

1 Minutes of the regular monthly meeting of the Planning Commission of the County of Henrico,
2 Virginia, held in the Board Room of the County Administration Building in the Government
3 Center at Parham and Hungary Springs Roads, Beginning at 9:00 a.m. Wednesday, January 28,
4 2004.

5

6 Members Present: Mrs. Lisa D. Ware, C.P.C., Chairperson (Tuckahoe)
7 Mr. Ernest B. Vanarsdall, C.P.C., Vice Chairperson (Brookland)
8 Mr. C. W. Archer, C.P.C. (Fairfield)
9 Mr. E. Ray Jernigan, C.P.C. (Varina)
10 Mr. John Marshall (Three Chopt)
11 Mr. James B. Donati, Jr., (Varina) Board of Supervisors
12 Representative

13

14 Others Present: Mr. John R. Marlles, AICP, Director of Planning, Secretary
15 Mr. Randall R. Silber, Assistant Director of Planning
16 Mr. David D. O'Kelly, Jr., Principal Planner
17 Ms. Leslie A. News, CLA, County Planner
18 Mr. James P. Strauss, CLA, County Planner
19 Mr. E. J. (Ted) McGarry, III, County Planner
20 Mr. Kevin D. Wilhite, C.P.C., AICP, County Planner
21 Mr. Michael F. Kennedy, County Planner
22 Ms. Christina L. Goggin, AICP, County Planner
23 Mr. Michael P. Cooper, County Planner
24 Mr. Michael Jennings, Assistant Traffic Engineer
25 Ms. Diana B. Carver, Recording Secretary

26

27 **Mr. James B. Donati, Jr., the Board of Supervisors Representative, abstains on all cases**
28 **unless otherwise noted.**

29

30 Mrs. Ware - Good morning, welcome to the Planning Commission meeting for plans
31 of development and at this point I will turn the meeting over to the Secretary, Mr. Silber.

32

33 Mr. Silber - Thank you, Madam Chairman. Good morning to the Planning
34 Commission and those in the audience. We appreciate you cooperating with our change of
35 schedule. We normally start these meetings at 9:00 a.m. but we delayed it to 10:00 a.m.
36 because of the weather and the slippery roads. We do have several items on the agenda that
37 are scheduled or has been requested for deferral and we have a good number of items on the
38 agenda that will be considered as expedited items, so we should be able to move through the
39 agenda fairly quickly this morning. We do have a quorum. All members of the Planning
40 Commission are present this morning, so we can conduct business. The first item on the
41 agenda would be the handling of the deferrals and withdrawals. I believe Mr. O'Kelly is going
42 to walk us through those.

43

43 Mr. O’Kelly - Good morning, Madam Chairman. Welcome, Mr. Donati. Welcome,
44 Mr. Marshall. The staff looks forward to working with you all in the new year.

45

46 Mr. Vanarsdall - How about the rest of us?

47

48 Mr. O’Kelly - It’s always a pleasure, Mr. Vanarsdall. As the Secretary mentioned, we
49 do have four requests for deferrals and withdrawals that the staff is aware of this morning.
50 The first one is on page 4 of your agenda, POD-68-02, Blackwood Retail Glen Eagles
51 Shopping Center.

52

53 **PLAN OF DEVELOPMENT (Deferred from the September 24, 2003, Meeting)**

54

POD-68-02
Blackwood Retail Glen
Eagles Shopping Center

Balzer & Associates, Inc. for Richfield Associates, LLC:
Request for approval of a plan of development, as required by
Chapter 24, Section 24-106 of the Henrico County Code, to
construct a 6,600 square foot building addition in an existing
shopping center. The 0.90-acre site is located on the northwest
corner of Ridgefield Parkway and Eagles View Drive in the
Glen Eagles Shopping Center on part of parcel 740-500-0178.
The zoning is B-2C, Business District (Conditional). County
water and sewer. **(Tuckahoe)**

55

56 Mr. O’Kelly - The applicant is requesting deferral to June 23, 2004.

57

58 Mrs. Ware - Is there anyone in the audience in opposition to the deferral of POD-68-
59 02, Blackwood Retail Glen Eagles Shopping Center? No opposition. Then I move that POD-
60 68-02, Blackwood Retail Glen Eagles Shopping Center, be deferred to the June 23, 2004,
61 meeting at the applicant’s request.

62

63 Mr. Vanarsdall - Second.

64

65 Mrs. Ware - The motion was made by Mrs. Ware and seconded by Mr. Vanarsdall.
66 All in favor say aye...all opposed say nay. The ayes have it. The motion is passed.

67

68 At the request of the applicant, the Planning Commission deferred POD-68-02, Blackwood
69 Retail Glen Eagles Shopping Center, to its June 23, 2004, meeting.

70

70 **PLAN OF DEVELOPMENT (ARCHITECTURALS PLANS)**

71 **(Deferred from the December 17, 2003 Meeting)**

72

POD-77-03
Plow & Hearth @ Short
Pump Town Center

Little Diversified Architectural Consulting for Short Pump Town Center, LLC and Plow & Hearth: Request for approval of architectural plans for a plan of development, as required by Chapter 24, Section 24-106 of the Henrico County Code, to construct a one-story, 9,988 square foot retail store. The 2.596-acre site is located along the north line W. Broad Street (U.S. Route 250), approximately 200 feet west of its intersection with Lauderdale Drive (11700 W. Broad Street) on parcel 737-763-0900. The zoning is B-3C, Business District (Conditional) and WBSO, West Broad Street Overlay District. Private water and sewer. **(Three Chopt)**

73

74 Mr. O'Kelly - The second request is on page 7 of your agenda. The applicant request a
75 withdrawal of this application.

76

77 Mrs. Ware - There's no action required for withdrawals, correct?

78

79 Mr. O'Kelly - That's correct.

80

81 Mr. Silber - I believe there is a motion required. Is this for a plan of development?

82

83 Mrs. Ware - Yes.

84

85 Mr. Silber - If it is a zoning request it doesn't require it, if it is a plan of development
86 it does require a motion.

87

88 Mrs. Ware - Okay. This is in the Three Chopt district, Mr. Marshall.

89

90 Mr. Marshall - I make a motion to approve the withdrawal of POD-77-03, Plow &
91 Hearth @ Short Pump Town Center.

92

93 Mr. Vanarsdall - Second.

94

95 Mrs. Ware - The motion was made by Mr. Marshall and seconded by Mr. Vanarsdall.
96 All in favor say aye...all opposed say nay. The ayes have it. The motion is passed.

97

98 At the request of the applicant, the Planning Commission withdrew the plans of development
99 for POD-77-03, Plow & Hearth @ Short Pump Town Center, from any further consideration.

100

100 **PLAN OF DEVELOPMENT & TRANSITIONAL BUFFER DEVIATION**

101

POD-71-03
Dunn Building
3916 Mechanicsville
Turnpike

Keith Engineering, Inc. for Dorthy D. Norman: Request for approval of a plan of development and transitional buffer deviation, as required by Chapter 24, Sections 24-106 and 24-106.2 of the Henrico County Code, to add a one-story, 5,000 square foot building addition and a parking lot. The rear wall of the building, at 17 feet high, would replace the required 35-foot transitional buffer along the rear yard. The .74-acre site is located one block south of Laburnum Avenue and Mechanicsville Turnpike on parcels 802-734-6795 and 802-735-6802. The zoning is B-3, Business District. County water and sewer. **(Fairfield)**

102

103 Mr. O'Kelly - The next request is on page 8 of your agenda. The applicant requests
104 deferral to March 24, 2004.

105

106 Mrs. Ware - Is there anyone in the audience in opposition to the deferral of POD-71-
107 03, Dunn Building? No opposition. Mr. Archer.

108

109 Mr. Archer - Madam Chairman, I move deferral of POD-71-03, Dunn Building, 3916
110 Mechanicsville Turnpike, to March 24, 2004, meeting by the request of the applicant.

111

112 Mr. Vanarsdall - Second.

113

114 Mrs. Ware - The motion was made by Mr. Archer and seconded by Mr. Vanarsdall.
115 All in favor say aye...all opposed say nay. The ayes have it. The motion is passed.

116

117 At the request of the applicant, the Planning Commission deferred POD-71-03, Dunn Building
118 - 3916 Mechanicsville Turnpike, to its March 24, 2004, meeting.

119

120 **SUBDIVISION (Deferred from the December 17, 2003, Meeting)**

121

Dorey Mill
(December 2003 Plan)

Engineering Design Associates for Pruitt Properties, Inc. and Loftis Real Estate & Development, Inc.: The 220.53 acre site proposed for a subdivision of 134 single-family homes is centered between Charles City and Darbytown Roads and Gill Dale Park and Yahley Mill Road on parcels 840-692-7093; 836-695-0386; 837-695-5661 and 837-693-5764. The zoning is A-1, Agricultural District. Individual well and Septic Tank/Drainfield. **(Varina) 134 Lots**

122

123 Mr. O'Kelly - The next request is on page 20 of your agenda. The applicant requests
124 deferral to February 25, 2004.

125

126 Mrs. Ware - Is there anyone in the audience in opposition to the deferral of
127 subdivision Dorey Mill (December 2003 Plan)? No opposition. Mr. Jernigan.
128
129 Mr. Jernigan - With that, Madam Chairman, I'll move for deferral of subdivision Dorey
130 Mill (December 2003 Plan) to February 25, 2004, by request of the applicant.
131
132 Mr. Vanarsdall - Second.
133
134 Mrs. Ware - The motion was made by Mr. Jernigan and seconded by Mr. Vanarsdall.
135 All in favor say aye...all opposed say nay. The ayes have it. The motion is passed.
136
137 Mr. Donati - Madam Chairman, note my abstention, I'm not voting.
138
139 Mrs. Ware - Abstention noted.
140
141 At the request of the applicant, the Planning Commission deferred subdivision Dorey Mill
142 (December 2003 Plan), to its February 25, 2004, meeting.
143
144 Mr. Silber - Next item on the agenda would be consideration of the Expedited
145 Agenda.
146
147 Mr. Vanarsdall - Excuse me, Mr. Secretary and Madam Chairman.
148
149 Mr. Silber - Yes, sir.
150
151 Mr. Vanarsdall - Mr. Jernigan, didn't you have one to be deferred in Camp Holly Spring?
152
153 Mr. Jernigan - No. It's not being deferred, we are going to hear it today.
154
155 Mr. Vanarsdall - Okay. Thank you.
156
157 Mr. Silber - Okay. Next on the agenda would be the expedited items. These are
158 items on the agenda that have all the known issues resolved and the staff is recommending
159 approval of these items. The Planning Commission is comfortable with the plan and there is
160 no known opposition. If there is any opposition to any of these items, we will pull them off
161 the Expedited Agenda and hear them in the order of the agenda. But, we do have a number of
162 items on the Expedited Agenda so we can hear these more quickly. Mr. O'Kelly.
163
164 Mr. O'Kelly - There are 10 items on the Expedited Agenda for your consideration.
165 The first one is on page 9, POD-1-04, Glenside Commons Office Development.
166

166 **PLAN OF DEVELOPMENT**

167

POD-1-04
Glenside Commons –
Phase 1 and Master Plan

E. D. Lewis & Associates for JLW Associates: Request for approval of a plan of development, as required by Chapter 24, Section 24-106 of the Henrico County Code, to construct three, one-story, office condominium buildings, totaling 26,601 square feet (Phase 1) and a master plan for three additional buildings with a total of 25,680 square feet. The 6.374-acre site is located on the northwest corner of Bethlehem Road and Glenside Drive on parcel 768-747-2537. The zoning is O-2C, Office District (Conditional). County water and sewer.
(Brookland)

168

169 Mr. O’Kelly - The staff is recommending two additional conditions for your
170 consideration which appears on page 1 of the addendum.

171

172 Mrs. Ware - Is there any opposition on hearing this case, POD-1-04, Glenside
173 Commons – Phase 1 and Master Plan, on the Expedited Agenda? No opposition. Mr.
174 Vanarsdall.

175

176 Mr. Vanarsdall - I move POD-1-04, Glenside Commons, be approved on the Expedited
177 Agenda at the request of the staff and the standard conditions for developments of this type and
178 the following conditions. I want to add Nos. 9 and 11 amended and Nos. 23 through 34 and
179 Nos. 35 and 36 on the addendum this morning.

180

181 Mr. Jernigan - Second.

182

183 Mrs. Ware - The motion was made by Mr. Vanarsdall and seconded by Mr. Jernigan.
184 All in favor say aye...all opposed say nay. The ayes have it. The motion is carried.

185

186 The Planning Commission approved POD-1-04, Glenside Commons – Phase 1 and Master
187 Plan, subject to the standard conditions attached to these minutes for developments of this type,
188 the annotations on the plan and the following additional conditions:

189

190 9. **AMENDED** - A detailed landscaping plan shall be submitted to the Planning Office for
191 review and Planning Commission approval prior to the issuance of any occupancy
192 permits.

193 11. **AMENDED** - Prior to the approval of an electrical permit application and installation
194 of the site lighting equipment, a plan including depictions of light spread and intensity
195 diagrams, and fixture specifications and mounting height details shall be submitted for
196 Planning Office review and Planning Commission approval.

197 23. The right-of-way for widening of Bethlehem Road as shown on approved plans shall be
198 dedicated to the County prior to any occupancy permits being issued. The right-of-way
199 dedication plat and any other required information shall be submitted to the County
200 Real Property Agent at least sixty (60) days prior to requesting occupancy permits.

- 201 24. The easements for drainage and utilities as shown on approved plans shall be granted to
202 the County in a form acceptable to the County Attorney prior to any occupancy permits
203 being issued. The easement plats and any other required information shall be submitted
204 to the County Real Property Agent at least sixty (60) days prior to requesting
205 occupancy permits.
- 206 25. The developer shall provide fire hydrants as required by the Department of Public
207 Utilities and Division of Fire.
- 208 26. Outside storage shall not be permitted.
- 209 27. The proffers approved as a part of zoning case C-28C-85 shall be incorporated in this
210 approval.
- 211 28. The certification of building permits, occupancy permits and change of occupancy
212 permits for individual units shall be based on the number of parking spaces required for
213 the proposed uses and the amount of parking available according to approved plans.
- 214 29. Any necessary off-site drainage and/or water and sewer easements must be obtained in
215 a form acceptable to the County Attorney prior to final approval of the construction
216 plans.
- 217 30. Deviations from County standards for pavement, curb or curb and gutter design shall be
218 approved by the County Engineer prior to final approval of the construction plans by
219 the Department of Public Works.
- 220 31. Insurance Services Office (ISO) calculations must be included with the plans and
221 contracts and must be approved by the Department of Public Utilities prior to the
222 issuance of a building permit.
- 223 32. Approval of the construction plans by the Department of Public Works does not
224 establish the curb and gutter elevations along the Henrico County maintained right-of-
225 way. The elevations will be set by Henrico County.
- 226 33. The location of all existing and proposed utility and mechanical equipment (including
227 HVAC units, electric meters, junction and accessory boxes, transformers, and
228 generators) shall be identified on the landscape plans. All equipment shall be screened
229 by such measures as determined appropriate by the Director of Planning or the
230 Planning Commission at the time of plan approval.
- 231 34. The property owner shall provide the Planning Office a copy of the business owner's
232 restrictive covenants that will govern this site prior to their recordation and prior to the
233 issuance of a certificate of occupancy for this development.
- 234 35. A standard concrete sidewalk shall be provided along the north side of Glenside Drive.
- 235 36. The conceptual master plan, as submitted with this application, is for planning and
236 information purposes only. All subsequent detailed plans of development and
237 construction plans needed to implement this conceptual plan may be administratively
238 reviewed and approved and shall be subject to all regulations in effect at the time such
239 subsequent plans are submitted for review/approval.
- 240
- 241

241 **PLAN OF DEVELOPMENT**

242

POD-3-04
Brook Run Shopping
Center Parcel 4B –
Brook Road

Timmons Group for Tetra Associates, LLC: Request for approval of a plan of development, as required by Chapter 24, Section 24-106 of the Henrico County Code, to construct a seven unit, one-story, 8,750 square foot retail building. The 0.83-acre site is located on an outparcel of the Brook Run Shopping Center, approximately 1,200 feet north of Brook Run Drive on the west line of Brook Road (U.S. Route 1) on parcel 783-748-5077. The zoning is B-3C, Business District (Conditional). County water and sewer. **(Fairfield)**

243

244 Mrs. Ware - Is there anyone in the audience in opposition to hearing POD-3-04,
245 Brook Run Shopping Center, on the Expedited Agenda? No opposition. Mr. Archer.

246

247 Mr. Archer - Madam Chairman, I move approval of POD-3-04, Brook Run Shopping
248 Center on the Expedited Agenda subject to the annotations on the plans, the standard
249 conditions for developments of this type and additional conditions Nos. 9 and 11 amended and
250 Nos. 23 through 46.

251

252 Mr. Vanarsdall - Second.

253

254 Mrs. Ware - The motion was made by Mr. Archer and seconded by Mr. Vanarsdall.
255 All in favor say aye...all opposed say nay. The ayes have it. The motion is carried.

256

257 The Planning Commission approved POD-3-04, Brook Run Shopping Centered Parcel 4B on
258 Brook Road on the Expedited Agenda, subject to the standard conditions attached to these
259 minutes, for developments of this type, the annotations on the plan and the following additional
260 conditions:

261

262 9. **AMENDED** - A detailed landscaping plan shall be submitted to the Planning Office for
263 review and Planning Commission approval prior to the issuance of any occupancy
264 permits.

265 11. **AMENDED** - Prior to the installation of the site lighting equipment, a plan including
266 depictions of light spread and intensity diagrams, and fixture and specifications and
267 mounting height details shall be submitted for Planning Office review and Planning
268 Commission approval.

269 23. Only retail business establishments permitted in a B-3 may be located in this center.

270 24. The ground area covered by all the buildings shall not exceed in the aggregate 25 percent
271 of the total site area.

272 25. No merchandise shall be displayed or stored outside of the building(s) or on sidewalk(s).

273 26. The easements for drainage and utilities as shown on approved plans shall be granted to
274 the County in a form acceptable to the County Attorney prior to any occupancy permits
275 being issued. The easement plats and any other required information shall be submitted
276 to the County Real Property Agent at least sixty (60) days prior to requesting

- 277 occupancy permits.
- 278 27. The limits and elevations of the 100-year frequency flood shall be conspicuously noted
279 on the plan "Limits of 100 Year Floodplain." In addition, the delineated 100-year
280 floodplain must be labeled "Variable Width Drainage and Utility Easement." The
281 easement shall be granted to the County prior to the issuance of any occupancy permits.
- 282 28. The entrances and drainage facilities on Brook Road (U. S. Route 1) shall be approved
283 by the Virginia Department of Transportation and the County.
- 284 29. A notice of completion form, certifying that the requirements of the Virginia
285 Department of Transportation entrances permit have been completed, shall be submitted
286 to the Planning Office prior to any occupancy permits being issued.
- 287 30. The developer shall provide fire hydrants as required by the Department of Public
288 Utilities and Division of Fire.
- 289 31. The proffers approved as a part of zoning case C-30C-88 shall be incorporated in this
290 approval.
- 291 32. Prior to issuance of a building permit, the developer must furnish a letter from
292 **Dominion Virginia Power** stating that this proposed development does not conflict
293 with their facilities.
- 294 33. Any necessary off-site drainage and/or water and sewer easements must be obtained in
295 a form acceptable to the County Attorney prior to final approval of the construction
296 plans.
- 297 34. Deviations from County standards for pavement, curb or curb and gutter design shall be
298 approved by the County Engineer prior to final approval of the construction plans by
299 the Department of Public Works.
- 300 35. Storm water retention, based on the 50-10 concept, shall be incorporated into the
301 drainage plans.
- 302 36. Insurance Services Office (ISO) calculations must be included with the plans and
303 contracts and must be approved by the Department of Public Utilities prior to the
304 issuance of a building permit.
- 305 37. Approval of the construction plans by the Department of Public Works does not
306 establish the curb and gutter elevations along the Virginia Department of Transportation
307 maintained right-of-way. The elevations will be set by the contractor and approved by
308 the Virginia Department of Transportation.
- 309 38. Evidence of a joint ingress/egress and maintenance agreement must be submitted to the
310 Planning Office and approved prior to issuance of a certificate of occupancy for this
311 development.
- 312 39. The conceptual master plan, as submitted with this application, is for planning and
313 information purposes only.
- 314 40. The location of all existing and proposed utility and mechanical equipment (including
315 HVAC units, electric meters, junction and accessory boxes, transformers, and
316 generators) shall be identified on the landscape plans. All equipment shall be screened
317 by such measures as determined appropriate by the Director of Planning or the
318 Planning Commission at the time of plan approval.
- 319 41. Landscaping along Brook Road, and site and street lighting shall comply with the Brook
320 Road Design Guidelines or standards approved by the Director of Planning at the time
321 of landscape and lighting plan review.

- 322 42. A coordinated design scheme shall be adopted for all parcels being developed within the
 323 shopping center consistent with both the quality of the existing developed portion of
 324 shopping center and with the “Brook Road Enhancement Study”. The buildings shall
 325 be constructed with brick coordinated to match the existing Ukrop’s building.
- 326 43. A coordinated lighting, landscape and signage scheme shall be maintained for all
 327 parcels within the Brook Run shopping center.
- 328 44. The required 35-foot transitional buffer along Brook Road may be reduced to no less
 329 than 25-feet. Planting within the transitional buffer along Brook Road shall conform to
 330 the planting standards of the 25-foot transitional buffer or as otherwise approved by the
 331 Planning Commission.
- 332 45. As a condition of the transitional buffer deviation, a public sidewalk and streetscape
 333 improvements conforming to the Brook Road enhancement study and such guidelines as
 334 may be adopted by the Director of Planning shall be provided prior to the issuance of
 335 any occupancy permits.
- 336 46. No additional freestanding signs shall be permitted within the shopping center.

337

338 **PLAN OF DEVELOPMENT**

339

POD-5-04
 Willows Bend
 Hickory Bend Drive

Youngblood, Tyler & Associates, P.C. for HHHunt Corporation: Request for approval of a plan of development, as required by Chapter 24, Section 24-106 of the Henrico County Code, to construct a zero lot line single-family subdivision with 88 lots. The 22.23-acre site is located on the northwest side of Hickory Bend Drive on part of parcel 747-771-2430 and parcels 745-768-7374, 745-769-6845, 5071 and 0926. The zoning is R-5AC, General Residence District (Conditional). **(Three Chopt)**

340

341 Mrs. Ware - Is there anyone in the audience in opposition to hearing this case POD-5-
 342 04, Willows Bend, on the Expedited Agenda? No opposition. Mr. Marshall.

343

344 Mr. Marshall - I move that POD-5-04, Willows Bend be passed on the Expedited
 345 Agenda along with annotations Nos. 23 through 27.

346

347 Mr. Vanarsdall - Second.

348

349 Mrs. Ware - The motion was made by Mr. Marshall and seconded by Mr. Vanarsdall.
 350 All in favor say aye...all opposed say nay. The ayes have it. The motion carries.

351

352 The Planning Commission approved POD-5-04, Willows Bend – Hickory Bend Drive, subject
 353 to the standard conditions attached to these minutes for developments of this type, the
 354 annotations on the plans, and the following additional conditions:

355

356 23. The subdivision plat for Willow Bend shall be recorded before any building permits are
 357 issued.

- 358 24. The proffers approved as a part of zoning case C-13C-02 shall be incorporated in this
 359 approval.
- 360 25. Any necessary off-site drainage and/or water and sewer easements must be obtained in
 361 a form acceptable to the County Attorney prior to final approval of the construction
 362 plans.
- 363 26. The owners shall not begin clearing of the site until the following conditions have been
 364 met:
- 365
- 366 (a) The site engineer shall conspicuously illustrate on the plan of development or
 367 subdivision construction plan and the Erosion and Sediment Control Plan, the
 368 limits of the areas to be cleared and the methods of protecting the required
 369 buffer areas. The location of utility lines, drainage structures and easements
 370 shall be shown.
- 371 (b) After the Erosion and Sediment Control Plan has been approved but prior to any
 372 clearing or grading operations of the site, the owner shall have the limits of
 373 clearing delineated with approved methods such as flagging, silt fencing or
 374 temporary fencing.
- 375 (c) The site engineer shall certify in writing to the owner that the limits of clearing
 376 have been staked in accordance with the approved plans. A copy of this letter
 377 shall be sent to the Planning Office and the Department of Public Works.
- 378 (d) The owner shall be responsible for the protection of the buffer areas and for
 379 replanting and/or supplemental planting and other necessary improvements to
 380 the buffer as may be appropriate or required to correct problems. The details
 381 shall be included on the landscape plans for approval.
- 382 27. The location of all existing and proposed utility and mechanical equipment (including
 383 HVAC units, electric meters, junction and accessory boxes, transformers, and
 384 generators) shall be identified on the landscape plans. All equipment shall be screened
 385 by such measures as determined appropriate by the Director of Planning or the
 386 Planning Commission at the time of plan approval.

387
 388 **SUBDIVISION**

389

BRI Acres (January 2004 Plan)	Balzer & Associates, Inc. for J. Duke Boswell: The 2.331- acre site proposed for a subdivision of 3 single-family homes is located approximately 390 feet north of Tallwood Road on the east side of Skipwith Road at 1903 Skipwith Road on parcel 761-747-8514. The zoning is R-3, One-Family Residence District. County water and sewer. (Three Chopt) 3 Lots
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390

391 Mrs. Ware - Is there anyone in the audience in opposition to hearing this subdivision
 392 case BRI Acres (January 2004 Plan) on the Expedited Agenda? No opposition. Mr. Marshall.
 393

394 Mr. Marshall - I move approval of subdivision BRI Acres along with the annotations and
 395 Nos. 12, 13 and 14.

396 Mr. Vanarsdall - Second.

397

398 Mrs. Ware - The motion was made by Mr. Marshall and seconded by Mr. Vanarsdall.
399 All in favor say aye...all opposed say nay. The ayes have it. The motion carries.

400

401 The Planning Commission granted conditional approval to subdivision BRI Acres (January
402 2004 Plan) subject to the standard conditions attached to these minutes for subdivisions served
403 by public utilities and the following additional conditions:

404

405 12. The limits and elevation of the 100-year frequency flood shall be conspicuously noted
406 on the plat and construction plans and labeled "Limits of 100-year floodplain." Dedicate
407 floodplain as a "Variable Width Drainage & Utilities Easement."

408 13. A County standard sidewalk shall be constructed along the east side of Skipwith Road.

409 14. Any future building lot containing a BMP, sediment basin or trap and located within the
410 buildable area for a principal structure or accessory structure, may be developed with
411 engineered fill. All material shall be deposited and compacted in accordance with the
412 Virginia Uniform Statewide Building Code and geotechnical guidelines established by a
413 professional engineer. A detailed engineering report shall be submitted for the review
414 and approval by the Building Official prior to the issuance of a building permit on the
415 affected lot. A copy of the report and recommendations shall be furnished to the
416 Directors of Planning and Public Works.

417

418 **SUBDIVISION**

419

Greenbrooke
(January 2004 Plan)

**Youngblood, Tyler & Associates, P.C. for Webb L. Tyler,
G. Edmond Massie IV, Joseph E. Liesfeld, Jr. and
Greenbrooke, LLC:** The 43.744-acre site proposed for a
subdivision of 76 single-family homes is located at the
northwest intersection of Dublin Road and Belfast Road,
adjacent to Interstate 295, on parcels 743-764-8795; 744-765-
0530, 2664, 8338, 5906, and 4795; 745-765-2882, 1418 and
8941 and 745-766-3912. The zoning is R-3C, One-Family
Residence District (Conditional), C-1, Conservation District
and C-1C, Conservation District (Conditional). County water
and sewer. **(Three Chopt) 76 Lots**

420

421 Mr. O'Kelly - There is a revised condition on page 3 of your addendum for this case.

422

423 Mrs. Ware - Is there anyone in the audience in opposition to hearing this subdivision
424 case Greenbrooke (January 2004 Plan) on the Expedited Agenda? No opposition. Mr.
425 Marshall.

426

427 Mr. Marshall - I move approval of subdivision Greenbrooke on the Expedited Agenda
428 with the annotations Nos. 12 through 21 and revised annotation No. 20.

429

430 Mrs. Ware - Second.

431

432 Mrs. Ware - The motion was made by Mr. Marshall and seconded by Mrs. Ware. All
433 in favor say aye...all opposed say nay. The ayes have it. The motion carries.

434

435 The Planning Commission granted conditional approval to subdivision Greenbrooke (January
436 2004 Plan) subject to the standard conditions attached to these minutes for subdivisions served
437 by public utilities and the following additional conditions:

438

439 12. The limits and elevation of the 100 year frequency flood shall be conspicuously noted on
440 the plat and construction plans and labeled "Limits of 100 year floodplain." Dedicate
441 floodplain as a "Variable Width Drainage & Utilities Easement."

442 13. Any necessary offsite drainage easements must be obtained prior to approval of the
443 construction plan by the Department of Public Works.

444 14. The proffers approved as part of zoning cases C-74C-02, C-3C-03, C-53C-03 and C-4C-
445 01 shall be incorporated in this approval.

446 15. Prior to requesting the final approval, a draft of the covenants and deed restrictions for
447 the maintenance of the common area by a homeowners association shall be submitted to
448 the Planning Office for review. Such covenants and restrictions shall be in form and
449 substance satisfactory to the County Attorney and shall be recorded prior to recordation of
450 the subdivision plat.

451 16. Any future building lot containing a BMP, sediment basin or trap and located within the
452 buildable area for a principal structure or accessory structure, may be developed with
453 engineered fill. All material shall be deposited and compacted in accordance with the
454 Virginia Uniform Statewide Building Code and geotechnical guidelines established by a
455 professional engineer. A detailed engineering report shall be submitted for the review
456 and approval by the Building Official prior to the issuance of a building permit on the
457 affected lot. A copy of the report and recommendations shall be furnished to the
458 Directors of Planning and Public Works.

459 17. Prior to final approval, the developer shall furnish a letter from Plantation Pipe Line
460 Company stating that this proposed development does not conflict with its easement.

461 18. Each lot shall contain at least 11,000 square feet exclusive of the floodplain areas.

462 19. The developer shall provide signage, the wording and location as deemed appropriate
463 by the Director of Public Works, which addresses the possible future extension of any
464 stub street.

465 20. Building permits for no more than 50 lots shall be issued prior to the construction of a
466 second point of access.

467 21. The applicant shall quitclaim his interest in any private access roads or easements
468 within the bounds of this development prior to recordation of the subdivision plat.

