

**REPORT TO THE BOARD OF SUPERVISORS  
FAIRFAX COUNTY, VIRGINIA**

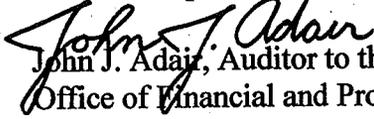
**QUARTERLY STATUS REPORT ON OPERATIONS  
AS OF DECEMBER 2, 2003**



**OFFICE OF FINANCIAL AND PROGRAMS AUDITOR**

FAIRFAX COUNTY, VIRGINIA

MEMORANDUM

TO: Board of Supervisors  
FROM:  John J. Adair, Auditor to the Board  
Office of Financial and Programs Auditor  
DATE: December 2, 2003  
SUBJECT: Quarterly Status Report on Operations

**EXECUTIVE SUMMARY**

The County's Transportation Department received \$1,683,676 this quarter for its Roadway Improvement Fund as a result of our continuing review of proffers and future construction escrows received from developers. The money, collected over a period of years, was being held in escrow as future construction money. However, research conducted by Transportation Department and Department of Public Works and Environmental Services staff determined that the money should have been placed in the Roadway Improvement Fund when it was received.

We continued our monitoring of responses to letters sent by Board Supervisors to Homeowner Associations telling them they are entitled to \$343,000 in proffered money we found being held by the County for the Associations. Three Associations were paid \$22,800 this quarter, bringing the total proffered money paid thus far to 7 Homeowner Associations to \$74,535.

Our review of how Fairfax County assesses real estate focused this quarter on improvements being made to the Department of Tax Administration's computer system in order to improve the real estate assessment process. We also reviewed the coordination of the Department of Tax Administration and the Department of Public Works and Environmental Services to determine whether information on improvements made to real estate were being reported to the Tax Administration staff so that property values could be adjusted accordingly.

At the Audit Committee's request, we reviewed the actions of County staff with regard to improvements being made to property located along the Thomas J. Stockton Parkway to determine whether staff had handled complaints about the improvements properly.

In the cash management area, County Departments continued to expedite grant reimbursement requests providing \$8 million in additional dollars for County investment. Accounts receivable decreased by about \$3.3 million from July 31, to October 31, 2003; however, receivables over 120 days old increased by about \$82,000.

## **FUTURE CONSTRUCTION ESCROWS**

At the request of the Audit Committee, we continued working with the Department of Public Works and Environmental Services staff on Future Construction escrows.

Departmental staff establishes Future Construction escrows when they receive amounts from developers representing their share of specific construction projects to take place at some time in the future.

Funds escrowed for specific projects are to be provided to developers or other County offices to help offset the cost of these specific construction projects when they are undertaken. There is about \$12 million in the Future Construction escrows account.

Last quarter we noted that some of the money being held as future construction escrows were actually proffers, and belonged to the County. Staff agreed to transfer the proffer money to the Department of Transportation.

### **Results of Review of Future Construction Escrows**

This Quarter, money for 28 escrows, totaling \$1,683,676, was transferred to the County's Department of Transportation and put into the Department's Contributed Roadway Improvement Fund.

Staff found last quarter that 27 future construction escrows totaling \$1,659,676, were actually proffers for such things as road improvements, traffic signals, including pedestrian signals, bus shelters, traffic calming, and pedestrian crosswalks on public streets. The money proffered for such improvements belongs to the County.

This quarter, another future construction escrow for \$24,000 was found to be a proffer for 2 bus shelters, and was transferred, along with the \$1,659,676, to the Department of Transportation's Contributed Roadway Improvement Fund bringing the total amount transferred to \$1,683,676.

We will continue to work with Department staff in researching other escrow amounts that may actually be proffers belonging to the County, and will include any that are determined to be proffers in future quarterly reports.

## **HOMEOWNER ASSOCIATION CASH PROFFERS**

A cash proffer is a written voluntary offer of money, submitted as part of a rezoning application and accepted by a locality upon approval of the rezoning. Cash proffers may

address various issues, such as offsetting or mitigating the impact of a particular development on public facilities and services.

After it was found that the County had money in a "General" proffer account that was being held for Homeowner Associations, County staff wrote to the Supervisors of the County's Magisterial Districts providing them with information regarding these proffers, which totaled \$343,206. The Supervisors then advised the 29 Homeowner Associations in their Districts of the proffers and what the Associations had to do in order to be eligible to obtain the proffered money.

The Associations were asked to facilitate the release of the proffered funds by providing the County with information, such as a plan or permit for the facilities mentioned in the proffers, a copy of a construction cost estimate or an itemized receipt for materials and labor, or photographic evidence that the facilities have been constructed.

This quarter, the County received a request for, and released, proffer funds totaling \$22,800 to 3 Homeowner Associations. This brings the total released to 7 Homeowner Associations from the General proffer account to \$74,535. This quarter:

- The Amanda Woods Homeowner Association, in the Braddock District, received \$3,300, for its Vertain Park Subdivision;
- the Griffins Homeowners Association, in the Providence District, received \$6,300; and
- the Park Estates Homeowners Association, in the Hunter Mill District, received \$13,200 for recreational facilities in the Hunt at Lake Fairfax Subdivision.

We will continue to monitor and report on the Homeowner Association requests in future quarterly status reports.

### **REVIEW OF REAL ESTATE ASSESSMENT PROCESS**

We continued our review of the process used by County officials to assess the value of residential real estate for tax purposes. Our previous reports had stated that the increases in real estate assessments for 2003 were in line with the percentage increases in the surrounding Northern Virginia Counties.

