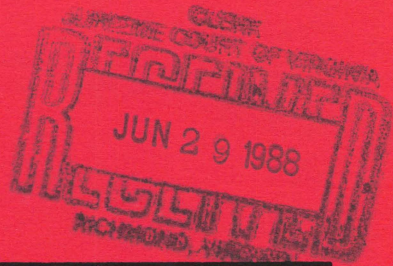


238V2162



IN THE
Supreme Court of Virginia
AT RICHMOND

RECORD NO. 880171

TOWN OF BLACKSBURG,

Appellant,

v.

ROBERT L. MILLS, THOMAS E. HEAVENER,
AND ERNESTINE FORESMAN,

Appellees.

JOINT APPENDIX

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VIRGINIA:

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY

Robert L. Mills, Thomas E.)
Heavener and Ernestine Foresman)
Plaintiffs)

v.)

The Town of Blacksburg, Virginia,)
Defendant)

MOTION FOR JUDGMENT

Serve: Richard B. Kaufman
Town Attorney
300 South Main Street
Blacksburg, VA

Pursuant to Section 15.1-475 of the Code of Virginia of 1950, as amended, plaintiffs appeal the disapproval by the Planning Commission of the Town of Blacksburg of the preliminary plat of subdivision of Deer Run Cluster Subdivision, and to that end would show this Court the following:.

(1) On or about May 8, 1986, plaintiffs submitted to the Town of Blacksburg their preliminary plat of subdivision, dated May 1, 1986, for Deer Run, a cluster housing development to be constructed on land owned by them in the Town of Blacksburg. Said plat was submitted pursuant to the provisions of Section 6.1 of Appendix B to the Code of the Town of Blacksburg, Virginia (1981) (the Subdivision Ordinance).

(2) The Code of the Town of Blacksburg provides in Section 6-3 of Appendix B that preliminary plats of subdivision resulting in more than five (5) new parcels must be approved by both the administrator of the Subdivision Ordinance and the

Town Planning Commission. The Town's Department of Planning, as administrator of the ordinance (or designated representative of the administrator), recommended approval of said preliminary plat, but by action taken on August 5, 1986, the Town Planning Commission disapproved the plat. By letter to plaintiffs dated September 3, 1986, the Director of Planning of the Town set forth the reasons for disapproval by the Planning Commission.

(3) Following meetings with Planning Department personnel and the Town Attorney concerning the changes necessary in order to gain approval of the plat, plaintiffs on October 24, 1986 resubmitted the preliminary plat, revised in accordance with the September 3 letter. Again the Department of Planning recommended approval of the plat, but again the Planning Commission, by action taken December 2, 1986, disapproved the revised plat. By letter to plaintiffs dated December 29, 1986, the Director of Planning set forth purported reasons for disapproval of the revised plat by the Planning Commission.

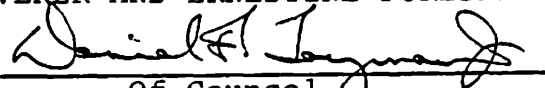
(4) The revised preliminary subdivision plat of Deer Run dated October 23, 1986 and submitted to the Town of Blacksburg for approval on October 24, 1986 complies with the requirements of the Subdivision Ordinance of the Town of Blacksburg as to cluster subdivisions. Disapproval of that plat by the Town Planning Commission was not properly based on the said ordinance and was arbitrary and capricious.

WHEREFORE, plaintiffs ask that this Court, pursuant to Section 15.1-475 of the Code of Virginia, order the Planning

Commission of the Town of Blacksburg to approve the preliminary subdivision plat of Deer Run dated October 23, 1986, and grant to the plaintiffs such other and further relief as shall seem appropriate, including the expenses incurred by them as a result of the improper refusal of the Planning Commission to approve said plat.

Respectfully,

ROBERT L. MILLS, THOMAS E.
HEAVENER AND ERNESTINE FORESMAN

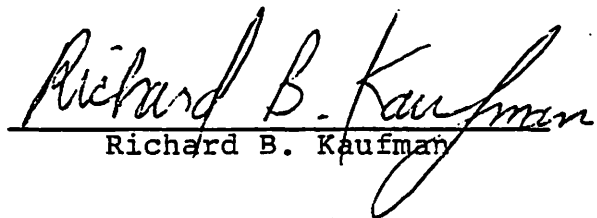
By 
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Counsel for Robert L. Mills, Thomas E. Heavener
and Ernestine Foresman

CERTIFICATE

I certify that a copy of the foregoing Grounds of Defense was mailed to Daniel F. Layman, Jr., counsel for Plaintiffs, Woods, Rogers & Hazlegrove, 105 Franklin Road, S.W., P.O. Box 720, Roanoke, VA 24004, this 24th day of March, 1987.


Richard B. Kaufman

VIRGINIA: IN THE CIRCUIT COURT OF MONTGOMERY COUNTY

ROBERT L. MILLS, et als,]

]

Plaintiffs,]

]

vs.]

]

TOWN OF BLACKSBURG,]

]

Defendant.]

NON-JURY TRIAL

BEFORE THE HONORABLE K. I. DEVORE

October 28, 1987

Christiansburg, Virginia

DEBBIE A. WILSON
BLUE RIDGE COURT REPORTING
P. O. BOX 251, GALAX, VA 24333-0251
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1 stipulated.

2 MR. LAYMAN: I have a booklet for you, too, Mr.
3 Kaufman, that's identical to the one I gave the Court. I'll
4 also give the same exhibits, not in a booklet form, but
5 prenumbered to the Reporter so everyone will have everything
6 here to begin with.

7 THE COURT: All right, sir.

8 MR. LAYMAN: Call Mr. Robert Mills please.
9

10 ROBERT L. MILLS, first being duly sworn, was
11 examined and testified as follows:
12

13 DIRECT EXAMINATION BY MR. LAYMAN:
14

15 Q Mr. Mill, for the record, would you tell the Court
16 your name and address please?

17 A I'm Bob Mills and I live at 908 Elliott Drive,
18 Blacksburg.

19 Q How are you employed?

20 A I am a principal in the firm of Mills, Oliver and
21 Webb, an architectural firm in Blacksburg.

22 Q And you are a trained architect? Is that correct?

23 A Yes, I am.

24 Q What degrees do you have?

25 A A Bachelor of Architecture degree from V.P.I.

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1 Q Now, you, along with Mr. Heavener and Mrs.
2 Foresman, are the owner of a seventeen (17) acre
3 tract in the Town of Blacksburg that's the subject
4 of this proceeding, are you not?

5 A That is correct.

6 Q Would you describe for the Court your first
7 attempt to develop this property?

8 A Our first attempt was a project called Timberwood,
9 which we started in the fall of '85, and it was
10 turned down, I guess, late winter or, I guess,
11 early spring of 1986.

12 Q When you say turned down, what do you mean?

13 A That the Planning Commission and Town Council
14 disapproved the project.

15 Q Was there substantial public opposition to that
16 project?

17 A Yes, there was.

18 Q And that came from the?

19 A From the entire neighborhood which surrounds the
20 project.

21 Q What was your next step after rejection of
22 Timberwood?

23 A In May of 1986, we began to undertake a new
24 project. We changed the site lay-out and this was
25 submitted to the Town of Blacksburg in May, I

believe, of 1986.

Q And that was Deer Run?

A That was Deer Run.

Q Is the, it was the predecessor plat there to your right on the easel. Is that correct?

A Correct. This, I believe, is the second plat, which was revised. The original plat was fairly similar to this plat, yes.

Q All right. Do you know what happened to that first plat after it was filed with the Town, whether it was reviewed by anyone?

A The plat was reviewed, I believe, by the Planning Director. It was referred to the Planning Commission, who referred it to the, a subcommittee. I'm not sure of the exact title of the subcommittee.

Q Do you know what the position of the staff was on that first plat?

A I believe the staff recommended approval with a couple of changes, I believe.

Q And that plat then went to the Planning Commission. What was the Planning Commission's response?

A Well, then they referred it to the subcommittee. The subcommittee had a meeting on it and they recommended approval to the entire Planning Commission.

- 1 Q What did the Planning Commission do then?
- 2 A The Planning Commission turned the project down.
- 3 Q That was in August of '86?
- 4 A I believe so.
- 5 Q I hand you this booklet of exhibits which is the
- 6 same thing we've given to the Judge and ask you to
- 7 look at what's marked as Exhibit #1. That's at Tab
- 8 #1. All the exhibit numbers correspond with the
- 9 tab numbers, Your Honor. This is a letter dated
- 10 September 3, 1986, from Mr. West to you, I believe.
- 11 Is that correct?
- 12 A Correct.
- 13 Q What does that letter do?
- 14 A It basically states the Planning Commission's
- 15 action on the project and lists four (4) items as
- 16 to the reason why the project was turned down.
- 17 Q And you understood those to be four (4) problems
- 18 that you had to solve in order to obtain Planning
- 19 Commission approval? Is that right?
- 20 A Yes. We needed to discuss these and to address
- 21 these problems and then resubmit.
- 22 Q Did you in fact discuss that letter with the
- 23 Director of Planning?
- 24 A I believe we did talk on the phone or even perhaps
- 25 in person about these items, yes.

1 Q Did you then make an attempt to comply with those
2 suggestions?

3 A Yes, we did.

4 Q And what form did that attempt take?

5 A That, I believe, is the plat which you have before
6 you here, where that we addressed the four (4)
7 items that were cited in the September 3rd letter.

8 Q All right. That is the plat that is at Tab #2, I
9 believe, in the exhibit booklet. Is that correct?

10 A I believe so, yes.

11 Q And at Tab #2 is a copy of the plat and a copy of
12 the information booklet that accompanied it when
13 you filed it with the Town? Is that right?

14 A That is correct.

15 Q I want to ask you what changes you made from the
16 first plat to the second and to assist you in that,
17 I want to give you a copy of the first plat. Now,
18 I'm not intending to introduce this into evidence.
19 Would you like to see a copy also?

20 MR. KAUFMAN: Yes.

21 Q If you would, using that first plat and comparing
22 it with the plat on the easel, would you just
23 explain to the Court briefly what changes were
24 made? Now, the first requirement in the letter was
25 that the location and nature of proposed open space

1 is not accessible, functional or usable. What did
2 you do to try to meet that objection?

3 A We added two (2) areas of access to the open space.
4 If you'd like, I could go to that map and point
5 out.

6 Q Would that be here?

7 A That would be that space up through there, correct.

8 Q And here?

9 A And there and plus, up at the top of the cul-de-
10 sac, to the right on over, right, correct. Right.
11 That gave more access to the common open space. We
12 felt that the large tract of common open space to
13 the top left of this plat was a very usable space.
14 It was one of the flatter areas on the site. The
15 views were very good and as we stated, we felt it
16 was a good open space that the people living in
17 that area could use. We also addressed adding a
18 sidewalk to the right hand side, going up Grove
19 Avenue to the property, which is one of the things.
20 Correct. A five (5) foot sidewalk was added. The
21 typical house placement in the lower left hand
22 corner, we had a couple of mistakes in there in our
23 dimensions in that we were having more lot coverage
24 of the house than was allowed and so we went back
25 and adjusted our dimensions. I believe we made the

1 lots wider. They were fifty (50) feet on the
2 original plat. We made them sixty (60) feet, I
3 believe, there and we reduced the size of the
4 typical house and we put the dimensions on for the
5 front, the rear and the side yard set backs.

6 Q All right. There was also some mention in the
7 letter of failure to cluster sufficiently,
8 suggesting that you perhaps reduce the number of
9 lots, introduce more buffering between the lots in
10 the subdivision here. Did you accomplish that?

11 A We reduced the lots, I believe, from sixty-three
12 - (63), which the original plat had, down to fifty-
13 two (52). That made some of them larger and we
14 also then added some open space to it, around the
15 edges.

16 Q This buffering here?

17 A Right.

18 Q So you made substantial changes on the revised
19 plat?

20 A We felt that we had addressed these four (4) items.

21 Q And that revised plat is the one that we're asking
22 the Court to approve today?

23 A Yes, sir.

24 Q Now, if you would please, turn to Tab #3, which is
25 marked as Plaintiff's Exhibit #3. Your Honor, I

1 don't want to bore the Court, but I think it's
2 important that we prove that the requirements of
3 the Subdivision Ordinance have been met, so I would
4 like to walk Mr. Mills through that as briefly as I
5 can. Mr. Mills, have you examined the sheet that
6 is marked Plaintiff's Exhibit #3?

7 A Yes, I have.

8 Q That purports to be a summary of the subdivision
9 requirements for the Cluster Subdivision Ordinance.
10 Is that an accurate summary in your belief?

11 A Yes, that is correct.

12 Q It sets forth a comparison of the requirements of
13 the ordinance, both the conventional Subdivision
14 Ordinance and the Cluster Subdivision Ordinance,
15 for such things as lot size, lot width, street
16 configuration.

17 A Correct.

18 Q And it also shows how Deer Run fits into that
19 scheme. Does Deer Run, as reflected on this
20 summary, meet all the requirements of the Cluster
21 Subdivision Ordinance?

22 A Yes, it does.

23 Q For example, its lot size, minimum lot size shown
24 here as sixty-two hundred (6,200) square feet is
25 greater than the minimum required by the Cluster

Ordinance of five thousand (5,000)?

A Yes.

Q And similarly throughout this list of items, it is your opinion that the Deer Run plat meets the numerical requirements of the Cluster Subdivision Ordinance?

A Yes.

Q All right. There is also, Your Honor, a set of requirements as to the particular form of the subdivision plat, the preliminary plat. Certain things have to be on there. We have, in Tab #4, Exhibit #4, placed a copy of the ordinance that describes what will be on the plat and we have chopped up this revised subdivision plat of Deer Run to isolate those items for each section of that ordinance and to show how it complies and I'd just like to go briefly through that with Mr. Mills. Mr. Mills, if you will turn to Exhibit #4 please, we're dealing now with Section 6-3 of the Blackburg Subdivision Ordinance. The first portion of that ordinance requires that the name of the subdivision, the subdivider, the surveyor, the date of the drawing, the number of sheets and the North point and scale be on the plat and we have marked the accompanying portion of the plat there to show

1 that that information is on there. Is it all on
2 there as far as you can tell?

3 A Yes, it is.

4 MR. KAUFMAN: Excuse me, Mr. Layman. Your Honor,
5 the Town will stipulate that they've met all these types of
6 requirements that are set forth in this particular Code
7 section. I don't think there's any dispute as to that.

8 THE COURT: All right, sir.

9 MR. KAUFMAN: That's Section 6-3 of the Subdivision
10 Ordinance.

11 THE COURT: That's fine. Thank you.

12 Q Now, I think, Mr. Mills, that there are some other
13 requirements of the Subdivision Ordinance in
14 addition to those that we've talked about, that
15 have to be handled at some point of the procedure.
16 Is that correct?

17 A Yes. Correct.

18 Q Where are such things as sewer, water, street
19 names, street paving and that kind of thing? Were
20 are those handled?

21 A The final design. It's usually handled in the
22 final subdivision plat with the engineering
23 drawings and any final details have to be worked
24 out before that the staff gives approval.

25 Q So after this plat is approved, you proceed with

1 those things to the final ...

2 A We go into a final, we would go into a final
3 subdivision plat, which would be the engineering
4 drawings, the street names, things of this nature.

5 Q And are you ready, willing and able to do that if
6 this plat is approved?

7 A Yes, we are.

8 Q Now, after this revised plat was submitted, do you
9 know what happened to it in the review process?

10 A It was resubmitted in October, I believe, October
11 the 24th. It was referred to the Environmental
12 Land Use Committee, I believe.

13 Q Do you know what happened in that committee? Were
14 you present when that committee considered the
15 plat?

16 A Yes.

17 Q And what happened there?

18 A The staff had made a recommendation for approval, I
19 believe, subject to one (1) or two (2) changes.
20 There was considerable discussion. The neighbor-
21 hood was there. The subcommittee recommended
22 approval to the Planning Commission.

23 Q I believe that that meeting occurred on October
24 24th and that Exhibit #9 reflects the procedure
25 that the committee followed. It appears that they

1 went through Mr. West's September 3rd letter step
2 by step and determined that all four (4) of the
3 requirements that he had stated had been satisfac-
4 torily addressed. Is that your recollection of
5 what occurred?

6 A Yes, it is.

7 THE COURT: Excuse me. You're on Exhibit #9?

8 Q Yes, sir. There is a paragraph, the third
9 paragraph on the second page of that exhibit, Your
10 Honor, which indicates a step by step consideration
11 and a vote that each item of the September 3rd
12 letter had been addressed to the satisfaction of
13 the committee. And I believe that committee then
14 voted to recommend approval of the plat to the full
15 Commission?

16 A That is correct.

17 Q Then were you present at the Planning Commission
18 meeting at which the full Commission considered the
19 plat?

20 A Yes, I was.

21 Q That was on December 2nd?

22 A Yes.

23 Q What happened at that meeting?

24 A There was considerable discussion at that meeting
25 also.

1 Q Was the public there, of course?

2 A I believe that's the meeting, perhaps, that they
3 had the public hearing. The public was there.
4 They had been to every meeting. They were
5 violently opposed to the project. I feel that the
6 Planning Commission was intimidated by these people
7 coming and opposing it. There was a considerable
8 public hearing. I spoke. Several of the opposi-
9 tion spoke and the Planning Commission turned it
10 down.

11 Q And then following that, well, at the meeting, did
12 the Planning Commission give any reasons for having
13 turned it down?

14 A No, they did not give a reason. They, I believe,
15 were instructed, there was discussion that they
16 should give a reason if they were going to turn it
17 down, but they could not come up with definite
18 reasons, so they set a special meeting, I believe,
19 on the 16th to try to arrive at a reason of why
20 they were going to turn the project down.

21 Q And were you present at the December 16 work
22 session?

23 A Yes, I was.

24 Q And what happened there?

25 A Well, there was considerable discussion there. The

1 opposition, the neighborhood was at that meeting.
2 I think one (1) or two (2) of them spoke before
3 they were stopped because that was not a public
4 hearing. There was considerable discussion among
5 the Planning Commission members. I think several
6 of the members thought it was going to be student
7 housing. It was going to be incompatible and
8 nowhere, in any of our discussions, did we talk of
9 student housing. The price of the houses became a
10 big factor, whether they should be set at sixty-
11 five thousand (\$65,000.00) or seventy-five
12 (\$75,000.00) or this and that, would that help the
13 project if we set a price. There was just
14 considerable discussion, no consensus of opinion.
15 At that stage, in my opinion, the Planning
16 Commission had made up their mind they were not
17 going to approve the project period.

18 Q I believe at, Exhibit #11, at Tab #11 is a set of
19 notes taken by Mr. West or some employee of the
20 City or the Town which reflects what transpired at
21 the December 16 work session. Is that right?

22 A Yes.

23 Q Now, that's four (4) pages of notes. Out of that
24 work session, I believe, came a letter, a second
25 letter to you from Mr. West. Is that right?

1 A Yes.

2 Q And that is at, that's Exhibit #5 at Tab #5. What
3 did Mr. West say to you after that long work
4 session proceeded by a public hearing? What did he
5 say was wrong with Plat #2?

6 A This letter listed two (2) items, that the location
7 and the nature of the proposed open space was not
8 accessible, functional or usable and that the
9 revised preliminary plat still presents only a
10 conventional subdivision with smaller lots than are
11 allowed by the Town Code and that the developer has
12 still made an unsatisfactory attempt to cluster or
13 group the lots and parts of the property with the
14 goal of lessening the impact of the higher
15 densities which this plat would render possible.
16 He also listed some suggested ways that we might
17 correct this deficiency. There were five (5) items
18 listed there.

19 Q Now, those two (2) objections were, in fact,
20 restatements of two (2) of the objections that have
21 been mentioned in the first letter, were they not?

22 A Basically. Basically, yes.

23 Q What was your reaction to the December 29th letter?

24 A There again, we felt that we had met those
25 objectives and we felt that some of their design

1 suggestions were totally against items #1 and #2.
2 One of the suggestions was that we could put some
3 trails between groupings of lots, but we could
4 still leave the open space as it was originally
5 shown and we felt that was contradictory. In one
6 place, they were saying that the open space was not
7 usable and was not accessible, but then in some of
8 their suggestions they say that that could be left.
9 So there was some inconsistency there, we felt.

10 Q You did not or did you attempt again to respond to
11 these objections?

12 A We did. We reduced the plat from fifty-two (52)
13 lots to forty-eight (48) lots, made some other
14 changes and that's the subdivision then that the
15 Planning Commission has refused to review.

16 Q And the one that Judge Devore had heard about
17 earlier?

18 A Has ruled on in a previous case.

19 Q Now, to your knowledge, have any other or were any
20 other cluster developments approved by the Town of
21 Blacksburg?

22 A To my knowledge, two (2) have been approved, yes.

23 Q Are you familiar with the procedures that were
24 followed in considering those plats?

25 A Yes, very much so.

R. Mills - Direct

36

1 Q And so they were approved?

2 A Correct.

3 Q Now, just one final question. Was any rezoning
4 required for this seventeen (17) acres in order for
5 it to ...

6 A No.

7 Q For cluster development to be permitted on it?

8 A No. Cluster development was permitted in the R-12
9 zone.

10 Q This is an R-12?

11 A This is an R-12 zone.

12 Q Would you answer any question Mr. Kaufman might
13 have please?

14 A O. K.

15

16 CROSS EXAMINATION BY MR. KAUFMAN:

17

18 Q When you submitted the Deer Run cluster project,
19 what documents did you submit, Mr. Mills?

20 A I believe we submitted, now, you're talking about
21 the first submission we made?

22 Q Yes, sir.

23 A I believe we submitted a plat dated May the 21st
24 and I believe we also met, submitted a copy of
25 other required documents, addressing water, sewer,

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1 home owners agreement, a booklet similar to what
2 you have. I think we had some floorplans in there,
3 perhaps, some building elevations, typical.

4 Q Did you submit this booklet called Deer Run Cluster
5 Development, Blacksburg, Virginia?

6 A I believe we did, yes.

7 Q In addition to the subdivision plat?

8 A Yes, definitely. The subdivision plat was the
9 first thing submitted. This may have been
10 submitted after the subdivision plat. We worked
11 with Bill West and the Planning staff.

12 Q And this booklet contains subheadings on engineer-
13 ing feasibility studies for water, sanitary sewer
14 and storm water?

15 A Correct.

16 Q And it contains a subsection on neighborhood
17 assessment, doesn't it?

18 A Correct.

19 Q It contains a section on methods and agreements for
20 ownership and maintenance of common open space. Is
21 that correct?

22 A Correct.

23 Q It contains Statement Number 10 on adjacent land
24 use, zoning classification, circulation systems,
25 public facilities and natural features, doesn't it?

1 A Correct.

2 Q Then it contains house plans?

3 A House plans and elevations, yes.

4 Q As well as a section on adjacent property owners?

5 A Yes.

6 Q All right. Now, so what you did, basically, didn't
7 you, is submit a subdivision plat and zoning
8 documents for review by the Town with respect to
9 the initial Deer Run filing, didn't you?

10 A I'm not sure that that complies with the Zoning
11 Ordinance. We, at that stage, were not addressing
12 the specific, the specific requirements of the
13 Zoning Ordinance. We were going basically by the
14 Subdivision Ordinance.

15 Q But you did submit documents that involved, that
16 were involved in the subdivision review, didn't
17 you?

18 A Correct. Yes.

19 Q And you did submit documents that were involved in
20 the zoning aspects of this cluster ...

21 A Some of those items as well as some of the items on
22 the plat are part of the zoning requirements.
23 Correct.

24 Q Isn't it true that the Cluster Housing Ordinance
25 procedures contemplate a unitary review of the

DEBBIE A. WILSON
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1 zoning and subdivision elements of the project
2 together?

3 MR. LAYMAN: I'm going to have to object to that
4 question, Your Honor. I think that asks for the witness to
5 draw a legal conclusion which, that's what we're here about
6 today.

7 THE COURT: Sustained.

8 Q Did you correspond with the Town with respect to
9 the zoning aspects of your project, Mr. Mills?

10 A Not specifically. We, I believe, talked to Mr.
11 West and realized that we had to address the zoning
12 part of the Ordinance, but we wanted to get
13 approval of the Subdivision Ordinance first. I
14 believe we have a letter from the Town, dated
15 September 3rd, also, stating the Zoning Ordinance
16 had to be addressed before final approval was
17 obtained and we certainly realized that.

18 Q Did I understand your testimony correctly to say
19 that the Timberwood did not involve a zoning
20 approval?

21 A A rezoning of the land. That was what I intended.
22 I thought that was what the question was, that the
23 land did not have to be rezoned.

24 Q But was it not true that the Town Council had to
25 approve the Timberwood, Evergreen and Vistas

1 project by an ordinance?

2 A Correct.

3 Q So that these projects were fundamentally different
4 from the Deer Run project in that they had to be
5 approved by an ordinance of the Council?

6 A I believe the Cluster Housing Ordinance stated that
7 Council would give final approval of any cluster
8 developments and that Deer Run came under the
9 Cluster Development, the same as Timberwood.

10 Q And did the Timberwood project involve the same
11 real estate that we're talking about today with
12 respect to Deer Run?

13 A Yes.

14 Q And the same developers?

15 A Yes.

16 Q I want you to describe to the Court the engineering
17 and planning and consultant studies that you've
18 secured with respect to the Timberwood project.

19 MR. LAYMAN: Your Honor, I don't know that I mind
20 Mr. Mills doing that since we have mentioned Timberwood, but
21 we're not really here about Timberwood. That project is
22 dead. I don't understand what the specifics of that ...

23 THE COURT: Well, I'm sort of interested in it
24 because Mr. Mills has testified that when they were turned
25 down for Timberwood, two (2) other cluster housing develop-

1 ments were approved and he added that there was no public
2 opposition. To me, that's the key to this whole thing, so
3 I'm interested in it, very much interested. Go ahead.

4 A O. K. If I understand the question, you want me to
5 describe the professional services that were
6 rendered on Timberwood?

7 Q Yes, sir. To the subdividers and the developers.

8 A O. K. David Foresman, a landscape architect in
9 Texas, did an overall landscape plan and a
10 development plan. Draper Aden, surveyors and
11 engineers in Blacksburg, did the site layout, the
12 boundary survey, water, sewer. Those were the two
13 (2) basic firms that were hired at that stage. Our
14 firm did a couple of renderings showing exterior
15 elevations of how some of the houses might look on
16 the project.

17 Q Did you hire anyone to advise you about blasting?

18 A Yes, we had an expert from V.P.I. look at the site
19 and give us an opinion, I believe.

20 Q Was his name Mr. Sterns?

21 A Sears, I believe.

22 Q Sears?

23 A I believe is the correct name.

24 Q Did you hire somebody named Mr. Durham to talk to
25 you about landscaping for Timberwood?

1 A I don't recall that. Possibly, we could have.

2 Q You spent a lot of money on Timberwood, didn't you?

3 A We sure did.

4 Q Do you have an estimate for the Court as to how
5 much you spent on Timberwood?

6 A Well, what do you want to include in the estimate?

7 Q Just the consultants and the planners and the
8 professionals that you hired for Timberwood.

9 A Fifteen (\$15,000.00), sixteen thousand dollars
10 (\$16,000.00).

11 Q Now, Deer Run, let's talk about Deer Run. Name the
12 planners and experts you had helping you on Deer
13 Run.

14 A Draper Aden were the main people we hired there.
15 They had done the Timberwood project, so we felt
16 they were involved and knew about the project. We
17 did not go in to as elaborate detail on the house
18 plans themselves. One of the objects on the
19 Timberwood project was a zero lot line, which
20 involved an little more detailed study. Then our
21 firm also was involved somewhat.

22 Q You did not have a landscape architect, did you?

23 A Not, no.

24 Q You didn't have anyone on blasting, did you?

25 A Well, we felt the same person who had done the

1 report, who we had met with on the previous
2 project, the land stayed the same, so we did not
3 feel we needed another expert on blasting.

4 Q Do you have an estimate for the Court as to how
5 much money you spent on these consultants and
6 experts for Deer Run?

7 A Maybe four (\$4,000.00) to five thousand dollars
8 (\$5,000.00).

9 Q Now, Mr. Mills, on the opposition or lack of
10 opposition to Vistas, which was one of the cluster
11 housing projects, considered contemporaneously with
12 the Timberwood project and Evergreen project, which
13 was another one, do you not remember the people
14 from Grove Avenue coming down and strongly opposing
15 the Evergreen project to the Town Council and
16 Planning Commission?

17 A I do not believe that was the case. At the meeting
18 I was at, no. There was one person, I believe,
19 that perhaps spoke and he was just concerned about
20 it backing up to his house. That's the only person
21 I recall speaking. Now, I'm talking about
22 Evergreen.

23 Q Yes, sir.

24 A I don't recall anyone speaking against the Vistas.

25 Q So there was opposition to Evergreen, wasn't there?

approval. Is that a true statement?

A I put them both in the same category.

Q Thank you. That's all the questions we have.

RE-DIRECT EXAMINATION BY MR. LAYMAN:

Q Mr. Mills, I think Mr. Kaufman was trying to show that you spent less money on Deer Run than you did Timberwood and you acknowledged that you did. I assume though that since you're dealing with the same piece of land, a lot of the work you had done on Timberwood was applicable to Deer Run. You didn't have to pay for it again. Is that right?

A Well, certainly. Yes, definitely.

Q No further questions.

~~THE COURT: Thank you, sir. Call your next witness please.~~

~~MR. LAYMAN: I'd call Mr. West please.~~

~~WILLIAM B. WEST, JR., first being duly sworn, was examined and testified as follows:~~

DIRECT EXAMINATION BY MR. LAYMAN:

1 Q Mr. West, would you tell the Court your name and
2 address and how you're employed please?

3 A My name is William B. West, Jr. My address is 2514
4 Plymouth Street, Blacksburg, Virginia. I am
5 employed as the Planning Director of the Town of
6 Blacksburg, Virginia.

7 MR. LAYMAN: Your Honor, since Mr. West is an
8 employee of the Defendant, I would like permission to treat
9 him as an adverse witness please.

