

RESIDENT'S STATEMENT OF SEWER BACKUP SITUATION

in

FAIRLINGTON VILLAGE, ARLINGTON COUNTY, VIRGINIA

We, the undersigned residents of Fairlington wish to bring to the attention of the County Board a very serious County-related problem that not only directly affects us and our homes but also the other approximately 7000 residents and 3500 dwelling units in Fairlington Village. We refer specifically to the antiquated common sewers prevalent in our community and the growing instances of sewer backups that are causing untold hardship to ourselves and all other Fairlington residents who, if they don't experience the damages and sanitary problems associated with a sewer backup directly, must and will pay through their condominium assessments to have the problems corrected.

At the time we purchased our homes, we (and, we believe, the vast majority of Fairlington purchasers) were not aware that (1) we were acquiring a common lateral sewer and not an individual sewer as in most modern housing; (2) that if we bought a "low unit" (approximately one in 8 - 10 Fairlington units) we could possibly experience the backup of raw sewage and/or sewer water into our finished basements; and (3) that the original renovation plans for Fairlington submitted to the County by CBI Fairmac in 1972 apparently called for individual sewers for each unit and that the County not only dropped this requirement but in June 1972 even suspended their later compromise requirement to have all existing "6" sewers inspected and certified by the County before the sale of any units (see Appendices A, B, and C).

The fact that the County dropped even the latter requirement which probably would have saved later Fairlington residents untold expense and mental anguish, leads us to believe that a reasonable case can be made that the County was negligent in its duties in 1972 and continues to be, and that remedial action is called for on the part of the Arlington County Board. Accordingly, we are asking that the Board schedule a hearing as soon as possible to hear our grievances and proposals for remedial action.

With due apologies for the unavoidable length of this letter, we will attempt in the following paragraphs to systematically detail (1) the immediate problem as it affects the present and future homeowners of Fairlington Villages; (2) the facts, as we presently know them, as to County past and present involvement in the problem; and (3) our proposals as to County Board action

We sincerely hope that you and the Board will give this letter your speedy study and consideration as County Board action in this matter not only affects our interests but also the interests of the many citizens who are contemplating buying in North Fairlington in the next months (see Appendix D for an indication of the present sales rate in North Fairlington and CBI Fairmac's contemplated sales completion dates).

The community of Fairlington (both North and South) was built by the Defense Homes Corporation during WW II to house the expanding government work force. It is our understanding that the materials used in constructing the homes and the sewer lines were dictated by wartime availability of materials. Therefore the 540 common lateral sewers serving the approximately 3400 dwelling units

in Fairlington are of varying materials, including cast iron but predominantly terracotta (see Appendix #). These almost 40 year old common laterals serve an average of 6 to 10 units apiece with one unit being the "low unit", i.e. the unit under which other units pipes converge and exit out to the street. Since the "low" unit's basement is from 8" to 12" below the adjoining basements, a backup will automatically flood that basement to a depth of 8" to 12" (unless discovered earlier) before affecting the adjoining units.

As Appendix A indicates, there had been many complaints of stoppages in these lateral sewers before renovation. With renovation - which usually included the addition of washing machine outlets, a new bathroom with shower, and other new plumbing fixtures for each unit - the problem was bound to intensify. It is probable that many sewer backups before renovation were not reported to the County by the individual renters who reported directly to their landlord, CBI Fairmac. It is also probable that many renters did not see a backup as much of a problem because their basements were most likely used as storage areas and were not rented as finished basements as they are now. Conversely, many of the backups since renovation have not been reported to the County by individual owners because either the problem was reported exclusively to CBI Fairmac during the units warranty period or because the policies of some Village Boards did not require an initial call to the County to ascertain the cause of a backup as indicated in the Sewer Policy of Village I (Appendix F).

All of us have experienced sewer backups into our finished basements. (Mr. Tobin can attest to six over a 2 1/2 year period

and other have also had multiple backups). Contrary to Mr. Merriam's memorandum (Appendix E), we have information that over fifty (50) South Fairlington (evidence presented in this letter deals primarily with South Fairlington, although it is obvious that similar conditions do and will exist in North Fairlington) "low" unit owners have had backups (many multiple) since they moved into their units. These residents primarily live in Villages 3, 4 and 6 (South Fairlington is divided into six autonomous condominium "villages" consisting of approximately 300 units each with a total of 1732 units altogether). Complete reports have been received from Villages 3, 4 and 6 (11, 15, and 20 "problem" sewers respectively) so our partial information indicates that roughly 20% of the lateral sewers in South Fairlington can be categorized as "problem" sewers.

