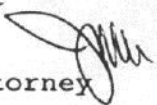


FAIRFAX COUNTY, VIRGINIA

MEMORANDUM

TO: Martha V. Pennino                      DATE: April 8, 1985  
Supervisor  
Centreville District

FROM: James V. McGettrick                      Ref. No. 17124  
Assistant County Attorney 

SUBJECT: Town of Wiehle

INQUIRY:

Upon your motion at the meeting of the Board of Supervisors on March 11, 1985, the County Attorney was asked to review the status of the Wiehle town charter and to advise whether it could be reactivated, especially whether it could be reactivated to serve as a charter for a town of Reston.

OPINION:

An almost total absence of any authority on the subject has made formulation of an opinion very difficult. With that caveat, it is this office's opinion that the Wiehle charter, while dormant, probably is not extinct. A Virginia court more likely than not would rule that the charter could be revived, although the process would require the resolution of a number of legal and factual questions.

Wiehle certainly is not equivalent to Reston. If Wiehle could be revived, it would include only a small corner of the Reston community. A map sketching the approximate boundary of Wiehle is attached. Furthermore, the original Wiehle charter is extremely limited in scope. Thus, converting the Wiehle charter into a serviceable town charter for the Reston community would require a series of difficult and expensive legal and political actions,

including amendment of the Wiehle charter by the General Assembly and extensive annexation of large additional portions of Fairfax County.

#### BACKGROUND:

In 1886, Dr. Carl Adolf Max Wiehle, a retired physician from Philadelphia, and General William Dunn purchased a tract of 6,449 acres of land near Herndon, approximately bisected by the Washington and Old Dominion Railroad. The land was later divided among the two partners, with Dr. Wiehle taking the portion north of the railroad tracks and building a home in 1888.

Dr. Wiehle conceived the idea of building a new town on part of his forested property. He made elaborate plans, including hiring a European planner to draw up a detailed street grid, although only a few of the streets were ever laid out. As an element of his overall plan, Dr. Wiehle apparently persuaded the Virginia General Assembly in 1898 to incorporate a town of Wiehle within a portion of his property.

While the Act of incorporation provided for a basic structure of town government for Wiehle, the explicit authority granted to that government was limited, e.g., the town council could lay out streets, provide for observance of the Sabbath, plant shade trees, abate nuisances, and license dogs. The town officers expressly were denied any control over public schools or road taxes.

I have not found any amendment or repeal of the Act incorporating Wiehle. Nor have I found any evidence that any of the authority or power contained in that Act was ever exercised, i.e., that an actual, functioning Town of Wiehle has ever existed, though it may have for at most a few years after passage of the Act. However, in 1901 Dr. Wiehle died, and any town activity that may have existed did not survive him for long, if at all.

#### DISCUSSION:

It is more likely than not that a court today would find that the Wiehle charter could be revived.

The only Virginia Supreme Court case which is relatively on point is the obscure 1907 decision of Beale v. Pankey, 107 Va. 215, 57 S.E. 661. In Beale, the Town of Pamplin City had been incorporated by the General Assembly

in 1874. In contesting the validity of a tax levied by town officials in 1906, the appellee alleged, among other things, that for many years prior to 1906 the charter of 1874 was not used and there was no town government in Pamplin City. However, the Court ruled that a municipal corporation does not go out of existence for the nonuse of its charter, on the legal theory that the creation and dissolution of municipal corporations is strictly a function of the legislature, not to be usurped by the courts. Since such municipal corporations exist only by legislative action, they cannot cease to exist except by legislative consent or pursuant to legislative provision.

Some factual distinctions between the Pamplin City and Wiehle situations can be made. The Court in Beale noted that a town government for Pamplin City was organized after the charter was granted in 1874, that elections were held, and that town officials acted in their respective capacities for a number of years. As noted above, it is questionable whether any activity pursuant to the Wiehle charter has ever taken place. Furthermore, Wiehle has been dormant far longer than the period of disuse alleged in Beale. Nonetheless, the extremely broad language used by the Court in Beale would appear to apply to the Wiehle situation regardless of these factual differences.

Beale was cited as controlling in a 1976 opinion of the Attorney General concerning a situation more factually akin to Wiehle. 1976-1977 Op. Va. Att'y Gen. 24 (September 20, 1976). That opinion concerned the community of Lynchs Station in Campbell County. A town charter for Lynchs Station was granted in 1884, but elections for town officers never were held and the corporate powers granted by the General Assembly never were exercised. As appears to be the case with respect to Wiehle, there was no later Act of the Assembly repealing the town charter of Lynchs Station, and the charter was effective upon passage of the incorporation Act, not made dependent on the occurrence of a subsequent event, such as elections being held.

The Attorney General concluded that the 1884 charter for Lynchs Station, not implemented in 92 years, was still effective. In order to revive Lynchs Station, the Attorney General opined that it would be necessary to hold an election of town officers, and also stated that such an election would have to be approved by the Attorney General of the United States, pursuant to section 5 of the federal Voting Rights Act of 1964, 42 U.S.C. § 1973c.