10 THE COURT: I think that would be permissible. Go
11 ahead.

12 MR. LAYMAN: Your Honor, in addition, I believe Mr.
13 West has qualified as an expert in urban planning the last
14 time he appeared. I assume that Mr. Kaufman will have no
15 objection to stipulating that he is an expert in urban
16 planning.

17 MR. KAUFMAN: We have no objection to stipulating
18 although we'd like to get into his qualifications later.

19 THE COURT: All right, sir.

20 Q Mr. West, in your capacity as Director of Planning,
21 did you review the initial plat or subdivision of
22 Deer Run that was submitted in May of 1986?

23 A Yes, sir. I did.

24 Q I show you a letter or a memorandum dated June 6th,
25 which has been marked Plaintiff's Exhibit #6 and is

1 at Tab #6, and ask you if you either prepared this
2 or supervised its preparation.

3 A Yes, I did.

4 Q You did prepare it?

5 A Well, I supervised its preparation.

6 Q Now, that memorandum, I believe, was a report on
7 your part to the Development and Study Committee of
8 the Planning Commission. Is that correct?

9 A That's correct.

10 Q On the first Deer Run plat?

11 A That's correct.

12 Q And that report goes through the requirements, what
13 it calls the general requirements of the Cluster
14 Subdivision Ordinance, step by step, does it not?

15 A That's correct.

16 Q And analyzes how that first plat handled each of
17 those requirements?

18 A That's correct.

19 Q And that report came to the following conclusions
20 and I'm quoting now from the conclusions portion on
21 Page Four: "The preliminary plat submitted by Deer
22 Run Partnership meets the general requirements
23 specified in the Subdivision Ordinance". That's an
24 accurate quote, is it not?

25 A That's correct.

1 Q And it also said that we, the Planning staff,
2 recommend approval of the preliminary plat with the
3 following conditions: installation of a sidewalk
4 and installation of a fence. Is that accurate?

5 A That's correct.

6 Q And does that accurately reflect your opinion as to
7 the first plat?

8 A That does reflect my opinion as to the first plat
9 in regard to the subdivision requirements.

10 Q Now, after the Planning Commission had rejected
11 this first plat, you wrote Mr. Mills a letter.
12 We've already heard him describe that. That's
13 Exhibit #1 at Tab #1, I believe. Was it the
14 purpose of that letter to set forth the basis for
15 the Planning Commission's rejection of the first
16 plat?

17 A That is the purpose of this letter.

18 Q And you said in, I believe, the third from the last
19 paragraph on the second page of that letter, that
20 the, in summarizing the reasons for rejection, that
21 the plat did not meet the high standards imposed by
22 the Cluster Housing Ordinance, despite its
23 technical compliance with the numerical require-
24 ments of the Cluster Housing Ordinance. Is that
25 correct?

1 A Yes. Yes, sir.

2 Q Now, I believe you also wrote a second letter on
3 that same date of September 3rd to Mr. Mills. Is
4 that right?

5 A Yes, sir. I did.

6 Q That's at Tab #8 and marked Exhibit #8. What was
7 the purpose of that second September 3rd letter?

8 A The purpose of the second letter was to more fairly
9 lay out the requirements of the proposal as it
10 related to the, to conformance for development
11 under the Zoning Ordinance and to put, to advise
12 the developer that there was still a significant
13 amount of work to be done before a project could be
14 approved at the site.

15 Q But you were here, obviously, making a conscious
16 effort to keep the subdivision and the zoning
17 requirements separate at this stage, were you not?

18 A Yes, I was.

19 Q Now, when the second plat was submitted in October,
20 that's the plat to your right on the easel that
21 we're here about today, did you and or your staff
22 review that second plat?

23 A Yes. My staff reviewed the second plat as well.

24 Q Did you or the staff make a recommendation to the
25 Planning Commission on that second plat?

1 A We did not make a recommendation on the second
2 plat.

3 Q Why did you not?

4 A Because we had made our recommendation on the first
5 plat and the Commission had, had listed its reasons
6 for denial of the plat as related to the sub-
7 division, to the Cluster Development Ordinance, and
8 we were, we felt like they needed to decide if it
9 met those aspects of the ordinance that they were
10 concerned about.

11 Q What was your opinion of this plat as compared with
12 the first plat?

13 A My opinion was that the plat was better. It had
14 addressed the two (2) technical, very technical
15 concerns of the sidewalk and the fencing and that,
16 in that aspect, it was better. In terms of the
17 attempt to address the open space functionality and
18 usability in the clustering of the lots, it was
19 different.

20 Q But you had felt that the first plat met the
21 requirements and you have just testified that you
22 thought the second plat was even better. Is that
23 correct?

24 A Yes, sir.

25 Q No further questions.

CROSS EXAMINATION BY MR. KAUFMAN:

Q Mr. West, in the June 12th, 1986, report, in two (2) places you mention that the project does indeed meet the "general requirements" set by the Subdivision and Zoning Ordinances. That's on the last paragraph on Page One. Then on the first paragraph on Page Four, you state the preliminary plat meets the "general requirements". Why did you use the term general requirements there?

A I used the term general because there were many detailed items that are a part of the Cluster Housing Ordinance that were not really addressed yet.

Q And what was this report of June 12, 1986, Mr. West? Why was it written?

A The report of June 12th, 1986, was a staff report to the committee, to a committee of the Planning Commission, the Development Study Committee, which was written to describe the project that was before them for review and to advise the Committee regarding the compliance with the technical aspects of the Zoning Ordinance, Zoning and Subdivision Ordinance, and to offer a recommendation of the

1 staff as to whether that, the plat met the
2 requirements or not.

3 Q In the report on the third paragraph on the first
4 page, you stated that the project met the general
5 requirements of the Subdivision and Zoning
6 Ordinances. State why you used the term Zoning
7 Ordinances in that case.

8 A Well, because the sizes of lots, lot widths,
9 frontage requirements, are all parts of the Zoning
10 Ordinance and the proposal as it had, as we had it
11 before us, did meet those general requirements.

12 Q Mr. West, let's turn to the two (2) letters of
13 September 3rd, 1986, again. You are the sub-
14 division agent for the Town, are you not?

15 A That's correct.

16 Q And you are also the Zoning Administrator for the
17 Town, aren't you?

18 A That is correct.

19 Q Are you also generally the agent of the Planning
20 Commission for subdivision and zoning purposes in
21 certain cases?

22 A In certain cases.

23 Q With respect to the Deer Run subdivision, with
24 respect to the Deer Run project, what body had to
25 approve the subdivision plat?

1 A The Planning Commission had to approve the
2 subdivision plat because it was a, it was a
3 subdivision in excess of five (5) lots.

4 Q Now, with respect to the zoning elements of this
5 project, which, on September 3rd, 1986, I assume,
6 had not been completely reviewed, but with respect
7 to those zoning elements, what body or person in
8 the Town government had to approve the zoning
9 aspects of that project?

10 A I think the Town Council would.

11 Q Let me ask you that again, Mr. West. With respect
12 to the Deer Run subdivision, with respect to the
13 Deer Run project, what body or person in the Town
14 government would approve the zoning elements of the
15 project?

16 A Oh, that would be the Zoning Administrator or me.
17 Excuse me.

18 Q Now, you wrote and signed the September 3rd letter,
19 didn't you, with respect to the zoning elements,
20 didn't you?

21 A Yes.

22 Q Did you write that in your individual capacity as
23 the Zoning Administrator or did you write that as
24 the Town Council or as the Planning Commission or
25 as some other overriding agency?

1 A I wrote it as the Director of Planning and Zoning
2 Administrator.

3 Q Now, looking at the September 3rd letter on the
4 subdivision aspects of this project, did you write
5 this letter as the Subdivision Agent or did you
6 write this as the Planning Commission, signed by
7 you as simply the one who signs off on the
8 correspondence?

9 A I wrote it as the agent of the Commission, signed
10 by me as the one who would do correspondence for
11 the Commission.

12 Q So was this the Commission's letter or was this
13 your letter?

14 A This was the Commission's letter.

15 Q Thank you. That is all the questions we have on
16 cross.

17
18 THE COURT: Thank you, Mr. West.

19 MR. LAYMAN: I have no further questions, Your
20 Honor. Your Honor, if I haven't done so already, I would
21 like to move into evidence all of the exhibits in the,
22 Exhibits #1 through #11 in the booklet we have given you.

23 THE COURT: Is there any objection?

24 MR. KAUFMAN: Well, I've stipulated several of
25 these and I have no objection as to those. As the Court will

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1 allow me, I'd like to be able to review with a little bit of
2 detail what the other exhibits are that I ...

3 THE COURT: All right. Suppose we just take a
4 brief recess while you go over those and everybody can relax
5 for a short time.

6
7 RECESS

8
9 THE COURT: Are you gentlemen ready?

10 MR. LAYMAN: Yes, sir.

11 MR. KAUFMAN: Yes, sir.

12 MR. LAYMAN: Your Honor, I believe Mr. Kaufman has
13 now reviewed the exhibits and if I can represent him
14 correctly has no objection to their being admitted into
15 evidence.

16 THE COURT: All right. I'll mark the ones that I
17 haven't marked.

18 MR. LAYMAN: Your Honor, those exhibits and these
19 two (2) witnesses constitute the Plaintiffs' evidence and we
20 rest.

21 THE COURT: The Plaintiffs rest. Mr. Kaufman?

22 MR. KAUFMAN: The Town of Blacksburg moves that the
23 evidence of the Plaintiffs be struck as not proving an
24 arbitrary and capricious action on the part of the Town of
25 Blacksburg and has not demonstrated to the Court by a

1 preponderance of the evidence that the Town did not follow
2 the standards of the Cluster Housing Ordinance including the
3 subdivision element and zoning element of the Cluster Housing
4 Ordinance.

5 **THE COURT:** Mr. Layman?

6 **MR. LAYMAN:** Your Honor, I believe that the
7 evidence presented by the two (2) witnesses clearly shows
8 that the plat complies with the Subdivision Ordinance.
9 Indeed, the Town has virtually stipulated to that fact. We
10 will want to argue at the conclusion of the case the evidence
11 in the documents that the Court has before it of the
12 arbitrariness and capriciousness that characterized the
13 Town's decision, but we believe the documents that you have
14 show clearly that the Town based its decision on the Zoning
15 Ordinance rather than the Subdivision Ordinance and perhaps,
16 more importantly, on the financially based objections of the
17 surrounding neighborhood and those facts are clear from the
18 minutes of the various committee meetings that the Court has
19 before it. So we would oppose a motion to strike on that
20 ground.

21 **THE COURT:** After considering the evidence and
22 especially the exhibits, I'd overrule your motion, Mr.
23 Kaufman. I think the Plaintiffs have made a prima facie
24 case.

25 **MR. KAUFMAN:** Thank you. The Town calls Mr.

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1 William E. West, Jr.

2
3 WILLIAM B. WEST, JR., still being under his oath,
4 was examined and testified as follows:

5
6 DIRECT EXAMINATION BY MR. KAUFMAN:

7
8 Q State your name please.

9 A William E. West, Jr.

10 Q What is your occupation?

11 A I'm the Director of Planning for the Town of
12 Blacksburg, Virginia.

13 Q You have already been qualified as an expert in the
14 field of planning, zoning and subdivision, but I'd
15 like you to recite for the Court your qualifica-
16 tions in that field.

17 A I have a master's degree in urban and regional
18 planning from the University of Mississippi. I
19 have sixteen (16) years of experience as a
20 professional planner, one (1) year with the City of
21 Columbus, Georgia, eleven (11) years with the City
22 of Lynchburg, Virginia, and the balance of the time
23 with the Town of Blacksburg.

24 Q Mr. West, did the Town adopt a Cluster Housing
25 Ordinance?

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1 A Yes, sir, they did.

2 Q And is it contained in Ordinances 576, adopted on
3 January 1, 1985?

4 A I think it's January 3th.

5 Q Excuse me. January 3th, 1985?

6 A That's correct.

7 Q Was it amended on February 11, 1986, by Ordinance
8 683?

9 A That's correct.

10 MR. KAUFMAN: I'd like to introduce into evidence
11 this Cluster Housing Ordinance, Your Honor. Attorneys for
12 the Plaintiffs have already seen it and stipulated that they
13 have no objection.

14 THE COURT: All right. Let's make it Respondent's
15 Exhibit #A.

16 Q Now, looking at the Ordinance 576, it's one (1)
17 ordinance, isn't it?

18 A Yes, sir.

19 Q Describe the makeup and components of the ordinance
20 please, sir?

21 A Ordinance 576 contained Division 15 of the Zoning
22 Ordinance related to and is entitled Cluster
23 Housing and it also contained an amendment to the
24 Subdivision Ordinance, 6.1 Cluster Subdivisions.
25 The Cluster Housing Ordinance describes goals and

1 purposes of it.

2 Q What are those, briefly?

3 A The purposes are to offer incentives and encourage-
4 ment to developers in the form of reducing
5 development costs by compacting development.
6 Briefly to, without limitation, for certain
7 specific regulations and in return, the developer
8 giving voluntary provision of common and private
• 9 open spaces, high quality site design, significant
10 landscaping, efficient construction techniques.
11 The goals are also for the preservation of land
12 used for agricultural, recreation, aesthetic and
13 environmental enrichment, enhancement of the public
14 health, safety and welfare by encouraging intensive
15 development in a manner planned to harmonize with
16 the natural and man made surroundings and promotion
17 of quality development in a compact form.

18 Q Go ahead and describe the other elements of the
19 Cluster Housing Ordinance, Mr. West, generally.

20 A Generally, there are definitions of cluster
21 development and cluster subdivisions, density
22 bonuses and zero lot line developments. There is a
23 listing of the permitted zones where such develop-
24 ments can be approved. There are allowances for
25 certain density bonuses assuming particularly high

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1 quality developments are proposed. There are
2 procedures for approval which govern how the
3 proposal should be submitted and there are review
4 criteria, six (6) of those. There is, there is a
5 decision on whether the Council will accept the
6 open space or whether it's to be maintained
7 privately. All that in Cluster Housing Division
8 15. The Cluster Subdivision is part of the
9 Subdivision Ordinance whose purposes, the overall
10 Subdivision Ordinance whose purposes are to, among
11 other things, to provide assurance that purchasers
12 of lots are buying a commodity that is suitable for
13 development and use. The Cluster Subdivision is
14 defined in 6.1-1 There are general requirements
15 for lot sizes and, of the, and lot widths of the
16 subdivision. There are minimum development
17 standards and discussion of private streets, when
18 they may be used and requirements of them if they
19 are used and there is stipulated an approval
20 process of the Cluster Subdivision plat.

21 Q Now, is there professional literature on the
22 question of clustering and cluster subdivisions and
23 cluster zoning districts, Mr. West?

24 A Yes, there's professional literature on the
25 subject. It's been written about extensively for,

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W. West - Direct

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1 sustain your objection.

2 Q Now, put away those authoritative texts now, Mr.
3 West. All right. Tell the Court generally what
4 was the Town Planning Commission and later the Town
5 Council trying to do in adopting the Cluster
6 Housing Ordinance, Mr. West.

7 MR. LAYMAN: Your Honor, I think the same problem
8 is involved in that question as well. What it did is on the
9 books and that's what we're dealing with.

10 THE COURT: That's true, but I'm going to allow him
11 to answer that. Did I hear someone say in opening or
12 something that it's been repealed by the Town Council now?

13 MR. KAUFMAN: Yes, sir.

14 THE COURT: Go ahead and answer the question if you
15 can.

16 A Would you repeat the question?

17 Q What was the Planning Commission and the Town
18 Council, what were they trying to do when they
19 adopted the Cluster Housing Ordinance? What were
20 their main purposes and objectives?

21 A I think that the Town Council and Planning
22 Commission wanted to do several things. They
23 wanted to allow for high quality development, land
24 within the Town of Blacksburg, some of which had
25 been overlooked or was inefficient for development

1 because of its size, configuration and to find a
2 way to promote the quality development of that land
3 and to, in a way that was in keeping with the
4 community in which these properties were, were
5 located. The, you know, the Council and Commission
6 attempted to do that with this ordinance and I
7 think they saw the need to tie that proposal
8 together by, you know, by adopting not only
9 standards of, for allowing it in zoning and for
10 such reductions of lot size as might be permitted,
11 but, by tying that also to the adoption of a
12 subdivision ordinance by which the land then is
13 divided and sold to individual property owners. I
14 think they wanted to be sure that when it was done
15 that it met the purposes of both the overall Zoning
16 Ordinance and the overall Subdivision Ordinance of
17 assuring that there was a usable property in, that
18 someone could buy.

19 Q Describe the procedure for submission and review of
20 a cluster subdivision plat, Mr. West, under the
21 Cluster Housing Ordinance.

22 A The developer would hopefully have preliminary
23 conferences with the staff to advise us and to, of
24 his intentions, and to, and seek some guidance of
25 how to go about filing preliminary plats. He would

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1 staff had. The staff would also make, generally
2 would make a recommendation as to whether the plat
3 should be approved on those technical requirements.
4 The Commission would then review the staff reports
5 and make its findings as to whether the plat should
6 be approved and communicate that to the developer.

7 Q Is there one submission for subdivision and zoning
8 elements in a cluster housing situation?

9 A There, in terms of a single family detached lot
10 type subdivision, Deer Run as an example, there
11 would be, there are two (2) reviews, one (1) for
12 the actual subdivision of the property, and one (1)
13 for the many, the zoning aspects. However, the
14 subdivision, I think, is somewhat tied to the
15 purposes of the zoning requirements of the
16 ordinance and the Commission expanded to look at
17 the usability of the space that was required, that
18 was provided in the plat and to what was done with
19 the lot arrangement itself.

20 Q Is there language in the Cluster Housing Sub-
21 division Ordinance that supports the dual review,
22 contemporaneous review of a subdivision plat and
23 zoning elements under the Cluster Housing Or-
24 dinance, Mr. West?

25 A Yes, there's language that supports the dual

1 review.

2 Q Can you find it and read it, briefly, to the Court?

3 A On the Cluster Subdivision definition, which is
4 6.1-1(b), this is part of the Cluster Subdivision
5 Ordinance. Compliance with overall density and lot
6 size limitations relates to the Zoning Ordinance
7 itself. Then in the, in the procedures for
8 development, cluster development approval, which is
9 back in Division 15, Section 293. The approval of
10 a cluster development, not a matter of right, shall
11 be granted or not by a zoning ordinance to Council.

12 Q Are you familiar with Section 6.1-5(b) of the
13 Subdivision Ordinance?

14 A 5(b)? Oh, yes, which states that approval of the
15 cluster subdivision plat shall be coordinated with
16 the Planning Department with the review and
17 approval or disapproval process for any companion
18 cluster development request submitted under
19 Blacksburg Zoning Ordinance in connection with the
20 land involved in the cluster subdivision review
21 process.

22 Q What is that last language telling you then as the
23 Subdivision and Zoning Administrator?

24 A That last section tells me that it's tied, is
25 another underlining of the fact that it is tied

1 together.

2 Q But yet it is your position as the Planning
3 Director that subdivision review, even under the
4 Cluster Housing Ordinance, constitutes an ad-
5 ministrative review? Is that true?

6 A Subdivision review is an administrative review.

7 Q Now, describe to the Court, in the case of Deer Run
8 exactly what approvals were necessary to get the
9 project going. Was there a zoning review necessary
10 by the Town Council?

11 A The zoning review was necessary by the Zoning ...

12 THE COURT: Excuse me, Mr. Kaufman. It appears to
13 me that we're going astray. We're now at the Town Council.
14 Isn't this action for me to do something about the Planning
15 Commission and has nothing to do with the zoning. Mr. West,
16 let me ask you just this. It's on my mind. I've read these
17 exhibits. Did the Plaintiffs comply with this ordinance,
18 576, Exhibit #A? That's my question.

19 A 576, Exhibit #A?

20 THE COURT: Exhibit #A. I'm looking at the same
21 thing you've been reading from here.

22 A Oh, Respondent's Exhibit #A.

23 THE COURT: Ordinance 576. I've marked it
24 Defendant's Exhibit #A without objection. Did they comply
25 with the ordinance?

1 A We do not have enough information to determine full
2 compliance with 576, Exhibit #A.

3 THE COURT: Did you recommend as shown in the
4 exhibits that it was approved by your office?

5 A The technical aspects of the subdivision which is
6 part, which is half of 576, Exhibit #A.

7 THE COURT: All right. O. K. Thanks. That's the
8 only question I wanted to ask you, the technical parts as you
9 call them. Go ahead.

10 MR. KAUFMAN: If I may, I was just trying to ...

11 THE COURT: I don't want to rush you people now,
12 because I'll give you all day, but I just want to stay, you
13 know, in the right path.

14 MR. KAUFMAN: Well, Your Honor, the Plaintiffs have
15 brought up that we have approved this thing under the wrong
16 criteria. They're saying that the Town has disapproved this
17 under zoning elements. What we're trying to say is that
18 there are, there is a dual review here. It is an administra-
19 tive review process under the Subdivision Ordinance, but it
20 is a cluster housing project and it is permissible, in our
21 opinion, to review the thing with the goals and purposes of
22 the Cluster Housing Ordinance in mind and they happen to be
23 contained in the zoning part of the Cluster Housing Or-
24 dinance, but I wasn't trying to get into this except for that
25 purpose.

1 THE COURT: All right. Go ahead.

2 Q Now, that I've argued that, I'll go ahead. Mr.
3 West, describe briefly the Timberwood project and
4 its relationship to the case that we have today.

5 A The Timberwood project was a proposal for sixty-
6 three (63) units of a town home type construction
7 that would have been on the same site. Originally
8 submitted, providing for private streets and homes
9 that went up and covered much more of the site, the
10 top of the hill that is now proposed as open space
11 under Deer Run, and it is, it was proposed by the
12 same parties and was an attempt to, an attempt to
13 create a common wall zero lot line type of cluster
14 concept on the property and which, when weighed
15 through by the Planning Commission and Town
16 Council, was found not to meet the purposes and
17 intents of the Cluster Housing Ordinance and was
18 denied by the Council.

19 Q When did that denial take place, Mr. West?

20 A That was in April of 1986.

21 Q What was the staff recommendation with respect to
22 that project?

23 A The staff recommendation was that the project, was
24 that we believed that the project was compatible
25 and recommended approval.

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1 Q When was the Deer Run project filed with the Town,
2 Mr. West?

3 A May of 1986.

4 Q What date in May?

5 A May 8th, 1986.

6 Q Was that one month exactly to the date after the
7 denial of the Town Council, of the Town Council of
8 the Timberwood project?

9 A That's correct.

10 Q Describe the major differences in terms of
11 procedural, procedural considerations between the
12 Deer Run project and the Timberwood project.

13 A The major difference is that the division into, by
14 approaching the project as a division into single
15 family detached lots, the proposal was more akin to
16 a subdivision of the property and the preliminary,
17 and a preliminary plat of that subdivision was
18 submitted to the Planning Commission. The staff
19 reviewed the plat and then in the process which I
20 described earlier.

21 Q Describe the contents of the submission for the
22 Deer Run project, Mr. West.

23 A The submission included a book, a copy of which I
24 have here, stamped received by this office of the
25 Deer Run Cluster Development. This book had

1 various boundary descriptions, staging of develop-
2 ment, some engineering feasibility studies,
3 addressing of methods and agreements for main-
4 tenance of common areas and open space, information
5 regarding adjacent land uses and circulation and
6 some typical home elevations and floor plans.

7 Q Did the submission ...

8 A Excuse me. Well, the submission did include an
9 application for cluster housing as well as a plat,
10 a proposed preliminary plat for the development.

11 Q Was there a separate submission under the Zoning
12 Ordinance and a separate submission under the
13 Subdivision Ordinance or was there only one
14 submission?

15 A There was only one submission.

16 Q Now, you've heard testimony, and in fact you
17 testified yourself, that your staff recommended
18 approval of the project. Is that true?

19 A Yes, we did.

20 Q And you've also heard testimony that the Planning
21 Commission with respect to the first version of the
22 plat did not approve the plat?

23 A That's correct.

24 Q And that disapproval took place on August 5, 1986,
25 didn't it?

1 A Yes, that disapproval took place on August the 5th.

2 Q Did you make a recommendation after the initial
3 disapproval of the first plat on any subsequent
4 Deer Run plat?

5 A No, I did not.

6 Q Why not?

7 A Because the, I made a recommendation regarding the
8 technical aspects. The subsequent submission only
9 had, had increased those minimums from what they
10 had been in previous submissions, so it was not
11 necessary to make a further recommendation
12 regarding those.

13 Q Did you feel like that you had one approach to this
14 plat and the Planning Commission possibly had
15 another approach to this plat?

16 A Yes, I did.

17 Q Did you feel like you had one role with respect to
18 the plat and the Planning Commission possibly had
19 another role with respect to reviewing this plat?

20 A I think the Planning Commission felt it had a
21 larger role to delve into the purposes of the
22 ordinance and, as well as the technical aspects of
23 a given proposal.

24 Q Did you see your office as a professional planning
25 staff reviewing the plat for professional, for

1 technical proficiency and conformance to the
2 Subdivision Ordinance?

3 A Yes, I did.

4 Q And did you see the Planning Commission as having a
5 little bit different focus in their review?

6 A Yes, I did.

7 Q Who makes the decision on approval or disapproval
8 of the Deer Run cluster subdivision plat?

9 A The Planning Commission.

10 Q Your office does not make the final decision, does
11 it?

12 A That's correct.

13 Q The letters of September 3, 1986, and the letter of
14 December 29, 1986, presented by the Planning
15 Commission to the subdivider, what was the purpose
16 of those letters? Why were they written?

17 A Those letters were written to communicate to the
18 subdivider the reasons that the Planning Commission
19 found the proposal deficient and to convey to him,
20 to them, what they needed to do to make the
21 proposal approvable.

22 Q What factors stopped this ongoing review and
23 approval process of the Deer Run subdivision plat,
24 Mr. West?

25 A The developer chose to appeal the decision of the

1 Planning Commission to the Town Council. At that
2 point, the Commission felt that their ability to
3 act had been terminated.

4 Q Did the developer subsequently appeal the decision
5 on the subdivision plat to this Court?

6 A The developer did.

7 Q Let's go back then to the December 29, 1986, letter
8 that the Planning Commission wrote to the sub-
9 divider. What did the Planning Commission mean by
10 the objection listed in the letter that is listed
11 as follows: "The location and nature of the
12 proposed open space is not accessible, functional
13 or usable." Feel free to use the plat when you
14 explain to the Judge what you believe the Planning
15 Commission was saying here.

16 A I believe that the Commission was telling the
17 developer that they had not made a serious attempt
18 to provide a high quality open space for the use of
19 either the residents of the subdivision or for the
20 community as a whole and that they wanted to see a
21 better attempt made at doing that. The access to
22 the site is steep. The points of access are fairly
23 minimal. The Commission felt like it did not serve
24 the purpose for which it, the ordinance was written
25 in providing of open space, and that, the informa-

1 tion was conveyed to the developer in the letter.
2 Several suggestions were made as to how that might
3 be achieved, by regrouping of the lots and that is
4 conveyed to them in that December 29th letter.

5 Q When you were reviewing the open space question as
6 part of your administrative review, what con-
7 clusions did you draw with respect to the open
8 space?

9 A I drew a conclusion with respect to the open space
10 that that hilltop, if I may, Judge?

11 THE COURT: Yes.

12 A That this hilltop here was itself a, provided a
13 significant geographical feature in the Town of
14 Blacksburg and that in its undisturbed state it
15 was, that their proposal to leave it as an
16 undisturbed area was, had merit to the citizens of
17 the Town of Blacksburg. The Commission felt that
18 it was more important to look inward to the
19 development and to the fact that since these lots
20 were considerably smaller than the other, than
21 other lots of a conventional R-12 subdivision and
22 recreational and open space could not be provided
23 as conveniently and as usable on the sites of the
24 property that that needed to be compensated for and
25 that had not been achieved in this, in this

1 proposal. Most people think of having, of their
2 properties as being able to use it for family
3 gatherings and other, other such use and when a lot
4 gets down to six thousand (6,000) square feet, that
5 doesn't leave a lot of room for intensive activity
6 on an individual's property. The purpose of the
7 open space requirement is to compensate for that
8 and the Commission did not feel like that was
9 achieved.

10 Q Look at the December 29, 1986, letter in paragraph
11 number two (2) and describe to the Court what the
12 purpose of the Planning Commission was in writing
13 this paragraph.

14 A O. K. Paragraph number two (2) said that the
15 preliminary plat still presents only conventional
16 subdivision of smaller lots than are allowed by the
17 Town Code and that the developer has still made an
18 unsatisfactory attempt to cluster or group the lots
19 in parts of the property with a goal of lessening
20 the impact of the higher densities which this plat
21 would render possible. I think what the Commission
22 was attempting to say there is that to look at this
23 project and compare it to any other conventional R-
24 12 subdivision, the only significant difference one
25 would find is that the lots were smaller, that

1 there was not, that there really hadn't been a
2 grouping of lots, an intent to create, you know, an
3 environment that was any different from a conven-
4 tional R-12 subdivision and they suggested
5 additional, they suggested limiting the grouped
6 lots to five (5) or six (6), perhaps, and reducing
7 the impact of the new development on the existing
8 properties by, perhaps, making these lots along the
9 western side of the property wider, more in keeping
10 with the densities and intensity of development
11 that immediately surrounds it. They made two (2)
12 suggestions to do that, as I said, by grouping the
13 lots or by more or by widening the lots so that it
14 provided a transition into the development from the
15 less intensively developed properties outside.

16 Q The Planning Commission did not agree with you on
17 the questions of open space and site quality
18 design, did it?

19 A They did not.

20 Q Would you say as a professional planner that, in
21 your opinion, it would be reasonable for the
22 Planning Commission to have taken the action it did
23 with respect to open space and site quality design
24 and still be within the bounds of sound planning
25 and still be consistent with the ordinance?

1 A Yes, it would.

2 Q That's all the questions I have on direct. Please
3 answer any questions Mr. Layman or Mrs. Oehlschlae-
4 ger may ask, within reason.

