

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 **SPRING ROADS, ON THURSDAY, APRIL 28, 2011 AT 9:00 A.M., NOTICE**
5 **HAVING BEEN PUBLISHED IN THE RICHMOND TIMES-DISPATCH APRIL 7,**
6 **2011 AND APRIL 14, 2011.**
7

Members Present: Helen E. Harris, Chairman
Robert Witte, Vice Chairman
Lindsay U. Bruce
James W. Nunnally
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

8
9
10 Ms. Harris - Good morning and welcome to the April 28, 2011
11 session of the Board of Zoning Appeals for Henrico County. Would you please
12 stand and recite the **Pledge of Allegiance**.

13
14 Good morning, Mr. Blankinship, would you tell us the rules for this meeting. And
15 if there are any deferrals.

16
17 Mr. Blankinship - Good morning, Madam Chairman, members of the
18 Board, ladies and gentlemen. The rules for this meeting are as follows. Acting as
19 secretary, I will announce each case. And as I'm speaking, the applicant should
20 come down to the podium. We'll then ask everyone who intends to speak on that
21 case to stand and be sworn in. Then the applicant will present their testimony.
22 Then anyone else who wishes to speak will be given the opportunity. And then
23 the applicant and only the applicant will have an opportunity for rebuttal. After the
24 Board has heard all the evidence and asked any questions, they will go on to the
25 next case. They will render all of their decisions at the end of the meeting. If you
26 wish to hear their decision on a specific case, you can either stay to the end of
27 the meeting, or you can check the Planning Department website this afternoon—
28 we usually get it updated within just a few minutes of the end of the meeting—or
29 you can call the Planning Department this afternoon.

30
31 This meeting is being recorded, so we'll ask everyone who speaks to speak
32 directly into the microphone on the podium, state your name, and please spell
33 your last name so we get it correctly in the record.
34

35 And finally, out in the foyer there is a binder containing the staff report for each
36 case, including the conditions that have been recommended by the staff. It's very
37 important that the applicants be familiar with those conditions.

38
39 Madam Chairman, we do have two requests for deferral this morning. The first
40 one is CUP2011-00007, County of Henrico. Between the various departments,
41 we are still working out some of the details on that proposal, so they have
42 requested deferral to the next meeting, which is May the 26th.

43
44 **CUP2011-00007 COUNTY OF HENRICO** requests a conditional use
45 permit pursuant to Section 24-116(c)(3) of the County Code to operate a solid
46 waste transfer station at 10620 Fords Country Lane (Parcel 753-772-2123),
47 zoned A-1, Agricultural District (Three Chopt).

48
49 Mr. Wright - I move we defer this case until the next meeting.

50
51 Mr. Nunnally - Second.

52
53 Ms. Harris - Moved by Mr. Wright, seconded by Mr. Nunnally that
54 this case be deferred until the next meeting. Are there any questions on the
55 motion? All in favor say aye. All opposed say no. The ayes have it; the motion
56 passes.

57
58 After an advertised public hearing and on a motion by Mr. Wright, seconded by
59 Mr. Nunnally, **CUP2011-00007, County of Henrico**, has been deferred until the
60 May 26, 2011 meeting.

61
62 Affirmative: Bruce, Harris, Nunnally, Witte, Wright 5
63 Negative: 0
64 Absent: 0

65
66 Mr. Blankinship - The other request for deferral is VAR2011-00002.
67 The access to the property crosses School Board land and the applicant is
68 working out the easement issues with the School Board. They have also
69 requested deferral for a month to May the 26th.

70
71 **VAR2011-00002 DEON AND JESSICA LOGAN** request a variance
72 from Section 24-9 of the County Code to build a one-family dwelling at 6988
73 Messer Road (Parcel 807-698-9733 (part)), zoned R-2A, One-family Residence
74 District (Varina). The public street frontage requirement is not met. The
75 applicants have 0 feet public street frontage where the Code requires 50 feet
76 public street frontage. The applicants request a variance of 50 feet public street
77 frontage.

78
79 Mr. Nunnally - I move VAR2011-00002, Deon and Jessica Logan be
80 deferred until next month.

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Mr. Wright - Second.

Ms. Harris - Motion by Mr. Nunnally, seconded by Mr. Wright that this case be deferred until next month. Are there any questions on the motion? All in favor say aye. All opposed say no. The ayes have it; the motion passes.

After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Mr. Wright, **VAR2011-00002, Deon and Jessica Logan**, has been deferred until the May 26, 2011 meeting.

Affirmative:	Bruce, Harris, Nunnally, Witte, Wright	5
Negative:		0
Absent:		0

Ms. Harris - We're ready now for our first case.

CUP2011-00005 GILLIES CREEK INDUSTRIAL RECYCLING, LLC requests a conditional use permit pursuant to Sections 24-52(d) and 24-103 of the County Code to extract materials from the earth at 6650 Hines Road (Parcels 855-695-5768 and 8710), zoned A-1, Agricultural District (Varina).

Ms. Harris - All persons who wish to speak to this case please stand and raise your right hand.

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

Mr. Hooker - Yes. Good morning, Members, my name is Randy Hooker—H-o-o-k-e-r. I'm here along with the applicant, Lew Bryant—L-e-w, B-r-y-a-n-t. I'm here to ask this morning for a renewal of an existing use permit. There has been no activity since the last renewal. The economy hasn't driven any work in this area to justify doing any work within this mine. There was a comment in the staff report regarding certain slopes exceeding a 2 to 1 slope. That issue has been addressed.

Ms. Harris - So you're saying now that there are no slopes greater than the 2 to 1 ratio? I noticed in the conditions you want the access road treated. And I think in the comments that you had you wanted the road swept. Which will it be?

Mr. Hooker - Treated for dust control?

Ms. Harris - Yes.

126 Mr. Hooker - When we haul, we bring a water truck and wet the
127 roads to keep the dust down when we're active in the site.
128
129 Ms. Harris - But the solutions that are in the conditions?
130
131 Mr. Hooker - Let me take a look at that solution again.
132
133 Mr. Blankinship - Calcium chloride or something.
134
135 Ms. Harris - Yes.
136
137 Mr. Hooker - Which condition number is that, Ma'am?
138
139 Mr. Blankinship - Number 11.
140
141 Mr. Hooker - It says calcium chloride or other wetting agents. Is
142 water unacceptable in that situation?
143
144 Ms. Harris - I suppose it's a wetting agent; I don't know.
145
146 Mr. Blankinship - As long as it's effective; that's the key. I don't know
147 that we've had any complaints of dust in this location.
148
149 Mr. Hooker - That's our standard procedure just to water the roads
150 to keep the dust down.
151
152 Mr. Wright - I'd like to address Condition #8, hours of operation, 7
153 a.m. to 5:30 Monday through Friday. I think in your application you had different
154 hours. I just want to emphasize that those are the hours set forth in your
155 conditions.
156
157 Mr. Hooker - I understand, yes sir.
158
159 Mr. Wright - In other words, there's no difference between Daylight
160 Saving and regular Eastern Standard Time.
161
162 Mr. Hooker - I don't think that's a problem.
163
164 Ms. Harris - Under the disposal methods, this is your narrative
165 description, three disposable methods. You use the words "third parties." Who
166 are we talking about here?
167
168 Mr. Hooker - Other contractors outside of ourselves. Other side
169 contractors bring in material to us. By "third parties," I mean not work that my
170 company in particular is doing but our customers.
171

172 Ms. Harris - From what distance are they bringing in other
173 materials?

174

175 Mr. Hooker - It all depends on where the job is located. Right now
176 the problem is there are not enough jobs close enough to make it feasible to go
177 there. So I wouldn't give you an exact distance, but I'd say it would have to be
178 close enough to make it financially viable to truck the material to that site. It's not
179 going to come from Charlottesville or North Carolina; it's going to be somewhere
180 in the Richmond-Metro area.

181

182 Mr. Blankinship - Condition #17 requires them to receive approval in
183 advance of any off-site-generated material.

184

185 Mr. Nunnally - Are you active in there now?

186

187 Mr. Hooker - No sir, not right now.

188

189 Mr. Nunnally - When do you plan on starting up? According to the
190 economy?

191

192 Mr. Hooker - Well yes sir. As soon as I can find an appropriate
193 project to take material in there that's where we want to go.

194

195 Ms. Harris - Any other questions by Board members? Thank you.

196

197 Mr. Hooker - Thank you.

198

199 Ms. Harris - Any other people who wish to speak to this case,
200 please come forward. Please identify yourself and spell your last name please.

201

202 Ms. Sharpe - My name is Ann Sharpe. My family owns property on
203 two sides of the pit on the west and on the south. I noticed in the conditions that
204 previously the trucks had to enter from Elko Road; they could not come in from
205 Charles City Road because Hines Road is so narrow. That condition is no longer
206 in there. I spoke to a gentleman out in the lobby and he didn't seem to know that
207 the condition was not in there. He said there is a sign when you come out of the
208 pit that you cannot make a right turn. But my thinking is I really don't think that it's
209 safe for them to enter from Charles City Road and come all the way through
210 Hines Road. We had that issue before. That condition has been in the previous
211 two times it's been renewed and it's not in there today.

212

213 Mr. Blankinship - I think we were looking at that when we were drafting
214 the conditions for this time. The way it was worded before it just said they shall
215 use the existing entrance from Hines Road and Elko Road. Since there was no
216 entrance on Elko Road we struck that language. Sounds like what it should say
217 is exit onto the established entrance on Hines Road and proceed to Elko Road.

218
219 Ms. Sharpe - And enter from Elko Road also, because Hines Road
220 is only two miles long and it's very crooked and narrow.
221
222 Mr. Blankinship - We can put that in the condition, but I'll just let you
223 know that the mining people in some cases have no control where the truck
224 comes from before it gets their site. We'll put it in the condition. It's much easier
225 to enforce the trucks coming out of the site than it is the trucks coming in.
226
227 Ms. Sharpe - Exactly. But it is a concern.
228
229 Mr. Blankinship - It's up to the Board.
230
231 Ms. Sharpe - Thank you.
232
233 Ms. Harris - Mr. Hooker, would you care to come back and
234 address this? First of all, is there anyone else who wishes to speak?
235
236 Mr. Hooker - Like the lady said, we spoke out in the lobby already
237 and Mr. Bryant stated that's not an issue.
238
239 Ms. Harris - So you have no opposition to our putting this in as a
240 condition?
241
242 Mr. Blankinship - It's number nine.
243
244 Ms. Harris - We want to make sure we are agreeing on this. We're
245 saying regarding the entrance—
246
247 Mr. Blankinship - All access to the property shall be from the entrance
248 onto Hines Road as shown on the approved plans. Trucks shall then proceed to
249 Elko Road not to Charles City Road.
250
251 Ms. Harris - Is that agreeable with you? Thank you. Okay, we'll
252 move on to the next case.
253
254 **[After the conclusion of the public hearings, the Board discussed the case**
255 **and made its decision. This portion of the transcript is included here for**
256 **convenience of reference.]**
257
258 Mr. Nunnally - I move for approval of CUP2011-00005, Gillies Creek.
259
260 Mr. Wright - Second.
261
262 Ms. Harris - Motion by Mr. Nunnally, seconded by Mr. Wright that
263 we approve CUP2011-00005, Gillies Creek.

264
265 Mr. Wright - One question. Condition #9 was supposed to be
266 amended.

267
268 Mr. Blankinship - Amend Condition #9 to include a statement that
269 trucks could not use Charles City Road; that they had to go out to Elko Road and
270 come in that way.

271
272 Mr. Wright - Mr. Blankinship has that amendment.

273
274 Ms. Harris - Okay. So we're saying that it was moved by Mr.
275 Nunnally, seconded by Mr. Wright that this case be approved with the revised
276 condition.

277
278 Mr. Blankinship - Can we state the grounds for the motion before the
279 vote?

280
281 Mr. Nunnally - I move we approve it because they have always run a
282 nice, clean operation at all these sites and we've never had any problem with
283 them as I know. I don't think it will be detrimental to the neighborhood or cause
284 health problems.

285
286 Ms. Harris - Are there any questions on the motion? All in favor
287 say aye. All opposed say no. The ayes have it; the motion passes.

288
289 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by
290 Mr. Wright, the Board **approved** application **CUP2011-00005, GILLIES CREEK**
291 **INDUSTRIAL RECYCLING, LLC's** request for a conditional use permit pursuant
292 to Sections 24-52(d) and 24-103 of the County Code to extract materials from
293 the earth at 6650 Hines Road (Parcels 855-695-5768 and 8710), zoned A-1,
294 Agricultural District (Varina). The Board approved the use permit subject to the
295 following conditions:

296
297 1. This use permit is subject to all requirements of Section 24-103 of Chapter 24
298 of the County Code. The operation shall be conducted in accordance with the
299 plans and narrative approved with the use permit, except as noted below.

300
301 2. The applicant shall maintain a financial guaranty in an amount of \$3,000 for
302 each acre of land to be disturbed, for a total of \$31,200, guaranteeing that the
303 land will be restored to a safe, stable, and usable condition, consistent with its
304 elevation before excavation. The form of the financial guaranty shall be subject
305 to approval by the County Attorney.

306
307 3. Throughout the life of the operation, the applicant shall continuously satisfy
308 the Department of Public Works that erosion and sedimentation control is

309 performed and maintained in accordance with the approved plan. The erosion
310 control bond shall remain active throughout the life of the project.

311

312 4. The applicant shall maintain a mine license from the Virginia Department of
313 Mines, Minerals and Energy.

314

315 5. All areas approved for mining under this permit shall be marked off with metal
316 posts. The posts shall be 5 feet high and 5 inches in diameter, and shall be
317 painted in alternating 1-foot stripes of red and white. The posts shall be erected
318 under the supervision of a professional engineer or certified land surveyor, who
319 shall certify their location.

320

321 6. The applicant shall comply with the Chesapeake Bay Preservation Act and all
322 state and local regulations administered under such act applicable to the
323 property, and shall furnish to the Planning Department copies of all reports
324 required by such act or regulations.

325

326 7. If, in the course of its preliminary investigation or operations, the applicant
327 discovers evidence of cultural or historical resources, or an endangered species,
328 or a significant habitat, the applicant shall notify all appropriate authorities and
329 provide them with an opportunity to investigate the site. The applicant shall
330 report the results of any such investigation to the Planning Department.

331

332 8. Hours of operation shall be from 7:00 am to 5:30 pm Monday through Friday.
333 No operations of any kind are to be conducted at the site on Saturdays,
334 Sundays, or national holidays.

335

336 9. [AMENDED] All access to the property shall be from the entrance onto Hines
337 Road as shown on the approved plans. Trucks shall travel to the property from
338 Elko Road onto Hines Road, and when leaving the property, shall turn left onto
339 Hines Road and proceed to Elko Road. Trucks entering or leaving the site shall
340 not travel on Charles City Road. The applicant shall maintain gates at all
341 entrances to the property. These gates shall be locked at all times, except when
342 authorized representatives of the applicant are on the property.

343

344 10. The applicant shall maintain a standard stop sign at the entrance to Hines
345 Road. The applicant shall pay the expense for the county to maintain standard
346 "Truck Entering Highway" signs along Hines Road on each side of each entrance
347 to the property.

348

349 11. The entrance road shall be paved from its intersection with Hines Road for a
350 distance of 300 feet and a width of 24 feet. All roads used in connection with this
351 use permit shall be effectively treated with calcium chloride or other wetting
352 agents to eliminate any dust nuisance.

353

354 12. The applicant shall maintain a sign at the entrance to the mining site stating
355 the name of the operator, the use permit number, the mine license number, and
356 the telephone number of the operator. The sign shall be 12 square feet in area
357 and the letters shall be 3 inches in height.

358

359 13. The applicant shall maintain "No Trespassing" signs every 250 feet along
360 the perimeter of the property. The letters shall be 3 inches in height. The
361 applicant shall authorize the Division of Police to prosecute trespassers, and
362 shall send a representative to testify in court at the request of the Division of
363 Police.

364

365 14. Trucks leaving the site shall travel at reasonable intervals and not in groups
366 of three or more. At any time the Division of Police deems it necessary, the
367 applicant shall provide a flagman to control traffic from the site onto the public
368 road, with the flagman yielding the right of way to the public road traffic at all
369 times. Trucks shall be loaded in a way to prevent overloading or spilling of
370 materials of any kind onto any public road.

