

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 Center
3 at Parham and Hungary Springs Roads, Beginning at 9:00 a.m. Wednesday, October 27, 2004.

4

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

12

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

24

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

27

28 Mrs. Ware - The Planning Commission will come to order. Good morning everyone.
29 This is the Planning Commission meeting for Plans of Developments, and I will now turn the
30 meeting over to our Secretary, Mr. Silber.

31

32 Mr. Silber - Thank you, Madam Chairman, members of the Commission, we do have a
33 quorum. All members of the Commission are present this morning. First on the agenda would
34 be consideration of the requests for deferrals and withdrawals. There are three on the list that I
35 am aware of. Ms. News, can you walk us through those please.

36

37 Ms. News - Yes, sir, Mr. Secretary. The Planning Office is aware of three requests for
38 deferrals, which are on your list and a fourth which was called in this morning. The first request
39 is on Page 5 of your agenda, POD-69-04, Townes @ Brickerstaff, in the Varina District. The
40 applicant requests to defer this case to November 17, 2004.

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

72

73 Pursuant to the applicant's request, the Planning Commission withdrew POD-71-04, Patrick Kia
74 - Nine Mile Road and Laburnum Avenue, from any further consideration.

75

76 Ms. News - The next case is on Page 32 of your agenda, subdivision Elizabeth Place
77 (October 2004 Plan) in the Varina District. The applicant requests to withdraw this case.

78

79 **SUBDIVISION**

80

Elizabeth Place
(October 2004 Plan)

Balzer & Associates, Inc. for Prince D. Allen, Sr.: The 4.182-
acre site proposed for a subdivision of 3, single-family homes is
located at 7326 Osborne Turnpike on parcel 802-649-3061. The
zoning is R-3, One-Family Residence District. Individual well
and septic tank/drainfield. **(Varina) 3 Lots**

81

82 Mrs. Ware - Is there anyone in the audience in opposition to the withdrawal of
83 subdivision Elizabeth Place (October 2004 Plan), in the Varina District? There's no opposition.
84 Mr. Jernigan.

85

86 Mr. Jernigan - Madam Chairman, I make a motion to withdraw subdivision Elizabeth
87 Place, at the request of the applicant.

88

89 Mr. Vanarsdall - Second.

90

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

93

94 Pursuant to the applicant's request, the Planning Commission withdrew subdivision Elizabeth
95 Place (October 2004 Plan), from any further consideration.

96

97 Mr. Vanarsdall - One good thing about that, you don't have to defer it. I guess that's the
98 end of the road.

99

100 Ms. News - Staff is aware of one additional request for deferral that was called in this
101 morning. This is found on Page 34 of your agenda, the landscape plan for LP/POD- 34-03, Parc
102 Place @ Short Pump Town Center, in the Three Chopt District. The applicant requests to defer
103 this case until November 17 meeting.

104 **LANDSCAPE PLAN (Deferred from the September 22, 2004, Meeting)**

105

LP/POD-34-03

Parc Place @ Short Pump
Town Center

McKinney and Company for SBRD No. 4 LP: Request for approval of a landscape plan as required by Chapter 24, Sections 24-106 and 106.2 of the Henrico County Code. The 8.87-acre site is located at 11736 West Broad Street on parcel 739-763-1874. The zoning is B-3C, Business District (Conditional) and WBSO (West Broad Street Overlay District). **(Three Chopt)**

106

107 Mrs. Ware - Is there anyone in the audience in opposition to the deferral of LP/POD-
108 34-03, Parc Place @ Short Pump Town Center, in the Three Chopt District? There's no
109 opposition. Mr. Marshall.

110

111 Mr. Marshall - Madam Chairman, I move that LP/POD-34-03, Parc Place, be deferred to
112 November 17, at the request of the applicant.

113

114 Mr. Vanarsdall - Second.

115

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

118

119 Pursuant to the applicant's request, the Planning Commission deferred the landscape plan for
120 LP/POD-34-03, Parc Place @ Short Pump Town Center, to its November 17, 2004, meeting.

121

122 Mr. Marshall - Madam Chairman, I have a case I would like to defer. It's Morgan Pointe.

123

124 Mrs. Ware - What page is it on?

125

126 Mr. Marshall - That, I don't know.

127

128 Ms. News - It's on Page 28.

129

130 Mr. Vanarsdall - You find the page first, Mr. Marshall, and then you find the case.

131

132 Mr. Marshall - Well, I'm lucky enough if I can remember the case.

133

134 **SUBDIVISION**

135

Morgan Pointe
(October 2004 Plan)

Foster & Miller, P.C. for Andronikos and Evangelia Moudilos and Winterfield Road Development, LLC: The 29.683-acre site proposed for a subdivision of 20, single-family homes is located on the west line of Pouncey Tract Road, approximately 2,975 feet north of the intersection of Nuckols Road and Pouncey Tract Road on parcel 734-776-1774. The zoning is A-1, Agricultural District. County water and septic tank/drainfield. **(Three Chopt) 20 Lots**

136

137 Mrs. Ware - Is there anyone in the audience in opposition to the deferral of subdivision
138 Morgan Pointe (October 2004 Plan), in the Three Chopt District? There's no opposition. Mr.
139 Marshall.

140

141 Mr. Marshall - Madam Chairman, I move that subdivision Morgan Pointe, be deferred to the
142 November 17 meeting, at the request of the Commission.

143

144 Mr. Vanarsdall - Second.

145

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

148

149 The Planning Commission deferred subdivision Morgan Pointe (October 2004 Plan), to its
150 November 17, 2004, meeting.

151

152 Mr. Silber - Are we aware of any other deferrals at this point?

153

154 Mr. Marshall - Yes. I have one more.

155

156 Mrs. Ware - The page.

157

158 Mr. Marshall - I don't have the page. I'm not good on pages.

159

160 Mrs. Ware - What is the case?

161

162 Mr. Marshall - Kain Estates.

163

164 Ms. News - That's on Page 21.

165

166 Mrs. Ware - Ms. News does the pages.

167 **SUBDIVISION (Deferred from the September 22, 2004, Meeting)**

168

Kain Estates
(September 2004 Plan)

Bay Design Group for Carolyn H. Leake, Trustee, and The Breeden Company, Inc.: The 175.442-acre site proposed for a subdivision of 97 single-family homes is located on the south line of Kain Road approximately 1,800 feet east of the Goochland-Henrico County boundary on parcels 734-769-4535, 733-770-2133, and 732-770-5049. The zoning is A-1, Agricultural District. Individual well and septic tank/drainfield.
(Three Chopt) 97 Lots

169

170 Mrs. Ware - Is there anyone in the audience in opposition to the deferral of subdivision
171 Kain Estates (September 2004 Plan), in the Three Chopt District? There's no opposition. Mr.
172 Marshall.

173

174 Mr. Marshall - Madam Chairman, I move that subdivision Kain Estates be deferred to the
175 November 17 meeting, at the request of the Commission.

176

177 Mr. Vanarsdall - Second.

178

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

181

182 The Planning Commission deferred subdivision Kain Estates (September 2004 Plan), to its
183 November 17, 2004, meeting.

184

185 Mrs. Ware - Are there any more deferrals? Okay.

186

187 Mr. Silber - Next on the agenda, would be those items listed as being on the Expedited
188 Agenda. We have a good number of these. These plans are plans that have been reviewed by
189 the County staff. There are no known issues at this point. The Commission member from the
190 district is comfortable with the plan. There is no concern from the applicant relative to the
191 conditions that have been suggested by the staff. So, these are placed on an expedited agenda so
192 that they can be heard more quickly and acted on. If any of these plans do have opposition or if
193 there are questions or concerns relative to these plans on the Expedited Agenda, we will pull
194 them off and hear them in the order on the agenda. Ms. News.

195

196 Ms. News - Yes, sir. Staff is aware of 10 requests for the Expedited Agenda. The first
197 one is on Page 2 of your agenda. This is a transfer of approval for POD-91-93, POD-105-95 and
198 POD109-73, Capital One Properties, which is Formerly Signet Bank Operations, in the Three
199 Chopt District.

200 **TRANSFER OF APPROVAL**

201

POD-91-93, POD-105-85 **McGuire Woods for RER Equities, Inc.:** Request for transfer of approval as required by Chapter 24, Section 24-106 of the Henrico County Code from Capitol One to RER/New Boston West Broad Street LLC and RER/New Boston Cox Road LLC. The 39.7-acre site is located at 11011 and 11013 W. Broad Street on parcels 746-760-8608 and 747-759-4312. The zoning is B-1, Business District and O-3, Office District and O-3C, Office District (Conditional). County water and sewer. **(Three Chopt)**

202

203 Mrs. Ware - Is there anyone in the audience in opposition to the transfer of approval
204 request for POD-91-93, Capital One Properties, in the Three Chopt District on the Expedited
205 Agenda? There's no opposition. Mr. Marshall.

206

207 Mr. Marshall - Madam Chairman, I move approval of the transfer of approval for POD-91-93,
208 POD-105-85, and POD-109-73, Capital One Properties, subject to the condition No. 1 on the
209 report.

210

211 Mr. Vanarsdall - Second.

212

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

215

216 The Planning Commission approved the transfer of approval request for POD-91-93, POD-105-
217 85 and POD-109-73, Capital One Properties (Formerly Signet Bank Operations) 11011 and
218 11013 W. Broad Street, subject to the new owners accepting and agreeing to be responsible for
219 continued compliance with the conditions for the original approval, and the following additional
220 condition:

221

222 1. The site deficiencies as detailed in the inspection report will be completed by RER/New
223 Boston West Broad Street LLC, as indicated and as scheduled in the letter from McGuire
224 Woods dated **October 14, 2004**.

225

226 Ms. News - The next request is on Page 11 of your agenda, POD-74-04, Petro Express,
227 in the Fairfield District.

228 **PLAN OF DEVELOPMENT**

229

POD-74-04
Petro Express –
2301 Mechanicsville
Turnpike (POD-10-80
Revised)

Obsidian, Inc. for Richmond Petroleum Marketing, 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 two-story, 6,323 square foot building to include a convenience store and office space, as well as fuel pumps and associated parking. The .897-acre site is located at the southeast corner of the intersection of Mechanicsville Turnpike (U.S. Route 360) and Bloom Lane, approximately 950 feet northeast of I-64 on parcel 799-728-4562. The zoning is B-3, Business District. County water and sewer. **(Fairfield)**

230

231 Mrs. Ware - Is there anyone in the audience in opposition to hearing POD-74-04, Petro
232 Express, in the Fairfield District on the Expedited Agenda? There's no opposition. Mr. Archer.

233

234 Mr. Archer - Madam Chairman, I move approval of POD-74-04, Petro Express, subject
235 to the annotations, the standard conditions for developments of this type, and additional
236 conditions Nos. 23 through 35.

237

238 Mr. Vanarsdall - Second.

239

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

242

243 The Planning Commission approved POD-74-04, Petro Express – 2301 Mechanicsville Turnpike
244 (POD-10-80 Revised) subject to the annotations on the plans, the standard conditions attached to
245 these minutes for developments of this type and the following additional conditions:

246

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

252 24. The entrances and drainage facilities on Mechanicsville Turnpike (State Route 360) shall
253 be approved by the Virginia Department of Transportation and the County.

254 25. A notice of completion form, certifying that the requirements of the Virginia Department
255 of Transportation entrances permit have been completed, shall be submitted to the
256 Department of Planning prior to any occupancy permits being issued.

257 26. The developer shall provide fire hydrants as required by the Department of Public
258 Utilities and Division of Fire.

259 27. Any necessary off-site drainage and/or water and sewer easements must be obtained in a
260 form acceptable to the County Attorney prior to final approval of the construction plans.

261 28. Deviations from County standards for pavement, curb or curb and gutter design shall be
262 approved by the County Engineer prior to final approval of the construction plans by the

- 263 Department of Public Works.
 264 29. The loading areas shall be subject to the requirements of Chapter 24, Section 24-97(b) of
 265 the Henrico County Code.
 266 30. Insurance Services Office (ISO) calculations must be included with the plans and
 267 contracts and must be approved by the Department of Public Utilities prior to the
 268 issuance of a building permit.
 269 31. Approval of the construction plans by the Department of Public Works does not establish
 270 the curb and gutter elevations along the Henrico County maintained right-of-way. The
 271 elevations will be set by Henrico County.
 272 32. Approval of the construction plans by the Department of Public Works does not establish
 273 the curb and gutter elevations along the Virginia Department of Transportation
 274 maintained right-of-way. The elevations will be set by the contractor and approved by
 275 the Virginia Department of Transportation.
 276 33. The location of all existing and proposed utility and mechanical equipment (including
 277 HVAC units, electric meters, junction and accessory boxes, transformers, and generators)
 278 shall be identified on the landscape plans. All equipment shall be screened by such
 279 measures as determined appropriate by the Director of Planning or the Planning
 280 Commission at the time of plan approval.
 281 34. Bulk storage of fuel shall be underground.
 282 35. No wrecked automobiles, nor automobiles incapable of being operated, shall be kept on
 283 the premises.
 284

285 Ms. News - The next request is on Page 24 of your agenda, subdivision Dunn's
 286 Pastures, in the Varina District.

287

288 **SUBDIVISION**

289

Dunn's Pastures
 (October 2004 Plan)

Engineering Design Associates for Howard R. & Barbara M. Dunn: The 20.321-acre site proposed for a subdivision of 7 single-family homes is located on the north line of Elko Road (State Route 156) and the west line of White Oak Road, opposite its intersection with Hurop Road, on parcel 856-703-3987. The zoning is A-1, Agricultural District. County water/individual well and septic tank/drainfield. **(Varina) 7 Lots**

290

291 Mrs. Ware - Is there anyone in the audience in opposition to subdivision Dunn's
 292 Pastures (October 2004 Plan), in the Varina District on the Expedited Agenda? There's no
 293 opposition. Mr. Jernigan.

294

295 Mr. Jernigan- Madam Chairman, first before I pass this case, I just want to make a note
 296 for the minutes that this subdivision is next to Csiki's Acres subdivision, which had significant
 297 drainage problems that they are trying to work out now. So, for the record, I want to let you
 298 know that this borders that property. So, we will have to be careful of that with Public Works.
 299 With that, I will move for approval of subdivision Dunn's Pastures (October 2004 Plan) subject
 300 to the annotations on the plans and the standard conditions for subdivision served by public

301 water, individual well and septic tank/drainfields.

302

303 Mr. Vanarsdall - Second.

304

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

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

307

308 The Planning Commission granted conditional approval to subdivision Dunn's Pasture (October

309 2004 Plan) subject to the standard conditions attached to these minutes for subdivision served by

310 public water, individual well and septic tank/drainfield, and the annotations on the plan.

311

312 Ms. News - The next request is on Page 25 of your agenda, subdivision Pocahontas

313 Estates, in the Varina District, and I would also like to bring your attention to the addendum on

314 Page 4. There is a revised recommendation and indicates that Public Works has granted the

315 waiver for the cul-de-sac lane, so staff can now recommend approval.

316

317 **SUBDIVISION**

318

Pocahontas Estates
(October 2004 Plan)

Engineering Design Associates for Pruitt Properties, Inc. and Loftis Real Estate & Development, Inc.: The 26.33-acre site proposed for a subdivision of 16, single-family homes is located on the west side of Willison Road, approximately 900 feet south of I-895 on part of parcel 811-696-1854 and 812-695-6589. The zoning is A-1, Agricultural District and ASO, (Airport Safety Overly) District. Individual well and septic tank/drainfield.
(Varina) 16 Lots

319

320 Mrs. Ware - Is there anyone in the audience in opposition to subdivision Pocahontas

321 Estates (October 2004 Plan), in the Varina District on the Expedited Agenda? There's no

322 opposition. Mr. Jernigan.

323

324 Mr. Jernigan- Madam Chairman, I move for approval of subdivision Pocahontas Estates

325 (October 2004 Plan) subject to the annotations on the plans and the standard conditions for

326 subdivision not served by public utilities and additional conditions Nos. 11 through 15, and the

327 addendum approval by Public Works.

328

329 Mr. Archer - Second.

330

331 Mrs. Ware - The motion was made by Mr. Jernigan and seconded by Mr. Archer. All in

332 favor say aye...all opposed say nay. The ayes have it. The motion is passed.

333

334 Mr. Marshall - Madam Chairman, please note my abstention.

335

336 Mrs. Ware - So noted.

337

338 The Planning Commission granted conditional approval to subdivision Pocahontas Estates
339 (October 2004 Plan) subject to the standard conditions attached to these minutes for subdivision
340 not served by public water, the annotations on the plans and the following additional conditions:

341

342 11. Each lot shall contain at least 43,560 square feet.

343 12. The detailed plant list and specifications for the landscaping to be provided within the 10-
344 foot-wide planting strip easement along I-895 shall be submitted to the Department of
345 Planning for review and approval prior to recordation of the plat.

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

348 14. The applicant shall consult with the Division of Recreation & Parks on any historical
349 findings as development progresses. A copy of any study identifying and protecting
350 historic resources, which may be required by a state or federal agency through its
351 permitting process, shall be submitted to the Department of Planning and the Division of
352 Recreation & Parks prior to final approval of the construction plans.

353 15. If historical resources are identified on site, the developer shall make best efforts to
354 coordinate the timing of construction activities with the Director of Recreation & Parks to
355 allow mapping and photo documentation.

356

357 Ms. News - The next request is on Page 27 of your agenda, subdivision Meadow Oaks,
358 in the Varina District.

359

360 **SUBDIVISION**

361

Meadow Oaks
(October 2004 Plan)

Foster & Miller, P.C. for Michael J. Pastore and Michaels Enterprises: The 32.8-acre site proposed for a subdivision of 26, single-family homes is located at the southwest corner of Meadow and Drybridge Roads on parcel 836-717-2759. The zoning is A-1, Agricultural District. Public water and septic tank/drainfield. **(Varina) 26 Lots**

362

363 Mrs. Ware - Is there anyone in the audience in opposition to subdivision Meadow Oaks
364 (October 2004 Plan), in the Varina District on the Expedited Agenda? There's no opposition.

365 Mr. Jernigan.

366

367 Mr. Jernigan- Madam Chairman, I move for approval of subdivision Meadow Oaks
368 (October 2004 Plan) subject to the annotations on the plans and the standard conditions for
369 subdivision served by public water and not public sewer and the following additional conditions
370 Nos. 11, 12 and 13.

371

372 Mr. Vanarsdall - Second.

373

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

376

377 The Planning Commission granted conditional approval to subdivision Meadow Oaks (October
378 2004 Plan) subject to the standard conditions attached to these minutes for subdivision served by
379 public water and not public sewer, the annotations on the plans and the following additional
380 conditions:

381

382 11. The detailed plant list and specifications for the landscaping to be provided within the 25-
383 foot-wide planting strip easement along Drybridge Road shall be submitted to the
384 Department of Planning for review and approval prior to recordation of the plat.

385 12. The plan must be redesigned to provide at least the one-acre minimum lot area on lots 22
386 through 25 as required and as regulated by Chapter 24, of the Henrico County Code.

387 13. The entire Pastore parcel shall be included in subdivision unless a split was recorded
388 prior to September 10, 2004.

389

390 Ms. News - The next request is on Page 29 of your agenda, subdivision The Village @
391 Willow Run, in the Brookland District. There is also on Page 7 of your addendum, which
392 includes an added condition requiring a cross access agreement to be submitted for the shared
393 access on the private road.

394

395 **SUBDIVISION**

396

The Village @ Willow Run
(October 2004 Plan)

**Foster & Miller, P.C. and Verizon Virginia, Inc. and Wilton
Development Corporation:** The 17.3-acre site proposed for a
subdivision of 87 townhouses for sale is located on the north line
of Wistar Road, approximately 413 feet east of Shrader Road on
parcels 767-751-0480 and 5291; 767-752-3012, 5942 and 7623;
part of 766-752-5952. The zoning is RTHC, Residential
Townhouse District (Conditional). County water and sewer.
(Brookland) 87 Lots

397

398 Mrs. Ware - Is there anyone in the audience in opposition to subdivision The Village
399 @ Willow Run (October 2004 Plan), in the Brookland District on the Expedited Agenda?
400 There's no opposition. Mr. Vanarsdall.

401

402 Mr. Vanarsdall - Madam Chairman, I move for approval of subdivision The Villages @
403 Willow Run (October 2004 Plan) subject to the annotations on the plans and the standard
404 conditions for subdivision served by public utilities and the following additional conditions No.
405 13 and on the addendum added condition No. 14.

406

407 Mr. Marshall - Second.

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

410

411 The Planning Commission granted conditional approval to subdivision The Village @ Willow
412 Run (October 2004 Plan) subject to the standard conditions attached to these minutes for
413 subdivision served by public utilities, the annotations on the plans and the following additional

414 conditions:

415

416 13. The proffers approved as part of zoning case C-19C-04 shall be incorporated in this
417 approval.

