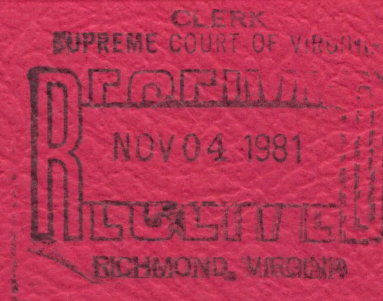


226 VA125



IN THE SUPREME COURT OF VIRGINIA

ALFRED BROWN, ET. AL.,  
V.

THE TAZEWELL COUNTY WATER AND SEWAGE  
AUTHORITY

APPENDIX II



SUPREME COURT of VIRGINIA

ALFRED BROWN, CLYDE B. RATLIFF,  
JOHN DOE and JANE DOE, along with  
other residents of College View  
Addition, Wardell, Virginia,

Appellants,

against      Record No. 801634  
                 Circuit Court No. C-40-7864

Tazewell County Water and Sewerage  
Authority,

Appellee.

APPELLANTS APPENDIX E1

EXHIBITS FILED

AT HEARING

(Tazewell Subdivision Ordinance)

1 AN ORDINANCE TO ESTABLISH CERTAIN SUBDIVISION  
2 STANDARDS AND PROCEDURES FOR TAZEWELL COUNTY,  
3 VIRGINIA, OR SO MUCH THEREOF AS COMES UNDER  
4 THE JURISDICTION OF THE GOVERNING BODY OF  
5 TAZEWELL COUNTY, VIRGINIA, AS PROVIDED BY THE  
6 1950 CODE OF VIRGINIA, AS AMENDED

7 Section 1: PURPOSE

8 It is intended as a long range plan to guide and facilitate  
9 the orderly and beneficial growth of Tazewell County, and to promote  
10 the public health, safety, convenience, comfort, prosperity, and  
11 general welfare of the County. Subdivided land sooner or later  
12 becomes a public responsibility in that roads and streets must be  
13 maintained and numerous public services customarily to urban areas  
14 must be provided. This ordinance assists the community in meeting  
15 these responsibilities.

16 Section 2: TITLE

17 This Ordinance is known and is to be cited as "Sub-division  
18 Ordinance of Tazewell County, Virginia."

19 Section 3: AUTHORITY

20 (a) This ordinance is adopted pursuant to the provisions  
21 and under the authority of Title 15.1, Chapter 11, Article 7, of the  
22 1950 Code of Virginia, as amended.

23 (b) Platting required from and after the first day of  
24 adoption. Any owner or developer of any tract of land situate in  
25 Tazewell County, Virginia, or so much of it as comes under the  
jurisdiction of the Board of Supervisors of Tazewell County, shall  
cause a plat of such subdivision, with reference to known or  
permanent monuments, to be made and recorded in the office of the  
Clerk of the Circuit Court of Tazewell County, Virginia. No such  
plat of a subdivision shall be recorded unless and until it shall  
have been submitted approved, and certified by the Board of Super-  
visors or its designated agent by appropriate ordinance in accordance  
with the regulations set forth in this ordinance.

26 Section 4: DEFINITIONS

27 (a) Subdivide: To separate any tract of land into five  
28 (5) or more lots or other divisions of land at one time or over an  
29 extended period of time, except, however, the separation of any

APPELLANTS APPENDIX E1. page E1

tract of land into lots or other divisions of land containing an area of five acres or more or the partition of any tract of land ordered by a Court of competent jurisdiction.

(b) Subdivision: The land sub-divided as used in this text, the process of subdividing or re-subdividing.

(c) Street: A strip of land subject to vehicular or pedestrian traffic, and providing direct or indirect means of access to property, including but not limited to road, land, drive, trail, avenue, boulevard, highway, or other thoroughfare.

(d) Street Width: The standard distance between the lines which delineate the right of way of a street.

(e) Local Street: A public street designed to serve as access to abutting property and not intended to provide for through traffic.

(f) Cul-de-sac: A street with only one outlet and having an appropriate terminal for safe and convenient reversal of traffic.

(g) Alley and Service Way: A minor street designed to serve side or rear of project or whose property frontage is on another street.

#### Section 5: GENERAL REGULATIONS

(a) No lot shall be sold in any such subdivision before the plat shall have been recorded.

(b) Draw and Certify: Every such plat shall be prepared by a licensed surveyor or engineer, who shall endorse upon each plat and certificate signed by him setting forth the source of the title of the land subdivided, and the place of record of the last instrument in the chain of title. When the plat is of land acquired from more than one source of title, the outlines of the several tracts shall be indicated upon such plats, within an inset block, or by means of a dotted boundary line upon the plat.

(c) Owners Statement: Every such plat, or the deed of dedication to which plat is attached, shall contain in addition to the surveyor's or engineer's certificate a statement to the effect that "the above and foregoing subdivision of (here insert correct description of the land subdivided as appears in this plat is with the free consent and in accordance with the desire of the undersigned owners, proprietors, and trustees, if any, which shall be signed

APPELLANT'S APPENDIX E1 page2

1 by the owners, proprietors, and trustees, if any and shall be duly  
2 acknowledged before some officer authorized to take Acknowledgement  
3 of deeds, and when thus executed and approved as herein specified  
4 shall be filed and recorded in the office of the clerk of the  
5 appropriate court, and indexed under the names of the land owners  
6 signing such statement and under the name of the sub-division.

7 (d) No One Exempt: No person shall sub-divide any  
8 tract of land that is located within Tazewell County as defined  
9 in Article 7 of the Virginia Planning Act except in conformity with  
10 the provisions of this ordinance.

11 (e) This ordinance shall be effective in so much of the  
12 unincorporated area of Tazewell County as is not subject to the  
13 regulations of and subject to the jurisdiction of any municipality  
14 in Tazewell County, pursuant to the provisions of Article 7, Chapter  
15 11, Title 15.1, Code of Virginia of 1950, as amended.

16 (f) Private Contracts: This ordinance bears no relation  
17 to an private covenant, easement, agreement, or restriction, nor is  
18 the responsibility of enforcing such private easement, covenant,  
19 agreement, or restriction implied herein to any public official.  
20 When this ordinance calls for more restrictive standards than are  
21 required by private contract the provisions of this ordinance shall  
22 control.

23 (g) Necessary Changes: No change, erasure, or revision  
24 shall be made on any preliminary plat or final plat, nor any accompanying  
25 sheets after approval of the agent has been endorsed in writing on  
the plat or sheets, unless authorization for such changes has been  
granted in writing by the agent.

(h) Streets and Alleys: All streets and alleys (service  
ways) shall be installed by the subdivider at his own proper costs.  
All streets and alleys (service ways) shall be designed and constructed  
in accordance with the minimum requirements and specifications and  
standards which have been established by the Virginia Department of  
Highways or which may hereafter by established by the Virginia  
Department of Highways.

(i) Minimum Widths: The minimum width of proposed  
streets, measured from lot to lotline shall be: Not less than fifty  
(50) feet wide. Alleys and service-ways, not less than 20 nor more  
than 28 feet wide.

(j) Cul-de-sacs: Generally, minor terminal streets  
(cul-de-sacs) designed to have one end permanently closed, shall be  
no more than six hundred (600) feet to the beginning of the turn-  
around. Each cul-de-sac must be terminated by a turn-around of not

APPELLENTS APPENDIX E1, page 3

less than one hundred (100) feet in diameter.

(k) Private Streets and Reserve Strips: There shall be no more private streets platted in any subdivision. Every subdivided property shall be served from a publicly dedicated street. There shall be no more reserve strips controlling access to streets.

(l) Monuments: As required by this ordinance, all monuments must be installed by the subdivider and shall meet the minimum specifications. Upon completion of the subdivision streets, sewers, and other improvements, the subdivider shall make certain that all monuments required by the Board of Supervisors or its designated agent are clearly visible for inspection and use. Such monuments shall be inspected and approved by the Board of Supervisors or its designated agent before any improvements are accepted by the governing body.

(m) Location-Concrete: Concrete monuments four (4) inches in diameter or square, three (3) feet long, with a flat top, shall be set at all street intersections and all points where the street line intersects the exterior boundaries of the subdivision, and at right angle points, and points of curves in each street. The top of the monument shall have an appropriate mark to identify properly the location and shall be set flush with the finished gravel.

(n) Location-Iron Pipe: All other corners shall be marked with iron pipe not less than three-fourths (3/4) inch in diameter and twenty-four (24) inches long and driven so as to be flush with the finished grade. When rock is encountered, a hole shall be drilled one inch deep in the rock, into which shall be cemented a steel rod one-half (1/2) inch in diameter, the top of which shall be flush with the finished grade.

(o) Lot Size: Residential lots served by neither public water or public sewer systems shall be seventy-five (75) feet or more in width and ten thousand (10,000) square feet or more in area. Greater lot areas may be required where individual septic tank or industrial wells are used if health officials determine that there are factors of drainage, soil conditions or other conditions to cause health problems. The agent shall require that data from percolation tests be submitted as a basis for passing upon subdivisions dependent upon septic tanks as a means of sewage disposal.

(p) Bond: Before any subdivision plat will be finally approved by the Board of Supervisors or its designated agent, the subdivider shall, in lieu of construction, furnish a bond in an amount determined by the Board or its designated agent to secure

the required improvements in a workmanlike manner, and in accordance with specifications and requirements under this ordinance, which bond shall be payable to and held by the governing body of this County.

(q) Plans and Specifications: Two (2) blue and black line prints of the plans and specifications for all required physical improvements to be installed, shall be prepared by an engineer and shall be submitted to the Board of Supervisors or its designated agent for approval or disapproval within forty-five (45) days. If approved, one (1) copy, bearing certification of such approval, shall be returned to the subdivider. If disapproved all papers shall be returned to the subdivider, with the reason for disapproval in writing. In the event that no action is taken in forty-five (45) days such subdivision shall be deemed approved.

(r) Lots: In addition to the area and width requirements already specified, lots shall be arranged in order that the following considerations are satisfied.

(s) Shape: The lot arrangement, design, and shape shall be such that all lots will provide satisfactory and desirable sites for buildings, and be properly related to topography, and conform to requirements of this ordinance. Lots shall not contain peculiarly shaped elongations solely to provide necessary square footage of area which would be unusually for normal purposes.

(t) Location: Each lot shall abut on a street dedicated by the subdivision plat, or on an existing publicly dedicated street, or on a street which has become public by right of use. If the existing streets are not fifty (50) feet in width, the subdivider shall make provisions in the deeds to the lots for all buildings to be so constructed as to permit the widening by dedication of such roads or streets to a width of fifty (50) feet.

(u) Corner Lots: Corner lots shall have extra width sufficient for maintenance of any required building lines on both streets as determined by the Board of Supervisors or its designated agent.

(v) Side Lines: Side lines of lots shall be approximately at right angles, or radial to the street line.

(a2) Remnants: All remnants of lots below minimum size left over after subdividing of a tract must be added to adjacent lots, or otherwise disposed of rather than be allowed to remain as unuseable parcels.