5

6 CROSS EXAMINATION BY MR. LAYMAN:

7

8 Q Mr. West, you've mentioned dual review. We
9 certainly can't argue with that. That's what the
10 ordinance says, that the zoning aspects and
11 subdivision aspects, where possible, will be
12 reviewed together, but isn't it a fact that the
13 zoning portion of the ordinance says that cluster
14 developments on approved and recorded cluster
15 subdivision plats shall be permitted "By-Right" and
16 on application to the Town? So that you've got to
17 have a subdivision plat approved before you can get
18 the development approved?

19 A I think that this language is intended to tie the
20 two (2) together.

21 Q But you can't argue that you've got to have an
22 approved subdivision plat at the time you get your
23 development approved?

24 A Yes.

25 Q Now, you mentioned purposes and goals and you

1 indicated that the Planning Commission wanted to
2 get into the purposes of the ordinance rather than
3 the technical aspects. Now, there's a statement of
4 purposes. Where is that statement of purposes
5 located in the ordinance?

6 A There are two (2) statement of purposes. There is
7 the Section 2-88, Cluster Housing, which is a part
8 of the Zoning Ordinance. There is also the
9 statement of purpose of the Subdivision Ordinance,
10 which is 1-1 and of which the Cluster Subdivision
11 requirements are a part.

12 Q Well, the section entitled "Statement of Purposes
13 and Goals", that's Section 2-88, that's in the
14 Zoning Ordinance, is it not?

15 A That's correct.

16 Q Now, in the, your December 29th letter, as you've
17 testified, you've set forth two (2) objection,
18 conveyed two (2) objections of the Planning
19 Commission. One (1) of those is that the open
20 space is not accessible, functional and usable.
21 Now, that is right out of the Zoning Ordinance
22 review criteria, is it not? Section 2-94(e). A
23 direct quote?

24 A That's correct.

25 Q That language is not in the Subdivision Ordinance

1 anywhere, is it?

2 A That language is not, no.

3 Q Now, your second reason was that there was an
4 inadequate attempt to cluster. Well, the, am I
5 wrong or is it the basic purpose of the Subdivision
6 Ordinance, by reducing lot size and then taking
7 that extra lot, what would be extra lot size and
8 putting it in open space, isn't the very nature of
9 that ordinance to cluster the residential lots?
10 Isn't that what has to happen if that is done?

11 A I guess in the broadest definition of it, that is
12 what happened. You've forced all the development
13 to one (1) area.

14 Q Well, that's exactly what's happened on this plat,
15 isn't it? You've forced the development out of
16 this area, which you've reserved for open space and
17 into this part of the tract. Correct?

18 A Right.

19 Q Now, is there any other clustering requirement in
20 that ordinance? I mean, there's nothing that says
21 that clusters have to be clustered, is there?

22 A No.

23 Q No further questions.

24 THE COURT: Thank you, Mr. West. Call your next
25 witness please.

1 MR. KAUFMAN: Your Honor, the next witness the Town
2 has is Mr. Oliver, but he's not here.

3 THE COURT: Is that the witness you said was coming
4 to Court with him?

5 MR. KAUFMAN: Yes, sir. I tell you, I can call the
6 last witness I planned to call now and by the time that
7 witness is finished testifying, perhaps Mr. Oliver will be
8 here and that will save us time.

9 THE COURT: Well, we usually recess about twelve
10 (12:00) for lunch anyway.

11 MR. KAUFMAN: I would appreciate it if I could put
12 the case on in the order I had planned on. It would be
13 helpful to the Town.

14 THE COURT: Well, we'll recess then until one
15 o'clock (1:00).

16 MR. KAUFMAN: Yes, sir. Thank you.

17
18 NOON RECESS

19
20 THE COURT: Are you ready?

21 MR. KAUFMAN: Yes, sir. The Town will call Mr.
22 Dale Oliver.

23
24 DALE OLIVER, first being duly sworn, was examined
25 and testified as follows:

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DIRECT EXAMINATION BY MR. KAUFMAN:

Q State your name please.

A Dale Oliver.

Q What is your position?

A I'm a faculty member in the College of Education at Virginia Tech.

Q Are you on the Blacksburg Planning Commission?

A I am.

Q Were you the chairman of the Blacksburg Planning Commission during 1986 when the Deer Run plats were being reviewed?

A Yes, I was.

Q Now, to be specific, are these plats, the plats dated May 1 and October 23, 1986, that I'm showing you now, that we're talking about in terms of what the Planning Commission reviewed for the Deer Run project?

A Yes, they are.

MR. KAUFMAN: I'd like to introduce these as our exhibits now. This is the only copy I have that's not on a plaque that has some superimposed numbers on there. If there's no objection, I'd like to go ahead and introduce that, too, otherwise, I'll introduce the one on the plaque.

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1 MR. LAYMAN: No objection, Your Honor.

2 THE COURT: Go ahead and mark them #B and #C.

3 Q Now, there's been testimony this morning, Mr.
4 Oliver, about the process that was engaged in by
5 the Planning Commission and the objections that the
6 Planning Commission had to the plat which were the
7 basis for the disapproval of the plat. Now, I
8 would like you to tell the Judge from the point of
9 view of the Planning Commission, what were the main
10 objections that the Planning Commission had to the
11 approval of this second plat, the one dated October
12 23, 1936, and give the reasoning and basis of the
13 Planning Commission for the objections please.

14 A O. K. The first concern was with the location
15 and nature of the proposed open space. There was a
16 question, serious question about accessibility of
17 it. If you study the subdivision plat, you'll see
18 that the open space is in one corner and for the
19 two (2) large cluster of homes, particularly those
20 in the numbers that run from about thirty-four (34)
21 to fifty-two (52), it's certainly not accessible
22 and somewhat limited accessibility to the other
23 cluster. Our concern was that the people there
24 would almost have to take the streets to get over
25 to it from the, or either go way around the back to

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1 get to the open space, so that's the question of
2 accessibility. There was a question of usability
3 of it also and functional, the functional and
4 usability of the space. That is, it's a fairly
5 steep area in the corner of the development and it
6 has usefulness, but it would be limited, let's say,
7 for family types of recreation, sports like
8 softball or anything like that, picnics, you could
9 put picnic tables, but for typical recreational
10 uses, there would be a limited, problem with
11 limitation. Now, the second one was a concern
12 about the clustering of the homes. We felt that
13 this was still somewhat of a conventional sub-
14 division with smaller lot sizes and there was not
15 an attempt to cluster or group the lots. We were
16 thinking about grouping the lots in sizes of two
17 (2) to six (6) lots with space in between so that
18 there are some recognizable clusters and we
19 expressed that concern with the second plat which
20 was reviewed in December, excuse me, reviewed in
21 December, there was still no evidence of cluster-
22 ing. We did offer proposals as to how these lots
23 could be clustered. So those were our two (2) main
24 concerns which were communicated to the developer.
25 Q Now, with respect to the second plat, were you

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1 aware that the Planning Director had basically said
2 that as far as he was concerned as a staff member,
3 the plat met the standards of the Cluster Housing
4 Ordinance?

5 A Yes, we were.

6 Q How did you approach that type of position and
7 recommendation?

8 A I guess the feeling of the Commission, if I may
9 speak for them and I think I can, is that the
10 Planning staff provides more of a technical review
11 and the Commission is more of a qualitative review.
12 By that I mean the technical review involves the,
13 the number of lots, the size of lots, all the
14 dimensions and things of that sort which are of a
15 technical nature and which we, as Commissioners, in
16 most cases, would not be prepared, although there
17 are some exceptions, would not be prepared to
18 review. The Commission looked at it from, more so,
19 from a qualitative aspect and the qualitative
20 dimensions of the ordinance. Now, if you compare
21 this with a conventional subdivision, the conven-
22 tional subdivision is much more of a technical
23 review than this, than a cluster subdivision
24 because a cluster subdivision permits trade-offs,
25 that is reduction of lot sizes for qualitative

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1 features and so we feel that our role is even more
2 critical in the cluster subdivision, to review the
3 qualitative than in a typical subdivision.

4 Q Now, the Planning Director testified earlier that
5 as far as he was concerned, from his review, the
6 open space could just have easily have been left in
7 a natural state with the timber on it and engaged
8 in passive recreation. Specify what the feeling of
9 the Planning Commission was about the open space
10 and the nature of the proposed use.

11 A O. K. There was concern about the usability of it,
12 due to, I guess as much as anything, the terrain,
13 because it's rather steep terrain and it would be
14 difficult to use it for building purposes, but it
15 would also be somewhat limited in its usefulness
16 for recreational purposes. We think of things
17 like, for sports like softball, for example.

18 Q Now, the Planning Commission had a meeting on
19 December 16, 1986, and here's a copy of some notes
20 that have been taken of that meeting. They're
21 dated December 16, 1986, and these have been
22 introduced into evidence. Now, there are lots of
23 statements in those notes made by various in-
24 dividual members of the Planning Commission, are
25 there not?

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1 A Correct.

2 Q Did the Planning Commission, after that meeting,
3 produce a formal document that presented the
4 position of the Planning Commission as a whole,
5 growing out of that meeting?

6 A You mean a letter?

7 Q Yes.

8 A Yes, there was memorandum produced as a result of
9 this.

10 Q Now, was that letter dated December 29, 1986?

11 A Yes. As I recall, it was. Yes.

12 Q And that letter has also been introduced into
13 evidence?

14 A Uh-huh. (Affirmative.)

15 Q So is the letter of December 29, 1986, the official
16 position of the Planning Commission?

17 A Yes, it is.

18 Q Are various individual comments in the notes of the
19 meeting of December 16th, 1986, representative of
20 the whole Planning Commission's consideration or of
21 individual member's comments during that meeting?

22 A Well, it's my impression, there are several
23 comments as are shown in this report, but the
24 letter that was prepared represents a consensus and
25 it was sent to the Commissioners for review and

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1 approval before it was sent to the developer and
2 so, yes, there was approval of the Commissioners
3 that this represented their position.

4 Q Now, there was some talk about the purposes and
5 goals of the Cluster Housing Ordinance and I'm sure
6 you're familiar with those?

7 A Uh-huh. (Affirmative.)

8 Q Tell the Court please why this plat was not
9 approved, based on that type of reasoning.

10 A It was our opinion, that is the Commission's
11 opinion that it had not been what we considered the
12 high quality standards of the Cluster Housing
13 Ordinance. That's putting it very straight
14 forward, I think.

15 Q All right. How can you, can you justify using that
16 type of criteria in reviewing this subdivision plat
17 to the Court?

18 A Well, when the ordinance was first conceived, it
19 was the intent of the Commission to provide a way
20 for reducing lot sizes and combining the land that
21 was, I guess, saved from the reduction of lot sizes
22 to put that into common open space purposes, but
23 our purpose in doing that was to offer incentives
24 to reduce development costs, to improve site
25 design. We were interested in high quality site

1 design, significant landscaping, efficient
2 construction techniques, things like this. That
3 is, it was a trade-off to allow smaller lots for
4 improved quality of development.

5 Q Is there language in the Cluster Housing Ordinance
6 that would support your using standards that you've
7 just outlined in reviewing the cluster housing,
8 excuse me, the Deer Run cluster subdivision plat?

9 A That's correct. There are.

10 Q Briefly, can you find those standards in the
11 ordinance and don't read them, but just tell the
12 Judge where you find them.

13 A The review criteria, is that what you mean?

14 Q Yes.

15 A They're in Section 2-94 of the Ordinance.

16 Q All right. But that's in the zoning part of the
17 ordinance. You're not telling the Court that you
18 used those standards to review the Deer Run cluster
19 subdivision plat?

20 A No. These were in the back of our minds because
21 there is a, the ordinance talks about a companion
22 review. The, I don't have all of the Subdivision
23 Ordinance with me.

24 Q Let me give you a copy of our Exhibit #A. This is
25 a copy of the Cluster Housing Ordinance. Now,

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1 here's the statement dealing with goals and intent
2 and purposes.

3 A Uh-huh. (Affirmative.)

4 Q Are you familiar with that section?

5 A Yes, I am.

6 Q All right. Would that, would those goals and
7 purposes as set for in the Cluster Housing
8 Ordinance enter the Planning Commission's mind when
9 they were reviewing this plat?

10 A Yes.

11 Q Did you receive legal advice to the effect that you
12 could consider those in reviewing the subdivision
13 plat?

14 A Yes, we did.

15 Q And did you receive legal advice that you could
16 consider those goals and purposes even though they
17 were found in the zoning portion of the Cluster
18 Housing Ordinance?

19 A Yes, we did.

20 Q And you sought that legal advice, didn't you?

21 A We did. Yes, sir.

22 Q Now, you made a statement earlier that you
23 considered some of the criteria set forth in
24 another section of the Zoning Cluster Housing
25 Ordinance. Now, I want to clarify that, Mr.

1 Oliver. Tell me what you meant by that.

2 A I can't find them at, oh, here they are. The
3 criteria here relate to things such as, one I
4 mentioned was open space, whether or not the
5 required open space is accessible, functional and
6 usable. That's an example of a criteria, a
7 criterion that we use. Is that what you're asking?

8 Q Yes, that's all I'm asking. But you're not telling
9 this Court and me that you used the zoning
10 standards set forth in the Cluster Housing Zoning
11 Ordinance to review the Deer Run cluster sub-
12 division plat, are you?

13 A Well, I think these, it was our understanding that
14 these were really one and the same, that is, the
15 ordinances were written that way and were later
16 separated for administrative convenience, I guess,
17 is the right term, but they are, it's really one
18 (1) ordinance because there's several cases where
19 they are cross-referenced and I could give
20 examples. However, we looked at the quality of the
21 development and undoubtedly these were in our minds
22 because we were doing qualitative review and these
23 relate to the quality of a development.

24 Q Mr. Oliver, are you aware that the review of a
25 subdivision plat constitutes an administrative

1 review?

2 A Yes.

3 Q Did you receive legal advice to that effect from
4 the Town?

5 A Yes, I'd say so, yes.

6 Q Are you aware that the review of a subdivision plat
7 involves using the criteria set forth in the
8 Subdivision Ordinance?

9 A True.

10 Q And you're aware of the difference between a zoning
11 review and a subdivision review, are you not?

12 A Yes, I am.

13 Q Do you remember receiving advice from the Town,
14 legal advice from the Town to the effect that the
15 zoning criteria in the Zoning Ordinance could not
16 be considered in review of a subdivision plat
17 except for the goals and purposes of the Cluster
18 Housing Ordinance as set forth in 2-88?

19 A I guess we did. That's a little bit fuzzy in my
20 mind, to tell you the truth.

21 Q All right. The last question I have then is did
22 the Planning Commission use the review criteria set
23 forth in 2-94, the Zoning Ordinance, to review the
24 Cluster Housing Ordinance or did it not, realizing
25 that those were zoning criteria, not subdivision

1 criteria?

2 A Undoubtedly, they were in our minds, I'm sure when
3 we looked at it because I think it was hard, in our
4 minds, to separate the two (2), so I'd have to say
5 they probably were in our minds. If not used
6 direct, at least we were aware of them.

7 Q Was that because it was a dual companion review?

8 A That's true. It was a dual companion review and I
9 don't know how we could have reviewed without, by,
10 without having them in the back of our minds.

11 Q That's all the questions that I have on direct.
12 Thank you.

13
14 MR. LAYMAN: I have no questions, Your Honor.

15 THE COURT: Thank you, Mr. Oliver. Call your next
16 witness please.

17 MR. KAUFMAN: I'd like to call Mrs. Foresman
18 please.

19
20 ERNESTINE FORESMAN, first being duly sworn, was
21 examined and testified as follows:

22
23 DIRECT EXAMINATION BY MR. KAUFMAN:

24
25 MR. KAUFMAN: Judge Devore, I'd like Mrs. Foresman,

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1 was a dream, that was not, we were not able to
2 fulfill ...

3 Q You mean Timberwood?

4 A In building Timberwood. We had to settle for far
5 less than we would have liked to have settled and
6 that was because of your ordinances, rules and
7 regulations, not because of our dreams.

8 Q But you stand by your statement in the letter that
9 Deer Run would have been or will be ordinary?

10 A Not necessarily, I mean, that's a concept. My
11 concept was what I was comparing it to. By
12 comparing it with Timberwood, in my mind and what
13 my dreams were and what I would have to settle for,
14 yes, but not necessarily by anybody else's
15 standards.

16 Q No further questions, Your Honor. Thank you, Mrs.
17 Foresman.

18

19 MR. LAYMAN: No questions, Your Honor.

20 THE COURT: Thank you.

21 MR. KAUFMAN: The Town rests.

22 THE COURT: Any rebuttal?

23 MR. LAYMAN: No rebuttal evidence, Your Honor.

24 THE COURT: Do you gentlemen really wish to argue
25 the matter?

DEBBIE A. WILSON
BLUE RIDGE COURT REPORTING
P. O. BOX 251, GALAX, VA 24333-0251
(703) 236-9426

1 THE COURT: Thank you, sir. Do you care to reply?

2 MR. LAYMAN: No rebuttal, Your Honor.

3 THE COURT: Mr. Kaufman used the word ordinary
4 several times in his closing argument. I wonder sometimes
5 what's wrong with being ordinary. Maybe I've always tried to
6 be ordinary and never could make it that high. From the
7 evidence that I've heard and more especially the exhibits in
8 this case, the letters, the minutes of the meetings, I can't
9 recall in a little over thirty-two (32) years, Mr. Kaufman,
10 any more arbitrary or capricious actions than what is in this
11 case, what the Planning Commission has done, not in over
12 thirty-two (32) years. Mr. Mills, I think, hit it on the
13 head that the members of this Commission evidently were
14 intimidated by these people who spoke in opposition and I'm
15 certainly not the smartest person in the world. I don't
16 believe I'm the most ignorant person in the world, just to
17 read those minutes, I know exactly why these plans were not
18 approved, pressure from people who owned some homes around
19 close or in the neighborhood. I think the Planning Commis-
20 sion was requiring the Plaintiffs here to comply with
21 something other than the Subdivision Ordinance and it's the
22 order of this Court to compel the Planning Commission to
23 approve the preliminary plat of the subdivision of Deer Run,
24 dated October 23, 1986, and I'll ask you people to get
25 together on a sketch of an order stating exceptions because I

DEBBIE A. WILSON
BLUE RIDGE COURT REPORTING
P. O. BOX 251, GALAX, VA 24333-0251
(703) 236-9426

1 know that this matter will go to the Supreme Court and I do
2 want to get this on record that the process is slow, it's
3 painful and it is expensive and the Town has more money than
4 you people who are the developers. I want to put that on the
5 record. If there's nothing further, we'll stand in recess
6 for the next hearing.

7 MR. KAUFMAN: Thank you, Judge Devore.

8
9 AND THIS CASE WAS THUS CONCLUDED ON THIS DATE AND AT THIS
10 TIME.

TOWN OF BLACKSBURG

300 South Main Street, Blacksburg, Virginia 24060

September 3, 1986

Mr. Robert Mills
Deer Run Partnership
P.O. Box 213
Blacksburg, VA 24060

Re: Planning Commission Action on the Deer Run
Cluster Subdivision Preliminary Plat

Dear Mr. Mills:

Please be advised that at its meeting held on August 5, 1986, the Blacksburg Planning Commission disapproved the Deer Run Cluster Subdivision Preliminary Plat submitted by the Deer Run Partnership on May 8, 1986. The Planning Commission cited the following reasons for its action.

1. The location and nature of the proposed open space is not accessible, functional, or usable. The Commission suggests that the developer of the Deer Run Subdivision should redesign the open space to render it accessible to and usable by the residents of the proposed subdivision and to demonstrate the function or functions that this open space would serve. The open space should also provide a greater transitional buffer between the existing, adjacent low density development, and the more intensive development proposed by this subdivision.

2. The Commission was concerned that the preliminary subdivision plat simply presented a conventional subdivision with smaller lots. The developer made no attempt to "cluster" or group the lots in one part of the parcel with the goal of lessening the impact of the higher densities which this plat would render possible. The Commission suggests that the developer redesign the subdivision to achieve a clustering of lots on the parcel, with open space intermingled to lessen the impact of the greater density on adjacent, existing uses. Alternatively, to achieve this effect, the developer could provide more open space on the perimeter of the subdivision. Such redesign should incorporate an arrangement of lots and structures on the perimeter of the development in a more

81



Mr. Robert Mills
September 3, 1986
Page Two.

conventional manner allowing a transition to smaller lots and more intensive design within the property.

3. The Commission also found that the typical house placement plans propose a typical lot size and lot coverage that render the lots unusable under §5-2, Subdivision Ordinance, for the development proposed, in that such lots could not comply with §5-4(c), Zoning Ordinance, providing a maximum lot coverage of twenty percent.

4. A sidewalk should be installed on the south side of Grove Avenue extended.

The cluster housing ordinance contemplates a dual, companion review of the subdivision plat, and proposed site development under the Zoning Ordinance. Here the review concerned itself with the subdivision elements of the Deer Run project. By separate letter, the Town intends to address the review under the Zoning Ordinance. Yet, the dual review must enable the Planning Commission to consider the goals of the overall cluster housing ordinance when performing its administrative review under the Subdivision Ordinance. In sum, the Commission disapproved the Deer Run subdivision plat in its current form because, for the reasons set out above, it did not meet the high standards imposed by the cluster housing ordinance, despite its technical compliance with the numerical requirements of the cluster housing ordinance.

The Planning Commission and staff shall be happy to work with the developers of the Deer Run project to address the Planning Commission's concerns, as expressed above.

You may reconsider your proposed design and resubmit a revised preliminary plat for the Planning Commission's consideration.

Please call me if you have any questions.

Sincerely,

William B. West, Jr.
Director of Planning

WBW/RBK:lb
c: Ernestine Foresman
Thomas E. Heavener
William B. Poff

DEER RUN CLUSTER DEVELOPMENT

BLACKSBURG, VIRGINIA

OCTOBER 24, 1986

83



1. METES AND BOUNDS DESCRIPTION

BEGINNING AT A POINT ON THE NORTHERNMOST RIGHT-OF-WAY LINE OF GROVE AVENUE CORNER TO LOT 30 OF BLACKSBURG HEIGHTS, AND FROM SAID BEGINNING POINT, LEAVING GROVE AVENUE AND WITH LOT 30 N7°55'06"W, 150.00' TO A POINT CORNER TO LOT 45; THENCE WITH LOT 45 N7°55'06"W, 150.00' TO A POINT IN THE SOUTHERNMOST R/W LINE OF NORTH DRIVE; THENCE CROSSING NORTH DRIVE N7°55'06"W, 35.00' TO A POINT CORNER TO LOT 75; THENCE WITH LOT 75 N7°55'06"W, 175.03' TO A POINT CORNER TO LOT 76; THENCE WITH LOT 76 N7°54'40"W, 107.87' TO A POINT; THENCE WITH LOTS 76, 77, 78 AND 79 THE FOLLOWING: N17°38'57"W, 139.67', AND N18°05'14"W, 259.68' TO A POINT CORNER TO MURPHY SUBDIVISION; THENCE WITH MURPHY SUBDIVISION N67°21'45"E, 197.17' TO A POINT; THENCE N68°08'31"E, 228.27' TO A POINT; THENCE N67°54'54"E, 168.65' TO A POINT CORNER TO THE PRICE FARM; THENCE WITH PRICE S22°13'07"E, 1193.11' TO A POINT IN THE NORTHERNMOST R/W LINE OF GROVE AVENUE; THENCE WITH GROVE AVENUE S81°58'58"W, 801.01' TO THE POINT OF BEGINNING, SAID PARCEL ENCOMPASSING 16.9473 ACRES.

5. STAGES OF DEVELOPMENT

Phase 1 - Lots 1-20

Phase 2 - Lots 21-33

Phase 3 - Lots 34-52

6. Engineering Feasibility Studies for Water, Sanitary Sewer and Storm Water

Water service will be provided from an existing 8" water line in Price Street. Booster pumps will be used to increase the pressure until the storage capacity of the supply system is increased.

Sanitary sewer will connect to an existing 8" sewer line in Price Street, which has the capacity to handle the development.

Storm water will go into a detention pond which will then flow into a natural outfall. Curb and gutter and yard inlets will collect all storm water. Post run-off will be equal or less than present run-off.

Volume of water and sanitary sewer will be 13,000 gal./day at 250 gal./day per living unit.

All of these utility services have been discussed with the Town Engineer.

7. Neighborhood Assessment

A. Estimated population - 52 lots x 2-1/2 persons (average) = 130 total persons when fully developed (5 year estimate).

B. Estimated vehicular traffic:

Phase 1 - 20 x 7.3 trips per day = 146

Total Development - 52 x 7.3 trips per day = 380

C. Public services required for this development include water, sanitary sewer, police and fire protection, and solid waste collection.

8. Methods and Agreements for Ownership and Maintenance of Common Space

A homeowner's association will be formed to manage and maintain all open common space. Individual lot owners will maintain their own lot and will own an equal share of the common open space. Covenants and by-laws are enclosed.

10. Adjacent Land Use Zoning Classification, Circulation Systems, Public Facilities, and Natural Features

The existing land is zoned R-12. All adjacent land is zoned R-12 except the area south of the site which is owned by Montgomery County School Board.

Single family detached housing is on the north and east sides of the site.

The land to the east is vacant and is owned by Mr. Tom Price.

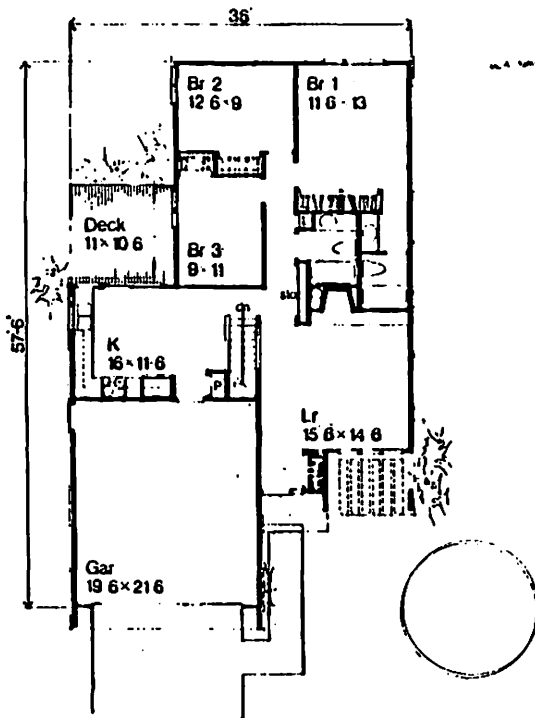
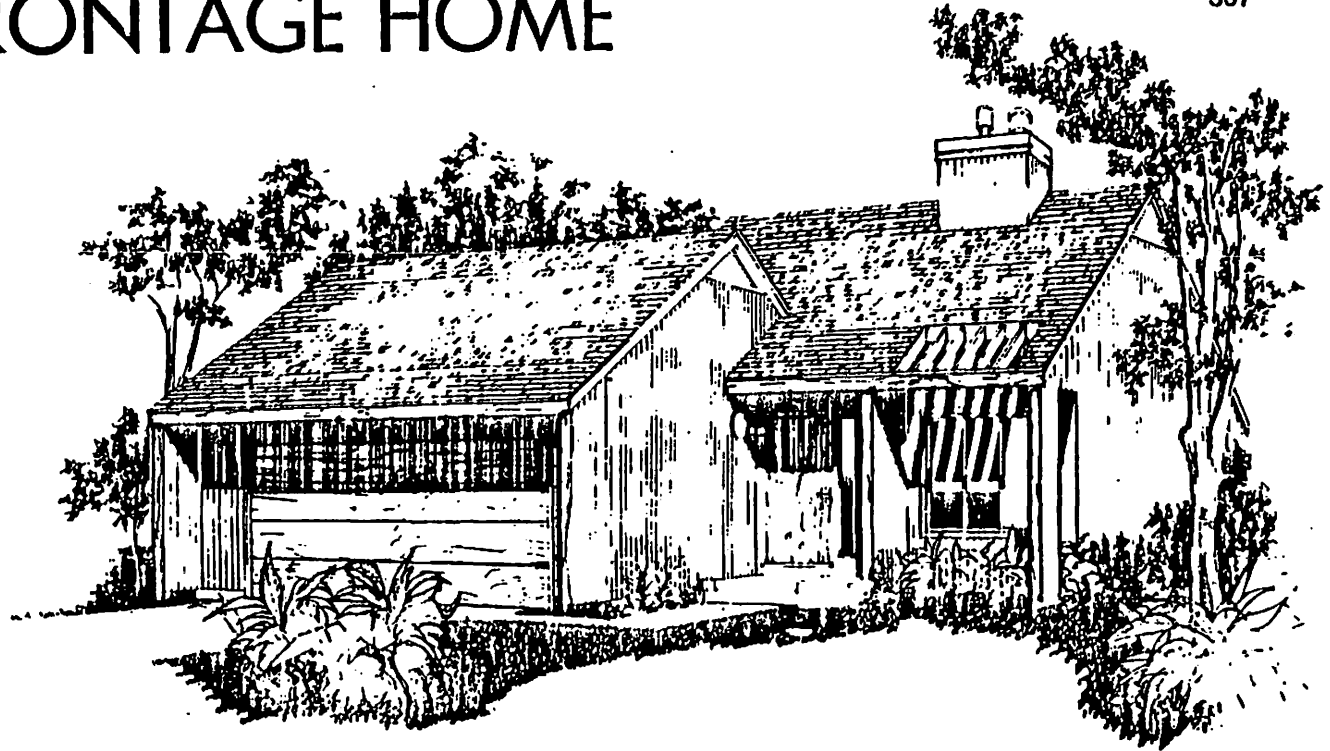
Blacksburg Recreation Center and Park is located 3 blocks from the site.

Running track and tennis courts are located at Blacksburg High School, which adjoins the site.

NARROW FRONTAGE HOME

307

11.



