

8. CONSIDERATION OF A REQUEST TO VACATE A PORTION OF A PLAT

Attached herewith please find correspondence from Mr. W. Robert Simmons, Jr. seeking your consideration in vacating a portion of a plat "Showing Sub-Division of Property of Mrs. W.S. Deloatch," recorded in Plat Book 5, Page 76 on September 2, 1949. The property is located on what is now known as Whitehead Road, just north of the Town of Branchville.

When platted in 1949, a 30' strip between lots 24 and 25 was shown as "reserved for street," (highlighted in yellow on the attached plat). After consulting with the county attorney, based on §15.2-2265 of the Code of Virginia (copy attached), we concluded that recordation of the plat effectively transferred that 30' strip in fee simple to Southampton County.

Mr. Simmons currently owns lots 12-37 and is asking for you to vacate only that area shown as "reserved for street." The process of vacating a plat is governed by §15.2-2272, Code of Virginia, and provides that a portion of a plat may be vacated by ordinance of the governing body, but only after notice has been given as required by §15.2-2204. The notice must clearly describe the plat or portion thereof to be vacated and state the time and place of the meeting of the governing body at which the adoption of the ordinance will be voted upon. Any person may appear at the meeting for the purpose of objecting to the adoption of the ordinance. An appeal from the adoption of the ordinance may be filed within thirty days with the circuit court. Upon appeal the court may nullify the ordinance if it finds that the owner of any lot shown on the plat will be irreparably damaged. If no appeal from the adoption of the ordinance is filed within the time above provided or if the ordinance is upheld on appeal, a certified copy of the ordinance of vacation may be recorded in the clerk's office.

Recordation of an ordinance destroys the force and effect of the part of the plat vacated, and vests fee simple title to the centerline of any streets in the owners of abutting lots free and clear of any rights of the public or other owners of lots shown on the plat. In this case, that would be Mr. Simmons. He seeks your consideration in vacating that portion of the attached plat by ordinance, in accordance with the requirements prescribed by statute.

MOTION REQUIRED:

If the Board is so inclined, a motion is required authorizing a public hearing on this matter at your March 25 meeting.

January 26, 2013

To: Mr. Michael Johnson
Southampton County Administration
Southampton County Board of Supervisors

From: Wallace Robert Simmons Jr.

Subject: DeLoatch Plat Lts - Tax Parcel # 110-A-1 12-37 Branchville, Va.
Owner: Wallace Robert Simmons Jr.

In our communications last year, you indicated that Southampton County owned the land between numbered lots 24 & 25 on the above referenced Tax parcel. While many factors govern dedications of real property under either statute or common law, and I may not have been in full agreement, I am requesting Southampton County to vacate the ownership interest being claimed in that portion of the plat. The entire parcel of land (Tax Parcel #110-A-1 12-37) has been in my family for many years and was subdivided by my relative, Mrs. W. S. Deloatch, in 1949. The section in question was noted as reserved on the plat. It was for lots 24 & 25 due to the power line and power line structures which were in place before subdividing the property and prevented building in the front. The reserved section did not cross the canal/creek.

As you may recall, I brought a situation to your attention the beginning of 2012 where an individual improperly made a path between lots 24 and 25 on the parcel of land. Not only were pines removed which were planted by my family 25+ years ago but a drainage pipe was installed in the 30 foot section of the canal which surrounds my entire parcel (with no permit). Fill material was then added on top. (I was, also, informed that part of the pipe collapsed and another pipe was attached). In order to create this path, it appears the property owner's low lying land on the other side of the canal was filled, several additional pipes installed, and more fill material added. I could not understand why this was done when the land on the other side of the canal already has access to a public road.

Since discovering, I have noticed some individuals on the path with guns, vehicles/lights shining late at night, and a dump truck with large debris/trash - all of which is a nuisance and may present a liability for the county. Given that my property is zoned R1 for residential use, I wanted you to be aware of this.