(b2) Business or Industrial: Lots intended for business

1 or industrial use shall be designed specifically for such purposes  
2 with adequate space set aside for off-street parking and delivery  
3 services and facilities.

4 Section 6: APPROVAL OF PLATS

5 (a) Approval Required Before Sale: Whenever any sub-  
6 division of land is proposed and before any permit for the erection  
7 of a structure shall be granted, the subdivider or his agent shall  
8 apply in writing to the Board of Supervisors its designated agent  
9 for the approval of the subdivision plat and submit three (3) copies  
10 of the preliminary plat including the street, and utilities layout.  
11 No lot shall be sold until a final plat the sub-division shall have  
12 been approved and recorded in the following manner;

13 (b) Final Plat: The subdivision plats submitted for final  
14 approval by the governing body and subsequent recording shall be  
15 clearly and legibly drawn in ink at a scale of one hundred (100)  
16 feet to the inch on sheets having a size of 17 3/4 x 21 inches.  
17 In addition to the requirements of the preliminary plat, the final  
18 plat shall include the following:

19 1. A blank oblong space 3" x 5" shall be reserved for the  
20 use of the approving authority.

21 2. Certificates signed by the surveyor or engineer  
22 setting the source of title by the owners of the land subdivided  
23 and the place of record of the last instrument in the chain of title.

24 3. A statement to the effect that the subdivision as it  
25 appears on this plat is with the free consent and in accordance with  
the desire by the owners, proprietors, and trustees, if any, which  
shall be signed by the owners, proprietors, and trustees, if any, and  
shall be duly acknowledged before some officer authorized to take  
acknowledgements of deeds.

4. When the subdivision consists of land acquired from  
more than one source of title, the outlines of the various tracts  
shall be indicated by dash-lines and identification of the respective  
tracts shall be placed on the plat.

5. The accurate location and dimensions by bearings and  
distance with all curve data on all lots and street lines and center  
lines of strip boundaries of all proposed or existing easements, parks,  
school sites, and other public areas, the number and area of all  
building sites, all existing public and private streets, their names,  
numbers, and widths, existing utilities, and those to be provided  
as such as sanitary sewers, storm drains, water mains, manholes,

APPELLANTS APPENDIX E1, page 6



1 and underground conduits, including their size and type, water  
2 courses, and their names, names of owners and their property lines,  
3 both within the boundary of the subdivision and adjoining said  
4 boundaries.

5 6. Distances and bearings must balance and close with an  
6 access of not less than one in ten thousand.

7 7. The data of all curves along the street frontage shall  
8 be shown in detail at the curve or in a curve data table containing  
9 the following: Delta, radius, arc, tangent, and chord and chord  
10 bearings.

11 (c) Conditions: The plat shall not be approved until the  
12 subdivider has complied with the general requirements and minimum  
13 standards design in accordance with this ordinance, and has made  
14 satisfactory arrangements for performance bond, cash or cash bond  
15 to cover the cost of necessary improvements, in lieu of construction,  
16 to the satisfaction of the Board of Supervisors or its designated  
17 agent. Approval of final plat shall be written on the face of the  
18 plat by the Board of Supervisors or its designated agents. The  
19 subdivider shall record plat within sixty (60) days after final  
20 approval, otherwise, the Board of Supervisors or its designated  
21 agent shall mark plat (void) and return same to the subdivider.

#### 22 Section 7: Advertising Standards

23 A subdivider when advertising a subdivided tract of land  
24 for sale shall be specific as to the following items:

25 1. Whether officially approved public water and sewage  
facilities are provided or not.

The Clerk of the Circuit Court of Tazewell County, Virginia  
shall not record or file any such plat or any copy thereof required by  
this ordinance to be filed, unless and until approval shall have been  
obtained as required by the provisions of this ordinance.

(a) Penalties: Any person violating the foregoing  
provisions of this section shall be subject to a fine of not more  
than one hundred dollars (\$100) for each lot or parcel of land so  
subdivided or transferred or sold and the description of such lot  
or parcel by metes and bounds to the instrument of transfer or other  
document used in the process of selling or transferring shall not  
exempt the transaction from such penalties or from the remedies  
herein provided.

(b) Validity: Should any article, section, sub-section,

APPELLANT'S APPENDIX E1, page 7

1 or provision of this subdivision ordinance be declared by a court of  
2 competent jurisdiction to be invalid or unconstitutional, such  
3 decision shall not effect the validity or constitutionality of the  
4 subdivision ordinance as a whole or any part thereof other than the  
5 part so declared to be invalid or unconstitutional.

6 (c) Repeal: All ordinances or portions of ordinances  
7 in conflict with this ordinance are hereby repealed to the extent  
8 of their conflict.

9 This Ordinance was duly considered, following a public  
10 hearing held on the 4th day of November, 1970, at 2:00  
11 P.M. After due and careful consideration this  
12 Ordinance was adopted by the Board of Supervisors of  
13 Tazewell County, at an adjourned meeting held this  
14 27th day of January, 1971.

15 The following vote is hereby recorded:

16  
17  
18 Graham Hedrick Aye

19 Willard Hankins Aye

20 J. Powell Royall Nay

21 This Ordinance shall become effective on or after the  
22 1st day of February, 1971, at 12:01 P.M.

23  
24  
25 /s/ W. J. Hankins  
W. J. Hankins, County Administrator

A COPY TESTE:

APPELLANTS APPENDIX E1, page 8

SUPREME COURT of VIRGINIA

ALFRED BROWN, CLYDE B. RATLIFT,  
JOHN DOE and JANE DOE, along with  
other residents of College View  
Addition, Wardell, Virginia,

Appellants,

against      Record No.    801634  
                 Circuit Court No. C-40-7864

Tazewell County Water and Sewerage  
Authority,

Appellee.

APPELLANTS APPENDIX E2

EXHIBITS FILED

AT HEARING

Relevant Deeds

PLAT CARD NO. 3165  
PLAT BOOK NO. 8, PAGE 140

THIS DEED, made and entered into this the 10th day of July, 1973, by and between BEVERLY HORNE and EMMA K. HORNE, his wife, parties of the first part, and JAMES A. HORNE and RUTH HORNE, his wife, as tenants by the entirety with the right of survivorship, parties of the second part;

WITNESSETH:

THAT FOR and in consideration of the sum of TEN DOLLARS (\$10.00), cash in hand paid, and other good and valuable consideration, the receipt of which is hereby acknowledged, the said parties of the first part do hereby grant, sell and convey, subject to the restrictions hereinafter contained, WITH COVENANTS OF GENERAL WARRANTY OF TITLE, unto JAMES A. HORNE and RUTH HORNE, his wife, as tenants by the entirety with the right of survivorship, parties of the second part, all that certain tract or parcel of land situate and lying and being near State Secondary Highway #603, near Wardell, Maiden Springs District, Tazewell County, Virginia, more particularly described as follows:

385' PAGE 621 BEGINNING at the northeastern corner of a .47 acre tract in the line of Stuart M. Cole and Geraldine Cole; thence with the Cole line south 50° east 745 feet to a stake; thence leaving the Cole line south 63° west 385 feet to a stake; thence north 29° west 169.75 feet to a stake; thence north 50° west 560.75 feet to a stake; thence north 52° 40' west 76 feet to a stake, a corner to the said .47 acre tract and with a line of the same north 60° east 312 feet to the point of BEGINNING, containing 5.06 acres, more or less, and as the same is shown on plat entitled "SCALE: 1" = 200' - 00" PROP LAYOUT NEAR WARDELL, VA HORNE ESTATE 7-9-73", which said plat is to be recorded herewith.



1                   FOR THE AFORESAID CONSIDERATION there is also granted  
2 to the parties of the second part, their heirs and assigns, along with others,  
3 a 40 ft. easement or right-of-way and a 20 ft. easement or right-of-way as  
4 shown on the aforesaid plat leading from Highway #603 to the property herein  
5 conveyed.


6                   EXCEPTING AND RESERVING unto the grantors herein, their  
7 successors in title, and the present or any future owner or owners of any  
8 lots in this or the adjoining subdivision, the right and easement to construct,  
9 install, operate and maintain water pipe lines, sewer lines, telephone lines  
10 and electric power lines in, on, over and across the land hereinabove con-  
11 veyed, together with all necessary rights of ingress and egress.

12                   IT IS EXPRESSLY STIPULATED, UNDERSTOOD AND AGREED  
13 by and between the parties hereto that the property hereby conveyed shall be  
14 used solely for residential purposes, and shall not be used for any shop, store,  
15 factory or other business establishment or for any commercial enterprise,  
16 whatsoever, or for any church, hospital, asylum or institution; that no residence  
17 shall be built upon any of property costing less than \$15,000.00, but this re-  
18 striction shall not apply to outbuildings, garages, servant houses and the like,  
19 used in connection with said residence; that no trailer, mobile home, basement,  
20 garage or other outbuildings erected on the property shall at any time be used  
21 as a residence, temporary or permanent, nor shall any structure of a temporary  
22 character be used as a residence, nor shall any barn or shack be erected thereon  
23 and nor shall any residence or outbuildings of any nature be erected within 30 ft.  
24 from any property line; grantees, their heirs and assigns, farther covenant and  
25 agree to furnish, provide and install their own drainpipes from any road way  
which would be necessary and desirable for driveways to their residence; and  
that these reservations and restrictions are, and shall forever be, covenants

running with the land, and shall be binding forever upon the grantees herein and their successors in title, and, in the event of a violation or attempted violation thereof, the parties of the first part, their assigns and successors in title, or the owners of any lot or lots contained in this or the adjoining subdivision, may resort to a Court of Law or Equity to enforce same or abate any violation thereof; AND BEING a portion of the real estate conveyed to the grantors herein by Maze and Nannie Horne, by deed dated the 23rd day of May, 1973, which said deed is of record in the Clerk's Office of the Circuit Court of Tazewell County, Virginia, and as the same is shown by plat entitled: "PROP. LAYOUT NEAR WARDELL, VA. HORNE ESTATE, 6-12-73".

It is expressly stipulated that it is the express intention of the parties hereto, that this conveyance is made to James A. Horne and Ruth Horne, his wife, as tenants by the entirety with the right of survivorship, that is, that the part of the one first dying should then belong to the other, in accordance with the provisions of Section 55-21, Code of Virginia, 1950.

WITNESS the following signatures and seals:

 (SEAL)  
Beverly Horne

 (SEAL)  
Emma K. Horne

Appellants Appendix E2, page 3

STATE OF VIRGINIA  
COUNTY OF TAZEWELL, To-wit:

I, Beverly Sue Kene, a Notary Public in and  
for the County aforesaid, do hereby certify that Beverly Horne and Emma K. Horne,  
his wife, whose names are signed to the foregoing and hereto annexed deed, bearing  
date the 10th day of July, 1973, have acknowledged the same before me in my  
County aforesaid.

Given under my hand this 12th day of July, 1973.