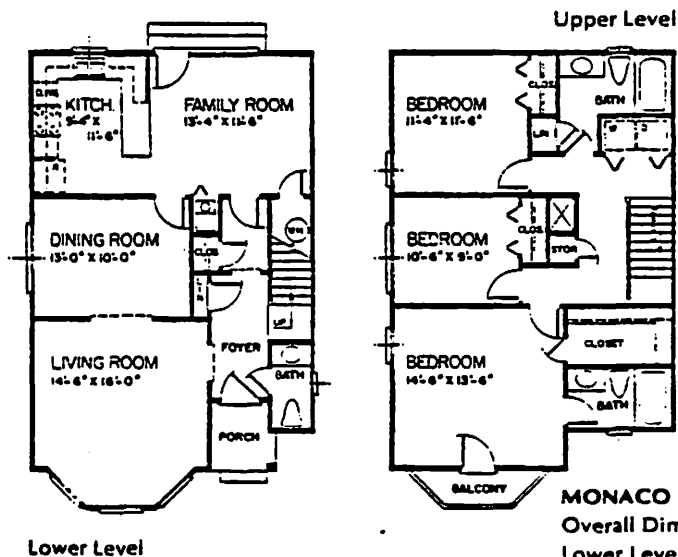
HOUSE DESIGN 307:

To minimize lot frontage, and therefore lot cost per unit, many new house designs are being narrowed. An additional benefit is that these narrow plans can adapt to either single-family detached siting as zero lot line units or duplex siting.

The 1242 square foot house shown here sites either way. Plan adapts to slab or crawl space construction.



The Monaco



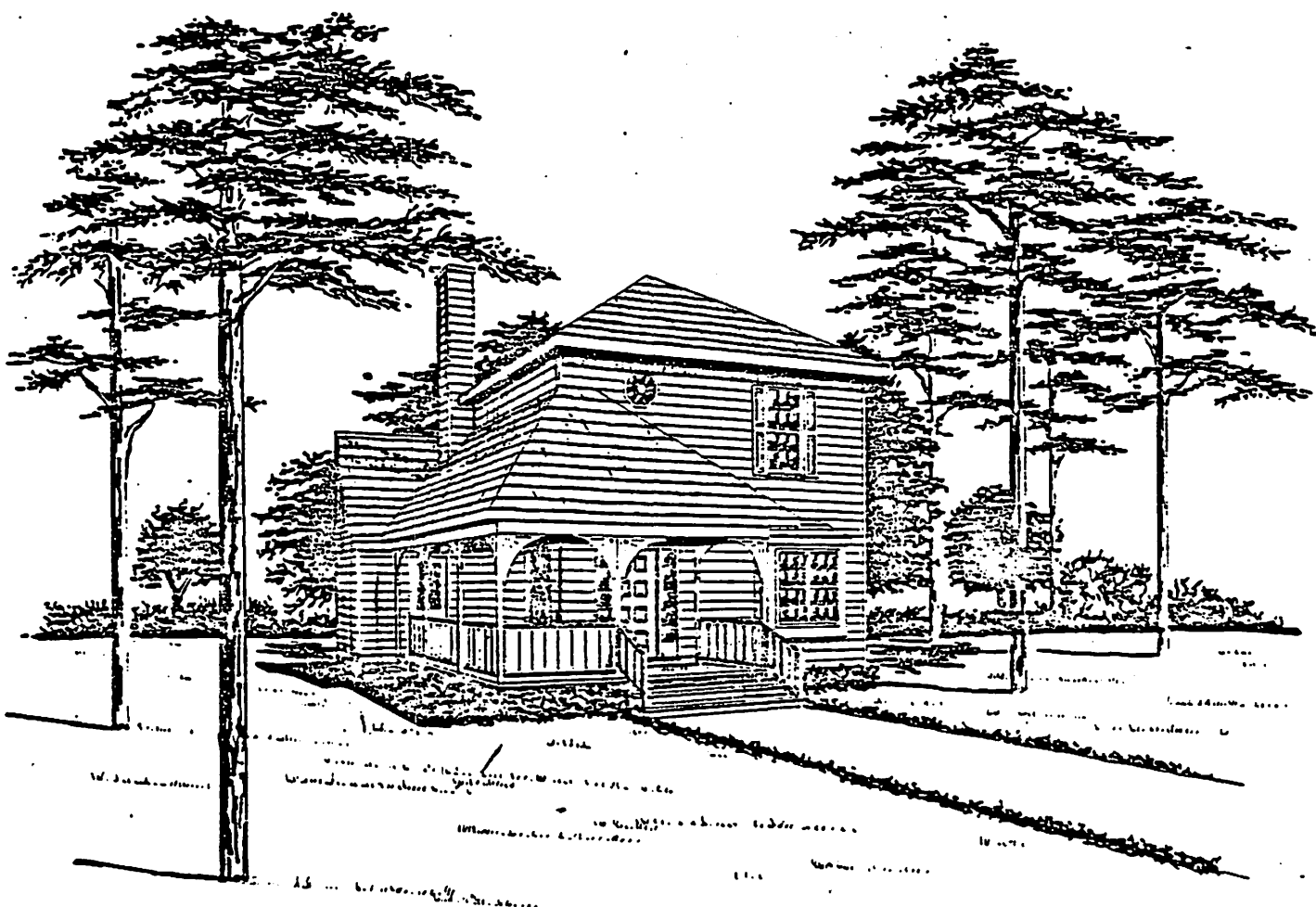
MONACO Plan No. 2 NP

Overall Dimension: 24'-0"

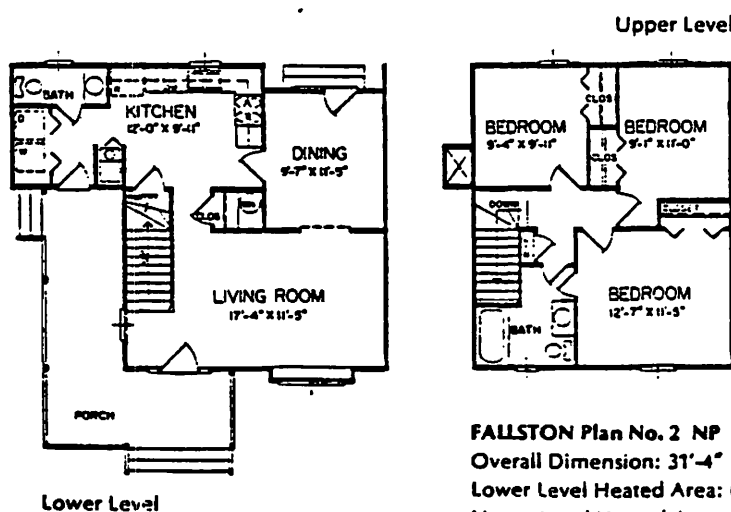
Lower Level Heated Area: 854 sq. ft. in siding

Upper Level Heated Area: 835 sq. ft.

Balcony & Porch: 62 sq. ft.



The Fallston



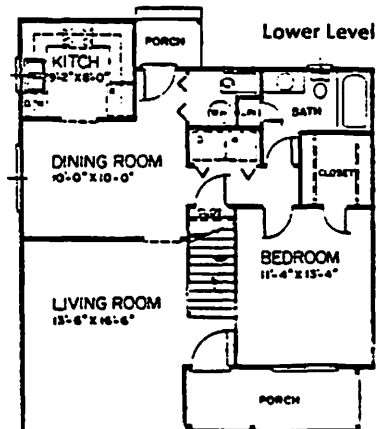
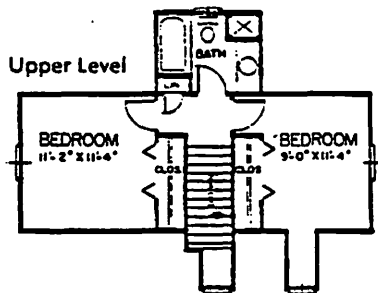
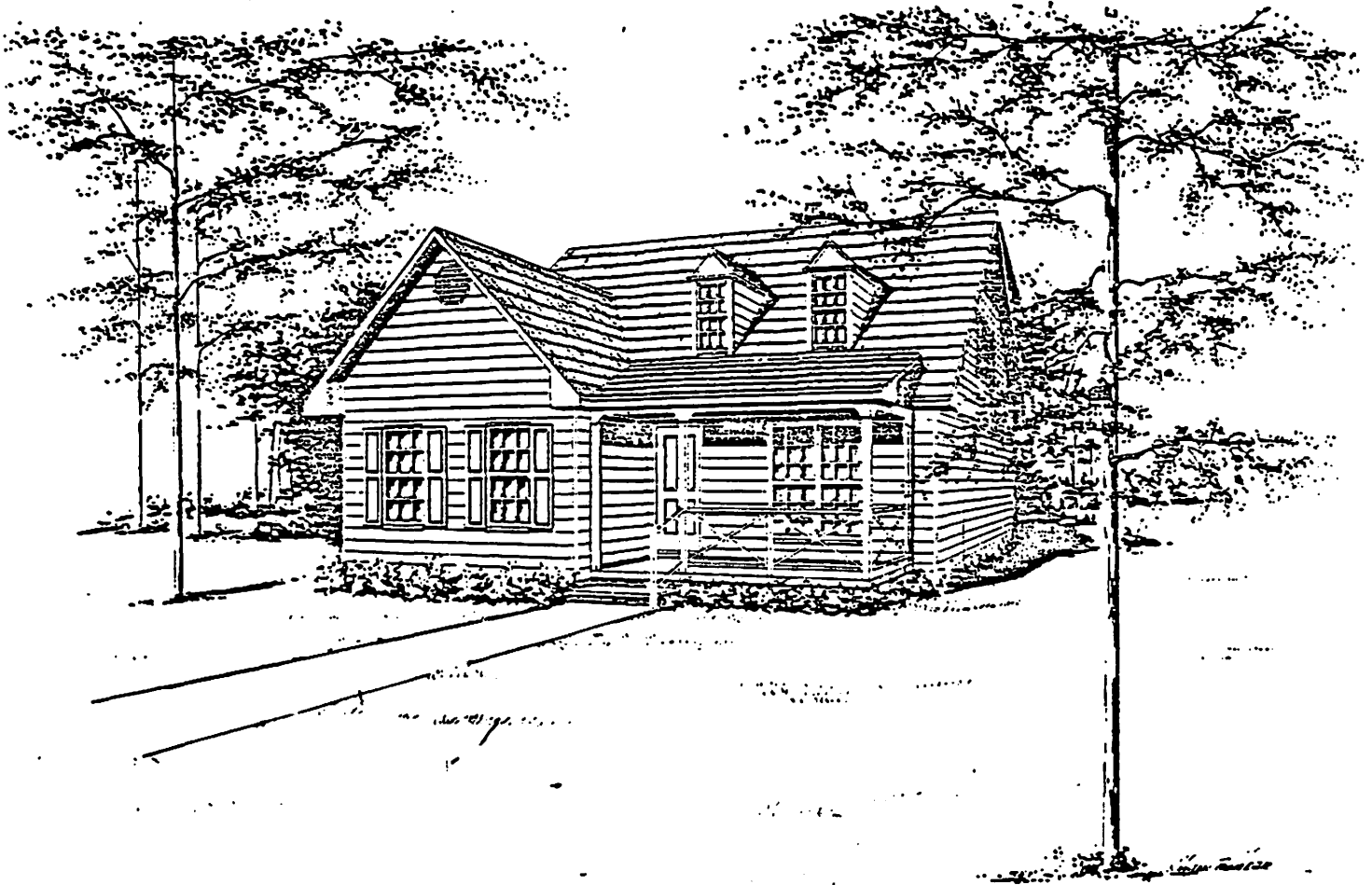
FALLSTON Plan No. 2 NP

Overall Dimension: 31'-4"

Lower Level Heated Area: 652 sq. ft. in siding

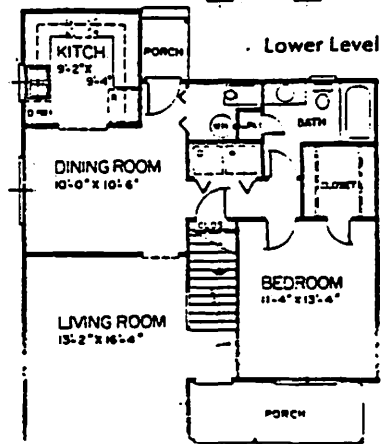
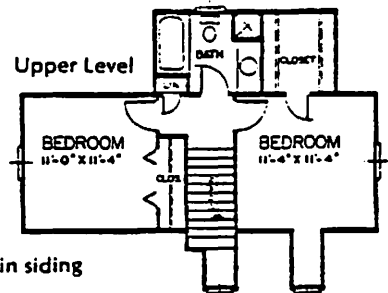
Upper Level Heated Area: 572 sq. ft.

Porch: 209 sq. ft.



The Mincey

MINCEY Plan No. 4 NP
 Overall Dimension: 30'-0"
 Lower Level Heated Area: 924 sq. ft. in siding
 Upper Level Heated Area: 501 sq. ft.
 Porches: 100 sq. ft.



MINCEY Plan No. 5 NP
 Overall Dimension: 30'-0"
 Lower Level Heated Area: 904 sq. ft. in siding
 Upper Level Heated Area: 455 sq. ft.
 Porches: 100 sq. ft.

12. ADJACENT LAND OWNERS

Thomas M. Price
Rt. 2, Box 13213
Fredericksburg, TX 78624

George A. Clum
400 Murphy Street
Blacksburg, VA 24060

John D. Edwards
304 Murphy Street
Blacksburg, VA 24060

Luke W. Mo
219 Price Street
Blacksburg, VA 24060

Richard Wells Rusk
225 Price Street
Blacksburg, VA 24060

John A. Scott
231 Price Street
Blacksburg, VA 24060

Emilie B. Gibson
900 North Drive
Blacksburg, VA 24060

Barry Kent Witherspoon
900 Grove Avenue
Blacksburg, VA 24060

STATEMENT OF PLANNING OBJECTIVES

Deer Run is being planned to fill a need for cluster detached single family housing on small lots. The cluster development will allow common open space to be intermingled around the lots, which can be used by the homeowners. A homeowner association will be formed to maintain all common space and exterior of all homes.

A hiking trail will extend around the perimeter of the site and will have 6 exercise stations. The top of the hill will be left as open space with a small picnic shelter. The view from this open area will allow one to see the VPI&SU campus and the mountains to the northwest and southeast.

All trees will be saved wherever possible and landscaping will be provided around the perimeter of the site to screen adjoining single family homes.

Density will be less than allowed in R-12 zoning.

TOWN OF BLACKSBURG
PLANNING DEPARTMENT

For Staff Use
Ord #

APPLICATION FOR CLUSTER HOUSING

Name of Property Owner ERNESTINE FORESMAN, TOM HEAVENER, ROBERT L. MILLS

Address P. O. BOX 213 Phone 552-2151
BLACKSBURG, VA 24060

Name of Developer DEER RUN PARTNERSHIP

Address P.O. BOX 213 Phone 552-2151
BLACKSBURG, VA. 24060

Name of Project DEER RUN

Address GROVE AVENUE EXTENDED

Location - Tax Map # Area of Parcel 16.9473

List of Adjacent or Tangent Streets

GROVE AVENUE
NORTH AVENUE

Zoning District R-12

Present Use of Property VACANT

PLEASE PROVIDE THIS INFORMATION ON THIS FORM AND ON DEVELOPMENT PLAN

Total Area of Parcel 16.9473

Total Number of Dwellings Proposed 52

Average Lot Size Proposed or Approved 6500 SQ. FT..

Minimum Lot Size Proposed or Approved 6200 SQ. FT.

Gross Residential Density 3.07 UNITS PER ACRE

Net Residential Density 6.70 " " " (7.76 ACRES)

Total Amount of Private Open Space 300,472 SQ. FT. - (6.89 ACRES)

Total Amount of Public Areas STREETS 99,752 SQ. FT. (2.29 ACRES)

PLEASE ATTACH THE FOLLOWING TO THIS APPLICATION

1. Metes and bounds description of property (1" = 100").
2. Vicinity map on 8 1/2" x 11" paper indicating existing land use and zoning of property in question and within 300 feet of property.
3. Site development plan as specified in Division 11 of the Ordinance.
4. A plan showing existing site conditions as specified in Section 2-93 (d) (9).
5. A development schedule listing stages of development within the development.
6. Engineering feasibility studies for storm water and sanitary sewer facilities.
7. Neighborhood assessment, including analysis of the following:
 - (1) Number of units to be developed
 - (2) Estimated population of the development
 - (3) Estimated vehicular traffic volumes from development
 - (4) Estimated need for public services, such as volume of water and sewer provisions, fire and police protection, and other municipal services
8. General statement of the methods and agreements necessary to govern the ownership, maintenance, and preservation of common open space if the Town is not to accept title.
9. A landscaping plan.
10. Information concerning adjacent land, including land uses, zoning classifications, traffic circulation systems, public facilities and unique natural features.
11. Graphic representations of sufficient number to clearly depict the typical character, scale, and architectural style of all proposed buildings.
12. A list of names and addresses of adjacent property owners.
13. Either an approved subdivision plat or a preliminary subdivision plat for same property.
14. Any item submitted larger than 8 1/2" x 11" or bound must be submitted in 26 copies; otherwise, one copy is sufficient.

Signature: _____

Robert L. Mills

Property Owner

Date: _____

10-24-86

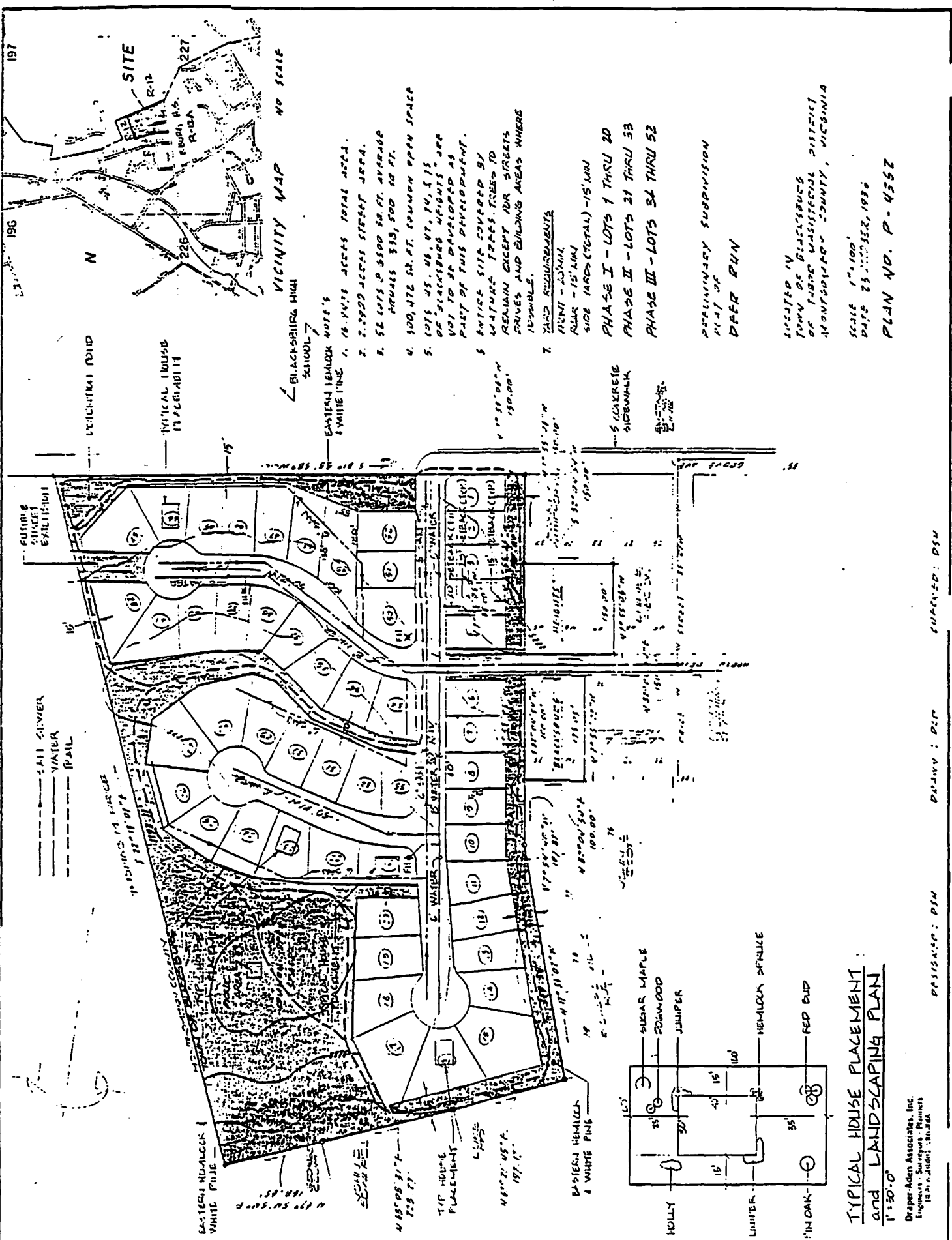
Signature: _____

Robert L. Mills

Agent

Date: _____

5-7-86



Section 6.1 of Appendix B of the Code of the Town of Blacksburg, entitled Cluster Subdivisions, permits a development, within specified zoning districts, of residential structures on adjoining lots more closely spaced than would generally be permitted by regulation for those zoning districts, with the reduction in lot size compensated by setting aside public or private open space on the developed parcel. The subject property is in an R-12 zoning district.

Technical Summary of Subdivision Requirements

<u>Code Section</u>	<u>Requirement</u>	<u>Conventional</u>	<u>Cluster</u>	<u>Deer Run</u>
6.1-2(a)	Lot size	10,000 s.f. (min)	5,000 s.f. (min)	6,500 s.f./6,200 s.f. (average) (min)
6.1-2(b)	Lot width	75 ft. (min)	37.5 ft. (min)	60 ft./ 37.5 (average) (min)
6.1-2(c)	Open space	-	260,000 s.f. (max. require- ment for 52 5,000 s.f. lots)	300,472 s.f. (52 lots)
6.1-2(c)	Plan for ownership care and maintenance of open space	-	Required	Homeowner's Association will be formed to manage and maintain common open space
6.1-3(a)	Development size	-	8 units (min)	52 units
6.1-4	Public streets	allowed	allowed	provided
5-20	Streets at right angles	Yes	Yes	Yes
5-23	Minimum width of streets	Service-50 feet Cul-de-sac-40 ft.	Service- 50 feet Cul-de-sac-40 ft.	50 feet
5-25	Cul-de-sac length	700 ft.	700 ft.	700 ft.
5-25	Cul-de-sac turnaround	100 ft. diameter	100 ft. diameter	100 ft. diameter
5-10	Lot shape	Not irregular	Not irregular	Normal
5-28	Street grades	Shall not exceed 10%	Shall not exceed 10%	9%

REQUIREMENTS
OF
PRELIMINARY PLATS
OF
SUBDIVISION



subdivider whether his plans, in general, are in accordance with the requirements of this ordinance. The commission or its delegated subgroup or delegated agent, upon submission of any such preliminary sketch, shall study it and advise the subdivider wherein it appears that changes would be necessary. The agent may mark the preliminary sketch indicating necessary changes and any such marked sketch shall be returned to the commission with the preliminary plat. The preliminary sketch shall be as follows:

6-2-1. It shall be drawn on white paper, or on a print of a topographic map of the property. It shall be drawn to a scale of not less than two hundred (200) feet to the inch. It shall show the name, location and dimensions of all streets entering the property, adjacent to the property, or terminating at the boundary of the property to be subdivided. It shall show the location of natural features such as slopes with approximate gradients, watercourses, wooded areas, preservable trees and of all proposed streets, lots, parks, playgrounds and other proposed uses of the land to be subdivided and shall include the approximate dimensions.

(Amend. No. 15, 6-8-76)

6-3. Preliminary plat.

Preliminary plats resulting in more than five (5) new parcels must be approved by the planning commission as well as the administrator. However, if the subdivision results in five (5) or fewer new parcels, the administrator may approve the plat. The preliminary plat shall include the following information:

6-3-1. The name of subdivision, owner, subdivider, surveyor or engineer, date of drawing, number of sheets, true north point and scale.

6-3-2. Location of proposed subdivision by an insert map at a scale of not less than two (2) inches equal one mile showing adjoining roads, their name and number, towns, subdivisions and other landmarks.

6-3-3. The boundary survey or existing survey of record provided such survey shows a closure with an accuracy of not less than one in twenty-five hundred (2,500); total acreage, acreage of subdivided area, number and approximate area and frontage of all building sites, existing buildings within the boundaries of the tract, names of owners and their property lines within the boundaries of the tract and adjoining such boundaries.

6-3-4. All existing, platted and proposed streets, their names, number and width; existing utility or other easements, public areas and parking spaces; culverts, drains and water-courses, their names and other pertinent data.

6-3-5. All parcels of land to be dedicated for public use and the conditions of such dedication.

6-3-6. Topography at intervals satisfactory to the municipal engineer if required.

6-3-7. Elevations of existing and proposed ground surface at all street intersections and at points of major grade change along the center line of streets together with proposed grade lines connecting therewith.

6-3-8. Proposed connections with existing sanitary sewers and existing water supply or alternate means of sewage disposal and water supply.

6-3-9. Provisions for collecting and discharging surface drainage and preliminary designs of any structures that may be required. (Amend. No. 30, 3-10-81)

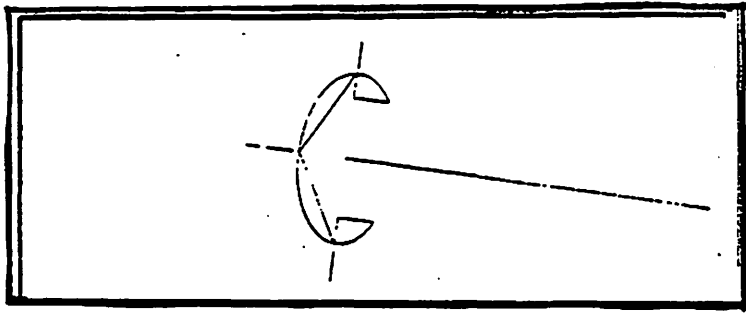
6-4. Procedure.

The agent or his appointed representative shall discuss the preliminary plat with the subdivider in order to determine whether or not his preliminary plat generally conforms to the requirements of the subdivision ordinance and of the zoning ordinance. The subdivider shall then be advised in writing within forty-five (45) days, which may be by formal letter or by legible markings on his copy of the Supp. No. 2

LEGEND

- 1.) Red markings outline areas of specific interest.
- 2.) When both red and blue markings are present, red signifies existing conditions and blue signifies proposed additions.

6-3-1. The name of subdivision, owner, subdivider, surveyor or engineer, date of drawing, number of sheets, true north point and scale.



DDX NOTE'S

1. 16.9475 ACRES TOTAL AREA.
2. 2.2900 ACRES STREET AREA.
3. 52 LOTS @ 6500 SQ. FT. AVERAGE
EQUALS 338,000 SQ. FT.
4. 300,472 SQ. FT. COMMON OPEN SPACE
5. LOTS 45, 46, 47, 74, & 75
OF "BLACKSBURG HEIGHTS" ARE
NOT TO BE DEVELOPED AS
PART OF THIS DEVELOPMENT.
6. ENTIRE SITE COVERED BY
MATURE TREES. TREES TO
REMAIN EXCEPT FOR STREETS
DRIVES AND BUILDING AREAS WHERE
POSSIBLE.
7. YARD REQUIREMENTS
FRONT - 20' MIN.
REAR - 15' MIN.
SIDE YARDS (TOTAL) - 15' MIN.

PHASE I - LOTS 1 THRU 20

PHASE II - LOTS 21 THRU 33

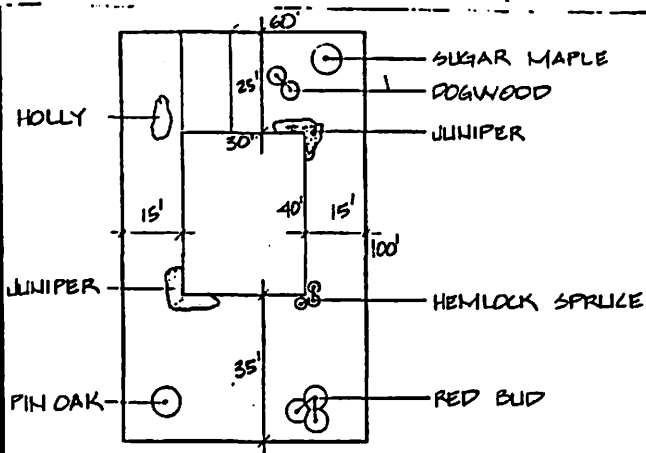
PHASE III - LOTS 34 THRU 52

PRELIMINARY SUBDIVISION
PLAN OF
DEER RUN

LOCATED IN
TOWN OF BLACKSBURG
OF TABOR MAGISTERIAL DISTRICT
MONTGOMERY COUNTY, VIRGINIA

SCALE 1"=100'
DATE 23 OCTOBER, 1986

PLAN NO. P-4362



TYPICAL HOUSE PLACEMENT and LANDSCAPING PLAN

1"=30'-0"

Draper-Aden Associates, Inc.
Engineers - Surveyors - Planners
BLACKSBURG, VIRGINIA

DESIGNED:

TOWN OF BLACKSBURG
PLANNING DEPARTMENT

For Staff Use
Ord # _____

APPLICATION FOR CLUSTER HOUSING

Name of Property Owner ERNESTINE FORESMAN, TOM HEAVENER, ROBERT L. HIGGS

Address P. O. BOX 213 Phone 552-2151
BLACKSBURG, VA 24060

Name of Developer DEER RUN PARTNERSHIP

Address P. O. BOX 213 Phone 552-2151
BLACKSBURG, VA 24060

Name of Project DEER RUN

Address GROVE AVENUE EXTENDED

Location - Tax Map # _____ Area of Parcel 16.9473

List of Adjacent or Tangent Streets

GROVE AVENUE

NORTH AVENUE

Zoning District F-12

Present Use of Property VACANT

PLEASE PROVIDE THIS INFORMATION ON THIS FORM AND ON DEVELOPMENT PLAN

Total Area of Parcel 16.9473

Total Number of Dwellings Proposed 52

Average Lot Size Proposed or Approved 6500 SQ. FT.

Minimum Lot Size Proposed or Approved 6200 SQ. FT.

Gross Residential Density 3.07 UNITS PER ACRE

Net Residential Density 6.70 " " " (7.76 ACRES)

Total Amount of Private Open Space 300,472 SQ. FT. - (6.89 ACRES)

Total Amount of Public Areas STREETS 99,752 SQ. FT. (2.29 ACRES)

6-3-2. Location of proposed subdivision by an insert map at a scale of not less than two (2) inches equal one mile showing adjoining roads, their name and number, towns, subdivisions and other landmarks.

