

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 GOVERNMENT CENTER AT PARHAM**  
4 **AND HUNGARY SPRINGS ROADS, ON THURSDAY, MARCH 26, 2009, AT**  
5 **9:00 A.M., NOTICE HAVING BEEN PUBLISHED IN THE RICHMOND TIMES-**  
6 **DISPATCH MARCH 5, 2009, AND MARCH 12, 2009.**

7  
Members Present: Elizabeth G. Dwyer, Chairman  
Helen E. Harris, Vice Chairman  
James W. Nunnally  
Robert Witte  
R. A. Wright

Also Present: David D. O'Kelly, Jr., Assistant Director of Planning  
Benjamin Blankinship, Secretary  
R. Miguel Madrigal, County Planner  
John Short, Zoning Enforcement Supervisor  
Jerry Peay, Zoning Enforcement Officer  
Carla Brothers, Recording Secretary  
Angela Edmondson, Recording Secretary

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9  
10 Ms. Dwyer - Good morning. The March 26, 2009 session of the  
11 Henrico County Board of Zoning Appeals will now come to order. Please rise for  
12 the **Pledge of Allegiance**.

13  
14 Mr. Blankinship, would you read the rules of the Board, please.

15  
16 Mr. Blankinship - Good morning, Madam Chairman, members of the  
17 Board, ladies and gentlemen. The rules for this meeting are as follows. Acting as  
18 secretary, I will call each case, and as I'm speaking, the applicant, or the  
19 appellant in this case, should come down to the podium. We will then ask  
20 everyone who intends to speak to stand and be sworn in. The applicant or  
21 appellant will speak, and then anyone else who wishes to speak will be given the  
22 opportunity. At the end, the applicant, and only the applicant, will have the  
23 opportunity for rebuttal. After they have heard all the testimony and asked  
24 whatever questions they have, the Board will take the matter under advisement, I  
25 presume. Their normal procedure is to render all the decisions at the end of the  
26 meeting, and I presume that we'll continue that this morning. This meeting is  
27 being recorded, so I will ask everyone who speaks to speak directly into the  
28 microphone on the podium, state your name, and please spell your last name so  
29 we get it correctly in the record. There are two binders in the foyer that contain  
30 the staff report for each case, including the conditions that have been  
31 recommended by the staff. On use permit cases, that is particularly important.

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Ms. Dwyer - Thank you, Mr. Blankinship. Are there any deferrals or withdrawals this morning?

Mr. Blankinship - No ma'am.

Ms. Dwyer - I have a request by counsel for Tidewater Quarries to hear that case first, and that's been agreed to by counsel for the Wagner's. Assuming that that case does not have opposition, is the Board agreeable to that? The case would take less time than the first case. Would counsel for Tidewater Quarries come forward, please. Is there anyone here to speak to this case, UP-004-09, Tidewater Quarries, Incorporated? Anyone other than Tidewater Quarries? Is that agreeable to the Board, to take this case first? Well, let's call the case.

**UP-004-09 TIDEWATER QUARRIES, INC.** requests a conditional use permit pursuant to Sections 24-52(d) and 24-103 to extract materials from the earth at 11460 Staples Mill Road (Parcels 756-773-3302 and 759-773-4746), zoned A-1, Agricultural District and M-2C, General Industrial District (Conditional) (Three Chopt).

Mr. Blankinship - Anyone who intends to speak, please stand and raise your right hand.

Ms. Dwyer - If you think you might speak, please.

Mr. Blankinship - Get it over with now. Raise your right hand, please. Do you swear the testimony you're about to give is the truth and nothing but the truth so help you God?

Mr. Wilson - I do.

Ms. Dwyer - Please state your name and your case.

Mr. Wilson - Good morning, Madam Chairman, members of the Board, and Mr. Blankinship. My name is Jack Wilson—W-i-l-s-o-n. It is my privilege to be here this morning on behalf of the applicant, Tidewater Quarries. I wanted to make sure, though, that the Board understood that while the applicant is Tidewater Quarries, Vulcan Materials Company has recently acquired this particular quarry and is now the owner of the quarry, having acquired the site a little more than a year ago. Vulcan Materials Company is a company that this Board and Henrico County are very familiar with, I believe, because of its other superior operations in the area.

I do, also, before I get into the presentation, want to recognize the hard work and the thorough work of staff in the preparation of this report, and on the ongoing

78 dialogue as we've worked through this application. That work included a site visit  
79 to the site where Mr. Blankinship and other members of the Planning staff were  
80 able to ask some good questions about the site and get a better understanding of  
81 the operations. We appreciate that involvement on behalf of the County.

82  
83 As you saw, we did have a number of folks from Vulcan here this morning.  
84 Among them included Butch Moody who is the plant manager, and Jack Marsh,  
85 who's the area operations manager. These folks have been in contact fairly  
86 regularly with the affected communities and have worked on good dialogue with  
87 them.

88  
89 As many of you know and the staff report pointed out, this quarry has been  
90 operating since its first conditional use permit was issued over 40 years ago in  
91 1965. Currently, the quarry has nearly \$38 million of assets employed at the site.  
92 It's clearly a major entity in Henrico County and worthy of ongoing good work for  
93 the County.

94  
95 As you know, the standard for review and renewal of a conditional use permit  
96 essentially is has the applicant complied in good faith with the conditions  
97 imposed in connection with its most recently application and [unintelligible] 2004.

98  
99 In the staff report, the staff has done an excellent job providing an overview of  
100 the property's location, and I believe the Board is very familiar with this site and  
101 area in Henrico County. A couple of things worth mentioning about this site, as  
102 you can see from the site plan that's on the screen, the site is very well buffered  
103 on all sides. To the north, it has the Chickahominy River, which provides an  
104 excellent buffer as it moves into Hanover County. It has Staples Mill Road (State  
105 Route 33) to the east that serves as a buffer. The County landfill serves as a  
106 buffer to the west, and of course you have I-295 to the south, which also serves  
107 as an excellent buffer. The buffer is actually to the exterior of the property. The  
108 property itself provides significant buffering from the quarry operations. The  
109 overall property is 212 acres, and as you can see from that aerial photograph, a  
110 good bit of the buffers is heavily wooded. Only 89.09 acres is devoted to quarry  
111 operations itself. So, well over half of the property serves as additional buffers  
112 from the neighbors in the surrounding communities.

113  
114 Again, we're here today because the existing use permit granted in April 2004  
115 expires on April 30, 2009. So, a renewal is required to continue the operations at  
116 this site. I do want to say at the outset that we are seeking no changes to the  
117 conditions in the existing permit. All those that have been proposed by the staff  
118 in the staff report are agreeable to the applicant. In fact, there are a couple of  
119 new conditions that I will identify, and Tidewater Quarries and Vulcan Materials  
120 have already started the steps to get in compliance with those new conditions.  
121 So, clearly, we want to make it clear that no changes in the conditions are  
122 proposed. Again, what we need to demonstrate for this renewal is that there  
123 have been no violations of the existing conditions from the permit granted five

124 years ago. There have been none and I think the staff report recognizes that as  
125 well.

126  
127 One of the things I did want to highlight is that the applicant, Tidewater Quarries,  
128 as you're well aware, had created a Community Liaison Committee a few years  
129 ago. That committee continues to work with the neighbors to get feedback on the  
130 operations of the quarry, provide information back to the community about the  
131 operations. When Vulcan acquired the site, they really stepped up the dialogue  
132 and the ongoing communications with the community group, with the neighbors.  
133 In the past, those meetings would have been held on sort of a quarterly basis  
134 without much interaction between each quarterly meeting. Since then, Butch  
135 Moody, the plant manager, Jack Marsh and others with Vulcan, have really been  
136 in regular dialogue with those folks in the community that had questions, and  
137 provided a lot of feedback to those, as well as continuing the ongoing regularly  
138 scheduled CLC meetings. I think you can see from the folks, or the absence of  
139 folks here today, they've done a pretty good job of reaching out to the  
140 community.

141  
142 So, in short, again, the applicant has complied with all the terms of its existing  
143 conditional use permit and has gone well beyond those conditions to work closer  
144 with the communities that are closest to the quarry.

145  
146 Let me highlight just very briefly some of the quarry's benefits to the community.  
147 Clearly, there's the employment aspect of this operation. In 2008, the quarry  
148 employed 13 people. It provides, of course, necessary materials for construction  
149 of community roads, houses, schools, other such infrastructure needs, provides a  
150 great tax source to the County. In 2008, nearly \$100,000 in taxes were paid to  
151 Henrico County from this operation. Vulcan, as you all are well aware, is a great  
152 corporate partner in the community, through its other operations in the  
153 community, it has reached out to schools and other community groups. Since  
154 Vulcan has acquired this site, that trend has continued. It reached out and is  
155 partnering with Rivers Edge Elementary School. It recently received a letter of  
156 appreciation from the principal of that school for that partnership. Vulcan clearly  
157 recognizes that that's part of its corporate culture, and continues to do that in  
158 relation to the Springfield Quarry.