418 14. Evidence of a joint ingress/egress and maintenance agreement must be submitted to the
419 Department of Planning and approved prior to issuance of a certificate of occupancy for
420 the development.

421

422 Ms. News - The next request is on Page 33 of your agenda, subdivision Middleton,
423 Section G (September 2004 Plan), in the Fairfield District.

424

425 **SUBDIVISION**

426

Middleton, Section G
(September 2004 Plan)
(A Resubdivision of Middleton,
Section B, Block C, Lot 21 and a
Reserved Parcel)

Landmark-Fleet Surveyors, P.C. for William F. Cumbo, III:
The 1.07-acre site proposed for a subdivision of 3, single-family
homes is located at the southwest corner of Littleton Boulevard
and Wilmecote Avenue on parcels 782-758-3742 and 3854. The
zoning is R-3, One-Family Residence District. County water and
sewer. **(Fairfield) 3 Lots**

427

428 Mrs. Ware - Is there anyone in the audience in opposition to subdivision Middleton,
429 Section G (September 2004 Plan), in the Fairfield District on the Expedited Agenda? There's no
430 opposition. Mr. Archer.

431

432 Mr. Archer - Madam Chairman, I move for approval of subdivision Middleton, Section
433 G (September 2004 Plan) subject to the annotations on the plans and the standard conditions for
434 subdivision served by public utilities.

435

436 Mr. Vanarsdall - Second.

437

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

440

441 The Planning Commission granted conditional approval to subdivision Middleton, Section G
442 (September 2004 Plan) subject to the standard conditions attached to these minutes for
443 subdivision served by public utilities and the annotations on the plans.

444

445 Ms. News - The next request is on Page 35 of your agenda. We have a landscape and
446 lighting plan LP/POD-3-04, Brook Run Shopping Center Parcel 4B, in the Fairfield District.

447 **LANDSCAPE AND LIGHTING PLAN**

448

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

Timmons Group for New Richmond Properties, LLC:
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 0.83-acre site is located at Brook Run

Shopping Center, Brook Road (U. S. Route 1), on parcel 784-748-8322. The zoning is B-3C, Business District (Conditional).
(Fairfield)

449

450 Mrs. Ware - Is there anyone in the audience in opposition to the landscape and lighting
451 plan for LP/POD-3-04, Brook Run Shopping Center - Parcel 4B, in the Fairfield District on the
452 Expedited Agenda? There's no opposition. Mr. Archer.

453

454 Mr. Archer - Madam Chairman, I move for approval of LP/POD-3-04, Brook Run
455 Shopping Center - Parcel 4B, subject to the annotations on the plans and the standard conditions
456 for landscape and lighting plans.

457

458 Mr. Vanarsdall - Second.

459

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

462

463 The Planning Commission approved the landscape and lighting plan for LP/POD-3-04 Brook
464 Run Shopping Center – Parcel 4B, subject to the annotations on the plans and the standard
465 conditions attached to these minutes for landscape and lighting plans.

466

467 Ms. News - The next request is on Page 36 of your agenda, subdivision landscape
468 plan, New Market Place Subdivision, in the Varina District.

469

470 **LANDSCAPE PLAN - SUBDIVISION**

471

New Market Place
Subdivision

Engineering Design Associates for New Market, LLC:
Request for approval of a landscape plan as required by Chapter
24, Sections 24-106 and 24.106.2 of the Henrico County Code.
The site is located along the east line of New Market Road (State
Route 5) and the south line of Wilderness Drive, approximately
250 feet southeast of the intersection of New Market Road and
Wilderness Drive on parcels 801-703-7934, 801-703-7169 and
801-703-3666. The zoning is R-3, One-Family Residence
District. **(Varina)**

472

473 Mrs. Ware - Is there anyone in the audience in opposition to hearing subdivision
474 landscape plan New Market Place Subdivision, in the Varina District on the Expedited Agenda?
475 There's no opposition. Mr. Jernigan.

476 Mr. Jernigan - Madam Chairman, I move for approval of landscape plan New Market
477 Place Subdivision, subject to the annotations on the plans and the standard conditions for
478 landscape plans.

479

480 Mr. Vanarsdall - Second.

481

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

484

485 The Planning Commission approved the landscape plan for New Market Place Subdivision,
486 subject to the annotations on the plans and the standard conditions attached to these minutes for
487 landscape plans.

488

489 Mr. Marshall - Madam Chairman, please note my abstention.

490

491

492 Mrs. Ware - So noted.

493

494 Ms. News - The final item is on Page 37 in your agenda, landscape plan, LP/POD-1-
495 04, Glenside Commons – Phase I, in the Brookland District.

496

497 **LANDSCAPE PLAN – PHASE ONE**

498

LP/POD-1-04
Glenside Commons, Phase I
(Glenside Drive and Bethlehem Road)

James River Nurseries for Larry Page: Request for approval of a landscape plan as required by Chapter 24, Sections 24-106 of the Henrico County Code. The 3.62-acre site is located at the northwest corner of the intersection of Bethlehem Road and Glenside Drive on parcel 768-747-2537. The zoning is O-2C, Office District (Conditional) (**Brookland**)

499

500 Mrs. Ware - Is there anyone in the audience in opposition to hearing the landscape plan
501 for LP/POD-1-04, Glenside Commons, Phase I, in the Brookland District on the Expedited
502 Agenda? There's no opposition. Mr. Vanarsdall.

503

504 Mr. Vanarsdall - Madam Chairman, I recommend approval of landscape plan,
505 LP/POD-1-04, Glenside Commons, Phase I, with the annotations on the plans and the standard
506 conditions for landscape plans.

507

508 Mr. Archer - Second.

509

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

512 The Planning Commission approved the landscape plan for LP/POD-1-04, Glenside Commons,
 513 Phase 1, subject to the annotations on the plans and the standard conditions attached to these
 514 minutes for landscape plans.

515

516 Mr. Silber - Next on the agenda would be the extensions of conditional subdivision
 517 approval. As you can see on the agenda, there is one for informational purposes and does not
 518 require Planning Commission action and there are two requested extensions of conditional
 519 approval which do require Planning Commission action. Mr. Wilhite will discuss each of those.

520

521 Mrs. Ware - Good morning, Mr. Wilhite.

522

523 Mr. Wilhite - Good morning. The one extension we have for the Director of Planning is
 524 Dry Dridge (October 2003 Plan). The Director of Planning is extending this subdivision for one
 525 year. The two that do require Planning Commission approval are Magnolia Ridge Cluster Lot
 526 (October 1994 Plan) and the Old Williamsburg Road (October 1999 Plan). Staff is
 527 recommending the extensions of one year for both of these subdivisions.

528

529 **SUBDIVISION EXTENSIONS OF CONDITIONAL APPROVAL:**

530

531 **FOR INFORMATIONAL PURPOSES ONLY**

532

Subdivision	Magisterial District	Original No. of Lots	Remaining Lots	Previous Extensions	Year(s) Extended
Dry Bridge (October 2003 Plan)	Varina	21	21	0	1 Year (10/26/05)

533

534

535 **FOR PLANNING COMMISSION APPROVAL**

536

Subdivision	Magisterial District	Original No. of Lots	Remaining Lots	Previous Extensions	Year(s) Extended
Magnolia Ridge Cluster Lot (October 1994 Plan) (Formerly Stuarts Ridge)	Fairfield	387	21	7	1 Year (10/26/05)
Old Williamsburg Road (A Ded. of a Portion of Old Williamsburg Road) (October 1999 Plan)	Varina	0	0	4	1 Year (10/26/05)

537

538 Mr. Archer - Can we do both of these with one motion?

539

540 Mr. Silber - We can do both of those with one motion.

541 Mr. Archer - Well, I will move approval of the subdivision extensions.

542

543 Mr. Vanarsdall - Second.

544

545 Mrs. Ware - The motion was made by Mr. Archer and seconded by Mr. Vanarsdall.

546 All in favor say aye...all opposed say nay. The motion passes.

547

548 The Planning Commission approved the subdivision extensions for Magnolia Ridge Cluster Lot
549 (October 1994 Plan) (Formerly Stuarts Ridge) and Old Williamsburg Road (A Dedication of a
550 Portion of Old Williamsburg Road) (October 1999 Plan) for one year, October 26, 2005.

551

552 Mr. Silber - Before we get into the regular agenda, I would like to make one quick
553 announcement. Kate, would you stand please. Kate Wolfrey is an intern with the Planning
554 Department. Kate is a senior at VCU studying in the School of Urban Studies and Planning.
555 She is with us through December. She will be graduating in December. So, I just wanted to let
556 you know that she is here helping us and if you recognized the last name, or if you didn't
557 recognize the last name, "Wolfrey," her father is the County Administrator in Goochland
558 County. So, she is somewhat familiar with local government and planning commissions and
559 boards of supervisors. I just wanted to let you know that she is here observing and helping us
560 out in the Planning Department.

561

562 Mr. Vanarsdall - We're glad to have you.

563

564 Mrs. Ware - We're glad to have you.

565

566 Mr. Jernigan - Thank you.

567

568 Mr. Silber - Okay. Our first plan on the agenda is a plan of development that was
569 deferred from the September 22, 2004, meeting. This is POD-60-04, Lee Conner Realty Office
570 Building.

571

572 **PLAN OF DEVELOPMENT (Deferred from the September 22, 2004, Meeting)**

573

POD-60-04

Lee Conner Realty Office
Building-

245 East Williamsburg Road

Engineering Design Associates for Lee Conner Realty 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 two-story, 5,280 square foot office building and associated parking. The 0.94-acre site is located at 245 E. Williamsburg Road (U.S. Route 60), approximately 500 feet east of the intersection of Williamsburg Road (U.S. Route 60) and Raines Avenue on parcel 828-715-6950. The zoning is B-1, Business District. County water and sewer. **(Varina)**

574

575 Mrs. Ware - Is there anyone in the audience in opposition to POD-60-04, Lee Conner
576 Realty Office Building, in the Varina District. No opposition.

577

578 Mr. Jernigan - Well, wait a minute, there's a hand up.

579

580 Mrs. Ware - Are you in opposition, sir?

581

582 Man from Audience - No, ma'am, but we will speak on it. We have some opposition on the
583 conditions.

584

585 Mrs. Ware - Okay. Good morning, Mr. Cooper.

586

587 Mr. Cooper - Good morning, Madam Chairman and members of the Commission. The
588 handout to you this morning is the latest revision to this plan. There are two outstanding issues
589 regarding the previous plan, the first being the required right-of-way dedication, which was not
590 shown on the plan. As you will see in the revised plan before you this morning, again, it still
591 does not indicate the correct right-of-way dedication. However, the staff has annotated the plan
592 accordingly. And, as well, the staff is recommending condition No. 23, as listed on your agenda,
593 which requires the applicant to dedicate the correct right-of-way, prior to any certificates of
594 occupancy.

595

596 The second issue deals with the proposed layout. The previous plan and this revised plan still
597 indicate parking to be located in front of the proposed buildings. The design is in conflict with
598 the Sandston Special Strategy Area Guidelines, which indicate the small pedestrian oriented
599 character of Sandston should be preserved. One way to do so is to provide the parking at the rear
600 and sides of buildings. This concept is further detailed in those guidelines which were adopted
601 by the Board of Supervisors on December 10, 2002. Staff is in support of this concept and
602 recommends that the site be redesigned to locate the building closer to the front property line and
603 provide the parking in the rear. Besides staff's concern for the layout, all other issues are
604 resolved at this time, again, including the condition requiring the right-of-way dedication prior to
605 certificate of occupancy. The applicant is here to discuss this issue, and I'm happy to answer
606 any questions you may have as well.

607

608 Mrs. Ware - All right. Are there any questions of Mr. Cooper from the Commission?

609

610 Mr. Jernigan - Well, Mike, I guess we have done just about all we can do on this so I
611 guess we will hear from the applicant.

612

613 Mr. Cooper - Okay.

614

615 Mrs. Ware - Good morning.

616

617 Mr. Montgomery - Good morning, Madam Chairman and members of the Commission, my
618 name is John Montgomery and I'm here on behalf of the applicant. It is interesting, as I was
619 sitting there listening, you know, always considering what I had planned to say and trying to

620 listen to what is said, I hope you picked up on it, and that the notion is that on the one hand we
621 are being asked to dedicate 15 feet so that some time in the future, 30 years or so down the road,
622 we could have a four-lane highway through Sandston. Yet, on the other side, within the same
623 breath, almost, we have been asked to change our parking configuration so that we can have
624 more pedestrians, and maintain the pedestrian village nature of Sandston. It seems that those are
625 inconsistent. As a beginning place I hope that you consider that as you consider our request.

626

627 Our request, quite simply, is very straightforward and that is that the 15-foot easement that's
628 being requested along Route 60 is unnecessary. It's unrealistic, as we just said. It's not in
629 keeping with the design and with the desire to maintain the village nature of Sandston. It's not
630 consistent. If you are familiar with the area Citizen's & Farmer Bank, right down the street, it's
631 not required to dedicate such an easement. The parking is not all in the rear and if that is not one
632 of the nicest building, if not the nicest building, it's one of the nicest new buildings in the area.
633 And, that is the kind of character that we would like to see and we propose to go forward. And,
634 finally, we suggest to you that it is not within the POD ordinance. If you look at the portion of
635 the POD ordinance regarding right-of-ways, one of the things it says is, "Easement or right-of-
636 ways....," this is a requirement that can be made, "Easements or right-of-ways for all facilities
637 shall be public maintained. Such easements shall be clearly defined for the purpose intended."
638 The rest of the POD, you talk about things such as utilities and easements for that. That's
639 obviously going to be publicly maintained or maintained by persons other than the applicant. In
640 this particular case, Route 60 is not something that is part of our application. It's been forced
641 upon us. We are not asking for any roadways that we will create and dedicate to the County and
642 thus provide easements to. We would suggest to you that that is the purpose of that Section. I
643 will tell you that as we go forward if in fact you require that we dedicate an easement, we will
644 continue to oppose that and continue to oppose it up the proper means.

645

646 Finally and in conclusion, if you look at, it's really two sections Nos. 23 and 27. Number 23
647 talks about the requirement for the right-of-way and number 27 talks about the fact that the
648 building setback would be measured from the right-of-way as shown on your plat today. And
649 then it goes on to say, "no occupancy permit would be issued until such right-of-ways are
650 gained." If you are going to require the, and if you are going to pass it with the condition of the
651 right-of-way, which we would ask to be stricken, it seems grossly unfair that that be dedicated
652 prior to the occupancy certificate. It's a nice little trick to throw in there, but if you are going to
653 require it, make it a part of the building permit process so that we can bring this thing to a
654 conclusion, if so, we could be denied our building permit and given an opportunity to pursue it.
655 But, don't make us build a building and then seek our occupancy permit. And throughout the
656 conditions that you have in there, it's interesting that sometimes there's a building permit
657 required and at other times there's an occupancy certificate required. And, obviously, occupancy
658 certificate makes us go as far out on the limb as we possibly can go before being able to be
659 denied that pursuant to this easement. So, if you are going to require it, make it up front and let
660 us bring it to a head and no ill feelings will be harbored but we will get it resolved one way or
661 other as to whether it's a legitimate requirement. I'll be pleased to answer any questions you
662 have. Mr. Jernigan and Mr. Donati are very familiar with the process as having worked through
663 it with the staff and worked through it with the applicant. But, it just seems grossly unfair to
664 require this when in fact in the future, sometime in the future, we are going to put a four-lane

665 highway, which is absolutely contrary to the pedestrian village nature of Sandston, which is what
666 we would like to maintain.

667

668 Mrs. Ware - Are there any questions for Mr. Montgomery?

669

670 Mr. Jernigan - John, you know who we get this for. We get it for the State, not for the
671 County.

672

673 Mr. Montgomery - I know that, but the State is not here today and if the State were here I'd
674 be telling them the same thing. And, that is, that if you want it, come buy it. We are not saying
675 that it is necessary. Nobody is saying that it is necessary to our project. Absolutely, no one has
676 once said that this easement will in anyway enhance the project. What it is for is for a four-lane
677 highway, which no one knows when will be built, but we will all probably agree somewhere
678 about several decades away, which will be contrary to what we do know today and that is that
679 we have a pedestrian village, a wonderful place to live and a wonderful place to shop. Our folks
680 want to make an investment there. VDOT, I understand, has desires but they are not there
681 everyday and they are not the one getting ready to build a significant enhancement to the existing
682 village nature of Sandston. So, if VDOT were here I would tell them the same thing.

683

684 Mr. Jernigan - We've got two issues, the right-of-way and the building. So, I'm going to
685 take the building out of the equation. We don't have to worry about that, flipping the building
686 with the parking because I know that you are not going to do that. So, I'm going to move that
687 away.

688

689 Mr. Montgomery - That's a good start.

690

691 Mr. Jernigan - Well, I know that you are not going to change it because we can't even get
692 through on the right-of-way. Now, Greg told me before he called VDOT, and VDOT told him,
693 that we don't need that property, and I said, that's fine. If they will call Bob Pinkerton and tell
694 him that and he relays that to me, then I won't ask for it. But, that didn't happen so on October
695 24 I called the VDOT office myself in Sandston I spoke to Bobby Campbell. Robbie Prezioso is
696 the agent there and he was in meetings all week but I spoke to Campbell on this situation and he
697 told me definitely that VDOT does want that 15 feet. So, VDOT says, "yes they want it." This
698 case has been deferred a couple of times because of this. I spoke to the County Attorney
699 because, and you can appreciate this, I felt we needed to go up the legal ladder and find out what
700 is going on. Mr. Rapisarda informed me that I could pass this case with the conditions as they
701 are. Now, whether you get it straight at building permit or at occupancy it really doesn't matter
702 because it's not a surprise because we know that this is an issue. So, I'm prepared to pass this
703 case today with the conditions that's on here. Greg expressed to me that he's not going to let me
704 do that. So, you being his attorney, you need to tell me which do you want. Do you want me to
705 pass it with the conditions as they are and you take some time to think about it and maybe
706 change your mind or do you want me to deny this case, on your request?

707

708 Mr. Montgomery- Mr. Jernigan, we are not going to request that you deny this case. We are
709 going to request that you pass it without these conditions. We are not going to agree to these

710 conditions. These conditions are contrary to good planning on this particular project. We
711 believe they are contrary to the statute. I can appreciate your legal counsel's advice but neither
712 he nor I are the final authority on this. So, we are not going to agree to those conditions. We
713 think the conditions are inappropriate, and we would ask that those conditions be stricken.

714

715 Mr. Jernigan - John, do you know how many times somebody has turned down a right-
716 of-way dedication?

717

718 Mr. Montgomery - I don't know how many, but I will tell you this, I can tell you that there
719 are hundreds of thousands of times where VDOT has walked in and paid money for what they
720 want, as opposed to coming, and, quite frankly, using the heavy arm of a planning process that in
721 my opinion, my humble opinion, but in my opinion in this case is reaching too far. Now there is
722 no reason for this to be broader than this particular case. But, in this particular case, we believe
723 that the truth of the matter is, and the final issue is here whether in fact you can require, this
724 Planning Commission can require, that we give up an easement that VDOT could otherwise
725 condemn. Whatever they want to do, they can do it. They have the authority to do that. But, it's
726 not, we believe is not appropriate at this point in time to hold up a plan of development when the
727 easement has absolutely nothing to do with the welfare and safety that we are proposing to go
728 forward. It's not been done in other places and whether if it was by oversight or whatever the
729 circumstance may be, at Citizens & Farmers it was not required and that is one of the.... Now, I
730 know that since then there have been cases where it was required. And y'all are more familiar
731 with those then I am.

732

733 Mr. Jernigan - That was an oversight.

734

735 Mr. Montgomery - Okay, it was an oversight but where was VDOT with their oversight. If
736 they want it now they've got to go buy it from Citizens & Farmers. Why should we be treated
737 the same? That's a fair question.

738

739 Mr. Jernigan - Randy, would you like to say something?

740

741 Mr. Silber - Yes. I think I would like to say several things. Mr. Montgomery, I
742 appreciate where you are coming from and I understand your position but I guess I would have
743 to respectfully disagree. I do believe that VDOT has requested this dedication. That it is
744 standard procedure with Henrico County, if this was a County road or a VDOT road, that we
745 would be recommending this condition to the Planning Commission and it has been accepted
746 consistently, as far as I know, for many, many years. If C & F Bank did not have that condition
747 imposed I would have to say that it was an oversight and we will have to look into that. I do
748 believe that the Sandston Study and the village concept that has been recommended and
749 endorsed by the Board, does contemplate a wider road, but it also contemplates traffic calming
750 methods by having bump outs, parallel parking and other techniques that would actually slow
751 traffic through here and really create the village concept. So, I don't think that we are looking at
752 widening and speeding up traffic. We are looking at doing the opposite. But, you do need
753 additional right-of-way to be able to do that and facilitate pedestrian movement that we believe
754 is important along here. I really do believe that this condition is appropriate. I continue to

755 recommend to the Planning Commission that they approve this POD with this condition. I have
756 no problems tying it to the time of building permits, whether the Commission wants to do that,
757 I'm fine with tying it to the building permits. It causes you to have to provide the dedication
758 earlier or take some action relative to that. But, I just wanted to get that out for Mr. Jernigan's
759 benefit.

