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John M. Taylor

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## RENEWED CONFLICT AT BRANDY STATION

John M. Taylor

During the 1970s and 1980s, real estate development in the communities between Baltimore and Richmond progressed at a startling rate.<sup>1</sup> As the Washington metropolitan area continues to grow, areas that were once the focus of the Civil War increasingly are prime targets for subdivisions, shopping centers and office buildings.<sup>2</sup> Historians, historic preservationists and Civil War enthusiasts have strongly objected to the effects of real estate development on these historically important areas.<sup>3</sup> Such a conflict has occurred sixty-five miles southwest of Washington, D.C., in Culpeper, Virginia, the location of the Brandy Station battlefield.

### SETTING FOR THE CONFRONTATION

On the morning of June 9, 1863, the Battle of Brandy Station was the opening clash of a Civil War campaign that would end less than one month later with a Union victory at the Battle of Gettysburg.<sup>4</sup> Twenty thousand men fought at Brandy Station, the largest cavalry battle of the Civil War.<sup>5</sup> One hundred and twenty-seven years later, another battle is being waged at Brandy Station between Lee C. Sammis, a California-based commercial real estate developer, and Civil War historians and preservationists.<sup>6</sup> The modern battle concerns the land on which the battlefield is situated.

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1. Russell, *Behind The Lines*, Civil War Times Illustrated, May/June 1990, at 6.
  2. Washington Post, June 10, 1990, at D1, col. 1.
  3. *Id.*
  4. Chicago Tribune, July 9, 1989, at 2F.
  5. Christian Science Monitor, Aug. 2, 1990, at 6.
  6. Pohanka, *A New Battle Flares at Brandy Station*, Civil War Times Illustrated, May/June 1990, at 43.

In 1987, Sammis began purchasing large tracts of the battlefield.<sup>7</sup> Sammis now owns approximately 5,000 acres, including virtually all of the site where the cavalry fought on June 9, 1863.<sup>8</sup> Although some historic preservationists were concerned when he originally acquired the land, it was only after a road had been graded across a portion of the battlefield that many preservationists became alarmed.<sup>9</sup> Sammis at first did not express any particular plans for the battlefield; in early 1989, however, it was announced that he planned to construct there a major business and residential project to be called "Elkwood Downs."<sup>10</sup> This announcement sparked the familiar clash between land developer and preservationist. The issue, however, is more complex than a debate over development rights; at stake is the question of whether conflicting interests can be accommodated.

#### THE DEVELOPER'S POSITION

The Brandy Station battlefield is located in northern Virginia near Washington, D.C. The area has been heavily developed, and much of the battlefield was "privately owned and virtually unprotected" before Sammis acquired it.<sup>11</sup> The battleground, which is located along U.S. Highway 29 near the city of Culpeper, Virginia, is not well delineated. It bears only one historical marker, which designates "where the most intense fighting took place."<sup>12</sup> According to Sammis, "[a]fter the Civil War most of the battlefields were recipients of monuments. This area received nothing."<sup>13</sup>

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7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.*

11. Chicago Tribune, July, 9, 1989, at 2F.

12. *Id.*

13. *Id.*

Sammis' proposed development would include "residential villages with a focal point being a corporate business park. It would have a system of trails for jogging and bicycling, an equestrian center, a golf course and a tennis course and there would be a lot of area dedicated to open space."<sup>14</sup> In order to facilitate his plans, Sammis applied to the Culpeper County Board of Supervisors to rezone 1,500 acres from agricultural to commercial and industrial uses.<sup>15</sup>

Sammis has stated that he would like to cooperate with the preservationists and to work out some type of mutually acceptable plan.<sup>16</sup> Toward that end, he has suggested preserving specific areas of interest, instead of the whole site. "It was a roving battle that coursed over this general area. Perhaps what we should be doing is defining . . . the locations that were most impactive to the battle so we can create points of interest people can relate to," Sammis said.<sup>17</sup> To further this goal, he hired Eugene Scheel to survey the property and to identify historic structures and locations. Sammis has said that he will takes steps to "preserve any true validated historic points of interest," and he has offered to give the county 240 of the "most crucial acres."<sup>18</sup>

