

**The Proliferation of Private Communities and the Role of County Government
in Loudoun County, Virginia**

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CHAPTER TWO: THE DEVELOPMENT OF LOUDOUN COUNTY

The following chapter is a brief historical look at Loudoun County. The purpose of this chapter is to provide insights as to why planned unit communities are a dominant form of housing within the County. The chapter focuses largely on historical land tenure, urbanization in Fairfax County to the east, and public infrastructure that was developed as a result of the building of Dulles International Airport. These three factors alone have created a suitable environment planned unit communities. While a myriad of other factors have made the environment for the establishment of planned unit communities appropriate, not the least of which is the current nature land development industry, this chapter focuses only on the specifics of Loudoun County.

A Brief History of Loudoun County

The history of Loudoun County, from its formation to present, has been affected greatly by its particular geography. The county is located at the tip of the Northern Neck of Virginia, 25 miles west of Washington DC and on the border with Maryland and West Virginia. This geography has tied the fate of Loudoun County to Washington DC region, making it a border county. While Loudoun County lies in the shadow of the Nations Capital and Fairfax County, is also borders West Virginia and Maryland and has influences from these regions as well. The result has been that the county, while prosperous historically has a mix of persons with large land holdings to the East and South and small farmers and small towns to the West.

The Origins of Loudoun County

The land area of what is now Loudoun County, Virginia was part of a grant from Charles III of England in 1649 to a group of seven British men. The 5.2 million acre tract of land stretched from the Rappahnock River to the Potomac River and currently is known as the Northern Neck of

Virginia. The seven British men sold their rights to the second Lord Culpepper who conferred the land to his grandson, Lord Fairfax in 1688.²⁶

The tract of land was administered by these seven proprietors, and then Lord Fairfax who leased and sold the land in a system of extensive land speculation and promotion schemes not unlike those of modern America. The settlers of the Northern Neck did not pay quitrent to the Crown, but to the proprietors instead. Typically, the land would be sold to large land speculators, who in turn sold or leased tracts of 100 to 400 acres to settlers. These land speculators acted as the modern equivalent of a real estate brokers.²⁷

Over the next century, the area was divided into separate counties. Prince William County (including is now Fairfax and Loudoun) was separated from Stafford County in 1732. Fairfax County (including the area of Loudoun) was separated from Prince William in 1742. Loudoun County became an independent County in 1757.²⁸

As of 1769, most of the landholders modestly owned between 100 and 500 acres. Only 11 out of 287 landholders owned more than 1,000 acres. However, the large landholders were very powerful, with one Robert Carter owning 39,509 acres, renting to 177 tenants who paid significant rent in terms of tobacco and currency.²⁹ Small farms predominated in the Western portion of the county, settled by persons Scot-Irish and German decent as well as Pennsylvania Quakers. In the Eastern and Southern portion of the county, old English Cavaliers, a more elite group owned and managed much larger tracts of land.³⁰ An observer of Loudoun's cultural geography at the end of the first quarter century made the following comment: 'A very considerable contrast,' he said, 'is observable in the manners of the inhabitants in the different sections of the County. That

²⁶ Head, James W. History and Comprehensive Description of Loudoun County, Virginia, Baltimore, MD: Clearfield Company, Reprints and Reminders, 1908, (1989), pg. 15-16.

²⁷ Poland, Charles P. From Frontier to Suburbia, Marceline, Missouri: Walsworth Publishing Company, 1976, pg. 12

²⁸ White, Henry P. "Historical Sketch of Loudoun County". An Economic and Social Survey of Loudoun County, Patrick A. Deck, ed., Charlottesville, Virginia: The Michie Company (The University of Virginia), 1926. pg. 1.

²⁹ Poland, Charles P. From Frontier to Suburbia, Marceline, Missouri: Walsworth Publishing Company, 1976, pg. 26.

³⁰ Head, James W. History and Comprehensive Description of Loudoun County, Virginia, Parkview Press, 1908. pg. 110.

part of it lying NW of Waterford was originally settled by Germans and is now called the German settlement, and the middle of the County, SW of Waterford and West of Leesburg, was mostly settled by emigrants from the middle states, many of whom were members of the society of Friends. In these two sections the farms are generally from one to three hundred acres and are mostly cultivated by free labor. In the South and East parts of the County the farms are many of them much larger and principally cultivated by slave labor.'

The county boundaries fluctuated slightly in 1798, due to political differences between the socially elite planters Eastern and Southern Loudoun and the inhabitants of Western Loudoun. The political compromise involved ceding the area east of Sugarland Run to back to Fairfax County. (Ironically, this includes a portion of the area referred to later as the Cascades tract and was partially returned to Loudoun County after the boundary was resurveyed in 1954.)

A Picture of the County in the Early 19th Century

By 1790, the population of Loudoun County reached 18,962 persons with 14,749 White persons and 4,213 African Americans. Interestingly, this number remained extremely constant from 1790 to 1950, with the County consistently having a population of about 20,000 residents with about one quarter of the population being African-American.

The county was largely agrarian, and the county had a number of small towns and villages surrounded by farms.³¹ Leesburg, the County Seat, was the largest town and exhibited influence over the entire County through not only politics, but also had the largest number of stores, mechanics, houses of worship, hotels, physicians dentists and attorneys.³²

Originally the major export crop in Loudoun County was tobacco, but like the rest of the Northern Neck this gradually this changed to wheat.³³ Typically, the farmers would grind the wheat to flour

³¹ Poland, Charles P. From Frontier to Suburbia, Marceline, Missouri: Walsworth Publishing Company, 1976. page 65.

³² Ibid, pg. 71.

³³ Harrison, Fairfax. Landmarks of Old Prince William: A Study of Origins in Northern Virginia, Baltimore, MD: Gateway Press, 1987. pg. 404.

and transport it overland to the port of Alexandria, Virginia for export. Rye, corn and oats were primarily consumed "at home" and pork and beef were produced for local markets such as Baltimore, Alexandria and the District of Columbia.

19th Century Transportation Improvements

Transportation innovations in the 19th Century had a major effect on the County. New turnpikes and railroads were brought to the County between 1800 and 1860, encouraging commerce and linking Loudoun with the Potomac for exports (and Alexandria in particular). In the late 18th Century, no one group was responsible for road maintenance and overland transportation difficult. Thus merchants from Alexandria to lobbied the state legislature to form what became the turnpike system, where private companies built and maintained roadways for profits from tolls.³⁴

While few of the turnpike companies were financially successful, the Little River Turnpike Company constructed a financially viable turnpike from the Village of Aldie to Alexandria (now Route 50). Other companies built turnpikes that connected the Little River Turnpike at Aldie to Warrenton and the Shenandoah Valley.

After the success of the Little River Turnpike, farmers and businessmen in the Leesburg area formed a company to build a turnpike from Leesburg to Alexandria. Georgetown businessmen convinced the Leesburg farmers and businessmen (now Route 7) not to join the road to the Little River Turnpike, but to bring it northward for a junction with their Georgetown Pike at Drainsville. Thus, the county emerged with two major groups of east-west roadways with little north-south linkage between them.³⁵ The turnpike system provided not only access to markets and mobility for citizens but improved communications through mail service.³⁶

³⁴ Poland, Charles P. From Frontier to Suburbia, Marceline, Missouri: Walsworth Publishing Company, 1976. page 114.

³⁵ Ibid, pg. 118.

³⁶ Ibid, pg. 122.

Loudoun was also able to secure rail service from Alexandria through Leesburg by 1860. By 1900 the rail line traversed the county and terminated at Snicker's Gap, opening the county to improved transportation for agricultural goods and citizen transport.³⁷

An Agrarian County (1870-1945)

Until the mid 20th Century, Loudoun County remained agrarian and remote. The county's population in numbers and nature was stable over this period, and the farming society evolved slowly. While corn replaced wheat as a staple crop over this period, farming remained the primary way of life for most Loudouners who often lived on ancestral lands in homes built in the 1790's and early 1800's.

By the 1920s Loudoun ranked first in the state in corn production, third in the state in wheat production and dairying had emerged as a major industry in the county. Seventy-four percent of the farms were operated by their owners and the remainder by professional managers or tenants.³⁸ The small and modest farm remained the dominant economic unit in the county and industry in the county was limited to grain, milling and lime companies.

However, technological improvements in transportation, electricity and agriculture changed the lives of Loudouners greatly. By 1924, County citizens owned 2,134 cars, trucks or motorcycles and tractors were replacing horses.³⁹ The Loudoun Light and Power Company organized in 1912 brought electricity to Purcellville, Roundhill and Hamilton. The Tri-County electrical co-op was established to bring electricity for the rural areas in the late 1930's. With electricity came running water, indoor plumbing, washing machines, refrigerators and electric lights, greatly changing the lifestyle of Loudoun residents.⁴⁰

³⁷ Ibid, pg. 127.

³⁸ Deck, Patrick A. An Economic and Social Survey of Loudoun County. Charlottesville, Virginia: The Michie Company (The University of Virginia), 1926.

³⁹ Ibid, pg. 46.

⁴⁰ Poland, Charles P. From Frontier to Suburbia. Marceline, Missouri: Walsworth Publishing Company, 1976, pg. 334.

By the turn of the century, the turnpike system of roadway maintenance was a failure and in 1923 the Commonwealth of Virginia initiated a gasoline tax to finance roadways. In the 1930's under the Harry Byrd administration, the state assumed control of all 'public roads causeways, landing and wharves in the State of Virginia that had been previously been under local control'.⁴¹ During this period, Loudoun's roadways were improved and roadway access to Washington DC and Alexandria was improved as well.

Through this period, as today, Loudoun citizens expressed fiscal conservatism and a desire for low taxes and small government. In the 1930's Loudoun's administration of New Deal policies to support the unemployed met with difficulties due to ideological conservatism. While the county benefited from federally funded projects, county officials and residents often expressed misgivings about 'excessive' government spending. The County encouraged the state office of the Federal Emergency Relief Administration (FERA) to reduce workers wages and increase working hours during the summer months. Likewise, the local chapter adopted a "no work, no eat" policy, where indigent families were given seeds and if the indigent were negligent in "helping themselves by not planting gardens, then they could not expect handouts from the FERA."⁴²

During Second World War, the problem of excess labor turned into a labor shortage. Likewise, lack of materials for farm equipment became a major problem and many farms were forced to use more modern farm equipment if it was available. (In addition, German prisoners of war were used for labor.) Loudoun's production and income soared during the war and the number of farms increased by 15%. By the end of the war 84.4% of the County land was used for agricultural purposes and the county was ranked as one of the five best agricultural counties in the Eastern region of the United States.⁴³

⁴¹ Vander Lugt, Robert D. and Satil Virkar, Coordination of Transportation Planning and Land Use Control: A Challenge for Virginia in the 21st Century, The US Department of Transportation, National Transportation Library, pg. 5.

⁴² Loudoun Times-Mirror, May 24, 1934.

⁴³ Poland, Charles P. From Frontier to Suburbia, Marceline, Missouri: Walsworth Publishing Company, 1976, pg. 337-341.

Loudoun's Neighbor to the East, The Urbanizing Fairfax County

While Loudoun County slept in a relatively stable, conservative economic, demographic and cultural atmosphere based on farming, rural hamlets and small town life during the first half of the 20th Century, its eastern neighbor Fairfax was undergoing a major evolution. Fairfax County changed from an agricultural community to suburban community. The population in Fairfax County was 18,580 at the turn of the century, but had grown to 98, 557 persons by 1950.⁴⁴

Fairfax County, located closer to the markets of Alexandria and Washington DC had transportation systems that allowed for Fairfax citizens to access not only city markets, but city employment and culture as well. As early as 1920's Fairfax had bus service from Washington DC and Alexandria to various towns in the County. In addition Fairfax had the advantage of trolley lines that ran connected the County to Alexandria and Washington DC. Where in 1900, most of Fairfax's citizens lived on farms, by 1925 most of the 21,943 inhabitants lived in town.⁴⁵ In 1923 a Fairfax observed, "...our small farmers...have sold their farms or abandoned their leases and moved into the cities and are earning more money per day, than they made per week in the country."⁴⁶ Small farmers could not compete with the cities for labor, as labors could earn five times the rate of farm labor by traveling to Washington. Thus, many ceased farming operations, bought Model T Fords and commuted to Washington to work as well.

From the 1920's forward the motor car and the truck were the primary source of transportation for Fairfax County citizens. By 1922, large portions of Fairfax's dairy products were transported by truck and farmers relied on road systems for transport of goods. In 1925, a system of statewide highways, uniform signing and the beginning of a comprehensive transportation system was established and the Fairfax Board of Supervisors focused on the highway system as major task. The highway system linked Fairfax to Washington DC and Alexandria, drawing shoppers and

⁴⁴ Fairfax County Office of Research and Statistics, Fairfax County Profile, 1977.

⁴⁵ Neterton, Nan, Donald Sweig, Janice Artemel, Patricia Hickin and Patrick Reed. Fairfax County, Virginia: A History. Fairfax, Virginia: Fairfax County Board of Supervisors, 1978, pg. 541.

⁴⁶ Derr, Harry B. Fairfax County Agricultural Agent, Annual Reports, 1923.

commuters from Fairfax to urban areas. By 1939 almost all horse drawn vehicles disappeared from the highway system and paved roads with motor vehicles became the norm.⁴⁷

Meanwhile the importance of the federal government expanded with New Deal programs and World War II, employing a large percentage of Fairfax County residents. By 1950, half of the civilian population was composed of government employees. The Pentagon was completed in nearby Arlington in 1943.⁴⁸ As the federal government expanded, the area attracted newcomers from the entire nation that moved to the area for work and many chose Fairfax as a place to reside. A comparison between New York City and Washington DC in 1952 revealed that while the Washington DC area was a tenth of the size of New York, the number of cars passing from Northern Virginia over the Potomac to the District of Columbia (218,199) exceed the number of trips from New Jersey to Manhattan over the Hudson (216,160).⁴⁹

Fairfax County struggled with the change from a rural area to an urban area as subdivisions appeared in Falls Church, McLean, Langely and the Chain Bridge and near Arlington and Alexandria.⁵⁰ As early as 1928 an ordinance was passed requiring all subdivision plats to be approved by the County Engineer, however by 1952 half of the 600 subdivisions in Fairfax County had problems with soil erosion.⁵¹ New suburban residents demanded public works and services beyond was needed by the farming community and taxes grew with the need for public water, sewers, schools, health services, fire protection, libraries and police forces.⁵² In 1953, Fairfax changed its government administrative form accommodate to its now urban/suburban population.

Eventually Fairfax's evolution would affect Loudoun as well. As Fairfax developed, "measuring distance by time, not space," made it possible to locate light industrial and business activities all

⁴⁷ Neterton, Nan, Donald Sweig, Janice Artemel, Patricia Hickin and Patrick Reed. Fairfax County, Virginia: A History. Fairfax, Virginia: Fairfax County Board of Supervisors, 1978, pg. 591-594.

⁴⁸Ibid, pg. 545.

⁴⁹Ibid, pg. 596.

⁵⁰Ibid, pg. 610.

⁵¹Ibid, pg. 562.

⁵²Ibid, pg. 616.

well as suburban residential construction within 20 to 25 minutes of the District of Columbia. With the building of the Shirley Memorial Highway, the National Beltway, I-95 and other transportation devices, the area's percentage of land devoted to industrial purposes quadrupled in the 1960s. By 1960 the population of Fairfax County reached approximately 250,000 persons and by 1970 the population grew to approximately 450,000 persons.⁵³ (Currently the population of Fairfax County is estimated to be 929,239 persons)⁵⁴

Urban Development Comes to Loudoun County

After 1950, Loudoun began to feel the effects of urbanization as the Washington DC Metropolitan area sprawled west. The major economic engine of change in eastern Loudoun was the establishment of Dulles International Airport on the Fairfax-Loudoun border, which would open up the eastern end of the County to commercial and residential development. In addition to economic development within the county, in the 1960's and 1970's Loudoun increasingly became a bedroom community for commuters to Fairfax County and Washington DC.

The Airport on the Border

The current site Dulles International Airport was one of four sites chosen by the Federal government for a new airport to serve the Washington DC Metropolitan area. The project moved quickly, with the first mention of the airport appearing in the Loudoun Times-Mirror in October of 1957. On January 16, 1958, President Eisenhower announced that he had selected the site "on the Loudoun-Fairfax border, and work is to begin immediately on this \$50,000,000 project." By January 30th, 5,000 acres Loudoun County and 3,000 acres of Fairfax County were condemned for the building of the Airport. The landowners were largely removed from their properties by the

⁵³ Fairfax County Office of Research and Statistics, Fairfax County Profile, 1977.

⁵⁴ 1998 Annual Growth Summary, Loudoun County Virginia, Leesburg, VA: Loudoun County Department of Economic Development, May 1999, pg. 4.

middle of summer of 1958.⁵⁵ The federal government moved quickly and decisively, and little could be done to debate the project on a local level.

Most of the public debate that did happen in Loudoun and Fairfax centered around the public taking of land, access roads to the new airport and the changes in land values in the area. Eventually, Route 28 was built as an access road for the airport, opening up a major north-south corridor in eastern Loudoun and much later the Dulles Toll Road was built linking eastern Loudoun with Washington DC and Maryland. The new highways acted to reduce travel time from eastern Loudoun to employment centers in Fairfax County and Washington DC.

However, one of the greatest immediate impacts of the airport was the sewer system, built by the federal government that would open Eastern Loudoun to development. The 25 million gallon sewer crossed under the river and went to the Washington Blue Plains Plant. The federal government paid for the capital cost of the infrastructure. The price of utilizing the sewer for eastern Loudoun developers was drastically below other alternatives.⁵⁶ In response to the new sewer system, the County formed the Loudoun County Sanitation Authority in 1959.⁵⁷

Supplying Water from Loudoun to Loudoun via Fairfax City

The Loudoun County Sanitation Authority was to eventually buy much of its potable water, not from the Dulles Airport arrangement, but from Fairfax City, flowing from a dam built on Loudoun soil. As early as 1955, the Town of Leesburg was suffering from acute water problems stemming from insufficient supply and aging infrastructure (one 60,000 gallon wooden tank built in 1909). Meanwhile, the City of Fairfax was undergoing similar problems and voted in April of 1956 on a 4.5 million dollar bond to pay for a dam at Goose Creek in Loudoun County. The terms of the proposal were that the Town of Leesburg could buy water from the City of Fairfax at cost. Three weeks later the Leesburg Town Council issued a statement, "It is a public necessity for the Town

⁵⁵ Rafio, Frank. Within the Iron Gates: A Collection of Stories about Loudoun as Remembered after Rereading the Loudoun Times-Mirror for the Years 1925-1975. Leesburg, Virginia: The Loudoun Times Mirror, 1988, pg. 210-218.