IRE
JET
VISION

DETENTION POND

TYPICAL HOUSE
PLACEMENT

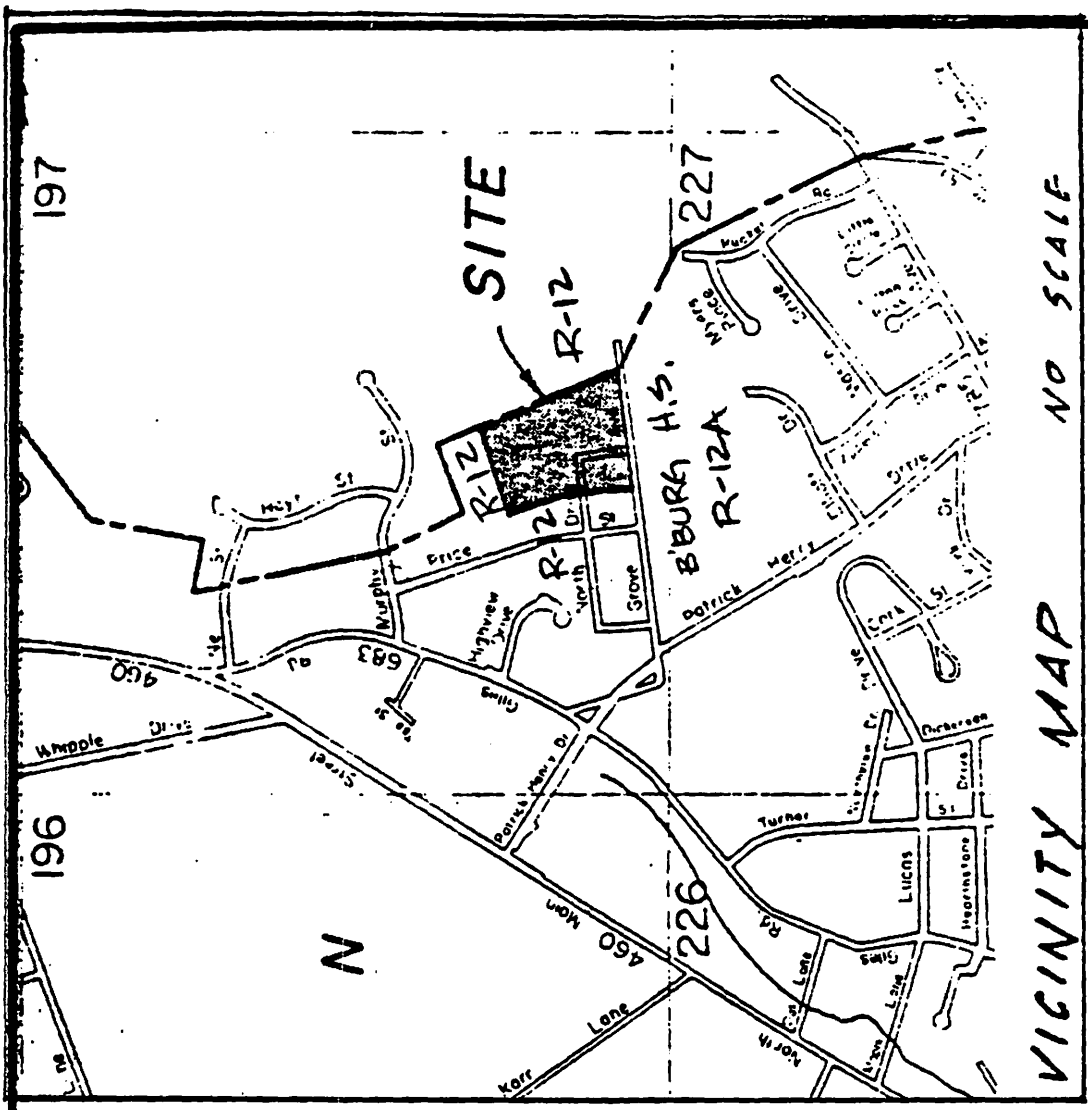
15'

810 58' 58" W. 85.018

BLACKSBURG HIGH
SCHOOL

EASTERN HEMLOCK NOTE'S
A WHITE FINE

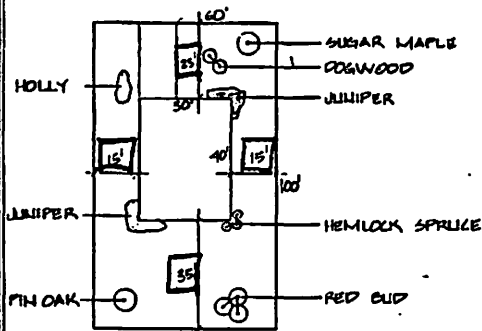
1. 16.9473 ACRES TOTAL AREA.
- 7 000 ACRES STREET AREA.



VICINITY MAP NO SCALE

1. METES AND BOUNDS DESCRIPTION

BEGINNING AT A POINT ON THE NORTHERNMOST RIGHT-OF-WAY LINE OF GROVE AVENUE CORNER TO LOT 30 OF BLACKSBURG HEIGHTS, AND FROM SAID BEGINNING POINT, LEAVING GROVE AVENUE AND WITH LOT 30 N7°55'06"W, 150.00' TO A POINT CORNER TO LOT 45; THENCE WITH LOT 45 N7°55'06"W, 150.00' TO A POINT IN THE SOUTHERNMOST R/W LINE OF NORTH DRIVE; THENCE CROSSING NORTH DRIVE N7°55'06"W, 35.00' TO A POINT CORNER TO LOT 75; THENCE WITH LOT 75 N7°55'06"W, 175.03' TO A POINT CORNER TO LOT 76; THENCE WITH LOT 76 N7°54'40"W, 107.87' TO A POINT; THENCE WITH LOTS 76, 77, 78 AND 79 THE FOLLOWING: N17°38'57"W, 139.67', AND N18°05'14"W, 259.68' TO A POINT CORNER TO MURPHY SUBDIVISION; THENCE WITH MURPHY SUBDIVISION N67°21'45"E, 197.17' TO A POINT; THENCE N66°08'31"E, 228.27' TO A POINT; THENCE N67°54'54"E, 168.65' TO A POINT CORNER TO THE PRICE FARM; THENCE WITH PRICE S22°13'07"E, 1193.11' TO A POINT IN THE NORTHERNMOST R/W LINE OF GROVE AVENUE; THENCE WITH GROVE AVENUE S81°58'58"W, 801.01' TO THE POINT OF BEGINNING, SAID PARCEL ENCOMPASSING 16.9473 ACRES.



TYPICAL HOUSE PLACEMENT
and LANDSCAPING PLAN

Draper-Aden Associates, Inc.
Engineers - Surveyors - Planners
BLACKSBURG, VIRGINIA

DESIGNED BY DS

2. NOTES

1. 16.9473 ACRES TOTAL AREA.
2. 2.2907 ACRES STREET AREA.
3. 52 LOTS @ 6500 SQ. FT. AVERAGE
EQUALS 338,000 SQ. FT.
4. 300,872 SQ. FT. COMMON OPEN SPACE
5. LOTS 45, 46, 47, 74, & 75
OF "BLACKSBURG HEIGHTS" ARE
NOT TO BE DEVELOPED AS
PART OF THIS DEVELOPMENT.
6. ENTIRE SITE COVERED BY
MATURE TREES. TREES TO
REMAIN EXCEPT FOR STREETS,
DRIVES AND BUILDING AREAS WHERE
POSSIBLE.

7. YARD REQUIREMENTS

FRONT - 20' MIN.
REAR - 15' MIN.
SIDE YARDS (TOTAL) - 15' MIN.

PHASE I - LOTS 1 THRU 20

PHASE II - LOTS 21 THRU 33

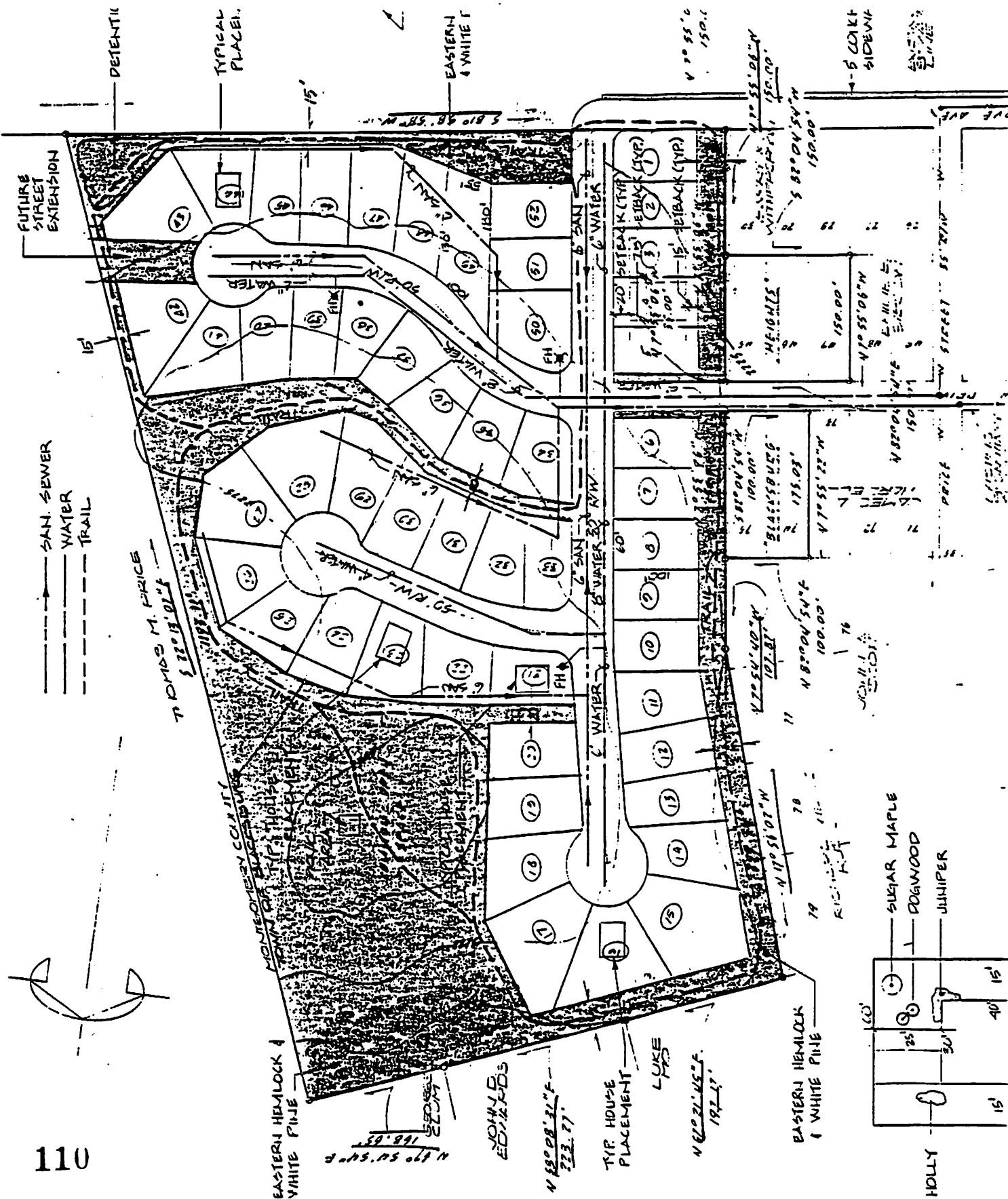
PHASE III - LOTS 34 THRU 52

PRELIMINARY SUBDIVISION
PLAN OF
DEER RUN

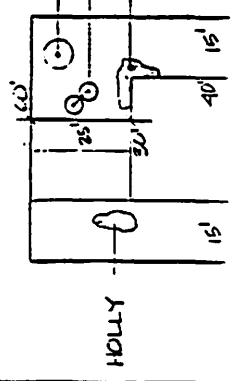
LOCATED IN
TOWN OF BLACKSBURG
OF TABOR MAGISTERIAL DISTRICT
MONTGOMERY COUNTY, VIRGINIA

SCALE 1"=100'
DATE 23.5.2352, 1986

PLAN NO. P-4362



6-3-4. All existing, platted and proposed streets, their names, number and width; existing utility or other easements, public areas and parking spaces; culverts, drains and water courses, their names and other pertinent data.

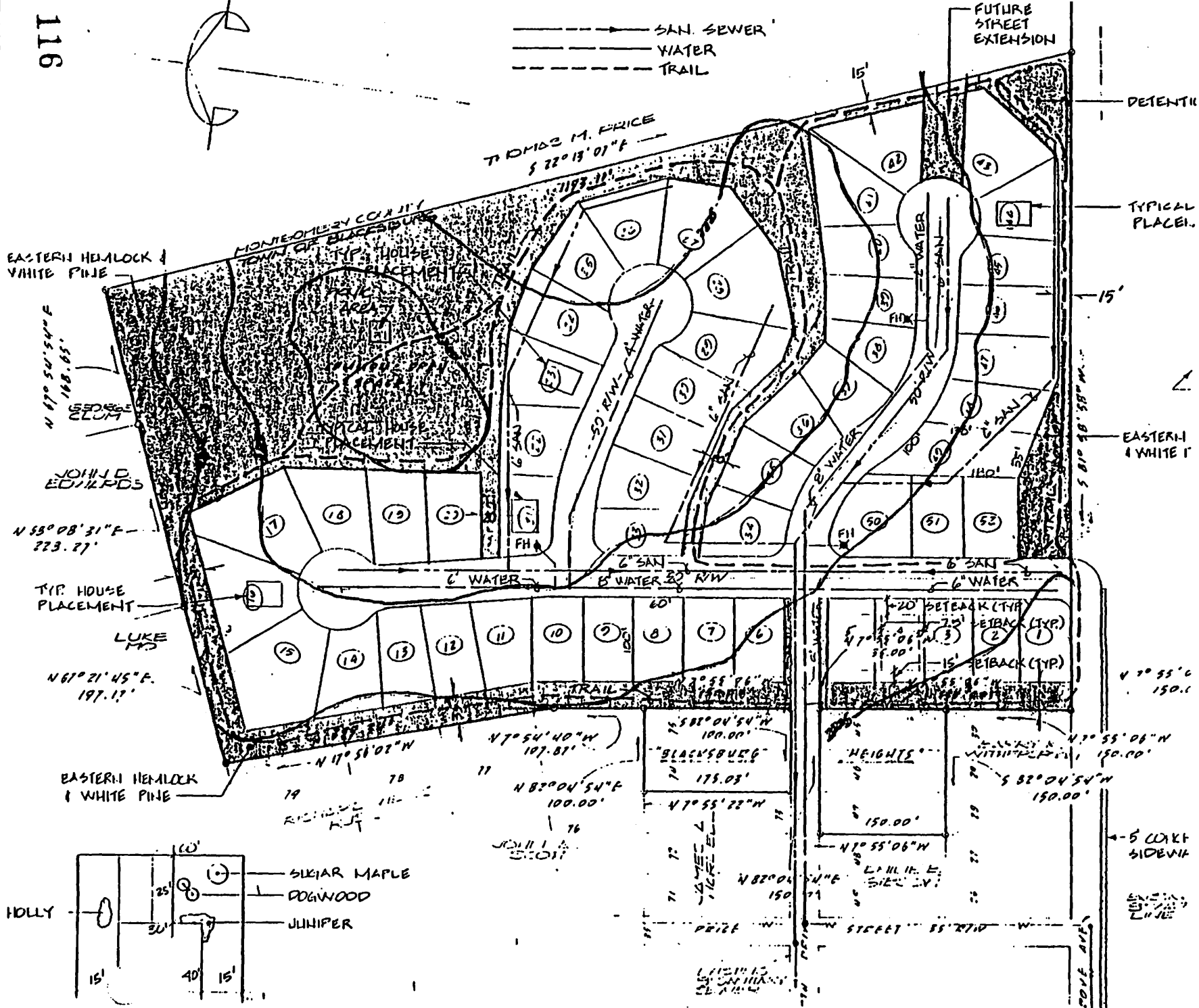


6-3-5. All parcels of land to be dedicated for public use and the conditions of such dedication.

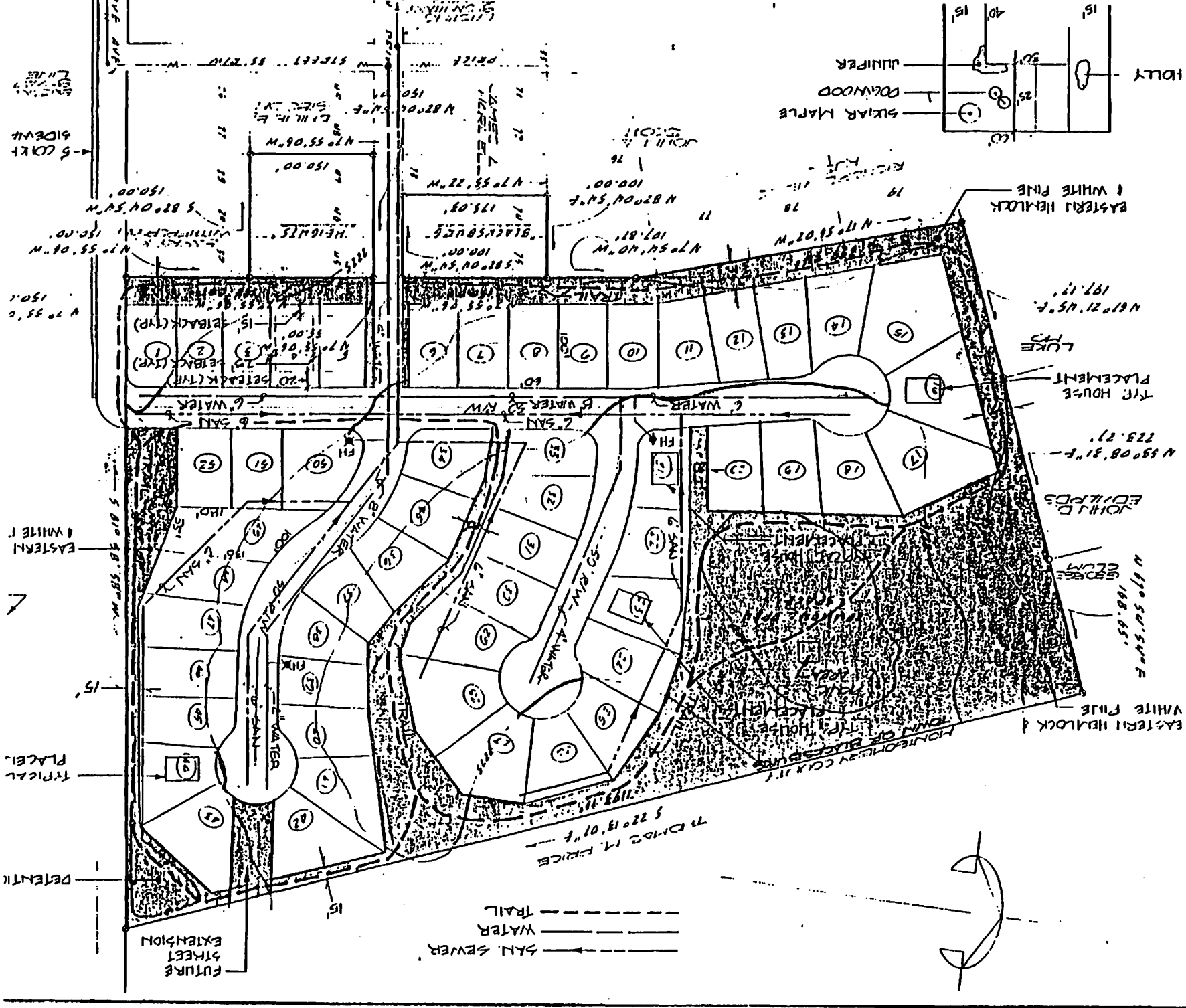
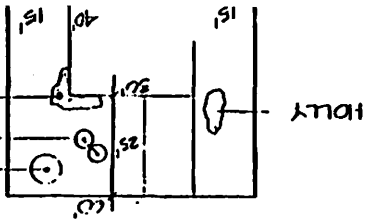
There are no parcels dedicated for public use.

6-3-6. Topography at intervals satisfactory to the municipal engineer if required.

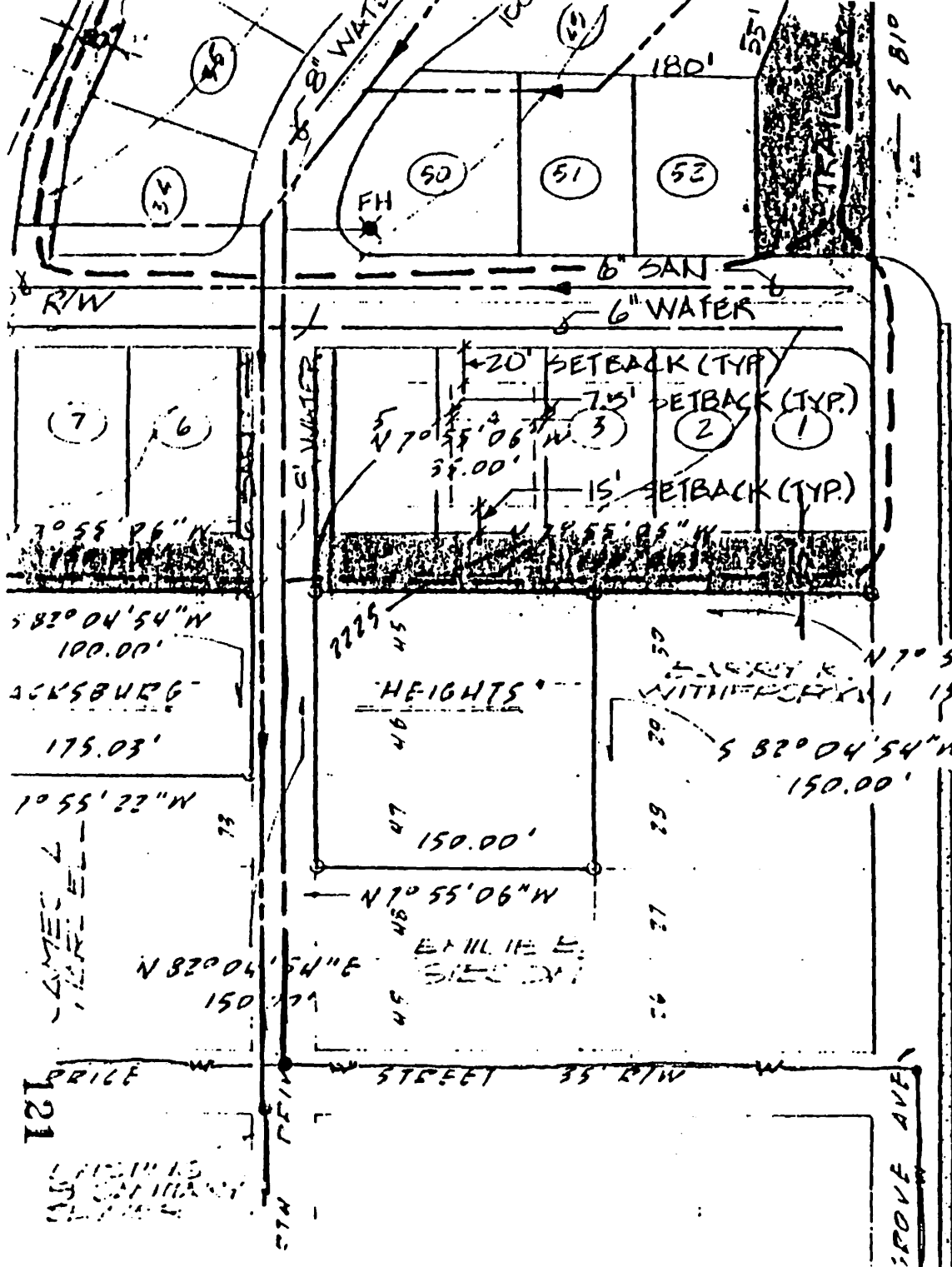
- - - - - SAN. SEWER
 - - - - - WATER
 - - - - - TRAIL



6-3-7. Elevations of existing and proposed ground surface at all street intersections and at points of major grade change along the center line of streets together with proposed grade lines connecting therewith.



6-3-8. Proposed connections with existing sanitary sewers and existing water supply or alternate means of sewage disposal and water supply.



1. 16.9473 ACRES TOT
 2. 2.2900 ACRES STREET
 3. 52 LOTS @ 6500 SQ. FT. EACH
EQUALS 338,000
 4. 300,472 SQ. FT. COM
 5. LOTS 45, 46, 47, 7. OF "BLACKSBURG HEIGHTS" NOT TO BE DEVELOPED PART OF THIS DEVELOPMENT
 6. ENTIRE SITE COVERED BY MATURE TREES. TREES TO REMAIN EXCEPT FOR DRIVEWAYS AND BUILDING FOOTPRINTS POSSIBLE.
 7. YARD REQUIREMENTS
FRONT - 20' MIN.
REAR - 15' MIN
SIDE YARDS (TOTAL) - 35' MIN
- PHASE I - LOTS 1, 2, 3
PHASE II - LOTS 4, 5, 6
PHASE III - LOTS 7, 8, 9
- PRELIMINARY SUBDIVISION PLAT OF
DEER RUN

6-3-9. Provisions for collecting and discharging surface
drainage and preliminary designs of any structures that may
be required.

6. Engineering Feasibility Studies for Water, Sanitary Sewer and Storm Water

Water service will be provided from an existing 8" water line in Price Street. Booster pumps will be used to increase the pressure until the storage capacity of the supply system is increased.

Sanitary sewer will connect to an existing 8" sewer line in Price Street, which has the capacity to handle the development.

Storm water will go into a detention pond which will then flow into a natural outfall. Curb and gutter and yard inlets will collect all storm water. Post run-off will be equal or less than present run-off.

Volume of water and sanitary sewer will be 13,000 gal./day at 250 gal./day per living unit.

All of these utility services have been discussed with the Town Engineer.

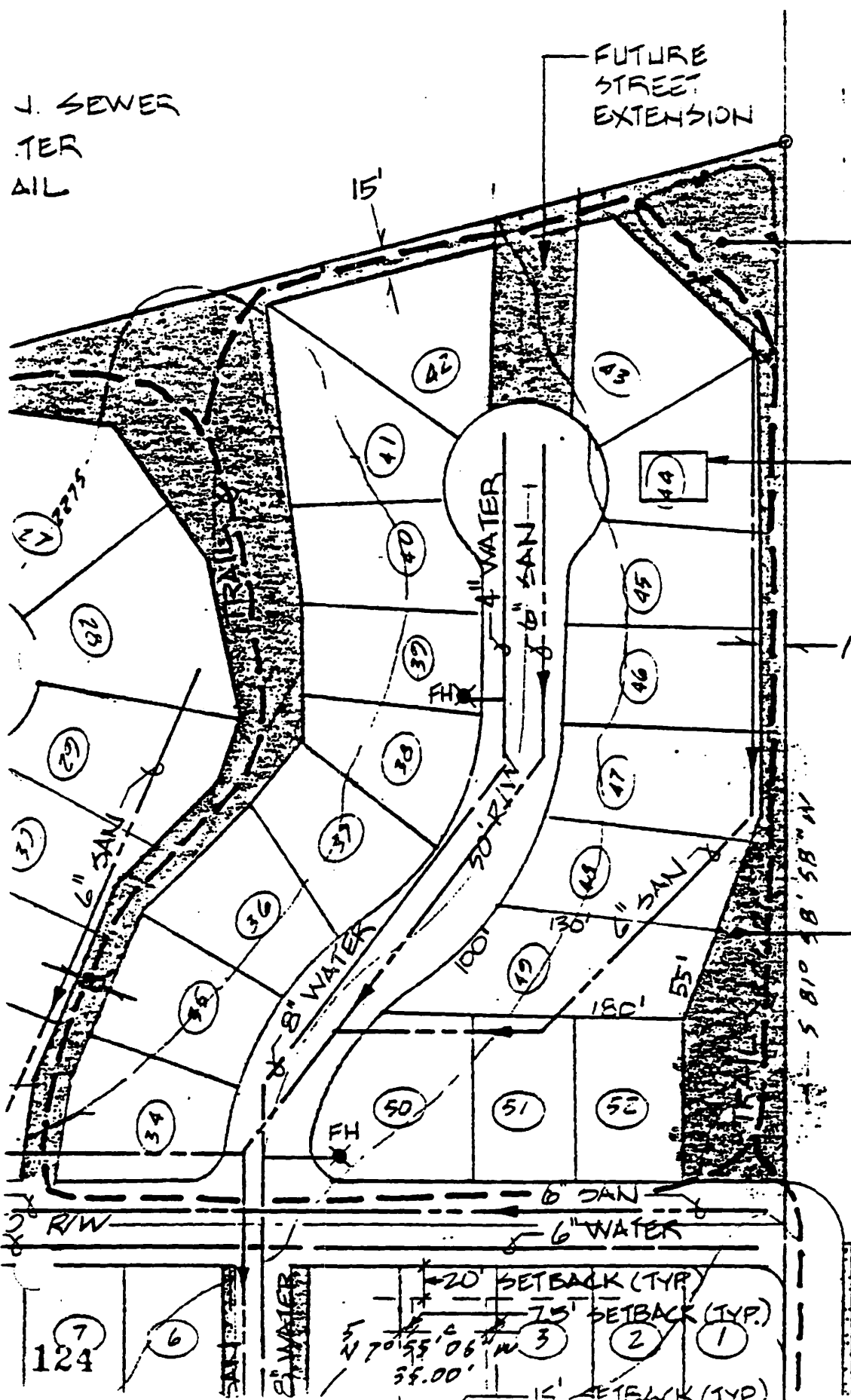
FUTURE
STREET
EXTENSION

TYPICAL HOUSE
PLACEMENT

BLACKS
SCHOOL

EASTERN HEMLOCK
& WHITE PINE

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.