159  
160 In conclusion, let me say it again, the applicant has been in total compliance with  
161 all the conditions in the existing use permit 9-2004. It has made significant  
162 investments in terms of time and resources to further minimize any impact it  
163 could have on its neighbors. It has continued and will continue to work on its  
164 relationship with this community group, the Community Liaison Committee, and  
165 will continue to get their feedback as it continues to improve its operations to  
166 even further minimize its impact on the neighbors. Again, Vulcan, as I mentioned,  
167 is a great corporate partner in the community. For all these reasons and others  
168 that I could probably go into if I needed to, we would just ask for your approval of

169 the renewal application. I'd be happy to answer any questions that any Board  
170 members may have.

171  
172 Ms. Dwyer - Thank you, Mr. Wilson. Any questions by Board  
173 members?

174  
175 Mr. Wright - A couple of questions. On Condition #8, it says  
176 Monday through Friday from 9 to 5 and nothing on Sunday, but it doesn't say  
177 anything about Saturday. Then #14 of the exhibit, which is with the applicant's  
178 materials, it says it will operate between 7 and 6 with no Sunday operations. I'm  
179 just curious to know what happens on Saturday. We don't mention that in this  
180 anywhere. Is it your understanding, sir, that you can operate on Saturday?

181  
182 Mr. Wilson - Yes. Again, the hours of operation, 9 to 5 on Monday.  
183 The blasting is limited, obviously, in here to the more limited hours. Six to eight  
184 for shipping and that we could operate on Sundays. But again, no blasting would  
185 be permitted on Saturdays. Shipping could, other operations could, but the  
186 blasting would be limited to Monday through Friday.

187  
188 Mr. Blankinship - So, that should read, you're suggesting, Mr. Wilson,  
189 "Hours of operation shall be limited to 9 a.m. to 5 p.m. Monday through Friday for  
190 blasting, 6 a.m. to 8 p.m. Monday through Saturday for shipping, and 7 a.m. to 6  
191 p.m. Monday through Saturday for all other operations."

192  
193 Mr. Wilson - That's correct. And with no operations on Sunday or  
194 national holidays.

195  
196 Mr. Wright - That would be consistent with what they say they're  
197 doing.

198  
199 Mr. Blankinship - Right.

200  
201 Mr. Wright - The other question I have is about Condition #21. The  
202 last sentence says, "Rehabilitation shall not be considered completed until the  
203 mined area is covered completely with permanent vegetation." Yet in paragraph  
204 one of the exhibit it says, "When the quarry operations are completed, operations  
205 discontinued, and the quarry left unattended for one month or longer, any  
206 exposure shall be covered with topsoil and seeded and stabilized, and the pit  
207 would be allowed to fill with water and used as a pond." It appears to me that our  
208 condition is not consistent with what they say there. I would assume that the idea  
209 is that they would have a pond there, except for the areas that needed to be  
210 seeded. Shouldn't our Condition 21 be changed to indicate that?

211  
212 Mr. Blankinship - We could either say "until the exposed area or  
213 exposed soil," or something like that, "is covered completely with permanent

214 vegetation.” Or we could just add the words, “or water,” at the end of the  
215 sentence.  
216  
217 Mr. Wright -                                Whatever. I just think that condition is not consistent  
218 with what they say they’re doing.  
219  
220 Ms. Dwyer -                                What are your thoughts, Mr. Wilson?  
221  
222 Mr. Wilson -                                I could see where we could say “until the mined area  
223 is covered completely with permanent vegetation or water as appropriate.”  
224  
225 Mr. Wright -                                I just want to make sure we’re operating on the same  
226 frequency. Those are all the questions I have.  
227  
228 Ms. Harris -                                What is the depth of the quarry now?  
229  
230 Mr. Wilson -                                We’re down to about approximately 280 feet.  
231  
232 Ms. Harris -                                So, we can anticipate in the next five years that you’re  
233 going to go down how much?  
234  
235 Mr. Wilson -                                The way this works, and as you can sort of see from  
236 the photograph, they work around these benches to go further down, so I don’t  
237 know over the next five years, do you anticipate going lower [unintelligible].  
238  
239 Mr. Blankinship -                                I think it’s clearer.  
240  
241 Mr. Wilson -                                Yes, perhaps one more bench or another 40 feet  
242 lower over the course of the next five years. Again, part of that depends on the  
243 economy and the demand for stone. That would dictate.  
244  
245 Mr. Blankinship -                                You won’t be going deeper so much as laterally.  
246  
247 Mr. Wilson -                                Working down the face, working down those benches.  
248 As you work down, then another bench gets created. It’s sort of hard to see from  
249 the photograph, the tiering of those. He said perhaps another bench would be  
250 created over the course of the next five years, which would be another 40 feet  
251 below where they currently are.  
252  
253 Ms. Harris -                                Another question I have is I know you have resolved  
254 many issues with the community. What type of questions do they have?  
255  
256 Mr. Wilson -                                Again, I think they were really pleased. The neighbors  
257 were pleased when Vulcan acquired the site. The issues that come up generally  
258 are when is the blasting going to occur. And, of course, Vulcan has taken the  
259 folks out there and shown those interested neighbors where the blasting will

260 occur. They're just generally interested in the continuing operations of the  
261 quarry, in terms of when the blasts will occur and what improvements, if any,  
262 Vulcan continues to make in the operations of the quarry. So, nothing specific  
263 other than just general interest in how the quarry's being operated. I think  
264 they've been pleased with the feedback that they've received from Vulcan on  
265 those issues.

266  
267 Ms. Harris - You said they asked the question what improvements  
268 does Vulcan intend to make. What improvements?

269  
270 Mr. Wilson - Well, one of the things that Vulcan has done,  
271 obviously there were the issues with blasting. The experts that were brought in  
272 by Tidewater Quarries on blasting, Vulcan has taken those recommendations  
273 and then further refined them to continue to minimize any impacts of a blast on  
274 the neighbors. So, looking at Vulcan's blasting impacts compared to the prior  
275 operator's impacts shows that Vulcan has further reduced the impacts of a blast.  
276 Using greater technology in the blasting techniques further minimizes the impact  
277 on the neighbors. That's one thing that Vulcan continues to explore, how they  
278 can further reduce whatever impacts there are on the neighbors. I think the  
279 neighbors have seen that and appreciate that.

280  
281 Ms. Harris - Do we still get blasting reports, Mr. Blankinship?

282  
283 Mr. Blankinship - Yes ma'am.

284  
285 Ms. Dwyer - Any other questions by Board members? So, the  
286 reclamation plan that I saw looked a lot like the mining plan. I didn't see a lot of  
287 difference. Can you help me understand about the reclamation?

288  
289 Mr. Wilson - Essentially, the plan would be that once the  
290 operations are completed that the pit would likely be filled with water. And then  
291 as we talked about the areas that are exposed that are currently not covered with  
292 topsoil and then would not be covered with water, would have topsoil placed back  
293 on them and permanent vegetation installed or grown in those areas.

294  
295 Ms. Dwyer - This is just storm water that's going to fill the quarry  
296 because you don't have—

297  
298 Mr. Wilson - Any water source, and there's no groundwater in  
299 there. So, it would be all storm water.

300  
301 Ms. Dwyer - Will that be enough to fill it so that it could be a  
302 recreational area, or would it just be [inaudible].

303  
304 Mr. Wilson - I think over time it would completely fill, so yes.

305

306 Ms. Dwyer - I see heads nodding. I wonder if someone could just  
307 speak to that. I just don't want to have a deep pit with a scum pond in the bottom.  
308 If we could look forward to—

309  
310 Mr. Carroll - My name is Tom Carroll. I'm Director of Business  
311 Development for Vulcan Materials. Actually, many of these facilities, once they  
312 are completed, their useful life as an aggregate resource is used, actually, it's  
313 public water supplies or recreational lakes. A lot of them have been used by  
314 subsequent owners of the properties for a variety of mixed-use development—  
315 office complexes and other types of activities associated with them. Essentially,  
316 these are large storm water retention/detention basins now because we try to  
317 direct all of our storm water runoff into them. We can hold that water over a  
318 period of time, clean it up, and make sure that when we do discharge, that's it  
319 cleaner than the receding water body. So, you get that whole surface area that  
320 can direct that water to there. The other things that have been done in other  
321 locations, if you want to accelerate the filling of it at the end, is some  
322 municipalities, when they've used it for public water supplies, have used high  
323 water flows in nearby watersheds such as the Chickahominy, and actually  
324 pumped into them to relieve flow in the river, accelerate the fill. During low-flow  
325 situation, have actually pumped out of the quarries back into the receiving  
326 bodies. So, used as sort of a regulation activity with the quarry. You could have  
327 billions of gallons of storage in one of these things. I hope that answers your  
328 question. Thank you.