My commission expires the 26th day of September, 1978

Beverly Sue Kene  
Notary Public

VIRGINIA: In the Clerk's Office of Tazewell Circuit Court July 23 1973  
This deed was presented and upon the annexed Certificate of Acknowledgment admitted to  
record at 10:00 A.M. The tax imposed by 58-54.1 of the Code has been paid in the  
amount of \$ 2.00

Teste:

L. E. M. Reynolds Deputy Clerk

A COPY, TESTE:

RHEA F. MOORE, JR., CLERK OF THE  
CIRCUIT COURT OF TAZEWELL COUNTY

BY: Alice A. Hale  
DEPUTY CLERK

APPELLANTS APPENDIX E2, Page 4

S. STROTHER SMITH, III  
ATTORNEY AT LAW  
P. O. BOX 1204  
117 W. MAIN STREET  
ABINGDON, VIRGINIA 24210

SUPREME COURT of VIRGINIA

ALFRED BROWN, CLYDE B. RATLIFF,  
JOHN DOE and JANE DOE, along with  
other residents of College View  
Addition, Wardell, Virginia,

Appellants,

against      Record No. 801634  
                 Circuit Court No. C-40-7864

Tazewell County Water and Sewerage  
Authority,

Appellee.

APPELLANTS APPENDIX E3

EXHIBITS FILED

AT HEARING

Relevant Deeds

HORNE TO HORTON



THIS DEED, made and entered into this the 11th day of April, 1974,  
by and between BEVERLY HORNE and EMMA K. HORNE, his wife, parties of the  
first part, and DAVID SAMUEL HORTON and BRENDA ELLEN HORTON, his wife, as  
tenants by the entirety with the right of survivorship, parties of the second part;

## W I T N E S S E T H:

PLAT CARD NO 3234  
PLAT BOOK NO 8 PAGE 109

THAT FOR and in consideration of the sum of TEN DOLLARS (\$10.00),  
cash in hand paid, and other good and valuable consideration, the receipt of which  
is hereby acknowledged, the said parties of the first part do hereby grant, sell and  
convey, subject to the exceptions and reservations hereinafter contained, WITH  
COVENANTS OF GENERAL WARRANTY OF TITLE, unto DAVID SAMUEL HORTON and  
BRENDA ELLEN HORTON, his wife, as tenants by the entirety with the right of  
survivorship, parties of the second part, all that certain tract or parcel of land  
situate and lying near State Secondary Highway #603, near Wardell, Maiden Springs  
District, Tazewell County, Virginia, and more particularly described as follows:

BEGINNING at a stake situate on the Western side of a 40 foot street,  
being an Eastern corner of Tract No. 6 as shown on the hereinafter described plat,  
which is attached hereto and to be recorded herewith; thence N. 77° W. 130 feet  
to a stake; thence S. 87° 30' W. 150 feet to a stake; thence N. 85° W. 97 feet to a  
stake; thence due West 205 feet to a stake; thence N. 82° W. 57' to a stake; thence  
N. 65° W. 70 feet to a stake; thence N. 12° 30' E. 75 feet to a stake, a corner to  
Tract No. 1, as shown on the hereinabove referred to plat; thence with a line of  
Tract No. 1, N. 63° E. 385 feet to a stake in the division line of a 40.64 acre tract;  
thence S. 50° E. 480 feet to a stake in the Western side of a 40 foot street; thence  
S. 54° 15' W. 50 feet to the point of BEGINNING, containing 3.42 acres, more or  
less, and being shown and designated as Tract No. 6, as shown on that certain

plat entitled: "SCALE: 1" - 200'-00" PROP LAYOUT NEAR WARDELL, VA. HORNE ESTATE", which plat is attached hereto and to be recorded herewith; AND BEING a portion of the real estate conveyed to the grantors herein by Maze and Nannie Horne, by deed dated the 23rd day of May, 1973, and recorded in the Clerk's Office of the Circuit Court of Tazewell County, Virginia, reference to which is here made.

The parties of the second part, their heirs, successors and assigns, covenant and agree by the acceptance and recordation of this deed, to assume and accept the responsibility for the cost of the installation or maintenance of any drains or driveways which may be necessary for the use and convenience of the hereinabove conveyed parcel of land, and for drainage of waters along and adjoining the 40 foot right-of-way as shown on the aforesaid plat.

FOR THE AFORESAID CONSIDERATION, there is also granted to the parties of the second part, their heirs and assigns, along with others, a 40 ft. easement or right-of-way and a 20 ft. easement or right-of-way as shown on the aforesaid plat leading from Highway #603 to the property herein conveyed.

BOOK 392 PAGE 172 EXCEPTING AND RESERVING unto the grantors herein, their successors in title, and the present or any future owner or owners of any lots in this or the adjoining subdivision, the right and easement to construct, install, operate and maintain water pipe lines, sewer lines, telephone lines and electric power lines in, on, over and across the land hereinabove conveyed, together with all necessary rights of ingress and egress.

It is expressly stipulated that it is the express intention of the parties hereto, that this conveyance is made to David Samuel Horton and Brenda Ellen Horton, his wife, as tenants by the entirety with the right of survivorship, that is, that the part of the one first dying should then belong to the other, in accordance with the provisions of Section 55-21, Code of Virginia, 1950.

WITNESS the following signatures and seals:

Beverly Horne (SEAL)  
Beverly Horne

Emma K. Horne (SEAL)  
Emma K. Horne

STATE OF VIRGINIA  
COUNTY OF TAZEWELL, To-wit:

I, Bessie Sue Keene, a Notary Public in and for the County aforesaid, do hereby certify that Beverly Horne and Emma K. Horne, his wife, whose names are signed to the foregoing and hereto annexed deed, bearing date the 11th day of April, 1974, have acknowledged the same before me in my County aforesaid.

Given under my hand this 11th day of April, 1974.

My commission expires the 26th day of September, 1977.

Bessie Sue Keene  
Notary Public

In and to the Clerk of the Circuit Court of Tazewell County, Virginia, this April 19, 1974, the deed was presented and upon the annexed Certificate of Acknowledgment, I did record a 519.00 M. The tax imposed by 58-54.1 of the Code has been paid in the amount of \$ 8.00.

Teste: Alvin N. Hale Deputy Clerk

A COPY, TESTE:

RHEA F. MOORE, JR., CLERK OF THE  
CIRCUIT COURT OF TAZEWELL COUNTY

BY: Alvin N. Hale  
DEPUTY CLERK

APPELLANTS APPENDIX E3, page 3

S. STROTHER SMITH, III  
ATTORNEY AT LAW  
P. O. BOX 1204  
117 W. MAIN STREET  
ABINGDON, VIRGINIA 24210

SUPREME COURT of VIRGINIA

ALFRED BROWN, CLYDE B. RATLIFT  
JOHN DOE and JANE DOE, along with  
other residents of College View  
Addition, Wardell, Virginia,

Appellants,

against      Record No. 801634  
                 Circuit Court No. C-40-7864

Tazewell County Water and Sewerage  
Authority,

Appellee.

APPELLANTS APPENDIX E4

EXHIBITS FILED

AT HEARING

Relevant Deeds

HORNE TO ABSHER



70. 391 000 371  
THIS DEED, made and entered into this the 14th day of February,  
1974, by and between BEVERLY HORNE and EMMA K. HORNE, his wife, parties  
of the first part, and TROY WILLIAM ABSHER, JR. and GLENDA KAY ABSHER, his  
wife, as tenants by the entirety with the right of survivorship, parties of the  
second part;

WITNESSETH:

PLAT CARD NO 3214  
PLAT BOOK NO 8 PAGE 89

THAT FOR and in consideration of the sum of TEN DOLLARS (\$10.00),  
cash in hand paid, and other good and valuable consideration, the receipt of which  
is hereby acknowledged, the said parties of the first part do hereby grant, sell and  
convey, subject to the exceptions and reservations hereinafter contained, WITH  
COVENANTS OF GENERAL WARRANTY OF TITLE, unto TROY WILLIAM ABSHER, JR.  
and GLENDA KAY ABSHER, his wife, as tenants by the entirety with the right of  
survivorship, parties of the second part, all that certain tract or parcel of land  
situate and lying near State Secondary Highway #603, near Wardell, Maiden Springs  
District, Tazewell County, Virginia, and more particularly described as follows:

BEGINNING at a stake on the North side of a 40 foot right-of-way,  
being the southernmost corner of a 4.5 acre tract as shown on the plat hereinafter desig-  
nated; thence with the northern side of said 40 foot right-of-way, S. 27° E. 105 feet  
to a stake; thence S. 53° 35' E. 112 feet to a stake; thence S. 71° 15' E. 463.53 feet  
to a stake; thence N. 82° 25' E. 95 feet to a stake; thence leaving said 40 foot right-  
of-way N. 3° 30' W. 503.87 feet to a stake in the division line of Tract No. 2; thence  
S. 80° W. 258.26 feet to a stake; thence N. 50° W. 253.36 feet to a stake in the  
division line of the 4.5 acre tract; thence with said division line S. 26° 10' W. 155  
feet to a stake; thence S. 16° 45' W. 142 feet to the point of BEGINNING, containing  
5.01 acres, more or less, and being shown and designated as Tract No. 3, as shown

1 on that certain plat entitled: "SCALE: 1" = 200'-00" PROP LAYOUT NEAR WARDELL,  
2 VA. HORNE ESTATE", which plat is attached hereto and to be recorded herewith;  
3 AND BEING a portion of the real estate conveyed to the grantors herein by Maze  
4 and Nannie Horne, by deed dated the 23rd day of May, 1973, and recorded in the  
5 Clerk's Office of the Circuit Court of Tazewell County, Virginia, reference to  
6 which is here made.

7 The parties of the second part, their heirs, successors and assigns,  
8 covenant and agree by the acceptance and recordation of this deed, to assume and  
9 accept the responsibility for the cost of the installation or maintenance of any drains  
10 or driveways which may be necessary for the use and convenience of the herein-  
11 above conveyed parcel of land, and for drainage of waters along and adjoining the  
12 40 foot right-of-way as shown on the aforesaid plat.

13 FOR THE AFORESAID CONSIDERATION, there is also granted to the  
14 parties of the second part, their heirs and assigns, along with others, a 40 ft.  
15 easement or right-of-way and a 20 ft. easement or right-of-way as shown on the  
16 aforesaid plat leading from Highway #603 to the property herein conveyed.

17  
18 BOOK 391 PAGE 312 EXCEPTING AND RESERVING unto the grantors herein, their successors  
19 in title, and the present or any future owner or owners of any lots in this or the  
20 adjoining subdivision, the right and easement to construct, install, operate and  
21 maintain water pipe lines, sewer lines, telephone lines and electric power lines  
22 in, on, over and across the land hereinabove conveyed, together with all necessary  
23 rights of ingress and egress.

24 It is expressly stipulated that it is the express intention of the  
25 parties hereto, that this conveyance is made to Troy William Absher, Jr. and  
Glenda Kay Absher, his wife, as tenants by the entirety with the right of survivor-

ship, that is, that the part of the one first dying should then belong to the other,

in accordance with the provisions of Section 55-21, Code of Virginia, 1950.

WITNESS the following signatures and seals.