The proposed development would be located next to the Culpeper County Airport, a link which is an important factor in Sammis' development plan.<sup>19</sup> The developer and his associates have stated that they "favor the creation of a foreign trade zone attracting international commerce -- and its attendant growth -- to the Brandy Station area."<sup>20</sup>

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14. *Id.*

15. Pohanka, *supra* note 6, at 43.

16. Washington Post, June 10, 1990, at D1.

17. *Id.*

18. *Id.*

19. Pohanka, *supra* note 6, at 43.

20. *Id.*

## THE COUNTY'S POSITION

Culpeper County officials are ambivalent about the project. On the one hand, they realize that its location next to the airport could dramatically "expand the employment base of a county that is trying to avoid becoming a bedroom community of Washington."<sup>21</sup> On the other hand, they are wary of the possible negative impacts on the community.<sup>22</sup>

On October 30, 1989, the State Board of Historic Resources designated Brandy Station as a Virginia Historical Landmark.<sup>23</sup> This designation, however, imposes no land use restrictions.<sup>24</sup> Zoning decisions remain within the broad police powers of the Culpeper County officials, some of whom support the Sammis project.<sup>25</sup> In a letter to the Washington Post on September 21, 1989, James Witherspoon, Chairman of the Culpeper Chamber of Commerce, went so far as to claim that "Lee Sammis has done more to identify and preserve specific sites relevant to the battle of Brandy Station than anyone since the Civil War."<sup>26</sup> "Nobody can afford to turn [the battlefield] into a park," said William C. Chase, Jr., a member of the Culpeper County Board of Supervisors.<sup>27</sup> "So if [Sammis] puts in a development and preserves historically significant spots, then I would be in favor because it would open [the battlefield] up to more Americans."<sup>28</sup>

In May, 1990, the Planning Commission voted 5 to 3 to

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21. Washington Post, June 10, 1990, at D1.

22. *Id.* Culpeper officials have expressed concern about the project's environmental, historical and traffic impacts.

23. Pohanka, *supra* note 6, at 44.

24. *Id.*

25. *Id.*

26. *Id.*

27. Chicago Tribune, July 9, 1989, at 2F.

28. *Id.*

recommend denial of the project. Despite this and other officials' expression of concern over the development,<sup>29</sup> the Board of Supervisors approved the plan to build the industrial park by a 5 to 2 vote on September 25, 1990.<sup>30</sup> By approving the rezoning of his land from agricultural to light industrial, the County has paved the way for Sammis' development plans.<sup>31</sup>

As part of the final plan for the rezoning of 1,445 acres, Sammis agreed to set aside 248 historic acres.<sup>32</sup> The Supervisors who voted in favor of the rezoning felt the project's economic benefits, coupled with the developer's donation of land and \$6 million in road improvements, outweighed its detriments.<sup>33</sup> Board of Supervisors Chairman Jack Fincham, who voted for the proposal, said "it would be great if the entire territory were never touched but let's be realistic . . . the only thing that has ever been done [for Brandy Station] is to place two markers on the road. Now a developer has proffered to protect some of the site."<sup>34</sup>

#### THE PRESERVATIONISTS' POSITION

Sammis' development has met with opposition from the outset by preservationists concerned with its potential effects on the battlefield.<sup>35</sup> The opposition now centers around the position that setting aside 248 acres is not sufficient to preserve the integrity of the battlefield.<sup>36</sup> Many preservationists view the grant of land in a skeptical light. They believe the offer does not include many areas

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29. Washington Post, June 10, 1990, at D1.

30. Washington Post, Sept. 26, 1990, at A20.

31. Pohanka, *supra* note 6, at 43.

32. Washington Post, Sept. 26, 1990, at D1, col. 1.

33. *Id.* at col. 2.