469

470

470 **SUBDIVISION**

471

Greenbrooke, Section C
(January 2004 Plan)

Foster & Miller, P.C. for Junko M. & Joseph E. Liesfeld, Jr., Greenbrooke, LLC and Johnson Development, LLC:
The 10.65-acre site proposed for a subdivision of 15 single-family homes is located approximately 250 feet west of Greenbrooke Drive between I-295, Sadler Place Subdivision and Sadler Grove Subdivision, on part of parcels 745-766-3912 and 1855; 744-765-8338 and 4795. The zoning is R-3C, One-Family Residence District (Conditional) and C-1, Conservation District. County water and sewer. **(Three Chopt) 15 Lots**

472

473 Mrs. Ware - Is there anyone in the audience in opposition to hearing subdivision
474 Greenbrooke, Section C (January 2004 Plan) on the Expedited Agenda? No opposition. Mr.
475 Marshall.

476

477 Mr. Marshall - I make a motion to approve Greenbrooke, Section C on the Expedited
478 Agenda along with annotations Nos. 12 through 18.

479

480 Mr. Vanarsdall - Second.

481

482 Mrs. Ware - The motion was made by Mr. Marshall and seconded by Mr. Vanarsdall.
483 All in favor say aye...all opposed say nay. The ayes have it. The motion carries.

484

485 The Planning Commission granted conditional approval to subdivision Greenbrooke, Section C
486 (January 2004 Plan) subject to the standard conditions attached to these minutes for
487 subdivisions served by public utilities and the following additional conditions:

488

489 12. The limits and elevation of the 100 year frequency flood shall be conspicuously noted on
490 the plat and construction plans and labeled "Limits of 100 year floodplain." Dedicate
491 floodplain as a "Variable Width Drainage & Utilities Easement."

492 13. Any necessary offsite drainage easements must be obtained prior to approval of the
493 construction plan by the Department of Public Works.

494 14. The proffers approved as part of zoning cases C-53C-03 and C-4C-01 shall be
495 incorporated in this approval.

496 15. Prior to requesting the final approval, a draft of the covenants and deed restrictions for
497 the maintenance of the common area by a homeowners association shall be submitted to
498 the Planning Office for review. Such covenants and restrictions shall be in form and
499 substance satisfactory to the County Attorney and shall be recorded prior to recordation of
500 the subdivision plat.

501 16. Any future building lot containing a BMP, sediment basin or trap and located within the
502 buildable area for a principal structure or accessory structure, may be developed with
503 engineered fill. All material shall be deposited and compacted in accordance with the
504 Virginia Uniform Statewide Building Code and geotechnical guidelines established by a
505 professional engineer. A detailed engineering report shall be submitted for the review

506 and approval by the Building Official prior to the issuance of a building permit on the
507 affected lot. A copy of the report and recommendations shall be furnished to the
508 Directors of Planning and Public Works.
509 17. Prior to final approval, the developer shall furnish a letter from Plantation Pipe Line
510 Company stating that this proposed development does not conflict with its easement.
511 18. Each lot shall contain at least 11,000 square feet exclusive of the floodplain areas.

512

513 **SUBDIVISION**

514

Midview Estates
(January 2004 Plan)

Bay Design Group, P.C. for New Market Properties, LLC and GreenLeaf Builders, LLC: The 3.587-acre site proposed for a subdivision of 7 single-family homes is located at the southeast corner of the intersection of Midview Road and New Market Road (State Route 5) on part of parcel 803-701-6867. The zoning is R-2AC, One-Family Residence District (Conditional). County water and sewer. **(Varina) 7 Lots**

515

516 Mrs. Ware - Is there anyone in the audience in opposition to hearing subdivision
517 Midview Estates (January 2004 Plan) on the Expedited Agenda? No opposition. Mr. Jernigan.
518

519 Mr. Jernigan - Madam Chairman, I move for approval of Midview Estates (January
520 2004 Plan) subject to the annotations on the plan, the standard conditions for subdivisions
521 served by public utilities and the following additional conditions Nos. 12 through 17.

522

523 Mr. Vanarsdall - Second.

524

525 Mrs. Ware - The motion was made by Mr. Jernigan and seconded by Mr. Vanarsdall.
526 All in favor say aye...all opposed say nay. The ayes have it. The motion carries.

527

528 The Planning Commission granted conditional approval to subdivision Midview Estates
529 (January 2004 Plan) subject to the standard conditions attached to these minutes for
530 subdivisions served by public utilities and the following additional conditions:

531

532 12. Each lot shall contain at least 13,500 square feet.

533 13. Any necessary offsite drainage easements must be obtained prior to approval of the
534 construction plan by the Department of Public Works.

535 15. The proffers approved as part of zoning case C-34C-03 shall be incorporated in this
536 approval.

537 16. Prior to requesting the final approval, a draft of the covenants and deed restrictions for
538 the maintenance of the common area by a homeowners association shall be submitted to
539 the Planning Office for review. Such covenants and restrictions shall be in form and
540 substance satisfactory to the County Attorney and shall be recorded prior to recordation
541 of the subdivision plat.

542 17. The detailed plant list and specifications for the landscaping to be provided within the
543 10-foot-wide planting strip easement along the rear of all lots shall be submitted to the

544 Planning Office for review and approval prior to recordation of the plat.
545 18. Prior to final approval, the developer shall furnish a letter from Colonial Pipeline
546 Company stating that the proposed development does not conflict with its 50-foot
547 easement.

548

549 **SUBDIVISION**

550

The Townes @ Meredith
Creek, Section 3
(December 2003 Plan)

Koontz-Bryant, P.C. for Mr. Kenneth E. Mills, Jr., Wilton Development Corporation, James T. Mills, and Keith A. Mills: The 3.7-acre site proposed for a subdivision of 18 single-family townhomes is located approximately 200 feet from the intersection of Springfield Road and Bocastle Road, at 4475 Springfield Road on parcel 755-762-0241. The zoning is RTHC, Residential Townhouse District (Conditional). County water and sewer. **(Brookland) 18 Lots**

551

552 Mrs. Ware - Is there anyone in the audience in opposition to hearing The Townes @
553 Meredith Creek, Section 3, on the Expedited agenda? No opposition. Mr. Vanarsdall.

554

555 Mr. Vanarsdall - I move The Townes @ Meredith Creek, Section 3 (December 2003 Plan)
556 be approved on the Expedited Agenda with the annotations on the plans and the standard
557 conditions for subdivisions served by public utilities and additional conditions Nos. 18, 19, and
558 20.

559

560 Mr. Jernigan - Second.

561

562 Mrs. Ware - The motion was made by Mr. Vanarsdall and seconded by Mr. Jernigan.
563 All in favor say aye...all opposed say nay. The ayes have it. The motion carries.

564

565 The Planning Commission granted conditional approval to subdivision The Townes at Meredith
566 Creek, Section 3 (December 2003 Plan) subject to the standard conditions attached to these
567 minutes for subdivisions served by public utilities, the annotations on the plans and the
568 following additional conditions:

569

570 18. The limits and elevation of the 100-year frequency flood shall be conspicuously noted
571 on the plat and construction plans and labeled "Limits of 100-year floodplain."
572 Dedicate floodplain as a "Variable Width Drainage & Utilities Easement."

573 19. Any necessary offsite drainage easements must be obtained prior to approval of the
574 construction plan by the Department of Public Works.

575 20. The proffers approved as part of zoning case C-37C-03 shall be incorporated in this
576 approval.

577

578

578 **LANDSCAPE & LIGHTING PLAN**

579

LP/POD-18-02
Millspring Townes –
Section 2 –
Hungary Springs Road

Bay Design Group, P.C. for Wilton Development Corporation: Request for approval of a landscape and lighting plan, as required by Chapter 24, Sections 24-106 and 24-106.2 of the Henrico County Code. The 4.76-acre site is located along the west line of Hungary Spring Road approximately 200 feet north of Olde West Drive on parcel 766-757-1690. The zoning is RTHC, Residential Townhouse District (Conditional).
(Brookland)

580

581 Mrs. Ware - Is there anyone in the audience in opposition to hearing the landscape
582 and lighting plan for LP/POD-18-02, Millspring Townes, on the Expedited Agenda? No
583 opposition. Mr. Vanarsdall.

584

585 Mr. Vanarsdall - We had a few discrepancies in this in the beginning and I want to thank
586 Leslie News and the staff for taking care of it. I move LP/POD-18-02, Millspring Townes,
587 Section 2, Hungary Springs Road, be approved with the annotations on the plans and the
588 standard conditions for developments of this type and on the addendum on page 5 it merely
589 says that the staff recommends approval.

590

591 Mr. Jernigan - Second.

592

593 Mrs. Ware - The motion was made by Mr. Vanarsdall and seconded by Mr. Jernigan.
594 All in favor say aye...all opposed say nay. The ayes have it. The motion carries.

595

596 The Planning Commission approved the landscape and lighting plans for LP/POD-18-02,
597 Millsprings Townes, Section 2, Hungary Springs Road, subject to the standard conditions
598 attached to these minutes for landscape and lighting plan and the annotations on the plan.

599

600 **LANDSCAPE & LIGHTING PLAN**

601

LP/POD-57-02
Quioccasin Baptist Church
Quioccasin Road

Hulcher & Associates, Inc.: Request for approval of a landscape and lighting plan, as required by Chapter 24, Sections 24-106 and 24-106.2 of the Henrico County Code. The 3.82-acre site is located along the south line of Quioccasin Road, approximately 260 feet east of Blue Jay Lane on parcels 751-745-9705, 751-744-8877, 752-745-1602 and 752-744-2499. The zoning is R-3, One-Family Residence District.
(Tuckahoe)

602

603 Mr. O’Kelly - This is your last case on the Expedited Agenda.

604

605 Mrs. Ware - Is there anyone in the audience in opposition to hearing the landscape
606 and lighting plan for LP/POD-57-02, Quioccasin Baptist Church, on the Expedited Agenda?

607 No opposition. All right. Then I move that LP/POD-57-02, landscape and lighting plan for
608 Quiocasin Baptist Church, be approved based on the standard conditions for landscape and
609 lighting plans as recommended on the Expedited Agenda.

610

611 Mr. Archer - Second.

612

613 Mrs. Ware - The motion was made by Mrs. Ware and seconded by Mr. Archer. All
614 in favor say aye...all opposed say nay. The ayes have it. The motion carries.

615

616 The Planning Commission approved the landscape and lighting plans for LP/POD-57-02,
617 Quiocasin Baptist Church – Quiocasin Road, subject to the standard conditions attached to
618 these minutes for landscape and lighting plan and, the annotations on the plan.

619

620 Mr. Silber - Mr. O’Kelly, I assume that takes care of all of the Expedited Agenda
621 items?

622

623 Mr. O’Kelly - Everything that staff is aware of, Mr. Secretary.

624

625 Mr. Silber - Okay. That took care a large portion of our agenda this morning. The
626 next item on the agenda would be the extensions of conditional subdivision approval. These are
627 simply shown on the agenda for informational purposes. These subdivisions are up for
628 consideration of extension of conditional approval and will be handle administratively. We put
629 them on the agenda for the Planning Commission’s information but there is no action that is
630 required.

631

632 **SUBDIVISION EXTENSIONS OF CONDITIONAL APPROVAL**

633

634 **FOR INFORMATIONAL PURPOSES ONLY**

635

Subdivision	Magisterial District	Original No. of Lots	Remaining Lots	Previous Extensions	Year(s) Extended
Bryan Park Gardens, Sec. C (Jan. 2003Plan)	Brookland	21	21	0	1 Year 1/26/05
Malvern Hill Manor (January 2001 Plan)	Varina	121	121	2	1 Year 1/26/05
Old Washington Place (January 2001 Plan)	Brookland	10	10	2	1 Year 1/26/05

636

637

638 Mr. O’Kelly - I’ll be happy to answer any questions.

639

640 Mrs. Ware - Are there any questions for Mr. O’Kelly concerning subdivision
641 extensions? Thank you.

642

643 Mr. Silber - I probably should have done this at the beginning of the meeting. I want
644 to welcome Mr. Donati to the Planning Commission. Mr. Donati sits on the Board of
645 Supervisors from the Varina District and the Planning Commission has five members that serve
646 from each of the magisterial districts appointed by the Board of Supervisors. Mr. Jernigan to
647 my right, are members from the Planning Commission from each of the districts and then one
648 member from the Board of Supervisors sits on the Planning Commission as its six member. So,
649 Mr. Donati is sitting on the Planning Commission this year as representative of the Board of
650 Supervisors. So, Mr. Donati, I welcome you to the Commission for this year for 2004.

651

652 Mr. Donati - Thank you, Mr. Silber.

653

654 Mr. Silber - Next on the agenda would be an item deferred from the December 17,
655 2003, meeting. The Church Road/Pump Road Future Land Use Plan.

656

657 **TUCKAHOE/THREE CHOPT:**

658 ***Deferred from the December 17, 2003 Meeting:***

659 **Church Road/Pump Road Future Land Use Plan:** The Planning Commission will consider
660 amendments to the 2010 Land Use Plan in the form of a new Land Use Plan for the Church
661 Road/Pump Road Study Area. The study area is generally comprised of the area surrounding
662 the existing intersection of Church Road and Pump Road. **(For Decision Only)**

663

664 Mr. Silber - This item was heard by the Planning Commission on November 5 of last
665 year and at that time the Planning Commission held a public hearing and there was lengthy
666 testimony provided and accepted by the Planning Commission in consideration of that plan.
667 After a lengthy testimony the Planning Commission deferred action on that plan to December
668 17, 2003, with the understanding that it was a deferral for decision only. It felt as though
669 enough testimony had been provided and so they deferred it for decision only. This item came
670 up on December 17, the Planning Commission deferred this item again to allow additional
671 input to be received and to meet with the residents in the area of this study, so it was deferred
672 to today's meeting, January 28, 2004, meeting.

673

674 A community meeting was held on January 22 of this year at Godwin High School where the
675 proposed plans were shared with the community once again and input was received in a form
676 of written comments. And Mrs. O'Bannon and Mrs. Ware were at that meeting as well as Mr.
677 Marshall and Mr. Vanarsdall were at that meeting as well and that was on January 22, 2004.
678 This item is back on the Planning Commission's agenda. It is slated to be for decision only so
679 we do not plan to have this as a continuation of a public hearing but simply as decision only.
680 So, I'll turn it over to the Commission at this point.

681

682 Mrs. Ware - At this time, I would like to make a statement before I make the motion.
683 And there is one thing I want to make clear with this is that the decision that we are making
684 today is not a zoning decision. The motion that we will be voting on involves an amendment
685 to the County's Land Use Plan. This plan is a recommendation and a general guide for the
686 future land use in rezoning decisions of the County.

687 As Mr. Silber mentioned, a public hearing on November 5 as well as a public meeting as

688 recently as last Thursday to seek input from all sides of this issue. I heard from surroundings
689 residences concerning the issue of keeping the commercial concentration designation on the
690 southeast corner of the Pump and Church intersection. I've also received numerous emails and
691 phone calls. Many want Thompson's Market to remain on this corner, while many have
692 expressed their concerns about the increase in traffic and commercial use due to a larger
693 intersection that would be created and the impacts of the increasing presence of business uses
694 in that area.

695

696 The construction of this new road will bring the intersection much closer to an existing
697 neighborhood. Even with the new road, and increased traffic in this area, this will remain a
698 highly residential corridor.

699

700 Removing the commercial concentration designation from the southeast corner, I believe,
701 would be more in keeping with this neighborhood corridor and lessen the impact on adjacent
702 residents. Removal of the commercial concentration designation would establish a
703 recommendation of urban residential for this entire corner. A modest retail designation of 6 ½
704 acres along with a large urban residential designation adjacent to already existing
705 neighborhoods is proposed for the southwest corner. There are two existing gas station
706 convenience stores on the northwest corner. Less intense office zoning is proposed for the
707 northeast corner. The removal of commercial concentration would certainly not prohibit an
708 application for a neighborhood market comparable to Thompson's and an application that
709 addresses the concerns and issues that have been expressed throughout this process but
710 certainly be given consideration.

711

712 Therefore, I move that commercial concentration be removed from the southeast corner and be
713 replaced with urban residential. Also under the list of general strategies I would like to
714 include, encourage the planting of canopy trees along all sidewalks, sufficient to ultimately
715 shade a substantial portion of the sidewalk.

716

717 Mr. Jernigan - Second.

718

719 Mrs. Ware - The motion was made by Mrs. Ware and seconded by Mr. Jernigan. All
720 in favor say aye...all opposed say nay. The ayes have it. The motion carries.

721

722 Mr. Marshall - No.

723

724 Mr. Vanarsdall - Madam Chairman, you should poll each Commissioner.

725

726 Mr. Vanarsdall - Mr. Vanarsdall, I'll be happy to do that. I recorded a 4 to 1 vote but I
727 think it's appropriate to poll the Commission. If we could move from right to left. Mr.
728 Archer.

729

730 Mr. Archer - Aye.

731

732 Mr. Silber - Mr. Marshall.

733

734 Mr. Marshall - No.

735

736 Mr. Silber - Mr. Vanarsdall.

737

738 Mr. Vanarsdall - Aye.

739

740 Mr. Silber - Mrs. Ware.

741

742 Mrs. Ware - Aye.

743

744 Mr. Silber - Mr. Jernigan.

745

746 Mr. Jernigan - Aye.

747

748 Mr. Silber - And, Mr. Donati.

749

750 Mr. Donati - Aye.

751

752 Mr. Silber - So, that is a five to one vote. Mr. Marshall voting against the motion.
753 At this point, this is a recommendation of the Planning Commission. This will be forwarded to
754 the Board of Supervisors. This is a proposed amendment to the Land Use Plan, the 2010 Land
755 Use Plan, which is an element of the County's Comprehensive Plan. I suspect the Board of
756 Supervisors will be holding a work session on this item probably in February and I would
757 presume that they will schedule a public hearing in March to consider this item. The Planning
758 Commission has sent this forward to the Board of Supervisor this time and I would suggest if
759 there is anyone who is interested stay in touch with the County Planning staff and we can tell
760 you when this will be scheduled again for the Board of Supervisors.

761

762 Mrs. Ware - Thank you.

763

764 **ALTERNATIVE FENCE HEIGHT PLAN**

765

West Lawn Subdivision
8000 Moorfield Road

Linda A. Bergh: Request for approval of an alternative fence height plan, as required by Chapter 24, Sections 24-106 and 24-106.2 of the Henrico County Code. The applicant requests a fence 54 inches in height in the front yard, whereas Section 24-95(7) permits 42 inches. The approximately 12,100 square foot lot is located on the northeastern corner of Moorefield Road and Fon-du-lac Road on parcel 759-750-1616. The zoning is R-3, One-Family Residence District. **(Three Chopt)**

766

767 Mrs. Ware - Good morning, Mr. Strauss.

768

769 Mr. Strauss - Good morning, Madam Chairman, members of the Commission. As it

770 was stated in the agenda, the homeowner Mrs. Linda Bergh has already constructed the fence
771 and this was done to contain a greyhound dog that she had required. The fence is built and it
772 does exceeds the maximum height permitted in a front yard by 12 inches. So, Planning
773 Commission approval is required. The staff and various agencies, including the traffic engineer,
774 reviewed the proposal to approve this extra height and they have know issues. Some of the
775 residents in the neighborhood have indicated that they do object to this additional height and
776 we can hear their reasons, if you wish. I would like to mention, when reviewing alternate
777 fence height proposals, the Commission may approve the extra height provided there are no
778 adverse affects with respect to the relevant section of the ordinance. And I would like to
779 endeavor the staff to hand out that section of the ordinance for your use.

780

781 Mrs. Ware - Mr. Strauss, can I ask at this point, is there anyone here in opposition to
782 this alternative fence height plan, West Lawn Subdivision, 8000 Moorfield Road? We do have
783 opposition. Go ahead.

784

785 Mr. Strauss - So, in summary, at this point, staff has no particular objection of the
786 approval although I imagine we would want to hear from the neighbors and I'll be happy to
787 answer any questions you may have.

788

789 Mrs. Ware - Are there any questions of Mr. Strauss? Thank you. Would you like to
790 hear from the applicant, Mr. Marshall?

791

792 Mr. Marshall - Yes, I would like to hear from the applicant.

793

794 Mrs. Ware - Would you please come forward and state your name.

795

796 Ms. Bergh - Yes. My name is Linda Bergh and my son and I wanted to build a fence
797 for our dog. We needed the fence in the front yard because the way the house is situated on
798 the lot, the backyard is tiny, it's not enough room for the dog to run. So, we had a little
799 trouble what height fence we could get. We looked on the internet and that was no good. And
800 my son called the building permit people and they transferred him to someone we didn't think
801 there was going to be an issue so he didn't write down the name of the person he talked to and
802 that person said four feet. We asked for a four-foot fence. In one spot it's a bit higher than
803 that. I understand that there have been some people saying that it looks pretty ugly and I'm
804 certainly willing to plant shrubbery to hide the looks of it. But, I can't do that until the spring
805 but I certainly be willing to do that.

806

807 Mr. Marshall - That's my question, Ms. Bergh. Are you willing to work with the staff
808 to pursuant to a landscape plan to do plantings along the fence?

809

810 Ms. Bergh - Yes. Now, I have to say that I don't have all the money in the world but
811 I'll do what I can, yes.

812

812 Mr. Marshall - And that's what our staff is for. So, if you are willing to do that then
813 I'm going to make a motion that the case be deferred to give you an opportunity to meet with
814 the staff, to develop a landscape plan, because pursuant to our ordinance if there is a landscape
815 plan done then you may be granted an extra height over and above the required amount.

816

817 Ms. Bergh - Okay.

818

819 Mr. Marshall - It has to be done pursuant to a landscape plan, which you would have to
820 work with our staff on. So are you willing to do that?

821

822 Ms. Bergh - Yes.

823

824 Mr. Marshall - Thank you.

825

826 Mr. Silber - Mr. Marshall, there is some opposition. I don't know if you want to
827 hear from them.

828

829 Mr. Marshall - Yes, I would.

830

831 Ms. Puryear - Hello. My name is Ann Puryear and I live on the Fon-du-lac side of the
832 corner lot which we are discussing. I've lived there about 30 years and after talking with a lot
833 of the neighbors in the neighborhood, I would say 95% of them are in agreement with me that
834 we felt this was an inappropriate fence for a front yard. My yard adjoins the fence and it's my
835 front yard, I measured it and in some places it's 54 and 56 inches in height. One of my main
836 concerns is the type of fence, the wiring. I have a picture to show you what the wires look like
837 if I may present that. (Pictures were put up on the screen for viewing)

838

839 As I was saying, this is my front yard. The fence is on my side of the split-rail fence which
840 makes it a lot more noticeable. The fence ran right to the very edge of my property so
841 therefore if shrubbery was planted I'm assuming that the fence would have to be moved back
842 to hide the fence it seems to me because shrubbery on the inside wouldn't do very much as far
843 as hiding it on that side. I take a lot of pride in my home and yard and I spent a lot of money,
844 a lot of time in planting flowers, new borders on that side of the fence. I was shocked to come
845 home one day and find out my azaleas were dug up and thrown out in the yard, which I'm
846 assuming was on the property. I am concerned about what would be done about that side of
847 the fence and if shrubbery is planted that it would be maintained properly at the height of the
848 fence and it would be something that would be appropriate for a front-yard planting. And
849 that's my main concern. And I think most of the neighbors that I have talked to are in
850 agreement with me. I guess it affects me more since I'm right directly beside the house and it
851 is looking at it like my front yard. I've lived there about 30 years and the last years, most of
852 the years, I have maintained that property. I cut the grass and I rake the leaves to help the
853 appearance of my yard because when a fence goes over a driveway like that, it looks like its in
854 your yard when really it's not sometimes.

855

855 And I even thought about maybe if the fence was moved to the driveway or the other side or
856 something. Anyway, that's my opposition and the way most of the neighbors feel.

857

858 Mr. Marshall - The fence is not on your property, correct?

859

860 Ms. Puryear - Correct. It comes right to the edge of it.

861

862 Mr. Marshall - And that's the side.

863

864 Ms. Puryear - The side fence, yes, there (referring to picture) and that's what the wire
865 looks like that's in my front yard.

866

867 Mr. Marshall - And so your main concern is with the type of fence and the way it looks.

868

869 Ms. Puryear - And the wire. The wire is on my side of the fence. It's even more
870 noticeable. I'm one of these country gals and that solid type of fence that we used to keep a
871 cow in and I was shocked.... I understand that there are no rules in Henrico County as the type
872 of fence that you can put up only the height and I think anything to like sort of cover the
873 appearance of the fence would be very helpful, in particularly, in the wiring being removed on
874 that side of the fence and I'm not sure how shrubbery would be planted to hide the fence
875 toward my front yard.

876

877 Mr. Vanarsdall - Why did you say the wire is there?

878

879 Ms. Puryear - Why is the wire there?

880

881 Mr. Vanarsdall - Is it to keep something in or to keep something out?

882

883 Mr. Marshall - It's a large dog.

884

885 Ms. Puryear - It's a large dog. I don't know how a small dog could and he could easily
886 climb it, but the wire on our side of the fence seems to me if he is a big dog he could easily
887 push it on out and get out if he wanted to, where if on the inside it would be a little bit more of
888 protection to keep the dog in the yard.

889

890 Mr. Vanarsdall - He probably hasn't learned how to do that yet.

891

892 Ms. Puryear - Correct.

893

894 Mr. Marshall - Ms. Puryear, I think you made the point is that we can do something
895 about the height of the fence but we can't do anything about the type of fence.

896

897 Ms. Puryear - Correct.

898

898 Mr. Marshall - That's not within our purview. But, we are going to give Ms. Bergh an
899 opportunity to work with the staff on a landscape plan and she can come back and see if that is
900 acceptable as far as the height of the fence along the Fon-du-lac, along the front. I do have a
901 question for Mr. Strauss as far as the side yard. Mr. Strauss, the part that is on the side of her
902 property, that's in compliance with the height requirements?

903

904 Mr. Strauss - I believe that's 54 inches as well.

905

906 Mr. Marshall - And the limit is on the front, correct?

907

908 Mr. Strauss - Right.

909

910 Mr. Marshall - So, it's not on the side. Okay. So, the side part that faces her yard is in
911 compliance with the height requirement?

912

913 Mr. Strauss - Hold on just a second.

914

915 Mr. Silber - I think, Mr. Marshall, that is not entirely correct. This is a confusing
916 situation because of the location of this parcel. Jim, correct me if I'm wrong but I believe in
917 this case the front yard is the side of the Fon-du-lac Road side, so that's the front yard but as
918 you back off of that street, that fence on that side of the property line is considered to be in the
919 front yard all the way back until it reaches the back edge of the house.

920

921 Mr. Marshall - Okay. That's my question. The part that runs down the side, that part
922 right there (referring to picture on the screen).

923

924 Mr. Strauss - It's perpendicular to Fon-du-lac.

925

926 Mr. Marshall - Right. That's the side yard.

927

928 Mrs. Ware - And Ms. Puryear house is on the other side of that, is that correct?

929

930 Ms. Puryear - Right.

931

932 Mrs. Ware - So, that's considered the side yard fence?

933

934 Mr. Marshall - That's what I'm trying to get at, is that within the 3 1/2 feet or is that....

935

936 Mr. Strauss - I'll be honest, I'm confused at this point. (Discussion is going on by the
937 sidelines) John, from the front of the house back that can be seven feet, so that's not in
938 violation, but from the house plain forward that part is 12 inches too high.

939

940 Mr. Marshall - That's what I was trying to get at.

941

942 Ms. Puryear - On both side of it.

943 Mr. Marshall - So, she would have to correct it from here back to here (referring to
944 pictures on screen)?
945
946 Mr. Strauss - Right.
947
948 Mr. Marshall - Now from the front....
949
950 Mrs. Ware - Show us on here where they would need to correct it.
951
952 Mr. Strauss - From this plain of the house forward.
953
954 Mrs. Ware - Okay, so part way up the side yard.
955
956 Mr. Marshall - Part way up the side yard. So, that may require moving the fence back
957 if there is going to be a landscape plan in front of it and it's already on the property line.
958
959 Mr. Strauss - To get the room for the landscaping I would image so.
960
961 Mr. Marshall - Okay.
962
963 Mrs. Ware - I have a question too. Maybe this is for Ms. Bergh. There is an
964 objection there seems by the opposition to the wire mesh that's placed on the outside portion of
965 the fence that faces the neighbors. What's the possibility of moving that wire mesh if that's an
966 acceptable technique here in Henrico County of moving it into the inside so that it is facing
967 your home and not the neighbor's home?
968
969 Ms. Bergh - It was a surprise to me to see that that wire was on her side of the fence
970 post anyhow. Yes, we plan to move that.
971
972 Mrs. Ware - Okay. You will be agreeable to doing that?
973
974 Ms. Bergh - Yes. The people who put the fence up did it because it was convenient
975 for them. And while I'm standing here I would like to say one thing. I've been around and
976 talked to some of my neighbors and nine of them have a signed a piece a paper that say that
977 they think that the fence is attractive and they support my right to have it, nine of them plus my
978 mail carrier. He wanted to help. There are a lot of people who thinks the fence looks good.
979
980 Mrs. Ware - Okay. But, you would be agreeable to moving the mesh?
981
982 Ms. Bergh - Sure.
983
984 Mrs. Ware - Okay.
985

985 Ms. Puryear - I also had a letter that I've taken around the neighborhood and I think
986 there were 12 names on it in opposition that Ms. Goggin received through her email.

987

988 Mrs. Ware - All right. So, you have that information then?

989

990 Ms. Goggin - Yes.

991

992 Mr. Archer - Madam Chairman, if I could just mention something here.

993

994 Mrs. Ware - Sure.

995

996 Mr. Archer - I had a similar case not long ago that we were able to meet a
997 compromise on. That is, I think it would be good if we could get all of the parties involved in
998 the situation with the landscaping plan because looking at it, as it is now, the right does exist to
999 have a fence of a legal height with no landscape plan at all. And I think somewhere between a
1000 good landscape plan and a little higher fence and a fence with no landscape lies the answer to
1001 this problem so I think if we work together on it we can get this resolved. Just thought I
1002 mentioned that because....

1003

1004 Ms. Puryear - Would there be a deadline to have the shrubbery put in, I know you
1005 don't plant shrubbery in cold weather maybe like March or so, but will there be a deadline to
1006 have the fence moved and have the shrubbery planted?

1007

1008 Mr. Archer - I guess that could be made a part of the condition of the case.

1009

1010 Mrs. Ware - Yes, that could be made a part of the conditions.

1011

1012 Ms. Puryear - And that it would be maintained, the height of the fence?

1013

1014 Mrs. Ware - That can all be negotiated with the conditions of the landscaping plan,
1015 yes.

1016

1017 Ms. Puryear - And the front yard runs just partially on the side of my fence, across
1018 Fon-du-lac and partially on the Moorefield side as well, for a front yard.

1019

1020 Mr. Marshall - Moorefield doesn't apply.

1021

1022 Ms. Puryear - I was told that it was from the front corner of one house to the front
1023 corner of the other. If you drew a direct straight line, that would be considered the front yard
1024 on a corner house.

1025

1026 Mr. Marshall - Mr. Strauss will tell you the exact area that's considered the front yard,
1027 as far as the fence height is concerned. I think it has to do with the distances along the street.

