

# BACON'S REBELLION

The Op/Ed Page for Virginia's New Economy

## Missing the Point

**A Heritage Foundation paper attacking the Journey Through Hallowed Ground as a tool of Virginia's landed elite is unsupported by the facts. Worse, it slights the Journey's important contributions.**

By James A. Bacon

When Rep. Frank Wolf, R-10, comes back in a second life, he might well return as a historian. In a speech to a conference of the Journey Through Hallowed Ground Partnership in Leesburg last week, he traced his veneration of the past to growing up in Philadelphia, where he walked by the Liberty Bell every day on his way to his first job. Then he regaled the audience with tales of some of the more memorable characters, both famous and obscure, who lived in Virginia's northern piedmont in years past. George Washington, he noted, got his start as a land surveyor in the region, but his start in politics was less than propitious: He lost his first election for a Winchester seat to the House of Burgesses.

For Wolf, though, history is more than a compendium of human interest stories. It is the fountainhead of our collective memory. Keeping history alive - especially the history of this part of Virginia, with its rich contribution to the founding of the country and the resolution of its early conflicts -- is indispensable for Americans to understand who they are and how they got here. Preserving the historic sites -- the presidential homes, the battlefields, the old mills and houses -- is essential to retaining our national memory, protecting our core values

and, as Wolf puts it, "passing the baton to future generations."

Needless to say, Wolf was preaching to the converted. Everyone in the audience of 100 or so gathered at the Thomas Birkby House, circa 1758, were lovers of history, and many made their living from it. Some promoted heritage tourism, others the historical architecture of Main Street communities. Many attendees were affiliated with historical sites such as Monticello, Oatlands



Plantation and the Gettysburg battlefield. As Cate Magennis Wyatt, president of the JTHG Partnership summed up the Partnership's mission, "What we're doing is honoring those who fought, and those who rebuilt" this nation.

That's certainly not the image you get of the Journey Through Hallowed Ground in a paper recently published by Ronald D. Utt, a senior research fellow with the Heritage Foundation. In a paper entitled, "[Another Federal Assault on Property Rights: The Journey Through Hallowed Ground National Heritage Area Act.](#)" he characterizes the 175-mile preservation corridor stretching from Monticello to Gettysburg as threat to the rights of private property owners orchestrated on the behalf of the region's landed elite.

Utt paints a picture of the JTHG Partnership as a front for anti-growth groups whose agenda is not merely to halt development through zoning controls but to set up a politically connected real estate investment fund that could reap a "financial windfall" based on quasi-monopoly profits for "a select group of land-owners." Passage of a bill submitted by Congressman Wolf, which would designate the Journey Through Hallowed Ground a "national heritage area," he says, would empower the landed gentry in Virginia's hunt country to protect their estates by limiting development of housing affordable to the working class and middle class.

I find Utt's views most distressing. The Heritage scholar has written some perceptive columns -- five of which I have published on *Bacon's Rebellion* -- that apply free-market thinking to public policy issues in Virginia. But this latest work has gone seriously astray. His description of the Journey Through Hallowed Ground bears no resemblance whatsoever to the organization that I know. Indeed, Utt has bought into the conspiratorial mindset of a group of fringe property-rights groups, and conferred upon them a measure of credibility they do not deserve.

Utt built his case in "Another Federal Assault on Property Rights" by cherry picking info-bits from the JTHG website and connecting them with a tissue of assumption and surmise. He has not attended any JTHG meetings, participated in any of its events or conversed with its leaders -- excepting only a last-

minute meeting with Wyatt, the organization's president, scheduled at her request shortly before publication of his paper in the hope that she could straighten out his evident misunderstanding.

Most disappointing of all, to me at least, is the opportunity lost. Free-market conservatives should be *embracing* the Journey Through Hallowed Ground, first as a chance to nurture the memory, threatened by our nation's historical amnesia, of how free markets, individual liberties and other foundation institutions arose in this country, and second to devise a new, market-driven model for historic conservation and landscape preservation.

The challenge, as I see it, is analogous to one that Newt Gingrich articulated in his most recent "Winning the Future" newsletter, in which he outlined the case for "green conservatism." The conservation and environmental movements have been hijacked by big-government, command-and-control liberalism, Gingrich argues, in large measure because conservatives have spent too much energy criticizing the flaws in liberal ideas and not enough proposing their own solutions.