34. *Id.*

35. Pohanka, *supra* note 6, at 43.

36. Washington Post, June 10, 1990, at D1.

of the heaviest fighting,<sup>37</sup> and they are seeking an agreement whereby the land preserved as open space will be the same ground on which historical events took place.<sup>38</sup> Historians are concerned that expansion of airport runways and facilities resulting from the proposed development will endanger key battlefield areas, including the spot where Union Colonel Benjamin F. "Grimes" Davis met his death.<sup>39</sup>

Other historical areas that would be threatened by "Elkwood Downs" include the plateau where the Sixth Pennsylvania Cavalry made its famous charge, St. James Church and its environs, the Confederate defensive position behind the stone wall at Green Farm, historic Beverly's Ford Road, and the eastern slope of Fleetwood Hill.<sup>40</sup> "What [Sammis] has offered us is acreage where there wasn't a lot of fighting [and] he can't build on it because it is a slope," said Clark Hall, of the Brandy Station Foundation and Secretary of the Association for the Preservation of Civil War Sites ("APCWS").<sup>41</sup> "What lies totally unprotected is the plateau where the Sixth Pennsylvania made their charge."<sup>42</sup> Hall said that the charge, "which failed, and a second charge at a nearby stone wall, which succeeded, were made across what is now Sammis' property."<sup>43</sup> Hall has

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37. Pohanka, *supra* note 6, at 43.

38. *Id.*

39. *Id.*

40. *Id.*

41. Washington Post, Sept. 26, 1990, at A20, col. 1.

42. *Id.* This charge was one of the most spectacular events of the battle. On June 9, 1863, Union forces crossed Beverly's Ford along the Rappahannock River in search of the enemy. The Sixth Pennsylvania Cavalry, recruited from Philadelphia's elite, charged headlong into the Confederate artillery that had met the Union forces with stiff resistance in the vicinity of St. James Church. "They started out in perfect order and took off across the field," Clark Hall said. "The Confederates could not believe it. They thought it was a beautiful charge." Chicago Tribune, July 23, 1990, at 1M.

43. Chicago Tribune, July 23, 1990, at 1M.

acknowledged Sammis' gift of 248 acres, but said, "[i]f you've got isolated pockets of preservation, you've got nothing. You would have an artillery position overlooking warehouses."<sup>44</sup> The dispute over the exact location of the charge, where the main focus of the battle was, and the adequacy of Sammis' grant of land have proven to be major areas of conflict between the developer and the preservationists.

In an attempt to make Sammis aware of the events that took place on his land, the APCWS has furnished him with several hundred pages of reports, period maps and excerpts from soldiers' letters and diaries, all documenting in detail the events which transpired on the developer's property.<sup>45</sup> Eugene Scheel, the historian working for Sammis, originally stated that the Sixth Pennsylvania's attack occurred on adjacent county land.<sup>46</sup> He was proven incorrect, however, by the National Park Service, which issued a report outlining guidelines for the preservation of Brandy Station.<sup>47</sup> Neither the developer nor the Board of Supervisors wished to adopt the guidelines drawn up by the National Park Service for appropriate development on the pristine landscape. Clark Hall stated that "the developer has it within his total power and control to follow the National Park Service guidelines for sensitive development."<sup>48</sup>

#### THE LEGAL CHALLENGE

On October 22, 1990, J.E.B. Stuart IV, great-grandson of the Confederate cavalry commander, and the Brandy Station Foundation filed suit in the Circuit Court of Culpeper County, alleging that the Culpeper Board of County Supervisors improperly approved the plan

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44. Washington Post, June 10, 1990, at D1.

45. Pohanka, *supra* note 6, at 43.

46. Chicago Tribune, July 23, 1989, at 1M.

47. NATIONAL PARK SERVICE, GENERAL OUTLINE FOR PRESERVING THE BRANDY STATION BATTLEFIELD SITE, CULPEPER COUNTY, VIRGINIA, Sept. 20, 1990.