During this quarter, we reviewed the coordination between the Permits Branch of the Department of Public Works and Environmental Services (DPWES) and the Department of Tax Administration (DTA) to ensure that assessments are updated timely to reflect improvements made by homeowners. We also reviewed the plans for the Department of Tax Administration's new computer system, which will become operational early in

2004, to determine the improvements in the Department's operations envisioned under the new system.

### **Coordination of Information Regarding Permits for Home Improvements**

The value of residential real estate is affected by both new construction and by improvements made by homeowners to their existing property. The DTA staff learns of such improvements through its own efforts, and through its coordination with the DPWES staff.

DTA told us that it performs daily matching of its and DPWES' permit files to receive notification of all final building permit inspections. Final inspection information is assigned to DTA supervising appraisers for review. Taxable new structures are assigned the highest priority.

The permits are reviewed either in the field or through contact with owners or contractors. DTA's appraisers then assign an assessed value, with items of substantial value being prorated as of the date of the DPWES final inspection. This generates a notice of supplemental assessment and a supplemental tax bill.

Because of workload and staff resources, DTA staff said that they are not always able to follow up on every final permit immediately. However, the ability to prorate items of substantial value ensures that assessed value is added back to the date the final inspection was approved, as long as the time period between the final inspection and the time of the DTA follow-up is less than three years.

DTA staff also said that they field review all decks for which permits have been issued after 6 months, even if no final inspection has been entered by DPWES. Staff does this to ensure that all completed decks are added to the assessment record and valued even if the owner never calls for a final inspection.

DTA staff said that it also assists DPWES staff in following up on new construction activity performed without a final inspection or without a building permit. DTA staff reports major instances of these items that are discovered when DTA's real estate appraisers follow up on building permits, even those that have expired. DTA's new real estate computer system, discussed in the section below, will improve on this by providing a field to report such DTA staff discoveries. DTA staff said that reports will be run against this field and the results provided to DPWES on a regular basis.

### **DTA'S TAX SYSTEMS MODERNIZATION PROJECT**

DTA is in the midst of a Tax Systems Modernization Project intended to ensure that the County's objective of administering the corporate tax systems continues to be supported

by a functionally and technically sound architecture. The new technology will enable improved interfaces with the County's other relational database systems, and more timely transfer of information between departments.

DTA's current real estate system was designed during the 1970's. In the more than 25 years the system has been in operation, business operations have changed significantly and the system is no longer able to efficiently support assessment operations, nor can the mainframe system be enhanced economically.

The current real estate system uses computer programming languages which are no longer supported by the vendor and/or for which in-house and contract programmer expertise is not available. The outdated languages limit integration of the current system to the Geographic Information System, Courts, Building Permits, and other relational County and external databases.

During Fiscal Year 2002, a contract was awarded to Cole, Layer and Trumble to modernize the computer system by acquiring a commercial off the shelf software that supports a full range of functions associated with the administration and assessment of real property. These functions include real estate administration, account maintenance, assessment and exemptions and adjustments. A contract amendment was executed during Fiscal Year 2004 to procure tax billing and accounts receivable modules.

After implementation of the new system and performing initial data clean up, DTA envisions being able to follow up on building permits on a more timely basis. The new system also allows viewing of building sketches online and saving photos of properties (photos for internal use only). These enhancements will provide staff with more detailed information about each property.

Currently, there are approximately 40,000 to 45,000 parcels that have some property characteristics stored in freeform note or sketch fields. Staff appraisers must retrieve this data and manually calculate values for these parcels. Since the new system is a relational database it allow for unlimited descriptive property features. This will eliminate the manual work to appraise these properties every year. The elimination of the manual process will allow for increased quality control and permit an easier comparison of properties and determination of market value.

**REVIEW OF IMPROVEMENTS**  
**TO A THOMAS J. STOCKTON**  
**PARKWAY PROPERTY**

At our September 8, 2003, Audit Committee meeting, the Committee requested that a review be made of activities involving a property at 8714 Thomas J. Stockton Parkway. Concerns had been raised by citizens to the Supervisor of the Mount Vernon District as to the obtaining of permits and approvals for improvements to this property. In addition, a question was raised as to the valuation of the property for tax purposes.

We reviewed the District Supervisor's files and other County files for the property, which included correspondence dating back to mid 2001, and the actions taken, primarily by County employees in the Department of Public Works and Environmental Services, (DPWES) and the County Attorney's Office with regard to the property. We also reviewed the valuation of the property, and held discussions with staff from the Department of Tax Administration to answer questions regarding the property's assessed value.

**Representatives of the Stratford Landing  
Citizens Association, Inc., Have Questioned  
The Thomas J. Stockton Parkway Property Improvements**

The property known as 8714 Thomas J. Stockton Parkway is a lot situated in Stratford Landing in the Mount Vernon District that runs along the Little Hunting Creek. The owner of the property intends to build a house on the property, and towards that end has taken steps to restore a bulkhead, and to clear, grade and fill the lot. The photo in Appendix I represents the development of the lot as of November 16, 2003.

On June 27, 2001, the owner of the property wrote to the County stating that he was in the process of building a bulkhead along the rear of the lot on little Hunting Creek, and planned to build a house for his family on the lot after the bulkhead is finished.

Along with the June 2001 letter, with regard to the construction of the bulkhead, the owner provided copies of letters he had obtained, and the permit numbers, from the U.S. Army Corps of Engineers permit (#01-N0059), the Virginia Marine Resource Commission (VMRC #00-2056), the Fairfax County Wetlands Board (#WB 00-W-0018) and a Fairfax County Building Permit (#01067B0640).