Not only does the actual or potential backup of raw sewage into a unit's basements directly affect the health and well-being of the afflicted resident, it adversely affects the resale potential and value of that unit and the moral and legal conditions under which that unit could be sold, to say nothing of the mental anguish suffered in the meantime. Needless to say, few of us would have bought our units if we had been informed of the fact that we were acquiring uninspected WWII common sewers (with a history of backups) at the time we contemplated purchasing our units. Most of us, and probably the vast majority of Fairlington purchasers were not clearly told at the time of purchase that we would have common sewers.

As it now stands, we are literally in a position of being our neighbors' cesspool and must depend on the goodwill of adjoining

units not to put anything in their toilets, etc. that would catch on the tree roots or other defects in these antiquated laterals. Conversely, our neighbors and ourselves are and will bear the cost of not only roto rooter services but also the expense of inspecting, repairing and replacing these units as needed in the months and years ahead. It takes little imagination to estimate the probable cost to the condominium owners of eventually doing this with 540 laterals.

Mr. Tobin's lateral, which is scheduled to be replaced and/or repaired in the next few weeks, will probably require the expenditure of \$3,000 to \$4,000. We sincerely feel that this expense and problem would have been largely eliminated if the County had done its duty in 1972.

Concurrent with the mailing of this letter, we plan to circulate a "fact sheet" to all residents of Fairlington detailing the problem and our suggested course of action (it is probable that a majority of Fairlington residents do not even know that they have common sewers or that a serious problem exists, and that only a handful are aware of the original 1972 County requirements and the County exemption of CBI Fairmac from the inspection of these sewers). Through feedback, we hope to not only receive concrete data on the true extent of sewer backups in Fairlington but also on a myriad of other structural problems that we will ask residents to address. This new data will be presented to you and the Board at an appropriate time.

On April 20, 1997, John Tobin and Mrs. Marcia Menes visited various departments in the Arlington County government to ascertain

whether there was any truth to the rumor that CBI Fairmac was exempted by County authorities from the pre-sale inspection and certification of Fairlington's sewers. The first official visited, Mr. Timbie, who is the Administrative Aide to Mr. Johnson, Director of the Department of Transportation, stated that his office was only involved in storm sewers and could not be of much assistance in the matter. The next official we met, Mr. Angel of the Department of Utilities, was of some help on the question of County records concerning sewer backups in Fairlington. He repeated that his Department's responsibility was only for the main County sewer and not for the connecting laterals (the responsibility for these currently and technically rests with the condominium associations). He admitted that his Department had got many calls concerning sewer backups in Fairlington but records of responses would probably only be kept if (1) the County sewer was at fault and/or (2) the call was received on a weekend and a "special" response was made.

The third person we interviewed was Mr. Bianco of the Inspections Division. He acknowledged that his Division had the responsibility for approving the lateral sewer lines in new and renovated construction and that, yes, the County did exempt CBI Fairmac from inspection. He proceeded to produce the memorandums attached as Appendices A, B, and C. Although he was an employee of the Inspections Division in June 1972, he claims that he was never told why the exemption was given and does not know to this day what County representatives were at the June 22, 1972 meeting referred to in Appendix B. He also stated that he still feels the original requirements, as stated in the June 12, 1972 memorandum, were and

are justified but that his opinion was overruled. He stated that even before his division received the June 26th memorandum (Appendix B) that his division was informed bluntly by the "County Managers Office" that the inspection provision was no longer operative. No reason was given to him for this reversal.