Beverly Horne (SEAL)  
Beverly Horne

Emma K. Horne (SEAL)  
Emma K. Horne

STATE OF VIRGINIA  
COUNTY OF TAZEWELL, To-wit:

I, Billie Sue Keene, a Notary Public  
in and for the County aforesaid, do hereby certify that Beverly Horne and Emma K.  
Horne, his wife, whose names are signed to the foregoing and hereto annexed deed,  
bearing date the 14th day of February, 1974, have acknowledged the same before  
me in my County aforesaid.

Given under my hand this 15th day of February, 1974.

My commission expires the 20th day of September, 1977.

Billie Sue Keene  
Notary Public

March 20, 74

A COPY. TESTE:

KEEA F. MOORE, JR., CLERK OF THE  
CIRCUIT COURT OF TAZEWELL COUNTY

Teste:

Alvin R. Moore Deputy Clerk

BY: Alvin R. Moore  
DEPUTY CLERK

APPELLANTS APPENDIX E4, page 3

SUPREME COURT of VIRGINIA

ALFRED BROWN, CLYDE B. RATLIFF,  
JOHN DOE and JANE DOE, along with  
other residents of College View  
Addition, Wardell, Virginia,

Appellants,

against      Record No. 801634  
                 Circuit Court No. C-40-7864

Tazewell County Water and Sewerage  
Authority,

Appellee.

APPELLANTS APPENDIX E5

EXHIBITS FILED

AT HEARING

Relevant Deeds

HORNE TO BURKE



1 THIS DEED, made and entered into this the 24th day of May, 1974,  
2 by and between BEVERLY HORNE and EMMA K. HORNE, his wife, parties of the  
3 first part, and CLYDE BENNY RATLIFF and EARL DONALD BURKE, as joint tenants  
4 with the right of survivorship, parties of the second part;

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W I T N E S S E T H:

7 THAT FOR and in consideration of the sum of TEN DOLLARS (\$10.00),  
8 cash in hand paid, and other good and valuable consideration, the receipt of which  
9 is hereby acknowledged, the said parties of the first part do hereby grant, sell and  
10 convey, WITH COVENANTS OF GENERAL WARRANTY OF TITLE, unto CLYDE BENNY  
11 RATLIFF and EARL DONALD BURKE, as joint tenants with the right of survivorship,  
12 parties of the second part, all that certain tract or parcel of land, situate and lying  
13 near State Secondary Highway #603, near Wardell, Maiden Springs District,  
14 Tazewell County, Virginia, and more particularly described as follows:

15 BEGINNING at a stake situate on the north side of a 40 foot street, being  
16 the southeast corner of Tract No. 3, as shown on the hereinafter referred to plat;  
17 thence with said street N. 82° 25' E. 95 feet to a stake; thence N. 68° 25' E. 131.6  
18 feet to a stake; thence N. 58° 55' E. 98.7 feet to a stake; thence N. 58° 15' E. 522.5  
19 feet to a stake; thence N. 54° 15' E. 316.8 feet to a stake; thence N. 77° W. 83 feet  
20 to a stake; thence N. 87° 30' W. 135 feet to a stake; thence N. 85° W. 97 feet to a  
21 stake; thence due west 205 feet to a stake; thence S. 73° W. 120 feet to a stake; thence  
22 S. 52° W. 123 feet to a stake; thence S. 54° 30' W. 175 feet to a stake; thence S. 80°  
23 W. 85 feet to a stake; thence S. 3° 30' E. 433.87 feet to the point of BEGINNING, con-  
24 taining 6.73 acres, more or less, and being Tracts Nos. 4 and 5 as shown on that  
25 certain plat entitled: "SCALE: 1" = 200'-00" PROP LAYOUT NEAR WARDELL, VA.  
HORNE ESTATE", which plat is attached to that certain deed from Beverly Horne and

wife to David Samuel Horton and wife, dated April 11, 1974, which deed conveyed Tract No. 6, as shown thereon, and of record in the Clerk's Office of the Circuit Court of Tazewell County, Virginia, reference to which is here made.

The parties of the second part, their heirs, successors and assigns, covenant and agree by the acceptance and recordation of this deed, to assume and accept the responsibility for the cost of the installation or maintenance of any drains or driveways which may be necessary for the use and convenience of the hereinabove conveyed parcel of land, and for drainage of waters along and adjoining the 40 foot right-of-way as shown on the aforesaid plat.

FOR THE AFORESAID CONSIDERATION, there is also granted to the parties of the second part, their heirs and assigns, along with others, a 40 ft. easement or right-of-way as shown on the aforesaid plat leading from Highway #603 to the property herein conveyed.

EXCEPTING AND RESERVING unto the grantors herein, their successors in title, and the present or any future owner or owners of any lots in this or the adjoining subdivision, the right and easement to construct, install, operate and maintain water pipe lines, sewer lines, telephone lines and electric power lines in, on, over and across the land hereinabove conveyed, together with all necessary rights of ingress and egress.

It is expressly stipulated that it is the express intention of the parties hereto, that this conveyance is made to Clyde Benny Ratliff and Earl Donald Burke as joint tenants with the right of survivorship, that is, that the part of the one first dying should then belong to the other, in accordance with the provisions of Section 55-21, Code of Virginia, 1950.

WITNESS the following signatures and seals:

Beverly K. Horne (SEAL)  
Beverly Horne

Emma K. Horne (SEAL)  
Emma K. Horne

S. STROTHER SMITH, III  
ATTORNEY AT LAW  
P. O. BOX 1204

117 W. MAIN STREET  
ABINGDON, VIRGINIA 24210 APPELLANTS APPENDIX E5 Page 2

STATE OF VIRGINIA  
COUNTY OF TAZEWELL, To-wit:

The foregoing instrument was acknowledged before me this 28th  
day of May, 1974, by Beverly Horne and Emma K. Horne, his  
wife.

Billing Lee Keene  
Notary Public

VIRGINIA: In the Clerk's Office of Tazewell Circuit Court Jan 4, 19 74  
This deed was presented and upon the annexed Certificate of Acknowledgment admitted to  
record at 1:30 P. M. The tax imposed by 58-54.1 of the Code has been paid in the  
amount of \$ 3.00.

Teste: Chas. E. Moore Deputy Clerk

A COPY, TESTE.

RHEA E. MOORE, JR., CLERK OF THE  
CIRCUIT COURT OF TAZEWELL COUNTY

BY:

Alice G. Hale  
DEPUTY CLERK

Appellants Appendix E5, page 3

SUPREME COURT of VIRGINIA

ALFRED BROWN, CLYDE B. RATLIFF,  
JOHN DOE and JANE DOE, along with  
other residents of College View  
Addition, Wardell, Virginia,

APPELLANTS,

against      Record No. 801634  
                 Circuit Court No. C-40-7864

Tazewell County Water and Sewerage  
Authority,

APPELLEE.

APPELLANTS APPENDIX E6

EXHIBITS FILED

AT HEARING

Relevant Deeds

HORNE TO RATLIFF

1 THIS DEED, made and entered into this the 17th day of August, 1976,  
2 by and between BEVERLY HORNE and EMMA HORNE, his wife, parties of the first  
3 part, and CLYDE B. RATLIFF and SYLVIA RATLIFF, his wife, as tenants by the  
4 entirety with the right of survivorship, parties of the second part;

5 WITNESSETH:

6 THAT FOR and in consideration of the sum of TEN DOLLARS (\$10.00),  
7 cash in hand paid, and other good and valuable consideration, the receipt of  
8 which is hereby acknowledged, the parties of the first part do hereby grant, sell  
9 and convey, WITH COVENANTS OF GENERAL WARRANTY OF TITLE, unto CLYDE  
10 B. RATLIFF and SYLVIA RATLIFF, his wife, as tenants by the entirety with the  
11 right of survivorship, parties of the second part, all of that certain tract or parcel  
12 of land situate, lying and being on State Secondary Highway No. 603, near Wardell,  
13 and known as Tract No. 2, containing 10.0 acres, more or less, as shown on that  
14 certain plat entitled: "SCALE 1" = 200'-00" PROP LAYOUT NEAR WARDELL, VA.  
15 HORNE ESTATE", which plat was recorded with that certain deed from Beverly  
16 Horne and wife to Troy William Absher, Jr. and wife, which deed is of record in  
17 the Clerk's Office of the Circuit Court of Tazewell County, Virginia, in Deed Book  
18 381, page 371, reference to which is here made, and which Plat is of record in  
19 the aforesaid Clerk's Office in Plat Book 8, page 89, reference to which is here  
20 made; AND BEING a portion of the real estate conveyed to the grantors herein by  
21 Maze and Nannie Horne, by deed dated the 23rd day of May, 1973, and recorded  
22 in the aforesaid Clerk's Office in Deed Book 384, page 11, reference to which is  
23 here made.

24 The parties of the second part, their heirs, successors and assigns,  
25 covenant and agree by the acceptance and recordation of this deed, to assume and  
accept the responsibility for the cost of the installation or maintenance of any drains  
or driveway which may be necessary for the use and convenience of the herein  
above conveyed parcel of land, and for drainage of waters along and adjoining the  
40 foot right of way as shown on the aforesaid plat.

FOR THE AFORESAID CONSIDERATION, there is also granted to the parties of the second part, their heirs and assigns, along with others, a 40 ft. easement or right of way and a 20 ft. easement or right of way as shown on the aforesaid plat leading from Highway 4603 to the property herein conveyed.

EXCEPTING AND RESERVING unto the grantors herein, their successors in title, and the present or any future owner or owners of any lots in this or the adjoining subdivision, the right and easement to construct, install, operate and maintain water pipe lines, sewer lines, telephone lines and electric power lines in, on, over and across the land hereinabove conveyed, together with all necessary rights of ingress and egress.

This conveyance is made subject to all of the rights, privileges, exceptions and restrictions incident to said real estate, of record.

It is expressly stipulated that it is the express intention of the parties hereto, that this conveyance is made to Clyde B. Rathiff and Sylvia Rathiff, his wife, as tenants by the entirety with the right of survivorship, that is that the part of the one first dying should then belong to the other, in accordance with the provisions of Section 55-21, Code of Virginia, 1950.

WITNESS the following signatures and seals.

Beverly Horne (SEAL)  
Beverly Horne

Emma Horne (SEAL)  
Emma Horne

STATE OF VIRGINIA  
COUNTY OF FAZEWELL, To wit:

The foregoing instrument was acknowledged before me this 20<sup>th</sup> day of August, 1976, by Beverly Horne and Emma Horne, his wife.

William S. Kene  
Notary Public

My commission expires: 7-26-77

Presented to the Clerk of the Circuit Court of Fawcett County, Virginia, for recording on January 13, 1977 at 2:00 P. M. The tax imposed by 58-54.1 of the Code has been paid in the amount of 10.00.  
A COPY TESTE: 10.00 Teste  
HEBA P. MOORE, JR., CLERK W. S. Kene Deputy Clerk  
CIRCUIT COURT OF FAZEWELL COUNTY  
BY William S. Kene  
DEPUTY CLERK

S. STROTHER SMITH, III  
ATTORNEY AT LAW  
P. O. BOX 1204  
117 W. MAIN STREET  
ABINGDON, VIRGINIA 24210

SUPREME COURT of VIRGINIA

ALFRED BROWN, CLYDE B. RATLIFF,  
JOHN DOE and JANE DOE, along with  
other residents of College View  
Addition, Wardell, Virginia,

Appellants,

against      Record No. 801634  
                 Circuit Court No. C-40-7864

Tazewell County Water and Sewerage  
Authority,

Appellee.