The county has never used the land and it is too narrow to be used as a street. It's apparent Southampton has no desire for the land and no plan for usage. As a result, I'm requesting your assistance and the Board's assistance (if necessary) to vacate the County/locality's interest claimed in the 30 foot section of land between lots 24 and 25. The only parcel(s) of land reflected on the 1949 plat showing the subdivision of Mrs. W. S. Deloatch land are lots 1-37. I'm the owner of 12-37 and the only owner adjacent to the reserved area (all my land runs "along the way" of the 30 foot section). As a result, part (1) in Virginia Code 15.2-2272 does provide for Southampton County's vacation by execution of an agreement with me. If Southampton County is not in agreement to proceed according to part (1), then please proceed according to part (2) which is by ordinance of the Governing Body of the locality - and return the interest being claimed to me as the only lot owner whose lots adjoin the property.

Again, the property has been in my family prior to the subdivision of land and I sincerely appreciate your assistance with this.

Yours truly,
W. Robert Simmons Jr.

120001107

PG 09 *MAY 11.12

Prepared by:
Rudy, Coyner & Associates, PLLC
Tax Parcel No. 110-A-1 12-37
Consideration: \$5520.00
Assessed Value:

THIS DEED OF BARGAIN AND SALE, made this 23rd day of April, 2012, by and between MARY JANE O. SIMMONS, party of the first part, Grantor; and WALLACE ROBERT SIMMONS, JR., party of the second part, Grantee;

WITNESSETH: That for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, the said party of the first part does hereby grant and convey, with **GENERAL WARRANTY AND ENGLISH COVENANTS OF TITLE**, unto the party of the second part as in fee simple, the following described property, to-wit:

**SEE SCHEDULE A ATTACHED HERETO
AND MADE A PART HEREOF**

THIS conveyance is made expressly subject to all recorded restrictions, easements, reservations, and other conditions of record affecting the same.

WITNESS the following signatures and seals:

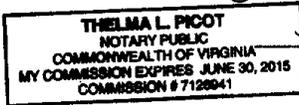
Rita T. Rose (SEAL)
MARY JANE O. SIMMONS BY RITA T.
ROSE, HER ATTORNEY IN FACT

STATE OF VIRGINIA,
COUNTY OF Southampton, to-wit:

The foregoing instrument was acknowledged before me this 8th day of
May, 2012, by Mary Jane O. Simmons by Rita T. Rose, her attorney in fact.

My commission expires: June 30, 2015

SEAL



Thelma L. Picot
NOTARY PUBLIC

GRANTEE'S MAILING ADDRESS:

P. O. Box 933
Chesterfield, VA 23832

SCHEDULE A

ALL those certain lots, pieces and parcels of land, lying and being in Branchville, Southampton County, Virginia, and designated as Lots 12 through 37 on a Plat Showing Subdivision of Property of Mrs. W. S. Deloatch, Situated in Branchville, Southampton Co., Va., Dated August 1949, made by C. R. Revelle, Reg. Surveyor, a copy of which is recorded in the Clerk's Office of the Circuit Court of Southampton County, Virginia in Plat Book 5, page 76, to which plat reference is made to a more particular description.

TOGETHER WITH a small portion of land lying immediately west of said lot 37 and immediately east of the line set forth as the boundary line between this tract and the tract of land on the west, which said boundary line is set forth in the deed dated May 19, 1964, and recorded in the aforesaid Clerk's Office in Deed Book 175, page 488.

BEING the same real estate conveyed to Wallace Robert Simmons, Jr., (as to a partial interest) by deed from Harry Michael Gates and Debra R. Gates, his wife, Charles William Gates and Sharon Gates, his wife, Ellen Gates Winkler and Kerry Brett Winkler, her husband, and Nancy Beard Turner and W. Earnest Turner dated May 22, 2006 and recorded July 7, 2006, Clerk's Office, Circuit Court, Southampton County, Virginia as Instrument No. 060003054.