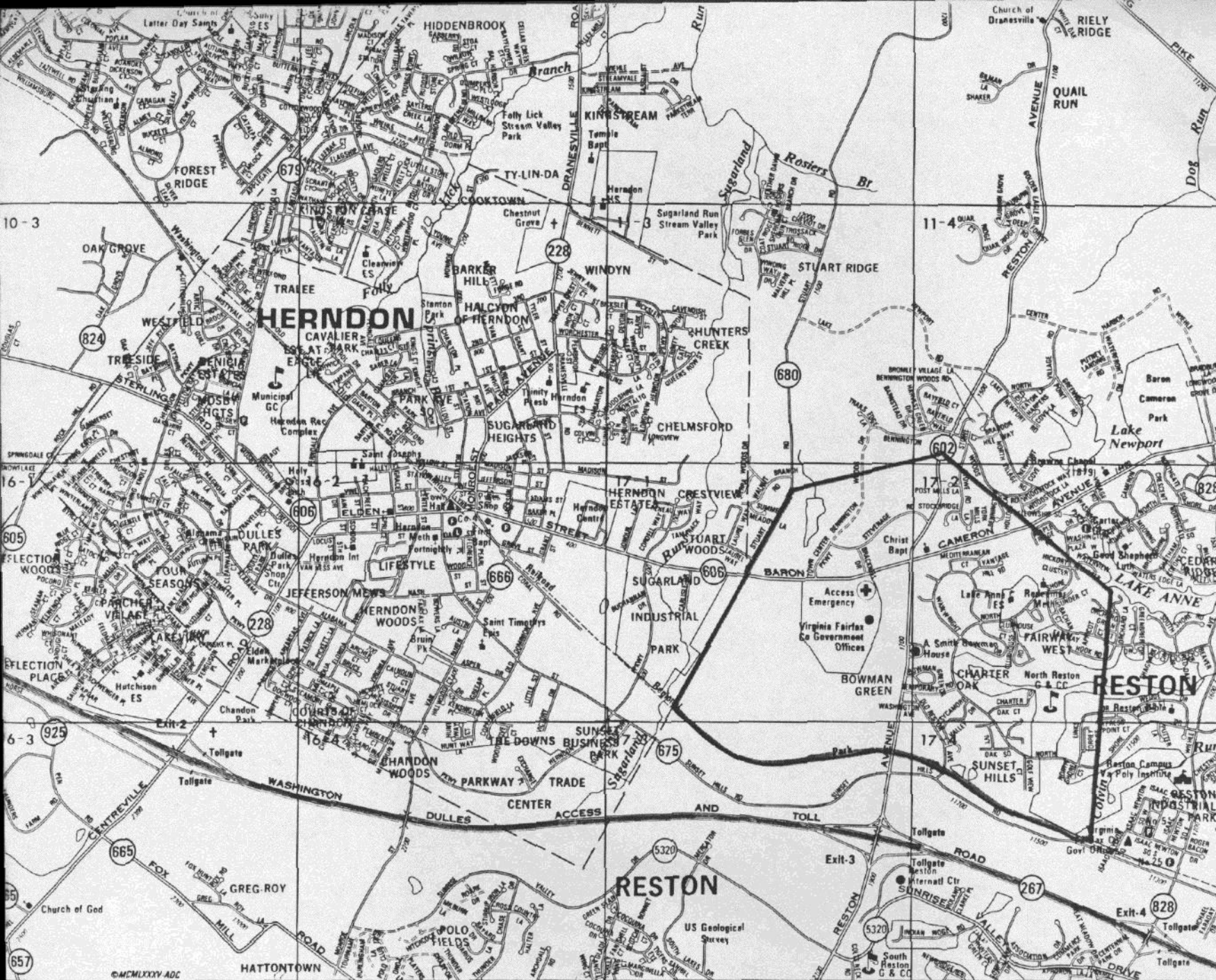
If a court ruled in accordance with the Attorney General's opinion, the procedure to revive Wiehle would be similar. However, in the case of Wiehle, a preliminary legal action in circuit court would probably be necessary to establish the true location of Wiehle's boundaries, a matter subject to some doubt. While the Virginia Code sets out procedures to settle boundary disputes between various kinds of political jurisdictions, Va. Code §§ 15.1-1026 to 1031.4 (1984 & Supp. 1984), there are no statutes pertaining to contested disputes between counties and towns, so this could prove to be a difficult process for the court. In any case, after boundaries were established, citizens residing within those boundaries would need to petition the circuit court to order a town election. If the election were ordered, it could not be held until prior Voting Rights Act approval was given by the United States Department of Justice.

Even if the town charter of Wiehle were revived, there would remain perhaps insurmountable barriers to its utilization as a town charter for Reston. Two principal barriers are the limited nature of the Wiehle charter and the fact that Wiehle would encompass only a small corner of the Reston community. In order to expand the authority granted by the charter, the General Assembly would have to agree to amend the charter. In order to expand the boundaries of Wiehle to include more of Reston, the town would have to succeed in the arduous and expensive annexation process.

In order to annex any other part of Fairfax County, Wiehle would have to bear the usual burden of proving to a three-judge court that it was both necessary and expedient (meaning advantageous and in furtherance of state policy) that annexation be permitted. Va. Code § 15.1-1041 (1981). In effect, the town would have to prove that it could better provide a whole catalog of urban services, from water and sewers, through land use and planning, to public safety and recreation. It would appear to be an extraordinarily difficult task for a newly revived Wiehle to successfully bear this burden of proof in the face of the services offered by urbanized Fairfax County. Therefore, there seems to be little likelihood that Wiehle could expand to include any more of Reston. Thus, the Wiehle charter would not be a viable vehicle for Reston town status.

JVM:rtc

cc: J. Hamilton Lambert  
County Executive



Joins Map 5