1028

1029 Mr. Strauss - That looks correct.

1030 Mr. Vanarsdall - I have a question. How is she going to ever know where the line starts if
1031 nobody doesn't show her? And whose responsibility is it to show her where the fence goes
1032 since the people who put the fence up didn't know?
1033
1034 Mr. Strauss - I image staff could go out there and help.
1035
1036 Mr. Vanarsdall - I don't mean to put it up I mean just draw a mark in the sand or
1037 something.
1038
1039 Mr. Silber - Mr. Vanarsdall, I think maybe your point is in this particular situation
1040 because of the corner lot situation the house being curved it is a difficult interpretation to say
1041 what is to be considered to be a front yard, but by all means the staff needs to provide for this
1042 case what the requirements are relative to the location of her house. What is considered to be
1043 a front yard and where would the 42-inch requirement apply and we certainly can provide that
1044 information.
1045
1046 Mr. Vanarsdall - I know Mr. Archer went out on his and had everybody within a mile
1047 involved in it and got it straight within a half hour.
1048
1049 Mr. Archer - It was not fun.
1050
1051 Mr. Marshall - I'm going to make a motion to defer this case to give the parties a chance
1052 to work on the landscape plan. Is March the 24 enough time for the staff?
1053
1054 Mr. Silber - Yes, that should be adequate.
1055
1056 Mr. Marshall - Okay. I'll make a motion to defer this case to March 24, 2004.
1057
1058 Mr. Jernigan - Second.
1059
1060 Mrs. Ware - The motion was made by Mr. Marshall and seconded by Mr. Jernigan.
1061 All those in favor say aye...all opposed say nay. The ayes have it. The motion carries.
1062
1063 The Planning Commission deferred the alternative fence height plan for West Lawn
1064 Subdivision - 8000 Moorefield Road, to its meeting on March 24, 2004.
1065

1065 **PLAN OF DEVELOPMENT (Deferred from the December 17, 2003, Meeting)**

1066

POD-69-03
Long John Silvers/A&W
Restaurant
4615 Williamsburg Road

McKinney & Company for Ralph L. Bradley and Yum! Brands, Inc.: Request for approval of a plan of development, as required by Chapter 24, Section 24-106 of the Henrico County Code, to construct a one-story, 2,860 square foot restaurant with drive-thru. The 1.927-acre site is located along the south line of Williamsburg Road (U.S. Route 60) approximately 200 feet west of Laburnum Avenue at 4615 Williamsburg Road on parcel 816-713-0978. The zoning is B-3, Business District and M-1, Light Industrial District. County water and sewer. **(Varina)**

1067

1068 Mrs. Ware - Is there anyone in the audience in opposition to POD-69-03, Long John
1069 Silvers/A&W Restaurant? No opposition. Good morning, Mr. McGarry.

1070

1071 Mr. McGarry - Good morning, Madam Chairman, members of the Commission. An
1072 attorney representing the property owner for this case has sent a letter to the engineer, which
1073 is McKinney & Company, relieving them of any further authority to act on behalf of the
1074 property owner. The case cannot be recommended for approval because of environmental
1075 issues. After several phone calls to the attorney in northern Virginia and yesterday a fax to
1076 the attorney asking him if he would either like to defer it or withdraw it because we also have
1077 the option of denying the case, I did not receive a fax until this morning in return and
1078 basically the attorney handling the case is on vacation. So, the staff would point out that...
1079 although the staff could recommend denial of this case, if the Commission so desires, there is
1080 one deferral to allow him to come back off vacation and tell us what he wants to do with his
1081 application. So, staff position is that it should be denied because it can't be approved, the
1082 parties involved have all have seemed to have....The applicant which is Long John Silvers
1083 seems to be out of the picture, the engineering firm is out, so staff can recommend that this
1084 case be denied. But, you do have a deferral if you wish to use it.

1085

1086 Mr. Jernigan - Is there anyone in the audience representing Long John Silvers, Yum!
1087 Brands, Inc.? They have no representation here.

1088

1089 Mr. McGarry - Correct. They told me they would not be....

1090

1091 Mr. Jernigan - And you said that the attorney is on vacation.

1092

1093 Mr. McGarry - I learned that this morning, that he is on vacation.

1094

1095 Mr. Jernigan - Madam Chairman, I'm going to move for denial on Long John Silvers.

1096

1097 Mr. Marshall - Second.

1098

1098 Mrs. Ware - The motion was made by Mr. Jernigan and seconded by Mr. Marshall.
1099 All in favor say aye...all opposed say nay. The ayes have it. The motion carries.

1100

1101 The Planning Commission denied the plan of development request for POD-69-03, Long John
1102 Silvers/A&W Restaurant at 4615 Williamsburg Road.

1103

1104 **PLAN OF DEVELOPMENT**

1105

POD-4-04
A & F Associates
Fountain Avenue

Beamon & Associates P.C. for The Fourth JMJ Corporation and A & F Associates: Request for approval of a plan of development, as required by Chapter 24, Section 24-106 of the Henrico County Code, to construct a retail, service and warehouse facility. The 1.02-acre site is located at the terminus of Fountain Avenue approximately 175 feet west of Hungary Spring Road on parcel 764-752-9619. The zoning is B-3C, Business District (Conditional). County water and sewer. **(Brookland)**

1106

1107 Mrs. Ware- Is there anyone in the audience in opposition to POD-4-04, A & F
1108 Associates Fountain Avenue? No opposition. Hello, Mr. Wilhite.

1109

1110 Mr. Wilhite - Good morning. The 11,700 square foot building proposed for the site
1111 serves as expansion of the Honda House operation which is on W. Broad Street. This
1112 property was recently rezoned back in October of 2003 also there has been a recent action on
1113 a vacation of a portion of Fountain Avenue that's being incorporated into this site. Primary
1114 building material proposed on this, this is split-face CMU with fluted split-face accents. A
1115 proffered color elevation primarily shows a tan or brown color and the majority of the front is
1116 aluminum storefront with clear glass which continues around the sides. The building has a
1117 flat roof and the architectural pretty much match proffered the colored elevations in the
1118 rezoning case.

1119

1120 There is some concern on staff's part dealing with the fact that the applicant has removed the
1121 block wall from the plan which was to be used to screen in any outdoor storage. We also
1122 have concerns about the existing Honda House site. We want to encourage the applicant to
1123 address the storage on that site as well. We do have concerns that once this site is cleared that
1124 this existing location would become more visible.

1125

1126 There's an addendum item No. 36 that deals with the outdoor storage. There is a correction
1127 on a typo that I need to make. It's on page 2 of your addendum. "*Any outdoor storage will be*
1128 *screened with a masonry wall at the height,*" the wording should be **required** by instead of
1129 **requiring** *County Code and proffered conditions. Outside storage will not be visible over the*
1130 *screening wall.* With the additional condition No. 36, and the annotations on the plan, staff
1131 can recommend approval. If you have any questions, I'll be happy to answer them.

1132

1133 Mrs. Ware - Are there any questions for Mr. Wilhite?

1134 Mr. Silber - I have a question, and maybe I missed that. The change that you were
1135 making was to which condition?
1136

1137 Mr. Wilhite - The word **requiring** should be **required by** this is the first word on the
1138 second line of condition No. 36 on the addendum.
1139

1140 Mr. Silber - Okay, I'm with you now. Thank you.
1141

1142 Mrs. Ware - There's no opposition. Would you like to hear from the applicant, Mr.
1143 Vanarsdall?
1144

1145 Mr. Vanarsdall - I would like to hear from Mr. Beamon, I would like to ask him one
1146 question. Good morning, Mr. Beamon.
1147

1148 Mr. Beamon - How are you. I'm Jack Beamon of Beamon & Associates.
1149

1150 Mr. Vanarsdall - Jack, I just wondered, in the original zoning case you wanted outside
1151 storage and since you don't want it now, you didn't enlarge the building so what's going to
1152 take the place of the outside storage?
1153

1154 Mr. Beamon - Basically, the layout that we provided with the staff shows an area in the
1155 back of the building inside that he's going to use for storage now. By building the block walls
1156 and having the storage in the back, Ernie, the cost of a 10-foot block wall supposedly in the
1157 area that we were obtaining just wasn't feasible. So, the owner decided to store everything
1158 inside the building.
1159

1160 Mr. Vanarsdall - I understand. Do you know why the proffer on the case was worded
1161 the way it was?
1162

1163 Mr. Beamon - Know I don't.
1164

1165 Mr. Vanarsdall - I have it here. This is a letter to Mr. Upshure signed by the County
1166 Manager in October of 2003. It says any outside storage will be screen with a masonry wall
1167 in the height to be maximum to be permitted by code, and that will be 10 feet.
1168

1169 Mr. Beamon - That is correct.
1170

1171 Mr. Vanarsdall - The reason for that was what Mr. Wilhite mentioned that when we
1172 walked up and down what I call an alley back there in Fountain Square there was just as much
1173 over top of the fence almost as there was in it. So, we felt like that wall should be as tall as it
1174 could be, maximum. So, I think that you might not have understood why we wanted the 10
1175 feet.
1176

1177 Mr. Beamon - No, I didn't understand it.
1178

1179 Mr. Vanarsdall - So, that's what that was. But, the proffer also said that "any outdoor
1180 storage will be screen." So, since you are not going to have it then....

1181

1182 Mr. Beamon - No, we are not going to have it.

1183

1184 Mr. Vanarsdall - That's all the questions that I have.

1185

1186 Mr. Silber - So, Mr. Vanarsdall, if I understand this correctly, if they do decide to
1187 have outside storage at some later date, then a masonry wall would be required.

1188

1189 Mr. Vanarsdall - Yes, that's condition No. 36. We are going to add it on it. If you do
1190 ever decide to have it, you will need the wall.

1191

1192 Mr. Beamon - We are in agreement.

1193

1194 Mr. Vanarsdall - Thank you.

1195

1196 Mr. Beamon - Thank you.

1197

1198 Mrs. Ware - Is that it, Mr. Vanarsdall?

1199

1200 Mr. Vanarsdall - I want to thank Mr. Wilhite and Ms. Goggin for the good work you did
1201 on that. I would like to recommend approval of POD-4-04, A & F Associates, Fountain
1202 Avenue. I would like to put No. 9 amended and No. 11 amended. Well, we don't really
1203 need No. 11 just No. 9 amended on there. Then on the addendum we are going to add to
1204 condition No. 36, it's No. 26 on here now, let's see where do we add it? We made it No. 36
1205 and I would like to change it to say "Any outside storage will be screened with a masonry
1206 wall at the height required by County Code and proffered conditions" I would like to add
1207 "Number 6 in the conditional rezoning case C-28C-03 dated October 23, 2003." And I would
1208 like to go with the annotations on the plans and the standard conditions for developments of
1209 this type and conditions Nos. 23 through 36.

1210

1211 Mrs. Ware - Second.

1212

1213 Mrs. Ware - The motion was made by Mr. Vanarsdall and seconded by Mr.
1214 Vanarsdall. All in favor say aye...all opposed say nay. The ayes have it. The motion
1215 carries.

1216

1217 The Planning Commission approved POD-4-04, A & F Associates on Fountain Avenue,
1218 subject to the annotations on the plans, the standard conditions attached to these minutes for
1219 developments of this type and the following additional conditions:

1220

1221 9. **AMENDED** - A detailed landscaping plan shall be submitted to the Planning
1222 Office for review and Planning Commission approval prior to the issuance of any
1223 occupancy permits.

- 1224 23. The easements for drainage and utilities as shown on approved plans shall be granted to
 1225 the County in a form acceptable to the County Attorney prior to any occupancy permits
 1226 being issued. The easement plats and any other required information shall be submitted
 1227 to the County Real Property Agent at least sixty (60) days prior to requesting
 1228 occupancy permits.
- 1229 24. The developer shall provide fire hydrants as required by the Department of Public
 1230 Utilities and Division of Fire.
- 1231 25. All service work shall be conducted entirely within the enclosed building.
- 1232 26. Outside storage shall not be permitted unless completely screened.
- 1233 27. The proffers approved as a part of zoning case C-28C-03 shall be incorporated in this
 1234 approval.
- 1235 28. Any necessary off-site drainage and/or water and sewer easements must be obtained in
 1236 a form acceptable to the County Attorney prior to final approval of the construction
 1237 plans.
- 1238 29. Deviations from County standards for pavement, curb or curb and gutter design shall be
 1239 approved by the County Engineer prior to final approval of the construction plans by
 1240 the Department of Public Works.
- 1241 30. The loading areas shall be subject to the requirements of Chapter 24, Section 24-97(b)
 1242 of the Henrico County Code.
- 1243 31. Storm water retention, based on the 50-10 concept, shall be incorporated into the
 1244 drainage plans.
- 1245 32. Insurance Services Office (ISO) calculations must be included with the plans and
 1246 contracts and must be approved by the Department of Public Utilities prior to the
 1247 issuance of a building permit.
- 1248 33. Approval of the construction plans by the Department of Public Works does not
 1249 establish the curb and gutter elevations along the Henrico County maintained right-of-
 1250 way. The elevations will be set by Henrico County.
- 1251 34. Evidence of a joint ingress/egress and maintenance agreement must be submitted to the
 1252 Planning Office and approved prior to issuance of a certificate of occupancy for this
 1253 development.
- 1254 35. The location of all existing and proposed utility and mechanical equipment (including
 1255 HVAC units, electric meters, junction and accessory boxes, transformers, and
 1256 generators) shall be identified on the landscape plans. All equipment shall be screened
 1257 by such measures as determined appropriate by the Director of Planning or the
 1258 Planning Commission at the time of plan approval.
- 1259 36. Any outdoor storage will be screened with a masonry wall at the height required by
 1260 County Code, proffered conditions and condition No. 6 of rezoning case C-28C-03
 1261 dated **October 23, 2003**. Any items that are stored will not be visible over the
 1262 screening wall.

1264 Mr. Archer - Madam Chairman, before we go on to the next case, I was informed this
 1265 morning that the County must have been inadvertently added to by SPAM blocker as an
 1266 undesirable web site and my e-mails have been returned back to you and I apologize for that.
 1267 You are not really undesirable. I'll correct that as soon as I get back to my office.
 1268

1269 **PLAN OF DEVELOPMENT**

1270

POD-6-04
Lakefield Mews -3
4400 Miller's Lane

G. Stuart Grattan for B & B Associates: Request for approval of a plan of development, as required by Chapter 24, Section 24-106 of the Henrico County Code, to construct a 28 unit apartment development with three, two-story buildings totaling 26,000 square feet. The 2.29-acre site is located on the west line of Millers Lane approximately 765 feet north of Gay Avenue on parcel 811-717-9163. The zoning is R-5, General Residence District. County water and sewer. **(Varina)**

1271

1272 Mrs. Ware - Is there anyone in the audience in opposition to POD-6-04, Lakefield
1273 Mews? No opposition. Mr. McGarry.

1274

1275 Mr. McGarry - The staff's review is complete on this plan. The staff and engineer are in
1276 agreement. The only issue that came up was the issue of the RVs, the screening of them as
1277 required by the multi-family guidelines. This is going to be handled in condition No. 33 on your
1278 addendum. That reads: The owner shall prohibit recreational vehicle parking in the leases. He
1279 is doing this in lieu of providing a screened parking area for RVs. With that, staff can
1280 recommend approval subject to the annotations on the plan, the standard conditions and Nos. 23
1281 through 33, the last one being on your addendum.

1282

1283 Mrs. Ware - Are there any questions for Mr. McGarry? Would you like to hear from
1284 the applicant, Mr. Jernigan?

1285

1286 Mr. Jernigan - No, ma'am. I'll tell you, I looked at these apartments and they meet all of
1287 staff's recommendation. They are proffered by right... they could put up 33 units and they are
1288 putting up 28. I went recently just this week to check this site out and everything is neat its an
1289 asset to the Varina community. So, at this point, I'm just going to move for approval of POD-6-
1290 04 Lakefield Mews, subject to the standard conditions for developments of this type and the
1291 following additional conditions Nos. 23 through 32 and on the addendum No. 33.

1292

1293 Mr. Vanarsdall - Second.

1294

1295 Mrs. Ware - The motion was made by Mr. Jernigan and seconded by Mr. Vanarsdall.
1296 All in favor say aye...all opposed say nay. The ayes have it. The motion carries.

1297

1298 The Planning Commission approved POD-6-04, Lakefield Mews - 3 - 4400 Miller's Lane,
1299 subject to the annotations on the plan, the standard conditions for developments of this type, and
1300 the following additional conditions:

1301

1302 23. The unit house numbers shall be visible from the parking areas and drives.

1303 24. The names of streets, drives, courts and parking areas shall be approved by the Richmond
1304 Regional Planning District Commission and such names shall be included on the
1305 construction plans prior to their approval. The standard street name signs shall be

- 1306 ordered from the County and installed prior to any occupancy permit approval.
- 1307 25. The developer shall provide fire hydrants as required by the Department of Public
 1308 Utilities and Division of Fire.
- 1309 26. Any necessary off-site drainage and/or water and sewer easements must be obtained in
 1310 a form acceptable to the County Attorney prior to final approval of the construction
 1311 plans.
- 1312 27. Deviations from County standards for pavement, curb or curb and gutter design shall be
 1313 approved by the County Engineer prior to final approval of the construction plans by
 1314 the Department of Public Works.
- 1315 28. The pavement shall be of an SM-2A type and shall be constructed in accordance with
 1316 County standard and specifications. The developer shall post a defect bond for the
 1317 construction of roads, driveways, and parking areas. The defect bond shall remain in
 1318 effect for a period of three years from the date of the issuance of the final occupancy
 1319 permit.
- 1320 29. Insurance Services Office (ISO) calculations must be included with the plans and
 1321 contracts and must be approved by the Department of Public Utilities prior to the
 1322 issuance of a building permit.
- 1323 30. Approval of the construction plans by the Department of Public Works does not
 1324 establish the curb and gutter elevations along the Henrico County maintained right-of-
 1325 way. The elevations will be set by Henrico County.
- 1326 31. Provide a driveway emergency access gate and pedestrian gate in the existing fence
 1327 which connects to the existing Lakefield Mews complex.
- 1328 32. Provide evidence of approval by the Fire Chief prior to issuance of any certificate of
 1329 occupancy.
- 1330 33. The owner shall prohibit recreational vehicle parking in the leases.

1331
 1332 **SUBDIVISION**
 1333

Garland Estates
 (January 2004 Plan)

G. Stuart Grattan, P.E. for John A. & Lois C. Crown: The 4.9-acre site proposed for a subdivision of 13 single-family homes is located along the west line of Three Chopt Road approximately 390 feet south of Fort King Road on parcels 751-751-5400 and 751-750-6083. The zoning is R-2A, One-Family Residence District. County water and sewer.
(Tuckahoe) 13 Lots

1334
 1335 Mrs. Ware - Is there anyone in the audience in opposition to subdivision Garland
 1336 Estates (January 2004 Plan)? No opposition. Mr. Wilhite.

1337
 1338 Mr. Wilhite - Thank you, Madam Chairman. We are handing out a revised plan that we
 1339 received last week. This revised plan addresses some of the staff's comments. First of all,
 1340 dealing with additional dedication along Three Chopt Road and also about the ultimate design of
 1341 cul-de-sac lots at the end of Garland Estates Court. Staff has reviewed the revision and while
 1342 staff recognizes that it does meet all technical requirements of the Code we do have some
 1343 concerns over the quality of the lot design. First of all, dealing with the two lots adjacent to

1344 Three Chopt Road; since Three Chopt Road is a major collector and in order to meet the new
1345 setback requirements from there on the sideyards the applicant has had to reduce the size of the
1346 lots' buildable area down quite a bit. He does show a footprint for a house that would meet the
1347 minimum house size requirements, but at this point he does not have a builder in mind with an
1348 actual footprint. Staff has concerns that once the builder has been contracted they may find it
1349 very difficult to put a house on these two lots because of the reduction in buildable areas.

1350

1351 Also, in order to make the cul-de-sac lot requirements work they have had to modify the front
1352 building lines on lots 4 and 9, which are standard lots, and there are very minimal buildable areas
1353 on some of the cul-de-sac lots at the very end of Garland Estates Court.

1354

1355 As I stated, while this meets the technical requirements of the Code and staff could recommend
1356 approval we would suggest to the applicant that he should consider actually losing one lot, and
1357 redesigning the lots to provide more space. As of right now 10 of the 13 lots in the subdivision
1358 are essentially at the minimum square footage for the zoning district. I'll be happy to answer any
1359 questions you may have.

1360

1361 Mrs. Ware - Are there any question for Mr. Wilhite? Thank you. At this point, I
1362 would like to hear from the applicant please. Hello.

1363

1364 Mr. Grattan - Good morning. I'm Stuart Grattan with Grattan Associates.

1365

1366 Mrs. Ware - Mr. Grattan, would you address the concerns that staff has expressed
1367 about the setbacks and the footprints of these houses on these first two lots?

1368

1369 Mr. Grattan - The first two lots being, this isn't numbered, but the two adjacent to Three
1370 Chopt, yes.

1371

1372 Mrs. Ware - The ones along Three Chopt.

1373

1374 Mr. Grattan - The ones along Three Chopt, yes. They meet code. As far as the building
1375 size, I can't remember off the top of my head, but I think the width of that front chunk of the
1376 building that we've got shown on there.... Somewhere within the 25-foot-wide range, so I just try
1377 to envision what this house would be should you walk in. For 25 feet you could have a foyer and
1378 one from coming off to the side and then there is a tremendous amount of space heading straight
1379 back. So, it's not common, it would be an unusual footprint for a house, but the question is will
1380 it work? Yes. Does it meet code? Yes. And can a house be built there that would suit current
1381 living needs? I think yes. It meets the minimum square footage requirement and with the value
1382 of these lots today I think it's worth the effort to get this lot approved.

1383

1384 Mr. Silber - Mr. Grattan, I think maybe where staff is coming from is that the Board of
1385 Supervisors, about two years ago, passed an ordinance that requires these lots adjacent to major
1386 roads to be wider so that the houses could be moved farther away from these major roads. And
1387 yes while you have met the requirements, it's going to leave you with a lot that is not much
1388 larger than a lot that we normally see in this situation. It's going to squeeze the buildable area

1389 considerably. I think the staffs concern is that, it's two-fold, one is that it may be difficult to get
1390 a house on both lots No. 1 and 13, which are adjacent to Three Chopt Road because of the
1391 buildable area that you have left. And, we are concerned that this may end up being a situation
1392 where a builder may want to come in and argue a case for a variance arguing that there is a lot of
1393 space between potentially the house and Three Chopt Road, therefore, really defeating the entire
1394 purpose of this ordinance amendment the Board just passed. So, we are raising it as a concern.
1395

1396 Secondly, many of these lots, I think Mr. Wilhite said 10 of the 13 lots are at the bear
1397 minimum, so you have very little space here to negotiate and to move lines to make it all work.
1398 Yes, you meet the requirements, you are right at the requirements, but the buildable area is so
1399 minimal that we are just not sure if today's houses that are becoming larger and larger can
1400 actually fit here without a future request for a variance. Reduction of one lot on this subdivision
1401 could correct all of these problems.
1402

1403 Mr. Grattan - I understand that, but that's a significant monetary hit that this owner is
1404 taking. The value of these lots in this area are remarkable, and to eliminate a lot to prohibit or
1405 maybe prevent the need or the potential for future variance, I think a lot of that is, if the County
1406 doesn't want variances I think that you just need to deny them. You've got a 37-foot setback off
1407 of Three Chopt Road and that meets the need that you mentioned earlier about these high
1408 collector roads and so on, high-traffic roads moving the building off of it. We think that we can
1409 get a house on here. If you all approve us for 13 lots, in that time I think the conditions reads
1410 that I have to show you guys the footprint of a house that will fit on there. And if at that time, we
1411 can't satisfy ourselves with finding that then we have the right to back if off to twelve at that
1412 time. But our request right now meets code, and I believe it is permitted by right, and I would
1413 like to have it approved. If we can't work out the fine details with staff later, we may decide our
1414 option is to back off to twelve.
1415

1416 Mr. Silber - As I said, you meet the requirements and we are recommending that this
1417 be approved but we want you to understand that this has potential of being a problem once the
1418 builder comes in to locate a house. You just stipulated that you think a house can work on those
1419 two lots, I would like for you to state for the record, that you will work with the builder to make
1420 sure that houses will be place on Lots 1 and 13 without coming forth with a variance.
1421

1422 Mr. Grattan - I believe the condition, I don't know what number is it, but the one Kevin
1423 added, pretty much require that we have that worked out before recordation, or what's the
1424 deadline? It's condition No. 12. "Showing a dwelling situated on Lots 1 and 13 to determine if
1425 the lot design is adequate to meet the requirements of Chapter 24, of the Henrico County Code."
1426 I shall furnish staff a plan showing a dwelling. That's something we need to work out. And it is
1427 my understanding, if it doesn't work out and we can't meet staff's approval at that time then we
1428 could back it off to twelve lots then, without coming back to the Commission, mind you. Is that
1429 correct? We can go from 13 to twelve without coming back but I cannot go from 12 to 13
1430 without your approval today.
1431

1431 Mr. Archer - Mr. Grattan, just as an observation. If the subdivision was 12 in lieu of 13
1432 lots, which would require those 12 lots to be resized and made larger, would that not add
1433 additional monetary value to those lots and even to the size of those houses that could fit on the

1434 lots? I'm just wondering, I'm not a builder, I don't know.

1435

1436 Mr. Grattan - I'm not a builder either, but my experience has shown that some of those
1437 cul-de-sac lots exceed the minimum square footage and I wouldn't image that they would sell
1438 for more than some of these others. I truly believe that the two lots on Three Chopt would be
1439 at a discount but I don't think they would be half the value.

1440

1441 Mr. Archer - I was just curious as to how that might work if you could devise another
1442 plan because I'm just thinking the larger the lot, the more value the lot, therefore the more you
1443 can sell it for and perhaps even a larger house you could build on it which would also sell for
1444 more and I was just wondering how those things would counterbalance between 12 and 13.

1445

1446 Mr. Grattan - I haven't gone through that exercise but in the 18 years I've been
1447 designing subdivisions, I'm getting a lot of pressure from the developer side to get every lot
1448 they can. So, that's telling me one thing that a lot is worth a significant amount of money.

1449

1450 Mr. Archer - Well, I understand that.

1451

1452 Mrs. Ware - Well, that's what you did.

1453

1454 Mr. Silber - So, you did a great job.

1455

1456 Mr. Grattan - Thank you.

1457

1458 Mrs. Ware - Thank you, Mr. Grattan. You do meet code, and it's stuffed in there, so
1459 I'm going to approve it but Mr. Grattan has stated on the record, and we do have the condition
1460 that he's going to have to show that these can go in here, No. 13 can go in here, and fit
1461 reasonably and meet the requirements. So, with that, I move that Garland Estates be approved
1462 subject to the standard conditions for subdivisions served by public utilities and the following
1463 additional conditions Nos. 12, 13, and 14.

1464

1465 Mr. Vanarsdall - Second.

1466

1467 Mrs. Ware - The motion was made by Mrs. Ware and seconded by Mr. Vanarsdall.
1468 All in favor say aye...all opposed say nay. The ayes have it. The motion carries.

1469

1470 The Planning Commission granted conditional approval to subdivision Garland Estates
1471 (January 2004 Plan) subject to the annotations on the plans, the standard conditions attached to
1472 these minutes for subdivisions served by public utilities, and the following additional
1473 conditions:

1474

- 1474 12. Prior to requesting final approval, the engineer shall furnish the Planning Staff a plan
 1475 showing a dwelling situated on Lots 1 and 13 to determine if the lot design is adequate
 1476 to meet the requirements of Chapter 24, of the Henrico County Code.
- 1477 13. The detailed plant list and specifications for the landscaping to be provided within the 25-
 1478 foot-wide planting strip easement along Three Chopt Road shall be submitted to the
 1479 Planning Office for review and approval prior to recordation of the plat.
- 1480 14. Any future building lot containing a BMP, sediment basin or trap and located within
 1481 the buildable area for a principal structure or accessory structure, may be developed
 1482 with engineered fill. All material shall be deposited and compacted in accordance with
 1483 the Virginia Uniform Statewide Building Code and geotechnical guidelines established
 1484 by a professional engineer. A detailed engineering report shall be submitted for
 1485 review and approval by the Building Official prior to the issuance of a building permit
 1486 on the affected lot. A copy of the report and recommendation shall be furnished to the
 1487 Directors of Planning and Public Works.

1488
 1489 **SUBDIVISION**

1490

XYZ (January 2004 Plan)
 Grey Oaks Park Drive

QMT for West Cary Street Associates, John W. Gibbs, Jr., James H. & Donna Dowden, Dominion Land & Development Partnership, Robert P. Bain, Gregory A. Windsor, Robert B. Parkerson, and Gibson Wright: The 126.92-acre site proposed for a subdivision of 208 single-family homes is located 415 feet east of Luxford Way, at 12201 Nuckols Road on parcels 740-775-9712 and 5801; 739-774-4564; 740-774-1407 and 4255; 740-772-8110 and 740-773-4426. The zoning is R-2A, One-Family Residence District. County water and sewer. **(Three Chopt) 208 Lots**

1491

1492 Mrs. Ware - Is there anyone in the audience in opposition to subdivision XYZ
 1493 (January 2004 Plan)? We do have opposition. All right, Mr. Kennedy.

1494

1495 Mr. Kennedy - Good morning, members of the Commission. I would like to draw your
 1496 attention to the revised conditions that are on the addendum. There are three revised
 1497 conditions and one deleted condition. Those have been worked out between the staff and the
 1498 developer to address our concerns with the coordination of the development of this site. There
 1499 has been an added annotation on the plans and that is the only subject of contention with the
 1500 developer. The added annotation is on page 3 of the plan that was just handed out to you. It's
 1501 letter DD, it's on the very bottom of the plan and that annotation states that a "stub street shall
 1502 be provided from Section M to Bridlewood Subdivision. That annotation was added at the
 1503 request of some adjoining property owners in the Bridlewood Subdivision. That's basically the
 1504 subject of the dispute. Staff added it at the request of some adjoining property owners and
 1505 staff has some discussion on that item, but the deciding fact is the Planning Commission.

1506

1507 Bridlewood Subdivision which abuts this property is zoned A-1, currently. The master plan
 1508 calls for that property be rural residential. The subject property which is being subdivided is

1509 suburban residential under the master plan and it zoned R-2AC. So, they are two joining
1510 properties but they have different master plan designations and different zonings at this time.
1511 Up until last week there was no issue because Bridlewood subdivision was subject to a
1512 covenant that restricted access to it and they couldn't subdivide. That covenant has been
1513 recently rescinded and so we have this issue before us now. In a sense it's premature because
1514 the property in Bridlewood is, as I said, zoned A-1 and the designation is rural residential, so a
1515 zoning case hasn't been brought forward to integrate this into this development so the question
1516 is before the Commission whether or not this annotation should stay. The developer feels that
1517 it's premature. He's agreed that he will try to work with these people to integrate it into the
1518 development. He has provided letters for the record from the zoning cases saying that he will
1519 work with them. But they would like some sort of guarantee that they would have access.