TOWN OF BLACKSBURG

300 South Main Street, Blacksburg, Virginia 24060

December 29, 1986

Mr. Robert Mills
Deer Run Partnership
P. O. Box 213
Blacksburg, VA 24060

RE: Planning Commission Action on the Proposed Deer Run Cluster
Subdivision Preliminary Plat; Plan No. P-4362, Dated 10/23/86;
Prepared by Draper-Aden Associates, Inc., Blacksburg, Virginia

Dear Mr. Mills:

Please be advised that on December 2, 1986, the Planning Commission disapproved the revisions of the proposed Deer Run Cluster Subdivision preliminary plat. The Planning Commission reviewed the revised plat in light of its comments to you in the prior disapproval which were detailed in a letter to you on September 3, 1986.

The Planning Commission continues to find that:

1. The location and nature of the proposed open space is not accessible, functional or usable.
2. This revised preliminary plat still presents only a conventional subdivision of smaller lots than are allowed by the Town Code and that the developer has still made an unsatisfactory attempt to "cluster" or group the lots in parts of the property with the goal of lessening the impact of the higher densities which this plat would render possible.

In order to overcome these deficiencies of the preliminary plat, the Planning Commission offers the following design suggestions for your consideration:

1. The preliminary plat should be revised to reflect a traditional R-12 lot in terms of area, lot widths, etc., in the areas occupied by lots 1-17. The balance of the lots (18-52) should be grouped in cluster of 2-6 lots with a minimum of 25 feet of landscaped area between groupings. The proposed trail and its buffer strip along the western boundary should be retained by a public or homeowner's easement over the lots and protected by appropriate restrictions.



D00016

Mr. Robert Mills
December 29, 1986
Page 2

2. As an alternative to #1, the developer may consider the grouping of lots as described in #1 for the entire development. In this case, the existing proposed open space parcel could remain as shown.

3. In any case, the peripheral buffer strips and trail system, as well as the interior trail system and large open space to the northeast, should continue to be shown as either easement of common area depending upon which of Alternatives 1 or 2 is chosen.

4. In redesign of either alternative, minimum lots should not be less than the average indicated on Plan No. P-4362, dated October 23, 1986.

5. The Commission also discussed the need to expand the covenants and restrictions to include a minimum structure size which approximates the median structure size of the neighboring community including Grove Avenue, North Drive, Price Street, and Murphy Street. Appropriate documentation of this should accompany information you submit in response to my letter regarding zoning requirements that must be addressed.

The Planning Commission would also remind you that the dual review of a proposed cluster subdivision plat does require your attention at some time to the items outlined in my separate letter to you of September 3, 1986, concerning conformance to the Zoning Ordinance. These items must be addressed prior to any permits being issued for construction at the site.

The Planning Commission and staff continue to be happy to work with the developers of the Deer Run project to address the Planning Commission's concerns.

Again, you may reconsider your proposed design and resubmit a revised preliminary plat for the Planning Commission's consideration. Please call me if you have any questions.

Sincerely,

William B. West, Jr.

William B. West, Jr.
Director of Planning

WBW:rkv

cc: Town Council
Planning Commission
Ernestine Foresmen
Thomas Heavener
William Poff
C. Robert Stripling
Richard Kaufman

D00017

TOWN OF

BLACKSBURG

300 South Main Street, Blacksburg, Virginia 24060

June 12, 1986

MEMORANDUM

TO: Development Study Committee

FROM: Planning Department *Net*

SUBJECT: Deer Run Subdivision

Deer Run Partnership has submitted the Deer Run Cluster Subdivision for the preliminary approval of the Planning Commission (Section 6-3). The property, zoned R-12, consists of 16.9473 acres, located approximately 250 feet east of the intersections of Grove Avenue and North Drive with Price Street. A 63-lot subdivision is proposed, with each lot being used for a single-family detached structure.

The submitted proposal does not have zero lot line houses, density bonuses, or private streets. Therefore, its development is "by-right", as described in Section 2-90 of the Zoning Ordinance. It also meets the "by-right" subdivision criteria set for cluster subdivisions. Any subdivider of property in Blacksburg must first submit a preliminary plat or sketch to permit the Town to check the plans for conformity with the Subdivision Ordinance. Preliminary plats with more than five lots must be studied by the Planning Commission, a Committee and the Staff. These parties are to study the sketch and advise the property owner if any changes are necessary to bring the plat into conformance. If the preliminary plat conforms to the general requirements, then a formal final plat is to be prepared for recordation in the County Courthouse.

Cluster subdivisions in single-family zoning districts are subject to approval by the Planning Commission because they have more than five lots. In approving the subdivision's preliminary plat, the Commission is stating that the project does indeed meet with the general requirements set by the Subdivision and Zoning Ordinances. The Planning Staff's analysis of the subdivision is as follows.



General Requirements

1. Lot Size

Section 6.1-2(a) states that lot sizes in cluster subdivisions may be reduced no less than fifty (50) percent of the minimum lot size for a particular district, as specified in the Zoning Ordinance. The R-12 Zoning Regulations specify lots must be 10,000 square feet in size. Therefore, cluster lots may be reduced to 5,000 square feet. Deer Run's preliminary plat and supplemental material indicates that the minimum lot size will be 5,500 square feet.

2. Lot Width

Section 6.1-2(b) states that lot sizes shall not be less than fifty (50) percent of the minimum lot width for the applicable zoning district. R-12 regulations specify that single-unit dwellings must have a lot width of 75 feet or more. Cluster subdivision lots in that district are required to have lot widths of 37.5 feet. Deer Run has lot widths of no less than 50 feet.

3. Common Open Space

Section 6.1-2(c) states that to the extent in land area that lot sizes are reduced for a subdivision, an equal amount of land area shall be set aside as common open space. A subdivider must submit a plan for the care, ownership and maintenance of the open space. The average lot size for Deer Run is 5,500 square feet. This means that the average lot size was reduced 4,500 square feet from the 10,000 required in a conventional subdivision. There are 63 lots, therefore, 283,500 square feet would need to be dedicated for common open space on the Deer Run project. The preliminary sketch shows 291,725 square feet of open space.

Deer Run Partnership has submitted plans for the ownership, maintenance, and care of the open space. A Homeowners Association will be formed to manage and maintain all open space, and will be responsible for the upkeep after the developer transfers legal or equitable ownership of at least seventy-five (75) percent of the units (48). The Association is obligated to operate and maintain the common areas, and any improvements made to them. It must also mow the common area's grass, and replace dead or destroyed landscaping. Homeowners will be assessed in particular for the improvement and maintenance of the common areas.

4. Minimum Development Size

Section 6.1-3 states that the minimum development size for a cluster subdivision in an R-12 zoning district is eight units. Deer Run has 63.

5. Streets

Section 6.1-4 states that streets within a cluster subdivision may be dedicated to the Town and shall be constructed to standards set out in the Subdivision Ordinance. Section 5-5-6 states that all streets shall be paved in accordance with standards established by the Virginia Department of Highways and the Town of Blacksburg. The developer must demonstrate, to the satisfaction of the Town Engineer through engineering studies, that the streets meet these standards.

Section 5-20 states that the alignment of streets in new subdivisions shall continue existing streets. Streets are to intersect at right angles, and where necessary, streets should extend to the boundary of the property to allow access to adjacent property. Section 5-23 specifies that local service drives or minor streets without hope of extension must be at least 50 feet in width. Section 5-25 states that cul de sacs cannot exceed 700 feet in length and must have a turning radius at the bulb of not less than 100 feet in diameter. Section 5-28 specifies that the grade of streets are subject to approval by the Town Engineer before the final subdivision plat is approved.

Deer Run Subdivision proposes streets which are to be public and dedicated to the Town. Therefore, the streets will be constructed to VDH&T standards. Two of the new streets continue North and Grove, while one parallels Price Street. The streets have 50-foot right-of-ways, intersect at right angles, and do not exceed 700 feet in length. The grades appear to be within the requirements, but are subject to final approval by the Town Engineer.

Other Information

Public Utilities

An 8-inch sewer line runs under North Drive and an 8-inch water line runs under Price Street. The developers must either prove to the Town Engineer that these facilities are adequate or they must install the improvements at their cost. The development is on the Alleghany Ridge Water System, which the Town is currently improving. All utilities, including cable, phone, and electricity must be placed under ground.

Pedestrian Circulation

Ten-foot wide "bars" of common area extend through the "bays" of lots to allow homeowners whose lots do not abut the larger area of open space to walk to it.

The Commission may wish to consider requiring a sidewalk down the south side of Grove Avenue extended to continue the line of the one already present on the existing street.

Conclusions

The preliminary plat submitted by the Deer Run Partnership (P-77-197) meets the general requirements specified in the Subdivision Ordinance. The lot size is met, the lot width is adequate, the open space exceeds the minimum required and plans have been made for its maintenance. The proposed streets meet the general standards of the Subdivision Ordinance. Public utilities are available for the site.

We recommend approval of the preliminary plat with the following conditions:

1. A sidewalk be installed on the south side of Grove Avenue extended.
2. As per a request by the Montgomery County Public School System dated March 11, 1986, a fence should be constructed between the development and the Blacksburg High School.

Deer Run Technical Summary

<u>Section of Code</u>	<u>Requirement</u>	<u>Conventional</u>	<u>Cluster</u>	<u>Deer Run</u>
6.1-2a	Lot size	10,000 s.f.	5,000 s.f.	5,500 s.f.
6.1-2b	Lot width	75 ft.	37.5 ft.	50 ft.
6.1-2c	Open space	-	283,500 s.f.	291,725 s.f.
6.1-4	Public streets	Allowed	Allowed	Allowed
5-20	Streets at right angles	Yes	Yes	Yes
5-23	Minimum width	50 ft.	50 ft.	50 ft.
5-25	Cul de sac length	700 ft.	700 ft.	700 ft.

MINUTES

I. CALL TO ORDER

Chairman Oliver called the meeting to order at 7:30 p.m.

II. ROLL CALL

Present:

M. D. Carson; A. W. Holberton;
T. Humphreyville; R. Litschert;
J. D. Oliver; C. Sumner;
G. A. Snyder-Falkinham

Absent:

J. Jones; W. Kerns; F. M. Parsons

III. APPROVAL OF AGENDA

Ms. Carson moved to approve the Agenda.

Ms. Snyder-Falkinham seconded; motion passed on a voice vote.

IV. APPROVAL OF MINUTES

Approval of the minutes for the July Planning Commission meeting was deferred until the August meeting.

V. CONSENT AGENDA

A. Ordinance #714 - An Ordinance Amending The Blacksburg Town Code (1981), As Amended, Relative To the Planning Commission.

ACTION: Refer to the Executive Committee and schedule public hearing for September 2, 1986.

B. Ordinance #719 - Teske Leasing Company, Roanoke, Lee And Rutledge Streets, conditional Rezoning Request from R-14 to R-15.

ACTION: Refer to Environmental Quality and Land Use Committee and schedule public hearing for September 2, 1986.

C. An Ordinance Amending The Blacksburg Town Code (1981), As Amended, Relative To Cluster Housing.

ACTION: Schedule public hearing for September 2, 1986.

D. A Resolution Initiating The Consideration Of Ordinance #718, Pertaining To The Movement Of A Zoning Line Near The Southeast Corner Of Clay And South Main Streets.

ACTION: Adopted.

E. Ordinance #718 - A Rezoning Initiated By The Town Of Blacksburg, Virginia, From R-14 And C-1 To R-14; and, C-1 And R-14 to C-1. Two tax parcels at the southeast corner of Clay and South Main Streets.

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PLAINTIFF'S
EXHIBIT

7

ACTION: Refer to Environmental Quality & Land Use Committee and schedule public hearing for September 2, 1986.

Ms. Carson moved to approve the Consent Agenda.
Ms. Snyder-Falkinham seconded; motion passed on a voice vote.

VI. PUBLIC HEARINGS

A. Ordinance #707 - Robert Freyman, Text Amendment for Agricultural Uses in R-11 Zones.

1. Staff Report

Mr. Harrington reported that the text amendment proposal was the result of a citizen request to amend R-11 zoning districts to permit agricultural and related uses by special use. Mr. Harrington informed the Commission that the amendment conformed to Comprehensive Plan policies that promote the preservation of agricultural lands and uses in the Tom's Creek Drainage Basin

2. Environmental Quality & Land Use Committee Report

Ms. Humphreyville reported that the committee voted to recommend approval of Ordinance #707.

3. Public Comment

a) Mr. Bob Freyman stated that he had submitted the proposal to allow agricultural and related uses by special use in R-11 districts and emphasized that approval of the text amendment would encourage rural areas to remain rural with some control over certain property uses.

4. Action

Ms. Humphreyville moved to recommend approval of Ordinance #707 to Town Council.

Ms. Carson seconded; motion passed 7-0 on a roll call vote. Carson, Holberton, Humphreyville, Litschert, Oliver, Snyder-Falkinham and Sumner voted yes. None voted no.

B. Special Use Permit - Request from Appalachian Power Company to permit construction of a new three-phase circuit out of the Price's Fork Station to a single-phase line adjacent to Lark Lane.

1. Staff Report

Ms. Alderman reported that Appalachian Power Company wanted to construct overhead transmission lines along Lark Lane and part of the 460 Bypass in order to upgrade the entire circuit system. Ms. Alderman explained that APCO proposed to install another circuit out of the Price's Fork substation to provide adequate service to both existing and expected development in the area since the existing circuits are nearing capacity.

Ms. Alderman pointed out that APCO claimed the requested improvements would make its electric service more reliable all over Town and that underground lines would be less reliable than overhead lines. Ms. Alderman informed the Commission that all zoning districts require Special Use Permits for overhead transmission lines and that the greatest negative impact from the wires would be aesthetic. In conclusion, Ms. Alderman stated that the Planning staff recommended approval of the request since it would improve electrical service over the greater Blacksburg area.

2. Development Study Committee Report

Mr. Litschert reported that the committee recommended approval of the APCO Special Use Permit.

3. Public Comment

a) Mr. Gary Long, resident on Quail Drive, stated his strong opposition to the overhead transmission lines coming through his residential neighborhood. Mr. Long stressed that he believed it to be hazardous for the high voltage lines to be located in a residential area and that he felt additional money should be spent to extend the lines along an alternate route. Mr. Long pointed out the dangerous conditions for children playing as well as poles being located on the residential roads and emphasized that all seven of the neighborhood residences were greatly opposed to the request.

b) Mr. Robert Badger, resident on Lark Lane, also opposed the special use request and stated his strong concerns for safety hazards that would be created by high voltage lines in a residential neighborhood.

c) Mr. Jim Ritter, resident on Gladewood Drive, referred to electric power lines that were knocked down during a past ice storm and urged the Commission to deny the special use request on the basis of the safety hazard that would be created.

4. Action

Ms. Humphreyville moved to table the Special Use Permit and refer it back to the Development Study Committee for further investigation. Ms. Humphreyville stated that she was concerned that the committee was not qualified to make a judgment on the request without additional information from Appalachian Power Company.

Ms. Holberton seconded; motion passed on a roll call vote. Carson, Holberton, Humphreyville,

Litschert, Oliver, Snyder-Falkinham and Sumner voted yes. None voted no.

Mr. Sumner requested that information be supplied on the three-phase line along with the advantages/disadvantages of overhead versus underground lines.

Mr. Oliver also requested that information be supplied regarding the possibility of television/radio reception interference that might result.

Ms. Carson referred to the neighborhood meeting that was held regarding the special use request and suggested that the minutes from that meeting be made available for the committee members since she felt the information presented by APCO was very satisfactory and explanatory.

C. Special Use Permit - Request from Appalachian People's Service Organization, Inc. to occupy the front portion of 204 East Roanoke Street "Canterbury House" as its main office.

1. Staff Report

Ms. Alderman reported that the Appalachian People's Service Organization (APSO) had offices located in a small house on the Episcopal Church property at the corner of East Roanoke and Church Street and that recent expansion of its services and staff made it necessary for APSO to find a larger place for its offices. Ms. Alderman informed the Commission that APSO requested the special use in order to occupy the front part of the Canterbury House, which is a larger house on the church property that has been used and will continue to be used as a student center. Ms. Alderman pointed out that the property, which is located in the CRD Zoning District, is required to have a Special Use Permit in order to be occupied for the additional office use. In conclusion, Ms. Alderman reported that the Planning staff recommended approval of the special use request.

2. Development Study Committee Report

Mr. Litschert reported that the committee recommended approval of the Special Use Permit with the following three conditions: 1) Any additional site lighting will be residential in character and will require approval by the Planning Department; 2) The hours that the office will be open to the public will be 9 a.m. to 5 p.m.; and, 3) Screening will be maintained between the church and the adjacent residences.

3. Public Comment

a. Ms. Sallie Mackie, 920 McBryde Lane, urged the Commission's support of the Special Use Permit and pointed out that the request was only a

continuation of the church use that already exists on the property.

4. Action

Mr. Litschert moved to approve the Special Use Permit with the three conditions given in the committee report.

Mr. Sumner seconded; motion passed on a roll call vote. Carson, Holberton, Humphreyville, Litschert, Oliver, Snyder-Falkinham and Sumner voted yes. None voted no.

VII. PUBLIC ADDRESSES

- A. Mr. Robert Mills, architect representing the Deer Run Subdivision request, informed the Commission that the Deer Run development proposal met all of the requirements of the Town's Subdivision Ordinance and was in full compliance with the Town's zoning regulations. Mr. Mills urged the Commission's approval of the subdivision request and requested that the Town Attorney read a specific section of the Blacksburg Town Code regarding the Planning Commission's responsibility to act on a request once the developer has complied with all of the Town's ordinance requirements.

Mr. Richard Kaufman, Town Attorney, responded that he would advise the Planning Commission if requested by the Commission; however, he would not respond to the developer's request unless so directed by the Commission.

It was the consensus of the Commission to not ask the Town Attorney to read the Code provisions into the record of the meeting.

- B. Mr. Nicholas Mullins, 1509 Hoyt Street, addressed the Commission in behalf of Murphy Subdivision and stated the neighborhood residents' strong opposition to the Deer Run Cluster Housing Subdivision request. Mr. Mullins discussed the residents' concerns regarding stormwater run-off from the development's steep terrain and emphasized that the requested clustered subdivision would be inappropriately accessed by poor and unsafe road conditions.
- C. Mr. Luke Mo, 219 Price Street, expressed his deep concern over the Deer Run proposal. Mr. Mo stated his strong opposition to an increase in density in an area that is immediately adjacent to a beautiful low-density residential area and stressed that the Murphy Subdivision residents are exhausted from having to continually defend the integrity of their neighborhood.

- D. Ms. Carolyn Mullins, 1509 Hoyt Street, continued the previous comments of opposition presented by Nicholas Mullins and pointed out that the green space being provided for the clustered development would not otherwise be practical for any type use. Ms. Mullins urged the Commission to recognize the adjacent neighborhood's concerns and to support the residents' desire that the property be developed as zoned.
- E. Ms. Wendy Farkas, 817 North Drive, opposed the Deer Run proposal and urged the Commission to recognize the safety hazard created by narrow road conditions entering the development.
- F. Mr. John Craig, attorney representing the Murphy, Derbyshire, et al Homeowners Association, addressed the Commission in opposition to the Deer Run Cluster Housing Subdivision and discussed what he believed to be the technical aspects of the proposal which did not comply with the "by right" development provisions of the zoning/subdivision ordinances. Mr. Craig described the proposed open space area of the development as not being suitable for anything but "billy goats and boa constrictors" and emphasized that the Deer Run project would only enhance the developers pocketbook by allowing twice as many dwellings to be located on half as much usable land. Mr. Craig referred to the Fire Chief's memorandum regarding potential fire hazards because of inadequate fire flow and the concerns expressed by the Montgomery County School Board regarding traffic impact and safety for the nearby high school and urged the Commission to keep in mind the neighborhood's concerns regarding development blasting and soil erosion control.
- G. Mr. Gary Long, 1106 Quail Drive, referred to a petition from the residents of the Karr Heights Subdivision opposing their neighborhood being used as an outlet for the Rolling Hills Subdivision. Mr. Long informed the Commission that 35 children under the age of nine years currently reside in his neighborhood and that he believed it to be unsafe and unfair for Quail Drive to be used a major access road to the Rolling Hills development. Mr. Long also referred to the dangerous road conditions on Glade Road and requested that the Town establish a moratorium on development in the area until significant improvements are completed. In addition, Mr. Long informed the Commission that the residents of his neighborhood had not been informed and were therefore unaware of the neighborhood meeting that was held on the APCO Special Use Permit request.
- H. Ms. Imogene Huff, resident on Murphy Street, stated her strong concern over any undesirable impact that might result for her mother's property on North Drive

by that property being used for construction access to the Deer Run project.

- I. Ms. Ernestine Foresman, one of the developers of the Deer Run Cluster Housing Subdivision proposal, responded to Ms. Huff's concerns by stating that any extension of North Drive for access to the development would be paved according to the Town's required specifications. Ms. Foresman also pointed out that the development proposal preserved the top of the ridge which had been a major concern of the area residents and that storm-water concerns had been addressed through a storm drainage study conducted by Draper-Aden Associates.
- J. Mr. Robert Badger, 1704 Lark Lane, expressed his opposition to the Rolling Hills Subdivision request and discussed his strong concerns for traffic safety and septic capabilities.
- K. Mr. William Whittier, 1701 Lark Lane, stated his concerns over the APCO special use request and over the traffic impact on his neighborhood with approval of the Rolling Hills Subdivision request.
- L. Ms. Mary Rhoades, 1202 Gladewood Drive, presented slides of her neighborhood and the area being proposed for the Rolling Hills Subdivision to demonstrate existing road conditions and construction/grading that is already taking place in the requested subdivision area.

VIII. OLD BUSINESS

A. Development Study Committee

- 1. Deer Run Cluster Housing Subdivision
 - Mr. Litschert disclosed that he would not participate in any discussion or action taken on the subdivision request because of a personal conflict of interest.
 - Ms. Humphreyville moved to disapprove the Deer Run Cluster Housing Subdivision.
 - Ms. Holberton seconded the motion.
 - Ms. Carson commented that it was unfortunate that the developers and the neighborhood residents had been unable to agree on the proposed development.
 - Ms. Carson stated that she had supported the Timberwood project but would not support the Deer Run proposal because she believed it to be inferior to the Timberwood development and because she felt it would not harmonize with the adjacent man-made development. Ms. Carson objected to the transfer of intense development so close to the more conventionally developed property.
 - Chairman Oliver asked Mr. Kaufman if he would like to respond to Ms. Carson's comments.

Mr. Kaufman clarified that consideration of the Deer Run Cluster Housing Subdivision request was not a zoning approval, but was a subdivision approval and that the Commission would be acting in an administrative capacity and not a legislative capacity. Mr. Kaufman stated that the Commission had the authority to approve or disapprove the subdivision request and that if the subdivision request was not approved, then the Commission should specify reasons for the disapproval with the view that the developer could meet the objections and get the subdivision plat approved. Ms. Humphreyville commented on her concern for the lack of adequate fire protection for the proposed subdivision.

In response to an inquiry from Mr. Sumner regarding Mr. Craig's comments on the technicality of inadequate information provided on the plat, Mr. Harrington clarified that some information had been presented but that the staff would review the information for zoning compliance at the final site plan stage.

Ms. Holberton commented on her concern regarding inferior road conditions.

Mr. Harrington stated that he believed Grove Avenue would adequately accommodate traffic for the proposed subdivision, however, he did not feel that the conditions on North Drive were sufficient. Mr. Harrington added that localities are not able to require developers to make off-site road improvements when proposing a development.

Mr. Oliver commented that he was very concerned that the open space being provided was not accessible, functional or usable for any other use.

Mr. Sumner pointed out that if all of the property was usable for development, then it would not be necessary to request a cluster development.

The motion to disapprove the Deer Run Cluster Housing Subdivision passed 4-2-1 on a roll call vote. Carson, Holberton, Humphreyville and Oliver voted yes. Snyder-Falkinham and Sumner voted no. Litschert abstained.

In response to a request for clarification from Mr. Harrington, the Commissioners agreed that the decision for denial of the subdivision request was based on the following: 1) Poor quality of site; 2) No accessible, functional or usable open space; 3) Inadequate fire protection; 4) Inadequate transportation; 5) Lots too small; and, 6) Does not harmonize with adjacent man-made development. The Commissioners felt that it was more desirable to develop cluster groupings with more interspersed open space.

2. CRD Revisions

Mr. Litschert reported that the committee members discussed possible changes in the ordinance and decided that: 1) it was necessary to determine what the Town wanted the area to ultimately look like; 2) the Town should consider the sixteen squares as a Historic District as an alternative to the CRD District; 3) professional offices should be made a by right use; 4) the density allowed by right should be lowered; 5) increase the required parking spaces per unit bedroom; and 6) the allowable lot coverage should be reduced. Mr. Litschert added that the committee would continue to study the proposed changes as more information becomes available.

3. Neighborhood Planning

Mr. Litschert reported that the committee did not discuss this item.

B. Environmental Quality & Land Use Committee

1. Virginia Tech Research Center - Subdivision Vacation Request.

Mr. Sumner disclosed that because of a possible conflict of interest he would not participate in discussion of or action on the vacation request. Ms. Humphreyville reported that the committee reviewed the vacation request and voted to recommend approval of the vacation of the plat and right-of-way. Ms. Humphreyville moved to recommend approval of the vacation request since the vacation of the street and the portion of the plat in general was substantially in accord with the adopted Comprehensive Plan or part thereof. Ms. Carson seconded; motion passed. Carson, Holberton, Humphreyville, Litschert, Oliver, Snyder-Falkinham voted yes. None voted no. Sumner abstained.

2. Rolling Hills Subdivision - Gladewood Drive

Ms. Humphreyville reported that the Planning staff reviewed the subdivision proposal and several points of concern were presented in a petition and oral comments from residents of Karr Heights. Ms. Humphreyville stated that she had informed the committee that she would not support the subdivision request because the neighbors had expressed so many concerns about the development. Following considerable discussion of the proposal, the committee voted to recommend approval of the Rolling Hills preliminary plat.

Mr. Sumner moved to approve the Rolling Hills Subdivision request with the conditions set out in the June 12, 1986 Planning staff report.

Ms. Carson seconded the motion.

Discussion followed regarding the neighborhood residents' concerns as well as where Glade Road improvements would fall under the Town's road improvement priorities.

Following further discussion on traffic safety and future sewer extensions, the motion to approve the Rolling Hills Subdivision request passed 6-1 on a roll call vote. Carson, Holberton, Litschert, Oliver, Snyder-Falkinham and Sumner voted yes. Humphreyville voted no.

3. Neighborhood Planning

Ms. Humphreyville reported that the staff hoped the hiring of an additional planner would provide time for work to begin on this project within the next few months. Ms. Humphreyville added that Mr. Kerns had suggested that the Commission hold a special work session on Neighborhood Planning in September.

C. Long Range Planning Committee

The Long Range Planning Committee did not meet during the month of July.

D. Executive Committee

Chairman Oliver reported that the Executive Committee would meet after the next Development Study Committee meeting.

E. Planning Commission Nominations Report

Mr. Litschert reported that the Nominations Committee recommended the following nominations for Commission officers: J. D. Oliver - Chairman; Robert Litschert - Vice Chairman; Georgia Anne Snyder-Falkinham - Secretary.

Chairman Oliver announced that Commission elections would be held at the September Commission meeting.

IX. NEW BUSINESS

A. Chairman's Report

Chairman Oliver did not have a report to present.

B. Board of Zoning Appeals

Ms. Holberton reported on the July meeting of the Board of Zoning Appeals.

C. Planning Director's Report

1. Monthly Report

Mr. West reviewed the July monthly report of the Planning Department.

Mr. West announced that a Joint Work Session was scheduled with Town Council to review the Landscape Policy and Planting Guidelines portion of the Townscape Master Plan on August 25th at 7:30 p.m.

It was the consensus of the Commissioners to request an additional work session with Town Council on August 28th to discuss revisions to the Cluster Housing Ordinance.

Mr. West introduced Carol Bousquet as the Planning Department's new Planner I.

2. Review of Planning Commission Priorities

Mr. West asked for the Commissioners to review the priorities list and submit any comments or recommendations for discussion at the September Commission meeting.

X. REPORT ON TOWN COUNCIL ACTIONS

Mr. West reported on Town Council's actions on the following items:

Ordinance #713

Ordinance #705

Property Purchases - Options on 203 Washington St., 207 W. Clay St. and 6.4 acres for development of Southeast Park - Acquisition of 2.058 acres adjacent to Blacksburg Municipal Park

Sewer Extension Priorities

Review of Town Architecture portion of Townscape Master Plan

Request to Planning Commission to review Landscape Policy and Planting Guidelines

XI. ANNOUNCEMENTS AND ADJOURNMENT

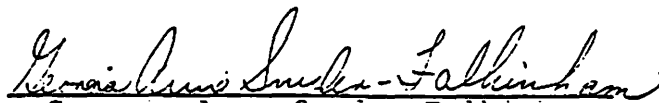
Following considerable discussion among the Planning Commissioners, Ms. Snyder-Falkinham moved to set the maximum speaking time under Public Addresses and Public Comments on the Agenda to 10 minutes per citizen.

Mr. Litschert seconded; motion passed on a voice vote.

Mr. Sumner suggested that a Planning Commission liaison be appointed to the Blacksburg Center Incorporated in order to keep the Commission informed of the activities of BCI.

The Commissioners agreed to set a Cluster Housing work session for August 19th at 7:30 p.m.

The meeting was adjourned at 9:45 p.m.


Georgia Anne Snyder-Falkinham
Secretary

TOWN OF BLACKSBURG

300 South Main Street, Blacksburg, Virginia 24060

September 3, 1986

Mr. Robert Mills
Deer Run Partnership
P.O. Box 213
Blacksburg, VA 24060

Dear Mr. Mills:

We have reviewed the Deer Run Subdivision Plat application for conformance under the Zoning Ordinance, and we have found that the following items will need to be addressed prior to definitive staff review of the project, as described in §2-90(a). Please submit these items in triplicate.