From May 2001 to the present, representatives of the Stratford Landing Citizens Association (Citizens Association) have raised questions, and sent e-mails to the Mount Vernon District Supervisor and County staff regarding the property at 8714 Thomas J. Stockton Parkway. They believe that County staff has not enforced County ordinances as they pertain to this property. They also question the valuation of the property by the County's Department of Tax Administration.

**County Actions  
Regarding the Property  
and Our Conclusions**

Appendix II represents our attempt to summarize into a list the 94 questions and comments raised by the Citizens Association representatives that have been answered by County staff between May 2001 and June 2003.

In reviewing the questions raised about the property, we noted that the County staff had answered each of them, point by point, in each of its responses. The County staff appears

to be trying to balance the rights of the property owner against the concerns raised by the Citizens Association representatives.

Where County approval is required, the County has on several occasions rejected the plans of the owner, required changes to be made to his submissions, and cited violations of County Code that had to be taken care of before work on the lot could continue. The following partial chronology includes examples of the County requiring the owner to take appropriate actions before proceeding with construction.

- On August 17, 2001, the County issued a Notice of Violation to the owner saying he was in violation of the County's Chesapeake Bay Preservation Ordinance. He was directed to correct the violation by providing, among other things, a water quality impact assessment to the Director of DPWES and demonstrating to the Director how appropriate vegetation will be established (a revegetation plan).
- In May 2002, the owner's revegetation plan, dated May 2, 2002, was submitted (according to a memo by an Assistant County Attorney, the date for correction of the Notice of Violation had been verbally extended by DPWES staff to May 17, 2002).
- By letter dated May 15, 2002, the owner's revegetation plan was rejected by the County because it did not adequately address the requirements of the Chesapeake Bay Preservation Ordinance and Fairfax County's Public Facilities Manual. The County advised the owner as to what needed to be done to restore the 8,350 square feet of Resource Preservation Area disturbance on the lot. The letter also said that "The bulkhead has been backfilled for months and the required vegetation plan and plantings has been delayed for too long. This plan must be submitted within one week or further action may be taken by the County to ensure compliance to County regulation and the outstanding August 17, 2001, Notice of Violation."
- On May 21, 2002, the County Attorney's Office sent a letter to the owner stating that the County was prepared to pursue any legal action available including injunctive relief and/or civil penalties, which are assessed at \$5,000 per day, to enforce full compliance with the August 17, 2001, Notice of Violation (including the revised reforestation plan and water quality impact assessment), if they are not submitted on or before May 27, 2002.
- On May 28, 2002, the owner timely submitted both documents to DPWES (May 27<sup>th</sup> was a holiday).
- On May 31, 2002, the Record Plat submitted by the owner to record the Flood Plain and Storm Drainage Easement was disapproved by the County.

- On August 2, 2002, the Water Quality Impact Assessment submitted by the owner (which had been disapproved in June 2002) was approved, based in part on the establishment of a vegetated buffer area within the Resource Protection Area.
- On September 6, 2002, the August 17, 2001, Notice of Violation was released by the County.
- On September 9, 2002, County staff issued a Notice of Construction Deficiency requiring the owner to place a woody seed mix on the center of the lot, which he did.
- On November 2, 2002, the County determined that the proposed placement of fill within the floodplain to elevate the property for the construction of a two-story dwelling qualifies as a permitted use.
- On December 4, 2002, the owner submitted a revised Floodplain and Storm Drainage Easement plat that reflects the revised floodplain boundary based on the existing fill for the bulkhead and the proposed fill for the construction of the proposed house. The County requested that the owner's engineer come to the County's offices to hand annotate the revisions to the plat, which was done on January 30, 2003.
- On January 3, 2003, a building permit application was submitted by the owner.
- On February 21, 2003, the owner, through his attorney, submitted a Deed of Dedication and Vacation for the floodplain and storm drainage easement to the County Attorney's Office for approval as to form.
- On February 27, 2003, an exception for the proposed house within the Resource Protection Area was approved by the County. The water quality control requirements were waived, with the exception for the proposed house. The waiver was approved, in part, on the consideration of the constraints imposed by the dimensions and location of the property and the proposed creation of a 750 square foot vegetated buffer area.
- On April 29, 2003, the County Attorney's Office approved the Deed for the floodplain and storm drainage easement, as to form, and it was executed by the County on May 9, 2003.
- On May 13, 2003, the record plat showing the new Floodplain and Storm Drainage Easement, which had been approved by the County, was recorded in the County Land Records.
- On May 21, 2003, the grading plan showing the proposed construction of the house and additional proposed fill was submitted for County review.

- On June 2, 2003, the owner's grading plan was approved.
- In July 2003, the building permit application that had been submitted in January 2003 was approved.

We believe the Citizens Association has a right to raise environmental and other concerns regarding the actions of the owner of the property at 8714 Thomas J. Stockton Parkway. However, we believe the County staff has acted appropriately, and within the parameters of the County Code and regulations, throughout the past 2 ½ years with regard to the actions taken affecting this property. Based on our review of the files, and discussions with County staff, we do not believe the County is providing any special favors to the owner, or is ignoring violations by the owner.

**Valuation of the Property**  
**For Tax Purposes by the**  
**Department of Tax Administration**

The Citizens Association raised a question as to the valuation of the Thomas J. Stockton property. The County had assessed the property at \$10,000 as of January 1, 2002, and at \$11,000 as of January 1, 2003. However, the County's records show that the owner had purchased the property for \$120,000 on April 4, 2001. The implication of the question is that the County should be assessing the property at a higher valuation.

We discussed the assessed value with Department of Tax Administration staff. They said that at the time of the purchase by the owner, the lot was considered unbuildable. They considered his purchase to be speculative since the lot could not be improved by building a house until certain actions were taken to make the lot buildable.

