

1 **MINUTES OF THE REGULAR MEETING OF THE BOARD OF ZONING**
2 **APPEALS OF HENRICO COUNTY, HELD IN THE COUNTY ADMINISTRATION**
3 **BUILDING IN THE GOVERNMENT CENTER AT PARHAM AND HUNGARY**
4 **SPRINGS ROADS, ON THURSDAY, OCTOBER 22, 2009, AT 9:00 A.M.,**
5 **NOTICE HAVING BEEN PUBLISHED IN THE RICHMOND TIMES-DISPATCH**
6 **OCTOBER 1, 2009 AND OCTOBER 8, 2009.**
7

Members Present: Elizabeth G. Dwyer, Chairman
Helen E. Harris, Vice Chairman
James W. Nunnally
Robert Witte
R. A. Wright

Also Present: David D. O'Kelly, Jr., Assistant Director of Planning
Benjamin Blankinship, Secretary
Paul Gidley, County Planner
R. Miguel Madrigal, County Planner
Carla Brothers, Recording Secretary

8
9 Ms. Dwyer - Good morning. The October 22, 2009 session of the
10 Henrico County Board of Zoning Appeals will now come to order. Please rise for
11 the **Pledge of Allegiance**.

12
13 Good morning, Mr. Blankinship. Would you please review the rules for the Board
14 this morning?

15
16 Mr. Blankinship - Good morning, Madam Chairman, members of the
17 Board, ladies and gentlemen, the rules for this meeting are as follows. Acting as
18 Secretary, I will call each case, and while I'm speaking, the applicant should
19 come down to the podium. We will then ask everyone who intends to speak to
20 that case to stand and be sworn in. The applicant will present their testimony,
21 and then anyone else who wishes to speak will be given the opportunity. After
22 everyone has spoken, the applicant, and only the applicant, will have an
23 opportunity for rebuttal.

24
25 This meeting is being recorded, so we'll ask everyone who speaks to speak
26 directly into the microphone on the podium, state your name, and please spell
27 your last name so we get it spelled correctly in the record. Out in the foyer, there
28 is a binder that contains the staff report for each case, including the conditions
29 that have been recommended by the staff. It's important, particularly for the
30 applicants, that you be familiar with those conditions.

31
32 Madam Chairman, we have one—Oh, I'm sorry, I skipped a paragraph.

33
34 After the hearing of each case, when the Board is finished hearing each case,
35 they will take that matter under advisement and they'll go on to the next case.

36 They will render all of their decisions at the end of the meeting. So, if you wish to
37 know their decision on a specific case, you can either stay until the end of the
38 meeting, or you can check the Planning Department website this afternoon—we
39 usually get it updated about half an hour after the meeting ends—or you can call
40 the Planning Department this afternoon.

41

42 Madam Chairman, we do have one request for a rehearing this month, one case
43 that was approved last month with a condition. The applicant's got out on the
44 property and found that the condition did not fit with their plans, and they have
45 asked the Board if you would consider rehearing that condition. I'll just point out
46 that the only decision to be made this morning is whether or not to rehear the
47 case. If the Board decides to rehear it, then we will schedule it for public hearing
48 next month.

49

50 Ms. Dwyer - Thank you, Mr. Blankinship. Would you call that case,
51 please?

52

53 **A-011-09 JOHN W. WRAY, JR. AND CATHERINE S. ROLFE**
54 request a variance from Section 24-9 to reconsider conditions of a previous
55 variance request at 9480 Hoehns Road (Parcel 765-759-1344), zoned A-1,
56 Agricultural District and R-3AC, One-family Residence District (Conditional)
57 (Brookland). The public street frontage requirement is not met. The applicant has
58 0 feet public street frontage where the Code requires 50 feet public street
59 frontage. The applicant requests a variance of 50 feet public street frontage

60

61 Ms. Dwyer - Is there anyone else here to speak to the case?

62

63 Mr. Blankinship - It's not a hearing.

64

65 Ms. Dwyer - No need to be sworn. Okay. All right. Would the
66 applicant please state your case?

67

68 Ms. Rolfe - Catherine Rolfe—R-o-l-f-e. We just want to ask that
69 the amendment be struck that required the 100-foot setback, and just have the
70 variance granted as normal with the Agricultural District setback requirements.

71

72 Ms. Dwyer - You understand that today we're just making a
73 decision as to whether to rehear the case.

74

75 Ms. Rolfe - Yes.

76

77 Ms. Dwyer - And we won't hear it's on its merit.

78

79 Ms. Rolfe - That's correct.

80

81 Ms. Dwyer - There was some discussion, as I recall, last month
82 about the location of the house. I think as you may recall last month when we
83 heard your case, there was another case in which the house had been built on a
84 lot that did not meet the zoning requirement. As development occurred around
85 it, that house ended up having a front door that was 17 feet from the backyards
86 of neighboring developments. I'm calling your attention to that because I think
87 the Board was concerned in your case, as in every case, where the house will be
88 located when the lot does not meet zoning standards. Would you be prepared
89 next month to bring us some sort of plat that would show precisely where you
90 want to locate the house—

91

92 Ms. Rolfe - Yes.

93

94 Ms. Dwyer - —since it seems to be different from what we thought
95 it was last month? And would that be a hand-drawn kind of plat, like you
96 submitted last time, or would you be able to have a survey done?

97

98 Ms. Rolfe - I would think it would probably still be hand-drawn.
99 We are trying to proceed with having the variance granted before we finalize
100 architectural plans. At this point, the basic orientation of the house would remain
101 the same. The front of the house would face north toward Hungary Road. It's the
102 side setback that's causing the difficulty.

103

104 Mr. Witte - The purpose of the 70-foot side setback was to save
105 a tree, a large tree?

106

107 Ms. Rolfe - Correct

108

109 Mr. Witte - On the opposite side of the house.

110

111 Ms. Rolfe - That's correct.

112

113 Ms. Dwyer - Any questions by Board members for this applicant?
114 Is there anything else you'd like to add?

115

116 Ms. Rolfe - Not unless you have any further questions.

117

118 Ms. Dwyer - Oh, I would just make an observation that when you
119 bring your plat in next month, your measurements, since it's not going to be done
120 with a survey, that you be very clear about the distances that you have
121 represented on the plat. We may not just go with the standard side yard; we
122 may require additional space. We want to make sure that what we think is
123 appropriate is also something that you think is doable on the property.

124

125 Ms. Harris - I have one question, Ms. Rolfe. Do you know the type
126 of home you're going to construct?

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Ms. Rolfe - Yes.

Ms. Harris - Do you have the plans for that?

Ms. Rolfe - We have met with an architect. We're also meeting with a designer just because there's a lot of price difference. But we know we want a one-story brick home.

Ms. Harris - If you could bring that to us, that would help, too, I believe, for us to see clearly what you're trying to do.

Ms. Rolfe - If I may ask a question just from lack of knowledge. Is there anything particular about this piece of property that makes the normal setback requirements harder to apply?

Ms. Dwyer - Normal setback requirements apply to a normal case. This is not a normal case because for other reasons your lot does not comply with the ordinance. So it's the responsibility of this Board to make other adjustments as we think are appropriate to compensate for the fact that the lot does not meet all of the standard ordinances.

Ms. Rolfe - Okay.

Ms. Dwyer - Any other questions by Board members? Is there a motion on this request for a rehearing?

DECISION

Mr. Witte - I make a motion we rehear it next month.

Ms. Harris - Second the motion.

Ms. Dwyer - Motion by Mr. Witte, seconded by Ms. Harris. Any further discussion? All in favor say aye. All opposed say no. The ayes have it; the motion passes.

On a motion by Mr. Witte, seconded by Ms. Harris, the Board **approved** the request to rehear this application at its November 20, 2009 meeting regarding a condition requiring a 100-foot setback: **A-011-09, JOHN W. WRAY, JR. AND CATHERINE S. ROLFE** request a variance from Section 24-9 to build a one-family dwelling at 9480 Hoehns Road (Parcel 765-759-1344), zoned A-1, Agricultural District and R-3AC, One-family Residence District (Conditional) (Brookland). The public street frontage requirement is not met.

173 Affirmative: Dwyer, Harris, Nunnally, Witte, Wright 5
 174 Negative: 0
 175 Absent: 0

176
 177
 178 **A-008-09 VIRGINIA LANDBANK COMPANY** requests a
 179 variance from Section 24-9 to build a one-family dwelling at 2421 Hartman Street
 180 (Montezuma Farms) (Parcel 801-728-7752), zoned R-4, One-family Residence
 181 District (Fairfield). The public street frontage requirement is not met. The
 182 applicant has 0 feet public street frontage where the Code requires 50 feet public
 183 street frontage. The applicant requests a variance of 50 feet public street
 184 frontage.

185
 186 Ms. Dwyer - Is there anyone else here to speak to this case?
 187 Please raise your hand to be sworn.

188
 189 Mr. Blankinship - Do you swear the testimony you're about to give is
 190 the truth and nothing by the truth so help you God?

191
 192 Mr. Henry - Yes. My name is Michael Henry—H-e-n-r-y. I have a
 193 lot in Montezuma Farms that is lacking the required public road frontage. I'm
 194 requesting a variance from the 50-foot requirement.

195
 196 Ms. Dwyer - The reason you're requesting the variance, other than
 197 the fact that you don't have the required road frontage?

198
 199 Mr. Henry - It's the only variance I need.

200
 201 Ms. Dwyer - Any questions by Board members?

202
 203 Ms. Harris - Mr. Henry, how will the house be positioned on this
 204 lot?

205
 206 Mr. Henry - There should be a drawing attached. One
 207 modification is that the right-of-way granted by Dominion Power is not in the
 208 exact location as on the original drawing. It comes at a slightly different angle.

209
 210 Ms. Harris - Do you have the angle you're describing?

211
 212 Mr. Blankinship - We have that in the file, Ms. Harris, if you need us to
 213 pull it out.

214
 215 Ms. Harris - Will that affect the position of the home?

216
 217 Mr. Henry - No.

218

219 Ms. Harris - How close are you going to be to the homes that are
220 behind and to the side, and to the townhouses there?
221

222 Mr. Henry - On here it's showing a 97-foot setback to the homes
223 in the rear; 89' to the townhouses; and 93' to the Wingfield's.
224

225 Ms. Harris - Are you going to face the area that you're going to
226 use for the right-of-way? Where will the front of house be?
227

228 Mr. Henry - That hasn't been finalized. It will either face towards
229 the power lines or it'll face towards the other property.
230

231 Ms. Harris - What County approval have you already secured that
232 would enable you to use this road for access?
233

234 Mr. Henry - The access was primarily dependent upon Dominion
235 Power approving it. Whatever was granted by Virginia Power, the small portion
236 of the property that was traversed, that was County-owned, it was indicated from
237 the County they would grant that right.
238

239 Ms. Harris - So you do have approval for use of the right-of-way
240 now.
241

242 Mr. Henry - Yes.
243

244 Mr. Blankinship - Ms. Harris, if I can interject there. The final word on
245 that approval comes from the Board of Zoning Appeals. The Administration did
246 not want to put the Board of—I'm sorry; from the Board of Supervisors. The
247 Administration did not want to put the Board of Supervisors in the position of
248 ruling on this before all of the other issues had been resolved. So when it
249 reached the point where it was right for the Supervisors to consider it, we took it
250 off of their agenda in order for the Board of Zoning Appeals to have the final
251 decision on the variance. If the variance is granted, then it would go forward to
252 the Board of Supervisors for the final decision on the permission to use the
253 County property.
254

255 Ms. Harris - Are there underground power lines?
256

257 Mr. Henry - To my knowledge there is not.
258

259 Ms. Harris - Everything is overhead?
260

261 Mr. Henry - Dominion Power is the one that drafted the
262 agreement and drafted the location. I have their agreement here, if you'd like to
263 review that.
264

265 Ms. Harris - Those are all the questions I have for right now.
266
267 Ms. Dwyer - Any other questions for the applicant?
268
269 Ms. Harris - I'd like to see that.
270
271 Ms. Dwyer - You can just hand it to Mr. Blankinship. The staff
272 report mentions that there is a fair amount of clearing and grading needed in
273 order to provide a clear and level path to the lot. Does that occur on the right-of-
274 way, or does it occur on your property?
275
276 Mr. Henry - It was on the old location of the right-of-way. The new
277 location that Dominion Power granted doesn't involve that grading.
278
279 Ms. Dwyer - It would be on County property then?
280
281 Mr. Henry - The first portion of the right-of-way would be on
282 County property. Then as it crosses off of the easement from the power line, it
283 goes onto a private right-of-way.
284
285 Ms. Dwyer - All right. This "substantial clearing and grading," does
286 that take place on County property or your property?
287
288 Mr. Henry - If you notice the hill that's to the left?
289
290 Ms. Dwyer - Right.
291
292 Mr. Henry - That was the original location of the driveway. Now
293 it's to the right of that hill, so there is no grading or clearing. You can see parts
294 of like a gravel-type access already in place. Dominion Power granted the right to
295 use that lower ground, so there would be no grading or clearing involved.
296
297 Ms. Dwyer - If this variance were not granted, would there be any
298 other use for this property?
299
300 [No verbal answer.]
301
302 Ms. Dwyer - Any other questions by Board members?
303
304 Ms. Harris - Mr. Henry, have you heard from the neighbors? Have
305 you had any concern expressed to you regarding what the neighbors would like
306 or not like?
307
308 Mr. Henry - No. My only contact with them was trying to access a
309 different easement to the property other than this one.
310

311 Ms. Dwyer - Will there will be public water and sewer serving the
312 property?

313
314 [No verbal answer.]

315
316 Ms. Dwyer - Okay. Any other questions? Anyone else here to
317 comment on this case? If not, the case is closed.

318
319 Ms. Harris - I move that we approve this case. This site has been
320 unusable for reasons of not having access through the power company's
321 easement. I think with that, they should be able to construct this home. I notice
322 on the plan that there is quite a bit of footage between where this house would
323 be constructed and the neighboring properties.

324
325 Mr. Blankinship - For the record, Ms. Harris, would you mind talking
326 about the Cochran threshold question?

327
328 Ms. Harris - I think that without this variance and approval of the
329 easement, this land would be an unusable site.

330
331 Mr. Wright - In other words, there's no beneficial use of the
332 property without the variance. You get around Cochran that way.

333
334 Ms. Dwyer - Is there a second?

335
336 Mr. Nunnally - Second.

337
338 Ms. Dwyer - Motion by Ms. Harris, seconded by Mr. Nunnally.
339 Anymore discussion?

340
341 I agree that it satisfies Cochran because there is no other beneficial use for the
342 property. I think it would be a hardship also to not grant the variance. And I think
343 that it's not a recurring issue. This is a very unusual piece of property. When it
344 was set out in 1930's, I believe, it did, in fact, show that it had public street
345 frontage. So I think this is an unusual case, and that over time, development has
346 changed, land-locking this parcel.

347
348 All right. So we have a motion to approve the case by Ms. Harris, seconded by
349 Mr. Nunnally. All in favor say aye. All opposed say no. The ayes have it; the
350 motion passes.

351
352 After an advertised public hearing and on a motion by Ms. Harris, seconded by
353 Mr. Nunnally, the Board **approved** application **A-008-09, Virginia Landbank**
354 **Company's** request for a variance from Section 24-9 to build a one-family
355 dwelling at 2421 Hartman Street (Montezuma Farms) (Parcel 801-728-7752),
356 zoned R-4, One-family Residence District (Fairfield). The public street frontage

403

404 Ms. Stern - My name is Theresa Stern—S-t-e-r-n. This is my
405 husband, Dale Stern, and he will be speaking on our behalf.

406

407 Mr. Stern - Good morning. We've come today to request a
408 variance to build a single-family dwelling on our lot on Kingsland Road. It's
409 always been our dream since we bought the property to build a new house there.
410 The old house left something to be desired from the day we bought it. We soon
411 found out that we did not meet the County's requirements as far as the building
412 ordinance. So we've come to you today to ask for that variance.

413

414 Mr. Nunnally - When did you purchase this property?

415

416 Mr. Stern - 1983.

417

418 Mr. Nunnally - You've been living there since? Or is it livable?

419

420 Mr. Stern - No. We lived there until 1996 when my mother
421 passed away. She left us a home in Sandston. We had to abandon our home at
422 that time and move to Sandston to take care of things there. So since that time,
423 it's been vacant.

424

425 Mr. Nunnally - You're going to demolish this one and build a new
426 one?

427

428 Mr. Stern - Yes sir.

429

430 Mr. Nunnally - One you're going to live in or are you going to—

431

432 Mr. Stern - Yes sir. We'd like to make that our retirement home.
433 I'm looking at retiring in another ten years, and feel that would be a great location
434 for it. I love out there.

435

436 Mr. Nunnally - What type of house are your putting there?

437

438 Mr. Stern - I have some basic plans here that I'd like to share.

439

440 Mr. Nunnally - Is it ranch type or?

441

442 Mr. Stern - No sir. I'd like to build a two-story frame, 19th Century-
443 style farmhouse. It's something that would reflect the history of that area, and
444 also the agricultural history.

445

446 Mr. Blankinship - Any idea of the floor area?

447

448 Mr. Stern - Yes sir.

449
450 Mr. Blankinship - Nineteen hundred twenty square feet.
451
452 Mr. Witte - Do you plan to demolish the house before you start
453 construction?
454
455 Mr. Stern - Yes sir.
456
457 Mr. Witte - And you're going to build in the same location?
458
459 Mr. Stern - No. We plan on moving the house over to meet the
460 County's requirements as far as side setbacks.
461
462 Ms. Dwyer - Do you have the square footage? I don't see it in this
463 handout that you gave us.
464
465 Mr. Stern - Yes ma'am. It's on the second page. It should be to
466 the right there. Approximate square footage.
467
468 Ms. Dwyer - Oh, I see it. Okay, 1920. Apparently public water is
469 available?
470
471 Mr. Stern - Yes it is.
472
473 Ms. Dwyer - Are you planning to use public water?
474
475 Mr. Stern - Yes. We would very much like to have that.
476
477 Mr. Wright - Mr. Stern, are there any other houses in the vicinity of
478 your proposed house?
479
480 Mr. Stern - No sir. There's a house a ways behind us, and then
481 there are some other houses in the woods beyond our house. Other than
482 another neighbor probably a quarter mile down the road.
483
484 Ms. Dwyer - Our research indicates that this house was built in
485 1936.
486
487 Mr. Stern - That's probably right. I'm not sure about that.
488
489 Mr. Blankinship - Could you speak more directly into the microphone,
490 please?
491
492 Mr. Stern - Yes sir. That's what I've seen.
493

494 Ms. Dwyer - Is there any other use this property could be put to if it
495 were not used for a dwelling?

496
497 Mr. Stern - I don't see any other use for it.