760

761 Mr. Montgomery - That's all well and good and that's expected and I appreciate you making
762 that a part of today's discussion. If I may, and then we will close. The portion of the POD
763 statute regarding easements, particularly it says, "such easements shall be clearly defined for the
764 purpose intended." And I take it that the definition for "the purpose intended" is for the future
765 widening of Route 60. It is my understanding, by reading everything, there is no requirement of
766 the easement directly regarding this project. Is that correct? And, if the other gentleman needs
767 to speak, that's fine too. As we go forward this will be important. I just want to make sure that's
768 what's written.... The only reason that we are requiring this is for the widening of Route 60. Is
769 that correct, sir?

770

771 Mr. Cooper - I just want to clarify for the record that it is not an easement but rather a
772 dedication to the State, that right-of-way.

773

774 Mr. Silber - That's correct and that's what the condition says. It says "the right-of-
775 way" for the widening would be dedicated.

776

777 Mr. Montgomery - I beg your pardon. I used the word easement, but right-of-way, okay.
778 Thank you. We again we oppose conditions No. 23 and No. 27 and ask if you are going to
779 require those conditions, that it be changed as I had suggested, I believe has been somewhat
780 agreed to, and that is that we do it on the front end and that way we can bring this to a resolution.

781

782 Mr. Jernigan - You want to have it at the time of building permit?

783

784 Mr. Montgomery - Yes.

785

786 Mr. Jernigan - Okay. I'm fine with that.

787

788 Mr. Archer - May I ask a question, Mr. Jernigan, before you go forward. Mr.
789 Montgomery, in the event you pursue to another level, at what point would some resolution be
790 brought to this? What authority would decide either in your favor or against you?

791

792 Mr. Montgomery - We do have the right to appeal to the Board of Supervisors, so that would
793 be our next step.

794 Mr. Archer - What if you are not upheld, would you still pursue it?

795

796 Mr. Montgomery - Quite possibly. You spell principal two ways and we have got to figure
797 out which one we are dealing with.

798

799 Mr. Archer - And where would you go from that point, some State body?

800
801 Mr. Montgomery - Yes.
802
803 Mr. Archer - That's all that I have.
804
805 Mr. Montgomery - Thank you. Thank you for your time.
806
807 Mrs. Ware - Thank you, Mr. Montgomery.
808
809 Mr. Donati - John, I have a question before you leave.
810
811 Mr. Montgomery - I'll answer your question.
812
813 Mr. Donati - Madam Chairman, I have a question, maybe from staff or whoever could
814 address it. Does VDOT have on file a plan for widening Route 60 through the Town of
815 Sandston? Do we know that to be a fact?
816
817 Mr. Silber - I don't know if there is a plan. Mr. Jennings is here and he may be able to
818 address that.
819
820 Mrs. Ware - Good morning, Mr. Jennings.
821
822 Mr. Jennings - Good morning. No, there is not currently a plan to do so, but this is to carry out
823 our Major Thoroughfare Plan. VDOT is looking to get it now so that we can carry it out when
824 the plan does come on. But, as Randy addressed it, it's looking at that whole concept.
825
826 Mr. Donati - Usually most of our dedication, that's been required in the County, is
827 connected to the Major Thoroughfare Plan. And, if we have that plan on our map, we ask for the
828 dedication.
829
830 Mr. Jennings - Correct.
831
832 Mr. Donati - There are instances where there is not and it's just a regular rural road or
833 what have you. We don't usually require any.
834
835 Mr. Jennings - With any development that comes in, administrative or normal POD, we ask for
836 the right-of-way dedication to carry out our Major Thoroughfare Plan and on some smaller
837 subdivisions we want to at least get the 50-foot right-of-way.
838 Mr. Donati - Is the Major Thoroughfare Plan our plan or VDOT's plan for Route 60?
839
840 Mr. Silber - It is our plan.
841
842 Mr. Donati - Is that in our State's plan that we project to VDOT every Fall?
843
844 Mr. Jennings - It's our plan but VDOT's in agreement with it.

845

846 Mr. Donati - Usually, we present our six-year plan to VDOT every year requesting the
847 improvements we would like to see made to State roadways through our County. And, I was just
848 wondering if that is on our six-year plan.

849

850 Mr. Silber - I'm not aware, Mr. Donati, that it is.

851

852 Mr. Donati - I don't believe it is.

853

854 Mr. Jennings - It's not on the six-year plan, no, sir.

855

856 Mr. Silber - Mr. Donati, even when roads are on the Major Thoroughfare Plan, without
857 road designs to improve them and not on any type of Capital Improvements Program or a State
858 Six-Year Program, we still request the dedication based on the ultimate design of that road and
859 it's no different in this case.

860

861 Mr. Donati - Do we have the ultimate design for every roadway in our County?

862

863 Mr. Silber - Public Works can tell you the ultimate right-of-way based on the Major
864 Thoroughfare Design, yes, sir. So, they can tell us, based on the road plan, the Major
865 Thoroughfare Plan, what the ultimate right-of-way is necessary for that road.

866

867 Mrs. Ware - All right, Mr. Jernigan.

868

869 Mr. Silber - I have one other question of Mr. Montgomery, if I could. Could you,
870 again, clarify for me the reason why you want condition No. 23 to reflect this requirement at the
871 time of building permit versus the time of certificate occupancy?

872

873 Mr. Montgomery - Yes, because if we wait until the certificate occupancy, for this to be
874 denied, conceivably, someone could say, well we have not suffered any damages until certificate
875 of occupancy is refused. Thus, we have to build a building, hold short of moving into it, have a
876 banker sitting there wondering what's going on and then we get to go through the process. So,
877 what I want you to do, and I don't believe this is asking much, but we just need to bring this to a
878 quick conclusion and one way to do so is for y'all.... Once you make your decision today,
879 depending on what it is, I will take our further action and then ultimately only, once our building
880 permit is denied, then we would be in a spot to take action.

881 Mr. Marshall - It's a standing to sue issue, basically, Mr. Silber. Basically, he's saying that he
882 wouldn't have much standing if he... He would have to go all the way out to the occupancy
883 stage to get denied to have standing versus applying for a building permit and getting denied and
884 then have standing.

885

886 Mr. Montgomery - And I would suggest that the record should reflect that I may not have
887 standing. Perhaps, arguably, one could say I wouldn't have standing but otherwise it makes it
888 easier for everybody. This does not have to be super complicated. It just needs to be gone
889 through the process and ultimate decision to be made. And the interesting thing is, I think it was
890 suggested that rarely or the question was how many times has this ever been turned down. If the
891 answer to that rhetorical question that I don't know is zero or nearly zero, the request of the
892 applicant, then we certainly need to get it quickly to a place where it can be resolved where there
893 is an appropriate mechanism. And the best way to do that is to frontload it. So, that's why the
894 request is made.

895

896 Mrs. Ware - But it can be resolved regardless of occupancy or building permit.

897

898 Mr. Montgomery - Perhaps it can but y'all have some very good lawyers who will argue that
899 until I don't have an occupancy certificate where is my harm.

900

901 Mrs. Ware - But it's incumbent upon you to argue that point.

902

903 Mr. Montgomery - Yes, ma'am, it is but I would suggest to you that as a matter of fairness,
904 which I know whatever y'all do when you walk in the door, walk out the door, you ultimately
905 want to be legal and fair. But, as a matter of fairness you would use gainsmanship to put my
906 client at a greater disadvantage, then to otherwise going up against one of the best legal outfits in
907 the state if not beyond that when it comes to land use issues. So, I would kindly and respectfully
908 request that that be made. And, I'm certain that those of you who may oppose our request would
909 recognize the legitimacy of our asking the question, would ensure that we are able to do that in a
910 fair and affordable and timely fashion. So, I would ask that that be done.

911

912 Mr. Jernigan - John, I'll answer the question I asked you earlier. It's zero. We never had
913 anybody to turn.... As a matter of fact, I have two other cases today where they are dedicating
914 right-of-way. You know, it's just been a standard procedure through time.

915

916 Mr. Montgomery - That being the case, Mr. Jernigan, I'd say let's get it in as cleared fashion
917 as we can so that we are not wrestling over standard issues, instead we are wrestling over the
918 legal question. I think that is a fair request. Everybody argues about the judiciousness of things
919 and one reason they become judicious is because there are so many issues on the table. I'm
920 asking you to take an issue that may not even be on the table, but why leave it out there. Let's
921 just make it where we can go forward and get this thing resolved. That's the kind of thing I can
922 ask and I don't know how you can deny that with a straight face. It is only one reason for you to,
923 and that's to stack the deck against us so as we go forward asking for ultimate determination that
924 we have to do these ancillary things.

925 Mr. Jernigan - Well, I'll say this for the record, Roma's, which was the last POD that
926 came through did dedicate their 15 feet and that's right down the street from them. So, at this
927 point, after that and seeking, you know, legal counsel, I'm prepared to pass this with the
928 conditions that we have and I guess what you would have to do is appeal it to the Board of
929 Supervisors. Unless you want me to deny this case, I'm going to pass it as is.
930

931 Mr. Montgomery - And you are not going to remove the occupancy permit?
932

933 Mr. Jernigan - Yes, I will change it from occupancy permit.... I want to make a note for
934 the record that in condition No. 23 that the building permit issue rather than occupancy permit
935 would be at the time that you have to dedicate the property. Okay.
936

937 Mr. Archer - So, we are changing the word "occupancy" to "building."
938

939 Mr. Jernigan - No. They will have to dedicate it at building permit.
940

941 Mr. Archer - Yes, I think that's what I'm saying. In other words, it says: The right-of-
942 way for widening of Williamsburg Road as shown on approved plans shall be dedicated to the
943 County prior to any "occupancy" permits. So, you would change "occupancy" to "building?"
944

945 Mr. Jernigan - Yes.
946

947 Mr. Archer - Okay.
948

949 Mr. Jernigan - And then we would get it straight right up front.
950

951 Mr. Montgomery - That's a fine solution. Thank you.
952

953 Mr. Jernigan - All right. If there is nothing else, Madam Chairman, with that, I will
954 move for approval of POD-60-04, Lee Conner Realty Office Building, with changes to condition
955 No. 23 that dedication of land must be made at the time of building permit and not at the time of
956 occupancy permit. And that will be conditions No. 23 amended through 32.
957

958 Mrs. Ware - Do I have a second?
959

960 Mr. Archer - I'll second.
961

962 Mrs. Ware - The motion was made by Mr. Jernigan and seconded by Mr. Archer. All
963 in favor say aye...all opposed say nay. The motion passes.
964

965 Mr. Marshall - Note my abstention.
966

967 Mrs. Ware - So noted.

968 The Planning Commission approved POD-60-04, Lee Conner Realty Office Building – 245 E.
969 Williamsburg Road, subject to the standard conditions attached to these minutes for
970 developments of this type, the annotations on the plans and the following additional conditions:

971

972 23. The right-of-way for widening of Williamsburg Road as shown on approved plans shall
973 be dedicated to the County prior to any ~~occupancy~~ building permits being issued. The
974 right-of-way dedication plat and any other required information shall be submitted to the
975 County Real Property Agent at least sixty (60) days prior to requesting occupancy
976 permits.

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

982 25. The entrances and drainage facilities on Williamsburg Road (U.S. Route 60) shall be
983 approved by the Virginia Department of Transportation and the County.

984 26. A notice of completion form, certifying that the requirements of the Virginia Department
985 of Transportation entrances permit have been completed, shall be submitted to the
986 Department of Planning prior to any occupancy permits being issued.

987 27. The required building setback shall be measured from the proposed right-of-way line and
988 the parking shall be located behind the proposed right-of-way line.

989 28. The developer shall provide fire hydrants as required by the Department of Public
990 Utilities and Division of Fire.

991 29. A standard concrete sidewalk shall be provided along the south side of Williamsburg
992 Road.

993 30. Any necessary off-site drainage and/or water and sewer easements must be obtained in a
994 form acceptable to the County Attorney prior to final approval of the construction plans.

995 31. Deviations from County standards for pavement, curb or curb and gutter design shall be
996 approved by the County Engineer prior to final approval of the construction plans by the
997 Department of Public Works.

998 32. Insurance Services Office (ISO) calculations must be included with the plans and
999 contracts and must be approved by the Department of Public Utilities prior to the
1000 issuance of a building permit.

1001 **PLAN OF DEVELOPMENT & TRANSITIONAL BUFFER DEVIATION**

1002

POD-72-04
Brook Run Shopping Center
Parcel 4C – Brook Road

Timmons Group for Tetra Associates, LLC: Request for approval of a plan of development and transitional buffer deviation, as required by Chapter 24, Sections 24-106 and 24-106.2(e)(3) of the Henrico County Code to construct a one-story, 8,750 square foot, seven-unit retail building. The 0.85-acre site is located at the Brook Run Shopping Center on Brook Road (U.S. Route 1) on parcel 783-748-5077. The zoning is B-3C, Business District (Conditional). County water and sewer. **(Fairfield)**

1003

1004 Mrs. Ware - Is there any opposition to POD-72-04, Brook Run Shopping Center Parcel
1005 4C, in the Fairfield District? No opposition. Good morning, Mr. Kennedy.

1006

1007 Mr. Kennedy - Good morning, members of the Commission. Brook Run Shopping Center –
1008 Parcel 4C is the third of five proposed outparcels to the Brook Run Shopping Center. This
1009 outparcel was shown on the revised master plan for the shopping center that was approved by the
1010 Commission in conjunction with POD-68-03, which appeared before the Commission in
1011 November of 2003. As with the previous two phases a transitional buffer deviation is requested
1012 to reduce the 35-foot wide transitional buffer required along Brook Road to 25 feet.

1013

1014 The Developer's master plan provides coordinated development standards consistent with both
1015 the quality of the existing developed portion of shopping center and with the "Brook Road
1016 Enhancement Study" and that all buildings developed in the shopping center shall be constructed
1017 of brick, matching the existing shopping center. Conditions to that effect have been added to the
1018 POD.

1019

1020 Staff recommends approval of the Transitional Buffer Deviation provided the required 35-foot
1021 buffer along Brook Road shall be reduced to no less than 25-feet. There is actually 10 feet of
1022 additional right-of-way behind the sidewalk, which would make up the difference. And that's
1023 been down with the two previous phases. And as a condition of the deviation, a public sidewalk
1024 and streetscape enhancement will be provided within the right-of-way. So, basically that 35-foot
1025 is being made up with 25 feet on the property and an additional 10 feet within the public right-
1026 of-way as street trees are being provided and conditions to that effect have also been added to the
1027 POD.

1028

1029 The plan as annotated satisfies all proffers and zoning requirements. Therefore, staff
1030 recommends approval of both the plan and the transitional buffer deviation. The engineer and the
1031 developer are present and are both available to answer any questions should you have any.

1032

1033 Mrs. Ware - Are there any questions from the Commission for Mr. Kennedy?

1034

1035 Mr. Archer - Mr. Kennedy, this requires to motions does it not?

1036 Mr. Kennedy - Yes it does, one for the transitional buffer deviation and one for the POD.

1037

1038 Mr. Archer - On the last page of the staff plan, under general notes, it says in item three,
1039 “Compliance with Chesapeake Preservation Ordinance is met through contribution to the
1040 environmental fund that’s calculated and shown within this plan.” Without a lot of detail what
1041 exactly does that mean?

1042

1043 Mr. Kennedy - Basically, they have to do Chesapeake Bay calculations within the construction
1044 plans and they allocate fees, they can pay fees into a fund.

1045

1046 Mr. Archer - So, it’s a way of sort of buying....

1047

1048 Mr. Kennedy - Buying credits.

1049

1050 Mr. Archer - Okay. Around the BMP?

1051

1052 Mr. Kennedy - Right.

1053

1054 Mr. Archer - I thought that’s what it meant, but I just wanted to be sure.

1055

1056 Mr. Kennedy - In this case, they are buying credits on their own. They have credits for this, their
1057 purpose.

1058

1059 Mr. Archer - That’s the only question that I have, Madam Chairman.

1060

1061 Mrs. Ware - Okay. Any more questions? Thank you, Mr. Kennedy. Would you care
1062 to hear from the applicant, Mr. Archer?

1063

1064 Mr. Archer - Being that there is no opposition, I don’t believe so.

1065

1066 Mrs. Ware - Okay.

1067

1068 Mr. Archer - All right. I will move, was there an addendum note of this?

1069

1070 Mr. Kennedy - No, sir.

1071

1072 Mr. Archer - Okay. First of all I move approval of the transitional buffer as required by
1073 Chapter 24.

1074

1075 Mr. Vanarsdall - Second.

1076

1077 Mrs. Ware - The motion was made by Mr. Archer and seconded by Mr. Vanarsdall.
1078 All in favor say aye...all oppose say nay. The motion passes.

1079

1080 The Planning Commission approved the transitional buffer deviation for POD-72-04 Brook Run
1081 Shopping Center Parcel 4C – Brook Road.

1082

1083 Mr. Archer - And, lastly, I move approval of POD-72-04, Brook Run Shopping Center
1084 Parcel 4C, subject to the annotations on the plans, the standard conditions for developments of
1085 this type and the additional conditions Nos. 23 through 45.

1086

1087 Mr. Vanarsdall - Second.

1088

1089 Mrs. Ware - The motion was made by Mr. Archer and seconded by Mr. Vanarsdall.
1090 All in favor say aye...all oppose say nay. The motion passes.

1091

1092 The Planning Commission approved POD-72-04, Brook Run Shopping Center Parcel 4C –
1093 Brook Road, subject to the standard conditions attached to these minutes for developments of
1094 this type, the annotations on the plans and the following additional conditions:

1095

1096 23. Only retail business establishments permitted in a B-3 may be located in this center.

1097 24. The ground area covered by all the buildings shall not exceed in the aggregate 25 percent
1098 of the total site area.

1099 25. No merchandise shall be displayed or stored outside of the building(s) or on the
1100 sidewalk(s).

1101 26. The easements for drainage and utilities as shown on approved plans shall be granted to
1102 the County in a form acceptable to the County Attorney prior to any occupancy permits
1103 being issued. The easement plats and any other required information shall be submitted
1104 to the County Real Property Agent at least sixty (60) days prior to requesting occupancy
1105 permits.

1106 27. The entrances and drainage facilities on Brook Road (U.S. Route 1) shall be approved by
1107 the Virginia Department of Transportation and the County.

1108 28. A notice of completion form, certifying that the requirements of the Virginia Department
1109 of Transportation entrances permit have been completed, shall be submitted to the
1110 Department of Planning prior to any occupancy permits being issued.

1111 29. The developer shall provide fire hydrants as required by the Department of Public
1112 Utilities and Division of Fire.

1113 30. A standard concrete sidewalk shall be provided along the east side of Brook Road.

1114 31. The proffers approved as a part of zoning case C-30C-88 shall be incorporated in this
1115 approval.

1116 32. Deviations from County standards for pavement, curb or curb and gutter design shall be
1117 approved by the County Engineer prior to final approval of the construction plans by the
1118 Department of Public Works.

1119 33. Insurance Services Office (ISO) calculations must be included with the plans and
1120 contracts and must be approved by the Department of Public Utilities prior to the
1121 issuance of a building permit.

