

4305 South High Street
Arlington, Virginia 22206

17 November 1977

Mr. Joseph Wholey, Chairman
and Members of the Arlington County Board
Arlington, Virginia 22201

Dear Chairman Wholey and Board Members:

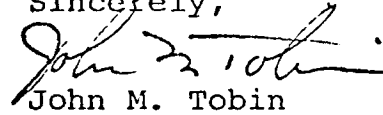
For the last several months, the problem of sewer backups in Fairlington and the attendant questions of responsibility and liability have consumed many hours of the Board's time as well as untold effort on the part of the County staff. The Ad Hoc Fairlington Sewer Resolution Committee is very much aware of and thankful for the Board's attention and patience in this matter and the Committee, like you, is hopeful that Fairlington's problems can be permanently solved and not be indefinitely on the Board's agenda.

When one considers the two crucial questions underlying the Fairlington tragedy- will Fairlington residents ever receive a safe and dependable sewerage system and who will pay for such?- Fairlington's situation is still ambiguous. Nonetheless, I believe that the Fairlington experience, although still unresolved, has provoked many uncertainties as to the County's responsibilities towards its citizens on the one hand, and to its corporate and business relationships on the other.

In the following attachments, I am offering two resolutions for the Board's consideration and (hopefully) adoption. They are advanced primarily in a constructive sense, not only to help resolve the continuing Fairlington matter, but also to help guarantee that this tragedy is never again repeated in Arlington County. They are intended to 1) maximize the "benefits" of the Fairlington experience in more precisely defining County Board and County staff accountability and responsibilities in such matters; 2) to determine aspects of the BOCA Codes and County enforcement procedures which are "fuzzy" and otherwise difficult to implement with an eye toward revising such procedures and regulations; 3) to suggest ways in which the appropriate State authorities and legislators might amend Virginia's present Condominium Law to more clearly reflect Fairlington's experience; 4) to "clear the air" in respect to the feelings of many Fairlington residents that the County, in the past and currently, has been more solicitous to the desires of the developer rather than to the welfare of its citizens; and 5) hopefully permanently answer the question as to what is the County's practical and legal responsibility for future sewer and Code-related problems in Fairlington.

I do not expect the Board to necessarily adopt these resolutions without fairly extensive discussion and/or amendment. There are some specifics of implementation that are yet to be articulated or formulated. These can be discussed in further detail during the the Fairlington Sewer Agenda period this Saturday or held until the next Board session. I do hope, however, that the Board will be generally receptive to the spirit of these resolutions this Saturday.

Sincerely,

A handwritten signature in cursive script, appearing to read "John M. Tobin".

John M. Tobin

RESOLUTION CONCERNING CITIZEN ACCESS TO INFORMATION
ON COUNTY ENFORCEMENT AND NONENFORCEMENT OF BOCA CODES

WHEREAS the desire of Fairlington residents to establish accountability and responsibility as to the continuing problem of sewer backups and related problems in their community has been frustrated in the past due to the lack of clear County records documenting past dealings between the latter and Fairlington's developer;

WHEREAS it is the desire of this County Board that the dealings between the appropriate County officials/employees and private developers in the future be as open to the public as possible;

NOW, THEREFORE, BE IT RESOLVED that the County Board of Arlington County, Virginia:

1. Instructs the County Manager to immediately order that all County officials/employees who henceforth enter into conversations, negotiations, etc. with a developer or other such private business as to the granting of waivers from the provisions of the BOCA Code and other like regulations of Arlington County, or when there is conflict between the County interpretation of such Codes and regulations and that of the developer/business, then all such conversations, negotiations, etc. should be fully recorded and documented and a record made available to requesting citizens as soon as possible.
2. Instructs the County Manager to inform the County Board when there is a major conflict in the interpretation of Arlington Codes and regulations between County officials and a developer/business, or when a substantive waiver is being contemplated to such Codes and regulations, so that the public might be alerted and full records kept.
3. The County Board expects all County employees to fully honor both the spirit and the letter of the above and instructs the County manager to take appropriate action if it is shown that an employee(s) does not.