498
499 Ms. Dwyer - Any other questions by Board members? Anyone else
500 wish to speak to the case? Any comments? Anything else you'd like to say to
501 the Board before we close the case?

502
503 Mr. Stern - No. I thank you for your time, and I hope you'll
504 consider our request.

505
506 Ms. Dwyer - I have one more question. This handout that you gave
507 us that has a drawing of a house and commitments as to the location of the
508 house and the square footage, if we included this as part of our approval, then
509 you would be obligated to comply with this. Are these plans firm enough in your
510 mind that that would be something you could work with?

511
512 Mr. Stern - No, that's just a basic idea that we had, and how we
513 wanted it to look, and approximately where we wanted to put it.

514
515 Ms. Dwyer - Okay. Is there anything in what you've submitted to
516 us that is firm that you could commit to?

517
518 Mr. Stern - No, I don't believe so.

519
520 Ms. Dwyer - Not even the square footage or the location?

521
522 Mr. Stern - No. We don't have a firm plan as of yet.

523
524 Mr. Wright - As long as the house meets the County requirements,
525 what is the other problem with that? There's not a house within a quarter of a
526 mile of it.

527
528 Ms. Dwyer - Any other comments?

529
530 Mr. Stern - No. Thank you for your time.

531
532 Ms. Dwyer - That concludes the case; thank you.

533
534 **DECISION**

535
536 Mr. Witte - I'll make a motion to approve this. I don't see where
537 it's going to affect negatively any surrounding properties. It's actually going to
538 take a dilapidated property, tear it down, and put a better situation in with a better
539 tax base. So, under those conditions, I'm going to recommend we approve this.

540
541 Mr. Nunnally - Second.
542
543 Ms. Dwyer - Motion by Mr. Witte, seconded by Mr. Nunnally.
544 Discussion.
545
546 There was a statement in the staff report about public water and sewer being
547 available, but that was not one of the conditions. That would be one thought I
548 had. When we have these substandard lots, I think it's important to know where
549 the house is going to go, where it's going to be oriented because, by definition,
550 we have a lot that doesn't meet the zoning requirements. So we need to make
551 sure that we're not building in some situation like we had last month with the
552 front of the house ending up being 17 feet from the back of the neighboring
553 subdivision after that subdivision was developed. I'm a little concerned that we
554 don't have commitments here. We could impose our own and require them to
555 build it according to the representations they've made.
556
557 Mr. Wright - If they build this pursuant to the County requirements,
558 side lot and so forth, I don't see how it could be any problem for this particular
559 lot.
560
561 Mr. Blankinship - I made a note that the applicant said he wanted to
562 attach to public water.
563
564 Ms. Dwyer - I thought he did say that as well. But that could be
565 another condition, Condition 4. I think it's okay as far as Cochran is concerned,
566 the argument that it is a hardship approaching confiscation to deny the variance.
567 Mr. Witte and Mr. Nunnally, what do you think about adding a condition for public
568 water and sewer—I mean just public water.
569
570 Mr. Witte - I'm not opposed to adding the condition that they
571 hook up to public water.
572
573 Ms. Dwyer - We have a motion and a second to approve this case
574 with the additional condition that public water hookup would be required. Any
575 more discussion?
576
577 Ms. Harris - I have a question about that condition. I notice in the
578 report it said that he's proposing a private well and septic system. So are we
579 going to require that he not do that?
580
581 Ms. Dwyer - Well, we can, because it's a variance. And I believe
582 he did say that—
583
584 Mr. Wright - He testified he was going to hook up to public water.
585

586 Ms. Harris - That's fine.

587

588 Mr. Blankinship - Just to clarify. There is a water line right in front of
589 the street. If this were a new house, the Department of Public Utilities would
590 require it to be connected to water. Because there is an existing house with an
591 existing well, they do still have the right under Utilities regulations to demolish the
592 house, build a new one, and connect it to the existing well. But he's expressed
593 an interest in connecting to public water.

594

595 Ms. Dwyer - Again, we have a motion by Mr. Witte, seconded by
596 Mr. Nunnally, adding Condition 4 requiring hookup to public water. All in favor
597 say aye. All opposed say no. The ayes have it; the motion passes.

598

599 After an advertised public hearing and on a motion by Mr. Witte, seconded by
600 Mr. Nunnally, the Board **approved** application **A-012-09, Theresa A. Stern's**
601 request for a variance from Section 24-95(b) to build a one-family dwelling at
602 2560 Kingsland Road (Parcel 825-678-5390), zoned A-1, Agricultural District
603 (Varina). The lot width requirement is not met. The applicant has 132 feet of lot
604 width, where the Code requires 150 feet of lot width. The Board approved the
605 variance subject to the following conditions:

606

607 1. This variance applies only to the lot width requirement for one dwelling only.
608 All other applicable regulations of the County Code shall remain in force.

609

610 2. Approval of this request does not imply that a building permit will be issued.
611 Building permit approval is contingent on Health Department requirements,
612 including, but not limited to, soil evaluation for a septic drainfield and reserve
613 area, and approval of a well location.

614

615 3. At the time of building permit application, the applicant shall submit the
616 necessary information to the Department of Public Works to ensure compliance
617 with the requirements of the Chesapeake Bay Preservation Act and the code
618 requirements for water quality standards.

619

620 4. [ADDED] The dwelling shall be connected to public water.

621

622

623 Affirmative: Dwyer, Harris, Nunnally, Witte, Wright 5

624 Negative: 0

625 Absent: 0

626

627

628 **A-013-09 CURNOW DEVELOPMENT, INC.** requests a
629 variance from Section 24-94 to build a one-family dwelling at 600 Robcurn Drive
630 (Stoney Creek) (Parcel 807-725-7282), zoned R-3AC, One-family Residence
631 District (Conditional) (Varina). The total lot area requirement and rear yard

632 setback are not met. The applicant has 7,722 square feet total lot area and
633 proposes 20 feet rear yard setback, where the Code requires 9,500 square feet
634 total lot area and 35 feet rear yard set back. The applicant requests a variance of
635 1,778 square feet total lot area and 15 feet rear yard setback.
636

637 Ms. Dwyer - Is there anyone else here to speak to this case?
638 Please raise your hand and be sworn.

639
640 Mr. Curnow - I'm Rob Curnow.

641
642 Mr. Blankinship - Raise your right hand, Mr. Curnow.

643
644 Ms. Dwyer - Raise your right hand.

645
646 Mr. Blankinship - Do you swear the testimony you're about to give is
647 the truth and nothing but the truth so help you God?

648
649 Mr. Curnow - I do.

650
651 Ms. Dwyer - Good morning. Please state your case.

652
653 Mr. Curnow - We have a reserve parcel that we're considering this
654 morning that's lacking in the total square footage of the parcel for meeting the
655 requirements for zoning, and also in the rear yard setback. I'm asking for
656 approval for 1,778 square feet minimum lot area variance. I have 7,722 square
657 feet. On the second account, I need a reduction of 15 square feet on the rear of
658 the property. So we're going from 35 to a 20-foot setback on the rear line of the
659 proposed house.

660
661 Ms. Dwyer - Excuse me, sir. Did you state your name at the
662 beginning?

663
664 Mr. Curnow - Yes. It was Robert Curnow—C-u-r-n-o-w.

665
666 Ms. Dwyer - Anything else you'd like to add?

667
668 Mr. Wright - When did you purchase this property?

669
670 Mr. Curnow - It was recorded in 2001. I think it was 2000 when the
671 purchase was completed.

672
673 Mr. Wright - It's part of the subdivision, isn't it?

674
675 Mr. Curnow - Yes sir.

676
677 Mr. Wright - Are you the developer?

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Mr. Curnow - That's correct.

Mr. Wright - When you created the lot, didn't you not know at that time that it did not satisfy the requirements of the County for a buildable lot?

Mr. Curnow - I had a partner at the time who was doing this subdivision for the partnership. I was involved in another business. About 95% of what was done on this subdivision was handled by my partner. I've never been able to get a satisfactory explanation of why he left a reserve area this large, this size. Also working with an engineer. So between the two of them, I don't understand why. But that's as it was. By the way, I severed the relationship with that partner after this subdivision. Down through the years, I realized that the size of this and the location of it right at the front of the subdivision, it's the first parcel after you make a turn into the subdivision. It's on the corner. The property was collecting trash, growing grass and weeds. And, as I stated in my application, it's presenting a problem for the residents. I started this whole process of asking for the variance because I was called by a resident asking me if I was the developer, and could I please try to do something about the problem with the lot and the collection of debris, etc. I said, "Well, I'll meet with you out at the site and we'll talk about it." In looking things over and talking, I decided to apply for this variance. If I were granted it, I would go ahead and build a house that would conform with the neighborhood, houses that are almost all of the Colonial style. Does the Board have a copy of that proposed house?

Ms. Dwyer - Yes we do.

Mr. Curnow - You do? Okay. I think that's a pretty fine looking Colonial house. As a matter of fact, it's probably a bit more pretentious in its appearance than the average house there, if you look at the pictures. Do you have pictures of the houses in the vicinity?

Ms. Dwyer - We have an aerial view.

Mr. Curnow - You have an aerial view? Okay.

Ms. Dwyer - Actually, we do have.

Mr. Curnow - If you care to look at them, I'll show you pictures of the houses across the street and adjacent to this parcel.

Ms. Dwyer - We have some, thank you.

Mr. Curnow - Oh, you do? Okay.

723 Ms. Dwyer - Mr. Curnow, couldn't you fit a house in the buildable
724 area without a variance? It would just be narrow across the front and a deeper
725 house than what you have planned.

726
727 Mr. Curnow - Yes. As a matter of fact, without a variance, you
728 would have to build a house fronting on Robcurn Drive, the same as the adjacent
729 and across-the-street houses, of course facing Robcurn Drive. You'd have to
730 build a house that would be, at the setback line, would be the side line 21.37 feet
731 wide. So it's obvious that I have to move the house back, that is further off
732 Robcurn Drive, and also ask for the reduction in the rear yard setback in order to
733 accommodate, as an example, the house that I propose to build.

734
735 Ms. Dwyer - My suggestion is that if you built a different house,
736 you could fit a different house into the buildable area without a variance.

737
738 Mr. Wright - It still doesn't have enough square feet in the lot. You
739 have to get a variance anyway.

740
741 Ms. Dwyer - Right. But you wouldn't have to—

742
743 Mr. Curnow - First of all, I'm trying to conform with the homes that
744 are already there; I think that's important. A Colonial-style home would not work
745 in that instance.

746
747 Ms. Dwyer - But conceivably, you could eliminate the need for the
748 15-foot rear-yard setback variance.

749
750 Mr. Curnow - Ma'am?

751
752 Ms. Dwyer - Conceivably, you could eliminate the need for the
753 rear-yard setback variance if you built a different house.

754
755 Mr. Wright - Wouldn't you have to face it on Dabbs House Road?

756
757 Ms. Dwyer - As I look at the buildable area, it seems to me if you
758 set the house back, that you could certainly get a house in that buildable area.

759
760 Mr. Curnow - I worked this over with Mr. Blankinship, and I think he
761 will attest to the fact that there's just no other way. Of course I spent a lot of time
762 with my engineer, [unintelligible] the house that needs to go in there with the side
763 lines that are called for in zoning.

764
765 Mr. Blankinship - I wouldn't say there's no other way, but I would say
766 there's a tradeoff between being consistent with the houses that are already
767 there versus—

768

769 Mr. Curnow - Well, that's what I was referring to all along, yes.
770
771 Mr. Blankinship - Versus requiring one variance rather than both
772 variances.
773
774 Mr. Curnow - Yes sir.
775
776 Mr. Blankinship - It's a question for the Board, not a question for me.
777
778 Ms. Dwyer - Anything else, Mr. Curnow?
779
780 Mr. Curnow - No, I don't think so.
781
782 Ms. Dwyer - Any questions by Board members?
783
784 Ms. Harris - Yes. Mr. Curnow, would the residents of this
785 subdivision consider buying your property? You said it was a common area and
786 you used it for an entrance to sort of introduce the subdivision. Do you think the
787 neighbors would consider buying this?
788
789 Mr. Curnow - No I don't. Everybody's strapped for money these
790 days. If someone has an idea about a person who would like to purchase it, I'd
791 be open to the consideration.
792
793 Mr. Nunnally - Speaking of being strapped for money, what price
794 home are you going to put here?
795
796 Mr. Curnow - Today, you have to say, well, today I might offer it for
797 x-number of dollars, if I could afford to build it. Two or three years from now,
798 hopefully it would be worth more. But if you're offering today, you'd probably
799 have to offer it for \$175,000, plus or minus \$5,000.
800
801 Ms. Harris - Did you say 75 or 175?
802
803 Mr. Curnow - One hundred and seventy-five.
804
805 Ms. Harris - Oh, okay. I just wanted to be sure that was clear.
806
807 Ms. Dwyer - Any other questions by Board members? That
808 concludes the case; thank you, Mr. Curnow.
809
810 Ms. Harris - The developer did not build on it and now he wants to
811 build on it.
812
813 Ms. Dwyer - Do we have a motion on A-013-09?
814

815 **DECISION**

816
817 Mr. Wright - I move we deny this on the grounds that when taken
818 as a whole, it was an 11.51-acre parcel. Therefore, it had a reasonable use and
819 it's just the way it worked out. I just don't see any legal basis for approving it.
820 Under Cochran, I think that's as far as it goes. I don't think we have the authority
821 to go further.

822
823 Ms. Dwyer - Is there a second?

824
825 Ms. Harris - I second it.

826
827 Ms. Dwyer - Motion by Mr. Wright, seconded by Ms. Harris.
828 Discussion.

829
830 Ms. Harris - Okay. In as much as he was a developer, I can see it
831 as being self-imposed.

832
833 Ms. Dwyer - I agree. I think it's a self-imposed hardship there.
834 They had the entire acreage and they developed as they saw fit. And they saw
835 fit to design a lot that did not meet the requirements of the zoning ordinance. I
836 don't think it satisfied the requirements of the [inaudible]. All right. Anymore
837 discussion?

838
839 Motion by Mr. Wright, seconded by Ms. Harris. All in favor say aye. All opposed
840 say no. The ayes have it; the motion passes. The case is denied 5 to 0.

841
842 After an advertised public hearing and on a motion by Mr. Wright seconded by
843 Ms. Harris, the Board **denied** application **A-013-09, Curnow Development,**
844 **Inc.'s** request for a variance from Section 24-94 to build a one-family dwelling at
845 600 Robcurn Drive (Stoney Creek) (Parcel 807-725-7282), zoned R-3AC, One-
846 family Residence District (Conditional) (Varina). The total lot area requirement
847 and rear yard setback are not met.

848
849
850 Affirmative: Dwyer, Harris, Nunnally, Witte, Wright 5
851 Negative: 0
852 Absent: 0

853
854
855 **A-014-09 EMERALD LAND DEVELOPMENT, LLC** requests a
856 variance from Sections 24-95(c)(2) and (4) to build a one-family dwelling at 9724
857 North Run Road (Parcel 781-760-8299), zoned R-4, One-family Residence
858 District (Fairfield). The rear yard setback and front yard setback are not met. The
859 applicant proposes 31 feet front yard setback and 15 feet rear yard setback,
860 where the Code requires 35 feet front yard setback and 25 feet rear yard

861 setback. The applicant requests a variance of 4 feet front yard setback and 10
862 feet rear yard setback

863

864 Ms. Dwyer - Anyone else here to speak to this case?

865

866 Mr. Blankinship - Sir, are you standing to speak to this case? Okay.
867 Would you raise your right hand, please? Do you swear the testimony you're
868 about to give is the truth and nothing but the truth so help you God.

869

870 Mr. Baker - I do.

871

872 Ms. Dwyer - All right. Please state your case.

873

874 Mr. Baker - Good morning Madam Chair, members of the Board.
875 My name is Mark Baker—B-a-k-e-r—from Baker Development Resources,
876 consultants representing Emerald Land Development as a contract purchaser.
877 The property is 9724 North Run Road. It's located in the Fairfield District. This
878 request is for a variance to reduce the front- and rear-yard setbacks in order to
879 permit the construction of a single-family dwelling. The request would be a four-
880 foot reduction on the front-yard setback, and 10-foot—or technically 9.2-foot—
881 reduction in the rear-yard setback.

882

883 A little background. The property is located on the north side of North Run Road
884 between Mountain Road and Hungary Road. The lot has been in existence in
885 this configuration since the 1800's. It has 147 feet of lot frontage, 8,494 square
886 feet of lot area. As such, the lot meets the R-4 standards for lot width and lot
887 area. It is, however, an irregular shape. The depth varies from west to east—
888 25.5 feet at the west; 92.4 feet at the east. The owner wishes to construct a two-
889 story residence on the property, which cannot be accommodated by the irregular
890 lot when the zoning regulations are strictly adhered to. That's due to the depth.
891 The owner owns no adjacent properties, and has been unsuccessful in attempts
892 to acquire abutting land to remedy the situation.

893

894 I understand that the County is still using the evaluation criterion that was
895 established by the Virginia Supreme Court in Cochran versus Fairfax County. So
896 essentially we're dealing with the threshold question and the three tests. With
897 regards to the threshold, it's whether the effect of the zoning ordinance upon the
898 property under consideration as it stands interferes with all reasonable beneficial
899 uses of the property taken as a whole The answer is yes, the threshold question
900 is met. The effect of the zoning ordinance on the property as it stands interferes
901 with any reasonable beneficial use of the property. Staff seems to be on board
902 with that. I think they recognize that in their comments. In their report, however,
903 they did comment that a potential rezoning to a commercial designation, and the
904 consolidation of lots in the area, might allow for reasonable beneficial use. These
905 are really contrary to the spirit of the threshold question, which evaluates the
906 effect of the current zoning of the subject property, not a future designation

907 subject to a speculative rezoning. In addition, it evaluates the property as it
908 stands in the current configuration, rather than after a future consolidation. So,
909 the effect of the zoning ordinance on the property as it stands, the effect of the
910 current zoning designation, is that there is no reasonable beneficial use.

