

ORDINANCE NO. 149

AN ORDINANCE TO AUTHORIZE THE ACQUISITION OF CERTAIN REAL PROPERTY IN JAMES CITY COUNTY, VIRGINIA, ALL AS SHOWN ON A PLAT ATTACHED HERETO FOR PUBLIC PURPOSES AND FOR CONSTRUCTING AND EXPANDING THE WATER SUPPLY SYSTEM OWNED BY JAMES CITY COUNTY, VIRGINIA.

WHEREAS, in the opinion of the Board of Supervisors of James City County, Virginia, a public necessity exists for the acquisition of certain real property hereafter more particularly described in James City County, Virginia, as shown on a plat attached hereto, for construction and expansion of the water supply system owned by James City County, Virginia, for public purposes, and the preservation of the health, safety, peace, good order, comfort, convenience, morals and welfare of James City County, Virginia.

NOW, THEREFORE, James City County, Virginia hereby ordains:

Section 1. That the County Attorney and/or the law firm of Anderson, Emmett & Franck, P.C., be, and they are hereby authorized and directed to acquire in the manner provided by Title 15.1, Chapter 7, Article 1 of the 1950 Code of Virginia, as amended, and by Title 33.1, Chapter 1, Article 7 of the 1950 Code of Virginia, as amended, certain real property in James City County, Virginia, and shown on a plat attached hereto, together with all rights appurtenant thereto, for public purposes and for constructing and expanding the water supply system owned by the County of James City, the said property and ownership being more particularly described in Section 3 of this Ordinance.

Section 2. That the County Administrator is authorized and directed to act for and on behalf of the County in agreeing or disagreeing with the owner of the property upon the compensation and damages, if any, to be paid within the limit of the funds provided as set out in Section 4 of this Ordinance, which has been authorized and appropriated.


Section 3. That the name of the present owner of the land to be acquired as provided in Section 1 of this Ordinance together with a substantial description of the parcel is as follows:

68.20 acres of land, more or less, in James City County, Virginia, shown on a plat entitled: "SURVEY FOR CONVEYANCE A PARCEL CONTAINING 68.20 ACRES OWNED BY: NICE PROPERTIES, INC. TO JAMES CITY COUNTY, STONEHOUSE DIST., JAMES CITY CO., VIRGINIA", dated Feb. 2, 1983, prepared by Buchart-Horn, Inc., Consulting Engineers & Planners.

Section 4. The funds estimated as necessary to compensate the owner of the above-described parcel for land and damages, if any, within the limits of which the County Administrator is authorized to agree with them is One Hundred Nineteen Thousand Three Hundred Fifty and 00/100 Dollars (\$119,350.00).

Section 5. The County Attorney and/or the law firm of Anderson, Emmett & Franck, P.C. shall notify the property owner of the compensation and damages offered by the County forthwith on or before May 15, 1983.

Section 6. That in the event any of the property described in Section 3 of this Ordinance has been conveyed, the County Attorney and/or the law firm of Anderson, Emmett & Franck, P.C. are authorized and directed to institute proceedings against successors in title.


Perry M. DePue, Chairman
Board of Supervisors

ATTEST:


James B. Oliver, Jr.
Clerk to the Board

<u>SUPERVISOR</u>	<u>VOTE</u>
DePUE	AYE
FRINK	AYE
EDWARDS	AYE
MAHONE	AYE
TAYLOR	NAY

Adopted by the Board of Supervisors, James City County, Virginia, this 27th day of June, 1983.

FMM/dam
/FMM5

M E M O R A N D U M

DATE: June 9, 1983

TO: The Honorable Chairman and Members of the
Board of Supervisors

FROM: Frank M. Morton, III, County Attorney

SUBJECT: Proposed Ordinance Authorizing Acquisition of Real Property
for Ware Creek Reservoir/Nice Brothers

On May 9, 1983, the Board of Supervisors adopted the attached ordinance as an emergency ordinance that would authorize acquisition of certain property owned by Nice Properties, Incorporated.

The ordinance authorizes the County Administrator to negotiate for the property within the limits of the amount set forth, \$119,350. In addition, it meets certain other legal requirements set forth in the Code of Virginia.