After talking with Mr. Bianco, Mr. Tobin and Mrs. Menes interviewed Mr. Bierd, the Acting Director of Inspection Services. Mr. Bierd said that his office had no record of the aforementioned June 22nd meeting and he knew no more than Mr. Bianco about what happened in 1972. We asked if it was possible to get copies of the original CBI Fairmac proposals for the renovation and the "revised architects" plans referenced in the June 12th memorandum, as well as the present plans CBI Fairmac is operating under. He said that he would try to locate these documents but that it was possible that the earlier plans are no longer available (as of the present, Mr. Tobin and Mrs. Menes have received no copies). He also suggested that we contact the County Manager's Office to see if there was any documentation on the June 22nd meeting.

On April 21, 1977, Mr. Tobin phone Mrs. Johnston who was identified as the current County Manager's Secretary and that of his predecessor, Mr. Johnson. She told Mr. Tobin that she did not personally remember anything of a June 22, 1972 meeting or its substance and was sure that there was no minutes of such a meeting. When asked why she was so sure, she replied that the County Manager's Office had made an extensive search of their records concerning this matter just two weeks ago and that the three memorandums I quoted were the result of that search. These had been given to

Mr. Bianco at that time. It was not made clear to Mr. Tobin why the search was initiated or who requested it.

On April 28, 1977, Mr. Tobin, who was still frustrated in finding out why CBI Fairmac was exempted and what happened at the June 22nd meeting, formally asked Mr. Walter Frankland to investigate the matter. He subsequently contacted the Acting County Manager at the moment, Mr. Merriam, and specifically asked for a report from him concerning the facts surrounding the 1972 exemption and the current County policies towards the situation in Fairlington. Mr. Merriam's reply is attached as Appendix E. Needless to say, Mr. Merriam's report completely ignores the 1972 question. Mr. Tobin subsequently contacted Mr. Merriam who admitted that he made no effort to investigate that question (such as attempting to interview the retired former County Manager) and that he felt his only duty was to ascertain the extent of the sewer backup problem in Fairlington which he did primarily through checking the Utilities Department records. When Mr. Tobin pointed out that this problem is much more serious than was reflected in his report, Mr. Merriam stated that the current County policy of no lateral sewer inspection in North Arlington is "justifiable."

Mr. Tobin had attempted to receive from CBI Fairmac their version of the circumstances surrounding the 1972 exemption outlined in Appendices A, B, and C. He has been unsuccessful in this as well as his attempts to contact Mr. Bert Johnson, the former County Manager. We believe that it is imperative that the questions surrounding the 1972 exemption be answered fully and hope that a full County Board hearing will do so.

There are many more facts and opinions that we could present for your consideration

for your consideration in this letter, but will reserve them for a later hearing. We firmly believe, however, that no matter what the reasons that the County excused CBI Fairmac from inspection in 1972, there is a clear case to show that the county was not acting ".... to protect the investment to be made by the future purchasers of these units." We therefore believe it is the duty of the present County Board to initiate remedial action to protect the investment of all present and future homeowners in Fairlington and to relieve the suffering of those directly affected by sewer back-ups such as ourselves.

With the above in mind, we submit the following remedial proposals for your initial consideration (in the course of future hearings there will probably be other proposals and compromises submitted):

- (1) Immediate County inspection and certification of the lateral sewers of all unsold units in North Fairlington with required repair/replacement by CBI Fairmac or the County as necessary.
- (2) Immediate County inspection of all Fairlington sewers that have had documented backups with the repair/replacement of these laterals at County or CBI Fairmac expense.
- (3) Future inspection and certification by the County of all other Fairlington laterals that are not now documented as "problem sewers", with repair/replacement at County or CBI Fairmac expense.
- (4) The definition given to Mr. Tobin by Mr. Bierd that any sewer that has tree roots in it is automatically a "bad" sewer be a primary consideration by the County in whether

to order the repair or replacement of a sewer.

- (5) The County will initiate an investigation of CBI Fairmac to ascertain whether there were/are violations of County Building Codes on the part of CBI Fairmac and to ascertain whether CBI Fairmac should be required to prominently disclose to future buyers and to the County their records of sewer maintenance problems.

The above constitute a partial listing of suggested actions we and other residents of Fairlington will present to the Board. We hope that you will agree that simple justice necessitates an open and full discussion of these very serious problems. Our apologies again for the necessary length of this letter.

Sincerely,

cc: All County Board Members
Commonwealth Attorney's Office
(Mr. Henry Hudson)