ALSO BEING the same real estate devised to Wallace Robert Simmons (as to a partial interest) from Robbie Claud. The said Robbie Claud died testate on July 1, 2002 and by her will dated June 13, 2000 and probated July 25, 2002 in the Clerk's Office of the Circuit Court of Chesterfield County, Virginia, the said Robbie Claud devised the above described real estate to Walter Maurice Simmons and Wallace Robert Simmons, in equal shares, but with the condition that if either of the two should predecease her, that share would go to the deceased person's descendants (children) who survived the testator. Walter Maurice Simmons predeceased Robbie Claud and had no descendants. The said Wallace Robert Simmons survived Robbie Claud and therefore Robbie Claud's interest in the above described property fully vested in Wallace Robert Simmons. The said Wallace Robert Simmons, by disclaimer dated December 23, 2002, and recorded in the Clerk's Office aforesaid, disclaimed any and all interest he had in the estate of Robbie Ximena Claud, including any interest and/or income arising therefrom. As a result of the aforesaid disclaimer, Wallace Robert Simmons, Jr. and his sister Lynn Simmons Talley, became equally vested with their father's interest on the above described property. ALSO BEING the same real estate devised to Wallace Robert Simmons from Arline P. James a/k/a Arline P. James Deloatch. The said Arline P. James Deloatch, formerly Arline P. James, died testate on November 20, 1955, and by her will recorded in the aforesaid Clerk's Office in Will Book 26, page 256, devised the above described property in equal shares to Ada Beard, Robbie Claud, Maurice Simmons, Wallace Robert Simmons and Emma May Simmons.

ALSO BEING the same real estate inherited by Wallace Robert Simmons from Emma May Simmons. Arline P. James Deloatch, formerly Arline P. James, died testate on November 20, 1955, and by her will recorded in the aforesaid Clerk's Office in Will Book 26, page 256, devised the above described property in equal shares to Ada Beard, Robbie Claud, Maurice Simmons, Wallace Robert Simmons and Emma May Simmons. The said

Emma May Simmons died intestate in 1971, survived by her two sons, Wallace R. Simmons and Maurice Simmons a/k/a W. Maurice Simmons and Walter Maurice Simmons who were her sole heirs at law. The said Wallace Robert Simmons inherited 50% of Emma May Simmons' interest in the whole property as devised by Arline P. James.

And further being the same real estate conveyed to Wallace Robert Simmons, Jr., by deed from Wallace Robert Simmons, Jr., Wallace Robert Simmons and Lynn Simmons Talley, as to their perspective interest, dated April 4, 2007, recorded April 30, 2007 in the Clerk's Office, Circuit Court, Southampton, Virginia as deed Instrument Number 070001835. The said W. Maurice Simmons died testate on October 12, 2001 and by his will recorded in the aforesaid Clerk's Office in Will CWF10-144, devised the above described property to his wife, Mary Jane O. Simmons.

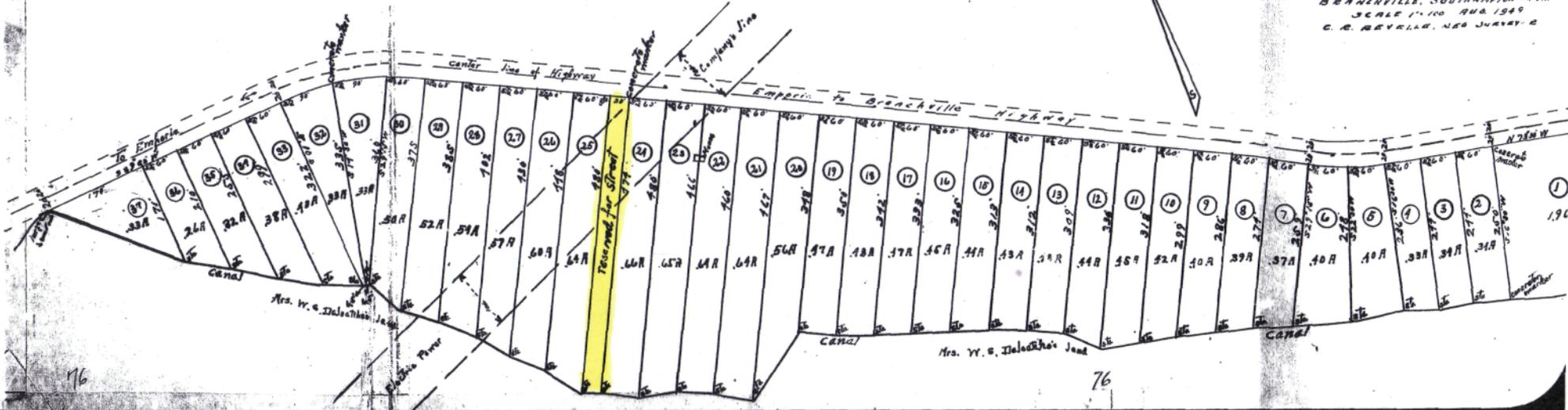
INSTRUMENT #120001107
RECORDED IN THE CLERK'S OFFICE OF
SOUTHAMPTON ON
MAY 11, 2012 AT 10:06AM
\$6.00 GRANTOR TAX WAS PAID AS
REQUIRED BY SEC 58.1-802 OF THE VA. CODE
STATE: \$3.00 LOCAL: \$3.00

