

1 **MINUTES OF THE REGULAR MEETING OF THE BOARD OF ZONING**  
2 **APPEALS OF HENRICO COUNTY, HELD IN THE COUNTY**  
3 **ADMINISTRATION BUILDING IN THE HENRICO COUNTY GOVERNMENT**  
4 **COMPLEX, ON THURSDAY, DECEMBER 20, 2007, AT 9:00 A.M., NOTICE**  
5 **HAVING BEEN PUBLISHED IN THE RICHMOND TIMES-DISPATCH**  
6 **NOVEMBER 29, 2007 AND DECEMBER 6, 2007.**

7  
Members Present: Richard Kirkland CBZA, Chairman  
Elizabeth G. Dwyer, Vice-Chairman  
Helen E. Harris  
James W. Nunnally  
R. A. Wright

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

8  
9  
10 Mr. Kirkland - Good morning, ladies and gentlemen. Welcome to the  
11 November Zoning Appeals meeting. Before we get started, would you please rise  
12 and we'll say the **Pledge of Allegiance to the Flag of Our Country**. Mr.  
13 Blankinship, our secretary, will read the rules.

14  
15 Mr. Blankinship - Good morning, Mr. Chairman, members of the Board,  
16 Ladies and Gentlemen. The rules for this meeting are as follows. Acting as  
17 Secretary, I will announce each case and while I'm speaking, the applicant  
18 should come down to the podium. We will then ask everyone who intends to  
19 speak on that case to stand and be sworn in. The applicant will then present  
20 their testimony. After the applicant has spoken, anyone else who wishes to will  
21 be given an opportunity to speak. After everyone has spoken, the applicant, and  
22 only the applicant, will have an opportunity for rebuttal. After everyone has given  
23 their testimony and the Board has asked their questions, the Board will take the  
24 matter under advisement. They will render all of their decisions at the end of the  
25 meeting. If you wish to know their decision on a specific case, you can either  
26 stay until the end of the meeting, or you can check the Planning Department  
27 website this afternoon, or you can call the Planning Department this afternoon.

28  
29 This meeting is being tape recorded, so we'll ask everyone who speaks to speak  
30 directly into the microphone on the podium, state your name, and please spell  
31 your last name so we get it correctly in the record.

32  
33 Finally, out in the foyer, there are two binders that contain the staff report for  
34 each case, including the conditions that have been recommended by the staff.

35 Particularly for use permit applications, you need to be familiar with the  
36 conditions staff has recommended.

37

38 Mr. Chairman, we do not have any requests for deferral or withdrawals. Oh, I'm  
39 sorry. I'm mistaken; we do. I didn't realize it was going to be printed on the  
40 agenda, but A-044-07 has been withdrawn. Staff determined that the variance  
41 was not necessary.

42

43 **A-044-07** **FLOYD D. GOTTWALD, JR.** requests a variance  
44 from Section 24-9 to demolish and replace a one-family dwelling at 300 Herndon  
45 Road (Parcel 748-731-9963), zoned R-1, One-family Residence District  
46 (Tuckahoe). The public street frontage requirement is not met. The applicant has  
47 0 feet public street frontage where the Code requires 50 feet public street  
48 frontage.

49

50 After an advertised public hearing, the Board **allowed withdrawal** of the above-  
51 referenced appeal, as staff determined that the variance was not necessary.

52

53 Mr. Kirkland - All right. Call the first case.

54

55 **A-041-07** **KAREN L. BROXON** requests a variance from  
56 Section 24-41(e) to build a sunroom at 1826 Fairwind Circle (Gayton Forest  
57 Townhomes) (Parcel 743-748-3611), zoned RTH, Residential Townhouse District  
58 (Tuckahoe). The rear yard setback is not met. The applicant has 20 feet rear  
59 yard setback where the Code requires 30 feet rear yard setback. The applicant  
60 requests a variance of 10 feet rear yard setback.

61

62 Mr. Kirkland - Anyone who wishes to speak on case A-041-07,  
63 Karen L. Broxon, please come forward. Anyone else wish to speak, for or  
64 against? Okay, ma'am, if you'll raise your right hand and be sworn in.

65

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

68

69 Ms. Broxon - I do.

70

71 Mr. Kirkland - Could you state your name for the record, please?

72

73 Ms. Broxon - My name is Karen Broxon.

74

75 Mr. Kirkland - Okay, what would you like for us to do for you?

76

77 Ms. Broxon - Well, I had plans to build a sunroom—built by  
78 Champion—on the back of my deck. I like living in townhouses. I've owned the  
79 townhouse for about 11 years. Always sort of planned to build this, but I had a  
80 condominium at Gwynn's Island for the same amount of time. So, I was away

81 during weekends. I've never used my deck much because of the mosquito  
82 problem in back. There are woods there and the mosquitoes are horrific, and I'm  
83 one of those people that is a mosquito magnet. Because I was gone weekends,  
84 it was not that big a problem. About a year ago, I sold that condo down there. I  
85 was thinking that when I did sell it—retired and sold it—that when I came back, I  
86 would build a sunroom then. Some of my neighbors had already built them.  
87 There's one right next to mine, attached to my deck. I think he built his eight  
88 years ago or so. Then there's one next door that will be similar to mine. I have a  
89 couple of pictures of the one that's next door. Can I put those up here? Well, I  
90 have one that's—that's the one that's attached to mine, and then I have pictures  
91 of the one that's on down. This shows what it looks like. So it's a nice looking  
92 room. It's not something that would detract from the neighborhood. As I said,  
93 they're townhouses. There are several others in the townhouse area that have  
94 already been built.

95  
96 This is something that's been in my plan, my retirement plan for years. It's not  
97 something that on a whim I decided to do this. So, I've been looking forward to it  
98 and I never realized it would be a problem, since there are other sunrooms  
99 similar in the neighborhood, and right next to me. I have a new granddaughter  
100 and I was looking forward to being able to use the outdoors with her. Again,  
101 because of the mosquito problem, I just don't like to be out on the deck. I'm  
102 hoping that I can do this. I'm disappointed to the point that if I can't do this, I'll  
103 probably sell the townhouse and move somewhere where I can have some kind  
104 of an outdoor room. I miss my place on the bay. I love looking at the out-of-  
105 doors; I just don't like being outside because of the mosquitoes. So, if I can't do  
106 it, I feel like I can't use the townhouse. There are others that have been built that  
107 have them, and I feel like that's what I'll do is make a move where I can have  
108 some kind of room where I can enjoy the outdoors.

109  
110 Mr. Nunnally - These other ones you're talking about, that have  
111 these rooms, are they on the same size lot that you have?

112  
113 Ms. Broxon - Yes. Our lots are all similar. The one that I think you  
114 have a picture of in your packet there connects right to me. My townhouse is  
115 adjacent to one other townhouse. You can see the one. He connects to me. His  
116 lot's the same as mine. It actually looks like it goes out a little farther than mine.  
117 Then the one I just passed you a picture of is next door to mine. All of our lots  
118 are similar.

119  
120 Mr. Nunnally - Did we give variances to these, Mr. Blankinship?

121  
122 Mr. Blankinship - Yes sir, we did, prior to the Virginia Supreme Court's  
123 Cochran decision.

124  
125 Ms. Dwyer - Mr. Gidley, could you put the photograph that you just  
126 had back up on the screen, please? I have a question for staff. It appears that

127 this townhouse next door, it stands out beyond this townhouse. I'm not talking  
128 about the sunroom, but just the townhouse itself. So, it seems—I'm surprised  
129 that this lot doesn't have any leeway, that is it doesn't have any extra space for  
130 setback.

131

132 Mr. Blankinship - If you look at the site plan, you'll see that the rear lot  
133 lines are not in the same place.

134

135 Ms. Dwyer - Okay.

136

137 Mr. Blankinship - The house next door is actually—the rear lot line is  
138 deeper. It shows on the aerial, if it doesn't show on the map. Oh, okay, it shows  
139 a little bit there.

140

141 Ms. Dwyer - I see, but it appears that the actual rear lot line is the  
142 same for both of these. I'm just curious about the discrepancy.

143

144 Mr. Blankinship - The next-door neighbor's rear lot line is farther back.

145

146 Mr. Kirkland - Ten feet deeper or something?

147

148 Ms. Dwyer - I realize their lot line is, but it juts out more into the  
149 common area, so I'm just wondering if there was any way to look at the common  
150 area and see if, say, 30 feet were required between the condo property line and  
151 the townhouse property line, maybe she would have a little more space, even  
152 though—Do you see what I'm saying, Mr. Blankinship?

153

154 Mr. Blankinship - I think so. She could, perhaps, buy some of the  
155 common area back from the Association to extend her lot a few feet.

156

157 Ms. Dwyer - Right, because she's in a little bit farther from next  
158 door. So, it looks like there might be some leeway there. That might be an  
159 option. Okay. Ms. Broxon, were you informed by staff about the fairly recent  
160 Virginia Supreme Court case that limits Board of Zoning Appeals jurisdiction on  
161 variances?

162

163 Ms. Broxon - I just [unintelligible] in my packet. I didn't realize that  
164 when I was applying for the sunroom and so forth. When they went to get the  
165 County permit, they found that a variance would be required. The person I talked  
166 to in Zoning mentioned this case, which I didn't really understand what the nature  
167 of it was until I saw it in print with the package that you sent me.

168

169 Ms. Dwyer - So, you understand now what that case means is that  
170 if you have any reasonably beneficial use of your property, that is you're able to  
171 use the condominium, then we don't have jurisdiction under the Cochran case to  
172 grant a variance.

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Ms. Broxon - I understand that. I feel like, though, without the sunroom there, because I can't use the whole back of my property, as far as I'm concerned, I would need to—I plan to live here forever. I'm retired and I want a place where I can enjoy the outside, too. I would probably be looking for another place to live if I can't use this.

Mr. Kirkland - Any other questions from our Board members? Anyone else wish to speak on this case? All right ma'am, that concludes the case.

Ms. Broxon - Okay, thank you.

Mr. Kirkland - Thank you very much.

**DECISION**

Ms. Dwyer made a motion to deny on the basis that the applicant has reasonable beneficial use of the property taken as a whole given the existing townhouse on the property. As a result, under the Virginia Supreme Court's Cochran decision the BZA does not have the authority to grant a variance. The motion was seconded by Ms. Harris.

After an advertised public hearing and on a motion by Ms. Dwyer, seconded by Ms. Harris, the Board **denied** application **A-041-07**, Karen L. Broxon's request for a variance from Section 24-41(e) to build a sunroom at 1826 Fairwind Circle (Gayton Forest Townhomes) (Parcel 743-748-3611), zoned RTH, Residential Townhouse District (Tuckahoe).

|              |   |   |
|--------------|---|---|
| Affirmative: | Dwyer, Harris, Kirkland, Nunnally, Wright | 5 |
| Negative:    |   | 0 |
| Absent:      |   | 0 |

**A-042-07** **MICHAEL AND LEAH COWARD** request a variance from Section 24-9 to build a one-family dwelling at 7091 Mosswood Road (Parcel 815-696-6231), zoned A-1, Agricultural District (Varina). The public street frontage requirement is not met. The applicant has 0 feet public street frontage where the Code requires 50 feet public street frontage.

Mr. Kirkland - Anyone else wish to speak on this case? All right, if you all would raise your right hand and be sworn in.

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

219 Mr. Kirkland - All right, ma'am. Whoever's going to speak, or sir,  
220 state your name, please.  
221  
222 Ms. Coward - Leah Coward.  
223  
224 Mr. Kirkland - Could you put that microphone a little closer? I'd  
225 appreciate it. There you go.  
226  
227 Ms. Coward - My husband knows a little more than I do, but what  
228 we're requesting is to build a house on the land that we've already purchased.  
229 Right now, it does not have any public street road frontage. Down that road,  
230 there are two other houses that also don't have public street frontage, or the first  
231 house might have some, but the second one probably is in the same situation as  
232 we are. There is like a long driveway that goes down off of Mosswood, so if we  
233 built our house there, we'd be sharing this long driveway with the other two  
234 residents.  
235  
236 Mr. Kirkland - When you purchased the property, did someone tell  
237 you that you could not build on there?  
238  
239 Ms. Coward - No, they did not.  
240  
241 Mr. Kirkland - [Unintelligible.]  
242  
243 Ms. Coward - Well, our builders didn't tell us. This came up after  
244 they tried to get the building permit. So, they couldn't get the building permit  
245 because of this. That's why we're here.  
246  
247 Mr. Coward - And also, I understand after talking to [unintelligible]  
248 that the property had been deeded a variance previously, and when we bought  
249 the property, it expired because she hadn't come up to get it [unintelligible].  
250  
251 Mr. Blankinship - That's correct. The variance was issued in 2003.  
252  
253 Mr. Nunnally - What type of home are they going to build there, Mr.  
254 Coward?  
255  
256 Mr. Coward - A single-family home.  
257  
258 Mr. Nunnally - Is it going to be a regular home dwelling, or is it going  
259 to be a modular home, or—  
260  
261 Mr. Coward - [Unintelligible.]  
262  
263 Ms. Coward - A regular dwelling, four bedrooms.  
264

265 Ms. Dwyer - Do you have any plans for a house, or any surveys to  
266 show where the house would be located specifically? You do have the survey,  
267 which is approximate, but do you have anything more detailed?  
268

269 Ms. Coward - Well, we submitted some plans for the house in with  
270 the packet that we gave to the County Planning Department. It's not in this  
271 packet that was mailed to us. The blueprints for the house were submitted to the  
272 County Planning Department. That drawing right there was drawn by our  
273 builders. They knew where it was going to be and they put that footage there  
274 also.  
275

276 Ms. Dwyer - It says in the information that the plat's not to scale,  
277 but the setbacks are pretty close.  
278

279 Ms. Coward - Yes.  
280

281 Ms. Dwyer - When you applied for the building permit, did you  
282 submit plans at that point?  
283

284 Ms. Coward - We talked to Mr. Paul Gidley.  
285

286 Mr. Blankinship - We haven't received any plans.  
287

288 Ms. Coward - Yeah, we gave them another copy of the house—  
289 Well, I don't know. I know I came to give them a copy of the house plan to the  
290 receptionist at the front desk.  
291

292 Ms. Harris - We see here the proposed home would be 2,527  
293 square feet. That's correct, right?  
294

295 Ms. Coward - Right.  
296

297 Ms. Harris - Where did we get this information?  
298

299 Mr. Blankinship - I was just wondering that, too. Mr. Gidley, do you  
300 know where that number came from?  
301

302 Ms. Dwyer - Well, the plat says—Yes, 46 by 82.  
303

304 Ms. Harris - While they're looking for that, do you know how wide  
305 that private road is? I was looking at the plan and I see some dimensions. Back  
306 on that back page. Yes.  
307

308 Mr. Wright - Ms. Harris, the plat shows a 50-foot right-of-way.  
309

310 Ms. Harris - Okay, so—

311  
312 Mr. Wright - Straight back from Mosswood Road.  
313  
314 Ms. Harris - But in our description, they said some of this private  
315 road is covered with leaves.  
316  
317 Ms. Coward - Right.  
318  
319 Ms. Harris - Is that what we're looking at?  
320  
321 Ms. Coward - Are you talking about the lower picture on the last  
322 page?  
323  
324 Ms. Harris - Yes.  
325  
326 Ms. Coward - That's the drive from the top picture to our house.  
327  
328 Ms. Coward - That's not part of the [unintelligible]; that's part of our  
329 land.  
330  
331 Ms. Harris - Okay.  
332  
333 Mr. Coward - Yes.  
334  
335 Ms. Harris - The [unintelligible] the road was 50 feet wide.  
336  
337 Ms. Coward - And see the house pictured in the first picture at the  
338 top on that last page, is a house further back that would be directly across from  
339 us. They probably had this same problem that we're having now.  
340  
341 Ms. Harris - Which direction, looking at this picture, would your  
342 house be placed, on the left of the road, Mosswood?  
343  
344 Ms. Coward - On that top picture, we would be on the left-hand side.  
345  
346 Ms. Harris - Is this part of the private road?  
347  
348 Ms. Coward - This page area?  
349  
350 Ms. Harris - Beyond that.  
351  
352 Ms. Coward - Beyond that, yes.  
353  
354 Mr. Blankinship - You wouldn't be able to see your home from  
355 Mosswood, would you, from where this picture was taken?  
356



357 Ms. Coward - No.  
358  
359 Ms. Dwyer - How did you select this particular home site to the  
360 very rear of this property?  
361  
362 Mr. Coward - We were looking for property [unintelligible].  
363  
364 Ms. Dwyer - Yes, I'm looking at your lot and you have it at the very  
365 rear of your lot. It looks like you have to cross maybe some streams. I'm just  
366 wondering why you chose that particular location.  
367  
368 Ms. Coward - This is where the builders felt it was the best place to  
369 put the house. There already appeared to be a driveway there, I suspect from  
370 the previous owner that was going to build something there.  
371  
372 Ms. Dwyer - Looks like in the aerial that the house that was there  
373 before, which apparently shows up, is closer to the access drive.  
374  
375 Mr. Coward - That was a trailer; it wasn't a home.  
376  
377 Ms. Dwyer - Okay.  
378  
379 Mr. Coward - It was a trailer there up front, for whatever reason.  
380  
381 Ms. Coward - It seems like she wanted to have a trailer there to live  
382 in while she was building her new home.  
383  
384 Ms. Dwyer - Do you plan to divide the property and build on the  
385 front part of this parcel?  
386  
387 Mr. Coward - Divide it? No, we don't plan to divide it. Keep it all in  
388 one piece.  
389  
390 Ms. Dwyer - The reason I'm asking the question is by putting your  
391 house in the rear, it leaves that front portion of your property open to additional  
392 development, additional divisions.  
393  
394 Ms. Coward - [Unintelligible] further down the private road, rather  
395 than close towards Mosswood.  
396  
397 Ms. Dwyer - Right, the area of your lot closest to Mosswood would  
398 be open and available for further development. I'm wondering if that's part of your  
399 plan.  
400  
401 Mr. Kirkland - Where were you planning on putting the septic field  
402 and all that? I don't see any drawings showing it.

403  
404 Ms. Coward - They already have a septic design and—  
405  
406 Mr. Kirkland - Is it in front of the house?  
407  
408 Mr. Coward - No.  
409  
410 Ms. Coward - Off to the back.  
411  
412 Mr. Coward - Off to the right to the back.  
413  
414 Ms. Coward - Right to the back of the house.  
415  
416 Mr. Blankinship - That may be why the builder selected that site. It  
417 could be closest to the best perk site.  
418  
419 Mr. Kirkland - Yes, I was thinking that.  
420  
421 Mr. Blankinship - It does slope back up as you get toward the corner.  
422  
423 Ms. Harris - Have you noticed the land after a rain? I noticed that  
424 you do have some wetlands there. Do you know exactly where that wetland is?  
425  
426 Mr. Coward - From the [unintelligible]? That's nowhere near the  
427 house.  
428  
429 Ms. Coward - It's nowhere near the home.  
430  
431 Mr. Kirkland - Any other questions from Board members?  
432  
433 Ms. Dwyer - Did you bring your house plans with you today?  
434  
435 Ms. Coward - I did not. I thought they would be here.  
436  
437 Mr. Blankinship - I apologize. I have no idea what's happened to them.  
438  
439 Mr. Coward - Twice. We brought it the first time, then they sent us  
440 a letter saying we needed them, and we came back with a second packet.  
441  
442 Ms. Coward - Yeah.  
443  
444 Mr. Blankinship - I apologize.  
445  
446 Mr. Kirkland - Anyone else wish to speak?  
447

448 Mr. Nunnally - You say it's just one, that you have no plans for  
449 development for the front part of this property? So, you have no problems with  
450 us putting a condition in there that if it's approved that there will only be this one  
451 house and that's it?

452

453 Mr. Coward - None whatsoever.

454

455 Ms. Coward - He has no objection to that.

456

457 Mr. Kirkland - Anyone else? Anyone else in the audience wish to  
458 speak? If not, that concludes the case.

459

460 Ms. Coward - Thank you.

461

462 Mr. Coward - Thank you.

463

## 464 **DECISION**

465

466 Mr. Nunally moved that the variance application be approved on the basis the  
467 applicant lacks reasonable beneficial use of the property without a variance. Ms.  
468 Harris seconded the motion.

469

470 After an advertised public hearing and on a motion by Mr. Nunally, seconded by  
471 Ms. Harris, the Board **granted** application **A-042-07**, MICHAEL AND LEAH  
472 COWARD's request for a variance from Section 24-9 to build a one-family  
473 dwelling at 7091 Mosswood Road (Parcel 815-696-6231), zoned A-1, Agricultural  
474 District (Varina).

475

476 1. [AMENDED] This variance applies only to the public street frontage  
477 requirement for one dwelling only. There shall be no further division or  
478 subdivision of the subject parcel. All other applicable regulations of the County  
479 Code shall remain in force.

480

481 2. Only the improvements shown on the plot plan and building design filed with  
482 the application may be constructed pursuant to this approval. Any additional  
483 improvements shall comply with the applicable regulations of the County Code.  
484 Any substantial changes or additions to the design or location of the  
485 improvements may require a new variance.

486

487 3. Approval of this request does not imply that a building permit will be issued.  
488 Building permit approval is contingent on Health Department requirements,  
489 including, but not limited to, soil evaluation for a septic drainfield and reserve  
490 area, and approval of a well location.

491

492 4. At the time of building permit application, the applicant shall submit the  
493 necessary information to the Department of Public Works to ensure compliance

494 with the requirements of the Chesapeake Bay Preservation Act and the code  
495 requirements for water quality standards.

496  
497 5. The applicant shall present proof with the building permit application that a  
498 legal access to the property has been obtained.  
499

500 6. The owners of the property, and their heirs or assigns, shall accept  
501 responsibility for maintaining access to the property until such a time as the  
502 access is improved to County standards and accepted into the County road  
503 system for maintenance.

504  
505 Affirmative: Harris, Kirkland, Nunnally, Wright 4  
506 Negative: Dwyer 1  
507 Absent: 0

508  
509

510 **A-043-07** **JOSEPH DEMETRIUS TYLER** requests a variance  
511 from Sections 24-94 and 24-9 to build a one-family dwelling at 8369 Strath Road  
512 (Parcels 816-684-9123 and 817-684-3216), zoned A-1, Agricultural District  
513 (Varina). The lot width requirement and public street frontage requirement are not  
514 met. The applicant has 20 feet lot width and 20 feet public street frontage where  
515 the Code requires 150 feet lot width and 50 feet public street frontage. The  
516 applicant requests of variance of 130 feet lot width and 30 feet public street  
517 frontage.