329  
330 Ms. Dwyer - Any other questions by Board members? Would you  
331 like to vote on this now?

332

333 **DECISION**

334

335 Mr. Wright - I move that we approve this application.

336

337 Mr. Nunnally - I second.

338

339 Ms. Dwyer - Any discussion?

340

341 Mr. Nunnally - The only discussion I have is you must be doing a  
342 pretty good job because you don't have a single opponent here today. Four  
343 years ago, they were standing in the hallway.

344

345 Ms. Dwyer - Now that you mention that, I did ask earlier and I'll ask  
346 once again just to be sure. Is there anyone else who wants to speak to this  
347 case?

348

349 Mr. Wilson - Actually, Mr. Wood here is a member of our CLC, and  
350 he wants to speak in favor of. But if you're going to ahead and take a vote, we'll  
351 let Mr. Woods speak or you go ahead and take your vote.



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Ms. Dwyer - Mr. Wood, if you would just speak briefly. Thank you for coming.

Mr. Wood - My name is Jay Early Wood. I live in Hanover County. My land touches over here on Lakeland, and Lakeland touches the quarry land. I live about 3,200 feet from the quarry. I've been living there for 54 years. Right now, I've found that these people are the best neighbors quarry speaking that we've ever had. Now, Tidewater was great, but these people are a little greater. I highly recommend that you renew their permit for doing business there.

Ms. Dwyer - Thank you very much, Mr. Wood.

Mr. Wright - I'll state the grounds for my motion. It will not affect the health, safety, and welfare of those living in the area, nor likely reduce or impair the buildings or property, and will be in substantial accordance with Chapter 24 of the County Code.

Ms. Dwyer - The County has found no evidence of failure to comply with any of the conditions that have been in existence. Other comments? We have a motion by Mr. Wright, seconded by Mr. Nunnally. All in favor say aye. All opposed say no. The ayes have it; the motion passes.

After an advertised public hearing and on a motion by Mr. Wright, seconded by Mr. Nunnally, the Board **approved** application **UP-004-09, TIDEWATER QUARRIES, INC.'s** request for a conditional use permit pursuant to Sections 24-52(d) and 24-103 to extract materials from the earth at 11460 Staples Mill Road (Parcels 756-773-3302 and 759-773-4746), zoned A-1, Agricultural District and M-2C, General Industrial District (Conditional) (Three Chopt). The Board approved the conditional use permit subject to the following conditions:

1. This use permit is subject to all requirements of Section 24-103 of Chapter 24 of the County Code. The operation shall be conducted in accordance with the plans and narrative approved with the use permit, except as noted below.
2. Before beginning any work, the applicant shall provide a financial guaranty in an amount of \$3,000 per acre for each acre of land to be disturbed, for a total of \$267,300, guaranteeing that the land will be restored to a safe, stable, and usable condition, consistent with its elevation before excavation. The form of the financial guaranty shall be subject to approval by the County Attorney. If this condition is not satisfied within 90 days of approval, the use permit shall be void.
3. Before beginning any work, the applicant shall apply for and obtain approval of erosion and sedimentation control plans from the Department of Public Works (DPW). Throughout the life of the operation, the applicant shall continuously satisfy DPW that erosion and sedimentation control is performed and maintained

398 in accordance with the approved plan. The erosion control bond shall remain  
399 active throughout the life of the project. If this condition is not satisfied within 90  
400 days of approval, the use permit shall be void.

401

402 4. Before beginning any work, the applicant shall obtain a mine license from the  
403 Virginia Department of Mines, Minerals and Energy. If this condition is not  
404 satisfied within 90 days of approval, the use permit shall be void.

405

406 5. Before beginning any work, all areas approved for mining under this permit  
407 shall be marked off with metal posts. The posts shall be 5 feet high and 5 inches  
408 in diameter, and shall be painted in alternating 1-foot stripes of red and white.  
409 The posts shall be erected under the supervision of a professional engineer or  
410 certified land surveyor, who shall certify their location. If this condition is not  
411 satisfied within 90 days of approval, the use permit shall be void.

412

413 6. In the event that the approval of this use permit is appealed, all conditions  
414 requiring action within 90 days will be deemed satisfied if the required actions are  
415 taken within 90 days of final action on the appeal.

416

417 7. The applicant shall comply with the Chesapeake Bay Preservation Act and all  
418 state and local regulations administered under such act applicable to the  
419 property, and shall furnish to the Planning Department copies of all reports  
420 required by such act or regulations.

421

422 8. [AMENDED] Hours of operation shall be limited to 9:00 a.m. to 5:00 p.m.  
423 Monday through Friday for blasting, 6:00 a.m. to 8:00 p.m. Monday through  
424 Saturday for shipping, and 7:00 a.m. to 6:00 p.m. Monday through Saturday for  
425 all other operations. No operations of any kind are to be conducted at the site on  
426 Sundays or national holidays.

427

428 9. All access to the property shall be from the entrance onto Staples Mill Road  
429 as shown on the approved plans. The applicant shall erect and maintain gates at  
430 all entrances to the property. These gates shall be locked at all times, except  
431 when authorized representatives of the applicant are on the property.

432

433 10. The 30-foot private access road leading from Staples Mill Road to the  
434 property shall be maintained in good repair at all times. All roads used in  
435 connection with this use permit shall be effectively treated with calcium chloride  
436 or other wetting agents to eliminate any dust nuisance.

437

438 11. The applicant shall post and maintain a standard stop sign at the entrance to  
439 Staples Mill Road. The applicant shall pay the expense for the county to erect  
440 and maintain standard "Truck Entering Highway" signs along Staples Mill Road  
441 on each side of each entrance to the property.

442

443 12. The applicant shall post and maintain a sign at the entrance to the mining

444 site stating the name of the operator, the use permit number, the mine license  
445 number, and the telephone number of the operator. The sign shall be 12 square  
446 feet in area and the letters shall be 3 inches in height.

447  
448 13. The applicant shall erect a continuous fence around the quarry. The  
449 applicant shall post and maintain "No Trespassing" signs every 250 feet along  
450 the perimeter of the property. The letters shall be 3 inches in height. The  
451 applicant shall authorize the Division of Police to prosecute trespassers, and  
452 shall send a representative to testify in court at the request of the Division of  
453 Police.

454  
455 14. Trucks leaving the site shall travel at reasonable intervals and not in groups  
456 of three or more. At any time the Division of Police deems it necessary, the  
457 applicant shall provide a flagman to control traffic from the site onto the public  
458 road, with the flagman yielding the right of way to the public road traffic at all  
459 times. Trucks shall be loaded in a way to prevent overloading or spilling of  
460 materials of any kind onto any public road.

461  
462 15. To protect the public safety, excavations having a depth of 10 feet or more,  
463 for a period of more than 30 days, shall be graded to a slope of 2:1 or flatter or  
464 benched in conformance with MSHA and DMME regulations. The applicant shall  
465 maintain the property, fences, and roads in a safe and secure condition  
466 indefinitely, or convert the property to some other safe use.

467  
468 16. All power-driven or power-producing machinery shall be located within the  
469 boundary of the 89-acre disturbed area and shall be at least 600 feet from any  
470 adjacent property.

471  
472 17. No offsite-generated materials shall be deposited on the mining site without  
473 prior written approval of the Director of Planning. To obtain such approval, the  
474 operator shall submit a written request stating the origin, nature and quantity of  
475 material to be deposited, and certifying that no contaminated or hazardous  
476 material will be included. The material to be deposited on the site shall be limited  
477 to imperishable materials such as stone, bricks, tile, sand, gravel, soil, concrete  
478 and like materials, and shall not include any hazardous materials as defined by  
479 the Virginia Hazardous Waste Management Regulations.

480  
481 18. A superintendent, who shall be personally familiar with all the requirements  
482 of Section 24-103 of Chapter 24 of the County Code, as well as the conditions of  
483 this use permit, shall be present at the beginning and conclusion of operations  
484 each work day to ensure that all applicable requirements are observed.

485  
486 19. Blasting shall be conducted in conformance with standards promulgated by  
487 the Virginia Department of Mines, Minerals and Energy and shall not endanger  
488 the public health or safety. The amount of explosives shall be limited to 1,000  
489 pounds per time delay. Blasting shall not be conducted when atmospheric

490 conditions would produce undesirable effects. The operator shall submit a record  
491 of all blasting to the Planning Department every three months.

492  
493 20. A progress report shall be submitted to the Board on or about April 30 of  
494 each year. The progress report shall state how much property has been mined  
495 to date of the report, how much land is left to be mined, how much rehabilitation  
496 has been performed, when and how the remaining amount of land will be  
497 rehabilitated, and any other pertinent information about the operation that would  
498 be helpful to the Board.