⁵⁶ Ibid, pg. -218.

to buy water from Fairfax." However, the County, (which is a separate jurisdictional entity from the Town of Leesburg) studied the issue and determined that the Fairfax dam would not benefit Loudoun County in any way and destroy the future use of Goose Creek.⁵⁸

However, Fairfax City had taken the issue to court and proven that the Fairfax had a legitimate public necessity and essential public convenience for taking water from Loudoun County. So the Loudoun County Planning Commission Chair issued a statement that Fairfax would need to obtain approval from the Commission before building the dam. The battle of words flew through 1957, with Loudoun County's attorney telling the City of Fairfax to "go look elsewhere" and "If you try to build a dam, you will face an injunction. Our zoning laws do apply to your project."⁵⁹ However in January of 1958, the Supreme Court of Virginia refused to grant a temporary injunction halting the construction of the Fairfax Dam.

Through the next year, Loudoun County's vocal discontent continued while Fairfax City sold bonds for the dam. The "Keep the Goose Creek for Loudoun Committee" was formed, and the editor of the Loudoun Times Mirror stated in the paper, "It makes no sense at all for this distant municipality to reach more than 20 miles to grab water needed on the spot."⁶⁰ When the City of Fairfax began construction on the dam in January of 1959, the Loudoun County Board of Supervisors called a special session to discuss the matter. Unfortunately, a special session requires a five-day waiting period for public notice and in the meantime the Mayor of Leesburg had his picture taken shoveling dirt at the new site. During the special session, the Supervisors agreed to study the issue further, and eventually decided to negotiate with Fairfax City on the terms of the dam.

The Federal Government, not to be outdone, "called upon the town of Fairfax to abandon its damming of Goose Creek." A member of Congress (from Nevada) called for a Northern Virginia

⁵⁷ Poland, Charles P. From Frontier to Suburbia, Marceline, Missouri: Walsworth Publishing Company, 1976. page 370.

⁵⁸ Rafo, Frank. Within the Iron Gates: A Collection of Stories about Loudoun as Remembered after Rereading the Loudoun Times-Mirror for the Years 1925-1975. Leesburg, Virginia: The Loudoun Times Mirror, 1988, pg. 150-151.

⁵⁹ Ibid, pg. 152.

Water Authority. In addition, the Army of Corp of Engineers was studying a project to dam the Potomac River, flooding 15,000 acres of Loudoun to supply water to the District of Columbia.

Meanwhile, Fairfax City continued to construct and Loudoun County secured two more attorneys to fight the dam. Loudoun County filed another lawsuit requesting a permanent injunction, that while insufficient to stop the project, did halt the selling of bonds by Fairfax City. The court date for the injunction was postponed twice.

After three years of legal battles, the matter was settled in a special closed door session with the Board of Supervisors in 1959. The agreement was that the City of Fairfax would only sell water to the Loudoun County Sanitation Authority, and that Fairfax would cancel the agreement with the Town of Leesburg. Apparently, when the Supreme Court of Virginia put its stamp of approval on the dam permit, the Loudoun County Board of Supervisors realized that chances of a court victory were slim and chose to negotiate instead. The Town of Leesburg was the major loser and continued to have water problems for some time to come.⁶¹

The Planned Communities

The development of Eastern Loudoun was spurred by the infrastructure that Dulles Airport and Fairfax City brought to the County and by the fact that large tracts of land still existed for purchase. In addition, employment opportunities in Fairfax and Washington DC were accessible by car by the 1960's for residents. Realizing the opportunities, corporations began purchasing large tracts of land for development.

The first planned community in Loudoun is located just north of Dulles Airport, and began when the Broyhill Company bought a 1,700 acre tract of land for building a planned community named Sterling Park. In 1961, county officials opposed the project by refusing to rezone the land for the new community. A consultant's report on the project stated that Sterling Park was not needed "to

⁶⁰ Ibid, pg. 153.

⁶¹ Ibid, pg. 154-158.

meet the growth" anticipated in the County and a member of the Board of Supervisors stated "I do not think Loudoun can afford this much impact at one time."⁶² However, the Broyhill Company began construction of 1,700 homes on 500 acres of the tract that was already zoned residential and began a public relations campaign that would eventually convince the Board of Supervisors to grant the rezoning. The Board of Supervisors amended the Zoning Ordinance to provide for Planned Communities in the summer of 1962.⁶³

In 1964, US Steel bought out the Broyhill Company and the completed Sterling Park project, which now encompasses 3,080 housing units. The second major planned community in Eastern Loudoun, Sugarland Run, followed the lead of Sterling Park and broke ground in 1970. Sugarland Run now encompasses 1,761 housing units.⁶⁴

From the beginning, Loudoun County tried to develop strategies for coping with the fiscal impact of new planned communities such as Sterling Park. Part of the original agreement for the rezoning of Sterling Park was that the developer would pay \$250 per unit to a County Trust Fund for construction of schools. However, the developer did not pay until May of 1966, when a check for \$100,000 dollars was presented to the Board of Supervisors.⁶⁵

During the mid 1960's and 1970's, many other speculators and real estate developers bought large farms east of Leesburg with the intention of rezoning the tracts for construction of planned communities. Most of these developers had more difficulty obtaining rezoning and would have to invest more time before constructing their projects, however the Xerox Corporation, Levitt and Sons, I.T.&T. and I.B.M. all obtained large tracts of land during this period with the intention of building planned communities.⁶⁶ Xerox purchased the land that is now the Landsdown area, and will sport 4,975 housing units in addition to industrial and commercial development. IBM

⁶² Poland, Charles P. From Frontier to Suburbia, Marceline, Missouri: Walsworth Publishing Company, 1976, pg. 368.

⁶³ Ibid, pg. 368.

⁶⁴ Loudoun County Department of Economic Development, 1998 Annual Growth Summary, Leesburg, Virginia.

⁶⁵ Rafo, Frank. Within the Iron Gates: A Collection of Stories about Loudoun as Remembered after Rereading the Loudoun Times-Mirror for the Years 1925-1975. Leesburg, Virginia: The Loudoun Times Mirror, 1988, pg. 221.

purchased the 1,128 acre Belmont Plantation near Leesburg, which is to become a planned community of 2,420 housing units. Levitt and Sons bought the acreage that is now the Countryside planned community and sold the area to IT&T where 2,434 housing units now stand.⁶⁷ Many of these communities are still currently under construction.

In addition, a number of other developers have bought large tracts of land for the establishment of planned communities. Typically the developments discussed previously and listed below incorporate commercial and residential space to create nuclear communities and are located in the area from Leesburg to the County's eastern border.

- Sterling Park (US Steel) – 3,080 units, 100% complete
- Sugarland Run (Boise Cascade) – 1761 units, 100% complete
- Countryside (Levitt and Sons, ITT) – 2,437 units, 100% complete
- **Cascades - 6,564 units at build out, 85% complete**
- Ashburn Farm – 3,830 units at build out, 84% complete
- Ashburn Village - 5,110 units at build out, 74% complete
- South Riding - 5,370 units at build out, 32% complete
- Potomac Station - 1,614 units at build out, 23% complete
- Broadlands – 3,078 units at build out, 19% complete
- Colonnade (Dulles Town Center) - 1,068 units at build out, 10% complete
- Landsdown (Xerox) – 4,975 units, 8% complete
- River Creek - 1,385 units at build out, 8% complete
- Stratford - 1,382 units at build out, 1% complete
- Stone Ridge - 2,792 units at build out, 0% complete
- Bramelton - 6,240 units at build out, 0% complete

⁶⁶ Poland, Charles P. From Frontier to Suburbia, Marceline, Missouri: Walsworth Publishing Company, 1976, pg. 368.

- Kirkpatrick Farms - 1,417 units at build out, 0% complete
- Belmont (IBM) - 1,933 units at build out, 0% complete
- Loudoun Parkway Center units, 1010 units at build out, 0% complete

The Planning Philosophy of Loudoun: Shooting for Planned Growth

Eastern Loudoun had access to transportation water and sewer infrastructure, and large tracts of land making the area ripe for building small communities. However the planning philosophy of Loudoun also played a major role in the eventual development pattern of planned unit developments that is emerging.

The origins of planning in Loudoun County came from the 'genuinely feminine movement'⁸⁸ of the Virginia Garden and Ladies' Clubs to beautify highways in Virginia. The godmother of planning in Loudoun County was Ms. Vinton Pickens who took an interest in planning through her involvement in the Leesburg Garden Club's efforts to control billboards along the state's highways. After attempting to resolve the billboard problems in other manners, the club entertained a guest speaker from the Department of Highways on the topic of zoning. When the head landscape architect from the Virginia Department of Highways came to speak to the Garden club he passed out informational pamphlets prepared by the state planning board giving advice on how community members could instigate planning. (Apparently, unbeknownst to the ladies until later, building setbacks enforced through zoning would save the highway department hundreds of thousands in dollars in mowing costs.) The garden club was so impressed that Ms. Vinton spent a year of lobbying the Board of Supervisors for the cause of zoning.

To her surprise the Board appointed her chairman of a newly formed Planning Commission in 1941. In September of 1942, Loudoun unveiled its first zoning ordinance and became one of the first rural counties in the US to have a zoning ordinance. From the beginning of planning efforts

⁸⁷ Loudoun County Department of Economic Development, 1997 Annual Growth Summary, Leesburg, Virginia.

⁸⁸ Vinton Liddel Pickens, Notes for Eugene Sheel Interview, June 20, 1997.

in Loudoun County to the present, planning has never deviated from the original emphasis maintaining the rural, agricultural beauty of the county instilled by the garden clubs.⁶⁹

In 1956 Loudoun adopted its first land use plan. The plan laid out concepts and goals that run through all of the county's planning efforts to the present date. Some of basic concepts are outlined below:

- To preserve the county's agricultural heritage.
- To retain the county's attractiveness.
- To protect the taxpayers of the county from harmful effects of ill-advised and haphazard growth.
- To protect the established economy of the towns.⁷⁰

The 1956 plan laid out the disadvantages and expenses caused by 'urban sprawl' – defined as "an indiscriminant mixture of dwellings on small lots fronting on major highways."⁷¹ The plan recommended that residential growth be channeled into existing towns and to restrict the subdivision of agricultural land to avoid adverse fiscal and environmental consequences.

In 1969, the county adopted the Comprehensive Development Plan, which carried on and elaborated the planning tradition of fiscal conservatism and rural preservation. The plan decried strip development along major county arterials and called for growth to take place in existing towns or as entirely new planned communities. The plan described the 'new communities' as self-contained units that provide a sense of identity and relative economic independence. The plan actually pointed out the Cascades tract as a potential location for a new planned community.

⁶⁹ Talk by Vinton Liddel Pickens to the Leesburg Garden Club, September 10, 1985.

⁷⁰ Loudoun County Virginia, 1956 Land Use Plan, Leesburg, VA: Loudoun County Department of Planning, 1956, pg. 10.

⁷¹ *Ibid*, pg. 15.

In regards to transportation, the plan called for careful attention to be paid to the developing network in eastern Loudoun County and that it be integrated with the older network.⁷²

In 1972, Loudoun revised and rewrote its zoning ordinance so that it could be in compliance with the Comprehensive Development Plan prepared three years earlier. The 1972 ordinance was more sophisticated than the earlier ordinances. It allowed for 'planned development' zones that allowed for greater flexibility in lot layout and land use. In regards to fiscal management the county included 'article 12' of the zoning ordinance. Article 12 required that for rezoning that the applicant would provide adequate transportation facilities, water and sewerage systems, private parks and recreation facilities. In short the developer was to "provide necessary facilities for the health safety, public welfare and general good of the residents of the development. The facilities...shall be maintained by the *developer or a corporation, organization or association of the residents* of the development and *not* at public expense." In addition, the developer of the new residences was to provide or contribute funds towards the construction of schools.⁷³ Thus, Loudoun continued its commitment to fiscal conservatism and rural preservation by concentrating new development into planned developments or existing towns and by an attempt to shift the costs of new infrastructure (as well as continuing maintenance of facilities) to the new residents of that development.

The next major plan, the Resource Management Plan was rejected in 1977, but was reworked and adopted in 1979. Once again, the strategy for planning in Loudoun County revolved around the notion distinct communities (planned and existing) and rural preservation. The analysis in the Resource Management Plan showed that concentrated growth and clustering of new housing would be more energy efficient, fiscally conservative and would preserve open space.⁷⁴ In addition, the plan asserted that by concentrating growth and mixing housing types into planned

⁷² Loudoun County Comprehensive Development Plan, 1969. Leesburg, VA: Loudoun County Department of Planning.

⁷³ 1972, Loudoun County Zoning Ordinance, Leesburg, VA: Loudoun County Department of Planning, pg. 183-185.

⁷⁴ Loudoun County Resource Management Plan, Leesburg, VA: Loudoun County Department of Planning, 1979.

communities, facilities for the elderly, handicapped and lower income groups could be made available.⁷⁵ Thus by encouraging concentrated public and private investments in specific areas rather than permitting scattered development, the county could enhance the efficiency and cost effectiveness of County service delivery.⁷⁶ The plan proposed special area detailed land use plans and they were created as part of implementation of the Resource Management Plan.

In September of 1980, Loudoun County unveiled its Eastern Loudoun Area Management Plan (ELAMP), which elaborated on the philosophy of the Resource Management Plan in a smaller region. The ELAMP plan embraced the concept of 'conditional zoning' or the proffer system as the preferred method for implementing phased growth, a mix of housing types, mixed use development, distinct communities, buffers between communities, open space and recreational facilities. The implementation section of the plan hinged on the use of the proffer system for goals as disparate as building regional arterials to assisting with historic preservation.⁷⁷

The current Loudoun County General Plan, the award winning *Choices and Changes*, clearly lays out the County's policies in regards to development and again is centered on the idea of concentrating growth to protect the county's resources. The vision of the plan describes a county that has densely concentrated, pedestrian towns that employ mixed use development, affordable housing and mass transit. At the same time, the countryside is protected, agriculture remains as part of the economic base and large open spaces are available to citizens.⁷⁸

The plan's goals are divided into three main segments: goals for natural and cultural resources, growth management goals and community design goals. A review of the implementation policies shows that the county plans on achieving its goals through strong design guidelines for new communities, annexation guidelines for existing towns and most importantly on the proffer system. The proffer guidelines require developer contributions per new housing unit based on a

⁷⁵ Ibid, pg. 207.

⁷⁶ Memorandum, From Karen F. Gavrilovic, through Julie Pastor to the Members of the Board of Supervisors and Planning Commission on the subject of Open Space Proffer Guidelines, 7/16/93.

⁷⁷ Eastern Loudoun Area Management Plan, Leesburg, VA: Loudoun County Department of Planning, 1980.

'Capital Facility Intensity Factor' where the developer may contribute cash, or land to the county's residents in general. The county also "anticipates that each development project will mitigate its impact on the network by contributing (through proffers) to the development of the planned transportation system."⁷⁹ Thus, developers are expected to work with County planners in developing a planned transportation network that integrates land use and transportation planning. In practice, proffers are an integral portion of the land development and range from building major arterial roadways to requiring annual contributions from the community associations to pay for fire and rescues services.

Loudoun County Grows

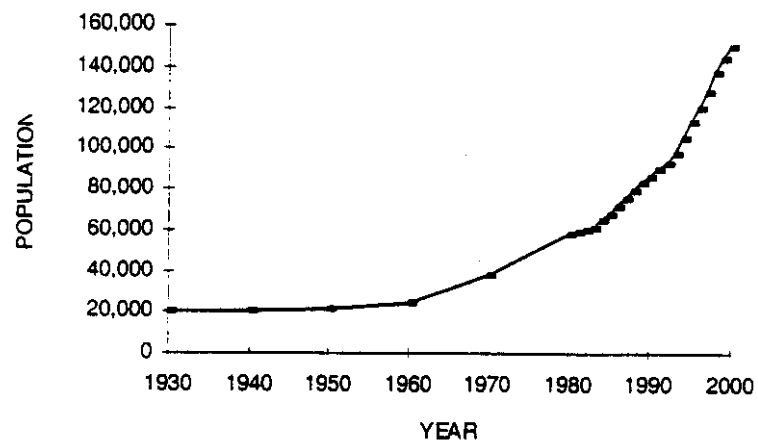
During the 1980's and 1990's, Loudoun's employment base has grown with the establishment of the Route 28 tax district and the development of industrial parts and technology centers from Leesburg to the County border with Fairfax. Loudoun commuter distance has reduced with the establishment of the Dulles Greenway Toll Road, which has linked Leesburg to Dulles Airport, and the greater metropolitan area. The Greenway has not only attracted residential development, but also commercial development as well with 1.46 million square feet of industrial and office space permitted in 1998. In addition, MCI/World Com recently rezoned property adjacent to the Greenway for the establishment of its 7.5 million square foot corporate headquarters.

The effects of these advantages have not gone unnoticed, and Loudoun County is currently one the fastest growing County in the United States.

⁷⁸ Loudoun County Choices and Changes: General Plan 1990-2010, Leesburg, Virginia: Loudoun County Department of Planning, Reprinted June 1995.

⁷⁹ Ibid, pg. 193.

LOUDOUN COUNTY POPULATION



CHAPTER THREE – PLANNING AND BUILDING LOUDOUN'S PRIVATE COMMUNITIES

The following chapter is the story of how one of the major planned unit communities was built and the role of the County in planning the Cascades Planned Community. Loudoun County, due to its planning philosophy and its particular land tenure, was a suitable location for planned communities. The private sector initiated, designed and built the project and much of the major public works that the Cascades community would eventually use. However, the County planners played a major role in the eventual outcome of the project by acting as negotiators and coordinators of public input on the project.

Because of the diverse factors that play into the process, this story involves a number of sub-plots, including the politics of rapid growth, the role of the Courts in land use planning, interjurisdictional squabbling due to uncoordinated regional planning, and the role of the private sector in the planning process. A linear and straightforward account of each of these factors is difficult because of each of these factors acted in concert to produce the ultimate physical and social organization of Eastern Loudoun.

In telling the story of the planning of Cascades, much of the evidence and debate surrounds the physical infrastructure of the community. Little debate was centered on the maintenance of the infrastructure once it was built, the provision of services to residents or to the continuing governance of the community, (other than a legal agreement "To form a Homeowner's Association"). Most of the public actors in arena of negotiation were essentially trying to manage the growth as best as possible and provide for the residents without expanding their own services or responsibility. Thus, in reviewing the case of Cascades, perhaps the most important features in the story are the ones that are missing.

The following two sections provide background on the planning process in Loudoun County, Virginia before presenting the case of Cascades. Loudoun County, Virginia employs a diplomatic

approach to land use planning by negotiating individual 'proffer' contracts for every rezoning. Every major planned unit development requires rezoning. Proffers are individually negotiated agreements between developers and the County at the time of rezoning where the developer will offer cash, infrastructure or other mechanisms for mitigating the negative impacts of the proposed project. While the process of the negotiation itself is only recently receiving attention in regards to institutional procedure, the fact that each project requiring rezoning is to be separately negotiated has been a primary part of the County's fiscal policy since the late 1970's.