1520

1521 Alternative access is available to the people who wish to subdivide their property in
1522 Bridlewood. They could actually access Hanes Drive which is their access drive currently or
1523 they could actually bring out a stub road, actually a cul-de-sac road out to Shady Grove Road,
1524 so there are other alternatives available to those property owners. The question is which is the
1525 best coordinated plan at this time or should we coordinate at this time or wait until the zoning
1526 case comes forward. So, the issue is, should this annotation stay on the plan? And I believe
1527 the applicant's attorney is here and has something to say and then the adjoining property
1528 owners has something to say as well.

1529

1530 Mrs. Ware - Are there any questions for Mr. Kennedy from the Commission? Okay,
1531 thank you. We will hear from the applicant. Hello, Mr. Condlin.

1532

1533 Mr. Condlin - Madam Chairman, members of the Commission, I'm Andy Condlin from
1534 Williams Mullins here on behalf of the applicant. Before we get into the access to Bridlewood,
1535 I wanted to confirm or put on record two additional points about the conditions, at least the last
1536 conditions that I got. Condition No. 28 requiring that the west side of road M-1 not exceed the
1537 permitted block lengths unless a Planning Commission approve an exception or an additional
1538 stub street as provided to the property to the west. There has been an agreement to the
1539 property to the west with Grey Oaks to provide a 20-foot-wide emergency access, and based
1540 on that we wanted to confirm that by being able to provide the 20-foot-wide emergency access
1541 to the west on our property line would satisfy the condition. I believe Mr. Kennedy who is
1542 nodding yes has agreed that that's the proper interpretation.

1543

1544 The second issue is with respect to the next number which is No. 29. That a maximum of 50
1545 lots may be developed with a single point of access, unless a secondary emergency access drive
1546 is provided. That 20-foot-wide emergency access that I just described going to the property to
1547 the west of Grey Oaks, will also satisfy that but for whatever reason if Grey Oaks is not
1548 developed we could go out to Shady Grove with that same 20-foot-wide access. And Mr.
1549 Kennedy agrees to both of those issues. I just wanted to confirm that on record and to make
1550 sure that we understand what we have to do on to those and can meet those standards.

1551

1552 As to Bridlewood access, I think that you are going to hear from some of the neighbors about
1553 that. I just have a few points about that. I don't want to forget that Bridlewood is a legally

1554 subdivided subdivision. These lots have gone through the subdivision process and while they
1555 are certainly large lots, they are not landlocked. If these were landlocked lots, or undeveloped
1556 property, or property subject to development, you can see that in our plat that we have got to
1557 the south a stub road heading to undeveloped property. That's typical and that's required but
1558 not next to subdivided lots. It's a setting of precedent that quite frankly I haven't seen before
1559 that would be required otherwise. When these neighbors bought their lots they bought them
1560 knowing that they were large lots, knowing that they were subdivided lots and that they would
1561 have to go through the process. These are already zoned A-1 and there is no development
1562 plans for these lots.

1563

1564 I would also like to point out, and I'll be happy to show you, that when we went through the
1565 zoning case we proffered a road layout that was proffered as a part of our zoning case and that
1566 road layout showed these cul-de-sacs. It's nothing different then what we showed as part of
1567 the proffers in the zoning case. We did not show the stub road, we did not show anything that
1568 would access to the Bridlewood lots.

1569

1570 The last point that I would make would be that placing a stub road requirement, a condition on
1571 this, is placing a burden on Mr. Windsor and those developers with all the benefit going to the
1572 neighbors. There's the extra costs of the road, the infrastructure cost, there is also lots of lots
1573 when he's got a cul-de-sac versus being able to have a stub road he's going to lose lots. He
1574 already has issues with the 50-lot rule pursuant to that condition that I've already placed
1575 forward or interpreted for you. With these additional lots from Bridlewood, being able to use
1576 his subdivided roads, then he is going to have additional lots that he is going to have to deal
1577 with without any control over. If those get developed before his lots, they are using his 50-lot
1578 rule, his emergency access before he can. Again, they are taking advantage of the burden that
1579 they are placing on him.

1580

1581 The final burden that I would point out would be that, with respect to wetlands. We haven't
1582 done a study of the Bridlewood property. They are subject to wetlands requirements and
1583 Army Corps of Engineer requirements. If we have to bring a stub road all the way through,
1584 we are impacting additional wetlands on our property and potentially on their property and
1585 that's just additional costs that we haven't figured out to the Army Corps of Engineer. We are
1586 trying to provide a high-in community here and while those are great houses in Bridlewood and
1587 they are excellent houses, there is no control over what the houses may be if they end up
1588 subdividing their lots. We need to have compatibility. It was a big deal that we have a high-in
1589 community with a recreational center and the limited access roads when we went through the
1590 zoning case. We want to be able to maintain that high-in community without control of what
1591 goes on around us, and the use of our roads then that's not something that we are able to
1592 control and that's not something that we can allow.

1593

1594 Finally, in addition to this coming up at the last minute, with respect to this objection and this
1595 condition, we went to the staff/developer meetings and this came up and quite frankly we feel
1596 that with the number of phone calls, this has been somewhat of a knee-jerk reaction but I
1597 provided to Mr. Marshall and I can provide on record to Mr. Kennedy as well, we have
1598 provided two different letters to the zoning case. One was to Mark Bittner as a part of our

1599 zoning case and the other one was to Mr. Taylor at his request outlining that when the time
1600 came and we were able to go through and get this approval through the tentative subdivision,
1601 subject to the 50-lot rule, what emergency access we could get in, as we do further wetlands
1602 studies and get additional information from the Army Corps, we will go back to, before we do
1603 our final subdivision plan, we will go back to the Bridlewood owners... We say in here at least
1604 120 days to go back to them, make an offer, see if we can work something out and see if we
1605 can purchase that property from the Bridlewood folks and work out a subdivision of their
1606 property to deal with this issue, without any commitment to say that we will absolutely work
1607 out something but we won't record our final subdivision plats to this area that lead up to
1608 Bridlewood until at such time we talk with them and give them enough notice as to what we
1609 are doing. I think that's a reasonable reaction. Certainly, I don't think anything of this nature
1610 has been done before. And, again, we are just trying to control what our costs, limit our
1611 burden that we giving for the benefit of those neighbors, and to be able to have a compatible
1612 neighborhood that goes through this.

1613

1614 This is a subdivision. We meet all subdivision requirements. This I think is a particularly
1615 unusual requirement. I've never seen this to require access to other subdivided lots that have
1616 access to their own road, that have the required lot frontage. With that, I hope you will
1617 approve it without, and we are going to object, that one condition. We will accept all other
1618 conditions but object to that one condition that requires a stub road to the Bridlewood
1619 subdivision. I see that I have stunned everyone so I'll be happy to answer any questions you
1620 may have?

1621

1622 Mr. Silber - So, Mr. Condlin, you are objecting to an annotation on the plan which is
1623 annotation DD.

1624

1625 Mr. Condlin - I haven't seen the specific annotation but I know the concept that we
1626 would have to provide some kind of a stub road to Bridlewood. We object to that.

1627

1628 Mr. Silber - There is an annotation on the plan, for the Commission's benefit, which
1629 is annotation DD and the applicant is objecting to that.

1630

1631 Mr. Vanarsdall - There are two DD's, Mr. Secretary.

1632

1633 Mrs. Ware - I just see one DD.

1634

1635 Mr. Archer - There's just one.

1636

1637 Mr. Vanarsdall - Do you want the DD dated with today's date?

1638

1639 Mr. Silber - Well, the DD that he is concerned with reads, if I can read this....

1640

1641 Mrs. Ware - Wait a minute, you are right, there are two, Mr. Vanarsdall.

1642

1643 Mr. Marshall - Stub street shall be provided from Section M to the Bridlewood

1644 subdivision.

1645

1646 Mr. Silber - That's correct. That's the annotation he is speaking of.

1647

1648 Mr. Vanarsdall - It's DD dated January 28, 2004.

1649

1650 Mr. Condlin - I'm not sure of the legal difference between a condition and an
1651 annotation but in any respect we object to that being on there and I don't think it can be
1652 imposed on us without our consent.

1653

1654 Mr. Silber - Also, you had concern with conditions Nos. 28 and 29 but they have
1655 been revised.

1656

1657 Mr. Condlin - Yes. I just wanted to make sure that we understood what our obligations
1658 were with the 20-foot-wide emergency access, and Mr. Kennedy has agreed that that's exactly
1659 what they were getting at. Sometimes it's a question of interpretation on those. We can do the
1660 20-foot-wide emergency access and that will satisfy those conditions.

1661

1662 Mr. Silber - So, have you seen the revised conditions Nos. 28 and 29?

1663

1664 Mr. Condlin - I seen a variation of it.

1665

1666 Mr. Silber - If you like I can read it. Number 28 says: The west side of Road M-1
1667 may exceed permitted block lengths provided a limited (pedestrian and fire) access and utility
1668 easement is provided to the property to the west.

1669

1670 Mr. Condlin - That's correct and with the understanding that as long as we provide a
1671 20-foot-wide emergency access to the property to the west that will satisfy that.

1672

1673 Mr. Silber - Revised condition No. 29 says: A maximum of 50 lots may be
1674 developed with a single point of access, unless a secondary emergency access drive is approved
1675 by the Directors of Planning and Public Works.

1676

1677 Mr. Condlin - That's correct. That could be served by the same 20-foot-access that
1678 goes to Grey Oaks. Our concern was that what if Grey Oaks isn't developed. There is no
1679 public street there, we would have to find another emergency access route, which we have one
1680 going out to Shady Grove, again that 20-foot so that would satisfy that.

1681

1682 Mr. Silber - So, your only objection this time relates to the annotation DD?

1683

1684 Mr. Condlin - Absolutely.

1685

1686 Mr. Silber - Okay.

1687

1688 Mr. Marshall - No questions. I would like to hear from the opposition.

1689 Mrs. Ware - If you have any opposition would you come forth. Hello.
1690

1691 Mr. Spear - Madam Chairman, members of the Commission, my name is Ken Spear
1692 and I live at 11135 Hames Lane. This is in the Bridlewood subdivision. I own an approximate
1693 10-acre parcel that abuts the subject development. First let me mention, the reason that this
1694 just came up yesterday is I just found out that this plan was going to be submitted. I've been
1695 following this subdivision for a while. I talked to Mr. Kennedy several months ago and I was
1696 under the impression that it was going to be brought before the panel, your Commission, in
1697 pieces and was surprised to learn from a phone call from him that it is so. I apologize for the
1698 last minute delay but it was unavoidable.
1699

1700 Secondly. I would like to refer you to a case that you just approved earlier this month for
1701 rezoning of part of Bridlewood on the northeast side of Bridlewood, adjacent to Hampshire.
1702 When I bought the property and built a house many years ago in Bridlewood, I expected to see
1703 it stay the same. The development in this area has gone topsy turvy. It's completely changed
1704 and in the last three or four months we and our neighbors have been faced the result of this
1705 change and a lot of decisions. What caused this was the case that I just referred to, that just
1706 got approved, where three of my neighbors on the other side of the street went and sold their
1707 property to a developer, the rear part of that property, which is going to be developed into
1708 some 30 odd houses. Well, the existing restrictive covenants as I think you know objected to
1709 that, prevent that, and as Mr. Kennedy mentioned. And there was a great deal of discussion
1710 among myself and my neighbors whether to approve the changes to those restrictive covenants.
1711 They were approved and the new restrictive covenants said that anybody could subdivide the
1712 rear portion of their property if it was at least 400 feet back from Hames Lane as long as there
1713 was no access from that subdivided property onto Hames Lane. So, out of my reason for
1714 asking for the stub road is if this subdivision is approved and again I apologize. I'm not an
1715 expert in your procedures, I'm learning a lot, but my impression is once you approve this plan
1716 then the roads, as shown with the cul-de-sacs, are pretty much set in stone unless the developer
1717 agrees to make another change.

1718

1719 The developer says that it is premature. Well, I would argue that if we don't make this change
1720 now that the rear of my property and the rear of my neighbors property, if we sell it to a
1721 developer, is going to be landlocked. There really is no practical way to access Shady Grove
1722 Road simply because the way the lots narrow down to smaller acreage near Shady Grove
1723 Road. So, the only real realistic access and to meet the requirements of the Bridlewood
1724 covenants as they were modified, is through Mr. Windsor's subdivision. I know that he has
1725 said that he would work with us in the future and I have spoken to him and I have spoken to
1726 his attorney and I'm sure they will. They have been very cooperative, but it almost sounds
1727 like an oxymoron. He's saying "Well I'll work with you in the future but I don't want to put a
1728 stub road in to allow that now." My thought is "Hey if he says he's interested and he's
1729 expressed interest in developing the rear several of the lots behind us, adjacent to his property,
1730 then let's go ahead in put the stub road in, allow for that, put it in now. Otherwise, the rear of
1731 the property is landlocked and if he changes his mind and decides he doesn't want to do it for
1732 some reason then we are not going to be able to possibly develop the rear of that property.

1733

1734 I would like to mention that as part of our discussions and this is before Mr. Marshall came on
1735 the Commission, we worked with Mr. Taylor and we were really encouraged to make these
1736 changes to allow for part of the 10 acres in the rear of these lots to be more highly developed.
1737 We were encouraged to make the changes so that the previous rezoning case could be approved
1738 and all we are doing is doing the same thing on the other side of the street. So, I would ask
1739 that you approve the recommendation from staff and include the stub road. If this is not
1740 possible, and particularly because this just came up, that I would alternatively ask that you
1741 delay this case for at least a couple of weeks or to the next hearing so that we can work on this
1742 further and I need some professional advice as to how to deal with this because as I said I'm
1743 just an individual homeowner and I'm against professional lawyers and developers who know
1744 all of the requirements. So, if you don't feel like you could approve the stub road, I would ask
1745 that you delay it and give myself and my neighbors... several of my neighbors could not attend
1746 today because they have other obligations. Thank you very much I appreciate you hearing my
1747 comments.

1748

1749 Mrs. Ware - Thank you. Are there any questions for Mr. Spear?

1750

1751 Mr. Marshall - Mr. Spear, if for whatever reason Mr. Windsor could not meet you and
1752 your neighbor's price, there's nothing that would prohibit you all from selling it to someone
1753 else, correct?

1754

1755 Mr. Spear - That is correct if we had access to the property.

1756

1757 Mr. Marshall - And didn't the restrictive covenants amendment also allow for lots of 6
1758 ½ acres or less to be subdivided with access on Hanes Lane?

1759

1760 Mr. Spear - Those as of, with 6 ½ acres, as of the date of the covenants, which is the
1761 changes, which is December 5, 2003. So, that would not apply to my property.

1762

1763 Mr. Marshall - But it would apply to some of your neighbor's property.

1764

1765 Mr. Spear - It would apply to those... The subdivision is primarily five and ten acre
1766 lots and there may be one that's six acres. So for those individuals that have say five acres,
1767 they could cut off one or two acres off the corner of their property that would apply, and have
1768 just a driveway come out, but not a street, sir.

1769

1770 Mr. Marshall - And you heard Mr. Kennedy state that there is possible along the back of
1771 the property line to run a road out to Shady Grove Road.

1772

1773 Mr. Spear - Well, I would like to discuss that with him further. We haven't had a
1774 chance to discuss that. I'm not sure that there is. I would certainly respect staff's opinion but I
1775 think if he and I could sit down I could show him that there really isn't an opportunity. There
1776 is some property between Shady Grove Road and Mr. Windsor's subdivision that is owned by
1777 I don't know who, that if it was subdivided in the future there might be access to that. But, I
1778 don't have no idea what might happen there, it may never be subdivided.

1779 Mr. Marshall - And to answer your concern about whatever action we take today is set
1780 in stone is not the case as far as the roads. There is a letter that Mr. Windsor has provided that
1781 says prior to him, at least 120 days prior to him recording a plat with these roads on it, that he
1782 is going to make an effort within those 120 days to work something out with the owners of
1783 Bridlewood. So, he could then make a change to put a stub road in if he's able to work
1784 something out with you all. That is part of what Mr. Condlin explained as far as addressing
1785 the concerns about whether what happens today then there is no chance for a stub road.

1786

1787 Mr. Spear - Make I ask a little clarification. Does that means that if we are not able
1788 to work something out with him, then when he comes in for that road plan that we will be
1789 able, again, to ask for a stub road?

1790

1791 Mr. Marshall - No.

1792

1793 Mr. Spear - No. See so this is it. If we can't work something out with him then he
1794 can deny us access to our property if he wanted to. So, that's why I am asking for the stub
1795 road to be there now otherwise it's conceivable. I mean, I'm reasonable and I'm sure Mr.
1796 Windsor is but I just don't want to operate on promises, I want to operate on something that's
1797 down on paper, that legal. Therefore I ask that while you are hearing this that you require the
1798 stub road.

1799

1800 Mrs. Ware - When did you say you had spoken to Mr. Kennedy concerning this
1801 change?

1802

1803 Mr. Spear - About noon time. I believe he called my home a little before noon
1804 yesterday. Yes, ma'am. I've been trying to follow it and again I apologize for this last minute
1805 situation. I did not want it to happen.

1806

1807 Mr. Jernigan - Mr. Spear, I have a question. During the zoning case there was
1808 opposition to that and I know that the count in the neighborhood was eight to seven for these
1809 three lots to be split off of the back of the northeast side.

1810

1811 Mr. Spear - Yes, sir.

1812

1813 Mr. Jernigan - Now, you all say you have changed your HOA rules and now everybody
1814 is ready to sell a portion of their lots. Has the vote changed?

1815

1816 Mr. Spear - Not that I know of. In order to change the restrictive covenants it
1817 required a majority which is eight so that is the eight to seven. I was one of the eight.

1818

1819 Mr. Jernigan - But, you are on the other side of the road, right?

1820

1820 Mr. Spear - Yes. I'm on the other side of the road adjacent to Mr. Windsor's. What
1821 I'm asking is the opportunity to do, in the rear of my property and my neighbor's the same
1822 opportunity that they have on the other side and the only way to guarantee that is to have a stub
1823 road, sir.

1824

1825 Mr. Jernigan - Okay. Thank you.

1826

1827 **AT THIS POINT THERE WAS A TAPE MALFUNCTION DURING THE SWITCHING**
1828 **OF THE TAPES.**

1829

1830 Mr. Kennedy - It's in Bridlewood and it's still zoned A-1 and so there is no guarantee on
1831 how many lots they will get even if they do come back because they would still need a
1832 rezoning case to go forward through the Planning Commission and the Board of Supervisors to
1833 move forward as well. So, there is no real guarantee on how many lots would be potentially
1834 will be developed in any case until they go through that zoning case.

1835

1836 Mr. Marshall - Is there any more opposition? Madam Chairman, I'm going to make
1837 motion to delete "DD" from the annotations on the plat for these reasons: The adjacent
1838 subdivision is already zoned, as Mr. Kennedy said, and is a legal subdivision having access on
1839 Hanes Lane. What we have before us today is a different subdivision with different zoning
1840 categories. The requirement of a developer of another subdivision to run a stub road to an
1841 adjoining already zoned subdivision, I think, sets a dangerous precedent in the sense that you
1842 would be requiring the developer to run a road to an already developed subdivision with access
1843 that's already been approved by the County. Thereby, opening this subdivision to access from
1844 adjoining properties that may be or may be not developed. It is a speculative situation as to
1845 say that there may or may not be a meeting of the minds as far as the sell of some of this
1846 acreage on these subdivisions lots behind it. And I think Mr. Kennedy was appropriate in
1847 bringing up the fact that as in the case that we handled previously, on the Bridlewood owners
1848 across the street, it was a subject of a zoning case which would have to occur in the event some
1849 of these property owners decide to sell the property and at that time, as in that zoning case, the
1850 issue of access and streets and so forth would come before us in the form of a zoning case. I
1851 think it is also pertinent that the restrictive covenants did allow for access on Hanes Lane for
1852 any lot 6 1/2 acres or less that was subdivided which would provide a means of access
1853 potentially to adjoining property owners as well as the fact that there is plenty of land there to
1854 explore the running of a road out to Shady Grove Road should the property owners decide to
1855 develop it and not sell the land to Mr. Windsor. So, I going to recommend and make a motion
1856 to delete annotation "DD" from the subdivision plat.

1857

1858 Mr. Archer - Before we vote on the motion, can I just get a bit of clarification from
1859 Mr. Secretary or somebody from staff as to how we have treated a similar condition like "DD"
1860 before. Have we seen it?

1861

1862 Mr. Silber - Mr. Archer, this type of annotation is not unusual. Staff is always
1863 interested in having stub streets to adjacent properties to allow for interconnectivity of roads
1864 when adjacent property is developed. I think what's unique here is, as Mr. Marshall has

1865 spelled out, that this piece of property adjacent to this subdivision is already a recorded
1866 subdivision. It doesn't have the same zoning classification at this time so it is somewhat
1867 unique. Staff is making this recommendation because we believe that there was interest on
1868 both sides to eventually have a zoning case and have the development of the back portion of
1869 Bridlewood with connection of road so we thought it was to everyone's advantage to have a
1870 stub road. I understand where Mr. Marshall is coming from and I don't entirely disagree.
1871 But, to answer your question, it is typical that we are recommending stub roads to adjacent
1872 properties that are certainly available for future development. I think it's worth pointing out to
1873 Mr. Spear that if this is approved in this fashion, with the deletion of annotation "DD" it
1874 wouldn't prohibit the applicant from providing a stub connection in the future. He would not
1875 have to come back to the Planning Commission to amend this subdivision, more than likely he
1876 would lose a lot on this subdivision to put the road through. We can handle that
1877 administratively and he could do that with little change. So, I don't think this prohibits future
1878 negotiations of the back portions of Bridlewood and if that does takes place and if zoning does
1879 occur, we would be encouraging Mr. Windsor to consider a connection to the back of
1880 Bridlewood in the future. So, it's not necessarily locked into concrete at this point.

1881

1882 Mrs. Ware - And I have one more question. You said there was a letter that we
1883 haven't seen, that addresses....

1884

1885 Mr. Marshall - It's addressed to Mr. Bittner, August 14.

1886

1887 Mrs. Ware - Oh, I thought you were talking about a recent letter. Okay.

1888

1889 Mr. Marshall - It was in the file.

1890

1891 Mrs. Ware - Okay. It was with the rezoning case. So, your motion is to remove DD.

1892

1893 Mr. Marshall - Yes.

1894

1895 Mr. Jernigan - Second.

1896

1897 Mrs. Ware - The motion was made by Mr. Marshall and seconded by Mr. Jernigan.
1898 All in favor say aye...all opposed say nay. The ayes have it. The motion passes to remove
1899 DD.

1900

1901 Mr. Marshall - I make a motion to approve subdivision XYZ (January 2004 Plan) -
1902 Grey Oaks Park Drive with the standard conditions for this type of development and additional
1903 conditions Nos. 12 through 34, and the amended, revised, No. 15, the deletion of No. 22, and
1904 revised conditions Nos. 28 and 29.

1905

1906 Mr. Vanarsdall - Second.

1907

1907 Mrs. Ware - The motion was made by Mr. Marshall and seconded by Mr. Vanarsdall.
1908 All in favor say aye...all opposed say nay. The ayes have it. The motion carries.

1909

1910 The Planning Commission granted conditional approval to subdivision XYZ (January 2004
1911 Plan) Grey Oaks Park Drive, subject to the standard conditions attached to these minutes for
1912 subdivisions served by public utilities, the annotations on the plans and the following additional
1913 conditions:

1914

1915 12. A County standard sidewalk shall be constructed along one side of Grey Oaks Park
1916 Drive.

1917 13. The proffers approved as part of zoning case C-15C-03 shall be incorporated in this
1918 approval.

1919 14. The limits and elevation of the 100-year frequency flood shall be conspicuously noted on
1920 the plat and construction plans and labeled "Limits of 100-year floodplain." Dedicate
1921 floodplain as a "Variable Width Drainage & Utilities Easement."

1922 15. The detailed plant list and specifications for the landscaping to be provided within the
1923 10-foot-wide planting strip easement along Grey Oaks Park Drive, and Nuckols Road
1924 shall be submitted to the Planning Office for review and approval prior to recordation
1925 of the adjoining lots. No driveways accessing Road X from street side yards shall be
1926 permitted on lots recorded prior to the recordation of the extension of Gray Oaks Drive
1927 to Nuckols Road.

1928 16. Each lot shall contain at least 13,500 square feet exclusive of the flood plain areas.

1929 17. Prior to recordation, a draft of the covenants and deed restrictions for the maintenance
1930 of the common area by a homeowners association shall be submitted to the Planning
1931 Office for review and approval. Such covenants and restrictions shall be in form and
1932 substance satisfactory to the County Attorney and shall be recorded prior to recordation
1933 of the subdivision plat.

1934 18. Any future building lot containing a BMP, sediment basin or trap and located within the
1935 buildable area for a principal structure or accessory structure, shall be developed with
1936 engineered fill. All material shall be deposited and compacted in accordance with the
1937 Virginia Uniform Statewide Building Code and geotechnical guidelines established by a
1938 professional engineer. A detailed engineering report shall be submitted for the review
1939 and approval by the Building Official prior to the issuance of a building permit on the
1940 affected lot. A copy of the report and recommendations shall be furnished to the
1941 Directors of Planning and Public Works.

1942 19. The plat must be redesigned to provide at the lot minimum lot width required and as
1943 regulated by Chapter 24, of the Henrico County Code, prior to the recordation of any
1944 cul de sac lot.

1945 20. Circus Farm Road shall be vacated or otherwise abandoned across Lot 2 in Block A,
1946 prior to the recordation of said lot.

1947 21. Turn lanes, as determined necessary by the Traffic Engineer shall be dedicated at the
1948 intersection of Nuckols Road and Road X on the record plat for Road X.

1949 22. Temporary turn around easements adequate for school bus turning movements shall be
1950 dedicated at the terminal ends of Grey Oaks Park Drive and Road M-1 on the record
1951 plats for those streets.

- 1952 23. Lot 14, Block L, shall be redesigned to satisfy minimum lot frontage requirements,
1953 prior to its recordation.
- 1954 24. The detailed plant list and specifications for the landscaping to be provided within all
1955 medians shall be submitted to the Planning Office for review and approval prior to
1956 recordation of the adjoining lots.
- 1957 25. A maintenance agreement for landscaping within all medians shall be submitted to the
1958 Department of Public Works for review and approval prior to recordation of the plat.
- 1959 26. Lot 63, Block M shall be redesigned to have sufficient buildable area and minimum lot
1960 area prior to its recordation.
- 1961 27. The west side of Road M-1 may exceed permitted block lengths, provided a limited
1962 (pedestrian and fire) access and utility easement is provided to the property to the west.
- 1963 28. A maximum of 50 lots may be developed with a single point of access, unless a
1964 secondary emergency access drive is approved by the Directors of Planning and Public
1965 Works.
- 1966 29. Circus Farms Drive shall not be included in lot areas of Lots 8-10 in Block I; and a 10-
1967 foot landscape buffer and no ingress/ egress easement shall be dedicated along those
1968 lots abutting Circus Farms Drive.
- 1969 30. The detailed plant list and specifications for the landscaping to be provided within a 10-
1970 foot landscape buffer abutting Circus Farms Drive shall be submitted to the Planning
1971 Office for review and approval prior to recordation of the adjoining lots.
- 1972 31. A coordinated plan for a pedestrian trail connecting with Grey Oaks and any shared
1973 recreational areas shall be submitted to the Planning Office for review and
1974 approval prior to recordation of each section.
- 1975 32. A sidewalk easement shall be dedicated as determined necessary by the Traffic
1976 Engineer along Nuckols Road prior to the recordation of the adjoining lots.
- 1977 33. The alignments and cross-sections of Grey Oaks Park Drive and Road X shall be
1978 approved by the Traffic Engineer prior to their recordation.
- 1979

1980 **ALTERNATIVE FENCE HEIGHT PLAN**

1981

Kinross Association –
Sleepy Hollow Road

Kinross Association: Request for approval of an alternative fence height plan, as required by Chapter 24, Sections 24-106, 24-106.2 and 24-95 (1)(7)b of the Henrico County Code to permit a seven foot privacy fence in the front yard along Sleepy Hollow Road and Derbyshire Road, where the County Code permits fences in the front yard not exceeding 42 inches in height. The 10.17-acre site is located at the southeast corner of Sleepy Hollow Road and Derbyshire Road on parcels 751-738-0853, 2355, 0170, 0280, 0892, 1993, 2993, 3993, 5193, 5984, 6172, 5360, 3954, 3176, and 750-738-9050. The zoning is R-2, One-Family Residence District. **(Tuckahoe)**

1982

1983 Mrs. Ware - Is there anyone in the audience in opposition to the alternative fence
1984 height for Kinross Association? We do have opposition. Hello, Ms. News.

1985

1986 Ms. News - Good morning, Madam Chairman and members of the Commission. As
1987 detailed in the Planning Commission agenda, there is a long history of requests for fencing
1988 around the perimeter of this site. In practice, the rear of the dwellings face the roads and the
1989 backyard activities occur between the road and the homes. However, due to the configuration
1990 of the site and the fact that the homes are oriented around a private drive, the public road
1991 frontage is the legal front yard of these residences. In order for the applicant to erect a fence
1992 greater than 42 inches, an alternative fence height approval is required.

1993

1994 There has been past and continued concern regarding the appearance of fencing this height
1995 along long stretches of road. To mitigate the impact of the fencing and understanding the
1996 wishes of the residents to buffer their yards from the busy streets, staff has recommended that
1997 landscaping be provided in front of the fencing along Derbyshire Road and that the proposed
1998 fencing be set back from the right-of-way along Sleepy Hollow Road to permit landscaping in
1999 front of the fence. This recommendation is in accordance with the intent of a recent
2000 amendment to the ordinance which requires fencing exceeding 42 inches in new subdivisions
2001 adjacent to Major Thoroughfare Plan roads to be located no closer than 15 feet from the public
2002 right-of-way.

2003

2004 The applicant submitted the landscape plan which has just been handed out in response to
2005 staff's request for a landscape plan. The applicant has proposed landscaping along Derbyshire
2006 which in concept staff feels is adequate to screen the fence. I would point out that the
2007 landscaping, a part of it, may be in the public right-of-way, and a maintenance agreement with
2008 the Department Works would be required. The applicant has also indicated that a cap
2009 matching the proposed fence detail can be added to the seven-foot-high fence on Derbyshire to
2010 blend the appearance of the existing and the proposed fences. The applicant, however, does
2011 not wish to shift the fence back along Sleepy Hollow Road and has since indicated that he
2012 would rather eliminate the seven-foot fence along Sleepy Hollow Road than locate it further off
2013 the road than its current location. His most recent proposal is to build the seven-foot fence
2014 along Derbyshire which would transition to the existing 42-inch height fence along Sleepy
2015 Hollow Road once the fence completes the radial turn at the intersection with Sleepy Hollow
2016 Road. This is generally indicated on the plan you just received.