499  
500 21. [AMENDED] Excavation shall be discontinued by April 30, 2014, and  
501 restoration accomplished by not later than April 30, 2015, unless a new permit is  
502 granted by the Board of Zoning Appeals. Reclamation of the property shall take  
503 place simultaneously with the mining process. All disturbed areas shall be  
504 covered with topsoil to a depth of at least 5 inches. The topsoil shall be treated  
505 with a mixture of seed, fertilizer, and lime as recommended by the County after  
506 soil tests have been provided to the County. Rehabilitation shall not be  
507 considered completed until the mined area is covered completely with permanent  
508 vegetation or water as shown on the reclamation plan.

509  
510 22. Failure to comply with any of the foregoing conditions shall automatically  
511 void this permit.

512  
513  
514 Affirmative: Dwyer, Harris, Nunnally, Witte, Wright 5  
515 Negative: 0  
516 Absent: 0

517  
518  
519 Mr. Blankinship - Did you mention the amended conditions in your  
520 motion?

521  
522 Ms. Dwyer - No.

523  
524 Mr. Blankinship - I'll just mention for the record that included the  
525 amended conditions 8 and 21, as stated earlier.

526  
527 Mr. Wright - Right.

528  
529 Ms. Dwyer - All right, next case.

530  
531 **UP-024-07 MARTHA WAGNER.** Hearing concerning compliance  
532 with a conditional use permit to operate a private noncommercial riding club at  
533 6301 Hines Road (Parcel 853-692-4325) (Varina).

534

535 Ms. Dwyer - Is anyone here to speak to this case? Please stand  
536 and raise your right hand to be sworn. If you think you might speak, please stand  
537 and raise your hand.

538  
539 Mr. Blankinship - All raise your right hands, please. Do you swear the  
540 testimony you're about to give is the truth and nothing but the truth so help you  
541 God?

542  
543 Ms. Dwyer - All right. We're going to ask the parties who have  
544 brought this to the County's attention alleging that there has been a failure to  
545 comply with the conditions of this case to come forward and state their case first.  
546 I will also state that we're going to limit each side to ten minutes for their  
547 presentation, and that will exclude the time that it takes to ask and answer  
548 questions. If the Board asks a question, we will cease timing on that ten-minute  
549 time limit, and then when you begin your presentation again, we'll begin the time  
550 again.

551  
552 Mr. Wright - Madam Chairman, I'd like to state that we granted this  
553 show cause on one issue and one issue only. The only alleged violation has  
554 been that the manure has not been removed every two weeks as required by the  
555 conditions of the permit. I suggest to the Chair that any testimony be limited to  
556 that one issue. We could get off into the wild beyond and be here until tomorrow  
557 if we open it up to that. When I made the motion for the show cause, the only  
558 issue was to determine whether or not that one condition had been violated. I  
559 don't think we should receive any testimony on anything other than that one  
560 issue.

561  
562 Ms. Dwyer - Thank you, Mr. Wright. I agree with that. That is the  
563 sole issue before the Board today, whether there has been a failure to comply  
564 with one condition. I will read the condition as part of the case. The condition  
565 states:

566  
567 The applicant shall maintain the property so that odors, noise, and other  
568 impacts are controlled. Manure shall be stored and disposed of in  
569 compliance with the Virginia Department of Agriculture and Consumer  
570 Services requirements, and any other applicable standards including the  
571 Virginia Agricultural Stewardship Act Guidelines of June 7, 2004. All  
572 manure shall be removed from the premises every two weeks, and may  
573 be re-deposited only to areas during the growing season and in agronomic  
574 rates.

575  
576 That is the sole issue before the Board today, whether there's been compliance  
577 with that particular condition that was imposed when this use permit was granted.  
578 So, we will limit the discussion today and all the presentation materials to that  
579 particular issue.

580

581 All right. Please state your case and your name.

582

583 Ms. Akers - My name is Ann Akers. A-k-e-r-s. I request  
584 permission to have my video shown.

585

586 Mr. Blankinship - Do you have that back there?

587

588 Ms. Dwyer - Do we have that queued up? Are you beginning the  
589 timing, Mr. Blankinship?

590

591 Mr. Blankinship - Yes ma'am. Does the video count against the time?

592

593 Ms. Dwyer - Yes, it does.

594

595 LONG PAUSE IN DISCUSSION FOR SHOWING OF MS. AKERS' VIDEO.

596

597 Ms. Akers - Since our entire case is limited to only ten minutes, I'll  
598 just basically hand those out to you and be as brief as possible. Basically, we're  
599 here not only because we're saying that the Wagner's have not been doing what  
600 was required under the permit, but that the County has completely ignored our  
601 complaints. Any time we brought the issue to the attention of the County, the  
602 bottom-line answer was, "Look, we have nice pictures of piles of manure. That  
603 means the manure is being taken off every two weeks like it's supposed to be in  
604 its entirety." Pictures don't cut it. We said, "Look, pictures aren't cutting it. In  
605 between your coming and taking pictures, these people are out here mowing and  
606 chopping, just as we said they did from 2004 to 2007. They've done this nonstop  
607 since the permit was issued.

608

609 The first page is just basically a summary of what our understanding of the permit  
610 requirements were and what led up to is, but I can't talk about it because we are  
611 limited on time. The second page is a chronology. We have down here the dates  
612 that we saw the blue vacuum system in use. When we would file complaints with  
613 the County due to excessive odors, it wasn't just they weren't picking up, there  
614 would also be excessive odors to my parents' property. The time periods  
615 between pickups, and evidence and time periods that the mowing and chopping  
616 were going on, and we would be recording those facts.

617

618 Statements made by the inspector's supervisor, Mr. Short, that, "Well, even if I  
619 saw mowing and chopping, they'd just be cutting grass." There was not grass; it  
620 was a drought. You leave all that manure on the ground and all it does is burn  
621 up whatever grass is there. You have eight to ten horses on four acres of land.  
622 They need to eat grass. You wouldn't be cutting it anyway. Our video was taken  
623 the first weekend in January. Obviously, this is winter; there's no grass growing.  
624 He also said, "If they are chopping manure, they're merely turning it into dirt."  
625 Excuse me, manure does not turn into dirt magically, and that's not in compliance  
626 with the permit condition. We even brought up that issue during the original

627 hearings, and it was clearly put forth by the Board members. If you go back to  
628 the last hearing notes in March of 2008, there was Mr. Kirkland, Ms. Dwyer, and  
629 Ms. Harris that were very emphatic—and even Mr. Blankinship was chiming in—  
630 that this is an operation that’s very concentrated, impacting a residential property,  
631 that the understanding is clearly they will remove, collect and remove all manure  
632 from the entire premises every two weeks completely. Ms. Harris even  
633 questioned what do we mean by “all.” Statements during that hearing were that  
634 “all” means—Mr. Kirkland chimed in that I had presented evidence on the  
635 calculations based on Internet research about how much manure is generated by  
636 a horse, how much the quantities could be fixed and verified as to how much is  
637 being taken off every two weeks.

638  
639 We tried to bring this to the attention of the County repeatedly, and all they would  
640 ever do is, “We have pictures. See the manure there? It doesn’t look like a  
641 whole lot.” Well, that’s because they were chopping and mowing in between.  
642 The only time that we saw evidence, or what we perceived to be evidence of  
643 manure actually leaving the site was in early April to May of 2008. After the  
644 vacuum was run, we saw Mr. Wagner leave with his pickup truck filled with  
645 plastic bags, black plastic bags, and then he would return after work that day and  
646 they weren’t there anymore. That happened only a couple of times. After that,  
647 we never saw any evidence of any manure ever leaving. My father’s always  
648 there. He never leaves the place unless he’s in the hospital, and that was in  
649 2007. We did see once in December—and I have that date down here—and  
650 once in January someone come in with a front-end loader and scrape the site,  
651 and remove the manure. But this was after repeated complaints, fights, arguing,  
652 incessant dealing with the County and being blown off. Basically, the County just  
653 told us, “They’re in compliance. They’re not doing what you say they’re doing,  
654 and you’re harassing these poor people.”

655  
656 I just wanted to bring to your attention that if you want to talk about harassment,  
657 my parents are the ones that feel threatened. There was an e-mail that was sent  
658 to us. It was actually started on February 25, 2009, by Ms. Wagner. It specifically  
659 named my parents and their address, and encouraged people to write us in favor  
660 of them. My parents took this as an opposition. They were actually scared to go  
661 to the mailbox because their address was given. They aren’t listed in the  
662 phonebook; nobody has their address.

663  
664 Ms. Dwyer - All right, thank you, Ms. Akers, your time is up. Are  
665 there any questions?

666  
667 Mr. Wright - I’d like to ask a question.

668  
669 Ms. Akers - Absolutely.

670  
671 Mr. Wright - Where do you live?