1. The statement of the planning objectives is intended to give the department a conceptual description of the project. A description of the character and rationale of the development is required. This statement may include, but is not limited to, sentences on who the units are designed for, what market is being pursued, and the style of the development (soft contemporary, early American, post-modern). Another item might include the "buzz words" which agents would use to sell the dwellings or lots. The objective is to give the reviewer a feel for the character of the site and the prospective project.

2. A site development plan must be submitted. In order to change the preliminary subdivision plat into a site plan the following items must be added to the document or revised on the plans:

- (a) the name and address of the property owner;
- (b) the name and address of the developers;
- (c) a boundary survey for all lots and the open common space;
- (d) the source of title;
- (e) the correct adjacent county zoning district;
- (f) the street names;
- (g) the typical unit as depicted exceeds the 20% maximum lot coverage permitted in R-12 zones;
- (h) a typical unit on the plan (lot 36) is located 15 feet away from the front property line; distance is to be at least 20 feet;



- (i) an erosion control plan may be added to the site plan or shown on a different sheet, but must be included;
- (j) show all existing or proposed easements;
- (k) place electrical service underground;
- (l) provide detailed water and sewer line diagrams;
- (m) show any areas which are to be dedicated to public use;
- (n) we will need to know the total estimated value of the project and of the public improvements;
- (o) show the tree canopy outline;
- (p) provide calculations and design of grading and storm water management;
- (q) provide curb and gutter design if proposed;
- (r) provide outdoor lighting details, if street lights or a uniform motif is to be used;
- (s) Open space is critical to cluster housing. Consequently, we must know, via the site plan, what makes the open space at Deer Run worthwhile. Can it have trails, picnic areas, benches, or a par course? What significant rock outcrops, views or tree stands will be featured? How will these be maintained?
- (t) a site condition plan that may or may not be placed on the site plan sheet.

3. We are required to evaluate this proposal in light of the purpose and goals of this ordinance. We need evidence that the submitted plan displays a high quality site design, that the general design is innovative and efficient and that the dwellings and layout harmonize with natural and manmade surroundings. In order to bring this about, we would like to encourage you to emphasize how the homes and roads will fit into the topography and woodlands. If any solar oriented designs are to be used, please emphasize them. Also, please describe how this proposal meets the definition of the ordinance which defines a cluster development as "arrangements . . . in groupings" (§2-89(a)).

4. We are also required to gauge the impact of the development on adjacent properties. A look at the subdivision plat shows that property owners in an adjacent, conventional subdivision may have one house on their property, but may abut from two to five houses. This 1:5 land use intensity needs to be buffered more than is now conceptualized. Site Planning For Cluster Housing recommends a buffer strip of at least 20 feet with a thick planting of evergreens. This or an even greater expanse of open space would greatly mitigate the land use impact of this development. Another impact of the development may be architectural styles. How can the new units be made to match, conceptually, the adjacent existing units in terms of bulk, materials or disposition? Can the units be turned on the lots to break up the linear monotony? We would also recommend that a

Mr. Robert Mills
September 3, 1986
Page 3.

fence be installed, possibly a low one with a berm, to separate Deer Run from the High School.

5. A neighborhood assessment should include vehicular traffic volumes and detailed water and sewer provisions. It is also to include an estimate of the necessary police and fire protection. A necessary separate but related requirement is the analysis of the adjacent land uses and available public facilities.

6. How innovative can the new units be made? Can they be placed on the lots for ultimate solar usage, and also so that one house does not deny another sunlight? Answers to these questions will greatly aid us in determining the project's suitability for cluster housing by demonstrating that innovative and energy efficient houses are to be constructed.

Please call me if you have questions regarding the above.

Sincerely,

William B. West, Jr.
Director of Planning

WBWjr:lb
c: Ernestine Foresman
Thomas E. Heavener
William B. Poff

TOWN OF BLACKSBURG

300 South Main Street, Blacksburg, Virginia 24060

November 24, 1986

MEMORANDUM

TO: Planning Commission

FROM: Environmental Quality & Land Use Committee

SUBJECT: November Committee Meeting

The Environmental Quality & Land Use Committee met on Monday, November 17, 1986, to discuss items referred to it by the Commission. Present were Commissioners Humphreyville, Holberton, Carson, Kerns, and Sumner. Planning staff present were West, Harrington and Alderman. Approximately 20 citizens also attended. The Agenda was revised to accept the Supplementary Agenda. The following items were discussed.

1. Ordinance #737: Poff Construction. Mr. Harrington briefly outlined the rezoning request from R-13 to R-14. He noted that Poff was proposing a mixture of single, detached homes and townhouses, yet the staff had not received the plans in time to review them for the meeting. The Committee voted to table the request until the December meeting.
2. Ordinance #730: Harold Alexander. Ms. Alderman reviewed the information collected on trailer park rents and moving expenses in Blacksburg. Discussion followed, Two points were made: one, the Town needs to make sure that there is enough land zoned PMR in Blacksburg; and two, if the property owner no longer wanted to be in the mobile home business, he could simply close down the park. The Committee made no motion, as this item was tabled after the public hearing at the Commission meeting.
3. Deer Run Cluster Subdivision. Richard Kaufman, Town Attorney, attended this portion of the meeting. Mr. Harrington reviewed his memo of November 14, 1986, which stated that if the Commission believed the items in the letter to Deer Run Partnership (September 3, 1986) had been addressed, then they had a responsibility to approve the plat. If the revised plat did not address the comments in the letter, the Commission must tell the Partnership what revisions are necessary.

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Add - special to memo minutes

Individually asked if she did not vote for the Deer Run proposal since in earlier conversations with him she had come to understand that if she found the deer Run developers had met the subdivisions requirements

During the Public Comment, Committee members questioned Robert Mills about the landscaping, rear setbacks, parking, and the location of the lots. Luke Mo, Jo Ann Meirvitch, and George Flick spoke against approval of the development. They cited density, storm water, traffic, and found that the incompatibility of lifestyles, price, uses and income, would hurt the existing neighborhood.

At this meeting

Commissioner Humphreyville reviewed the minutes of the August 5, 1986, meeting, (the one where the Commission disapproved the subdivision plat) She noted that transportation and fire systems were seen as inadequate and yet these points were not mentioned in the letter. Richard Kaufman, at her request, explained that the Commission must find that the developer has technically not met the requirements of the Subdivision Ordinance.

Chairman Kerns led the committee in a review of the plat against the letter. The Committee found that the sidewalk should follow Grove Avenue extension and merge with one of the proposed trails. The revised house placement plan met the intent of the letter. They found that the open space had been interspersed with the units and that the lots appeared to be grouped more. In short, the committee found that each item on the letter had been addressed to their satisfaction. Commissioner Humphreyville abstained.

Committee members began to discuss items mentioned in the minutes but not in the letter. Mr. Kaufman cautioned the Committee to concern itself only with the items delineated in the letter from the Commission. The committee voted to recommend approval of the plat with the condition that the Grove Avenue sidewalk be modified to merge with the trail system on the site. Commissioners Holberton and Humphreyville voted no, all others voted yes. Commissioner Sumner asked the staff to collect the assessed value of houses adjacent to the development.

4. Ordinance #735: Alexander and Lizzie Black Estate Vacation. The Committee voted to recommend approval of this item.

5. Cedar Hill Subdivision: Ms. Alderman noted that the staff recommended approval if the speed limit was reduced to 25 miles per hour. The Committee asked for a report on the storm water drainage, and recommended approval subject to the reduction of the speed limit. Approval

6. PDR Revisions: Tabled for further study at the next Committee meeting.

7. Ordinance #733: Repeal of the Cluster Housing Ordinance. The Committee voted to recommend repeal of the Ordinance.

8. Neighborhood Planning: Mr. Harrington informed the Committee that a work program will be presented to the Commission at their December 2 meeting.

So speed limit rezoning approved

MINUTES

I. CALL TO ORDER

Chairman Oliver called the meeting to order at 7:30 p.m.

II. ANNOUNCEMENTS

Ms. Snyder-Falkinham announced that Agendas were available to the public and called attention to Items V Public Hearings and VI Public Addresses.

III. ROLL CALL

Present:

M. D. Carson; A. W. Holberton;
T. Humphreyville; J. Jones; W. Kerns;
R. Litschert; J. D. Oliver;
F. M. Parsons; G. A. Snyder-Falkinham;
C. Sumner

Absent:

None

IV. CONSENT AGENDA

A. Approval of Agenda

ACTION: Approved.

B. Approval of Minutes - November 4, 1986

ACTION: Approved.

C. Special Use Permit #86-167 - Kenneth and Sandra Varner request for professional offices at 200 Washington Street.

ACTION: Refer to Development Study Committee and schedule public hearing for January 6, 1987.

D. Ordinance #737 - Poff Construction rezoning request from R-13 to R-14, property south of Lantern Ridge.

ACTION: Request tabled by Environmental Quality and Land Use Committee in November; schedule public hearing for January 6, 1987.

E. Ordinance #731 - Civil Penalties for Zoning Violations.

ACTION: Refer to Development Study Committee and schedule public hearing for January 6, 1987.

F. Vacation of Public Utility Easement - Wilman Park Subdivision, Lots 2 and 3.

ACTION: Refer to Environmental Quality and Land Use Committee and schedule public hearing for January 6, 1987.

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PLAINTIFF'S
EXHIBIT

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Mr. Kerns moved to approve the Consent Agenda.
Ms. Holberton seconded; motion passed.

V. PUBLIC HEARINGS

A. Deer Run Cluster Subdivision

Commissioners Jones and Litschert announced that they would not participate in the Commission's consideration of the Deer Run Cluster Subdivision because of possible conflict of interest for each of them.

1. Staff Report

Mr. Harrington referred to the preliminary subdivision plat of Deer Run dated October 23, 1986 which was distributed in the November Commission packets and reviewed by the Environmental Quality & Land Use Committee. Mr. Harrington informed the Commission that the October 23rd plat was prepared in response to a letter from the Planning Director to the Deer Run Partnership which outlined some of the Commission's concerns with respect to the original plat that was denied by the Commission at its August meeting.

In response to a request from Mr. Kerns, Mr. West reported on the contents of the September 3rd letter that was sent to the Deer Run developers regarding the zoning administrator's concerns with the original proposal and informed the Commission that no reply was received from the letter.

2. Environmental Quality & Land Use Committee

Mr. Kerns reported that the staff reviewed the Town Attorney's memo advising the Commission of its responsibility to approve the revised subdivision plat if the Commission believed the items in the September 3rd correspondence to the Deer Run Partnership to have been addressed. Mr. Kerns also informed the Commission that, following careful review of the plat against the letter, the committee members, with the exception of an abstention from Ms. Humphreyville, voted that each item on the September 3rd letter had been addressed to the committee's satisfaction. Mr. Kerns also reported that, after further discussion of the proposal, the committee voted to recommend approval of the plat with the condition that the Grove Avenue sidewalk be modified to merge with the trail system on the site.

3. Public Comment

- a. Mr. Bill Poff, attorney representing the developers of Deer Run, strongly emphasized

the Commission's responsibility to approve the subdivision request if the developer complied with the concerns expressed in the September 3rd letter from the Planning Department. Mr. Poff assured the Commissioners that the revised proposal was in compliance with the Town's requirements and, more particularly, with the provisions that prevented approval of the initial request, and urged that approval be given for the revised Deer Run Subdivision plat.

- b. Mr. John Craig, attorney representing the homeowners opposed to the Deer Run Subdivision, insisted that the Commissioners had an obligation to the adjoining residents to not approve the proposed subdivision because of the consistent objections that were expressed regarding the original proposal as well as the revised proposal. Mr. Craig argued that the resubmitted proposal was basically the same proposal that was first presented for approval and that the Deer Run Subdivision would not exist in harmony with the adjacent single-family residential area.
- c. Mr. Nicholas Mullins presented slides of the subdivision proposal to demonstrate that little change actually took place between the original proposal and what the developers called the revised proposal. Mr. Mullins pointed out that the requested subdivision demonstrated no evidence of real clustering; provided a poor location with a low quality of open space; contained an inappropriate storm-water system; was not in character or harmony with the adjacent neighborhood; and contradicted the Comprehensive Plan's designation for the area.
- d. Ms. Opal Price, 211 Price Street, referred to the closeness of adjacent residential structures to her residence and pointed out that she could not understand why the area residents were opposed to the proposed subdivision when clustering already existed in the neighborhood.
- e. Mr. George Flick briefly responded to Ms. Price's comments and informed the Commission that the clustering referred to by Ms. Price was the result of a BZA variance that was granted in the 1970's for a building addition next to her property. Mr. Flick reminded the

Commission of his neighborhood's strong opposition to the Deer Run proposal and emphasized that the greatest concern of the residents was for the destiny of their properties and the character of their neighborhood.

- f. Mr. Luke Mo, 219 Price Street, expressed his objection to the Deer Run Subdivision and urged the Commission to recognize that such a development would destroy the character of the adjoining neighborhood and that it contained technical problems such as inadequate fire protection, insufficient water pressure, increased traffic hazards and increased risks for students attending the nearby high school. Mr. Mo also questioned the ethics of a former member of Town Council becoming a partner in the original cluster development proposal for the subject property while serving as a Councilmember and urged the Commission to deny the Deer Run project to protect the integrity of his residential neighborhood as well as the rights of the citizens who already reside in the area.

4. Action

In response to an inquiry from Mr. Sumner, Mr. West clarified that two letters were sent to the developer regarding the original Deer Run Subdivision proposal. One of the letters described the specific concerns of the Planning Commission in denying the subdivision request and the other letter strictly addressed the zoning aspects of the proposal which involves administrative procedures by the Planning staff and not by the Planning Commission.

Mr. Sumner moved to approve the Deer Run Subdivision contingent upon the developer meeting all of the required zoning provisions.

Mr. Kerns seconded the motion.

Ms. Humphreyville stated that she would oppose the Deer Run proposal because she believed it would have a detrimental effect on the adjoining residential neighborhood. Ms. Humphreyville discussed concerns that she had regarding whether the Commissioners had received all of the facts and whether the Planning staff had been biased in presenting information to the Commission. Ms. Humphreyville referred to the Timberwood Cluster Housing project and the original Deer Run Subdivision proposal and said she considered them to be "substantially the same petition" and therefore subject to the Town Code Section 1-10, p. 1871 which states, "Having acted on a petition, Town Council during the year following such action shall not reconsider substantially the same petition."

Ms. Carson commented that she did not believe the developer had adequately responded to the Commission's concern with the original Deer Run proposal regarding open space provisions. Ms. Carson added that she believed such a proposal should include smaller clusters with more open space around the perimeter for better harmonizing with the adjoining neighborhood.

Ms. Holberton stated that she could not support the revised Deer Run proposal because it appeared to her to be the same project as previously submitted with smaller lots.

Mrs. Parsons agreed with the comments presented by Ms. Carson and added that she believed the proposed subdivision would adversely affect the adjacent property owners.

Chairman Oliver stated that he did not feel the project was worthy of approval because it did not meet the high standards of the Subdivision Ordinance.

Ms. Humphreyville added that she hoped the developer would not pursue the proposal any further with the Commission if the Commission voted to deny this request.

The motion to approve the Deer Run Subdivision failed 3-5-2 on a roll call vote. Kerns, Snyder-Falkinham and Sumner voted yes. Carson, Holberton, Humphreyville, Oliver and Parsons voted no. Jones and Litschert abstained.

Ms. Humphreyville moved to consider the Commission's refusal as final and to advise the developer that an appeal could be made to the Town Council.

There was no second to the motion.

In response to an inquiry from the Chairman, Mr. Kaufman stated that Ms. Humphreyville's motion was in order, however, he would not recommend or support such a motion. Mr. Kaufman added that he would advise the Planning Commission to inform the developer of the Commission's reasons for denying the request.

Following considerable discussion, it was the consensus of the Commissioners to schedule a work session for the entire Commission on December 16, 1986 at 7:30 p.m. to discuss notification to the developer of the reasons the Planning Commission voted to deny the Deer Run Subdivision.

B. Ordinance #735 - Vacation of Lots 1-18, Block 1, Roanoke Street, Alexander and Lizzie O. Black Estate (Hoge Heirs).

1. Staff Report

Mr. Harrington reported that Mr. Warren S. Neily, acting on behalf of the Hoge Heirs, requested the.

vacation of Lots 1-18, Block 1 on the Alexander and Lizzie O. Black Estate Plat. Mr. Harrington pointed out that the Public Works' Engineers had determined that all alleyways and driveways adjoining the property are privately owned which would not give the developer additional land for computing density of the proposed development. Mr. Harrington also informed the Commission that the mobile homes previously located on the site had been removed to permit the construction of apartments and that the Public Works Department had reviewed the request and determined that no public utilities are located on the property to be vacated. In conclusion, Mr. Harrington reported that Planning staff recommended approval of the vacation since the existing R-15 zoning permits multiple-unit housing and the 1985 Comprehensive Plan designates the area for high density housing.

2. Environmental Quality & Land Use Committee Report
Mr. Kerns reported that the committee voted to recommend approval of Ordinance #735.
3. Public Comment
There were no comments from the public
4. Action
Mr. Kerns moved to recommend approval to Town Council of Ordinance #735.
Ms. Holberton seconded; motion passed on a roll call vote. Carson, Holberton, Humphreyville, Jones, Kerns, Litschert, Oliver, Parsons, Snyder-Falkinham and Sumner voted yes. None voted no.

C. Ordinance #739 - Repeal of the Cluster Housing Ordinance.

1. Staff Report
Mr. West reported on Town Council's denial of the proposed revisions to the Cluster Housing Ordinance and the subsequent decision of Council to consider repealing the original ordinance and amendment. Mr. West informed the Commission that the November 11th action by Town Council set a December 9th public hearing and referred Ordinance #739 to the Planning Commission for consideration and recommendation at its December 2nd meeting.
2. Committee Reports

Environmental Quality & Land Use Committee Report
Mr. Kerns reported that the committee recommended approval of Ordinance #739.

Development Study Committee Report
Mr. Litschert reported that the committee did not have a recommendation on Ordinance #739.

3. Public Comment

Mr. Luke Mo, 219 Price Street, stressed that he believed the Town's Cluster Housing Ordinance to be undemocratic and urged the Commission to repeal the unfair ordinance.

4. Action

Ms. Humphreyville moved to recommend approval to Town Council of Ordinance #739.

Ms. Holberton seconded the motion.

Mr. Kerns stated that he was glad Town Council decided to deny the proposed revisions rather than to try to patch up what might have appeared to be problem areas in the cluster ordinance.

Mr. Sumner agreed with Mr. Kerns' comments but added that he hoped the cluster housing concept would still be given consideration for future development in Blacksburg.

Ms. Carson commented that she felt the Commission should stand by its 8-2 vote supporting the proposed revisions to the Cluster Housing Ordinance.

Mrs. Parsons pointed out that the Council had been very concerned over the town-wide applications of the cluster ordinance.

Ms. Snyder-Falkinham stated that she did not believe the Town had given cluster development a chance and that she hated to see the cluster concept fail at this point. Ms. Snyder-Falkinham added that the by-right projects appeared to be doing more damage to Blacksburg than the cluster projects.

Mr. Litschert voiced his support of the repeal since he believed the Cluster Housing Ordinance to include many flaws.

Mr. Sumner requested that Town Council provide the Planning Commissioners with guidance as to whether the repeal of cluster provisions meant a shift in the Town's policy from infill to encouraging development on the periphery.

The motion to recommend approval of Ordinance #739 passed 7-2-1 on a roll call vote. Holberton, Humphreyville, Kerns, Litschert, Oliver, Parsons and Sumner voted yes. Carson and Snyder-Falkinham voted no. Jones abstained.

V. PUBLIC ADDRESSES

- A. Mr. Luke Mo, 219 Price Street, reiterated his concerns regarding cluster housing developments adjacent to single-family residential neighborhoods and emphasized the stress and anxiety that his neighborhood has experienced during its opposition to the Timberwood and Deer Run projects. Mr. Mo questioned when the cluster proposals will stop and added that it was not the Planning Commission's job to design a project for a developer.

VI. OLD BUSINESS

A. Development Study Committee

1. Montgomery County Referral - Linkous Rezoning
Mr. Litschert reported that the committee voted to write the County in support of the rezoning request and to caution the County regarding the its conflict with State Law on calculating grandfather status.
2. CRD Revisions
Mr. Litschert reported that the committee discussed proposed changes and decided that multiple-unit structures should be by special use. Recommendations will be forwarded to the Commission in January followed by a mid-January neighborhood meeting and a possible public hearing at the February 3, 1987 Commission meeting.

B. Environmental Quality & Land Use Committee

1. Cedar Hill Subdivision
Mr. Kerns reported that the committee recommended approval of the subdivision subject to a speed limit reduction to 25 mph.
Ms. Alderman reported that the Traffic Committee also recommended a 25 mph speed limit for the area.
Mr. Kerns moved to approve the Cedar Hill Subdivision with a 25 mph speed limit and providing that the rezoning request of Harold Alexander from PMR to R-13 (Ordinance #730) is adopted by Town Council.
Ms. Carson seconded; motion passed 9-0-1 on a roll call vote. Carson, Holberton, Humphreyville, Kerns, Litschert, Oliver, Parsons, Snyder-Falkinham and Sumner voted yes. None voted no. Jones abstained.
2. Ordinance #730 - Rezoning request of Harold Alexander from PMR to R-13.
Mr. Kerns moved to remove Ordinance #730 from the table.
Ms. Carson seconded; motion passed.
Mr. Kerns moved to recommend approval to Town Council of Ordinance #730.
Mr. Sumner seconded; motion passed on a roll call vote. Carson, Holberton, Humphreyville, Kerns, Litschert, Oliver, Parsons, Snyder-Falkinham and Sumner voted yes. None voted no. Jones abstained.
3. PDR Revisions
Mr. Kerns reported that this item was tabled until the December committee meeting.

4. Sub-Area Planning

It was the consensus of the Commission for this item to be referred to both committees for discussion and consideration.

At this time, some discussion took place between the Commissioners and the Town Attorney regarding individual liability in actions taken by the Planning Commission. At the request of Commissioner Humphreyville, Mr. Kaufman agreed to provide a written communication to the Commission regarding general liability of the Commissioners.

C. Long Range Planning Committee

The committee did not meet during the month of November.

D. Executive Committee

Chairman Oliver reported that the committee met to schedule a December public hearing on Ordinance #739 for repeal of the Cluster Housing Ordinance, which was in response to the action taken by Town Council at its November 11th meeting.

VII. NEW BUSINESS

A. Subdivision Ordinance Amendment - Maximum Length of Cul-de-sacs

Mr. Harrington reported on a request to amend the Subdivision Ordinance to increase the maximum length of cul-de-sacs within subdivision developments.

Mr. Kaufman pointed out that the Town Attorney is responsible for a comprehensive review of the Subdivision Ordinance.

Following some discussion, it was the consensus of the Commissioners to not make a special amendment for cul-de-sacs at this time, but for consideration of such a change to be included with the comprehensive review process.

B. Planning Commission Bylaws Amendment

Mr. Harrington referred to Ordinance #714 adopted by Town Council in October and recommended that the Commission discuss the Bylaws amendment and take action at the January 1987 Commission meeting.

In response to an inquiry from Ms. Carson, Mr. West clarified the Bylaws provision for the Councilmanic membership on the Commission.

It was the consensus of the Commissioners for this item to be considered on the January 6th Commission agenda.

C. Capital Improvement Program 1987-1992

Following some discussion, it was the consensus of the Commissioners for the CIP to be referred to both

committees for review and recommendations at the January 6th Commission meeting.

- D. Chairman's Report
Chairman Oliver did not have a report to present.
- E. Report on Board of Zoning Appeals
Ms. Holberton reported on the actions taken by the Board of Zoning Appeals at its November meeting.
- F. Planning Director's Report
 - 1. Monthly Report
Mr. West reviewed the monthly report of the Planning Department for November, 1986.

VIII. REPORT ON TOWN COUNCIL ACTIONS

Mr. West reviewed the actions taken by Town Council on the following items:

Ordinance #722
Special Use Permit - James Lucas, Ellett/Fairfax Rds.
Ordinance #723
Ordinance #729
Ordinance #730
Ordinance #733
Ordinance #739
Special Use Permit - Jehovah's Witnesses, Givens Lane

IX. ANNOUNCEMENTS AND ADJOURNMENT

The meeting was adjourned at 9:35 p.m.

Georgia Anne Snyder-Falkinham
Secretary

Notes

Planning Commission Work Session on Deer Run Subdivision

Tuesday, December 16, 1986

Present: Commissioners: Carson, Holberton, Humphreyville, Parsons, Sumner,
Oliver, Kerns, Snyder-Falkinham

Planning Staff Members: West, Harrington, Alderman

Town Attorney: Richard Kaufman

Dale Oliver began the meeting by stating that the object was to react to the last submittal of the Deer Run Subdivision and that the minutes were not yet available from the Planning Commission meeting of December 2, 1986. He asked Bill West to explain the alternatives available to the Commission. Mr. West replied that the Commission could decide to (a) send a letter notifying the developer that terms of the Subdivision Ordinance had not been met, and/or (b) send a letter notifying the developer of specific changes which could be made to the plat so that the Commission could approve the subdivision. Mr. West repeated these alternatives at Mr. Oliver's request.

Mr. Kerns asked if the Commission would be forced to limit itself to the items mentioned in the letter of September 3, 1986, concerning the Subdivision Ordinance. Mr. Kaufman replied that the points which were not in the letter, while good and legitimate, should not be brought up in a second letter.

Ms. Parsons noted that the October 23, 1986, submission was almost identical to the May submission. She stated that Item #2 of the letter had not been addressed, nor did it meet the high standards required of cluster housing. "It's just a regular subdivision," she said.

Ms. Carson asked if it was necessary for the Commission to design the project; she believed it needed more open space. Mr. Sumner replied that it was not fair to ask the developer to read the Commissioners' minds. Ms. Holberton suggested that removing the lots in the first row (1-17) would make the plat better. Ms. Snyder-Falkinham commented that if the 35-foot buffer strip was not enough to separate the developments - how much more did the Commission want? Ms. Carson noted that it was unfortunate that the first letter was not more specific.

Ms. Holberton reviewed the land assessments collected for properties in the neighboring area. Mr. Sumner noted that the average assessed value of a house and lot in the area was \$83,312. A member of the audience announced that the figure was wrong. Ms. Carson called for a point of order. Someone asked Mr. Mills what the average selling price for the houses would be, and he replied that he did not have that information as he was not required to build them, only to sell individual lots. He reminded them that there was a maximum lot coverage of 20 percent. Mr. West elaborated on Mr. Mills' role as a developer of cluster housing projects, noting that the Zoning Ordinance provisions must be met by the development as a whole.

Mr. Sumner explained that the wide range of housing types in the area made it impossible to say what would be a compatible housing type. He stated that he went to the courthouse and copied the records, therefore, his sources were accurate. Ms. Holberton stated that if the area there was incompatible, then the whole Town was incompatible.

Ms. Carson asked Ms. Parsons what type of buffer would be adequate between the developments. She asked about the 75 percent rule and how it might be useful for this purpose. Ms. Parsons replied that the rule was too difficult to administer. Ms. Carson noted that the lots abutting the proposed project were much larger than the new ones would be. She asked if 85 feet was a sufficient buffer or if more clustering would be more effective. Mr. Sumner suggested that the September letter had called for more clustering or more open space, and that the decision apparently was to offer more open space.

Ms. Humphreyville stated that she said everything she felt over the past several meetings, and she had nothing to add. Mr. Kerns stated that he was opposed to sending another letter. Mr. Oliver concluded that the Commission may not be able to define what they wanted because it was so hard to put it into figures. Mr. Kerns queried the staff as to whether specific items were to be suggested in the letter. Mr. West replied that specific reasons must be given for denial but that general suggestions could be given for improvements.

Discussion followed. Commission debated their role in the project and the intent of the ordinance. At some point, Ms. Snyder-Falkinham stated that if the developer could do nothing to improve the project then he needed to know now. She also stated that all those who voted against the project would not say what was wrong with it. Ms. Carson objected, claiming that she had noted that conventional lot sizes around the perimeter would make it more palatable to her. Ms. Carson asked Ms. Parsons if she thought that improved the plat. Ms. Parsons replied that she liked that kind of idea for Timberwood. Mr. Sumner asked if the buffer strip would still be necessary between the 10,000 square foot lots and the adjacent properties. Ms. Carson did not believe that was a fair requirement. Mr. Sumner noted that the houses could be built within 25 feet of the adjacent properties. He suggested redrawing the lines of the plat. Mr. West pointed out that if Lots 1-15 were made conventional in size, the developer would lose 3-4 lots.

Ms. Carson made a second suggestion for the Commission to consider - that if the lots were clustered in groups of no more than five, with a lot's width in between them, it might work better. Mr. Kerns suggested removing every sixth lot from the plat. Ms. Carson also suggested that the common area or perimeter common space could be expanded.

Mr. Sumner suggested that a 65-foot wide lot might be too much buffering and that a 25-foot wide strip would be sufficient for that purpose. Ms. Snyder-Falkinham noted that folks don't really know what clustering is. Ms. Carson noted that it was difficult to cluster single-family, detached homes. Ms. Holberton pointed out that Kings Mill in Williamsburg was a very successful project with the same idea. Ms. Carson summed up the problem by claiming that the topography will force the Commission to accept the fact that it may be impossible to have an ideal development on the site.

Ms. Humphreyville stated that if this project was approved, it's effect on the neighborhood would be devastating. She believed it will be student housing and that it cannot be made compatible with the neighborhood. She felt that while Timberwood was a row housing project, the \$100,000+ price would have kept students out. She claimed that the feeling of the neighborhood was the most important thing.

Mr. Oliver commented on the suggestion that Lots 1-15 be made 10,000 square feet in size, noting that if the lot lines now on the plat were extended to the rear property line, the lots would be approximately 8,100 square feet in size, only a little smaller than R-12. Some discussion followed on how these lots would differ from conventional lots.

Mr. Harrington pointed out that if the subdivision were conventional, it would not be necessary to have a special work session to discuss it. He pointed out that recent homes in new R-12 subdivisions were sold in the range of \$60,000-\$65,000.

Mr. Oliver asked if setting prices would make the subdivision compatible; Ms. Carson asked if it was really necessary; Ms. Snyder-Falkinham said it was illegal; and Ms. Humphreyville said she was sick of the whole thing.