The owner of the property will have 30 days from May 15, 1983 in which to contest the taking. Thereafter, the owner may petition the Court to obtain the amount of funds set forth in the ordinance at anytime.

We have begun preliminary negotiations with Nice Properties, Inc. and it is my hope that this matter will be worked out without need for litigation.

I recommend that the Board adopt the attached ordinance.

Respectfully submitted,


Frank M. Morton, III

FMM/tad

Attachment

CONFIDENTIAL

ANDERSON, EMMETT & FRANCK, P. C.

ATTORNEYS AT LAW

POST OFFICE DRAWER Q

WILLIAMSBURG, VIRGINIA 23187

CHARLES HARPER ANDERSON
ALVIN POWERS ANDERSON
ROBERT WILLIAM EMMETT III
SHELDON M. FRANCK

June 21, 1983

1200 OLD COLONY LANE
TELEPHONE 804 229-7322

PRIVILEGED--CONFIDENTIAL MATERIAL

Frank M. Morton III, Esquire
County Attorney
James City County
P. O. Box JC
Williamsburg, Virginia 23185

Re: James City County, Virginia
v.
Nice Properties Co., a Virginia corporation

Dear Frank:

In connection with the above captioned and pursuant to the various questions raised by Mr. Thomas D. Mahone at the meeting of the Board of Supervisors on Monday, June 13, 1983, I have investigated the applicable statutes of the Commonwealth of Virginia for the purpose of determining the most advantageous route available to James City County, Virginia.

Based upon my investigation and upon my experience representing other condemning authorities for similar projects, I would not recommend the inclusion of any right of first refusal in the Ordinance. Such a right would be revocable at will by the Board of Supervisors and, accordingly, would not reduce the market value of the subject property. This would result in James City County, Virginia, paying the landowner the full market value of the property and then, for no consideration, giving the landowner the right of first refusal.

Section 15.1-238(e) gives to the County those powers granted to the Highway and Transportation Commissioner pursuant to § 33.1-119 through 33.1-129 of the 1950 Code of Virginia, as amended. Sections 33.1-121 and 33.1-122 provide that a certificate may be issued in lieu of payment stating that the money designated therein will be paid pursuant to the order of the court and upon recordation of the certificate in the clerk's office, the interest or estate of the owner of such property shall terminate and the title to such property shall be vested in the Commissioner (i.e. the County); however, § 33.1-132 provides no suit to establish the value of the land taken or damages to the residue, if any, must be instituted until the project has been completed, a reasonable time for the completion of the project has expired, or until one (1) year after the recordation of the certificate, in which event the property owner may petition the court for the appointment of commissioners to determine the compensation for the property taken and the damages to the residue, if any. Accordingly, no suit to complete the acquisition of the property would be instituted until June of 1984 and then only upon the petition of the property owner and no trial would be scheduled until sometime after that date. In the meantime, the County would be able to determine the feasibility of the project. If the project is

ANDERSON, EMMETT & FRANCK, P.C.

Frank M. Morton III, Esquire
Page Two
June 21, 1983

unfeasible, the County pursuant to § 33.1-125 could petition the court to invalidate the certificate which would effectively re-vest title in the original owners of record. Please note, however, that nothing contained in § 33.1-125 is to be construed to prohibit or preclude any person damaged thereby from showing in the proper proceeding the damage suffered by reason of such invalidation of a certificate of deposit. Accordingly, the landowner could attempt to hold the County responsible for the damages which I would anticipate would be in the nature of the fair market value rental for the subject property for the period of time between the recordation of the certificate and the invalidation of the certificate. These damages probably would be offset by the interest requirements of § 33.1-128.

For the reasons outlined above, I would respectfully suggest that the Board of Supervisors adopt the Ordinance in the form as presented on June 13, 1983.

Very truly yours,

ANDERSON, EMMETT & FRANCK



Alvin P. Anderson

APA:d1

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Respectfully submitted,


Frank M. Morton III

FMM/tad

Attachment

*Tabled
at June 13 meeting
till June 27, 1983*