APPELLANTS APPENDIX E7

EXHIBITS FILED

AT HEARING

Relevant Deeds

HORNE TO RICHARDSON

1                   THIS DEED, made and entered into this the 5th day of June, 1974, by  
2 and between BEVERLY HORNE and EMMA K. HORNE, his wife, parties of the first  
3 part, and DOWELL RICHARDSON, party of the second part;

4                   W I T N E S S E T H:

5                   THAT FOR and in consideration of the sum of TEN DOLLARS (\$10.00),  
6 cash in hand paid, and other good and valuable consideration, the receipt of which  
7 is hereby acknowledged, the said parties of the first part do hereby grant, sell and  
8 convey, WITH COVENANTS OF GENERAL WARRANTY OF TITLE, unto DOWELL  
9 RICHARDSON, party of the second part, all of their undivided interest in and to all  
10 that certain tract or parcel of land, situate, lying and being near State Secondary  
11 Highway No. 603, near Wardell, Maiden Spring District, Tazewell County, Virginia,  
12 and designated as Tract 7, 5.03 acres, on that certain plat entitled: "SCALE 1" =  
13 200'-00" PROP. LAYOUT NEAR WARDELL, VA. HORNE ESTATE 10-5-74", which  
14 said plat is recorded with that certain deed from Beverly Horne and Emma K. Horne,  
15 his wife, to Dowell Richardson, dated October 5, 1973, and recorded in the Clerk's  
16 Office of the Circuit Court of Tazewell County, Virginia, reference to which is here  
17 made, said Tract 7 being more particularly described as follows:

18                   BEGINNING at the southwest corner of said Tract 7, on the south side of  
19 a 40 ft. street; thence with said street north 68° 25' east 131.5 feet to a stake; thence  
20 north 58° 55' east 98.7 feet to a stake; thence north 56° 15' east 522.5 feet to a stake;  
21 thence north 54° 15' east 318.8 feet to a stake; thence north 54° 15' east 130 feet to  
22 a stake in the division line of a 40.64 acre tract; thence leaving said 40 ft. street  
23 south 50° east 395 feet to a stake in a division line; thence south 69° 45' west 1,067.7  
24 feet to a stake; thence south 82° 25' west 275 feet to the point of BEGINNING; AND  
25 BEING a portion of the real estate conveyed to the grantors herein by Maze and  
Nannie Horne, by deed dated the 23rd day of May, 1973, which said deed is of



1 record in the Clerk's Office of the Circuit Court of Tazewell County, Virginia,  
2 reference to which is here made.

3 The party of the second part, his heirs, successors and assigns,  
4 covenant and agree by the acceptance and recordation of this deed, to assume and  
5 accept the responsibility for the cost of the installation or maintenance of any drains  
6 or driveways which may be necessary for the use and convenience of the herein-  
7 above conveyed parcel of land, and for drainage of waters along and adjoining the  
8 40 foot right-of-way as shown on the aforesaid plat.

9 FOR THE AFORESAID CONSIDERATION, there is also granted to the  
10 party of the second part, his heirs and assigns, along with others, a 40 ft.  
11 easement or right-of-way as shown on the aforesaid plat leading from Highway #603  
12 to the property herein conveyed.

13 EXCEPTING AND RESERVING unto the grantors herein, their successors  
14 in title, and the present or any future owner or owners of any lots in this or the  
15 adjoining subdivision, the right and easement to construct, install, operate and  
16 maintain water pipe lines, sewer lines, telephone lines and electric power lines  
17 in, on, over and across the land hereinabove conveyed, together with all necessary  
18 rights of ingress and egress.

19 WITNESS the following signatures and seals:

20 Beverly Horne (SEAL)  
Beverly Horne

21 Emma K. Horne (SEAL)  
Emma K. Horne

22 STATE OF VIRGINIA  
23 COUNTY OF TAZEWELL, To-wit:

24 The foregoing instrument was acknowledged before me this 24  
25 day of June, 1974, by Beverly Horne and Emma K. Horne, his wife.

William L. Horne  
Notary Public

1 VIRGINIA: In the Clerk's Office of Tazewell Circuit Court June 7 19 77  
2 This deed was presented and upon the annexed Certificate of acknowledgment admitted to  
3 record at 1:45 P. M. The tax imposed by 58-54,1 of the Code has been paid in the  
4 amount of \$ 1.00

5 Teste: [Signature] Deputy Clerk

6 A COPY, TESTE:

7 WHEA F. MOORE, JR., CLERK OF THE  
8 CIRCUIT COURT OF TAZEWELL COUNTY

9 BY: [Signature]  
10 CLERK

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APPELLANT'S APPENDIX E7, page 3

SUPREME COURT of VIRGINIA

ALFRED BROWN, CLYDE B. RAILIFF,  
JOHN DOE and JANE DOE, along with  
other residents of College View  
Addition, Wardell, Virginia,

Appellants,

against      Record No. 801634  
                 Circuit Court No. C-49-7364

Tazewell County Water and Sewerage  
Authority,

Appellee.

APPELLANTS' APPEAL OF

ORDER FOR

PERMANENT INJUNCTION

1 VIRGINIA: IN THE CIRCUIT COURT OF TAZEWELL COUNTY  
2 TAZEWELL COUNTY WATER AND SEWERAGE AUTHORITY, COMPLAINANT

3 VS X FINAL ORDER

4 ALFRED BROWN, et al, DEFENDANTS

5 On the 26th day of June, 1980, came the parties, in person,  
6 and by counsel; upon the Bill of Complaint filed herein on the 6th  
7 day of June, 1980; upon the Notice served upon Alfred Brown and  
8 Clyde B. Ratliff by M. E. Whitt, Deputy Sheriff of Tazewell County  
9 on the 6th day of June, 1980, and served upon the defendants along  
10 with the complaint on the 11th day of June, 1980, by M. E. Whitt,  
11 Deputy Sheriff aforesaid; upon a petition for Removal and Order of the  
12 U. S. District Court for the Western District of Virginia entered  
13 on the 24th day of June, 1980; upon Notice served upon counsel for  
14 defendants by mailing on the 24th day of June, 1980; upon a Motion  
15 to Vacate Order, filed herein by counsel for defendants; upon evidence  
16 ore tenus and was argued by counsel.

17 It appearing to the Court that on the 11th day of April,  
18 1974, Beverly Horne, et ux, conveyed unto David Samuel Horton, et ux,  
19 as tenants by the entirety, a tract of land by metes and bounds  
20 survey description with specific reference to Tract 6, as shown on a  
21 map which accompanied the deed of conveyance and is recorded in Deed  
22 Book 392, at page 171 and plat book 3, at page 109; it further appear-  
23 ing to the Court that on the 1st day of February, 1971, at 12:01 P.M.  
24 an ordinance commonly known as the Tazewell County Subdivision  
25 Ordinance was duly adopted by the County of Tazewell; it appearing to

Appellants Appendix F Page 1

1 the Court that subsequent conveyances by deed with specific reference  
2 to said map were made by the owners of said subdivision such that all  
3 tracts or lots shown on said map were made by the owners of said  
4 subdivision such that all tracts or lots shown on said map have been  
5 conveyed; it appearing to the court that such map has shown thereon  
6 a forty (40) foot street providing access from State Route 603 to all  
7 tracts shown thereon not having direct access to State Route 603 except  
8 Tract 1 which is served by an alley or access road twenty (20) feet  
9 in width; it appearing to the Court that each conveyance by the  
10 owner of the subdivision makes reference to and grants unto all  
11 purchasers in the subdivision makes reference to and grants unto all  
12 purchasers in the subdivision an easement or right of way over and  
13 across said forty foot and twenty foot access roads together with  
14 the right to construct, install, operate and maintain water pipelines,  
15 sewer lines, telephone lines and electric power lines, in, on, over  
16 and above the land therein conveyed, together with all necessary  
17 rights of ingress and egress; it further appearing that the owner of  
18 Tract 7 of said subdivision has requested the Tazewell County Water  
19 and Sewer Authority to construct, install, operate and maintain  
20 water and sewer lines from State Route 603 to Tract 7 as shown on  
21 said map and further has executed an indenture and easement unto the  
22 Tazewell County Water and Sewerage Authority to implement and facilitate  
23 said construction.

24 It is, therefore, ADJUDGED, ORDERED and DECREED that:

25 1. The forty (40) foot and twenty (20) foot access roads  
as shown on the map of record in Plat Book 3, at page 109 are public

APPELLANT'S APPENDIX F Page 2

1 roads.

2 2. The Tazewell County Water and Sewerage Authority is  
3 entitled to free and unobstructed passage on, over and under said  
4 public access roads as shown on the aforesaid map for the purpose of  
5 construction, installation, operation and maintenance of water  
6 pipelines and sewer lines as well as all necessary rights of ingress  
7 and egress.

8 3. The defendants are hereby permanently enjoined from  
9 interference, interruption or disruption of the use of said access  
10 roads by the Tazewell County Water and Sewerage Authority or its  
11 agents, successors or assigns.

12 The Clerk of Court is hereby ORDERED to serve a copy of  
13 this Order upon each of the defendants and, in addition, all owners  
14 owning property within the subdivision known as College Addition,  
15 Wardell, Tazewell County, Virginia.

16 Requested by:

17 TAZEWEILL COUNTY WATER AND  
18 SEWERAGE AUTHORITY

19 s/ Roger W. Mullins, Of Counsel  
20

21 Seen and Objected To:

22  
23 s/ S. Strother Smith, III, Of  
24 Counsel for Defendants

25 Entered this 31st day of July, 1930.

s/ Judge Powell  
APPELLANTS APPENDIX F Page 3

SUPREME COURT OF VIRGINIA

ALFRED BROWN, CLYDE B. RATLIFF,  
JOHN DOE and JANE DOE, along with  
other residents of College View  
Addition, Wardell, Virginia,

Appellants,

against      Record No. 801634  
                 Circuit Court No. C-40-7864

Tazewell County Water and Sewerage  
Authority,

Appellee.

APPELLANTS APPENDIX G

PETITION FOR RECONSIDERATION

AND

STATE OF EXECUTION

1 VIRGINIA:

2 IN THE CIRCUIT COURT OF TAZEWELL COUNTY

3  
4 TAZEWELL COUNTY WATER &  
5 SEWERAGE AUTHORITY,

6 Plaintiff

7 v.