RICK FRANCIS; CLERK
RECORDED BY: HRS

Witness: In the Clerk's Office, of the Circuit Court of Southampton County, 2nd day of September, 1949. This plat showing subdivision of property of Mrs. W.S. DeLoatch in Branchville, Virginia, was this day received and admitted to record.

Teste: H.B.W. Lewis, Jr. Clerk
 By: P. McMill D.C.

PLAT
 SHOWING SUB-DIVISION
 OF PROPERTY OF
 MRS. W.S. DELOATCH
 SITUATED IN
 BRANCHVILLE, SOUTHAMPTON CO. VA.
 SCALE 1" = 100' AUG. 1949
 C. E. REVELLE, SEA SURVEYOR



§ 15.2-2265. Recordation of approved plat as transfer of streets, termination of easements and rights-of-way, etc.

The recordation of an approved plat shall operate to transfer, in fee simple, to the respective localities in which the land lies the portion of the premises platted as is on the plat set apart for streets, alleys or other public use and to transfer to the locality any easement indicated on the plat to create a public right of passage over the land. The recordation of such plat shall operate to transfer to the locality, or to such association or public authority as the locality may provide, such easements shown on the plat for the conveyance of stormwater, domestic water and sewage, including the installation and maintenance of any facilities utilized for such purposes, as the locality may require. Nothing contained in this article shall affect any right of a subdivider of land heretofore validly reserved. The clerk shall index in the name of all the owners of property affected by the recordation in the grantor's index any plat recorded under this section. Nothing in this section shall obligate the locality, association or authority to install or maintain such facilities unless otherwise agreed to by the locality, association or authority.

When the authorized officials of a locality within which land is located, approve in accordance with the subdivision ordinances of the locality a plat or replat of land therein, then upon the recording of the plat or replat in the circuit court clerk's office, all rights-of-way, easements or other interest of the locality in the land included on the plat or replat, except as shown thereon, shall be terminated and extinguished, except that an interest acquired by the locality by condemnation, by purchase for valuable consideration and evidenced by a separate instrument of record, or streets, alleys or easements for public passage subject to the provisions of § [15.2-2271](#) or [15.2-2272](#) shall not be affected thereby. All public easements, except those for public passage, easements containing improvements, those that contain private utility facilities, common or shared easements for the use of franchised cable operators and public service corporations, may be relocated by recordation of plat or replat signed by the owner of the real property, approved by an authorized official of a locality, regardless of the manner of acquisition or the type of instrument used to dedicate the original easement. In the event the purpose of the easement is to convey stormwater drainage from a public roadway, the entity responsible for the operation of the roadway shall first determine that the relocation does not threaten either the integrity of the roadway or public passage. The clerk shall index the locality as grantor of any easement or portion thereof terminated and extinguished under this section.

(Code 1950, §§ 15-792, 15-967.13; 1958, c. 460; 1962, c. 407, § 15.1-478; 1964, c. 564; 1974, c. 530; 1978, c. 590; 1995, cc. [431](#), [662](#); 1997, c. [587](#); 2000, c. [165](#); 2005, c. [937](#).)

§ 15.2-2272. Vacation of plat after sale of lot.