911
912 In looking at the three tests, the first test is if the property is affected by
913 exceptional narrowness, shallowness, size, or shape, topographic condition, or
914 other extraordinary situation or condition. In this case, the depth of the lot is
915 extraordinarily shallow on the western end. It sets up a triangular building
916 envelope. That just won't accommodate a practical house in today's market;
917 staff notes this in their report. The lot is otherwise of sufficient size to meet
918 County lot width, lot area, and side yard requirements in order to permit the
919 development of a single-family dwelling.

920
921 The second test is if the variance will not be a substantial detriment to adjacent
922 property and that the character of the district will not be changed. The use is
923 consistent and compatible with the existing character of the surrounding single-
924 family dwellings. In fact, the only uses in the vicinity are single-family dwellings.
925 There are three single-family dwellings that front on the opposite side of North
926 Run Road. So in terms of orientation towards North Run Road, this is not a
927 unique condition. The subject is comparable in lot area, and it's greater in
928 frontage with those particular lots.

929
930 Commercial uses. There is some discussion of commercial use in the staff
931 report. I just want to comment. Commercial uses as they're contemplated by the
932 Comprehensive Plan do not exist at Mountain Road and North Run, and
933 therefore do not contribute to the existing character of the district. With that being
934 said, should there be a market for a commercial use at some time in the future—
935 we don't feel that there is currently—the request would not prohibit the
936 development of commercial frontage on Mountain Road at that future time.

937
938 The third test, is the condition or situation of the property concerned not so
939 general or recurring in nature as to make reasonably practical the formulation of
940 a general regulation to be adopted as an amendment to the ordinance. As staff
941 notes in the report, the request is not of a general and recurring nature. It would
942 definitely not be precedent-setting for the area. I would not suggest a general
943 regulation might be appropriate.

944
945 In summary, we're dealing with a legal lot of record that exists in the same
946 configuration back to the 1800's. The property is residentially zoned. The owner
947 has reasonable expectations for the beneficial use of the property—the
948 construction of a single-family dwelling in this case—which as the lot stands
949 today under the current zoning regulations cannot be accommodated. The
950 applicant has chosen a dwelling that minimizes the variance request—it's two
951 stories; it's a smaller footprint. It represents the minimum relief necessary to
952 develop under the current zoning. The threshold and three tests are met. Thank

953 you for consideration. I urge you to rule in favor of the applicant based on the
954 demonstrated hardship. I'll take any questions you have.
955
956 Ms. Dwyer - Thank you, Mr. Baker. Any questions by Board
957 members?
958
959 Ms. Harris - Yes. When the lot was purchased in 1991, did the
960 owner not know that the lot was noncompliant?
961
962 Mr. Baker - My client, the applicant, is the contract purchaser. I'm
963 not sure. I can't really speak for the owner who bought it.
964
965 Ms. Harris - How can we determine that this problem is not self-
966 imposed?
967
968 Mr. Baker - The existing configuration as early as the 1800's for
969 an illegal lot of record dating back to the—Are you concerned that they may have
970 knowingly bought into a hardship?
971
972 Ms. Harris - In 1991.
973
974 Mr. Baker - I can't—Are you aware if they knew at that time?
975
976 Ms. Harris - The other thing you said was that it was comparable
977 in lot area to adjacent homes. What homes are you talking about, the homes on
978 North Run—comparable in lot area—or the homes that are on Mountain Road?
979
980 Mr. Baker - I was referring to the three lots across the street.
981
982 Ms. Harris - The subdivision?
983
984 Mr. Baker - The three that are fronting North Run across the
985 street.
986
987 Ms. Harris - Not on the same side.
988
989 Mr. Baker - No.
990
991 Ms. Harris - Oh, I thought you were talking about the same side.
992
993 Mr. Baker - There are two uncharacteristically large lots which are
994 directly to the left of the property.
995
996 Ms. Harris - You sort of discredited the Comprehensive Plan that
997 designates the properties on Mountain Road as commercial construction or

998 concentration. Do you, in fact, feel that if property were constructed as you are
999 proposing that this would put it definitely too close to commercial concentration?

1000
1001 Mr. Baker - I don't think so. In fact, we've had Napier Commercial
1002 Realtors evaluate the situation from a commercial standpoint. I do have a letter
1003 from them, if you'd like to examine that. First of all, the market, from their
1004 perspective, isn't there for the commercial. And it's not to discredit the
1005 Comprehensive Plan; it's just that it's not there at this time. Secondly, they're
1006 recognizing that from the highest and best use standpoint, given the
1007 [unintelligible] zoning is R-4, this is the best use for the property.

1008
1009 Ms. Harris - How do you address the traffic concerns? That
1010 intersection at North Run and Mountain Road is an extremely busy intersection.
1011 You want to place a home there, close to commercially-designated property.
1012 How do you propose to address the issue that this might cause more of a traffic
1013 problem?

1014
1015 Mr. Baker - I don't know that in the review of it that it was
1016 recognized by staff. Mr. Blankinship, was there a concern, traffic, as it relates to
1017 the drive or the curb cut that might be required?

1018
1019 Mr. Blankinship - No. We didn't go into that. There is plenty of right-of-
1020 way because of the curve in the road compared to the straight property line.
1021 There's plenty of right-of-way to make whatever improvements Public Works
1022 feels are necessary. You're as far back from Mountain Road as the houses
1023 opposite, so I think—

1024
1025 Mr. Baker - It seems as though there's adequate sight distance.

1026
1027 Mr. Blankinship - Whatever issues are there I think could be resolve. I
1028 would be interested in seeing that letter from Napier.

1029
1030 Mr. Baker - I have several copies of that. No market for
1031 commercial currently. We've talked to adjacent owners; they have no interest in
1032 selling. Part of it is the Comprehensive Plan. If you're talking about a larger
1033 commercial development, it presumes that someone's going to buy all this
1034 property and would be willing to consolidate them. Of course, that's beyond the
1035 scope of what this current—this owner wants to undertake.

1036
1037 Ms. Dwyer - Any other questions by Board members?

1038
1039 Ms. Harris - I still have not completed this particular question. On
1040 page 2 and 3 in the report, under item two. It says, "Furthermore, the quality of
1041 the life of the residents of the proposed home could be negatively affected by the
1042 potential business activities, noise, traffic, parking glare, of the lights to the north

1043 and east were they developed for commercial use.” Hence, this is the reason for
1044 my question regarding traffic.

1045
1046 Mr. Baker - Was that a question for me or?

1047
1048 Ms. Harris - I had already asked the question before, and this is
1049 the reference why I asked the question.

1050
1051 Mr. Baker - The developer doesn't see an issue.

1052
1053 Ms. Harris - They don't consider proposed commercial
1054 development imminent.

1055
1056 Mr. Baker - Well, that. And then the other thing is that I think they
1057 feel as though it won't be a detrimental—Certainly this property won't be a
1058 detriment to that future commercial development, which is what I think the test is.
1059 Then secondly, I don't feel that, conversely, that it would be a detriment to this.

1060
1061 Ms. Dwyer - I guess my concern is I just look at this as the unusual
1062 shape of the lot, the fact that whatever house is going to be there will be
1063 constrained in the future for any sort of additions. And we do have those often
1064 come back to us, wanting to add onto a house and they have no space to do it.
1065 It is a very unusual lot. It's also bordered on two sides by commercial zoning.
1066 There's the potential that this particular lot, if it were to be developed by a house,
1067 would not only have this strained configuration of a lot, but also could be
1068 surrounded by commercial development.

1069
1070 Mr. Wright - What two sides are you talking about?

1071
1072 Mr. Baker - There's that spike that comes out to North Run at the
1073 western boundary.

1074
1075 Ms. Dwyer - Not really surrounded on that side, but it does touch.
1076 The commercial development does slightly—

1077
1078 Mr. Wright - Looks like to me the commercial property is
1079 surrounded by residential property. The way that map looks to me.

1080
1081 Mr. Baker - There are two properties that are commercial at the
1082 intersection of Mountain and North. And those two particular properties are
1083 commercial. And then you have an “L” shape, including the subject, which is
1084 residential. You do have a small triangular section that comes out to North Run,
1085 but I don't think that that would be—That's not really functional from a
1086 commercial standpoint. I don't anticipate that small triangle there being
1087 developed with any meaningful commercial use.

1088

1089 Ms. Harris - It has been in the past. Dugout Restaurant is on one
1090 corner, and there's a little store right there on the other corner. And there are a
1091 couple of homes that are there on the commercial side. Without a doubt,
1092 Mountain Road in that area is commercial. Without a doubt.
1093

1094 Ms. Dwyer - The B-3C is a fairly large commercial parcel that does
1095 touch this property on the—I guess the west side. All right. Any other questions
1096 by Board members? Any other statements you'd like to make at this time? If you
1097 would be seated, you will have an opportunity for rebuttal. Yes sir, please come
1098 forward and state your name.
1099

1100 Mr. Redford - Ernest Redford—R-e-d-f-o-r-d,
1101

1102 Ms. Dwyer - What comments do you have for us.
1103

1104 Mr. Redford - I come to oppose this. I don't think that it is
1105 necessary. He said that we would not be able to sell them the land. We would
1106 sell the land if the offer was right.
1107

1108 Ms. Dwyer - You have property near this?
1109

1110 Mr. Redford - That's the piece of land that they want to take the part
1111 of.
1112

1113 Ms. Dwyer - Is that the R-4 property?
1114

1115 Mr. Blankinship - The property to the north? Horace James?
1116

1117 Mr. Redford - Horace James, yes.
1118

1119 Mr. Blankinship - 1519 Mountain Road, Madam Chairman.
1120

1121 Ms. Dwyer - So you own that property?
1122

1123 Mr. Redford - The family owns that property. My wife, Charlene and
1124 I, we are the caretakers of the land.
1125

1126 Ms. Dwyer - Why do you oppose this?
1127

1128 Mr. Redford - We don't want them to take out land. We don't want
1129 them to take that section in there.
1130

1131 Ms. Dwyer - This triangular section—
1132

1133 Mr. Redford - The triangular section that they want to take. That's
1134 the section we are opposed to them getting.

1135
1136 Ms. Dwyer - You don't want him to purchase it? Is that what
1137 you're saying?
1138
1139 Mr. Redford - They could purchase the land if they want to
1140 purchase the whole section, but not just that little section that they want to
1141 purchase.
1142
1143 Ms. Dwyer - Do you have a dispute with them over how much
1144 property is being purchased from your family? Is that correct?
1145
1146 Mr. Blankinship - The property that they're talking about is owned by
1147 John W. Gibbs, Jr.
1148
1149 Mr. Redford - Right. I'm talking about the property that's owned by
1150 the James'.
1151
1152 Mr. Blankinship - Right, okay.
1153
1154 Mr. Redford - That's the property I'm talking about.
1155
1156 Male - [Talking off the microphone; inaudible.]
1157
1158 Ms. Harris - Do you believe that this triangular piece would
1159 adversely affect the property that you and your family own?
1160
1161 Mr. Redford - Yes.
1162
1163 Ms. Harris - Okay. If it's sold as it is, and the construction is made
1164 as proposed, it would put their boundary closer to your property, and you feel
1165 that that is to your disadvantage.
1166
1167 Mr. Redford - They wanted to take part of our property. The way it's
1168 stated, they want to take part of our property on each side.
1169
1170 Mr. Blankinship - So, they approached you, asking to buy a part of the
1171 property.
1172
1173 Mr. Redford - They haven't approached us to buy yet.
1174
1175 Mr. Blankinship - They have not.
1176
1177 Mr. Redford - No.
1178
1179 Ms. Harris - Do you see this triangular piece of land as being a
1180 part of your property?

1181
1182 Mr. Redford - Yes.
1183
1184 Ms. Harris - You do? How can we—
1185
1186 Mr. Blankinship - But it's not actually owned—The triangular piece that
1187 they're talking about is no longer in your family; it's owned by John W. Gibbs, Jr.
1188
1189 Mr. Redford - The land that is adjoining to it.
1190
1191 Mr. Blankinship - Right. That is in your property.
1192
1193 Mr. Redford - That is in our property.
1194
1195 Mr. Blankinship - Right, in your family. Have they approached you to
1196 buy some of your property or not?
1197
1198 Mr. Redford - No.
1199
1200 Mr. Blankinship - Okay.
1201
1202 Mr. Wright - Are you willing to talk to them about it?
1203
1204 Mr. Redford - I'll sell if they want to buy.
1205
1206 Ms. Harris - Hence they would not need a variance, right?
1207
1208 Ms. Dwyer - Any other statement you would like to make, Mr.
1209 Redford? Any other questions by Board members? Thank you, sir. Would the
1210 applicant like to make a statement in rebuttal?
1211
1212 Mr. Baker - I would first ask that the gentleman who was just
1213 speaking, which property?
1214
1215 Mr. Blankinship - He owns 1519 Mountain Road, the property to the
1216 north of yours that's zoned R-4.
1217
1218 Mr. Baker - Part of this section right here?
1219
1220 Mr. Blankinship - Yes.
1221
1222 Mr. Baker - Did I understand him to say that he was interested in
1223 selling?
1224
1225 Mr. Blankinship - If the price were right.
1226

1227 Mr. Baker - I understand. Napier Realtors has approached those
1228 adjacent property owners and attempted to purchase—Of course, we haven't
1229 had a chance to talk with them. I don't know if the price was the issue, or if he
1230 wasn't willing to sell at that point. That's the first thing I'd say about that.

1231
1232 Secondly, I want to make sure that you understand that the property has been
1233 surveyed, there's clear title. This is a transaction that can take place. The party
1234 that owns the property has the ability to sell it.

1235
1236 Getting back to the concern about the adjacent commercial use. It was
1237 suggested the B-3 parcel that's at the corner is not a large parcel, and would not
1238 suggest a large-scale commercial use. Regardless of the scale or the intensity, it
1239 might typically be permitted by B-3C. Secondly, the larger B-3C parcel I believe
1240 has been developed, and it may be subject to future additional development,
1241 which might increase the intensity there. But again, that triangular-shaped piece
1242 of property that intersects North Run Road, I don't think there would be any
1243 significant commercial development of that portion. In other words, I don't think it
1244 would accommodate any commercial development that could be a negative
1245 impact on the property.

1246
1247 I just want to stress that we're supposed to be evaluating the effect of the current
1248 zoning on the property, not a future designation or, again, a speculative
1249 rezoning. Additionally, we need to be evaluating the property as it stands in its
1250 current configuration, rather than after future consolidation. That's essentially it.

1251
1252 Ms. Harris - Just one quick question. Am I quoting you right,
1253 "Should this be granted, we don't feel this would have a negative effect on
1254 adjoining properties or adjacent properties"? Is that what you said?

1255
1256 Mr. Baker - Yes. According to the test, in terms of this property
1257 and its impact on adjacent property, it's our opinion—and also the opinion of
1258 Napier Commercial Realtors—that there wouldn't be any negative impact on the
1259 adjacent properties.

1260
1261 Ms. Harris - I just wanted to make sure I heard you correctly.
1262 Thank you.

1263
1264 Mr. Wright - I'm not clear on this purchase of adjoining property.
1265 You stated early on that you had attempted to purchase the property so that you
1266 could eliminate your problem.

1267
1268 Mr. Baker - Yes sir.

1269
1270 Mr. Wright - Now this gentleman testifies that nobody has
1271 approached them to purchase the property. Where is the difference?

1272

1273 Mr. Baker - I'm testifying as to what I've been told by Napier
1274 Realtors.

1275
1276 Mr. Wright - We have direct testimony; you're giving us some
1277 hearsay.

1278
1279 Mr. Baker - That was my point. I'm not sure what the substance
1280 of that discussion between Napier and perhaps this gentleman was, if it was that
1281 the price was not realistic, or that he was not interested in selling at the time. I'm
1282 guessing here.

1283
1284 Mr. Blankinship - I wonder if there is more than one family member,
1285 and perhaps the family members are not speaking to each other. Someone was
1286 approached, but it wasn't Mr. Redford.

1287
1288 Ms. Harris - Or it could have been the property on the corner
1289 rather than his property, his family's property.

1290
1291 Mr. Baker - I understood that he talked to the surrounding
1292 property owners. But again, I don't know. I didn't find out more detail about each
1293 conversation other than to hear that he wasn't successful in acquiring it.

1294
1295 Mr. Wright - If you could purchase something from the adjacent
1296 property, that would eliminate your problem. Would you want to ask for a
1297 continuance to see if that could be worked out and have more definite
1298 information on that?

1299
1300 Mr. Baker - Is it possible that we could have an opportunity to talk
1301 with this gentleman, and then perhaps come back up after the next case?

1302
1303 Mr. Wright - It's up to the Chairman.

1304
1305 Ms. Dwyer - We can table this case.

1306
1307 Mr. Baker - Thank you.

1308
1309 **CASE A-014-09, EMERALD LAND DEVELOPMENT, LLC, TABLED AT THIS**
1310 **TIME; CONTINUED ON PAGE 41.**

1311
1312 **UP-017-09 THE EAST END LANDFILL, LLC** requests a
1313 conditional use permit pursuant to Section 24-116(c)(3) to expand the existing
1314 landfill at 1850 Darbytown Road (Parcels 808-706-6679, 809-707-1585 and 808-
1315 708-0513), zoned B-3, Business District and M-2, General Industrial District
1316 (Varina).