672

673 Ms. Akers - I live over in Short Pump, and I've never professed to  
674 live at 6285 Hines Road. My parents are old and ailing. My mother, she has  
675 heart disease, high blood pressure, and has suffered multiple heart attacks. This  
676 is very stressful for her. My father has osteoarthritis. In 2007, I was at their house  
677 almost constantly with my father's multiple joint replacement surgeries, helping  
678 them do their chores, cut their grass, helping my dad get around because he  
679 couldn't walk. He's on so much pain medication he could virtually kill all the  
680 horses that are on that site with the amount of medication he's taking. It's very  
681 stressful for them. They were very upset. And when I was there, I witnessed and  
682 was impacted by the smell and the odors. And I asked—

683  
684 Mr. Wright - I asked you a simple question, where did you live. I  
685 didn't ask for a full explanation. How often do you go to the site? Now, just get—

686  
687 Ms. Akers - I never go to the Wagner's site. I go—

688  
689 Mr. Wright - I'm talking about to your parents' home.

690  
691 Ms. Akers - Every weekend, every other weekend.

692  
693 Mr. Wright - So, you're not there during the week.

694  
695 Ms. Akers - Sometimes I am, yes, to help him.

696  
697 Mr. Wright - Most of the time you're not there during the week.

698  
699 Ms. Akers - Most of the time I'm there weekends. And during the  
700 week, my parents are there. My father never leaves the site except, like I said, if  
701 he's in the hospital or at the doctor's office.

702  
703 Mr. Wright - That's all I wanted to know.

704  
705 Ms. Dwyer - Any other questions for either of the speakers this  
706 morning?

707  
708 Ms. Harris - I do have a question. The video taping takes place  
709 only when you observe or your parents observed something is going on in that  
710 area, or do you keep the camera set up?

711  
712 Ms. Akers - No. They didn't even tape at all. Because the County  
713 kept saying, "Oh, it's not happening, what they're saying is happening. We don't  
714 believe you that it's happening," I finally advised my parents, I said look, why  
715 don't you tape—We couldn't afford to hire a private investigator, and I even sent  
716 an e-mail to the County, is that was it takes, do we have to do that. So, I advised  
717 my mother, I said a picture tells a thousand words. Why don't you videotape  
718 them the next time that you see it occurring. She did set up her camera in her



719 Florida room, which is on the back where they have breakfast every day. And  
720 she did tape them one time. I think she tried to tape them another time, but she  
721 turned on the record button and didn't realize you had to hit another red button to  
722 get it to actually record. It was only made so that we could show the County we  
723 weren't lying; this is going on constantly. And we did not commit any crime, as  
724 was alleged. There is no line of site trespass in the State of Virginia. They were  
725 on their property when they took this video. In fact, if they wanted to, they could  
726 post cameras along their borders, the shared border and take 24/7, 365 days a  
727 year. There's nothing illegal in that.

728  
729 Ms. Harris - Okay, let me stop you. The question was is the  
730 camera 24/7, or is it just for the occasions that you observe. I understand your  
731 answer—

732  
733 Ms. Akers - We did not do it for the occasions that were observed.  
734 We have multiple occasions that were observed, and those dates are in the  
735 chronology. It was one time that we took the video.

736  
737 Ms. Harris - One occasion. That's what I need.

738  
739 Ms. Dwyer - That was in December?

740  
741 Ms. Akers - It was right after the New Year. During the winter  
742 break, there was a young boy on the site. I think he was off. She taped the date.  
743 I told her to tape the date on the video itself, but she forgot again to push record,  
744 and she doesn't zoom in. She didn't really know how to use it that well. But,  
745 basically, it was the first weekend in January, right after the New Year.

746  
747 Ms. Harris - How many feet is your property, your mother's  
748 property from the pasture of horses?

749  
750 Ms. Akers - I don't think we ever measured it. I think in the last  
751 hearing, Mr. Blankinship said it was something like 250 feet. That's an estimate.

752  
753 Ms. Dwyer - In your chronology, you note that you have observed  
754 the machine collecting manure from the pasture on several occasions—in April,  
755 June, August, September, and December. By that, you mean the vacuum  
756 machine that is supposed to collect the manure from the fields.

757  
758 Ms. Akers - Yes. We did not see that in December. In December,  
759 it was a front-end loader. Those were the dates that we saw the vacuum in use.  
760 It's actually more than just seeing it; you can actually hear it when it's running.  
761 So, you know when it's out there.

762  
763 Ms. Dwyer - Your contention is that because of the noise that you  
764 would have been aware had there been other uses.

765  
766 Ms. Akers - Well, that and also because of the excessive odors.  
767 My parents were watching and vigilant 24/7 to see if anyone was out there taking  
768 care of the manure because they were complaining to the County, and the  
769 County just said, "Oh, no, there are no problems." And they're sitting there  
770 smelling it.  
771  
772 Ms. Dwyer - So, someone is at the window observing their  
773 neighbors 24/7.  
774  
775 Ms. Akers - No, they live there 24/7. They live there. My father is  
776 always there. He's picking up sticks, he's cutting up trees, he's banging on  
777 something in the garage. They live there. They're there 24 hours a day. My mom  
778 leaves once in a while to go to the grocery store; my father hardly ever leaves.  
779  
780 Ms. Dwyer - Any other questions of Ms. Akers? You have used  
781 your time.  
782  
783 Ms. Akers - [Off mike – inaudible.]  
784  
785 Ms. Dwyer - Ma'am. Unless there is some need for rebuttal. All  
786 right? H.I.S. Riding Club, representative. You also have ten minutes.  
787  
788 Mr. Axelle - Thank you. Madam Chairman, members of the Board,  
789 my name is Bill Axelle—A-x-s-e-l-l-e. I'm an attorney working on a pro bono  
790 basis for the Wagner's and Horses in Service. I will comply with the  
791 admonishment that we limit our testimony to the issue before us, as you're aware  
792 of the good work that Horses in Service does otherwise. I would ask to be  
793 placed into the record the material of March 26, 2009, that I [unintelligible] to you,  
794 and make that part of the record. I'll walk you through that and summarize it  
795 rather than reading everything verbatim.  
796  
797 First, I'll call your attention to Tab 1. Tab 1 is basically a letter from Mr.  
798 Blankinship stating that the Planning Department has investigated the site and  
799 found the Wagner's are in compliance. Another is a letter from Joe Emerson,  
800 who is the Director of Planning, to the Akers. He makes a couple of points that I  
801 excerpt. "Since the use permit was approved"—and I will tell you that was March  
802 of 2008—"staff has visited the site every two weeks and documented the manure  
803 removal," etcetera. They conclude that based on those visits, the staff has  
804 confirmed that no odors were present other than those normally associated with  
805 agricultural land, and the manure in the fields was not out of the ordinary. That's  
806 the County's Director of Planning. In the second paragraph, he basically says  
807 that during a two-week period, specified therein, they had the inspector visit three  
808 times, and they basically concluded that the manure is being removed from the  
809 site every two weeks. So, they are the formal reports on this matter by Mr.  
810 Blankinship and Mr. Emerson. There are some pictures that follow behind that.

811

812 Now let me call your attention to Tab 2, which is prepared, if you will, from the  
813 inspection reports by the County. Mr. Jerry Peay, I think he's had the pleasure of  
814 making these visits. He has been visiting the site every two weeks, according to  
815 the previous documented records, since May of 2008. He visited, I believe from  
816 the records, different times. You will see that I have taken verbatim from his  
817 reports certain conclusions, and each of these conclusions is that no odor  
818 detected, no odor detected, no odor detected. One says no [unintelligible]  
819 observed. So, the inspector who has gone out, who is independent, obviously, of  
820 either of these participants in this matter, has confirmed that no odor has been  
821 detected.

822

823 I have three excerpts from a number of favorable community letters. I've  
824 excerpted only those parts that deal with the issue before us. The riding rinks  
825 were clean of manure and other debris. Volunteers often pick up the manure  
826 from riding areas in between sessions. Another one says no overwhelming odor  
827 to speak of. A lady, Sue Ellen Hargin, talks about, "I've never smelled any  
828 manure or urine odor there other than when I muck stalls, which I do each day of  
829 lessons. I've never had anyone—rider, parent, volunteer staff—complain about  
830 manure or urine odor." Then there are a number of others, which I won't go  
831 through. But they all have the same basic thread. The last one that I tabbed  
832 says, "Please also note I visit the property weekly with my four young children,  
833 and always find the property extremely well kept. We never experience odor or  
834 have issue with unsightly manure."

835

836 Tab 4 is a series of pictures that the Wagner's have put together that shows what  
837 they do there. Let me just briefly tell you. And we have—and they've been  
838 sworn—Mr. and Mrs. Wagner, Kenny Cochran, and Mr. Harlow that can answer  
839 specific questions. In the riding area and the stable area, the manure is removed  
840 in this fashion. Before and after each session, the students, the volunteers, the  
841 [unintelligible] director remove the manure. They pick it up with a fork-type device  
842 and put it in the manure pile. The same thing is done for the people  
843 [unintelligible] also do that in the area where the barn is. And the fields or the  
844 pastures are done in two ways. Sometimes it's done by hand with a fork and  
845 taken to a manure pile. They've also purchased at a cost of \$4300, a manure  
846 vacuum that they use regularly to pick that up. The manure vacuum was paid  
847 with money from a special fundraising effort they had. It takes a fairly  
848 considerable amount of time. They then take that to the manure pile, and Kenny  
849 Cochran and others—and Kenny's here and his sworn affidavit is in there—he  
850 has removed the manure from there every two weeks during the time. I think Mr.  
851 Wagner can speak to that.

