

# **Summary of the Original Deeds and Covenants of Old Courthouse Spring Branch Stream Valley Park 1976 - 1999**

There are at least six references to the preservation of the Old Courthouse Stream Valley Park in deeds which conveyed private land to the Fairfax County Board of Supervisors. These deeds cover a 23 year period from 1976 to 1999. Again and again, the deeds reflect the original owners' intent *and the County's agreement* to preserve the subject property as an environmentally sensitive, natural buffer between Tysons Corner development and the various developments near Route 7. Quotes from these deeds indicate the legal intent of the property owners and the agreement by the County:

- 1) May 24, 1976 Declaration of Covenants from Daniel S. Capper, et al to the Fairfax County Board of Supervisors conveying 11 acres of land adjacent to the Tysons Green Subdivision (near Pine Valley)



In May 1976, as part of a rezoning application, the Cappers deeded 11 acres of land to the County with very specific restrictions. This original deed recognized the environmental sensitivities of the Stream Valley, required the County to use it as park land or open space -- explicitly "burden[ing]" the land with a "covenant running with the land and binding" on subsequent owners, and gave the Beneficiaries (the eight Tysons Green neighbors), a right to contest any subsequent development as "being detrimental to their general health, safety, and welfare".

Please see the specific language below. In a detailed "Declaration of Covenants," signed by the Cappers, the Board of Supervisors, and eight Tylsons Green residents (some of whom still live in Tylsons Green), all parties agreed as follows:

**WHEREAS, the Owners (Cappers) *desire and intend to burden their property* as herein described by this Declaration of Covenants ...**

*WHEREAS, certain traffic conditions exist along the Leesburg Pike which are potentially hazardous and may be made more hazardous by the proposed more intense zoning and possible uses thereof, and it appears to be in the best interests of and for the health, safety, and welfare of the parties hereto and the residents of the surrounding area ...*

*WHEREAS, the Beneficiaries hereto recognize that they have the **right to contest any subsequent rezoning request as being detrimental to their general health, safety, and welfare, and***

WHEREAS, it appears that the property in the approximate amount of 11 acres situated to the rear of the property and in the vicinity of the Tysons Green Subdivision is **environmentally sensitive**, its development may be detrimental to the health, safety, and general welfare of the parties hereto and of the residents of the surrounding area and **it is suitable for use as open space, park land, or other public use and that a need exists in the area for such open space, park land, or other public uses.**

WHEREAS, by virtue of **certain environmental conditions** existing in the area, it appears to be in the best interests and for the health, safety, and welfare of the parties hereto and of the residents of the surrounding area that the following covenants shall attach to and run with the said tract of land;

WITNESSETH:

1. The parties of the first part, for the considerations previously stated as well as charitable purposes, hereby agree to convey approximately 11 acres, **including the Stream Valley and the land lying south of the Stream Valley** and adjacent to the Tysons Green Subdivision to the Board of Supervisors of Fairfax County, VA, for use as **park land, open space**, and other public purposes as so determined by the said Board of Supervisors.  
\* \* \*
6. This shall be deemed a **covenant running with the land and binding** on all heirs, assigns, and other successors in interest.

Reading these sections together and in the context of the entire Declaration of Covenant, the County must protect the "environmentally sensitive" land which includes the "Stream Valley," without developing it (which would be "detrimental to the health, safety, and general welfare of the "parties" ... "beneficiaries" ... "residents of the surrounding area") and maintain it as "open space" and "park land." This reading it also consistent with the detailed concerns about *"certain traffic conditions exist along the Leesburg Pike* which are potentially hazardous and may be made more hazardous by the proposed more intense zoning and possible uses thereof, and it appears to be in the best interests of and for the health, safety, and welfare of the parties hereto and the residents of the surrounding area". Building a highway ramp -- *which would create traffic* -- through the parkland would be wholly inconsistent with the letter and spirit of this Covenant.

## 2) June 1, 1977 Deed from Vincent Joseph Dardin Jr. to the Fairfax County Board of Supervisors conveying 1.18977 acres north of Higdon



"[T]he party of the first part does hereby grant, bargain, sell and convey, with General Warranty of Title, unto the party of the second part, a tract or parcel of land containing 1.18977 acres... **said land to remain substantially in its natural condition subject** only to hereinafter reservations.