Because the owner has taken action to construct a bulkhead, and to clear, grade and fill the lot, the lot is now considered to be buildable. Accordingly, a new assessment has been made of the property, and the new valuation will be reflected in the assessed value shown in the January 1, 2004 valuation. Department of Tax Administration staff also are researching the possibility of supplemental assessments for 2002 and 2003.

**EXPEDITED GRANT**  
**REIMBURSEMENTS CONTINUE**

We monitor grant reimbursement requests made by three County Departments at the request of our Audit Committee. Timelier grant reimbursement requests made over the past three years have provided millions of additional dollars for the County to invest in its Pooled Cash Management Program, increasing interest income by a substantial amount.

Appendixes III, IV, and V show that the three Departments – the Department of Housing and Community Development, the Police Department and the Fire and Rescue Department – have reduced their negative cash balances (which result from not drawing

reimbursements timely) from \$9.1 million to about \$1.1 million. Together, the three Departments have increased the amount of cash the County has available to invest by about \$8 million.

The Department of Housing and Community Development has improved its negative cash balances by about \$5.0 million; the Police Department has improved by about \$1.4million; and the Fire and Rescue Department has improved by about \$1.6 million.

### **FINANCE DEPARTMENT'S REPORT ON COUNTY RECEIVABLES**

The Department of Finance is now responsible for coordinating the resolution of current and future overdue receivables through its Accounting Operations Division. Our Audit Committee has asked us to monitor the collection of receivables.

#### **Accounts Receivable Changes Between July 31, 2003 and October 31, 2003**

According to a report from the Finance Department Director, accounts receivable as of the end of October 2003 totaled about \$17.3 million, a decrease of about \$3.3 million from July 2003's total of about \$20.6 million.

October 31, 2003 receivables over 120 days old totaled about \$3.5 million, or 20% of the total receivables. The "over 120 day" category balance increased by about \$82,000 during that 3 month period. The primary reason for the increase involved receivables for:

- \$207,012 from Fairfax County Redevelopment and Housing Authority (FCRHA) partnerships, which FCRHA staff plans to collect upon completion of partnership audits in December 2003; and
- \$204,052 owed the Community and Recreation Services (CRS) from a customer for whom the invoices are being revised due to contractual changes. CRS plans to collect these receivables in December 2003.

Of the \$3.5 million in receivables over 120 days old, overdue parking tickets accounted for about \$1.3 million, or 36% of the overdue receivables.

Excluding parking tickets, other County Departments had receivables over 120 days of about \$2.2 million. The Commonwealth of Virginia and other governments owe the County about 50% of this amount. County staff is highly confident that these receivables will be collected. Department of Finance staff is working with County agencies to facilitate the collection of the remainder of the receivables over 120 days old.

**WORK TO BE PERFORMED**  
**DURING THE NEXT QUARTER**

During the next quarter, we will continue our reviews of the real estate assessment process and the receipt and expenditure of cash proffers and future construction escrows. We also will monitor the collection of overdue receivables and the timeliness of the Department of Housing and Community Development, Police Department, and Fire and Rescue Department grant expense reimbursement requests.

APPENDIX I

Development Progress of Lot at 8714 Thomas J. Stockton Parkway  
and Adjoining Undeveloped Lot as of November 16, 2003



APPENDIX II

**CHRONOLOGY OF COUNTY RESPONSES TO QUESTIONS  
PRIMARILY FROM REPRESENTATIVES OF  
THE STRATFORD LANDING CITIZENS ASSOCIATION  
INVOLVING 8714 THOMAS J. STOCKTON PARKWAY**

**DATE OF RESPONSE**

**COUNTY REPRESENTATIVE RESPONDING**

**May 1, 2001**

Bruce Nassimbeni, Director, Environmental and Facilities Review  
Division, Department of Public Works and Environmental Services  
(DPWES)

**QUESTIONS**

1. Does the proposed structure impact the wetlands of Little Hunting Creek?
2. Does the structure require a wetland permit from the Wetland Board or other local, state, or federal wetland permitting agency?
3. If the wetlands are impacted, what will be the extent of the impact?
4. Which office in the County determines whether activities impact tidal and nontidal wetlands?
5. Who determines what kind of wetland permit is required?
6. Who determines if the application is within the jurisdiction of the Wetlands Board, and what steps are taken to make that determination?
7. What system or structure is in place to assure that all activities in wetlands are properly permitted?
8. Specifically for building permits, who makes the determination and forwards the application to the Wetlands Board?

**DATE OF RESPONSE**

**COUNTY REPRESENTATIVE RESPONDING**

**September 7, 2001**

Michelle Brickner, Director, Office of Site Development Services, DPWES

**QUESTIONS**

1. If this property is in the Resource Protection Area, can it be built upon?
2. If so, what conditions make this possible?
3. Can it be done via a waiver?
4. If so, who grants the waiver and why?
5. Where is the public involvement, if any, in this process?

**DATE OF RESPONSE**

**COUNTY REPRESENTATIVE RESPONDING**

**October 15, 2001**

Michelle Brickner

**QUESTIONS**

1. The lot is depicted as a buildable lot on the subdivision plat for Stratford Landing as approved on August 18, 1972. How is this reconciled with the Department of Tax administration's Detailed Property Description dated 6/14/01 which identifies the site as "unbuildable"? What is the controlling authority?
2. The front setback is 30 feet. What is the rear setback?

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3. Did the Office of Site Development Services approve an exception to the owner for the loss of buildable area in a RPA in accordance with the requirements of Section (sic) of the Fairfax County Code?
4. Is a hearing scheduled before the Board of Zoning Appeals for the approval to construct a residence within the minimum yard setbacks as defined in the Zoning Ordinance? Can we get a copy of the paperwork? Will your office track any such applications and provide notice to interested parties of any hearing dates?