852

853 I think the video that you saw was not of chopping of manure. They put hay out  
854 on the ground. They feed the horses with grass that grows, but certain times of  
855 the year the grass is not there so they put hay out there. If the hay is not all  
856 eaten, which is frequently the case, then they chop up the hay and spread it out

857 because if the hay lies there, it will prevent the sun, the water and other things  
858 from coming in. The pictures show how that is done. They are available and I  
859 tendered them to you at the appropriate time when there were questions that  
860 you've had.

861  
862 Under Tab 5 is a document that we put together that has people who have visited  
863 there recently. They say that they're frequent visits. And I quote, "There is no  
864 odor from the smell of manure at the property. There is no foul or offensive smell  
865 on the site associated with manure. It's obvious from my frequent visits that the  
866 manure is being removed regularly." To attest that this is accurate, they put their  
867 names, they put their addresses, and some put their phone numbers. As you can  
868 see, that is approximately 80 people, and they've all taken place in the last month  
869 or so.

870  
871 Tab 6, if you will, is the affidavits of Kenny Cochran, Jack Harlow, Ted Wagner,  
872 Martha Wagner—and they're all here and can testify—as well as a young man,  
873 Mr. Morris, who is a 16 year old in school. We did not ask that he come today.  
874 They all say under oath that the manure is removed every two weeks.

875  
876 Tab 7 shows the proximity, or actually the lack of proximity of the Akers' property  
877 to this area.

878  
879 It is a new world with electronics. Tab 8 shows an e-mail that was sent out, and  
880 we've had people, if they were willing to do so, to send back an e-mail with their  
881 name and address concurring with this statement.

882  
883 I've visited the Fox Chase Farm on one or more occasions, did not detect  
884 any offensive odor associated with manure. From my personal  
885 observation, it is properly and responsibly maintained and neatly kept. It is  
886 a comfortable, welcoming, inviting environment for members of the public,  
887 riding families, [unintelligible], and volunteers. It appears that the manure  
888 is removed on a regular basis because the property is well kept and  
889 maintained. There is no offensive odor developing from the manure on the  
890 property.

891  
892 Again, we have all of these e-mails; I will give them to Mr. Blankinship. This is  
893 about 60 people or 80 people—60 people. There may be an overlap between the  
894 60 and 80. Nevertheless, these people have all authorized us to present to you  
895 present to you their concurrence with [unintelligible]. I've highlighted only four  
896 because I think, like I said, the whole group I have available for Mr. Blankinship.  
897 The first one who concurred with that, the person [unintelligible], is Darrell  
898 Marshall. Mr. Marshall is with the Virginia Department of Agriculture and  
899 Consumer Services. He's the agriculture stewardship coordinator who worked  
900 on this property. He's indicated his concurrence. Another is a lady who works  
901 with Henrico Area Mental Health and Retardation Services. Another is a lady who  
902 worked with the Richmond Mental Health. Another is a lady who is a school

903 teacher. And then this was an individual that's fairly consistent with this. One of  
904 them says, "Good luck. We love Horses in Service and has helped Brett in many  
905 ways," obviously referring to her son.

906  
907 All the documents are there. All of them say the manure, there is no odor, the  
908 manure appears to be removed. And then we have four affidavits saying, five  
909 affidavits saying it is removed on a weekly basis—excuse me, every two weeks.  
910 Thank you.

911  
912 Ms. Dwyer - Thank you, Mr. Axselle. I believe we did receive quite  
913 a number of e-mails in our packet this morning. Are these the ones that you're  
914 speaking of?

915  
916 Mr. Axselle - They are the original batch. There are more. I've  
917 given an entire batch, the whole thing to Mr. Blankinship because we've had  
918 more than one [unintelligible]. On March 19<sup>th</sup>, I'm sorry. We went in a partial  
919 report with the note that it would be supplemented. So, March 26<sup>th</sup> is the complete  
920 report.

921  
922 Ms. Dwyer - We received, just for the record, two packets. One is  
923 a series of e-mails from the Wagner's, and those who are challenging this  
924 particular condition. And we also received quite a few e-mails from those who—

925  
926 Mr. Axselle - I think they are what staff prepared, a staff report to  
927 you of what they received. Mine are different, if you will. Mine came through  
928 either an investigation of the staff documents, or what was in the staff file is  
929 probably a better way of saying it, of things that we put together that we thought  
930 you'd [unintelligible].

931  
932 Ms. Dwyer - Any questions of Mr. Axselle?

933  
934 Mr. Witte - Mr. Axselle, your explanation for the mowers backing  
935 up and cutting was the piles of uneaten hay that they were dispersing. Is that  
936 what I understood?

937  
938 Mr. Axselle - Yes sir. If I may get Mr. Wagner to answer that more  
939 clearly. That was the way it has been explained to me.

940  
941 Ms. Dwyer - All right.

942  
943 Mr. Axselle - They've indicated they vacuum to get the manure up,  
944 they do it by hand. But the hay, if you've ever been on a farm, especially certain  
945 times of the year you feed them by hay. The horses eat the hay; not all of it. If  
946 you leave it and let it lie out there, it becomes a mat that prevents the water and  
947 the sun getting to the underlying ground. So, they do, in fact, cut that up and  
948 spread it out.

949  
950 Mr. Witte - That's fine. Thank you.  
951  
952 Ms. Dwyer - Would you like to hear from Mr. Wagner?  
953  
954 Mr. Witte - Sure. That explained it, but if Mr. Wagner has  
955 anything to add that's different.  
956  
957 Ms. Dwyer - You need to come to the podium, sir.  
958  
959 Mr. Witte - Come to the podium, please.  
960  
961 Ms. Dwyer - And state your name.  
962  
963 Mr. Wagner - Charles Wagner. As far as pulling forward and  
964 backing up, I couldn't make much out of the video myself. I didn't see anything.  
965 Most of the time, I didn't even see the mower. But when you're cutting anything, if  
966 you ever mulched leaves or run over anything, it catches on the deck. Eventually,  
967 your front wheels ride up off the ground. Manure wouldn't do that manure would  
968 break up and disperse from the deck hitting it. The reason for backing up and  
969 pulling forward, backing up and pulling forward is to break the hay up enough  
970 that you can get it under the deck so that it will chop it up. It blows it over onto  
971 the—much like you do on a job site where you [unintelligible].  
972  
973 Mr. Witte - Okay.  
974  
975 Mr. Wagner - The part that's left is generally the straw from the hay.  
976  
977 Mr. Witte - Okay, thank you.  
978  
979 Ms. Dwyer - Any other questions by members of the Board for Mr.  
980 Axselle? I would like to hear from the inspector.  
981  
982 Mr. Peay - My name is Jerry Peay—P-e-a-y. I'm the Zoning  
983 Inspector, and I was the inspector for the use permit [unintelligible] at the  
984 Wagner's property.  
985  
986 Mr. Witte - Were you sworn in at the beginning?  
987  
988 Mr. Peay - Yes, I was.  
989  
990 Mr. Witte - Okay, thank you.  
991  
992 Ms. Dwyer - We have a document here that's part of Horses in  
993 Service's presentation that lists inspections. Have you seen that document?  
994

995 Mr. Peay - No, I haven't.  
996  
997 Ms. Dwyer - I wonder if you could just look at that. That would be  
998 Tab #2, and it lists inspection dates, the summary, I believe of your various  
999 inspections. This reflects accurately the inspection dates, the dates that you  
1000 went onto the premises?  
1001  
1002 Mr. Peay - Yes.  
1003  
1004 Ms. Dwyer - And you detected no odors on those days.  
1005  
1006 Mr. Peay - No, not at any time. I've put those in my report, and  
1007 these coincide with my report that I had given to my supervisor, Mr. Blankinship.  
1008  
1009 Ms. Dwyer - When you inspected the site, what did you do, did you  
1010 actually go on the property, did you go around where the barns are, or did you—  
1011 Tell me exactly what you did.  
1012  
1013 Mr. Peay - Okay. I entered the property and there's a barn. You  
1014 have to go through the barn in order to get to the stockpile. I passed through the  
1015 barn and took pictures from about 20 feet from the stockpile. So, I was right  
1016 there. If there was any odor, I definitely would have detected something.  
1017  
1018 Ms. Dwyer - By stockpile, you mean the pile of manure that was  
1019 placed there before it could be removed.  
1020  
1021 Mr. Peay - Yes. It's all there on the reports as far as the pictures  
1022 that I shared with my supervisor.  
1023  
1024 Ms. Dwyer - We have some of your pictures; I just wanted to hear  
1025 from you.  
1026  
1027 Mr. Peay - Yes.  
1028  
1029 Ms. Dwyer - So, did you notice that the pile, the stockpile, did it  
1030 increase in size or did it appear that it was, that the manure was being removed  
1031 methodically?  
1032  
1033 Mr. Peay - Sometimes it increased and sometimes it was  
1034 decreased. You can tell from the size of the stockpile something had to be  
1035 removed.  
1036  
1037 Ms. Dwyer - So, in your opinion, based on what you've observed  
1038 from being on the property, manure was being removed on a regular basis.  
1039  
1040 Mr. Peay - Yes.