518

519 Mr. Kirkland - Anyone else wish to speak on this case?

520

521 Ms. Waldrop - I'm not Joseph Tyler, but.

522

523 Mr. Kirkland - Are you the applicant?

524

525 Ms. Waldrop - No, I'm his real estate agent.

526

527 Mr. Kirkland - Okay. So, you're representing him, correct?

528

529 Ms. Waldrop- Right.

530

531 Mr. Kirkland - Okay. If you would raise your right hand and be sworn  
532 in.

533

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

536

537 Ms. Waldrop - I do.

538

539 Mr. Kirkland - All right. Would you state your name for the record,  
540 please?  
541  
542 Ms. Waldrop - Sure. Lestra Waldrop, Varina and Seelmann Realty.  
543  
544 Mr. Kirkland - All right. Let us know what you want.  
545  
546 Ms. Waldrop - I had been contacted by Mr. Tyler to sell a piece of  
547 property that was given to him by his grandfather. The property has a 20-foot  
548 easement off of Strath Road to it. There is a house behind it. There is another  
549 piece of land to the right of it, as you will see. We have a contract to sell it based  
550 on the variance issue. If we obtain a variance, the contracted sale will go  
551 through.  
552  
553 Mr. Nunnally - Who built the house that's there now? Did Oakwood  
554 Homes build that?  
555  
556 Ms. Waldrop - I don't know who built the house behind, sir, I wasn't  
557 involved in that. There is new subdivision, however, to the right, that is being  
558 developed by Stern Homes. Adjacent to his property. To the left. Strath Woods.  
559 That's a new subdivision.  
560  
561 Mr. Nunnally - Where does Mr. Tyler live now, ma'am?  
562  
563 Ms. Waldrop - He lives with his parents at 8444 Strath Road.  
564  
565 Mr. Blankinship - You said he intends to sell this property?  
566  
567 Ms. Waldrop - He does. We have a contract for sale. He was given  
568 the property by his grandfather.  
569  
570 Ms. Harris - This private road that would lead to the home is how  
571 wide? What is the width of that?  
572  
573 Ms. Waldrop - Twenty. Twenty feet.  
574  
575 Mr. Blankinship - And they actually own that? Mr Tyler actually owns  
576 that property, that 20-foot strip? You described it as easement.  
577  
578 Ms. Waldrop - Yes, it was—  
579  
580 Mr. Blankinship - [Unintelligible] research—  
581  
582 Ms. Waldrop - Yes.  
583  
584 Ms. Dwyer - So, it's not an easement, in fact?

585  
586 Mr. Blankinship - Right. He owns the 20-foot strip.  
587  
588 Ms. Harris - Do you have wetlands problems? I mean, does the  
589 owner?  
590  
591 Ms. Waldrop - Not that we're aware of. The person who has the  
592 contract on the property will obtain a septic test, a perk test. We're not aware of  
593 any wetland problems.  
594  
595 Mr. Kirkland - Mr. Blankinship, it's kind of unusual we get one of  
596 these without some sort of house plan or some sort of sketch on the lot, isn't it.  
597  
598 Mr. Blankinship - I don't suppose you dropped one off and we  
599 misplaced it?  
600  
601 Ms. Waldrop - What is that?  
602  
603 Mr. Blankinship - The house plan.  
604  
605 Ms. Waldrop - Well, no, because the contractor that is buying it, he's  
606 proposing a three-bedroom, two-bath rancher anywhere between 1,200 to 1,500  
607 square feet. It's going to be a fairly small house; it's not going to be a large home.  
608  
609 Mr. Kirkland - We like to get a location of exactly where the home is  
610 going to go on the lot, whether it's going to be shoved all the way forward to meet  
611 the setbacks, or shoved all the way to rear where the septic would go. Normally  
612 we get a sketch or a drawing.  
613  
614 Ms. Waldrop - I understand that. However, he did not want to enter  
615 into spending that additional money if the variance—It was kind of a Catch-22.  
616 He didn't want to spend that money before we had the variance issued ironed  
617 out.  
618  
619 Mr. Kirkland - Okay.  
620  
621 Ms. Dwyer - The staff report mentions that there—and it shows on  
622 the map—is a concept road that crosses this property. One of the conditions  
623 states that the applicant will work with the Department of Public Works to ensure  
624 the location of the proposed home is set back 50 feet from the location of the  
625 future right-of-way of the concept road. Do you have thoughts about that?  
626  
627 Ms. Waldrop - Well, you have to understand, I haven't been privy to  
628 any paperwork that you sent to Mr. Tyler; it went directly to him. So, I really am  
629 not aware of that.  
630

631 Ms. Dwyer - I can say that—  
632  
633 Ms. Waldrop - Can that be shown on the picture that's up here? I  
634 can't believe there's a—I mean, I'm sure there is a concept road, but all of that  
635 property is pretty much residential. I don't know where it's going, where it would  
636 go.  
637  
638 Ms. Dwyer - We do have a map. I don't know if it's—Okay. I can  
639 say that at least in my opinion, the house would need to be oriented toward the  
640 concept road. The concept road would need to be reserved, that 50-foot swath  
641 across the property.  
642  
643 Ms. Waldrop - Wow.  
644  
645 Ms. Dwyer - Not given to the County, but certainly reserved for the  
646 future roadway. So, the house would need to be oriented with the concept road  
647 in mind.  
648  
649 Ms. Waldrop - That would have a definite impact on the property.  
650  
651 Ms. Dwyer - That's a very important thing to ensure that future  
652 roadways the County has planned for can be built.  
653  
654 Ms. Waldrop - Is that in a recent comprehensive plan, or is that  
655 something that has just been added?  
656  
657 Ms. Dwyer - The Major Thoroughfare Plan is updated every few  
658 years, but it's usually done ten years out, revised several years out.  
659  
660 Ms. Waldrop - I guess what I wanted to know is, is this something  
661 that's just been carried through for the last 25, 30, 40 years. Sometimes there  
662 are roadways that the County has that were concept roads that are not valid any  
663 longer.  
664  
665 Ms. Dwyer - Well, this is a road that is parallel to Route 5, which is  
666 incurring lots of traffic, a lot of increases in traffic. It does connect Strath to Buffin,  
667 I believe. So, I would view this as a road that's probably likely to be built as that  
668 line continues to be developed.  
669  
670 Mr. Blankinship - The Department of Public Works has commented on  
671 these cases, and they pointed out that there is a concept road. And they brought  
672 it up as if it was still within their horizon.  
673  
674 Ms. Waldrop - Right. Well, that would have a definite impact on the  
675 salability of the property. I was unaware of that.  
676

677 Mr. Kirkland - Anyone else have any questions?  
678  
679 Mr. Nunnally - Do you have any problem with deferring this case  
680 until next month and then bringing back a set of plans?  
681  
682 Ms. Waldrop - If the purchaser, the contractor will furnish me that, I  
683 don't have a problem with that.  
684  
685 Mr. Nunnally - He's going to have to furnish it to you.  
686  
687 Mr. Kirkland - If you've got a road through your property, he's going  
688 to have to.  
689  
690 Ms. Waldrop - Yeah, he needs to be aware of this also, and we need  
691 to figure out how much of that property is going to be encumbered.  
692  
693 Ms. Dwyer - We need to make a decision today, though, since the  
694 case is before us. We can either deny or we can approve it with the concept road  
695 and write our own condition for that, or you can defer it until next month and  
696 confer with your client, if you'd like to do that.  
697  
698 Ms. Waldrop - I would probably say at this point that we need to  
699 defer it rather than make a rash judgment on the spot.  
700  
701 Ms. Dwyer - We don't make rash judgments.  
702  
703 Ms. Waldrop - No, I mean—Well, no, no. I didn't mean to infer that,  
704 but—I didn't want to make my decision, your decision for my client at this point.  
705 So, deferring would be fine. And we'll try to come back. Will you be advising us  
706 what you require in this next 30-day period?  
707  
708 Mr. Blankinship - Mr. Tyler should get with Public Works and work that  
709 out.  
710  
711 Ms. Waldrop - Okay. All right, thank you.  
712  
713 **DECISION**  
714  
715 Mr. Nunnally - You'll be #1 on the agenda. I make a motion we defer  
716 the case until next month.  
717  
718 Ms. Harris - Second.  
719  
720 Mr. Kirkland - Motion by Mr. Nunnally, seconded by Ms. Harris. All  
721 in favor say aye. All opposed say no. The ayes have it; the motion carries.  
722



723 It's been deferred to the January 2008 meeting.

724

725 Upon a motion by Mr. Nunnally, seconded by Ms. Harris, the Board **deferred**  
726 application **A-043-07**, Joseph Demetrius Tyler's request for a variance from  
727 Sections 24-94 and 24-9 to build a one-family dwelling at 8369 Strath Road  
728 (Parcels 816-684-9123 and 817-684-3216), zoned A-1, Agricultural District  
729 (Varina). The lot width requirement and public street frontage requirement are not  
730 met.

731

732 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5

733 Negative: 0

734 Absent: 0

735

736

737 **UP-018-07 GILLIES CREEK INDUSTRIAL RECYCLING, LLC**

738 requests a conditional use permit pursuant to Section 24-88(c) to develop a  
739 wetlands mitigation bank at 5500 White Oak Drive (Parcels 864-704-2093, 860-  
740 709-5622 and 863-706-3470), zoned C-1, Conservation District (Varina).

741

742 Mr. Kirkland - Anyone else wish to speak on this case? All right, sir,  
743 if you would, raise your right hand and be sworn in.

744

745 Mr. Bayliss - You may hear from two other folks, too, so if they'd  
746 stand, too.

747

748 Mr. Kirkland - You all stand, please, also?

749

750 Mr. Blankinship - Mike or anybody who intends to speak on this. Do  
751 you swear the testimony you're about to give is truth and nothing but the truth so  
752 help you God?

753

754 Mr. Bayliss - I do.

755

756 Mr. Kirkland - State your name for the record, sir.

757

758 Mr. Bayliss - Good morning. My name is Bill Bayliss and I'm here  
759 on behalf of Gillies Creek. We were deferred a number of times earlier because  
760 we couldn't get the VDOT report, which finally came in last night, or yesterday. I  
761 want to just make a couple of points, and there's one condition I'd like to address  
762 that we believe is unrealistic when we look at what we've got here. This property  
763 is under contract with my client. On July 31<sup>st</sup>, 2006, UP-31-2006 was issued with  
764 32 conditions imposed. And what happened at that time was there was an issue  
765 with respect to New Kent County because the entrance to this operation is in  
766 New Kent County. New Kent County had not gotten a notice and so we worked  
767 with New Kent, and they had raised some issues. There was really a  
768 misunderstanding as to what was really intended to be done out there. What is

769 intended to be done is to develop a wetlands mitigation bank. That includes  
770 extraction of some materials, and return of filler materials under a conceptual  
771 plan designed by engineers, which has been provided.

772

773 We worked with both Mr. Blankinship and with New Kent to deal with those  
774 concerns. Although it's kind of unplowed ground here, there's no ordinance that  
775 lists a wetlands mitigation back. Working with Mr. Blankinship, it's kind of like a  
776 lesser-included use than what the existing use permit was. And a number of  
777 mining permits have been issued before, and this property has been mined  
778 before in the—and I don't know how many, three or four anyhow. And so in  
779 working with them, we made the application, which speaks for itself. In doing so,  
780 we were waiting for the VDOT report and recommendations. Well, we went out  
781 and had our own traffic analysis done and that was provided, and there was an  
782 issue there as far as whether [unintelligible].

783

784 But on November 27<sup>th</sup>, that was finally a part of the file here in Henrico County.  
785 Under that analysis, and based upon the projected use, there was no need for a  
786 left-hand or right-hand turn lane. In working with Mr. Blankinship, we answered  
787 certain questions, including the average number of trucks per day, which were 28  
788 [unintelligible]. When VDOT saw this—And the conditions imposed are, I  
789 suspect, are normal, and that is we can't do anything until we work out our issues  
790 with VDOT and get the property permits. So, we're going to have to work with  
791 VDOT, because it's simply inconsistent with the average use that has been  
792 projected, #1, and 2, with respect to the traffic study done by the folks that helped  
793 us, and VDOT. But that's an issue, really, that I'll get to in a second, because I  
794 think it really does solve what my one problem is.

795

796 So, we understand under Condition #11 that is imposed with use permit, that  
797 before beginning excavation and filling out the operations, the applicant shall  
798 obtain all necessary approvals for the access road from VDOT. That is a  
799 condition that self-imposes a lot of things that I'll talk about in a second, that we  
800 still have to work with VDOT before we can proceed with this as a realistic  
801 project. The problem we have, and where we think that it's unrealistic is #18. If  
802 you look at the existing permit, and my guess is if you look at every other permit  
803 that has been issued with respect to mining of this property—and that goes down  
804 to the heart of, again, what we're talking about with New Kent: This is not a  
805 mining operation; we're developing a wetlands mitigation bank. There is some  
806 history with New Kent with another wetlands mitigation bank.

807

808 If you look at the current, existing use permit, there are two things I'd like to point  
809 out. Number one, the hours of operation in the current permit are from 7 a.m. to  
810 5:30, Monday through Saturday; the new use permit eliminates Saturday. So, as  
811 a result of an elimination of Saturday—and we can live with that—there will be  
812 less work done and therefore a longer period of time before the project is  
813 completed. I think that's an important point that I want to come back to. If you  
814 look at the existing permit, there are no restrictions at all as to the number of

815 trucks per day. There are simply no restrictions at all. If you look at the  
816 information we provided Henrico County, to modify the existing permit to a permit  
817 that would allow the development of a wetlands mitigation bank, we estimated 28  
818 trucks per day. Some days will be more and some days will be less, but the  
819 estimate as an average number of trucks per day was 28.

820

821 Ms. Dwyer - Can I ask a question here, sir?

822

823 Mr. Bayliss - Yes ma'am.

824

825 Ms. Dwyer - Apparently the traffic study says there'll be 200 trips a  
826 day.

827

828 Mr. Bayliss - That's whose traffic study, VDOT?

829

830 Ms. Dwyer - No. Well—

831

832 Mr. Blankinship - The consultant.

833

834 Ms. Dwyer - Randy Kemp and Associates.

835

836 Mr. Blankinship - I think that's the traffic on Route 60.

837

838 Mr. Bayliss - Right.

839

840 Ms. Dwyer - "Based on our understanding, the site will function as  
841 a wetlands mitigation bank and is expected to have no more than 200 total  
842 trips—100 entering and 100 exiting—on an average weekday. I interpreted that  
843 to mean [unintelligible] generating trips.

844

845 Mr. Bayliss - Even based on that, which is totally inconsistent with  
846 what we think the realistic use will be, this traffic study recommended no turn  
847 lanes based upon the current VDOT regulations. I've got two representatives  
848 here that can talk to you about that. I see what you're talking about there. I  
849 think—

850

851 Mr. Blankinship - They use 26 trips per hour in the next paragraph.

852

853 Mr. Bayliss - And ours is clearly 28 per day. That's the information  
854 we based it on. And I'll let—You want to address that issue now?

855

856 Mr. Morgan - Kelby Morgan. For the purpose of this study that  
857 Randy Kemp did was just to determine what kind of turn lanes, if any, were  
858 needed. For the basis of our study, they used 100 vehicles per day basically to  
859 determine that there was no turn lanes needed if we were to have that kind of  
860 volume. That's not to say we're going to have that kind of volume, but for the

861 sake of this study, that's the volume that they used to show that we did not  
862 require any turn lanes. So, anything under that would likewise not require any  
863 turn lanes.

864

865 Ms. Dwyer - I understand what your saying is that even at that  
866 level, no turn lane is required, and that's the point of this study.

867

868 Mr. Morgan - Exactly.

869

870 Ms. Dwyer - But what they actually say is that, "we expect 200  
871 trips a day."

872

873 Mr. Blankinship - Based on our understanding.

874

875 Ms. Dwyer - We have three different estimations.

876

877 Mr. Blankinship - It does say [unintelligible].

878

879 Mr. Kirkland - What did VDOT base their study on, this report?

880

881 Mr. Morgan - Yes.

882

883 Ms. Dwyer - Okay.

884

885 Ms. Harris - Look at page 2 where it says the site further  
886 complicates, it would [unintelligible] approximately 12 trips entering and 12 trips  
887 exiting.

888

889 Mr. Blankinship - During the peak hours.

890

891 Ms. Harris - During the peak hours.

892

893 Mr. Kirkland - So Mr. Blankinship, did VDOT reassess this and see  
894 there was going to be only 28 trips a day and then come to this same resolution  
895 to the situation that the turn lanes would be needed?

896

897 Mr. Blankinship - This is one of two cases today, Mr. Chairman, where I  
898 think we're going to recommend that you take all of the testimony today, you hold  
899 the public hearing and hear what everyone has to say, but that you defer your  
900 decision until some of these issues can be resolved.

901

902 Mr. Kirkland - Okay.

903

904 Ms. Harris - Because the staff report is recommending 16 trucks,  
905 and you're sending 28.

906

907 Mr. Bayliss - And I'm going to come back to that in a second.

908

909 Ms. Harris - Okay.

910

911 Mr. Bayliss - I'm going to come back to that in a second to deal  
912 with that issue. Mr. Morgan, again—and maybe we have to clarify this through  
913 the Randy Kemp information. Really, if you look at the Randy Kemp information,  
914 I think they were trying to say if you have a hundred, that you still wouldn't need  
915 turn lanes. VDOT has, I believe, for whatever reason, and we didn't know this  
916 until just recently, has disagreed with that and said you do need turning lanes,  
917 both left and right, which has a huge economic impact, which is one of the points  
918 I want to make. Again, we've asked for this use permit to be modified based  
919 upon a representation to the County and to the Board that the average number of  
920 trips will be 28 per day, not 200 per day. If was an average of 200, many days it  
921 would exceed 200. Realistically, there will be days it exceeds 28, and there will  
922 be days it will be less than 28. There's not going to be 28 on each day.

923

924 Going back to what our real problem is—and that's the condition imposed of,  
925 again, in #18—I want to make the following points. Number one, I think I just  
926 made the point if you look at the existing permit, it eliminates "six days," which is  
927 in the existing permit, and now it's a five-day issue, which extends the duration of  
928 the project. This project was anticipated to last five years. The quicker the  
929 project can be completed, the quicker it will be a consistent use with the  
930 neighborhood as a wetlands mitigation bank instead of an open mine area, which  
931 it's been for years and years and years. So, I think that's a benefit. The quicker  
932 for everybody, the better for everybody. If you impose a restriction of 16 trucks  
933 per day, the project that was hoped to last five years, will now last 10 or 15 years,  
934 and I don't think that's what New Kent County wants; I know it's not what the  
935 applicant wants. It's better to get it done, and finished, and move on. It also  
936 makes it economically unrealistic to the applicant to try to do this with a 16 trucks  
937 per day limitation. That's a limitation of 16 per day. When you talk about an  
938 average of 28, you're talking about some days maybe 3 times less, or 2, 2-1/2  
939 times less.

940

941 Again, I go back to—if you look at the restriction imposed in #11, it requires the  
942 applicant to work these issues out with VDOT. VDOT, obviously, bases its  
943 decision on its regulations that are imposed, and has required a left-hand and  
944 right-hand turn lane, which is totally inconsistent with only 16 trucks a day coming  
945 in and out of there. Again, we think there's an inconsistency with the report we  
946 had, which tried to say if it was 100 or 200, you still wouldn't need a right-hand or  
947 left-hand turn lane. So, what we would ask this Board to do, and what we'd like  
948 to do, is you have an existing permit in place, and that existing permit has no  
949 limitation on truck traffic. However, that condition, conditional use permit and this  
950 one, if you had the same conclusion, and that is no limitation one way or the  
951 other, it really falls back to VDOT because VDOT's going to self-impose  
952 whatever they do in order to make a determination if you need a right-hand, or

953 left-hand, or both, which in this case, they've already done. VDOT will police that  
954 issue by working with the applicant to see what's realistic and see what's based  
955 on actual projected use.

956

957 That said, I think by imposing #11, which requires the applicant to work with  
958 VDOT, and cannot do anything out there until they get the approvals from  
959 VDOT—which right now we're not in agreement with—by going back to the  
960 original use permit that's in place today, and understanding what the applicant's  
961 trying achieve is to work with New Kent. It's not a mining operation. That was the  
962 real issue here and why we did this this way in order to work with New Kent and  
963 Henrico. What we are trying to accomplish is actually what I refer to as a lesser-  
964 included use, and that is a wetlands mitigation bank. So, at the end of the five-  
965 year period, what you'll have out there is a nice pristine piece of property versus  
966 what you have out there today, and that's a wetlands mitigation bank. So, we  
967 think that if it's imposed at 16, which is totally different than the average number  
968 of trucks that we suggested, that it makes it unrealistic economically to the  
969 applicant; it makes it unrealistic to New Kent County and the residents in that  
970 area because it takes this project from a 5-year project to a 10- to 15-year  
971 project; and it's unrealistic with what VDOT has imposed. For those reasons—  
972 That's the only condition, that again, we have a problem with. We ask that the  
973 conditional use permit be issued and that it be issued without a restriction, just as  
974 it is today under the existing conditional use permit.

975

976 Mr. Wright - When does that UP-031-06 expire?

977

978 Mr. Bayliss - Nothing's been done out there under it right now  
979 because the—

980

981 Mr. Wright - It must be coming up soon.

982

983 Mr. Bayliss - It is, and I'm looking right now.

984

985 Mr. Wright - Normally we grant them for two years, Mr.  
986 Blankinship?

987

988 Mr. Blankinship - The problem with that, Mr. Wright, was not so much  
989 expiration as that they were unable to work out with VDOT and with New Kent  
990 County the conditions for using the road at the other end.

991

992 Mr. Wright - I understand that.

993

994 Mr. Bayliss - It says the expiration—Under the old one, excavation  
995 shall be discontinued by August 1, 2008, and restoration accomplished by  
996 August 1, 2009, unless a new permit is granted.