RESOLUTION PERTAINING TO COUNTY ENFORCEMENT OF BOCA CODES
AND OTHER REGULATIONS IN RELATION TO FAIRLINGTON VILLAGES

WHEREAS the involvement of the County in relation to assuring a safe and dependable sewerage system for the Fairlington community has raised unanswered questions as to past County dealings in this matter as well as to the clarity and meaning of current and past County Codes and regulations pertaining thereto;

WHEREAS it is the desire of this County Board to "clear the air" in this matter as well as determine what lessons might be gained from Fairlington's experience as to possible revision of County procedures and regulations;

NOW, THEREFORE, BE IT RESOLVED that the County Board of Arlington County, Virginia:

- 1) authorize an independent investigation of all aspects of past County involvement in this matter, such an inquiry to be conducted by an appropriate team of outside experts familiar with the engineering and legal aspects of BOCA Codes and similar regulations;
- 2) the scope of such an inquiry should attempt to answer, but not necessarily be limited to, the enumerated questions on the attached sheet supplied by residents of Fairlington;
- 3) the purpose of the inquiry should not only be to pinpoint the exact reason(s) and responsibility for County actions in the past, but also to suggest revisions in present County Codes and regulations applicable to the future;
- 3) the County Manager is instructed to assure the cooperation of present County employees to the best of his legal ability, and the team of inquiry shall make reasonable efforts to obtain the testimony of past County employees;
- 4) the final report of the inquiry team shall be submitted in a reasonable time to be determined by the County Board;
- 5) the final report will contain reference to all present County employees who were, in the opinion of the inquiry team, uncooperative in this endeavor;
- 6) Fairlington residents shall be advised of this inquiry and given an opportunity to testify and comment;
- 7) the County Board authorizes the sum of \$ to fund this inquiry.

CONFIDENTIAL

- 1) It has been suggested by some County officials that the 12 June 1972 County letter to CBI Fairmac (attachment #1) was not really a "requirement" but a "prodding" of the latter to inspect/replace the defective lateral sewers in South Fairlington during conversion. It is also suggested that CBI Fairmac refused to honor this "requirement" because they felt they were not legally bound to do so under the Codes operative at the time.

The only written record of what transpired on this question in 1972 is the 12 June memorandum/letter and 14 July 1972 County letter to CBI Fairmac (attachment #2); the 26 June 1972 letter from the latter to the County (attachment #3); and CBI Fairmac's record of the 22 June 1972 meeting with the County (attachment #4). Nowhere in these documents does there seem to be any explicit reference to the Codes invalidating the 12 June requirements so forcibly called for. The 22 June written record also seems to belie the County's initial desire to "...protect the investment to be made by the future purchasers of those units as well as the best interests of Arlington County." It seems that the 22 June meeting was not preoccupied with the latter sentiments or in a discussion of why or why not the Codes required inspection, but rather in ascertaining who would ultimately be responsible for the maintenance and correction of these laterals, i.e., the homeowner and his/her condominium association.

Additionally, CBI Fairmac apparently promised in this meeting to examine their maintenance records and make repairs "...anywhere there has been trouble in the past"

Pertinent questions that should be answered are a) is there any written evidence or testimony available to substantiate the suggestion that the County was dissuaded for legal reasons from enforcing the entire requirements of the 12 June letter?; b) why did the County suddenly drop its concern for the future investments of the homeowners and accept the concept that its responsibility to assure a safe and dependable sewerage system ended with the legal concept that the future homeowners, not the County, would be ultimately responsible?; c) are there any written records or testimony to show that CBI Fairmac was held to its apparent promise to check its maintenance records and make appropriate repairs?; and d) if no attempt was made to hold CBI Fairmac to this apparent promise, why not?

- 2) Apparently the County had at least one plumbing inspector assigned full or part time to South and North Fairlington during the entire period of renovation. The inspection reports sent to the County Board since 10 September 1977 indicate that sewer backups, wet basements, and other defects

in unoccupied Fairlington units were a weekly, if not daily, occurrence confronting an inspector. Given the number of backups in occupied units in South and North Fairlington apparently caused by construction debris or other reasons, the suspicion is raised that the inspector(s) did little to assure that the affected laterals were safe and cleaned to capacity before the final plumbing okay.

Assuming that many sewer backups occurred in unoccupied units during renovation (a reasonable assumption), were there any records kept of this by the inspectors? More importantly, were higher ups informed of such possible backups? Given the County's 12 June 1972 desire to look out for the welfare of the future homeowners, why was this continuing situation apparently ignored?

3) The appropriate County departments and authorities surely were aware of the sewer backup situation in occupied South Fairlington units if only a fraction of those owners who reported to the Ad Hoc Committee also had previously called the County. It has been suggested that other homeowners in Arlington have old lines (not necessarily common) and have experienced backups so that maybe Fairlington's situation is not unique. A serious survey of County records would probably show the opposite- that South Fairlington (and later North Fairlington) was clearly Arlington's "problem area" in this regard. If so, what action did the appropriate County officials take to correct this developing problem obviously foreseen by the County in June 1972?

4) The BOCA Code before and after 1975 clearly states that dryer venting should adhere to manufacturers recommendations. The County claims it did not enforce this code until February 1977. Why not? Were there any complaints from Fairlington residents (especially South Fairlington residents) on the question of CBI Fairmac-installed dryer venting made before this time? If the venting in South Fairlington residences installed before February 1977 exceeds manufacturers recommendations, can and will the County order the situation corrected at the installer's expense?