Ms. Humphreyville stated that if the development was a conventional subdivision, it would be all right to approve it because the ordinance said so, but she would not like it. She also said that it was not a by-right subdivision, it was clustered.

Ms. Holberton stated that she did not see how they could build houses on that site anyway. Further comments were made about the 10,000 square feet perimeter lots. A member of the public began to explain why this development was not true cluster but he was ruled out of order.

Mr. Kerns brought up the possibility of doing something with the perimeter of the development. He suggested cutting Lots 1-5 down to four lots and taking Lots 6-15, and making them eleven. Ms. Carson replied that she did not want to redesign the project. Ms. Parsons asked if this concept wasn't the same as Timberwood. Mr. West explained some of the differences between the projects. Mr. Kerns asked if there were any problems with the streets. Mr. West replied that there were none, that they followed the contours of the land and were of adequate width.

Mr. Sumner suggested, once again, that the development should have clusters separated by 25-30 feet of open space. The Commission decided that 2-6 lots would make an effective cluster. Mr. Kerns suggested that the developer could pursue two alternative layouts: either do the whole project with groups of 2-6 lots with open space, or do 10,000 square foot lots along the edge of the development and make the rest of the site clusters of 2-6 lots. Mr. Harrington asked if the Commission wished to specify if the clusters could be divided by streets, but they responded by saying they did not want to design the project for the developer.

Mr. Sumner suggested that the 10,000 square feet lots would need to maintain the open space between them and the adjacent properties. He brought up the idea of requiring an easement along the rear of the property for a trail. Ms. Carson suggested that the site needed more open space, but Ms. Snyder-Falkinham said that it was no longer an issue. Mr. Sumner added that it would not help the project.

Ms. Snyder-Falkinham asked the Commission what it was looking for in terms of "quality development". Ms. Holberton said that it should be in line with the assessed value. Ms. Humphreyville said that 53 \$60,000 homes would hurt the neighborhood and people's feelings are important. Mr. Sumner commented that \$75,000 homes would not hurt residents. Ms. Snyder-Falkinham noted that the

houses were detached. Ms. Holberton claimed that they would be purchased for student housing. Ms. Snyder-Falkinham noted that the Commission could not control the sale of the houses. Mr. Sumner pointed out that the changes in the tax laws would probably result in fewer student houses next year.

Ms. Parsons asked the Commission and Planning staff about the response to the September 3rd letter on zoning. Mr. Mills tried to respond to that question, but the Commission ignored him as he was out of order. Ms. Parsons noted that it was hard to separate the zoning concerns from the approval process. Ms. Carson mentioned that she felt paragraph four of the subdivision letter was written to summarize the first three requests. Mr. Sumner asked if the square footage proposed was not more than the minimum required, and received a positive response. Ms. Carson added that if the lots were smaller, the houses would be also.

Mr. Oliver asked the Commission if they would accept the plat if it came in with the requested changes or would the Commission only accept a conventional subdivision. Mr. Sumner asked if the group wanted the typical shown the norm for the site and Ms. Carson responded that she would hate to see the lots any smaller. Mr. Mills, when asked, explained that the typical house plan supplied was all the information available and that the developers could not tell homeowners the size of the house they had to build. Mr. West emphasized that the Town neither enforced nor approved covenants.

Ms. Parsons asked if the Commission could look at the minimum size of the houses as a criterion for approval. Mr. Kaufman replied that in other developments, which required zoning approval, housing size was a factor. In Deer Run's case, he did not believe the Commission could consider it.

Mr. Oliver reviewed the Commission's discussion on restating the alternatives proposed to the developer. Ms. Parsons thought that requiring landscaping between the new units and Murphy was important. Mr. Sumner asserted that it was not as important between Grove Avenue and the development. Discussion followed as to the merits and problems of white pines and fir trees.

Mr. West asked if the Commission had further comments on the open space provisions. Ms. Humphreyville questioned whether the trails should be open to the general public or not. Discussion on who would maintain the trails and whether or not homeowners should have to tolerate the general public using their site followed.

Ms. Humphreyville asked how the Commission could make the houses cost more than \$80,000, and how the Commission could make the homes a minimum size. Ms. Snyder-Falkinham replied that the Homeowner's Association could do that, but the Town should not. Someone pointed out that all development was based on faith. Ms. Humphreyville brought up the adage which claims that a person may do whatever he wants with his property as long as he hurts no one.

Mr. Kaufman addressed her question by describing the purposes and theory of the Zoning Ordinance. He summarized the meeting with the statement of the Commissioners "grappling with quality."

Mr. West advised that he would take the direction given by the Commission's consensus and develop a letter responding to the developer.

AN ORDINANCE AMENDING AND REORDAINING SECTIONS *E*
 6.1-2 AND 6.1-4 OF THE BLACKSBURG SUBDIVISION
 ORDINANCE RELATING TO PROVISIONS FOR
 CLUSTER SUBDIVISIONS

BE IT ORDAINED by the Council of the Town of Blacksburg
 that Sections 6.1-2 and 6.1-4 of the Subdivision Ordinance,
 Blacksburg Town Code (1981), as amended, are amended and reor-
 dained, respectively, as follows:

Sec. 6.1-2. Cluster subdivisions (general requirements).

* * *

(b) The lot width for individual lots shall not be less than fifty (50) percent of the minimum lot widths for the applicable zoning district, unless a greater lot width reduction is approved by the Planning Commission or by the administrator, as appropriate, in the review process.

* * *

Sec. 6.1-4. Private streets and access easements.

* * *

[ADD] (d) Individual lots within a cluster subdivision may be served by a private access easement, provided the location and design of each easement and the improvements to be constructed and maintained thereon are approved by Town Council. The cluster subdivision plat in this case shall contain a covenant running with the title of the land stating that any such easement shall perpetually remain under private control and ownership.

TOWN ATTORNEY
 TOWN OF BLACKSBURG
 300 SOUTH MAIN STREET
 BLACKSBURG, VA. 24060

Roger E. Hedgepeth
 Mayor

ATTEST:
 (SEAL)

Donna Boone-Caldwell
 Clerk of Council

1st Reading: January 14, 1986

2nd Reading & Passage: February 11, 1986

COPY ATTEST:

Donna Boone-Caldwell
 Donna Boone-Caldwell
 Clerk of Council

Roger E. Hedgepeth
 Roger E. Hedgepeth, Mayor
 To Whom the Clerk of
 Council Reports

AN ORDINANCE AMENDING AND REORDAINING APPENDIX A,
TOWN OF BLACKSBURG ZONING ORDINANCE AND
APPENDIX B, SUBDIVISION ORDINANCE OF BLACKSBURG,
VIRGINIA, BLACKSBURG TOWN CODE (1981), AS AMENDED,
TO INCLUDE PROVISIONS ALLOWING FOR CLUSTER HOUSING,
DENSITY BONUSES AND ZERO LOT DEVELOPMENT, UNDER
CERTAIN TERMS AND CONDITIONS

BE IT ORDAINED by the Council of the Town of Blacksburg,
Virginia, as follows:

1. Appendix A, "Town of Blacksburg Zoning Ordinance,"
Blacksburg Town Code (1981), as amended, is amended and reor-
dained by the addition of new Division 15, Cluster Housing, of
Article II, as follows:

Division 15. Cluster Housing.

Sec. 2-88. Statement of purposes and goals.

(a) The purpose of this division is to offer incen-
tives and encouragement to developers in the form of
reducing development cost by compacting development, in
compliance with overall land use regulations, but without
limitation by certain specific regulations, in return for
the developer's voluntary provision of common or private
open spaces or public areas, high quality site design,
significant landscaping and innovative, efficient con-
struction techniques.

(b) The goals of this division are the preservation
of land used for agriculture, recreation or aesthetic and
environmental enrichment; promotion of efficient land and
energy use and the enhancement of the public health,
safety and welfare by encouraging intensive development in
a manner planned to harmonize with natural and man-made
surroundings and the promotion of quality development in a
compact form.

Sec. 2-89. Definitions.

The following terms shall have the meanings set out
below:

COPY ATTEST:

Donna Boone Caldwell
Donna Boone-Caldwell
Clerk of Council

Roger E. Hedgepeth
Roger E. Hedgepeth, Mayor
To Whom the Clerk of
Council Reports

TOWN ATTORNEY
TOWN OF BLACKSBURG
60 SOUTH MAIN STREET
BLACKSBURG, VA. 24060

(a) Cluster Development. An arrangement of residential structures on adjoining lots in groupings allowing smaller lots and closer spacing than would be generally permitted under this chapter, with the reduction in lot size compensated by setting aside or dedication of equivalent private or public open space on the developed parcel.

(b) Cluster Subdivision. The subdividing of land for residential purposes pursuant to the Subdivision Ordinance of Blacksburg, Virginia, in compliance with overall density and lot size limitations, but without regard to certain specific regulations applicable to conventional subdivisions, with the reduction in lot size compensated by setting aside or dedication of equivalent private open space or public areas on the developed parcel.

(c) Density Bonus. A permitted increase in residential density in a particular zoning district, as measured by dwelling units per acre.

(d) Zero Lot Line Development. Improvement of real property for residential use, where a side of the structure may be located on or closely parallel to (but within) one side of the lot line.

Sec. 2-90. Permitted Zones.

(a) Cluster developments on approved and recorded cluster subdivision plats shall be permitted by right and on application to the town delivered to the administrator in the following zoning districts: A-10, R-11, R-12(a), R-12, R-13, R-14, R-15, R-16 and CRD. Cluster developments involving any zero lot line development shall be permitted by right in R-14, R-15, R-16 and CRD zones. The administrator shall within sixty (60) days from receipt of the application, approve or disapprove the application, in writing, with reasons for a disapproval.

(b) Cluster developments involving zero lot line development in A-10, R-11, R-12(a), R-12 and R-13 districts and any cluster development involving a density bonus in any of the districts listed in §2-90(a) shall be approved or not, as provided in §2-93 of this chapter.

(c) Lots in cluster developments which abut existing public streets or conventionally developed subdivisions shall have the same front and side yard set-backs as provided for the zoning district in which the development is proposed.

(d) Except as provided above, all other lots within the cluster development may reduce set-back requirements below those normally prescribed as follows:

(1) Front Set-Back. All structures shall be located twenty (20) feet or more from the nearer edge of any abutting street right-of-way;

(2) Side Yard Requirements. Total side yards in cluster developments shall be ten (10) feet or more, except where approved zero lot line development renders the side yard requirement not applicable.

(3) Rear Yard Requirement. Rear yards in cluster developments shall be fifteen (15) feet or more.

2-91. Density Bonus.

Density bonuses may be allowed in conjunction with cluster developments by the council, as provided below, in those zoning districts set out in 2-90(a). The maximum density bonus shall be fifty percent (50%) over densities permitted for such use in the applicable district elsewhere in this chapter. When reviewing and considering approval or disapproval of cluster developments with a density bonus feature, the town staff, planning commission, and town council shall consider the following:

access to lots; preservation of natural features; proposed landscaping; proposed on-site recreational or open space areas; proposals for screening of parking areas from residential areas; proposals for development of vacant or underdeveloped land.

2-92. Density Bonus Overlay District.

(a) The Density Bonus Overlay District is generally described as follows: An area whose boundaries coincide with the Central Residential District as adopted by Blacksburg Town Council on May 27, 1980. It is further and specifically described by reference to map dated November 19, 1984, entitled Density Bonus Overlay District, on file in the office of the clerk of council.

(b) The town's official zoning map shall be amended to show the density bonus overlay district.

(c) In the density bonus overlay district the same rules set forth in the previous section shall govern the density bonus and the required open space set aside shall be governed in §6.1-2(d), Subdivision Ordinance, Blacksburg Town Code (1981), as amended.

Sec. 2-93. Procedure for Cluster Development Approval.

(a) The procedures listed in this section shall be utilized for review, approval or disapproval of any cluster development.

(b) To obtain information concerning cluster development, each applicant shall confer with the staff of the planning department, town engineer and other affected town staff to discuss the cluster development provisions of this chapter. The applicant may at this point submit a general outline of the proposed development, evidenced schematically by sketch plans.

(c) Approval of a cluster development, not a matter of right, shall be granted or not by zoning ordinance of

the council, adopted in conformance with the requirements and according to the procedures of §§1-10 through 1-15 of this chapter.

(d) The materials below form the basis upon which such an application will be reviewed. An application for cluster development shall contain the following items, which shall constitute the cluster development plan:

(1) A cluster subdivision plat, preliminary sketch or preliminary plat, in conformance with the "Subdivision Ordinance of Blacksburg, Virginia," the tender of which shall constitute an application for approval under that ordinance and which review shall, where possible, be carried out contemporaneously with zoning review of the proposed cluster development hereunder.

(2) A statement of the planning objectives to be achieved by the cluster development, including a description of the character and rationale behind the proposed development.

(3) A site development plan.

(4) A neighborhood assessment, including an analysis of the following:

- (i) the number of units to be developed;
- (ii) estimated population of the development;
- (iii) estimated vehicular traffic volumes from the proposed cluster development;
- (iv) estimated need for public services such as volume of water and sewer provision, fire and police protection and other municipal services.

(5) An approximate development schedule, indicating various stages of development within the development.

(6) Engineering feasibility studies for storm water and sanitary sewer services.

(7) Data as to the following: total number and type of dwelling units; average and minimum single unit parcel sizes; maximum gross and net residential densities; and total amount of private open space or public areas.

(8) A general statement of the methods and agreements necessary to govern the ownership, maintenance, and preservation of common open space, if the town does not accept title thereto.

(9) A plan showing existing site conditions including approximate contours, water courses, flood plains, unique natural features and tree cover; the location and configuration of all areas to be conveyed, dedicated or reserved as private common open space, public parks, recreation areas, school sites and the like; and the existing and proposed vehicular, pedestrian and bicycle traffic circulation system; the existing and proposed major sanitary sewer lines, storm drainage facilities and water lines to serve the proposed cluster development.

(10) A general landscaping plan.

(11) Information concerning adjacent land, including land uses, zoning classifications, traffic circulation systems, public facilities and unique natural features.

(12) Graphic representations of sufficient number to clearly depict the typical character,

scale, and architectural style of all proposed buildings.

Sec. 2-94. Review Criteria.

The planning staff, planning commission and town council, as appropriate, shall review the application for a cluster development with consideration given to each of the following:

(a) whether or not the proposed cluster development is in harmony with the goals, objectives and policies of the Comprehensive Plan and of §1-2 of this chapter;

(b) the impact of the proposed cluster development on adjacent property and uses;

(c) whether or not the proposed cluster development will be served adequately by essential public facilities and utilities;

(d) the impact of the proposed cluster development on natural, agricultural, scenic or historic features;

(e) whether or not the required open space is accessible, functional and usable and whether or not the open space includes any areas of irreplaceable natural importance such as stream beds, wetlands, stands of trees, significant individual trees or rock outcroppings.

(f) the style, quality, and character of proposed buildings.

Sec. 2-95. Open Space.

The council shall decide whether or not to accept the dedication for public purposes of open space, recreation areas, or parks, and the like, proposed to be part of the cluster development. The decision shall be set forth in any ordinance approving a cluster development.

Sec. 2-96. Relation to other law.

(a) The provisions of this division shall take precedence over any conflicting provisions of this chapter

or of the Subdivision Ordinance, Blacksburg Town Code (1981), as amended, and as may be amended.

(b) Unless otherwise expressly provided, the provisions of this chapter shall nonetheless apply to cluster developments.

2. Appendix B, "Subdivision Ordinance of Blacksburg, Virginia," Blacksburg Town Code (1981), as amended, is amended and reordained by the addition of new Section 6.1, Cluster Subdivisions, as follows:

Sec. 6.1-1. Definitions.

(a) Cluster Development. An arrangement of residential structures on adjoining lots in groupings allowing smaller lots and closer spacing than would be generally permitted under this chapter, with the reduction in lot size compensated by setting aside or dedication of equivalent public or private open space on the developed parcel.

(b) Cluster Subdivision. The subdividing of land for residential purposes pursuant to the Subdivision Ordinance of Blacksburg, Virginia, in compliance with overall density and lot size limitations, but without regard to certain specific regulations applicable to conventional subdivisions, with the reduction in lot size compensated by setting aside or dedication of equivalent private open space or public areas on the developed parcel.

Sec. 6.1-2. Cluster Subdivisions.

(a) An approved cluster subdivision plat, in each zoning district allowing for such, may provide for reduction of lot sizes from the normally applicable lot size for that district to a lot size which shall be no less than those set forth as follows. In A-10, R-11, R-12(a), R-12, R-13 and R-14 zoning districts, individual lot sizes may be no less than fifty percent (50%) of the minimum lot

size for that particular district, as specified in the Town of Blacksburg Zoning Ordinance. In R-15, R-16 and CRD zoning districts, the individual lot sizes shall be not less than the quotient obtained by dividing 43,560 (the square footage of an acre) by the maximum dwelling units per acre allowed in the particular zoning district. For all such zoning districts, the minimum lot sizes in cluster subdivisions are set forth on the following table:

<u>Zoning District</u>	<u>Minimum Lot Size</u>
A-10	$\frac{1}{2}$ Acre
R-11	$\frac{1}{2}$ Acre
R-12(a)	7,500 sq.ft.
R-12	5,000 sq.ft.
R-13	4,250 sq.ft.
R-14	4,250 sq.ft.
R-15	2,292 sq.ft.
R-16	1,742 sq.ft.
CRD	1,742 sq.ft.

Lot sizes may be reduced to less than fifty percent of the minimum lot size for a particular zoning district, or to less than the quotient referred to above, under an approved density bonus feature, authorized pursuant to the Zoning Ordinance, Blacksburg Town Code (1981), as amended.

(b) The lot width for individual lots shall not be less than fifty percent (50%) of the minimum lot widths for the applicable zoning district.

(c) To the extent, in land area, that lot sizes are reduced in accordance with this section, the owner of the land to be subdivided shall set aside on the subdivision plat common open space, to be preserved and maintained for its scenic, recreational and environmental value; provided, however, that no such requirement shall apply as to any reduction in lot size effected by an approved density bonus feature, under the Zoning Ordinance, Blacksburg Town Code (1981), as amended. The subdivision plat shall contain appropriate language to effect the dedication or reservation of such land for the purposes just named. The

owner of the property for which approval of a cluster subdivision plat is requested shall submit with the preliminary sketch a plan for the ownership, care and maintenance of the open space required to be set aside hereunder. The council may accept, or not, a dedication of open space, as prescribed in §2-95, Zoning Ordinance, Blacksburg Town Code (1981), as amended.

(d) In the density bonus overlay zoning district, it shall not be necessary for the owner to set aside common open space, to the extent that lot sizes are reduced, in accordance with this section. Instead, the following open space requirements shall exist. Fifteen percent of gross land area shall be reserved, developed, and maintained as common open space. In addition, this required minimum open space shall be increased by the same percentage as the requested increase in density. The following chart offers examples of the use of this latter formula:

<u>Requested Percentage Density Bonus</u>	<u>Required Open Space</u>
0	15.0 %
10	16.5 %
25	18.75%
50	22.5 %

(e) This section will apply for cluster subdivisions, notwithstanding contrary or differing language set out on this subject in §5-32 of this subdivision ordinance or in the Town of Blacksburg Zoning Ordinance.

Sec. 6.1-3. Development Standards for Cluster Subdivisions.

(a) The minimum development size for a cluster subdivision in A-10, R-11, R-12, R-12(a) and R-13 zoning districts shall be eight units.

(b) There shall be no such minimum for cluster subdivisions in R-14, R-15, R-16 and CRD zoning districts.

Sec. 6.1-4. Private Streets.

(a) Streets within a cluster subdivision may be dedicated to the town or, if approved and effected by action of the town council, retained under private ownership.

(b) Public streets shall be constructed to the standards established elsewhere in this ordinance.

(c) Private streets shall meet the following standards:

(1) they shall constitute local service streets;

(2) they shall serve no more than thirty (30) dwelling units, with a minimum right-of-way width of forty (40) feet; or they shall serve no more than eight (8) dwelling units, with a minimum right-of-way width of twenty-five (25) feet.

(3) The cluster subdivision plat shall contain a covenant running with the title to the land to the effect that all owners abutting the private street and any other owner of the street shall first bring the street up to generally applicable town street standards at their cost prior to the town's acceptance thereof, and then dedicate the street to the town, when three-fifths or more of the abutting property owners (each parcel being deemed to have one owner for this purpose) declare in writing that they request the town to assume ownership, control and maintenance of the street.

Sec. 6.1-5. Approval of ~~A~~ Cluster Subdivision Plat.

(a) Approval of a cluster subdivision plat shall conform to the general approval procedures set out in this ordinance, except that the administrator may, in his discretion, and for good cause set forth in writing, accept a final subdivision plat for initial review,

omitting the preliminary sketch and preliminary plat stages.

(b) Where applicable, approval of the cluster subdivision plat shall be coordinated by the planning department with the review and approval or disapproval process for any companion cluster development request, submitted under the Blacksburg Zoning Ordinance in connection with the land involved in the cluster subdivision review process.

Sec. 6.1-6. Relation to other law.

(a) The provisions of this section 6.1, Cluster Subdivisions, shall take precedence over any conflicting provisions of the Subdivision Ordinance or the Zoning Ordinance, Blacksburg Town Code (1981), as amended, and as may be amended.

(b) Unless otherwise expressly provided, the provisions of the Subdivision Ordinance, Blacksburg Town Code (1981), as amended, and as may be amended, shall nonetheless apply to cluster subdivisions.

(ATTEST)

Dona Bone-Cabell
Clerk of Council

1st Reading: December 11, 1984

2nd Reading & Passage: January 8, 1985

Roger E. Hedgepeth
Mayor

CERTIFICATE

I certify that I am the Clerk of Council of the
Town of Blacksburg, and that I have custody of the
ordinances of the Town of Blacksburg, Virginia.

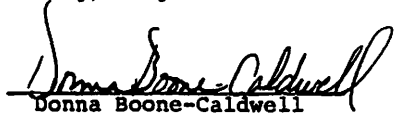
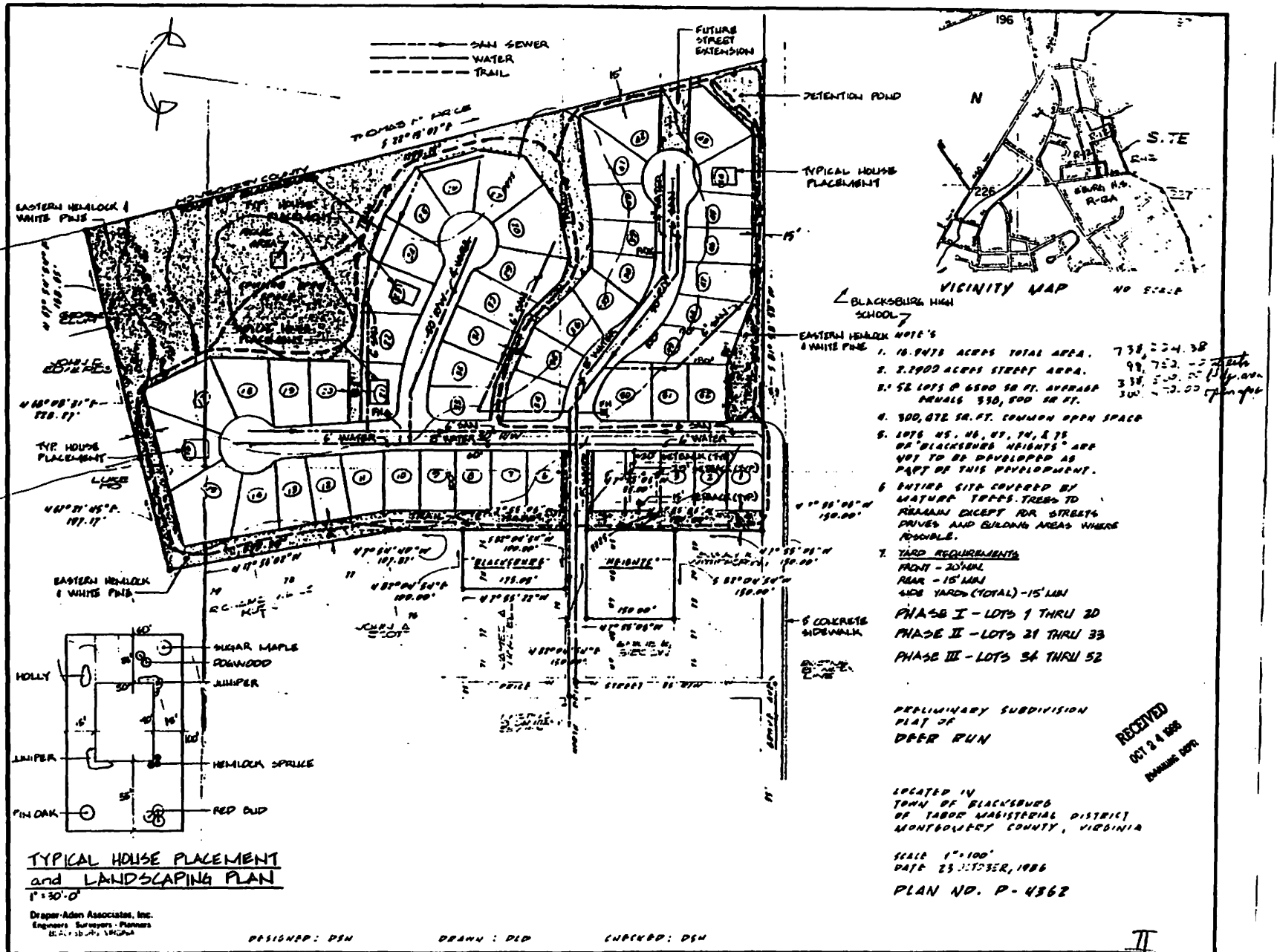

Donna Boone-Caldwell
Clerk of Council

Exhibit A

DEFENDANT'S EXHIBIT A





May 15, 1986

Mr. Thomas Price
Rt #2 Box 132B
Fredericksburg, Texas 78624

Dear Tom,

Enclosed is a copy of the plat submitted for approval by the town, by right under cluster housing.

As you can see it is not the development Timberwood would have been. We changed the name because we didn't want the Timberwood name on it as it is a different project. Timberwood was a quality project. Cost had to be considered in this project.

The enclosed letters were secured for your benefit by the Timberwood Development Team when it was determined that we would have private streets and the town would have some problem if we made them public. At that time the only entrance was to be Grove Ave. The town didn't want us to use North Dr. and with good reason. It is small and congested. Note the new plan uses both Grove Ave. and North Dr. They now seem to require two entrances because of the public streets.

These letters were secured by us and our attorney at our expense and delivered to Bud Neely on your behalf. It is quite clear to me that you do have the right to build a road up Grove Ave. to your property as long as you build to town standards of 30 ft. width paving etc. That is true for every property in town. We hired an engineer to check the recorded plat to see if you had enough room on the dedicated Grove Ave. to get to your property before the school property began; according to his report you have approximately 99' as shown on the enclosed plat.

I am surprised Bud has not transmitted all this information to you. It has been our intent to honor our commitment to you to protect your access either through a right of way through the property we are buying or through Grove Ave. if we were to have private streets.

The 15' additional right of way is being addressed by the town attorney for the town so you will probably have the 50' wide street anyway. It will not effect your position according to the town but it will increase the recorded right of way for Grove Ave.

As we have discussed we still cannot define the exact right of way to your property as our plans are incomplete.

This has been a most frustrating experience. We have lost our enthusiasm for developing the property, what we planned and what we have to settle for is not the same. Timberwood was class. Deer Run will be ordinary.

If you have any questions please call me.

Sincerely,



Ernestine Foresman

EF/ch

RECEIVED NOV 23 1987

VIRGINIA:

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY

Robert L. Mills,
Thomas E. Heavener and
Ernestine Foresman,

Plaintiffs

v.

The Town of Blacksburg,
Virginia,

Defendant

ORDER

This cause came on this 28th day of October, 1987, upon the Motion for Judgment of the Plaintiffs; upon the Grounds of Defense of Defendant and upon its Plea in Bar; upon the testimony of witnesses and upon exhibits introduced on behalf of Plaintiffs and Defendant; upon a Memorandum of Law submitted on behalf of Plaintiffs; and upon argument of counsel for Plaintiffs and for Defendant.

And it appearing to the Court that the Defendant's refusal to approve Plaintiff's preliminary plat of subdivision of Deer Run dated October 23, 1986 was arbitrary and capricious and not properly based on the ordinance applicable thereto, it is therefore ADJUDGED, ORDERED and DECREED, pursuant to Section 15.1-475 of the Code of Virginia of 1950 (as amended), that the preliminary plat of subdivision of Deer Run dated October 23, 1986, meets the requirements of the applicable ordinances of the Town of Blacksburg for such plat and that the Town is hereby ordered to approve said plat to which Defendant objects as contrary to §§ 6.1-1 through 6.1-6, Subdivision Ordinance

and § 2-88, Zoning Ordinance, Blacksburg Town Code (1981), as amended, and to Prince William Co. v. Hylton Enterprises, 216 Va. 582, 584 (1976), allowing a measure of elemental discretion in purely administrative review.

And it appearing to the Court that Plaintiffs requested damages from Defendant in the form of "expenses incurred by them as a result of the improper refusal of the Planning Commission to approve said plat," and that no evidence of any such damages was presented, it is hereby ORDERED that Plaintiffs shall not recover any damages from Defendant in this action.

ENTERED: 11. 16. 87

K. L. L. L.
JUDGE

I request the entry of this Order:

Deborah A. Oehlschlaeger
Deborah A. Oehlschlaeger
Woods, Rogers & Hazlegrove
105 Franklin Road, S.W.
P. O. Box 720
Roanoke, Virginia 24004

Counsel for Robert L. Mills, Thomas E. Heavener
and Ernestine Foresman

Seen and objected to:

Richard B. Kaufman
Richard B. Kaufman
Town Attorney
300 South Main Street
Blacksburg, Virginia 24060

Counsel for Defendant

A Copy-Teste:

JOHN E. MYERS, JR., Clerk
Circuit Court Montgomery County, Virginia

By: Henry L. Myers Deputy Clerk