### DATE OF RESPONSE

### COUNTY REPRESENTATIVE RESPONDING

December 13, 2001

Diana Guillen, Senior Engineering Inspector, Environmental and Facilities Inspection Division, DPWES

### QUESTIONS

1. On the original plat, is it a buildable lot without exceptions or variances?
2. Violation of Chapter 104 of the Code: Was the lot cleared and graded without a grading plan?
3. If the bulkhead was in violation of Chapter 118 of the code and he didn't move the bulkhead or make changes, how did it get approved?
4. The Department of Planning and Zoning citing Chapter 116 of the code with a "Stop Work Order" and the owner did not make any changes, how was it approved?
5. This property is in a Resource Protection Area (RPA). What are the implications for Little Hunting Creek and Stratford Landing?
6. Office of Building Code Services issued a building permit to replace a bulkhead at this location on Stockton Parkway to Walton Green, Jr. as the owner, how does this apply to the (new) owner who purports to be the owner of the property?
7. Was there a violation of the Chesapeake Bay Preservation Ordinance, Chapter 118, since the new bulkhead did not coincide with the existing bulkhead?
8. The owner did not plant vegetation to protect and stabilize the shoreline. Is this in violation?
9. He was allowed no more than 278 cubic yards of fill in the floodplain. Did he have a special exception to exceed this amount?
10. Taking account of the required 15 foot offset from the floodplain and 30 (foot) offset from the street, there does not appear to be enough space remaining on the lot to construct a dwelling. Zoning ordinance Section 2-0903 requires a public hearing to process a variance application is this true?

### DATE OF RESPONSE

### COUNTY REPRESENTATIVE RESPONDING

March 20, 2002

David Reidenbach, Acting Director, Permits Division, Office of Building Code Services, DPWES

### QUESTIONS

1. If a permit is issued to one person, can (it) be conveyed to another?
2. If the owner has to reapply, what penalty is associated with this?

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### DATE OF RESPONSE

April 3, 2002

### COUNTY REPRESENTATIVE RESPONDING

Michelle Brickner

### QUESTIONS

1. How much of the lot is permitted to be cleared to allow access of machinery and materials?
2. It appears that the replacement bulkhead was built several feet creekward of the pre-existing bulkhead. Was any amendment made to the original application for permitting this further encroachment into Little Hunting Creek?
3. Furthermore, the permit application requested permission to build a bulkhead, the upper extent of which is six feet above sea level. Did the county field verify compliance with this limitation?
4. The owner cleared virtually the entirety of the lot in question. We understand that land disturbing activities are not permitted within a Resource Protection Area without first obtaining an exception from the requirements of Chapter 118 of the Fairfax County Code. Before virtually the entire lot was cleared, (was) such an exception applied for and granted?
5. After the lot in question was cleared, it was graded in a manner changing the contours of the land that were present before grading. Neighbors observed at least ten truckloads or more of dirt being imported into the property. We understand that fill in the flood plain and/or within an RPA are prohibited before one obtains a permit to do so. Is our understanding correct?
6. County officials informed us that the owner did not violate county ordinances when he cleared what they described as 80% of his lot to provide room for building material and machines used to construct his bulkhead. He did not submit a conservation plan because he indicated to the county that he would only clear enough area necessary to construct the bulkhead. Isn't this a contradiction?
7. The County considered the bulkhead a shoreline erosion control project and not a land disturbing activity. Why has he not been held accountable for this?
8. What criteria does the Zoning Board use to determine how to treat violations of zoning permits?
9. County officials informed us that the owner has never applied for or obtained a Resource Protection Area Exception. They reiterated that they did not believe that the extent of clearing violated the permit even though it far exceeded what was claimed in the permit application. However it would seem such a contradictory situation indicates a Conservation Plan should have been required. Is this a violation of the code?
10. The owner graded the lot in question, completely changing the contours of the lot, and in our view moved the flood plain line from a location near the left hand boundary of the property to a location 40 to 50 feet in the right hand direction. Officials informed us that when the owner applies for his next permit, the matter of grading will be addressed. Why not now?
11. We noticed that the plans filed with the County by The owner for the bulkhead permit are not stamped by a licensed surveyor. They are drawings made by some unidentified person and purport to represent the contours of the lot prior to commencement of any land disturbing activities. Did County officials field verify that the contours shown were true and accurate as depicted?
12. Was there any obligation on the part of the County to do so?
13. Officials were noncommittal concerning whether they would conduct field soil tests to determine the contours of the land prior to the owner's filling and grading activities. Is this possible for the County to perform?
14. Is it possible for the County to conduct field soil tests by taking borings at numerous locations on The owner's property to determine where fill was placed and what the contours actually were prior to filling?

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15. Should the County find that the assertions set forth above are probably true, what is the remedy?
16. Can the owner be required to restore the land to its contours prior to his clearing and filling?
17. Can actions in violation of Fairfax County law be taken into account when the County decides whether to approve subsequent phases of the owner's development project?
18. We understand the owner will be required to go to the Board of Zoning Appeals to receive variances concerning the front yard requirement (30 feet) and the spacing from the floodplain (15 feet) before a house can be built there. In conjunction with action to be taken by the Board of Zoning Appeals, can County staff officially weigh in with a report concerning the activities of the owner as described above?
19. A Water Quality Impact statement must be filed for an RPA exception request, and the projected total phosphorous runoff pollution load for a proposed development must be reduced by 40% or more. To accomplish this, open space that will filter runoff may be dedicated and credit taken for phosphorus removal. Can open space in the creek itself be claimed?
20. If so, what is the justification for the apparent claim that open space in the creek will remove 100% of phosphorus?
21. One of the RPA performance criteria is a buffer area requirement. What is required to address this performance criterion in an RPA exception request?
22. When I called the Urban Forester Branch about the Tulip Poplars removed from the property (about 100 years old) they said they had no enforcement authority. How can this be?
23. In the Citizens Handbook it states a permit is necessary to clear trees. Who enforces that?
24. Mount Vernon is taking DNA samples to preserve the Tulip Poplar, and no one (has) taken notice in an RPA to the removal of these trees?