5) The County was presented evidence of an alleged sanitary-storm sewer connection on the part of CBI Fairmac on 10 September 1977 (re: the Glenns' testimony--attachment # 5). Why did the appropriate County officials not immediately investigate this clearly illegal violation of the Codes rather than wait almost two months and after prodding by the Ad Hoc Committee?

6) Since the question of differing interpretations of the BOCA Codes played and play such an important part in the resolution of Fairlington's sewer and other Code-related problems, why was not the BOCA authorities contacted immediately to render their professional opinion?

ARLINGTON COUNTY, VIRGINIA
INTER-DEPARTMENTAL MEMORANDUM

June 12, 1972

DATE: Fairlington building sewers
SUBJECT: Re-use for Condominiums

Dert W. Johnson, County Manager

P. O. Shepherd, Jr., Building Inspection Director *P.O.S.*
T. H. Dee, Jr., Utilities Director

The architect for the remodeling and conversion to condominiums of buildings in South Fairlington has submitted revised sewer plans for the two prototype buildings on 31st Street South. These plans contemplate re-using the existing 6" building sewers from the buildings to the County sewer in the street and re-connecting the plumbing within the buildings to these building sewers. The first plans submitted and approved indicated new building sewers would be installed with separate connections thereto from each unit.

Over the years we have received many complaints of stoppages in these existing building sewers and the County has had to assist in removing stoppages in these lines on numerous occasions. At times tree roots had blocked some lines so that cleaning the County sewer was not enough to open them.

In view of the problems encountered with these old 6" building sewers we have informed the architect that in order to re-use them the following will be required in order to protect the investment to be made by the future purchasers of these units as well as the best interests of Arlington County:

1. Build manhole at existing connection to County sewer in street.
2. Install cleanouts 5' from building and one at each end of plumbing ground work in basements.
3. Expose existing 6" building sewers from building to street line for inspection, checking of grade, and testing for leaks.

CC: Mr. Bianco

EXHIBIT 304
ATTACHMENT # 2

July 14, 1972

Mr. Theodore H. Eabinski, Vice President
Construction Operations
Fairmac Corporation
3118 South Abingdon Street
Arlington, Virginia 22206

Dear Mr. Eabinski:

This is to acknowledge and distribute copies of your letter of June 26th in which you confirm your agreement to install cleanouts in the basements where the house lines are out in a straight line to meet the County line and other cleanouts as we deem necessary, and to repair or rebuild existing sewer lines as necessary.

On the foregoing agreement, Arlington County is willing to waive the requirements as set forth in the memorandum of Mr. Shepherd and Mr. Doe under date of June 12, 1972.

Sincerely yours,

Bert W. Johnson
County Manager

EWJ:j

cc: Mr. Shepherd
Mr. Doe

EXHIBIT 3.3
FAIRMAC CORPORATION

3118 SO. ARLINGTON
ARLINGTON, VIRGINIA 22206

ATTACHMENT #3

June 26, 1972

Mr. Bert W. Johnson, County Manager
Arlington County Court House
Courthouse Road
Arlington, Virginia

Dear Mr. Johnson:

We refer herein to the Arlington County memorandum to you dated June 12 from Mr. Shepherd, Jr., and Mr. Doe, Jr., and to the June 22 meeting between the County and Fairmac Corporation representatives wherein we agreed that Fairmac Corporation will install cleanouts in basements where the house lines run out in a straight line to meet the County line and the other cleanouts as it deems necessary; and to repair or rebuild existing sewer lines as we deem requisite to solve maintenance problems; and Arlington County to waive the requirements as set forth in the said memorandum.

Also enclosed is a copy of our letter to the County Board rescinding our request for the vacation of a portion of South Wakefield Street.

Sincerely,

Theodore N. Babinski

Theodore N. Babinski
Vice President
Construction Operations

TNB/lz
Enclosure

3-2-83
ATTACHED #4
II. County Officials: Bert W. Johnson, County Manager
F.H. Doe, Jr., Utilities Director

County: Are you appealing the request of our people to put in manholes?

Fairmac: We don't think it's necessary to dig up all the lines.

County: The condition of the 6" lines leading from the houses to the county sewer is questionable. There have been stoppages in these lines in the past, and the lines have probably settled. The County does have responsibility for seeing that Fairlington's sewers are up to standards. Where the 6" lines meet the county lines, there should be a manhole, and, in order, to guarantee the condominium owners of good service, these sewers should be inspected.

Babinski: The type of ownership in South Fairlington will not change under the condominium arrangement. The corporation formed by the condominium owners will still be responsible for maintenance of common property outside the houses, including utility lines, landscaping, etc. The County will not be asked to maintain building sewer lines not on County property.