8 ALFRED BROWN, ET AL.,

9 Defendants

10 PETITION FOR RECONSIDERATION &/OR  
11 FOR A STAY OF EXECUTION OF  
12 A DECREE OF INJUNCTION ENTERED  
13 BY THE CIRCUIT COURT OF  
14 TAZEWELL COUNTY ON JULY 31, 1980

15 Come now Alfred Brown and all other defendants herein,  
16 who compose all the resident lot and homeowners in College Hills  
17 Subdivision in Tazewell County, and hereby file this petition to  
18 reconsider its earlier order herein or, to issue an amendment of the  
19 injunction to make it a temporary injunction for a period of 120  
20 days so that action may be taken before the State Supreme Court  
21 under 18.02-626 of the Code or that it amend the order to stay the  
22 effect of the injunction entered herein on July 31, 1980 enjoining  
23 your Defendants herein from protecting their property from the  
24 depredations and injury caused by heavy blasting and digging of a  
25 construction contractor retained by the Plaintiff to dig a ditch up  
their privately owned and maintained right of way to provide ingress  
and egress to and from their homes, without either condemning the  
property necessary to do so or paying the Defendants fair compensation

APPELLANT'S APPENDIX G Page 1



1 for taking and damaging their property or even making any attempt  
2 to assure your Defendants that they would later be compensated for  
3 the taking and any damage incurred, as provided for in 18.02-676.

4 BACKGROUND OF THE CASE

5 1. On or about June 6, 1980, your Plaintiffs filed a  
6 Complaint in Chancery in this Court seeking a temporary injunction  
7 against Alfred Brown, Clyde Ben Ratliff, and all others living in  
8 their immediate neighborhood who were opposing the drilling of  
9 holes for extensive blasting in the road which the Defendants herein  
10 had paved and maintained as access to and from their homes on lots  
11 earlier sold them by BEverly Horne and Emma K. Horne.

12 2. Your Plaintiffs claimed in that Complaint that they had  
13 a right to go up this right of way because there was a Plat on  
14 record showing the surface right of ways to this property on the  
15 11th of April, 1974, recorded in Deed Book 392, Page 171, and that  
16 (based on that and on the Tazewell County Subdivision Ordinance  
17 passed in February, 1971 and §15.1-465 et. sig. of the 1950 Code of  
18 Virginia as amended) by the recording of this plat the County had  
19 obtained a fee simple right to the road and therefore to dig up the  
20 road to put in the water lines. (See Complaint in Record).

21 3. In the early Spring of 1980 and before the Defendants  
22 herein (who include all resident homeowners in this neighborhood and  
23 all but one of two landowners along the right of way in question--  
24 see Trial Tr. Page 32, lines 17-25) were all told by the Plaintiffs  
25 that only one lot along the whole road would be served by this water

APPELLANTS APPENDIX G Page 2

1 line, i.e., the lot owned by Western Realty Company (which has its  
2 home offices in the Commonwealth of Kentucky) and that no one else  
3 along the right of way could be served). (See Trial Tr. page 38,  
4 lines 9-17 and page 39, lines 7-14).

5 4. The Plaintiffs, acting through R & G Construction,  
6 their agents in the Spring of 1980 had, without so much as a "by  
7 your leave" came upon the lands of some of your Petitioners herein  
8 and dumped large quantities of gravel on their front yards and placed  
9 heavy equipment thereon. (See Trial Tr. page 58, lines 10-25 and  
10 page 59, lines 243).

11 5. In addition, the Plaintiffs and/or their agents had  
12 gone on the right of way which had been deeded to each of your  
13 Petitioners (See Trial Record, Complainants Exhibits #2; 4(a);  
14 4(b); 4(c); 4(d) and Tr. page 64, lines 15-25) and for which your  
15 Defendants herein had paid an average of (\$500) FIVE HUNDRED DOLLARS  
16 to pave and maintain the hard surface on their surface right of way  
17 and the said Plaintiffs began subsurface drilling thereon in  
18 preparation for blasting a ditchline as close as twenty (20) feet  
19 from the residence of your Defendants (See Trial Tr. page 26, lines  
20 6-20).

21 6. The Plaintiffs had done blasting before in adjacent  
22 areas where they had torn up road pavement (See Trial Tr. page 26,  
23 lines 22 & 25).

24 7. In regard to the blasting danger, one of your Defend-  
25 ants, Mr. Alfred Brown<sup>1</sup> testified that the closest house was 25 feet

APPELLANTS APPENDIX, Page 3

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1 away and the blasting would have to be done in dolomite (a very hard  
2 form of limestone).

3 8. Prior to this time and right up until the end of the  
4 school year 1979-1980 while the Plaintiffs contended that the right  
5 of way which had been specifically deeded to your Defendants was in  
6 reality a public road (which they somehow equated with a fee simple  
7 ownership in the Tazewell County Water and Sewerage Authority), the  
8 Tazewell County School Board constantly and consistently recognized  
9 the right of way in question as not being a public road since it  
10 constantly and, consistently with State Law,<sup>2</sup> refused to drive up the  
11 right of way to pick up the half bus load of children that lived  
12 up the right of way and otherwise had to walk up to nine tenths of  
13 a mile down to the public road where the right of way intersected  
14 with it. (See Trial Tr. page 66, lines 9-25).

15 9. Furthermore, it is the uncontroverted evidence herein  
16 that even though the Defendants have constantly and consistently  
17 asked the County of Tazewell to recognize and accept the right of  
18 way in question as a public road, the Board of Supervisors of Tazewell  
19 County have constantly, consistently and specifically refused to accept  
20 this right of way as a public road or to take any responsibility for  
21 it. (See Trial Tr. page 65, lines 23-25 & 66, lines 1-3). As Mr.  
22 Brown testified both the petitioners and the County have always  
23

24 <sup>1</sup>  
25 Mr. Brown is a certified blaster, licensed by the Commonwealth of Virginia for both surface and underground blasting and instruction at Wytheville Community College in blast safety and technique--See Trial Tr. page 60).

2State law required local boards to, if they provide transportation at a-1, to provide transportation with reasonably available

APPELLANTS APPENDIX, Page 4

1 stops to all children living on public roads but prohibits school  
2 buses from driving up privately owned rights of way.

3 understood that (until the Plaintiff wanted to go their way blasting  
4 merrily up a private right of way) even though

5 "...according to the deed  
6 the road was for the use of  
land owners only...."

7 (Trial Tr., page 65, lines 15-19).

8 While the Plaintiffs rely on the fact that a plat was  
9 filed on the 11th of April 1974 with the Clerk of the Circuit Court  
10 of Tazewell County in Deed Book 392, page 171 it is totally  
11 uncontroverted that the Plat did not meet any of the statutory  
12 requirements for plats to comply with 15.1-473 V.C.A. et. sig.

13 Thus, in regard to the plat which was recorded, there were  
14 certain matters which made that plat something other than the plat  
15 described in § 15.1-466; 15.1-477; §15.10473 of the 1950 Code of  
16 Virginia as amended (hereinafter known as V.C.A.). Specifically  
17 the plat did not meet the definition of a plat as set forth in those  
18 Code Sections because of the following:

19 A. It was not drawn by a certified engineer nor was it  
20 certified as being accurate;

21 B. It was never specifically approved and/or accepted by  
22 the Board of Supervisors of Tazewell County of any appropriate  
23 governmental agency;

24 C. It did not show who drew it or who did the engineering  
25 work; it was not endorsed by the professional engineer with a

APPELLANTS APPENDIX, Page 5

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1 certificate setting forth the source of title of the owner of the  
2 land subdivided and the place of record of the last instrument in the  
3 chain of title as is required by § 15.1476 of the Code;

4 D. It does not show the correct description of the land  
5 subdivided nor does it show that it is with the free consent and in  
6 accordance with the desire of the undersigned owners, proprietors  
7 or trustees, nor is it signed before an officer authorized to take  
8 the acknowledgment of deeds, all as required under § 15.1-477 V.C.A.

9 In this regard, the pertinent provisions of State Law  
10 state:

11 §15.1-466 (V.C.A.) "Provisions of subdivision Ordinances"  
(emphasis supplied)

12 A subdivision ordinance may include, among other things,  
13 reasonable regulations and provisions that apply to or  
provide: (a) for size, scale and other plat details;

14 \*\*\*\*\*

15 (f) for the acceptance of dedication of public use of any  
16 right of way located within any subdivision which has con-  
17 structed therein or proposed to be constructed therein,  
18 any street, curb, gutter, sidewalk . . . . financed or to be  
19 financed in whole or in part by private funds only if the  
20 owner or developer (one certifies to the governing body  
21 that the construction costs have been paid to the person  
constructing such facilities; or (2) furnishes to the  
governing body a certified check in the amount of the est-  
imated cost of construction or a bond, with surety satis-  
factory to the governing body, in an amount sufficient  
for and conditioned upon the construction of such  
facilities, or a contract for the construction of such  
facilities and the contractors bond, with like surety, in  
the amount and so conditioned

22 \*\*\*\*\*

23 (h) that unless a plat be filed for recordation within  
24 a reasonable time after final approval thereof, such  
25 approval shall be withdrawn and the plat marked void and  
returned to the approval official; . . . .

§15.1-475 (V.C.A.) "Plat of proposed subdivision to be  
submitted for approval" (Emphasis supplied)

Whenever the owner or proprietor of any tract of land

APPELLANTS APPENDIX, Page 6

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1 located within any territory to which a subdivision  
2 ordinance applies desires to subdivide the same, he shall  
3 submit a plat of the proposed subdivision to the local  
commission of the county or municipality

4 § 15.1-476 (V.C.A.) "Requisite or plat" (emphasis  
5 supplied)

6 Every subdivision plat which is intended for recording  
7 shall be prepared by a certified professional engineer  
8 or land surveyor who shall endorse upon each such plat a  
9 certificate signed by him setting forth the source of title  
10 of the owner of the land subdivided and the place of  
11 record of the last instrument in the chain of title; . . . .

12 § 15.1-477 (V.C.A.) "Statement of consent to subdivision  
13 execution, acknowledgment and recordation - - " (emphasis  
14 supplied)

15 Every such plat or deed of dedication to which the plat is  
16 attached, shall contain in addition to the professional  
17 engineer or land certifiers certificate or statements as  
18 follows the platting or dedication of the following described  
19 land . . . is with the free consent and in accordance with  
20 the desire of the undersigned owners, proprietors and  
21 trustees, if any. The statement shall be signed by such  
22 persons and duly acknowledged before some officer authorized  
23 to take acknowledgement of deeds. When thus executed  
24 and acknowledged, the plat, subject to the provisions herein,  
25 shall be filed and recorded in the office of the clerk of  
court where deeds are admitted to record to the lands  
contained in the plat and indexed in the general index to  
deeds under the names of the owners of lands signing such  
statement and under the name of the subdivision.

§ 15.1-478 (V.C.A.) "Recordation of plat as transfer of  
streets" (emphasis supplied)

The recordation of such plat shall operate to transfer in  
fee simple to the respective counties and municipalities  
in which the land lies, such portion of the premises  
platted as is on such plat set apart for streets, allies,  
or other public use and to transfer to such county or  
municipality any easement indicated on such plat to create  
a public right of passage over the same; but nothing  
contained in this article shall affect any right of the  
subdivider of land heretofore validly reserved.