### DATE OF RESPONSE

June 11, 2002

### COUNTY REPRESENTATIVE RESPONDING

Gerald Hyland, Mount Vernon District Supervisor  
(On behalf of County staff)

### QUESTIONS

1. How can you approve a grading plan when the grading and filling has been completed without a permit?
2. The proposed grading plan the owner submitted with the soil report was inaccurate and deceiving.
3. What about the soil samples were they taken from 8714 Thomas J. Stockton Parkway?
4. When is the owner going to be held accountable for his actions?
5. The owner should have been held accountable for the many violations at 8714 Thomas J. Stockton Parkway. He has been in violation for more than a year, and in February when Article 8 of the Chesapeake Bay Preservation Ordinance went into effect, thousands of dollars in fines should have been imposed.

### DATE OF RESPONSE

September 4, 2002

### COUNTY REPRESENTATIVE RESPONDING

Jeffrey Blackford, Deputy Director, Office of Site Development  
Services, DPWES

### QUESTIONS

1. Has the County responded to the May 9, 2002, letter from the owner's surveyor with an approval or denial?

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2. Second, you should note that the letter is dated the day after our comprehensive meeting with Gerry Hyland and numerous members of the County staff during which the owner project was discussed in detail. At that meeting, discussion of the prior clearing, filling and grading by the owner was had. The letter, mailed the very next day, acts as if no clearing, filling or grading has taken place. In fact, all of those actions had already taken place prior to May 9, 2002.
3. We would like to know how the owner's surveyor calculated the number of cubic yards of fill (106 cubic yards) set forth in his letter. Based on my own observations and calculations, it doesn't seem possible that the amount of fill deposited at the owner site could be such a low number.
4. Next, looking at the plat that was submitted by the owner accompanying his soil report, the location of the 10 foot elevation line is lightly displayed along with the darker lines showing the proposed elevations after clearing, filling and grading. Of course, we know that the clearing filling and grading operations occurred even prior to submission of that plat and the soil report.
5. Looking at the plat, it is apparent that to create a buildable area where little previously existed, the owner moved the 10 feet elevation line approximately 10 feet on average toward the Creek. Looking at the new grade set forth in the plat, over a distance of approximately 9 feet, the elevation increases from 6 feet above sea level to 10 feet above sea level. It doesn't seem possible that this result could be achieved through placement of less than 2 feet depth of fill over the area from the prior 10 feet elevation line to the current bulkhead.
6. Note that the County requires the level of ground at the first floor of a habitable dwelling to be not only 15 feet from the flood plain but 18 inches above the flood plain as well. This is reflected in the plat which shows the ground elevation as 11' 6" at the left rear corner of the house and 11' 7" at the right rear corner.
7. The area of fill between the bulkhead and the house is 140 feet wide by approximately 30 feet deep or a total of 4,200 square feet. If that area was provided fill to a depth of only 18 inches, the fill would encompass 6,300 cubic feet or 233.3 cubic yards. Adding that figure to the previous figure creates a total of 367.7 cubic yards of fill, almost 80 cubic yards in excess of that which is permitted by Fairfax County. These calculations do not even take into account the prior location of the flood plain as depicted in the owner's plat to the left side and slightly in front of the proposed dwelling. That prior location of the flood plain is within one foot of the left front corner of the residence. Thus, additional fill would have had to have been placed over an extensive area at that location so that the proposed residence is at least 15 feet away and 18 inches above the flood plain.
8. Once the results of the survey are known, we will be in a better position to understand exactly how much fill was placed. The notion that the number is anywhere near 106 cubic yards is, frankly, laughable.
9. If the determination by the DPWES staff that an exception pursuant to the Chesapeake Bay Preservation Ordinance was not required for the subject property was, in fact made, then based upon the plain meaning of the C-BAY ordinance in the English language, that determination was made in error and must be revisited and reversed.
10. Section 118-6-2 of the C-BAY ordinance permits the Director to approve an RPA exception on such a pre-existing lot where land area created does not exceed 5,000 square feet. The owner's proposal appears to comply with these requirements (although it appears that he disturbed close to 10,000 square feet, virtually his entire lot, when he cleared during construction of the bulkhead.)
11. Stratford Landing wants the owner to demonstrate that his project, when completed, will result in no net loss of water quality. See the purpose and intent of the C-BAY ordinance, paragraphs (3), (4), and (5). The owner must be required to obtain an RPA Exception, just like anyone else similarly situated would be required to do.
12. In making its determinations, the County must keep the following in mind. The owner purchased the property for \$125,000. Comparably attractive waterfront properties similarly situated and ready to build upon are worth significantly more. Thus, it is likely that both the seller and the owner knew, when the owner bought the property, that site modifications were necessary to significantly expand the buildable area. Among those contemplated modifications was the new bulkhead. The owner did not build his expensive bulkhead to be a nice guy. He obviously built it, at great cost, because, without it, he could not have

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prevented the huge amount of fill he placed on the property from eroding into the creek. Such erosion could have restored the flood plain line to its prior location thereby precluding grant of an occupancy permit.