1041  
1042 Ms. Dwyer - Any other questions by Board members?  
1043  
1044 Ms. Harris - How tall is the stockpile, how many feet?  
1045  
1046 Mr. Peay - As far as height is concerned? I would say maybe  
1047 sometimes a maximum of maybe two feet or so.  
1048  
1049 Ms. Harris - And you're saying that no odor comes from that?  
1050  
1051 Mr. Peay - No.  
1052  
1053 Ms. Harris - Did you notice that there's a cattle farm nearby?  
1054  
1055 Mr. Peay - Cattle?  
1056  
1057 Ms. Harris - Cattle. Cows. They have cows and pastures.  
1058  
1059 Mr. Peay - No, but I noticed there are a lot of other horse farms  
1060 in the vicinity.  
1061  
1062 Ms. Dwyer - I was wondering how could we pinpoint—if there were  
1063 an odor, how could we pinpoint that to this particular location unless it was a  
1064 distance away from the Wagner's place.  
1065  
1066 Mr. Peay - As far as distance is concerned, maybe a quarter of a  
1067 mile.  
1068  
1069 Ms. Harris - Thank you.  
1070  
1071 Mr. Witte - Are you employed by the County or are you an  
1072 outside inspector?  
1073  
1074 Mr. Peay - I'm employed by the County.  
1075  
1076 Mr. Witte - This is your full-time job.  
1077  
1078 Mr. Peay - Yes.  
1079  
1080 Mr. Witte - So, you make inspections. These aren't the only  
1081 inspections you've ever done.  
1082  
1083 Mr. Peay - Oh, no, no.  
1084  
1085 Mr. Witte - Okay. Okay, thank you.  
1086



1087 Ms. Dwyer - Did you observe the manure being removed from the  
1088 premises or removed from the field at any time when you were there?  
1089  
1090 Mr. Peay - As a matter of fact, my last biweekly inspection was  
1091 on the 18<sup>th</sup>, and I have some photos. The photos indicated Mr. Wagner—and he  
1092 had some help—was actually removing some manure from the field during my  
1093 inspection.  
1094  
1095 Ms. Dwyer - That would be February 18<sup>th</sup>? March 18<sup>th</sup>?  
1096  
1097 Mr. Peay - Yes, yes.  
1098  
1099 Mr. Blankinship - You should have a copy of those photographs on the  
1100 table dated March 18.  
1101  
1102 Ms. Dwyer - March the 18<sup>th</sup>? March 16<sup>th</sup>.  
1103  
1104 Mr. Blankinship - Next page.  
1105  
1106 Ms. Dwyer - All right. Any other questions by Board members?  
1107 Thank you, sir.  
1108  
1109 Mr. Short - Good morning. My name is John Short—S-h-o-r-t. I  
1110 am an inspector for the Planning Department.  
1111  
1112 Ms. Dwyer - Did you also visit the premises?  
1113  
1114 Mr. Short - Yes, I did.  
1115  
1116 Ms. Dwyer - How frequently?  
1117  
1118 Mr. Short - Not as frequently as Mr. Peay because that is his  
1119 assignment, but because we had so many issues with this piece of property  
1120 coming up, as his supervisor, I would try to go down there periodically to view the  
1121 property myself. So, [unintelligible] ask, I can answer it from a personal point of  
1122 view.  
1123  
1124 Ms. Dwyer - What did you observe regarding the stockpile, the  
1125 manure in the fields, and the odor?  
1126  
1127 Mr. Short - Starting with the stockpiles, at the time that I did go  
1128 there, the stockpiles were very minimal and not even the two feet that Mr. Peay  
1129 had mentioned. I believe that it was being removed from the property as the  
1130 permit requires. As far as odors go, I was down there one day and it was very  
1131 windy. I [unintelligible] where I could smell when the wind blew, and I just could

1132 not smell anything other than the normal farm uses that [unintelligible]. No  
1133 [unintelligible] odor from the manure.  
1134  
1135 Ms. Dwyer - How about the manure in the fields?  
1136  
1137 Mr. Short - It was always minimal. I never saw anything that was  
1138 excessive. When you have horses, you're going to have some manure in the  
1139 field. In the pictures that I took, it's just that.  
1140  
1141 Ms. Dwyer - Which pictures did you take? In this February/March  
1142 packet that we have.  
1143  
1144 Mr. Blankinship - Some of those dates—  
1145  
1146 Mr. Short - [Unintelligible] pictures, so they may not have gotten  
1147 into the packet.  
1148  
1149 Mr. Blankinship - Oh, they're in there, but they're not distinguished from  
1150 the ones that Mr. Peay took.  
1151  
1152 Ms. Harris - I think Mr. Peay said he took these—His last picture  
1153 was on March 18, and we have two more sets of pictures from March 23<sup>rd</sup> and  
1154 March 20<sup>th</sup>.  
1155  
1156 Mr. Blankinship - I think Mr. Peay took those as well.  
1157  
1158 Mr. Short - I haven't been down there in the last week.  
1159  
1160 Ms. Harris - I do have a question about the March 18<sup>th</sup> pictures.  
1161 What is being done here? Are we picking up manure, are we shredding the  
1162 straw? What's going on here?  
1163  
1164 Mr. Blankinship - Jerry, you want to come back down?  
1165  
1166 Mr. Peay - He was picking up manure. It so happened some of  
1167 the straw probably had been mixed with the manure when he was picking it from  
1168 the ground.  
1169  
1170 Ms. Harris - On the left side, bottom left, this is what—this is the  
1171 stockpile that he was picking?  
1172  
1173 Mr. Peay - Bottom left or bottom right?  
1174  
1175 Ms. Harris - On March 18<sup>th</sup>, bottom left.  
1176

1177 Mr. Peay - Bottom left? Bottom left is the field. It's a field. The  
1178 bottom left picture is the field.  
1179  
1180 Ms. Harris - What's the pile up here?  
1181  
1182 Mr. Peay - The pile is in the bottom right.  
1183  
1184 Ms. Harris - On March 18<sup>th</sup>, 2009?  
1185  
1186 Mr. Peay - Yes, March 18<sup>th</sup>, the pile is in the bottom right. He had  
1187 mixed—There was some straw that was mixed with the pile.  
1188  
1189 Ms. Dwyer - It doesn't look like a pile.  
1190  
1191 Mr. Blankinship - I think those are the same four photographs but  
1192 printed in a different order.  
1193  
1194 Mr. Peay - According to these, the bottom left is the pile that's  
1195 mixed with the straw, and the bottom right is the field.  
1196  
1197 Ms. Harris - Thank you.  
1198  
1199 Ms. Dwyer - Thank you, sir. Mr. Blankinship, can either of the  
1200 inspectors or someone else here, perhaps from the County, speak to this letter of  
1201 May 21<sup>st</sup>, 2008, from the Department of Agriculture and Consumer Services?  
1202  
1203 Mr. Blankinship - I cannot. Is Mr. Marshall in the room, or anyone else  
1204 from Agriculture? I'll do my best, Madam Chairman.  
1205  
1206 Ms. Dwyer - All right. My concern is that we had some language in  
1207 this condition that required the applicant for the permit to be in compliance with  
1208 certain regulations. This letter indicates that that's an inappropriate condition for  
1209 us to have imposed, that it's basically inapplicable to this operation.  
1210  
1211 Mr. Blankinship - Yes ma'am.  
1212  
1213 Ms. Dwyer - Is that your reading of it? Is that your understanding?  
1214  
1215 Mr. Blankinship - The way I recall, the condition reads that they have to  
1216 comply with Department of Agriculture recommendations and remove the  
1217 manure from the site every two weeks. When we notified the Department of  
1218 Agriculture that that was the outcome of the meeting—because as you may  
1219 remember, that was decided at the meeting, that condition was finalized at the  
1220 meeting.  
1221  
1222 Ms. Dwyer - Okay.