The Commonwealth: The Basics of the Enabling Political Structure

In 1634, the General Assembly of Virginia divided its territory into eight administrative units or 'shires' (later counties) to enable administration of the commonwealth by collecting taxes and enforcing the law at a local level. Later, the State General Assembly allowed Williamsburg and Norfolk to be chartered as independent cities. The counties were never truly envisioned to be independent administrative entities like municipalities and to this day are more restricted by the state than 'cities'. However, both the counties' and municipalities' powers are circumscribed by the Commonwealth's Constitution that restricts independent authority. The principle that authority must come from the General Assembly to smaller governmental units is a fundamental principle in the municipal law in Virginia.⁸⁰

Thus, the Commonwealth of Virginia does not have 'home rule', but operates under Dillion's Rule, whereby the State General Assembly must enable each county and municipality to perform each of its functions. The concept came from Iowa State Supreme Court Justice John F. Dillion who established the rule in the nineteenth century. The rule has two elements: firstly that the powers of the municipality must be expressly stated by the state or be absolutely indispensable to the operation of the governmental unit; and secondly, that if there is any question whether the power

⁸⁰ Vander Lugt, Robert D., and Salll Virkar, Coordination of Transportation Planning and Land Use Control: A Challenge for Virginia in the 21st Century. The US. Department of Transportation, National Transportation Library., pg.3.

has been conferred, it has not been conferred.⁸¹ The net result has been that the state courts have been quick to strike down any ordinance that counties or municipalities adopt that are outside of powers expressly granted by the state.⁸² This has created problems for counties in engaging growth management techniques that are not enabled by the state, as growth management ordinances are struck down by the courts.

The state has not enabled Loudoun County to accept impact fees, but did grant the county authority to accept proffers from developers in conjunction with rezoning in the mid-seventies. Thus, until the Commonwealth grants the authority for other systems of fiscal growth management, the proffer system is the County's primary mechanism for softening the capital costs associated with new development.⁸³

Proffers are considered voluntary contributions from the developer to the county at the time of rezoning. While proffers are not a condition of rezoning on the surface, in practice developers are expected to contribute cash, infrastructure and land. The county established guidelines for expected proffer contributions as part of its general plan and special area plans.⁸⁴

A Sketch of How Loudoun's Development Process Works

The typical development procedure in Loudoun County begins with the private developer who researches his/her property's zoning, planned land use, general building suitability, and market potential to establish a concept for development. After devising a concept for development, the developer will have a pre-application meeting with county staff to discuss contents of the project, the planning approval process, as well as land use, community planning, transportation and zoning considerations. There is nothing binding about the pre-application meeting, and it is usually used to assist and steer the developer through the planning process.

⁸¹ Wirt, Clay L. Virginia Town and City. "Dillion's Rule." August 1989. Pg. 13.

⁸² Vander Lugt, Robert D., and Salil Virkar, Coordination of Transportation Planning and Land Use Control: A Challenge for Virginia in the 21st Century. The US. Department of Transportation, National Transportation Library., pg.3

⁸³ Choices and Changes: Loudoun County General Plan, 1991. Page 68.

⁸⁴ Ibid, pg. 68-69.

The developer will then submit a development application which must include a concept development plan (a narrative statement of justification), a plat, a property description and other standard materials. The county staff checks to see if all the materials are included and if so approves the development plan. Once the county approves the development application the county planning process time clock begins and a project requiring rezoning must be able to get through the entire process in one year if the developer so wishes.

At this point, the project is assigned to a land use planner at the county who sends out the plans for referral to a number of parties including county engineers, the Virginia Department of Transportation, the Comprehensive Planning Department, Parks and Recreation and the School Board. The referral period is usually 60 days, and during this time all of the recipients send back recommendations and comments on the development plan to the project manager. The project manager collects the responses and gives overall comments to the applicant.

The applicant then responds to the comments and may change the plans if necessary. If there is a substantial change in plans, or if outstanding issues still exist, then the project will go through the referral process again. Projects may go through the referral process three or four times before an agreement can be reached on the land development plan.⁸⁵

During the referral process the county staff also negotiates the first round of proffer agreements for projects that will require rezoning and have a significant impact on the county's existing infrastructure. The most recent guidelines (1998) require that the proffers negotiations between staff and developers to be held only at the County Government Center, during scheduled meetings. Nevertheless, these meetings are not open to the public during this stage of the proffer negotiation process.⁸⁶

⁸⁵ This entire section is largely based on an interview with Kristen Alexander of the Loudoun County Comprehensive Planning Department on March 16, 1999.

⁸⁶ Norman, Susan. Leesburg Today. "Opening the Doors: Proffer Talks made Public, PC Posts Not Restricted", 10/28/98.

Developers building as of right projects (those in accordance with the county's current zoning), at this point may begin work on their detailed subdivision, site and construction plans and are not required to seek approval from the planning commission or the board of supervisors. But if the land development plan does not commiserate with the existing zoning ordinance the project will require rezoning or a special exception.⁸⁷ The county scrutinizes these projects more carefully. Special exceptions allow for the modification of a zoning ordinance to fit an individual development plan and require a planning commission public hearing. For major projects, both rezoning and an amendment to the General and Special Area plans may be necessary. The project manager and other staff will analyze the project in terms of the General Plan: *Choices and Changes* and appropriate small area management plan during the referral process.⁸⁸

Thus, for projects that require rezoning, a planning commission public hearing for the project will be set up after the referral process. After the public hearing, the planning commission will review the project taking into account staff recommendations and citizen comments. The proffers are considered to be an integral part of the project and they become open to the public during public hearing by the planning commission. The commission may recommend approval, denial or approval with conditions and then sends the project to the County Board of Supervisors for the final approval. During this stage, the proffer negotiation process becomes more public, and the dialog continues the planning commission, the planning staff and the developer.

Before hearing the land development application, the County Board of Supervisors will typically send the project to the land-use committee for review. Following committee review, the Board of Supervisors will have a public hearing. Following the public hearing (but not at the same meeting), the item will come up as an action item and the Board will approve or deny the rezoning.⁸⁹

⁸⁷ Leesburg Today. "Land Use: What Are The Rules: Loudoun Has Complex Regs to Control Process", 9/25/97.

⁸⁸ Ibid.

⁸⁹ This entire section is largely based on an interview with Kristen Alexander of the Loudoun County Comprehensive Planning Department on March 16, 1999.

Once the development proposal, rezoning and proffers have been accepted by the County board of Supervisors, then the developer may file site plans and subdivision plans for staff review by the zoning, engineering staff and in many cases the Virginia Department of Transportation (VDOT). The county staff will ensure that the project meets the technical requirements of the Zoning Ordinance, the Land Subdivision and Development Ordinance, the Facilities and Standards Manual and building and fire codes.⁹⁰ After receiving technical comments from the county staff, the developer will revise the plans if necessary and resubmit them to gain final approval for the grading, building and occupancy permits. These steps are administrative only, and do not require public hearings or approval from the planning commission or the board of supervisors.⁹¹

The Case of the Cascades Planned Community

The 1,200 acre Cascades tract, located on the Potomac River and straddling both Loudoun and Fairfax Counties, is now the site of a planned community with 2,000+ housing units, a commercial center, office space, trails and a major arterial roadway. The story of Cascades really is a story of how legal and political mechanisms are used in the planning process. The story shows an example of the negotiation process between developers, Loudoun County, Fairfax County and the Virginia Department of Transportation (or the Virginia Department of Highways and Transportation.) The project only arrived at its final set proffers after thirteen years of negotiation and a fair bit of legislation between the parties.

This story, by necessity, is also the story of the building of the Algonkian Parkway, a regional arterial that serves Eastern Loudoun county and was built primarily through developer proffers. Loudoun county planners faced and completed the arduous task of extracting and coordinating proffers from at least four developers and convincing Fairfax county to accept the roadway and all of its traffic while the Virginia Department of Transportation stayed on the sidelines of the road

⁹⁰ Leesburg Today. "Land Use: What Are The Rules: Loudoun Has Complex Regs to Control Process", 9/25/97.
⁹¹ Ibid.

building process as much as possible. Cascades is a case where the public sector coordinated the development of a project privately conceived, designed and built.

Getting Development Started: The First Set of Proffers

On July 1, 1974 property owners, Joel and Cecil Kaufmann, applied for rezoning (from A-3 to PHD-12) of a 1,170 acre tract of land adjacent to the Potomac river, with plans to build a planned community with 3,215 housing units. The proposed project consisted of 600 single-family homes, 950 townhouses, 1250 condominiums and 215 high-density units.⁹² The project faced substantial difficulties from the beginning due to politics of growth and the conditions of the particular parcel of land, which was inaccessible to a major transportation arterial. The Board of Supervisors denied the initial rezoning application.

Political Problems

Political opposition to the Cascades project came from Fairfax county citizens due to accessibility of the parcel to State Route 7 (the only major roadway) and Loudoun county citizens who were opposed to new residential development in general.

The 1,170 acre 'Cascades' parcel was located on the Fairfax county border, with 60 acres within Fairfax county and adjacent to the wealthy Great Falls area. Access to the property was limited to narrow two lane roads that lead mostly into Great Falls, with no access to any transportation facility that could adequately support the planned population of the project. In 1975, Loudoun County received a petition from the Richland-Kentlands Association, which straddled both Fairfax and Loudoun Counties registering objection to development of the parcel.⁹³ During the public hearing in April of 1976, Fairfax residents comprised most of the citizen comments expressing concerns and outrage over transportation issues.⁹⁴

⁹² Application for Rezoning from Kaufmann, Loudoun County Documents 7/1/74.

⁹³ Correspondence/Petition, from the Richland Kentlands Association,

⁹⁴ Transcript from the Loudoun County Public Hearing. 4/8/76.

By the time the Cascades project was proposed there was opposition among Loudoun County's citizenry to large planned communities in general, based on experiences with Sterling Park and Sugarland Run. In 1960, before Sterling Park and Sugarland Run were built, the county's annual budget was \$2 million. By 1972, the county's budget had expanded by 600% and its population had expanded 52%.⁹⁵ Between 1959 and 1971 the county's structure and services adjusted and expanded as the county redistricted politically, added administrative departments (such as the Parks and Recreation Department), established the Loudoun County Sanitation Authority and added building and subdivision codes.⁹⁶

So while the county struggled to pay for new students and services for suburban Sterling Park and Sugarland Run⁹⁷ citizens, farmers and residents with a long tenure in the county protested vociferously against the rezoning of land and any new taxes. And not without reason, as by 1971, due to land speculation and to increased services, the farmer's land tax assessments had increased sharply, some by as much as 1,000 percent.⁹⁸⁹⁹ "Farmers' demanding no tax increases debated against 'school oriented' new comers who insisted they wanted the best facilities for their children and were willing to pay." Citizen's groups organized to fight new, large-scale residential development¹⁰⁰ and supervisors were elected on the plank of preserving the rural environment.¹⁰¹

This was the beginning of a political divide that still exists in Loudoun County, as the residents in planned communities in the eastern portion of the county have different needs than the agricultural residents in the western portion of the county. Olson described a similar phenomenon in the *Logic of Collective Action*, "As population, urbanization and congestion

⁹⁵ Ratlo, Frank. Washington Star-News. "Suburban Growth: A Middle Ground", 9/9/73.

⁹⁶ Poland, Charles P. From Frontier to Suburbia. Marceline, Missouri: Walsworth Publishing Company, 1976, pg.271-372.

⁹⁷ The education system made up 81% of the county budget in the 1971-1972 fiscal year, and mobile classrooms with 12 month school year were used and students from the Sterling Park and Sugarland run subdivisions made up one-third of the students in 1974. Poland, Charles P. From Frontier to Suburbia. Marceline, Missouri: Walsworth Publishing Company, 1976, pg.373.

⁹⁸ Poland, Charles P. From Frontier to Suburbia. Marceline, Missouri: Walsworth Publishing Company, 1976, pg.375.

⁹⁹ Washington Times-Mirror. "Levitt Challenges Board's Decision", 5/10/71

¹⁰⁰ Falka, John. Washington Star-News. "Loudoun County Said 'Whoa'" 5/10/71.

increase, external diseconomies almost certainly increase too. For example, the farmer in a sparsely settled area who is careless about disposing of his garbage, or who has a noisy household, or who decides to go off to work just when everybody else does, creates no problems for anybody else, whereas the same behavior in a crowded city imposes costs upon others."¹⁰² Thus, the residents in the eastern portion of the county experience the need for greater, urban-type services, infrastructure and regulations whereas the western farmers have no need for the same services. In fact, the farmers suffer when urban regulations and tax structures are imposed upon them. Realizing the problems of urbanization, most notably that farmers pay more in taxes than they receive in services, there was (and still is) massive pressure from the county's existing citizens to stop large scale residential development.¹⁰³

So, it is no surprise that when the owners of the Cascades property filed for a different rezoning application in January of 1977, proposing a \$200 million resort called "Gilgarren" instead of the original planned community, Loudoun County Staff and officials looked upon the development warmly while Fairfax County reacted in horror. The resort would be primarily composed of transient persons enjoying luxury hotels, two championship golf courses, 60 tennis courts, a 7,000 seat sports arena, a marina, racquet ball clubs, an equestrian center and health spa protected by a green belt (and few school children). The Loudoun County Supervisors took a trip to Florida to investigate other resorts built by the same developer.¹⁰⁴ One Supervisor upon returning commented, "The way I look at it, it won't be a drain on the other taxpayers - Its all plus."¹⁰⁵ The county staff gave a favorable recommendation to the project.¹⁰⁶

Meanwhile, Fairfax citizens lodged protests with the county due to the transportation problems, foreseeing their roads becoming congested and their property devalued. The Fairfax Board of

¹⁰¹ Washington Times-Mirror. "Levitt Challenges Board's Decision", 5/10/71

¹⁰² Olson, Mancur, The Logic of Collective Action. Cambridge, MA: Harvard University Press, 1971, appendix, pg. 172.

¹⁰³ Farewell, Bryan. The Washington Post. "Stay Out of My Loudoun County: Growth is Not Progress and Saving an Eden from the Serpents is Not Evil," 7/6/86.

¹⁰⁴ Geddie, Shannon. Loudoun Times-Mirror. "Supervisors Check Resort" 2/17/77.

¹⁰⁵ Ibid.

¹⁰⁶ Correspondence. The Loudoun County Department of Comprehensive Planning to the Loudoun County Board of Supervisors, 3/24/77

Supervisors passed a resolution stating that they would only support the project if a four lane highway was built entirely in Loudoun County through the Sugarland Run community, linking the convention center with Route 7, at a significant distance from the county border. A Fairfax board of Supervisors member commented, "It is incumbent on Loudoun County to solve all the traffic problems association with this project and not have all the revenue go to Loudoun County and all the traffic to Fairfax."¹⁰⁷

This was the beginning of a controversy between Fairfax County and Loudoun County that would last for another decade, and eventually became a strong determinant in the eventual proffers and subsequent roadway network of the area. However, the Gilgarren project never came to be. The developer of the Gilgarren resort ran into contractual problems when he demanded that the sale of the property to him be conditional of rezoning. To the disappointment of many in Loudoun County, the Kaufmanns opted to sell the property to another developer, Warren K. Montouri who had plans to develop the property as a planned community. Montouri decided to continue the litigation filed by the Kaufmann after the rezoning denial in 1976.¹⁰⁸

Legal Problems

Upon denial of the rezoning, the Kaufmanns filed suit against the county in 1976, joining a number of other developers in the process of litigation.¹⁰⁹ During the early and mid 70's the County Board of Supervisors was in the habit of denying rezoning application for major planned community projects, refusing all rezoning applications for planned communities between 1971 and 1976.¹¹⁰ The county was involved with six other major court suits by 1977 due to denial of rezoning applications: the Gateway to the World, CountrySide, East Leesburg Hills, Mirror Ridge, Windmill Shopping Center and Woodstone projects.

¹⁰⁷ Loudoun Times-Mirror. "Gilgarren Endorsed-With Reservations", 5/17/77.

¹⁰⁸ Pope, Jim. Loudoun Times-Mirror. "Ownership Change Scuttles Resort." 7/28/77.

¹⁰⁹ Staff Report for the Board of Supervisors Meeting on 7/25/79, Action Item, Cascades ZMAP # 280.

¹¹⁰ Pope, Jim. Loudoun Times-Mirror. "Ashburn Group Gets Rezoning: First in 5 Years" 12/23/76

The most similar and influential case for Cascades was that of the nearby "CountrySide" development. The Levitt Bros., owners of the CountrySide tract filed suit after being denied rezoning in 1971 for the proposed 1,270 acre, \$125 million, planned community.¹¹¹ The county prevailed in the first round of Levitt case in 1972. The court ruled that the Board of Supervisors had a right to deny the rezoning application because of a project's adverse economic impact on the county and a political body's zoning ordinance must be sustained by the judiciary if its reasonableness is "fairly debatable".¹¹² Levitt appealed this decision to the Supreme Court of the State of Virginia but later dropped the appeal and acquiesced to the County's new "article 12" of the zoning ordinance. Article 12 required developers to pay for the establishment of public facilities, such as schools, sewers, and libraries needed to serve residents of a new development. The Levitts applied for rezoning with new conditions including a 1.8 million-dollar cash and land donation to the county to cover the county facilities not compensated for by tax revenues from the new residents. Nevertheless, the Levitts were denied for rezoning a second time in 1974 and entered into litigation again in 1975, joined by the Cascades Case in 1976.¹¹³¹¹⁴

The Levitt case and the Cascades case also had another dimension in common: both properties had been sold to third parties. The Levitt property was sold to 437 Land Development Company in March of 1976¹¹⁵ and the Cascades property was sold to group of investors represented by Warren K. Montouri in June of 1977¹¹⁶. The county submitted a request to dismiss the Levitt case, citing that the new owner should apply for rezoning, and that the new owner could not continue previous litigation. The new owners should not be able to sue until they too had been denied rezoning.¹¹⁷ "Without an application to rezone there can be no denial. Without a denial there is

¹¹¹ Loudoun Times-Mirror, "Levitt Suit Dismissal Is Requested", 8/18/77.

¹¹² Miller, Peter, Staff Writer, Loudoun Times-Mirror, "Plea Filed in Court to Shorten Levitt Case", 1/12/78.

¹¹³ Ibid.

¹¹⁴ From, "A Summary of Cascades Development Impacts," Loudoun County Staff, 1980.

¹¹⁵ Pope, Jim. Loudoun Times-Mirror, "Motion to be Argued in Levitt Zoning Case." 8/4/77.