1317

1318 Ms. Dwyer - While the applicant and their representatives are
1319 coming forward, is there anyone else here to speak to this case? Please stand.
1320 Would you just raise your hand if you're in opposition to the case? Thank you.
1321
1322 Mr. Blankinship, before we get started on the case itself, I understand that
1323 there's been a request to delay the hearing of this case?
1324
1325 Mr. Blankinship - Or to hold a second hearing, perhaps.
1326
1327 Ms. Dwyer - Hold a second hearing? I would like to go ahead and
1328 dispense with that particular request.
1329
1330 Mr. Blankinship - The request was to hold a second hearing in the
1331 evening hours so that people who find it impossible or inconvenient to attend a
1332 morning hearing would be able to address the Board.
1333
1334 Ms. Dwyer - Is the applicant aware of this request?
1335
1336 Mr. Axselle - Mr. Blankinship had mentioned that this request had
1337 been made, yes.
1338
1339 Ms. Dwyer - Thank you, Mr. Axselle. Is there someone here who
1340 made that request?
1341
1342 Ms. Jackson - Yes, I am. Carol Jackson.
1343
1344 Ms. Dwyer - All right, Ms. Jackson, I wonder if you would speak
1345 not to the merits of the case, but just to the request to have this hearing at a
1346 different time.
1347
1348 Ms. Jackson - Okay. Well, at this point, we would like to withdraw
1349 the request.
1350
1351 Ms. Dwyer - You want it to go forward this morning?
1352
1353 Ms. Jackson - Yes.
1354
1355 Ms. Dwyer - All right; thank you. Have a seat. All right. We will
1356 proceed with the case on its merits, then. Everyone who wants to speak to the
1357 case please stand now and raise your right hand and be sworn. If you even think
1358 you might want to testify, but you're not sure, go ahead and be sworn. Thank
1359 you.
1360
1361 Mr. Blankinship - Do you swear that the testimony you're about to give
1362 is the truth and nothing but the truth so help you God?
1363

1364 Ms. Dwyer - Mr. Axelle, go ahead and proceed.
1365
1366 Mr. Axelle - Madam Chairman, my name is Ralph L "Bill"
1367 Axelle—A-x-s-e-l-l-e—Jr. I'm here on behalf of the applicant, the East End
1368 Landfill, which we may refer to as TEEL. I am prepared to, and will provide all of
1369 the testimony, but with me are a number of people who are available to respond
1370 to questions or comments that you may have.
1371
1372 Ms. Dwyer - Thank you, sir. Do you have an idea of the time that
1373 will be required for your presentation?
1374
1375 Mr. Axelle - Twenty to twenty-five minutes. It's a fairly complex
1376 matter, and because of the concerns that have been merged between this and
1377 DEQ, I would say 25 minutes, and then allowing for whatever questions you may
1378 have afterward.
1379
1380 Ms. Dwyer - All right. I'll allow you 20 minutes, and then 5 minutes
1381 for rebuttal. And I'll allow 20 minutes on the other side.
1382
1383 Mr. Axelle - Thank you, ma'am. With me is Matt Appelget, who is
1384 the president of TEEL; Speaker Pollard and John Daniel, who are environmental
1385 attorneys who can address those issues better than I; Tom Lofland and Bill Hoss
1386 with Draper Aden, our engineers; Harry Gregori, who is a long-term, 20-year,
1387 former DEQ employee who was director of the Division of Pollution and
1388 Compliance at DEQ, and is now helping oversee the TEEL operations; and
1389 Heather Barber the Landscape Architect.
1390
1391 A couple quick preliminary comments because I want you to understand that we
1392 have submitted this application, we've been working with the County dealing with
1393 Department of Public Works about the installation of their mandatory wheel
1394 wash. We've been dealing with Planning and Department of Public Works about
1395 relocating the location of the entrance. We had been dealing with other entities in
1396 the County. Everything was going along pretty well. We didn't have any then
1397 known neighborhood opposition. This changed on September 21, when
1398 objection was filed. I think the objection came from the neighbors—this is my
1399 premise—on two things that took place. One, there was a posting of a notice for
1400 a hearing that's pending before DEQ regarding an increase in waste tonnage.
1401 And then second, some trees were taken down. They were taken down by TEEL
1402 pursuant to a permit issued by the Federal Army Corps of Engineers—after
1403 public notice—the State's DEQ (Department of Environmental Quality), and the
1404 Department of Public Works of the County of Henrico for erosion and sediment
1405 control. That's what caused, I think, some of the concerns—or prompted, I
1406 should say—those concerns. Until September 21, we had not heard any
1407 complaints filed with the County.
1408

1409 A couple concepts. One, the East End Landfill has been at this site either as a
1410 sand and gravel pit, a former Richmond City landfill and the Darbytown Landfill
1411 that's part of TEEL was permitted there in 1975. So you've issued a number of
1412 CUP's over the years, as have your predecessors. The six subdivisions and
1413 apartment complex that are nearby who have voiced an objection were all built
1414 during the timeframe after the landfill had been in operation, 1978 through 2005.
1415 So they came after the landfill had been in operation for decades. Having said
1416 that, we do recognize we need to be sensitive to those area residents. I think we
1417 have been; I hope you will conclude that. Others may disagree, and I recognize
1418 that.

1419
1420 The governmental scrutiny for a landfill is dual. The Department of
1421 Environmental Quality of the State of Virginia deals with environmental issues
1422 including increases in waste intake tonnage. The County of Henrico deals with
1423 local land-use issues. Those issues let simultaneous reviews, ongoing even
1424 today as you have this hearing, and DEQ has had a hearing and will be making
1425 their decision in the near future. I mention that because so many of the issues we
1426 think you're going to hear about are really those related to DEQ.

1427
1428 Another concept that I'll share with you is that the request actually is to increase
1429 this landfill—which is about 110 acres—by 1.38 acres. So it's a less than a 1%
1430 increase, if you will, in the amount of the landfill. We've been working with the
1431 County, and as you see, the County staff report includes a lot of protection for
1432 berms, landscaping, setbacks, and so forth.

1433
1434 Another concept I think we need to keep in mind is that this is a construction,
1435 demolition and debris landfill. It accepts items such as wood, metal, brick, wire,
1436 glass, soil, split tires, white goods, etc. It is not a sanitary landfill. A sanitary
1437 landfill accepts household and commercial waste that decomposes. It does
1438 have the potential for emitting gasses, attracting birds, and so forth. The material
1439 that this landfill accepts is an inert material and does not have those
1440 compositions.

1441
1442 Lastly, this landfill is the only CDD— construction, demolition and debris landfill
1443 in Henrico. The only one. It is the only one in the Eastern half of our
1444 metropolitan area. It has served, and continues to serve, working with and
1445 taking in material and recycling it from the Shoppes at White Oak Village, the
1446 airport connector, assisting Rocketts Landing—all in Henrico County—
1447 MeadWestvaco, and others. Approximately 60% of what TEEL takes in is
1448 recycled. It is the largest and highest amount of recycling of any landfill around.
1449 So as society encourages people to recycle, it is the largest recipient of and
1450 recycling landfill in the area. Also, to the best of our knowledge, it is the only
1451 landfill in Virginia that is LEED qualified. As you know, the leadership in energy
1452 and environmental design (LEED) is something that government and businesses
1453 are encouraging. This is the only one in Virginia, to our knowledge, that is so
1454 qualified.

1455

1456

Now, let me go through some issues quickly that I think you may hear about. One is odor. This is an issued that is addressed by and controlled by DEQ through their regulation. The day the complaint came in, DEQ happened to be at the site, and they had verified for us that they did not detect any odor from TEEL. A number of people from your staff have visited the site on many occasions, and they have indicated that they did not detect any offensive odor from the landfill. There is a nearby sanitary landfill. Your staff report says that any offensive odors noticed in the community are likely coming from facilities other than TEEL.

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As far as birds and vultures, as was one of the allegations, again, your County staff indicates on their visits to this site on many occasions that they have not observed such birds. They have observed birds at the sanitary landfill that's nearby, which is understandable because those waste products decompose and have some attractions for birds.

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As far as dust control, TEEL has a number of devices that they use on site, from an operational standpoint, to control the dust and to keep it from leaving the landfill. It operates two water trucks that spray water on the roads, the working face of the landfill, and other areas of the site as needed to tamp down dust and minimize its generation from onsite operation. The DEQ permit for the landfill requires these operational measures, and even some of the shredders have devices that use water to dampen the waste. Obviously, there is some dust when you move items around in a landfill. The County staff on their visits, they've advised me that they have not seen any problems with airborne dust off of the property.

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1492

Another complaint regards dirt and mud on the road. This entrance is off of Darbytown Road. This is an issue with which there have been some problems, especially in times of wet weather. TEEL owns and operates a street sweeper. They use it on the paved portions of their road, and they also take it out on Darbytown Road on an as needed basis. In discussions with the Department of Public Works this summer, they installed an automatic wheel wash so that all trucks that are leaving this landfill have to go through a wheel wash to knock off the mud and the dirt. They are the only landfill in Henrico County that has a mandatory wheel wash. Also, you'll see, the relocation of the entrance that's desired to Fergus Boulevard will address this issue even more so than the wheel wash.

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1500

Now, let me go to traffic. Four points, if I may. There is a lot of traffic on Darbytown Road; no question about that. The traffic is a mix of commercial and residential. Mostly everything on one side of Darbytown is industrial and commercial; the other side is mostly residential. In October 2007, the County did a traffic study, and it revealed that there were about 7900 vehicles during a 24-hour period on this part of Darbytown Road between the City and Laburnum Avenue. A traffic impact study was done by Draper Aden—this is the study the

1501 County reviewed—and estimated that under those numbers, the current
1502 maximum, not average, per day of vehicles by TEEL as a percentage of daily
1503 vehicles was about 4.6% of the traffic. Another study, in October 2008, by the
1504 County of Henrico says traffic has gone up in this area, and now the TEEL
1505 operations, the daily maximum, not average, is about 3.8% of the vehicles. Keep
1506 in mind, this traffic by TEEL operations currently, and we think even with the
1507 increased tonnage if DEQ approves that, is in the neighborhood of 3.8%, so it's a
1508 relative matter.

1509
1510 Mr. Nunnally - Let me ask you one thing. TEEL is 3-point-something
1511 amount of traffic, and if you have 70-some-hundred cars going down there a day,
1512 you said 3 point something. Three percent to 7,000-and-some, that's a few
1513 hundred and some odd—200-and-some vehicles every day coming out of that
1514 plant there.

1515
1516 Mr. Axelle - In that instance, if assuming that your math is correct,
1517 and I'm certain it is—

1518
1519 Mr. Nunnally - Don't assume it.

1520
1521 Mr. Axelle - That is true. But you've got, in the same area, the
1522 [unintelligible] facilities, you have other landfills, you have other industrial uses
1523 that are coming from the City out. My point is, there is traffic, but a relatively
1524 modest part of it—relative is a term of judgment—is only from this landfill. You'll
1525 see in a moment that we've made a change that I think will actually help the
1526 location of the entrance.

1527
1528 The important thing is that when the study was done in 2007 by Draper Aden, it
1529 had to be submitted to the County, which it was. The County Department of
1530 Public Works, which handles roads for Henrico County, concluded—and this is
1531 the exact quote—“since this expansion,” talking about the expansion, “is not
1532 expected to adversely impact the existing local traffic volume, road congestion
1533 levels or the highway safety on Darbytown Road, there are no—and there are no
1534 new points of ingress—we have no objections to the proposal.” In other words,
1535 looking at the information in that time—October 2008—the County Department
1536 of Public Works said they had no objection. Also, the DEQ has issued a
1537 temporary authorization for the expansion in July and then October 6th, but I will
1538 state to you that it's a temporary authorization. It is subject to their final approval.

1539
1540 Now, one of the most important things is that TEEL comes out on Darbytown
1541 Road. It comes right out on Darbytown Road, and probably not at a best location,
1542 but it's where that entrance has always been. We went to the County, and the
1543 County concurred, Department of Public Works and Planning agree that we
1544 could take our entrance and move it to the back of the landfill where it will come
1545 out onto Fergus Boulevard. Most of us have never heard of Fergus Boulevard.
1546 It's a very wide County road that was built to access a Dominion Power peaker,

1547 which has very, very little traffic; Dominion is the only one there. So this will take
1548 the traffic off of Darbytown Road at the current entrance, move it over to Fergus
1549 Boulevard, which is to move it further east. It has a couple of benefits. One, right
1550 now when somebody goes through the wheel wash, it goes 900 feet to access
1551 Darbytown Road. Under the new location, the wheel wash will be put at the
1552 back. You will then go through the wheel wash and you'll have 2500 feet of
1553 paved surface before you reach Darbytown Road. The street sweeper and the
1554 wheel wash have maximized the chance that you'll not have any dirt. And also
1555 you will then come into Darbytown Road at an X intersection, which is better from
1556 a safety standpoint. Most importantly, out of the six subdivisions, and the
1557 apartment complex, for whom the neighbors spoke, all but one of those are on
1558 the City side of Fergus Boulevard. So the traffic that will access TEEL and leave
1559 TEEL will be from Laburnum, Fergus Boulevard, and will not go past six of the
1560 seven entities. That's a tremendous enhancement. It will take the traffic off of
1561 Darbytown near those residential subdivisions.

1562

1563 I had not shared this with staff because we had a preparation meeting yesterday.
1564 I think this is helpful. There is very little traffic that comes to TEEL from the City
1565 of Richmond under—there's an overpass that's very, very low. We are prepared,
1566 with the Fergus Boulevard relocation, two conditions that you could put in there
1567 that say no traffic coming to or from TEEL can come from the City on Darbytown
1568 Road, it will have to come from the Laburnum side of Darbytown Road. Thus,
1569 again, ensuring that there is no TEEL traffic that will go in front of those six of the
1570 seven entities who voiced objection. The current entrance would be closed. It will
1571 be used by emergencies for TEEL only. I say only. There is another owner that
1572 has property on there that we do not own or control. They will still be able to use
1573 that, but that's only occasionally use.

1574

1575 The trees were taken down with all the proper governmental approvals, including
1576 federal, state, and local. The staff report very much details that there will be a
1577 50-foot natural area, some heavily treed, some not heavily treed just because of
1578 wetland. And then there will be at least a 50-foot berm, and it will have numerous
1579 evergreens on it such as Leland Cypress, White Pine, some American Hollies,
1580 Virginia Red Cedars, Southern Wax Myrtles, and others.

1581

1582 DEQ requires that that landfill be at the base level of the property, and that's 132
1583 feet above sea level. Darbytown Road is actually a little higher; its average is 142
1584 feet. So, what we have done, and agreed with the staff—and it's part of your
1585 condition—is our berm will go 132 feet and then be 50 feet above 142 feet.

1586

1587 Mr. Blankinship - So you're saying 50 feet up, but you mean 50 feet
1588 wide and 10 feet up.

1589

1590 Mr. Axelle - Thank you. While we have Mr. Blankinship here, it
1591 won't be 50 feet. But my point is instead of being 10 feet from the base of the
1592 land, 132 feet above sea level, it will be that plus an additional 10 feet so that the

1593 people on Darbytown Road will have the benefit of the full berm from their
1594 visibility, plus these trees, which are planted, most of them at 8 to 10 feet high.
1595 The landscape architect is here and says that within about eight years, they will
1596 all be 25 feet in height. So you'll have the berm plus the 25 feet in height.

1597
1598 There are other issues that we can address, and I'll give you—These are
1599 environmental issues, so I will be short. And please don't ask me any questions.
1600 Speaker and John can do that. They had requested at DEQ a variance to receive
1601 some contaminated non-hazardous soil. That is something that DEQ may allow if
1602 the construction conditions on the site would permit that. That is subject purely to
1603 the DEQ discretion. You will also hear that they entered into a consent order with
1604 DEQ. DEQ and TEEL had some disagreement as to what were the applicable
1605 standards regarding slopes, heights, finished areas, and so forth. They were
1606 cited for certain things. They reached an agreement. A consent order with DEQ
1607 put in place certain standards, paid certain civil charges and so forth. But the
1608 good thing is that DEQ and they have closed that out, and they have put in place
1609 by this consent order, standards by which TEEL must operate. Now they're on
1610 the same page as to what they should or shouldn't do. Most of them came from
1611 differences on recycling, but nevertheless, that issue's been resolved. Harry
1612 Gregori, who as I said was a 20-year DEQ employee and has joined them to
1613 help oversee their operations. He's not retired.

1614
1615 Madam Chairman, I tried to speak quickly.

1616
1617 Ms. Dwyer - You have two more minutes. I allowed you extra time
1618 because we had a question.

1619
1620 Mr. Axselle - Thank you. We do appreciate your attention and your
1621 time. This is an important issue for a lot of people. It's an important issue for the
1622 County in our area to be able to allow the continued and expanded operation of
1623 the only construction, demolition and debris landfill in Henrico. The only one on
1624 the East Side. It is not a sanitary landfill. They'd done everything they can to try
1625 to address these. Staff has imposed some additional conditions. While they're
1626 strenuous, we do find that they are a reasonable [unintelligible]. I just don't want
1627 us to get carried away with issues that are actually before DEQ and will be
1628 determined in that environment.

1629
1630 We'll be here and be glad to respond to any questions that you may have. And
1631 then I would like to reserve that time for rebuttal.

1632
1633 Ms. Dwyer - Thank you, Mr. Axselle.

1634
1635 Mr. Axselle - There is one lady who is here who approached me.
1636 She's a neighbor who wants to speak in favor of it, but I'll leave that up to you.

1637
1638 Ms. Dwyer - Any questions for Mr. Axselle from Board members?

1639
1640 Ms. Harris - I have loads of questions, but I'll listen to the case
1641 first.
1642
1643 Mr. Axselle - Thank you.
1644
1645 Ms. Dwyer - Mr. Axselle, this is just a question to make sure that I
1646 understand the issue before us, and also the operation. As I understand it, this is
1647 about the addition of a 1-point-some-odd-acre parcel to the entire parcel. By
1648 adding that acreage, that opens up existing land that TEEL owns and makes that
1649 available now for use for its operation. Is that correct?
1650
1651 Mr. Axselle - The latter part of that, it would, the rear portion of the
1652 1.38-acre. This is a piece of property they own where they have an office on
1653 Darbytown Road. We have proposed, and your staff report recommends
1654 conditions that would have the buffers installed not just there, but all along where
1655 it's going to be open. That property—and I'll let Speaker maybe speak to that—
1656 does not open up and it is not as relevant to the request that's before DEQ.
1657 There's up to the knoll of the hill about 200 feet back, if memory serves me
1658 correct, that there would be no change. But beyond that at the rear, there would
1659 be. This is Speaker Pollard, who's an environmental lawyer.
1660
1661 Mr. Pollard - Speaker Pollard with Christian and Barton
1662 representing TEEL. Yes. We're simply adding today this 1.38-acre—I think it
1663 is—parcel to the larger piece. Practically, what that does allow is some
1664 additional elbow room, if you will, along this area for future expansion in that
1665 area. This area has already been approved into the CUP for landfill use, so
1666 really what's happening is we're just trying to consolidate this last piece that's
1667 been out there historically as an office. We're trying to bring this in to really just
1668 kind of bring it all together into one tight parcel. That does give a little bit of elbow
1669 room along here. And as Bill mentioned, we are going to be putting in the buffers
1670 along the way there to make sure.
1671
1672 Ms. Dwyer - So the increase in tonnage, you're already—
1673
1674 Mr. Pollard - The increase in tonnage is completely independent of
1675 this issue. It's a totally separate issue than what's before this—
1676
1677 Ms. Dwyer - Is that a DEQ issue?
1678
1679 Mr. Pollard - That's a DEQ issue, yes ma'am. That's a difference
1680 on permit limit on the DEQ permit of how much tonnage could come in per day.
1681
1682 Ms. Dwyer - Okay. So this additional parcel, this 1.38 acres, has
1683 no impact, essentially, on your ability to increase tonnage. You already have the
1684 zoning for that.