- 1122 34. Approval of the construction plans by the Department of Public Works does not establish
1123 the curb and gutter elevations along the Virginia Department of Transportation
1124 maintained right-of-way. The elevations will be set by the contractor and approved by
1125 the Virginia Department of Transportation.
- 1126 35. Evidence of a joint ingress/egress and maintenance agreement must be submitted to the
1127 Department of Planning and approved prior to issuance of a certificate of occupancy for
1128 this development.
- 1129 36. Any necessary off-site drainage and/or water and sewer easements must be obtained in a
1130 form acceptable to the County Attorney prior to final approval of the construction plans.
- 1131 37. The conceptual master plan, as submitted with this application, is for planning and
1132 information purposes only.
- 1133 38. The building shall be constructed of red brick and the brick shall not be painted at any
1134 time.
- 1135 39. The location of all existing and proposed utility and mechanical equipment (including
1136 HVAC units, electric meters, junction and accessory boxes, transformers, and generators)
1137 shall be identified on the landscape plans. All equipment shall be screened by such
1138 measures as determined appropriate by the Director of Planning or the Planning
1139 Commission at the time of plan approval.
- 1140 40. Landscaping along Brook Road and site and street lighting shall comply with the Brook
1141 Road Design Guidelines or standards approved by the Director of Planning at the time of
1142 landscape and lighting plan review.
- 1143 41. A coordinated design scheme shall be adopted for all parcels being developed within the
1144 shopping center consistent with both the quality of the existing developed portion of
1145 shopping center and with the "Brook Road Enhancement Study." The buildings shall be
1146 constructed with brick coordinated to match the existing Ukrop's building.
- 1147 42. A coordinated lighting, landscape and signage scheme shall be maintained for all parcels
1148 within the Brook Run shopping Center.
- 1149 43. The required 35-foot transitional buffer along Brook Road may be reduced to no less than
1150 25-feet. Planting within the transitional buffer along Brook Road shall conform to the
1151 planting standards of the 25-foot transitional buffer or as otherwise approved by the
1152 Planning Commission.
- 1153 44. As a condition of the transitional buffer deviation, a public sidewalk and streetscape
1154 improvements conforming to the Brook Road enhancement study and such guidelines as
1155 may be adopted by the Director of Planning shall be provided prior to the issuance of any
1156 occupancy permits.
- 1157 45. No additional freestanding signs shall be permitted within the shopping center.
1158

1159 **PLAN OF DEVELOPMENT & TRANSITIONAL BUFFER DEVIATION**

1160

POD-73-04
Villas @ Laburnum
1401 N. Laburnum Avenue

Engineering Design Associates for KCA/Laburnum, LLC and Atack Properties: Request for approval of a plan of development and transitional buffer deviation, as required by Chapter 24, Sections 24-106 and 24-106.2(e)(3) of the Henrico County Code, to construct 78, two-story condominiums units. The 10.33-acre site is located at the southeast corner of Laburnum Avenue and Watts Lane on parcel 808-731-7728. The zoning is RTHC, Residential Townhouse District (Conditional) and ASO, Airport Safety Overlay District. County water and sewer. **(Fairfield)**

1161

1162 Mr. Silber - We do have an addendum item on this one. It's an added condition No.
1163 37.

1164

1165 Mrs. Ware - Is there any opposition to POD-73-04, Villas @ Laburnum in the Fairfield
1166 District? No opposition. Good morning, Ms. Goggin.

1167

1168 Ms. Goggin - The project in front of us today consist of 78, two-story townhouse, style,
1169 condominiums units on N. Laburnum Avenue. A revised plan is being handed out to you with
1170 some revised annotations on it. There is one outstanding issue with this POD. Public Works
1171 Traffic Division is requiring the extension of Watts Lane from its current temporary cul-de-sac
1172 turnaround to Harvie Road, and the developer does not want to design or construct the
1173 connection. During the rezoning, the developer proffered that Watts Lane would not be
1174 extended to Harvie Road unless required by the County at time of plan of development. The
1175 County is requiring the extension of Watts Lane with this plan of development. Another proffers
1176 states that if the road is not extended the excess land would be conveyed to the adjacent property
1177 owner. Thus by proffer, if the road is not built now it will not be built in the future.

1178

1179 The applicant learned about this requirement during the staff/developer meeting. Traffic briefly
1180 reconsidered the extension but has deemed the connection necessary. Even though Watts Lane
1181 is not on the Major Thoroughfare Plan, it has always been intended to extend or run from
1182 Laburnum Avenue to Harvie Road. The existing portion was built in 1986 to provide public
1183 road access to Kings Point Apartments, Phase III, which is located north of the subject property.

1184

1185 Also, as previously mentioned, the existing road section was built with a temporary cul-de-sac
1186 turnaround that will be removed and vacated as a part of this project's construction. The
1187 connection would also be advantageous to both this development and the neighborhood. First,
1188 the Department of Public Utilities has stated that when the road is built it can then loop the water
1189 line increasing water pressure for the area for both residential use and increase fire safety. The
1190 connection would also provide an additional access point for emergency access for both this
1191 development and Kings Point Apartments.

1192 An additional condition, as in the addendum requiring the subdivision plat for the extension of
1193 Watts Lane will be recorded prior to any occupancy permits. This is a standard condition for

1194 new roads not located within subdivisions. Staff can recommend approval subject to the
1195 annotations on the revised plan, the standard conditions for developments of this type, conditions
1196 Nos. 23 through 36 on the agenda, and No. 37 on the addendum. Mike Jennings from Traffic
1197 Engineering is here today as well as Bob Atack, Philip Parker and Jim Theobald to speak in
1198 favor for their project. I'd be happy to answer any questions that the Commission may have.

1199

1200 Mrs. Ware - Are there any questions of Ms. Goggin from the Commission? No
1201 questions at this time? Would you like to hear from the applicant then?

1202

1203 Mr. Archer - Madam Chairman, was there opposition?

1204

1205 Mrs. Ware - No, there was no opposition.

1206

1207 Mr. Archer - Okay.

1208

1209 Mrs. Ware - Good morning, Mr. Theobald.

1210

1211 Mr. Theobald - Good morning, Madam Chairman, members of the Commission. My
1212 name is Jim Theobald and in a late inning substitution, I am pinch engineering for Mr. Parker
1213 who is unable to speak due to a respiratory condition. So, I will do my best here in working
1214 through this one issue. This has been an issue every since the zoning.

1215

1216 Mrs. Ware - I'm sorry, Mr. Theobald, we do, I believe, have opposition, so I just
1217 wanted to check and make sure that you are aware of that.

1218

1219 Mr. Theobald - They are on our side of this issue.

1220

1221 Mrs. Ware - Okay. I just wanted make sure that everything is clear. He raised his
1222 hand. Okay. I just wanted to let you know just in case you wanted some rebuttal time. I'm
1223 sorry.

1224

1225 Mr. Theobald - This has been an issue not only at the time of rezoning but in a prior effort
1226 with which I was involved for Mr. Rogers as to whether this road should be extended. Staff has
1227 had the position, at the time of zoning, that it ought to be considered to be extended. There was
1228 a proffer at the time of rezoning that said, "If required by the County at the time of plan of
1229 development it would be extended." We are asking you not to require that extension. At this
1230 point, the County has not required it, you get to require it or the alternative possible the Board of
1231 Supervisors. So, they are suggesting that it be extended. Curiously, in the staff report with the
1232 original zoning, I think it was acknowledge that this was this issue and it says, "Most of the
1233 residents concerns pertained to the extension of Watts Lane to Harvie Road" and I think you will
1234 hear more of that this morning.

1235

1236 The other comment was that we would need a second means of access if we exceeded 82 units.
1237 Well, we have 78 units, which I believe is just further evidence that our development does not
1238 give rise to the need for this extension. So, someone is requesting this be extended for the

1239 benefit of others rather than for the benefit of this development. Curiously, I am told by Mr.
1240 Parker that at the staff/developer meeting that staff was clear that it was not requiring this
1241 connection. And, further more, in the copy of the staff report that I received last week, it says,
1242 “The traffic engineer has not required the extension of Watts Lane to Harvie Road.” Well,
1243 clearly people can change their minds or have their minds changed for them and I’m sure that is
1244 the case here, which is allowed and legitimate but we think that staff essentially took the position
1245 that really wasn’t needed and yet I think someone else think it is a good idea. Don’t think it’s a
1246 good idea. And I think you will hear that the residents from Harvie Lane don’t think it’s a good
1247 idea. This road extension is not on your Thoroughfare Plan apropos after the recent discussion
1248 and with that I would request that you delete the annotation on the plan that suggest that Watts
1249 Lane be built to Harvie Road per Public Work’s Traffic Division and also delete proposed
1250 condition No. 37 that deals with the dedication of that extension. I’d be happy to answer any
1251 questions. I believe Mr. Atack would like to say a few words and then Mr. Avery.

1252

1253 Mrs. Ware - Are there any questions of Mr. Theobald from the Commission?

1254

1255 Mr. Archer - Mr. Theobald, at what point was the proffer made that the road would not
1256 be built unless required at by the County at the time of development? Was that done at our
1257 Planning Commission meeting or between there and.... I don’t remember....

1258

1259 Mr. Theobald - You know, I didn’t handle that case, Mr. Archer, and I have a feeling it
1260 was done between the Commission and the Board because wasn’t this case initially denied, then
1261 amended and then went up to the Board?

1262

1263 Mr. Archer - We heard it two or three times.

1264

1265 Mr. Theobald - Don’t rely on this, but I have feeling that it was sort of.... It was that issue
1266 that allowed, frankly, the staff to preserve the right to ask for the extension. But, you and Mr.
1267 Thornton, the right to take into account the needs of the citizens. It got us through the zoning
1268 and unfortunately delayed the issued to this point this morning.

1269

1270 Mr. Archer - Well, I guess I’m asking that question because I do remember the issue
1271 coming up when we had the original zoning case.

1272

1273 Mr. Theobald - It’s been an issue.

1274

1275 Mr. Archer - I remember the people who came out and were in opposition to the road
1276 being built. But, then I am just curious as to why you would then proffer that it could be built if
1277 the County demanded it because that kind of put a whole new light on the thing.

1278 Mr. Theobald - Well, again, I believe, you hit a point in the zoning case where you
1279 wonder if you are going to get through the process unless you address an issue. This was a way I
1280 think for both the Board of Supervisors and the developer to basically duck the issue, which
1281 maybe should have been addressed at the time, but it wasn't. But, again, I think it's a question
1282 of, you know, obviously, the staff is concerned about moving people from point A to point B and
1283 you all, to greater extent, and ultimately the Board to the greatest extent also then take into
1284 account not only notions of Planning and staff recommendations but the impacts on surrounding
1285 citizens. So, perhaps it's not inappropriate that we ended up in this form or could end up in front
1286 of the Board for that consideration. But, again, I don't think it.... I think it got us over that point
1287 at the time and that's probably the most candid way I can answer that.

1288

1289 Mr. Archer - I heard your answer and I'm just sitting here trying to consider all of this.
1290 You know, it troubles me that the proffer has been made and now we are saying we don't want
1291 to honor the proffer, and I understand that. I don't think it is a good idea to make a proffer just
1292 to get over the hump and that's where we are right now. I'm going to defer this case because I
1293 don't feel like as an appointed official instead of an elected official that I have enough juice to
1294 make a decision as whether or not a road ought to or ought not to be built. I don't think this
1295 should be made at this level, particularly in the case where we've got a proffer that the developer
1296 made and agreed to. And at the same time, I want to protect the integrity of the Commission
1297 because as I recall we were sort of adhering to the wishes of the public when we pass this the
1298 way we did, and I think they left here with that understand. I understand that it could be that
1299 maybe somebody got the feeling, when you said, unless required by the County that maybe that
1300 would be 10 or 15 years down the road. I don't really know.

1301

1302 Mr. Theobald - Well, no, because it was at the time of POD.

1303

1304 Mr. Archer - Well, yes, it did say at the time of plan of development. I think that you
1305 and Mr. Attack need to meet with (unintelligible) and see whether or not you can resolve this
1306 issue because that's satisfactory. I feel like if I make a decision I'm obligated to make the
1307 decision on the case as presented and as proffered, and at the same time I feel like it might be a
1308 little bit unfair if we do that today. I don't think it....

1309

1310 Mr. Theobald - Would it be possible, Mr. Archer, for you to consider deferring it for two
1311 weeks so that the neighbors would be able to be here in the evening because we had a number of
1312 neighbors that were very unhappy about not being able to attend this morning.

1313

1314 Mr. Archer - Mr. Silber, do you think that's enough time to allow a meeting?

1315

1316 Mr. Theobald - There aren't but so many powers to be. I mean, staff recommended, or
1317 said they didn't need it and now they need it.

1318

1319 Mr. Archer - I don't have any objection to that but I don't want to make the decision
1320 today.

1321 Mr. Silber - Mr. Archer, the next agenda is a heavy agenda. I don't have a problem
1322 with the two-week deferral. I think there are some things that need to be discussed. You are
1323 raising some questions. I would prefer that it be deferred for a month, if the Commission wishes,
1324 two weeks. We can make that work.

1325

1326 Mr. Archer - Well, can you go into the next zoning meeting after two weeks? And, I'll
1327 do the deferral at the Commission's request, if we are willing to do that. Mr. Attack stepped out.

1328

1329 Mr. Jernigan - When Chris said deferral he left.

1330

1331 Mr. Archer - Oh, here he comes.

1332

1333 Mr. Montgomery Theobald - In other words, to the night meeting, to the zoning meeting in
1334 December.

1335

1336 Mr. Archer - Yes, that would be December. If we worked this through sufficiently
1337 where we just brought it back for decision only, we probably could, but if the public comes they
1338 are probably going to say something.

1339

1340 Mr. Montgomery Theobald - December's zoning meeting would be okay, Mr. Archer. That
1341 way, I think that if this really is an issue where the wishes of the neighbors is going to be taken
1342 into account that they can attend and express that.

1343

1344 Mr. Archer - Okay. I really would like for you all to work really hard to get this
1345 resolve.

1346

1347 Mr. Montgomery Theobald - I just need to figure out who exactly the power is I need to sit
1348 down with. Once I do that, I'll go straight there.

1349

1350 Mr. Archer - I think we can do that between now and the time when we meet again.

1351

1352 Mr. Montgomery Theobald - And I hope that you will stay involve in that process.

1353

1354 Mr. Archer - Okay. I want to make sure that we understand that the proffer was made.

1355

1356 Mr. Montgomery Theobald - And I can't take it back and we are not amending the proffer. We
1357 are just saying please don't require it.

1358

1359 Mr. Archer - And I know you weren't here and I know you weren't representing at the
1360 time, but at the same time I don't think we should make proffers as a means of getting by
1361 because sometimes you don't get by. But, I'm willing to defer this at the Commission's request
1362 to the December 10 meeting and hopefully we can get this issue resolved.

1363

1364 Mr. Silber - Mr. Archer, let me point out a couple of things. You were asking about
1365 the proffer, when it was offered relative to when the Planning Commission heard it.

1366

1367 Mr. Archer - Was it at our meeting?

1368

1369 Mr. Silber - It went through several versions but the proffer that I believe was before
1370 the Planning Commission, which was offered on March 2, did have that proffer. It said, "Watts
1371 Lane shall not be extended to Harvie Road unless otherwise required by the County at the time
1372 of plan of development review. The Planning Commission heard that case and acted on it at
1373 their meeting on March 23. So, your point is well taken. I think Mr. Marshall recalls that there
1374 were residents here at that time and had a concern about Watts Lane going through. There was
1375 much discussion and consideration after it left the Planning Commission when it got to the Board
1376 level. So, I think that the Commission is somewhat of a disadvantage because you weren't privy
1377 to discussions and concerns expressed by the County administration relative to this public road
1378 going through. I'm not telling you which way to act on this, I'm just telling you that there was
1379 additional consideration given to this at a later time.

1380

1381 Mr. Archer - I still want to defer it, simply because as you said, I've not been privy to
1382 all of the conservation that occurred after that and I don't really know what happen, to be honest
1383 with you. But, you are saying that both the Commission and the Board had the benefit of that
1384 proffer?

1385

1386 Mr. Silber - Yes, sir.

1387

1388 Mr. Archer - Okay.

1389

1390 Mr. Silber - Mr. Archer, are you deferring this or recommending that it be deferred to
1391 November or December?

1392

1393 Mr. Archer - I think December.

1394

1395 Mr. Silber - Okay, that would be December 9.

1396

1397 Mr. Archer - December 9 and not 10, huh?

1398

1399 Mr. Silber - Yes.

1400

1401 Mr. Archer - Anybody else have any questions?

1402

1403 Mr. Vanarsdall - I will, I'll second it.

1404

1405 Mr. Archer - I haven't made the motion yet.

1406

1407 Mrs. Ware - Thank you, Mr. Theobald.

1408

1409 Mr. Archer - All right. I move deferral to the December 9 zoning meeting, at the
1410 request of the Commission.

1411

1412 Mr. Vanarsdall - Second.

1413

1414 Mrs. Ware - The motion was made by Mr. Archer and seconded by Mr. Vanarsdall.

1415 All in favor say aye...all opposed say nay. The motion passes.

1416

1417 The Planning Commission deferred POD-73-04, Villas @ Laburnum – 1401 N. Laburnum
1418 Avenue, to its December 9, 2004, Rezoning Meeting.

1419

1420 **PLAN OF DEVELOPMENT & TRANSITIONAL BUFFER DEVIATION**

1421

POD-75-04

Uppy's @ Lauderdale Square
Shopping Center

BGBT Design Group, P.C. for The Wilton Companies, LLC:

Request for approval of a plan of development and transitional
buffer deviation as required by Chapter 24, Sections 24-106 and
24-106(e)(3) of the Henrico County Code, to construct a one-
story, ~~3038 square foot~~ convenience store, **car wash** and service
station **addition to the existing Lauderdale Square Shopping
Center**. The 1.067-acre site is located at 3101 Lauderdale Drive
~~on an outparcel of existing Lauderdale Square Shopping Center~~
on parcel 734-757-2935. The zoning is B-2C, Business District
(Conditional). County water and sewer. **(Three Chopt)**

1422

1423 Mr. Silber - There is an addendum item that speaks to this plan of development with
1424 several additional conditions recommended.

1425

1426 Mrs. Ware - Is there anyone in the audience in opposition to POD-75-04, Uppy's at
1427 Lauderdale Square Shopping Center in the Three Chopt District? Thank you, sir, your
1428 opposition has been noted. We will call you after the presentation. Hello, Mr. Kennedy.

1429

1430 Mr. Kennedy -Hello, again. Uppy's at the Lauderdale Square Shopping Center is an outparcel in
1431 the Lauderdale Square Shopping Center. A previous POD for an Exxon convenience store,
1432 service station and car wash on this same sited (POD-93-97), was approved by the Commission
1433 in September of 1997. However, that POD was never implemented and it expired in September
1434 of 2000.

1435

1436 It's basically, substantially, the same plan that was previously approved. This plan basically
1437 reflects that same layout.

1438

1439 Staff recommends approval of the transitional buffer deviation reducing the 25-foot buffer to
1440 11.08 feet, that's consistent with the transitional buffer deviation on the adjoining parcels on
1441 both sides, provided that planting within the buffer shall conform to the planting standard of the
1442 25-foot transitional buffer. So we are getting the same planting but within a reduced area, and
1443 that as a condition of the deviation, the buildings and canopy shall have a coordinated design
1444 consistent with the quality and design of the existing developed portions of the shopping center
1445 and that a sidewalk shall be constructed along Lauderdale Drive. Conditions to that effect have

1446 been provided in the recommendation.

1447

1448 The plan as annotated satisfies all proffers and zoning requirements. Therefore, staff
1449 recommends approval of the plan subject to the annotations on the plans. There are two added
1450 conditions one of which states that “no additional freestanding sign shall be permitted in the
1451 shopping center.” The shopping center doesn’t have permit for additional signs it just restates
1452 the zoning code. And the second condition is that the design of the buildings and canopy shall
1453 be consistent with the existing shopping center and the final design and materials shall be
1454 submitted for review and approval by the Director of Planning.

1455

1456 That’s to address the design of the canopy itself which they did not submit. Mr. Marshall also
1457 had some concerns about the amount of brick along the face of the building and he requested
1458 additional windows, and the applicant has agreed to provide additional windows there.

1459

1460 The applicant does note that the building is limited to 1,000 square feet of food sales and that’s
1461 consistent with their plan. They’ve got some agreements with Food Lion to allow food sales on
1462 this, it’s not a major food sales store and the hours of this use is limited to the B-2 hours, so it is
1463 not a 24-hour operation. In order to operate 24 hours, they would need a provisional use permit,
1464 which would come back to the Board of Supervisors for approval.

1465

1466 Mrs. Ware - Are there any questions for Mr. Kennedy from the Commission?

1467

1468 Mr. Silber - Mr. Kennedy, did you say that you did not have elevations for the canopy?

1469

1470 Mr. Kennedy - They do not but those elevations would have to come back for the Director of
1471 Planning approval.

1472

1473 Mr. Marshall - You get to approve those, Mr. Silber.

1474

1475 Mr. Kennedy - They haven’t designed them yet.

1476

1477 Mr. Silber - Okay.

1478

1479 Mr. Kennedy - So, the final design elevations would come back for Board approval.

1480

1481 Mr. Marshall - And when you look at those plans, I did request two windows, a window on either
1482 end of the building.

1483

1484 Mrs. Ware - Are there any more questions for Mr. Kennedy from the Commission?

1485 Thank you, Mr. Kennedy. Mr. Marshall, there is opposition. Do you want to hear from the
1486 applicant or opposition first?

1487 Mr. Marshall - Let’s hear from the applicant.

1488

1489 Mrs. Ware - Please come down to the podium, sir, and state your name and address, for
1490 the record.

1491

1492 Mr. White - Yes. My name is Jack White at 12006 Warrenton Court. That's a
1493 subdivision called Worthington Hills Townhouse Association and I am opposed to the station
1494 going in. I'm not familiar with the specs and so forth that this gentleman presented to you. But,
1495 I don't see the need for a filling station at this point in time or a convenience mart. Within a mile
1496 and a half, as you go from Church to Pump Road, you have three filling stations and each have a
1497 convenience mart. If you go back the other way from Lauderdale to Broad Street, take a right on
1498 Broad, and there is a Crown Station with a convenience mart. You go another two tenths of a
1499 mile, approximately, and you have two other filling stations with convenient marts. This is all
1500 within an area of one seven tenth of a mile. I'm worried, as you well know with the price of gas
1501 and so forth nowadays, implementing more or building more filling stations. What happens if it
1502 goes belly up, if you would? Do we take and put plywood on the windows and close it, and the
1503 building remains as an eyesore. Whose responsibility is it to take care of the property if this
1504 occurs?