371

372 15. To protect the public safety, excavations having a depth of 10 feet or more,
373 for a period of more than 30 days, shall be graded to a slope of 2:1 or flatter. The
374 applicant shall maintain the property, fences, and roads in a safe and secure
375 condition indefinitely, or convert the property to some other safe use.

376

377 16. Topsoil shall not be removed from any part of the property outside of the
378 area in which mining is authorized. Topsoil shall not be stockpiled outside the
379 authorized mining area. Any topsoil stockpiled within the authorized mining area
380 shall include adequate erosion control protection.

381

382 17. No offsite-generated materials shall be deposited on the mining site without
383 prior written approval of the Director of Planning. To obtain such approval, the
384 operator shall submit a written request stating the origin, nature and quantity of
385 material to be deposited, and certifying that no contaminated or hazardous
386 material will be included. The material to be deposited on the site shall be limited
387 to imperishable materials such as stone, bricks, tile, sand, gravel, soil, concrete
388 and like materials, and shall not include any hazardous materials as defined by
389 the Virginia Hazardous Waste Management Regulations.

390

391 18. If water wells located on surrounding properties are adversely affected, and
392 the extraction operations on this site are suspected as the cause, the effected
393 property owners may present to the Board evidence that the extraction operation
394 is a contributing factor. After a hearing, the Board may require the operator to
395 correct the problem, or may revoke this use permit, or both.

396

397 19. A superintendent, who shall be personally familiar with all the requirements
398 of Section 24-103 of Chapter 24 of the County Code, as well as the conditions of

399 this use permit, shall be present at the beginning and conclusion of operations
400 each work day to ensure that all applicable requirements are observed.

401
402 20. A progress report shall be submitted to the Board on April 30, 2012. The
403 progress report shall state how much property has been mined to date of the
404 report, how much land is left to be mined, how much rehabilitation has been
405 performed, when and how the remaining amount of land will be rehabilitated, and
406 any other pertinent information about the operation that would be helpful to the
407 Board.

408
409 21. Excavation shall be discontinued by April 30, 2013, and reclamation
410 completed no later than April 30, 2014 unless a new use permit is granted by the
411 Board of Zoning Appeals. Reclamation of the property shall take place
412 simultaneously with the mining process. All disturbed areas shall be covered with
413 topsoil to a depth of at least 5 inches. The topsoil shall be treated with a mixture
414 of seed, fertilizer, and lime as recommended by the County after soil tests have
415 been provided to the County. Rehabilitation shall not be considered completed
416 until the mined area is covered completely with permanent vegetation.

417
418 22. Failure to comply with any of the foregoing conditions shall automatically
419 void this permit.

420
421
422 Affirmative: Bruce, Harris, Nunnally, Witte, Wright 5
423 Negative: 0
424 Absent: 0

425
426
427 **[At this point, the transcript continues with the public hearing on the next**
428 **case.]**

429
430 **CUP2011-00006 GILLIES CREEK INDUSTRIAL RECYCLING, LLC**
431 requests a conditional use permit pursuant to Section 24-88(c) of the County
432 Code to develop a wetlands mitigation bank at 5500 White Oak Drive (Parcels
433 863-706-3470, 860-709-5622 and 864-704-2093), zoned A-1, Agricultural District
434 and C-1, Conservation District (Varina).

435
436 Ms. Harris - All persons who wish to speak to this case please
437 stand and raise your right hand to be sworn in.

438
439 Mr. Blankinship - Well you're still under oath from before.

440
441 Ms. Harris - Please present your case.

442
443 Mr. Hooker - Again, ma'am, we're just here to renew the permit
444 already in place for our facility on 5500 White Oak Road. We are using this as a
445 dirt disposal site, but we also creating several wetland mitigation banks. This is

446 the ultimate use of this property, we're currently in the process of constructing
447 those mitigation banks and it's currently an ongoing operation.

448
449 Ms. Harris - I have a couple of questions. Look at condition
450 number 17, second sentence: For three months of each year the average
451 number of trucks entering and leaving the site shall not exceed 56 per day. We
452 had already come to a conclusion that it would not exceed 28 per day. Why is
453 this condition here?

454
455 Mr. Hooker - When we first applied for this permit four years ago, I
456 guess, there was a concern about the traffic coming out of the facility directly
457 onto Route 60, which is in New Kent. I think New Kent's concern was heavy and
458 slow traffic entering directly onto a high-speed thoroughfare. I guess they wanted
459 a condition that it not impede the flow of traffic to the Patriot's Landing
460 subdivision and then going into New Kent. So we came up with a number
461 between us that we felt was appropriate to make it viable but wouldn't be a traffic
462 hazard for New Kent County. This is the figure that we agreed upon.

463
464 Ms. Harris - So you came up with an agreement between us?
465 What "us"?

466
467 Mr. Hooker - "Us" being Gillies Creek and New Kent County. I
468 believe New Kent County raised the concern about the traffic initially.

469
470 Ms. Harris - Have you spoken with anyone from this subdivision,
471 Patriot's Landing?

472
473 Mr. Hooker - No ma'am. I haven't had any contact with them or
474 they with me. I have no complaints from anyone there.

475
476 Mr. Blankinship - We did coordinate briefly with New Kent County staff
477 in the last couple of weeks and they didn't have any concerns. I guess the
478 economy has slowed this project down as well.

479
480 Mr. Hooker - We have some activity going on there. We're right
481 now actually constructing the wetland mitigation banks. But the amount of
482 material actually coming in or going out of the site has been curtailed by the
483 economy.

484
485 Mr. Blankinship - Bumping up against these numbers is the least of
486 your problems.

487
488 Mr. Hooker - At this point, no. I submitted the annual reports in
489 February breaking down month by month the truck traffic and it wasn't probably
490 half of what the limit we set was.

491

492 Ms. Harris - How populated in Patriot's Landing right now?
493
494 Mr. Hooker - I couldn't speak to that. I've been through the
495 subdivision. It's not full. I know there are a lot of empty houses and empty lots,
496 but the total number of residents I couldn't tell you.
497
498 Ms. Harris - Are there any questions from the Board?
499
500 Mr. Wright - Yes, I have a question about condition number 23.
501 This says all off-site-generated materials deposited on the mining site shall be
502 documented in a monthly report to the Director of Planning.
503
504 Mr. Blankinship - Yes sir.
505
506 Mr. Wright - Condition number 17 in case number 00005: No off-
507 site-generated material shall be deposited without prior written approval of the
508 Director. What's the difference?
509
510 Mr. Blankinship - Prior written approval is our standard condition. The
511 last time this permit was renewed—or perhaps at the original issuance of this
512 permit—the applicant specifically asked that that language be changed and the
513 Board agreed to that at the time. But of course that doesn't bind you going
514 forward; you can change the condition.
515
516 Mr. Wright - Why would we change it?
517
518 Mr. Blankinship - I don't remember all of the discussion involved, but I
519 know the applicant requested the change rather than the staff. He presented his
520 argument that as long we had notice and documentation of what the material
521 was after the fact.
522
523 Mr. Wright - Yes, but I would want approval before the fact.
524
525 Mr. Blankinship - That's our standard condition.
526
527 Mr. Wright - Do you have any problem with putting that language
528 in this condition?
529
530 Mr. Hooker - I think it would depend upon how stringent the
531 condition was. And by that I mean we have a long list of existing customers who
532 do work with us on a regular basis. If it meant that I would have to get approval
533 for every load every time a truck came in, I think that would be a little bit
534 prohibitive.
535
536 Mr. Wright - I don't believe that's what we're talking about.
537

538 Mr. Blankinship - That's what other people do. That's how the standard
539 condition is enforced. That is to say if they have a job where they know they're
540 going to get 75,000 yards of material, we approve the 75,000 at one time.

541
542 Mr. Wright - You don't have to approve each truck, just the
543 general nature. It's in the other conditions of the other case.

544
545 Mr. Hooker - I'm sure we can work something out. The Planning
546 Department and I will figure something out I'm certain.

547
548 Mr. Wright - I'd like to see that in there.

549
550 Ms. Harris - Condition 17 in the prior case.

551
552 Mr. Wright - Yes. I'd like to see the same language in here.

553
554 Ms. Harris - Same language in this case. Is it okay?

555
556 Mr. Hooker - Yes ma'am. If that's what the Board decides they
557 need to do, then we'll work with it.

558
559 Ms. Harris - Any more questions from Board members?

560
561 Mr. Blankinship - Madam Chairman, I just brought up a map of Patriot's
562 Landing and I'd say there were more than a hundred homes in it when this map
563 was done. I'm just on Google Maps here so I don't know how current or accurate
564 this is. It's going to be something over a hundred homes.

565
566 Ms. Harris - When they were here before, it was not nearly as
567 populated, right?

568
569 Mr. Blankinship - It was just being constructed, yes ma'am.

570
571 Ms. Harris - Thank you. Let's move on to the next case, Mr.
572 Blankinship.

573
574 **[After the conclusion of the public hearings, the Board discussed the case**
575 **and made its decision. This portion of the transcript is included here for**
576 **convenience of reference.]**

577
578 Mr. Nunnally - I also move we approve this, Madam Chairman. I
579 think we have a condition to add on that, too, haven't we?

580
581 Mr. Blankinship - Yes sir. Number 17, changing back to the standard
582 language that they have to get prior written approval of any offsite materials.

583

584 Mr. Wright - It's 23 in this one.
585
586 Mr. Blankinship - Oh, I'm sorry; okay.
587
588 Mr. Wright - It's Condition #23. I second that motion.
589
590 Ms. Harris - Moved by Mr. Nunnally, seconded by Mr. Wright that
591 this case be approved. Are there any questions on the motion? All in favor say
592 aye. All opposed say no. The ayes have it; the motion passes.
593

594 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by
595 Mr. Wright, the Board **approved** application CUP2011-00006, **GILLIES CREEK**
596 **INDUSTRIAL RECYCLING, LLC's** request for a conditional use permit
597 pursuant to Section 24-88(c) of the County Code to develop a wetlands
598 mitigation bank at 5500 White Oak Drive (Parcels 863-706-3470, 860-709-5622
599 and 864-704-2093), zoned A-1, Agricultural District and C-1, Conservation
600 District (Varina). The Board approved the use permit subject to the following
601 conditions:

- 602
- 603 1. This use permit is subject to all requirements of Section 24-103 of Chapter
604 24 of the County Code. The operation shall be conducted in accordance with the
605 plans and narrative approved with the use permit, except as noted below.
606
 - 607 2. The applicant shall maintain a financial guaranty in an amount of \$3,000 for
608 each acre of land to be disturbed, for a total of \$226,200, guaranteeing that the
609 land will be restored to a safe, stable, and usable condition, consistent with its
610 elevation before excavation.
611
 - 612 3. Throughout the life of the operation, the applicant shall continuously satisfy
613 the Department of Public Works that erosion and sedimentation control is
614 performed and maintained in accordance with the approved plan. The erosion
615 control bond shall remain active throughout the life of the project.
616
 - 617 4. The applicant shall maintain all necessary permits from the United States
618 Army Corps of Engineers and the Virginia Department of Environmental Quality.
619
 - 620 5. The applicant shall comply with the Chesapeake Bay Preservation Act and all
621 state and local regulations administered under such act applicable to the
622 property, and shall furnish to the Planning Department copies of all reports
623 required by such act or regulations.
624
 - 625 6. Hours of operation shall be limited to 6:00 am to 6:00 pm when Daylight
626 Saving Time is in effect, and 7:00 am to 5:00 pm when Eastern Standard Time is
627 in effect. No operations of any kind are to be conducted at the site on Saturdays,
628 Sundays, or national holidays.
629

630 7. All means of access to the property shall be from the established entrance
631 onto U.S. Route 60 in New Kent County. This condition shall be enforced in
632 cooperation with the Virginia Department of Transportation and New Kent
633 County.

634

635 8. The applicant shall maintain all necessary approvals for the access road from
636 the Virginia Department of Transportation (VDOT) and New Kent County. These
637 shall include, but shall not be limited to, site plan approval of the road, including
638 stormwater management and erosion and sediment control, County land
639 disturbance permit and VDOT Land Use Permit.

640

641 9. The applicant shall construct and maintain a 30-foot wide entrance, a right
642 turn lane with 200 feet of taper and 100 feet of storage, and a left turn lane with
643 200 feet of taper and 200 feet of storage, all to Virginia Department of
644 Transportation specifications.

645

646 10. The applicant shall maintain gates at all entrances to the property. These
647 gates shall be locked at all times, except when authorized representatives of the
648 applicant are on the property. This condition shall be enforced in cooperation
649 with the Virginia Department of Transportation and New Kent County.

650

651 11. The applicant shall post and maintain a sign at the entrance to the site
652 stating the use permit number, the name of the operator, and the telephone
653 number of the operator. The sign shall be 12 square feet in area and the letters
654 shall be 3 inches in height.

655

656 12. The applicant shall maintain "No Trespassing" signs every 250 feet along
657 the perimeter of the property. The letters shall be 3 inches in height. The
658 applicant shall furnish the Chief of Police a letter authorizing the Virginia State
659 Police, the New Kent County Sheriff's Office, and the Henrico County Division of
660 Police to enforce the "No Trespassing" regulations, and agreeing to send a
661 representative to testify in court as required or requested.

662

663 13. The applicant shall maintain standard "Truck Crossing" signs (MUTCD W8-
664 6) on U.S. Route 60 on each side of the entrances to the property, at locations
665 approved by the Virginia Department of Transportation (VDOT). This condition
666 shall be enforced in cooperation with VDOT and New Kent County.

667

668 14. The applicant shall maintain at its expense any traffic sign or signal required
669 by the Virginia Department of Transportation (VDOT) or New Kent County at the
670 entrance to U.S. Route 60. This condition shall be enforced in cooperation with
671 VDOT and New Kent County.

672

673 15. The applicant shall maintain the entrance road, which shall be paved for a
674 distance of 300 feet from its intersection with U.S. Route 60 and a width of 24
675 feet. All roads used in connection with this use permit shall be effectively treated

676 with calcium chloride or other wetting agents to eliminate any dust nuisance.
677 Wash racks shall be installed as necessary to prevent the tracking of mud onto
678 any public street. This condition shall be enforced in cooperation with the Virginia
679 Department of Transportation and New Kent County.

680
681 16. Trucks leaving the site shall travel at reasonable intervals and not in groups
682 of three or more.

683
684 17. For nine months of each year, the average number of trucks entering and
685 leaving the site shall not exceed 28 per day. For three months of each year, the
686 average number of trucks entering and leaving the site shall not exceed 56 per
687 day. This condition shall be enforced in cooperation with the Virginia Department
688 of Transportation (VDOT) and New Kent County. The applicant shall maintain
689 records on site documenting all trucks entering or leaving the site. Such records
690 shall be available to staff of Henrico County, New Kent County and VDOT during
691 normal hours of operation. At the request of the New Kent County Zoning
692 Administrator, the Henrico County Director of Planning may approve increases in
693 the volume of trucks allowed by this condition. All requests for exceptions shall
694 contain the reason, duration, and magnitude of the exception requested.

695
696 18. To limit the total number of truck trips into and out of the site, no truck shall
697 be allowed to haul material away from the site unless that truck was also used to
698 haul a full load of material to the site.

699
700 19. Trucks shall be loaded in a way to prevent overloading or spilling of
701 materials of any kind onto any public road. This condition shall be enforced in
702 cooperation with the Virginia Department of Transportation and New Kent
703 County.

704
705 20. The applicant shall maintain the property, fences, roads, and bridge in a
706 safe and secure condition indefinitely, or convert the property to some other safe
707 use.

708
709 21. If, in the course of its operations, the applicant discovers evidence of cultural
710 or historical resources, or an endangered species, or a significant habitat, it shall
711 notify appropriate authorities and provide them with an opportunity to investigate
712 the site. The applicant shall report the results of any such investigation to the
713 Planning Department.

714
715 22. If water wells located on surrounding properties are adversely affected, and
716 the operations on this site are suspected as the cause, the affected property
717 owners may present to the Board evidence that the operation is a contributing
718 factor. After a hearing, the Board may revoke or suspend this use permit, and
719 the operator may be required to correct the problem.