County: The manholes can be omitted if it is made clear to the prospective owners that the County's responsibility stops at the street, and that if something goes wrong, the County is not responsible for fixing it.

Without manholes, how would you clean out your sewers? If you can really do your own maintenance work without these manholes, it's alright to omit them.

Babinski: We fully intend to do our own maintenance, and we will provide cleanouts where we know they're necessary. But we want to disturb the ground over there as little as possible to preserve the landscaping. Also, if we were to dig up the lines with machines, they would be destroyed; hand-digging would be necessary. However, we will give you written assurance of our responsibility for sewer maintenance.

County: We need a contractual agreement. It should be incorporated in your sales agreement.

Smith: We would need this to protect Fairmac. The condominium owners should know that we can't guarantee that nothing would go wrong with the sewers.

County: You let us see this in writing, and we'll obtain a clearance on the language.

32-8383
Babinski: We have maintainance records and will make repairs anywhere there has been trouble in the past.

County: We're also concerned because these sewer lines were laid down during wartime without being inspected by the County. We feel strongly that there should be cleanouts on house lines, maybe not at 5' from the houses if there are plants there, but farther out if you have to.

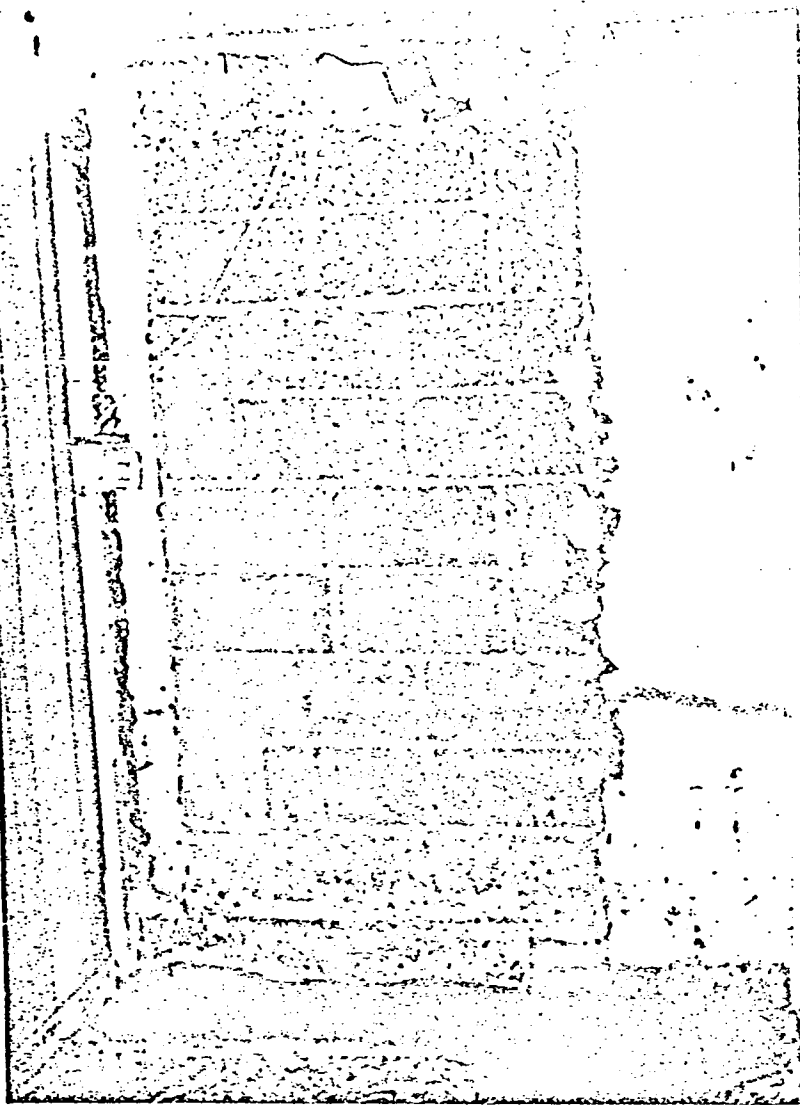
Kinser: We could install cleanouts in the basements where we've had to break up the slabs to lower the floor. It's a straight shot from there to the County line.

County: That's fine. Could you rod it?

Kinser: Yes.

County: What about storm sewer problems -- maybe you'll need some new outlets.

YES, WHAT ABOUT
STORM SEWER PROBLEMS?!



R282

7-18-75
Glen Home
4317-A2 3674 ST

③ cement
covering Foundation
Drain & Angling
To Sanitary Sewer
cleanout.

ATTACHMENT
#5



④ cement
continuing
From Photo
Above To
sanitary
sewer
cleanout.

Floor was
recovered
with Floor
Tile.

No County
permit or
inspection
were involved