The party of the first part hereby reserves unto itself and its successors and assigns easements for the installation of utilities and for construction purposes including but not limited to sanitary sewer, storm sewer, water, telephone, electric, cable T.V., gas, grading and slopes."

**3) September 18, 1978 Deed from Wilson C. Sherman et al to the Fairfax County Board of Supervisors conveying 18.21260 acres north of Higdon.**



One year later, in September 1978, the Shermans, the Olivers, the Lanfords agreed to deed another 18.21260 acres to the County, subject to the exact same requirements as the Dardins had relied upon the year before. This 18 acres immediately behind most Higdon homeowners' houses (running from Vesper to Palm Springs), was to "remain substantially in its natural condition" ... "as park land."

"WHEREAS - The Parties of the first part are desirous of dedicating the said tract to the party of the second part for its ownership and **use as park land.**"

"The said land is to **remain substantially in its natural condition** subject only to reservations as follows:"

*Recent conversations with members of the Sherman and Oliver families all confirm this intent and understanding.*

**4) November 5, 1997 Deed of Subdivision and Easement between Westwood Village Associates and Fairfax County Board of Supervisors**



In 1997, on the northern edge of the parkland, "Tyson's Village" was sub-divided and developed by Rocky Gorge at Tysons with Westwood Village Associates LP (collectively referred to as the "Owners"). Like previous landowners who had donated substantial acreage to be protected, these landowners conveyed conservation easements to the Park Authority with specific requirements, as follows:

**[Conservation]**

***[T]he Owners .. grant and convey to the County conservation easements for the purpose of conserving and preserving undisturbed the natural vegetation, topography, habitat and other natural features ...***

***All existing vegetation in the conservation easement area shall be preserved and protected and no clearing or grading shall be permitted, nor shall the easement area be denuded, defaced or otherwise disturbed.."***

**[Conveyance to Park Authority]**

**THIS DEED FURTHER WITNESSES, that Westwood Village LP grants and conveys in fee simple *unto the Park Authority*, with Special Warranty of Title, Parcel "A" and Parcel "B", Section 1, Tyson's Village.**

In the "Notes" section, the agreement indicates all the areas in which the protecting open space is required:

**6. Areas designated as conservation easements have been credited as perpetually undisturbed open space ...**

**10. Floodplain and storm damage easement, no use shall be made of, nor shall any improvements be made in the flood plain easement ...**

**12. RPA (Resource Protection Area) lines shown hereon are per the Chesapeake Bay Preservation areas maps dated 3-21-94**

**5) February 13, 1998 Deed of Subdivision between Westwood Village Associates and the Fairfax County Board of Supervisors**

Only a few months later, the Westwood Village Associates LP conveyed more land to the Park Authority, again providing “conservation easements,” as follows:

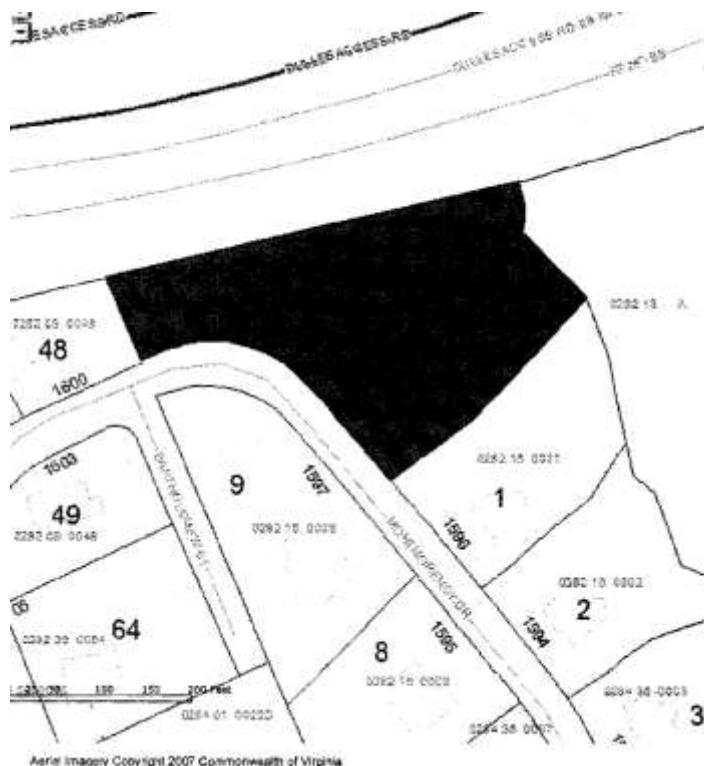
***“Westwood Village grants and conveys to the County conservation easements for the purpose of conserving and preserving undisturbed the natural vegetation, topography, habitat and other natural features …”***