997

998 Mr. Wright - Well, that's got about nine, eight or nine months more  
999 to go. That one would expire anyhow.  
1000  
1001 Mr. Bayliss - Right.  
1002  
1003 Mr. Blankinship - But it's more or less moot as it is.  
1004  
1005 Mr. Wright - Yeah, I understand, I understand. I just was trying to  
1006 get everything in perspective here.  
1007  
1008 Mr. Kirkland - Mr. Blankinship, I have a question. If we allowed  
1009 VDOT to do the policing, let's say—I guess that's what you call it—who would  
1010 enforce all of these traffic counts and making sure the trucks—would that be New  
1011 Kent County doing this, or would it be VDOT?  
1012  
1013 Mr. Blankinship - We would have to cooperate on it, and we've actually  
1014 written that sentence in several of these conditions that this would be enforced in  
1015 cooperation with VDOT and New Kent County.  
1016  
1017 Mr. Bayliss - And #27, failure to comply with any of the following  
1018 conditions shall automatically [unintelligible].  
1019  
1020 Ms. Dwyer - Mr. Blankinship, where did we get this "16" number?  
1021  
1022 Mr. Blankinship - That grew out of a meeting that I attended with New  
1023 Kent County staff, several months ago now.  
1024  
1025 Ms. Dwyer - Is there anyone from New Kent who would like to  
1026 speak to that?  
1027  
1028 Mr. Blankinship - Yes, Mr. Vaughn is here from New Kent County. I  
1029 don't know if Mr. Bayliss is finished yet.  
1030  
1031 Mr. Kirkland - Mr. Bayliss, I have one more question for you.  
1032 Number 22, New Kent suggested no asphalt be dumped in the area. Is that a  
1033 problem with you?  
1034  
1035 Mr. Bayliss - That's not a problem.  
1036  
1037 Mr. Kirkland - Okay.  
1038  
1039 Mr. Bayliss - Really, the conditions that are here, the only problem  
1040 that we really just can't live with is the number of 18 trips.  
1041  
1042 Ms. Harris - Let me ask you about the "truck crossing" sign. We  
1043 noticed on Mr. Homewood's report, or his memo to Mr. Blankinship, that he

1044 mentioned “trucks entering highway” or “truck crossing.” Are we going to use  
1045 “truck crossing”?  
1046  
1047 Mr. Blankinship - Right. I had used the Henrico County standard, but  
1048 that is a VDOT road and Mr. Homewood informed me of the VDOT standard. So,  
1049 that should be substituted.  
1050  
1051 Ms. Harris - Okay.  
1052  
1053 Ms. Dwyer - You mentioned that this was a five-year project, and  
1054 condition #26 states, “operations shall continue December 20, 2009, and  
1055 restoration accomplished no later than 2010,” so that’s considerably sooner.  
1056  
1057 Mr. Bayliss - We understand that.  
1058  
1059 Mr. Wright - It can come back. It says unless we extend, renew  
1060 this.  
1061  
1062 Mr. Bayliss - Right. And that’s what we understand, you have to  
1063 come back and renew the application.  
1064  
1065 Ms. Dwyer - The scope of this is the entire property—is that  
1066 correct?—not just Mine One.  
1067  
1068 Mr. Bayliss - That’s correct.  
1069  
1070 Ms. Dwyer - But we only have a concept plan for reclamation of  
1071 Mine One, or is that just all that was included in our packet?  
1072  
1073 Mr. Morgan - What you have is the conceptual plan for Mine One.  
1074 The whole project is phased. Really, it’s being phased through the Corps of  
1075 Engineers and DEQ. That’s a typical detail of what can be expected for each of  
1076 the mine areas.  
1077  
1078 Ms. Dwyer - Each of the mines.  
1079  
1080 Mr. Morgan - None of that has been, or will be permanently  
1081 designed until after we hit a certain phase of the project, and then that design  
1082 comes into play.  
1083  
1084 Ms. Dwyer - If you—  
1085  
1086 Mr. Bayliss - Number 5 deals with the work that we have with the  
1087 DEQ. It imposes that we obtain all necessary permits [unintelligible].  
1088



1089 Ms. Dwyer - So, it's the Virginia Department of Environmental  
1090 Quality and the Corp of Engineers who really dictate the specifics of the  
1091 reclamation plan. Is that right?  
1092

1093 Mr. Morgan - That's correct.  
1094

1095 Ms. Dwyer - And this concept plan is drawn according to their  
1096 requirements.  
1097

1098 Mr. Morgan - That's correct.  
1099

1100 Ms. Harris - It seems in New Kent that the Community  
1101 Development Department, or Office, has some input, right, for what they approve  
1102 or what they don't approve.  
1103

1104 Mr. Morgan - I think their input—I can't speak for them—but their  
1105 intent with their input is not what's done on the site, but what's done on the  
1106 access to the site, which is in New Kent County. After you cross over the river,  
1107 the site's actually in Henrico; the access is through New Kent. New Kent's  
1108 concern is [unintelligible], is our understanding. They might [unintelligible], but I  
1109 believe that's—  
1110

1111 Ms. Harris - But you can't carry out your operation without their  
1112 approval.  
1113

1114 Mr. Morgan - That's correct.  
1115

1116 Mr. Blankinship - Exactly how they would regulate it is—I'm not exactly  
1117 certain. But as a sister County, we're interested in getting their input at this point,  
1118 and making sure that our approval of the project is consistent with what they  
1119 would like to see as well.  
1120

1121 Ms. Harris - Mmm-hmm. If left-hand and right-hand lanes were  
1122 actually put in place on those major thoroughfares, who picks up the tab for that?  
1123 Would it be the Virginia Department of Transportation, or would it be—  
1124

1125 Mr. Bayliss - It's [unintelligible]. We wish.  
1126

1127 Ms. Harris - So, if we—  
1128

1129 Mr. Bayliss - Henrico County taxpayers don't do it.  
1130

1131 Ms. Harris - Right. If we decided to remove the restriction on the  
1132 number of trucks, and instead place the condition that we do need left- and right-  
1133 hand turns off a major thoroughfare, how would you feel about that?  
1134

1135 Mr. Bayliss - Again, I don't think you need to do that because in  
1136 order to do this, we have to have the proper permits and approval from VDOT.  
1137 That's what the business of VDOT is, and right now, they've required it. They've  
1138 said that. So, we think it would be better served to let us work with VDOT in  
1139 determining whether those are needed.  
1140  
1141 Mr. Blankinship - And if you can talk them out of it—  
1142  
1143 Mr. Bayliss - Right.  
1144  
1145 Mr. Blankinship - —then you don't need to come back here.  
1146  
1147 Mr. Bayliss - We don't need to come back here. We're stuck. Your  
1148 condition says we can't do anything until we work our issues out with VDOT.  
1149 That's their business, and I think everybody's protected, and we've gotta work  
1150 that out with them.  
1151  
1152 Ms. Dwyer - Are you finished, Ms. Harris?  
1153  
1154 Ms. Harris - Yes. I just think safety for Henrico—  
1155  
1156 Mr. Bayliss - Right, right. But I mean, and they work with—  
1157  
1158 Mr. Blankinship - But we may require more than VDOT requires.  
1159  
1160 Mr. Bayliss - Oh, okay, okay.  
1161  
1162 Ms. Harris - I'm finished.  
1163  
1164 Ms. Dwyer - It states in our staff report that there will no longer be  
1165 any extraction, and I understand that is the case. It also states that the total  
1166 amount of material to be removed is 300,000 cubic yards, and the total amount of  
1167 material to be brought in is 275,000 cubic yards. So, it does sound like there is  
1168 extraction.  
1169  
1170 Mr. Bayliss - There will be—It's spelled out in the intended use  
1171 attached to the application. It does entail excavation and replacement of fill  
1172 material, and the conceptual plan reflects that. There is going to be—I mean,  
1173 we've hired the engineers to do that. There's going to be extraction, as well as  
1174 infill, but it's not going to be a mining operation.  
1175  
1176 Ms. Dwyer - Okay. All throughout the conditions it says,  
1177 "excavation or filling," and I notice that in your intended use it does say,  
1178 "excavation and replacement."  
1179  
1180 Mr. Bayliss - Right.

1181  
1182 Ms. Dwyer - So, I'm wondering why the staff report said there will  
1183 no longer be any extraction.  
1184  
1185 Mr. Blankinship - Extraction of sand and gravel. They would not be  
1186 mining the site of sand and gravel—  
1187  
1188 Mr. Bayliss - Right.  
1189  
1190 Ms. Dwyer - Okay.  
1191  
1192 Mr. Blankinship - —for sale.  
1193  
1194 Ms. Dwyer - So, what's the nature of the extraction activity, then?  
1195  
1196 Mr. Morgan - What's the nature of it?  
1197  
1198 Ms. Dwyer - Right. What are you extracting if you're not—it sounds  
1199 like you're extracting more than you're putting back, so what are we taking out?  
1200  
1201 Mr. Morgan - You're taking out the existing materials on the site so  
1202 we're not processing. We are extracting, we are removing materials from the site,  
1203 but no materials are being processed. No sand and/or gravel as in a typical  
1204 mining operation would be done. But the materials that are on site will be  
1205 extracted.  
1206  
1207 Mr. Wright - What are you going to do with them?  
1208  
1209 Mr. Morgan - We're going to sell them.  
1210  
1211 Ms. Dwyer - So, you're extracting sand and gravel, you're just not  
1212 processing it? Is that what you're saying?  
1213  
1214 Mr. Morgan - Yes, yes. We are extracting, but we are not  
1215 processing.  
1216  
1217 Mr. Bayliss - Which is what we understood was the issue. They  
1218 didn't want a typical sand and gravel mining operation on that site, which is  
1219 where I think the confusion occurred originally, and they thought this was going  
1220 to be a sand and mining, I mean a sand and gravel mine operation, where it  
1221 would be extracted, processed, etc.  
1222  
1223 Mr. Wright - You could say you would not extract that and process  
1224 it.  
1225  
1226 Mr. Blankinship - Yes, that would be probably be more accurate.

1227  
1228 Mr. Wright - That would clear that up.  
1229  
1230 Ms. Dwyer - [Unintelligible] thought that should be somewhere in  
1231 the conditions to clarify that, because it's not clear. It seems like there's nothing  
1232 in the conditions now that prohibit what you've decided to refrain from doing. It  
1233 continues to say "extraction" throughout the conditions. The only thing that says  
1234 that they're not going to do it, is something in the staff report.  
1235  
1236 Mr. Bayliss - And that's not a problem.  
1237  
1238 Ms. Dwyer - It's just a clarification.  
1239  
1240 Mr. Bayliss - I think that's why we're here because they were  
1241 confused as to what they thought the intended use was out there.  
1242  
1243 Ms. Dwyer - All right. So, that would need to be something that  
1244 you—and you've approved of that.  
1245  
1246 Mr. Bayliss - We have no intentions. We're not operating that and  
1247 so a condition that says, "will not extract and process on site," is not a problem.  
1248  
1249 Ms. Dwyer - So, what's the correct terminology, you will extract but  
1250 not extract and process?  
1251  
1252 Mr. Bayliss - I mean—  
1253  
1254 Mr. Morgan - We will not process materials on the site.  
1255  
1256 Mr. Bayliss - As far as the correct terminology—and in our  
1257 application—and I think it's pretty clear that there will be excavation and  
1258 replacement, so if you want to impose the condition that with respect to the  
1259 excavation or extraction there will be no processing on site.  
1260  
1261 Ms. Harris - You did accept the no asphalt being processed?  
1262  
1263 Mr. Morgan - That's correct.  
1264  
1265 Ms. Harris - Or not processed, but being deposited. Were you  
1266 aware that Henrico County does have a reclamation plan for mining sites? I  
1267 know this is not strictly a mining site, but I didn't know if you knew—Mr.  
1268 Blankinship, have we looked at their plans to see if they comply with our  
1269 reclamation plans?  
1270  
1271 Mr. Blankinship - No, we haven't discussed that with them.  
1272

1273 Ms. Harris - Okay.  
1274  
1275 Mr. Bayliss - We had a problem with Mr. Blankinship and I finding  
1276 where we could find anything about wetlands mitigation banks.  
1277  
1278 Mr. Blankinship - Yes, those terms don't occur in the Code.  
1279  
1280 Mr. Bayliss - They're not in the Code or anything. From a non-  
1281 hunter or whatever, I foresee the wetlands mitigation bank as an enhancement,  
1282 not a problem. But that's a subject of [unintelligible].  
1283  
1284 Ms. Harris - This is the first wetlands mitigation plan?  
1285  
1286 Mr. Blankinship - The first one that I know of—  
1287  
1288 Ms. Harris - The first one in Henrico County.  
1289  
1290 Mr. Blankinship - —in Henrico County. Curles Neck, I think, has been  
1291 developed as man-made wetlands, but I don't think it's a mitigation bank in the  
1292 sense that you can sell credits to other developers.  
1293  
1294 Mr. Nunnally - Were you saying, Mr. Blankinship, that you're going to  
1295 have another meeting with New Kent?  
1296  
1297 Mr. Blankinship - Well, Mr. Vaughn is here, and perhaps he can  
1298 represent them and answer all your questions.  
1299  
1300 Mr. Kirkland - Mr. Bayliss, do you have anything else? We're  
1301 listening to Mr. Vaughn and then you can have a few minutes for rebuttal.  
1302  
1303 Mr. Bayliss - Okay, thank you.  
1304  
1305 Mr. Kirkland - Okay. Mr. Vaughn?  
1306  
1307 Mr. Vaughn - Good morning. I'm Kenneth Vaughn. I'm the Zoning  
1308 Administrator for New Kent County. First I want to thank you all for having me  
1309 here and to listen to the case, because I know we are sister and brother counties.  
1310 You all are the big brother county. Mr. Blankinship did an excellent job on the  
1311 staff report. We have no problem with all the conditions. But there is something  
1312 you have to realize. The traffic study is their traffic study. It's not our traffic study;  
1313 it's their traffic study. I don't represent VDOT either. That is the VDOT  
1314 recommendation from their traffic study. Another point I want to make is—I don't  
1315 know if it shows on the map, but across the street is a big subdivision called  
1316 Patriot Landing. It's one of our nicest places in New Kent County that we're  
1317 developing. That's why the truck traffic is very, very important to what's going on  
1318 here. I don't want citizens calling my office complaining about why do all those

1319 trucks come up and down, and people complaining. Those are some of the  
1320 things that I want you to—look at that report. If you feel that something else  
1321 needs to be done, maybe you all need to get together and hash this out; I don't  
1322 know. Like I said, I can't represent VDOT. That is a VDOT thing. But I know in  
1323 New Kent County, you can't do anything unless you get that approved. Do you  
1324 have any questions for me?

1325

1326 Ms. Dwyer - So, the 16 came from New Kent County, the 16 trucks  
1327 per day, wasn't it?

1328

1329 Mr. Vaughn - Yes ma'am.

1330

1331 Ms. Dwyer - What did you base that on?

1332

1333 Mr. Vaughn - In our conversations with them, that's what they were  
1334 telling us. They were telling us that not that many trucks would be coming in and  
1335 out of the site. We said fine, that's no problem, but we still need a traffic study for  
1336 you to turn in so VDOT can make a determination. They had one traffic study and  
1337 it was for the wrong place; that's why it took so long. Another traffic study came  
1338 out and it said what it said. We didn't read into it; we didn't write into it; we had  
1339 no problem with it. That's why when Mr. Blankinship gave us the conditions to  
1340 this place, we had no problem with the conditions at all. I'm just here just to see  
1341 how you all run stuff.

1342

1343 Ms. Dwyer - Now you know.

1344

1345 Mr. Wright - Do you have any problem with the 28 that they  
1346 suggested? They're saying an average. I take it that would be an average per  
1347 week. If you said average per day, but for how long? I mean, is it over the week  
1348 or what, because he's talking about some days more than 28, some days a lot  
1349 less than 28, if you use the word "average." I don't have a real good idea of what  
1350 that means.

1351

1352 Mr. Vaughn - Well see, maybe one of the conditions should be  
1353 stating how many you can do.

1354

1355 Mr. Blankinship - Well, that's the number we're trying to come up with.  
1356 We put 16 in the report—

1357

1358 Mr. Wright - Per day.

1359

1360 Mr. Blankinship - —and they wanted 28.

1361

1362 Mr. Wright - No, they want more than 28.

1363

1364 Mr. Blankinship - Well, they want an average.

1365  
1366 Mr. Wright - An average of 28 means—  
1367  
1368 Mr. Vaughn - As a representative of New Kent, we agree with Mr.  
1369 Blankinship.  
1370  
1371 Mr. Blankinship - You'd like to see it stay at 16 since you would be  
1372 uncomfortable increasing it to 28.  
1373  
1374 Mr. Wright - Let me give you an example. If you set an average of  
1375 28 per day per week, you'd have to have it for a period of time. In effect, it could  
1376 be 130 in one day.  
1377  
1378 Mr. Blankinship - Right.  
1379  
1380 Mr. Wright - Five times 28. I think that's the right math. They could  
1381 do it like one day have 130 and nothing for the rest of the week, on that kind of  
1382 basis. I don't—  
1383  
1384 Mr. Blankinship - Yeah, I'm uncomfortable with averages. I think we  
1385 need a maximum, whatever that number is. I don't know whether it needs to be  
1386 16 or 28 or 100, but I think it needs to be a maximum. What about Saturdays,  
1387 Ken?  
1388  
1389 Mr. Vaughn - Usually when you do this kind of stuff in New Kent  
1390 County, you don't operate on Saturday. That's something we do here at New  
1391 Kent. Like I said, we have a big time neighborhood across street, and plus, even  
1392 though this is a wetlands mitigation bank, the area they're going through is our  
1393 economic development area. We're trying to develop that area. You understand  
1394 what I'm saying? And they're going through it. Let's be honest. New Kent's not  
1395 going to get any benefit from this at all.  
1396  
1397 Mr. Blankinship - Right.  
1398  
1399 Mr. Vaughn - All we're getting is the traffic and watching them doing  
1400 what they're supposed to do.  
1401  
1402 Ms. Dwyer - Because we have to put the number, or we've chosen  
1403 to limit the traffic, I'm trying to think of what the justification is for 16, because  
1404 apparently that's going to create a hardship on the operation; it'll extend the  
1405 amount of time that it takes to finish it; it'll make it economically unfeasible,  
1406 according to the applicant. They need 28, an average of 28, so we're trying to  
1407 look at these numbers and justify them. They've justified the 28 average,  
1408 because that's what they think the business will demand. I guess what I'm  
1409 looking for is where does the 16 come from, from New Kent?  
1410

1411 Mr. Vaughn - Ma'am, I remember—I don't think I was at that  
1412 meeting, but they had a meeting with the applicant and I believe that number  
1413 came up because when this all came about, New Kent was very upset because  
1414 the first time, we played no role in this at all.  
1415  
1416 Mr. Blankinship - Right.  
1417  
1418 Mr. Vaughn - We were extremely upset with them. We had a  
1419 meeting with them, and they were trying to calm us down and tell us what they  
1420 were going to do. I believe that's where that number came in.  
1421  
1422 Ms. Dwyer - The 16 came from the applicant.  
1423  
1424 Mr. Vaughn - I believe 16 came from the applicant *at that time*.  
1425 They may have changed.  
1426  
1427 Ms. Dwyer - Okay.  
1428  
1429 Mr. Vaughn - But like I said, I have no record of that now.  
1430  
1431 Ms. Dwyer - Okay.  
1432  
1433 Ms. Harris - Would it be too much of a stretch to change it to an  
1434 average of 16, realizing that in the course of a week, it will go over? Well, the  
1435 average means it's going to go over some days, maybe most days. But what  
1436 about an average, if we had to change it at all?  
1437  
1438 Mr. Vaughn - I don't like averages, because ma'am, the thing is  
1439 somebody in New Kent is going to have to enforce this.  
1440  
1441 Ms. Harris - We don't like averages either, but we—  
1442  
1443 Mr. Vaughn - [Unintelligible], and I'm answering you no.  
1444  
1445 Ms. Harris - Okay.  
1446  
1447 Mr. Kirkland - Move your office out on site, huh?  
1448  
1449 Mr. Vaughn - Yeah, I might as well, and count trucks all day.  
1450  
1451 Ms. Harris - In other words, we've reached an impasse, and we're  
1452 trying to see if an average would take us from this point to our next case. But not  
1453 with your approval, right?  
1454  
1455 Mr. Vaughn - No. Remember, you all are big brother. We're  
1456 looking at y'all.



1457  
1458 Mr. Kirkland - Mr. Vaughn, [unintelligible]—and I confer with my  
1459 colleague here, but we have a lot of open-ended questions here that need to be  
1460 resolved. I do think this needs a deferral, and I also think that at the next month's  
1461 meeting, we need to have a representative here from VDOT.  
1462  
1463 Mr. Blankinship - We can certainly request.  
1464  
1465 Mr. Kirkland - If we have any questions—I mean, we've had this  
1466 similar situation when we did the quarry and VDOT sent a representative at that  
1467 time.  
1468  
1469 Mr. Blankinship - Right.  
1470  
1471 Mr. Kirkland - But we need to come up with a cap.  
1472  
1473 Ms. Dwyer - I'm wondering what more information we need. We  
1474 need the report that was given to VDOT. And I think [unintelligible] took a  
1475 number. Apparently, New Kent wants 16, the applicant wants an average of 28,  
1476 and I'm not sure what more information we're going to get between now and next  
1477 month on that question.  
1478  
1479 Mr. Blankinship - The question in my mind is how does VDOT do the  
1480 different numbers. If they were looking at a hundred and they said that turn lanes  
1481 are necessary—  
1482  
1483 Ms. Dwyer - Right.  
1484  
1485 Mr. Blankinship - —what do they think is necessary at 28, what do they  
1486 think is necessary at 16?  
1487  
1488 Ms. Dwyer - We're not requiring the turn lanes.  
1489  
1490 Mr. Blankinship - Right.  
1491  
1492 Ms. Dwyer - In our conditions. I mean, I agree, if there are only  
1493 16 trucks, why would you need turn lanes, but that's an issue to resolve with  
1494 VDOT. Our only issue is what's the cap, what's the cap in the number of trucks  
1495 coming in and out. So, you're saying we'd like to know what VDOT thinks about  
1496 that cap. If they could select one, what would they select and why.  
1497  
1498 Mr. Blankinship - That's the question that I feel is unresolved, but if  
1499 that's not critical—if you're willing to just leave that issue to VDOT, then it may  
1500 not be critical to your decision.  
1501

1502 Ms. Dwyer - I don't think I'm willing to leave it to VDOT; I think we  
1503 should decide.  
1504

1505 Mr. Blankinship - I'm sorry, I meant the turn lane question. Whatever  
1506 number you pick, whether it requires a turn lane.  
1507

1508 Ms. Dwyer - I think we should determine the number of trucks, but  
1509 I think the turn lane is a question—  
1510

1511 Mr. Blankinship - VDOT can take that number and determine whether  
1512 turns lanes are needed.  
1513

1514 Ms. Dwyer - Plus it's not even on Henrico property.  
1515

1516 Mr. Blankinship - Right.  
1517

1518 Ms. Dwyer - Within our jurisdiction. The turn lanes are in New  
1519 Kent, so I think that's more appropriate for VDOT to determine. Well, the  
1520 question then is could VDOT shed some light on the truck cap.  
1521

1522 Mr. Blankinship - I'm not sure what they would—  
1523

1524 Mr. Kirkland - What would they say would be the number of trucks  
1525 not to require a turn lane?  
1526

1527 Mr. Blankinship - Certainly, some operations run a lot more trucks than  
1528 that, and some don't run 28 in a year, so I'm not sure what VDOT would—I view  
1529 their role as more technical, and I'm not sure they would really have any useful  
1530 info on this.  
1531

1532 Ms. Dwyer - I think the turns lanes are really a non-issue for us. I  
1533 believe that's a VDOT issue and if they require turn lanes, that's something that  
1534 they need to work out with the applicant, because it's in New Kent County  
1535 anyway.  
1536

1537 Mr. Blankinship - Right.  
1538

1539 Mr. Nunnally - I think everybody will be pleased if you had a talk with  
1540 VDOT so we can get this traffic thing straightened out. I understand Mr. Vaughn  
1541 wants 16. You all don't want more than 16 a day, do you?  
1542