1           10. The County Subdivision on which the Plaintiffs are  
2 relying generally follows the State statutory scheme requiring that  
3 all plats before being accepted for subdivisions be presented for  
4 acceptance and accepted, (See Respondent's Exhibit #1 3(a) & (b)  
5 and 5 & 6), and any plat not meeting these standards is void.

6           11. All Deeds to the Defendants, while referring to the  
7 alleged plat are described by metes and bounds and are not void for  
8 failure of description even if the plat is not fully operative to  
9 establish a subdivision.

10           12. After the Defendants learned that the Plaintiffs  
11 were, for the very first time, claiming that their 40' (10' paved)  
12 right of way was a public street, and that that allegedly gave  
13 Plaintiffs the right to go onto their surface right of way which was  
14 specifically deeded to them and which had never been accepted by any  
15 public authority as a public road before, the Defendants looked into  
16 the ownership of the fee simple interest in the land over which the  
17 right of way ran and determined that that fee simple, i.e., the  
18 subsurface interests in that strip of land still belonged to the  
19 Hornes who had originally sold the land, and Clyde Ben Ratliff, one of  
20 your Petitioners herein made arrangements in May of 1980 to purchase  
21 that fee simple interest subject to the surface easement for ingress  
22 and egress in the lot owners. Thus, even if the right of way was a  
23 public easement, it was only a surface easement unless Tazewell County  
24 got a specific fee simple by operation of the statutes mentioned and  
25 set forth above.

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1                   13. Thereafter, based solely upon the deed language to the  
2 lot owners which stated:

3                   EXCEPTING AND RESERVING unto the grantors herein, their  
4                   successors in title, and the present or any future owner  
5                   or owners of any lots in this or the adjoining subdivision,  
6                   the right and easement to construct, install, operate and  
7                   maintain water pipe lines, sewer lines, telephone lines  
8                   and electric power lines in, on over and across the land  
9                   hereinabove conveyed, together with all necessary rights  
10                  of ingress and egress. (emphasis supplied)

11                  (See Respondents' Exhibits 4(a), 4(b), 4(c), & 4(d). The Respon-  
12                  dents on June 2, 1980, obtained what purported to be an assignment  
13                  of this right and easement to build waterlines into Lot 7 owned by  
14                  Western Realty (See Trial Tr. page 32, lines 14-25).

15                  14. Such an alleged assignment of an easement was con-  
16                  tended by the Petitioners to be improper, illegal and unenforce-  
17                  able because:

18                  (a) by the very language of the easement it is to the  
19                  lot owners and future lot owners only. It therefore runs with the  
20                  land and is not assignable to any non-land owner. The Respondent  
21                  herein owns no land herein.

22                  (b) The easements are not shown, either on the alleged  
23                  plat, nor are they defined by any reasonable means of identification,  
24                  and they are therefore void for vagueness.

25                  (c) the easements are across the various lands conveyed  
to the landowners and there is absolutely no easement allowed for  
up the surface right of way and therefore, the Respondents are not  
using any easements that they may have had assigned to them even if

APPELLANTS APPENDIX, Page 9

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1 the assignments were valid. (See Trial Tr. page 79, lines 6-25 &  
2 page 81, lines 2-6).

3 15. Based on the foregoing, on July 31, 1980, the Lower  
4 Court entered an injunction, enjoining the Petitioners from taking  
5 any action to protect their property. (See Exhibit attached  
6 herewith.)

7  
8 II REQUEST FOR RELIEF

9 This injunction need not last more than a few weeks or  
10 months since any injunction would allow the Plaintiffs to completely  
11 drill, blast, and dig up your Defendants' roadway, possibly causing  
12 extensive damage not only to their right of way for ingress and  
13 egress but very likely to their very expensive homes as well, all  
14 within a time range that would be considerably less than that in  
15 which your Defendants could perfect an appeal herein, much less, the  
16 time in which they could be fully heard on appeal and have a  
17 decision rendered.

18 2. If the injunction is not so amended or stayed under  
19 8.02-676 pending a full appeal being perfected, heard and  
20 decided herein then your Defendants will be effectively denied the  
21 due process right to be heard on appeal as well as just compensation  
22 for the taking of their roadway to satisfy the purely commercial  
23 desires which (according to Respondents' Exhibit #4 is an illegal  
24 commercial establishment in violation of the restrictive covenants  
25 relating to the land) and any appeal would be rendered totally

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1 fruitless since once the blasting and its concurrent damage would  
2 have already been done (See Trial Tr. page 60, lines 9-25 and page  
3 61, 62, 63, & 64, lines 1-11)

4 3. An injunction is meant to maintain the status quo.  
5 In the instant case the status quo is to maintain the right of way  
6 as it always has been without digging and blasting it with dynamite,  
7 damaging not only the road, but adjacent homes at great loss to the  
8 Petitioners, since the Respondents have an extremely poor record of  
9 safety and of repairing damages.

10 4. Furthermore, the Plaintiffs cannot really show that  
11 they will be irreparably damaged if this injunction is granted, as is  
12 an indispensable part of this Court's jurisdiction to grant any  
13 injunction.

14 5. In addition, while Defendants can be required (and  
15 are readily willing) to post a bond to reimburse Plaintiffs for any  
16 damages resulting from any delay caused by their prosecution of their  
17 appeal, Plaintiffs argue that under state law they do not have to  
18 post any bond to protect the Defendants and once the damage is done  
19 and the pipeline to the one commercial lot (which violates what was  
20 clearly intended to be restrictive covenants for the whole  
21 development--See Respondents' Exhibit #4) is laid then, even if  
22 your Petitioners win on their appeal, the victory will be empty be-  
23 cause the damage will have been done and no one is going to take up  
24 lines once they are put down.

25 WHEREFORE, your Petitioners pray that this Honorable Court

APPELLANT'S APPENDIX, Page 11

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1 reconsider its order and deny the injunction or that it enter an order  
2 under V.C.A. 8.01-676 staying the execution of the injunction until  
3 such time as the Defendants have perfected a timely appeal and for  
4 such further time as may be necessary for the appeal to be heard  
5 and decided or until the issues herein have been finally decided  
6 through their failure to timely prosecute their appeal or in the  
7 alternative that it make the injunction a temporary injunction only  
8 so that Defendants may seek relief before a Justice of the State  
9 Supreme Court under 8.01-626 and for such other further relief as  
10 may to this Court be deemed mete and proper.

11 Respectfully submitted,

12 ALFRED BROWN, ET AL,

13 By Counsel

14 S. Strother Smith, III  
15 P. O. Box 1204  
16 117 W. Main Street  
17 Abingdon, VA 24210

18 s/ S. Strother Smith, III

19  
20 CERTIFICATE OF SERVICE

21 I do hereby certify that a true copy of the foregoing  
22 was hand delivered to Roger Mullins, Esq., Tazewell, Virginia on  
23 this the 11th day of August, 1980.

24  
25 s/ S. Strother Smith, III

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S. STROTHER SMITH, III  
ATTORNEY AT LAW  
P. O. BOX 1204  
117 W. MAIN STREET  
ABINGDON, VIRGINIA 24210

SUPREME COURT of VIRGINIA

ALFRED BROWN, CLYDE B. RATLIFF,  
JOHN DOE and JANE DOE, along with  
other residents of College View  
Addition, Wardell, Virginia,

Appellants,

against      Record No. 801634  
                 Circuit Court No. C-40-7364

Tazewell County Water and Sewage  
Authority,

Appellee.

APPELLANTS APPENDIX II

NOTICE OF APPEAL

AND

ASSIGNMENT OF ERROR

1 VIRGINIA:

2 IN THE CIRCUIT COURT OF TAZEWELL COUNTY

3 TAZEWELL COUNTY WATER AND )  
4 SEWERAGE AUTHORITY, )

5 Complainant )

6 v. )

7 ALFRED BROWN, ET AL. )

8 Respondents )

9  
10 NOTICE OF APPEAL

11 The respondents, Alfred Brown, et al., hereby serve notice  
12 that they appeal the decree entered on the 31st day of July, 1980,  
13 in the Circuit Court of Tazewell County wherein they were the  
14 respondents and Tazewell County Water and Sewerage Authority were  
15 the petitioners to the Supreme Court of Virginia.

16 ASSIGNMENT OF ERROR

17 In support of their appeal, the respondents, Alfred Brown,  
18 et al., assign the following errors:

19 I.

20 That the lower court failed to take into consideration  
21 and totally ignored facts which, if rationally considered by the  
22 lower court, would have required a decision in favor of the respond-  
23 ents. Those facts which were not given due consideration by the  
24 lower court were as follows:

25 A. That lower court failed to give due consideration to  
the fact that the plat upon which the lower court based its decision

APPELLANTS APPENDIX H, Page 1

1 that the roads shown on the map of Plat Book 8, Page 109 of public  
2 roads utterly and completely failed to meet any of the statutory  
3 requirements of such plats under § 15.1-466; § 15.1-476 and § 15.1-478  
4 of the 1950 Code of Virginia as amended (hereinafter known as V.C.A.).  
5 Specifically the plat did not meet the definition of a plat as set  
6 forth in those Code sections and, therefore, did not and could not  
7 have the effect attributed to it by the lower court because of the  
8 following:

9 1. It was not drawn by a certified engineer nor was it  
10 certified as being accurate;

11 2. It was never specifically approved and/or accepted  
12 by the Board of Supervisors of Tazewell County or any appropriate  
13 governmental agency but rather, in fact, every governmental agency  
14 of Tazewell County that was given a chance to accept the road  
15 directly and specifically refused to do so;

16 3. It did not show who drew the plat nor who did the  
17 engineering work;

18 4. It was not endorsed by the professional engineer  
19 with a certificate setting source of title of the land subdivided  
20 and the place of record of the last instrument in the chain of title  
21 as is required by § 15.1-476 of the Code;

22 5. It does not show the correct description of the land  
23 subdivided nor does it show that the conveyance of the road to the  
24 public is intended by the landowners and that it is with their free  
25 consent and in accordance with their desires, nor did it show

APPELLANTS APPENDIX H, Page 2

1 specifically any utility easements whatsoever; nor is it signed before  
2 an office authorized to take the acknowledgment of deeds all as  
3 required under § 15.1-477 V.C.A.;

4 6. Likewise, it utterly fails to meet the requirements of  
5 the Tazewell County subdivision ordinance set forth for plats which  
6 have the effect of deeding a roadway in fee simple to the County  
7 and/or the Commonwealth.

8 B. In addition, the lower court failed to give reasonable  
9 consideration to the uncontroverted testimony during the trial that  
10 the residents of the subdivision had on numerous occasions gone to  
11 the Board of Supervisors asking them to accept the streets involved  
12 and take them into the State system for maintenance, snow scraping,  
13 etc. which the Board of Supervisors had continuously and explicitly  
14 refused to do.

15 C. Furthermore, the lower court failed to give reasonable  
16 consideration to the fact that the Tazewell County School System  
17 refuses to drive up the roads involved to pick up the children in the  
18 subdivision because they do not consider the roads involved to be  
19 public roads.