720

721 23. No offsite-generated materials shall be deposited on the mining site without
722 prior written approval of the Director of Planning. To obtain such approval, the
723 operator shall submit a written request stating the origin, nature and quantity of
724 material to be deposited, and certifying that no contaminated or hazardous
725 material will be included. The material to be deposited on the site shall be limited
726 to imperishable materials such as stone, bricks, tile, sand, gravel, soil, concrete
727 and like materials, and shall not include any hazardous materials as defined by
728 the Virginia Hazardous Waste Management Regulations.
729

730 24. A superintendent, who shall be personally familiar with all the terms and
731 conditions of Section 24-103 of Chapter 24 of the County Code, as well as the
732 terms and conditions of this use permit, shall be present at the beginning and
733 conclusion of operations each work day to see that all the conditions of the Code
734 and this use permit are observed.
735

736 25. A progress report shall be submitted to the Board, with a copy to the New
737 Kent County Zoning Administrator, on or about April 30, 2012. This progress
738 report must contain information concerning how much rehabilitation has been
739 performed, when and how the remaining amount of land will be rehabilitated, and
740 any other pertinent information about the operation that would be helpful to the
741 Board.
742

743 26. Operations shall be discontinued by April 30, 2013, and restoration
744 accomplished by not later than April 30, 2014, unless a new permit is granted by
745 the Board of Zoning Appeals. Restoration shall not be considered completed
746 until the disturbed area is approved as a wetlands mitigation bank by the U. S.
747 Environmental Protection Agency and U. S. Army Corps of Engineers Mitigation
748 Bank Review Team.
749

750 27. Failure to comply with any of the foregoing conditions shall automatically
751 void this permit.
752

753
754 Affirmative: Bruce, Harris, Nunnally, Witte, Wright 5
755 Negative: 0
756 Absent: 0
757

758
759 **[At this point, the transcript continues with the public hearing on the next**
760 **case.]**
761

762 **CUP2011-00008 RONNIE W. CARNEAL** requests a conditional use
763 permit pursuant to Section 24-95(i)(4) of the County Code to allow an accessory
764 structure in the front yard at 2910 Cottrell Road (Parcels 746-754-1444 (part)
765 and 3350), zoned R-3, One-family Residence District (Three Chopt).
766

767 Ms. Harris - All persons who plan to speak to this case, please
768 stand and raise your right hand to be sworn in.

769
770 Mr. Blankinship - Do you swear the testimony you're about to give is
771 the truth and nothing but the truth so help you God?

772
773 Ms. Harris - Please state your name, spell you last name, and
774 present your case.

775
776 Mr. Carneal - Ronnie Carneal—C-a-r-n-e-a-l.

777
778 Ms. Harris - Mr. Carneal, please present your case.

779
780 Mr. Carneal - I'm trying to get a permit to build a garage.

781
782 Mr. Reuger - I'm John Reuger. I'm an adjacent landowner. This
783 land was originally on my property and Ronnie and I went to get a permit to build
784 this garage. I found that I already had too many structures on my property, so I
785 cut out a piece of that land and put it onto his property. We did that and then the
786 County didn't like the verbiage, the way I deeded it to him—so I've since
787 changed that—because it gave me 100% egress and they said well, you know,
788 you really own the property. That's not true. But anyway, so I've taken that
789 verbiage out. So now we're finding that they say this property is in his front yard.
790 I have pictures, but you all have it up there on that previous screen where it's
791 really in his side yard.

792
793 Mr. Blankinship - Technically it's defined by the zoning ordinance as
794 the front yard.

795
796 Mr. Reuger - Okay.

797
798 Ms. Harris - So you've changed the deed or what is that you
799 changed?

800
801 Mr. Reuger - I changed the verbiage of the deed. Originally it gave
802 my guests and I a hundred percent egress to that structure. And I've taken that
803 out. It has not been recorded, but I have a notarized copy of it. The lawyer just
804 hasn't had a chance to do it yet. That goes out and all I have is egress to my
805 garage using this road that you see on the picture. So we tried to address all the
806 concerns that the County has. Now we're just asking that we be allowed to build
807 it where it is.

808
809 Ms. Harris - So you're changing the language that takes out the
810 part where you and your guest have full—

811
812 Mr. Reuger - Yes ma'am.

813
814 Ms. Harris - Okay. Does that still cancel out the fact that this is in
815 his front yard?
816
817 Mr. Blankinship - The use permit is still necessary, but it's a stronger
818 argument that the structure is accessory to Mr. Carneal's property and not to Mr.
819 Reuger.
820
821 Mr. Reuger - It is on Mr. Carneal's property. That is his property
822 now.
823
824 Mr. Wright - What's it being used for?
825
826 Mr. Reuger - His garage.
827
828 Mr. Wright - Whose garage? What's the size?
829
830 Mr. Reuger - I think 25 by 40, 26 by 40.
831
832 Mr. Carneal - It's a three-car garage.
833
834 Mr. Wright - And it's strictly to be used for a garage.
835
836 Mr. Carneal - Yes sir.
837
838 Mr. Wright - Not a frame shop or construction or anything?
839
840 Mr. Reuger - When they wrote it up and said frame shop, they
841 wrote it up because it was just framed in.
842
843 Mr. Blankinship - Frame construction.
844
845 Mr. Reuger - Yes. We don't do frame work.
846
847 Mr. Wright - I thought there was something going on in there.
848
849 Mr. Reuger - No sir.
850
851 Mr. Wright - Just a garage.
852
853 Mr. Reuger - Yes sir.
854
855 Ms. Harris - I still have concerns about the change in the deed.
856 You said it has not been notarized?
857

858 Mr. Reuger - Yes, it has been notarized; it just has not been
859 recorded.
860
861 Mr. Wright - That's no problem. We can make that a condition.
862
863 Ms. Harris - Okay. May we see that? Give it to Mr. Blankinship,
864 please.
865
866 Mr. Blankinship - Thank you.
867
868 Ms. Harris - Are there any more questions from the Board at this
869 point? Are we concluding that this accessory structure is in the front yard?
870
871 Mr. Blankinship - Yes ma'am, it is in the front yard. There's no question
872 about that.
873
874 Mr. Reuger - I would like to note that I read the conditions at Mr.
875 Carneal's request that the County would impose if this was approved and we'll
876 meet all those conditions.
877
878 Mr. Wright - Is that one of the conditions?
879
880 Mr. Blankinship - There is a condition number four that says the use of
881 the building shall be accessory to the building at 2910 Cottrell Road. I would
882 suggest that you add language to that condition requiring that this instrument be
883 recorded.
884
885 Mr. Reuger - That is his property now.
886
887 Ms. Harris - Do we want to word it now or wait until the motion?
888
889 Mr. Blankinship - I think we'll be all right.
890
891 Ms. Harris - Now?
892
893 Mr. Blankinship - No, I think we can wait.
894
895 Ms. Harris - Okay. Is there anyone else who wishes to speak to
896 this case? If not, that concludes the case. Thank you. We'll give this back to you
897 in just a minute.
898
899 **[After the conclusion of the public hearings, the Board discussed the case**
900 **and made its decision. This portion of the transcript is included here for**
901 **convenience of reference.]**
902

903 Mr. Wright - Madam Chairman, I move we deny this. The grounds
904 of the denial are that the property that is owned by the gentleman who lives
905 forward of that area already has four accessory buildings. He tried to build this
906 on his land and it was brought to his attention that he could not build it because
907 he would exceed the area that would be necessary for accessory buildings. So
908 then he deeds it to his neighbor behind him who happens to be his employee, I
909 understand. And the deed reserves onto that gentleman the unqualified right to
910 use it at any time he wants for him and guests, which he has now changed. It
911 was to be a three-story building, which is to me out of proportion to what needs
912 to be done to the neighborhood. I don't think it's proper to approve it for those
913 reasons.

914
915 Ms. Harris - Is there a second to this motion?

916
917 Mr. Bruce - Second.

918
919 Ms. Harris - Moved by Mr. Wright, second by Mr. Bruce that this
920 case be denied. Any questions on the motion? All in favor of denying this case
921 say aye. All opposed say no. The ayes have it; the motion passes.

922
923 After an advertised public hearing and on a motion by Mr. Wright seconded by
924 Mr. Bruce, the Board **denied** application **CUP2011-00008, RONNIE W.**
925 **CARNEAL's** request for a conditional use permit pursuant to Section 24-95(i)(4)
926 of the County Code to allow an accessory structure in the front yard at 2910
927 Cottrell Road (Parcels 746-754-1444 (part) and 3350), zoned R-3, One-family
928 Residence District

929
930
931 Affirmative: Bruce, Harris, Nunnally, Witte, Wright 5
932 Negative: 0
933 Absent: 0

934
935
936 **[At this point, the transcript continues with the public hearing on the next**
937 **case.]**

938
939 **CUP2011-00009** **ELLIS O. HENDERSON** requests a conditional use
940 permit pursuant to Section 24-95(i)(4) of the County Code to allow an accessory
941 structure in the front yard at 4500 Richmond-Henrico Turnpike (Parcel 794-743-
942 1008), zoned A-1, Agricultural District and R-3, One-family Residence District
943 (Fairfield).

944
945 Ms. Harris - All persons who wish to speak to this case please
946 stand and raise your right hand to be sworn in.

947

948 Mr. Blankinship - Do you swear the testimony you're about to give is
949 the truth and nothing but the truth so help you God?
950
951 Mr. Neal - Yes sir. I'm currently filling in for Ellis Henderson.
952
953 Ms. Harris - Can you speak up please?
954
955 Mr. Neal - I'm filling in for Ellis Henderson. I'm his assistant this
956 morning.
957
958 Ms. Harris - What's your name?
959
960 Mr. Neal - My name is Rashad Neal.
961
962 Ms. Harris - N-e-a-l.
963
964 Mr. Neal - Yes ma'am.
965
966 Ms. Harris - Please state your case.
967
968 Mr. Neal - Yes. We would like to add storage where it says
969 "Location 1." We would like to have storage right there due to the fact that we
970 have a high volume of furniture and we're paying a lump sum a month just to
971 keep it in storage. So we want to build storage on the property. That way we'll
972 have better access to the furniture for the group homes, etc.
973
974 Ms. Harris - I notice in your proposal you had two proposed
975 locations. Which one and why two?
976
977 Mr. Neal - This picture we're looking at now—oh, you just
978 changed it.
979
980 Ms. Harris - There.
981
982 Mr. Neal - Location 1 is where we really want to put it. Location
983 2 is just an alternative. When we went back and looked at it, there is not enough
984 room for us to put the storage there at all because the hill drops, the yard drops
985 to a hill. Right there we have more room. Actually, we could drive up the trucks
986 right there on the pavement and we can go up a ramp to the storage room.
987
988 Ms. Harris - So Location 2 is your preference.
989
990 Mr. Neal - No, Location 1 is.
991
992 Ms. Harris - Is that near the basketball court?
993

994 Mr. Neal - Yes ma'am.
995
996 Ms. Harris - What are you going to do with the basketball court?
997
998 Mr. Neal - We're going to knock that down and move it
999 somewhere else probably.
1000
1001 Ms. Harris - My first reaction to this case is why not the backyard.
1002 But then when I saw the—
1003
1004 Mr. Neal - Yes, there's no backyard.
1005
1006 Ms. Harris - And this I saw there is no backyard. You have seven
1007 acres but you have this tremendous slope so you really don't have a backyard.
1008
1009 Mr. Neal - Yes. And when I came to do the variance they asked
1010 us about it and I was trying to explain to them. That lake is right there. You can't
1011 put anything behind there. And we need big enough storage to hold table, desks,
1012 beds, couches. That's what we're building the storage for.
1013
1014 Ms. Harris - What type of siding are you going to use for that
1015 proposed structure? They said siding, but I didn't know if it was vinyl siding or
1016 what.
1017
1018 Mr. Neal - I don't have the paper with me right now.
1019
1020 Ms. Harris - You can see our paper, but I don't know if that would
1021 help you with the type of siding. Normally we want the structure to conform to the
1022 building you already have on the premises. You have a brick home, right?
1023
1024 Mr. Neal - Yes ma'am.
1025
1026 Ms. Harris - And this is vinyl.
1027
1028 Mr. Neal - Yes. The storage is going to be vinyl on the sides.
1029
1030 Ms. Harris - You say it's vinyl siding then.
1031
1032 Mr. Neal - Yes, we are going to use vinyl.
1033
1034 Ms. Harris - All right. Just for the record, do you want to tell us
1035 what—you said you had a number of beds in the facility and all that. You want to
1036 tell us what you all are about?
1037
1038 Mr. Neal - We're NdUTime Youth and Family Services,
1039 Incorporated. We do a lot of community-based services. We do group home,

1040 mental health, in-home, after school, one-to-one parenting, conflicts. We also
1041 provide sexual therapy, home therapy. We do a number of things in the
1042 community.

1043
1044 Ms. Harris - You're a resident home for young men?

1045
1046 Mr. Neal - Yes ma'am. This actual home is a group home, our
1047 young men we have there. With them being in our facilities, they do damage
1048 beds, they damage couches, chairs, tables. So we have a lump sum of it, but we
1049 have to drive to the storage to get it and drive it all the way back there. As far as
1050 here, the house is here and we can just take it out of the storage and take it in
1051 there. The house is on 5801 Chamberlayne Road, which is not that far of a drive
1052 for us to get there compared to driving way out to Laburnum and picking up stuff
1053 there and then having to drive all the way back. Our staff has to be available at
1054 the time as well. If we don't have staff available, that means I'm doing it by
1055 myself.

1056
1057 Ms. Harris - Is there another storage building on your premises?

1058
1059 Mr. Neal - No, we don't have any other storage at all.

1060
1061 Ms. Harris - Any other questions by Board members?

1062
1063 Mr. Nunnally - What is the maximum number of people you have in
1064 there?

1065
1066 Mr. Neal - In this group home here?

1067
1068 Mr. Nunnally - Yes.

1069
1070 Mr. Neal - We're allowed to have six kids per house. No more
1071 than that.

1072
1073 Mr. Witte - What's the age?

1074
1075 Mr. Neal - The ages range from 13 to 19. Our range right now is
1076 from 14 to 17. They're boys.

1077
1078 Ms. Harris - You have six houses here now?

1079
1080 Mr. Neal - Do we have six residents in the house?

1081
1082 Ms. Harris - Yes.

1083
1084 Mr. Neal - No, we don't have six residents in there right now.
1085 Two of them just signed out of care because they were at the age where they

1086 could sign out. So we're currently interviewing other boys to bring them into the
1087 group home.

1088
1089 Ms. Harris - Let's see if there's anyone else who wishes to speak.
1090 Is there anyone else who wishes to speak to this case? If not, that concludes the
1091 case. Thank you.

1092
1093 Mr. Neal - Thank you.

1094
1095 **[After the conclusion of the public hearings, the Board discussed the case**
1096 **and made its decision. This portion of the transcript is included here for**
1097 **convenience of reference.]**

1098
1099 Mr. Nunnally - Madam Chairman, I move that we approve this case
1100 because I know there are some hardships on the neighbors and all down there,
1101 but we're going to have that all the way through the County.

1102
1103 Mr. Blankinship - I think you may have jumped ahead.

1104
1105 Ms. Harris - We're on the case where the group home has seven
1106 acres of land they want to have this structure.

1107
1108 Mr. Nunnally - Oh, I'm sorry.

1109
1110 Mr. Witte - I'll make a motion we approve it. It's a seven-acre
1111 site. There are no other outbuildings on the facility. It's shielded from the road for
1112 the most part. I don't think it's going to affect the neighbors in any way, shape, or
1113 form.

1114
1115 Mr. Bruce - I second it.

1116
1117 Ms. Harris - Moved by Mr. Witte, seconded by Mr. Bruce that this
1118 case be approved. Any discussion on the motion? All in favor say aye. All
1119 opposed say no. The ayes have it; the motion passes.