1543 Mr. Vaughn - Yes sir. We want a cap of 16 a day.  
1544

1545 Ms. Harris - As you said, we are called quote Board members.  
1546

1547 Mr. Vaughn - You all are big brother; we're looking up to you all.

1548  
1549 Mr. Wright - I was looking at this report again, and it goes into,  
1550 "based on our understanding of the site."  
1551  
1552 Mr. Blankinship - The consultant's traffic study?  
1553  
1554 Mr. Wright - Yes. Randy Kemp and Associates. The last  
1555 paragraph on the first page, "The truck traffic entering and exiting this site is  
1556 expected to be distributed evenly throughout the typical workday." And then they  
1557 say, "For the purpose of this analysis, we will assume that a typical workday is  
1558 eight hours." Well, it's 12 hours during daylight saving. And included in the peak  
1559 hour of the adjacent street. That's U. S. 60. "Under these assumptions, it would  
1560 reasonable to expect a site to generate approximately 26 total trips per hour, 13  
1561 entering and 13 exiting, during the peak hour." So, I don't know what they're  
1562 talking about there, but that's sure a lot more than we would anticipate.  
1563  
1564 Mr. Blankinship - I think Mr. Morgan cleared up that they were looking  
1565 at, I guess you could say, a worst case. Setting a maximum of 100 and working  
1566 backward from there, they would say turn lanes were not necessary. So, if  
1567 they're not necessary for 100, they're certainly not necessary for 28. But, of  
1568 course, VDOT disputes that. They say it is necessary for 100.  
1569  
1570 Mr. Wright - I'm just concerned with what they consider the normal  
1571 work, typical workday to be.  
1572  
1573 Mr. Blankinship - Right.  
1574  
1575 Mr. Wright - Twenty-six trips per hour. We're talking about 16 per  
1576 day total.  
1577  
1578 Ms. Dwyer - I have a question for the applicant.  
1579  
1580 Mr. Kirkland - Thank you, Mr. Vaughn.  
1581  
1582 Ms. Dwyer - Do you have an alternative proposal to the 28  
1583 average per day, given what New Kent believes—16 a day total?  
1584  
1585 Mr. Bayliss - You make a good point. We weren't aware, quite  
1586 frankly, and want to clear it up. I've been at two meetings with New Kent and I've  
1587 been in dialogue with them a couple of other times as far as these numbers, but I  
1588 don't think there's been any confusion at all. We're all here to cooperate. We  
1589 want to be a good neighbor, too. That's why we did this instead of going forward  
1590 under the mining permit because there was that confusion. I don't think there's  
1591 ever been any intention—and it was perfectly publicly disclosed that we've  
1592 always said it would be an average of 28. To the extent there was any  
1593 misunderstanding we said it would be only 16 trucks a day, it just doesn't make

1594 any sense. And it doesn't make sense for New Kent. It doesn't make any sense  
1595 for the applicant to do that because it really just protracts this project to  
1596 something that makes it totally unmanageable. I really don't think that Patriot  
1597 Landing or anybody wants this project to go 15 years when, realistically, it can be  
1598 done in approximately 5 years. That's one point. The second point is, to the  
1599 extent that there was some idea that 16 per day was the number fixated on,  
1600 that's just inconsistent with what we publicly disclosed all along. I sent this entire  
1601 package to New Kent County when we did it. Everything we've done has been  
1602 sent to New Kent County. So, the 16 was a surprise to us when we saw it. I think  
1603 we've made it pretty clear as to why we think it's not—it's just unrealistic, is the  
1604 word I'll use. Now, I'll let Mr. Morgan respond to is it 16 per day, is it an average  
1605 of 16 per day, is it an average of 28. When we made the application, we made a  
1606 realistic assessment that over—and Mr. Wright, it's a week, it's a 30-day period is  
1607 where they came up with the average. Over a 30-day average, there would be  
1608 28 trips per day. And let me say, if VDOT analyzed this and there are only 16  
1609 trips per day, I can't imagine that they would ever think about a turn lane on  
1610 either side of it. When you think of 16 trucks over an 8 hour, and in the  
1611 summertime 12 hour period of time, that's almost one an hour. So, again, I'll let  
1612 Mr. Morgan talk about whether there's some way that maybe everybody comes  
1613 across out of here not bruised and still happy with one another. I don't think it's  
1614 going to be 16 per day, and so we are talking about averages. And by the way,  
1615 the idea of how do you enforce, well, I think there's something in here about truck  
1616 counts. It's very easy to enforce by the applicant giving truck counts so the  
1617 County has them. And the County doesn't have to do that. It's a condition that  
1618 the applicant will take care of, and that would be something that people would be  
1619 able to police it. As you say in #27, if you violate any of the conditions, this is  
1620 automatically voided.

1621

1622 Mr. Morgan - What would you like to know?

1623

1624 Ms. Dwyer - Well, we're wrestling with a number of trucks—and  
1625 we're wrestling with two things. Is it a cap per day or an average over 30 days, is  
1626 one issue. And the other is how many trucks per day. New Kent wants 16 and  
1627 you say 28, so we're trying to figure out what would be appropriate.

1628

1629 Mr. Morgan - The way we came up with 28 is we have a facility not  
1630 too far from this one that we're hoping this takes the place of. We did a 30-day  
1631 period of what was going into that facility, and it averaged to 28 trucks per day.  
1632 As a response to Mr. Blankinship, I asked the question how many trucks per day  
1633 do you think will be going in and out. So, I did that operation and that's the  
1634 information that we provided. It is what it is. I mean, we answered the question  
1635 of that's what the average is. If we do a cap, I mean, 16 is just not feasible. It  
1636 doesn't make any economic sense for us or anyone. We want in and out as fast  
1637 as possible. Obviously, there's a lot of fixed cost associated with it, etcetera,  
1638 etcetera. We feel the area, [unintelligible] area, that what we're doing is we think  
1639 it's an asset; that's why we want to be there, not that it's a detriment. So, the

1640 quicker we can get in and out, we feel like it's better for everyone. The more we  
1641 put on the road per day, the shorter the duration.  
1642

1643 Ms. Dwyer - So the report came from a real-time analysis of—  
1644

1645 Mr. Morgan - Real-time analysis of another facility that we have in  
1646 that area. That's correct.  
1647

1648 Mr. Kirkland - Is it a mining facility?  
1649

1650 Mr. Morgan - Yes sir. Well, it's more of a disposal. It's a disposal  
1651 facility.  
1652

1653 Mr. Kirkland - Okay.  
1654

1655 Mr. Bryant - Good morning, Lou Bryant. I've been before this  
1656 Board several times representing Meadow Road, also operated by Gillies Creek.  
1657 The average truck count came from our operation at 2980 Meadow Road. So,  
1658 we feel that's a pretty accurate representation of what's going to be going in  
1659 there on a regular basis.  
1660

1661 Ms. Dwyer - Do we have staff information about how the Meadow  
1662 Road truck traffic has affected the neighborhoods around Meadow Road?  
1663

1664 Mr. Blankinship - Well, Meadow Road, of course, is not a four-lane  
1665 divided highway, and it doesn't have a Patriot's Landing going up across the  
1666 road. I haven't received complaints specific to the truck traffic there that I can  
1667 recall. Now, that project's been going on for a long time, so I guess the  
1668 neighbors have gotten used to just the volume of trucks. Under previous  
1669 operators, we did have complaints about mud on the road, but I don't think we've  
1670 had any of those since Gillies Creek took over.  
1671

1672 Mr. Kirkland - And we limit the direction, which way they can leave  
1673 and come in.  
1674

1675 Mr. Blankinship - Right. That's the biggest issue there. There's a  
1676 subdivision west of that—I'm sorry, east of that mining site and we don't allow the  
1677 truck traffic to go in the direction of that subdivision.  
1678

1679 Mr. Wright - Question. If you had an average of "x" per day, but  
1680 not to exceed so much in one day, how would that fit?  
1681

1682 Mr. Morgan - That might fit.  
1683

1684 Mr. Wright - In other words, what I'm trying to get around is  
1685 bunching it, using that average. If you're going over a 30-day period, you could

1686 have some real heavy concentration in one week, and nothing the other three  
1687 weeks. But if we say an average and then say but not to exceed a maximum of  
1688 "x" in one day, that would put a cap on it so we wouldn't have an undo number  
1689 going in one period of time.  
1690  
1691 Mr. Morgan - That's very well something that we might be able to  
1692 do.  
1693  
1694 Mr. Bayliss - [Off mike.] [Unintelligible.]  
1695  
1696 Mr. Wright - And we're leaving ourselves open if we do something  
1697 just like that. So, if we put a maximum of one day and an average not to exceed  
1698 "x" that might alleviate some of that concern.  
1699  
1700 Mr. Bayliss - That should alleviate a lot of the concerns. And even  
1701 using the 28 as the average, [unintelligible] project. You could still impose a "not  
1702 to exceed" on that.  
1703  
1704 Mr. Wright - I'm just thinking. I live in Wyndham and the dump  
1705 trucks that go down Nuckols Road are amazing. We have to live with it, but I'm  
1706 sure I see—I'm behind two or three every time I go out. And that's on Nuckols  
1707 Road. This is U. S. Highway 60, so the impact wouldn't be as bad as it would be  
1708 in a residential area like Wyndham.  
1709  
1710 Ms. Dwyer - So, can you give us a number that you could live with  
1711 that's less than 28?  
1712  
1713 Mr. Bayliss - Well, if it's 28 and a not-to-exceed.  
1714  
1715 Mr. Bryant - Are you asking for the cap number we could live with,  
1716 the maximum not to exceed in a day?  
1717  
1718 Ms. Dwyer - A reduced average and a cap. An average less than  
1719 28.  
1720  
1721 Mr. Bryant - I don't think I can do that right now this morning. I  
1722 think I have to go back at—Meadow Road's been in operation for six years this  
1723 month, I believe. That's a pretty good [unintelligible], so it would be good data. I  
1724 think if I have a chance to look at that data, by next meeting, I think I could have  
1725 a number for you based on something—  
1726  
1727 Mr. Bayliss - We could have it before the meeting and provide it to  
1728 Mr. Blankinship. And what you're asking for is there a number that would be an  
1729 average of less than 28 with a not-to-exceed that would make the project still  
1730 economically feasible. And again, I hope that our friends in New Kent realize that

1731 if you do limit like this, and they went ahead and did it, this stuff would be here a  
1732 long time, and I don't think anybody wants that.  
1733  
1734 Mr. Blankinship - I know it's the holiday season, but if you could get that  
1735 to me in the next couple of weeks, I can share it with VDOT and New Kent, and  
1736 perhaps have their—  
1737  
1738 Mr. Bryant - I'll have it to you toward the end of the year.  
1739  
1740 Mr. Blankinship - Because the VDOT, they'll be able to look at and say,  
1741 "Well, at this number, we don't need turn lanes." And New Kent may say,  
1742 "Sixteen would be better, but we can live with this." And then we can all go home  
1743 happy.  
1744  
1745 Ms. Dwyer - So, what we're thinking about is deferring and then  
1746 next week we'll get information from the applicant about an alternative average  
1747 and cap. We'll ask VDOT if they have any thoughts about these numbers as well.  
1748 Is that right? And we're also going to revise the conditions to say that they'll be  
1749 no processing on the site. Is that right?  
1750  
1751 Mr. Blankinship - Yes.  
1752  
1753 Ms. Dwyer - I would suggest that we also move that next month  
1754 when we hear it, the only issue will be this traffic number issue, to not have a full  
1755 hearing again.  
1756  
1757 Mr. Bayliss - That's fine with us.  
1758  
1759 Ms. Harris - Okay. Before you leave, though, where is the  
1760 Meadow Road landfill, or—  
1761  
1762 Mr. Bryant - 2980 Meadow Road.  
1763  
1764 Ms. Harris - What section? Is that Varina, too?  
1765  
1766 Mr. Bryant - That's Sandston.  
1767  
1768 Ms. Harris - Sandston.  
1769  
1770 Mr. Bryant - It's in the Varina District.  
1771  
1772 Ms. Harris - Is that near Charles City Road?  
1773  
1774 Mr. Blankinship - It's on the north side of 64. Dry Bridge Road. You've  
1775 been out there a couple of times.  
1776

1777 Ms. Harris - Okay. And you say it would not satisfy you if we said  
 1778 a max of 28.  
 1779  
 1780 Mr. Bryant - No ma'am.  
 1781  
 1782 Ms. Harris - Okay. Will we also have New Kent's input for the next  
 1783 meeting, before the next meeting?  
 1784  
 1785 Mr. Blankinship - We will request it.  
 1786  
 1787 Ms. Harris - Okay.  
 1788  
 1789 Mr. Kirkland - New Kent, VDOT. And we'll just speak to the issue at  
 1790 hand.  
 1791

1792 **DECISION**

1793  
 1794 Mr. Blankinship - Is that a motion?  
 1795  
 1796 Ms. Dwyer - I move. I'll make it a motion.  
 1797  
 1798 Mr. Wright - I second.  
 1799  
 1800 Mr. Kirkland - Motion by Ms. Dwyer, seconded by Mr. Wright. All  
 1801 those in favor of deferring to the next meeting, say aye. All those opposed say  
 1802 no. The ayes have it; the motion carried.  
 1803  
 1804 Mr. Wright - See you next year.  
 1805

1806 Upon a motion by Ms. Dwyer, seconded by Mr. Wright, the Board **deferred**  
 1807 application **UP-018-07**, Gillies Creek Industrial Recycling, LLC's request for a  
 1808 conditional use permit pursuant to Section 24-88(c) to develop a wetlands  
 1809 mitigation bank at 5500 White Oak Drive (Parcels 864-704-2093, 860-709-5622  
 1810 and 863-706-3470), zoned C-1, Conservation District (Varina).  
 1811

1812  
 1813 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5  
 1814 Negative: 0  
 1815 Absent: 0  
 1816

1817  
 1818 **UP-024-07** **MARTHA WAGNER** requests a conditional use  
 1819 permit pursuant to Section 24-52(g) to operate a riding stable at 6301 Hines  
 1820 Road (Parcel 853-692-4325), zoned A-1, Agricultural District (Varina).  
 1821



1822 Mr. Kirkland - Anyone wish to speak on this case? Would you  
1823 please all stand and raise your right hand. Come on up. You all are the  
1824 applicants, I assume. Raise you right hand. Mr. Blankinship, you do the honors.  
1825  
1826 Mr. Blankinship - Do you swear the testimony you're about to give is  
1827 the truth and nothing but the truth so help you God?  
1828  
1829 Ms. Wagner - I do.  
1830  
1831 Mr. Blankinship - Thank you.  
1832  
1833 Mr. Kirkland - All right. Would you state your name for the record,  
1834 please?  
1835  
1836 Ms. Wagner - My name is Martha Wagner.  
1837  
1838 Mr. Kirkland - Okay, ma'am, what do you request from the Board  
1839 this morning?  
1840  
1841 Ms. Wagner - I'm requesting a conditional use permit to allow  
1842 Horses in Service, a therapeutic riding center, to run their center at my farm  
1843 location at 6301 Hines Road.  
1844  
1845 Mr. Kirkland - Could you explain to me a little bit of what you do  
1846 there?  
1847  
1848 Ms. Wagner - Yes. We run a therapeutic riding center, which is for  
1849 people with disabilities to come and receive therapeutic exercise and riding on  
1850 horseback. So, we have approximately 28 people that come per week to receive  
1851 therapeutic riding.  
1852  
1853 Mr. Nunnally - Do you have adults and children?  
1854  
1855 Ms. Wagner - We have children and adults. We start with age 5 and  
1856 there's no upper age limit. We have a senior citizen that's riding with us.  
1857  
1858 Mr. Wright - I take it this is a non-profit?  
1859  
1860 Ms. Wagner - Yes sir, it is a non-profit organization, and we  
1861 received our non-profit status in 2002.  
1862  
1863 Ms. Dwyer - Apparently this came to light because of a manure  
1864 pile and a complaint that it was detrimental to the neighborhood. Can you explain  
1865 what happened and what's been done to correct that problem, if anything?  
1866

1867 Ms. Wagner - Yes ma'am. The manure pile is created from manure  
1868 that comes out of the stalls. It is located at the very back eastern side of the  
1869 property. There is a very limited amount of manure that comes from the stalls  
1870 because the horses stay outside the majority of the time. But that pile has—it  
1871 was accumulating into a pile and recently we have spread it out and our plans  
1872 are to continue to keep the manure spread out over the back part of the property.  
1873

1874 Ms. Dwyer - Have you looked into removing it from the property?  
1875

1876 Ms. Wagner - No ma'am, we have not looked into that.  
1877

1878 Ms. Dwyer - Does spreading it out make it better in the  
1879 summertime and August when it's hot and there's not much wind?  
1880

1881 Ms. Wagner - It does. It allows the manure to turn back into soil a  
1882 lot faster. It's more like a compost pile when it's in a pile. When it's spread out,  
1883 it's more like a fertilizer. It can be used as a fertilizer.  
1884

1885 Ms. Harris - Before now, did you have a use permit to operate this  
1886 riding facility?  
1887

1888 Ms. Wagner - No ma'am.  
1889

1890 Ms. Harris - How tall is the manure pile?  
1891

1892 Ms. Wagner - Well, right now it's been spread out, so there it does  
1893 not exist any more.  
1894

1895 Mr. Blankinship - How tall was it in August?  
1896

1897 Mr. Wagner - I'll speak to that. I'm Charles Wagner. It probably  
1898 has never reached a height of over 14, 16 inches.  
1899

1900 Mr. Kirkland - Inches?  
1901

1902 Mr. Wagner - Inches. Fourteen, sixteen inches. It probably covers  
1903 an area from where I'm standing to the wall over there and half that wide. Like  
1904 my wife said, it's only the manure moved from the stalls. Our animals are not  
1905 stalled. You're talking about—if you understand a lawn cart that's pulled behind  
1906 a lawnmower, probably in a riding session for a six-week period about three of  
1907 those a week are going into it. The bulk of the material being uneaten straw,  
1908 sawdust, and what manure came from the horse being in the barn for  
1909 approximately two hours.  
1910

1911 Mr. Wright - How many horses do you have?  
1912

1913 Ms. Wagner - We own six horses and the center owns four horses.  
1914 So, there are ten altogether on the property.  
1915  
1916 Mr. Wright - Do you have any problem with the condition—if this is  
1917 approved—to limit to “x” number? How many horses would you want?  
1918  
1919 Mr. Wagner - We would never have over ten. We only have facilities  
1920 for ten. We require ourselves to have a stall for each animal.  
1921  
1922 Mr. Wright - Right.  
1923  
1924 Mr. Wagner - At the present time, there are two temporary stalls in  
1925 an old shed that was there before we built a four-stall barn that’s there now.  
1926 Those stalls are not in use. Their used to store lawn equipment, a couple of  
1927 water tanks. That building, I’ve only kept it because I have nowhere to put these  
1928 other things that I had displaced since we were using the full barn for horses.  
1929  
1930 Mr. Wright - Sir, I was just trying to get—I think in the permit we  
1931 will have to put a limit on the number of horses. How many do you think you  
1932 would want?  
1933  
1934 Mr. Wagner - Ten is—  
1935  
1936 Ms. Wagner - Well, we could just say 12.  
1937  
1938 Ms. Dwyer - The conditions say 12 now.  
1939  
1940 Mr. Wright - Okay. Are you happy with 12?  
1941  
1942 Ms. Wagner - Yeah, 12 would be fine. At this point, we have no  
1943 intention of adding horses.  
1944  
1945 Ms. Dwyer - I was wondering because in your letter, it says that  
1946 you’d like to grow the program to have more riders. So, I think given the situation,  
1947 that might be a problem.  
1948  
1949 Ms. Wagner - Well, that would give us the ability to grow to include  
1950 two more horses. I don’t think that we would want to grow the program at that  
1951 site any larger than that. If it was to grow above the point that we needed more  
1952 than 12 horses, we would probably move it to another site.  
1953  
1954 Mr. O’Kelly - Mrs. Wagner, is this a year-round operation?  
1955  
1956 Ms. Wagner - We operate 18 weeks out of the year.  
1957  
1958 Mr. O’Kelly - Eighteen weeks.

1959  
1960 Ms. Wagner - Yes.  
1961  
1962 Mr. Wright - Is that during the summertime?  
1963  
1964 Ms. Wagner - No, we have a winter program, a spring program, and  
1965 a fall program. Each one is six weeks long.  
1966  
1967 Mr. Wright - Six weeks is a program.  
1968  
1969 Ms. Wagner - Yes. For each of those sessions.  
1970  
1971 Mr. Wright - And what happens during the periods when you're not  
1972 operating? Do the horses just roam in the pasture there?  
1973  
1974 Ms. Wagner - They're in the pasture, yes.  
1975  
1976 Mr. Wright - Do you live on the property?  
1977  
1978 Ms. Wagner - Yes sir.  
1979  
1980 Mr. Nunnally - How many acres do you have?  
1981  
1982 Ms. Wagner - It's 12.79 acres.  
1983  
1984 Ms. Harris - Is there an agency that regulates your operation with  
1985 the rules and the disclaimers for the handicapped people that will be—  
1986  
1987 Ms. Wagner - Yes ma'am. The operation is NARHA—North  
1988 American Riding for the Handicapped Association. We did receive a Premier  
1989 Status with them in 2006. They came out and looked at the operation; looked at  
1990 all of our forms, figures; looked at the riding facility; actually witnessed a riding  
1991 lesson. We received our Premier Status with 100% compliance.  
1992  
1993 Ms. Harris - How often do they come out to—  
1994  
1995 Ms. Wagner - They do that once every five years. That has to be  
1996 renewed once every five years.  
1997  
1998 Mr. Wright - In the suggested conditions, we have hours of  
1999 operation. Have you looked at these conditions?  
2000  
2001 Ms. Wagner - I did.  
2002  
2003 Mr. Wright - Are you agreeable to the conditions?  
2004

2005 Ms. Wagner - I would like to not have those limited times because if  
2006 we do grow the program, that would limit us to our hours, and those hours might  
2007 need to change. If we were to grow the program in any way, it might have to be  
2008 during the daytime of the weekdays.

2009

2010 Mr. Wright - Mr. Blankinship, where did these hours come from?

2011

2012 Mr. Blankinship - They were taken off the application form.

2013

2014 Mr. Wright - Oh.

2015

2016 Ms. Wagner - Those are the current operating hours.

2017

2018 Mr. Wright - What hours would you like to have there?

2019

2020 Mr. Wagner - If I might just say, those are the hours that the classes  
2021 are in session. It actually requires a half hour to 45 minutes before that, and a  
2022 half hour or 45 minutes after that to put the horses back out, straighten up, and  
2023 put the equipment away. You're not talking about a large activity, you're talking  
2024 about taking the horse out of the stall and leading him back to the pasture,  
2025 turning him loose. So, it's not an actual riding activity, it's just an activity. Those  
2026 are the class times that you have there.

2027

2028 Ms. Dwyer - So, what would you like them to be to give you the  
2029 flexibility to change some class times during the day? I don't think we would  
2030 want to go later in the evening.