2017

2018 The applicant has also indicated he is willing to work with staff to finalize the details of the
2019 landscaping along Derbyshire Road. Staff would recommend that an additional condition be
2020 added, should the Commission approve this request, stating that a landscape plan specifically
2021 detailing the location of all proposed plant material shall be submitted for review and approval
2022 by the Planning Office prior to installation of the fence. The applicant, Mr. Barden,
2023 representing Kinross Association is present and is prepared to address his request to the
2024 Commission and I'll also be happy to answer any questions.

2025

2026 Mrs. Ware - Are there any questions for Ms. News. Okay. I'll hear from the
2027 applicant at this point. Good morning, Mr. Barden. Would you state your name for the
2028 record, please.

2029

2029 Mr. Barden - Good morning, Madam Chairman and Commissioners. I'm Jim Barden,
2030 529 Sleepy Hollow Road representing the Kinross Homeowners Association. As you will
2031 note, today's proposal is the result of approximately 60 days of the Kinross neighborhood
2032 negotiation with the Henrico County Planning Commission to come up with what is a much
2033 more modest fencing application than we had previously applied for. And the compromise that
2034 is before you today is one that is acceptable to the homeowners association as well as the
2035 County's Planning staff. The fence design that you have was at the suggestion of Harvey
2036 Hinson. It's modeled after the Cultural Arts Center at Glen Allen's Cultural Arts Center on
2037 Mountain Road.

2038

2039 There are several reasons why that we wanted to increase the fence height. First and foremost,
2040 the fence that we have now is 20 years old, it is rotten, it's ugly and eventually it will turn into
2041 petrified wood that will look very nice in someone's aquarium. The recent hurricane damage
2042 that we sustained took down some of the backyard trees that used to screen our houses from
2043 Derbyshire and Sleepy Hollow. And everybody knows that Derbyshire traffic today is much
2044 heavier than it used to be, approximately 12,000 cars per day. And for that reason, not only
2045 for aesthetics but for safety reasons, our little 14-home community has 20 children, five under
2046 the age of six. Not only will the increased fence height keep unwanted people out it also helps
2047 to keep our urchins in and off the busy highways. But, I think, foremost, the increased fencing
2048 and reducing the exposure that our houses have to the traffic will help to maintain our property
2049 values. And, as a byproduct we will end up cleaning up and landscaping 800 feet of
2050 Derbyshire Road down to Parham Road.

2051

2052 Mrs. Ware - The fence that you are putting all along Derbyshire, will it be the same
2053 fence?

2054

2055 Mr. Barden - Yes.

2056

2057 Mrs. Ware - So, you are just going to blend it in to what is existing on Parham now
2058 and then take it down and decrease the height of the fence when it takes this turn to meet the
2059 shorter fence that you have.

2060

2061 Mr. Barden - Yes. So for most of lot 529 and all of 531 and 533 and 507 they will all
2062 have 42-inch fence heights along Sleepy Hollow.

2063

2064 Mrs. Ware - And that fence will be graduated down to meet that. And you are in
2065 complete agreement with working with staff in the Planning Office on the landscaping.

2066

2067 Mr. Barden - Yes, that's fine. We don't care.

2068

2069 Mrs. Ware - Are there any other questions at this time for Mr. Barden? Okay. Mr.
2070 Barden you may want to stay near by. We are going to hear from the opposition now.

2071

2071 Mr. Newins - I'm on 512 Sleepy Hollow Road across from the Kinross subdivision.
2072 Late yesterday afternoon when I was talking to someone from staff they explained that he
2073 changed the requirement on the Sleepy Hollow side, so now I have no opposition.

2074

2075 Mrs. Ware - Okay. Are there any questions?

2076

2077 Mr. Vanarsdall - Thank you for coming.

2078

2079 Mrs. Ware - Thanks. All right. I am satisfied with the plan that has been agreed
2080 upon with the increased fence height all along Derbyshire and then graduated down and leaving
2081 the fence along Sleepy Hollow at the 42 inches, especially with the increased landscaping that
2082 we have for this. I know a lot has been lost from the storm. So, I will move that the Kinross
2083 Association, Sleepy Hollow Road, alternative fence height be approved subject to conditions
2084 Nos. 1 through 6.

2085

2086 Mr. Vanarsdall - Second.

2087

2088 Mrs. Ware - The motion was made by Mrs. Ware and seconded by Mr. Vanarsdall.
2089 All in favor say aye...all opposed say nay. The ayes have it. The motion carries.

2090

2091 The Planning Commission approved the alternative fence height plan for Kinross Association –
2092 Sleepy Hollow Road, subject to the standard conditions attached to these minutes for
2093 alternative fence heights and the following additional conditions:

2094

2095 1. All ground cover and landscaping shall be properly maintained in a healthy condition at
2096 all times. Dead plant materials shall be removed within a reasonable time and replaced
2097 during the normal planting season.

2098 2. The owner shall have a set of approved plans available at the site at all times when
2099 work is being performed. A designated responsible employee shall be available for
2100 contact by County Inspectors during the performance of the work.

2101 3. The property shall be developed as shown on the annotated staff plan, dated **January**
2102 **28, 2004**, and no changes or additions shall be made without the approval of the
2103 Commission.

2104 4. The owner shall be responsible for obtaining all applicable permits.

2105 5. The fence shall be continuously and properly maintained in good repair by the property
2106 owners. Damaged or deteriorating boards or fence sections are to be replaced promptly.
2107 Trash and debris shall not be allowed to accumulate along the fence.

2108 6. A landscape plan specifically detailing the location of all proposed plant material shall
2109 be submitted for review and approval by the Planning Office prior to installation of the
2110 fence.

2111

2111 **SUBDIVISION (Deferred from the November 19, 2003, Meeting)**

2112

King's Reach
(October 2003 Plan)

Foster & Miller for Quarry Hill Estates, L.C. and Atack Properties, Inc.: The 101.744-acre site proposed for a subdivision of 80 single family homes is located approximately 800 feet south of Quarry Hill Lane at 5600 Pouncey Tract Road (State Route 271) on part of parcels 733-775-7627 and 733-777-4209. The zoning is A-1, Agricultural District. County water and septic tank/drainfield. **(Three Chopt) 80 Lots**

2113

2114 Mrs. Ware - Is there anyone in the audience in opposition to subdivision King's Reach
2115 (October 2003 Plan)? No opposition. Mr. Strauss.

2116

2117 Mr. Strauss - Thank you, Madam Chairman. As the Secretary said this case was
2118 deferred from at our November meeting in order to allow the applicant time to pursue a Major
2119 Thoroughfare Plan amendment to address the master plan roads that were located within the
2120 proposed subdivision. Since that time, this Commission has recommended approval of the
2121 Major Thoroughfare Plan amendment, and last night it was approved by the Board of
2122 Supervisors. So, those master plan roads are no longer an issue.

2123

2124 Staff was working on several other issues with the applicant. One was the number of lots
2125 proposed on a single entrance. This is an 80-lot subdivision and there is a County policy that
2126 does not recommend any more than 50 lots on a single point of access. The other issue was
2127 the soils in the area. Soils mapping indicates severe restrictions in this area and that was a
2128 concern for staff because this is to be a subdivision on septic fields. Finally, staff was
2129 concerned about the location of an old family plot cemetery which is located, according to our
2130 investigation by Recreation & Parks, in this area here (referring to map on the screen). And to
2131 the west in Goochland there is an operating quarry. So, after discussion with staff and some
2132 additional meetings this last week we have developed several additional conditions which as the
2133 Secretary said appears on the agenda and this morning's addendum. These additional
2134 conditions address the requirement to file additional information for the septic fields and the
2135 applicant is in agreement with that. We have also had a number of discussions with respect to
2136 the entrance and the applicant has informed us that he is pursuing, acquiring additional
2137 property to the north which in the future would alleviate the concern about the single point of
2138 access.

2139

2140 Also, the applicant has agreed to relocate the family plot cemetery, and staff has recommended
2141 additional condition No. 15 to address what would happen if they were not able to relocate that
2142 cemetery with respect to regulations and state law. So, with that, staff can recommend
2143 approval and I'll be happy to answer any questions you may have. Thank you.

2144

2145 Mrs. Ware - Are there any questions for Mr. Strauss by the Commission?

2146

2146 Mr. Archer - Mr. Strauss, I have just one question, out of curiosity. Where would be
2147 the cemetery be relocated to, at a site nearby?

2148

2149 Mr. Strauss - I do believe the applicant did mention this last week that they are looking
2150 into another cemetery nearby. At the moment I can't remember the name, but I think the
2151 applicant can tell us that.

2152

2153 Mrs. Ware - Mr. Marshall, are you ready to hear from the applicant?

2154

2155 Mr. Marshall - Yes.

2156

2157 Mr. Atack - Madam Chairperson, members of the Planning Commission, Mr. Silber,
2158 my name is Bob Atack and I'm the applicant. I appreciate Mr. Strauss and the staff's efforts
2159 on this and their recommendation for approval. I'll just go over sort of the gist of what we are
2160 proposing and it may either answer some or even provide some additional questions. The
2161 property is approximately 100 acres and we are proposing to build 80 homes on this site. The
2162 homes will be in the price range of between one and two millions dollars. To provide security
2163 and add for additional aesthetic value, we will be billing a brick serpentine wall across the
2164 entire frontage of this site which is on Pouncey Tract Road. This wall will be approximately
2165 one quarter of a mile long. It will tie into what we will hope to be able to build a gated
2166 entrance with electronically controlled gates as well as provide 24-hour monitoring for this
2167 community. It is an unusual community in one in which we are very excited about the
2168 possibilities of.

2169

2170 The homes specifically will all be custom designed and no two homes will be built the same.
2171 The houses will have a minimum of 5000 square feet. Many of the homes will have tennis
2172 courts and swimming pools. I've got some exhibits that I'll be glad to post up here if you
2173 would like to see them, actually one of one of the homes, and as well I'll be glad to answer any
2174 questions.

2175

2176 Mrs. Ware - Mr. Atack, perhaps you can answer the question about the cemetery.

2177

2178 Mr. Atack - Yes, ma'am, the question that Mr. Archer asked?

2179

2180 Mrs. Ware - Yes.

2181

2182 Mr. Atack - Yes, ma'am, we have developed a lot of properties where cemeteries
2183 were on the site and what we have, I think the ordinance, or, what we have done, I think
2184 maybe the ordinance we have provided pedestrian access to the cemetery. In this neighborhood
2185 we felt like that would probably not be as amenable solution to our homeowners so we are
2186 working with Bliley's Funeral Home for the relocation of this cemetery. So, actually, Mr.
2187 Archer, we haven't identified the specific cemetery but we are working with Bililey's Funeral
2188 Home. It's one of their businesses to provide ancillary cemetery use in scenarios such as this.

2189

2189 Mr. Archer - Okay. It was something that has not come up before since I've been
2190 here, I don't believe, and I was just curious as to how that is handled. I appreciate the
2191 explanation.

2192

2193 Mr. Atack - There are a number of different scenarios. They actually have a scenario
2194 where they take a shovel full of dirt and call that relocating a cemetery. We are experts on
2195 cemeteries and aquifers these days, so I'll be glad to talk about either at any time for you, sir.

2196

2197 Mr. Archer - I'll leave it alone then.

2198

2199 Mr. Marshall - Mr. Atack, could you tell the other members how wide that entrance is?

2200

2201 Mr. Atack - Yes, sir. And I think, Mr. Marshall, it's appropriate in that this
2202 entrance is 22 feet wide on each side of the divided median. That would allow vehicular traffic
2203 at two cars or two vehicles per side for emergency vehicles as well the divided median is
2204 approximately 15 feet wide and it travels 1,500 feet into the community. One of the
2205 disadvantages because of the size and the exhibit you have before you, is it's a 100 acres and if
2206 you didn't know that these homes were a minimum of one acre lots, you would have the
2207 tendency to say, well you know it's a typical 80 or 90-foot frontage subdivision. These homes
2208 are all on 150-foot minimum frontages. So, we think we have satisfied the requirements as far
2209 as ingress and egress with two main accesses with these two entrances.

2210

2211 Mr. Marshall - Thank you.

2212

2213 Mrs. Ware - Are there any more questions for Mr. Atack by the Commission? Thank
2214 you.

2215

2216 Mr. Atack - Thank you.

2217

2218 Mr. Marshall - Madam Chairman, I move approval of subdivision King's Reach
2219 (October 2003 Plan) with the standard conditions for developments of this type, along with No.
2220 5 revised, No. 11 amended and Nos. 12, 13, 14 and No. 15 added on the addendum.

2221

2222 Mr. Vanarsdall - Second.

2223

2224 Mrs. Ware - The motion was made by Mr. Marshall and seconded by Mr. Vanarsdall.
2225 All in favor say aye...all opposed say nay. The ayes have it. The motion passes.

2226

2227 The Planning Commission granted conditional approval to subdivision King's Reach (October
2228 2003 Plan) subject to the standard conditions attached to these minutes for subdivisions not
2229 served by public utilities, the annotations on the plans and the following additional conditions:

2230

- 2230 5. **REVISED** - A detailed soil analysis shall be performed and other requirements of the
 2231 Health Department met before final plats are recorded. The developer shall have the
 2232 center lines of all streets and lot corners staked to facilitate the examination of lots by
 2233 the Health Department Sanitarians prior to filing for final approval and shall notify the
 2234 Planning Office and Health Department in writing when the staking has been done. The
 2235 final plat shall conspicuously indicate all lot(s) not receiving Virginia Department of
 2236 Health approval for sewage disposal and state that there be no construction on lots
 2237 without such approval. Details of approved sewage disposal systems and reserved areas
 2238 for such systems shall be included with the final construction plan prior to construction
 2239 plan approval.
- 2240 11. **AMENDED** - Prior to a request for final approval, the developer shall provide a
 2241 buildable area plan showing information for all lots within the subdivision. Such plan
 2242 shall be a part of the construction plans submitted for review and for signature. The
 2243 buildable area plan shall be a minimum of 1" to 50' scale or larger and shall show the
 2244 buildable area for the principal structure, all setback, dimensions, the minimum lot width
 2245 (front building line), the area of each lot found to be suitable for the location of the septic
 2246 drainfield system and reserved drainfield area on the lot, or alternative system and if
 2247 applicable, the 100 year floodplain location and the area of each lot exclusive of
 2248 floodplain and Chesapeake Bay Act Preservation areas and setback dimensions when
 2249 applicable.
- 2250 12. The detailed plant list and specifications for the landscaping to be provided within the 25-
 2251 foot-wide planting strip easement along Pouncey Tract Road shall be submitted to the
 2252 Planning Office for review and approval prior to recordation of the plat.
- 2253 13. Prior to requesting the final approval, a draft of the covenants and deed restrictions for
 2254 the maintenance of the common area by a homeowners association shall be submitted to
 2255 the Planning Office for review. Such covenants and restrictions shall be in form and
 2256 substance satisfactory to the County Attorney and shall be recorded prior to recordation of
 2257 the subdivision plat.
- 2258 14. Any future building lot containing a BMP, sediment basin or trap and located within the
 2259 buildable area for a principal structure or accessory structure, may be developed with
 2260 engineered fill. All material shall be deposited and compacted in accordance with the
 2261 Virginia Uniform Statewide Building Code and geotechnical guidelines established by a
 2262 professional engineer. A detailed engineering report shall be submitted for the review
 2263 and approval by the Building Official prior to the issuance of a building permit on the
 2264 affected lot. A copy of the report and recommendations shall be furnished to the
 2265 Directors of Planning and Public Works.
- 2266 15. The applicant intends to relocate the existing family cemetery plot in accordance with
 2267 applicable regulations and state law. If the gravesite is not relocated, then permanent
 2268 access shall be provided to the gravesite and the gravesite protected.
 2269
- 2270 Mrs. Ware - Is everyone who is still here, here for the Camp Hill case? If you are
 2271 raise your hands.
 2272

2272 Mr. Jernigan - What we are discussing, it is 11:55 a.m. and this case is going to take
2273 some time. We are normally not faced with this situation but we don't know whether you
2274 would rather take a lunch break and come back or do you want to take a short break and go
2275 ahead and try it.

2276

2277 Audience - We would rather take a short break.

2278

2279 Mr. Archer - Let's do a short break and plow on.

2280

2281 Mr. Vanarsdall - We are going to take a sandwich break, that's a short break.

2282

2283 Mrs. Ware - Well, why don't we say 30 minutes then? Does the Commission have an
2284 opinion on 15 minutes, 30 minutes....

2285

2286 Mr. Vanarsdall - We can't get out of the building in 15 minutes.

2287

2288 Mrs. Ware - All right. At this point we will take a 10-minute break and we will come
2289 back, let's just say 10 after 12. And then go ahead and do this and then break for lunch.

2290

2291 **AT THIS TIME THE PLANNING COMMISSION TOOK A TEN-MINUTE BREAK &**
2292 **THEN RECOVERED AFTER THE BREAK.**

2293

2294 Mrs. Ware - All right, everyone we are ready to start again. I just want to state, when
2295 everyone gets settled and before we get started on this next case, because I know that it is
2296 going to be a lot of discussion. We have time limits that we allow for the applicant and the
2297 opposition that is generally 10 minutes. Due to this case and what all is involved, we are
2298 going to extend that to 20 minutes for opposition as well as the applicant. That doesn't include
2299 question time. The applicant does hold time for rebuttal. If you are here to speak in
2300 opposition, especially if you are with a larger group, it is good that you have a spokesperson to
2301 come to the podium to represent you to state your point as concisely as you can. With that
2302 being said, Mr. Secretary, call the next case.

2303

2304 **SUBDIVISION (Deferred from the December 17, 2003, Meeting)**

2305

Camp Hill
(October 2003 Plan)

Foster & Miller, P.C. for Danny R. and C. J. Paxton, A. B. Harrelson and Attack Properties, Inc.: The 576-acre site proposed for a subdivision of 317 single-family homes is located generally along the north line of the intersection of New Market Road (State Route 5) and Long Bridge Road between Turner Road and Yahley Mill Road on parcels 833-686-7681 and 833-682-5297. The zoning is A-1, Agricultural District. Individual well and septic tank/drainfield. **(Varina) 317 Lots**

2306

2307 Mrs. Ware - Is there any opposition to this case? Raise your hand please. OK.
2308 Opposition is noted. Mrs. News.

2309 Ms. News - This conditional subdivision application is for approval of 317 lots on
2310 two parcels totaling approximately 576 acres. The property is zoned A-1, permitting
2311 development of one-acre single-family lots. The plans have undergone extensive review by
2312 staff. The plan in your packet is actually the third revised plan. Many issues have been
2313 identified and resolved during this process either through revisions to the plan or through
2314 conditions, which have been recommended to you and included in your agenda. The project
2315 fronts on four major thoroughfare plan roads, requiring right-of-way dedication, provision of
2316 turn lanes and provision of planting strip easements, which have been reflected on the plans.
2317 There are environmentally sensitive areas including wetlands, RPA, and stream protection
2318 areas. The layout has been revised to provide lots with adequate buildable area outside of
2319 these areas. The major wetlands and RPA along Bailey Creek are preserved in common area.

2320 The site has historical, archeological and battlefield significance. Well preserved breastworks,
2321 known as Fort Southard exist on the site, which date back to the Revolutionary War and were
2322 used during the Civil War. Additionally, several Civil War battles occurred on this site. The
2323 Division of Recreation and Parks has requested that the fort be preserved and that conditions
2324 be established for its long-term maintenance. The developer has redesigned this site to
2325 preserve the site in common area. A condition has been recommended requiring the long-term
2326 maintenance of the fort be addressed with the covenants for the property. Additionally,
2327 Condition No. 19 indicates the developer will coordinate with the Director of Recreation and
2328 Parks to allow mapping and photo documentation of significant areas prior to construction.
2329 Staff will continue to work with the developer to finalize details regarding methods for
2330 providing for interpretative use access and preservation of the area prior to final approval.

2331 Also, condition No.22 has been recommended requiring a Phase 1 archaeological survey be
2332 performed by the developer to attempt to identify any other major items of historical
2333 significance, which may exist on the site. This recommendation is supported by the National
2334 Park Service. The applicant has proposed rewording the condition as shown on the revised
2335 conditions, which have been handed out to the Commission.

2336 Although staff, including the Department of Public Utilities, Division of Fire, and Health
2337 Department have recommended that public water and sewer be provided to this property, the
2338 applicant has chosen to plan for well and septic systems due to the fact that County services are
2339 not readily available. The soils report for this site indicate that the majority of soils have
2340 severe to moderate limitations for septic tank absorption fields. On-site sewage disposal will
2341 need to be addressed for each lot to the satisfaction of the Health Department. In addition to
2342 soil limitations, steep slopes exist in certain areas throughout the site. Grading plans will be
2343 reviewed to ensure that all County design standards are satisfied and suitable buildable areas
2344 are provided. Additionally, Condition No. 25 has been recommended to provide utility
2345 easements to allow for future potential sanitary sewer main extensions through the property to
2346 save the area. Revised wording for Condition No. 25 is included in your handout.

2347

2348 The remaining issue on the site regards the adjacent property to the east containing Camp
2349 Holly Springs and potential impacts to the aquifer for recharge area for this spring due to the
2350 development of the property. As the Comprehensive Plan recommends, as part of its
2351 environmental goals, objectives and policies, to protect the quality of the Camp Holly Springs
2352 and Diamond Springs recharge area to the extent reasonably practicable and to identify and
2353 protect, by proper management, aquifer recharge areas, staff has attempted to work with the
2354 developer to address this issue. As you are aware, through current correspondence and
2355 through the history of past proposals in the vicinity, there are opposing opinions regarding the
2356 extent and impact to the aquifer. To address this issue, staff has recommended Condition No.
2357 23 so that best efforts can be made to avoid negative impacts. Revised wording for Condition
2358 No. 23 is included in your conditions, which you have just been handed out.

2359 With that said, staff recommends approval of the conditional subdivision subject to the
2360 conditions for subdivisions not served by public utilities and the additional conditions in the
2361 agenda and revised Conditions Nos. 22, 23 and 25. I'd be happy to answer any questions.

2362 Mrs. Ware - Are there any questions for Ms. News?

2363 Mr. Jernigan - Ms. News, I don't have any right now. I think we have talked about this
2364 quite a bit, but I am sure I may have some for you later. Thank you.

2365 Mrs. Ware - Can we hear from the applicant? Mr. Theobald, would you like to
2366 reserve some time for rebuttal?

2367 Mr. Theobald - Do you think I will need any?

2368 Mrs. Ware - You might want to be on the safe side.

2369 Mr. Theobald - How about eight minutes and we will see what that does. OK.

2370 Mr. Vanarsdall - How many?

2371 Mr. Theobald - Eight. We have 20, correct?

2372 Mrs. Ware - Yes.

2373 Mr. Theobald - I am not sure I will need all that much. Madam Chair, members of the
2374 Commission, my name is Jim Theobald and I am here on behalf of Mr. and Mrs. Paxton, also
2375 Dr. Harrelson, who is acting in his capacity as the trustee for an incapacitated individual who
2376 was the beneficiary of that trust, and Atack Properties. Also with me are John Walk and
2377 Caroline Nadal? from Hirschler Fleischer, Spud Mistr, Chris Sims from Foster and Miller,
2378 Jerry Samford from Virginia Geotech, Mr. Atack and Mrs. Weinstein.

2379 As you know, this is a request for tentative subdivision approval in an A-1, Agricultural
2380 District, for Camp Hill Subdivision, which is to be comprised of 317 one-acre lots to be served
2381 by private water and septic or engineered sewage systems. These homes are expected to be
2382 2,000 to 3,000 sq. ft. in size and range in price from \$200,000 to \$300,000 as measured in
2383 today's dollars. The upscale residential development is consistent with the quality that the

2384 County has seen in other Atack Properties developments. Perhaps the best example to this
2385 proposal would be Ash Creek Subdivision in Hanover County. Single-family detached homes
2386 on one-acre lots are permitted as a matter of right in an A-1 District, subject only to meeting
2387 the written requirements of the subdivision ordinance consistent with State law. Staff has
2388 found this request to be in compliance with the County's Ordinance and, accordingly, has
2389 recommended approval.

2390 This request is not about Diamond Springs. Nobody wants to harm Diamond Springs, but it is
2391 about fundamental private property rights, and most importantly, subdivision law. And the
2392 law is really simple, and it is that way for a reason. The Planning Commission has been
2393 delegated the responsibility of confirming that subdivision requests are in compliance with the
2394 provisions of the written ordinance, and that responsibility is decidedly ministerial. It is not
2395 discretionary nor legislative. As such, this request either complies or it does not. One-acre
2396 lots are permitted in A-1 as a matter of right and staff says it complies. If for some reason you
2397 think it does not, the State law requires that you give us written evidence as to which of the
2398 published criteria we do not meet, so that it can be revised and approved. Public policy
2399 considerations and emotions are just not relevant to your task this morning. That was
2400 presumed to have been taken into account when the Board of Supervisors decided to allow one-
2401 acre lots in an A-1 subdivision as a matter of right. That is why subdivision laws are what
2402 they are. They are ministerial. They are supposed to be void of politics so that every request
2403 for a by right use will be treated exactly the same.

2404 We have provided a summary of our legal position to you in a letter from me dated December
2405 15, which I would incorporate by reference into the record. This site certainly has a history
2406 both over the past hundreds of years and the past hundreds of months. Prior attempts to
2407 develop this property have been vigorously opposed and largely thwarted by the owners of
2408 Diamond Springs, which commercially bottles, distributes and sells that natural resource that
2409 you are going to hear so much about this morning. They are concerned about the welfare of
2410 the springs and so are we, but nobody can require the owners of our parcel to set aside our
2411 land for the commercial benefit of Diamond Springs unless Diamond Springs or the County is
2412 prepared to write a check. It is really just that simple. You know we did the dueling geologist
2413 thing a couple of years ago, as some of you will remember. There is no legal relevance to
2414 your decision this morning that would necessitate repeating that dialogue, but our geologist is
2415 here, Mr. Samford, if we must. And perhaps contrary to the books of information you have
2416 received in advance, we have conducted testing on our property and that of Diamond Springs,
2417 and I'd like to incorporate by reference a copy of the report entitled "Geologic Evaluation of
2418 Camp Holly Springs" in response to comments regarding Southerlyn Development, Henrico
2419 County, Virginia, that was prepared in October of 1998, as part of the Amason case, which is
2420 part of the file on a previous case. The geology hasn't changed out there, notwithstanding that
2421 this is dated in 1998. We did test borings and we performed ground penetrating radar tests on
2422 our side of the line and we performed ground penetrating radar testing on their side of the line
2423 as part of the report, and perhaps I can save us a little time by trying to sum up the difference
2424 of opinions of the geologists, although I am sure they will be happy to state their own. Mr.
2425 Sanford, I think, during probably the rebuttal phase will speak to the significance of this. I am
2426 afraid you can't see that very well, since it is not in color today (referring to rendering). There
2427 is a small area – now is this going to work. There is a small area of land, a few parcels, a few

2428 acres in size to the right of the large gap back where you see the long, elongated.... If you can
2429 blow that up, that will be great (referring to rendering). You can see the yellow area, which
2430 we believe to be an area of potential impact on that recharge area. There we go. You see it up
2431 there to the right in yellow and then we have a map prepared by the folks representing
2432 Diamond Springs, which showed the area I have cross hatched in blue, and obviously this is a
2433 little different scale, as the area of septic pollution as noted on that plat. So we still have
2434 dueling geologists who disagree as to what is going on underground, and we will hear more
2435 about that later.

2436 Our next step in this process after today would be to apply for well and septic permits. That
2437 process is highly regulated by the State Health Department and we have no choice but to
2438 comply with all of their legitimate requirements, as those requirements are consistently applied
2439 to everybody. And remember that every existing resident with a home within the recharge
2440 area of Diamond Springs is by definition on well water and every one of them has a septic tank
2441 today. But for safety of the systems, which systems exist all over Henrico County, near
2442 drinking water sources, can be provided and the proper subject of the next step, the permitting
2443 process with the Health Department, not this one. Staff has recommended some conditions to
2444 the approval, which under State law they really don't have the ability to do. We tried to
2445 resolve those conditions and along with Ms. News and the County Attorney, the conditions that
2446 were passed out to you in the package are the ones that you and I were discussing today as
2447 alternatives. I provided her with a copy of some conditions this morning that we are prepared
2448 to agree with if we modified relating to our willingness to consult with Department of
2449 Recreation as we find historical findings as development occurs, and to provide copies of any
2450 reports that are required to be produced as a result of permitting to the County. Condition No.
2451 23, we have agreed to the amended condition whereas if a geologic exploration or geotech
2452 study is performed that is required as a result of permitting by some agency with the authority
2453 to do so, we will provide approvals for that and we have agreed with the language and No. 25,
2454 as rewritten, I think I discussed with the County Attorney, the deletion of the last sentence
2455 because we thought it was redundant, but in essence we have to mutually agree as to the
2456 location of sewer easements in the event that sewer ever comes to this area, and is provided to
2457 other property. So, the draft as I have amended, 22, 23 and 25 as provided by Ms. News are
2458 acceptable to us, and we would be in a position to consent to their imposition.

2459 In summary, we believe we are entitled to approval of this request as a matter of law, as the
2460 staff has recommended, and the Paxtons and Dr. Harrelson are entitled to rely on the
2461 fundamental rights to use their land as guaranteed to them by the Constitution of the United
2462 States, the laws of the Commonwealth of Virginia, and the Ordinances of Henrico County. I
2463 am not sure whether there is anybody here to speak in support of this case. Some folks may
2464 have some comments that are extraneous, I am not sure, but with that I'd be happy to answer
2465 any questions or answer them in rebuttal.

2466 Mrs. Ware - Are there any questions at this time for Mr. Theobald?

2467 Mr. Vanarsdall - I have one. Mr. Theobald, as you know, I have been involved in 1995,
2468 1996 and 1998 in this case. I am one of the few, I believe, and Mr. Archer. We are the only
2469 two that have two manuals from (unintelligible) and I was disappointed to hear, and you can

2470 answer this for me. Were you asked to see if you could defer this case today so we wouldn't
2471 be going through this, because...

2472 Mr. Theobald - I was, sir.

2473 Mr. Vanarsdall - Thank you. I said I have been in on it and I've visited the site one time
2474 in 1995 or 96, Mr. Archer and I. We always said that the owner of the springs should
2475 purchase this property and I understand he almost got to that, maybe he saw a window that
2476 could be taken care of, so I just want to state that I am disappointed that we are hearing this
2477 morning and Mr. Jernigan could not defer, because he has used his deferment.