1120
1121 After an advertised public hearing and on a motion by Mr. Witte, seconded by
1122 Mr. Bruce, the Board **approved** application **CUP2011-00009, ELLIS O.**
1123 **HENDERSON's** request for a conditional use permit pursuant to Section 24-
1124 95(i)(4) of the County Code to allow an accessory structure in the front yard at
1125 4500 Richmond Henrico Turnpike (Parcel 794-743-1008), zoned A-1, Agricultural
1126 District and R-3, One-family Residence District (Fairfield). The Board approved
1127 the use permit subject to the following conditions:

1128
1129 1. This use permit applies only to the placement of a 16 foot by 20 foot
1130 storage building in the side yard of a one-family residence. All other applicable
1131 regulations of the County Code shall remain in force.

1132
1133 2. Only the improvements shown on the plot plan (location No. 1) and
1134 building design filed with the application may be constructed pursuant to this
1135 approval. Any additional improvements shall comply with the applicable
1136 regulations of the County Code. Any substantial changes or additions to the
1137 design or location of the improvements will require a new use permit.

1138
1139 3. At the time of building permit application, the applicant shall submit the
1140 necessary information to the Department of Public Works to ensure compliance
1141 with the requirements of the Chesapeake Bay Preservation Act and the code
1142 requirements for water quality standards.

1143
1144
1145 Affirmative: Bruce, Harris, Nunnally, Witte, Wright 5
1146 Negative: 0
1147 Absent: 0

1148
1149
1150 **[At this point, the transcript continues with the public hearing on the next**
1151 **case.]**

1152
1153 **CUP2011-00010 SPINIELLO CONSTRUCTION** requests a temporary
1154 conditional use permit pursuant to Section 24-116(c)(1) of the County Code to
1155 operate a temporary storage yard at 488 N Juniper Avenue (Parcels 826-727-
1156 0564 and 1383), zoned R-3, One-family Residence District (Varina).

1157
1158 Ms. Harris - All persons who wish to speak to this case please
1159 stand and raise your right hand. If you think you might speak, please stand now
1160 and raise your right hand to be sworn in.

1161
1162 Mr. Blankinship - Do you swear the testimony you're about to give is
1163 the truth and nothing but the truth so help you God? Anybody here to present the
1164 case?

1165
1166 Ms. Harris - Mr. Green or R. Green?

1167
1168 Mr. Paulette - [Off microphone.] I'm with [inaudible] [0:31:41]*,
1169 subcontractor on the job.

1170
1171 Ms. Harris - Give us your name, please.

1172
1173 Mr. Paulette - My name is David Paulette—P-a-u-l-e-t-t-e. I'm Vice
1174 President of Operations for Lighting and Utilities. We're a subcontractor to
1175 Spiniello on this job; we're doing a bunch of the pipe work. We initiated the first
1176 contact with Mr. Palmore about getting this lay-down area. We failed to get a
1177 permit. We did all the erosion control. Did the topsoil, did erosion control,

1178 reseeded everything. And I guess we'd been working for two to three months on
1179 the site. It's very convenient to the site because it's within a half a mile of
1180 everything we're doing just about in Highland Springs.

1181
1182 And across the street from there, was a property owner that had a basement
1183 they'd dug out years ago and they wanted to get it filled in. So I called the
1184 environmental inspector. I thought we were going to leave the dirt in there so it
1185 wasn't temporary. So I called the inspector and Mike came down and told us
1186 what it looked like we had to do on that to get it straight. And then he asked did
1187 we have a permit for what we were doing across the street. I told him I'm not
1188 sure but I don't think so. So he checked and found out we didn't. He gave us a
1189 shut-down notice that afternoon, which was a Friday. Then we had a meeting
1190 with him and they gave us about a week and a half and we cleared it out. I think
1191 we did everything they wanted us to do.

1192
1193 It cost us a lot more money by not having the facility because we have to haul
1194 everything so far. We had some dirt stocked on it temporarily but most of the dirt
1195 we're hauling in from Hanover on Cold Harbor Road. About all of it's going over
1196 there. Anyway, with diesel fuel and everything else that's very convenient to the
1197 site. And time-wise it helps us a lot.

1198
1199 That's the gist of the story.

1200
1201 Mr. Blankinship - Could you describe the project just briefly.

1202
1203 Mr. Paulette - Oh, the project is rehabbing the sewer system. It's
1204 called Raw Water Section 2 and it runs from Holly Avenue up to Long Street. It's
1205 the north side of Washington Street, in that section there, too. Around Daisy and
1206 all that. I think it was 22,000 feet of lining work, 9,000 feet of open cut replacing
1207 8-inch pipe, and over 500 laterals to be replaced at the property lines. All the
1208 streets are going to be repaved.

1209
1210 Mr. Wright - Describe what you put on the property.

1211
1212 Mr. Paulette - Okay. We had pipe materials. We had a storage box
1213 out there called a Chicago box. We had pipe there; we had equipment parked
1214 there. The broken asphalt, we had stocked some of that there until we get ready
1215 to go to the plant and then we take it to get it recycled and pick up a load of
1216 asphalt to bring back to put in the trenches. And we had gravel stocked there.
1217 We had to backfill all the trenches with 21A stone so we had a big pile of gravel
1218 there, and then 57 stone for bedding. That's what we used it for.

1219
1220 Mr. Wright - So you have a pile of gravel on the property, too.

1221
1222 Mr. Paulette - We had a pile of gravel, 21A stone and 57 stone, the
1223 small stone to bed the pipe with.

1224
1225 Mr. Wright - How tall is that pile of gravel?
1226
1227 Mr. Paulette - I'm saying just off the top of my head probably 10 or
1228 12 feet.
1229
1230 Mr. Nunnally - They have those piles of gravel and soil all over
1231 Highland Springs, don't they?
1232
1233 Mr. Blankinship - Yes sir. And where they're on the location where work
1234 is being done, that's okay; that's part of the job. This site needed a use permit
1235 because they're not working on this location. They're using this location for work
1236 taking place elsewhere.
1237
1238 Mr. Nunnally - I live on a dead-end street and they have some
1239 property down at the dead end of the street and they're coming from other
1240 places to get material to take to the job. I don't know what material you would call
1241 it but it's a big round thing cement things.
1242
1243 Mr. Blankinship - Oh, okay.
1244
1245 Mr. Paulette - Manholes?
1246
1247 Mr. Nunnally - They have them all over Highland Springs. Have you
1248 had any problem with the neighbors? Have they complained about your trucks?
1249
1250 Mr. Paulette - I think we had one guy on the corner of Ivy. He was
1251 the only guy that I know of complaining. In fact, everybody in Highland Springs
1252 has been mighty good us, I'll tell you that.
1253
1254 Mr. Nunnally - What we just received today is about five pages of
1255 people in opposition of it.
1256
1257 Mr. Paulette - Oh, is that right?
1258
1259 Mr. Nunnally - You didn't get any of this?
1260
1261 Mr. Paulette - No sir.
1262
1263 Mr. Blankinship - The County just received it yesterday afternoon, late
1264 afternoon.
1265
1266 Mr. Paulette - Well that's the gist of the story. We're about 60%
1267 through that job. I'd say we'll finish in September. It's contracted up until
1268 December, but I think it will be finished in September.
1269

1270 Ms. Harris - So you're saying that you would only do this until
1271 September?
1272
1273 Mr. Paulette - Yes ma'am. By the end of the September we should
1274 be finished and done with the job.
1275
1276 Ms. Harris - When did you remove the equipment and materials?
1277 How long ago was that?
1278
1279 Mr. Paulette - It's been about two months by now.
1280
1281 Ms. Harris - Before you removed them, when you read the letters,
1282 the petition, there were some complains about kids playing in this area, this area
1283 being used for normal activities for children. And with the trucks it was getting to
1284 be a hazard. Were you aware of that?
1285
1286 Mr. Paulette - No ma'am. I travel that road every day. Our trucks go
1287 extra slow on that road. I never saw that many children in the street, to tell you
1288 the truth, and never had any body flag me down or talk to me about somebody
1289 going too fast or anything like that. I'm not saying the County didn't get some
1290 complaints, but I didn't see it was a problem. As far as anybody playing on this
1291 site, I don't think they had any permission to be on that site to start with.
1292
1293 Mr. Witte - Mr. Paulette, was there any fencing around the
1294 storage area.
1295
1296 Mr. Paulette - All we had was a silt fence.
1297
1298 Mr. Witte - Right. Nothing that would prevent children from
1299 getting in there and playing on the equipment.
1300
1301 Mr. Paulette - No sir. We have equipment parked all over Highland
1302 Springs and there's nothing to keep them off that either. We're not the only
1303 contractor working in Highland Springs. We appreciate the work, though, I'll tell
1304 you that.
1305
1306 Mr. Nunnally - I noticed on the application for the use permit it has
1307 7:30 AM to 5:30 PM. Then it was changed to 7:00 AM to 5:00 PM in the
1308 conditions. What I'm trying to find is do you run those trucks while the school
1309 buses are coming to pick up children? They come out early now for children to
1310 go to school.
1311
1312 Mr. Paulette - We haven't had any problem with it.
1313
1314 Mr. Nunnally - You don't run those trucks while they're picking up
1315 children for school.

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Mr. Paulette - Oh yes sir, we do. But I don't see the children out there. I mean it's not a big problem; I think somebody's trying to make a mountain out of a molehill on that, sir, because we don't have that many trucks steady running all the time. You have to go down to the street, you have to dig it out and load it out. By that time you get the first load out of the job and by the time you set all the traffic control up it's probably 8:30 AM or 9:00 AM. And about 5:00 PM is when we finish up.

Mr. Nunnally - How many trucks do you have?

Mr. Paulette - If we have two crews of men that's two trucks on each crew. If we have three crews that's six trucks. And the average truck is hauling—the dirt has to go all the way over to Cold Harbor which is six miles. We're hauling about six or seven loads apiece a day and then we have to bring stone back and fill in the trench.

Mr. Witte - But they're not all coming to and from this lot.

Mr. Paulette - No sir.

Mr. Witte - How many actually come down—just a rough estimate—Juniper?

Mr. Paulette - Come down Ivy to Juniper. They come down N. Ivy and then turn and go into Juniper. I'd say with small pickups picking up material and stuff—

Mr. Witte - Not the pickup trucks; the big trucks.

Mr. Paulette - The tandem trucks? I'm going to say a dozen a day.

Ms. Harris - The roads Ivy Avenue and Juniper Avenue, are they very narrow? What kind of width are we talking about?

Mr. Paulette - Ivy is a lot better than most of them in Highland Springs to tell you the truth. We're not getting on Juniper at all. Juniper dead-ends on either side of Washington Street. You can't turn off of Washington Street and go down Juniper. You have to come all the way down Ivy and turn around and go into Juniper from that end. There's really no traffic on Juniper at all, but Ivy is the street that most of the traffic is on. We'll be working on that street before too long as far as digging it up and putting the valves in.

Ms. Harris - You're not sure of the width. But is this the street—

Mr. Paulette - The two-tandem trucks pass with no problem at all.

1362

Ms. Harris - Is this the street we're seeing on the overhead?

1363

1364

Mr. Paulette - That's not the street. Ivy is the street right there between those two houses looking that way. And Juniper is right here going to the left where that curb is.

1366

1367

Ms. Harris - We can't see N. Ivy from this?

1368

1369

Mr. Witte - It's in between those houses.

1370

1371

Ms. Harris - We don't have a picture of that, right?

1372

1373

Mr. Blankinship - I don't believe we took one over that direction because the site doesn't actually adjoin that portion of N. Ivy. There you see it in the aerial photograph and it doesn't look that different from where we were before. Paul, would you put the cursor where the photograph was before? Right there is where the other photograph was taken from.

1374

1375

1376

1377

1378

1379

Mr. Paulette - That is N. Ivy, but N. Ivy goes out here and takes a left, too. I've never seen a street where you make a left and it still has N. Ivy on it. But anyway, right there on that corner is where you took that picture. And the yard is right there where you have that yellow around.

1380

1381

1382

1383

1384

Mr. Blankinship - So you can see that the north-south section of N. Ivy is maybe a little bit wider than that right-angle section. Now Paul, if you'll go back to the photograph.

1385

1386

1387

1388

1389

Mr. Paulette - N. Ivy out there, the main part of it, is wider than that section, yes sir. I think they improved that street when they built all those houses in there.

1390

1391

1392

1393

Mr. Blankinship - It's maybe a little bit wider and a little bit newer than that section, but not much different.

1394

1395

1396

Ms. Harris - All right. Any more questions from Board members?

1397

1398

Mr. Wright - If this permit is denied, where would you have to operate from?

1399

1400

1401

Mr. Paulette - We would do like what we're doing now. We piecemeal anywhere we can find a place to store some material, dead-end streets. And park equipment somewhere on the side of the street. Stuff like that. And it's taking us longer to do the job because we have to haul it so far and stuff.

1402

1403

1404

1405

1406

Mr. Blankinship - Do you have material stockpiled near Dorey Park?

1407

1408
1409 Mr. Paulette - We have material down on WRVA Drive where
1410 Spiniello's main yard is. Some of the material we have to go down there and get.
1411 The small stuff we're stocking over there on Cold Harbor Road where we're
1412 taking the dirt to dump.
1413
1414 Mr. Witte - Mr. Paulette, I have one more question. Down after
1415 you pass the subdivision and make that right to go to your yard, if you went
1416 straight ahead, is there still a landfill down there?
1417
1418 Mr. Paulette - That's another staging area that G. L. Howard is
1419 using. Yes sir. I think that's been there a long time.
1420
1421 Mr. Witte - I'm familiar with the area and there were several
1422 dump trucks that would run down there every day to dump debris from wherever
1423 to that landfill.
1424
1425 Ms. Harris - Any other questions from Board members?
1426
1427 Mr. Nunnally - Let me ask you one more time. How long will you be
1428 down there?
1429
1430 Mr. Paulette - We think we will finish in September. If everything
1431 goes according to schedule, we should be out before September. But by the end
1432 of September I would say we'll be completely finished. I'd say we're 60-some
1433 percent through now. The hardest part of it I think is done.
1434
1435 Ms. Harris - The use permit has November.
1436
1437 Mr. Paulette - Right.
1438
1439 Ms. Harris - But you're saying you think you'll be done in
1440 September.
1441
1442 Mr. Paulette - Yes ma'am. It has to be done in December. We
1443 should have no problem getting it finished by September.
1444
1445 Ms. Harris - Thank you, Mr. Paulette. Let's hear the other people
1446 who had raised their hands. Is there anyone else who wishes to speak to the
1447 case? Please come forward and identify yourself.
1448
1449 Mr. Blazek - Good morning. My name is Andrew Blazek—B-l-a-z-
1450 e-k. I'm a resident at 433 N. Ivy Avenue. It's just across the street from the end
1451 of this dashed line on the screen.
1452

1453 Basically looking out into my backyard, there is a construction site that has no
1454 effect on my neighborhood. If you could imagine that site busy with construction
1455 material, construction equipment, and just the level of noise that goes on in this
1456 facility throughout the week, it interrupts my day. There's the sound of the
1457 machinery, the diesel engines. There's also the sound of all the safety reverse
1458 backup beeps that cause annoyance in my neighborhood. As we discussed
1459 before, trucks cannot get down Juniper Avenue. So if they want to access the
1460 site, they have to come down all the way N. Ivy Avenue and then come around to
1461 the lot on the Juniper side. So yes, there is truck traffic. I don't see truck traffic as
1462 being the largest inconvenience with this project because, as you said before, we
1463 do have dump trucks that do go to that old dump site; I'm not sure if they still use
1464 that or not. So we've been used to that for some time.

1465
1466 As you said before, there are piles of gravel when it is active, large mounds of
1467 stone, and then long runs of piping that are out there. But it's mainly the
1468 equipment use in that area throughout the day regardless of trucks ingressing
1469 and egressing. There is still a lot of activity back there.

1470
1471 When people began work in this area, I didn't step up and call the County. When
1472 I walked around my neighborhood I saw it and I figured oh, they've called the
1473 County and they have a permit to work in this area. And then later I saw some
1474 County trucks coming through our neighborhood and I said okay, they're the
1475 ones who will see this. And they were the ones who ended up shutting down the
1476 site. So then when I received my notice, which I should have received the first
1477 time they began working in the zone, I would have come down and let people
1478 know that this is an inconvenience specifically to the people who live across the
1479 street from this site. And as you will hear, there was more support from people
1480 who just experience the truck traffic down this road.