1505

1506 The signage with Uppy's, well you have to excuse me, but I have never heard of Uppy's before
1507 and it looks like something that I would name it as Uppy's filling station, as opposed to Crown
1508 and Exxon and so forth. But, I'm also concerned about the hours, and I think this gentleman
1509 spoke of the hours that it would open, I didn't quite grasp the opening and closing times of that.

1510

1511 Mr. Kennedy -It will close at mid-night.

1512

1513 Mr. White - At mid-night. And the lighting, I think on the last filling station that was
1514 going in there, which was never constructed, there was a restriction on the height of the lighting
1515 to prevent it from interfering with the homes that are directly behind this particular location and
1516 the landscaping of it and primarily, who is going to be responsible for it, once again, if it goes
1517 belly up. But, I'm opposed to it and I speak for myself and several of the neighbors there who
1518 could not attend this meeting. So, that's it and I thank you for your time.

1519

1520 Mr. Marshall - Thank you, Mr. White.

1521

1522 Mr. Silber - Mr. White, let me just address a couple of your points. I think most
1523 importantly, you need to understand that this property is already zoned for business, it's zoned
1524 B-2, and when that legislative action was decided by the Board of Supervisors, they deemed in
1525 their wisdom the appropriateness of business zoning at this location. What the owner of this
1526 property is required to do is when they come in with their plans to develop this property they
1527 basically have to meet the technical requirements of the ordinance. The use has already been
1528 determined so on this particular case, this use, that you have concerns with, is a permitted use in
1529 this zoning classification.

1530

1531 Mr. White - I understand.

1532

1533 Mr. Silber - So, this Planning Commission has little authority to say this use is not
1534 appropriate at this time, since it is already zoned. They can review the plans against the County
1535 Ordinances and they can take into consideration matters you may have relative to lighting and

1536 design issues but the use is permitted on this property.

1537

1538 Mr. White - Well, I understand, I really do. Another concern that I have is that that
1539 particular part of Lauderdale from Broad headed toward Church in that area, is soon to look like
1540 Jeff Davis on the south side of Midlothian Turnpike. You know, Chesterfield just built and
1541 threw up everything. And regardless of appearance and regardless of the longevity of the
1542 buildings and so forth, and it appears that Henrico is headed in the same direction.

1543

1544 Mr. Silber - I appreciate your opinion. I would argue that Henrico is not headed in that
1545 direction. We have some land use controls that I think far exceed our neighboring county but
1546 this is a neighborhood center. It's not fully developed and they are developing the remaining
1547 parcels here. But, we are very sensitive to the commercialization of this property along
1548 Lauderdale. We don't want that to happen, I can tell you it won't happen because most of
1549 Lauderdale Drive is zoned for residential uses and will remain that way. We appreciate your
1550 comments and concerns.

1551

1552 Mr. White - Thank you.

1553

1554 Mr. Marshall - Madam Chairman, I am going to move approval of POD-75-04, the Uppy's at
1555 Lauderdale Square Shopping Center, subject to the annotations on the plans, the standard
1556 conditions for developments of this type and additional conditions Nos. 23 through 35 and the
1557 additional item about the windows that Mr. Silber is going to look at.

1558

1559 Mr. Vanarsdall - Second.

1560

1561 Mrs. Ware - The motion was made by Mr. Marshall and seconded by Mr. Vanarsdall.

1562

1563 Mr. Jernigan - Madam Chairman, excuse me.

1564

1565 Mrs. Ware - Yes.

1566

1567 Mr. Jernigan - You have Nos. 36 and 37 on the addendum.

1568

1569 Mr. Marshall - All right. You are exactly right, Mr. Jernigan.

1570

1571 Mrs. Ware - Thank you.

1572

1573 Mr. Marshall - And additional conditions on page 2 of the addendum, Nos. 36 and 37.

1574

1575 Mr. Vanarsdall - Second.

1576 Mrs. Ware - The motion was made by Mr. Marshall and seconded by Mr. Vanarsdall.

1577 All in favor say aye...all opposed say nay. The motion passes.

1578

1579 The Planning Commission approved POD-75-04, Uppy's @ Lauderdale Square Shopping
1580 Center, subject to the annotations on the plans, the standard conditions attached to these minutes

1581 for developments of this type and the following additional conditions:

1582

- 1583 23. Only retail business establishments permitted in a B-2 zone may be located in this center.
- 1584 24. The ground area covered by all the buildings shall not exceed in the aggregate 25 percent of
1585 the total site area.
- 1586 25. No merchandise shall be displayed or stored outside of the building(s) or on sidewalk(s).
- 1587 26. The easements for drainage and utilities as shown on approved plans shall be granted to
1588 the County in a form acceptable to the County Attorney prior to any occupancy permits
1589 being issued. The easement plats and any other required information shall be submitted
1590 to the County Real Property Agent at least sixty (60) days prior to requesting occupancy
1591 permits.
- 1592 27. The developer shall provide fire hydrants as required by the Department of Public
1593 Utilities and Division of Fire.
- 1594 28. A standard concrete sidewalk shall be provided along the east side of Lauderdale Drive.
- 1595 29. Outside storage shall not be permitted.
- 1596 30. The proffers approved as a part of zoning cases C-55C-85 shall be incorporated in this
1597 approval.
- 1598 31. Deviations from County standards for pavement, curb or curb and gutter design shall be
1599 approved by the County Engineer prior to final approval of the construction plans by the
1600 Department of Public Works.
- 1601 32. Insurance Services Office (ISO) calculations must be included with the plans and
1602 contracts and must be approved by the Department of Public Utilities prior to the
1603 issuance of a building permit.
- 1604 33. Approval of the construction plans by the Department of Public Works does not establish
1605 the curb and gutter elevations along the Henrico County maintained right-of-way. The
1606 elevations will be set by Henrico County.
- 1607 34. Evidence of a joint ingress/egress and maintenance agreement must be submitted to the
1608 Department of Planning and approved prior to issuance of a certificate of occupancy for
1609 this development.
- 1610 35. The location of all existing and proposed utility and mechanical equipment (including
1611 HVAC units, electric meters, junction and accessory boxes, transformers, and generators)
1612 shall be identified on the landscape plans. All equipment shall be screened by such
1613 measures as determined appropriate by the Director of Planning or the Planning
1614 Commission at the time of plan approval.
- 1615 36. No additional freestanding sign shall be permitted in the shopping center.
- 1616 37. Design of the buildings and the canopy shall be consistent with the existing shopping
1617 center. The final design and materials shall be submitted for review and approval by the
1618 Director of Planning.

1619 **PLAN OF DEVELOPMENT**

1620

POD-76-04

Advance Orthopaedic Center
@ 7858 Shrader Road
(POD-52-01 Revised)

Balzer & Associates, Inc. for CAE Real Estate, LCC: Request for approval of a revised plan of development, as required by Chapter 24, Section 24-106 of the Henrico County Code, to construct a two-story, 46,050 square foot, medical office building addition to an existing medical building. The 5.0-acre

site is located on the north line of Shrader Road, approximately 500 feet east west of its intersection with Hungary Spring Road on parcels 765-752-0784, 764-753-8211 and part of 765-752-6035. The zoning is O-2C, Office District (Conditional). County water and sewer. **(Brookland)**

1621

1622 Mr. Silber - There is an addendum item that speaks to this plan of development and
1623 two additional conditions are recommended.

1624

1625 Mrs. Ware - Is there any opposition to POD-76-04, Advance Orthopaedic Center in the
1626 Brookland District? There's no opposition. Good morning, Mr. McGarry.

1627

1628 Mr. McGarry - Good morning, Madam Chair and members of the Commission. The revised site
1629 plan has been handed out to you. Staff feels this plan addresses our concerns regarding the
1630 partial underground parking, the office use, the HVAC screening and provision of the adequate
1631 parking for the use. Staff is in the position to recommend approval subject to your standard
1632 conditions for developments of this type, conditions Nos. 23 through 29, plus two on the
1633 addendum and a third one which addresses the parking. I will read the addendum item for you.
1634 Addendum item No. 30, No medical services for inmates and no prisoner waiting area shall be
1635 provided at this location. No. 31. Prior to the issuance of the building permit for this project, any
1636 HVAC equipment shall be sound proofed to the satisfaction of the Director of Planning. And
1637 finally, since this is an unresolved issue regarding the amount of handicapped parking to be
1638 provided staff is going to propose an additional condition No. 32. That will read: Handicap
1639 parking shall be provided in accordance with the building official. As it turns out the building
1640 code for medical office use like this wants 20 percent of the parking for handicapped parking
1641 which has a significant impact on the development of the site to meet the parking requirements.
1642 I'd be happy to answer questions.

1643

1644 Mrs. Ware - Are there any questions for Mr. McGarry from the Commission? Thank
1645 you. No questions.

1646

1647 Mr. Vanarsdall - We had a few issues on this case. So many people were involved in it and
1648 I didn't know who to call for information but we got it all together, thanks to everybody. The
1649 big issue was that they bring prisoners over there and we need a sally port, they did that, they
1650 still have a contract with the County, which they don't now, so that's why we had the additional
1651 conditions on the addendum. I move that POD-76-04, Advance Orthopaedic Center, be
1652 approved with the annotations on the plans and the standard conditions for developments of this
1653 type and conditions Nos. 23 through 29 and then on the addendum we have added No. 30 and 31
1654 and I would like to read these to make sure that they get in the record. No. 30. No medical
1655 services for inmates and no prisoner waiting area shall be provided at this location. So, that took
1656 care of the sally port. The architect is here this morning and he has already seen this and he is
1657 okay with it.

1658

1659 Mr. Marshall - It hurt some of my clients, though.

1660

1661 Mr. Vanarsdall - No. 31. Prior to the issuance of the building permit for this project, any
1662 HVAC equipment shall be sound proofed to the satisfaction of the Director of Planning. I was
1663 talking to Ron earlier and, Mr. O'Kelly, if you don't mind Ron may need some help on how to
1664 sound proof that. You are familiar with it, aren't you? We had that on top of St. Mary's.
1665 Recently, we did it to BMW. I don't know what kind of materials they used but Ron said he
1666 would call you. It goes farther than just screening, so it won't go into the neighborhood behind
1667 it. So, that's my motion.

1668

1669 Mr. Marshall - Second.

1670

1671 Mr. Jernigan - And, No. 32 also. Mr. McGarry included No. 32.

1672

1673 Mr. Vanarsdall - I don't see No. 32.

1674

1675 Mr. McGarry -It's been added at the last minute, Mr. Vanarsdall. We've been working right up
1676 to the last moment here. Condition No. 32 would read: Handicap parking shall be provided in
1677 accordance with the building official.

1678

1679 Mr. Vanarsdall - Okay. You worked that out with Greg Revels?

1680

1681 Mr. McGarry -We think so.

1682

1683 Mr. Vanarsdall - Because I know they were working on it yesterday. No. 32 then.

1684

1685 Mr. Jernigan - Second.

1686

1687 Mrs. Ware - The motion was made by Mr. Vanarsdall and seconded by Mr. Jernigan.

1688 All in favor say aye...all opposed say nay. The motion passes.

1689

1690 The Planning Commission approved POD-76-04, Advance Orthopaedic Center @ 7858 Shrader
1691 Road (POD-52-01 Revised), subject to the standard conditions attached to these minutes for
1692 developments of this type, the annotations on the plans and the following additional conditions:

1693

1694 23. The developer shall provide fire hydrants as required by the Department of Public
1695 Utilities and Division of Fire.

1696 24. The proffers approved as a part of zoning case C-23C-01 shall be incorporated in this
1697 approval.

1698 25. Any necessary off-site drainage and/or water and sewer easements must be obtained in a
1699 form acceptable to the County Attorney prior to final approval of the construction plans.

1700 26. Deviations from County standards for pavement, curb or curb and gutter design shall be
1701 approved by the County Engineer prior to final approval of the construction plans by the
1702 Department of Public Works.

1703 27. Insurance Services Office (ISO) calculations must be included with the plans and
1704 contracts and must be approved by the Department of Public Utilities prior to the
1705 issuance of a building permit.

- 1706 28. Approval of the construction plans by the Department of Public Works does not establish
 1707 the curb and gutter elevations along the Henrico County maintained right-of-way. The
 1708 elevations will be set by Henrico County.
- 1709 29. The location of all existing and proposed utility and mechanical equipment (including
 1710 HVAC units, electric meters, junction and accessory boxes, transformers, and generators)
 1711 shall be identified on the landscape plans. All equipment shall be screened by such
 1712 measures as determined appropriate by the Director of Planning or the Planning
 1713 Commission at the time of plan approval.
- 1714 30. No medical services for inmates and no prisoner waiting area shall be provided at this
 1715 location.
- 1716 31. Prior to the issuance of the building permit for this project, any HVAC equipment shall
 1717 be sound proofed to the satisfaction of the Director of Planning.
- 1718 32. Handicap parking shall be provided in accordance with the requirements of the Building
 1719 Official.

1720
 1721 **PLAN OF DEVELOPMENT & ALTERNATIVE FENCE HEIGHT**

1722

POD-77-04 Delmont Village Apartments Delmont Street and Ladies Mile Road	Engineering Design Associates for Viking Investment Properties, LLC and Delmont Apartments, LP: Request for approval of a plan of development and an alternative fence height, as required by Chapter 24, Sections 24-106 and 24-95(L)(6)c of the Henrico County Code, to construct one, one-story apartment building and six (6), two-story apartment buildings totaling 52 units and a common building. A six-foot-high metal picket security fence would be constructed within the required front yard along Delmont Street. In addition three (3), two-story apartment buildings totaling 24 additional units would be located on an adjoining 1.28-acre portion of the property located within the City of Richmond. The 3.67-acre site is located on the northwest corner of Delmont Street and Ladies Mile Road (3710-3740 Delmont Street) on parcel 793-737-2945. The zoning is R-5, General Residence District. City water and sewer. (Fairfield)
---	--

1723

1724 Mr. Silber - I will draw your attention also to the addendum with three additional
 1725 conditions.

1726 Mrs. Ware - Is there any opposition to POD-77-04, Delmont Village Apartments in the
 1727 Fairfield District? No opposition. Mr. Kennedy.

1728

1729 Mr. Kennedy - I'm a busy man today. Delmont Village Apartments is revitalization project that
 1730 would replace the existing apartment complex at this location with a new apartment complex.
 1731 The existing apartments were constructed in 1952 and are in poor condition. The previous
 1732 complex had one-story buildings with 34 units in the County and 14 units in the City. The new
 1733 complex would have two-story buildings instead of one-story buildings and there will be 52 units

1734 in the County and 24 units in the City. The new complex would also have a community building
1735 with an on-site management office, laundry facility and community meeting room.

1736

1737 The proposed development would satisfy current design standards. The project would be
1738 enclosed with a six-foot high metal picket fence, have a video surveillance system and have
1739 controlled access in accordance with County standards. They would also be constructed with
1740 fire sprinklers. So, we are basically really upgrading this current facility and really bringing it up
1741 to current standards and trying to make it as secure as possible, given its location.

1742

1743 Staff recommends approval of the alternate fence height to permit construction of the proposed
1744 six-foot-high fence. Ordinarily, in the front yard along Delmont Street we would only allow 42-
1745 inch fence. This would be a six-foot-high security fence and it would be a part of the secure
1746 access of the community. It's a metal picket fence and we have giving you a cut sheet showing
1747 what it would look like. It is a very attractive fence. Given security concerns expressed by the
1748 Police Department in this area, and the fact that the fence has an attractive design, we
1749 recommend approval of the alternative fence height.

1750

1751 The plan as annotated satisfies all zoning requirements and multi-family design standards as
1752 well. Therefore, staff recommends approval of the plan subject to the annotations on the plan,
1753 standard conditions for multi-family development, and the additional conditions listed on the
1754 agenda. The engineer and the developer are present and available to answer any questions.

1755

1756 Mrs. Ware - Are there any questions for Mr. Kennedy by the Commission? Thank you,
1757 Mr. Kennedy. Mr. Archer.

1758

1759 Mr. Archer - I don't think I need to hear from anyone, Madam Chairman.

1760

1761 Mrs. Ware - All right.

1762

1763 Mr. Archer - I think two motions are required here, one for the alternative fence height
1764 and the other for the plan.

1765

1766 Mr. Silber - Yes, sir.

1767 Mr. Archer - I think this project will do quite a bit to upgrade the surrounding area, well
1768 this area anyway, I hope the surrounding area catches on. And with that, I will first move to
1769 approve the alternate fence height as required by the Code.

1770

1771 Mr. Vanarsdall - Second.

1772

1773 Mrs. Ware - The motion was made by Mr. Archer and seconded by Mr. Vanarsdall.

1774 All in favor say aye...all opposed say nay. The motion passes.

1775

1776 The Planning Commission approved the alternative fence height plan for POD-77-04, Delmont

1777 Village Apartments Delmont Street and Ladies Mile Road, subject to the annotations on the

1778 plans and the standard conditions for landscape plans.

1779

1780 Mr. Archer - And next I will move to approve POD-77-04, Delmont Village

1781 Apartments, subject to the standard conditions for developments of this type, and additional

1782 conditions Nos. 23 through 30 on the standard agenda and adding Nos. 31 through 33 on the

1783 addendum.

1784

1785 Mr. Vanarsdall - Second.

1786

1787 Mrs. Ware - The motion was made by Mr. Archer and seconded by Mr. Vanarsdall.

1788 All in favor say aye...all opposed say nay. The motion passes.

1789

1790 Mr. Marshall - I abstain, Madam Chairman.

1791

1792 Mrs. Ware - So noted.

1793

1794 The Planning Commission approved POD-77-04, Delmont Village Apartments – Delmont Street

1795 and Ladies Mile Road, subject to the standard conditions attached to these minutes for

1796 developments of this type, the annotations on the plans and the following additional conditions:

1797

1798 23. The unit house numbers shall be visible from the parking areas and drives.

1799 24. The names of streets, drives, courts and parking areas shall be approved by the Richmond

1800 Regional Planning District Commission and such names shall be included on the

1801 construction plans prior to their approval. The standard street name signs shall be ordered

1802 from the County and installed prior to any occupancy permit approval.

1803 25. The easements for drainage and utilities as shown on approved plans shall be granted to

1804 the County in a form acceptable to the County Attorney prior to any occupancy permits

1805 being issued. The easement plats and any other required information shall be submitted

1806 to the County Real Property Agent at least sixty (60) days prior to requesting occupancy

1807 permits.

1808 26. The developer shall provide fire hydrants as required by the Department of Public

1809 Utilities and Division of Fire.

1810 27. Deviations from County standards for pavement, curb or curb and gutter design shall be

1811 approved by the County Engineer prior to final approval of the construction plans by the

- 1812 Department of Public Works.
- 1813 28. Insurance Services Office (ISO) calculations must be included with the plans and
 1814 contracts and must be approved by the Department of Public Utilities prior to the
 1815 issuance of a building permit.
- 1816 29. Approval of the construction plans by the Department of Public Works does not establish
 1817 the curb and gutter elevations along the Henrico County maintained right-of-way. The
 1818 elevations will be set by Henrico County.
- 1819 30. The location of all existing and proposed utility and mechanical equipment (including
 1820 HVAC units, electric meters, junction and accessory boxes, transformers, and generators)
 1821 shall be identified on the landscape plans. All equipment shall be screened by such
 1822 measures as determined appropriate by the Director of Planning or the Planning
 1823 Commission at the time of plan approval.
- 1824 31. A 12-inch water main shall be extended from Laburnum Avenue to serve this project.
- 1825 32. Each building shall be improved with a fire sprinkler system in accordance with the
 1826 requirements of the Fire Marshall's Office.
- 1827 33. Security systems including a six-foot-high perimeter metal picket fence with controlled
 1828 access in accordance with County standards, and a video surveillance system shall be
 1829 provided.

1830
 1831 **SUBDIVISION (Deferred from the September 22, 2004, Meeting)**

1832

Hillcrest Farms
 (September 2004 Plan)

Bay Design Group for Barbara A. Moss and Prospect Homes: The 63.82-acre site proposed for a subdivision of 114 single-family homes is located on the north line of Creighton Road approximately 300 feet east of the intersection of Cedar Fork Road on part of parcels 813-733-7603, 817-732-6992, 815-733-7603 and 815-733-2040. The zoning is R-2A, One-Family Residence District (Conditional) and R-2, One-Family Residence District. County water and sewer. **(Fairfield) 114 Lots**

1833

1834 Mrs. Ware - Is there any opposition to Hillcrest Farms subdivision (September 2004
 1835 Plan) in the Fairfield District? There is opposition. You are noted, thank you. Good morning,
 1836 Mr. Strauss.