¹¹⁶ Pope, Jim. Loudoun Times-Mirror, "Ownership Change Scuttles Resort." 7/28/77.

¹¹⁷ Pope, Jim. Loudoun Times-Mirror, "Motion to be Argued in Levitt Zoning Case." 8/4/77.

no jurisdiction in the court." argued the County's attorney.¹¹⁸ Yet the effort was to no avail and the Judge dismissed the plea, and the county was forced to continue litigation in both cases.¹¹⁹

The county attorney then argued that a the CountrySide developer should have to prove that the original A-3 zoning was unreasonable, shifting the burden of proof to the property developer.¹²⁰ This argument did not sway the courts. The judge ruled that the question at hand was "the reasonableness of the board of supervisors' action."¹²¹ Thus, that argument could not be used in the Cascades case either.

At the same time, the county was losing the other court cases. The Gateway to the World case involved a rezoning of tract of land near the Cascades property and bordered on two sides by the Levitt tract, where the developer requested a change in zoning from A-3 to R-4 (4 units per acre)¹²². In January 1978, the court decided that the Board of Supervisor's decision to deny rezoning in this case was unreasonable and the judge described the decision as "not fairly debatable".¹²³ Two weeks later the county also lost its case in the "Windmill" rezoning case and the court described the rezoning denial, "unreasonable, arbitrary and capricious."¹²⁴

As the County lost case after case due to denying rezoning of major developments, Fairfax County was experiencing the same legal difficulties,¹²⁵ and on the state level the Supreme Court

¹¹⁸ Ibid.

¹¹⁹ Miller, Peter, Staff Writer, Loudoun Times-Mirror, "Plea Filed in Court to Shorten Levitt Case", 1/12/78.

¹²⁰ Miller, Peter, Staff Writer, Loudoun Times-Mirror, "Plea Filed in Court to Shorten Levitt Case", 1/12/78.

¹²¹ Loudoun Times-Mirror, "County Loses Again to Levitt & Sons, inc." 2/9/78.

¹²² Loudoun Times-Mirror, "First of Big Zoning Cases Argued in Circuit Court", 12/1/78.

¹²³ Miller, Peter, Loudoun Times-Mirror, "Loudoun Loses Gateway Case", 1/19/78.

¹²⁴ Miller Peter, Loudoun Times-Mirror, "Windmill Wins Suit Against County." 2/2/78.

¹²⁵ During this period the Fairfax County Board of Supervisors were also struggling with unfavorable court decisions arising from their efforts to control growth. The Virginia courts strictly applied Dillon's Rules, and limiting the power of the counties to make land use decisions. The court struck down the Fairfax board's decision to downzone the western two-thirds of the county. The court also struck down Fairfax's efforts to prevent a change of use of properties that had already been given special use permits, under the reasoning that the right to develop land was 'vested'. The Fairfax Board of Supervisors followed a similar philosophy as the Loudoun Board and denied a number of rezoning applications due to the stress the new development would place on infrastructure. The Fairfax board felt that it had an obligation to "protect against undue density of population in relation to the community facilities existing or available." Nevertheless, the courts struck this down as well, stating that "public facilities should follow rather than precede development." From Vander Lugt, Robert D., and Saili Virkar, Coordination of Transportation Planning and Land Use Control: A Challenge for Virginia in the 21st Century. The U.S. Department of Transportation, National Transportation Library., pg. 18-19.

struck down other local planning decisions.¹²⁶ The county changed its tactics. There was a realization that if developers go to court and win the cases, that the county is left with out bargaining power to ensure that at least the new developments include provisions for infrastructure. A shift occurred in the thinking of the County Board of Supervisors: that since the development is inevitable (or at least legally risky) that they should avoid the cost of litigation and negotiate.¹²⁷ The zoning administrator commented, "Personally, I'd rather see dollars spent on public services than on lawyers to fight a hopeless cause."¹²⁸

Thus, the county opted to enter into negotiations with developers to mitigate the impacts of development by using the proffer system. The county settled the CountrySide case out of court in 1978 through a Memorandum of Understanding.¹²⁹ They followed suit with the Cascades case and settled out of court using a Memorandum of Understanding in June of 1979.¹³⁰

Coming to Agree on the First Set of Proffers

In the months preceding the Memorandum of Understanding, negotiations were brewing between Loudoun County, Fairfax County and the developers of the Cascades project. As the plan for Cascades developed and the possibility for stopping the eastern Loudoun projects altogether faded in a hostile legal environment, the Loudoun County planning staff had been working on 'The Eastern Loudoun Area Management Plan' in earnest. By February of 1979, a full 40% of the county's residents lived in the area, and in the face of imminent development, the staff and county had begun to fine tune specific goals for the development of the area.¹³¹ Specifically, they examined the possibilities of an access road from the CountrySide development through adjacent

¹²⁶ Lindstrom, Tim. "Land-Use Planning: The Truth about the Dillion Rule", in Janet Pelley and Glen Besa's Sprawl: It Costs Us All. A Guide to the Costs of Suburban Sprawl and How to Create Livable Communities in Virginia. Heritage Printing and Graphics: Leonardtown, Md: 1997

¹²⁷ Chitwood, Byran R. Loudoun Times-Mirror. "Zoning: The Political Battlefield of Development and Loudoun's Last Stand." 11/6/86.

¹²⁸ Miller, Peter. "Change of Attitude About Development in Loudoun County." The Washington Post, June 29, 1978.

¹²⁹ Chitwood, Byran R. Loudoun Times-Mirror. "Zoning: The Political Battlefield of Development and Loudoun's Last Stand." 11/6/86.

¹³⁰ Staff Report for the Board of Supervisors Meeting on 7/25/79, Action Item, Cascades ZMAP # 280

¹³¹ The Eastern Loudoun Area Management Plan, Adopted September 2, 1980, Reformatted 1994. The Loudoun County Department of Planning.

development projects, including Cascades back to Leesburg Pike (Rt. 7) in Fairfax County. This roadway, known as the Route 28 loop road in 1979 (later renamed Algonkian Parkway) was a major irritant to Fairfax County residents who lived near the Cascades tract in low-density, wealthy Great Falls. The roadway was conceived primarily to service the new Loudoun residents. The new roadway would not only cut through existing subdivisions in Fairfax, but dump the new traffic onto already congested Route 7 in Fairfax County. Yet, development without the access road would have a major negative impact on the existing transportation network in Great Falls. Either way, Fairfax County would absorb a majority of the traffic from the Loudoun development.

The Holly Knoll Homeowner's Association in Fairfax wrote to Loudoun county expressing opposition to the new roadway alignment proposal that would in essence split their subdivision in half, and noting that it 'would adversely affect the way of life for Fairfax residents'.¹³² (The Holly Knolls subdivision was originally designed for a major roadway to cross through the center, as the developer was connected to the interests of the Cascades tract and envisioned access through Holly Knoll.) Correspondence from the Fairfax County Executive expressed that it was the Fairfax's position that the land use intensity of the new development was in conflict with Fairfax's plans which called for a low density settlement.¹³³ A flurry of letters from concerned citizens in Great Falls were directed at Loudoun County¹³⁴ and the Fairfax Board of Supervisors passed a resolution that it was opposed to the development and that only Loudoun county services and access should be available for the new development.¹³⁵

Thus, Loudoun county officials called a dinner meeting to discuss the project with the officials of Fairfax County and the Virginia Department of Highways and Transportation to discuss their concerns. In addition, during this time, while there is little evidence of this in the correspondence, there must have been some negotiation between the Cascades developer and the county. The

¹³² Correspondence from the Holly Knoll Homeowner's Association to Mr. John Socchis, Planning Director of Loudoun County, 2/7/79.

¹³³ Correspondence from J. Hamilton Lambert, the Acting Fairfax County Executive to Philip Bolen, the Loudoun County Administrator, 2/28/79

¹³⁴ Correspondence, Concerned Citizens of the Great Falls area through March of 1979 to the Loudoun County Board of Supervisors.

county simultaneously negotiated for a 120' wide roadway easement through the adjacent Seneca Hills subdivision, requiring cooperation with other property owners for the construction of a road all the way to Leesburg Pike, 45 days before the Memorandum of agreement with the Cascades Developer.

In the Memorandum of Understanding, the Loudoun County Board of Supervisors agreed that the A-3 zoning classification was unreasonable and that a change of zoning to a 'planned unit development' was acceptable. The memorandum stipulated a number of conditions that would be necessary for future development of the project, and that these conditions would be binding upon a public hearing and subsequent 'voluntary' proffer agreement. In the Memorandum, the county stipulated a density of 1.61 units per acres and laid out the mix of housing types. They specified that the developer would dedicate an elementary school site, contributions for a second school site, a 10 acre commercial site, a location for the fire station and parkland. The developer agreed to dedicate and at least partially construct a leg of the eastern Loudoun Loop road and that the eastern portion of the Cascades tract would be limited to 70 units similar to the style of development in neighboring Fairfax county. The memorandum required that the project have unified control of development.

After both Montouri and the Loudoun County Board of Supervisors signed the Memorandum of Understanding, the proffer negotiations became much more transparent. The agreement went out for referendum to the Virginia Department of Highways and Transportation (VDH&T), the county engineering department, the public school system, the fire marshal and the county sanitation authority. Predictably, the highway department felt that the developer should build a four lane facility instead of the proposed two lane roadway. The county engineers suggested lower densities based on the floodplain and soils.¹³⁵ The school board felt that at least two school

¹³⁵ Fairfax County Board of Supervisors Resolution, 2/28/79.

¹³⁶ Correspondence from Richard Calderon, Fire Marshall of Loudoun county to James Van Zee, Administrator of Loudoun County, 6/19/79.

sites should be dedicated, and that the sites be completely improved.¹³⁷ Only the Loudoun County Sanitation Authority felt that it could service the development without major developer proffers.

Thus the Memorandum was in fact an 'offer' by the developer, and each of the agencies asked for more in the way of facilities from the developer than was originally proposed. The planning department acted as a diplomat between the developer and the county agencies, by gathering comments and communicating them to the developer.

On June 27, 1979 the Board of Supervisors and the Planning Commission of Loudoun County held a joint public hearing to discuss the rezoning of the Cascades property with the public. During the public hearing the staff presented the developer's argument that the A-3 zoning was unreasonable due to the fact that the neighboring properties in Fairfax, as well as the neighboring Senenca Hills and Sugariand Run subdivisions were zoned at higher densities. Thus the county had two real alternatives: to rezone the property as R-1 zone (one-acre residential zoning) or as PH-12 (planned unit development). The staff laid out the issues surrounding the potential rezoning: the physical layout of the site (which is 40% flood plain), potential problems with fire and rescues services, the access road proposal and the potential cost to the county in services. The staff laid out an analysis that considered an R-1 zone in comparison to the planned unit proposal. The analysis by the staff showed that the planned unit development proposal would cost the county 17% more in capital investment and services up-front due to the increased number of units. Yet, that over a fifteen year period that the cost would be 35% less per household than if the land was developed according to R-1 pattern.¹³⁸

¹³⁷ Correspondence from the Loudoun County Public School System to James Van Zee, Zoning Administrator of Loudoun County, 6/18/79

¹³⁸ Staff Report, Joint Public Hearing, June 27, 1979: Board of Supervisors and the Loudoun County Planning Commission.

Two weeks later the matter was considered by the zoning committee of the Board of Supervisors, where the committee voted by resolution to approved the Cascades planned unit zoning subject to additional contributions from the developer to the school system.

On July 23, 1979, the developer Montouri, submitted a proposed proffer agreement for the Cascades project. The proffers included the following major contributions to the county:

- A site for an elementary school and financial contributions for a second school.
- A trail for access for lands donated to the Virginia Regional Park Authority.
- An agreement to restrict development in portion of the property that would require using transportation facilities that lead to Fairfax County.
- The developer would apply to Fairfax county and all other authorities to acquire permission to build the 'Loop Road' and agrees to build two lanes of the access road on the Cascades property in coordination with the building of the road on the Seneca Hills property.
- The developer would limit development until the 'Loop Road' is built.
- The developer would bind any successors in title to the proffers.
- To sign that that the proffers are not a condition of rezoning.¹³⁹

The agreements were reached by *negotiation* between the county and the developer, each party stretching to agree to make the project work. One of the Supervisors commented, "Mr. Hendrickson said that he feels that the bottom line of the whole matter is that the issue that the private sector is trying to get what it can out of the public sector at the taxpayer's expense. And the public sector is trying to get as much as possible."¹⁴⁰ The planning department acted as

¹³⁹ Proffer Agreement, Warren Montouri and the Loudoun County Board of Supervisors, 7/23/79.

¹⁴⁰ Minutes from the Loudoun County Board of Supervisors meeting, 7/23/79.

diplomatic agency between the elected officials, the public and the developer, knowing that active combat in the court system was risky at best.

On July 27, 1979, the Loudoun County Board of Supervisors agreed to accept the proffers and approve the rezoning to PH-12. In September the court case was dismissed.

Border Wars: The Second Set of Proffers

While Montouri and Loudoun County were able to reach an agreement in regards to the zoning of Cascades, Fairfax County had not approved the controversial 'Loop Road' to be built on its territory. The entire project hinged on the developer acquiring permits from Fairfax County and the VDH&T to build two lanes of the road and VDH&T agreeing to build the other two lanes. Over the next four years, Fairfax County and the VDH&T were reluctant to issue approvals and stalled the project.

During the fall of 1979, Fairfax County performed an environmental impact statement in regards to the Loop road, carefully reviewing the alternative alignments for the road. As proposed by Loudoun, the road was envisioned to be a four lane facility, originating at the Route 28 and Route 7 interchange, continuing through CountrySide and Cascades and to meet the planned Fairfax County Parkway at Route 7. The results of the Fairfax County report was that, if a four-lane roadway carrying 25,000 vehicles per day was to be built, then most attractive alignments were to either go directly through the center of the Holly Knolls subdivision or to swing to the west of the subdivision. The no-build alternative was found to have significant effect on the existing roadway network in Great Falls.¹⁴¹

¹⁴¹ Environmental Impact Statement, the Fairfax County Environment and Policy Division of the Office of Comprehensive Planning Department, 12/1/79.

While Fairfax was examining the new roadway, Loudoun County received a preliminary sketch plan of the Cascades planned community and sent the plan was sent out for referral.¹⁴²

However, VDH&T refused to comment until Fairfax county officials made comments.¹⁴³

Fairfax County stalled the project. The Fairfax County Planning Commission scheduled the Loop Road as item at their meeting in February of 1980, but voted to move the item to March of 1980. At the March meeting, the item was deferred until September of 1980 so that a public hearing could be held.¹⁴⁴ The counties' administrators, supervisors, attorneys, state senators and delegates met to discuss the roadway.¹⁴⁵

Meanwhile, citizens groups in Fairfax were mobilizing to protect their interests. There were two significant groups: the residents who would be adversely affected by the loop road itself and the Great Falls residents who would experience congestion on their roads from the project if the Loop road was *not* built. Each group was vocal in opposition to the project and solutions to the traffic problem.

Over the next year, the project stalled while Fairfax County continued to study the situation and VDH&T took a hands-off approach. The state legislature refused to allocate funds for building the second two lanes in August of 1981.¹⁴⁶ VDH&T was not willing to allocate funds to building new roadways for a project that could possibly be funded by the developer. During this time, Fairfax County officials were attempting to find ways to minimize the impact of the Loudoun development on their low-density Great Falls district which was across the border from Loudoun county's highest density area. Meanwhile, the Loudoun county planning staff fretted about the possibility that Fairfax would not approve the roadway connection to Route 7 because the new subdivisions

¹⁴² Correspondence from Richard Hobson of Booth, Prichard and Dudley, attorney for Warren K. Montouri to James Van Zee, 12/19/79.

¹⁴³ Correspondence from TF Butler, Resident Engineer of the Virginia Department of Highways and Transportation to James Van Zee, Zoning Administrator of Loudoun County, 1/31/80.

¹⁴⁴ Correspondence from J. Hamilton Lambert, the Fairfax County Acting Executive to Philip Bolen the Loudoun County Administrator, 3/31/80.

¹⁴⁵ Correspondence from J. Hamilton Lambert, the Fairfax County Acting Executive to Philip Bolen the Loudoun County Administrator, 3/11/80.

¹⁴⁶ Correspondence from Richard Hobson of Booth, Prichard and Dudley, attorney for Warren Montouri to Nancy Falck, the Supervisor for the Drainsville District in Fairfax County, 8/18/81.

were estimated to generate 27,000 vehicles per day. The Loudoun County transportation plan hinged on the construction of the loop road.

The agencies were challenged to coordinate their plans that were not formulated by any greater regional logic. "It only made sense, said Loudoun County administrator Philip a. Bolen, for Loudoun to concentrate its heaviest development in the area closest to Washington - - an area that, coincidentally is not as well-suited to farming as is the rest of the traditionally agrarian county."¹⁴⁷ On the other hand, Fairfax County's plan called low-density two to five acres lots in the county's corner that was *furthest* away from Washington. Thus, without coordination, the counties had to resort to negotiation to retrofit the roadway network. A Loudoun county planner remarked that this situation was history repeating itself: in the 1950's and 1960's, Fairfax and Arlington were squabbling over Fairfax citizens using Arlington roads.¹⁴⁸

Fairfax County Supervisor, Nancy Falck was the primary negotiator with the Fairfax county residents and between 1982 and 1984 worked to find uncomfortable solutions to the problems of congestion. Supervisor Falck organized a plan to mitigate the impact of the new road on Fairfax citizens by *cul-de-sacing* Fairfax roadways at the County border with Loudoun. The access road would support all of the traffic from the new Loudoun developments, keeping commuters off Great Falls roadways (Seneca Road, Kentlands Drive and Thomas Avenue would be cul-de-saced).

The plan was not without opposition. Loudoun County officials strongly protested the plan. The residents of the Thomas Avenue and Holly Knolls neighborhoods complained bitterly because the new proposal would split their neighborhoods in half. One resident described the proposition as "the equivalent of the Berlin Wall, or perhaps better would be the Falck Wall."¹⁴⁹ Nevertheless, the plan to cul-de-sac Fairfax roads was approved by the Fairfax County Board of Supervisors in December of 1982.

¹⁴⁷ Bauer, Patricia E. Washington Post Staff Writer. "Fairfax Homeowners Say Road 'Would destroy the Community'" The Washington Post, 9/11/83. Urban Eastern Loudoun, Rural Western Fairfax.