1481
1482 If you couldn't tell I oppose this permit being approved because this work—I
1483 support this work happening. The School Board needs to get sewer lines, people
1484 need to do their jobs. But I believe the staging area should not be in a residential
1485 area. Thank you very much.

1486
1487 Ms. Harris - Mr. Blazek, how long have you been a resident of that
1488 community?

1489
1490 Mr. Blazek - I've lived there for almost four years.

1491
1492 Ms. Harris - Any questions from Board members?

1493
1494 Mr. Blazek - Thank you.

1495
1496 Ms. Harris - Anyone else who wishes to speak to this case?
1497 Please come forward and identify yourself.

1498

1499 Ms. M. Hornberger - Hello, my name is Marie Hornberger. That's H-o-r-n-
1500 b-e-r-g-e-r. I was one that helped put together the petition because many of the
1501 neighbors weren't aware of them seeking to get a permit to be coming back
1502 because only a few were notified.

1503
1504 I homeschool my children and so we're home the majority of the time. I live at
1505 430 N. Ivy Avenue and so there are days that it seemed like as one was coming
1506 down, one was coming up. And it was like that, up and down, and that rumble-
1507 rumble, which also not just the noise and the traffic, but the dust and dirt that
1508 was stirred up by this. They tried to take care of it by cleaning the road with the
1509 sweeper or washing it down. It may have cleaned the road some, but all of that
1510 was pushed onto our properties, all the dirt and the rocks was then pushed right
1511 onto our properties.

1512
1513 As I was going around and just listening to various neighbors and what they had
1514 to say about it, some said there was some siding damage to their homes from
1515 the rocks being kicked up. Some residents work at night and sleep during the
1516 day, which is kind of hard. And then these drivers, most of them, I'm sorry, were
1517 rude. They came through having a job to do, which was their first priority, and it
1518 was just like, I'm sorry, to heck with the residents. That's the way we felt. There
1519 was only one driver I could say that was actually nice. And the reason why you
1520 didn't see many kids is because when this started the kids just couldn't go out. I
1521 stopped mine from riding their bikes or us walking our dog and just the normal
1522 neighborhood activity going on.

1523
1524 I understand it is temporary, but like most jobs, they go longer than planned and I
1525 feel like we've already had our time of putting up with this. That's enough of
1526 putting up with it. There has to be another alternative site for this. There is even
1527 land off of Airport Drive. I don't know if that would be an area to look into for
1528 where they could relocate this. We would like to feel like we have our
1529 neighborhood back and can have our activities carrying on. With school being
1530 out and kids being able to be out in the road and not hear the rumble-rumble of
1531 trucks all the time.

1532
1533 Ms. Harris - I have a couple of questions. For the last two months
1534 they have removed their materials. Have you noticed a difference in the truck
1535 traffic?

1536
1537 Ms. M. Hornberger - Tremendously. We understand that at the end of the
1538 road there's a farming zone there. The activity that that generated was nothing
1539 compared to what went on with this staging site.

1540
1541 Ms. Harris - Are trucks actually coming through your
1542 neighborhood going to that farming site?

1543

1544 Ms. M. Hornberger - Occasionally. But it does not generate the traffic like
1545 this work station does.

1546
1547 Ms. Harris - If we honor this commitment until September, that
1548 would not be agreeable with you?

1549
1550 Ms. M. Hornberger - No, it wouldn't. I feel like we've already put up with it
1551 from the first time.

1552
1553 Ms. Harris - Are there other questions by Board members?

1554
1555 Mr. Witte - Does this count as political science time for your
1556 school children for homeschool?

1557
1558 Ms. M. Hornberger - Yes it does. In fact, two of them are prepared to say
1559 something if it's allowed.

1560
1561 Ms. Harris - Thank you so much for coming in. Are there any other
1562 persons who wish to speak to this issue? The only thing we ask is that when you
1563 do speak before us—I need to say this because other cases are here too—we
1564 ask that you not repeat any point that has already been made.

1565
1566 Ms. E. Hornberger - I am Elizabeth Hornberger—H-o-r-n-b-e-r-g-e-r. I'm
1567 also a resident of 430 N. Ivy Avenue. One of the main reasons I dislike the
1568 construction vehicles is because of the noise. They disrupt the piece and quiet
1569 that the neighborhood should have. When the dump trucks came, I could not
1570 ride my bike, we could not take walks along the road, which had become littered
1571 with rocks and clumps of mud. The grass on the edge of the road was covered in
1572 dust. This is a residential area that should not have to go through this, be it
1573 temporarily or not. They should not be allowed to disrupt the peace.

1574
1575 Ms. Harris - How old are you, Elizabeth?

1576
1577 Ms. E. Hornberger - I'm 16.

1578
1579 Ms. Harris - Any questions from Board members? Is there anyone
1580 else who wishes to speak to this case?

1581
1582 Mr. Johnson - My name is Charles Johnson and I live at 601 N. Ivy.
1583 And it's J-o-h-n-s-o-n. As far as trucks coming off of Ivy turning right on Ivy, they
1584 cannot make that turn without taking a driver's side tire into the left-hand ditch. A
1585 tractor-trailer can't make it without going through my yard. And I've dealt with it
1586 from the day they rolled in there until they day they rolled out. They tore my front
1587 yard up. I have three granite blocks down there trying to keep them out. If they
1588 do get the permit again, I'm going to put a Jersey wall up there to stop them
1589 because they will just tear my front yard up.

1590

1591 The noise from the trucks, there were five trucks an hour. That's in. And then
1592 they had to come back out. So I listen to that from the time they started until the
1593 time they ended. They work at 7 and 8:00 PM at night. So when they say that
1594 they stop at 5, they don't.

1595

1596 As far as the dust, they swept the roads dry; they did not put water down on the
1597 road. They would sweep them dry. There would be so much dust you couldn't
1598 see up and down Ivy. They did dry it when I called the County. Mr. Fullerton was
1599 the inspector down there. When I would call him, I reckon they would know and
1600 they would come down and either sweep it before he got there or after they got
1601 there, but they did not put water down on that road. G. L. Howard always did put
1602 water down. They never actually got dirt on the road because they run the trucks
1603 back there and get the dirt off. But the amount of dust that was in that place
1604 when these people run was constant from morning until evening. Now summer is
1605 coming and it's just going to get worse on us. They are making it as they are with
1606 the places they have.

1607

1608 There are 30-some people here that do not want this. Thank you for listening to
1609 us. Thank you very much for listening to us.

1610

1611 Ms. Harris - Mr. Johnson, how long has this been going on?

1612

1613 Mr. Johnson - I'm not sure of the dates. It's from when they started
1614 in there when they got the permit.

1615

1616 Ms. Harris - A few months?

1617

1618 Mr. Johnson - Oh yes ma'am. And it was a nightmare for me and
1619 the residents from the time that they started until the time they left.

1620

1621 Ms. Harris - Can you point out your house on this?

1622

1623 Mr. Johnson - Yes ma'am. I'm at 601. Next to 504.

1624

1625 Ms. Harris - I see the corner.

1626

1627 Mr. Johnson - Okay, right there. They can't make that corner without
1628 running in my front yard. They have their front tire in the ditch to make that
1629 corner. Now a tractor-trailer cannot get down there and if it's a lay-down yard,
1630 they're bringing pipe in, there are going to be tractor-trailers. And they can't get in
1631 there without hitting that yard. If you go back to the other picture, get down there
1632 where the white mailbox is right there? That's where a tractor-trailer has to turn in
1633 to dump that pipe. He cannot get through there without being on this side of that
1634 mailbox. And if they're doing fine now, it's 30-some people saying he's not doing
1635 fine down there. So thank you all very much for listening.

1636
1637 Mr. Nunnally - You said you did call the County—
1638
1639 Mr. Johnson - Yes sir.
1640
1641 Mr. Nunnally - —that they were running in your yard and they didn't
1642 do anything about it?
1643
1644 Mr. Johnson - No sir. I don't know what happened there. There were
1645 actually no complaints made. I know of four residents that called complaining
1646 about this and there were no complaints that you all have, I don't think. I was told
1647 there were no complaints. Mr. Fullerton being the inspector down there said I
1648 was the only one that ever complained. I know that Mr. Fennel and Mr. Williams
1649 called probably two or three times a week, too. I don't know where the mix-up got
1650 as far as the complaints coming in, but they were never logged in as complaints.
1651 There were a lot of people complaining back then but nobody was getting it up
1652 here.
1653
1654 Mr. Blankinship - Who did you complain to, do you know?
1655
1656 Mr. Johnson - Doug Fullerton.
1657
1658 Mr. Blankinship - Police?
1659
1660 Mr. Johnson - Oh, police were down there, too. They have reports
1661 on how many trucks they were trying to stop down there. They were coming
1662 down the road at 35. Like they said, they've got a job to do and they didn't care.
1663 The environmental inspector is John Mulligan. And he was only called in the last
1664 couple days that they were there.
1665
1666 Mr. Blankinship - They're the ones who shut it down.
1667
1668 Mr. Johnson - Right. And see he didn't know—
1669
1670 Mr. Blankinship - That previous complaints had been filed.
1671
1672 Mr. Johnson - Right. Well I was told Fullerton was the utilities
1673 inspector.
1674
1675 Mr. Blankinship - Oh, okay.
1676
1677 Mr. Johnson - As far as Mr. Mulligan, when I spoke to him, then
1678 things started happening. But there were a lot of complaints. That's all I know.
1679
1680 Ms. Harris - How long have you been a resident of that
1681 community?

1682
1683 Mr. Johnson - Since 1998. I actually grew up at 601 Juniper. So I
1684 grew up there and that's since 1961.
1685
1686 Ms. Harris - Any more questions from Board members? I want to
1687 thank you for coming.
1688
1689 Mr. Johnson - Thank you all very much.
1690
1691 Ms. Harris - Is there anyone else who wishes to speak to this
1692 case? We're ready now for the rebuttal. Mr. Paulette?
1693
1694 Mr. Paulette - We haven't been in Mr. Johnson's front yard. There is
1695 fifty-foot right-of-way on N. Ivy right there. We haven't been anywhere close out
1696 of that right-of-way. It has been a problem there for some trucks, the bigger
1697 triple-axle trucks that bring in some stone sometimes.
1698
1699 Anyway, I understand what the people are concerned about. But I want them to
1700 know we still have to work on Ivy Street, so. I guess they'll have a lot more
1701 complaints then, but we'll be right in their front yards then.
1702
1703 Mr. Bruce - What are you actually going to do on Ivy?
1704
1705 Mr. Paulette - They're going to line the sewer line and then we have
1706 to replace the laterals from the main to each house.
1707
1708 Mr. Witte - So you're going to work on every one of those
1709 houses?
1710
1711 Mr. Paulette - Every one of those houses we have to dig down to
1712 the main after they put the liner inside of the old pipe.
1713
1714 Mr. Witte - When do you anticipate that happening?
1715
1716 Mr. Paulette - Well, I'm not sure, but I'd say in the next month,
1717 maybe month and a half. The lining crew is supposed to be coming in there this
1718 week to finish up the line.
1719
1720 Mr. Witte - You're actually going to use a backhoe or something
1721 to dig up the lines?
1722
1723 Mr. Paulette - We have to dig up the lines, haul the dirt off, replace
1724 the pipe, and then backfill it with stone and put the asphalt back.
1725
1726 Mr. Witte - And where are you going to store these materials
1727 while you're working on N. Ivy, in their front yards?

1728
1729 Mr. Paulette - No sir. Like the 57 stone we bring in each day, dump
1730 it in the street and then clean it up at night. And the material, the pipe work, the
1731 six-inch pipe, there's not a whole lot of material on each lateral. But it'll probably
1732 average 25 feet of pipe in a cleanout.
1733
1734 Mr. Witte - So temporarily you will be putting the pipes in the
1735 ditches.
1736
1737 Mr. Paulette - Yes. We'll just probably bring it in each day. Then the
1738 stone we keep stocked off of Cold Harbor Road now. That's what we're doing
1739 now. Any place where we can find a place to put something. We're not stocking
1740 in the front yards.
1741
1742 Mr. Nunnally - You still believe you will be out of there by the first of
1743 September.
1744
1745 Mr. Paulette - I said the end of September, sir.
1746
1747 Mr. Witte - And you're going to tie into the meters. You're going
1748 to the connection, which is generally inside the property line.
1749
1750 Mr. Paulette - Yes, it's right at the property line. The lateral is
1751 supposed to be set right at the property line. What we normally do is dig
1752 backwards. We start at the property line and dig down to find the old sewer
1753 connection. And then we dig from that. We dig the old one up and trace it back
1754 to the main and put the pipe in that way and then backfill it and grade the yard
1755 back and seed it. We haven't swept that street every time when it was dusty. I
1756 understood [Unintelligible] sometime, no I'm not saying that. But not every time
1757 we swept it, because I know that I've put water on it myself.
1758
1759 Mr. Witte - And how long do you anticipate it taking to do the
1760 stretch on N. Ivy?
1761
1762 Mr. Paulette - It will probably take two weeks.
1763
1764 Mr. Witte - Thank you.
1765
1766 Mr. Paulette - Now that's for us digging. Now they'll be in there with
1767 the lining crew, which they should line it in two days or three days. But they'll just
1768 have trucks. They won't do any excavation. They'll be trucks, steam lines and
1769 stuff, and they'll put the pipe in, heat it, blow it out, and cool it, and they they'll go
1770 on down to the next section.
1771
1772 Mr. Witte - Okay, thank you.
1773

1774 Mr. Paulette - Thank you sir.
1775
1776 Ms. Harris - Mr. Paulette, have you had this type of complaints
1777 from other neighborhoods?
1778
1779 Mr. Paulette - To tell you the truth, we consider ourselves a pretty
1780 good contractor and we don't get a lot of complaints on our jobs. I know my truck
1781 drivers and I don't think I have impolite truck drivers because I don't put up with
1782 it.
1783
1784 Ms. Harris - Are you familiar with any police reports that were
1785 turned in?
1786
1787 Mr. Paulette - No ma'am. I'd like to know how many tickets they
1788 wrote. None of my drivers got a ticket, I can tell you that, because I would be the
1789 first one to hear about.
1790
1791 Ms. Harris - Is there anyone else who wishes to speak to this
1792 case? That concludes the case.
1793
1794 **[After the conclusion of the public hearings, the Board discussed the case**
1795 **and made its decision. This portion of the transcript is included here for**
1796 **convenience of reference.]**
1797
1798 Mr. Nunnally - I move we approve it because I know it will be a
1799 hardship on some of the neighbors down there, most of the neighbors, but this is
1800 going to happen all the way through Highland Springs for the next two or three
1801 years. In fact, they just started on my street. Anyway, I just don't think it will be
1802 that much hardship and it's going to be a short-term thing here. The permit only
1803 lasts until September, so I move we approve it.
1804
1805 Ms. Harris - Is there a second to this motion?
1806
1807 Mr. Bruce - I second.
1808
1809 Ms. Harris - Moved by Mr. Nunnally, seconded by Mr. Bruce that
1810 we approve this case. Are there questions? I have a question. We had seen on
1811 the use permit that they had a date, they had November 1st. So we're changing
1812 this use permit date to September 30th.
1813
1814 Mr. Blankinship - That was part of their testimony. It's not unusual for
1815 the Board to allow a little extra time in case something gets tied up. So if you
1816 want to change it, that should be explicit in the motion, I think.
1817
1818 Ms. Harris - You said September the 30th, the last of September?
1819

1820 Mr. Nunnally - Last of September, yes.
1821
1822 Mr. Blankinship - Do you want to add to the motion you're amending
1823 the condition that it expire the last of September?
1824
1825 Mr. Nunnally - I asked him several times and he said September
1826 would be fine.
1827
1828 Ms. Harris - All in favor of this motion. Oh, questions, discussion?
1829 All right.
1830
1831 Mr. Witte - My real concern is Mr. Johnson with the vehicles in
1832 his front yard. If he does install Jersey walls—which I guess is his right; I don't
1833 know if it meets the fencing requirements set by the County—it could cause a
1834 major issue there. I'm very familiar with the area and I know when those 30-
1835 some houses were being built there was a lot of construction equipment. I was
1836 involved in that and I don't recall any complaints from that standpoint. My only
1837 concern would be Mr. Johnson's property on the corner.
1838
1839 Mr. Wright - Madam Chairman, I have real concern for all the
1840 citizens that live in that area. We've heard testimony of the dust, rocks, and mud
1841 pushed into the yards. The trucks are evidently speeding. Children are not able
1842 to go out and do what they're supposed to do, enjoy the community, riding their
1843 bicycles on the road, or even walking on the road. This is April. That's May,
1844 June, July, August, September. That's five more months of this and it's in the
1845 most beautiful time of the year, the summertime when people need to be out and
1846 enjoying their neighborhood. I'm really concerned. I know it works a hardship on
1847 those people, the company that's performing this work. This is sort of an unusual
1848 situation the way those trucks have to come around and go around and go out
1849 the entire length of N. Ivy Road. I just think that's part of the cost of doing
1850 business and I don't think it should be done on the backs of the citizens.
1851
1852 Ms. Harris - I have concern about this particular case, too. If we
1853 approve it, it's almost like we're giving authority to operate business as usual.
1854 And we don't want it to continue like it was before they removed the materials.
1855 So I do have some reservations about the volume of truck traffic and about the
1856 disregard of citizens' properties. Any more discussion on the motion?
1857
1858 All in favor of approving this say aye. All opposed say no. This is denied.
1859
1860 After an advertised public hearing and on a motion by Mr. Nunnally seconded by
1861 Mr. Bruce, the Board **denied** application **CUP2011-00010, SPINIELLO**
1862 **CONSTRUCTION's** request for a temporary conditional use permit pursuant to
1863 Section 24-116(c)(1) of the County Code to operate a temporary storage yard at
1864 488 N Juniper Avenue (Parcels 826-727-0564 and 1383), zoned R-3, One-family
1865 Residence District (Varina).