As I argued in my most recent column, "[Honoring Hallowed Ground](#)," Journey Through Hallowed Ground *is* a conservative solution. It is conservative in the traditional sense that it honors the past and illuminates the struggle, often bloody, of how our nation formed its fundamental values. It is also conservative in the free-market sense that it mobilizes market-based strategies -- heritage tourism, Main Street revitalization, sustainable agriculture -- to create economic value for property owners, large and small, so they can resist the

pressure to sell their land to outside developers. Journey Through Hallowed Ground offers *an alternative* to the down zonings and other traditional anti-growth measures that Utt imagines the organization is covertly supporting.

Maybe there are some secret protocols that I'm not privy to, but there was no hint of that kind of thinking in a brainstorming session of the "leadership committee" that I participated in during last week's conference. (I attended the workshop with the intention of simply listening and taking notes; I was drafted, as a journalist with some facility in writing and lay out, in jotting down the ideas and displaying them as a newspaper might treat the Journey Through Hallowed Ground story 30 years from now.)

Land use controls simply were not one of the mechanisms that participants mentioned for advancing the JTHG vision. The only idea remotely related to land use that I heard was the concept of "viewshed easements" -- easements, the originator quickly clarified, that would be voluntarily donated by property owners.

Knowing Wyatt's views of the matter, and after chatting with Kathleen S. Kilpatrick, director of the Virginia Department of Historic Resources and one of the JTHG's 11 board members, I concluded the organization has little interest in the kind of land use controls that Utt describes. One of her goals at Historic Resources has been to harmonize conservation with market principles and property rights, Kilpatrick told me. The state already has a great line-up of tax incentives and other tools. The way for the Journey to achieve its goals that she would encour-

age, she said, is to utilize the tools that already exist.

**I**f you're interested in tracking the Journey Through Hallowed Ground controversy inside the Beltway, Utt's paper is worth reading. It condenses the arguments of various property-rights rights groups into a single, coherent document.

By way of background, Wolf's bill would designate the JTHG Partnership as the "management entity" charged with running the National Heritage Area. The Partnership would qualify for federal funding of \$1 million a year, to be used for heritage tourism and educational initiatives.

While the Partnership would have "no direct authority to rezone the land in the ... JTHG," Utt concedes, "its federal authorization, federal funding, influential supporters, and National Park Service association [would] make it a major player in land use decisions in the communities that are ultimately included in the scheme."

Utt singles out key supporters on the board -- the Piedmont Environmental Council, the National Trust for Historic Preservation, the Civil War Preservation Trust and the National Park Service -- as organizations "that have actively opposed growth and housing development for middle-income and moderate-income people in the state and region and have frequently proposed limiting the rights of private property owners as a way to deter such growth." (Full disclosure: The Piedmont Environmental Council is a major sponsor of *Bacon's Rebellion*.)

These groups and their financial supporters, Utt contends, "have often acted to thwart construction of all but the most expen-

sive houses and estates in the Virginia segment of the corridor. ... They have encouraged many of the affected counties to engage in 'downzoning' — zoning (or rezoning) an area to set a minimum lot size, generally five acres to 25 acres per house — which effectively limits new housing construction to expensive single-family homes. In this way, communities can maintain their upscale demographic profile by excluding all but the very well-off."

Utt then makes the leap, despite protestations of President Cate Wyatt that respect for property rights is a cornerstone of Partnership strategies, and despite property-rights protections built into the legislation itself, that the JTHG will push a radical land use agenda. He offers no documentation of any remark, written or quoted, by anyone affiliated with JTHG showing that Partnership supports, or intends to support, down zoning or other land use controls. His argument amounts to guilt by association: The Piedmont Environmental Council and others support land-use controls, therefore, the JTHG does, too.

Carrying his guilt-by-association logic a step further, Utt sees sinister motives in Wyatt's idea to create a socially responsible Real Estate Investment Trust to protect historically important properties through free-market transactions. What she regards as *an alternative to zoning restrictions*, Utt treats as a threat to property owners. Writes Utt with astonishing cynicism:

The partnership seems genuinely committed to fostering business opportunities, especially those that can benefit its supporters, preferably through a captive REIT, which over the past few

years has been one of the best-performing investment vehicles in the stock market. ...

The partnership's preference for a REIT over any of the other less costly types of corporate entities that could hold property for "preservation" purposes is telling. It suggests that the potential for profits is of compelling interest to the partnership. ...