13. The fill should never have been placed without prior permission, including obtaining an RPA exception, and obtaining approval of a Water Quality Impact Assessment demonstrating that the result of the development will be no net loss of water quality. If the amount of fill exceeded 278 cubic yards, as I calculated it did in my e-mail sent last Friday, I believe the owner would have been required to obtain a special exception from the Board of Supervisors to place that much fill. Such a Special exception, if granted, would have rendered many more of the waterfront properties on Little Hunting Creek buildable, by that precedent. I presume that Gerry would have opposed such a Special Exception request.

### DATE OF RESPONSE

October 18, 2002

### COUNTY REPRESENTATIVE RESPONDING

Jeffrey Blackford

### QUESTIONS

1. We await further word once the County has received the additional information requested. Presumably, a penalty will be imposed if the information is not supplied within a reasonable time period after the request.
2. Will there be any penalty assessed to the owner as a result of the delay in providing the requested information? As of this date, about 80 days have elapsed since the July 3, 2002, response.
3. We believe that most, if not all, of the clearing, filling and grading necessary to construct a house has already been completed. We base this belief upon the current grade and contour of the owner property as well as knowledge as to elevation at that location. A cursory inspection of the property reveals that virtually the entirety of the property was cleared and that the contours of the property are quite level as compared to the previous undulating contours which were shared by the neighboring properties to either side of the owner property. The proposed placement of fill for the house HAS occurred and it is apparent that to create a buildable area where little previously existed, the owner moved the 10 foot elevation line approximately 10 feet on average toward the Creek.
4. Although the permit for the bulkhead was justified, the clearing, filling and grading went way beyond the minimum necessary to complete the approved project.
5. We have always understood that construction of a bulkhead is a permitted water dependent use under the CBPO. Our concern has always been that, while carrying out that permitted use, the owner went well beyond the clearing, grading and filling that were necessary to complete the permitted use.
6. The plat submitted by the owner to the County was inaccurate at best, the proposed contours shown on the soils report reflect the grading and filling that has already taken place. Is this the plat that reflects the proposed trees "TBR" when in fact, the trees had been previously removed and the flood plain moved? In fact the plat submitted wasn't prepared by a licensed surveyor.
7. We presume that if, in fact, additional filling will take place, any such fill Creekward of the 10 foot contour cannot exceed 128 cubic yards based upon the estimate of less than 150 cubic yards of fill already placed in the flood plain.
8. We presume that if and when the owner applies for an RPA exception and WQIA approval, the County will take into account the community's concerns, particularly our desire that any development result in no net loss of water quality in Little Hunting Creek.

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### DATE OF RESPONSE

June 2, 2003

### COUNTY REPRESENTATIVE RESPONDING

Anthony Griffin, County Executive

### QUESTIONS

1. Where is the topographic survey showing the definitive amount of fill placed at 8714 Thomas J. Stockton Parkway during and subsequent to bulkhead construction?
2. On December 2, 2002, The owner signed the owner/WETLANDS certificate for the property at 8714 Thomas J. Stockton Parkway which states "I hereby CERTIFY THAT ALL WETLANDS PERMITS REQUIRED BY LAW WILL BE OBTAINED PRIOR TO COMMENCING LAND DISTURBING ACTIVITIES." However, as has been pointed out to County staff, land disturbing activity has already taken place at this address. On what basis was this approval granted when the lot has been enlarged and the floodplain line changed from the previous plat without benefit of permit or approval?
3. As discussed, the owner has not applied for an exception pursuant to the Chesapeake Bay Preservation Ordinance, based upon the plain meaning of the C-BAY ordinance in the English language. Has this issue been revisited By DPWES staff as requested by Ms. Pelto, the Assistant County Attorney?
4. Substantial clearing, filling and grading have already been performed without a permit at 8714 Thomas J. Stockton Parkway. Has the owner ever submitted an application for a permit for any of the activity on this property?
5. Under the revision of the Chesapeake Bay Preservation Ordinance, Chapter 118-5-5(a), expanding a structure, property zoned R-3, how is it possible to enlarge the buildable area and change the floodplain line without the approval of the Board of Supervisors?
6. The plat dated December 2, 2002, was filed with the County with the information from the County not even filled out (no date, no agent signature, without approval of the Board of Supervisors?). What specifically was revised and registered on 1/30/03? Did it not comprise establishing a new flood plain line based on filling and grading that had been performed without a permit?
7. What constituted an approval for the WQIA? A Water Quality Impact Assessment must be filed for an RPA exception, and the projected total phosphorous runoff pollution load for a proposed development must be reduced by 40% or more. One of the RPA performance criteria is a buffer area requirement: "a buffer area that is effective in retarding runoff, preventing erosion, and filtering pollution from runoff shall be retained, if present, and established where it does not exist." With this criteria described above, please explain why it wasn't mandatory for the owner to obtain an RPA Exception in an area zoned R-3?
8. The owner failed to supply the County with a CORRECT Site Plan and has not complied with any of the codes throughout this whole process. He received no RPA Exception, no Special Exceptions; ignored letters hand delivered by Diana Guillen for a revegetation plan and spent a year in violation of submission. He also installed no super silt fencing, allowing more than a year to pass with runoff of mud into the creek. Now, he still receives approvals for all of the belated documents he submits, with no fines or penalties imposed, how can this be?
9. Who approved the Storm Drain Easement and newly established Flood Plain Line that expanded the buildable area without a hearing before the Board of Supervisors? Where was the justification for that approval?
10. It now appears that the new 100 year flood plain and storm drainage easement corresponds to the final evaluation of the proposed grade. This newly established flood plain line was changed by all of the previously described unauthorized filling and grading, then was submitted with the Storm Drain Easement request. With the new flood plain line now approved by County staff based on the filling and grading that was completed without a permit, does this mean that the owner will not be required to go to the Board of Zoning Appeals to receive a variance concerning the front yard requirement (30 feet) and the spacing from the flood plain (15 feet) before a house can be built?
11. The County Surveyor calculated approximately 112 cubic yards of fill in the flood plain with the owner's Site Plan. On May 9, 2002, R.C. Fields submitted a letter stating 106 cubic yards were placed in the flood plain.