2031

2032 Ms. Wagner - No, we probably would not want to go later either, but  
2033 I would possibly like to ask them to open it up on the weekdays from 8:00 in the  
2034 morning until [unintelligible]. If that's not possible, we can operate within the  
2035 hours that are there, but it just limits us on our—

2036

2037 Mr. Wright - Would you like it to be 8 a.m. to 5:30?

2038

2039 Ms. Wagner - Well, on weekdays, I think it goes to—

2040

2041 Mr. Wright - To 7 p.m.

2042

2043 Ms. Wagner - 7:45?

2044

2045 Mr. Wright - You have 7:45 here.

2046

2047 Ms. Wagner - Yeah. If we could go from 8 a.m. to approximately  
2048 7:45.

2049

2050 Ms. Dwyer - And then on Saturday/Sunday?

2051  
2052 Ms. Wagner - Saturday we will not operate, but on Sunday we can  
2053 limit it to the hours that are mentioned there.  
2054  
2055 Ms. Dwyer - 2 to 5:30?  
2056  
2057 Ms. Wagner - Yes.  
2058  
2059 Ms. Harris - Do you have insurance on your operations?  
2060  
2061 Ms. Wagner - Yes ma'am. We have insurance with Markel  
2062 Insurance.  
2063  
2064 Ms. Harris - And then the people who ride, do they sign  
2065 something? I'm thinking about the handicapped who will be using your facility.  
2066  
2067 Ms. Wagner - Yes ma'am. They have quite a few forms that they  
2068 have to sign. Those are all regulated by the NARHA, the North American Riding  
2069 for the Handicapped Association.  
2070  
2071 Mr. Nunnally - Do they have the parents or guardian or somebody  
2072 with them at all times?  
2073  
2074 Ms. Wagner - Yes. Usually the parents or guardian will stay right  
2075 there. Most often they do. There are a few riders that are allowed to—they are  
2076 more capable and we have volunteers that stay with them.  
2077  
2078 Mr. Wright - Most of these persons are led, you lead the horse  
2079 with them on it. Is that correct?  
2080  
2081 Ms. Wagner - That's correct. We have three volunteers assigned to  
2082 most riders.  
2083  
2084 Mr. Wright - It's more or less a walking activity rather than any  
2085 running?  
2086  
2087 Ms. Wagner - It's walk and trot. Majority walk/trot, yes. Our goal is  
2088 to help each rider to become as independent as they possibly can, so some of  
2089 our riders will only have one volunteer. Some riders will only have a leader and a  
2090 side walker. Some of them have two side walkers. It just depends on the ability  
2091 of the rider. I think we do have two riders that are actually independent.  
2092  
2093 Mr. Kirkland - Any other questions by Board members? All right,  
2094 ma'am, if you would have a seat. And I guess we'll hear from the opposition now.  
2095 Is anyone else in favor? Opposition? And you'll have time to rebut. If you would  
2096 come forward, please. Did you all stand and be sworn in?

2097  
2098 Mr. Blankinship - We had two stand.  
2099  
2100 Ms. Akers - Thank you very much for allowing me to be here. My  
2101 discussion today—  
2102  
2103 Mr. Wright - Her name.  
2104  
2105 Mr. Kirkland - What's your name, ma'am?  
2106  
2107 Ms. Akers - Karol Akers, daughter of the neighbors, Jerry and Ann  
2108 Akers.  
2109  
2110 Mr. Kirkland - Okay.  
2111  
2112 Ms. Akers - I'm here today because I have concerns over the  
2113 health and welfare of my parents. Everything that they've worked for their entire  
2114 lives. They very much like the Wagner's. Never had problems with the Wagner's  
2115 as people. I don't personally know the Wagner's; I had long moved away by the  
2116 time they had moved in.  
2117  
2118 Mr. Wright - First, let's find out where your parents live.  
2119  
2120 Ms. Akers - Okay. Does this clicker work the slides? Can I do  
2121 that myself?  
2122  
2123 Mr. Blankinship - I think it will.  
2124  
2125 Ms. Akers - If I can go further down. I may have to go back. This  
2126 is the Wagner's site. My parents live off to the west just past the little opening in  
2127 the tree, just beyond that. They are immediately adjacent, to the west of the  
2128 property.  
2129  
2130 Mr. Wright - They're adjacent to the property?  
2131  
2132 Ms. Dwyer - Is that 6285 Hines?  
2133  
2134 Ms. Akers - Yes ma'am. Now, if I can go back.  
2135  
2136 Ms. Dwyer - Our map shows it. The County aerial shows your  
2137 house in relation to the Wagner's, I believe.  
2138  
2139 Ms. Akers - What prompted my involvement and my concern for  
2140 my parents, the Wagner's have been present there since 1993. They've had  
2141 horses in the past. We used to laugh when—They used to have a pig that would  
2142 follow around with the horses and it was quite comical to watch this pig thinking

2143 he was a horse. So, they've been there quite a long time. They started up the  
2144 Horses in Service operation; that's been there for a number of years. But things  
2145 have grown exponentially, and with that, problems that have been impacting on  
2146 my parents. It's come to a head this year. This year in particular—and I spent  
2147 quite a lot of time down at my parents' home. Starting last fall, my father had  
2148 double-knee replacement surgery, so I was down there quite often helping them  
2149 with yard work, and putting up safety rails, and doing a lot of work. I spent a lot  
2150 of time there. And outside in their property, the odors have been extremely  
2151 nauseating. And it's almost all the time now. I mean, you feel truly like you're  
2152 living in an outhouse. I sit here and I say my parents worked their entire lives to  
2153 save up and buy this piece of property, be out here, and enjoy their retirement  
2154 years, and now they're living in a world of crap, essentially. It's just around them  
2155 constantly.

2156

2157 To put this into perspective—because this is a charitable type of organization and  
2158 I applaud the concept and the things that they do—there are negative's  
2159 associated with this and I didn't see any of that reflected in the file. So, I thought I  
2160 would try to put this into perspective. I'm not a horse expert, but I went out and I  
2161 did some research on the Internet to try to support some of the things that I was  
2162 saying today.

2163

2164 Basically, for a typical adult horse, you're looking at that horse generating 50  
2165 pounds of manure a day. That's a lot of manure. You add into that typical  
2166 bedding, their straw, and the woodchips and things that come out of the stalls—  
2167 you could play with these figures. It might be up or down 10%, but basically,  
2168 you're looking at approximately one ton of dirty bedding and manure per horse  
2169 per month being generated. The typical urine output is 1-1/2 to 6 gallons a day,  
2170 depending on their level of activity for that particular day, how much they're  
2171 running, how hot it is, what type of feed that they're on. Some feed will generate  
2172 more urine than other feed. But basically, you're looking at—and if you take that  
2173 by 30 days, you're looking at 45 to 180 gallons of urine being produced per  
2174 month per horse. Later, when I do some calculations, we're going to assume that  
2175 some of that urine stays in the bedding and then later gets translated into the  
2176 manure count, and some of it is what is actually extruded onto the ground.

2177

2178 Now I've heard some different figures thrown out about how many horses are  
2179 there. I have seen, unless I can totally not know how to count, 11 to 13 horses  
2180 on that site. This has been since the summer and the fall. But my calculations  
2181 are on the number of 12. I believe the Wagner's said there were only 10. When I  
2182 looked at the County records, there was an electronic record of an inspector who  
2183 went down there and he said he witnessed 12 horses when he was on site. I  
2184 don't have his name. I'm sure you people have that information in your files. But  
2185 basically, if you're looking at one ton of manure and bedding per month being  
2186 generated per horse, and assuming we have 12 horses, you're looking at—for a  
2187 total of a year—a 144 tons of manure. Now, to put 144 tons of manure into  
2188 perspective, a standard dump truck is, what, 10 tons? We're looking at 15 tons,



2189 15 truckloads, dump truck loads of manure being generated on this site per year.  
2190 Play with the figures on the urine, if you go with low end of the 45 to 180 gallons  
2191 per month per horse—because some is included in that bedding volume and the  
2192 144 tons of solid waste—you’re looking at approximately 6500 gallons of urine  
2193 being released onto the ground per year at this site.  
2194

2195 The manure pile. I personally have not walked onto the site. I personally have  
2196 not seen the manure pile. I have see the maps, the plat drawing that was  
2197 provided in the County file that showed the location of a manure pile. I have also  
2198 talked extensively with my parents of their past presence on the site, what they  
2199 witnessed as far as a manure pile, and conversations that they have had. At the  
2200 same time that I was talking to them about this, I pulled up Google Earth. You  
2201 can now, from space, see a lot of properties. Can’t see my house for some  
2202 reason, in the West End; it’s really kinda fuzzy. But you can see this property  
2203 fairly clearly. And this is the Wagner’s site. I’ve circled in red the location that  
2204 my father said he witnessed the manure pile. My mother was there at the same  
2205 time that they both witnessed the manure pile. This was a couple of years back  
2206 that they actually saw it and have been physically on that site. But at that time,  
2207 they described the pile to me to be approximately 12 to 15 feet in height.  
2208

2209 Mr. Blankinship - Twelve to fifteen feet.  
2210

2211 Ms. Akers - Twelve to fifteen feet, not 10 or 12 inches, or  
2212 whatever, that we mentioned earlier. There is a pile in the same location that my  
2213 mom and dad said they saw it. I recently talked to a DEQ inspector that I had  
2214 asked to visit the site. When he was there, he said, “There’s no manure pile  
2215 here. I don’t see a pile.” And he had just gone down Friday before last, I expect it  
2216 was. I said, “Well, did you see that huge pile out by the tree line?” He said yeah.  
2217 He said, “It is kind of an odd-shaped pile. It’s covered right now with lumber and  
2218 brush.” I cannot swear to you that this pile has manure under it, but this is the  
2219 location that my parents in the past said they witnessed the pile 12 to 15 feet in  
2220 height. Now DEQ says there is still a pile there. I pulled this up this weekend  
2221 when I was working on my presentation. They said it is covered in trees and  
2222 brush and wood and lumber right now, but they would be looking into it further.  
2223

2224 During these discussions—and I asked my father in the past—because of the  
2225 odors and the problems and the concerns, I asked him, I said, “Well, did you ever  
2226 talk to the Wagner’s about the manure pile?” And my father mentioned that he  
2227 had talked to Mr. Wagner. Mr. Wagner was in the habit of going around and  
2228 cleaning the manure off the fields. Not just what’s coming out of the stalls, but  
2229 cleaning the manure off the fields, carrying it back to the manure pile, and mixing  
2230 it with the stuff that would be mucked out of the stalls. My dad asked him  
2231 specifically whether or not he was looking at selling or whatever this manure to  
2232 be used as fertilizer to a farm area or something of that nature. And again, I was  
2233 not there, so this is hearsay. But my father is here if you have any questions of  
2234 him. He explained that Mr. Wagner said he takes a lot of time and effort. It’s

2235 really hard work for him to go out and pick up the manure off his fields and put it  
2236 in this pile, and that if anybody wanted to come and clean his field, they could be  
2237 happy to come, he'd be happy to have them come clean the fields and take that  
2238 manure. But what he has in his pile, he worked to hard to make that pile, and that  
2239 he was using that material to fill in low-lying areas in the rear of the property.  
2240 Again, I did not witness this conversation; I heard it from my father. But my  
2241 father is here, and if you have questions, you can discuss it with him.  
2242

2243 Some of the information that you have in your file, it shows the plat for the  
2244 property—and I also have a copy of it later. But basically, it doesn't show the  
2245 topography and the geological features in this area. I pulled up this topo from the  
2246 TerraServer menu that's produced by the U. S. Geological Survey. I did not  
2247 produce this map; I did add a few little additions to it. But basically, this is a U. S.  
2248 Geological Survey map. The properties, the buildings to the east or right of the  
2249 blue creek, that's the Wagner's property. The red is the location of the pile as it  
2250 was depicted on the plat that was submitted to the County in their application,  
2251 and also the location that my parents said they witnessed the pile, and what  
2252 we're currently seeing by satellite. My parents live to the west. You'll see the  
2253 two blocks there are their home and their garage.  
2254

2255 Basically, this entire year the manure odors have been coming from down at the  
2256 pond area up through to their home, to their garage, to a little pony shed and  
2257 workshop that they have out back. That entire portion of the property where they  
2258 spend most of their time smells like manure constantly. Some days it's much  
2259 worse than others. I was helping my father, and my son was helping my father  
2260 put a ceiling in his pony shed to try to keep the bees from eating up all the wood,  
2261 and we were almost about to pass out with the odors being trapped in the roof.  
2262 This is an open structure where you pull in the tractor. You could smell the  
2263 odors; it was just nauseating. Recently—and I'm not sure why this is happening  
2264 recently—there are pockets in areas that the smell of urine and ammonia are  
2265 extremely strong. One such area has been down on Hines Road. It's a low-lying  
2266 area of my parents' property right where the creek crossing is for the road, and  
2267 also to the rear, snaking up the rear of the property, kinda comes up to the ravine  
2268 and up over the hill. So, I depicted the manure odors primarily where they exist  
2269 in brown, and I tried to depict the urine and ammonia odors in melon.  
2270

2271 Again, this is another view of the U. S. Geological Survey topo. I've depicted the  
2272 Wagner property in red dash. Again, it's not precise; there are limits because I'm  
2273 not good enough and I'm using my own little software at home to try to draw add-  
2274 ons to this map. But basically, on this property there is water. There's not always  
2275 water, but there is water. And it's water enough that it's qualified as a creek,  
2276 intermittent stream that got indicated on the U. S. Geological topo that was  
2277 produced in 1996. That creek and stream comes from the rear of the Wagner's  
2278 property, which is down to the south. It curves over to the west. When it  
2279 approaches the property line that divides my parents' property and their property,  
2280 there is a pond. It used to be much larger in size because there was an effective

2281 dam. The previous property owner, Mr. Allen, had gone and gotten all the permits  
2282 from the proper agencies and constructed a dam, so it was much larger at one  
2283 time. His son, when he moved in there, he had small children and he was  
2284 concerned about the volume of water. So, he went out there and kinda damaged  
2285 the dam, so there's less water. But when we're not in a drought situation, and  
2286 when we have rain, when we have a reasonable amount of water supply in the  
2287 area, there is a much larger and distinct pond than what's there today. But still,  
2288 that is the pond. When it crosses my parents' property line, it becomes a creek  
2289 again, and it's no longer a pond, it's much smaller in nature. My entire life—when  
2290 we moved there in 1977, there's always water in the pond, there is always water  
2291 in the creek. Now, the portion of the creek that extends to the rear of the  
2292 Wagner's property, at times may or may not be dry. I don't have access to their  
2293 site, so I can't say for sure.

2294  
2295 This creek continues on, it undercuts the road and Henrico County installed  
2296 some guardrails because of the concerns of accidents. One guy drove off the  
2297 road and ended upside down in the creek and almost drowned. The creek  
2298 continues past the Allanson's, who are across the street, where their  
2299 [unintelligible] in the creek, and continues back and empties out into White Oak  
2300 Swamp.

2301  
2302 This is the plat that was in the County file; I did not do this plat. I'm not sure  
2303 where it came from, but it was a plat that was in the County file. I've cut it off a  
2304 little bit just to get everything to fit here. But basically, on the plat that you've  
2305 been provided, it shows absolutely no water at all; it shows a drainage ditch.  
2306 Well, that drainage ditch is the location of the creek, intermittent stream, and  
2307 pond as it appears on the U. S. Geological topographic map. Again, I did not  
2308 prepare those features, I'm simply relaying the information and where it exists.  
2309 I've attempted to highlight that in blue so you can see from the topo overlay here.  
2310 This is not to scale, but it's just basically trying to demonstrate for you all what  
2311 the conditions are in the field. This is where it is. And there have been times  
2312 where it was almost a raging river coming through here when we had the rains,  
2313 and spring season, and definitely with the Gaston's and the Isabel's, you had  
2314 massive flooding problems. It almost approached to my parents' garage. It would  
2315 fill so much and the pond would swell so much, it would take the large majority of  
2316 their backyard, basically.

2317  
2318 With this picture here, what I'm trying to demonstrate—and I didn't cut off the  
2319 map so that you could see scale—I'm trying to demonstrate with the contours.  
2320 The contour interval prepared by the U. S. Geological Survey is basically we've  
2321 got a 10-foot shift with each contour. When you look at these contours, and you  
2322 compare that to the location of the Wagner's facilities, basically, you have a  
2323 constant 10% to 20% slope coming off of all of their active operations, the areas  
2324 of their property that flow directly into the creek or stream. So, any potential for  
2325 runoff, any leachate, any of that sort coming off either pastures or piles or out of

2326 barns or being discharged with wash water onto the surface—all of that is going  
2327 to flow, because water does not flow uphill; it's going to flow downhill.

2328  
2329 I added—it's probably hard to see there—some buildings that were not shown  
2330 on the 1996 topo that have been added since. I believe it's a barn and a shed,  
2331 something of that nature. Again, I depicted the location of the pile, manure pile.

2332  
2333 I've also tried to demonstrate by this drawing and this topo why I am concerned  
2334 about not only the odors, but the potential for actual harm to my parents. Their  
2335 drinking water well I depicted is located immediately in front of their house. It's  
2336 basically at a contour interval of 130 feet elevation above sea level. The creek  
2337 area lies between the 110 elevation. There's a slight drop-off in between. You  
2338 don't show those changes in elevation, but basically it averages around 105 to  
2339 108 in that elevation.

2340  
2341 When you open the top off my parents' well, you'll see water. Now, it changes  
2342 with the time of year and how much water there is. Right now, it's about 25 feet.  
2343 If you take the contour interval of 130 where my parents' well is, and you  
2344 subtract the depth to water, you end up with 105 feet. Essentially, where their  
2345 water is located is at the same exact elevation as the creek. This is  
2346 demonstrating that my parents' well is hydraulically connected to the creek. Their  
2347 well is placed in a shallow water table. The elevations of the creek affect the  
2348 elevations in the well. My mom is always hysterical and worried about running  
2349 out of water. Living down there, especially in recent years when we didn't have a  
2350 lot of rain, my dad would always assure her, don't worry, as long as there's water  
2351 in the creek, we're in good shape. Basically, they're tied together. Any impact to  
2352 the creek can have an impact to my parents' well. My parents didn't put in this  
2353 well; this well was put in before when the previous owners—the Malincin's, I  
2354 believe their name is—installed the well. They had all the proper permits from  
2355 the County to do so, so it is a properly-permitted and [unintelligible] well.

2356  
2357 My parents moved in and purchased the property in 1977. For approximately 20  
2358 years, my dad was always raving about how good the water is, always picking at  
2359 me saying, "You live in the wonderful West End. You drink that old nasty County  
2360 water." He said, "We've got good water down here." Then that started to change  
2361 and we started to have bacterial problems. They had samples sent off to the  
2362 Health Department. The Health Department came back and said it came back as  
2363 high in total coliforms, and they recommended that they either boil their water, or  
2364 they install a bleaching fluorination system. My parents did this. This was several  
2365 years back, but it was 20 years after they lived there, and after the Wagner's had  
2366 been present at the site and dealing with a number of horses for whatever reason  
2367 that they have horses.

2368  
2369 Other concerns that we have living down here and having private wells, private  
2370 water—

2371

2372 Mr. Wright - Let me ask you a question.  
2373  
2374 Ms. Akers - Yes sir.  
2375  
2376 Mr. Wright - To keep it fresh in mind. When did they have the test  
2377 that found the coliforms?  
2378  
2379 Ms. Akers - I asked my mom if she still had the records, and she  
2380 didn't. She says she thought it was probably about five years ago, she wasn't  
2381 absolutely positive. I believe the Wagner's moved in in '93. Their Horses in  
2382 Service officially started in April of 2004, I believe it is.  
2383  
2384 Mr. Wright - Right.  
2385  
2386 Ms. Akers - But they had horses, a larger number of horses than  
2387 just a couple for a number of years. What, if any, impact may have come just  
2388 from their own horses, or Horses in Service horses, or whatever, I can't attest to  
2389 that right at this point.  
2390  
2391 Mr. Wright - So, they had horses before they started this  
2392 operation?  
2393  
2394 Ms. Akers - Yes sir.  
2395  
2396 Mr. Wright - How many did they have?  
2397  
2398 Ms. Akers - I do not know the answer to that question.  
2399  
2400 Mr. Wright - Their horses.  
2401  
2402 Ms. Akers - They had horses. I always remembered seeing a  
2403 number of horses out there not anywhere near the numbers now. I would say,  
2404 you know, just from my recollection maybe they had three or four horses, and a  
2405 pig. There was always that pig running around. But I can't swear to those  
2406 numbers.  
2407  
2408 Our other concern, my concern for them and their concern—and my mom gets  
2409 pretty hysterical over this. As I mentioned before, she's always worried about the  
2410 well going dry, and my dad says don't worry, as long as there's water in the  
2411 creek, we're okay. But if you look at the number of horses—and let's take 12 for  
2412 the sake of argument—an average horse drinks 12 gallons a day. I don't believe  
2413 that the Wagner's have an artesian well. They have two wells on the property, I  
2414 believe. One is for their own use, and one is for farm-related use. But I believe  
2415 they are all streamed in the shallow water table. If you take 12 horses drinking 12  
2416 gallons a day, and you look at that for the course of a year, that's an extra 5200  
2417 gallons of water per year being taken out of this shallow water table for the

2418 purposes of drinking only. That's not including any washing of the horses, any  
2419 washing down of the stalls, or any of those activities.

2420

2421 The other concern is flies, the vectors, the flies. Horse manure attracts flies.  
2422 Flies love to breed in it. They [unintelligible] to some level out here in the  
2423 boonies. Given this is the boonies, there were always some flies. The level of  
2424 flies and the aggressiveness have gotten much worse over the years, and  
2425 especially in recent times. I know that this last, any time that you pull up in the  
2426 driveway—standard practice—you pull up in the driveway, and as you're driving,  
2427 you start to get bombarded by these black flies. It's like kamikazes. I mean,  
2428 they're swarming all over the car, and they're banging into the car windows. You  
2429 pull up to the back of the hill where my parents' garage is, and you sit there, and  
2430 you wait for a minute until the flies realize, "I can't eat the car and I'll leave."  
2431 Then they leave; then you can exit the vehicle. The flies have gotten that  
2432 aggressive and that numerous in number.

2433

2434 I also have the concern—I've worked in the environmental field for a number of  
2435 years—25 years, to be precise. I have some experience in all of these, and  
2436 that's why I submitted diagrams that I put together here. But I also have  
2437 experience with the Virginia Solid Waste Management regulations, having  
2438 worked for the Department of Health, the Bureau of Solid and Hazardous Waste  
2439 Management, for approximately three years, and then another three years with  
2440 the Department of Waste Management. This was all before it became folded into  
2441 the Department of Environmental Quality. But I knew from years before that the  
2442 disposal of animal husbandry type related waste, the stabling or bowing of  
2443 animals, that is exempt from the Solid Water Management regulations provided it  
2444 is being used as fertilizer. Based on my interviews with my parents, the  
2445 conditions that I've seen, some of the maps that I've seen, I have yet to see  
2446 where the manure on the site was actually being used as fertilizer, especially  
2447 when you're talking about my parents said they witnessed a stockpile that had  
2448 been there for a number of years. This stockpile was essentially abandoned.  
2449 The material that was mixed and reportedly buried and used as fill to fill in the  
2450 low-lying areas out back in the woods, that's not used as a fertilizer. And any  
2451 time you're looking at regulations, you're talking about legitimate uses as  
2452 fertilizer. So, in the next couple of slides, I have some information regarding  
2453 legitimate use. But basically, any stockpiling, any disposal, any use as fill, if it  
2454 occurred in the past or occurs in the future, is not using the manure as fertilizer  
2455 on the site, and would not be excluded. And if it's not excluded, then what you're  
2456 left with is either an un-permitted facility, un-permitted landfill, or an open dump,  
2457 depending on how bad the nuisance and the hazards are. Neither one is  
2458 allowed. Both are subject to enforcement.