However, the Loop Road was rejected by the Fairfax Planning Commission in February of 1983.¹⁵⁰ Fairfax County effectively came up with a plan to please both groups of unhappy Fairfax citizens: no loop road and no access to Fairfax Roads from the new developments. Nancy Falck commented, "Any right-minded person would say that neither [blocking the roads nor allowing traffic onto existing roads] of these courses is good."¹⁵¹ The plan to both barricade its streets to Loudoun traffic and to deny the construction of the Loop Road made the whole area of Loudoun County impossible to develop with access to the east. Yet, access to the west was complicated by the fact that VDH&T refused to fund a 6 million dollar bridge over Sugarland Run to complete the Loop road to the west.¹⁵²

Unfortunately, Loudoun County had already granted rezoning for a number of developments and expected the area have fairly dense residential development. If the Loop Road could not be developed, Loudoun County faced major transportation difficulties. Thus, the Loudoun County planning staff noted that if the Loop road was denied an approval from Fairfax, the entire roadway network in Eastern Loudoun would need to be reassessed.¹⁵³

Montouri, the Cascades developer, promptly appealed the Fairfax Planning Commission's decision to deny the Loop Road. Yet, the Loudoun County Board of Supervisors and Montouri had allowed their proffer agreement to lapse. (The dates for beginning development stipulated in the proffers passed while Fairfax County stalled on granting approvals for the Loop Road.) Thus, before the Fairfax Board of Supervisors could hear the appeal to the Planning Commission's decision, Loudoun would have to have renew the proffer agreement. This would entail a public hearing and the project waited from February to July of 1983 so that the proffers between Fairfax

¹⁴⁸ Dawson, Stella. "Loudoun Project Draws Fire: Fans Flames of Border War with Fairfax." The Washington Post, 5/4/85.

¹⁴⁹ Sugawara, Sandra. "Fairfax to Barricade Four Streets to Block Loudoun Commuters." The Washington Post, 12/14/82.

¹⁵⁰ Correspondence, from Richard Hobson of Booth Pricahard and Dudley, attorney for Warren Montouri to the Fairfax Board of Supervisors, 2/22/83

¹⁵¹ Bauer, Patricia. "Fairfax Homeowners Say Road 'Would destroy the Community.'" The Washington Post, 9/11/83.

¹⁵² Bauer, Patricia. "Fairfax Homeowners Say Road 'Would destroy the Community.'" The Washington Post, 9/11/83

and Loudoun could be renewed. Meanwhile, new proposals for funding the second two lanes were made to VDH&T from the developer.

The second set of proffers was nearly identical to the first set of proffers except for the dates in the proffer agreement. The Loudoun county staff recommended approval and the Loudoun County Board of Supervisors approved the second set of proffers in July of 1983.¹⁵⁴

Compromising: Developing Band-Aid Solutions for Jurisdictional Dysfunction

In September of 1983, the Fairfax Board of Supervisors made the unhappy decision to approve the Holly Knoll alignment as an access road for Cascades. The decision represented a defeat for Fairfax County which had hoped to keep Loudoun commuters from clogging Fairfax county roads. The decision to approve the access road raised concerns over the capacity of Route 7 and Georgetown Pike to support future traffic. The best alternative of approving Cascades access road did not represent the best regional transportation plan available. Supervisor Faick commented, "We still have a problem," and complained of the lack of real alternatives.¹⁵⁵

The players in the negotiation process were the Virginia courts, Loudoun County, Fairfax County, area residents, the developers and VDH&T. Each of these parties had their own agenda and overarching goals. The courts moved to protect the rights of private property owners and made their decisions on a site-specific basis, with little attention paid to regional transportation impacts. Fairfax County planned for the outer reaches of their county to be low-density. Loudoun was attempting to preserve their rural way of life by clustering development on the eastern portion of their county. Existing residents were acting to preserve their own way of life. The developers were attempting to make profit by constructing a residential community according to Loudoun's

¹⁵³ Staff Report. The Loudoun County Planning Department to the Loudoun County Board of Supervisors, 11/15/82.

¹⁵⁴ Staff Report. The Loudoun County Planning Department to the Loudoun County Board of Supervisors, 7/7/83.

¹⁵⁵ Bauer, Patricia, "Fairfax Homeowners Say Road 'Would destroy the Community.'" The Washington Post, 9/11/83

plan. VDH&T was attempting to balance their projects, which were state-wide, while maintaining political neutrality and financial prudence.

In this case, no over-riding authority was available to negotiate for regional concerns. The courts set the atmosphere determining that the project should be built. Loudoun, knowing that the project must be built worked to funnel the residents to their probable Fairfax County employment. Fairfax, subject to Loudoun's rezoning approval had no real alternatives but to search for solutions with the least impact on their residents and to stall the project. VDH&T stood on the side-lines and refused to pay for the project with state funds. The result was a band-aid solution of cul-de-sacing Fairfax roads at the county border and approving the road, adopted because the private sector was willing to contribute to the road network. Widening of Route 7 and public transportation were never actively discussed.

The negotiation over Cascades for the next year revolved around which roads were to be cul-de-saced. Supervisor Falck requested that the developer build an overpass for Thomas Avenue and the developer refused.¹⁵⁶ The Fairfax board of Supervisors requested that the Loudoun County Board of Supervisors comment on the Thomas Avenue cul-de-sac.¹⁵⁷ The Loudoun County Board of Supervisors passed a resolution that they did not prefer to have a cul-de-sac at Thomas Avenue.¹⁵⁸ The developer coordinated with Loudoun County and the other developers to begin the roadway project.¹⁵⁹

New Faces. New Deals: The Third Set of Proffers

In May of 1985 Warren Montouri sold the Cascades property to the Sequoia Corporation. Sequoia was the contract purchaser, with a \$1.6 million dollar investment in deposits for the

¹⁵⁶ Correspondence, From Nancy Falck of the Fairfax County Board of Supervisors to Steven Stockman of the Loudoun County Board of Supervisors, 1/3/84.

¹⁵⁷ Correspondence, From the Fairfax County Board of Supervisors to the Loudoun County Board of Supervisors, 2/10/84.

¹⁵⁸ Resolution from the Loudoun County Board of Supervisors, 3/19/84.

¹⁵⁹ Correspondence, Richard Hobson of Booth, Prichard and Dudley, the attorney of Montouri to Mr. Grayson P. Haynes, the Attorney for the Great Falls Forest Subdivision. 2/28/84

purchase of property, and the sale was contingent upon Sequoia acquiring the proper arrangements for building a the "Loop Road" – or "Algonkian Parkway".¹⁶⁰

Sequoia, as the contract purchaser of the property, met with the county staff in a June pre-application meeting to determine the process of changing the concept plan. The county staff informed Sequoia that the process of changing the concept plan would require a new proffer agreement, which is the same process as a major rezoning and that the process would like four to six months.¹⁶¹ Sequoia agreed to this and submitted an application for concept plan amendments in September.¹⁶²

The County initiated the referral process, and the Zoning Administrator collected responses and commented on the revised plan in November. In December, VDH&T, submitted a letter to the Zoning administrator stating that it would be in the best interest of the county to require that the developer proffer to build four lanes of the road all the way to Route 7, and not two, as originally proffered. VDH&T would not contribute to building the new facilities.¹⁶³

Over the next few months, negotiation over 'Algonkian Parkway' continued and the developer offered to build two lanes to Route 7, acquire the right of way for the other two lanes. An agreement to build all four lanes was contingent on the County allowing the density of the property to be increased by 350 units and that the last two lanes will not be built until 80% build out. In March, the County planning commission held a public hearing on the application.

On June 2, the Board of Supervisors voted to approve the position that the roadway should be aligned with the future Fairfax County Parkway and that the County would not pay for the additional two lanes. The county also adopted the position that since VDH&T would not take the

¹⁶⁰ Chitwood, Bryan R. "Judge Denies Injunction Asked Against County by Developer." The Loudoun Times Mirror.

¹⁶¹ Correspondence from Sara Howard O'Brien, Chief of Land Development at Loudoun County to Tom Rust of Patton, Rust, Harris and Associates. 6/22/85.

¹⁶² Correspondence. From Michael J. Geiger of Booth, Prichard and Dudley, Attorney for Sequoia Corp. to The Loudoun County Planning Department. 8/9/95.

¹⁶³ Correspondence, From Arthur J. Smith of VDH&T to Timothy J. Krawczel, Zoning Administrator of Loudoun County, 12/10/85.

roadway into the state system without a four lane roadway, that the developer would have to fund the additional two lanes. However Fairfax County had adopted the position that they would only accept two lanes of the roadway and there would not be an alignment with the Fairfax County Parkway. Thus, the Loudoun County would be in a position to deny the new rezoning/proffers if the developer did not build the road to VDH&T standards. Fairfax County was making it impossible to conform to VDH&T standards.¹⁶⁴

Sequoia withdrew their concept plan and filed suit against the Loudoun County on June 25 for an injunction on grounds that Loudoun violated the original proffer agreement to assist the developer in obtaining approvals to build the roadway.¹⁶⁵ The developer requested an injunction to prohibit the county from refusing to process and approve the land use application while contemplating a two lane road.¹⁶⁶

In September, the property was sold to yet another party, Aoki, an American subsidiary of a Japanese development corporation.¹⁶⁷ Apparently, Aoki had been working on the project before the sale, as they submitted a preliminary concept plan in August. They requested a pre-zoning application meeting for October 21 to discuss the project.¹⁶⁸ The new owners adopted a policy of cooperation, and stated that Aoki would be willing to drop the law suit if a solution could be found.¹⁶⁹

In November Aoki submitted a concept plan amendment request, plats and a new proffer agreement.^{170 171} They promptly requested a joint (Planning commission and the Board of

¹⁶⁴ Chitwood, Bryan R. "Supervisors Support Alignment of Parkway with Springfield Bypass." The Loudoun Times Mirror, 6/5/86.

¹⁶⁵ Chitwood, Bryan R. "Sequoia Sues County over Algonkian Parkway Construction." The Loudoun Times-Mirror, 7/10/86.

¹⁶⁶ Chitwood, Bryan R. "Sequoia Sues County over Algonkian Parkway Construction." The Loudoun Times-Mirror, 7/10/86.

¹⁶⁷ Chitwood, Bryan R. "Cascades, Beacon Hill Sold." The Loudoun Times-Mirror, 10/2/86.

¹⁶⁸ Memo, from Timothy J. Krawczel, Zoning Administrator of Loudoun County to The Loudoun County Board of Supervisors, 10/14/86

¹⁶⁹ Memo, from Timothy J. Krawczel, Zoning Administrator of Loudoun County to The Loudoun County Board of Supervisors, 10/14/86.

¹⁷⁰ Correspondence, From Gary P. Bowman of Urban Engineering Associates to the Loudoun County Planning Department, 11/7/86.

¹⁷¹ Proffer Agreement, forwarded by Woodrow W. Turner Jr., Attorney for Aoki to the Loudoun County Board of Supervisors, 11/7/86.

Supervisors) public hearing for the project, and requested that Loudoun be expedient in scheduling a hearing because the project had been under review for a year and one-half.¹⁷²

The joint committee hearing was held on December 15, 1986, the Loudoun County zoning administrator presented the staff opinion and the developer's position in regards to the roadway. The staff position was that two lanes of the road should be built prior to development and the other two before 50% build out. The applicant adopted the position that either way, the project need to get underway and that they would require other means of access if the Parkway was not approved. The staff response was that the developer should build four lanes within Loudoun County, two lanes in Fairfax, and proffer the costs for construction of the other two lanes.¹⁷³

After the public hearing, Aoki forwarded a new copy of the proffer agreement to the County Staff. The new offer included an increase in proffered amenities as far as recreation was concerned and an offer to design, bond and build all four lanes from Route 7 to Cascades and to cul-de-sac Thomas Avenue (with the exception of the Barazotto and Great Falls Forest tracts, which would build the road on their own property).¹⁷⁴ The new proffers were sent out for referral.

Each of the county departments responded to the referral by asking for more amenities than were proposed in the proffer agreement. The county engineer requested that less private streets be built, in addition to a number of technical comments.¹⁷⁵ The parks and recreation department suggested that they receive financial contributions of \$200 dollars per unit to the recreation trust fund and an increase in proffered facilities.¹⁷⁶ The fire and rescue department requested that the developer proffer \$60 per unit annually the Fire and Rescue department.¹⁷⁷

¹⁷² Correspondence, from Woodrow W. Turner Jr., Attorney for Aoki to the Loudoun County Board of Supervisors, 11/13/86.

¹⁷³ Staff Report, from Timothy J. Krawczel to the Loudoun County Board of Supervisors and Planning Commission Members, 12/15/86.

¹⁷⁴ Draft Proffer Agreement, Aoki Corporation and Loudoun County Board of Supervisors, 12/23/86.

¹⁷⁵ Correspondence, from Daniel Berler, Staff Engineer to Timothy J. Krawczel, Zoning Administrator, Loudoun County, 1/16/87.

¹⁷⁶ Correspondence, from James O. Stup, Loudoun County Department of Parks and Recreation to Timothy J. Krawczel, Zoning Administrator, Loudoun County, 1/21/87.

¹⁷⁷ Correspondence, from O.R. Dube, Loudoun County Director of Fire and Rescue to Timothy J. Krawczel, Zoning Administrator of Loudoun County, 1/21/87.

The planning commission hearing was held on February 9, and during the meeting, the latest copy of the proffer agreements were revealed to the public. During the meeting, the standing room crowd took most of the floor time and none of the planning commissioners spoke. Fairfax's position was that the Fairfax would only accept the proposed road if Thomas Avenue and Brockman lanes were cul-de-sacs by Loudoun. Most of the comments from citizens were in reference to the cul-de-sacs of Thomas Avenue and Brockman lane, although there were some comments on other matters as well. There were a number of upset citizens on all sides of the matter.

During the Planning commission meeting two weeks later, the staff recommended approval of the concept plans and the proffers and the planning commission agreed to move the project to the Board of Supervisors for final approval.¹⁷⁸ After the meeting, the proffers were slightly revised again and resubmitted on February 27.

Meanwhile, Loudoun County was negotiating a settlement in regards to the roadway matter with Fairfax County and sent a draft "Memorandum of Understanding" to Fairfax along with the new proffers on March 2.¹⁷⁹ Subsequently, the Loudoun County Board of Supervisors approved the zoning map amendment petition and proffers on March 16.

In addition to the previous proffers new set of proffers included the following improvements;

- Pedestrian trails to the elementary school site,
- Additional cash contributions to the School Board,
- To dedicate 80 acres of Lowe's Island to the Northern Virginia Regional Park Authority,
- To construct athletic fields,

¹⁷⁸ Chitwood, Bryan R. and Tim Farmer, "Fairfax May Block Work on Algonkian Parkway." The Loudoun Times-Mirror, 2/12/87.

¹⁷⁹ Roberts, John R., Assistant County Attorney for Loudoun to Karen J. Hartwood, Assistant County Attorney for Fairfax., 3/2/87.

- To contribute \$200 per dwelling unit to a community facilities trust fund for building a community center,
- To reserve space for a Post Office and Medical Clinic in the Commercial area.
- To dedicate two sites for community facilities, including a church,
- To dedicate a single family lot and home for Mental Health and Mental retardation uses,
- To provide a trail to the Potomac river,
- To provide a trail along the river and dedicate it to the Northern Virginia Regional Park Authority,
- To build four lanes of the Algonkian Parkway subject to approval from Fairfax, Loudoun and Virginia Department of Transportation (VDOT),
- To agree to construct two lanes of the roadway before obtaining occupancy permits, and agrees to construct the other two lanes before reaching 50% build out,
- To agree that if approval for the other two lanes was not given, then Aoki would find another means of access before the second half of the occupancy permits will be given,
- To close and cul-de-sac Brockman Lane and Thomas Avenue,
- To build two private recreational centers,
- To form a Homeowner's Association,
- To require that the Homeowner's Association contribute \$60 annually to fire and rescue services, and

- To require that the Homeowner's Association provide lawn maintenance of common areas, snow removal, garbage collection, maintain and operate recreational buildings and maintain and repair private streets.

The last set of proffers shows a much greater commitment on the part of the developer for the contribution of services to the new community than the first set of proffers. Through requiring that a homeowner's association be formed, the county actively participated in privatizing not only the provision and construction but also the maintenance of typically public services.

Epilogue

Shortly after the proffers were accepted, the developer of the nearby Potomac Lakes project, Kettler and Scott, bought the Cascades tract. The combined project amounted to over 6,000 planned residential units and 5.2 million square feet of office, hotel and retail space. Kettler used the same proffers, but slightly changed the concept plan for Cascades when it was joined with the Potomac Lakes project. Through the Potomac Lakes proffers, Kettler agreed to build five miles of the Algonkian Parkway, a bridge, 20 miles of trails, a highway interchange on Route 7 and an expansion of a portion of Route 7 from four to six lanes.¹⁸⁰ Kettler envisioned a colonial style neo-traditional town center, bordered by office space and surrounded by residences¹⁸¹. The project's concept plan amendments were accepted by the Loudoun County Board of Supervisors in August of 1987.¹⁸²

Fairfax County and Loudoun finally reached an agreement on the roadway alignments of the Fairfax County Parkway and Algonkian Parkway in January 1989.¹⁸³ Fairfax agreed to align the two roads, and Loudoun agreed to cul-de-sac Brockman Lane, Thomas Avenue and Cup Leaf

¹⁸⁰ Brenner, Joemi Glenn and Kirsten Downy, "Thrift Takes over Two Loudoun Projects" The Washington Post, 9/29/90.

¹⁸¹ Pae, Peter. "Virginia Community 'May just be a dream': Residents angered as Economic Reality Redraws a Plan for Cascades" The Washington Post, 5/30/93.

¹⁸² Mahoney, Michael C. "Cascades Developer Says He Loves His Job: For Bob Kettler, it's a Family Affair" The Loudoun Times-Mirror, 11/22/89.

¹⁸³ Kokianaris, Maria. "Significant Stretch of Parkway Opened; Algonkian Project Overcomes Bickering" The Washington Post, 12/28/89.

Holly Court. Process on the roadway was delayed when a resident on Thomas Avenue obtained a court order to keep Thomas Avenue open. But, less than a year later, right before the case was to go to court, the resident dropped the lawsuit.¹⁸⁴

In 1990, Kettler and Scott were forced to give up the projects to their lender, Chevy Chase Bank, due to financial difficulties and a sluggish market.¹⁸⁵ While Kettler and Scott were still the official developers, the bank assumed a considerable amount of control over the project.¹⁸⁶ By fall of 1990 a considerable portion of the Algonkian Parkway was built and the first 'Cascades' homes were occupied.¹⁸⁷

In 1994, Chevy Chase and Kettler scrapped the idea of a town center and office space, and requested to approve for a change in plans.¹⁸⁸ The county Board of Supervisors was convinced of the severity of Chevy Chase's financial difficulties and approved the change. In lieu of the "Reston-type" town center, a Home-Depot and strip mall was built, saddening and enraging the residents of Cascades that expected to have a town center. In addition, Chevy Chase changed its marketing and building strategy, essentially changing the makeup of the community from upper-class to largely middle-class clientele. The planned office space was then converted to residential space.¹⁸⁹

Most of Algonkian Parkway was built by developer proffer, but VDOT eventually ended up building the interchange at Route 7 and Holly Knoll Drive/Algonkian Parkway. Loudoun County has \$6 million in developer proffers from a nearby regional shopping mall's proffers for the interchange at Route 28, but has not found the funding necessary to build the interchange yet.