48. *Id.*

for the industrial park.<sup>49</sup> Preservationists have alleged that the supervisors deliberately limited public input and failed to consider the development's effect on the battlefield, the environment and the rural character of Culpeper County, and that the Sammis rezoning failed to consider properly the objectives of the Culpeper County Comprehensive Plan.<sup>50</sup> The suit alleges that the County Board acted in an arbitrary, capricious and improper manner in granting the rezoning.<sup>51</sup>

The suit asserts for the first time that there is a "right to heritage" guaranteed under both the Virginia and United States Constitutions.<sup>52</sup> According to senior partner Daniel Reznick, of Arnold & Porter, which has accepted the case on a *pro bono* basis, "We believe that once historic properties have been designated by the proper public officials, constitutional rights of heritage cannot be abridged without due process of law; and we think the courts will agree with us."<sup>53</sup> In addition to having been declared a Virginia Historical Landmark, National Park Service officials have declared that the Battlefield also may be eligible for National Register and National Landmark status, the highest classifications accorded the country's most historic properties.<sup>54</sup>

#### THE PRESERVATION OF BATTLEFIELDS IN THE FUTURE

The conflict at Brandy Station raises the question of what should be done in the future to protect battlefields. The Brandy Station dispute might have been avoided if the battlefield had been protected and its purchase for real estate development precluded.

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49. Washington Post, Oct. 23, 1990, at D1, col. 1.

50. *Id.*

51. Brandy Station Foundation Press Release, Oct. 1990.

52. *Id.*

53. *Id.*

54. *Id.*

The effort to save battlefield sites is primarily a conflict between preservation and time.<sup>55</sup> Some preservationists believe that within five years, population growth will sweep over numerous battlefields.<sup>56</sup>

In addition to Civil War enthusiasts and historic preservationists, many government officials have voiced support for the protection of battlefields and other historical landmarks.<sup>57</sup> Legislation has been introduced in Congress to protect crucial areas and to purchase land in order to expand existing national battlefield parks.<sup>58</sup> Private foundations have also been organized to protest development on battlefield sites, sometimes purchasing endangered land to protect it from development.<sup>59</sup> In July, 1990, Department of the Interior Secretary Manuel Lujan, Jr., distributed a report identifying twenty-five endangered battlefields, including Brandy Station, and called for public and private groups to join together to save them.<sup>60</sup> Many congressmen have also come out in support of the preservation effort.<sup>61</sup> Much of the current attention surrounding the preservation of battlefields is a direct result of Congress' purchase in 1988 of six hundred acres for the Manassas National Park at a cost of more than \$50 million, while a commercial developer was building roads and a sewer system on the property.<sup>62</sup>

Representative Bruce Vento, a democrat from California and Chairman of the House Subcommittee on National Parks and Public Lands, has stated that "the preservation issue goes beyond simply saving battlefields. It is about preserving a swath of America's

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55. Christian Science Monitor, Aug. 2, 1990, at 6.

56. *Id.*

57. Chicago Tribune, July 9, 1989, at 2F.

58. Washington Post, June 10, 1990, at D1.

59. *Id.*

60. Washington Post, Sept. 26, 1990, at A20, col. 1.

61. Christian Science Monitor, Aug. 2, 1990, at 6.

62. *Id.*

historic and cultural resources. These aspects include native Americans, labor, women's history and archaeological concerns."<sup>63</sup> Congressman Vento has also pointed out that "[t]he problem we are talking about is the same -- historic, cultural resource settings. Our historic, cultural experience is hardly one of only Civil War experience."<sup>64</sup>