It might well be difficult to resist the temptation to profit substantially from the ability of the partnership, in complicity with the [National Park Service] to oppose some real estate development projects while approving others: namely, those put forth by the partnership's REIT.

In effect, Utt is saying that Wyatt is mischaracterizing the true intent of the REIT: She may say it is a socially responsible investment vehicle willing to accept a below-market return on investment -- but don't believe her. The billionaires and cent-millionaires living on their horse farms aren't satisfied with riches. They want to pile up even more lucre by plundering their less well-to-do neighbors through this devious scheme.

If Wyatt had a track record of dishonest or predatory behavior, Utt might have a case. But she doesn't -- she has a record of honorable public service -- and Utt offers no evidence whatsoever to suggest the REIT would function as he describes.

(I will concede that Utt does make one valid point: There could be the *appearance* of a conflict of interest if the REIT

were controlled by the JTHG Partnership. That appearance could undermine the credibility of the Partnership should it stake out positions for or against specific development projects, especially if the REIT was underwriting what could be construed as competitive projects. To avoid any such appearance, any socially conscious REIT should be launched as an entirely independent entity with a minimum of overlapping directorships.)

Utt cites stories from other states and draws a lot of inferences, but he offers no tangible evidence that the JTHG Partnership harbors the designs and intentions that he attributes to it. Rather, he reads between the lines of obscure legislative action affecting Wolf's legislation, H.R. 319. Writes Utt:

In fairness to the partnership, the original version of H.R. 319 included a series of cosmetic property rights "acknowledgements" in Sections 10 and 11, but most of these were removed when the bill was marked up in committee on March 12, 2007. Subcommittee Chairman Raul Grijalva (D-AZ) offered the amendment, which was not opposed by Representative Wolf, and it passed on a party-line vote. Apparently, even symbolic acknowledgments of property rights are too threatening to the bill's supporters, and the Democrats on the committee voted unanimously to diminish even these.

Let's examine what is being implied here. "Democrats" removed the provisions and Wolf did not oppose them. Therefore, what...? Therefore, *Wolf* wasn't really sincere about protecting

property rights? Therefore, the Journey Through Hallowed Ground really *does* intend to down-zone property?

According to Olwen Pongrace, vice president of the JTHG Partnership, the language was superfluous but had been inserted to appease the property rights lobby. Taking it out really didn't change anything. Important safeguards remain, including (taken verbatim from a summary prepared by Rep. Wolf's staff):

- The management entity may not use federal funds under this act to acquire real property or interests in real property (easements). Additionally, states and local governments cannot use federal funds under this act to acquire interest in real property by condemnation.
- Nothing in this Act abridges the rights of any property owner, including their right to choose not to participate in the management plan or have any connection in any way with the Heritage Area or its programs.
- Nothing in this Act alters regulatory authority of Federal, State or local governments, including road safety and transportation improvement projects.

National Heritage Area designation does not address down-zoning at all -- local governments will retain the same rights, subject to legal redress, they did before. But the issue is a red herring. Regardless of what a few influential board members may or may not think, JTHG is not pursuing zoning protections for historical sites.

Why? Because the goal of JTHG

is to build a broad-based movement. Says Pongrace: "From the get-go, we wanted to bring everyone to the table -- businesses, developers, communities. The Journey was not going to move forward as an idea if it was divisive in nature." Bottom line: Advocating actions that diminished the rights of landowners would divide the organization, not make it stronger.

**S**ince writing my previous column, "Honoring Hallowed Ground," I have encountered what I consider to be legitimate questions about the JTHG's strategy. Can the region's transportation network support automobile-based tourism between far-flung destinations? Could success in promoting tourism create traffic congestion that undermines the very quality of life the initiative is designed to protect?

Likewise, would not a successful tourism industry create a demand, as it has in many other regions, for low-wage labor? Are the communities of the region prepared to accept an influx of immigrants, many of them possibly illegal, and to provide them affordable and accessible housing? The region's track record in arena of affordable housing has been less than stellar.

Utt touches upon the affordable-housing issue, which he quite correctly attributes to restrictive zoning policies. But he goes far astray in characterizing the JTHG partnership as a conspiracy of the landed aristocracy to impose more restrictive zoning. The Journey has widespread grassroots support, having won endorsements from some 150 local governments and community organizations. The people who support it are everyday citizens who are proud of the contributions their ancestors, from presidents to runaway slaves,

made to the nation's history. They are people who want to preserve their heritage and way of life. That's the real JTHG, that's the real story.

-- **April 30, 2007**