In cases where any lot has been sold, the plat or part thereof may be vacated according to either of the following methods:

1. By instrument in writing agreeing to the vacation signed by all the owners of lots shown on the plat and also signed on behalf of the governing body of the locality in which the land shown on the plat or part thereof to be vacated lies for the purpose of showing the approval of the vacation by the governing body. In cases involving drainage easements or street rights-of-way where the vacation does not impede or alter drainage or access for any lot owners other than those lot owners immediately adjoining or contiguous to the vacated area, the governing body shall only be required to obtain the signatures of the lot owners immediately adjoining or contiguous to the vacated area. The word "owners" shall not include lien creditors except those whose debts are secured by a recorded deed of trust or mortgage and shall not include any consort of an owner. The instrument of vacation shall be acknowledged in the manner of a deed and filed for record in the clerk's office of any court in which the plat is recorded.
2. By ordinance of the governing body of the locality in which the land shown on the plat or part thereof to be vacated lies on motion of one of its members or on application of any interested person. The ordinance shall not be adopted until after notice has been given as required by § [15.2-2204](#). The notice shall clearly describe the plat or portion thereof to be vacated and state the time and place of the meeting of the governing body at which the adoption of the ordinance will be voted upon. Any person may appear at the meeting for the purpose of objecting to the adoption of the ordinance. An appeal from the adoption of the ordinance may be filed within thirty days with the circuit court having jurisdiction of the land shown on the plat or part thereof to be vacated. Upon appeal the court may nullify the ordinance if it finds that the owner of any lot shown on the plat will be irreparably damaged. If no appeal from the adoption of the ordinance is filed within the time above provided or if the ordinance is upheld on appeal, a certified copy of the ordinance of vacation may be recorded in the clerk's office of any court in which the plat is recorded.

Roads within the secondary system of highways may be vacated under either of the preceding methods and the action will constitute abandonment of the road, provided the land shown on the plat or part thereof to be vacated has been the subject of a rezoning or special exception application approved following public hearings required by § [15.2-2204](#) and provided the Commissioner of Highways or his agent is notified in writing prior to the public hearing, and provided further that the vacation is necessary in order to implement a proffered condition accepted by the governing body pursuant to §§ [15.2-2297](#), [15.2-2298](#) or [15.2-2303](#) or to implement a condition of special exception approval. All abandonments of roads within the secondary system of highways sought to be effected according to either of the preceding methods before July 1, 1994, are hereby validated, notwithstanding any defects or deficiencies in the proceeding; however, property rights which have vested subsequent to the attempted vacation are not impaired by such validation. The manner of reversion shall not be affected by this section.

(Code 1950, §§ 15-793, 15-967.17; 1950, p. 722; 1962, c. 407, § 15.1-482; 1975, c. 641; 1990, c. 719; 1994, c. [341](#); 1997, c. [587](#).)

§ 15.2-2274. Effect of vacation under § [15.2-2272](#).

The recordation of the instrument as provided under subdivision 1 of § [15.2-2272](#) or of the ordinance as provided under subdivision 2 of § [15.2-2272](#) shall operate to destroy the force and effect of the recording of the plat or part thereof so vacated, and to vest fee simple title to the centerline of any streets, alleys or easements for public passage so vacated in the owners of abutting lots free and clear of any rights of the public or other owners of lots shown on the plat, but subject to the rights of the owners of any public utility installations which have been previously erected therein. If any street, alley or easement for public passage is located on the periphery of the plat, the title for the entire width thereof shall vest in the abutting lot owners. The fee simple title to any portion of the plat so vacated as was set apart for other public use shall be revested in the owners, proprietors and trustees, if any, who signed the statement required by § [15.2-2264](#) free and clear of any rights of public use in the same.

(Code 1950, §§ 15-793, 15-967.18; 1950, p. 722; 1962, c. 407, § 15.1-483; 1964, c. 564; 1997, c. [587](#).)

§ 15.2-2273. Fee for processing application under § [15.2-2271](#) or § [15.2-2272](#).

Any locality may prescribe and charge a reasonable fee not exceeding \$150 for processing an application pursuant to § [15.2-2271](#) or § [15.2-2272](#) for the vacating of any plat.

(1970, c. 161, § 15.1-482.1; 1975, c. 641; 1978, c. 554; 1984, c. 285; 1997, c. [587](#).)

From: Mike Johnson
Sent: Monday, August 13, 2012 4:47 PM
To: Robert Simmons
Subject: RE: Vacation of Plat

Robert,

I'm sorry, but I'm not in agreement. I'm basing this on case law - *Booher v. Board of Supervisors*, 65 Va., Cir. 53, 2004 Va. Cir. LEXIS 77 (Botetourt County, 2004) - in that case, the vacated street dead-ended into the petitioner's property - the Court ruled that even though petitioner's property was not within the subdivision, because their property appeared on the plat, the petitioner had standing.