1685
1686 Mr. Pollard - Yes ma'am. We proceeded with a waste intake
1687 increase with DEQ irrespective of this issue. They're totally separate issues.
1688
1689 Ms. Dwyer - We're just being informed of—
1690
1691 Mr. Pollard - Right, I understand. There are a lot of issues floating
1692 around at once, and we're doing our best to keep on top of it ourselves, so I can
1693 understand.
1694
1695 Ms. Dwyer - Having read the entire package, my understanding,
1696 then, is that as far as this body is concerned, the issue is the 1.38-acre parcel
1697 and whether that should be added to what you have. That will enable you to
1698 have a continuous landscape buffer and berm along Darbytown in that area
1699 where this 1.38 acres is located. Nothing we do or say today is going to affect
1700 your ability to increase the tonnage; that is a DEQ question. And you already
1701 have the permit to use the land that you would—
1702
1703 Mr. Pollard - Yes ma'am. If we never came before you today, we
1704 could proceed with that waste intake increase with DEQ.
1705
1706 Ms. Dwyer - Okay.
1707
1708 Mr. Pollard - Those are independent issues. Subject to DEQ's final
1709 approval.
1710
1711 Ms. Dwyer - If we add this parcel, what we're doing is essentially
1712 allowing you to install a berm and a buffer in this area.
1713
1714 Mr. Pollard - We would be putting the berm in here irrespective.
1715 Once this office parcel is put in—Frankly, the plan is we would be extending that
1716 berm and buffer essentially all the way down the line. The landfill's really
1717 sensitive to what the view is going to be from the street.
1718
1719 Ms. Dwyer - What other impact would it have if we approved this
1720 1.38 acres, other than allowing you to extend the berm all the way along
1721 Darbytown Road?
1722
1723 Mr. Pollard - The only other thing that it would allow would be a
1724 little bit more elbow room in this corner of the landfill, in terms of the proposed
1725 build-out of the cell that would go in that corner. But it's mainly just a
1726 configuration issue. In other words, right now that cell would be very awkwardly
1727 designed. This just gives us a little bit more elbow room, allows, frankly, a little bit
1728 better positioning of an erosion sediment control pond in this area, give us a little
1729 bit more space to work that in the best way we can. Frankly, in that sense, it has
1730 that benefit to it.

1731
1732 Ms. Dwyer - Thank you.
1733
1734 Mr. Pollard - I'd say the only other think that's in the mix that we're
1735 showing is the design.
1736
1737 Mr. Nunnally - How close will that cell be to Darbytown Road?
1738
1739 Mr. Pollard - Well, with the buffers that are planned, sir, we would
1740 have 50 feet of natural buffer. This area, as you can see, is already heavily
1741 wooded. Rather than tearing down existing trees to put a berm in, we would
1742 probably just leave that existing 100 feet, basically. We would sort of keep it one
1743 hundred feet up and down the line. You have 50 feet along the road to begin with
1744 of natural, and then were we don't have good treeline coverage, based on design
1745 or future build-out, we would put the berm in. Where we know we're going to
1746 have the density of the trees left in place, we'll leave that in place because that's
1747 the best thing.
1748
1749 Ms. Dwyer - Any other questions at this time? Reserve the right to
1750 ask questions later.
1751
1752 Mr. Axselle - One other comment that I may add to Speaker's
1753 comment. The approval does give you the ability to place on TEEL certain
1754 conditions that are not in the current CUP. I think that's another advantage of
1755 the approval. Thank you.
1756
1757 Ms. Dwyer - Is there someone else to speak for the case? Is there
1758 a citizen here?
1759
1760 Female - I am not—[speaking off the microphone; inaudible.]
1761
1762 Ms. Dwyer - Okay.
1763
1764 Male - [Speaking off the microphone; inaudible.]
1765
1766 Ms. Dwyer - No sir. We're going to hear one side of the case, then
1767 we'll hear the other side of the case. We're going to do them in blocks so that we
1768 don't get confused. Come forward, ma'am. I'll give you two minutes. We are
1769 imposing time limits this morning.
1770
1771 Ms. Posenau - Let me run.
1772
1773 Ms. Dwyer - Well, time to get to the podium doesn't count.
1774
1775 Ms. Posenau - Good morning. My name is Gwen Davis Posenau—P-
1776 o-s-e-n-a-u. I am the proud mother of two children that have graduated at

1777 Varina, and one grandchild. I am a resident of this area on Darbytown Road
1778 since 1974, three different houses in three different locations on every side of
1779 this landfill. I'm a member of the Pioneer Baptist Church there on Darbytown
1780 Road further down. I run up and down Darbytown Road four times every day in
1781 every direction. I have a grandchild I take to preschool and pick back up. And
1782 then I go the other through the landfill to go to the City under the underpass,
1783 which other trucks—not the TEEL ones—try to go through and the County has to
1784 get them out. I am a registered Henrico resident.

1785
1786 I'm a part of this meeting to say that I know there is plenty of dust and plenty of
1787 noise. The landfill itself is not the only place that's creating the traffic. As has
1788 been brought to your attention, there are now six subdivisions which were not
1789 there. The landfill and I have been; the subdivisions were not. The subdivisions
1790 have created an enormous amount of this traffic because they also have to have
1791 trucks that bring fuel. They have to have maintenance and things of this nature.
1792 So the landfill vehicles are not the only trucks on this road. I would like to say
1793 from firsthand knowledge I'm very aware of the dust. My driveway and the
1794 landfill's driveway kiss. So, I have great experience with that.

1795
1796 The residents of the subdivisions are concerned about things that have nothing
1797 to do with this landfill. The County landfill is on the other side, and that's where
1798 an enormous amount of this problem comes from. The residents also state that
1799 it's a safety hazard. Well, the subdivisions themselves are the safety hazards
1800 because the residents won't stop at their stop signs. They pull out in front of the
1801 trucks, as well as other traffic. So the issues here are all being laid upon the
1802 landfill. The landfill, the company itself, is one of the most community oriented
1803 companies I have ever worked with or encountered. The opposition to this has
1804 kind of been blown completely blown out of proportion. I would like to see that
1805 the landfill employs a whole lot of people. If the residents would not make so
1806 many safety issues, we wouldn't have so many problems. I would like to see the
1807 County relocate the entrance; they've been working on that for several years.
1808 The speed limit on Darbytown Road should certainly be lowered. You have 55,
1809 45, 35, and 25 all on that one road. I do believe that the speed limit would be a
1810 great asset to the safety issues on Darbytown Road. There are many school
1811 buses. The other traffic is the residents that live in these subdivision. So I would
1812 like to say that I am not opposed to the landfill by any means. I am firsthand at
1813 everything with the landfill.

1814
1815 I appreciate your time, and thank you for taking this into consideration.

1816
1817 Ms. Harris - I have a question. One of the opposition letters had
1818 something to do with health issues. You live how close to the landfill?

1819
1820 Ms. Posenau - My driveway kisses the landfill driveway.

1821
1822 Mr. Blankinship - It's 1847.

1823
1824 Ms. Posenau - I am directly across. My daughter owned the property.
1825 We've owned it since 2001. My daughter and her son owned it from 1997.
1826
1827 Ms. Harris - So you have no health issues like asthma or
1828 breathing conditions in your family, right?
1829
1830 Ms. Posenau - Not from this. I am a cancer survivor. That did not
1831 come from the landfill.
1832
1833 Ms. Harris - Okay. The other question. The trucks from 4-ton
1834 trucks to 20-ton trucks would not bother you at all?
1835
1836 Ms. Posenau - The traffic on Darbytown Road, even the tonnage
1837 trucks are not all TEEL traffic. I sit on my porch; I see what goes by every day.
1838
1839 Ms. Harris - That was not my question.
1840
1841 Ms. Posenau - The traffic is bad, but, I mean.
1842
1843 Ms. Harris - That was not my question. To move from a 4-ton
1844 truck to a 20-ton truck—
1845
1846 Ms. Posenau - Which is a larger truck.
1847
1848 Ms. Harris - Much larger. Would that not bother you at all?
1849
1850 Ms. Posenau - I'm not excited that we're going to have huge, huge
1851 trucks, but that's a much bigger truck. I'm not envisioning the picture of that
1852 truck. I've been an insurance agent for years. We've written them. So you're
1853 saying the current large trucks that come in are how big?
1854
1855 Ms. Harris - Four tons, I believe.
1856
1857 Mr. Blankinship - I believe they have some 20-ton trucks coming to the
1858 property now.
1859
1860 Ms. Posenau - Yes, I'm thinking that we have big trucks that come in
1861 now all the time.
1862
1863 Mr. Blankinship - It's 4.8 tons now.
1864
1865 Ms. Harris - But to bring in this degree of tonnage would have to—
1866
1867 Ms. Posenau - I can't imagine it's going to be any different than it has
1868 been for the last seven years.

1869
1870 Ms. Harris - Thank you.
1871
1872 Ms. Dwyer - Ms. Posenau, how long did you say you've lived in the
1873 area?
1874
1875 Ms. Posenau - We bought the house August 8, 2001. I have been in
1876 the Varina area on Darbytown Road since 1974. My first house was on Eanes
1877 Lane on the other side of the landfill. My second house was on the other side of
1878 Darbytown Road across from Dorey Park. My church is right past Dorey Park.
1879
1880 Ms. Dwyer - Any other questions for Ms. Posenau? Thank you.
1881
1882 Ms. Posenau - Thank you very much.
1883
1884 Ms. Dwyer - The Board will take a five-minute break. When we
1885 come back, we will hear the opposition.
1886
1887 **CASE UP-017-09 EAST END LANDFILL, LLC, CONTINUES ON PAGE 43.**
1888
1889 **FIVE-MINUTE BREAK**
1890
1891 Ms. Dwyer - The Commission will reconvene. We had tabled your
1892 case, Mr. Baker. Was there any miraculous resolution?
1893
1894 **CONTINUATION OF CASE A-014-09, EMERALD LAND DEVELOPMENT, LLC,**
1895 **FROM PAGE 28.**
1896
1897 Mr. Baker - [Audio is not clear.] May I just remind you we had
1898 previously tabled and ultimately withdrawn the request in order to consolidate. I
1899 think it's reasonable where, obviously, there's the capability of doing that. The
1900 Redford's are very nice people, but I think the problem is they've run into a
1901 significant title issue. There was a former owner who was the parent of Mrs.
1902 Redford who passed away, leaving that to nine children, four of which are
1903 deceased, and multiple grandchildren. So I think the problem is we have no idea
1904 [unintelligible]. We have no idea whether Napier has spoken to someone who
1905 was not willing. Mr. Redford was [unintelligible]. So clearing the title, getting the
1906 approval of all interested parties represents a significant hardship in and of itself.
1907 It may not be resolved without [unintelligible] expense, and certainly
1908 [unintelligible].
1909
1910 Ms. Dwyer - The bottom line is, you don't want to defer it, you
1911 would like us to go ahead and make a decision today?
1912
1913 Mr. Baker - [Audio not clear.] Yes. I just don't see any
1914 [unintelligible] evaluate it. That's a significant title issue.

1915
1916 Ms. Dwyer - That's really all I needed to know. So if there's
1917 nothing else you wanted to add, we'll go ahead and make a decision on the case
1918 today.

1919
1920 Mr. Baker - I think that all I would add is that, again, that the test
1921 is evaluated as it stands. Were it a reasonable consolidation that could be had in
1922 a 30-day, or a 60-day continuance even, I think that would be something we
1923 would be willing to consider. But in this instance, the actual need to consolidate
1924 would represent a hardship in and of itself. So I thank you for your time.

1925
1926 Ms. Dwyer - Okay. Thank you. So that will close the Emerald Land
1927 Development case.

1928

1929 **DECISION**

1930

1931 Ms. Harris - I move that we deny this request. I do believe that it is
1932 self-imposed, the problems we're having here. I also feel that more working
1933 together to alleviate this particular problem would have been desirable.

1934

1935 Ms. Dwyer - We have a motion for denial. Is there a second to that
1936 motion?

1937

1938 Mr. Nunnally - Second.

1939

1940 Ms. Dwyer - Motion by Ms. Harris, seconded by Mr. Nunnally. Any
1941 discussion?

1942

1943 Mr. Wright - Hold on a minute; let me get organized here.

1944

1945 Ms. Dwyer - All right.

1946

1947 Ms. Harris - In discussing this, I think the land was purchased in
1948 1991, and it was a substandard lot at that time.

1949

1950 Mr. Witte - I'm familiar with the property and it's always been an
1951 eyesore to me. I think a new dwelling over there and the cleaning up of the area
1952 would actually be an asset to the neighborhood. I also don't think it's going to be
1953 affected adversely by its proximity to the isolated B-3 zoning on the corner at
1954 1501.

1955

1956 Mr. Wright - This lot has been there since 1800. It has basically
1957 residential property to the north and south, except for that little B-3 area there.
1958 You can build a residence on that lot that's 1519 that's right adjacent to the B-3.
1959 I think it satisfies the Cochran case because there is no other beneficial use of
1960 the property. It appears to me that this is something that should be.

1961
1962 Ms. Dwyer - Any other discussion? All right. We have a motion to
1963 deny the case by Ms. Harris, seconded by Mr. Nunnally. All in favor say aye. All
1964 opposed say no. The motion does not carry.

1965
1966
1967 Affirmative: Harris 1
1968 Negative: Dwyer, Nunnally, Witte, Wright 4
1969 Absent: 0

1970
1971
1972 Ms. Dwyer - Do we have a motion for approval?

1973
1974 Mr. Witte - Yes, I'll make a motion we approve with conditions
1975 attached by the Planning Department.

1976
1977 Ms. Dwyer - We have a motion to approve. Do I hear a second?

1978
1979 Mr. Wright - I'll second it.

1980
1981 Ms. Dwyer - Motion by Mr. Witte, seconded by Mr. Wright. Any
1982 discussion beyond what we've already had? All in favor say aye. All opposed
1983 say no. The ayes have it; the motion passes.

1984
1985 After an advertised public hearing and on a motion by Mr. Witte, seconded by
1986 Mr. Wright, the Board **approved** application **A-014-09, EMERALD LAND**
1987 **DEVELOPMENT, LLC's** request for a variance from Sections 24-95(c)(2) and
1988 (4) to build a one-family dwelling at 9724 North Run Road (Parcel 781-760-
1989 8299), zoned R-4, One-family Residence District (Fairfield). The rear yard
1990 setback and front yard setback are not met. The Board approved the variance
1991 subject to the following conditions:

1992
1993 1. This variance applies only to the front and rear yard setback requirements for
1994 one dwelling only. All other applicable regulations of the County Code shall
1995 remain in force.

1996
1997 2. Only the improvements shown on the plot plan and building design filed with
1998 the application may be constructed pursuant to this approval. Any additional
1999 improvements shall comply with the applicable regulations of the County Code.
2000 Any substantial changes or additions to the design or location of the
2001 improvements may require a new variance.

2002
2003 3. Any dwelling on the property shall be served by public water and sewer.

2004
2005 4. The covered front porch shall not exceed 6 feet wide by 4 feet deep.

2006

2007	Affirmative:	Dwyer, Nunnally, Witte, Wright	4
2008	Negative:	Harris	1
2009	Absent:		0

2010
2011

2012 **CONTINUATION OF CASE UP-017-09 EAST END LANDFILL, LLC, FROM**
2013 **PAGE 40.**

2014

2015 Ms. Dwyer - We will continue with The East End Landfill case. We
2016 had opposition. I will remind both sides that we had 22 minutes that we allowed
2017 for the case to be presented. We will allow a total of 22 minutes for the
2018 opposition. You might want to get together and make sure that everyone who
2019 wants to speak will have an opportunity to do that. That 22 minutes will not
2020 include questions. The Board will tend to not ask questions during the
2021 presentations and wait until later so that we can keep the time straight. So, will
2022 the opposition please come forward and state your case.

2023

2024 Mr. Leabough - Good morning. My name is Eric Leabough. That's L-
2025 e-a-b-o-u-g-h. I'll try to be as brief as possible. I hold in my hand a letter here
2026 from Supervisor Donati.

2027

2028 Mr. Blankinship - That's in your package.

2029

2030 Mr. Leabough - A letter of opposition to this particular landfill,
2031 although it specifically relates to DEQ. Let me go to this other letter that I have
2032 here from a state senator, who actually attended the public hearing that was held
2033 by DEQ on October 5th.

2034

2035 Mr. Blankinship - I don't believe I have a copy of that.

2036

2037 Mr. Leabough - Do you want to share that?

2038

2039 Ms. Dwyer - And who is that from?

2040

2041 Mr. Blankinship - Senator McEachin.

2042

2043 Mr. Leabough - Yes. Senator Donald McEachin; I'll say it in the
2044 microphone. I understand Mr. Axelle; I respect him as an attorney. I've worked
2045 with him on previous projects. But the key thing that he omitted in his
2046 presentation is that this is the only CDD landfill in Henrico, but there are others in
2047 the region that are able to serve the needs of the construction sites around this
2048 area.

2049

2050 The other issue that I'd like to bring to your attention is that although the case is
2051 not to hear concerns around truck traffic and things of that nature, the actual
2052 expansion of the site closer to Darbytown Road does impact the quality of life of

2053 the residents in those neighboring neighborhoods. There's a lady that spoke in
2054 favor of the landfill. She was the same lady that was on Channel 12, if I'm not
2055 mistaken, that had concerns about the truck traffic. And here today she sort of
2056 admitted that she did have concerns about the truck traffic. Although they're
2057 saying that they're going to have 20-ton trucks come in, there's no guarantee, to
2058 my knowledge, that those 4-ton trucks won't be committed to allow 4-ton trucks
2059 on the site.

2060

2061 When you look at economic and community impact or benefit, they say they
2062 have 27 full-time employees. Well, we have thousands of neighbors that are
2063 impacted by this landfill daily. In addition, in terms of County benefit, economic
2064 benefit, the County is second in the nation in fiscal strength, so this \$140,000
2065 they just contributed to the tax base of the County is a drop in the bucket in
2066 terms of the overall economic contributors to the County's tax base. We have
2067 thousands of residents that commit thousands of dollars annually to the tax base
2068 that have opposition to this landfill.