20 D. In addition, the court failed to consider the fact that  
21 defendants Ben Ratliff and his wife had in fact been deeded a fee  
22 simple interest in the lands under which the roads run subject only  
23 to the rights of ingress and egress of other subdivision owners on  
24 and over that right of ingress and egress and that as such they had  
25 absolute dominion, position and control under the subsurface portions  
of land below the designated rights of way which would require that

APPELLANTS APPENDIX II, Page 3

1 any blasting of the right of way and the laying of pipelines therein  
2 would be without just compensation and would be a taking of their  
3 property in violation of the 5th and 14th Amendments to the U.S.  
4 Constitution.

5 II.

6 In addition, the lower court erred in recognizing any  
7 easement for the construction, installation, operation and  
8 maintenance of pipelines and sewer lines as giving the petitioners'  
9 a right to go on to the private lands of the respondents, Ben Ratliff  
10 and wife, when it held that the provision in the deeds to the respond-  
11 ents granting all lot owners certain unspecified utility easements  
12 could be conveyed by one landowner in opposition to all the other  
13 landowners in the subdivision to a non-lot owner third party so that  
14 the Tazewell County Water and Sewerage Authority could come onto  
15 private lands and construct public water and sewerage against the  
16 will of all the other subdivision owners. That reservation stated:

17 "Accepting and reserving under the grantors herein and  
18 successors in title and the present or any future owner  
19 or owners of any lots in this or the adjoining sub-  
20 division the right and easement to construct, install,  
21 operate and maintain water pipelines, sewer lines,  
22 telephone lines and electric power lines in, on,  
23 and across the land herein above conveyed together with  
24 all necessary rights of ingress and egress." (emphasis  
25 supplied)

22 The lower court erred specifically in ruling that this  
23 reservation allowed one landowner to assign his easement to any  
24 other party who was not a landowner in opposition to all other  
25 landowners. It also erred in upholding any easement that was not

APPELLANTS APPENDIX H, Page 4



1 clearly defined as to location either by deed or plat,

2 III.

3 The lower court further erred in ruling that the aforesaid  
4 reservation in the deeds of landowners which reservation was not in  
5 the deed of the right of way to the respondents, Ben Ratliff and his  
6 wife, operated to give anyone a right of way "in, on and across the  
7 right of way for ingress and egress" which is the subject of this  
8 injunction.

9 IV.

10 The lower court erred in refusing to grant a Stay of  
11 the Injunction entered pending appeal when the uncontroverted  
12 evidence herein was that:

13 A. The respondents included all landowners in the  
14 subdivision with the exception of one corporate absentee landlord;

15 B. That the respondents had themselves built and  
16 maintained the road providing access to their homes out of their own  
17 pockets with no assistance whatsoever from Tazewell County or any  
18 other government agency (and without the assistance of the one  
19 dissenting corporate absentee landowner);

20 C. That the petitioner had a very poor record of repairing  
21 roads that it had dug up for the placement of its pipelines in other  
22 areas;

23 D. That if the petitioner was allowed to go ahead with its  
24 proposed construction there would be very serious and extensive  
25 blasting required which would cause serious damage to the respondents'

APPELLANTS APPENDIX H, Page 5

1 homes ranging in costs from \$90,000 up;

2 E. That the blasting could be begun within 24-48 hours  
3 of the time of the effectuation of any injunction;

4 F. That once the blasting began the very harm against  
5 which the respondents were fighting would have occurred. And any  
6 further action would be fruitless. This would result in actively  
7 denying your defendants of their rights to equal protection and due  
8 process of law under the Constitutions of the United States and of  
9 this Commonwealth;

10 G. And when the respondents had offered to post a  
11 substantial bond for any damages that might be incurred to the  
12 Petitioner by any delay cost by the Stay of the courts of the pending  
13 appeal.

14 H. This is especially true since under Virginia law the  
15 Petitioner would not be required to post a bond of any sort to  
16 protect the respondents in the event of any damage accruing to them  
17 by such blasting and tearing up of their road and only access to  
18 their homes. Thus, further depriving the respondents of equal  
19 protection and due process of law.

20 V.

21 The lower court erred in granting an injunction to the  
22 petitioner when the uncontroverted evidence in the case at bar was  
23 that the petitioner wanted the injunction requested solely for the  
24 purpose of serving the lands held by one absentee corporate landowner  
25 and had adjectly refused to provide water or sewerage to any of the

APPELLANTS APPENDIX H, Page 6

1 other landowners in the subdivision and was, thereby, guilty of  
2 invidious discrimination and denial of due process of law vis-a-vis  
3 all other landowners who are the respondents herein in further violation  
4 of their constitutional rights to due process and equal protection of  
5 the law.

6 Respectfully submitted,

7 ALFRED BROWN, ET AL.

8 By Counsel

9 S. Strother Smith, III  
10 P.O. Box 1204  
11 117 West Main Street  
12 Abingdon, VA 24210

13 s/ S. Strother Smith, III

14 CERTIFICATE OF SERVICE

15 I hereby certify that I mailed a true copy of the  
16 foregoing to Roger Mullins, Attorney at Law, Tazewell, Virginia  
17 and to the Clerk of the Supreme Court of Virginia, Richmond,  
18 Virginia, on this the \_\_\_\_\_ day of \_\_\_\_\_, 1980.

19  
20  
21 s/ S. Strother Smith, III

22  
23  
24  
25  
APPELLANTS APPENDIX H, Page 7

SUPREME COURT of VIRGINIA

ALFRED BROWN, CLYDE B. RATLIFF,  
JOHN DOE and JANE DOE, along with  
other residents of College View  
Addition, Wardell, Virginia,

Appellants,

against      Record No. 801634  
                 Circuit Court No. C-40-7864

Tazewell County Water and Sewerage  
Authority,

Appellee.

APPELLANTS APPENDIX I

CERTIFICATE GRANTING

APPEAL AND APPEAL BOND

SUPREME COURT of VIRGINIA

Alfred Brown, Clyde B. Ratliff,  
John Doe and Jane Doe, along with  
other residents of College View  
Addition, Wardell, Virginia,

Appellants,

against      Record No. 801634  
                 Circuit Court No. C-40-7864

Tazewell County Water and Sewerage  
Authority,

Appellee.

From the Circuit Court of Tazewell County

Certificate

Pursuant to Rule 5:30 of the Rules of the Supreme Court of  
Virginia, I, Allen L. Lucy, Clerk of the said Court, do hereby  
certify that on September 21, 1981, an appeal and suspension of  
judgment was awarded from a judgment rendered by the court below on  
July 31, 1980, in the suit therein depending under the short style  
of Tazewell County Water and Sewerage Authority v. Alfred Brown, et al.

Appeal bond is required in the penalty of \$1,000 in conformity  
with Code 8.01-676.

This certificate, constituting the summons on appeal, was this  
day mailed to the court below and to

S. Strother Smith, III, 117 West Main Street, P.O. Box 1204,  
Abingdon, Virginia 24210

Counsel for Appellants

Roger W. Mullins, P.O. Box 843, Tazewell, Virginia 24651

APPELLANTS APPENDIX I, Page 1

Counsel for Appelle

Given under my hand this 22nd day of September, 1981.

s/ Allen L. Lucy Clerk

1 S. Strother Smith, III  
2 Counsellor at Law  
3 117 West Main St. - P.O. Box 1204  
4 Abingdon, VA 24210

5  
6 (703) 628-8441

7  
8 October 1, 1981

9 Clyde Ratcliff  
10 General Delivery  
11 Cedar Bluff, VA 24609

12 Dear Clyde:

13 I am enclosing herewith the appeal bond which you should complete  
14 along with an insurance agent or someone else satisfactory to Ray  
15 Moore and which you should file with Ray in the Clerk's Office  
16 of the Circuit Court of Tazewell County by no later than October  
17 6, 1981. If you have any problems filing this bond you can reach  
18 me in the Courthouse in Lebanon on that day. I would suggest that  
19 you file it as early in the day as you can.

20 After this has been filed please see that a copy is sent to me  
21 and that a copy is sent to Allen Lucy, Clerk of the Supreme Court  
22 of Virginia at the Supreme Court Building, Richmond, VA 23219.  
23 I am sending you three extra copies of the bond so that you can  
24 also send a copy to Roger Mullins, attorney for the Water and  
25 Sewer Authority. I am sending this to you by Certified Mail, RRR,  
so that the Post Office realizes the importance of this. I am  
really pleased that we were able to get this writ and am looking  
forward to seeing your rights fully exonerated in Court.

Sincerely yours,

s/ S. Strother Smith, III

SSS/hmw

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S. STROTHER SMITH, III  
ATTORNEY AT LAW  
P. O. BOX 1204  
117 W. MAIN STREET  
ABINGDON, VIRGINIA 24210

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APPEAL BOND

KNOW ALL MEN BY THESE PRESENTS, That we, Clyde Ratcliff,  
name of appellant(s)  
principal, and Clyde Ratcliff, et al, surety, are held and firmly  
bound unto The Tazewell County Water and Sewerage Authority in the  
name of appellee(s)

sum of one thousand dollars (\$1,000.00) to the payment of which we  
bind ourselves, our heirs, successors, personal representatives and  
assigns, jointly and severally, firmly by these presents.

The condition of this obligation is such, that whereas  
the Supreme Court of Virginia on the 22 day of September, 1981,  
awarded an appeal and suspension of judgment from a judgment rendered  
against Alfred Brown, Clyde Ratcliff, et al by the Circuit Court of  
name of appellant(s)

Tazewell County, on the 31 day of July, 1980, upon Alfred Brown or  
Clyde Ratcliff, or some one for him, filing an appeal bond with  
name of appellant(s)  
sufficient security in the clerk's office of the Circuit Court of  
Tazewell County in the penalty of one thousand dollars (\$1,000.00)  
within fifteen (15) days of the date of the order awarding the appeal,  
with condition as the law directs.

Now, therefore, if the said principal, Clyde Ratcliff,  
shall perform and satisfy said judgment or the part thereof proceedings  
on which are stayed, in case such judgment or such part be affirmed in  
whole or in part, and shall pay all damages, costs, and fees which may  
be awarded against him in the Supreme Court of Virginia and all  
actual damages incurred in consequence of the suspension, then this  
obligation shall be void; otherwise to remain in full force and effect.

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1 In witness whereof, the said Clyde Ratcliff,  
2 name of appellant(s)  
3 principal, and \_\_\_\_\_, surety, have hereunto set  
4 their hands and seals, this \_\_\_\_ day of \_\_\_\_\_, 19\_\_.

7 \_\_\_\_\_ (SEAL)

11 \_\_\_\_\_ (SEAL)

13 State of Virginia  
14 City/County of \_\_\_\_\_

15 The foregoing instrument was acknowledged before me this  
16 \_\_\_\_ day of \_\_\_\_\_, 19\_\_, by \_\_\_\_\_

18 \_\_\_\_\_  
NOTARY PUBLIC

19 My commission expires: \_\_\_\_\_

25  
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