1837

1838 Mr. Strauss - Good morning, thank you, Madam Chairman and members of the
 1839 Commission. This conditional subdivision was the subject of a lengthy rezoning. There are
 1840 numerous proffers on everything from the architecture of the homes, the landscaping and the
 1841 lots. It was deferred at our last meeting to give the applicant time to meet with several neighbors
 1842 and clarify some issues that the neighbors raised prior to our last meeting. Since that time, the
 1843 staff and the applicant have met with the neighbors and the applicant has submitted a revised
 1844 plan that addresses the access issue related to the McAllister and Chisenhall residents. This
 1845 revised plan is a plan that we just handed out this morning. Access was originally proposed
 1846 between Lots 7 and 8 from Mrs. McAllister access will now be provided parallel to the rear of
 1847 Lots 4, 5, 6 and 7 as shown on the revised plan, which is on the left-hand side western property

1848 line. There is still disagreement between the owners of the residential lot at the southwest corner
1849 of the proposed subdivision, which has its own access via existing frontage onto Creighton Road.
1850

1851 The lot owners, the Tuckers, have inquired about purchasing some adjacent area near their home,
1852 specifically their garage, an area, which they have maintained since living there. This area that
1853 they are maintaining is useful to them in order to gain access from their existing garage to the
1854 rear of their fenced in lot. The developer of this subdivision, Prospect Homes, has been in
1855 negotiation with the Tuckers but to date there has not been an agreement on how to handle this.
1856 Other than this issue, with the submission of this revised plan, the staff is in the position to
1857 recommend approval of this conditional subdivision. With that, I can answer any questions you
1858 may have and Mr. Larry Horton of Prospect Homes is here as well as his engineer and of course
1859 we have opposition with Mrs. Tucker. Thank you.

1860

1861 Mrs. Ware - Are there any questions for Mr. Strauss from the Commission?

1862

1863 Mr. Marshall - Can you show us on a map where that is?

1864

1865 Mr. Strauss - This is the Tucker's residence (referring to map) and the lots in question
1866 are here. This is a close-up aerial, this is the Tucker residence, the garage is located here. There
1867 seems to be a discrepancy which we can get into after Mrs. Tucker speaks, but the GIS shows
1868 what looks to be about nine feet between the garage and the property line. This is the proposed
1869 Prospect Homes subdivision that we are looking at. They would like to get access around the
1870 garage to the back of the lot here.

1871

1872 Mr. Marshall - So, you are saying that the exit, the doors to the garage face that GIS line?

1873

1874 Mr. Strauss - Well, the doors face front, you can see the gravel driveway.

1875

1876 Mrs. Ware - Yes.

1877

1878 Mrs. Strauss - Well, according to the Tucker's there is not... this GIS map would be
1879 incorrect. She has some information, which indicates that there is more room in here. She
1880 would like to acquire the area that she has been maintaining along this western property line for
1881 the Prospect Homes development.

1882

1883 Mr. Jernigan - Mr. Strauss, have they done a survey on this?

1884

1885 Mr. Strauss - Well, I have the benefit of a survey, but I have to admit it was a faxed plat
1886 from the Tuckers and the number seems to be hard to read, so I am at a loss to tell you whether
1887 that is 9 feet or 3 feet at this point, but we can ask the engineer who can ask Ms. Tucker for her
1888 information. She also has a letter that she would like to hand out.

1889

1890 Mrs. Ware - Do you want to go ahead and hear from Ms. Tucker?

1891 Mr. Archer - Yes, I think we'd better get Ms. Tucker before we hear from the applicant.

1892

1893 Mrs. Ware - Good morning. Would you please state your name and address for the
1894 record.

1895

1896 Ms. Tucker - Yes, my name is Wendy Tucker and I live at 4150 Creighton Road. I have
1897 some documents here and, unfortunately, I don't have enough copies for everybody, but I would
1898 like to present these to you. Prior to our purchasing this property, of course, there was a survey
1899 done and we did go out there and look at it and discovered that the property that is maintained
1900 around our property was not included in what we were purchasing and that actually belonged to
1901 somebody else and maintained by this homeowner, and has been for over 21 years. This plat,
1902 that you have a copy of, looks like it reads 9.14. It actually is 3.14. It has a scale down here at
1903 the bottom, and I don't know if you have any tools with you or not, but Bob checked this
1904 morning, and he does. This one closest to the garage is 3.14. The one at the front of the garage
1905 is 5.5 feet. There is no way that we can get our lawn mower back through there. If somebody put
1906 up a fence, if the homeowners put up a fence it would deny us access completely to that
1907 property. We would not be able to take our truck around, if we wanted to put another opening to
1908 the fence around front, we can't drive our truck over there because of the landscaping that has
1909 been done, as well as the fact that we have a septic tank out front, so that is an issue for us. We
1910 have tried to work with Mr. Courtney of Prospect Homes and we have gotten absolutely nowhere
1911 in those discussions. After talking to Mr. Strauss yesterday, I got Bob to go home and from the
1912 survey stakes put a rope so we could see if, in fact, what we were saying was correct or not. I do
1913 have a picture. This pictures states it all that, in fact, there is insufficient room to even get our
1914 riding lawn mower back there. This would prevent us from even cutting the fenced-in area of
1915 our backyard, because that is the only way we can access our backyard. That is where the
1916 double gate is. We would have no way to get our lawn mower back there, and we would have no
1917 way to get our trucks back there. This is a request that we have made through Day 1 – the same
1918 – and they indicated they could not do anything with it because they didn't own the property.
1919 Well, they do own it now. We are not asking for a great deal of property. Actually, on this map
1920 that he has proposed, you can see where Fair Run comes directly next to our property, or I
1921 should say, to the garage. I don't know if these will show or not (referring to pictures). We are
1922 not asking for a huge amount of property, and according to the size of the lot that he has on his
1923 subdivision plan, there is sufficient land to take off a small section of that. We would like, on
1924 the side of the house, if you look what the roads are showing, I don't think they are showing up
1925 very well. Roughly 20 feet, a line comes directly straight up from the corner of that gravel road
1926 straight back to the (unintelligible), so it brings that boundary within three feet of our back
1927 garage. We want to move it over just enough that we can get our truck back there and that we
1928 can get our lawnmower back there. We maintain a huge vegetable garden back there. Of course,
1929 this year it got mowed over because of all of the rain, but that is the only place that we really
1930 have a decent spot to have it and keep the dogs out of it, as well.

1931

1932 Mrs. Ware - Are you asking to purchase?

1933

1934 Ms. Tucker - We have asked all along to purchase this property.

1935

1936 Mr. Marshall - Can you go to the left of your garage to get to the rest of your back property?

1937

1938 Ms. Tucker - No.
1939
1940 Mr. Marshall - What prevents you from going to left?
1941
1942 Ms. Tucker - On the left of it, well, for one thing, there are timbers there. We would
1943 have to rip out all of the garden. We'd have to rip out the fence, and it still wouldn't allow us to
1944 get our truck back through there.
1945
1946 Mr. Marshall - And all the land from the left of the garage all the way over to the other property,
1947 you can't go anywhere?
1948
1949 Ms. Tucker - It is fenced. The whole backyard is fenced. There is a section that we own
1950 and it is not a huge piece, but it is still sizeable, that we need to be able to access, and we will be
1951 denied access if we don't obtain a front portion of this property.
1952
1953 Mr. Silber - I think what Mr. Marshall is stating is it looks as though there is ample
1954 room for you to have access to the left of your garage, to access the back of your property. I
1955 understand you might prefer to have the land to the right, and acquire more property, but it looks
1956 from this aerial photograph that you have plenty of room to get back there. It may require you to
1957 remove a fence, and other objects, but no buildings or structures are in the way.
1958
1959 Ms. Tucker - Well, there is a structure in the back. There is a tool shed back there.
1960
1961 Mrs. Ware - But it looks like it is positioned behind the garage quite a bit, so that you
1962 are not having to go between two buildings to get to the back of your property.
1963
1964 Mr. Archer - Ms. Tucker, I have had quite a few conversations with Mr. Strauss and
1965 with Mr. Horton to try to see what we could do to resolve this issue for you, and I even asked
1966 them to give you some of the land, but the problem is, the owner of the land has, possession is
1967 99% of the law, they say, but I can't legally make them do anything. I would so much like to be
1968 able to help you out in this situation, but I really honestly don't know how, unless they are
1969 willing to either give or sell you the piece of land you would like to have. When you moved in,
1970 was that garage already there?
1971
1972 Ms. Tucker - Yes. It has been there for over two years.
1973
1974 Mr. Archer - When you bought the land?
1975
1976 Ms. Tucker - Yes, sir.
1977
1978 Mr. Archer - So it was legally built, it wasn't too close to the edge of the property line
1979 when it was built. You thought you owned it.
1980
1981 Ms. Tucker - Well, to be perfectly honest with you, they did, too. Before we put a
1982 contract on this house, we specifically asked where the property lines were on this property,

1983 because we knew eventually this land around us would be sold and developed, and we wanted to
1984 make sure we knew where those lines were before the survey work was done. We were told it
1985 was within a few feet of what they maintained. Well, it is far from being a few feet from where
1986 it is maintained.

1987

1988 Mr. Archer - When they did the survey, didn't they stake it off so that you could see?

1989

1990 Ms. Tucker - Well, yes. A survey wasn't done when we put a contract on it. It was done
1991 before we closed, and almost didn't close on it because of this. But, the thing, they had forgotten
1992 how much land they didn't own, in all honesty. Even in talking to the mother-in-law of the
1993 owner, she, herself, had forgotten. She said she can't believe that he built it that close to the line,
1994 but, obviously, he'd forgotten. So, it was an error on their part. We are not worried about
1995 tearing down the garage, because I know you all are not going to make us do that, but we are
1996 concerned about access to our property. We are concerned about having a neighbor that close to
1997 us, and putting up a fence. It will be barely enough room for us to walk through.

1998

1999 Mr. Silber - Mr. Archer, the setbacks on accessory structures, such as this, would only
2000 be three feet outside of the property line, so it does meet the requirements.

2001

2002 Mr. Archer - Looks like he used up all of it.

2003

2004 Ms. Tucker - Yes.

2005

2006 Mr. Archer - OK. I don't really have any more questions, but I would like to hear from
2007 Mr. Horton for just a moment, if I may.

2008

2009 Ms. Tucker - Oh, there is one other thing, and I am sorry I got sidetracked, but in our
2010 letter, this is a letter from Bob because he is not able to be here, and this was an issue I had also
2011 brought up, and that was the drainage on the back two lots behind our property. It slopes and
2012 this area, with all of the rain we have and anytime it rains, there is at least six inches of standing
2013 water. Our property flow goes down, and the property that they can be building on, also slopes
2014 down. We have serious concerns about the drainage issue there, and we want to make sure that
2015 that is noted and Public Works is involved in assuring us that that drainage, the water will be
2016 drained off that property, away from us.

2017

2018 Mr. Archer - OK, well it is never the intention of the County to throw water toward
2019 you.

2020 Ms. Tucker - Oh, I know that. I don't mean you. I am really referring to Prospect
2021 Homes and their drainage.

2022

2023 Mr. Archer - We can control that.

2024

2025 Ms. Tucker - OK, thank you.

2026

2027 Mrs. Ware - The applicant. Good morning.

2028

2029 Mr. Horton - Good morning. The name is Larry Horton and I represent Prospect
2030 Homes. I guess the first thing I'd probably like to mention is as far as the drainage, we honestly
2031 will make that better when we develop the site. As far as the letter that I was just given about the
2032 water standing there, the gravel easement that the two ladies back there use now is probably like
2033 a dike, so the water probably does stand, particularly with something like Gaston. One thing I
2034 would like to point out as far as for her saying she doesn't have access, that behind the garage is
2035 a double gate on the fence right there, and it was a gate right there beside her driveway. It
2036 doesn't show on the mortgage survey, so it's two gates there right now to go around that way.
2037 Obviously these are premium lots and in the very beginning when I had met with Ms. Tucker, I
2038 guess probably Fall of 2003, when I was sort of going door to door to talk with folks before I
2039 actually submitted the case. She had asked me about possibly acquiring some land, and I told
2040 her, obviously, at the time I didn't own it and I couldn't. Well, in the beginning we thought that
2041 this site, since Clarendon Farms behind us is R-3, on the northern and western property line was
2042 R-3, the last two cases that were approved within a mile of here were R-3, we felt like it was
2043 going to be an R-3 case, with my entrance being between her going east, and when were R-3s, I
2044 probably had some room or maybe I could, but as this case evolved into 100 foot lots and
2045 because of a large pending zoning case across the street and changing my entrance, I end up
2046 having a cul-de-sac here and end up with big 100-foot premium lots and at this point in time, as
2047 it evolved, I was just unable to try to sell her any land, that I felt like in good faith that I could in
2048 the beginning. And it is two gates there right now for her to get to the back of her property. And
2049 she knew it when she first purchased it. And I have been talking to her for well over a year on
2050 this matter.

2051

2052 Mr. Archer - Well, I just wanted you to make a statement so that the other members of
2053 the Commission could have benefit of things you and I talked about, so they would know where
2054 we are.

2055

2056 Mr. Horton - Yes. I worked with Mr. Archer on this and explained what we can and
2057 can't do. He made a suggestion to see if maybe we would give her a gate and then after we
2058 discussed it and I went out there, she has two gates, and she has a double gate back on the fence
2059 immediately north or behind the garage, and there is one on this side of the garage, so two gates
2060 are there for her to get back to the rear of her property.

2061

2062 Mrs. Ware - Her fence you are saying?

2063 Mr. Horton - Yes, ma'am. Her fence already has two existing gates to get to the back.
2064 Obviously, what she purchased with this green space out there has been maintained and it is
2065 obviously easier to go around that way, but as a practical matter there is an avenue there that has
2066 not been utilized.

2067

2068 Mr. Archer - Well, Mr. Horton, this is an unfortunate situation for Ms. Tucker, maybe
2069 not anything that you had anything to do with, but if we should approve this, and doing whatever
2070 it is you do adjacent to her property line, I would hope you can at least leave her enough room
2071 that she can cut her grass and maneuver beside the garage, 3.0 feet is not a lot, but it is enough to
2072 be able to maneuver in, I believe, with a push mower.

2073

2074 Mr. Horton - I am not sure if it is three feet or not. That is what she is saying, and of
2075 course, this is the mortgage survey that was given to me and in discussing it with my engineer
2076 and in looking at it, I am not really sure. I guess sometimes I look at it and it looks like it is 10-
2077 foot and then again, as Mr. Silber indicated, the setback is three feet. I really don't know what it
2078 is. I sort of thought it was 10 feet.

2079

2080 Mr. Archer - Well, I am looking at a faxed copy of it and it looks like 9.14 and it also
2081 looks like 3.14.

2082

2083 Mr. Horton - That is the basis I have been on, that I thought it was 10 and with two
2084 existing gates already in existence, Mr. Archer.

2085

2086 Mr. Archer - OK.

2087

2088 Mr. Vanarsdall - Larry, did you see this letter.

2089

2090 Mr. Horton - I just got it this morning, so, no sir, I haven't read it. Any other questions?

2091

2092 Mr. Archer - I don't have any more.

2093

2094 Mr. Horton - Thank you.

2095

2096 Mr. Archer - Come on up, Ms. Tucker.

2097

2098 Mr. Tucker - We do have two entrances to the back yard that is fenced in. The double
2099 gate that is large enough for our lawn mower to go through is behind the garage. We would not
2100 have access to take the lawn mower back there without an additional number of feet. I just
2101 wanted to clarify that. The other gate is also on the same side. It is a small gate that would not
2102 allow our lawn mower to go through. I just wanted to clarify that. Thank you.

2103 Mr. Archer - I guess it is incumbent upon me to make a decision on this, is it not?

2104

2105 Mrs. Ware - Yes, it is.

2106

2107 Mr. Archer - Well, this project has engendered quite a bit of conversation. It has been

2108 deferred a couple of times while we try to work out problems with the neighbors and the adjacent
2109 property owners. I very much empathize with the situation that Ms. Tucker has, and it is one
2110 that occurs often when land has been vacant for some time and not been used. We tend to use it
2111 and it could be that she was misled when she bought her property, but that doesn't do much to
2112 alleviate the situation that we are in now. The owner owns it and we can't, literally can't make
2113 him do anything with it that he does not want to do, Ms. Tucker. We have been striving to
2114 improve the quality of the residential life along the Creighton Road corridor and this particular
2115 subdivision, being built in the zoning classification that it is one that should do that. I would
2116 certainly hope that we could reach a resolution that everybody would be good neighbors,
2117 because the developers will not be your neighbor. It will be other people that will be your
2118 neighbors and I trust that you all will get along. I don't see anyway that I can resolve this issue
2119 unless it is something that you and the developer and the owner can work out amongst
2120 yourselves, but I do appreciate your coming forward and making us aware of what he has said.
2121 So, with that, Madam Chair, I have to move for approval of Hillcrest Farms subject to the
2122 annotations on the plans, the standard conditions for subdivisions served by Public Utilities and
2123 the additional conditions Nos. 12 through 21.

2124

2125 Mrs. Ware - Motion made by Mr. Archer and seconded by Mr. Vanarsdall. All in
2126 favor say aye. All opposed say no. The motion passes.

2127

2128 The Planning Commission approved Subdivision Hillcrest Farms, subject to the annotations on
2129 the plans, the standard conditions for subdivisions served by Public Utilities and the additional
2130 conditions Nos. 12 through 21 shown below:

2131

- 2132 12. Each lot shall contain at least 18,000 square feet for R-2 lots and 13,500 for R-2A lots.
- 2133 13. The developer shall submit one set of the architectural plans to the Department of Planning
2134 for review prior to final approval of the plat.
- 2135 14. Detailed construction plans shall be submitted to the Department of Planning before the
2136 final plats are submitted for final approval.
- 2137 15. The detailed plant list and specifications for the landscaping to be provided within the 30-
2138 foot-wide planting strip easement along Creighton Road shall be submitted to the
2139 Department of Planning for review and approval prior to recordation of the plat.
- 2140 16. A County standard sidewalk shall be constructed along the north side of Creighton Road.
- 2141 17. A plan shall be submitted prior to recordation of the plat showing the buildable area for
2142 each lot to properly recognize the limitations for dwelling unit dimensions and setbacks.
2143 Buildable area is that area within which a dwelling unit may legally be located considering
2144 the front yard, side yard, and rear yard setback requirements of Chapter 24, of the Henrico
2145 County Code.
- 2146 18. Any necessary offsite drainage easements must be obtained prior to approval of the
2147 construction plan by the Department of Public Works.
- 2148 19. The proffers approved as part of zoning case C-7C-04 shall be incorporated in this
2149 approval.
- 2150 20. Prior to requesting the final approval, a draft of the covenants and deed restrictions for the
2151 maintenance of the common area by a homeowners association shall be submitted to the
2152 Department of Planning for review. Such covenants and restrictions shall be in form and

2153 substance satisfactory to the County Attorney and shall be recorded prior to recordation of
2154 the subdivision plat.

2155 21. Any future building lot containing a BMP, sediment basin or trap and located within the
2156 buildable area for a principal structure or accessory structure, may be developed with
2157 engineered fill. All material shall be deposited and compacted in accordance with the
2158 Virginia Uniform Statewide Building Code and geotechnical guidelines established by a
2159 professional engineer. A detailed engineering report shall be submitted for the review and
2160 approval by the Building Official prior to the issuance of a building permit on the affected
2161 lot. A copy of the report and recommendations shall be furnished to the Directors of
2162 Planning and Public Works.

2163

2164 **AT THIS TIME THE COMMISSION TOOK A 10-MINUTE BREAK.**

2165

2166 **THE COMMISSION RECONVENED AT 11:10 A.M.**

2167

2168 **SUBDIVISION**

2169

Castleton
(September 2004 Plan)
(Formerly Hunt Valley)

D. Bryant Gammon for Ross Run, LLC: The 247.71-acre site proposed for a subdivision of 433, single-family homes is located along the eastern line of Doran Road, 900 feet south of its intersection with Darbytown Road on parcels 825-692-8035 and 823-694-4202. The zoning is R-2AC, One-Family Residence District (Conditional), R-3AC, One-Family Residence District (Conditional) and A-1, Agricultural District. County water and sewer. **(Varina) 433 Lots**

2170

2171 Mr. Kennedy - Good Morning Members of the Commission. Castleton is a proposed 434-
2172 lot subdivision of a 248-acre parcel generally located west of Doran Road, south of Darbytown
2173 Road, east of I-295 and north of Four Mile Creek. It is proposed to be developed with a density
2174 of 1.98 lots per net acre.