1866			
1867	Affirmative:	Bruce, Nunnally	2
1868	Negative:	Harris, Witte, Wright	3
1869	Absent:		0

1870
1871
1872

1873 **[At this point, the transcript continues with the public hearing on the next**
1874 **case.]**

1875

1876 **APL2011-00001 THE EAST END LANDFILL, LLC** appeals a decision
1877 of the director of planning pursuant to Section 24-116(a) of the County Code
1878 regarding the property at 1820 Darbytown Road (Parcels 809-707-1585 and 808-
1879 706-6679), zoned B-3, Business District and M-2, General Industrial District
1880 (Varina).

1881

1882 Ms. Harris - All persons who wish to speak to this case, either pro
1883 or con, please stand and raise your right hand to be sworn in.

1884

1885 Mr. Blankinship - Do you swear the testimony you're about to give is
1886 the truth and nothing but the truth so help you God?

1887

1888 Ms. Harris - Will the applicant please identify yourself and state
1889 the case.

1890

1891 Mr. Hayes - Good morning Madam Chairman, members of the
1892 Board. My name is Tim Hayes with Hunton and Williams. I'm here representing
1893 the East End Landfill on this appeal this morning. I have Andrea Wortzel with
1894 me, who is also with Hunton and Williams. We are going to be introducing
1895 several exhibits during the course of the appeal and we'll just go ahead and give
1896 the packets of exhibits to the secretary. There is a map for the Board members
1897 to look at.

1898

1899 We're here today to appeal a February 24th Notice of Zoning Violation that says
1900 that coal combustion byproducts and tires have been unlawfully brought to the
1901 East End Landfill site. Basically the point that the Planning Director makes is that
1902 the coal combustion byproducts and tires are not wastes that are permitted to be
1903 taken to the landfill.

1904

1905 East End Landfill operates under a conditional use permit from the County and
1906 they also operate under a permit issued by DEQ. I'd like to have the DEQ permit
1907 introduced as our Exhibit 1 and the CUP introduced as Exhibit 2. It's a
1908 construction demolition debris landfill and as such it's authorized by DEQ by the
1909 permit and State regulations, as well as by the conditional use permit, to receive
1910 and dispose of construction demolition and debris waste. Now the conditional
1911 use permit has a Condition #20 that says:

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The landfill shall only accept construction and demolition debris originating within 150 miles of the site hauled by the applicant and other contract haulers licensed by the Commonwealth of Virginia. The material to be deposited in the landfills shall not include any hazardous waste as defined by the Virginia Hazardous Waste Management regulations or any biodegradable material other than woody waste from construction, demolition, and land-clearing operations.

There's no issue about whether the waste has come from more than 150 miles of the site. No issue about whether it's been hauled by the applicant or whether it contains hazardous waste. The only question on this appeal is whether this condition restricts the landfill's ability to accept materials into the landfill for construction purposes as opposed to waste disposal. There are not factual disputes here; they do bring coal combustion byproducts in, they do bring tires in and shred them. They do use those as construction material at the landfill. There is no factual dispute. The only question is whether those types of uses violate the condition I just read.

Now the conditional use permit authorizes TEEL (The East End Landfill) to combine two existing old landfills—the old Simons' landfill and the old Cox landfill off of Darbytown Road—and to operate them as a single landfill. Exhibit 3 shows the area that is currently within the conditional use permit area. The DEQ permit authorizes construction and operation of CDD landfill cells. If you look at this map that I handed out to everyone—take a minute to look at it—the area that is permitted for waste disposal—

Ms. Harris - Excuse us, please, Mr. Hayes. We want to be sure of the map you're speaking of. Is this the map that was in our packet?

Mr. Hayes - No, I just handed it.

Mr. Witte - You only handed one packet out?

Ms. Harris - We need the copies.

Mr. Blankinship - Oh, I'm sorry.

Mr. Hayes - On the map you'll see an area that is cross-hatched in blue. Those are the currently-active cells in the landfill that are permitted by DEQ to receive construction demolition and debris waste. You'll also see to the east and south some other cells, but those cells are not currently active; they've been closed.

1957 The DEQ permit, which authorizes disposal of waste in these cells, also requires
1958 that Condition 1F3 requires TEEL to reclaim the old City of Richmond landfill,
1959 which is in the CUP area which is on TEEL's property, but which is not within the
1960 currently-permitted DEQ landfill area. That's a separate condition in the DEQ
1961 permit. They're under an affirmative obligation to reclaim that landfill. They were
1962 required to submit a plan for reclamation of the old Richmond landfill and they
1963 did so. That plan is included in our exhibits as Exhibit #7. We also have two
1964 exhibits, affidavits from Mr. Appelget and Mr. Hinderlighter, which explain how
1965 the landfill operates and what is going to be done with the landfill reclamation.
1966

1967 In the landfill reclamation plan, what TEEL has proposed to do is to remove the
1968 waste that was put in that area over the years by the City of Richmond when it
1969 operated it as a landfill. That waste will be taken out all the way down to base
1970 grade, to clean soil. And waste that is acceptable as CDD waste will be put into
1971 the TEEL landfill. Waste that is not CDD waste—for example sanitary municipal
1972 type waste, plastic bags and so forth—will be taken to another landfill that's
1973 permitted to receive that type of waste. Any recyclable materials in the landfill
1974 that can be economically recycled—metals, glass, and so forth—will be
1975 appropriately recycled. And any hazardous materials will be taken away from the
1976 site for proper disposal. Once that's done, there is going to be a large hole,
1977 obviously, remaining where the old Richmond landfill was. And TEEL is going to
1978 have to reclaim that area. What they have proposed to do is to build that area
1979 back up to grade for use in future construction. The way they're going to do that
1980 is they're going to put down a geo-synthetic liner over the clean soil where the
1981 old Richmond landfill used to be. And then they're going to place construction fill
1982 on top of that liner to bring it up to grade. They're going to put an additional liner
1983 over the top of that fill and then there will be an additional two feet of soil and
1984 then a half a foot of topsoil. And then it will be seeded. So at the end of the day
1985 when the project is completed, it will be at grade, it will be vegetated, with grass
1986 growing there.
1987

1988 What TEEL had proposed to use as fill in that site, to bring it up to grade as
1989 construction material was to use coal combustion byproducts, which is both fly
1990 ash and bottom ash from coal-fired power plants located in Virginia. That
1991 material is used as construction fill, it's very suitable construction fill. DEQ has
1992 specific regulations authorizing its use as construction fill under certain
1993 conditions. And DEQ issued in July 2009 a beneficial use determination to The
1994 East End Landfill—which is our Exhibit #8 going in the record—saying that they
1995 could use coal combustion byproducts for the purpose of relaying the old
1996 Richmond landfill, bringing it up to grade. Now this stuff is done just like you
1997 would do with fill dirt. It's brought in, it's put in six-inch layers, it's compacted. It's
1998 exactly like construction fill dirt.
1999

2000 So that's what they had proposed to do with the coal combustion byproducts on
2001 site. As I said, that's allowed by State law, it's allowed by DEQ. They are not
2002 going to be putting coal combustion byproducts in this blue area, which is the

2003 waste disposal area. It's not going to be disposed of as a waste; it's going to be
2004 used as construction materials.

2005
2006 The County Code at Section 17-26 also allows the use of imperishable materials
2007 as construction fill. So since this is not being disposed of as waste, it's not in the
2008 active landfill, and it's being used as a construction material not a waste, we
2009 would also submit that that's permissible under the County Code.

2010
2011 I think there was a little confusion. I think when this whole thing came up was in
2012 October of last year. There's a letter from the Planning Director—our Exhibit 9—
2013 that's dated October 4 of 2010 where the Planning Director wrote to Mr. Bill
2014 Axselle of the Williams Mullen law firm basically saying, "We first became aware
2015 of how you were planning to use this material when we found that DEQ had
2016 approved of it. We thought that would be okay, we agreed with the beneficial use
2017 determination. Since DEQ had already authorized it and since the CCB was not
2018 being deposited in the landfills, but rather was being used in place of or in
2019 combination with fill dirt, we acquiesced in that decision." And then the key
2020 paragraph at the end of the first page, "At last Friday's meeting, however, TEEL
2021 representatives clearly stated that CCB would be deposited in the landfills. That
2022 would clearly violate the conditions cited above."

2023
2024 I wasn't at that meeting, so I don't know who said what. But CCB is not being
2025 deposited in the landfill and is not going to be deposited in the landfill. We would
2026 agree with the Planning Director that if there was any effort to put that material in
2027 the landfill it would be a violation of the conditional use permit, no question about
2028 it. But the misconception appears to be that they were going to be putting it in
2029 the landfills rather than using it as fill. But it also appears to have been their
2030 conception before that that as long as it was going to be used for construction
2031 material as approved by DEQ that would be acceptable. At that point, it looks like
2032 everything kind of went off the rails and things have sort of gone downhill from
2033 there. That's probably why we're here today.

2034
2035 If you look at the Planning Director's interpretation of the CUP in a subsequent
2036 letter that he wrote in November and in the Notice of Violation, you know, TEEL
2037 could decide not to use coal combustion byproducts to reclaim the old Richmond
2038 landfill. They could decide to use fill dirt from a borrow pit. If they have to use fill
2039 dirt from a borrow pit, that's not construction demolition debris waste either. So if
2040 the interpretation is that the only thing you can bring onto that landfill for any
2041 reason is construction demolition debris waste, you can't use fill dirt from a
2042 borrow pit to reclaim the old City of Richmond landfill because it's not CDD
2043 waste.

2044
2045 Mr. Witte - Excuse me. Is the fill dirt from a borrow pit considered
2046 any type of hazardous waste—

2047
2048 Mr. Hayes - No.

2049
2050 Mr. Witte - —by the Centers for Disease Control or anything like
2051 that?
2052
2053 Mr. Hayes - No. And neither is coal combustion byproducts.
2054
2055 Mr. Witte - I think at the last hearing we were told that it was
2056 considered to be hazardous to health when it was inhaled.
2057
2058 Mr. Hayes - DEQ determined—
2059
2060 Mr. Witte - Not DEQ, the Centers for Disease Control.
2061
2062 Mr. Hayes - I don't know what the Centers for—obviously if you
2063 stood there and breathed it into your lungs I suppose it would be dangerous. But
2064 then fill dirt probably would be, too. The point is from a regulatory standpoint it's
2065 not a hazardous waste, it's permitted material, it can be used for construction fill.
2066
2067 Mr. Witte - So it's not a hazardous waste, but it is a health
2068 hazard.
2069
2070 Mr. Hayes - I don't know if it's—anything is a health hazard if
2071 you're exposed to it in the wrong way. I mean table salt is health hazard if you
2072 eat too much of it. Water is a health hazard if you stick your head down in a
2073 bucket of it. I mean it depends on how you're exposed to it and what the
2074 circumstances are. I can't say that coal combustion byproducts would never be a
2075 health hazard; what I'm saying is that in this particular application with this
2076 particular use it's not.
2077
2078 Mr. Wright - So you maintain that you could stack it up to a
2079 thousand feet in the air to be used later.
2080
2081 Mr. Hayes - It's not deposited in any cell. It's not on an active cell;
2082 it's being stored on the site.
2083
2084 Mr. Wright - I don't care; you're storing it on the property.
2085
2086 Mr. Hayes - That's right.
2087
2088 Mr. Wright - You could bring it in and use it there evidently. But
2089 you're actually storing this stuff and it's up well—we have pictures of it.
2090 [Unintelligible] all over the place and on people's cars and houses and so forth.
2091
2092 Mr. Hayes - We don't dispute that.
2093
2094 Mr. Wright - Then you have to remove it.

2095

2096

Mr. Hayes - We don't dispute that it's being stored on the site. We don't dispute that it's blowing around. All we dispute is if that constitutes a violation of the conditional use permit.

2098

2099

2100

I think if you were to look at the interpretation of the conditional use permit, the only issue here is that the conditional use permit only allows construction demolition debris waste to be brought on site. Take that interpretation, take my original point that you could not bring on fill dirt, you couldn't bring on a plastic liner, you couldn't bring anything onto the site other than construction demolition debris waste. The CCB materials aren't being placed in the landfill. They're authorized by DEQ to be used in the reclamation of the old Richmond landfill. If they're being improperly stored, if they're causing nuisance conditions in the neighborhood, then the County has enforcement authority to deal with that.

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Mr. Wright - That's what we're trying to do right here.

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Mr. Hayes - But this is not a question of improper storage; this is a question of what does the conditional use permit allow or not allow. I respectfully submit to this Board the conditional use permit does not prevent them from using this material for construction fill. If they're using it improperly—it's like if somebody's storing any material improperly and creating a nuisance. That's a different issue. I'm not defending anything like that. But what I am saying is the conditional use permit does allow these materials to be used on the property.

2119

2120

Mr. Wright - It does not permit them to be stored on the property.

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Mr. Hayes - Well I think they can be stored before they're used. Whether they're properly stored or improperly stored is not the subject of this appeal; that's the subject of an enforcement action.

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Mr. Wright - That's what we're trying to do.

Mr. Hayes - Anyway, with respect, Madam Chairman, members of the Board, to this particular issue TEEL submits that the Notice of Zoning Violation is incorrect insofar as it says the use of CCB's for construction fill violates the conditional use permit.

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The next issue has to do with use of CCB's as cover material. The DEQ regulations require landfills to place cover material over waste at periodic intervals. Construction demolition debris landfills have to maintain at least a one-foot-thick cover on a weekly basis over waste deposited in the landfill. That's to keep it from blowing around, to keep birds out of it, to keep it from catching fire and so forth.

2140 Now the cover material placed on the waste is not itself waste, otherwise it
2141 wouldn't be cover. Cover has to either be clean soil or some other material
2142 approved by DEQ. DEQ has approved CCB's mixed with soil as cover material at
2143 this landfill and there is a letter from DEQ approving that use, which is the exhibit
2144 having to do with use of CCB's done officially on site, which has already been
2145 introduced.

2146
2147 The Notice of Violation says that this violates the conditional use permit
2148 because, again, CCB's are not construction demolition debris waste. But again,
2149 under that interpretation, soil from a borrow pit couldn't be used as cover either.
2150 Clean soil couldn't be used as cover. Nothing could be used as cover except
2151 CDD waste. That means if you were going to take that interpretation, you would
2152 have to cover CDD waste with more CDD waste in order to comply with the CUP.
2153 I don't think that's what the CUP means and I'm sure DEQ would not approve of
2154 using waste as cover over other waste. So again, we submit that the use of
2155 CCB's mixed with soil as approved by DEQ is not the deposit of CCB's in the
2156 landfill as waste and it's not restricted by the CUP any more than use of any
2157 other cover material would be restricted.