1223

1224 Mr. Blankinship - So, they didn't have any advance notice of that. When  
1225 I notified the Department of Agriculture that that was the outcome, Mr. Marshall  
1226 wrote back and said that that "would not be our recommendation, so they can't  
1227 comply with our recommendation and remove the manure every two weeks. Our  
1228 recommendation would be to compost the manure on site, and then to use it as a  
1229 soil fertilizer." They were concerned that we had made them responsible for  
1230 making a recommendation that the same condition said we would not follow what  
1231 they actually recommended. Mr. Marshall suggested that we reopen the case  
1232 the following month and reconsider that condition. I passed that information on  
1233 and the decision was made not to follow Mr. Marshall's recommendation, to  
1234 leave the condition as it was approved.

1235

1236 Ms. Dwyer - The part that I'm looking at says that the statement  
1237 that we made is based on the misunderstanding about the authority of the  
1238 VDACS, the Virginia Department of Agriculture and Consumer Services. "The  
1239 VDACS does not have any requirement or standards relating to the storage and  
1240 disposal of manure. There are, however, best practices." Then it says, "The law  
1241 would apply to the Wagner operation if and when I, as Commissioner, determine  
1242 that there is a water quality problem. I decided that that complaint was  
1243 unfounded."

1244

1245 Mr. Blankinship - Right.

1246

1247 Ms. Dwyer - It sounds like our condition insofar as it incorporates  
1248 the regulations and the authority of the ACS should be eliminated.

1249

1250 Mr. Wright - That's not the subject of this hearing.

1251

1252 Ms. Dwyer - Well, it's a part of the condition we're looking at.

1253

1254 Mr. Wright - It's still not the subject of this hearing.

1255

1256 Ms. Dwyer - Well, I respectfully disagree because it is part of the  
1257 condition that we're looking at, and it's also an imposition, a regulatory  
1258 requirement that we have imposed that apparently is inappropriate and on the  
1259 condition that we're considering today. At any rate, any more questions by Board  
1260 members of any of the witnesses or either party to this case?

1261

1262 All right. I will invite the Akers, and I will give each side two minutes to rebut what  
1263 has been said so far, so that you will each have a final word. Then we'll render a  
1264 decision on the case.

1265

1266 Ms. Akers - Carol Akers, daughter, again, of Anne and Jerry  
1267 Akers, the neighbors. Basically, this whole context of what you saw in the video  
1268 has been deemed nothing more than mowing hay. If you will recall, we have had

1269 three hearings leading up to the issuance of the conditional use permit. I  
1270 mentioned it, my mother mentioned it, Anne Sharpe mentioned it, standing there  
1271 witnessing them at that time and for years mowing manure. You could physically  
1272 see the manure that they were mowing and chopping up. If you will go back to  
1273 those records, you will also see where Mr. Wagner said, "Oh, yes, we go in there  
1274 and we chop up clumps of manure so they're not piled up, and it makes it easier."  
1275 There's nothing wrong with that. They did this practice continuously since 2004;  
1276 they've done it ever since. This is what they are doing. Sure, they go out and put  
1277 hay on top of manure and mow both hay and manure, but they are mowing the  
1278 manure on the field.

1279  
1280 We asked that the permit be revoked because the County has basically painted  
1281 us as being hysterical people and lying. Everyone goes down there. If they're  
1282 going to participate in horse activity, of course. To say there is no odor at all  
1283 from manure, I mean, you must not have any olfactory system at all. My dog  
1284 goes in the backyard, I can smell it. But basically, if you've ever worked in an  
1285 office environment me and someone popped a bag of popcorn, or they open a  
1286 bottle of nail polish, the person eating the popcorn and person painting their  
1287 nails, they don't notice it, it doesn't bother them. It bothers everybody else. My  
1288 parents do not expect to be in their homes, trying to eat their food smelling  
1289 manure. We never said it was 24 hours a day; we said it comes up at various  
1290 times and when it comes up, it is very nauseating. It comes up out of the creek  
1291 and it comes up out of the pond, especially when it's very humid or we've had a  
1292 lot of rain. The odors on their property are excessive.

1293  
1294 Ms. Dwyer - Thank you, Ms. Akers. Mr. Axselle?

1295  
1296 Mr. Axselle - I simply would submit that we're dealing with what the  
1297 situation is now and what the situation has been in the past year. We have the  
1298 benefit of extremely diligent inspections by the County. The County has taken  
1299 this seriously, and they've given you evidence that is specific with their  
1300 observations. The Wagner's have taken this very seriously. They have changed  
1301 some of their operations, they've purchased the vacuum. They have been and  
1302 remain in full compliance. They do remove the manure from the property every  
1303 two weeks. We have statements of people who are on the site on a regular basis  
1304 who shared with you. We have statements of people who have been there.  
1305 They all say the same thing. If there were a problem with manure not being  
1306 removed, the odor and the [unintelligible] would be observed by all these people.  
1307 Then we have the affidavits from the individuals who do, in fact, [unintelligible]  
1308 the manure. I think it's fairly clear that they are in compliance [inaudible].

1309  
1310 Ms. Dwyer - All right, that closes the case. Do I have a motion on  
1311 the case?

1312  
1313 **DECISION**

1314

1315 Mr. Wright - Madam Chairman, I move that after hearing all this  
1316 evidence and reviewing a great deal of information that we've been provided  
1317 with, that the appeal be denied. I think the evidence is clear to the fact that the  
1318 applicant is complying with that condition, so I move that the appeal be denied.

1319

1320 Mr. Nunnally - Second.

1321

1322 Ms. Dwyer - Motion by Mr. Wright, seconded by Mr. Nunnally. Any  
1323 discussion? May I just clarify one thing? By "appeal denied," this is a show  
1324 cause hearing, so your motion is essentially then that there's been a failure to  
1325 show cause of non-compliance with the condition.

1326

1327 Mr. Wright - That's right.

1328

1329 Mr. Witte - I do have a couple comments. First, the video actually  
1330 showed no manure that was recognizable being chopped. While it does show  
1331 the tractors, there wasn't evidence, in my opinion, that there was actually manure  
1332 being chopped. The explanation that we were given as it being hay makes sense  
1333 to me. Secondly, the professional inspectors from the County, I respect their  
1334 opinions; that is their full-time job. They seem to be satisfied with the situation.  
1335 Third, the main reason we were here is the removal aspect. With the shown  
1336 affidavit from Mr. Cochran that he does remove it, that satisfies me. Those are  
1337 my comments.

1338

1339 Ms. Dwyer - There are several affidavits.

1340

1341 Mr. Witte - Mr. Cochran's affidavit actually says he removes it,  
1342 that he hauls it away.

1343

1344 Ms. Dwyer - Okay.

1345

1346 Ms. Harris - I do have comments, too. I believe that the Wagner's  
1347 are acting in good faith. When we compare the stockpiles of this year with the  
1348 stockpiles we formerly saw, I do see progress, a great deal of progress. I think  
1349 we should stick by our guns, so to speak, to require the removal every two weeks  
1350 even though the Department of Agriculture requires something less. I would  
1351 think that the Akers might need more evidence as to the urine stench or any  
1352 other complaint that they would have. They would need more evidence to prove  
1353 that point. At this particular juncture, I do think that with this condition, the  
1354 Wagner's are compliant.

1355

1356 Ms. Dwyer - Any further comments? All right. We have a motion  
1357 by Mr. Wright, seconded by Mr. Nunnally that there's been a failure to show  
1358 cause that the Wagner's have failed to comply with the requirements to  
1359 [inaudible] odors [inaudible] property. All in favor say aye. All opposed say no.  
1360 The ayes have it; the motion passes.

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The case is dismissed regarding failure to show cause on non-compliance.

After an advertised public hearing and on a motion by Mr. Wright, seconded by Mr. Nunnally, the Board **denied** the request regarding **UP-024-07, MARTHA WAGNER**, hearing concerning compliance with the conditional use permit to operate a private noncommercial riding club at 6301 Hines Road (Parcel 853-692-4325) (Varina)

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

Ms. Dwyer - We'll take up the minutes next, the minutes of February 26, 2009. Please leave the room and carry on your conversations outside. Thank you. We'll take up the minutes of February 26, 2009. Any additions, correction, or changes? Do I have a motion on the minutes?

Ms. Harris - I move that the minutes be accepted as presented.

Mr. Witte - I second.

Ms. Dwyer - Motion by Ms. Harris, seconded by Mr. Witte that the minutes be accepted as presented. All in favor say aye. All opposed say no. The ayes have it; the motion passes.

On a motion by Ms Harris, seconded by Mr. Witte, the Board **approved** the **Minutes of the February 26, 2009** Henrico County Board of Zoning Appeals meeting.

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

Ms. Dwyer - Any other business, old, new business for the Board?  
Motion for adjournment.

Mr. Wright - I move we adjourn.

Several voices - Second

Ms. Dwyer - Motion by Mr. Wright, seconded by everyone. All in favor say aye. All opposed say no. The ayes have it; the motion passes.

1406 There being no further business, the Board adjourned until the April 23, 2009  
1407 meeting at 9 a.m.

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Elizabeth G. Dwyer  
Chairman

Benjamin Blankinship, AICP  
Secretary