2175

2176 The property fronts on Doran Road at two locations for a total distance of 1800 feet and along
2177 Darbytown Road for a distance of 100 feet. A boulevard entrance from each street would
2178 provide principal access to the property. Two additional secondary access points are
2179 contemplated. One to Darbytown Road thru the Windsor Oaks Subdivision and another is
2180 anticipated to Doran Road through the adjoining Sutton Tract, which is the subject of a rezoning
2181 case that will be appearing before you shortly.

2182

2183 The subject property is generally comprised of a 239-acre tract formerly known as the Hunt
2184 Valley Property and a nine-acre tract that was proposed for the future expansion of the Windsor
2185 Oaks subdivision. That nine-acre parcel is part of the residual property for the Windsor Oaks
2186 Subdivision.

2187 The original subdivision, which was called Hunt Valley, expired in 1999 when it was no longer
2188 eligible for extension of approval. At that time, and it still needs a sewer pump station, and they
2189 didn't think it was feasible up until that time, and it is now feasible. The original plan, as I said

2190 earlier, was prior to implementation of the Chesapeake Bay and stream protection requirements
2191 and prior to the adoption of the current Public Works design standards. The revisions to the
2192 master plan addresses those concerns and provides for Chesapeake Bay buffers. In the past the
2193 required right-of-way width was 44 feet and actually if you look closely at the Windsor Oaks
2194 Subdivision section on the plans, you will see they were 44 feet and they didn't accommodate
2195 sidewalks. This plan will accommodate 50 foot right-of-ways. The revisions to the Public Works
2196 design standards necessitated a revision to the master plan.

2197

2198 The Windsor Oaks residual parcel also known as the Continental Development property was
2199 rezoned R-2AC in 1999. The proffers for the property, which includes Windsor Oaks Section
2200 One, contemplated a maximum of 71 lots. In addition, the proffers provided 25-foot wide
2201 buffers along both Doran and Darbytown Roads, prohibited slab foundations for main residential
2202 structures and required brick, stone or Dryvit foundations, a minimum of 50% of garages to be
2203 side or rear entry and paved driveways.

2204

2205 The proposed subdivision satisfies all subdivision and zoning requirements as well as the
2206 proffers applicable to each portion of the property. In addition, the plan satisfies all current
2207 Chesapeake Bay and Stream Protection requirements and will be constructed in accordance with
2208 the current Public Works design standards, and as I stated earlier a sewer pump station will be
2209 constructed in connection with this project.

2210

2211 The plan would also extend the pedestrian access plan, street lighting and street trees to include
2212 the Windsor Oaks residual parcel and would extend membership in the recreation association to
2213 those lots as well. These lots here (referring to rendering) would also become members of the
2214 pool association, so they'd have the benefits of sidewalks, street trees, and street lighting and the
2215 recreation association. The developer has also indicated that all lots would have improved
2216 driveways and there would be no slab foundations for any main residential structure. He has had
2217 several discussions with Mr. Jernigan about the size of the homes and he contemplated the
2218 homes would be comparable to everything that is built in Windsor Oaks. He has agreed that
2219 although the size they were proffered at the time were 1200 sq. ft. for a one-story residence and
2220 he says that he has represented to Mr. Jernigan that the houses will be comparable in size to what
2221 is in Windsor Oaks, or greater. In essence, the developer has agreed to extend the most stringent
2222 standards of each proffered case to the balance of the property. Given that the statutory
2223 requirements for approval are satisfied, staff recommends approval of the plan.

2224

2225 Staff has received several phone calls and e-mails expressing concern about connecting the
2226 Oakington Drive Stub Road in Windsor Oaks to the proposed Castleton Subdivision. Several of
2227 those persons also expressed concern that they had not received public notice of the request.

2228

2229 Since the property to be developed as Castleton is already rezoned, notice to the adjoining
2230 property owners for subdivision approval is not required by the County Code and we don't give
2231 notice of subdivisions, as you know.

2232

2233 As the Planning Commission knows, subdivision review and approval is an administrative act.
2234 Subdivisions are entitled to Planning Commission approval as long as the requirements of the
2235 subdivision and zoning ordinances are met. The property is already zoned R-2A and the
2236 developer intends to develop the property in conformance with the previously approved zoning.

2237

2238 In a similar sense, neighbors aren't notified when someone wants to build a home on a vacant lot
2239 and there are a lot of vacant lots within Windsor Oaks Subdivision that have not been developed
2240 and are being developed today, and they don't get notice letters. If someone wants to add a
2241 garage they wouldn't provide such notice. Review of subdivisions by the Planning Commission,
2242 however, are held in a public hearing and anyone is invited to attend and present their comments
2243 and concerns.

2244

2245 Since the original plan was submitted, a revised layout was submitted at staff's request to
2246 significantly reduce traffic that may cut through the Windsor Oaks Subdivision and to address
2247 staff's other concerns with the subdivision design. On the location map it shows a T intersection
2248 coming from Windsor Oaks here (referring to rendering). This little stub has been eliminated
2249 and that would have provided access to this future subdivision. That was eliminated, so the only
2250 access through Windsor Oaks, which is contemplated, is actually these lots here (referring to
2251 rendering), this being the main entrance out to Darbytown Road with a boulevard entrance. It is
2252 anticipated that these two boulevard entrances will be the principal access and all of these lots
2253 would use this as the principal access, and that the only lots that would ordinarily use Windsor
2254 Oaks and Oakington Drive would use what was originally contemplated with the Windsor Oaks
2255 Subdivision.

2256

2257 As you can see from the revised staff plan, staff does share a concern that Windsor Oaks is an
2258 established neighborhood and cut-through traffic should be minimized. The revised plan
2259 eliminates the connection to that property which is under consideration of rezoning, and those
2260 adjoining property owners will be provided notices. Notices have been sent out. So, they will
2261 receive notice of that because rezoning is a legislative action which affects the property, so they
2262 will receive notice of that action.

2263

2264 The revised plan does maintain a connection from Windsor Oaks thru the residual Continental
2265 Development property to Castleton, in order to provide secondary access to the Windsor Oaks
2266 and the residual Continental Development property. The additional lots being developed on the
2267 residual Continental Development property and the interconnection between the two
2268 subdivisions were contemplated when Windsor Oaks was originally designed. This actually
2269 shows as you can see the existing Windsor development and actually shows this connection
2270 going down to the Hunt Valley property, and what was actually done in this case was get rid of
2271 this connection and put a cul-de-sac in (referring to rendering). So, that actually reduced from
2272 what was originally proposed, but it did show additional lots on the residual property. So that
2273 was actually originally proposed.

2274

2275 As noted earlier, when the Continental Development property was rezoned in 1999 the proffers
2276 for the property, which includes Windsor Oaks Section One, contemplated a maximum of 71
2277 lots. The Planning Commission conditionally approved 52 lots in Windsor Oaks Section One, in
2278 May of 1999. The conceptual layout at that time showed an additional 17 lots for future
2279 development on the balance of the Continental Development property, as well as three stub street
2280 connections to both the Hunt Valley (now Castleton) and the Sutton tract. In addition the
2281 Planning Commission's conditional approval at that time required a second point of access to be
2282 provided with any future expansions. The Planning Commission waived the requirement for a
2283 second point of access for a subdivision with more than 50 lots, since it was contemplated that it
2284 would be provided with future development.

2285

2286 Continental Development subsequently returned to the Planning Commission in September of
2287 2003 for approval of a three-lot subdivision of their property when it appeared that sanitary
2288 sewers would not be available and they revised that request to a four-lot subdivision in May of
2289 2004. However with the development of Castleton, sanitary sewers are now available to the
2290 property and the new owners wish to develop it to its full potential, consistent with the
2291 development in Windsor Oaks.

2292

2293 Although the revised plan discourages cut-through traffic, interconnection of the two
2294 neighborhoods would have positive benefits for both subdivisions. It offers secondary
2295 emergency access to the Windsor Oaks subdivision. It permits the possibility of school buses to
2296 pick up children within the subdivision, rather than on Darbytown Road. Darbytown Road is a
2297 55 mph road and currently school buses can't make those turns within the neighborhood. They
2298 actually have to pick up on Darbytown Road, so a five-year old potentially can be picked up by
2299 the school bus on Darbytown Road, and because Darbytown Road is a 55 mph road, they
2300 actually get school bus service, and they don't cross it to get picked up. The connection would
2301 also permit looped water lines to improve water quality and pressure in both developments.
2302 Without the connection, the block length in the balance of the Continental Development property
2303 would exceed permitted block lengths. Excessive block length would require an exception to the
2304 subdivision ordinance requirements. In addition, elimination of the connection may create an
2305 awkward design with a cul-de-sac abutting a new street. This street here (referring to rendering)
2306 if this connection was not made, would be 1,500 feet and in actuality the cul-de-sac, the
2307 temporary cul-de-sac serving this is actually built onto the subject property. In addition,
2308 elimination of the connection would create an awkward design, basically if you eliminate the
2309 connection you'd have a cul-de-sac backing up to the street. You can't eliminate the cul-de-sac.
2310 It is necessary for the turnaround for the balance of the Windsor Oaks Subdivision. Other
2311 alternatives have been considered by staff, however, limitations on the number of lots on a single
2312 point of access, limits on block lengths, and the need to loop water mains to provide adequate
2313 pressure precludes alternative layouts.

2314

2315 Given the benefits of interconnecting the subdivision streets and the fact that the revised plan
2316 would reduce cut-through traffic from the originally contemplated plan, staff recommends
2317 approval of the plan as revised. The addendum contains an added condition to prohibit
2318 construction traffic on Oakington Drive. The number of lots has been revised to include an A-1

2319 zoned lot.

2320

2321 The engineer and developer are present and are available to answer any questions.

2322

2323 Mrs. Ware - At this point I was remiss in not asking if there was any opposition to
2324 Castleton Subdivision in the Varina District. Thank you.

2325

2326 Mr. Jernigan - All right, Mr. Kennedy, before you go, after talking with Mr. Ken Merner
2327 this morning with Boyd Homes at 7:15, he has made a concession that on Oakington Drive
2328 where the temporary cul-de-sac is now that he is willing to turn that into a permanent cul-de-sac.
2329 At that point, that would end your subdivision right there. Now, I want you all to realize
2330 something on this. This school bus is loading on Darbytown Road. It will continue to load on
2331 Darbytown Road.

2332

2333 Mr. Donati - I need to question staff on that. If I am not mistaken, I think all of our
2334 roadways are built now in new subdivisions should have sufficient radius in cul-de-sacs to be
2335 able to turn around. I know they do in my neighborhood. I don't understand why we are going
2336 to be committed to having a school bus still stop on Darbytown Road. The School Board makes
2337 that decision, obviously, but...

2338

2339 Mr. Kennedy - They designed the subdivision and anticipated a future connection, and so the
2340 temporary cul-de-sac that was there and the design wasn't such to permit that turnaround
2341 function to occur.

2342

2343 Mr. Silber - Mr. Donati, we do need a clarification from Schools on this, because this
2344 has come up now two months in a row, so I am going to make note that we need clarification.

2345

2346 My understanding is in a situation where a subdivision only has cul-de-sacs and no through
2347 connection, my understanding is that Schools will not go into that subdivision because if they get
2348 in there and there are cars parked in the cul-de-sac or whatever, they cannot turn around in there,
2349 so their policy, my understanding is that they would stop on the main road and pick up children
2350 there. I want clarification of that.

2351

2352 Mr. Donati - I know they come in my subdivision because I live in a cul-de-sac and the
2353 bus turns around every morning.

2354

2355 Mr. Marshall - I live in a cul-de-sac, Mr. Donati, and they don't come down my street.

2356

2357 Mr. Jernigan - But in 1999 we have enhanced the cul-de-sacs since 1999 but when this
2358 case was proffered the cul-de-sacs were a smaller size than what they are right now, and that is
2359 what they have, that proffered size. So, we have been working hard on this to get this straight,
2360 and I know Barry is your spokesman and I am going to let him get up, but I want you all to
2361 realize that Darbytown Road is a 55 mph speed limit road, and that is where your bus is stopping
2362 to pick the kids up. Now, when this plan originally came through, I thought the 20 lots that you
2363 pick up down there is going to add a little more traffic, and I think that most of you all were

2364 worried about the traffic coming through the rest of the Castleton Subdivision. I personally
2365 don't think that you are going to get that much traffic through there because you have the
2366 boulevard entrance coming up on Darbytown. There may be some people that will cut through,
2367 but I don't think it is going to be to the extent that you think it is, but I want you to realize you
2368 are giving up that school bus coming through the neighborhood and coming back out to close
2369 this road up. So, I just want to make you aware of that.

2370

2371 Mr. Donati - But again, Mr. Jernigan, they still have an option to talk to their School
2372 Board representative to make sure that school bus can come in there or is given the authority to
2373 come in there, and I think, also, the size of this subdivision as it is being developed, I think the
2374 traffic is going to definitely have to take another look at a speed study on Darbytown Road
2375 because all of this influx of traffic going out to Darbytown, definitely something is going to have
2376 to be done for safety design of the roadway.

2377

2378 Mr. Jernigan - So, Mr. Kennedy, as our discussion during the break, Mr. Merner has
2379 agreed that they can cul-de-sac Oakington there, as it comes out, past the 51st lot.

2380

2381 Mr. Kennedy - We will annotate the plans to that extent.

2382

2383 Mr. Jernigan - And 20 lots there will be incorporated with the Castleton as it shows on
2384 the map. OK, as you come in Oakington, which is the main road, coming off of Darbytown
2385 where it comes down to the 20 lots, there is a temporary cul-de-sac there now. They are going to
2386 make that a permanent cul-de-sac, and that will separate those two subdivisions there. With the
2387 cul-de-sac, there won't be any more traffic coming through there. The 51 lots that are in
2388 Windsor Oaks now will be all that will be in there and those 20 of Continental will exit through
2389 the Castleton development.

2390

2391 Mr. Vanarsdall - Mr. Kennedy, how many acres of that is A-1?

2392

2393 Mr. Kennedy - A little over an acre. And this would put them in the conditional approval and
2394 they would have subdivision approval before the adoption of the 10-acre requirement. That was
2395 one of the reasons for adding that lot.

2396

2397 Mr. Jernigan - I am straight. I think we need to hear from the opposition if they still want
2398 to speak in respect to what is being done, Barry, if you still want to say something.

2399

2400 Mrs. Ware - Can you give us your name and address, please.

2401

2402 Mr. Barry Crum - My name is Barry Crum and I am the President of the Windsor Oaks
2403 Homeowners Association. And we came here prepared to oppose the request as submitted, but it
2404 sounds like it has just been revised. Is that correct?

2405

2406 Mr. Jernigan - Yes, sir.

2407 Mr. Crum - Would there be a vote today?

2408

2409 Mr. Jernigan - Yes.
2410
2411 Mr. Crum - To accept it as revised and stipulated, that Oakington will be cul-de-saced
2412 off?
2413
2414 Mr. Jernigan - That is what we are going to approve today.
2415
2416 Mr. Crum - And there would be no passageway...
2417
2418 Mr. Jernigan - I am going to approve this Castleton Subdivision and the changes on the
2419 plans that shows that the temporary cul-de-sac will become a permanent cul-de-sac, and cut off
2420 access from the Continental property back through Windsor Oaks.
2421
2422 Mr. Crum - We have no opposition, but for clarity reasons I want to make sure that in
2423 the morning when the bus comes on Darbytown, the speed limit is 25 mph, and in the evening
2424 when the kids come home. That speed limit at that time is 25 mph. But we have no opposition if
2425 we are going to vote on it as presented by Mr. Jernigan.
2426
2427 Mr. Jernigan - OK. Thank you. Mrs. Ware, do you have a question?
2428
2429 Mrs. Ware - No.
2430
2431 Mr. Kennedy - I just want to make one other statement that the developer is also advising that in
2432 the past they were considering offering associate membership to the pool association to Windsor
2433 Oaks, but they are no longer a part of the subdivision and they would not be offering that.
2434
2435 Mr. Silber - Mr. Kennedy, with the temporary cul-de-sac and this being made a
2436 permanent cul-de-sac, are there houses currently constructed at a location where that temporary
2437 cul-de-sac is, and my question relates to if there are existing houses there, will they meet the
2438 setbacks when that becomes a permanent cul-de-sac.
2439
2440 Mr. Kennedy - If you can look at the plan, this is actually the construction plan for Windsor
2441 Oaks, and it actually shows the cul-de-sac actually extending on to the future development
2442 property. That was one of our concerns, actually. It was represented to the developer that he
2443 had access to this.
2444
2445 Mr. Silber - How is that road terminated right now?
2446
2447 Mr. Kennedy - That road is terminated with a temporary cul-de-sac. The developer has to come
2448 in and put in curb and gutter and finish it and then the adjoining lots would face the adjoining
2449 street, so what you would have is a cul-de-sac separated by about 25 feet from another street. So
2450 that street would run...
2451 Mr. Jernigan - Their engineer is here and has a drawing of it.
2452
2453 Mr. Silber - But I guess Mr. Jernigan what I am hearing is that the permanent cul-de-

2454 sac then is going to be on the subject property for which we are considering.

2455

2456 Mr. Kennedy -On the Castleton property.

2457

2458 Mr. Silber - So with that cul-de-sac at that location, there will be a public road, and I
2459 just want the Commission to understand this. There will be a public road in Castleton that will
2460 run right along the back side of that, the end of that cul-de-sac, so you are going to have curbing
2461 next to curbing. There is not going to be any lot there.

2462

2463 Mr. Kennedy -There is not going to be any lot, but a cul-de-sac with a street running right back
2464 up to it.

2465

2466 Mr. Marshall -He is going to put it on the screen for us.

2467

2468 Mr. Silber - So someone could actually come down this road at Castleton and just
2469 jump over the curb and they are into this other subdivision. There is no land between the two.
2470 Two public rights of way would be adjacent to each other.

2471

2472 Mr. Kennedy -Right. Two public rights would be adjacent and be continuous, actually, because
2473 connections to sewer and water will go through there.

2474

2475 Mr. Silber - Would there be, and I don't know if representatives from Castleton can
2476 speak to this, is there any, and I don't want to take a step back, Mr. Jernigan. I understand where
2477 you are coming from and that is fine if that is where we end up, but would there by any merit to
2478 considering cutting the main portion of Castleton off from this corner of Castleton by running a
2479 road from Windsor Oaks out in this direction.

2480

2481 Mr. Marshall -By that drawing, you can see Mr. Silber, on the picture there, there is land
2482 between the cul-de-sac. You have got the drawing in front of you. See how it is designed.

2483

2484 Mr. Silber - OK. How much land is that?

2485

2486 Mr. Kennedy -Approximately 40 feet. You mean, basically the cul-de-sac would end at the front
2487 yards of houses.

2488

2489 Mr. Silber - And that cul-de-sac couldn't be pulled back closer to the existing
2490 subdivision, could it?

2491

2492 Mr. Jernigan - Those homes are already built and deeded there.

2493 Mr. Silber - Depending on where the radius starts, you might be able to get a little bit.
2494 OK, there would be about 40 feet between the two public roads.

2495

2496 Mr. Vanarsdall - We don't have any school buses that wouldn't be able to turn around in
2497 there.

2498

2499 Mr. Jernigan - Mrs. Ware, do you have any questions?

2500

2501 Mrs. Ware - I have no questions. Are there any questions for the Commission? OK,

2502 Mr. Jernigan.

2503

2504 Mr. Jernigan - What I wanted to say when I met with Mr. Merner the first time, the
2505 Castleton Subdivision, which used to be Hunt Valley, was zoned, as Mr. Kennedy said, in 1989
2506 and 1990 and all this road structure and everything was put into force at that time. Now, the
2507 proffers on this case, which were pretty weak, they could have built slab homes, 1200 sq. ft.
2508 They weren't very strong by today's standards. When I met with Mr. Merner, I will have to say,
2509 he has actually done everything that I have requested of him. He has upgraded the size of the
2510 homes. He has guaranteed that everything will be on crawl spaces. He has done a sidewalk plan
2511 that goes throughout the neighborhood, and he has taken a project that could have really been
2512 bad and turned it into something nice, and that is protecting you all. So, at this point, too, he is
2513 bending over backwards here to help you all cul-de-sac this property. So, you are going to have
2514 a nice subdivision behind you, but it didn't have to be, but the man stepped up to the plate and
2515 agreed to do everything that I asked to keep the quality in there.

2516

2517 So, with that, I will move for approval of Castleton Subdivision, September 2004 Plan, subject to
2518 the annotations on the plans, the standard conditions for subdivisions served by Public Utilities
2519 and the following conditional conditions Nos.12 through 30 and 31 on the Addendum, and with
2520 the annotations for the cul-de-sac at the end of Oakington Street.

2521

2522 Mr. Marshall - Second.

2523

2524 Mrs. Ware - Motion made by Mr. Jernigan and seconded by Mr. Marshall. All in favor
2525 say aye. All opposed say no. The motion passes.