2478 Mr. Theobald - I think, Mr. Vanarsdall, I appreciate your comments. I think it would be
2479 instructive to give you a little more background on that, so that perhaps your feelings would
2480 maybe be assuaged a bit. We spent a number of days discussing a potential purchase by the
2481 owners of Diamond Springs of the land in a certain area, that as a result of their ability to test,
2482 might have a potential impact on the aquifer, and Mr. Jernigan has tried harder than any
2483 human being I think I have ever seen in a case to protect the interests of both parties, and he
2484 has done it with an enormous amount of heart and I know that both Mr. Dowdy and his
2485 representatives and Mr. Attack and I are sincerely appreciative, but it takes the two principals
2486 in essence to make a deal. We offered to sell that portion of the property to Mr. Dowdy for
2487 our costs or less. That was rejected. We were offered about 40% of that. That is not really
2488 close in terms or almost there in terms of negotiations, with Mr. Attack at one point
2489 contributing two million dollars to protect Diamond Springs, and the reason Mr. Jernigan and
2490 I, and forgive me if I speak for you Mr. Jernigan, or correct me, but I think he was hoping
2491 that there would be an opportunity to speak with the seller of this property to see whether or
2492 not there was any flexibility on his part as to the price, which Mr. Attack would pay for the
2493 property, and Dr. Harrelson is in Costa Rica and none know how to contact him. We got hold
2494 of his son. We are not sure when he is coming back, and frankly, we did make a counter offer
2495 as to the money, but we are so far apart on the money that it didn't seem like we were going to
2496 get there, absent taking this step today, so I don't want you to think we did it to be arbitrary or
2497 uncaring of Mr. Jernigan's request. It was a result of spending five hours in the conference
2498 room, not getting very close, not being able to get to Dr. Harrelson, and, frankly, the seller of
2499 this property representing their charge, who was incapacitated, and they are probably the last
2500 person who should be contributing to the protection of the Spring. Mr. Attack is probably the
2501 next least person who should be contributing to protecting the Springs, and the owners at
2502 Diamond Springs, who were offered the property for what we are paying for it in my opinion
2503 should be the ones, so I didn't want you to misconstrue why we were not in a position to take
2504 that deferral, because I know you were concerned about that.

2505 Mr. Vanarsdall - Thank you, Mr. Theobald. I don't have any more questions.

2506 Mrs. Ware - Does anyone else have any questions at this time for Mr. Theobald?

2507 Mr. Archer - While it is still fresh in our minds, could I see the previous map, the one
2508 with the yellow hatched area and this one, and let Mr. Theobald explain what the difference is
2509 between geology.

2510 Mr. Theobald - The geologist's interpretation of what is going on underground. This
2511 represents our best belief, after doing the testing that we've done, that there is an underground
2512 structure which acts as an underground dam in terms of the aquifer and the other side has a
2513 different opinion as to what is occurring underground.

2514 Mr. Archer - So this is your view of what would be the affected area - the yellow
2515 hatched area? Could we put the other one back up again? Mr. Theobald, your area would be
2516 in the upper left portion of that upper blue hatched area.

2517 Mr. Theobald - We would be, I think, up in this area (referring to rendering). Is that
2518 correct? Here is the Spring, and directly over and up. It is this little area right in here. So we
2519 don't know.

2520 Mr. Archer - I just kind of wanted to...

2521 Mr. Theobald - So we don't know. That is what the Health Departments do.

2522 Mr. Archer - Thank you, sir.

2523 Mr. Jernigan - Jim, before you leave, I do want to say that in the last few days there has
2524 been a lot of contact between Mr. Atack, Mr. Theobald and the principals at Diamond Springs,
2525 and Mr. Deal. And we have, I think that we may have a workable solution but we just didn't
2526 have time to finish it up by this hearing today. But, I am hoping that whatever the results of
2527 this hearing that we will continue to work on a buy out on this property, which Mr. Dowdy
2528 has committed that he is willing to buy a portion of this property, so, Jim, I want to thank you
2529 for your help, and like I said, we've been to a lot of meetings and made a lot of phone calls,
2530 but we are not there yet, but we are close.

2531 Mr. Theobald - I think you know, regardless again, as you say what happens, that all
2532 parties, I think are people of good intent, and we will look for that solution so that we don't
2533 have to continue to do this the hard way. So, you have my pledge on that, Mr. Jernigan.

2534 Mrs. Ware - It is time to hear from the opposition. How many out there want to
2535 speak? I know we have the attorney, is it seven?

2536 Mr. Silber - Again, what we are asking is that....

2537 Mrs. Ware - Oh, I am sorry. We have someone that wants to speak for it. Thank you
2538 for speaking up.

2539 Mr. Moseley - My name is Ed Moseley, Madam Chairman, and members of the Commission.
2540 My home is approximately one mile west of the property in question here. I came with the
2541 prime concern this morning for our community as a whole and we have not too many, five to
2542 six hundred acre parcels that we can develop, and water and sewer has been made available to
2543 some of our area in recent years and I look forward to it moving into more of our community.
2544 I am concerned if you approve or the Health Department approves well and septic on this
2545 track. Is that going to deter us getting water and sewer for our neighbors in that area? Is it
2546 going to deter managed growth in that area? I don't know. I don't have the answer. You

2547 people are the experts, not me. Now, again, after sitting in your meeting here I am beginning
2548 to be concerned about my property rights for the property that I own. What can I do with it?
2549 Can my neighbor tell me that I can't. I don't know. Lady and gentlemen, I think you have a
2550 real task before you. I am glad it is before you and not me. But I wish you would consider
2551 our community. We are part of Henrico that has most of the undeveloped land and what we do
2552 with that is going to determine just how well our people in the neighborhood are served, and I
2553 am a great believer that we should put our land to the very best use possible. Now, if one-acre
2554 lots are the best use, I will go along with it, but I feel that we need more of a mix in our
2555 community, and this, to me, may be an opportunity to get that. So, with that said, thank you
2556 for listening to me.

2557 Mrs. Ware - Thank you. Are there any questions from the Commission for Mr.
2558 Moseley? Thank you, sir. OK, we are ready to start with the opposition. I saw like six
2559 hands.

2560 Mr. Jernigan - Madam Chair, I think I'd like to hear from Mr. Deal, Mr. Dowdy, the
2561 principals in this first and the engineering firms before we go to the citizens. I think we need
2562 to hear that input first.

2563 Mr. Deal - Madam Chairman, my name is John Deal. I am the attorney for Camp
2564 Holly Springs and members of the Commission and Mr. Donati. This is cruel and inhuman
2565 punishment. I have to put this in 20 minutes, but I will see what we can do. Sitting here today
2566 are Terri Phillips, who with Joyce Engineering, has been working to try to determine the
2567 extent and the nature of the aquifer under this project for now over six or seven years. To her
2568 right is Mr. Jim Richard who is a nationally known expert on aquifers. He has worked on
2569 aquifers all over the United States. He has been working on this aquifer for about six years
2570 now, almost seven years. We are still in the process of determining the nature and extent of
2571 his aquifer. The reason we are still in the process of determining the nature and extent of the
2572 aquifer is when we started having zoning requests for the Harrelson property, we immediately
2573 requested the Harrelson property for a request to come on to their property at our expense and
2574 drill six or eight inch holes, six of them, showed them a map where the holes are going, and
2575 said we are going to insert a two-inch pipe in that hole, put Bentonite down in there and
2576 whatever else goes in there, so we could determine. On six separate occasions, by letters from
2577 my office, we got absolutely, positively and unequivocally no response, at which time Mr.
2578 Jernigan, in exasperation, went to the Harrelson people that, Bob Harrelson controls this, and
2579 asked for permission to go on, and he said with me it is OK. I don't have any problem with it,
2580 but my lawyer won't let me. I am sorry, but that was the answer. That is the only response
2581 we have gotten from them, "My lawyer won't let me" after six requests. And Dr. Harrelson
2582 is an MD, so he is not an uneducated person. The reason we need to study this aquifer is I am
2583 not standing here only, I am representing and paid by Camp Holly. However, there are in
2584 excess of 37 residences also pulling water from this aquifer as we speak and have been for
2585 years. The problem is not "Will the lots percolate." That is the developer's problem. Our
2586 problem is, let's say a lot does percolate. Our issue rises when that effluent leaves the
2587 drainfield, where does it go? The soil under the drainfield in this area is very porous, a lot of
2588 stone, a lot of gravel and the velocity of water going vertically and laterally in this aquifer is
2589 extremely fast. This is an extremely shallow aquifer. As a matter of fact, if you look where

2590 this pointer is right here, when it rains the aquifer surfaces above the ground right there. The
2591 aquifer actually comes out of the ground. Many places in here, the aquifer is 2, 3, 4 or 5 feet
2592 below the surface of the ground, so while an area may percolate for a drainfield, that is not the
2593 issue. We have, you all have been talking today about fences and making subdivisions look
2594 right, and that is proper. We have got to go underground in this case. What is going on under
2595 the ground? That is what Mr. Dowdy in the last three years alone has spent \$185,000 trying to
2596 determine the nature and extent of this aquifer. We have had to draw these areas on the
2597 Harrelson's property and it has been excluded for one reason. When we couldn't get on it to
2598 drill it, we have to assume a worse case basis, and remember, she has been working on this for
2599 six years, and he's been working on it about the same amount of time. Anybody who says
2600 they know what the, how the aquifer would be affected here, how do they know? It hasn't
2601 been drilled, and you don't know what is below the ground until you stick a drill in the ground
2602 and go down there and find out. Now, why were these lines drawn the way they were? Right
2603 here is the exit point of the Camp Holly Spring. Up here is the point of the Diamond Spring.
2604 These two springs flow one million gallons of water a day in wet weather, as pristine pure
2605 water. If this subdivision goes through, both of these experts right here have said
2606 unequivocally and unabashedly if houses are developed in these areas, and I am going to
2607 address these areas in a second, are developed, the aquifer will become polluted. The issue
2608 then is, "What is the County going to do for these 37 residents?" Because what happens is,
2609 the nitrates go down into the water. Well, what is wrong with nitrates? Nitrates are made by
2610 human waste going into a septic system. That gets into the liquid. The liquid goes into the
2611 ground. It gets in the aquifer. It doesn't shoot all over the aquifer at one time. What happens
2612 is it forms plumes, and swales around in the entire aquifer. This aquifer, we've been able to
2613 determine so far, extends from somewhere along this line (referring to rendering). See that
2614 ridge line right there? That is a valley. We don't believe the aquifer goes beyond this point
2615 here. Over here the aquifer goes to Deer Lick Creek, which flows into Four Mile Creek. The
2616 issue is, if Camp Holly is contaminated by the same aquifers of 37 homes, what are those
2617 residents going to do? I have sat with the Health Department twice. The Health Department
2618 has said this. I asked why did you set 10 mg. of nitrates per liter of water as the maximum a
2619 human could consume. Their answer, "The Center of Disease Control has determined that if a
2620 human, a mother, pregnant, begins to consume water containing in excess of 10 mg. per liter
2621 of nitrates, she can have a blue baby syndrome in the fetus and the baby dies." The same thing
2622 applies with the child from birth to six months consuming water in excess of 10 mg. of nitrates
2623 per liter. The normal septic system, when it allows water to go down in the earth, discharges
2624 between 80 and 160 mg. per liter, so you've got a septic system setting on the subdivision. It
2625 is a normal situation. That effluent has between 80 and 160 mg. per liter as told to me this
2626 morning from these gentlemen. Now what is going to happen to that 80 to 160 mg. per liter?
2627 It is going into the aquifer real fast, form a plume, and contaminate wells. Mr. Jernigan's own
2628 subdivision at Old Cannon Estates has got the same problem right now except it has got it with
2629 salt. The State Highway Department didn't attend to where they stored the salt, it rained as it
2630 does here, and it went into the aquifer. Now his whole subdivision, the Virginia Department of
2631 Highways and us taxpayers have got to replace those wells in Old Cannon Estates with a public
2632 water supply system all at no cost to the residents, as they should. What is going to happen
2633 here? You can taste salt. You can smell salt. But you can't taste nitrates and you can't smell
2634 nitrates. You don't know that you've been polluted by nitrates in your body until somebody

2635 gets sick, and if this subdivision is built, our people are telling us that one of these days this
2636 County is going to get a phone call. And it is going to get a phone call from a sick resident
2637 that we are sick and we want to know why. Is it coming from our water? And this County is
2638 going to have to give those people an answer and that is going to be hard. Already, I've got a
2639 report in my hand right now from DEQ that is to be released on April 2, 2004. You know
2640 what that report says? Deer Lick Creek that is on the other side of the aquifer and Bailey
2641 Creek, that serves the lower lands in this proposed subdivision are both so polluted that they
2642 are not fit for humans to walk in. Those two creeks go into Four Mile Creek. Four Mile
2643 Creek goes into the James River, and DEQ says you can't put in the river anymore in excess of
2644 5 mg. of nitrates per liter of water and we are talking about 80 to 160 coming out the bottom
2645 of a septic system. There is a big difference there. What we are trying to do, is if we could
2646 have gotten on the property, we said in our negotiations the other day talking with the
2647 engineers and they said, "Look. If we could get on that property for 60 days we could shrink
2648 those areas." We told the developer that. But we need to get on the property and we need to
2649 drill, because they can tell by soil patterns and by drilling on that property where those lines
2650 should be drawn. We had to draw the lines in a way that was a worse case basis and that is
2651 what we did. Now, Mr. Andy Mauck, my co-counsel in this case, with Troutman Sanders is
2652 going to address the legal issues on it, and I want to leave him some time and Mr. Dowdy
2653 some time. Mr. Mauck, would you come on up, please?

2654 Mr. Mauck - Thank you very much. I am Andy Mauck with Troutman Sanders and I
2655 get the lovely task of trying to explain the law in however few minutes I can because there is a
2656 big difference in the opinions of the parties. Mr. Theobald has told you that this is irrelevant.
2657 Everything you just heard you might as well not have heard, and Mr. Vanarsdall and Mr.
2658 Archer, in your previous hearings, everything you heard about geology other to the other side,
2659 you can put away because it doesn't matter. And I think that is wrong. I think it is wrong
2660 under the law for three different reasons. I think there are three different ways this Planning
2661 Commission can take into account the harm to this aquifer. The first is under the way you
2662 have done it in the past, three times, 1995, 1996, 1998, you denied preliminary plans just like
2663 this one based on harm to the aquifer, and I sent you a letter with some excerpts from the
2664 minutes, and each of those minutes, if you read them, says the denial is made solely on the
2665 injury to the aquifer. So we are not asking you to do anything you have not done before. We
2666 are asking you to do it again and we think you can under the law, and the reason you can is
2667 because if you look at the Code of Virginia, which sets up the Subdivision Ordinance, the first
2668 section of the Code says "The purpose of the whole subdivision law - the chapter is intended
2669 to encourage localities to improve the public health, safety, convenience and welfare of its
2670 citizens." That is 15.2-2200. Under the Code, the County of Henrico passes Subdivision
2671 Ordinance, Chapter 19. The first chapter in your own Subdivision Ordinance, the first
2672 sentence, says the purpose of this chapter is to promote public health, safety and welfare. So,
2673 the Code says the Subdivision law is for this purpose. The Code says it and yet, according to
2674 Attack Properties, that only applies to every other decision. What they want to do is add
2675 language here that says "except when you are considering a preliminary plat, you should
2676 consider public health, safety and welfare." And I don't think that is the law. In fact, I have
2677 researched the law as well as my firm. There is not a single case ever in the State of Virginia
2678 that says you cannot consider public safety, health and welfare when considering a preliminary

2679 plat. Not a single case ever that we could find. Instead, there are two cases, and I gave you
2680 all a site to that. The first one is the Glass Case, which is in Frederick County, which was
2681 exactly this case. The developer came in. The Planning Commission denied the plan based on
2682 health, safety and welfare. The developer sued and it went to court. And the court said, “Of
2683 course, you are not a rubber stamp Planning Commission. You can consider public health,
2684 safety and welfare issues.” That is the reason we have a Planning Commission. If you
2685 couldn’t consider these issues, there would be no reason to have this meeting. Someone in the
2686 office could just look at the plat and go, “Well it is in English. The lines are drawn properly.
2687 End of story.” So, I think you can deny it under those provisions I just told you. That is No.
2688 1, but there is a special circumstance in this case, and that is because under the law when a
2689 County passes a Subdivision Ordinance, it can include a provision in it, and this is from the
2690 Virginia Code, that I am going to read, that says what a County can put in its Subdivision
2691 Ordinance. It says you can put a requirement in, this 15.2-2242, I will give you a copy at the
2692 end. The County can put a requirement in their Subdivision Ordinance with the furnishing of a
2693 preliminary opinion from the applicable health official regarding the suitability of a subdivision
2694 for septic tanks. That is exactly what we are asking today, and so I would ask, did Henrico
2695 County put such a provision in its subdivision ordinance? Well, if you look at Section 19-53
2696 of your Subdivision Ordinance, first sentence, “The Director of Planning shall forward the
2697 preliminary plat and relevant material to all State and local agencies that must approve a
2698 feature of the plat.” Well, that is what your Planning Director did. He forwarded a copy of
2699 the plat to the Health Department as he always does when a plan requires septic and wells.
2700 There are two letters in the files that say it went to the Health Department. There is a letter
2701 from your Planning Director on December 4 to the Health Department, and it says “a proposed
2702 subdivision is under review by the Virginia Department of Health.” So your Ordinance allows
2703 to get an opinion from the Health Department and in this case, you asked for an opinion from
2704 the Health Department. Your Ordinance 19-53 says “Upon receipt of approvals from all
2705 reviewing agencies” you can approve a subdivision plan. In other words, you have to get the
2706 approval of the agencies that you send it to, that you require approval. Well, then the question
2707 is, did you get the approval of the Health Department? The Health Department sent a letter to
2708 the Planning Department on December 9 and I hope everyone has had a chance to see that
2709 letter, but what it says, and I quote, “This proposal poses unique concerns for protecting the
2710 water quality in the aquifer. These concerns are above and beyond the usual site specific
2711 evaluations.” In other words, normally you pass this stage and the developer goes and gets the
2712 septic tank permit. But here the Health Department is saying, “We have a concern more than
2713 each individual septic tank.” The Health Department says, “We have a statutory mandate to
2714 protect ground water and in following that mandate, based on the evidence before it, it says the
2715 evidence makes a strong case for the likelihood that on-site water supplies would result in
2716 degradation of the aquifer. Therefore, the Health Department staff recommends that the
2717 proposed development be served by public water and sewer. What that means is, the Health
2718 Department has not given you the approval that you have to have under 19-53 of your own
2719 Code to approve this. So, I think the law says under Section 19-53 you have to deny it without
2720 the approval from the Health Department. I realize my time is short, but there is one other
2721 vote that you have to take that has not been mentioned, and if you didn’t get to it in the
2722 previous one, it arises under a Virginia Code and it deals with your Comprehensive Plan. It is
2723 Section 15.2-2232. Once you pass a Comprehensive Plan, anything that is going to be built

2724 that is going to be owned by the County that is not on your Comprehensive Plan, the
2725 Commission should vote on to find out whether it is substantially in accordance with the
2726 Comprehensive Plan. Well, the streets in this subdivision are going to be owned by the
2727 County, the law that I just quoted you means this Commission has to vote and find whether
2728 those streets are in accordance with the Comprehensive Plan. The reason they are not is
2729 because the evidence from the engineers for Camp Holly say that the road as designed are
2730 going to cut into the hill and drain the aquifer. The Comprehensive Plan specifically spells out
2731 reasonable protections for the Camp Holly aquifer, so I believe this Commission has a duty
2732 under Virginia law to make a vote - a separate vote - if you didn't do it in the past and didn't
2733 get to it, under this statutory provision. And what I have done is I have taken the liberty of
2734 drawing these - a cheat sheet - the three things that I just spoke of, because I have been told
2735 you are going to go into Executive Session, and I welcome the opportunity for you to talk to
2736 your attorney about them and discuss with yourselves because I know I am giving you Code
2737 sections and whatnot, so I ask that you deny it, just the way you did in the past. We ask that
2738 you must deny it under Section 19-53, and you need to make a separate vote and deny it under
2739 the Virginia Code. The last point is, this does not end it for Attack Properties. Since I have
2740 been involved in this case, Mr. Dowdy has told me every time I have spoken to him he is not
2741 opposed to development. He is willing to buy land and he is not opposed to development.
2742 Mr. Attack can solve the problems here by convincing the Health Department that there is not a
2743 problem. He can switch to public water and sewer, or he can take the high lands out of this
2744 proposal and come back with a proposal that won't damage the aquifer. So, a denial is not the
2745 end of the story for this development, and we are not taking anything from him except this
2746 land (unintelligible). I don't know if anyone has questions, and I hope I saved a few minutes
2747 for my client.

2748 Mrs. Ware - Are there any questions from the Commission for Mr. Mauck at this
2749 time? Thank you.

2750 Mr. Jernigan - Madam Chairman, how much time do we have left?

2751 Mrs. Ware - A minute.

2752 Mr. Jernigan - I think in this case, we don't want this to turn into a hootenanny, but we
2753 want to hear what people have to say.

2754 Mr. Deal - Mrs. Phillips is going to address the Virginia GEO Technical Report that
2755 showed only a small sliver of this land being affected by the system.

2756 Ms. Phillips - I am Terri Phillips with Joyce Engineering. I have recently acquired the
2757 title of Dueling Geologist and I am going to take just a minute. Back in 1998 we did a review
2758 of the VGS Report that was incorporated into the record earlier. I, too, would like to
2759 incorporate into the record my December 7, 1998 letter report, which refuted in plain language
2760 the VGS findings. Again, the dueling is based largely on a lack of data in key areas and the
2761 VGS Report was somewhat of an attempt to fill in those data gaps, but the use of the ground
2762 penetrating radar is not a definitive tool. It is largely interpretative, again, just adding to the
2763 difference of opinion. We believe the conservative approach of starting with a large protection
2764 area and defining it smaller and smaller is a sound approach to protect the aquifer, and we

2765 believe with access to key areas we'd be able to do that. The VGS Report had several
2766 discrepancies. We were unable to verify the findings of the VGS Report by field work.
2767 Assuming their model was correct, we were unable to account for the volume of water coming
2768 out of the Diamond and Camp Holly Springs, and we also proposed a much simpler model. In
2769 geology as in many other things, it is usually the simplest explanation that is more appropriate,
2770 so there is a simpler model to account for what we are seeing out there, and we very much
2771 would like to have the opportunity to do some additional testing and accurately define the
2772 protection area.

2773 Mr. Jernigan - Terri, I have question. As in the meeting the other day, and, of course,
2774 Mr. Dowdy you know is looking to buy this property that will protect him, so let's face it. He
2775 doesn't want to spend any more money than he has to. Now, in our meeting which you
2776 weren't there but the other participants were, as it stands right now the area that is marked off
2777 is what you feel is needed to be protected, but proper drilling could diminish that area
2778 considerably.

2779 Ms. Phillips - Yes, and we fully believe that it will diminish that area. It is just until
2780 we have those data to definitively draw that line, because once that aquifer is polluted, that is
2781 it. There is no way to clean it up. So, I am obligated to error on the conservative side until I
2782 have data that tells me otherwise.

2783 Mr. Jernigan - Thank you.

2784 Mr. Archer- So, Ms. Phillips, then we are speaking about the blue hatched area that
2785 we are looking at on the screen right now.

2786 Ms. Phillips - Yes, sir.

2787 Ms. Archer - And you are saying that area could possibly be diminished in size if
2788 testing were done on it?

2789 Ms. Phillips - Absolutely sir.

2790 Mr. Archer - And the other side is saying that a significantly smaller portion would be
2791 affected?

2792 Ms. Phillips - Yes. The difference in the blue and the yellow. Any other questions?

2793 Mrs. Ware - Anymore questions for Ms. Phillips? Thank you very much.

2794 Mr. Dowdy- Madam Chairman and Board members, I am Dave Dowdy, President,
2795 Camp Holly Springs. I had a whole pile of these cards when I walked in here and I had it all
2796 planned out what I was going to say, but I have been pitching cards since everybody else
2797 started talking and will squeeze in a few little words. One thing that seems, as a business man,
2798 of course, I have a concern for the source of my business, my life's work, and hopefully, the
2799 things that will benefit my children and grandchildren. As a citizen I have a concern for the
2800 environment, which I have demonstrated in other issues at different times that was not related
2801 to the business. I don't mean to say that I have a greater concern as a citizen or a lesser

2802 concern, simply because you are in the position that you are in. But I am supposed to be a
2803 good guy, as everybody is, and we are supposed to do the best that we can, but I have never
2804 sworn to protect the health, safety and welfare of the citizens of Henrico County, although it is
2805 my desire, and not trying to give you a hard time. I would be foolish if I did. I think that you
2806 have to consider that you have a special responsibility to the citizens and a special obligation to
2807 them, and that means this is not just the aquifer that serves more than 37 wells or my business.
2808 All of these things that we can talk about. It is not limited to that. This is a natural resource,
2809 a very precious natural resource, and we all have the obligation to protect. People that want to
2810 develop, people that want to sell, all of us. We don't ever get away from that responsibility.

2811 In the meeting that we had with Mr. Donati and representatives from Planning and from the
2812 County Manager's office in August of 2000, I offered to embark upon an extensive and
2813 expensive survey to determine the boundaries of the aquifer as much as we could, and to
2814 determine how vulnerable it was in one area, compared to others, hoping that we would come
2815 up with an overlay situation that I could tell a relative, we've got relatives that live in this area,
2816 that old man. I could tell a relative we believe that if you limit your development to one house
2817 every four acres and you do an alternative septic system of some sort, and it is maintained
2818 properly, that that won't hurt us. Mr. So and So, you can sell your land and do whatever you
2819 want to with it. It won't hurt this aquifer. I might not like it as someone born and raised in
2820 Varina, but I don't have anything to do with that. That is what you folks decide. The results of
2821 that was that, and of course we said we'd provide all this information to anyone, the County
2822 and so forth and we have done that. The results of that was that this body of people
2823 encouraged me to go ahead with this. The County basically said, well, you know, we don't
2824 have the wherewithal to do this ourselves. First thing you know, we'd have to do the whole
2825 County. We can't do it. We are limited. If you will do this and provide us with the
2826 information, it will be great. And then when you stand before us the next time, we'll have the
2827 knowledge that we need to make the right decision to protect the resources, and to protect the
2828 neighbors and everything else. I can't put a tile recycling plant down there on my property
2829 just because I want to, because it doesn't fit. And some things just don't fit and some things
2830 are appropriate, and you all make those decisions. We said it would take a minimum of two
2831 years if we could get the right kind of testing done. The County even went so far as to lease
2832 us some property at a \$1 a year so we could put test wells on County property. So now, I
2833 have been thinking all the time, after we spent quite a sum of money, and I have been thinking
2834 that, you know, I am working as hard as I can and I am doing what the County wants me to
2835 do, and I am a good guy, and I am trying to figure out what I can do for my friends and
2836 neighbors that will be good for them, even if it is not exactly what they want, at least they will
2837 know what they can do. They don't have to fear me coming down on them every time they
2838 want to put a fence up too high. So, based on all of that, I have these three questions, and all
2839 these questions, regardless of the law and all the things we can argue about, all of these
2840 questions are based on the County's interpretation of honor.

2841 How can Henrico County expect the citizens of this County to trust you, trust the County, if
2842 they realize at some point you have allowed something to happen that will endanger their
2843 health? So, there are a lot of people around down that way that have a house on an acre and a
2844 half or something like that. They are not going to develop it. They leave it up to you to
2845 protect them. How will this effect them if this is approved?

2846 Another question is will this encourage other Henrico businessmen to spend their money and
2847 time working as part of the County for the common good, as it puts doubt in their minds, what
2848 is it going to do to future relationships.

2849 The last question I have is how could Henrico County encourage me to pursue this course of
2850 action and even allow it to get this far? Why didn't somebody say, "Wait a minute. Wait a
2851 minute. We've got a deal going with these folks. They are spending their money. They are
2852 going to provide us with the information that we need to make a responsible decision in any
2853 kind of development or anything that is done here." So, sorry, but this isn't the timing you are
2854 going to like. Come back to us. When we have the information that we need and I think this
2855 has really put you all between a rock and a hard place, because as hard as we have tried we
2856 have not been able to give you the specifics that you need to protect this natural resource. And
2857 I hope that you will consider these things and ask yourself these questions when you make your
2858 determination. I thank you.

2859 Mrs. Ware - Thank you, Mr. Dowdy.

2860 Mr. Jernigan - Mr. Dowdy, I had one question. As far as the development that Mr.
2861 Attack wants to do, as long as it wasn't up on the upper escarpment? I mean, are you OK with
2862 him building down below?

2863 Mr. Dowdy - I would like to think I can cure all of the problems of the world, but I am
2864 kind of limited to what I can do and what I can afford, and what I can fight. I don't have any
2865 problem with the development because I realize development is going to happen. I mean if we
2866 don't have anymore room in the West End or wherever and we've got a bridge across the river
2867 now that opens South Side up to Varina, and if I was living over there in South Richmond, I
2868 would just say man, I can live over there, and I can get to work in no time. So, you have got
2869 to be realistic and know that (unintelligible). I don't have any problem with responsible
2870 development. Even though I would really like to be able to run around like I did when I was
2871 little in the backyard and down through the woods naked, but the neighbors would certainly
2872 object now, and so that is something that is a fact of life. I would not object to it. I feel like I
2873 owe a responsibility to the people in the community and in the neighborhood that have showed
2874 their concern for this aquifer and I feel like I owe something to them, but I don't think it
2875 extends into me being Attila the Hun for every developer that comes around.

2876 Mr. Jernigan - OK. Thank you.

2877 Mr. Deal - Thirty seconds. You all are being asked to make a decision here today
2878 based on the fact that, based on ignorance because of what we don't know is under that land.
2879 That ignorance has been occasioned by the man who is going to make the money selling the
2880 land if this subdivision goes through. And by his stubborn refusal to let us on and drill and
2881 find out what is there, and there is something inequitable and something very wrong in health,
2882 safety and welfare about that. Also, Mr. Attack came to my office, I believe, when he first had
2883 an interest in this property, and he asked me what was Camp Holly's position, and I told him,
2884 we just want to drill the property so we will know what we really need. This is too much.
2885 Standing here today, we have never even let during his contractual period on his property. We
2886 would have gone on that property in a moment's notice and drilled. But he has never offered

2887 that to us even during the contractual period. So we are here today, the people who are really
2888 keeping us from getting the information we need and that you need in order to make a proper
2889 decision for the citizens of the Commonwealth.

2890 Mrs. Ware - Thank you, Mr. Deal. We still have some people who want to speak.

2891 Mr. Jernigan - I want to say this. We have gone over the time limit, but Jim, your side
2892 will have an equal amount of time. That is the reason I had Randy keep time for you. This is
2893 an important case, and I feel we need to hear both sides in its entirety. OK. Thank you, Mr.
2894 Deal.