2158
2159 And finally the question of tires. TEEL processes used tires at the landfill and
2160 uses the resulting chips and shred as drainage material, backfill for collection
2161 pipes, gas pipes, and so forth, and similar construction purposes. Again, TEEL
2162 doesn't dispose of tires in the landfill, although the regulations for CDD landfills
2163 do allow that. DEQ regs specifically exempt tire chips and shred from the
2164 definition of solid waste when they're used as construction material the way I've
2165 just described. As used that way, they're not a waste and they're not a CDD
2166 waste. If you were, again, taking the interpretation of the Planning Director that
2167 only CDD waste can come into the landfill, you wouldn't be able to use gravel or
2168 crushed stone for pipe bedding, drainage, and so forth, any more than you could
2169 use tire chips because crushed stone or river gravel would not be CDD waste.
2170 Again, the tire chips are benign. This is a well recognized use. It's a good way to
2171 recycle a material that would otherwise go into a landfill for disposal. We submit
2172 that the CUP condition is not intended to prevent that type of use.

2173
2174 In conclusion, we submit that TEEL has not violated the CUP by using CCB's as
2175 construction material or alternate cover and it has not violated the CUP by using
2176 processed tires as construction material at the landfill.

2177
2178 I'd like to reserve some time for rebuttal. And I also notice that there are a
2179 number of people here who have asked to speak and I'm sure that you all are
2180 going to let them speak. But just because I have to make my record, I am going
2181 to object them to them speaking. This is an appeal. It's not a legislative process;
2182 it's a judicial process. The only parties to the appeal are TEEL and the County.
2183 There are no factual issues in dispute. TEEL has stipulated to all the factual
2184 issues. We believe that the testimony of anybody not representing the County or
2185 TEEL would be irrelevant and prejudicial.

2186

2187

With that, thank you.

2188

2189

Mr. Witte -

Mr. Blankinship, do we need to get a ruling on that?

2190

2191

Mr. Blankinship -

I've never head the argument made before that it was improper to have public testimony at all at an appeal hearing. Let me give that some thought as the County Attorney makes his presentation.

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Ms. Harris -

If we have counsel here, we can address that.

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Mr. Blankinship -

They don't represent you, though, and that's one of those complicated issues where they don't want to be giving you legal advice.

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2200

Ms. Harris -

We just want advice on the proceedings. We have some questions, Mr. Hayes, before you sit down. Any other members of the Board have questions? I have a question in reference to the July 2, 2009, letter that was in our packet from the DEQ. It was very specific. There were 15 guidelines about ash. Guideline #10. Do you have that in your packet?

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Mr. Hayes -

I think I do, Madam Chairman. I think that was one of our exhibits. Yes, I have it. That's our Exhibit 8.

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2209

Ms. Harris -

The use of the alternate materials shall cease if the material results in nuisances. You could put a period right there. We have photos of the ash residue being blown in the neighborhood. There was a DVD that was given to us, too, that showed it blowing around. How can you say that it's not a nuisance?

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Mr. Hayes -

I didn't say it wasn't a nuisance.

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2217

Ms. Harris -

No—

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2219

Mr. Hayes -

All I said—Madam Chairman, if I can answer your question. The only reason why I'm here this morning is a Notice of Violation that was issued to the company said that the use of coal combustion byproducts at the landfill for any purpose violates the conditional use permit. That's it. That is a legal question going to the interpretation of the permit. I am only here this morning to say that that legal interpretation of the permit is wrong. I'm not here to say that it's okay for coal dust to be blowing around. I'm not here to say it's okay to create a nuisance or anything like that. That's not an issue before this Board today. That's an issue that if the County wants to pursue an enforcement action using its authority, if DEQ wants to pursue an enforcement action, that's going to be a completely different problem for those folks. But the issue today is just what's in the Notice of Violation and the Notice of Violation says nothing about blowing dust or anything like that. It just says that they can't accept this material

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2232 under any circumstances. It says that even if they were to bring it in—you can
2233 interpret the way it's written. Even if they were to bring it in and not have one
2234 shred of dust go off of that site and everything was to go in and be clean,
2235 everything was fine and nobody even knew it was there that would still be a
2236 violation. I'm saying that that's an incorrect interpretation. That does not mean
2237 that all the other things that are going on—and I do not disagree. I can see the
2238 dust blowing from my office window. I sit downtown in Riverfront Plaza and I can
2239 see that landfill and I can see the dust coming off of it; I can't deny that. But I'm
2240 not here to defend that and that's not the issue today.

2241
2242 Mr. Witte - I believe the permit does not allow hazardous waste.
2243 Hazardous waste, as I've been told, is defined as hazardous to the health of
2244 humans—anything that will cause damage to health. The words escape me right
2245 now. If the Centers for Disease Control lists this product as hazardous to health,
2246 that's a hazardous waste. The Centers for Disease Control does not list clean fill
2247 dirt as hazardous to health, or a bucket of water.

2248
2249 Mr. Hayes - May I respond to that?

2250
2251 Mr. Witte - Yes sir, please do.

2252
2253 Mr. Hayes - If you look at Condition 20 it says that the material to
2254 be deposited in the landfill shall not include any hazardous waste as defined by
2255 the Virginia Hazardous Waste Management Regulations. Hazardous waste as
2256 defined by the Virginia Hazardous Waste Management Regulations has to be a
2257 waste that meets one of the four criteria in the regulation listed as a hazardous
2258 waste. Coal combustion byproducts are not hazardous waste under those
2259 regulations. If they were, it couldn't be used at the landfill. It would have to go to
2260 a hazardous waste facility. This is a very narrow definition in Condition 20. It
2261 doesn't say anything the Centers for Disease Control thinks may be a hazardous
2262 waste. It just says it has to be as defined by the Virginia regulations. And I think I
2263 can tell you today categorically that the Virginia Hazardous Waste Management
2264 Regulations do not define coal combustion byproducts as hazardous waste as
2265 long as the constituents in that material are below certain threshold levels. This
2266 material has been tested and it's way, way below those threshold levels.

2267
2268 Mr. Witte - All right.

2269
2270 Ms. Harris - Any other questions? I find it interesting that we use
2271 DEQ when it's helpful and we disregard when we think it doesn't suit our
2272 purpose. But another condition in the letter—that's been quoted—by DEQ says,
2273 "The handling, storage, or use of the ash shall not have an adverse impact upon
2274 public health, safety, or welfare," which is the basis of our use permit. So we
2275 can't very well separate our consideration for the health, safety, and welfare of
2276 the citizens from this particular issue. But the handling and the storage, do you
2277 think that you misused the storage of this ash since it's blowing around? Do you

2278 think you are misusing it? Even if it were permitted, are you mishandling the
2279 storage?

2280
2281 Mr. Hayes - I'm not doing anything with the ash. I'm here
2282 representing this company on this appeal.

2283
2284 Ms. Harris - Okay.

2285
2286 Mr. Hayes - Whether they're misusing it or not is a completely
2287 different issue. I am not saying that they are in compliance with or out of
2288 compliance with the requirements of the DEQ. All I am saying is that the CUP
2289 does not prevent them from using this material as long as it's done in
2290 accordance [inaudible].

2291
2292 Ms. Harris - Any other questions? Thank you, Mr. Hayes. You said
2293 there's another person who wishes to give a pro side to this who has been sworn
2294 in?

2295
2296 Mr. Hayes - I'd like to have some time for rebuttal.

2297
2298 Ms. Harris - The County will present its side.

2299
2300 Mr. Thorpe - Good morning. My name is Benjamin Thorpe. I'm an
2301 Assistant County Attorney representing the Director of Planning and County in
2302 this.

2303
2304 As an initial matter I understood there may be some confusion about the various
2305 appeals and actions that are going on with TEEL and the Board of Zoning
2306 Appeals. It seems like that's been clarified, but just to make certain.

2307
2308 On December 16th this Board refused to amend the CUP at the request of TEEL
2309 to permit coal ash and waste tires to be brought onto the site. That decision, the
2310 refusal to amend the permit, has been appealed by TEEL to the Circuit Court.
2311 After this Board refused to amend the permit to allow them to do what they want,
2312 they continued to bring coal ash and waste tires onto the site. That's when the
2313 County issued its Notice of Violation. They challenged that Notice of Violation
2314 and that's why we're here today.

2315
2316 Obviously we oppose their appeal of the Notice of Violation. My office submitted
2317 a letter to this Board with some exhibits—on I believe it was the 21st of April—
2318 explaining our position and I'm not going to go through everything we said in
2319 there; I'll just hit some of the highlights and move on.

2320
2321 This Board should deny TEEL's appeal for the reasons that we stated in that
2322 letter and for the reasons that this Board discussed and considered when it
2323 rejected their request to amend the CUP. Condition 20 states that the landfill

2324 shall accept construction and demolition debris originating within 150 miles of the
2325 site. I'm skipping a little bit. The material to be deposited in the landfill shall not
2326 include any hazardous waste as defined by the Virginia Hazardous Waste
2327 Management Regulations or any biodegradable material other than woody waste
2328 from construction demolition or land-clearing operations. TEEL asserts that this
2329 condition doesn't prohibit them from bringing tens of thousands, hundreds of
2330 thousands of cubic yards of coal ash and waste tires so that they can dig holes
2331 on their property and fill it in with this material. Mr. Hayes was very careful to say
2332 that he wasn't condoning or he wasn't arguing about the manner in which TEEL
2333 is handling this material, but that's intrinsic to this. The reason the CUP is
2334 required to operate a landfill is because landfill operations are inherently a thing
2335 that if not managed properly can be damaging to neighbors and can be
2336 damaging to neighboring property. That's the reason the Board considered a
2337 CUP and conditioned the CUP as they did.

2338
2339 If I can show, please, some of the exhibits that we have for this. Let's go to the
2340 top, if I could, please. This is an aerial photograph. That shows you where
2341 they're putting the ash so that they can later dig a big hole and fill it in. Mr. Hayes
2342 has asserted that they're required to do that reclamation by DEQ and that's true
2343 to an extent. But TEEL asked DEQ for that requirement. The reclamation of the
2344 old City of Richmond landfill is not a condition that DEQ thought up; it's a
2345 condition that TEEL requested in their permit applications that conveniently
2346 allows them to dig a giant hole and fill it with coal ash in addition to the materials
2347 that you see there. And I have some folks here who have been out to the site
2348 frequently from Public Works who can speak to you about this and can verify
2349 some of these things if needed. But in addition to the material that you're seeing
2350 there on top of the landfill, they have also already dug a considerable hole and
2351 filled it with coal ash that had been previously brought to the site.

2352
2353 You can see there behind the trees the coal ash. There again, more of it. More of
2354 it. You can see where it is. As I said before, the whole purpose of this conditional
2355 use permit is to make sure that the neighboring properties and the neighbors are
2356 protected given that an adjacent or adjoining or a nearby property is going to be
2357 used for something like a landfill. The reason that Condition 20 was put on there
2358 was to assure that this landfill was limited to a relatively benign use. And that use
2359 is construction and demolition debris.

2360
2361 Now they assert that coal ash should be treated under this condition as nothing
2362 different than fill dirt, but fill dirt doesn't come with letter from DEQ conditioning
2363 its use on all sorts of particulars about how it's handled and not being a nuisance
2364 to neighbors and all that. No DEQ approval is needed whatsoever for bringing fill
2365 dirt onto the property.

2366
2367 What TEEL was trying to essentially argue to this Board is that Condition 20 of
2368 your permit should be governed by the definitions that DEQ applies to
2369 construction and demolition debris. But that's not the case at all. When this

2370 Board in Condition 20 wanted to refer to DEQ regs, they did so, and that's the
2371 case of hazardous waste, as Mr. Hayes said. Hazardous waste, in Condition 20
2372 you define it to be only as it's defined under the regs. But nothing else in that
2373 definition is limited to what DEQ regulations say or define. So this Board is the
2374 proper body to decide what Condition 20 means and can decide whether
2375 Condition 20 permits TEEL to use their facility to dispose of, to store, to handle
2376 coal ash.

2377
2378 Is this the video here? Can we play that video? I know we submitted this with our
2379 letter and I know some of you may have had trouble seeing it. But you can see
2380 there the consequence of bringing onto the site as much coal ash as they claim
2381 that they need to fill the hole. This photograph was taken not long ago. It was
2382 taken on April 4th, I believe, so this is a very recent example of the inevitable
2383 consequence of permitting a construction and demolition debris landfill to accept
2384 coal ash in whatever quantities they claim they need to use it as structural fill and
2385 daily cover for their operations.

2386
2387 Mr. Hayes remarked that he supposed that while it's not a hazardous waste that
2388 breathing it in or exposure to it could be harmful to people. And you can see
2389 there, I mean, clearly neighboring properties, neighboring people are exposed to
2390 this material.

2391
2392 The purpose of a cover material is to keep construction and demolition debris
2393 from blowing around. But if that's what they propose to us to cover it with, it
2394 seems to be largely a self-defeating exercise.

2395
2396 As I said, this Board is the proper body to look at the conditional use permit that
2397 *it* issued, decide what *it* intended and meant by Condition #20 that it imposed
2398 restricting the use of this property, and it's the proper body to decide whether the
2399 property can be used essentially as a recycling facility for coal ash, for fly ash
2400 and bottom ash, because that's essentially what they're doing. A beneficial use
2401 determination of DEQ allows you to take something that would normally be
2402 classified as a waste and put it to some other use, recycle it to a different use
2403 and use it for that means. And that's essentially what they're trying to do here is
2404 take bottom ash, fly ash, and waste tires and recycle them into structural fill and
2405 drainage materials and daily cover so that they can accept massive quantities of
2406 this material, which they're paid to accept, instead of simply operating what this
2407 Board intended, which is a construction and demolition debris facility.

2408
2409 I'm happy to answer any questions you might have for me.

2410
2411 Ms. Harris - Any questions?

2412
2413 Mr. Thorpe - Thank you very much.

2414
2415 Ms. Harris - Ready for the rebuttal.

2416
2417 Mr. Hayes - Madam Chairman, I really don't have any rebuttal to
2418 what Mr. Thorpe said. I think we stated our case pretty clearly and he stated his
2419 case pretty clearly. What I would like to do in my rebuttal time, though, they did—
2420
2421 Ms. Harris - Excuse me, Mr. Hayes.
2422
2423 Mr. Hayes - I thought you called for rebuttal; I'm sorry.
2424
2425 Ms. Harris - I did call for rebuttal. Since the case is between the
2426 County and TEEL, unless the attorney needed some more testimony from the
2427 citizens—
2428
2429 Mr. Witte - Did we determine that—
2430
2431 Mr. Blankinship - Let me read a couple sentences here, one from the
2432 Statute and one from the County Code.
2433
2434 Ms. Harris - Excuse us, please, Mr. Hayes.
2435
2436 Mr. Blankinship - The Statute under 15.2-2312 Procedure on Appeal
2437 says, "The Board shall fix a reasonable time for the hearing of an application or
2438 appeal, give public notice thereof, as well as due notice to the parties in interest,
2439 and make its decision within 90 days of the filing of the application of appeal." So
2440 there's not a clear statement that I see in the Code as to whether the hearing is a
2441 public hearing or not. It says the public has to be notified and a hearing has to be
2442 held. The County Code I'm reading from is 24-117(c) and this language mostly
2443 mirrors that. It says, "The Board shall fix a reasonable time for the hearing of the
2444 application or appeal, give public notice thereof, as well as due notice to the
2445 parties in interest, and decide the same within 90 days." But it does go on to say,
2446 "Upon the hearing, any party may appear in person or by agent or by attorney." I
2447 don't know what affect that sentence in the County Code would have in the
2448 Circuit Court if Mr. Hayes were to make the argument that any other testimony
2449 we received was improper and prejudicial. I wanted to read to you what the
2450 Statute and the County Code say so that you have that in your minds as you
2451 make a decision.
2452
2453 Ms. Harris - What is the pleasure of the Board? It's my way of
2454 thinking that we heard extensive testimony in December from the citizens. We
2455 received their mail, pictures of the ash being on top of the site, we've seen the
2456 video of it blowing around. It seems our purpose here is just to uphold the Notice
2457 of Violation or to disapprove the Notice of Violation. Or reverse that. I don't see
2458 at this point where we need extensive testimony saying the same things that we
2459 heard in December. If anything, things have become worse in this
2460 neighborhood. However, we do have some people who have taken the time to
2461 be here, including the Supervisor. How do you feel?