The circumstances are very similar here - in fact, identical. The plat illustrates the adjacent property on the southern side of the canal, owned by Mrs. W.S. Deloatch when the survey was recorded in 1949. It's apparent that, at the time, the street was reserved to access the residual of her property located south of the canal, which is now the property owned by the Futrells.

Michael W. Johnson
County Administrator
Southampton County
P.O. Box 400
Courtland, VA 23837
(757) 653-3015
www.southamptoncounty.org

From: Robert Simmons [rjrsimmons1@msn.com]
Sent: Sunday, August 12, 2012 9:45 PM
To: Mike Johnson
Subject: Re: Vacation of Plat

Mr. Johnson,

Why would other signatures be required?

Based on the statute 15.2-2272, the only parties required to sign would be myself and the governing body. The statute is specific to the Owners of lots shown on the plat. I am the only lot owner on the plat immediately adjoining and contiguous.

There is no requirement for signatures of surrounding owners of property – as any surrounding property is not part of the Plat.

Are you in agreement?

Thanks
Robert Simmons
804-301-3595

----- Original Message -----

From: [Mike Johnson](#)
To: [Robert Simmons](#)
Sent: Friday, August 10, 2012 9:16 AM
Subject: RE: Vacation of Plat

Robert,

Paragraph 1 is an option. If that is the route that you prefer, you may prepare the instrument of vacation and sign it. It must also be signed by Harold and Shelly Futrell whose property is immediately joining and contiguous to the portion of the plat you propose to vacate. Once you have obtained the necessary signatures, please transmit the instrument to me and I'll arrange to present it to the governing body for their consideration.

mj

Michael W. Johnson
County Administrator
Southampton County
P.O. Box 400
Courtland, VA 23837
(757) 653-3015
www.southamptoncounty.org

From: Robert Simmons [rjrsimmons1@msn.com]
Sent: Thursday, August 09, 2012 5:55 PM
To: Mike Johnson
Subject: Re: Vacation of Plat

Mr. Johnson,

I looked through the information you emailed. Statute 15-2-2272 is specific to the owners of lots on a plat and states that either paragraph 1 or 2 can be followed regarding the vacating process. The middle of Paragraph 1 states the only signatures required are that of the immediately adjacent lot owners on the plat. I'm the only owner of the Deloatche platted lots immediately adjacent to the strip of land in question. That was the paragraph discussed.

I still feel I'm the owner of the strip but thought paragraph 1 might be an option to resolve our discussions over the last 9 months.

Will you vacate any ownership interest Southampton County is claiming in accordance with paragraph 1?

Thank You
Robert Simmons
804-301-3595

From: Mike Johnson
Sent: Tuesday, August 07, 2012 5:07 PM
To: rjsimmons1@msn.com
Subject: Vacation of Plat

Robert,

I went back and checked my records regarding process and procedure for vacation of a plat after the sale of a lot. We utilized this process in 2002, but followed the procedure prescribed in paragraph 2 of 15.2-2272 (rather than paragraph 1).

In that case, the process was initiated by a letter from the property owner seeking the Board's assistance in vacating the plat. Once I received the letter, an ordinance was drafted and the matter was placed on the Board agenda for consideration in moving forward with the required public hearing. The notice of public hearing was then published in the local newspaper and a public hearing was conducted on the scheduled date. After the public hearing, the Board

adopted the ordinance and a certified copy was sent to the applicant with instructions to record it following the 30-day appeal process.