¹⁸⁴ Koklanaris, Maria. "Significant Stretch of Parkway Opened; Algonkian Project Overcomes Bickering" The Washington Post, 12/28/89.

¹⁸⁵ Brenner, Joemi Glenn and Kirsten Downy, "Thrift Takes over Two Loudoun Projects" The Washington Post, 9/29/90.

¹⁸⁶ Brenner, Joemi Glenn and Kirsten Downy, "Thrift Takes over Two Loudoun Projects" The Washington Post, 9/29/90.

¹⁸⁷ O'Harrow, Robert, Jr. "Cascades: Rave Review Amid the Loudoun Mud." The Washington Post, 10/20/90.

¹⁸⁸ Pae, Peter. "Va. Community 'May Just be a Dream': Residents Angered as Economic Reality Redraws Plans for Cascades." The Washington Post, 5/30/93.

¹⁸⁹ Brenner, Joemi Glenn, "At Cascades, A Dream Plan Awakens; Changes at Stalled Project Anger Some Residents" The Washington Post, 1/8/94.

After the building of Cascades, smaller "infill" developments built along the edges of the community, using community roads and other infrastructure that was constructed as part of Cascades. In 1996, the South Bank subdivision was approved right next to Cascades. A county citizen commented, "Developers often say they don't have to contribute towards the costs because the infrastructure is already taken care of. Its unfair." Many small developments now surround and "infill" the areas around the larger private communities including Countryside, Cascades, South Riding, Ashburn Farm and Ashburn Village, and benefit from the infrastructure that the homeowners in the larger community paid for.

Concluding Thoughts on the Case of the Cascades Planned Community

This case is an example of the using the private sector to construct, finance and maintain major public infrastructure. It is an example of an attempt to link transportation planning with land use planning through envisioning the eventual roadway network in advance of the eventual development. Finally, it is an example of the difficulties associated with coordinating planning between jurisdictions that have contradictory and competing goals for development. The responsibility for all of this negotiation fell primarily on the planners at Loudoun, who both argued their position and interpretation of the county plan and brought together input from VDOT, Fairfax planners, area residents, political bodies and the courts to come to an eventual decision on the matter.

While the policy of building privately planned communities where developers contribute to public infrastructure transfers the cost of new development to the new residents, the eventual solution was a compromise. Loudoun County's plan calls for a network of garden cities in the spirit of Reston. However, by relying on the private sector to contribute the majority of the infrastructure to implement this goal, the county had to submit to the realities of the financial and marketing restraints on the private sector. As the county and VDOT pushed for more financial contribution from the developer, they eventually lead the final developer to promise more than could be realistically financed. The result was not a mini-Reston, but another planned unit development.

Thus, when expecting the private sector to take a larger role in the financial portion of the provision of infrastructure, there is also a transfer of control of the eventual product.

A positive aspect of this case is that by planning and coordinating the developers in the region, the planning department of Loudoun County was able to link land use and transportation planning into a coherent pattern. In contrast to most cases of development, where a developer will use (and eventually overload) existing transportation facilities, the county was able to act in advance to assure that transportation would be considered appropriately in this case. One could argue that the link between the land use and transportation was forced in this particular case due to the specific problems and advantages of the Cascades tract and the concentration of five major developers would directly benefit from constructing the roadway. However, Loudoun's policy is to use the proffer system for coordinating the construction of an eventual transportation network that has already been envisioned. Nevertheless, even the roadway was a compromise when considered against Loudoun's plan: there is little or no provision for public transport and the town center became a strip mall located along Route 7.

The planning process in this case was extraordinarily inefficient, involving a large number of attorneys, countless hours of staff time and numerous public hearings. The fact that the project took thirteen years to get started, and then ran into financial trouble anyway, suggests that the process of negotiation is costly. The costs of this process fall onto the shoulders of the new residents and existing residents alike. The negotiation process itself had no formal process or procedure, which in some cases could leave the door open to abuse. Underprivileged and non-vocal groups did not have a place in the planning process, as their views were not solicited in the diplomatic system of negotiation. While billion dollar projects such as this require significant attention, attention through uncoordinated legal and political conflict may not represent savings to citizens.

The process also leads to inequitable distribution of costs associated with development as each development has its own, separately negotiated proffers. While the county does have general guidelines for proffers, the diplomatic abilities of the developer and the principal planner directly

influences the eventual outcome of each project. A savvy developer can pass off costs to the county, and a savvy planner can pass the costs to the new residents. The proffers from different projects have vastly different price tags depending on the geography and nature of the site as well as the specifics of the projects. For example, some residents pay \$60 per year for fire and rescue services through their homeowner's association, and other residents pay nothing.

This case shows the problems of regional planning among jurisdictions with disparate and conflicting goals. Without a regional authority to coordinate Fairfax and Loudoun as they planned for a regional roadway, there was no impartial or centralized diplomat to bring together the counties. The result was a number of stand-offs and conflicts over the subject of Algonkian Parkway, that lead to cutting off transportation links between the counties. VDOT was exceptionally uninvolved with the process and did not take responsibility for bringing together the counties to come to a reasonable solution that would benefit the citizens of the region. The lack of a regional authority to coordinate the decision making process lead to years of delay and costly negotiations between the jurisdictions that could have been avoided.

The planning process forces the private sector to take more responsibility for the impacts of development. However, there are a number of other costs associated with this uncoordinated system of deal making. In an era where sharing costs and responsibility for public services between the private sector and the public sector is celebrated, the impacts of relying on the private sector to build and often maintain public infrastructure so that public government entities can avoid responsibility for new growth should not go undocumented. The story of Cascades is a story of diverse governmental agencies shirking the cost and responsibility of growth.

CHAPTER 4: MAINTAINING THE PRIVATE COMMUNITIES

Loudoun County has become and continues to develop as a collage of development types: isolated development in incorporated towns, small planned unit developments in these towns, typical large lot development without specific governance organization in the County, small planned unit developments under the county's jurisdiction and planned communities ranging from 2000 to 6000 units under the county's jurisdiction. However, planned unit developments that rely on homeowner's associations have become the dominant development type.

Rapid development coupled with a planning process that transfers costs and responsibilities to the private sector has lead to proliferation of private communities. Every one of these private communities is governed by an RCA. This represents a massive, if unintentional privatization, of municipal government functions. As Robert Nelson points out, "If RCA's were to become the prevailing mode of social organization of the local community, this development count be as important as the adoption in the United States of the private corporate form of business ownership."¹⁹⁰ Nevertheless, while the formation of RCA's has had a major impact on the nature of the region, the public government retains responsibility of much of the big-ticket items such as schools, police and libraries. So while RCA governance is a privatization, it is not a total privatization.

The following chapter is organized in the following fashion: the first section is a review of the history of residential community associations; following is an analysis of the RCA's in Loudoun County and their functions; the third section discusses the nature of RCA governance in Loudoun.

¹⁹⁰ Nelson, Robert, "The Privatization of Local Government: From Zoning to RCA's", in Residential Community Associations: Private Governments in the Intergovernmental System?, The Advisory Commission on Intergovernmental Relations. 1989. Washington D.C.: The US Government Printing Office, pg.47.

Background and History of Residential Community Associations

The following section explores the history of the residential community association to give the reader a background understanding on the nature of private communities and their RCA's. The RCA has always been envisioned as a *quasi-governmental* entity and an alternative form of community. While the early associations were either focused and practical – such as Grammercy Park or utopian, like Radburn, now community associations governing planned communities are a major accepted institution in the US.

Early Experiments with Common Ownership

The origins of the common interest development can be traced back to the 18th and 19th centuries when groups of land owners would organize to provide for the upkeep of a central park. The first example of common ownership is Leicester Square in London, England. In 1793, descendants of Earl of Leicester wanted to preserve park at Leicester Square. So, they required those who leased properties adjacent to the square to communally pay for groundskeeping and upkeep. When the land was sold in 1808, the owner engineered a restrictive covenant into the sale forcing the next owners to maintain the park and with the tenants paying fees for its upkeep. In exchange the tenants had exclusive rights to use the fenced park.¹⁹¹

Grammercy Park in New York was designed in 1831 with the same idea.¹⁹² A set of trustees was assembled to see to the maintenance of the square and tenants in the surrounding row houses still have exclusive use of the property.

Louisburg Square, Boston was formed in 1844 and is considered to be the first homeowner's association. In this case, land owners voluntarily organized for the upkeep of the park and bound themselves and subsequent land owners to the agreement.¹⁹³ Other early associations include

¹⁹¹ McKenzie, Evan. Privatopia: Homeowner's Associations and the Rise of Residential Private Government. Yale University Press: New Haven, 1994. pg. 34.

¹⁹² Treese, Clifford J. and Frank H. Spink. Community Associations Factbook. Alexandria, Virginia: The Community Associations Institute Research Foundation, 1999, pg. 5.

¹⁹³ Dilger, Robert Jay. Neighborhood Politics: Residential Community Associations in American Governance. New York and London: New York University Press, 1992, pg. 48.

the Saint Louis street associations (many of which exist today),¹⁹⁴ Riverside – a community near Chicago, Ocean Grove - New Jersey, Squirrel Island - Maine and Roland Park in Baltimore.

Ebenezer Howard and the Garden City: The Ideological Framework

Perhaps one of the earliest and most powerful initiators to the current boom of RCA's is the utopian ideology laid out by Ebenezer Howard in the late 19th Century. His ideology laid the framework for allowing the planning and architectural communities to embrace the idea of common ownership of land in a community.¹⁹⁵

Howard originally conceived of a garden city as a means to social betterment; to allow people to live together in harmony, dignity and happiness.¹⁹⁶ In both Great Britain and America there was a dichotomy of space: either one lived urban areas with opportunity and culture, but high rent and long work hours; or one lived in rural areas with little opportunity and culture but with low rents and beautiful scenery. He asked "What can possibly be done to make the county more attractive to a workday people than the town - to make wages or at least the standard of physical comfort higher in the county in the town, to secure the county equal possibilities of social intercourse and to make the prospects of advancement of the average man or woman equal, not to say superior to those enjoyed in our large cities?"¹⁹⁷ His solution was to combine the two in the form of the garden city, where people could have the best of both worlds.

The plan had two basic elements: the physical plan and the social plan. The physical plan comprised of a circular town, surrounded by a green belt. The town would have a central park with a shopping arcade nearby and the residences and public institutions would be located on avenues that radiate out from the central park. Manufacturing would be located at the edge of the city. The garden city would have rail links to other garden cities that spread out across the

¹⁹⁴ Ibid, pg. 48.

¹⁹⁵ McKenzie, Evan. Privatopia: Homeowner's Associations and the Rise of Residential Private Government. Yale University Press: New Haven, 1994. pg. 8.

¹⁹⁶ Ward, Stephen J., The Journal of the American Planning Association, Spring 1998, Vol 64, No. 2, pg. 128.

¹⁹⁷ Howard, Ebenezer, "Author's Introduction," Garden Cities of Tomorrow, from The City Reader, ed. Richard T. Gates and Federic Stout, London and New York: Routledge, 1997. pg. 347.

countryside in a decentralized pattern.¹⁹⁸ At present Loudoun County has a similar construction; it is comprised of a number of towns that are separated by green areas. Each of the towns has a core with a shopping center or older city center. The new towns have recreation facilities in the central part of the towns with public schools are located near the residents.

The second element was the social plan. The garden city was to have common ownership, where every person would pay a rent that included all the services that went with the town. The governance of the garden city was democratic in nature so the residents of the town voted for the best civic officials who would run the town. The government would also be technocratic in nature, in that the city's constitution would be modeled after a corporate business charter. The garden city would reflect a mixing of public and private entities as the leadership of the town would work on private principals due to the common land ownership.¹⁹⁹ "By stepping as a *quasi*-public body into the rights of a private landlord, it becomes at one clothed with far larger powers for carrying out the will of the people than are possessed by other local bodies."²⁰⁰ Thus, by combining the private rights of ownership with public authority, the leadership of the garden city would have more power than the typical public town.

A garden city named Radburn, NJ was planned and built by the Regional Planning Association of America (RPAA). While Radburn was built according to Howard's vision as much as possible, not all of the social and governance ideas that Howard envisioned could be realistically implemented in the United States. The economic and political functioning of the project was one of the largest project challenges: project funding was difficult because one of the basic tenants of Howard's Garden City notion was communal ownership. "Bing explained...that perhaps one of the greatest obstacles to building garden cities like Howard's was American opposition to public ownership of the land...[and, he] saw restrictive covenants that limited the rights of individual

¹⁹⁸ Fishman, Robert. Urban Utopias in the Twentieth Century. London, England and Cambridge, MA: The MIT Press, 1982. pg 42-44.

¹⁹⁹ Evan McKenzie, Privatopia: Homeowner's Associations and the Rise of Residential Private Government. 1994, Yale University, pg. 84.

²⁰⁰ Howard, Ebenezer Howard, Garden Cities of Tomorrow, Cambridge, MA: MIT Press, 1965. pg. 92-93.

owners as the next best thing to community land ownership."²⁰¹ After significant analysis, the covenants and homeowner's association of Radburn was designed in lieu of complete common ownership. Radburn's government became a prototype for later RCA's.

American Developers: Constructing the Vision

Prominent developers, like J.C. Nichols, as early as the beginning of the century began to discover the returns to scale of building large, planned community scale projects. These projects worked best when the developer could use a homeowner's association to care for common grounds and covenants associated with planned unit development. The County Club District, started in 1905 was the first large scale master planned community that used a homeowner's association. J.C. Nichols formed the homeowner's association and the restrictive covenants before the sale of the first lot.²⁰²

Yet, J.C. Nichols was not entirely pleased with the results because the County Club District Improvement Association was a voluntary organization and it soon became too independent for his taste.²⁰³ He told other developers that "he knew he was going to have to do something because it was becoming increasingly difficult to work with the original [homeowner's association] as it continued to grow."²⁰⁴

In 1914, Nichols created another homeowner's association at a development called Mission Hills. The Mission Hills development was not located in a municipality and thus would need to supply municipal services for itself. Nichols preferred to maintain as much control as possible over the development, thus forming a public municipality was out of the question. The Mission Hills Homes Company was a mandatory membership organization with extensive responsibilities on

²⁰¹ Bing, Alexander M. "Can We Have Garden Cities in America?", The Survey, 54, no. 3., May 1, 1925, pg. 172. From Privatopia, pg. 48.

²⁰² Dilger, Robert Jay, Neighborhood Politics: Residential Community Associations in American Governance, New York and London: New York University Press, 1992, pg. 48.

²⁰³ McKenzie, Evan, Privatopia: Homeowner's Associations and the Rise of Residential Private Government, Yale University Press: New Haven, 1994, pg. 39.

²⁰⁴ Worley, William S., J.C. Nichols and the Shaping of Kansas City: Innovation in Planned Residential Communities, Columbia: University of Missouri Press, 1990, 164-65.

the part of the homeowner's association. The covenants associated with buying a home in Mission Hills were strictly enforced by homeowner's association and Nichols felt strongly that it should be that way. He felt that "setting any precedent of non-enforcement, however slight will lead to widespread disregard of the rule." This philosophy often continues today.²⁰⁵

From the 1920's on, large corporate builders have been increasing in number, building in many cases 100 and sometime 1,000 residential units at once. Since the advent of large scale development, developers have experimented with Howard's physical layout.²⁰⁶ At the same time they found that private controls such as restrictive covenants and RCA's added to property value because rules enable the developer to reduce uncertainty of neighborhood deterioration or change. Thus, a developer could add value to each home with little or no cost to themselves by setting up a RCA.

The Formation of an Institutional Framework

The garden city ideas had begun to merge with private development interests and the result was large scale planned development and RCA's. The last sanction needed was that of the American federal and state governments & they came soon after these innovations. State courts continually have asserted legality of RCA's even though they constitutionally dubious due to the fact that they privately tax citizens.²⁰⁷ In 1934, the US government decided to back mortgage loans, which added to the mix, an incentive for individuals to buy new homes. In 1935, the Federal Housing Administration was formed, which instituted mortgage insurance programs and encouraged large scale housing subdivisions through its land planning, property and subdivision standards.²⁰⁸

²⁰⁵ McKenzie, Evan. Privatopia: Homeowner's Associations and the Rise of Residential Private Government. Yale University Press: New Haven, 1994. pg. 39.

²⁰⁶ Ibid, pg., pg. 9

²⁰⁷ Miels, Hugh, Jr. Federally Assisted New Communities: New Dimensions in Urban Development. Washington D.C.: The Urban Land Institute, 1974, pg. 54.

²⁰⁸ Treese, Clifford J. and Frank H. Spink. Community Associations Factbook. Alexandria, Virginia: The Community Associations Institute Research Foundation, 1999, pg. 5.

Institutional support in the form of the Urban Land Institute (ULI) was set in place in 1936 when J.C. Nichols formed the ULI. The ULI is a non-profit research organization dealing with land use and development issues.²⁰⁹ The ULI formed the Community Builder's council in 1944, which stressed the need for home owners associations and established mechanisms for communication of best practices for forming homeowner's associations. The ULI recommended that RCA's be established and that restrictive covenants be placed on the properties as a means of quality control of the development.²¹⁰

Nevertheless, by 1970's common interest developments were facing significant problems. Firstly, developers took advantage of the flexibility that local governments gave them in designing and building the private communities, and often used shoddy workmanship and inferior design of the buildings. Developers also underestimated the costs of maintaining the private facilities, leaving the RCA's under-financed. Another problem was uneducated home buyers who entered into a RCA's with misconceptions because they were not informed of the association until they were members. In addition, often managers of RCA's were unqualified to run the associations and did not realize that they needed perform tasks such as filing tax returns. Phased developments also were a problem as they often left the first set of homeowners with financing amenities such as pools and tennis courts when the later phases came slowly or not at all. All of these things lead to a negative public conception of RCA's.

The ULI formed the Community Associations Institute (CAI) to manage these problems in 1973.²¹¹ The CAI mission is to provide developers, managers and homeowners the necessary information to properly build, manage and understand a RCA's. As a result of practice and the

²⁰⁹ Urban Land Institute/Community Associations Institute, Managing a Successful Community Association, (Washington, D.C.: Urban Land Institute, 1974).

²¹⁰ Dilger, Robert Jay, Neighborhood Politics: Residential Community Associations in American Governance, New York and London: New York University Press, 1992, pg. 49.

²¹¹ Ibid, pg. 54-55.