2895 Mr. Taylor - Good afternoon. My name is George Taylor and I live at 8555 Camp
2896 Hill Road. Diamond Springs is on one side of this property to be developed and I'm adjacent
2897 on the other side, right off of Route 5. My concerns are I have been involved in this back in
2898 1999 when they went for the rezoning. It was denied them. They were asked then about the
2899 testing to protect the wells and the water supply in the area. They haven't allowed them to do
2900 it. They have asked and his lawyer won't allow them to do it. Mr. Jernigan has gone as far as
2901 to ask him if they have been allowed to do the test, but without the complete testing you don't
2902 know what is going to happen, just like in Mr. Jernigan's neighborhood where the salt has
2903 gotten in the water. You have already heard about that. Nobody knew when the State put that
2904 salt there it was going in the ground until now, when the County taxpayers or the State
2905 taxpayers are paying for County water in there. This could have a direct impact on my water
2906 supply. I also speak for my neighbors on both sides of me who cannot be here due to their
2907 jobs. Also, as recent as Sunday's paper, I don't know if any of you remember the movie "The
2908 Civil Action" where the dump site was done. This was in Sunday's paper in *The Richmond*
2909 *Times-Dispatch* Parade section, where the pollutants in the dump, medical waste, all kinds of
2910 things, went in, ruined the town supply. They were involved in several civil suits after that.
2911 I'd hate to be the one to have to come back to sue the County after they were notified the
2912 testing was not complete to allow a subdivision of this nature with septic tanks, the nitrates
2913 when they say it will cause this and that, to have to answer to those people whether it is my
2914 grandkids or their kids or whatever, to come back and face those people, and they don't know
2915 how long it would take. It could be five years, 20 years, 30. Without the conclusive tests, I
2916 don't know how you could pass that. That is all I have to say.

2917 Mrs. Ware - Are there any questions? Thank you.

2918

2919 Ms. Ellis - Good afternoon. My name is Nicole Anderson-Ellis, and I live on
2920 Chaffins Bluff. Mr. Theobald came up here and said this is not about Diamond Springs and I
2921 agree with him. I think this is about the health, safety and welfare of Henrico County
2922 residents. I am not a doctor but I used to be a fifth grade elementary science teacher and any
2923 one of my fifth graders could tell you that the human body is 78% water, that no living thing
2924 can survive without adequate clean water and that water cycles, today's aquifer, tomorrow's
2925 creek, next month rain. And yet I live in one of the world's richest nations in terms of money,
2926 in terms of freedom, in terms of technology and science and the more I learn about the area
2927 that I live in, the more concerned I've become about my family and about our future.

2928

2929 I moved to Varina to raise my children, in the country, in a peaceful area and now I'm
2930 wondering how I'm going to explain to them why they can't wade in the creeks around our
2931 home, why they can't fish the way I did when I was a child, the way the neighbors still want to
2932 today.

2933

2934 The government scientist tells me that it is increasingly dangerous. And one of the reasons it
2935 keeps getting worse is that we are not stopping the pollutants from getting into the water and
2936 once they are in the water we don't know how to get them out, in the case of nitrates, and if
2937 we did, we don't have the money. The most recent budget proposal set aside hundreds of
2938 millions of dollars for transportation and nine for pollution and clean up.

2939

2940 I would like to ask you to spare me that explanation from my children and to help protect our
2941 health and safety. And to quote Mr. Theobald again, when it comes to water quality or
2942 property rights I think it should be that simple. Thank you.

2943

2944 Mrs. Ware - Thank you, Ms. Ellis.

2945

2946 Ms. Ellis - Are there any questions?

2947

2948 Mrs. Ware - There are none, ma'am. Thank you.

2949

2950 Ms. Donley - My name is Ann Marrow Donley. I live at Darbytown Road at the
2951 intersection of Darbytown and Long Bridge Road. There are a number of people who have
2952 already faxed letters to Mr. Jernigan and Mr. Donati and I ask that those be included in the
2953 record and as well as the files. The Planning staff, here are some other letters that I was given
2954 coming here and these are for the Commission (passing documents to staff and Commission
2955 members). A number of people could not come because of illness of families and of other
2956 prior commitments.

2957

2958 One of those letters is from the Varina Environmental Protection Group, Marilyn Paschke the
2959 president and I am a part of that group too. You have the full letter there, if it would be read
2960 into the record, or if it has to be in the record do I have to read the entire letter?

2961

2962 Mr. Silber - No.

2963

2964 Ms. Donley - Okay. Because a number of these things have been covered, and she
2965 points out in here "I do not believe the developer has even begun to address the concerns of the
2966 community. It appears that roads would be constructed on hillsides that should not be
2967 disturbed, placing houses on slopes of this magnitude would be negligent." She goes on, "We
2968 feel it is the responsibility of the developer to provide this expertise and to answer concerns
2969 from the County and the community." I don't think that the developer has adequately buffered
2970 the wetlands leading to Bailey's Creek, which is already showing serious signs of pollution and
2971 which empties into Four Mile Creek, which according to the recent study is severely
2972 contaminated.

2973

2974 A letter that is not in your stack there but was faxed to Mr. Donati from Dr. Leonard Morrow
2975 points out that his tree farm on Long Bridge Road in excess of 90 acres would be severely
2976 impacted also by destruction and contamination of the aquifer. A letter that you have there
2977 from Timothy Donley who is also a tree farm owner on Long Bridge and Darbytown Road has
2978 a number of points there among which that perhaps a compromise might be to reduce the
2979 number of homes, cut it in half, and not place it on those areas that are of greatest concern.
2980 He says, "The construction of the proposed access roads, wells and septic systems will have an
2981 unacceptable impact on the water resources of the area and damage to my tree farm could
2982 occur."

2983

2984 Elfriede Heidelberg who lives on Long Bridge, and by the way, all the people I've mentioned,
2985 all the people who have expressed concern to me, know of us knew of any community meeting
2986 that the developer held. None of us knew anything from the County or the developer until we
2987 happen to hear about it from one person who was concerned.

2988

2989 Mr. Jernigan - Ann, excuse me, let interrupt there, and I hate to interrupt you, but I do
2990 want people to know. There was notices sent out and I went to that neighborhood meeting and
2991 there were about 35 to 40 people at that meeting. So the County does not send it to everybody
2992 in Varina but they do send it to the adjacent landowners and those are the people who are
2993 directly affected.

2994

2995 Ms. Donley - Well, I'm speaking for people up and down Long Bridge Road, which is
2996 one of the boundaries of this, and for people who are around the corner on Darbytown Road,
2997 my immediate neighbors who are opposed to this but didn't have time to write or fax a letter
2998 because of illness of an elderly relative. They hadn't heard about it either. I think it is very
2999 strange that at least 35 people hadn't heard anything about it either, sir, with all due respect.

3000

3001 In a letter from Elfriede Heidelberg who *lives* on Long Bridge Road Bridge close to Yahley
3002 Mill Road, are comments that John Muir the greatest environmentalist, said you could not
3003 pluck a flower without changing the universe. With this subdivision, we are doing more than
3004 plucking a flower. This is being done irresponsibly and irreversibly. Once destroyed, the
3005 aquifer can never be replaced - it will never be pure again in our grandchildren's lifetime, nor
3006 even in their grandchildren's lifetime.

3007

3008 Once the sewage begins to flow, it will contaminate our watershed. I want to know who, this
3009 is Elfriede Heidelberg writing, I want to know who will pay for my water system when my
3010 water becomes contaminated because Henrico County has permitted this subdivision and thus
3011 allows my water system to become contaminated. Is Henrico County willing to foot the bill
3012 for this?

3013

3014 And then the comments from myself and my husband that we have here on the two pages
3015 there, and I will summarize that and comment. Also, Mr. Theobald made the remarks which
3016 were so articulate and eloquently addressed by Ms. Ellis a moment ago, but he commented
3017 about fundamental property rights. His assumption is that when one has taken ownership of
3018 property one becomes God and can do with it whatever you will. It is my memory that the

3019 County of Henrico some years ago with the Land Use Plans did put into effect certain
3020 comments in regard to large development tracts and this certainly should qualify as a large
3021 development tract and I don't see that any of those concerns have been addressed in this.

3022

3023 Also, it is other property owners who are very concerned about how this is going to impact
3024 them. It's very negligent on the part of the Board of Supervisors, the Planning Board (sic) and
3025 others of the County staff and officials who have ignored those words about large
3026 developments, the impacts upon the taxpayers, the rural way of life, the water supply aquifer,
3027 pollution, the detrimental loss of the wildlife. As one of my friends said the other day, if you
3028 are a tree in eastern Henrico, you have got to be frightened because they are falling every day
3029 from the developers. All of that increases the heating of the land surface and other types of
3030 pollution.

3031

3032 We have had heard a lot said today about how, one, Mr. Dowdy should be footing the bill to
3033 do all of this research, but then you are going to say, "too bad thanks for that but we have to
3034 approve this because everybody has a fundamental right to develop their property and so
3035 forth." We have also heard about how Mr. Dowdy ought to be buying the property and so
3036 forth. I think that it is time that the County considered its responsibility to the citizens. There
3037 are on the books for the state initiatives and funds for you to get together and actually buy that
3038 property yourself. Now you will say you don't have money but some how I recall that the
3039 County was able to come up with more than \$30,000,000 without taxpayers approval and
3040 without and without even taxpayers knowledge to entice business to settle on an
3041 environmentally sensitive area in the Elko Tract. I know also that the County combined with
3042 the State of Virginia to spend millions of dollars again without taxpayers input to entice Philip
3043 Morris to come from New York to Richmond. So, it seems to me that with taxpayers input the
3044 County could come up with the money to buy this, and then *you could protect it*. You could
3045 protect forest and wilderness. You could have educational and recreational areas there, bike
3046 trails, history trails, nature trails. It could be quite a jewel for Henrico County there and show
3047 that you really do have some concerns about citizens. Thank you.

3048

3049 Mr. Jernigan - Thank you, Ann.

3050

3051 Ms. Donley - Oh, one further thing. You will notice, please, not only did Elfriede
3052 Heidelberg ask would you be willing to pay, my husband and I did put at the top that if you do
3053 approve this we will hold the County of Henrico and all persons and parties responsible for any
3054 contamination of our well water and any illness which apparently results from it. Thank you.

3055

3056 Mr. Jernigan - I think that's enough for right now. I would like to, before we go any
3057 farther, I would like to speak to the Health Department, and we have two representatives from
3058 the Health Department here. Mike Campbell and Lewis Walker, if you would both please
3059 come up in tandem because I may have a question that one of you can answer and the other
3060 may not.

3061

3062 Mr. Jernigan - Lewis, if you would, walk me through, and I think everybody needs to
3063 know this. When you file for a septic permit what all goes into that study other than ground

3064 percolation?

3065

3066 Mr. Walker - The permit, at the permit time, comes

3067

3068 Mr. Vanarsdall - Can we have your name, please?

3069

3070 Mr. Walker - Yes. My name is Lewis Walker with the Health Department. The
3071 permitting process takes place when somebody is ready to build on a parcel of land. We
3072 conduct soil evaluations on the site with a plan of development by the builder or the applicant
3073 to determine what size and location of the house is going to be. Then we conduct our field
3074 analysis to see if the soil is suitable for on-site sewage disposal.

3075

3076 Mr. Jernigan - So, basically, you are just doing a percolation test. In the parameters of
3077 what we have in this situation, what testing would be done beyond that to consider if was safe
3078 for to issue a permit on the upper escarpment?

3079

3080 Mr. Walker - The soil evaluation that we do is referred to, in the general population, is
3081 a percolation test. It is all that we do and a site evaluation that limits some areas that aren't
3082 usable because of slope drainways and things like that. But, when we define an area that's
3083 available for the on-site sewage disposal system then our test are limited to the soil borings that
3084 we take.

3085

3086 Mr. Jernigan - Thank you, Lewis. All right, Mike.

3087

3088 Mr. Campbell - My name is Mike Campbell from the Henrico Health Department.

3089

3090 Mr. Jernigan - Mike, in a meeting that I was with you before, you seem to be somewhat
3091 up on the situation that we have here and I know you are kind of a professional on
3092 underground aquifers and shallow aquifers. So that everybody understands here, give me your
3093 assumption of our situation on the escarpment.

3094

3095 Mr. Campbell - Well, I don't pretend to be a hydro-geologist or engineer. I do have 25
3096 years of field experience with the Virginia Department of Health in Henrico and in Dickerson
3097 County in southwest Virginia. During that period of time I have seen quite a number of
3098 springs. The word *unique* is one that we tend to use rather loosely but in my experience this
3099 spring that we are talking about today is unique. Yes, it is a spring but comparing this spring
3100 to all the other springs that I have seen in my professional experience, is similar to comparing
3101 a fire hose to a garden hose. It's considerably different in terms of the quantity of water
3102 coming out and the topography and geology of this particular area. In my own mind after
3103 reading the various different hydro-geology reports I sort of think of this as an underground
3104 pond that's being held back by an earthen dam. And Camp Holly Springs is the weakest point
3105 where the water is erupting through that dam. Not unlike the picture you may have seen in the
3106 Times Dispatch this week of the dam in Augusta County that is eroding and some fear that the
3107 pond will break out and if it broke out it would empty itself through that particular breach in
3108 the dam and that's similar in my mind of what we are looking at here.

3109

3110 We are arguing about the extent of pond since it is underground and we can't see it and we
3111 can't walk the limits of it, but it is clear that the underground pond, so to speak, is there and
3112 it's clear that whatever is introduced into it will eventually find its way to that opening which is
3113 the spring.

3114

3115 Our Health Department regulations, which are site specific, have standoff distances from
3116 springs. But those regulations are written considering springs as a very low volume flow for
3117 probably an individual home and that's why I say this is very, very, different. And my fear is
3118 that the types of standards that we have in place for normal development may result in
3119 degradation of this aquifer in a very rapid fashion and I don't want to be a person whose name
3120 is on the paper trail when that happens. Does that help?

3121

3122 Mr. Jernigan - Thank you. Are there any questions?

3123

3124 Mr. Donati - I have a couple of questions. The new systems that are being allowed
3125 now by the State Health Department, Vantex, PureFlo, those various systems, and I think
3126 several years ago the state was using those as a test and evidently they have been working to
3127 some extent.

3128

3129 Mr. Campbell - Yes, sir.

3130

3131 Mr. Donati - And now they seem to be able to be putting these systems on properties
3132 that didn't perk in the past. Is that pretty much a given rule, that no matter what condition the
3133 soil is that these things will work? I know that if they work that they also have to have a
3134 tremendous amount of maintenance that goes along with the operation of that system. Could
3135 you maybe just elaborate a little bit on that?

3136

3137 Mr. Campbell - Yes, sir. There are many different variables that play into whether or
3138 not waste water will percolate, will flow into the ground and go away without surfacing and
3139 becoming a risk to people in the immediate area. Some of those variables are the nature of the
3140 soil and the strategies of the soil as you go down. And another variable is the quality of the
3141 water itself. Septic tank effluent is not a very pure water. If any of you have been around
3142 when your septic tank was pumped you know the smell and you know how nasty that is.

3143

3144 These systems that you refer to, Mr. Donati, have the ability to clean up that septic tank
3145 effluent so that there are less of the nitrates and there are less of the solids in that. And it
3146 produces a clearer, cleaner effluent that is more likely to flow into the ground and be dissipated
3147 without the degradation that we fear from untreated septic tank (effluent?). I think we all
3148 understand that there is going to be some qualitative degradation to any development, whether
3149 it's dewatering, the surface aquifers by the wells or adding to them from the septic tanks and
3150 drainfields and all of what we do is an attempt to apply what we know to minimize that
3151 degradation.

3152

3153 Mr. Donati - But they do have to be maintained properly.

3154

3155 Mr. Campbell - Yes, sir, they do.

3156

3157 Mr. Donati - And probably more frequently than an average septic tank.

3158

3159 Mr. Campbell - They require power, they require pumps, they require operation and
3160 maintenance whereas the conventional septic tank and drainfield is gravity flow and the only
3161 general maintenance is pumping out the tank every three to five years.

3162

3163 Mr. Donati - I have another question. Are you gentlemen going to be attending this
3164 meeting tomorrow night at the Fairfield Library? The DEQ is doing the presentation on the
3165 total maximum daily loads of Four Mile Creek and the pollutants that are being created and
3166 what the County's got to do. We've got to devise a plan to be able to work and to find some
3167 ways to help the situation. We are to be mandated by DEQ to do that. Are you gentlemen
3168 aware of that or are going to be attending that meeting?

3169

3170 Mr. Campbell - This is the first that I have heard of it, but if you would for me to be
3171 there I would certainly be there.

3172

3173 Mr. Donati - Okay. It's very important and it's tomorrow night. It's a public hearing
3174 for anybody in the audience that lives in Varina and lives in Four Mile Creek and also White
3175 Oak Creek watersheds.

3176

3177 Mr. Walker - I was unaware of the meeting but I have had lengthy discussions with
3178 Public Works and had input into their response.

3179

3180 Mr. Donati - I know Four Mile Creek is really suffering right now with fecal matter
3181 from animals, humans, and all of those other things that contribute to that. It has very
3182 dangerous levels and situations right now. I think we all should be concerned about that.

3183

3184 Mr. Walker - Thank you.

3185

3186 Mr. Deal - Mr. Chairman, could I ask one question, please. When I started
3187 speaking I meant to incorporate all the documents by reference into the record that I had sent
3188 you, members of the Commission. I just wanted to do that. I think I did it in the beginning
3189 but I just want to say now incorporate them by reference in their entirety into the record, all
3190 the documents I sent to you folks.

3191

3192 Mrs. Ware - Okay.

3193

3194 Mr. Jernigan - Let's see what Mr. Theobald like to do.

3195 Mrs. Ware - All right. Mr. Theobald, what would you like to do? You have quite a
3196 bit of time.

3197

3198 Mr. Silber - He has 26 minutes.

3199

3200 Mr. Theobald - I won't need all that time, I don't believe.

3201

3202 Mr. Jernigan - Well, I want to be fair with everybody.

3203

3204 Mr. Theobald - Twenty-six minutes. I can't do that. Let me jump around just a little bit
3205 here. I think that the Diamond Springs representatives would have you think of the law as
3206 being upside down and somewhat turned inside out. They really have this whole legislative
3207 scheme backwards. This is not rezoning, it is a tentative subdivision plan like you all approve
3208 day in and day out every meeting. It's ministerial, it's not discretionary. The Comprehensive
3209 Plan is not legislation it's a guide. You can't use the Land Use Plan as a basis to deny
3210 subdivision approval, okay. Zoning, maybe, subdivision approval no. The subdivision
3211 ordinance is presumed to reflect that when the Board of Supervisors adopted it that they have
3212 taken the Land Use Plan and the purposes clauses, that Mr. Mauck referring to in the State
3213 Code and County Code, taking those into account before they pass a specific ordinance. But
3214 then when they pass the specific ordinance and tell you you can have one-acre lots as a matter
3215 of right in agricultural district, they have done that. You don't go back when you have a by-
3216 right right use and then reapply the purpose clause and then reapply the Land Use Plan. That's
3217 not how it works. The case cited by Mr. Mauck, the Glass case, was a case that is 23 years
3218 old. It was a circuit court case, it is not a Virginia Supreme Court case, and it was passed at a
3219 time when the State statute only required you to give general reasons for your denial. That
3220 was subsequently amended to require you to provide in writing specific reasons where this
3221 request does not comply with the subdivision ordinance.

3222

3223 The legislation changed that for a reason. They did that so that whoever was considering
3224 subdivision plans couldn't play footsy with them, okay. So, that there is a stated of criteria
3225 and you complied or you didn't.

3226

3227 I've never seen a subdivision plan have to go through a finding of substantial accord. I just
3228 think that is just incorrect. The Land Use Plan contemplates that this is appropriate for
3229 residential subdivision and the Thoroughfare Plan along with it, in terms of the roads by it. In
3230 terms of the Health Department's preliminary opinion on this, they can't require water and
3231 sewer. They recommend we do water and sewer. Lord knows, we've tried to do water and
3232 sewer. On two subsequent occasions by rezoning this property, that's the only way water and
3233 sewer is coming to this area, if you get enough density to pay for it, but the Board of
3234 Supervisors found that rezoning was not appropriate. So, we can't do water and sewer.

3235

3236 Interestingly, if we could put this on the light table (document was put on screen). What you
3237 see in front of you is a little map. This is a subdivision on Turner Road, you can see the
3238 reference to Camp Holly, that's a subdivision called New Market Flats. You approved that in
3239 May of 2003. It is obviously next to the springs in the recharge area, you approved it, and I
3240 have a memo in that file from Mr. Lewis Walker that says we have conducted field reviews on
3241 the above proposed subdivision. We have found sites for onsite sewage disposal systems on
3242 each of the nine lots. We will review the construction plans to make sure that there is also a
3243 site for a well. Well, what's different? I don't think he showed up in that case to say that they

3244 don't have the ability to protect the springs. So, you acted within your legal constraints in that
3245 case and you approved it, okay.

3246

3247 You've heard a lot of references to Diamond Springs being referenced in the Land Use Plan
3248 but how do you supposed those got in there. The advocates for Diamond Springs have very
3249 adroitly gotten the County to recognize them specifically in the Land Use Plan. They talked
3250 about you denied this before. Is that relevant? Of course it's not relevant. Somebody shot
3251 one by somebody, you approved it and it wasn't challenged. Somebody didn't hold you to the
3252 strict interpretation of subdivision laws. The fact that you denied a subdivision plat is not
3253 precedent setting and really has no validity in this proceedings. There's really only one way
3254 for Diamond Springs to protect the springs and that's to buy the land, that's been for sale
3255 forever, which we have offered to sell to them at our cost or less. As opposed to subjecting
3256 other people to what amounts to private condemnation. This request is the least intensive
3257 development potential that you can possibly have on this piece of property and see it
3258 developed. If there is a problem with Four Mile Creek etc. it's because there is so much
3259 farming operation out there that is putting effluent into these water sources. If you don't want
3260 that you have to approve water and sewer and you have to zone some property. You just can't
3261 have it both ways.

3262

3263 We don't have to do any testing to request a tentative subdivision approval. Mr. Dowdy has
3264 said that he wouldn't support this development even if we were on water and sewer. He said
3265 he is prepared to buy some land and if he's prepared to pay what I have to pay or Mr. Attack
3266 has to pay for it, then fine they can test all they want. We have offered to let them test but you
3267 don't get to come test without a commitment to buy. You can't come put a line on the
3268 property and then say see here's where it is. We've offered to let him buy it at our cost or less
3269 than our cost and we haven't been able to cobble that deal together. You've heard a lot about
3270 health, safety and welfare. Those are classic zoning terms. Health, safety and welfare does
3271 not enter into the ministerial decision that you have with regard to a tentative subdivision
3272 application.

3273

3274 It shouldn't be up to the seller of this property, Dr. Harrelson, in his capacity as a fiduciary
3275 and trustee, to pay to protect the springs by reducing the price of the land. And it shouldn't be
3276 up to Mr. Attack to have to pay to buy the land and sell if for less than he has to pay for it to
3277 protect the springs. It's up to Diamond Springs to protect those springs. And I know that Mr.
3278 Jernigan and Mr. Donati have had scores and scores and scores of calls about this but it's just
3279 not about the political ramifications of this deliberation, it's about the law. If you won't
3280 approve zoning, if you won't approve a subdivision then you have condemned it. What else
3281 can you do?

3282

3283 Mr. Dowdy talked about your sworn responsibilities and trust but what you are sworn to do is
3284 uphold the law. And that same trust goes to protecting everybody's property rights as charged
3285 under the constitution. If it doesn't comply with your ordinance, we need to know why. I'm
3286 sorry that this is so controversial. Everybody has tried very hard to try to find a way to make
3287 this work, but this comes up year after year after year and there needs to be a solution to it.
3288 The reason we didn't request rezoning on this property because we just didn't think we would

3289 ever get there and under a subdivision we have the ability to develop responsibly, develop a
3290 high-quality subdivision and I would respectfully ask that you treat this like every other
3291 subdivision that you have been presented, New Market Flats included, and approve it. I
3292 appreciate your time and your obvious attention today and I'll be happy to answer any further
3293 questions.

3294

3295 Mrs. Ware - How many homes did you say were in New Market Flats?

3296

3297 Mr. Theobald - Nine.

3298

3299 Mrs. Ware - Nine? Thank you. Are there any questions?

3300

3301 Mr. Jernigan - Do you have anybody else you want to speak?

3302

3303 Mr. Theobald - No, sir. I think Mr. Samford probably doesn't need to get up. I think
3304 their geologist confirmed that nobody knows what's going on underground so we will just rely
3305 on the report that's been made a part of the record.

3306

3307 Mr. Jernigan - All right. If that is everybody that's going to speak, at this time, Madam
3308 Chairman, I want to make a motion that we go into closed meeting for consultation with the
3309 County Attorney regarding specific legal matters requiring provision of legal advice pertaining
3310 to the proposed Camp Hill Subdivision pursuant to 2.2-3711(a) and 7 of the Virginia Code
3311 1950 as amended.

3312

3313 Mr. Vanarsdall - Second.

3314

3315 Mrs. Ware - The motion was made by Mr. Jernigan and seconded by Mr. Vanarsdall.
3316 All in favor say aye...all opposed say nay. All right. We will move into closed session now.

3317

3318 Mr. Jernigan - Now where are we meeting?

3319

3320 Mr. Silber - We have the conference room reserved upstairs in the Planning Office.
3321 So, we will meet in there.

3322

3323 Mr. Jernigan - You all can just hang lose, go outside, we won't start without you.
3324 When we come back we will make sure that everybody is in.

3325

3326 **AT 1:49 P.M. THE PLANNING COMMISSION DISASSEMBLED FROM THE BOARD**
3327 **ROOM TO REGROUP IN THE PLANNING OFFICE CONFERENCE ROOM FOR A**
3328 **CLOSED EXECUTIVE SESSION ON THE CAMP HILL SUBDIVISION CASE.**

3329

3330 **AT 2:48 P.M. THE PLANNING COMMISSION RETURNED TO THE BOARD ROOM**
3331 **AND CAME OUT OF EXECUTIVE SESSION TO RESUME WITH THE CAMP HILL**
3332 **SUBDIVISION CASE.**

3333

3334 Mr. Silber - Sorry for the delay. I think we may have been a little over 20 minutes.
3335 I do need to read a certification of the executive meeting or closed session. So, please allow
3336 me.

3337

3338 Whereas, the Henrico Planning Commission has convened a closed meeting on this date
3339 pursuant to an affirmative recorded vote and in accordance with the provisions of the Virginia
3340 Freedom of Information Act; and

3341

3342 Whereas, Section 2.2-3712 of the Code of Virginia requires a certification by the Planning
3343 Commission that such executive meeting was conducted in conformity with Virginia law.

3344

3345 Now, therefore, be it resolved that the Planning Commission certifies that, to the best of each
3346 member's knowledge, (i) only public business matters lawfully exempted from open meeting
3347 requirements by Virginia law were discussed in the closed meeting to which this certification
3348 resolution applies, and (ii) only such public business matters as were identified in the motion
3349 convening the closed meeting were heard, discussed, or considered by the Planning
3350 Commission.

3351

3352 Now we will need a motion and second on that certification.

3353

3354 Mr. Jernigan - So move.

3355

3356 Mr. Vanarsdall - I second.

3357

3358 Mrs. Ware - The motion was made by Mr. Jernigan and seconded by Mr. Vanarsdall.

3359 All in favor say aye...all opposed say nay. The ayes have it. The motion is passed.

3360

3361 Mr. Jernigan - All right. I guess I've got the podium or I've got the speaker. I want to
3362 start off by saying, you know, two years ago when this case had never been filed I knew that it
3363 would happen one day so that's when I started working were two years ago. After knowing
3364 the Roy Amason case was down here and that there was a lot of uncertainties I called Dr. A.
3365 B. Harrelson who is the trustee for this property and asked him for permission for Mr.
3366 Dowdy's crew and to pay for it, Mr. Dowdy paying for it, to come in and drill on his property
3367 so that we could find out exactly how things laid, so we would know in the future when
3368 development came this way that we would be safe.

3369

3370 Dr. Harrelson and I had a nice conversation and I'm sure he knows what he is doing, he's a
3371 pretty smart man. He is a doctor. You know, he gave me his permission and he said Mr.
3372 Jernigan you have my permission. He said, you just have to clear it through my attorney. If it
3373 is all right with my attorney, it's okay. At that time I called his attorney and as a matter of fact
3374 the same day, Blackwell Shalley and he flat refused, no. And he told me in not so many words
3375 he didn't know where anything was. He would rather keep it as a mystery. I explained to him
3376 at that time that you were at the bottom of the barrel. The only way you have to go is up
3377 because right now, you know, we are worried about what would happen. So, that was kind of

3378 beating on deaf ears and nothing changed and so here a few months ago this subdivision plat
3379 came in.

3380

3381 This case was deferred first by Mr. Theobald and then by me trying to work out things. And
3382 during that time, I went to the Health Department which is one of the main players in this
3383 because they are the people who really determine what's going to happen. It goes to Public
3384 Works and everything but the Health Department is what I consider one of the main players.
3385 At that time, I requested, because we had so much geological information and I'm not a
3386 geologist and I don't understand the reports, I requested from the State Health Department a
3387 geologist. The State Health Department doesn't have a geologist. So, at that point Mr.
3388 Marlles, who is the Director of Planning, requested that one be brought from another state
3389 agency mainly probably one of Mines, Rivers and Energy in Charlottesville to help me sort out
3390 the geological reports and have a third person that would be able to give what they felt was an
3391 inclination of how this land laid.

3392

3393 The report that I received back from the Health Department was that they weren't going to
3394 give me a geologist and they recommended that sewer and water be on this site. Well, I kind
3395 of knew that from the word go that that would have been the best way to go, but that didn't
3396 cure my problem because I asked them at that time are you going to make them do that and
3397 they said, No, we can't. So, they have kind of taken that monkey off of their back and thrown
3398 it up on mine and I'm not really excited about that. And Mr. Walker, when he was here this
3399 morning, I asked them what testing would be done, how the test goes to, you know, derive at
3400 which sites are buildable. And basically he explained the testing that goes on every piece of
3401 property, would be the same on this piece of property, and we have a different situation here.

3402

3403 Now, you know we have been in closed chambers and by law we are supposed to pass this. It
3404 meets County Code. The roads and the streets meet County Code. Now I think everybody
3405 involved in this knows that this property can't be built like it's shown because the slopes are
3406 too much. Nobody is going to put a road or a house up there. But, anyway, it is what it is
3407 and staff says it's correct and not that they like it but.... And the County Attorney says it's
3408 correct. I don't like being in the position I'm in right now because they say that this action is
3409 just another simple action. In some cases it's a rubber stamp, and if it is why did they bring it
3410 to me. If we don't have discretion to rule on a case then why should we try it? And this case is
3411 a little bit different than every other subdivision case we have. And I thought to myself what if
3412 I was a Planning Commissioner in New York and a case came before me that would actually
3413 affect Niagara Falls, how would I vote. And I realize Diamond Springs is not Niagara Falls,
3414 it's nowhere as great but yet it's no less important. So I have to make a decision that when I
3415 go home at night I can sleep with. That's when I know. When I leave here during the day and
3416 I go home I sleep alright at night, I know I made the right decision. And it might not be the
3417 right decision for everybody but it's what I feel I have to do.