2069

2070 In addition, the landfill, although they dismissed it as something just to sweep it
2071 under the rug that they've been cooperating with DEQ on the violations. For a
2072 period of 1-1/2 years, they failed to correct actions that DEQ requested. So I
2073 wouldn't call them differences in opinion on what should have been done. There
2074 are certain permit requirements they did not adhere to. For a year and a half,
2075 DEQ continually came out month after month to inspect, and they ignored them,
2076 and disputed every issue that DEQ had. I use this analogy. If you're driving in a
2077 car and you break the speed limit, and you're stopped by the police, do you
2078 increase the speed limit so they stay within the realm of the law? No. You fine
2079 them, you penalize them. I would find it appalling that DEQ is even entertaining
2080 a permit request when they can't even adhere to the permit that they have in
2081 place.

2082

2083 My concern is if we expand the site—They have already violated the liner to
2084 protect the soil. They've had trash in the permit. I have it here, if you want to
2085 look at it. It's a 35-page report from DEQ on all the violations that they had. They
2086 haven't been able to keep the trash within the liners that they have on the site.
2087 So why give them another 1.3 acres, closer to our homes, to be able to
2088 contaminate the soil? It just doesn't make sense. I don't even understand why
2089 we're here today.

2090

2091 Focus on the 6.8 acres. It's continual increase after continual increase after
2092 continual increase. This is the third or fourth increase that they've asked for
2093 tonnage since 2005 when they bought the site. That's crazy. How every year
2094 you need more and more land. And then they said, well, this is just to give us
2095 more elbow room? The reality of it is they're going to move closer to Darbytown.
2096 That's not elbow room; that's amount of land that they can use to put trash in our
2097 neighborhood.

2098

2099 So I speak in opposition to this request. I'm very passionate about it. I'm not on
2100 the payroll of TEEL. I'm a neighborhood resident. I've only lived there for one
2101 year. And fortunately, we have people that are savvy enough to know what the
2102 issues are. All the people in that neighborhood don't know who to contact when
2103 there's debris on the road, or there are environmental issues, which there a
2104 number of factors that have contributed to health problems of the people in the
2105 area.

2106
2107 So, fortunately, whether it's today or next week, we are complaining today. It
2108 does not matter how long or how big a request they received, there is a
2109 complaint on the table today. We're here to see that they do not expand, and
2110 they do not get that DEQ approval to accept more tonnage.

2111
2112 Thank you. Would you all like to see a copy of this report? It's appalling?

2113
2114 Mr. Blankinship - We have it in the file. I don't believe we distributed all
2115 35 pages to the Board members.

2116
2117 Mr. Leabough - Okay, thank you.

2118
2119 Ms. Harris - Madam Chairman, it would be helpful if we could
2120 have the people who are speaking to identify where they live so we can see just
2121 what subdivisions are being affected.

2122
2123 Mr. Leabough - Yes. I live in the Midview Farms Subdivision. It's the
2124 newest subdivision in the area. I spoke about their contributing over \$140,000 to
2125 the tax base. Well, I find that it impacts my ability to resell my property when
2126 there are odors that I've witnessed. I've actually been to the site. It smells like
2127 cow manure.

2128
2129 Ms. Harris - The answer to the question was Midview Farms.

2130
2131 Mr. Leabough - Midview Farms.

2132
2133 Ms. Harris - That's what I need to know; thank you.

2134
2135 Mr. Leabough - Okay; I'm sorry.

2136
2137 Ms. Dwyer - Next speaker.

2138
2139 Ms. Jackson - Good morning. My name is Carol Jackson. I'm the
2140 president of the Oakland Chase Homeowners' Association. We are a 78-home
2141 subdivision that's built off of Midview. I am also the mother of twin boys that are
2142 students at Baker Elementary. They're nine years old. As a matter of reference,
2143 they were diagnosed with asthma this spring. One of my sons was just elected
2144 vice president of the student council. I am a member of the PTA for our school.

2145 I'm very concerned. I stand in opposition to this petition for any expansion of the
2146 landfill.

2147
2148 I bought my home in 2004, knowing that this landfill was there, and knowing it
2149 was a construction and under the auspices of which it should operate. I did not
2150 factor into the fact that they would expand and get bigger, and that it would be a
2151 landfill that would violate State law and County law, and not operate as a good
2152 neighbor. I was of the good faith and understanding that they would operate in
2153 that community as I would as a good neighbor. They have not done that.

2154
2155 As stated, there is a 35-page violation report. It's not differences of opinion. This
2156 is a company that brings in 45,000 used tires when their permit gives them the
2157 ability to bring in 1,000 tires. Can you imagine the impact on our community if
2158 there was to be a fire with these tires at this landfill, and our ability to breathe and
2159 function in this community? Forty thousand used tires on fire. And that had
2160 happened before. I have seen that on the news, and the chaos that it causes,
2161 and the livability—or shall I say the inability to live in communities after you have
2162 a situation like this. We can't say a fire would not happen here because they've
2163 had fires here. The fire department has come out for smoke coming from this
2164 landfill. Where there's smoke there's fire. That's cited in this report. And with the
2165 smoke comes the emissions that go into our air, and this affects our children; this
2166 affects us; this affects our community. We live here. We do not close our doors
2167 at 5:00 and leave. We live here. We pay taxes and entrust the elected officials
2168 to protect us with the laws that are on the books from our neighbor sometimes,
2169 and from the people who would come into our neighborhoods. We trust that this
2170 Board will do the same.

2171
2172 I would have no problem with the expansion of any business along Darbytown,
2173 whether it be Wyeth or Pfizer or any of the others, if they were good community
2174 neighbors. This company has not shown themselves to be that just by the
2175 magnitude of this report, and having to pay over \$100,000 in fines because of
2176 their opinions. It's not just about opinions. They bring in waste that is not
2177 approved from military bases to this site from Northern Virginia. That's in this
2178 report. I would hope you would look at this, and just really read this report and
2179 say, "Would I want this coming into my backyard and my neighborhood,"
2180 because we do not. I'm a responsible parent; I am a responsible citizen.

2181
2182 Yes, they have proposed to move the entrance to this entrance to this landfill,
2183 but from a parent and a citizen, I don't see where that solves problems. Because
2184 right now, the entrance is in front of a church, which basically would have traffic
2185 on a Sunday. They're now moving the entrance in front of a subdivision that has
2186 300 homes where people use that street directly in front of this entrance. If you
2187 could show that, and show that intersection, and all those homes, and those
2188 school buses, and those families and minivans who will be coming out of that
2189 subdivision of 300 homes, competing with these 20-ton trucks to get onto
2190 Darbytown Road. Nobody has made mention of that. That is unfathomable.

2191 How can that be a better option, to move it from in front of a church to in front of
2192 a 300-home subdivision where there are school buses, and traffic issues already
2193 in the morning as I witness taking my children to school, and seeing traffic trying
2194 to get in and out on those high-traffic times of day. I just don't see that as being
2195 an option or a fix, and will make everyone happy, and take care of all the
2196 problems. That is not it. I don't know who recommended that or who approved
2197 that.

2198
2199 But I also think that if you would look at the report that the County staff did,
2200 they're not recommending this expansion either. They're proffering all these
2201 conditions that this company should be able to operate under because they
2202 know they're not good corporate citizens, and that anything that has to do with
2203 them needs to be in writing and enforceable by law. So it needs to be in the legal
2204 documents. You probably need to put a thing in there, too, please don't run over
2205 the school buses as you come in and out of this new exit, and don't run over the
2206 minivans with these big 20-ton trucks. So if County staff cannot have the
2207 conscience to recommend this—Hopefully they live in the County or they live
2208 near here. If the people who live there, and the people who represent that area
2209 cannot support this, I don't see how this body should. This is our home. It is
2210 impacting us in a negative way. I'm really not concerned about how much money
2211 they give to support any charity or anybody else, not when I'm having to suffer
2212 the consequences of their actions or inactions.

2213
2214 That's all I would like to say, but I really would like for you to reconsider this new
2215 entrance will satisfy everybody. I live in one of the subdivisions that would be
2216 impacted by you moving it from the Bickerstaff/Darbytown entrance. I don't feel
2217 like it's fair to take it and dump it in front of the Darbytown Meadows residents
2218 either, at their doorstep, where there are school buses for Baker Elementary,
2219 Rolfe Middle School, and Varina High School. Those three schools are within a
2220 mile of this facility. To think about expanding their operations to allow them to
2221 bring in more of this who knows what? Because what the paperwork tells them
2222 they can have, as we all see from this report, they figure they can have more of
2223 the tires and the military waste debris, and everything else that is not in their
2224 permit. We do not want that in our community. I would just ask that you give that
2225 consideration for the people that live there, and the children that will be
2226 impacted, the schools that will be impacted by this decision. Thank you.

2227
2228 Ms. Harris - Question. You want us to hold our questions until
2229 they conclude?

2230
2231 Ms. Dwyer - I'll stop the timing now.

2232
2233 Ms. Harris - I just have two quick questions, I hope. Fergus
2234 Boulevard where it intersects Darbytown Road, how far is that from Baker
2235 Elementary School?

2236

2237 Ms. Jackson - Half a mile.
2238
2239 Ms. Harris - Half a mile? Okay. And Oakland Trace, is that at
2240 Bickerstaff?
2241
2242 Ms. Jackson - Bickerstaff and Midview.
2243
2244 Ms. Harris - And Midview?
2245
2246 Ms. Jackson - Yes.
2247
2248 Ms. Harris - Okay. You said that you had—three questions. You
2249 said you had information on how many used tires were being dumped there.
2250
2251 Mr. Blankinship - That's it. The DEQ consent order. The consent order
2252 is in the file.
2253
2254 Ms. Jackson - Their permit says 1,000.
2255
2256 Ms. Harris - Thank you.
2257
2258 Mr. Blankinship - Madam Chairman, can I respond just to the questions
2259 about Fergus Boulevard, while they're on the table.
2260
2261 Ms. Dwyer - All right.
2262
2263 Mr. Blankinship - Just to explain the staff's point-of-view on that. Let
2264 me also begin by saying the Fergus Boulevard entrance is not the primary
2265 question before the Board today. They could rule in favor or in opposition of that,
2266 but that's not really what brought us here today. They already have approval to
2267 use Fergus Boulevard.
2268
2269 Fergus Boulevard has three big advantages over the existing entrance. One is
2270 that it's closer to Laburnum Avenue, which is where most of the truck traffic is
2271 coming from and going to. So just by shortening that trip, we're taking truck miles
2272 off of the road. Second is that the entrance is not directly from the landfill
2273 property onto Darbytown Road. As it is today, they come right off landfill property
2274 and they're on the narrow portion of Darbytown. Whereas on Fergus, they'd
2275 come off of their property onto a state road quite some distance before they get
2276 onto Darbytown. Most important is that the intersection of Fergus Boulevard and
2277 Darbytown was originally designed and constructed as an industrial intersection.
2278 It serves a four-lane section of road. The only thing back there is the Virginia
2279 Power plant, but you wouldn't believe that just from looking at the intersection
2280 because it's a large industrial intersection that has wide turn lanes, and was
2281 originally designed and constructed to handle large, heavy truck traffic. The

2282 entrance that they have now was not designed or constructed to handle that kind
2283 of traffic as adequately as Fergus.

2284

2285 We certainly don't think that that is the solution to all the world's problems, or
2286 that that makes any of these issues go away, but I think it is staff's perspective
2287 that—looking at it from everyone's perspective, not this person's versus that
2288 person's, but looking at it from the broad, general view, the Fergus Boulevard
2289 entrance would be much safer than the existing one.

2290

2291 Ms. Jackson - Have you checked with the school system in terms of
2292 the school buses that come out of the 300-home subdivision, and the traffic
2293 impact on those buses competing with 20-ton trucks to get onto Darbytown? And
2294 I understand what the original use of that street may have been at the time it was
2295 so designated, but change happens, and change has happened in this
2296 community, and it was changed into a more residential suburban subdivision
2297 type of a community. So we would just ask that this body keep that in mind, that
2298 we can coexist but for the proliferation of this negative commercial development
2299 and all its impacts, that that be taken into consideration. Because change has
2300 happened.

2301

2302 Mr. Blankinship - Yes ma'am.

2303

2304 Ms. Jackson - There are now families over there with many children
2305 and school buses serving all of these schools coming out of there. And the
2306 school staff probably should have been contacted by your staff to see the impact
2307 of 20-ton trucks.

2308

2309 Mr. Blankinship - Yes ma'am. I don't mean to take anything away from
2310 your opposition, I just wanted to answer the question from the staff's perspective.
2311 Your opposition stands in the record.

2312

2313 Ms. Jackson - Thank you, sir.

2314

2315 Ms. Dwyer - Just a minute. While we have a moment here. Mr.
2316 Blankinship, since we didn't have a staff presentation on this case, I wonder if
2317 you would clarify for us the issues, again, that are before us today. We've
2318 already established it's the 1.38-acre parcel that they're asking to integrate into
2319 this development. But there's also a question before us about expanding into cell
2320 7, as I understand it. Could you clarify that?

2321

2322 Mr. Blankinship - Yes. This is an exhibit from the previous use permit
2323 approval. This is the existing use permit here, and it shows cells 1 through 6 as
2324 area that has been approved for land filling as of now. And you see clearly the
2325 1.38-acre parcel there with what was a house and is now an office on it. That
2326 parcel under the existing previous approval of the use permit is not within the use
2327 permit at all. So there are two different boundaries, the land that is covered by

2328 the use permit, and smaller than that, the land that is approved for land filling
2329 within the existing use permit. Now Paul, if you would switch back and give me
2330 the site map from today's case. You'll still see cells 4, 5, and 6, which are the
2331 existing approved ones there. And then you also see cell 7. And you'll notice that
2332 within cell 7 over toward Darbytown Road, you do not see the 1.38-acre office
2333 parcel. So the approval today would bring that 1.38-acre parcel into the boundary
2334 of the landfill use permit, and would approve this entire cell 7 area as part of the
2335 property that can be used directly for the landfill operation. Waste can be put in
2336 that cell 7. Under the existing approval prior to today, they do not have approval
2337 to put waste in what is shown as cell 7 on this map. That's the main question
2338 that's under review today, will they be allowed to bring waste into what is shown
2339 as cell 7.

2340
2341 Ms. Dwyer - Thank you. Any questions for Mr. Blankinship on
2342 that? I think that was an important point to clarify.

2343
2344 Mr. Wright - I have one question. Could it be possible to move cell
2345 7 back to where cell 6 starts? There's a distance from Darbytown Road where
2346 cell 6 is.

2347
2348 Mr. Blankinship - Yes sir. The Board could approve a lesser area
2349 included within the area the applicant is requesting.

2350
2351 Mr. Wright - How far is it from cell 6 to Darbytown Road?

2352
2353 Mr. Blankinship - I'm going to guess about 300 feet.

2354
2355 Ms. Dwyer - Which part of cell 6?

2356
2357 Mr. Wright - I'm talking about the part closest to Darbytown Road.

2358
2359 Mr. Blankinship - I'm going to guess that it's about 300 feet.

2360
2361 Mr. Wright - Looks like to me that would be more appropriate than
2362 putting it right up on Darbytown Road.

2363
2364 Ms. Dwyer - Any other questions on that point?

2365
2366 Ms. Harris - Yes. Have you had anyone to look at this recently to
2367 notice that some activity is going on right in this area?

2368
2369 Mr. Blankinship - Yes ma'am. We've been out there on an almost daily
2370 basis.

2371
2372 Ms. Harris - What activity is going on?

2373

2374 Mr. Blankinship - They are doing some clearing and some removal of
2375 some wetlands. Some of the wetlands are being retained and some of them are
2376 being removed, and they are putting in a storm water management pond for their
2377 erosion and sedimentation control. They do have an approved erosion
2378 sedimentation control plan to do that with. But they do not have any authority to
2379 put waste in that area that they've just recently cleared.
2380

2381 Ms. Dwyer - Thank you, Mr. Blankinship. All right. No sir. We have
2382 someone at the podium. Would you like to make a comment please? Sir, you
2383 may come forward and speak in lieu of the person at the podium.
2384

2385 Mr. Leabough - The real issue I have is that cell 5 and 6 they don't
2386 have permission to use by DEQ.
2387

2388 Mr. Blankinship - But they're in the permitting process. They have their
2389 request filed.
2390

2391 Mr. Leabough - They don't have approval to use that.
2392

2393 Mr. Blankinship - They have their Part A to construct those; they don't
2394 have the Part B to begin—
2395

2396 Mr. Leabough - To begin using it. So essentially, they're looking at
2397 constructing on 5, 6, and 7. It's tremendous how cell 7 is probably four times the
2398 size of any other cell on the site. They're growing by leaps and bounds. They
2399 have only been open since 2005.
2400

2401 Ms. Dwyer - Let's see, that was Mr. Leabough who just spoke, for
2402 our records and recording. Okay, ma'am.
2403

2404 Ms. Agee - Good morning. My name is Eva Agee. I live in the
2405 Almond Creek subdivision, which is back-doored, I would say to this landfill,
2406 which would be adversely impacted by the expansion of this landfill. My
2407 backyard, if I threw a rock real, real hard, I could throw it over to the landfill.
2408

2409 I'm going to try to touch on some of the issues that my neighbors, and now new
2410 friends, have tried to get you all to understand. One of the first things that I want
2411 to say is that when you have a home, your home should at least allow you quiet
2412 enjoyment. And there is no quiet enjoyment in any of the surrounding
2413 subdivisions when 20-ton trucks start hitting airbrakes before 7:00 in the
2414 morning. The landfill opens at 7:00 AM. You all are allowing them, or DEQ is
2415 allowing them, or somebody is allowing them a 2,500-foot road to stage trucks
2416 on. So when the gate opens at 7:00 AM, how many trucks are already going to
2417 be on that 2,500-foot road ready to go in that landfill, and ready to start dumping
2418 construction debris? They want to call it construction debris, but construction
2419 debris does not attract buzzards. And we've had them just all over, and it's a

2420 frightening thing. At the public hearing, we had people testify that they're afraid to
2421 let their children and grandchildren go out into their backyards because of the
2422 proliferation of buzzards. I used to see seagulls; I haven't seen any lately. So the
2423 buzzards have taken over.