2459

2460 Again, I pulled up some information here and did a little research just to try to  
2461 demonstrate the effective, and proper, and legitimate use of fertilizer. Basically,  
2462 there are a number of recommendations. You want to protect the water supply,  
2463 so you don't want to apply it when the land is highly erodible; you don't want to

2464 apply it when the land is frozen, like in the winter months; you don't want to apply  
2465 it when the ground is saturated with heavy rains; you don't want to get it near  
2466 creeks or ponds or streams or riverbanks; you don't want to put it near drinking  
2467 water wells. To avoid the nutrient loss and the benefits of the fertilizer, it should  
2468 be incorporated into the soil immediately. That helps reduce the odors, and it  
2469 also helps eliminate some of the problems where the horses go back over that  
2470 same area. They can be subjected to being exposed to parasites and other  
2471 diseases in their own manure. So, you want to isolate them from their manure. It  
2472 also has to be applied at the proper rate. That proper rate is what's referred to as  
2473 an agronomic rate. Basically, that's just not saying, oh, I'm going to take all this  
2474 manure and I'm going to spread it out on my land and see if it turns my grass  
2475 green, and I'm using this fertilizer. The agronomic rate is basically a calculation  
2476 that comes from testing your soil, looking at the current nutrients that are  
2477 available in that soil, looking at the crop that you are growing and what its  
2478 nutrients are, and testing the manure because manure varies in the nutrients that  
2479 are provided by the type of feed and the time of year. From that, you basically  
2480 develop what is the appropriate land application rate of manure per acre, per  
2481 year on the site. If you're going to do it every year, you have to lower those  
2482 numbers because agronomic rates [unintelligible] translate it into a three-year  
2483 type of [unintelligible].

2484  
2485 So, you kinda reduce back from that. So, this is just demonstrating that it's not  
2486 just taking manure and spreading it, and saying, "Oh, I'm done, I've used it as  
2487 fertilizer." It has to be a legitimate use as fertilizer. You have to be growing  
2488 something. I would assume for the sake of argument purposes at this site that  
2489 what we might be talking about is forage grasses being grown. Again, I'm not an  
2490 expert in this, but you're probably looking at maybe five tons per acre per year.  
2491 That's not a lot when you talk about the size of the site.

2492  
2493 I think I skipped one of my—I need to go back for a second because I skipped  
2494 one slide that I thought would be beneficial to talk about. This slide here. They  
2495 have a total of 12.79 acres demonstrated on the plat. Given the location of the  
2496 creek and pond, and the other portion of the intermittent stream that pops up in  
2497 and out, the low-lying areas, and the seasonal high water table—because there's  
2498 water there, that water table has to be there—a large portion of this site is not  
2499 suitable for either the horses to be on, or for fertilizer activities to take place  
2500 because it's in proximate to the water supply. That affects not only the neighbors,  
2501 but [unintelligible] swamp, Chesapeake Bay—we could go on from there. So,  
2502 you're looking at probably less than half of this site is actually being effective and  
2503 available for use for a horse activity. And only a portion there—and I believe I  
2504 looked at the numbers that the Wagner's provided and their application—totals  
2505 about four acres that you can pasture. That's what they would actually be using  
2506 to grow grasses for the horses to forage.

2507  
2508 Again, just looking at what other possible agronomic rates for use of fertilizer on  
2509 the site. Again, you don't want it near the water sources. You obviously can't put

2510 it on a driveway, because you're not growing gravel. It's not wise to use it around  
2511 their own home or their own drinking water well, nor would they want to use it  
2512 around the second well, if that water's being used for the horses. You need to  
2513 safeguard against exposure to the horses to the their own manure, the parasites  
2514 and diseases that come with that. So basically, if you're putting it on a pasture  
2515 and towing it in, there has to be a period of time when you rotate the horses off  
2516 that pasture to the other location, and don't allow them back onto that or they'll  
2517 get those exposures. Again, what is the crop that you're growing and what are  
2518 the nutrient requirements. Those nutrient requirements, again, will be a  
2519 calculation looking at they typically use nitrogen rates or phosphorous rates. So,  
2520 it's typical for Virginia.

2521

2522 I also—I have concerns over the existing operation and the extent of it. This is  
2523 not to say that I don't think there could be some limitations and some rollbacks to  
2524 allow property use. But right now, given as it is, I have concerns over the existing  
2525 operation, and I also have serious concerns because at least according to their  
2526 website, they have grand plans for expansion.

2527

2528 Mr. Wright - They said they're not going to increase. You've done  
2529 all this on 12 horses. They'll never have more than 12 horses.

2530

2531 Ms. Akers - That is what they said. When I prepared my  
2532 presentation, I wasn't privy to what they were going to say here. I'm not creating  
2533 this information; this is also what's being said—

2534

2535 Mr. Wright - Yes.

2536

2537 Ms. Akers - —on their website.

2538

2539 Mr. Wright - I understand. But if this were approved, they would  
2540 be limited to 12.

2541

2542 Ms. Akers - And I can appreciate that. And that would be one of  
2543 the reasons that I would be looking for a cap so that it is limited. Because right  
2544 now, the organization, per se, is actively soliciting for horses. They want more.

2545

2546 Mr. Wright - Well, they can't. They wouldn't be able to have more.

2547

2548 Ms. Akers - I understand. I just wanted to make sure when I  
2549 prepared this, that you guys were aware that outside of today's testimony, that  
2550 they had been looking for more horses.

2551

2552 Mr. Wright - Well, the testimony was if they get more, they would  
2553 move their location somewhere else.

2554



2555 Ms. Akers - Right. They're actively—Right now, the website says,  
2556 "We're actively looking for horses," and it doesn't say, "Give it to us five years  
2557 from now."  
2558

2559 Mr. Wright - I understand.  
2560

2561 Ms. Akers - They're looking for it today. People are calling up on  
2562 the phone saying, "Hey, I have a horse to donate." It didn't sound like they were  
2563 going to say, "Well, get back to us in the future."  
2564

2565 Mr. Kirkland - When we put a condition in the case, and it's  
2566 approved with the case—  
2567

2568 Ms. Akers - Yes sir.  
2569

2570 Mr. Kirkland - —it's a done deal. This form you're got here, I guess  
2571 what you're talking about is soliciting or whatever, it's done over.  
2572

2573 Ms. Akers - Yes sir. And I understand that. I just wanted to make  
2574 sure that you guys were aware before—  
2575

2576 Mr. Kirkland - Right.  
2577

2578 Ms. Akers - I didn't know that you knew that they were  
2579 [unintelligible] more horses on the website.  
2580

2581 The area to the—this is also off of their website. The area to the left is what they  
2582 call their existing arena. It was shown on the plat that you have in the file. It's  
2583 butt up against the Sharpe's property to the east. Basically, this is their existing  
2584 arena. They're looking at being able to ride at night, in any kind of weather. They  
2585 basically want to—They're hoping in the future to be able to build an enclosure  
2586 for that area. They don't appear to have any setbacks planned for; I guess that  
2587 would come up with future building permits.  
2588

2589 Mr. Wright - Yes, we'd like to see to that, that that may be a  
2590 dream, a wish. They would have to come back before this Board before they  
2591 would do anything different than this, if this were approved.  
2592

2593 Ms. Akers - Yes sir. I understand.  
2594

2595 So, I just want to demonstrate that the website, again, was actively looking at  
2596 expanding—more horses, more facilities. We are here today as [unintelligible],  
2597 but this operation has been going on since even before 2004. And it didn't seem  
2598 to have any type of concern about how this might affect others. It was just get  
2599 bigger, to get more, because we're doing a good thing. And you may be doing a  
2600 good thing, but it's having an adverse impact to people in the area.

2601

2602 There were also some statements made on the application that was submitted to  
2603 you all by the Wagner's that I take issue with. It's basically, you can see, a matter  
2604 of interpretation. But, basically, they said that their activity is not visible from the  
2605 neighboring property. The way I see this, and what's been impacting my parents,  
2606 is not necessarily the little circle out in front of the house where you ride a kid  
2607 around on a horse; it's the whole site. The whole site is being used to house  
2608 these horses, graze these horses, and for these horses to dump their excrement  
2609 24/7. From the west is where my parents' property is. They can see, and I can  
2610 see. Standing in their house, we can see the entire front pasture; we can see  
2611 their houses; we can see all activities to the front of the house. You can see  
2612 portions of the barn. Depending on the time of year, you can see it more than  
2613 others. Right now, there are not any leaves on the trees, so you can see  
2614 everything. During the summer, there are leaves on the trees, but because of  
2615 the ravine and because of the rise, you can still see through there. Like I said,  
2616 we used to sit there at the lunch table and laugh over the pig that would chase  
2617 the horses. So, we obviously can see it. From Hines Road, you can see the  
2618 entire property. There are no trees on Hines Road. From the Sharpe's land,  
2619 there are no trees along the majority of the border. You can see from the east.  
2620 To the rear, there are trees, and there is basically no one living back there. You  
2621 can't see anything from the south.

2622

2623 The application also states it's compatible, the use is compatible with the  
2624 surrounding area. It depends on how you define, "surrounding area." If you want  
2625 to look at a huge swath of Varina, maybe so. But if you want to talk about Hines  
2626 Road, there's only one other lot that I'm aware of on Hines Road, and it's all the  
2627 way down at the end, almost at the Charles City County line at 156. A man has a  
2628 small little area and he has a couple of horses there. There are not stockpiles of  
2629 manure; there are no bodies of water there. I think even the back—The entrance  
2630 to that old mining operation is to the rear of that property, so he's not surrounded  
2631 by homes. Could be others I'm not aware of, but that's the only place that I know  
2632 of that there are horses. And cattle? I'm not aware of any cattle at all on Hines  
2633 Road. Primarily, most of the landowners use the land for their private homes.  
2634 They have some small gardens. There are a couple of larger sections of land  
2635 where people either use the fields themselves, or they rent out the fields. And  
2636 I've seen cotton grown, and things of that nature, from cultivation going on.

2637

2638 My concern also being here today, and looking over the processes and the  
2639 applications, it's difficult because I can't quite grasp what it is they're applying for,  
2640 and what it is you are considering. So, it makes public comment somewhat  
2641 difficult. The application talked about the operation of a therapeutic riding center  
2642 on the Wagner property. It gave very finite hours and small hours for operation.  
2643 But they have many more horses on this site than are associated just with the  
2644 Horses in Service; they even said that themselves. I'm not altogether sure  
2645 whether they have horses—Basically, when you look at landowners and horses,  
2646 you have how many horses for your own personal use. They said they have six

2647 others, which would be a total of 12. I'm not sure whether or not they're boarding  
2648 other people's horses on the site or not. But in coming to you today, that is one  
2649 of the things that I would like to point out, that as a citizen and being concerned  
2650 for my parents next door, I'm looking at what are you considering. Are you  
2651 considering their personal use and the charitable use, as confined to the Horses  
2652 in Service operation, or are you considering any type of riding stables that they  
2653 wish to operate irrespective of whether or not it's associated with non-profit or  
2654 personal use. That's a big window. So, it's difficult to comment when you don't  
2655 know what's being asked for. The only thing it says on the application is, "Horses  
2656 in Service for about two hours a day." They have horses all over the place, and  
2657 horse manure all over the place.

2658  
2659 Again, this is just some of the information that I took off the application that led  
2660 me to some concerns because they apply under one section of the ordinance.  
2661 What's in public notice and the mailings that came out is a totally different section  
2662 of the ordinance. It puts us in a difficult position. What the heck is it that we're  
2663 supposed to be commenting on, and do we have the foresight to come up with  
2664 every creative idea we can to make sure that you guys are fully informed when  
2665 you're making your decision.

2666  
2667 I also have the concern that this operation has gone on for a number of years  
2668 when they did not have the permits in order to do so. So, are we in a situation  
2669 now where it's kinda like, well, it's better to ask for forgiveness than seek  
2670 permission because they're already doing it, and because it's for charitable  
2671 operations that we're going to go ahead and allow them? Would you have  
2672 allowed them if they had come in first and asked for permission to do this  
2673 originally? Originally, my mother—Now, I asked her about it and she said she  
2674 called the County when they first put up the sign out front, the "Horses in Service"  
2675 sign. She said, "Look, they're going to operate a business. Don't we have any  
2676 say in this?" And the County person told them that, "Well, it's zoned agricultural;  
2677 they can do anything they want to." So, they didn't follow up at that time because  
2678 they were told they had no choice. When I started noticing all the problems this  
2679 year, and the heavy odors, and I started looking at the ordinance, I started  
2680 arguing with the County that, hey, you know, I think your ordinance does require  
2681 that there be some kind of permit associated with this. And it has gone on for  
2682 three years, but it's not been going on for three years and nobody cared. People  
2683 cared, but they didn't know they had any alternative.

2684  
2685 I'd also like to point out, if the applicable code section in the ordinance is 24-  
2686 52(g), the riding stables, that was put out in public notice, and in the mailing that  
2687 came to my parents and others in the area, then already, they do not meet the  
2688 distance requirements. It stipulates three times the distance requirements of 24-  
2689 10. [Unintelligible]. Three times that is 600 feet from a dwelling. Their site, their  
2690 operations—you might want to say the little circle out in front of the house might  
2691 be beyond 600 feet. Where they have the horses, that is not 600 feet from either  
2692 my parents' house, nor the Allanson's house across the street.

2693

2694 Again, looking at whether or not—you mentioned that—I guess that you said that  
2695 staff has already proposed some conditions to allow. If you do allow the  
2696 continued operation, I would hope that one of the stipulations would be that any  
2697 and all stockpiled waste be removed from the site. I am hoping—and again, I  
2698 don't know what you're considering, because it's unclear in your notices. I'm  
2699 hoping that the use will be restricted to their personal use only—and this isn't all  
2700 their family and friends, and the number of horses that might be moved to  
2701 accommodate family and friends, but their personal use only, and the use for the  
2702 non-profit organization that they're affiliated with, the Horses in Service. I would  
2703 hope that there would be no allowance of continuing stockpiles outside. If you're  
2704 going to be using manure as fertilizer, and if you choose not to use it fresh, and  
2705 you want to compost it—Composting is a controlled operation that's generally  
2706 done where you can turn it periodically, aerate it, add water, add nutrients, collect  
2707 the leachate. It's a controlled situation. It's usually done indoors or it's done on  
2708 concrete pads, clay liners, under cover. It's not where you just sit it out  
2709 indefinitely and just let it sit there, and maybe some time in the future if  
2710 somebody gets upset, you can use it as fertilizer.

2711

2712 I'd also like to see the total number of horses, for any and all uses, be scaled  
2713 back and capped. Again, I'm not a horse expert, but in looking at the possible  
2714 environmental impacts—and where I think it's already occurred to the  
2715 environment—and the little research that I've done on horses, their needs, their  
2716 forage needs; what PETA would say is adequate for the horses, I would suggest  
2717 they have four acres in pasture. My recommendation is that they be capped at  
2718 four horses.

2719

2720 That's what I have in my formal presentation. I had two things that I thought  
2721 about on the way down that I'd like to bring out. Again, it's a procedural process  
2722 type of thing, but on the application, only Ms. Wagner signed the application. So,  
2723 if you did issue a permit, a conditional use permit, would only she be subject to  
2724 those requirements, or all property owners, which I would assume includes Mr.  
2725 Wagner would be subject to those requirements. Again, I would hope that—and  
2726 I think you've expressed it today—if you allow the continued use of the property  
2727 for these purposes, and you impose conditions, that you actually have effective  
2728 means to enforce those conditions, and an intent to enforce those conditions. I  
2729 know to date, whenever I called the County and started this process, or e-mailed  
2730 the County, or had discussions, the first thing always out of the people's mouth  
2731 was, "We can't do anything about odors, and we can't do anything about  
2732 manure." Well, that's our primary concern. If you can't do anything about it, if  
2733 you don't plan to do anything about it, I would hope you don't issue the permit. If  
2734 you can, and you plan on watching this and ensuring that it's done in a manner  
2735 that doesn't interfere with my parents' free and unencumbered use and  
2736 enjoyment of their property, then I'm all for it. But as long as they have potential  
2737 health concerns in drinking their water, are exposed to the noxious fumes and  
2738 not being able to enjoy being out in their backyard—you should see my family's

2739 land. My dad is not somebody that bought this land and just let it go. Their  
2740 property looks like a park. It was all wooded; there were grapevines; there were  
2741 briars. He goes out there and cleans every weed that he can find in the woods. If  
2742 a stick falls, it doesn't last long. He goes—He loves this place; he lives for this  
2743 place. And now he can't enjoy that property.  
2744

2745 I would also hope that if the Board were to deny, the Board would still see what it  
2746 could do with the County to at least return the site to a proper use. If you do deny  
2747 the petition, you still have all the horses out there, you still have horse manure  
2748 out there. So, what's going to be done in that alternative?  
2749

2750 Mr. Kirkland - Thank you, ma'am.

2751

2752 Mr. Wright - Could I ask you something?

2753

2754 Ms. Akers - Sure.

2755

2756 Mr. Wright - Could you give us a copy of your material? You've  
2757 covered a lot of information.

2758

2759 Ms. Akers - Absolutely.

2760

2761 Mr. Wright - A lot of that stuff is—

2762

2763 Ms. Akers - [Off mike – unintelligible.] [Back at mike.] That makes  
2764 five. I think there's one more, so I may not have enough copies. I'll give you my  
2765 copy, too, that's got my handwritten note on there. So, if you don't mind having  
2766 one slightly different than the others. And they have a copy, obviously, on  
2767 whatever computer this is coming from, but I also made a CD, and you're  
2768 welcome to have that CD, if you would like the CD. Again, you have it already  
2769 here as well.

2770

2771 Mr. Kirkland - Okay, thank you.

2772

2773 Ms. Akers - I appreciate it.

2774

2775 Mr. Kirkland - Before we hear the rebuttal, we're going to take about  
2776 a 10-minute short break. Oh.

2777

2778 Mr. Wright - That's more opposition. Let's take all the opposition.

2779

2780 Ms. Sharpe - I am Ann Sharpe. I live on the adjacent property to  
2781 the east. This property's been in my family since 1909. I have just some  
2782 concerns and questions that I would like for you all to address, and especially put  
2783 in the dry runs that are established for the use of this property. I think there is  
2784 some confusion in our mind about whether this is a conditional use permit just for

2785 the HIS organization, or are they going to be allowed to run a commercial riding  
2786 stable, to board horses for profit. I think that's two different things. I don't know  
2787 what horses belong only to the organization, and what horses belong to them?  
2788 And if there are six other horses or however many, do they belong to them or are  
2789 they boarded there?

2790

2791 The horses, to me, the whole idea must be limited. The large pasture that you  
2792 see on that plat, that large pasture is only three and three-quarter acres, by you  
2793 all's numbers, by the County numbers and the numbers that they provided. So,  
2794 the 12 horses live in that three and three-quarter acres. Okay? We're not  
2795 looking at 12.79; that's a big difference.

2796

2797 When you read the website, they talk about a few horses being trained—  
2798 something like four—for Horses in Service, but yet we're looking at 10—I counted  
2799 10 from my property the other day. I am concerned that a cap be defined for the  
2800 number of horses on the property, and some clarification on boarding horses for  
2801 profit versus uses horses for therapy.

2802

2803 The manure management, to me, is just a must. I live on the far eastern side of  
2804 the property. Our home is on the far eastern side, so from my yard, I cannot  
2805 smell the odor. You can smell the odor from Hines Road; you can smell—if I  
2806 walked across my big hill that separates us, I could, at some point, smell the  
2807 odor. My big thing is somewhere along the line, with 12 horses or 10 horses in  
2808 that amount of space, the manure needs to be hauled away. And there needs to  
2809 be some way to manage the manure. And I don't think it should be stored on the  
2810 property for great lengths of time, nor do I really see—having lived in the country  
2811 all my life—I was born and raised on this property, as was my father. I don't  
2812 really see where you're going to spread that much manure on that piece of land.  
2813 So, to me, we're looking at some means of managing the horse manure.

2814

2815 Also, on the plat that was provided, and on the website where the arena is, there  
2816 is the plan to enclose the area. And I would assume a permit would have to be  
2817 granted for that, and a setback from our property line.

2818

2819 The manure pile, I didn't walk across my big hill until last week to look at what  
2820 some of the neighbors had been talking about. There is a pile on the lower back  
2821 in the spot on that plat that they provided for you. I walked and stayed on my  
2822 property and you can visually see it from the trees on my side. Now I understand  
2823 it's being called a brush pile. Having grown up in the country, it's hard for me to  
2824 believe that there's not something solid underneath of there. To me, it looks like  
2825 there's solid material [unintelligible] because brush piles, when you look at them,  
2826 are airy and they're all wiry and everywhere. This looks more like an  
2827 [unintelligible] covered with brush. Just looking at it, that was my opinion, from  
2828 growing up in the country.

2829

2830 The application, when I came to the County to look at a copy of the application,  
2831 the first thing that I was amazed at was the statement that it was not, the activity  
2832 was not visible from any other people. The activity is visible from Hines Road,  
2833 the public—I mean, the horses are in the front pasture. There's no—When they  
2834 have an activity there, they install some what I call stadium lights. There is  
2835 lighting there at night. The activity is visible. I mean, not that it bothers me; I'm  
2836 far enough way from it. But just that statement jumped out at me. Not visible?  
2837 Well, I can see everything.

2838  
2839 And my main concern is that the guidelines define whether this be  
2840 environmentally safe for everybody around, and also whether we define whether  
2841 this is commercial or whether this is humanitarian.

2842  
2843 Mr. Blankinship - On that question, the draft condition does say the  
2844 riding center shall be operated on a non-profit basis for the purpose of providing  
2845 therapy to persons with disabilities. So, this would only include—they wouldn't  
2846 have to stay with the name, "Horses in Service," but it would only include that  
2847 use.

2848  
2849 Ms. Sharpe - So they would be allowed to have 12 horses for  
2850 Horses in Service, plus more horses?

2851  
2852 Mr. Blankinship - And put on there was for the total number of horses  
2853 on the property, whatever that number ends up being.

2854  
2855 Mr. Kirkland - No huge horse farm.

2856  
2857 Ms. Sharpe - Okay. Thank you.

2858  
2859 Mr. Wright - Does somebody else want to speak?

2860  
2861 Mr. Kirkland - Is that it? Anybody else wish to speak in opposition?  
2862 Before we have the rebuttal, we need to take about a 10-minute break. Thank  
2863 you.

2864  
2865 **BOARD TAKES A TEN-MINUTE BREAK**

2866  
2867 Mr. Kirkland - Will everyone please have a seat. I don't believe  
2868 there is any more opposition. Would you all like to rebuttal? I'll give you a  
2869 couple minutes to answer some of the questions.

2870  
2871 Mr. Wagner - I think I can answer a lot of these points that were just  
2872 brought up. The first point is when we came up in the beginning, I took an oath to  
2873 tell you the truth, and everything I have said has been the absolute truth and  
2874 nothing but the truth. First order, on the pictures we were seeing, we saw a  
2875 satellite photo. Would you bring that back up, or could you?