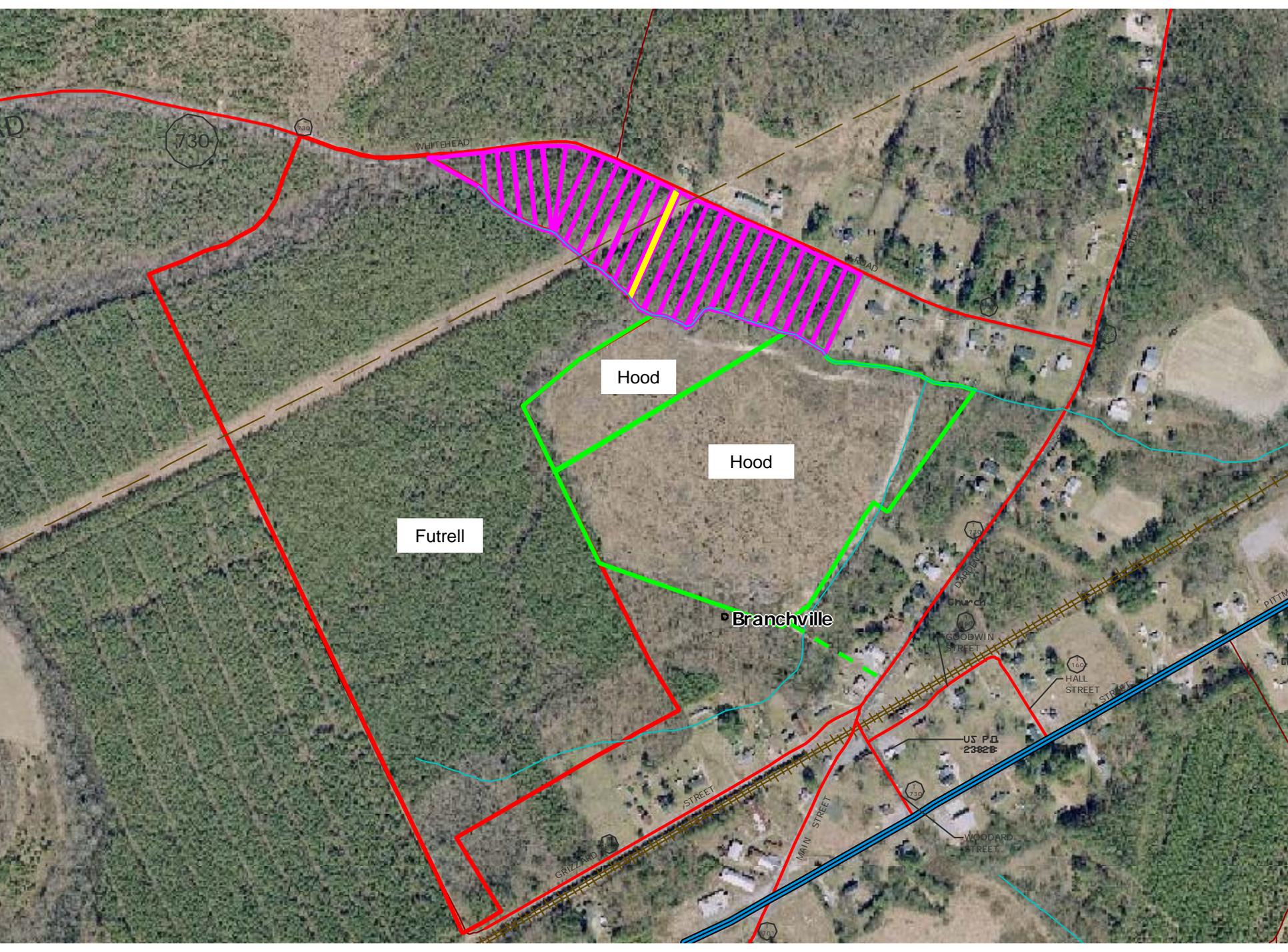
This was the timeline in 2002:

1. Applicant transmits written request dated October 3;
2. Board of Supervisors reviews draft ordinance and considers matter on October 28 - authorizes public hearing for the following month;
3. Notice of public hearing published on November 3 and November 10;
4. Public hearing conducted on November 25 - Board adopts ordinance;
5. Certified copy of ordinance transmitted to applicant on December 5;
6. Applicant records certified copy of ordinance sometime after December 25.

Please review and give me a call.

Best,
Mike

Michael W. Johnson
County Administrator
Southampton County
P.O. Box 400
Courtland, VA 23837
(757) 653-3015
www.southamptoncounty.org



730

WHITEHEAD ROAD

Hood

Hood

Futrell

Branchville

US PO 23828

140

140

149

700

DAPPLEY CHURCH

GOODWIN STREET

HALL STREET

WOODARD STREET

STREET

MAIN STREET

GRIZZARD

PITTMAN