2462

2463 Mr. Witte - I think Mr. Hayes has a valid point that this is not
2464 about the blowing of dust or the storage of it. That's not the purpose here. I think
2465 if anybody is here to speak on the issues of the dust or conditions, I think they
2466 should have the opportunity, not speaking about something that doesn't apply to
2467 this appeal.

2468

2469 Ms. Harris - Do we need to recap just where we are with all of
2470 this? We know that in December the Board ruled that TEEL was in violation.

2471

2472 Mr. Blankinship - In December, TEEL had applied for an amendment to
2473 their use permit to specifically allow these materials. The Board denied that
2474 application.

2475

2476 Ms. Harris - And then later.

2477

2478 Mr. Blankinship - Subsequent to that the Planning Department issued a
2479 Notice of Violation stating that because the Board did not amend the permit to
2480 accept the material it was therefore not lawful to deposit that material on the
2481 landfill site.

2482

2483 Mr. Witte - Does the permit allow for storage?

2484

2485 Mr. Blankinship - Not specifically.

2486

2487 Mr. Witte - If it doesn't allow for storage then it doesn't allow for
2488 storage.

2489

2490 Mr. Wright - That's the whole point.

2491

2492 Mr. Blankinship - I think we keep coming back to the idea of what is
2493 accessory, what is customary. As Mr. Thorpe pointed out if you have a landfill
2494 you're going to be moving a certain amount of dirt and using it for cover. If you're
2495 going to use dirt for cover, you have to store that dirt somewhere. I think the
2496 issue is Mr. Hayes would make the argument that using coal ash is similar—and
2497 he didn't make this argument; I'm putting words in his mouth which may not be
2498 proper for me—that the use of coal ash is similar enough to the use of fill dirt that
2499 it's also customary. Mr. Thorpe is saying that no, they're two completely different
2500 subjects, that what is customary at a landfill includes the use of fill dirt and does
2501 not include the use of coal ash. That's how I'm interpreting it.

2502

2503 Mr. Witte - I disagree with the part as to whether or not it's
2504 comparable to fill dirt because fill dirt isn't listed as a health hazard.

2505

2506 Ms. Harris - Well we can save this for discussion for the motion.
2507 Right now I think what we need to do is to decide if people who are in attendance
2508 should be allowed to speak.
2509
2510 Mr. Witte - I think we should ask them if anybody is here to
2511 speak directly to the appeal.
2512
2513 Mr. Wright - They don't know what that means.
2514
2515 Mr. Witte - Well that's true.
2516
2517 Mr. Wright - I agree with Mr. Hayes and our Chairman that we've
2518 heard voluminous testimony. We have it in the record; we've read it. We know
2519 the effect of this; we have pictures of it. I don't see where any further testimony
2520 would—. The question is whether or not we want to stand by the decision of the
2521 Planning Department to require this material to be removed. Up or down. That's
2522 the way I see it.
2523
2524 Ms. Harris - Do you think this is a consensus, Mr. Bruce?
2525
2526 Mr. Bruce - Yes.
2527
2528 Ms. Harris - Do you care to make a statement? Do we need a
2529 motion to that effect?
2530
2531 Mr. Witte - I don't think so.
2532
2533 Ms. Harris - Mr. Hayes, would you give us your rebuttal. Sorry to
2534 interrupt you.
2535
2536 Mr. Hayes - Thank you, Madam Chairman. Again, I really have no
2537 rebuttal to Mr. Thorpe's argument. I think he stated his arguments well; I think
2538 I've stated my arguments. Whether they were stated well or not, I'm not going to
2539 ask for your opinion.
2540
2541 But a couple of things just to make the record. With respect to what the Board
2542 did with the prior request for a CUP amendment, I think it's reflected in the record
2543 but I'll restate that TEEL's position at that time was that they did not need the
2544 amendment, but they came in to ask for one just to clear things up. The fact that
2545 they didn't get the amendment left them in their original position that the permit
2546 already allowed this. I want to make sure that's clearly stated.
2547
2548 The other is there was a letter from Mr. Axselle that was with the package that
2549 accompanied the County's brief to you all a week or two ago. I think the County
2550 represented that that letter was a concession by TEEL that they were going to
2551 remove the material and would not bring it back to the landfill after December

2552 15th. One thing we would object to, that letter being made part of the record
2553 because it was settlement materials and they're not allowed to be in evidence.

2554
2555 The second thing is if it is allowed into the record, I want to clarify that all Mr.
2556 Axselle was saying—and there is an affidavit from Mr. Axselle, which is Exhibit
2557 11—was that if the County would allow them to use the material that was already
2558 there for fill, they would go ahead and use that material up before December 15th
2559 and would not bring any more in after December 15th. And that if that wasn't
2560 enough to do the job, they'd do the rest of job with fill dirt. So I want to make sure
2561 it was clear that that was not an offer to take the stuff away from the landfill. The
2562 second point, the County rejected that proposal in the subsequent letter of
2563 November 1st saying you can't use it all—from Mr. Blankinship. So that offer was
2564 no longer valid. And Mr. Axselle's affidavit points that out. But I just wanted to
2565 state that for the record.

2566
2567 Thank you.

2568
2569 Mr. Wright - Mr. Hayes, let me ask you a question.

2570
2571 Mr. Hayes - Yes. Mr. Wright.

2572
2573 Mr. Wright - It was said earlier that the company has appealed the
2574 company decision of the Board.

2575
2576 Mr. Blankinship - Yes, the December one.

2577
2578 Mr. Wright - They have appealed that decision to the Circuit Court.

2579
2580 Mr. Hayes - They appealed that. They filed a petition for a writ and
2581 the County responded.

2582
2583 Mr. Wright - So it's now before the Court.

2584
2585 Mr. Hayes - Yes sir.

2586
2587 Mr. Wright - If the Court upholds the County, what would be your
2588 position with respect to this coal ash?

2589
2590 Mr. Hayes - Well, the only issue in that appeal really was whether
2591 or not the Board erred in not amending the permit. It didn't ask for an
2592 interpretation of the permit; it asked for an amendment of the permit. I think the
2593 issue of what Condition 20 means is still not before the court.

2594
2595 Mr. Wright - Even if the County prevails in that, your position is
2596 that they could continue to pile the coal ash up on the property.

2597

2598 Mr. Hayes - I'm not arguing that they can continue to pile coal ash
2599 up; that's not my argument. My only argument, Mr. Wright, is that Condition 20
2600 does not categorically exclude that material from being used. Whether they're
2601 using it properly or not I'm not here today to say. That case that's before the
2602 Court right now would not address the question of what Condition 20 means.
2603

2604 Mr. Wright - Is it your position, then, that this Board has no
2605 authority to regulate stacking or piling or storing coal ash on the landfill?
2606

2607 Mr. Hayes - No, that's not my position. I have not made that
2608 argument and I would not.
2609

2610 Mr. Wright - So you deny that what we're trying to do would
2611 address that. What is your take on that?
2612

2613 Mr. Hayes - I'm only saying that Condition 20—if you had put in a
2614 conditional use permit, Condition 21, 20A, that said the company shall not
2615 stockpile materials on the landfill or the company shall not stockpile coal
2616 combustion byproducts on the landfill prior to beneficial use, I would think that
2617 was in your authority. I'm not arguing that you don't have the authority. All we're
2618 saying is what does the permit say. We got a Notice of Violation here. This is an
2619 enforcement case. The County has said that they're violating their existing
2620 permit. All I'm arguing this morning is that they're not. I'm not saying you can't do
2621 more than you've done.
2622

2623 Mr. Wright - We're talking about semantics here. What you're
2624 saying is we need to haul the company back in here to amend their use permit
2625 and specifically address that issue. That's what you're saying.
2626

2627 Mr. Hayes - That would be one thing to do. Another thing to do
2628 would be to go ahead and approve the erosion and sediment plan so they could
2629 go ahead and start reclaiming the Richmond landfill and get the stuff off the pile.
2630 But right now they can't do anything because all of their approvals are hung up
2631 because of the controversy over the coal ash. They had a requirement to get the
2632 Richmond landfill reclaimed within 180 days once they get approval.
2633

2634 Mr. Wright - You're saying you'll need all of that coal ash to do
2635 what—
2636

2637 Mr. Hayes - They're going to need more than that. I forget how
2638 many cubic yards there were up there, but I think it was somewhere in the
2639 neighborhood of [inaudible] thousand. And that is not going to be enough to
2640 reclaim. They stopped taking it in as of April twenty. And they're going to have to
2641 use something else to make up the difference.
2642

2643 Ms. Harris - Mr. Hayes, you say TEEL has taken off the table an
2644 agreement, a prior agreement, right? Do you read what I'm talking about?

2645
2646 Mr. Hayes - Mr. Axselle's proposal that was attached to the
2647 County's response—I forget what the date of that letter was. That was off the
2648 table as of November 1st when the County rejected the proposal and said you
2649 can't use the coal ash for any reason. That's not a concession by the company.

2650
2651 Mr. Wright - What was the date of that letter?

2652
2653 Ms. Harris - October 22nd. It's summarizing the attorney's
2654 comments. He's saying TEEL's attorney assured the Director that, number one,
2655 TEEL would forego the use of CCB fill. See that? It's on page two of the—

2656
2657 Mr. Wright - Your position is that should be removed and not
2658 made part of the record.

2659
2660 Mr. Hayes - I'm saying that it should not be considered to be an
2661 active offer. If you want to put in the record, that's fine. But our position is it's not
2662 admissible because it's settlement materials and it was rejected by Mr.
2663 Blankinship's November 1st response that said you can't use it. Even the stuff
2664 that's already there can't be used for fill. If you read Mr. Axselle's affidavit, it
2665 makes it clear what the position is.

2666
2667 Ms. Harris - The third one was if it's not, The East End Landfill will
2668 remove the material from the site. We're kind of going back and forth here. Any
2669 other questions of Mr. Hayes? Anything else you wish to say?

2670
2671 Mr. Hayes - Just one more point. Again, I probably should object
2672 to myself because this isn't the issue on appeal. In a practical matter, if that
2673 material that's already there could be used to reclaim the Richmond landfill, and
2674 if the approvals for the reclamation of the Richmond landfill were issued, I think
2675 that material would be off the top of there and gone. I would just simply make a
2676 point that if they have to take it out of the landfill based on 20 tons a truck, you're
2677 looking at maybe seven or eight thousand truckloads going back down
2678 Darbytown Road.

2679
2680 I don't think we're looking at a situation where—the Notice of Violation deals with
2681 what's already there and what's already been [inaudible]. If we looked at in terms
2682 of what's there and what could be done as opposed to going into the future with
2683 this, it might be a good resolution.

2684
2685 Male: What's holding up the approval?

2686
2687 Mr. Hayes - DEQ has the reclamation plan and DEQ hasn't
2688 approved the reclamation plan yet. Exactly why I don't know. I understand that

2689 the erosion and sediment control plan is required for that work. They're down to
2690 a very few—they've been exchanging comment back and forth and I think all of
2691 the County's comments on the E&S plan are going to be addressed favorably to
2692 what the County wanted by next week. I think once that E&S plan has been
2693 approved and DEQ approves the reclamation plan, as far as I know there are no
2694 issues. It just hasn't been done yet. The Richmond Landfill can be cleaned up.
2695 The material can go down there [unintelligible] which I described in my earlier
2696 testimony. No more is going to come in for any purpose. That will be the end of
2697 it.

2698
2699 Ms. Harris - I do have one question. I just have to ask this. The
2700 suggestion you gave us a few minutes ago, I think if the violation had given
2701 TEEL a 30- to 60-day time limit to clean up the ash, do you think that would have
2702 helped things or resolved the problem that we're having?

2703
2704 Mr. Hayes - I think a time limit of some kind would help. I don't
2705 know if they could do it in that amount of time because before they can use it
2706 they have to get the stuff out of the Richmond landfill. The DEQ approval permit
2707 says they have to get the landfill reclaimed within 180 days. I think that means
2708 get the trash out and fill it within 180 days.

2709
2710 Mr. Blankinship - The notice of violation gave them until June 30th.

2711
2712 Ms. Harris - Thank you so very much, all persons. I want to say
2713 this to the citizens who came here to speak and did not speak. We do thank you
2714 for taking time to come. It means so much to have citizens who really have
2715 opinions about the way they live to take an active part. We are caught up here
2716 into a situation where the County and TEEL are the two people who must
2717 address this particular issue. We want you to know that we're glad to see you
2718 and come again. Maybe not on this issue, but—

2719
2720 **[After the conclusion of the public hearings, the Board discussed the case**
2721 **and made its decision. This portion of the transcript is included here for**
2722 **convenience of reference.]**

2723
2724 Ms. Harris - We have to either support the Director's Notice of
2725 Violation or not. What is your pleasure on this?

2726
2727 Mr. Wright - Madam Chairman, I move that we deny this appeal.

2728
2729 Mr. Bruce - I second.

2730
2731 Mr. Wright - I think that this carries out what the Board intended
2732 when it ruled back in December. If this pile can be removed some other way,
2733 fine, but I don't think the citizens in that area and the children and the schools

2734 and so forth should be subjected to this ash blowing all over their houses and
2735 their automobiles and everything.

2736
2737 Ms. Harris - Any comments.

2738
2739 Mr. Witte - I have a comment. I think my biggest concern—I do
2740 have a concern with the ash and all, but I have a concern with the facility as a
2741 recycling center for CCB and shredded tires. It's not approved for that, in addition
2742 to the other problems that they've been cited for. I think they're using the CCB for
2743 improper purposes according to the permit.

2744
2745 Ms. Harris - Any more discussion on this motion? So it was moved
2746 by Mr. Wright, seconded by Mr. Bruce that the appeal be denied. Okay, we're
2747 ready for a vote. All in favor of denying the appeal say aye. All opposed say no.
2748 The ayes have it; the motion passes.

2749
2750 After an advertised public hearing and on a motion by Mr. Wright seconded by
2751 Mr. Bruce, the Board **denied** application **APL2011-00001, THE EAST END**
2752 **LANDFILL, LLC's** appeal of a decision of the director of planning pursuant to
2753 Section 24-116(a) of the County Code regarding the property at 1820 Darbytown
2754 Road (Parcels 809-707-1585 and 808-706-6679), zoned B-3, Business District
2755 and M-2, General Industrial District (Varina).

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2757
2758 Affirmative: Bruce, Harris, Nunnally, Witte, Wright 5
2759 Negative: 0
2760 Absent: 0

2761
2762
2763 Ms. Harris - Let's look at the minutes, please, from the previous
2764 meeting. I did see one thing on line 782. It's probably a typographical error. Page
2765 18, line 782. Mr. Witte, "so this may go on." Just delete the "e" on the end of that.

2766
2767 Mr. Witte - Should be "on" instead of "one."

2768
2769 Ms. Harris - Any other corrections? May I have a motion to
2770 approve the minutes?

2771
2772 Mr. Witte - I make a motion to approve the minutes and adjourn.

2773
2774 Mr. Bruce - Second.

2775
2776 Ms. Harris - Motion by Mr. Witte, seconded by Mr. Bruce that we
2777 approve the minutes and adjourn the meeting. All in favor say aye. All opposed
2778 say no. The ayes have it; the motion passes.

2779

2780 On a motion by Mr. Witte, second by Mr. Bruce, the Board **approved as**
2781 **corrected** the **Minutes of the March 24, 2011** Henrico County Board of Zoning
2782 Appeals meeting.

2783			
2784	Affirmative:	Bruce, Harris, Nunnally, Witte, Wright	5
2785	Negative:		0
2786	Absent:		0

2787
2788 Ms. Harris - The meeting is adjourned.

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Helen E. Harris
Chairman

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Benjamin Blankinship, AICP
Secretary

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