2424

2425 But 20-ton trucks. They tried to cover the thing up, 7900 vehicle going up and
2426 down Darbytown Road is only going to be a 3.8% increase. But what their math
2427 said was that there are currently 376 4.8 ton trucks moving in and out of that
2428 landfill. And because they want to increase the tonnage to 20.2-ton trucks, that
2429 now there are only going to be 346 20-ton trucks coming in and out of that
2430 landfill. And I say, and I'm gonna repeat what my sister, Carol, said, and what
2431 brother Leabough said. There is no pleasant mix between a 20-ton truck and a
2432 school bus and little children. The little children come out in the mornings first.
2433 At 7:00 AM it is almost still dark, that's when the buses—and some of those
2434 buses actually stop on Darbytown Road. Winding Woods and Eagles Nest, the
2435 children are standing out on Darbytown Road. So your movement of this landfill
2436 entrance to Fergus Boulevard adversely impacts those two subdivisions, as well
2437 as Darbytown Meadows. And little children are standing out almost on the
2438 highway first thing in the morning when those trucks are going to be rushing in to
2439 dump their first load so they can rush off to get their next load. So, I reiterate,
2440 there's no quiet enjoyment of your home with 20-ton trucks are running up and
2441 down the road.

2442

2443 The second thing that I want to say is that—and I may have said more than two
2444 things. But the second thing that I want to say is that at the public hearing, one
2445 of our neighbors testified that she's lost over \$100,000 value in her home since
2446 they tore down the trees and exposed all of the building and renovations that
2447 they were doing at this landfill. So the value of our homes is being adversely
2448 impacted by the expansion of this landfill. How do you justify somebody losing
2449 \$100,000. She paid \$200,000, \$300,000 for the house and now she can't sell it
2450 when the real estate agent was bringing people there to show them the house,
2451 all they had to do was look up. They put a 50-foot berm to cover a 300-foot
2452 monstrosity going towards the sky. The math doesn't add up. A fifty-foot berm
2453 with 25 feet of trees only adds up to a 75-foot obstruction trying to cover a 300-
2454 foot obstruction behind it. If you drive down Oakland Road, it's there. You can
2455 look up as high as you can see and all of that construction with trucks and dust
2456 and stuff coming off of the top of it is there. So the fact that they're saying, well,
2457 it's a little bit of dust, or it's a little bit of traffic, you know, and the traffic is only
2458 going to be adjusted by 3.8%, it's dishonest. It's not honest at all.

2459

2460 They minimize what they want to take into that landfill. They told us at the public
2461 hearing that they were bringing in construction debris. They used the building of
2462 White Oaks as the place where some of the debris originated. But in this report,
2463 it says that it comes from some type of transfer station, which they didn't tell us.
2464 We found out that they're bringing in asbestos. What do they do with asbestos?
2465 It has to be getting into the air, and it has to be impacting us somehow. There's

2466 leachate runoff that I don't understand; somebody does. Got a vague report that
2467 some runoff is being emptied straight into Almond Creek. How is that impacting
2468 our groundwater? Nobody has said. They're trucking in water from one of the
2469 water companies, buying water to drink for themselves because they're afraid to
2470 drink the water that is coming out of the septic tanks or the wells that they said
2471 they have use of.

2472
2473 So I'm certainly opposed to this thing, and I mean vehemently opposed, that you
2474 can allow a four-time increase in the amount of debris that this landfill is going to
2475 be allowed to take in when they haven't shown, as we've said, good citizenship
2476 in the 950 tons that they've been taking in. They've talked about making 70
2477 million dollars last year, and they, what, paid a hundred and some thousand
2478 dollars? I don't know what that hundred-and-some thousand dollar figure was.
2479 But it's hardly a drop in the bucket for the amount of money that they are making
2480 over there. So if they're making 70 million now, and you all allow them a four-
2481 time increase, are they going to be making four times the money at our
2482 expense? You can't come out in your backyard and enjoy your backyard. The
2483 church directly across the street from them, the minister there said he's gotten
2484 kids to power wash his church four times—three or four; I don't want to lie on
2485 him—three or four times. And I power washed my house this summer. And a
2486 month later, it looked like it hadn't been touched. So please consider not giving
2487 these people the option that they're looking for to expand into cell 7. Their little
2488 artificial mesh fence that they've put up has already fallen down. No protection
2489 for the little children who are going to be curious, that are going to come over
2490 there and want to go either under or over that little mesh fence. And the fact that
2491 it's already fallen doesn't speak too highly of their citizenship. Please, not in our
2492 backyard. Thank you.

2493
2494 Ms. Dwyer - Thank you, Ms. Agee. Any questions for Ms. Agee
2495 before she sits down? Thank you, ma'am. The opposition has six minutes.

2496
2497 Mr. Silver - My name is Asberry Silver. I live in Midview in Varina
2498 Station. My concern is with the person who said she is in favor of it. She's right
2499 there in front of it. Her house is very dirty. I've parked in front of her house and
2500 observed the dirt on her house. Now, I live in Midview in Varina Station. I power
2501 washed my house four times in the past three years, and that's costing me like
2502 over a thousand dollars. But to say more, it has affected the neighborhood with
2503 sinus and respiratory problems for kids in that area. I include myself and my
2504 wife. Once I power wash my house, I feel better for a while. But with that wind
2505 blowing, the dust is back on their again. Like I'm congested right now. But my
2506 concern is also that we don't want them to bring any more debris in that
2507 neighborhood. As far as trucks, I want them to be eliminated and minimized.

2508
2509 Second is, we need to think about the neighborhood, the community with the
2510 kids. The school situation we have over there is already overcrowded. The traffic
2511 is already tremendous. So we have a lot of issues going on in the area. I don't

2512 think anyone here lives there to see what we're talking about. Everybody that's
2513 speaking doesn't live in that neighborhood, that's coming to try to put this in our
2514 neighborhood. But everybody that has spoken in opposition lives there. We know
2515 what's going on. We need to take opposition to what they want and start to
2516 minimize what's going on in the East End.

2517
2518 I've lived in the East End since 1980. I moved into this neighborhood in 1996. I
2519 didn't see this problem until the past five years. It started increasing because of
2520 the neighborhoods and the families that are coming in. The value of our homes
2521 is going down. My neighbor next door just had to decrease his house by
2522 \$20,000 just to sell. That house is valued at 260, now he went down to 190.
2523 Now he had to sell his house at 180. You can imagine if I tried to sell my house
2524 what I could sell it for. I just ask that we don't give these people what they want.
2525 I'm in opposition of it. And my last name is Silver—S-i-l-v-e-r.

2526
2527 Ms. Dwyer - Thank you, Mr. Silver. Any questions for Mr. Silver?
2528 Anyone else to speak? Three minutes.

2529
2530 Mr. Willis - Good morning. My name is Paul Willis, and I live in
2531 the subdivision Almond Creek, 1736 Almond Creek North Terrace. I live about
2532 approximately 20 seconds from the landfill. I come up my subdivision and I can
2533 see the landfill very clearly.

2534
2535 One of the things I wanted to mention is when a company comes up to ask for a
2536 conditional use permit, the Zoning Commission has to make a decision whether
2537 to grant it. One of the stipulations is will it adversely affect the health and the
2538 quality of life in the neighborhood, and the safety and the welfare. One point I
2539 want to bring out first of all, more traffic will affect the quality of life in the
2540 subdivisions surrounding this landfill.

2541
2542 Another thing, increased tonnage is not acceptable to us. Mr. Axelle says they
2543 try to monitor the dust. You cannot monitor airborne dust. I come out of my
2544 house every day and wipe my vehicles off. I wipe off dirt off my vehicles every
2545 morning. I imagine the dirt is flying in the air. As you inhale it, it's going inside
2546 your lungs.

2547
2548 Number three, increase the tonnage, you know, less than 1% now. But what is
2549 TEEL's future plans for this? If you grant them to increase it 1% now, and they
2550 want to expand more cells—let's do the math—they're going to ask for another
2551 increase in the future.

2552
2553 Also the trees and the wetlands. He put up a 10-foot mound of dirt. That's what it
2554 looks like. You can see the dirt without a problem.

2555
2556 As my other neighbors said, we have a bunch of kids that live over there. In
2557 Almond Creek, there's probably about 200 or 300 homes. My youngest son is

2558 17 and he's graduating from Varina High School. There are going to be like 400
2559 to 500 graduates. After him, there's about another 500 to 600 kids that go to
2560 Baker and John Rolfe schools there. So all those kids ride their bikes around.
2561 And, of course, as a child, you're going to absolutely wander into this landfill.

2562
2563 Also as my other neighbor said, the payment of fines was \$110,000 from DEQ.
2564 There is no consideration compared to the amount that this company actually
2565 takes in.

2566
2567 Lastly, construction debris consists of any type of thing you could imagine.
2568 When you demolish a building, whatever is in the building is taken out. No one
2569 looks at what's actually taken out of the building. So all the debris is put in there.
2570 That's what construction debris is.

2571
2572 That's all I have to say right now. I'm opposed to his landfill.

2573
2574 Ms. Dwyer - Thank you, Mr. Willis. Any questions for Mr. Willis?
2575 The applicant now has five minutes reserved for rebuttal.

2576
2577 Ms. Harris - They have some questions.

2578
2579 Ms. Dwyer - Not according to my clock. I've been fairly generous.
2580 Oh, Mr. Donati, would you like to speak? I'll give you a minute.

2581
2582 Mr. Donati - Madam Chairman, Board members, I'm Jim Donati,
2583 member of the Board of Supervisors representing the Varina District. Thank you
2584 for allowing me time just to be real brief here.

2585
2586 This is the first time I've been before this body since I've been on the Board of
2587 Supervisors, but I felt compelled to be here this morning on behalf of the citizens
2588 that just recently spoke. I echo all their comments. I think one of the most
2589 important factors our Board tries to recognize is public safety and education. And
2590 certainly public safety is the question here today.

2591
2592 TEEL said if they get their increase from DEQ, which is from 900 tons a day to
2593 3500 tons a day, that their truck capacity wouldn't increase anymore than 348
2594 trucks a day. I'm very familiar with trucks, and have been around that industry
2595 before. I have observed this area quite a number of times in the last couple of
2596 months here. I don't think you can get any larger trucks than are going in there
2597 today; it's a tractor and trailer. And they're walk-in floor trailers that carry the
2598 debris in. If my calculations are right, if they increase their tonnage per day four
2599 times, that truck count would be up around a thousand trucks a day. And that's
2600 not counting the dump trucks that have to go in there every day that are taking fill
2601 dirt to actually fill the debris that has been disposed of in the landfill; that's a
2602 requirement by DEQ. So you have an array of trucks.

2603

2604 I just recently had staff do a traffic count just a few weeks ago. In that general
2605 area, 300 feet south of Bickerstaff Road, there's 7662 cars a day. Of those,
2606 there's 539 trucks. So there is a tremendous amount of trucks in that area. There
2607 are new subdivisions that we just recently approved zoning for below this Fergus
2608 Boulevard. It's really a traffic concern of mine, and I would just appreciate it if you
2609 would not grant this request today. This one little acre is actually a huge part of
2610 this whole program that DEQ is actually addressing, too, as we speak. And I've
2611 made my provision to DEQ.

2612

2613 Thank you for your time.

2614

2615 Ms. Dwyer - Any questions for Mr. Donati? Thank you, sir. Now.
2616 Mr. Axselle, if you would like. I'll add two minutes to your rebuttal time.

2617

2618 Ms. Harris - We still have not addressed our questions to Mr.
2619 Axselle.

2620

2621 Ms. Dwyer - Right.

2622 Ms. Harris - Before he rebuts, I was thinking that there are some
2623 other questions you need to answer that you might want to include in your
2624 rebuttal.

2625

2626 Mr. Axselle - If I may, it may be that others here will need to
2627 answer them if it's something that I'm not as familiar with.

2628

2629 Ms. Harris - That's fine; whatever.

2630

2631 Ms. Dwyer - Ms. Harris, are you asking—

2632

2633 Ms. Harris - Ask a question. Yes, if I may. So that when he
2634 rebuts, or whoever will rebut, they will have all of the questions answered.

2635

2636 Mr. Axselle - I don't see it that way. I would prefer just to make
2637 some general comments and then answer question by question to get the right
2638 person up to answer.

2639

2640 Ms. Harris - That's fine.

2641

2642 Mr. Axselle - In a bit more global as a summary, let me kind of give
2643 you a couple things. We initiated the move to Fergus Boulevard for the reasons
2644 that Mr. Blankinship spoke. I would add another one. It does take the traffic—
2645 trucks of whatever size—away from the subdivision, 6 of 7 that have complaints.
2646 I think that's part of the effort that we're trying to make. We would be glad to
2647 have you add a condition that after that relocation is done that we would not
2648 have any trucks come to the Fergus Boulevard entrance from the City of
2649 Richmond.

2650

2651 Do keep in mind that on the expansion issue of tonnage—and that’s really the
2652 issue before DEQ—when the Department of Public Works, the County’s
2653 Department of Public Works looked at it, and looked at the numbers, they said—
2654 and I repeat the quote—“Since this expansion is not expected to adversely
2655 impact the existing local traffic volume, road congestion, or highway safety on
2656 Darbytown Road. There are no new points or ingress/egress. We have no
2657 objections to this proposal.” So the County Department of Public Works, looking
2658 at it from the standpoint of volume, road congestion, and safety, did indicate that
2659 they had no objection to this request in the matters before DEQ now.

2660

2661 As far as the berm, currently the CUP does not require this type of berm. The
2662 berm we’re suggesting, and your staff is suggesting, is taller than what you would
2663 normally have. It exceeds all County standards for berms. The berms are in—
2664 mostly all of them in. And we were prepared to put them in and put in the
2665 plantings now, but staff suggested we wait until after this, so we want to be able
2666 to do that.

2667

2668 As far as safety, the lady makes a good point, and one we’ve already
2669 contemplated. The property will, in fact, have a fence around it to protect people
2670 who may want to wander onto it.

2671

2672 There are a lot of misstatements about what can and cannot be accepted on the
2673 site, and I really can’t get into all of those. But they can’t accept just anything that
2674 comes in. They can accept asbestos, non-fiber asbestos, but under certain
2675 standards and so forth.

2676

2677 Do keep in mind that the numbers that are in the report are the maximum
2678 capacity at the average, and that won’t be every day. Mr. Donati has the
2679 calculations done, and I’m sure they’re accurate. He has about 7762 vehicles
2680 and 539 are trucks. If you remember, the earlier testimony is that we estimated
2681 at about 3.8 or 4% of those total vehicles, not just the trucks, are for TEEL.

2682

2683 So we would like to ask that you consider this. The expansion issue is more
2684 before DEQ. We want to think it’s best for you to address the land use type of
2685 issues. This is the only CDD landfill in the County. It’s the only one that does this
2686 extensive amount of recycling, the only one LEED certified in the state, we
2687 believe. It does need to expand, but the expansion is up to DEQ. And the traffic,
2688 Department of Public Works of Henrico County has indicated they have no
2689 concern about that. No *opposition* is probably the better word there.

2690

2691 Madam Chairman, we’ll be glad to respond to any questions.

2692

2693 Ms. Harris - Okay. The use permit states that you want to add this
2694 parcel, 808-708-0513. I’m trying to address this request. We’re concerned about
2695 the health, safety, and welfare of residents. Condition #19 that deals with the

2696 boundaries. Condition 19 states that you have some restrictions for 150 miles of
2697 the site. Okay. We notice in the information here that transfer stations are going
2698 to be giving you debris to bring to this site. How do we know the boundaries of
2699 the transfer stations? In other words, is this area being used to bring in debris
2700 from out of state? How do we know what kind of control we have over this?
2701 Condition 19 says 150 miles. But your plan is to use transfer stations. How do we
2702 know where that debris is coming from?

2703
2704 Mr. Axselle - Condition 19 does state the landfill shall accept only
2705 construction, demolition, and debris waste originating within 150 miles. So, if it
2706 originated outside the 150 miles, it could not be accepted regardless of where
2707 the transfer station is. Obviously, if you have a lot of trucks coming in and out, it
2708 creates the traffic. So the more common way now is using transfer stations
2709 where things go to a transfer station and then it's transported in, which creates a
2710 lesser number of trucks. But the requirement that's in there now, we will have to
2711 and need to comply with that. Regardless of where the transfer station is, the
2712 debris itself, the waste, has to be originated within the 150 miles.

2713
2714 Mr. Blankinship - How does TEEL know that it's complying with that
2715 condition today?

2716
2717 Mr. Axselle - Let me get Matt. Matt, the question is how does
2718 TEEL know that it complies 150 miles now and in the future?

2719
2720 Mr. Appelget - We have control over the origin point of the waste, so
2721 we would only pick up at a transfer station that falls within that 150-mile radius.

2722
2723 Ms. Harris - We know that you will only pick up debris from the
2724 transfer station that is within 150 miles, but how do we know that the transfer
2725 station—What is the radius, the boundaries for the transfer station?

2726
2727 Mr. Appelget - That depends on the permit of that transfer facility.

2728
2729 Mr. Axselle - But we would only pick up from those transfer stations
2730 for which their permit says they can only accept within the 150 miles. That's the
2731 control.

2732
2733 Ms. Harris - Okay. I think you've answered that question. If the
2734 residents are saying that you are not good neighbors and not good citizens, have
2735 you met at all with the residents of these various subdivisions?

2736
2737 Mr. Axselle - Matt Appelget can tell you better. He works very
2738 closely with the churches, the ones in closest proximity. After their complaint
2739 was filed, we hosted a meeting at which representatives of those subdivisions
2740 were there and voiced concerns that we've heard today, and they voiced to DEQ,
2741 and then voiced to you. Today was, obviously, consistent with the structure

2742 here, which allowed a little more give and take. But we have met with them. We
2743 were not aware, quite frankly, of the extent of any concerns from the community
2744 until some of the trees went down, as I said, and before the berms could go up,
2745 and then the DEQ expansion filing was posted. Then I think there's an effort by
2746 them, and not improperly so, to express their thoughts.

2747
2748 Ms. Harris - In meeting with them, have you made any
2749 adjustments to anything that you've been doing?

2750
2751 Mr. Axelle - Yes. We have expanded the berms. We asked them
2752 if they wanted a permanent fence with a mesh on it; they said no, so we did not
2753 do that. We've expanded the berm, expanded the height of it, we expanded the
2754 number of plantings. We told you about Fergus Boulevard. We thought that was
2755 something that would help because it takes the truck traffic away from those
2756 subdivisions—all but one of them. We've not offered to you that we will put in,
2757 as part of that, or asked you to put into that a condition that no trucks of any size
2758 or nature coming to or from the TEEL property would come from the City on
2759 Darbytown Road. Most all of them don't know, but we wanted to condition that in
2760 that respect.