3418

3419 So, Madam Chairman, to protect the health, safety and welfare of those 37 citizens that we
3420 have and the resources that's in this aquifer, I will make a motion that we deny it.

3421

3422 Mr. Vanarsdall - Second.

3423
3424 Mrs. Ware - The motion was made by Mr. Jernigan and seconded by Mr. Vanarsdall.
3425
3426 Mr. Jernigan - And, Madam Chairman, I would like us to rather than just having a
3427 verbal vote I think we need to poll each Commissioner because I'm sure it's going to be a
3428 mixed vote. So, I would like to poll each Commissioner for a vote.
3429
3430 Mrs. Ware - Do you want to do that, Mr. Secretary?
3431
3432 Mr. Silber - Sure that's fine. I have a motion by Mr. Jernigan and a second by Mr.
3433 Vanarsdall to deny this subdivision. Mr. Archer.
3434
3435 Mr. Archer - I vote no on the motion.
3436
3437 Mr. Marshall - I vote no.
3438
3439 Mr. Silber - Mr. Marshall, no.
3440
3441 Mr. Vanarsdall - I vote aye.
3442
3443 Mr. Silber - Mrs. Ware.
3444
3445 Mrs. Ware - I vote no.
3446
3447 Mr. Silber - Mr. Jernigan.
3448
3449 Mr. Jernigan - Yes.
3450
3451 Mr. Silber - Mr. Donati, do you want to vote?
3452
3453 Mr. Donati - Aye.
3454
3455 Mr. Silber - That leaves us with a split vote of 3 to 3.
3456
3457 Person in Aud. - (Unintelligible)
3458
3459 Mr. Silber - I recorded a vote of 3 to 3. Did I miscount?
3460
3461 Person in Aud. - What was Mr. Vanarsdall vote?
3462
3463 Mrs. Ware - His vote was, yes, for denial.
3464
3465 Mr. Vanarsdall - I voted, yes. No wait a minute. No, No.
3466
3467 Person in Aud. - He voted no.

3468
3469 Mr. Vanarsdall - Wait a minute. The vote was to deny the case and I voted yes.
3470
3471 Mr. Silber - The motion was to deny and I have Mr. Vanarsdall voting affirmatively
3472 with that motion. I had Jernigan and I had Donati. Am I mistaken?
3473
3474 Mr. Jernigan - No, you are correct.
3475
3476 Mr. Silber - Okay. So, we have a 3 to 3 vote. At this point, I think it is appropriate
3477 to see if there is a motion, or request a motion, a different motion.
3478
3479 Mr. Marshall - Madam Chairman, I make a motion to approve subdivision Camp Hill
3480 (October 2003 Plan) pursuant to the standard conditions for subdivisions with items Nos. 4 and
3481 10 amended and Nos. 11, 12, 13, 14, 15, 16 through 21 and additional conditions handed out
3482 earlier Nos. 22, and 23 and No. 24 draft condition No. 25 and No. 26.
3483
3484 Mr. Archer - I'll second.
3485
3486 Mrs. Ware - The motion was made by Mr. Marshall and seconded by Mr. Archer.
3487 Do you want to poll the Commission?
3488
3489 Mr. Silber - Let me just have one clarification. I have draft conditions, revised draft
3490 conditions Nos. 22, 23 and 25.
3491
3492 Mr. Marshall - Correct.
3493
3494 Mr. Silber - Is that what you said?
3495
3496 Mr. Marshall - Yes, I think so.
3497
3498 Mr. Silber - Okay. There's a motion to approve by Mr. Marshall and seconded by
3499 Mr. Archer. If we can vote on that motion to approve the subdivision. Mr. Archer, your
3500 vote.
3501
3502 Mr. Archer - Aye.
3503
3504 Mr. Silber - Mr. Marshall.
3505
3506 Mr. Marshall - Aye.
3507
3508 Mr. Silber - Mr. Vanarsdall.
3509 Mr. Vanarsdall - No.
3510
3511 Mr. Silber - Mrs. Ware.
3512

3513 Mrs. Ware - Aye.
3514

3515 Mr. Silber - Mr. Jernigan.
3516

3517 Mr. Jernigan - Nay.
3518

3519 Mr. Silber - Mr. Donati.
3520

3521 Mr. Donati - No.
3522

3523 Mr. Silber - Okay. We have a 3 to 3 vote. Is there any other variation to the action
3524 that can be taken on the subdivision? I think at this point if there has been a motion to deny
3525 the subdivision and there has been a motion to approve the subdivision they both had a 3 to 3
3526 split vote. I presume at this point that this shows no action on the subdivision and I think this
3527 simply ends up as “no action” taken by the Planning Commission on this proposal for a
3528 subdivision.
3529

3530 Mr. Archer - Mr. Secretary, do we not have any more reasons to defer? Or are we
3531 able to defer again?
3532

3533 Mr. Jernigan - No, sir. Our time is up on the deferral.
3534

3535 Mr. Archer - All right.
3536

3537 Mr. Jernigan - Not unless Mr. Theobald would like to defer it.
3538

3539 (Mr. Theobald indicates no from the audience)
3540

3541 Mrs. Ware - And there’s not a condition that would perhaps....
3542

3543 Mr. Jernigan - Where does it goes from here, Mr. Silber?
3544

3545 Mr. Silber - Well, I’m not an attorney so I’m not real sure. I presume at this point,
3546 since there is no action by the Planning Commission, it’s simply recorded as “no action.” I
3547 may want to call on our County Attorney, Joe Rapisarda. I’ll let him respond to that question,
3548 Mr. Jernigan.
3549

3550 Mr. Rapisarda - Madam Chairman, for the record, I’m Joe Rapisarda the County
3551 Attorney. Under the Virginia Code, Madam Chairman, you and your fellow Commissioners
3552 have a statutory duty to act timely on the subdivision proposal. The law also requires that
3553 there be a majority vote for any action to be valid so with the stalemate as it is I would
3554 analogize this to a hung jury. The problem you face is if you fail to approve it or disapprove
3555 it, and that’s exact where you are right now, then you are serving up a lawsuit to the Henrico
3556 Circuit Court which would then have the jurisdiction and authority to force the outcome. So, I

3557 would suggest, in all due respect to the Commission while it's in your hands, that you make a
3558 decision on it. Thank you. I'll try to answer any questions.

3559

3560 Mrs. Ware - Are there any questions for Mr. Rapisarda?

3561

3562 Mr. Archer - Mr. Rapisarda, if it goes before the Circuit Court, what is the process
3563 that they go through?

3564

3565 Mr. Rapisarda - The process would be that the Circuit Court will review the failure of the
3566 Commission. As it goes right now, the Commission has not acted. So, the Circuit Court
3567 would then become the Planning Commission in effect and it would approve or disapprove the
3568 plat.

3569

3570 Mr. Silber - Mr. Rapisarda, if the Commission, at this point, has voted in both
3571 directions with a split vote, I presume that's where we're at unless there is another motion to
3572 do something differently. If not, I guess, if there is no other action to be taken, I guess this
3573 matter is dispensed at this point. You are asking for the Commission to consider moving this
3574 forward in some fashion.

3575

3576 Mr. Rapisarda - Well, I asked that, I guess, because that's what the law contemplates and
3577 also I think you have had a lot of eager for and against that you have heard for nearly two
3578 hours and I would think the sides would like a decision. But, again, under the Virginia Code
3579 the Commission is charged with making it. Unfortunately, the time has run, I'm told. So you
3580 can't defer it. You could take a recess and then come back and see if you can reach a decision
3581 just a jury would do after a break. Or, you can send it with the minutes showing what they are
3582 which is no decision, but you can rest assured that that won't be the end of the matter.

3583

3584 Mr. Donati - Mr. Rapisarda, if this goes... obviously it's probably going to be going
3585 to Circuit Court. Will both sides have the ability to debate the issues as much as they did here
3586 today?

3587

3588 Mr. Rapisarda - Certainly the developer will, Mr. Donati. I think there is an issue of
3589 standing. The Virginia Code talks about the subdivider or developer having a right to appeal
3590 the Circuit Court. There is no mention of any one other than that. I'm not a Circuit Court
3591 judge I can only tell you what the law does say which would be that the developer could
3592 petition.

3593

3594 Mr. Donati - Can that decision of the Circuit Court, whichever way it might be, can
3595 that be appealed to a higher court?

3596

3597 Mr. Rapisarda - Yes, sir, it could. The Virginia Supreme Court, unlike the federal
3598 system, is not obliged to take an appeal so you have to persuade that court to hear your appeal.
3599 But, if you are able to, then, yes, it would.

3600

3601 Mr. Donati - Well, if it goes to a higher court then it's obvious that it could be debated
3602 on both sides, not just on one side at the Circuit Court level.

3603

3604 Mr. Rapisarda - Well, again, I think there's no automatic appeal in Virginia, Mr. Donati.
3605 Anyone can file anything and ask for it, the question becomes is it legally tenable.

3606

3607 Mr. Donati - Right, I understand.

3608

3609 Mrs. Ware - Just a minute folks. Our secretary is in conference.

3610

3611 Mr. Jernigan - Mr. Rapisarda, question for you. If this case does go to Circuit Court,
3612 the conditions that are on this case now Nos. 4 through 26 would they be included in the court
3613 case?

3614

3615 Mr. Rapisarda - What the court, I believe would get, Mr. Jernigan, is simply the minutes
3616 of this proceeding. It would be up to the Circuit Court judge to decide what he or she would
3617 do and what conditions would or would not be placed on it. Again, that's why I made the plea
3618 earlier. Right now it's in the hands of the body appointed by the Board of Supervisors. If it
3619 leaves here in its present state, it becomes a matter for the Circuit Court and you have said all
3620 you are going to say on the matter.

3621

3622 Mr. Jernigan - But the conditions that we have on this case, now, would they be
3623 introduced with the case? Would the court go by this?

3624

3625 Mr. Rapisarda - They would be a part of the minutes and record that goes to Circuit
3626 Court.

3627

3628 Mrs. Ware - But, they would not necessarily be applied to the case as is?

3629

3630 Mr. Rapisarda - Correct.

3631

3632 Mr. Donati - So, in other words, it could get approved with no conditions.

3633

3634 Mrs. Ware - With no conditions.

3635

3636 Mr. Jernigan - Madam Chairman, let's take a recess.

3637

3638 Mrs. Ware - Okay, we are going to recess for 10 minutes.

3639

3640 **AT 11:56 A.M. THE PLANNING COMMISSION RECESSED AND RETURNED AT**
3641 **12:12 P.M. TO RESUME WITH THE CASE.**

3642 Mrs. Ware - We are back in session.

3643

3644 Mr. Jernigan - Mr. Rapisarda, I have a question for you. If this does go to Circuit
3645 Court would the opposition have a chance to speak in this case? Would Mr. Deal... In other

3646 words, if this goes to Circuit Court is it a case where the opposition has a chance to speak or is
3647 it a decision made by the judge according to the applicant?

3648

3649 Mr. Rapisarda - Let met just try to respond in this way, members of the Commission.
3650 The way I would see it happening would be that the opposition would try to intervene into that
3651 court proceeding whether or not they're named in it they would certainly try to intervene and
3652 they could try to persuade a Circuit Court judge that they ought to be a party and be heard.
3653 That would be their prerogative. Again, I cannot speak for what the Circuit Court would do.
3654 That was the earlier point I made about what standing they have to complain.

3655

3656 Mr. Jernigan - But this is not a regular trial. If it goes to a Circuit Court judge for a
3657 decision that the Planning Commission didn't act, does both sides, by right, have testimony or
3658 does it have to be allowed. Would the judge have to allow the opposition to make testimony?

3659

3660 Mr. Rapisarda - I think he would have to allow it in my opinion.

3661

3662 Mr. Jernigan - Okay. Thank you.

3663

3664 Mr. Vanarsdall - All right, Madam Chairman.

3665

3666 Mrs. Ware - Okay.

3667

3668 Mr. Marshall - Madam Chairman, I make a motion to approve subdivision Camp Hill
3669 (October 2003 Plan) with the standard conditions for developments of this type, with
3670 annotations Nos. 4 and 10 amended, Nos. 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, and
3671 amended draft condition Nos. 22, 23, and 25 and other annotations Nos. 24 and 26.

3672

3673 Mr. Archer- I second.

3674

3675 Mrs. Ware - The motion was made by Mr. Marshall and seconded by Mr. Archer.
3676 Do we need to poll this?

3677

3678 Mr. Silber - I think we should.

3679

3680 Mrs. Ware - Mr. Secretary.

3681

3682 Mr. Silber - Mr. Archer.

3683

3684 Mr. Archer - I vote aye on the motion.

3685

3686 Mr. Silber - Mr. Marshall.

3687 Mr. Marshall - Aye.

3688

3689 Mr. Silber - Mr. Vanarsdall.

3690

3691 Mr. Vanarsdall - Aye.
3692
3693 Mr. Silber - Mrs. Ware.
3694
3695 Mrs. Ware - Aye.
3696
3697 Mr. Silber - Mr. Jernigan.
3698
3699 Mr. Jernigan - Nay.
3700
3701 Mr. Silber - Mr. Donati.
3702
3703 Mr. Donati - No.
3704
3705 Mr. Silber - The motion was 4 to 2 in favor of the motion which was to approve the
3706 subdivision with the conditions.
3707
3708 Mr. Vanarsdall - Wait a minute. I want to say something else. I don't think I've ever
3709 changed my vote on anything for any reason. When I found out that it would go to Circuit
3710 Court without any conditions I volunteered to do that, nobody asked me. That's all.
3711
3712 Mr. Jernigan - And in that, what happens if the conditions are the only thing we have
3713 protecting this case right now, and if we lose the conditions, then we would have lost
3714 protection of everything.
3715
3716 On vote of 4 to 2, the Planning Commission approved subdivision Camp Hill (October 2003
3717 Plan) subject to the standard conditions attached to these minutes for subdivisions not served by
3718 public utilities, the annotations on the plans and the following additional conditions:
3719
3720 4. **AMENDED** -This approval is of the conditional plat only. Final approval of the plat
3721 shall not be granted until such time as the Virginia Department of Health has granted
3722 approval for sewage disposal on all lots or until a final plat is prepared that
3723 conspicuously indicates all lot(s) not receiving Virginia Department of Health approval
3724 for sewage disposal, and which states that there shall be no construction on lots without
3725 such approval. Details of approved sewage disposal systems and reserved areas for such
3726 systems shall be included with the final construction plan prior to construction plan
3727 approval.
3728 10. **AMENDED** - Prior to recordation of the plat, the developer shall provide a buildable
3729 area plan showing information for each lot within the subdivision. These plans shall be
3730 a part of the revised construction plans submitted for review and for signature. The
3731 buildable area plan shall be a minimum of 1" to 50' scale or larger and shall show the
3732 buildable area for the principal structure, all setback dimensions, the minimum lot
3733 width (front building line), the area of each lot found to be suitable for the location of
3734 the septic drainfield system and reserved drainfield area on the lot, or alternative
3735 system, and if applicable, the 100 year floodplain location, the area of each lot

- 3736 exclusive of floodplain, and Chesapeake Bay Act Preservation areas and setback
3737 dimensions when applicable.
- 3738 11. Prior to final approval of the construction plans, grading plans with minimum finished
3739 floor elevations are required for the following lots: All lots that have impacted
3740 wetlands, all lots adjacent to wetlands, all lots adjacent to yard swales, all lots adjacent
3741 to flood plain, all lots that have a sediment trap or basin that is to be filled in, and all
3742 lots with excessive slopes, as determined by the Director of Public Works.
- 3743 12. Each lot shall contain at least 1 acre, exclusive of floodplain areas.
- 3744 13. The limits and elevation of the 100 year frequency flood shall be conspicuously noted on
3745 the plat and construction plans and labeled "Limits of 100 year floodplain." Dedicate
3746 floodplain as a "Variable Width Drainage & Utilities Easement."
- 3747 14. Prior to final approval of the construction plans, the developer shall furnish a letter
3748 from Dominion Virginia Power stating that this proposed development does not conflict
3749 with its facilities.
- 3750 15. Prior to final approval of the construction plans, the developer shall furnish a letter
3751 from Colonial Pipe Line Company stating that this proposed development does not
3752 conflict with its facilities.
- 3753 16. Final approval shall not be granted to any lots containing any portion of the private access
3754 road, Camp Hill Road, or any lots which may be directly impacted by the redesign of the
3755 aforementioned lots, until the legal status of this roadway is determined by the applicant
3756 to the satisfaction of the Director of Planning and the County Attorney. No portion of the
3757 private roadway shall be located on any proposed lot.
- 3758 17. The detailed plant list and specifications for the landscaping to be provided within the 25-
3759 foot-wide planting strip easement along New Market Road, Long Bridge Road, Turner
3760 Road and Yahley Mill Road shall be submitted to the Planning Office for review and
3761 approval prior to recordation of the plat.
- 3762 18. Prior to requesting final approval, a draft of the covenants and deed restrictions for the
3763 maintenance of the common area by a homeowners association shall be submitted to the
3764 Planning Office for review. Such covenants and restrictions shall be in form and
3765 substance satisfactory to the County Attorney and shall be recorded prior to recordation of
3766 the subdivision plat. The covenants should establish conditions to provide for perpetual
3767 upkeep of the historic fort/breastworks to be preserved within the common area, including
3768 interpretive signage or other facilities provided.
- 3769 19. The developer shall make best efforts to coordinate the timing of construction activities in
3770 the area of Fort Southard with the Director of Recreation and Parks to allow mapping and
3771 photo documentation.
- 3772 20. Any future building lot containing a BMP, sediment basin or trap and located within the
3773 buildable area for a principal structure or accessory structure, may be developed with
3774 engineered fill. All material shall be deposited and compacted in accordance with the
3775 Virginia Uniform Statewide Building Code and geotechnical guidelines established by a
3776 professional engineer. A detailed engineering report shall be submitted for the review and
3777 approval by the Building Official prior to the issuance of a building permit on the affected
3778 lot. A copy of the report and recommendations shall be furnished to the Directors of
3779 Planning and Public Works.
- 3780 21. No more than 50 lots may be recorded on a single point of access.

- 3781 22. The applicant shall consult with the Division of Recreation and Parks on any historical
3782 findings as development progresses. A copy of any study identifying and protecting
3783 historic resources which may be required by a state or federal agency through its
3784 permitting process shall be submitted to the Planning Office and Division of Recreation
3785 and Parks prior to final approval of the construction plans.
- 3786 23. If a geologic exploration and a geo-technical study is be performed by a geo-technical
3787 firm representing the applicant to determine if the proposed development may impact
3788 ground water quality and quantity at Camp Holly Springs, a copy of the study and
3789 recommendations shall be submitted to the Planning Office and the Health Department
3790 prior to final approval of the construction plans.
- 3791 24. An overall phasing plan for the subdivision shall be submitted with the first application
3792 for final approval, and shall be updated with each subsequent application.
- 3793 25. Utility easements for future County sanitary sewer main extensions, including
3794 permanent and construction easements, shall be shown on the final construction plans in
3795 locations mutually acceptable to the applicant and the Director of Public Utilities. Such
3796 easements shall be shown on the subdivision plat prior to recordation.
- 3797 26. Any application for final approval which does not substantially conform to the plat as
3798 approved for conditional approval as determined by the Director of Planning, shall be
3799 submitted for reconsideration by the Planning Commission.

3800
3801 Mr. Silber - Okay. That concludes the hearing on the subdivision and we will now
3802 move on to the 10:30 portion of the agenda.

3803

3804 LAUGHS FROM THE CROWD

3805

3806 Mr. Silber - Could we ask those of you standing around in the back to leave unless
3807 you are staying for the ordinance amendment on the Gated Communities. We will move on to
3808 the next item. Thank you.

3809

3809 **PUBLIC HEARING: Ordinance Amendment for Gated Communities on Public Roads**

3810

3811 Mr. Silber - Members of the Commission, if I can direct your attention to the
3812 ordinance amendment on gated communities on public roads. The Commission has held a
3813 work session to discuss this proposed ordinance amendment. This is an advertised public
3814 hearing on this amendment. Should the Commission decide to make a recommendation on this
3815 today, it would go on to the Board of Supervisors with that recommendation and would be
3816 considered by the Board probably in a work session in February. So, I'll turn this over to
3817 Dave O'Kelly to maybe tell us what changes have occurred since the last meeting and present
3818 the amendment.

3819

3820 Mr. O'Kelly - Thank you, Mr. Secretary. Madam Chairman, members of the
3821 Commission, good afternoon. This kind of reminds me of the old days when we had meetings
3822 scheduled to five o'clock in the afternoon or more. Anyway, as Mr. Silber mentioned since
3823 the work session in December, and I don't believe Mr. Vanarsdall was present for that work
3824 session, and I know Mr. Marshall wasn't, having just recently been appointed, but, hopefully,
3825 you had an opportunity to review the minutes from the work session that was provided in your
3826 packet. I think that will give you a good overview of the discussion that took place and the
3827 decision to advertise the ordinance for public hearing.

3828

3829 As Randy mentioned, this matter was a subject of a joint work session with the Board of
3830 Supervisors and the Planning Commission which was held on November 25, 2003. The
3831 Commission and Board were introduced to the subject of gated communities in Henrico County
3832 and the subject in general and the pros and cons. Many questions were raised. Staff was also
3833 provided some direction at that meeting of ways to proceed with the ordinance amendment, to
3834 permit single-family subdivisions on private roads. The County Attorney explored the subject
3835 and discovered state enabling legislation, Virginia Code Section 15.2-2267, which permits
3836 localities to approve gated subdivisions on public rights-of way yet with privately maintained
3837 roads. These roadways would be maintained by the homeowners association.

3838

3839 We have modeled our proposed ordinance based on the state enabling legislation. It appears
3840 that this legislation came about in 1980 but up until this time the staff has yet to be able to
3841 identify what locality may have requested this legislation. We felt that would be helpful
3842 information to have so that we could visit those areas and so far we have been unable to do that
3843 even with the assistance of the County Attorney's office.

3844

3845 Before we begin with the actual ordinance language, are there any questions of the staff? I do
3846 have additional copies here if anybody needs one.

3847

3848 The ordinance proposal is that gated subdivisions be a permitted use in the one-family
3849 residential districts, in the agricultural district and in the R-5A district with the approval of a
3850 provisional use permit by the Board of Supervisors. That is what we are talking about. With
3851 that decision by the Board, conditions can be added that would insure the health, safety and
3852 welfare of the residents of the neighborhood and also to permit governmental agencies to
3853 access these areas, which will have restricted access and public service corporations. Kevin

3854 has worked very closely with the Department of Public Works, Police, Division of Fire to
3855 come up with some development standards that could be considered as additional conditions for
3856 the Planning Commission and Board's consideration when a provisional use permit has been
3857 filed. Since the work session, we have had some additional input from Commission members.
3858 Some modifications have been made to those conditions. Kevin met as recently as last week
3859 with the other agencies, except for the Department of Public Works. They were not in
3860 attendance for some reason, and he does have some additional language to present to you this
3861 afternoon. A very important part of this proposal in the way the State enabling legislation is
3862 drafted is the fact that this ordinance would not apply to existing subdivisions. Only new
3863 subdivisions that come before the Planning Commission would be allowed to be considered for
3864 a gated subdivision because everything else that has already been constructed, the roads have
3865 been accepted into the County system for maintenance, and the ordinance would not allow
3866 them to be considered. So, we are only talking about new subdivisions from this day on, from
3867 the day onward if the Board adopts the ordinance.

3868

3869 Mr. Vanarsdall - Mr. O'Kelly, can we ask questions as we go along.

3870

3871 Mr. O'Kelly - Yes, sir.

3872

3873 Mr. Vanarsdall - I am not advocating this. I am just saying would there be an avenue that
3874 somebody in an old subdivision who wanted to see if they could get a gated community, could
3875 they get that in some way to the Planning Office and through the Board or something?

3876

3877 Mr. O'Kelly - Not that I am aware of, Mr. Vanarsdall. Perhaps the only approach
3878 would be to vacate the existing rights of way. Then that would put their lots into non-
3879 conformity. I am not sure the mortgage companies would permit that to happen if there are
3880 mortgages on those lots, so it is a difficult question to give you a full answer on right now.

3881

3882 Mrs. Ware - You want to make sure that existing communities can't do this, right?

3883

3884 Mr. Vanarsdall - There is an exception to everything.

3885

3886 Mr. O'Kelly - The King's Reach development, which you approved today, would
3887 probably be one of the first projects to come forward if the Board adopts this ordinance, and
3888 that is really all I have to say at this point. You may want to hear from Kevin on the amended
3889 development standards.

3890

3891 Mrs. Ware - Is there anybody in the audience who would like to speak concerning this
3892 issue today?

3893

3894 Mr. Wilhite - I would like to apologize for not getting this into your packet. We have
3895 been working on some revisions as recently as last week and even the first part of this week,
3896 too. What was included in your packet was the original draft of conditions that was in the
3897 work session in December. This is the most recent draft based on further meetings with the
3898 other staff members of other departments. The changes to this document are highlighted and

3899 bold, and I just want to go over those changes with you. Of course, I'd be happy to answer any
3900 questions pertaining to the entire document as well.

3901

3902 No. 3 is the first one and this is a modification or change from your original conditions that
3903 dealt with the posting of a bond or an account with the County to cover maintenance of the
3904 roads, to assure maintenance of the roadways by the homeowners associations. This had been
3905 modified to refer to a joint account between the developer, the homeowners association, the
3906 County with a deposit equal to the most recent lane mile pavement rate from the Virginia
3907 Department of Transportation for each lane mile of proposed development prior to the
3908 installation of the gates. This means that the assurance that would be posted with the County is
3909 based on the maintenance funds that we receive currently from VDOT for roadway
3910 maintenance. There is one slight change to Condition No. 10 involving the change of one
3911 word from *must* to *should* and that is referring to the County's policy for 50 lots on one point
3912 of access.

3913

3914 There were four additional conditions added, 27, 28, 29 and 30 on the third page. Twenty-
3915 seven and 28 refer to public utility construction and is confirmation that Public Utilities would
3916 meet the rules, regulations and policies and practices currently in the Department of Public
3917 Utilities and that sufficient right of way or public access through easements is guaranteed as
3918 well. Also, 28 shows that there would be access for the Department of Public Utility
3919 employees or their agents in order to perform necessary maintenance work and also to insure
3920 that in emergency situations that there would be immediate access through the entry gate.

3921

3922 Condition No. 29 deals with the possibility of the roadways being accepted into the County
3923 system at a later point based on the request of 3/4s of the homeowners association members.
3924 The County Engineer would do an inspection and come up with a list of deficiencies dealing
3925 with, as far as the road conditions are concerned, and the work being done by the homeowners
3926 association that brings them up to current County standards and at that point the County
3927 Engineer would make the request of the Board of Supervisors to accept them into the roadway
3928 system for maintenance.

3929

3930 Condition No. 30 was added to allow for some flexibility in these standards. It would allow
3931 for the possibility of deviations or modifications to the standards being made, requested in
3932 writing with the joint approval of the Director of Planning, Public Works, Police and Fire
3933 Chief. As David mentioned, we are looking at the possibility that these development standards
3934 would be attached to the provisional use permit through the conditions. I'd be happy to answer
3935 any questions that you have.

3936

3937 Mrs. Ware - Are there any questions for Mr. Wilhite?

3938

3939 Mr. Archer - Mr. Wilhite, can you address No. 10 just briefly. Why did you change
3940 that word from *must* to *should*?

3941

3942 Mr. Wilhite - The change was a request by a Planning Commission member. The 50
3943 lots, of course, is a County policy currently in existence. It is not a requirement. You've got

3944 discretion. We just thought that word represented a little bit better language for that particular
3945 condition.

3946

3947 Mr. Archer - I was just looking for.... oh ok.

3948

3949 Mrs. Ware - Are there any more questions? I have a question for Mr. O'Kelly. My
3950 question is last time we discussed this, we discussed the R-5A provision and I don't have my
3951 ordinance in front of me, but what is staff doing on R-5A, changing it to or allowing R-2
3952 standards within the R-5A when the R-5A is...

3953

3954 Mr. O'Kelly - I understand. I recognized that was a concern by several Commission
3955 members from the last meeting, and what the Staff was not aware of at that time was are there
3956 any vacant R-5A properties that exist that this ordinance would apply to. We have done the
3957 necessary research. I have a map here with all the R-5A properties in the County and all of
3958 them are either developed or have a subdivision approved on them, so there are no vacant R-
3959 5A lands that this recommended ordinance would apply to, so I am not sure how useful it is,
3960 based on the current zoning that exists. There is a zoning case pending before the Board of
3961 Supervisors for R-5A, which the Planning Commission recommended denial of that perhaps
3962 this ordinance could apply to. But it is a pending case. This is something we were asked to
3963 look at. If these proposed subdivisions are permitted in your normal residential districts, and
3964 agricultural, I share your concern Mrs. Ware. Is it necessary? No.

3965

3966 Mrs. Ware - If we remove that portion...

3967

3968 Mr. O'Kelly - There would be only one property in the County that could be adversely
3969 affected by not providing the right.

3970

3971 Mr. Silber - That property that would be adversely affected would be the one that is
3972 currently up for rezoning?

3973

3974 Mr. O'Kelly - Correct.

3975

3976 Mr. Vanarsdall - We need a motion to send this on to the Board, don't we?

3977

3978 Mr. O'Kelly - Yes, sir.

3979

3980 Mr. Vanarsdall - I move that Ordinance Amendment for Gated Subdivisions be forwarded
3981 to the Board of Supervisors for approval with the changes we had today, incorporated into it
3982 today.

3983

3984 Mr. Jernigan - Second.

3985

3986 Mrs. Ware - Motion made by Mr. Vanarsdall and seconded by Mr. Jernigan. All in
3987 favor say aye. All opposed say no. The motion passes. Thank you, Mr. O'Kelly.

3988

3989 Mr. Vanarsdall - Now if nobody has any changes on the minutes, I move that we
3990
3991 Mr. Archer - I have one change. Page 22, Line 832 says that Mr. Archer carried the
3992 motion. I believe Mr. Jernigan did that.
3993
3994 Mr. Vanarsdall - I move that the minutes of December 17, 2003 be approved with one
3995 change.
3996
3997 Mrs. Ware - Second. Motion made by Mr. Vanarsdall and seconded by Mrs. Ware.
3998 All in favor say aye. All opposed say no. The motion passes.
3999
4000 Mr. Vanarsdall - There being no further business, I move that the meeting be adjourned.
4001
4002 Mr. Marshall - Second.
4003
4004 On a motion by Mr. Vanarsdall and a second by Mr. Marshall, the Planning Commission
4005 adjourned its January 28, 2004, meeting at 3:34 p.m.
4006
4007
4008
4009
4010

Lisa D. Ware, C.P.C., Chairperson
4011
4012
4013
4014
4015

Randall R. Silber, Acting Secretary