CAI, problems due to inexperience with and understanding of common interest developments largely subsided in the 1980's.²¹²

The Building Boom

The trend in suburban land development after the initial post WW II suburban building boom has been to move away from typical large lot development to "cluster" development whereby homes are grouped in high density and commonly owned open space is left for community amenities (park, tennis courts, etc.). As the prices of suburban land increased, developers realized that there was a lack of market that could afford typical large lot housing.²¹³ So the ideas of the RCA became typically applied to small areas and condominiums as well as new towns and enormous developments.

During the eighties and nineties the primary growth of RCA's has been for small communities. These RCA's are often formed more as a way to reduce costs rather than provide specialized recreational facilities. A number of facilities, ranging from streets to utilities can be built more cheaply, if they remain private instead of being dedicated to the public sector. In addition, many local governments have provisions for common interest developments in their ordinances and they specifically request facilities from new developments.²¹⁴

The most recent addition to the mix of factors that have increased the force RCA's in American governance is neo-liberal ideology. "Neo-liberals view the market as the savior of all that society values."²¹⁵ Thus, they embrace the Jeffersonian idea that "the government that governs least governs best".²¹⁶ Neo-liberals prefer to leave as much of society's production as possible to the private sector, citing that the private sector is far more efficient at providing services. RCA's are seen as a mechanism for private service provision outside of state affairs. Robert Nelson, as an

²¹² Ibid, pg. 57.

²¹³ Evan McKenzie, Privatopia, 1994, Yale University, pg. 84

²¹⁴ The Advisory Commission on Intergovernmental Relations (ACIR). "Residential Community Associations: Private Governments in the Intergovernmental System?", Washington, D.C.: ACIR, 1989.

²¹⁵ Sclar, Elliot. Sclar Manuscript for Privatization and Public Policy, Columbia University, 1998, pg. 7.

²¹⁶ Ibid, pg. 2.

economist for the US Department of the Interior states: "An RCA represents a further extension of ...municipal privatization trends. Instead of privatizing service by service or facility by facility, the RCA serves a community that is in large part private form inception. An RCA is a systematic.. and comprehensive privatization."²¹⁷

In light of the prevailing philosophies of privatization and neotraditional (garden city type) urban design principals, and the reality of development costs, the number of RCA's have exploded.

"There were fewer than five hundred such homeowner associations in 1964....by 1992, there were 150,000 associations governing an estimated 32 million Americans."²¹⁸ Currently 205,000 community associations in the US housing 42 million Americans.

The Residential Community Association in America and Loudoun County

Evan McKenzie asserts in *Community First!* that at one time the RCA was just an experiment, but that over time it has become an institution. Now, community associations govern millions of Americans, have a major economic impact on the housing markets, support thousands of employed professions and provide what used to be considered essential public services.²¹⁹

Sixteen percent (16%) of existing housing units in the nation are governed by RCA's and 28% of housing units in the State of Virginia are governed by RCA's. Fifty four percent (54%) of all new housing construction in the US involves an RCA.²²⁰

This is particularly true in the region of Loudoun County. An exact figure for the percentage of housing units that are part of an RCA in Loudoun County is not available at this time. However, the researcher conducted a survey of Loudoun County residential community associations. The

²¹⁷ Nelson, Robert, "The Privatization of Local Government: From Zoning to RCA's", in Residential Community Associations: Private Governments in the Intergovernmental System?, The Advisory Commission on Intergovernmental Relations, 1989. Washington D.C.: The US Government Printing Office, pg. 47.

²¹⁸ McKenzie, Evan. Privatopia: Homeowner's Associations and the Rise of Residential Private Government. Yale University Press: New Haven, 1994, pg. 11.

²¹⁹ Evan, McKenzie, "Reflections on a New Paradigm for the Governance of Common-Interest Communities," Community First, Emerging Visions Reshaping American's Condominium and Homeowner's Associations. Bill Overton, editor. Alexandria, Virginia: Community Associations Institute, 1999, pg. 63.

²²⁰ Cummings & Associates, Inc. "Community Associations Overview for Leadership Loudoun Forum", February 11, 1999, page 10: Source: 1990 Census and 1998 Virginia Real Estate Board.

total population of 160 known community associations were sent the survey and 63 community associations responded. A comparison between the survey results and the published number of housing units in the County reveals that a very significant portion of the County resides in RCA's: while only the survey only had a 39% response rate, the RCA's that did respond govern over half of the residential units in the county.

Table 1: Comparison with Loudoun County Annual Growth Summary -1998 Total Units

<i>Type of Unit</i>	Units represented by Survey	Total in Loudoun County in 1998²²¹	Percentage of Total for Comparison
Single Family Detached	11,887	31,125	38%
Single Family Attached	10,341	13,735	75%
Multifamily	5,236	7,530	70%
Total	27,464	52,390	52%

²²¹ Loudoun County Department of Economic Development, 1998 Annual Growth Summary, Loudoun County Virginia, April 1999, pg. 31, 27.

The survey conducted by the researcher covers 27,464 housing units or an estimated 52% of the County's housing units. When the survey responses are broken down by housing type, the number of single family detached units, or houses, represented in the survey comprise only 38% of the total number houses in the County. However, the number of single family attached units or townhouses represents 75% of the total townhouses in the County and the number of multifamily units comprise 70% of the multifamily units. This breakdown may be due to the fact that townhouses typically are not built for rental purposes, but are built to be sold to individuals. They have communal parking lots, which necessitates a RCA. Multifamily units are more likely to be built for rental purposes than townhouses, but if they are built for sale to individuals then an RCA is necessary. Single family homes are much less likely to require an RCA, and many of these homes were built prior to 1960.

The Basic Structure and Duties of the RCA in Loudoun

The structure of RCA's is based on a corporate model of organization. Thus, the homeowners' are in essence much like stockholders in a non-profit organization. The homeowners' vote for other homeowners who serve on the board of directors. The board of directors usually elects president who serves as a chairman of the board. The board of directors will typically set policy, make decisions on managing the community and enforce rules. In regards to day to day management the associations either contract for management services from a professional management company, or are self-managed. The management, volunteer or paid staff act much as company employees or staff.

The basic duties of the RCA are as follows:

- 1.) Maintenance of commonly owned amenities such as open spaces, swimming pools, tennis courts and the like;

2.) Arrangement for the provision of basic services such as trash collection, street lighting, snow removal, sidewalk maintenance and security;

3.) Collection of assessments and fees from members for these services;

4.) Protection neighborhood property values through enforcement of covenants, conditions and restrictions.²²²

In addition, the RCA's typically have design review boards to ensure that the architectural standards of the community are maintained. The RCA is to exercise the powers and duties set forth in the governing documents and fulfill the duties conferred by law.²²³ Associations typically have financial reserves for future repair and replacement of association facilities.²²⁴ The following section is a look at the nature of RCA's in Loudoun County, how they operate and what their tasks are.

Types of Community Associations

The associations governing private communities within Loudoun County consist of a wide spectrum of sizes of units, housing classes, variety of services, levels of services, degrees of enforcement of CCR's and community activities. They range from major planned unit communities to small associations of single family houses. Nevertheless, at this time community associations still fall into one of three major groups according to their organizational structure.

There are three basic types of RCA's: the Condominium, the Cooperative and the Homeowner's Association. The Condominium is a form of ownership where an owner gains title to the interior space within a building. The land surrounding each unit is owned by all of the owners on an

²²² Dilger, Ray, J., Neighborhood Politics: Residential Community Associations in American Governance, New York and London: New York University Press, 1992, pg. 20-25.

²²³ Cummings & Associates, Inc. "Community Associations Overview for Leadership Loudoun Forum", February 11, 1999, page 6.

²²⁴ Ibid, pg. 13.

undivided basis.²²⁵ By definition there are common facilities that must be maintained by an association of owners. The Condominium Association is the community association that administers and maintains this common property.²²⁶

The Cooperative is a system of ownership whereby each member owns common stock in a not-for-profit organization that owns the entire project. The owner holds a proprietary lease or occupancy agreement granting exclusive use of the unit.²²⁷

Homeowner's Associations are associations that do not fit into the category of condominiums or cooperatives. The Homeowner's Association are RCA's where each homeowner has title to his residence and its grounds and the association holds title to the common areas and amenities. (More recent publications by the CAI have used the term 'planned community' in place of 'homeowner's association'.)

According to the CAI, 64% of RCA's in the US are 'planned community' or homeowner's associations, 31% are condominium associations and 5% are cooperative associations. Likewise, in the state of Virginia, 64% of all community associations are homeowner associations, 31% are condominiums, and the remaining 5% are cooperative units. The following table presents the result of the survey in regards to association type.

²²⁵ Urban Land Institute/Community Associations Institute, Community Associations: A Guide for Public Officials (Washington, D.C.: Urban Land Institute, 1980), pg. 2.

²²⁶ Ibid, pg. 2.

²²⁷ Cummings & Associates, Inc. "Community Associations Overview for Leadership Loudoun Forum", February 11, 1999, page 9.

Table 2: Loudoun County Associations by Type

<i>Type of Community Association</i>	Number	Percent
Homeowner Associations	45	71%
Condominium	14	22%
Cooperative	0	0%
Civic Associations ²²⁸	2	3%
Commercial Association ²²⁹	1	2%
Retirement Home	1	2%
Total	63	100%

According to the survey of Loudoun County, the proportion of Homeowner Associations exceeds the national or state proportion at 71% (vs. 64%). Twenty-two percent (22%) of the respondents were condominium associations. None of the associations surveyed were cooperative associations. Many of the condominium associations are also part of a larger, umbrella, home owner's association.

Developer vs. Homeowner Control of the Board of Directors

RCA's are typically set up by the developer who oversees the association until the completion of the project at which time he/she hands over the associations to the homeowners. The developer usually maintains control of the RCA until a specified number of units have been sold. The developer may vote on the RCA board for the unsold units, usually at an inflated rate, so that control of the RCA remains with the developer until a super-majority of the units (75% or more) are in the hands of individual homeowners. Of the community associations surveyed in Loudoun County, 13 are developer controlled.

²²⁸ A Civic Association is defined as an association without common property and has non-mandatory membership.

²²⁹ A Commercial Association is an associations made of commercial property owners or lease holders who contribute to the association for the upkeep of common property.

Table 3: Control of the Board of Directors

<i>Control</i>	<i>Number of Associations</i>	<i>Percent of Total Responses</i>
Homeowner Controlled	46	73%
Developer Controlled	13	21%
Civic/Retirement/Commercial	4	6%
Total	63	100%

Management of the RCA

The RCA is governed by a board of (usually uncompensated) representatives that are elected by the homeowners. Only homeowners have a right to vote, and only one vote per unit is permitted. (Renters do not have the right to vote.) In addition, RCA's often have a president whose duties are similar to the Chairman of the Board of corporations. In many cases, the day to day operations of RCA's are performed by management companies that act as staff.

There are four types of community management structures: self-management; on-site professional management; off-site professional management; and, off-site management coupled with on-site management.²³⁰ As 24% of the survey respondents are self managed and all but one of those associations are homeowner's associations. One major planned community is self managed, Ashburn Farm. The other self-managed associations range from 7 to 550 units. Nationally, two thirds of community associations either hire staff or contract a management company to oversee the day to day management tasks of the association.²³¹

²³⁰ Packard, Michael E., "Its All About Service," Bill Overton, ed. Community First: Emerging Visions Reshaping Condominium and Homeowner's Associations, Alexandria, Virginia: The Community Associations Institute, 1999, pg. 33.

Table 4: Professional Management

Management	Number of Associations	Percent of Total Responses
Professional Management Services	44	70%
Self Managed	15	24%
Civic/Retirement/Commercial	4	6%
Total	63	100%

The survey data doesn't reveal if the associations are professionally managed on-site or off-site. However, a general observation by the researcher and by others is that large planned communities tend to have on-site management and smaller communities tend to have off-site management. The reasons are simple: off-site management is more cost-effective for smaller communities and larger communities can afford to have dedicated on-site management.²³² On-site managers are hired via contract and provide day to day management of the community. Typically off-site management companies provide training programs for staff and residents, financial management and accounting services, access to information technology, after-hours emergency service, prescreen choices for vendors and service providers and competent advice. Many associations use a combination of on-site and off-site management.²³³

Residential Community Association Dues in Loudoun County

Association dues can be significant, particularly for residents of planned communities and condominiums. Often association dues are similar to what a resident in one of the public towns would pay. The Town of Purcellville charges a tax rate of .0024 per assessed value on a property per year. For a property assessed at \$200,000 dollars, this represents a payment of \$480.00 per year – and the public town provides garbage collection, maintenance of Town parks, water and

²³¹ Cummings & Associates, Inc. "Community Associations Overview for Leadership Loudoun Forum", February 11, 1999, page 21.

²³² Packard, Michael E., "Its All About Service," Bill Overton, ed. Community First: Emerging Visions Reshaping Condominium and Homeowner's Associations, Alexandria, Virginia: The Community Associations Institute, 1999, pg. 32.

²³³ Ibid, pg. pg. 32.

sewer services, a police force, professional planning, maintenance of Town streets, sidewalks and a representative government.²³⁴ While this is not a fair comparison of services or income – it is an illustration of the magnitude of association fees.

Table 5: Average Annual Dues by Association Type

Association Type	Number of Responses	Number of No Response to Question	Average Dues
Condominium	9	5	\$ 1,315.64
Homeowner's Associations	41	4	\$ 448.68
Single Family Detached only	20	1	\$ 356.65
Single Family Attached only	7	0	\$ 481.40
Mixed Housing Types	14	1	\$ 565.43
Civic	2	0	\$ 6.00
Commercial/Retirement	2	0	N/A
Total	54	9	

The above chart shows RCA dues of the survey respondents by housing type. Condominium associations charge the highest average dues at \$1315.64 annually. Condominium associations provide services such as building upkeep than many of the other associations types of associations are not required to provide, thus the higher rate for dues is logical. The next highest group is the Homeowner's Association – Mixed housing types. These associations tend to be the larger, planned community types and are usually newer associations and have higher fees. Finally the single family attached communities charge more than the single family detached communities, which require the least amount of mandatory services.

There is evidence that over time that developers have realized the costs of running community associations and have increased the dues as a result. The following table shows that dues are a function of community age in Loudoun County. The following table also may indicate that like

²³⁴ The Town of Purcellville also has a number of other revenue sources other than the real estate tax such as

local governments, community associations experience pressure from their members not to increase dues, but to keep dues low. Increasing dues may be as difficult as raising taxes, thus once dues are set, they only increase incrementally. (Associations formed before 1985 on average provide more services than their counterparts formed after 1985 – according to this survey. So, the low dues are not due to fewer services in these cases. See Appendix)

Table 6: Average dues for Homeowner's Associations Only, by Age of Development

Community Associations	Number of Respondents	Average Annual Dues
Formed prior to 1980	3	\$135.33
Formed from 1980 through 1984	5	\$376.48
Formed from 1985 through 1989	6	\$444.57
Formed from 1990 through 1995	8	\$458.01
Formed after 1995	7	\$541.87

Of the 44 Homeowner's Associations that responded to the survey, 15 did not give the date of the formation of the Homeowner's Association, and four did not respond to the dues question.

Covenants, Conditions and Regulations

The RCA is not a voluntary association: membership is automatic and mandatory for all homeowners who live in the community. Upon purchasing a home in an RCA the new homeowner enters into contract with the RCA and is bound to follow the governing documents of the association. The contract is enforceable, as the RCA is able to put a lien on any homeowner who violates the rules and regulations of the RCA or does not pay mandatory assessments.²³⁵

The most common rules and regulations of community associations in Loudoun County involve the exterior appearance of the property. Less common regulations involve conduct by the homeowner in regards to noise, leasing of property, home businesses, pets, and number of residents and guests. None of the homeowner's associations surveyed regulate age of persons or religious conduct.

business taxes, parking stickers, utility taxes and personal property taxes.

²³⁵ Cummings & Associates, Inc. "Community Associations Overview for Leadership Loudoun Forum", February 11, 1999, page 4.

Table 7: Covenants, Conditions and Regulations and Their Enforcement

Covenants, Conditions and Regulations	% Regulated	% Regulated and Enforced	% Regulated but not Enforced
Exterior Remodeling	97%	95%	2%
Parking of Trucks, Vans, RV's	95%	81%	14%
Exterior Color or Decoration	93%	92%	2%
Fences on Unit Lots	80%	80%	0%
Shrubbery/Trees/Lawn Decoration	54%	51%	3%
Noise Within or outside Units	46%	29%	17%
Exterior TV or radio antennas*	41%	34%	7%
Leasing or Subleasing of Units	39%	24%	15%
Home Base Business	36%	31%	5%
Type, Number of pets	24%	22%	2%
Number of Persons Living in One Unit	8%	7%	2%
Number of Guests in a Unit at One Time	2%	0%	2%
Residence by Children in the Community	0%	0%	0%
Residence by Adults below a Certain Age	0%	0%	0%
Religious Worship within Home	0%	0%	0%

Services Provided by Residential Community Associations in Loudoun County

The most common services provided by residential community associations in Loudoun are those associated with maintenance of commonly owned property, such as grass cutting and grounds keeping. In addition, street maintenance such as maintenance of private streets, sidewalks, snow removal and street lighting are commonly provided by homeowner's associations in Loudoun County. The Condominium units and planned communities (mixed housing types) typically provide more services than the homeowner's associations with only single family attached housing units.

Condominiums, planned unit developments and townhouse RCA's provide more services is because the Commonwealth typically owns and maintains streets that single family residential units are located on, while the RCA must manage the private streets that are adjacent to townhouses or condominiums. In regards to garbage collection, planned communities are more

likely to have garbage collection service because they are not typically located in incorporated towns. Townhouse communities and small single family RCA's are more likely to be located in incorporated towns that provide garbage collection. Condominium units have the tendency to have communal garbage collection in the form of dumpsters that require the RCA to contract for the service.

Another point in describing the nature of private communities in Loudoun is that 'gated' communities are virtually non-existent with only a few exceptions. Some of the RCA's have gates or fences that they maintain, but security patrols or restricted entry is uncommon.