2761
2762 Ms. Harris - The 35-page report that was mentioned, do you
2763 dispute that report, the findings of that report? There were some offenses for the
2764 \$100,000 fine. But first of all, let me deal with the 35-page report. You have a
2765 copy of that, do you not?

2766
2767 Mr. Axelle - I've asked Speaker Pollard to speak to that. While
2768 he's coming up, I'll tell you that TEEL did not admit any fault, but did enter a
2769 consent order, which does call for some civil charges that have been paid. The
2770 most important thing is that this has resolved that issue to the satisfaction of
2771 DEQ. And more importantly, they put in place certain standards going forward,
2772 and thus that's why Harry, who has been in that department long before he
2773 retired, is now working with TEEL in helping to oversee it. But I'll let Speaker
2774 Pollard speak to that because he was there.

2775
2776 Mr. Pollard - Bill, in the course of I would say the last year, year
2777 and a half, there were a number of issues that came up with DEQ, some of
2778 which dealt with interpretations or different interpretations of the characterization
2779 of certain materials that were coming into the landfill as to whether they were
2780 waste or excluded from being waste. In other words, were they solid waste at all
2781 to begin with. Some others dealt with heights and elevations of the landfill, and
2782 the timing of when material had to be there, or could be moved around. And
2783 there were some other points as well.

2784
2785 Frankly, TEEL was trying to work through those issues with DEQ, trying to
2786 explore with them the interpretation issues. At the same time, DEQ was I would
2787 say regularly coming out and visiting and inspecting the site, repeating some of

2788 the same alleged violations from inspection to inspection as we were trying to
2789 work through those issues. So, in some ways, what you're saying, if you talk
2790 about the number of the violations, a lot of those are repeats on the same issues
2791 that we were trying to work through with DEQ. And there were some other issues
2792 that I think TEEL recognized it could have done better. No facility is perfect, but
2793 they are trying to do the best they can, and try to comply in all ways that they
2794 could. The bottom line is, as that process unfolded, the facility believed it was in
2795 its best interest to try to resolve these issues with DEQ as amicably as possible,
2796 and entered into the consent order to do that. In the consent order, there are
2797 alleged violations. TEEL did not admit to those, because we still disagreed with
2798 some of the underlying interpretations. But we settled those issues with DEQ.
2799 We paid civil charges accordingly. And there is a schedule of compliance in the
2800 back that deals with how to resolve those issues going forward. Certain
2801 additional steps, additional measures that TEEL will implement over time. And
2802 TEEL is on track to do those things. And has been mentioned, Harry is helping
2803 with doing a pretty thorough review of TEEL's own procedures to make sure we
2804 are doing things the best that we can. I would say in that sense, from DEQ's
2805 standpoint on the violations, the book has been closed, but we have these going-
2806 forward issues or obligations that deal with those to try to put things back on
2807 track.

2808
2809 Ms. Harris - Attorney Pollard, Attorney Axelle, one last question.
2810 With the number of landfills in Varina—I think the report said something about
2811 six—why expand in the Varina District? Is it a dollar thing as opposed to the
2812 welfare and the health and the well being of citizens? Why expand in the Varina
2813 District?

2814
2815 Mr. Pollard - Sure. I can only speak to the TEEL facility. This is an
2816 existing landfill. It's been an existing landfill for many, many years. The need for
2817 landfill space for construction/demolition debris in particular is still there. While
2818 we are in a little lull right now, that will come back at some point. This is the only
2819 CDD landfill that serves the whole East End, that has that role. It is also
2820 because of the great amount of recycling they do. They recycle approximately
2821 60% of the material that comes in, and that's a huge factor for businesses and
2822 local governments. In fact, they want to pursue—for lack of a better term—green
2823 construction, that want to do projects that have green building design. There are
2824 standards that have to be met when you construct and redevelop those
2825 properties. You have to certify that a certain amount of your materials are being
2826 recycled. If you don't have a place that you can take those materials to do that,
2827 you can't meet that standard. So one of the reasons why the demand is there,
2828 and the waste intake increase is being requested, is because the trend in the
2829 industry, and the trend in the construction industry is going to require that much
2830 more demand for that recycling activity. So some of the traffic that's coming in is
2831 actually bringing that material in that would be recycled. The other benefit of that
2832 is that it does preserve landfill space for the long run. I guess TEEL's
2833 perspective is that this build-out that has been proposed is the wisest and best

2834 use of the property in the County to ensure that you're using the existing foot
2835 print as efficiently as you can to ensure that this service is available, which will
2836 meet the needs of the community going forward.

2837

2838 Mr. Axelle - I'd like to add one final comment in response to that
2839 question. There is a construct/demolition debris landfill in Goochland, which has
2840 the ability to serve the western part of our Richmond area. There is no other in
2841 the eastern part of the Richmond area. So if they are not allowed to expand, the
2842 need will still be there, and a new landfill may need to be addressed just from a
2843 business standpoint. Not by us, but just by society.

2844

2845 Mr. Pollard - One quick final point. The way cells evolve is the
2846 natural, normal pattern for a landfill development. One starts with one cell and
2847 you fill that cell. You construct another cell, you fill that cell, and so forth. So
2848 what you're seeing here in terms of projected development of a landfill is, in fact,
2849 the normal and typical way a landfill gets developed. There is nothing out of the
2850 ordinary here by what is being proposed in terms of how this landfill would be
2851 developed. Again, based on the recycling activity and the way that they
2852 approach this, they are, in fact, I think, doing a service to the community because
2853 they are preserving this space for the long run, and that means that it's less likely
2854 you're going to need another landfill somewhere in the County to serve this
2855 need, whether it's in the East End or otherwise.

2856

2857 Ms. Dwyer - Any other questions by Board members?

2858

2859 Mr. Wright - I want to ask Mr. Axelle a question. We've heard
2860 some testimony, a good deal of testimony here today, Mr. Axelle, about the dust
2861 problem. Dust is a real problem. I have a problem with that. How far from
2862 Darbytown Road will TEEL be dumping this material if this is approved?

2863

2864 Mr. Axelle - It, of course, will be beyond the buffer and the berm.
2865 That doesn't answer your question, however. About 200 feet.

2866

2867 Mr. Pollard - In the normal development, again, if we look at cell 7,
2868 the material would be brought in on trucks, and it would be placed into cell 7
2869 wherever the active working face of that area is at that moment.

2870

2871 Mr. Wright - Well, what's the closest it could be?

2872

2873 Mr. Pollard - Theoretically, with the setbacks that are proposed,
2874 and the additional boundary area of where cell 7 would come, you're looking at
2875 probably 150, you know—probably somewhere between 150 to 200 feet would
2876 be the toe, if you will, of that cell 7. There is certain site work that would come as
2877 close as that just as they're bringing material to that edge. But remember, you're
2878 going to have that berm, you're going to have that vegetation at that point. From

2879 a dust standpoint, that not only visually helps, but that serves a screen on the
2880 dust movement because it does tend to slow and knock that down.

2881
2882 Mr. Wright - When the wind gets to blowing, it'll blow it up over
2883 there.

2884
2885 Mr. Pollard - What I'm saying is it helps.

2886
2887 Mr. Wright - This type of material, too, is conducive to dust
2888 because that's what it is. It's all junk. When they dump it, the dust just billows.

2889
2890 Mr. Axselle - I would say in some respects that's accurate, but they
2891 do, in fact, do the watering and the things that we talked about. But back to your
2892 question, I think that 150 to 200 feet to the toe of the area is probably a more
2893 direct answer than what I gave earlier, based on what Mr. Pollard said. Then as
2894 was mentioned earlier, the front area is where the natural vegetation will be left
2895 because it's more successful than what we could put in with a berm. This staff
2896 report does impose certain conditions regarding buffering and berms that are
2897 beyond what are required now.

2898
2899 Mr. Wright - My concern is cell 1, I guess, is very active. That's
2900 back a considerable distance. Cell 7, as shown on this map, is considerably
2901 closer to Darbytown Road. I'm convinced we're getting dust from this operation
2902 from cell 1, that far back. Move it up further, and that would increase the
2903 problem.

2904
2905 Mr. Pollard - Let me maybe offer a point of clarification on this. Cell
2906 1 is actually essentially a closed cell. The active area on the landfill right now is
2907 actually more in the area of cell 5—which has just been constructed—cell 4
2908 which is—

2909
2910 Mr. Wright - That makes it even worse.

2911
2912 Mr. Blankinship - Mr. Pollard, I think he's talking about DRL cell 1.

2913
2914 Mr. Pollard - Oh, DRL cell 1. DRL cell 1 in that area, what TEEL is
2915 doing there is they are mining out the waste that's been in place there to recover
2916 recyclable materials. Again, as Mr. Axselle said, they are working the water
2917 trucks to try to down the dust. That cell is an existing cell and it's an inactive cell.
2918 That's really not new.

2919
2920 Mr. Blankinship - But it's high above the road and there is work going
2921 on there.

2922
2923 Mr. Pollard - There is, there is certainly.

2924

2925 Mr. Blankinship - I don't know where the dust comes from. It's certainly
2926 believable that dust is blowing off of DRL.
2927
2928 Mr. Wright - This is a dust operation. I mean, there's no question
2929 about it.
2930
2931 Mr. Blankinship - Things like wallboard. When that crushes, it's just
2932 nothing but dust.
2933
2934 Mr. Pollard - All I can say, sir, is that with any landfill, there's going
2935 to be some. TEEL is doing everything possible to tamp that dust down. It's got
2936 the two water trucks. It keeps the site as wet as it can without being a problem
2937 for the traction on vehicles and so forth.
2938
2939 Mr. Wright - We already have it there. My concern is not
2940 increasing it, or bringing it closer and causing more difficulty.
2941
2942 Male - [Not at microphone.] Thank you.
2943
2944 Mr. Pollard - I guess on that point, again, this maybe goes back to
2945 the progression of the landfill. As they move, the active area doesn't really
2946 necessarily get that much bigger as much as it is just moved around. So the
2947 active area, if you will, that could be generating dust is really not increasing in
2948 size so much as it is just moving around the site, depending on where they are at
2949 the time. I think, again, with the addition of the berms and the screening, that will
2950 serve to help with that issue.
2951
2952 Mr. Wright - But it will be getting closer to Darbytown Road.
2953
2954 Mr. Pollard - In the normal expansion of a landfill, yes sir. The
2955 activity will get closer to Darbytown Road, yes sir.
2956
2957 Ms. Dwyer - I have a question about the height that's proposed for
2958 the fill material in cell 7. You do have a sheet that demonstrates that, but it's
2959 very difficult for me to read. Is it over 300 feet?
2960
2961 Mr. Pollard - Just barely.
2962
2963 Mr. Blankinship - Three hundred feet above sea level.
2964
2965 Mr. Pollard - Above sea level, yes ma'am. It's not 300 feet above
2966 Darbytown Road; it's 300 feet above sea level. Darbytown Road is already at
2967 about 142 feet. So the top of the landfill would be at about 150 feet, as ultimately
2968 built out as projected. It would be 150 feet above the average elevation of
2969 Darbytown Road right in that area.
2970

2971 Ms. Dwyer - Is that the same height as the existing cells that are in
2972 operation now?

2973
2974 Mr. Pollard - It's slightly higher. And that's just because when you
2975 increase the footprint, you have to sort of bring everything to a crown on top a
2976 little bit. It allows for a little bit more on top. I wouldn't call it a substantial
2977 increase over the existing.

2978
2979 Mr. Blankinship - If I'm reading my map correctly, what you're looking—
2980 Oh, go back, go back. What we were looking at just a second ago, the top of
2981 that hill was at about 260 feet above sea level. The top of that hill is at about 260
2982 feet above sea level and the bottom is at about 140 or 150 above sea level.
2983 Darbytown Road would be slightly lower than this, and the top of cell 7 would be
2984 about 40 feet higher than this.

2985
2986 Mr. Pollard - That's about right. I think one of the other things that
2987 was included in your package were line-of-sight drawings and cross sections that
2988 were done by the engineers. They kind of give you a feel for accounting for the
2989 buffers and the vegetation, how that would play out. The bottom line is once
2990 those things are in place, you shouldn't be able to see the top of this from along
2991 Darbytown Road. It's pretty straightforward geometry, frankly.

2992
2993 Ms. Dwyer - Thank you. Any other questions by Board members?

2994
2995 Mr. Axselle - Thank you, Madam Chairman.

2996
2997 Ms. Dwyer - Thank you, Mr. Axselle.

2998
2999 Mr. Pollard - Thank you.

3000
3001 Ms. Dwyer - Do the Board members want to ask anyone else a
3002 question from the opposition? This matter is closed and we now have the
3003 decision part of our meeting. Let's go ahead and start with this case since we've
3004 just heard it.

3005
3006 **DECISION**

3007
3008 Do I have a motion on the application by the East End Landfill, LLC, UP-017-09?

3009
3010 Mr. Nunnally - Madam Chair, we heard a lot of voices today, and
3011 heard a lot of good stuff and a lot of bad stuff. I make a motion that we deny this
3012 case due to the safety and welfare of the people that live in the neighborhood,
3013 and because of the increase in traffic that I know it's going to bring. Those are
3014 my reasons for denial.

3015
3016 Mr. Witte - I'll second that.

3017

3018 Ms. Dwyer - Motion by Mr. Nunnally, seconded by Mr. Witte. Let's
3019 have some discussion on this.

3020

3021 Ms. Harris - I think in the questions we dealt pretty much with all of
3022 the issues, but maybe we need to summarize them a bit. I'll try to summarize
3023 some of them.

3024

3025 When we talk about safety, even though Fergus Boulevard might be an
3026 improvement over the current entrance, it still puts the entrance to this site about
3027 a half of a mile from Baker Elementary School, and right at the door of another
3028 subdivision. And we have subdivisions still being developed in that area, even as
3029 we speak. So safety is a factor.

3030

3031 The well-being of the community. We know that things have changed. When this
3032 use permit was granted years ago, we didn't have the large and growing
3033 residential community, but we do have that now. Our use permit guidelines tell
3034 us that we must be mindful of the health, safety, and well-being of our citizens. I
3035 think when we try to match dollars being generated in comparison to the health,
3036 safety, and welfare of individuals, we're going to have to make some serious
3037 decisions that will affect the residents of our community. I don't doubt that the
3038 site needs to be expanded, but I think you could have selected a better location
3039 than this particular one. I think we are exhausting the resources of this particular
3040 site and the tolerance, even, of this particular community.

3041

3042 I think if the County of Henrico ever decides to do a health study for people who
3043 live near landfills, all over the country we will find that folks will have experienced
3044 all types of health problems from emphysema to cancer to asthma to anything
3045 that has to do with the runoff of waste into that community. I think we probably
3046 need to conduct a study in Varina to see if there have been adverse impacts
3047 from the various landfills or the other dumping sites that are there.

3048

3049 I notice in the report that we said we cannot prove that this operation causes
3050 odor, but can we disprove that it does not cause odor? I drive down there all the
3051 time and odor certainly is coming from somewhere. So I don't know where we
3052 can say it does not emit. I don't know how we can draw the line of distinction.

3053

3054 So we're still talking about the safety, the health, and the welfare. I could go on
3055 and on. We talked about this case for a couple of hours. I could go on and on,
3056 but I think I'll stop there.

3057

3058 Ms. Dwyer - Any other discussion?

3059

3060 Mr. Witte - Yes. While any decision we make here today is not
3061 going to create the necessary relief that the residents desire or the demand that
3062 TEEL has, I think we do have to consider the dust situation affecting the

3063 residents. The landfill will continue to operate regardless of our decision here
3064 today, and it's going to create the dust, which I understand they're making an
3065 attempt to take care of. I also applaud TEEL for their recycling because I think
3066 that's important. But overall, I think the vast number of residents in the area
3067 since the landfill was approved has completely changed the situation and the
3068 demographics of the area. Under those circumstances, I think we really need to
3069 take a hard look at this.

3070
3071 Ms. Dwyer - Any other comments? All right. So we have a motion
3072 to deny the request by Mr. Nunnally, seconded by Mr. Witte. All in favor say aye.
3073 All opposed say no. The ayes have it; the motion passes.

3074
3075 After an advertised public hearing and on a motion by Mr. Nunnally seconded by
3076 Mr. Witte, the Board **denied** application **UP-017-09, The East End Landfill,**
3077 **LLC's** request for a conditional use permit pursuant to Section 24-116(c)(3) to
3078 expand the existing landfill at 1850 Darbytown Road (Parcels 808-706-6679,
3079 809-707-1585 and 808-708-0513), zoned B-3, Business District and M-2,
3080 General Industrial District (Varina).

3081
3082
3083 Affirmative: Dwyer, Harris, Nunnally, Witte, Wright 5
3084 Negative: 0
3085 Absent: 0

3086
3087
3088 Ms. Dwyer - The next item will be the minutes from last month. Are
3089 there any changes.

3090
3091 Mr. Witte - I have one, line 1067.

3092
3093 Ms. Dwyer - Page?

3094
3095 Mr. Witte - Page 24. It says, "What you street address." Should
3096 be "your."

3097
3098 Ms. Dwyer - Okay. Any other changes, amendments? Motion on
3099 the minutes?

3100
3101 Ms. Harris - I move the minutes be approved as corrected.

3102
3103 Mr. Wright - Second.

3104
3105 Ms. Dwyer - Motion by Ms. Harris, seconded by Mr. Wright that the
3106 minutes be approved as corrected. All in favor say aye. All opposed say no. The
3107 ayes have it; the motion passes.

3108

3109 On a motion by Mr. Wright seconded by Ms. Harris, the Board **approved as**
3110 **corrected** the **Minutes of the September 24, 2009** Henrico County Board of
3111 Zoning Appeals meeting.

3112
3113 Affirmative: Dwyer, Harris, Nunnally, Witte, Wright 5
3114 Negative: 0
3115 Absent: 0

3116
3117 Ms. Dwyer - Motion for adjournment. All in favor stand.

3118
3119 There being no further business, the Board adjourned until the November 19,
3120 2009 meeting at 9 a.m.

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Elizabeth G. Dwyer
Chairman



Benjamin Blankinship, AICP
Secretary