Senator Dale Bumpers, a democrat from Arkansas, introduced a major proposal in Congress that would establish a study commission to identify those battle sites that should be preserved forever.<sup>65</sup> The Senator's proposal, which has the backing of Interior Secretary Lujan, grew out of a plan proposed by Senator James Jeffords, a republican from Vermont.<sup>66</sup> Jeffords was the principal sponsor of a bill to survey battlefields in Virginia's Shenandoah Valley and to create a national commission to establish which sites throughout the country need protection.<sup>67</sup> "Some sites such as those in the Shenandoah, haven't needed any protection until now," said Senator Jeffords.<sup>68</sup> "The problems we've had -- as at Manasas -- were that everybody was asleep and then the bulldozers moved in."<sup>69</sup>

The Senate was scheduled to act on the measure in September, 1990.<sup>70</sup> If the commission's proposal makes it to the House, it is likely to be broadened in scope by Representative Vento, who favors the inclusion of other historic and cultural areas.<sup>71</sup> The Senate and the House did not have a chance to fully act on the

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63. *Id.*

64. *Id.*

65. *Id.*

66. *Id.*

67. Washington Post, June 10, 1990, at D1.

68. *Id.*

69. *Id.*

70. Christian Science Monitor, Aug. 2, 1990, at 6.

71. *Id.*

proposal, however, before Congress adjourned in the fall.

The national battlefield protection initiative has run into more trouble, however, as Lujan has announced that he will oppose the congressional plan to create a commission to study Civil War battlefields unless he, and not Congress, gets to appoint the members and the commission is stripped of the power to hold hearings and seek donations.<sup>72</sup> Some preservationists worry that because of rapid urban growth, many battlefields may be lost before any type of survey is complete.<sup>73</sup> Battlefields like Brandy Station, located in rapidly growing areas, are unprotected and vulnerable.<sup>74</sup>

Congress and preservationists agree that in the future, as a preventive measure, America must obtain historically important land before development approaches and prices rise.<sup>75</sup> As an example of this, in July, 1990, the Richard King Mellon Foundation gave the United States government several Civil War battle sites worth \$21 million.<sup>76</sup> This demonstrates a renewed interest in preservation and is indicative of the type of support that will be needed to save unprotected battlefields.

#### CONCLUSION

Ultimately, the solution might not be a question of preservation versus development, but a compromise between these two seemingly diverse goals. Georgie Holder Boge, a recent graduate of Princeton University, wrote a thesis recommending the preservation of Civil War sites, which helped fuel Congressional action in support of Civil War battlefields.<sup>77</sup> Boge said her research "convinced her

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72. Washington Post, Sept. 26, 1990, at A20.

73. Washington Post, June 10, 1990, at D1.

74. *Id.*

75. Christian Science Monitor, Aug. 2, 1990, at 6.

76. *Id.*

77. N.Y. Times, June 10, 1990, at 43, col. 1.

that preservation of the nation's battlefields is not only a moral obligation, but also economically advantageous: the tourism, green space and agriculture that the sites provide benefit the local economy."<sup>78</sup> She added, "I really found that the whole question was not one of preservation versus development but one of planned development. It is possible to have the best of both worlds: you can preserve the battlefields and have development too."<sup>79</sup>

Similar sentiments have been echoed by others. Representative Vento has stated that "[e]very single thing cannot be preserved. America must choose carefully what to retain and what to develop. Although some remaining battle locations are of national importance, others are only of local interest and thus should be preserved, if at all, only by local government or a private body."<sup>80</sup>

Major General George S. Patton, son of the World War II hero, said during an interview in the July 27, 1989, *Culpeper News*:

I would hope that a permanent solution can be reached at Brandy Station where significant features of this long overlooked battlefield can be protected while balanced at the same time, against our common need for economic growth. Surely the open lands around Brandy Station can be sensitively developed while the more key features of the battlefield can be preserved forever, for all time.<sup>81</sup>

General Patton's views are shared by many, whether they are fighting for the preservation of Brandy Station or other battlefields, or are attempting to promote economic development and sustained growth. His statements articulate clearly the case for preservation in the future.

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78. *Id.*, at col. 2.

79. *Id.*

80. *Christian Science Monitor*, Aug. 2, 1990, at 6.

81. *Pohanka*, *supra* note 6, at 44.