Table 8: Services Provided by RCA's

	Condominium	Mixed Housing Types	Single Family Attached Only	Single Family Detached Only	Total
Number of Responses Considered	8	11	5	14	38
Average Number of Units	196	2,106	139	112	780
Average Fee	\$964.23	\$535.97	\$552.96	\$294.92	\$ 426.32
Service					
Grass Cutting in common Areas	100%	100%	100%	86%	95%
Trees/Shubbery in common areas	100%	100%	80%	71%	87%
Snow Removal	100%	100%	100%	50%	82%
Street Repair	100%	100%	60%	43%	74%
Sidewalks	100%	100%	80%	29%	71%
Open Space	63%	91%	60%	57%	68%
Street Lighting	100%	91%	60%	29%	63%
Parking	100%	91%	80%	14%	61%
Lot Repair	75%	82%	80%	7%	53%
Trash Collection	75%	64%	20%	14%	52%
Swimming Pool	63%	82%	40%	7%	45%
Play Areas/Tot Lots	38%	82%	40%	0%	37%
Other Recreation Facilities	38%	64%	40%	7%	34%
Painting/Outside Maintenance	75%	36%	20%	14%	34%
Tennis Courts	13%	82%	20%	7%	32%
Indoor Community Area	50%	45%	0%	7%	26%
Gates or Fences	13%	36%	60%	21%	26%
Lake or Pond	13%	64%	0%	7%	24%
Security Patrol	13%	0%	0%	0%	3%

Private Communities and the County Government

The survey questioned the relationship between the associations and County Government. At this time there is no formal relationship between community associations and the county government, and the county does not regulate the associations. Not surprisingly, 'no contact' was a major response on the part of associations. (In many instances, the management company provided a response to the survey, and because one management company manages 20 RCA's and answered, 'no contact' may have affected the response.)

Table 9: RCA Relationship with County Government

Relations with County Government	Number of Responses	Percentage of Total
Excellent	3	5%
Good	20	32%
Fair	5	8%
Poor	2	3%
No Contact	31	49%
Don't Know	2	3%
Total	63	100%

Governance Structure and the Private Communities

Loudoun is a county where RCA governance is a way of life for a majority of its residents. Therefore, the citizens of Loudoun have a vested interest in ensuring that RCA governance is stable, sustainable and fair. RCA governance is a relatively new institution and still is in the process of evolution, thus the county should be aware of issues that arise from RCA's not only in regards to infrastructure, but also in regards to the system's stability and protecting the rights of county citizens.

Residential Communities, while they do not take on the most sensitive and costly government services (such as schools), they do operate as limited municipal governments.²³⁶ However, the governance structure of RCA's is based on a private corporate structure. This corporate governance structure is largely unregulated, and has no mandate for social equity. RCA's use authority granted to them by the state to tax, set and enforce rules and maintain community infrastructure. Yet, RCA's are not required to adhere to the accountability and responsibility restraints of public government. In addition, they are heavily reliant on private entities such as lawyers and management companies who have a vested interest in the continuance of the system that requires their services. From the vantagepoint of the County, a number of issues regarding RCA governance should be considered.

The following sections are an attempt to look at private community RCA's from three vantagepoints to examine problems that arise from the structural organizational RCA's. The intent of this section is to analyze the problems of private community governance that could have a negative impact on the functioning of the County as a whole, thus not every issue that has been raised by other authors is considered here. The first section considers organizational problems associated with RCA's. The second section considers the possibility that some RCA's may be much more effective than others leading to an uneven geography of services and infrastructure across the county. The third section considers the social equity concerns that arise from RCA's.

The Organization of RCA's

As discussed previously in this chapter, RCA's provide communal goods and services as well as preside over the administration and decision making process in regards to these goods and services. The functions of RCA's are similar to, if more limited than, municipal government functions. However, RCA's are not required to adhere to many of the same accountability and responsibility mandates that municipal government must adhere to. Municipal government is tied

²³⁶ Mallet, William John, Privatizing the Metropolis: The Emergence of Public-Private Government in the Washington D.C. Metropolitan Area. Dissertation for Cornell University, 1995.

to a system of US governance, which requires public accountability, allegiance to the US Constitution, the bill of rights, and mandates set forth in state constitutions. RCA's on the other hand, while enabled as an organization form by state acts, are not required to adhere to the full set of responsibility requirements that municipal governments must.

In the case of Loudoun County, the RCA's are completely unregulated by the local municipal government and the state only collects limited information in regards to each community. The County government does not even have a database of information in regards to RCA functioning, such as funds in retainer, dues, services provided, members on the board. At the time the survey was completed, there was even some doubt as to whether the County list of RCA's was complete and correct.

Thus, while RCA's provides municipal government type services, the organization of RCA's is quite different from municipal government as illustrated by the description of how RCA's function organizationally presented earlier in this chapter. The following section explores some of the challenges to RCA governance that have arisen in regards to the participants in RCA governance: developers, members, new homebuyers, RCA boards and professional community managers.

Developers

Developers who charter the organizations receive returns for creating stable environments for home-owner investors, thus the charters contain mechanisms that often make it very difficult for associations to change their own constitutions.²³⁷ (It typically requires a super-majority of all homeowners, and RCA residents show incredibly low voter turnout.) This corporate structure allows the developer to maintain absolute control over the property for as long as possible so they can receive returns on property sales by strict maintenance of regulations until build-out.

²³⁷ Winokur, James L. "Association-Administered Servitude Regimes: A Private Property Perspective", in Residential Community Associations: Private Governments in the Intergovernmental System?, The Advisory Commission on Intergovernmental Relations. 1989. Washington D.C.: The US Government Printing Office, pg. 87.

After the development is turned over to RCA's, they too retain a large degree of control over the neighborhood through rules. As documented in Evan McKenzie's *Privatopia* this often leads to unreasonable enforcement of obtrusive covenants, conditions and regulations, and few mechanisms that allow for fair and democratic change.

Developers often experience the pressure to set the fees for associations artificially low to enhance the marketability of RCA's. Developers are primarily concerned with profitability in the short run, while the long term maintenance of the community is not their responsibility.

Community infrastructure is often not a problem while the communities are new and the infrastructure does not require repair or replacement, but as the communities age this could evolve into problems for undercapitalized communities.

RCA Members

One of the biggest characteristic RCA members is homeowner apathy.²³⁸ Many buy homes in private communities because the rules restrict other members of the RCA, and keep the community 'nice', by disallowing trailers, regulating lawn maintenance and the exterior appearance of their homes.²³⁹²⁴⁰ However, the interest in community often stops there.

Only about ten percent of persons volunteer, and one out of six who do are serving for their own purposes.²⁴¹ Larger communities will have an easier time finding volunteers to serve on the boards or architectural review committees than small communities. Thus, when private communities are dependent on volunteers for leadership, many of the larger communities may manage better than their smaller counterparts.

²³⁸ Ibid.

²³⁹ Ibid.

²⁴⁰ McKenzie, Evan. *Privatopia: Homeowner's Associations and the Rise of Residential Private Government*. Yale University Press: New Haven, 1994, pg. 97.

²⁴¹ Cummings & Associates, Inc. "Community Associations Overview for Leadership Loudoun Forum", February 11, 1999, page 20.

New Homebuyers and RCA's

Unlike a public municipal government the members of the RCA are required to sign contracts that contain rules that many do not understand when they purchase their home. Real estate brokers tend to down play the importance of the community association Covenants, conditions and regulations, offering only three days to review what are often large legal documents before closing on their homes²⁴². A CAI publication pointed out that one of the top three problems of RCA's is that owners were unaware of restrictions before they bought their homes.²⁴³ As a consequence, many homeowners may sign documents that restrict their freedoms without considering the consequences.

RCA Boards

In the case of RCA's a corporate model of management is being applied to a situation that is by necessity more complex: managing a community requires both social and business concerns. RCA board members are not just managers and they are more than neighbors; they essentially fill a political role in the community. Currently there are no requirements or training obligations required of RCA board members. Internally there are strong incentives for RCA board members to support *status quo* measures even when proper leadership would call for change. Much of the litigation between residents and RCA's results from the board of directors enforcing rules that may be overly restrictive because of the fear of setting a legal precedent.²⁴⁴ The result is inflexible organizational unit that relies on impersonal authority (rules) instead of political authority.

As part of a larger area and over time, the RCA's will be subject to pressures and circumstances that may not have been conceived during the original founding of the community and chartering of the covenants, conditions and regulations. Even planned communities grow and change over time. Decisions such as the location of an adult bookstore, changing attitudes towards home

²⁴² Interview with Bob Christenson of Koger Management Company, Leesburg Virginia. August 5, 1999.

businesses or the demolition of aging housing units may require that the board of the planned community be involved. Some boards in the County have more political flexibility and power than others to make decisions, however the County may find that the governing documents, over time may not be a sufficient mechanism for some RCA's to handle growth and change.

Many communities struggle as they age: an example given by a community manager is the older townhouse associations in Herndon, Virginia. Many of these communities have as many as 60% renter population, who have no vote on the board and essentially require different services than a majority homeowner population.²⁴⁵ In addition, mortgage companies often refuse to grant loans on homes in community associations that have more than 50% renter population.²⁴⁶ These communities are subject to homeowner apathy due to absentee landlords, and face problems of physical disrepair. This scenario is particularly concerning when one takes into account that RCA's in Loudoun County are often responsible for major infrastructure such as storm water management systems.

Professional Community Managers and the RCA

A major problem with community management by professionals that has been discussed in the literature is that association managers are not screened, tested or certified. Any company or individual may become an association manager. This could be a problem considering the importance of financial, maintenance and other responsibilities associated with managing an association. This becomes more important when one considers that in Loudoun County 30% of all associations are managed by just four companies.

Another problem that has been discussed in regards to management companies is that many companies undercharge for their services. During an informal interview with one of Loudoun's

²⁴³ Hyatt, Wayne S. "Putting the Community Back into Community Associations." Community First! Emerging Visions Reshaping American's Condominium and Homeowner's Associations. Bill Overton, editor. Alexandria, Virginia: Community Associations Institute, 1999, pg. 92.

²⁴⁴ Ibid, pg. 93.

²⁴⁵ Interview with Bob Christenson of Koger Management Company, Leesburg Virginia. August 5, 1999

off-site management companies, the company's president pointed out the problem of economies of scale with small associations. If a small association can only bring in \$20,000 a year in dues, a management company will usually charge 25% or \$5,000 to manage the community. The small association has trouble finding a pool of volunteers to serve on the board of directors and provide labor for managing the community. In addition, the small association manager (like a large association manager) will need to pay a fixed number of bills, file tax returns, secure contracts for lawn maintenance, snow removal and other services. The amount of work required to manage these services is not dependent on the number of units. So, association management companies often try to expand their portfolios to a point where a profit can be made, potentially sacrificing quality.²⁴⁷

Uneven Geography of Services and Infrastructure

In Loudoun County, the larger private communities are recognizable units. Thus, County residents have the tendency to see "Sterling Park" or "Cascades" as places with an identifiable character and refer to private community name as their place of residence. Its not uncommon to hear that someone lives in 'South Riding', for example. In many ways this is the intention of the County's Comprehensive plan and preferable unidentifiable urban sprawl.

RCA's, however, have the responsibilities of 'place' particularly in the form of infrastructure: storm water management systems, private streets, recreational facilities, open space and trails. Many of these amenities are provided by developers at the request of the County. In addition, many of the RCA's are required contribute financially quarterly or annually to the Volunteer Fire and Rescue Squads in Loudoun County. Yet, the County has no mechanism to require that infrastructure such as trails or storm water management systems are maintained. The County

²⁴⁶ Based from an interview with Elizabeth Trishman of Option One Mortgage, a non-conforming lender, who states that Option One refuses to lend in private communities that have more than 50% renter population.

²⁴⁷ Ibid.

may even have trouble collecting fees for Fire and Rescue payments once the communities reach build-out.²⁴⁸

Thus, the County has no mechanism for requiring that RCA's provide maintenance and continuing infrastructure improvements. Most of the County's RCA's will adequately provide those services over time because it is the interest of the homeowner's to protect their property values. However, at the same time, RCA members are typically apathetic and dues-sensitive. When the rigid nature of RCA governance is taken into account, undoubtedly some associations may fail to adequately provide these services. This could lead to an uneven economic geography across the County.

Among these different RCA's there may exist a plurality of service levels. Thus, RCA's that have high income residents will be able to buy better services than RCA's with lower income residents. In addition, residents in RCA's may be able to purchase much better services than the county is able to provide to non-RCA citizens at some point in time in the future. Each of these RCA's reserves the use of its facilities for its citizens only. This leads to an uneven distribution of services. To date these fundamental organizational problems associated with a quasi-public governance scheme have not been a problem because the developments are essentially new. Over time as the "new towns" and smaller developments age with their facilities in need repair or replacement, the communities that are under-capitalized will appear.

Social Equity

In terms of social equity the proliferation of private community in Loudoun brings a number of concerns for the County. The first is that there is a lack of alternatives to RCA membership for persons who can not afford to purchase a single family detached house. Secondly, RCA dues have a tax structure that requires that condominium or townhouse dwellers to pay more than their

²⁴⁸ Leadership Loudoun Forum: Community Associations, February 11, 1999. (Issue raised by many members and panelists during the forum.)

counterparts that live in single family houses. Thirdly, renters are disenfranchised from RCA governance as they are not permitted to vote.

Lack of Alternatives to RCA Membership

Townhouse and condominium units provide housing for middle to lower income persons, single persons and younger persons who either do not need a single family house or can not afford to purchase a single family house. For a person of moderate income, whether renting or purchasing a townhouse or condominium, there are few realistic alternatives to RCA membership. The argument that persons who live in RCA's do so out of choice and willingly submit to the RCA rules does not apply when there are few realistic alternatives. In Northern Virginia, there is bias against townhouses and condominiums, as single family housing is perceived to be more elite than denser housing.²⁴⁹

The nature of town house and condominium development requires that these units be grouped together, often in large numbers. As the infrastructure in these developments begins to age, taking into account due to problems of economy of scale for management for smaller communities, the rigid organization nature of RCA's and that denser housing units require more services than the single family RCA's could lead to certain neighborhoods declining.

Regressive Taxation

Yet, persons who live in denser housing arrangements will pay more, not less in mandatory dues. Thus, the taxing structure is regressive, charging more for persons of less income. In Loudoun County the median household income in Loudoun is \$60,805 per year and only 10.8% of the population currently has a household income of less than \$25,000 per year.²⁵⁰ Nevertheless, these persons will have little alternatives to RCA housing and will pay a larger portion of their income to dues or rent because of the arrangement. This is in contrast to public towns where real

²⁴⁹ Comment from Elizabeth Trischman, Senior Underwriter for Option One Mortgage.

estate taxes are based on property assessments, and presumably housing units of less value will also pay less for town services.

Robert Nelson pointed out in a report to the Advisory Commission on Intergovernmental relations. "Privatization has the consequence, as noted of segregating the population according to income, social status, social values and other personal characteristics that define the character of a neighborhood. [But]...barriers and social divisions among the residents of a metropolitan area may be raised, rather than lowered."²⁵¹ So, a territory marked by class division according to residence could emerge over time in the county.

Renters

Many first time homebuyers will purchase townhouses or condominiums because the price of these units is more affordable than single family housing. However as their lifestyles change many people chose to purchase a larger home. Nevertheless, due to the building large numbers of new townhouse and condominium communities in the County, these homeowners will face a loss value on their property. Therefore, they often chose to keep the units and rent them. In many cases the burden of two mortgage payments is difficult for families and even one month of unpaid rent on the unit will lead to economic difficulties. Thus, they will rent the properties for less than the combined sum of dues and the mortgage payments, taking a monthly loss while they wait for the property value to increase.²⁵² Logically, these homeowners will be extremely sensitive to any increase in dues and less likely to invest in the maintenance of the rental unit than a homeowner resident.

Renters have no voice in the governance of their communities. They can not vote or serve on the RCA boards. Yet, renters comprise a significant part of many communities. Renters pay dues,

²⁵⁰ Loudoun County Department of Economic Development, 1998 Annual Growth Summary, Loudoun County Virginia, April 1999, pg. 6.

²⁵¹ Nelson, Robert, "The Privatization of Local Government: From Zoning to RCA's", in Residential Community Associations: Private Governments in the Intergovernmental System?, The Advisory Commission on Intergovernmental Relations, 1989. Washington D.C.: The US Government Printing Office, pg.50.

²⁵² Ibid.

just like the homeowner members, even if they pay the dues in the form of rent. Typically, renters require services beyond what a typical homeowner would require. They are less likely to maintain the units because they do not own the properties, they tend to be younger, more transient and less financially secure. An example brought up in regards to renters by a property manager was that in one rental unit, the occupants moved out overnight and left much of their unwanted furniture on the front yard. The owner of the unit was unavailable to remove the furniture and the RCA needed to take on the task of cleaning the lot.²⁵³ This type of work is typically beyond the scope of most RCA's.

Future Directions for RCA's

Despite the problems with RCA: inflexibility, restrictiveness and lack of representation for many members, there is evidence that RCA's are moving towards a more democratic organizational form. *Community First!*, a publication recently published by the ULI stresses the importance of flexibility and democratic practices and it appears that the CAI is open to criticism from within and without.

Evan McKenzie describes the changes in thinking about community associations as a new paradigm. "For the past quarter century, common-interest communities (private communities) has been driven and shaped by the interaction of three powerful forces: conversion of housing into a commodity, privatization of local government services and functions, and trends in the American consumer culture. The new paradigm proposes that the next phase should be driven by the effort to build working communities."²⁵⁴ A number of writers have contributed ideas to putting 'community' back into the RCA.

In addition, residents in RCA's themselves appear to be demanding more democratic practices. An example in Loudoun County, the Cascades private community, which was developer

²⁵³ Interview with Bob Christenson of Koger Management Company, Leesburg Virginia. August 5, 1999

²⁵⁴ Evan, McKenzie, "Reflections on a New Paradigm for the Governance of Common-Interest Communities," *Community First, Emerging Visions Reshaping American's Condominium and Homeowner's Associations*, Bill Overton, editor. Alexandria, Virginia: Community Associations Institute, 1999, pg. 55.

controlled until late 1998, had problems with board secrecy, going so far as to prohibit any board member speaking to the media, except one developer member. Board members were not even permitted to submit articles to the community newsletter without review from the Board.²⁵⁵ In addition, community members were not permitted to speak during board meetings.

Community outrage erupted when the developer controlled board decided to contract community management services to a particular company without putting the contract out for competitive bid. Cascades citizens were upset, demanding that the contract be put out for bid without blindly awarding the contract. While the \$1.2 million contract was awarded, it was not without controversy. After transition to homeowner control the management contract, the board reversed policy and put the management contract out for bid.²⁵⁶

The new board members essentially fill political roles in the community and acknowledge this. One commented, "We live in one of the fastest growing communities in Virginia, but our county supervisors are too busy fighting each other to pay attention to us...in a sense, we here at Cascades are disenfranchised. The Cascades board has to compensate for the Loudoun County Board."²⁵⁷ Thus, members of RCA's and others are accepting that the nature of RCA governance must be political and policy oriented as well as service oriented.

²⁵⁵ Lenhart, Jennifer, "Cascades Leadership Denounced." The Washington Post, 7/5/98.

²⁵⁶ Lenhart, Jennifer, "Cascades Votes to Solicit Bids for Managers; Board Reverses Policy." The Washington Post, 2/21/99.

²⁵⁷ Cahill, Steve. "Off and Running in Cascades: Candidates for HOA board discuss pivotal community issues." Eastern Loudoun Times.