2876  
2877 Mr. Kirkland - Is that a [unintelligible] presentation?  
2878  
2879 Mr. Wagner - Yes it was. Anyway, the picture you were looking that  
2880 there, the satellite picture of the manure pile, I don't know if you all remember a  
2881 few years ago, we had a storm called Isabel come through.  
2882  
2883 Mr. Kirkland - Right.  
2884  
2885 Mr. Wagner - That pile didn't exist when Isabel came through.  
2886 There was nothing there except three hickory trees standing beside it. That pile  
2887 was started when Isabel came through. There is nothing in that pile. If you came  
2888 and looked at it, it is an enormous pile. The reason for this is because it's too big  
2889 to burn. I hope one day to be able to pay somebody to come in there with dump  
2890 trucks and haul it off. It is all brush and a few pieces of [unintelligible] from where  
2891 I tore down an old pole barn shed, which this picture here is still an old enough  
2892 picture that it still shows that old pole barn shed.  
2893  
2894 Mr. Wright - So, you're saying that is not a manure pile?  
2895  
2896 Mr. Wagner - That is not a manure pile; it has never been a manure  
2897 pile. I can't get to it from here, but just up outside of this circle, you'll see a small  
2898 corner in that field. If you go straight up from it in the green part there. Right  
2899 where that little piece of fence appears to hit the trees. That little corner right  
2900 there is where the manure pile is, or was. That's the only place it's ever been.  
2901 How somebody saw a 15-foot manure pile on my property—I don't have a piece  
2902 of equipment there to stack manure piles. I have no loader for my tractor. My  
2903 manure is moved in a bucket and put in a lawn cart, like I told you before. So,  
2904 where they got this 15-foot manure pile, I have no idea. As far as being visible,  
2905 the operation, we were under the impression that we were applying for a permit  
2906 to operate the riding center. When the riding center is riding, it is not visible from  
2907 the next-door neighbor's property on our other side; it is cut off by trees on the  
2908 south side, the arena area that you were shown. On the other side, it is cut off by  
2909 our house. So, you'd have to be able to look through a brick house to see it from  
2910 the Akers' property. We didn't realize that we were talking about a pasture for  
2911 animals in the front field, that you wouldn't be able to see the animals. Because  
2912 anywhere you go, right up and down any road, you see animals in the field. We  
2913 didn't realize that having animals visible from the road was a problem.  
2914  
2915 Mr. Wright - So, all of your activity is within that arena shown on  
2916 this plat?  
2917  
2918 Mr. Wagner - All of it. As far as the covered arena that was shown,  
2919 we have never had a plan to enclose that arena. That is a dream for one day.  
2920 Horses in Service exists on its own. It has nothing to do with me; it only has to  
2921 do with my wife in that she was a co-founder of it. It is an entity unto itself. The



2922 money it raises or generates stays within that organization. It has nothing to do  
2923 with the two of us. As far as their hopes and dreams for the future, one day they  
2924 hope to have their own facility, not operated at our house or anyone else's  
2925 homes, but at its own place. They hope to have a covered arena there. When  
2926 we speak of growing this program, we do not speak of bringing in more horses,  
2927 we speak of bringing in more riders. We have plenty of horses to serve the  
2928 amount of riders that we have, plus more riders. As far as donations of horses,  
2929 we have offers for the donation of horses daily. As you can see, we have 10  
2930 horses. Have never had but 10 horses, never 12 horses, never 13 horses. There  
2931 have never been but 12 horses on this property.

2932  
2933 Ms. Wagner - Ten.

2934  
2935 Mr. Wagner - Ten horses on this property. That's all there has ever  
2936 been. Six of them belong to us; four of them belong to the riding center. There  
2937 are no other horses there for anybody else, and we keep horses for no one but  
2938 ourselves and the organization. Like I said, daily they receive offers for people to  
2939 donate horses. We have no place to put them; we cannot accept them. We can  
2940 offer to refer them to another riding center in some other part of the state. I know  
2941 of one case right now where a man is in the process of donating a horse to this  
2942 organization. It's not at our home. It will stay where it's at until it is sold, and then  
2943 the proceeds will be given to Horses in Service. That's a horse donation. It's just  
2944 like a bale of hay donation or anything else. This is a non-profit [unintelligible]  
2945 donations. They can only operate off of receiving donations and volunteer help.

2946  
2947 If there are any other questions about the presentation that we saw a few  
2948 minutes ago, in rebuttal I would just say I have said that I will not stockpile  
2949 manure anymore. I'm in the process of buying a manure spreader. As far as the  
2950 flies attacking you when you get out of your car, I've never had that problem and  
2951 I live closer to these horses than anybody there. The only place I've ever noticed  
2952 any flies were around manure piles out in the field. I don't notice them in my  
2953 backyard; I don't notice them sitting in a lawn chair in my backyard. As far as the  
2954 odor, I notice no odor. I think some of the people here have been to my house,  
2955 and they can testify to you just what they saw; that it wasn't an environmental  
2956 mess; that there were no health problems. We drink water out of our well, which  
2957 is in the same water table that these people drink out of. As far as how much  
2958 water we pump out of our well, it's our private well and we can pump all the water  
2959 out of it we want to. Water in the ground doesn't stay there. As the water table  
2960 goes down, whether you pump it out and spray it on your lawn; or wash your car,  
2961 or water your horse with it, it doesn't stay there. If the water goes down, it goes  
2962 down. You can use it or you can leave it in the well and let it evaporate, so.

2963  
2964 Mr. Blankinship - Mr. Wagner, did you say you would no longer  
2965 stockpile manure?

2966  
2967 Mr. Wagner - Yes sir.

2968  
2969 Mr. Blankinship - You would spread, but do you have enough land to  
2970 spread all of the manure that you gather, or would you have to haul some of it off  
2971 site instead?  
2972  
2973 Mr. Wagner - I don't—I've never collected manure. I heard the  
2974 comment made that we discussed it with my neighbor one time, and that I told  
2975 him that I spent too much time picking it up, that I was going to use it.  
2976  
2977 Mr. Blankinship - I'm just asking would you be hauling manure off the  
2978 site as well as spreading it on the ground?  
2979  
2980 Mr. Wagner - I will be spreading it on the site. If it works to where  
2981 that's some sort of a problem, we'll do with it whatever the County requires us to  
2982 do with it under the present zoning laws.  
2983  
2984 Mr. Blankinship - Okay, thank you.  
2985  
2986 Mr. Wagner - We have no problem with conforming to anything, any  
2987 rules or codes that the County has. We never have. We have sought out the  
2988 County's help from the beginning as to whether we needed permits or anything  
2989 else to operate under.  
2990  
2991 Mr. Wright - Wait a minute, let's address that. This started in  
2992 2004.  
2993  
2994 Mr. Wagner - Yes sir.  
2995  
2996 Mr. Wright - You say at that time you consulted with the County as  
2997 to whether you needed a permit to run this operation?  
2998  
2999 Mr. Wagner - Yes, and we were told that they didn't see why they  
3000 did.  
3001  
3002 Mr. Wright - So, you actually did seek advice as to whether you  
3003 needed a permit in 2004.  
3004  
3005 Mr. Wagner - Yes. They went and looked into all of that and were  
3006 told that it didn't appear that they needed them.  
3007  
3008 Mr. Wright - Where did you get that advice? Do you recall who  
3009 you talked with?  
3010  
3011 Mr. Wagner - No sir, I do not.  
3012  
3013 Mr. Wright - What office was it?

3014  
3015 Mr. Wagner - I—  
3016  
3017 Mr. Wright - The Planning Office.  
3018  
3019 Mr. Wagner - I did not found Horses in Service; my wife and her  
3020 sister did. They did all the background work, investigating what they needed to  
3021 do and how they needed to set it up.  
3022  
3023 Mr. Wright - I was just curious which office you went to.  
3024  
3025 Mr. Wagner - I'm not aware. I personally did not do the work.  
3026  
3027 Mr. Wright - Did you wife do it?  
3028  
3029 Mr. Wagner - My wife and her sister.  
3030  
3031 Mr. Wright - Could she tell us where she went?  
3032  
3033 Mr. Wagner - She may be able to.  
3034  
3035 Mr. Wright - I don't know; I'm just curious.  
3036  
3037 Ms. Wagner - To my knowledge, we did not need a permit.  
3038  
3039 Mr. Wright - But where did you go to seek that information?  
3040  
3041 Ms. Wagner - All we did was get a non-profit status from the—  
3042  
3043 Mr. Wright - But that doesn't answer my question.  
3044  
3045 Ms. Wagner - Yeah. I don't know that we went.  
3046  
3047 Mr. Wright - So you really did not ask the County whether you  
3048 needed a permit for this operation.  
3049  
3050 Ms. Wagner - I don't know that we did. My sister might have. At the  
3051 time, she was the one doing the paperwork on this. But I personally did not.  
3052  
3053 Mr. Wright - So, you didn't seek—  
3054  
3055 Ms. Wagner - Yeah, we asked about a business license.  
3056  
3057 Mr. Wright - A business license. But that doesn't have—That's not  
3058 zoning. Okay. I just wanted to get clear. But at that time it was your feeling—  
3059

3060 Ms. Wagner - Correct.  
3061  
3062 Mr. Wright - —didn't have any idea that you did.  
3063  
3064 Ms. Wagner - Correct.  
3065  
3066 Mr. Wright - I wanted to ask Mr. Wagner a couple more questions.  
3067 There was something about lights being brought in, and that is the first time that  
3068 had been mentioned here.  
3069  
3070 Mr. Wagner - Yes sir. Right there on this slide they showed you  
3071 before of the arena.  
3072  
3073 Mr. Wright - Where are the lights used?  
3074  
3075 Mr. Wagner - They are—  
3076  
3077 Mr. Wright - In the arena area?  
3078  
3079 Ms. Wagner - In the arena, in the riding arena.  
3080  
3081 Mr. Wagner - I believe there are two lights.  
3082  
3083 Mr. Wright - Two lights.  
3084  
3085 Ms. Wagner - One about where the white cursor is.  
3086  
3087 Mr. Wagner - And one at—  
3088  
3089 Ms. Wagner - And one at the far end.  
3090  
3091 Mr. Wright - Okay.  
3092  
3093 Mr. Kirkland - What are they, portable lights with generators?  
3094  
3095 Mr. Wagner - No, they're lights on poles.  
3096  
3097 Mr. Wright - Okay. Are they installed?  
3098  
3099 Mr. Wagner - Yes sir.  
3100  
3101 Mr. Wright - So, they're there. The other question I had, if this  
3102 Board were to put in a condition that you had to remove the manure from the  
3103 property, could you live with that?  
3104

3105 Mr. Wagner - To some extent, yes sir. We don't—Like I said, we  
3106 don't collect. There's no equipment made, other than a manure fork or a shovel,  
3107 to pick manure off the ground.  
3108

3109 Mr. Wright - I'm talking about when you clean the stable.  
3110

3111 Mr. Wagner - Yes sir.  
3112

3113 Mr. Wright - When you clean the stable out, if you were required to  
3114 take that off site, would that present a problem for you?  
3115

3116 Mr. Wagner - Not directly, no sir.  
3117

3118 Mr. Kirkland - Any other questions?  
3119

3120 Mr. Nunnally - Yes, I'd like to ask Mr. Blankinship, since everybody is  
3121 still here, have we ever had a problem from anybody on this operation?  
3122

3123 Mr. Blankinship - Well, it was because of the complaint that this came  
3124 before us to begin with.  
3125

3126 Mr. Nunnally - Yes, but when did this complaint come, just recently?  
3127

3128 Mr. Blankinship - The first one I know of was this summer. I believe  
3129 the—  
3130

3131 Mr. Nunnally - And they've been operating for—How long have you  
3132 all been operating?  
3133

3134 Ms. Wagner - We're going into our fourth year.  
3135

3136 Mr. Nunnally - Fourth year.  
3137

3138 Mr. Blankinship - I believe Ms. Akers testified that there had been  
3139 previous complaints that had been forwarded to my office. So, there may have  
3140 been other complaints that I'm not aware of.  
3141

3142 Mr. Wagner - Excuse me.  
3143

3144 Mr. Nunnally - Go ahead.  
3145

3146 Mr. Wagner - I've never had a complaint from them. This was my—  
3147 I was kind of befuddled by this because—My neighbors have contacted me about  
3148 everything that has gone in our neighborhood since we've lived there, if a gun  
3149 was fired, if a—whatever. I don't understand why they didn't come to me with  
3150 this before they went to the County. One more thing I had meant to bring up that

3151 I didn't when we were talking about other things that could have affected any of  
3152 this in the area is all of the land, probably 5,000 acres, several thousand  
3153 [unintelligible] anyway, between Darbytown Road and Hines Road drains through  
3154 this piece of property. Directly behind us is a cattle farm, which drains directly  
3155 into this creek directly between our two pieces of property, with probably a  
3156 hundred cows on it. I don't know; maybe it's 15 or maybe it's 100, but they're  
3157 there. That drainage from that land is far more accessible to the creek we're  
3158 talking about than the manure from my horses. So, I don't know how you would  
3159 separate it, and if somebody wanted to check it, they'd be welcome to come out  
3160 and sample this water in the creek and see if they find this manure in it, or any of  
3161 these problems. I don't have any problem with that. And as far as that, like I  
3162 said, that manure pile, if anyone would like to look under it—it's a brush pile, it's  
3163 not a manure pile. It's never had manure in it. If the County would allow me a  
3164 permit to burn it, I'd be glad to get rid of it tomorrow.

3165  
3166 Mr. Wright - I have another question I meant to ask. You have ten  
3167 horses and you say you own six.

3168  
3169 Mr. Wagner - Yes sir.

3170  
3171 Mr. Wright - And ten are leased to you or provided for you.

3172  
3173 Ms. Wagner - Four.

3174  
3175 Mr. Wright - Four are—

3176  
3177 Mr. Wagner - Four additional.

3178  
3179 Mr. Wright - Do you lease those or do they give them to you, lend  
3180 them to you?

3181  
3182 Mr. Wagner - They belong to the riding center.

3183  
3184 Mr. Wright - I see.

3185  
3186 Mr. Wagner - And we board them for the riding center. They are the  
3187 only boarding client that we have.

3188  
3189 Mr. Wright - That's the other. That's what I want to get to.

3190  
3191 Mr. Wagner - Two of our horses are also used in the riding  
3192 program.

3193  
3194 Mr. Wright - So, out of your six horses, you only use two in the  
3195 riding program.

3196

3197 Mr. Wagner - Yes sir. One of our horses is a spotted [unintelligible]  
3198 stallion. He's only two years old and he's a little bit to—  
3199  
3200 Mr. Wright - Too frisky.  
3201  
3202 Mr. Wagner - —immature to be used for anything. His mother is  
3203 used in the riding program.  
3204  
3205 Ms. Wagner - Our personal horses are just used for our personal  
3206 needs.  
3207  
3208 Mr. Wright - Do you have any other operation where you give  
3209 riding lessons?  
3210  
3211 Ms. Wagner - No sir.  
3212  
3213 Mr. Wright - I'm just trying to get at—There was some statement  
3214 that they didn't know whether this was the sole thing you did with your horses.  
3215 You use how many in this operation, total? How many horses do you actually  
3216 use?  
3217  
3218 Ms. Wagner - We actually utilize six horses in the program.  
3219  
3220 Mr. Wright - Six. And the other four are your personal horses.  
3221  
3222 Ms. Wagner - Well, six are our personal horses; two are leased to  
3223 be used by the riding center.  
3224  
3225 Mr. Wright - So, you only use six in the riding.  
3226  
3227 Ms. Wagner - Correct.  
3228  
3229 Mr. Wright - And the other four are not.  
3230  
3231 Ms. Wagner - They're not suitable to be therapeutic horses.  
3232  
3233 Mr. Wright - Do you use those for any other purpose?  
3234  
3235 Ms. Wagner - To ride them, yes.  
3236  
3237 Mr. Wright - You ride them yourself?  
3238  
3239 Ms. Wagner - Yes.  
3240  
3241 Mr. Wright - Do you have riding lessons for anybody outside or  
3242 anything?

3243  
3244 Ms. Wagner – No, we don't do riding lessons; we just do private trail  
3245 riding.  
3246  
3247 Mr. Wright - So those you use personally.  
3248  
3249 Ms. Wagner – Yes.  
3250  
3251 Mr. Wright - That's the sole purpose for those other four horses.  
3252  
3253 Ms. Wagner – Yes.  
3254  
3255 Mr. Wright - One more question. I'm just trying to find out if you  
3256 can get along with fewer horses. You've got ten, and you use six in your riding,  
3257 and you have four personal horses. So, could you get along with—I think there  
3258 was some information when you started you had eight horses—in our material—  
3259 back in 2004.  
3260  
3261 Ms. Wagner – Well, we started with four horses, our personal horses  
3262 that we've had since 1996, is when we got two horses, and in '97 we got two  
3263 more. We've had four horses on the property, basically since 1997.  
3264  
3265 Mr. Wright - Okay.  
3266  
3267 Ms. Wagner – Since the Horses in Service program started, starting  
3268 in 2004, might have been 2003, we got another horse, the center got a horse.  
3269 And then we got two more personal horses, and then the center got three more  
3270 horses, making the total of 10.  
3271  
3272 Mr. Wright - What I'm trying to get at, could you possibly operate  
3273 with less than 10 horses?  
3274  
3275 Ms. Wagner – We could not operate with less than ten horses, no.  
3276  
3277 Mr. Wright - Because four of them are not used.  
3278  
3279 Ms. Wagner – Correct, but they are our personal horses that I don't  
3280 want really want to get rid of. I want to keep them.  
3281  
3282 Mr. Wright - So, what you're saying six, you need a minimum of six  
3283 for the operation that this would be permitted for.  
3284  
3285 Ms. Wagner – At least, yes. I mean, we're running with six. We're  
3286 at our limit as far as how many riders we can take.  
3287



3288 Mr. Wright - Somewhere in this material I saw where you have a  
3289 waiting list.  
3290  
3291 Ms. Wagner – We do. That waiting list is for if we have riders that  
3292 drop out for whatever reason.  
3293  
3294 Mr. Wright - So, you cannot accommodate any more riders right  
3295 now with the horses you have.  
3296  
3297 Ms. Wagner – That’s correct.  
3298  
3299 Mr. Wright - Is there any possibility that any one of the four horses  
3300 which you have personally could be trained so you could use them?  
3301  
3302 Ms. Wagner – Yes. We have one in training right now.  
3303  
3304 Mr. Wright - Okay. So, you may increase it to seven horses.  
3305  
3306 Ms. Wagner – Used in the program? That’s possible, yes. One of  
3307 them is kind of on a standby temporary. In case one of the therapy horses comes  
3308 up lame or something like that, then we have a substitute horse that we can put  
3309 in.  
3310  
3311 Ms. Dwyer - I have a question for staff, if you’re finished with the  
3312 questions of these witnesses.  
3313  
3314 Ms. Harris - I have a question for Mr. Wagner. I think the answer  
3315 is no, but have you ever met with the community to discuss this concern?  
3316  
3317 Mr. Wagner - I never knew until this complaint came up that there  
3318 was a concern.  
3319  
3320 Ms. Harris - Right.  
3321  
3322 Mr. Wagner - I have discussed it with my neighbor across the road,  
3323 and he told me that he had no problem with it whatsoever.  
3324  
3325 Ms. Harris - Now you know that there is a concern—I heard you  
3326 say that a few minutes ago. I didn’t mean to cut you off, but I did hear you say  
3327 that a few minutes ago. Now you know that there is a—the Akers have a problem  
3328 with the smell, and you said it could come from the cattle, not necessarily the  
3329 horses.  
3330  
3331 Mr. Wagner - No ma’am, I wasn’t talking about smell, I was talking  
3332 about any problems they might be having with their water, because we don’t  
3333 have any problems in ours.



3380 purposely left until I had an opportunity, we got some rain so that I could do  
3381 something with it. It wasn't just neglect.

3382

3383 As far as getting with my neighbors, had my neighbors come to me in the  
3384 beginning and told me they had a problem, were worried about my manure  
3385 problem or whatever else, we could have probably taken care of that at home.  
3386 Like I say, I don't understand why this was all thrown up to give you people  
3387 something to do, when we've had, like I thought, cordial relations in the past.

3388

3389 Ms. Dwyer - Mr. Blankinship, I see that there are really two issues  
3390 in front of us. One has to do with the conditional use permit, which requires us to,  
3391 among other things, consider whether this use would adversely affect the health,  
3392 safety, and welfare of the people residing in the vicinity. I think all the testimony  
3393 today goes to that question. But the other question, which—Or the other issue  
3394 that I think we have to address—and there are several questions about the  
3395 statutes that apply, in my mind. It looks like 24-52(g) is the one that requires  
3396 riding stables to meet three times the distance requirement of Section 24-10(a).  
3397 And that distance requirement is normally 200 feet. So, we're talking here about  
3398 a 600-foot distance requirement that's imposed. Is that correct? The question in  
3399 my mind is from where to where is the 600 feet to be measured? And it's not  
3400 clear. When I look at the statute, it says, use of buildings or premises are to be,  
3401 in this case, 600 feet from any other lot occupied by a dwelling other than a farm  
3402 dwelling. So, that's the statute we're looking at it. My first question is, what's a  
3403 farm dwelling. Is that the neighbor's house or residence, in this case? So that's  
3404 one question. The other is, what do we measure from? Do we measure from that  
3405 house, or from the lot on which that house is located, to where on the Wagner's  
3406 property—to their property line, to their pasture, to their stable, to the manure  
3407 pile? Those, to me, are questions that I don't have the answers to and I would  
3408 like to have some legal counsel on the question of the application, and  
3409 interpretation of the statute. Specifically, what's a farm dwelling, and where do  
3410 we take this measurement.

3411

3412 Mr. Blankinship - I mentioned this morning that I thought there were two  
3413 cases on the agenda where you could probably take all of the public hearing that  
3414 you needed this morning, but that you probably might want to consider deferring  
3415 making a decision. This is the other one, and that's exactly the reason. Mr.  
3416 O'Kelly and I kicked this around a little bit, and the different conclusions that  
3417 we've reached seemed to apply in some cases, and not in others. We're having a  
3418 little bit of difficulty landing on the solid answer for that question.

3419

3420 Ms. Dwyer - We do have counsel; we have a County Attorney's  
3421 Office. Is there a formal way for us to ask for an opinion, or how do we go about  
3422 doing that?

3423

3424 Mr. Blankinship - I think Mr. O'Kelly can do that for us, but I would  
3425 suggest that—

3426  
3427 Mr. O'Kelly - I would like the opportunity first to get an  
3428 interpretation from the Director of Planning. I think that's the first place we  
3429 should go. If we need to go beyond a decision from the Director, then certainly  
3430 we could ask for an opinion from the County Attorney.

3431  
3432 Mr. Wright - In view of that, don't you think it would be in order to  
3433 move that we defer this to January? It's a lot for us to consider here, and we  
3434 want to make sure that [unintelligible] our decision for everybody concerned.

3435  
3436 Mr. Blankinship - As with the other case, I'd like for that motion to be  
3437 specific on what is being deferred and what is not. I don't think you need to open  
3438 up for testimony next month.