1. *No use shall be made of, nor shall any improvements be made within, the conservations easement areas without prior written authorization from the County.*
2. *All existing vegetation on the **conservation easement areas** shall be preserved and protected and no clearing or grading shall be permitted, nor shall the easement area be denuded, defaced or otherwise disturbed without the prior written approval of the appropriate agency or department of the County."*

In another section titled “Conveyance to Park Authority,” the language is repeated:

“THIS DEED FURTHER WITNESSETH, that ... Westwood Village hereby grants and conveys in fee simple unto the Park Authority ... Parcel “B”, Section 2, Tyson’s Village, shall not be denuded, defaced or otherwise disturbed in any manner at any time without the prior written approval of the Park Authority.”

**6) October 1, 1999 Dead of Subdivision between DR Horton, Inc. and the Board of Supervisors, Park Authority, and the Olivers – Ashgrove Woods**



The next year, in October 1999, D.R. Horton, Inc. is subdividing to create Ashgrove Woods, and also deeds a parcel to the Park Authority for "park purposes" in addition to a conservation easement, as follows:

## RECITALS

*"G. It is the desire and intent of the Owner to convey a portion of the Property to the Park Authority for park purposes in the location shown on the Plat and as hereinafter provided.*

## CONVEYANCE OF PARCEL

*THIS DEED FURTHER WITNESSETH, that for an in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Owner does hereby grant and convey unto the Park Authority with Special Warranty of Title, the portion of the Property described on the Plat as "PARCEL A 7.956.276 sqm [85,641 sq. ft.) TO BE CONVEYED TO THE FAIRFAX COUNTY PARK AUTHORITY," subject to the restriction, running with the land, that Parcel A shall not be denuded, defaced nor disturbed in any manner, at any time, without the approval of the appropriate County department, and further subject to all covenants, conditions, restrictions, agreements, rights-of-way and easements of record.*

## CONSERVATION EASEMENT

*THIS DEED FURTHER WITNESSETH, that ... the Owner grants unto the County conservation easements for the purpose of conserving and preserving undisturbed the natural vegetation, topography, habitat and other natural features now existing on and across the Property, said easements being more particularly bonded and described on the Plat, subject to the following conditions:*

1. *No use shall be made of, nor shall any improvements be made within, the conservation easement area without prior written authorization from the County.*
2. *All existing vegetation on the conservation easement area shall be preserved and protected and no clearing or grading shall be permitted, nor shall the easement area be denuded, defaced or otherwise disturbed without the prior written approval of the appropriate agency or department of the County."*

*The Owner agrees that the agreements and covenants stated in this Deed are not covenants personal to the Owner but are covenants running with the land which are and shall be binding upon the Owner, its heirs, personal representatives, successors and assigns.*

### **Conclusion:**

The documentation since 1976 confirms the mutual intention and legal agreement of both landowners and the Fairfax County Board of Supervisors to protect the "environmentally sensitive" Old Courthouse Stream Valley Park and maintain it in its "natural condition," as "park land" and "open space". Even as recently as 1998, landowners conveyed to the Fairfax County Park Authority "conservation areas" near the Stream Valley to protect the "natural vegetation, topography, habitat, and other natural features."

FCDOT's Option Three, with a proposed highway ramp through a protected Stream Valley, is in conflict with these legally mandated covenants and restrictions. The property rights and desires of the original owners of the deeded parkland should be protected and respected. Please remove Ramp Option Three from any current or future development of the Tysons Corner area.