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On October 29, 2002, R.C. Fields & Associates estimated 80 cubic yards had been filled in the flood plain. It does not seem possible to obtain a credible estimate of how much fill was placed in the flood plain, so when does an exception for the proposed house within the RPA come into play?

12. If the survey was conducted with the incorrect Site Plan submitted by the owner, how did you expect your surveyor to determine a calculated number of cubic yards of fill? Is that why the survey results are not available?
13. If this plat was filed with the County on December 2, 2002, was the approval for the Storm Drain Easement and the Flood Plain line change based on this plat? If so, how does this plat compare with the plats previously on file for this property and where is the plat that was revised on January 30, 2003? How can you grant approvals without the correct information?
14. Without the benefit of permits that he acknowledges in this plat are required, he had already conducted land disturbing activity and changed the flood plain line before submitting and registering this latest plat with the County. How was approval granted for the Storm Drain Easement and flood plain line change despite previous explicit notice to County staff that clearing, filling and grading had already been performed in the flood plain and the buildable space of the lot expanded?
15. Show the type and location of proposed best management practices (BMP's) to mitigate the proposed RPA encroachment (CBPO Section 118-4-3(e)). The proposed total impervious area is greater than 18%, therefore, BMP's are required in accordance with CBPO Section 188-3-2(f)(7). Is this going to be enforced?

## DHCD'S CASH MANAGEMENT PROGRESS

<u>Grant Program</u>	<u>Average End-of-Month Negative Cash Balance During FY 1999</u>	<u>Negative Cash Balance at April 30, 2003</u>	<u>Negative Cash Balance at August 29, 2003</u>	<u>Negative Cash Balance at October 31, 2003</u>	<u>Amount of Improvement or (Regression) Since FY 1999</u>
Community Development Block Grant	\$ 2,421,918	\$ -	\$ 1,023,961	\$ 55,836	\$ 2,366,082
HOME Investment Partnership Grant	265,047	20,239	292,686	184,107	80,940
Public Housing Under Modernization	289,007	-	-	99,570	189,437
Fairfax County Rental Program	535,622	-	-	-	535,622
Private Finance Fund	1,871,222	-	-	-	1,871,222
<b>Totals</b>	<b>\$ 5,382,816</b>	<b>\$ 20,239</b>	<b>\$ 1,316,647</b>	<b>\$ 339,513</b>	<b>\$ 5,043,303</b>

## POLICE DEPARTMENT'S CASH MANAGEMENT PROGRESS

<u>Grant Program</u>	<u>Average End-of-Month Negative Cash Balance During CY 1999</u>	<u>Negative Cash Balance at April 30, 2003</u>	<u>Negative Cash Basalance at August 29, 2003</u>	<u>Negative Cash Balance at October 31, 2003</u>	<u>Amount of Improvement or (Regression) Since CY 1999</u>
Local Law Enforcement Block Grant	\$ 65,470	\$ -	\$ -	\$ -	\$ 65,470
COPS More Program	19,817	76,977	75,142	75,142	(55,325)
COPS Universal Hiring Program	1,416,680	-	-	108,084	1,308,596
VDOT I-95/395/495 Patrol Augmentation	109,886	-	52,021	-	109,886
<b>Totals</b>	<u>\$ 1,611,853</u>	<u>\$ 76,977</u>	<u>\$ 127,163</u>	<u>\$ 183,226</u>	<u>\$ 1,428,627</u>

## FIRE AND RESCUE DEPARTMENT'S CASH MANAGEMENT PROGRESS

<u>Grant Program</u>	<u>Negative Cash Balance March 3, 2000</u>	<u>Negative Cash Balance at April 30, 2003</u>	<u>Negative Cash Balance at August 29, 2003</u>	<u>Negative Cash Balance at October 31, 2003</u>	<u>Amount of Improvement or (Regression) Since March 2000</u>
FEMA/OFDA Activation	\$ 1,699,173	\$ 8,013	\$ -	\$ -	\$ 1,699,173
FEMA National Search and Rescue Response (1)				- (1)	-
International Search and Rescue	127,330	335,797	311,080	310,684 (2)	(183,354)
USAID Urban Search and Rescue Assistance (2)				174,681 (2)	(174,681)
DOJ Domestic Preparedness	18,357	-	-	-	18,357
VDOT Congestion Management	266,304	-	-	-	266,304
<b>Totals</b>	<b>\$ 2,111,164</b>	<b>\$ 343,810</b>	<b>\$ 311,080</b>	<b>\$ 485,365</b>	<b>\$ 1,625,799</b>

**Footnotes:**

- (1) This new FEMA National Search and Rescue Response grant replaces the FEMA/OFDA Activation grant. Further, Fire and Rescue Department staff informed us that FEMA will fully fund the costs of 3 positions under this new grant which are intended to aid Departmental staff in the administration of the grant, including accelerated filings of claims for reimbursement of expenses incurred under the grant.
- (2) This new USAID Urban Search & Rescue Assistance grant replaces the International Search and Rescue grant. The old grant still has an unreimbursed negative cash balance of \$310,684 as of the end of October, because USAID will not provide final reimbursement until it completes its close-out audit.