3439  
3440 **DECISION**

3441  
3442 Mr. Nunnally - Well, [unintelligible] heard from Mr. Wagner, I would  
3443 suggest that we defer until next month, if it's all right with you people.

3444  
3445 Mr. Kirkland - And we're going to answer that question that Ms.  
3446 Dwyer what's to get resolved.

3447  
3448 Mr. Nunnally - Right.

3449  
3450 Ms. Dwyer - And I could—

3451  
3452 Mr. Nunnally - [Unintelligible] all that information so we can make a  
3453 decision.

3454  
3455 Ms. Dwyer - And I think we close the public hearing. I think we  
3456 have enough information on the health, safety, and welfare issue. I don't think  
3457 we need any more facts on that issue. What we need facts on are the distance,  
3458 you know, how does the County ordinance apply to this case in terms of the  
3459 distance requirements. So, next month we won't have any more testimony. We'll  
3460 have a hearing, but we will hear from the Director of Planning and/or the County  
3461 Attorney on those legal questions, and then we'll make a decision.

3462  
3463 Mr. Wright - And that will give us an opportunity to digest all the  
3464 material that we've heard today.

3465  
3466 Ms. Dwyer - You should be here. Anyone who wants to be here is  
3467 welcome to be here.

3468  
3469 Mr. Kirkland - We're just not going to take any more testimony about  
3470 the health, safety, and welfare.

3471

3472 Ms. Dwyer - And we'll probably have our transcripts from this  
3473 hearing so we can review that in the meantime if we want to refresh our memory.

3474  
3475 Mr. Kirkland - That all said, I have a motion to defer by Mr. Nunnally.  
3476 Who seconded it?

3477  
3478 Mr. Wright - I seconded it.

3479  
3480 Mr. Kirkland - Seconded by Mr. Wright. All those in favor say aye.  
3481 All opposed say no. The ayes have it; the motion passes.

3482  
3483 Upon a motion by Mr. Nunnally, seconded by Mr, Wright, the Board **deferred**  
3484 application **UP-024-07**, Martha Wagner's request for a conditional use permit  
3485 pursuant to Section 24-52(g) to operate a riding stable at 6301 Hines Road  
3486 (Parcel 853-692-4325), zoned A-1, Agricultural District (Varina).

3487  
3488 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5  
3489 Negative: 0  
3490 Absent: 0

3491  
3492

3493 **UP-025-07 THE EAST END LANDFILL, LLC** requests a  
3494 conditional use permit pursuant to Section 24-116(c)(3) to consolidate two  
3495 existing landfills at 1820 Darbytown Road (Parcels 811-708-0108, 808-706-6679,  
3496 809-707-1585 and 806-708-6348), zoned B-3, Business District and M-2,  
3497 General Industrial District (Varina).

3498  
3499 Mr. Kirkland - Is the applicant here? Anyone else wish to speak on  
3500 this case? Anyone else wish to testify, please stand and raise your right hand,  
3501 and come on down front, or whatever, to be sworn in.

3502  
3503 Mr. Blankinship - Do you swear the testimony you're about to give is  
3504 the truth and nothing but the truth so help you God?

3505  
3506 Mr. Kirkland - If you would, please state your name for the record.

3507  
3508 Mr. Pollard - My name is Speaker Pollard. I'm an attorney-at-law  
3509 from Christian and Barton, representing The East End Landfill, LLC. Thank you  
3510 for your time today. Our application—TEEL I'll use short for The East End  
3511 Landfill. TEEL's application is essentially what I would sort of say, administrative  
3512 in nature. We are seeking to consolidate essentially two existing CUP's into one.  
3513 This results from a recent business transaction whereby East End Landfill, or  
3514 TEEL, acquired what was then called, and is still called Cox's Darbytown Road  
3515 Landfill, Inc. That had been a wholly owned subsidiary of S. B. Cox. Cox's  
3516 Darbytown Road Landfill was the corporate owner, the owner of—as you see on  
3517 your map—a landfill that is located, in part, adjacent to TEEL's existing landfill.

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What we're seeking to do today is simplifying operationally, but also, frankly, administratively, in terms of what controls, land-use controls apply, is to essentially merge the two existing CUP's for these two operations into one. At present, Cox's Darbytown Road Landfill, Inc., is still the record owner of that parcel. But TEEL, just from an operational standpoint, seeks to become the operator of that landfill. Its operations at this point are very much reduced. It's essentially on the—at this point, based on the footprint that you have there, somewhat in a very reduced stage of operation. But for reasons that I think would be obvious from a division standpoint, operationally it's much easier for TEEL to run and manage both facilities rather than trying to create some other entity and get caught in having multiple entities running different things that are next door to each other.

So, again, what we're seeking to do, the purpose of today's application, is to consolidate these two CUP's together. The terms as have been proposed by staff are acceptable to TEEL and, again, reflect essentially—Mr. Blankinship can speak to this as well—reflect almost to their entirety the current terms that are in TEEL's current CUP, which is a newer CUP than the one that exists at the Cox's Darbytown Road Landfill. The proposed CUP terms reflect more modern, more current [unintelligible], more current standards. We ask you to consider this and approve our application. I'll be glad to take any questions. I just would say that hand-in-hand with this we are—TEEL that is—is seeking the associated permit approvals and transfers from the Department of Environmental Quality to affect its ability to operate on the Cox's Darbytown Road Landfill, as well as to formalize that process with them as well. As far as we know, those permit transfers will be forthcoming to DEQ very soon, in conjunction with this, too. We're trying to kind of manage them altogether at one time.

Mr. Nunnally - Is this the one that bought out Simons?

Mr. Pollard - Yes sir. TEEL, The East End Landfill purchased out the Simons Hauling Landfill, right.

Mr. Nunnally - And it's the same operation that was going on then?

Mr. Pollard - Essentially, sir, yes. It's a construction demolition debris landfill.

Mr. Nunnally - [Unintelligible], Mr. Blankinship?

Mr. Blankinship - I'm sorry?

Mr. Nunnally - The same conditions on this as there was on the other?

3564 Mr. Blankinship - Yes sir. A little bit updated and tightened, because we  
3565 are combining two permits, an older one and a newer one. We've used almost  
3566 all the conditions from the newer one.  
3567

3568 Mr. Wright - I don't see anywhere in these conditions where it has  
3569 a time expiration?  
3570

3571 Mr. Blankinship - Landfills typically we have not put an expiration on.  
3572 We've allowed the DEQ permit to control that.  
3573

3574 Mr. Wright - So, DEQ has some control over that.  
3575

3576 Mr. Pollard - Yes sir. These sites are heavily regulated by the  
3577 Department of Environmental Quality [unintelligible] permits, including, ultimately,  
3578 closure and post-closure care for these facilities.  
3579

3580 Ms. Dwyer - So, Cox will maintain ownership of its property, and  
3581 you will be the operator.  
3582

3583 Mr. Pollard - For the time being, yes. For the foreseeable future.  
3584 And this gets into long-term business planning issues, but Cox's Darbytown Road  
3585 Landfill, Inc., will remain the record owner of that parcel, of those areas, but  
3586 TEEL seeks to operate. In the future, there may be some further business  
3587 consolidation that may bring this all under one entity. But for a variety of  
3588 business reasons that I would bore you to tears with, probably, this is sort of  
3589 where we are at this point. Right. You've had a long day already and I'm going to  
3590 keep this simple for you.  
3591

3592 Ms. Dwyer - Well, other than eliminating two 100-foot buffers that  
3593 are required because of the separate ownership now, but economies of  
3594 operation—  
3595

3596 Mr. Pollard - It simply allows TEEL as the operating entity already  
3597 essentially in place to operate generally across both parcels, rather than trying to  
3598 come up with some other way to operate this other site. TEEL is the existing  
3599 operating, landfill operating entity. It's owns the TEEL landfill. It provides a  
3600 simplified and I would say a unified way to manage both parcels, since they're  
3601 under common corporate structure and ownership.  
3602

3603 Ms. Dwyer - If you have an agreement with Cox that you're the  
3604 operator of their property, it seems to me that combining these is not really going  
3605 to add anything operationally to your ability to function on both parcels.  
3606

3607 Mr. Pollard - It does in the sense that Cox's Darbytown is  
3608 essentially a property holding company. It doesn't have, essentially, much in the  
3609 way of operating capability.

3610  
3611 Ms. Dwyer - Right. And so it's fine if you operate it. I guess—  
3612  
3613 Mr. Pollard - So, TEEL is looking—  
3614  
3615 Ms. Dwyer - —consolidate the CUP's?  
3616  
3617 Mr. Pollard - It allows TEEL as an entity to operate both landfills  
3618 under one common set of conditions. We think it streamlines the whole thing and  
3619 makes it simple for everybody, including the County in that you've got one  
3620 current common set of standards that are applying to what is essentially a  
3621 combined operation.  
3622  
3623 Ms. Dwyer - Is there any disadvantage to the County, Mr.  
3624 Blankinship, in having a non-owner holder of this combined CUP?  
3625  
3626 Mr. Blankinship - No ma'am. We would still hold the owner and the  
3627 operator responsible for any violations or failure to comply, or anything like that.  
3628  
3629 Mr. Wright - You have two people where you used to have just  
3630 one.  
3631  
3632 Mr. Blankinship - Right.  
3633  
3634 Ms. Dwyer - Is Cox part of this case, then?  
3635  
3636 Mr. Pollard - Well, the application was filed on behalf of both TEEL  
3637 and Cox's Darbytown Road Landfill, Inc. Remember, Cox's Darbytown Road  
3638 Landfill, Inc. is wholly owned by TEEL, as this point.  
3639  
3640 Ms. Dwyer - Cox is wholly owned by—  
3641  
3642 Mr. Pollard - Cox's Darbytown Road Landfill, Inc. was purchased—  
3643 the stock purchase acquisition in this past summer—by TEEL. So, S. B. Cox is  
3644 no longer associated with this operation whatsoever at this site. So, you have  
3645 essentially the parent company seeking to become the operator for both its own  
3646 owned operation, and for its subsidiary owned operation.  
3647  
3648 Ms. Harris - [Unintelligible] under Cox Darbytown Road Landfill,  
3649 cell 1 and cell 2. What functions go on there? Are they different?  
3650  
3651 Mr. Pollard - I should have mentioned this. Cox's Darbytown Road  
3652 Landfill was also a construction demolition debris landfill, so it's all the same  
3653 essential operation. And it's also currently permitted by DEQ. Very similar  
3654 operations, very like in their function.  
3655



3656 Ms. Harris - Do we have something in our [unintelligible] that dealt  
3657 with one of these cells in sludge operations?

3658  
3659 Mr. Blankinship - Yes ma'am.

3660  
3661 Ms. Harris - Where is that?

3662  
3663 Mr. Blankinship - Let's see if I can get the map. What's shown as Cell  
3664 2 in the purple property there, yes. That was once a sludge [unintelligible].  
3665 There was a plan of development approved for that. I believe when TEEL took  
3666 over the Simons property, they discontinued that use and made that—

3667  
3668 Mr. Pollard - It actually was never really used as a sludge. They  
3669 had obtained the permits for it. They had actually constructed a liner to hold it.  
3670 But I think, to my knowledge, there has never been any sludge deposited there.  
3671 So, it ended up being a very convenient transition for TEEL buying out Simons at  
3672 this property, that they could convert that into another cell of the landfill.

3673  
3674 Ms. Harris - Okay. In the staff report, page 2, the second  
3675 paragraph, the details of the reclamation plan will be negotiated with DEQ as the  
3676 permit progresses. Should this be a condition? I notice in the conditions there is  
3677 no mention of a reclaiming of the resources.

3678  
3679 Mr. Pollard - I don't know if Mr. Blankinship would have any  
3680 response.

3681  
3682 Mr. Blankinship - I'm trying to think of how we've handled other landfills  
3683 in the past.

3684  
3685 Mr. Pollard - Well, if I may. I think it's suggested condition #2 that  
3686 states the applicant has to maintain the appropriate financial responsibility to  
3687 ensure that whatever areas are involved, they will be reclaimed. In addition, this  
3688 CUP is subject to, and conditioned on, the appropriate permits being issued by  
3689 state authorities, including DEQ. DEQ permits call for the appropriate measures  
3690 to be taken, and there are regulatory provisions specifically in place for how you  
3691 deal with the design, operation, and then the closure—

3692  
3693 ***[End of Recording.]***

3694  
3695 *The following is a summary for the remainder of the meeting.*

3696  
3697 **DECISION**

3698  
3699 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by  
3700 Mr. Wright, the Board **granted** application **UP-025-07**, The East End Landfill,  
3701 LLC's request for a conditional use permit pursuant to Section 24-116(c)(3) to

3702 consolidate two existing landfills at 1820 Darbytown Road (Parcels 811-708-  
3703 0108, 808-706-6679, 809-707-1585 and 806-708-6348), zoned B-3, Business  
3704 District and M-2, General Industrial District (Varina).  
3705

3706 1. This use permit is subject to all requirements of the County Code.  
3707

3708 2. At all times, the applicant shall maintain a financial guaranty in the amount of  
3709 \$3,000 per acre to cover active cells permitted to receive waste under the solid  
3710 waste permit(s) issued by Virginia Department of Environmental Quality (DEQ),  
3711 guaranteeing that the land will be restored in accordance with DEQ regulations.  
3712 This permit does not become valid until a financial guaranty has been submitted  
3713 by The East End Landfill, LLC in substitute for both the guaranty in place under  
3714 UP-20-2006 and the bond currently in place under UP-9-93, and the same is  
3715 approved by the County Attorney. The financial guaranty may provide for  
3716 termination after 90 days notice in writing to the County. In the event of  
3717 termination, this permit shall be void, and work incident thereto shall cease, and  
3718 within the next 90 days the applicant shall restore the land as provided for under  
3719 the conditions of this use permit. Termination of such financial guaranty shall not  
3720 relieve the applicant from its obligation to indemnify the County of Henrico for any  
3721 breach of the conditions of this use permit. If this condition is not satisfied within  
3722 60 days of approval, the use permit shall be void, except in the event that the  
3723 approval of this use permit is appealed, the guaranty shall be submitted within 60  
3724 days of the final action on the appeal.  
3725

3726 3. Before beginning work on additional landfill cells or any other land disturbing  
3727 work, the applicant shall submit erosion control plans to the Department of Public  
3728 Works for review and approval. Throughout the life of the operation, the  
3729 applicant shall continuously satisfy the Department of Public Works that erosion  
3730 control procedures are properly maintained, and shall furnish plans and bonds  
3731 that the department deems necessary. All plans provided by the applicant shall  
3732 include certification from a licensed professional engineer that the landfill facilities  
3733 and sediment control structures meet the approved design criteria as set forth by  
3734 the State.  
3735

3736 4. The applicant shall obtain and maintain a permit or permits from the Virginia  
3737 Department of Environmental Quality. If this condition is not satisfied within one  
3738 year of approval, the use permit shall be void.  
3739

3740 5. The applicant shall comply with the Chesapeake Bay Preservation Act and all  
3741 state and local regulations administered under such act applicable to the  
3742 property, and shall furnish to the Planning Department copies of all reports  
3743 required by such act or regulations.  
3744

3745 6. Hours of operation shall be from 7:00 a.m. to 6:00 p.m. when Daylight Savings  
3746 Time is in effect, and from 7:00 a.m. to 5:00 p.m. at all other times.  
3747

- 3748 7. No operations of any kind are to be conducted at the site on Sundays or  
3749 national holidays.  
3750
- 3751 8. [AMENDED] All means of access to the property shall be from the established  
3752 entrance from Darbytown Road or such other entrance as may be approved in  
3753 writing by the Planning Department. Trucks entering or leaving the site shall not  
3754 travel on Bickerstaff, Midview, Oakland or Old Oakland Roads.  
3755
- 3756 9. The applicant shall erect and maintain gates at all entrances to the landfills.  
3757 These gates shall be locked at all times, except when authorized representatives  
3758 of the applicant are on the property.  
3759
- 3760 10. The applicant shall post and maintain a sign or signs at the entrances to the  
3761 landfills stating the name of the operator, the use permit number, the DEQ permit  
3762 number(s), and the telephone number of the operator. The sign(s) shall be at  
3763 least 12 square feet in area and the letters shall be at least three inches tall.  
3764
- 3765 11. The applicant shall post and maintain "No Trespassing" signs every 250 feet  
3766 along the perimeter of the property. The letters shall be at least three inches tall.  
3767 The applicant shall furnish the Chief of Police a letter authorizing the Division of  
3768 Police to enforce the "No Trespassing" regulations and agreeing to send a  
3769 representative to testify in court as required or requested by the Division of  
3770 Police.  
3771
- 3772 12. Standard "Trucks Entering Highway" signs shall be erected and maintained  
3773 on Darbytown Road on each side of the entrance(s) to the property. These signs  
3774 will be placed by the County, at the applicant's expense.  
3775
- 3776 13. The applicant shall post and maintain a standard stop sign at all entrances to  
3777 the property for exiting traffic.  
3778
- 3779 14. Whenever the Division of Police deems necessary, the applicant shall provide  
3780 a flagman to control traffic from the landfills onto the public road(s), with the  
3781 flagman yielding the right of way to the public road traffic at all times.  
3782
- 3783 15. All roads used in connection with this use permit shall be effectively treated  
3784 with calcium chloride or other wetting agents to eliminate any dust nuisance.  
3785
- 3786 16. The operations shall be scheduled so that trucks will travel at regular  
3787 intervals and not in groups of three or more.  
3788
- 3789 17. The applicant shall maintain the property, fences, and roads in a safe and  
3790 secure condition so long as this use permit is in effect, or convert the property to  
3791 some other safe use.  
3792

3793 18. If, in the course of its preliminary investigation or operations, the applicant  
3794 discovers evidence of cultural or historical resources, or an endangered species,  
3795 or a significant habitat, it shall notify appropriate authorities and provide them  
3796 with an opportunity to investigate the site. The applicant shall report the results  
3797 of any such investigation to the Planning Department.  
3798

3799 19. If water wells located on surrounding properties are adversely affected, and  
3800 the landfill operations on this site are suspected as the cause, the affected  
3801 property owners may present to the Board of Zoning Appeals evidence that the  
3802 landfill operation is a contributing factor. After a hearing by the Board, this use  
3803 permit may be revoked or suspended, and the operator may be required to  
3804 correct the problem.  
3805

3806 20. The landfills shall only accept construction and demolition debris originating  
3807 within 150 miles of the site, hauled by the applicant and other contract haulers  
3808 licensed by the Commonwealth of Virginia. The material to be deposited in the  
3809 landfills shall not include any hazardous wastes as defined by the Virginia  
3810 Hazardous Waste Management Regulations or any biodegradable material other  
3811 than woody waste from construction, demolition and land clearing operations.  
3812

3813 21. A superintendent, who shall be personally familiar with all the terms and  
3814 conditions of Section 24-103 of Chapter 24 of the County Code, as well as the  
3815 terms and conditions of this use permit, shall be present at the beginning and  
3816 conclusion of operations each work day to see that all the conditions of the Code  
3817 and this use permit are observed.  
3818

3819 22. Each day the applicant shall monitor and clean up any trash, dust or mud  
3820 along any public road within 2,000 feet of the entrance(s) to the site.  
3821

3822 23. A progress report shall be submitted to the Board on April 30 of each year.  
3823

3824 24. Failure to comply with any of the foregoing conditions shall be grounds for the  
3825 Board to void this permit.  
3826

|      |              |   |   |
|------|--------------|---|---|
| 3827 | Affirmative: | Dwyer, Harris, Kirkland, Nunnally, Wright | 5 |
| 3828 | Negative:    |   | 0 |
| 3829 | Absent:      |   | 0 |

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3831

3832 **UP-026-07** **FLOYD D. GOTTWALD, JR.** requests a conditional  
3833 use permit pursuant to Section 24-95(i)(4) to allow accessory structures in the  
3834 front/side yards at 300 Herndon Road (Parcel 748-731-9963), zoned R-1, One-  
3835 family Residence District (Tuckahoe).  
3836

3837 A representative of the property owner spoke, indicating they were planning on  
3838 demolishing the existing home and replacing it with a larger home of over 10,000

3839 square feet. The existing swimming pool would be replaced with a newer pool.  
3840 This future pool would be located in the side yard, thus the need for the CUP. In  
3841 addition, there are several existing accessory structures in the front yard that also  
3842 are part of this CUP request. These structures were constructed when the  
3843 original home was built in 1966. They include a pump house, equipment storage  
3844 building and a couple of guest houses. A Board member inquired about the  
3845 guest houses and was told they have not been occupied for years.

3846  
3847 Ms. Harris inquired about the access drive. A picture of it was put on the screen  
3848 and it was noted that it was paved and had a width of 12 to 14 feet.

3849  
3850 Ms. Dwyer noted the access driveway and asked if a variance was needed. Mr.  
3851 O’Kelly responded that staff had looked into this and had determined one was  
3852 not necessary, since the applicant owns the surrounding land that was recently  
3853 made part of a permanent conservation easement. Mr. Blankinship noted that  
3854 this was the variance that was scheduled for earlier in the meeting, but this was  
3855 withdrawn once it was determined not to be necessary.

3856  
3857 Ms. Dwyer noted the applicant is replacing one home with a new one, the same  
3858 with the pool, while the accessory buildings themselves have been in place since  
3859 the original home was constructed. Therefore as far as the use permit is  
3860 concerned there is not really any change from the existing arrangement of  
3861 buildings on the property. In addition, this is a roughly 61 acre parcel making the  
3862 buildings virtually invisible from the neighbors. Finally there is a certain historic  
3863 value to the outparcel buildings. As a result, Ms. Dwyer moved that the  
3864 application be approved. It was subsequently seconded by Mr. Wright.

3865  
3866 After an advertised public hearing and on a motion by Ms. Dwyer, seconded by  
3867 Mr. Wright, the Board **granted** application **UP-026-07**, Floyd D. Gottwald, Jr.’s  
3868 request for a conditional use permit pursuant to Section 24-95(i)(4) to allow  
3869 accessory structures in the front/side yards at 300 Herndon Road (Parcel 748-  
3870 731-9963), zoned R-1, One-family Residence District (Tuckahoe).

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3872  
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3874

3875 1. This approval allows five existing structures, identified as the equipment  
3876 garage, barn, pump house, tenant house, and guest house, to remain on the  
3877 property and also allows a swimming pool to be constructed with the new  
3878 dwelling. No other accessory structures may be constructed in the front or side  
3879 yard of the property without approval of a separate conditional use permit.

3880  
3881 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5  
3882 Negative: 0  
3883 Absent: 0  
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**Minutes**

After a motion made by Ms. Harris, and seconded by Ms. Dwyer, the Board **approved** the minutes of the **November 15, 2007** Board of Zoning Appeals meeting as drafted.

|              |   |   |
|--------------|---|---|
| Affirmative: | Dwyer, Harris, Kirkland, Nunnally, Wright | 5 |
| Negative:    |   | 0 |
| Absent:      |   | 0 |

At this time the Board **adjourned** until their January 24, 2008 public hearing.

Richard Kirkland, CBZA  
Chairman

Benjamin Blankinship, AICP  
Secretary