2526

2527 The Planning Commission approved Castleton Subdivision, September 2004 Plan, subject to the
2528 annotations on the plans, the standard conditions for subdivisions served by Public Utilities and
2529 the following additional conditions:

2530

2531 12. Each R-2A lot shall contain at least 13,500 square feet exclusive of the flood plain areas.

2532 13. Each R-3A lot shall contain at least 9,500 square feet exclusive of the flood plain areas.

2533 14. The limits and elevation of the 100-year frequency flood shall be conspicuously noted on
2534 the plat and construction plans and labeled "Limits of 100-year floodplain." Dedicate
2535 floodplain as a "Variable Width Drainage & Utilities Easement."

2536 15. The detailed plant list and specifications for the landscaping to be provided within the
2537 islands in Road A and the 20-foot-wide planting strip easement along Doran Road shall be

- 2538 submitted to the Department of Planning for review and approval prior to recordation of the
2539 plat.
- 2540 16. Any necessary offsite drainage easements must be obtained prior to approval of the
2541 construction plan by the Department of Public Works.
- 2542 17. The proffers approved as part of zoning cases C-39C-89, C-39C-90, C-40C-90, C-41C-90
2543 and C-20C-99 shall be incorporated in this approval.
- 2544 18. Prior to requesting the final approval, a draft of the covenants and deed restrictions for the
2545 maintenance of the common area by a homeowners association shall be submitted to the
2546 Department of Planning for review. Such covenants and restrictions shall be in form and
2547 substance satisfactory to the County Attorney and shall be recorded prior to recordation of
2548 the subdivision plat.
- 2549 19. Any future building lot containing a BMP, sediment basin or trap and located within the
2550 buildable area for a principal structure or accessory structure, may be developed with
2551 engineered fill. All material shall be deposited and compacted in accordance with the
2552 Virginia Uniform Statewide Building Code and geotechnical guidelines established by a
2553 professional engineer. A detailed engineering report shall be submitted for the review and
2554 approval by the Building Official prior to the issuance of a building permit on the affected
2555 lot. A copy of the report and recommendations shall be furnished to the Directors of
2556 Planning and Public Works.
- 2557 20. Prior to recordation a development agreement for the proffered recreational area must be
2558 submitted for review and approval by the Director of Planning. The Development
2559 Agreement shall provide for the dedication of the recreational area, a master plan for the
2560 recreational area and a performance schedule or bond for the proffered recreational area
2561 amenities.
- 2562 21. Prior to recordation a streetscape plan must be submitted for review and approval by the
2563 Director of Planning. The Streetscape Plan shall address the proffered requirements
2564 regarding street trees, sidewalks and pedestrian paths, street lighting, and lot landscaping.
2565
- 2566 22. Provide ROW dedication and improvements as determined necessary by the Director of
2567 Public Works at Doran Road and Darbytown Road entrances.
- 2568 23. A maximum of 50 lots may be developed with a single point of access.
- 2569 24. The permanent access easement shall be vacated prior to recordation of any affected lots.
- 2570 25. An access easement shall be provided to the adjoining A-1 lots without street frontage. A
2571 10-foot landscape buffer shall be provided along both sides of the easement.
- 2572 26. The existing prescriptive access easements shall be vacated in accordance with state law,
2573 prior to recordation of the affected lots.
- 2574 27. Any known cemetery or burial ground shall be relocated in accordance with state law or
2575 platted as a cemetery lot with either public street frontage or an access easement. The
2576 developer shall construct a walkway within and a fence along each side of the access
2577 easement. The type, design and other details shall be indicated on the construction plans
2578 for the approval of the Planning Office.
- 2579 28. All new utilities to be located underground.
- 2580 29. The construction plan shall identify spoils stockpiles remaining from any previous
2581 mining operations. Any future building lot containing spoils and located within the
2582 buildable area for a principal structure or accessory structure, shall be developed with

2583 engineered fill. All material shall be deposited and compacted in accordance with the
2584 Virginia Uniform Statewide Building Code and geotechnical guidelines established by a
2585 professional engineer. A detailed engineering report shall be submitted for the review and
2586 approval by the Building Official prior to the issuance of a building permit on the affected
2587 lot. A copy of the report and recommendations shall be furnished to the Directors of
2588 Planning and Public Works.
2589 30. Any unused well or septic system shall be abandoned in accordance with Health
2590 Department requirements.
2591 31. There shall be no construction access provided from Oakington Drive. The construction
2592 plans shall provide for temporary signage and barricades as deemed necessary by the
2593 Director of Planning to prohibit construction traffic on Oakington Drive. The developer
2594 shall specify on the construction plan such provisions to be provided within each
2595 construction contract to permit enforcement of said prohibition
2596

2597 **SUBDIVISION**

2598

Crowder Farms
(October 2004 Plan)

Foster & Miller, P.C. for Doris L. Crowder Revocable Trust and Wilton Development Corporation: The 66-acre site proposed for a subdivision of ~~42~~ 43 single-family homes is located at the northwest corner of Osborne Turnpike and Sholey Road on parcel 800-695-7559. The zoning is A-1, Agricultural District. Individual well and septic tank/drainfield. **(Varina) 43 Lots**

2599

2600 Mrs. Ware - Is there any opposition to Subdivision Crowder Farms in the Varina
2601 District? No opposition. Hello, Mr. Wilhite.

2602

2603 Mr. Wilhite - You have just been handed out a revised layout plan that addresses most
2604 of staff's concerns. We had asked them to reorient the lots that were fronting on Osborne
2605 Turnpike. Originally there were seven lots shown fronting on Osborne. They have revised the
2606 plan so six of those lots now front on the side street and only one lot remains fronting on
2607 Osborne Turnpike. Also, there was a stem lot shown on the original plan. The redesign has
2608 extended the cul-de-sac street, has eliminated a stem lot and created a standard lot there and in
2609 the redesign they actually gained one additional lot to a total of 43 in the subdivision. Extension
2610 of the stub street also provided public road access to the adjacent parcel to the south as well. On
2611 page 5 of your Addendum, there are two revised recommended conditions for approval. One
2612 deals with vacation of a 15-foot right-of-way easement that is currently existing and would be
2613 done prior to recordation of the subdivision plat. Condition No. 17 refers to the strip of land that
2614 connects to Sholey Road on what is now lot 19 on the revised plan. Staff has recommended that
2615 the applicant try to transfer that strip of land to the adjacent property owner or hold in reserve for
2616 future development. If not, and it stays a part of lot 19, then a 10-foot planting strip easement
2617 will be provided along Sholey Road to prohibit access to that street. The cul-de-sac street to the
2618 intersection does exceed 1320 feet in length as far as the length of the block, so specific approval
2619 by the Planning Commission is necessary. Staff would recommend approval of the revised plan.
2620

2621 Mr. Silber - Mr. Wilhite, I see this dedication along Sholey Road. Would there also be
2622 road improvements along Sholey Road?
2623
2624 Mr. Wilhite - Yes, there would be.
2625
2626 Mr. Silber - Which would include...
2627
2628 Mr. Wilhite - Paving and curb and gutter.
2629
2630 Mr. Silber - OK, thank you.
2631
2632 Mr. Jernigan - OK, so Kevin, do we need a special exception for the length of the cul-de-
2633 sac road?
2634
2635 Mr. Wilhite - You can actually just make it a part of your motion specifically approving
2636 the length and we can approve it with one motion.
2637
2638 Mr. Jernigan- You don't have to have a separate motion for it.
2639
2640 Mr. Wilhite - No, sir.
2641
2642 Mr. Jernigan - Well, we had no opposition to this case, right?
2643
2644 Mrs. Ware- That is correct. Were there any other questions from the Commission?
2645 No. OK.
2646
2647 Mr. Jernigan - Hank, you can just wave your hand, but you are all right with giving me
2648 15 feet, aren't you?
2649
2650 Mr. Wilton - Yes, sir.
2651
2652 Mr. Jernigan - We had a rough case this morning. Can you talk to Mr. Conner?
2653
2654 Mr. Wilton - I thought about it, but I decided against it.
2655
2656 Mr. Jernigan- Could you maybe talk to Mr. Conner, because I have been trying for the
2657 last three months but it hasn't worked. OK, with that being that there is no opposition, and staff
2658 has everything straight here, I will move for approval of Subdivision Crowder Farms, October
2659 2004 Plan, subject to the standard conditions for subdivisions not served by public utilities and
2660 the following additional conditions Nos.11 through 15 and Nos. 16 and 17 on the Addendum.
2661
2662 Mr. Marshall - Second.
2663 Mrs. Ware - Motion made by Mr. Jernigan and seconded by Mr. Marshall. All in favor
2664 say aye. All opposed say no. The motion passes.
2665

2666 The Planning Commission approved Subdivision Crowder Farms, October 2004 Plan, subject to
2667 the annotations on the plans, the standard conditions for subdivisions not served by public
2668 utilities and the following additional conditions:

2669

2670 11. Each lot shall contain at least 43,560 square feet, exclusive of the flood plain areas.

2671 12. The limits and elevation of the 100-year frequency flood shall be conspicuously noted on
2672 the plat and construction plans and labeled "Limits of 100-year floodplain." Dedicate
2673 floodplain as a "Variable Width Drainage & Utilities Easement."

2674 13. The detailed plant list and specifications for the landscaping to be provided within the 25-
2675 foot-wide planting strip easement along Osborne Turnpike shall be submitted to the
2676 Department of Planning for review and approval prior to recordation of the plat.

2677 14. A County standard sidewalk shall be constructed along the west side of Osborne Turnpike.

2678 15. Any future building lot containing a BMP, sediment basin or trap and located within the
2679 buildable area for a principal structure or accessory structure, may be developed with
2680 engineered fill. All material shall be deposited and compacted in accordance with the
2681 Virginia Uniform Statewide Building Code and geotechnical guidelines established by a
2682 professional engineer. A detailed engineering report shall be submitted for the review and
2683 approval by the Building Official prior to the issuance of a building permit on the affected
2684 lot. A copy of the report and recommendations shall be furnished to the Directors of
2685 Planning and Public Works.

2686 16. The developer shall provide evidence to the Department of Planning of the vacation of
2687 the existing 15-foot right-of-way easement prior to the recordation of the subdivision
2688 plat.

2689 17. There shall be no access to Sholey Road from the strip of land currently shown as part of
2690 Lot 19. If the said piece of land is not transferred to an adjacent property owner or held
2691 in reserve for future development, a 10-foot planting strip easement shall be provided
2692 along that portion of the lot abutting Sholey Road.

2693

2694 **SUBDIVISION**

2695

Dalton Park @ Greenbrooke
(October 2004 Plan)

Youngblood, Tyler & Associates, P.C. for Greenbrooke, LLC, Estate of Philip J. Kennedy, Jr., Marguerite Gilman Bruce, Browning Construction Company, Robert & Anna Triscari, Nevan N. Chang, G. Edmond Massie IV & Lara M. Tyler, Timothy H. & Donna M. Smith, Myrtle H. Dalton and Fidelity Properties, Ltd.: The 51.23-acre site proposed for a subdivision of 101 single-family homes and an exception for stem lots as required by Section 19-4 of the Henrico County Code is located along the west side of Belfast Road and the east side of I-295, approximately 650 feet north of I-64 on parcels 743-764-8795, 6363, 4622; 743-763-3572; 744-763-1576 and 2190; 744-764-3317, 2703, 5770, 5157, 4443 and 3831 and part of 744-763-0148 and 0961. The zoning is R-3C, One-Family Residence District (Conditional) and C-1, Conservation District. County water and sewer. **(Three Chopt) 101 Lots**

2696

2697 Mrs. Ware - Is there any opposition to subdivision Dalton Park at Greenbrooke in the
2698 Three Chopt District? No opposition. Good morning, Mr. Cooper.

2699

2700 Mr. Cooper - Good morning, again, Madam Chairman and members of the Commission.
2701 The revised plan is being handed out to you as we speak. The concern for the first plan that was
2702 in your agenda packet dealt with correct delineation of wetlands, flood plain elevation details
2703 and proposed stem lots. The revised plan that you are receiving now shows the correct limits of
2704 wetlands and does provide the required flood plain elevations. However, the plan still proposes
2705 five stem lots, which require an exception to be approved by this Commission. The first lot, you
2706 will notice, is lot 14 of Block B, which is located at the end of Allenbend Drive near I-295. This
2707 lot here. Staff feels that a slight lot line adjustment will provide enough frontage to make it a
2708 cul-de-sac lot and, therefore, recommends that it be redesigned accordingly. The four remaining
2709 stem lots are lots 7 through 10, also of Block B, and they are located at the end of Thunder
2710 Court. I am pointing to them now. (Referring to rendering) Of most concern are lots 8, 9 and 10,
2711 which have the design and appearance of what was once recognized as flag lots. The applicant
2712 will tell you that these lots are not flag lots, which are no longer allowed, but rather a stem lot, as
2713 defined by the County Code. Staff agrees with that definition, however, they still hold the
2714 design, again, of what was once known as flag lots. Therefore, staff is not in support of this
2715 design and feels that it is not a good overall design. To think of it in a visual term, at the end of
2716 that cul-de-sac bubble on Thunder Court will just be a driveway that would extend at least 100
2717 feet back before reaching three homes, which essentially are behind lot 7. Again, the rears will
2718 not be fronted by the front of another home, however, they are tucked away back behind that lot
2719 off of the cul-de-sac. As well, you may recall during the rezoning hearings for this site, the
2720 applicant's representative said, "The developer has demonstrated that they can create very nice
2721 neighborhoods that are coordinated and well planned. They would like to continue the vision
2722 that they have for transforming this area into housing that meets today's standards." While staff
2723 certainly agrees that the applicant's proposed development in this area will provide very nice

2724 neighborhoods, the stem lots proposed on this plan do require an exception of today's standards.
2725

2726

2727 Finally, staff would like to present an alternative layout which was handed to you this morning.
2728 This layout has also been shared with the applicant and, in staff's opinion, provides a better
2729 layout that does result in one less lot than originally proposed by the applicant. The original plan
2730 calls for 101 lots. This plan proposed by staff presents 100 lots. You will note on the revised
2731 plan that staff is proposing there are no longer cul-de-sac lots. They are all standard lots by
2732 definition.

2733

2734 Staff does not recommend the approval of the proposed stem lots in this case and recommends
2735 that the applicant revisit the layout and provide a design that meets today's standards. The
2736 applicant is here today and is likely not to agree with our recommendation, but is happy to
2737 discuss this matter, I am sure, and I am happy to answer any questions you may have as well.

2738

2739 Mrs. Ware - Thank you. Are there any questions from the Commission for Mr.
2740 Cooper?

2741

2742 Mr. Marshall - There would never be a case where you would come up here and support a stem
2743 lot, would it?

2744

2745 Mr. Cooper - No, sir.

2746

2747 Mr. Marshall - I am sorry Mr. Tyler that your captive audience for your presentation has
2748 disappeared.

2749

2750 Mr. Tyler - That is quite all right. I will try to do an abbreviated presentation, but
2751 unfortunately this particular subject, since I am the first one to go through the gauntlet here in
2752 five years I think does merit some precedence standards and I hope to demonstrate that I have
2753 given you good design standards here.

2754

2755 First off, let me tell you that my name is Webb Tyler, for the record. I am an engineer with
2756 Youngblood, Tyler and Associates, but in this particular instance I am also the land developer
2757 and the contract purchaser of this property. Here today with me is Anne Tignor, the project
2758 engineer with Youngblood, Tyler and Associates, and Ms. Tyler, the construction manager, and
2759 if you have any questions of them, they will be glad to answer those questions.

2760

2761 Specifically, as Michael was kind enough to point out, we are here today to talk about the
2762 requesting of an exception under the Subdivision Ordinance 19.4. That Subdivision Ordinance
2763 allows you, as the Planning Commission, to grant approval of this plan, with stem lots. I need to
2764 give you a little bit of a brief background on this matter for those that have been on the Planning
2765 Commission a shorter time than five years. Back in 1999 we had what was allowed and called
2766 "flag lots." Prior to 1999 for about 10 years there from 1989 to 1999, flag lots were allowed.
2767 There were several problems that were created by flag lots, staff and Homebuilders Association
2768 got together and wanted to change that. We came up in 1999 with what was called the

2769 elimination of flag lots, and basically redefined the lots to cul-de-sac lots, which are lots that are
2770 like pieces of cheesecake, so to speak, with the first bite taken out on the cul-de-sac, and what
2771 we call stem lots. You have approved cul-de-sac lots and those lots are quite common.
2772 However, stem lots are not and this is the first time, to my knowledge, that you all have had an
2773 opportunity to review this, even though you do have the authority to approve them.

2774

2775 The Ordinance that we have right now says that stem lot regulations under Section 24.95
2776 basically states that you can have stem lots with no more than five stem cul-de-sac lots shall be
2777 permitted on a street. We meet that requirement. At least two or three parking spaces shall be
2778 provided on each lot. We meet that requirement. The important one is “No dwelling shall face
2779 any portion of the rear or side of an existing or proposed dwelling on adjacent lots.” We meet
2780 that third requirement. The area within the access strip shall not be used to meet the minimum
2781 lot area requirement. We meet that requirement, and No. 5, “The stem lots may be permitted at
2782 any point along a public cul-de-sac street.” We meet that because we are at the end. All of the
2783 previous cases that we have done in this area, including Sadler Green, Sadler Glen, Sadler Grove
2784 and Greenbrooke, or Crawford Park at Greenbrooke as it is now named, pledged that we would
2785 not have any flag lots or stem lots. We met that requirement. At the time of the rezoning, this
2786 particular layout was shown to the staff prior to rezoning and we did not offer a proffer that
2787 precluded the use of flag lots or stem lots, because we intended to use them. Our original plan,
2788 which showed 103 lots at that time, had to be modified due to environmental concerns and final
2789 engineering information, so we have already reduced the number of lots from approximately 103
2790 down to 101. We are significantly below our allowed density of 2.2 units per acre for the 50
2791 acres or 120 lots, but much lower because of the environmental flood plain, wetlands concerns
2792 that are on this property.

2793

2794 Why should this request be granted? The Dalton Park layout, this area I have wetlands right
2795 here, which is why that is the shape of this particular lot, right here (referring to rendering). In
2796 this area here we have wetlands that are in this area down here which preclude our ability to
2797 extend this cul-de-sac bubble up closer to the interstate in order to get adequate perpage. You
2798 will notice over here, and I want to come back to this, we have another edge of wetlands right in
2799 here. By the way, these wetlands have been confirmed by our Corps, and in this particular area,
2800 the alternative plan shows, as much as we appreciate Michael’s efforts, showed a greater impact
2801 of wetlands in this area, so we would be expanding our impacts of wetlands and thus not
2802 exercising avoidance and minimization as required by the Corps of Engineers. Your Public
2803 Works Department and Environmental Department require us to have a minimum side yard
2804 setback from those wetlands of 25 feet, thus the increase, or pink area is a greater impact of
2805 wetlands than what we are allowed. Again, I appreciate Michael’s efforts. I, too, have struggled
2806 with this layout. Rather than hire lawyers to represent this, I, as a designer, felt I needed to do
2807 this rather than someone else. Right now I would like to try to point out to you an example of
2808 good design and bad design. Obviously, this is my opinion, at least the Homebuilders thought I
2809 had a justification to qualify as an opinion, because I was one of the individuals to help write this
2810 new ordinance about five years ago. This design on stem lots is where we don’t back up the front
2811 of the house to the back of the house. This represents good design. You will note that the back
2812 of the house is abutting a golf course and the front a flood plain. This also represents good
2813 design. This one is Preston @ Wyndham. I also might add, why is it good design? Because the

2814 lots are sold at premium amounts, amenities for a higher price, and they built bigger homes.
2815 They built bigger homes on it because the little lane is considered to be a highly desirable
2816 exclusivity feature. Traeburn @ Wyndham, we had another case of good design where the fronts
2817 of houses faced the front of houses and they backed up to an amenitized area. You only use
2818 these designs when you have very difficult land restrictions. An example of poor design is in
2819 Belstead @ Wyndham, where the front of a house faces the back of a house. That is not what I
2820 am requesting. That is not what I proffered in my zoning case for this project. I did not want to
2821 do this. I do not like that design. It was eliminated and thus the regulations allow it to be
2822 eliminated. I'd like to pass this around so you all can just look at it yourselves, the detailed
2823 pictures. There are two examples of good design and one example of bad design on there. I
2824 have some other examples I'd like to pass around, also, that are poor design and good design.
2825 Obviously, I submit what I am offering is good design. There is the concern by staff that the
2826 common area access road is not a public road, and although that is true, it is very similar to what
2827 you are considering with mixed urban uses with the use of alleys. What it is it is a 16-foot wide
2828 road that is asphalt with concrete and an example is on that board. It is asphalt. It would be built
2829 by the developer using the same pavement thickness that is required on a public road. In other
2830 words, 8 inches of stone and 2 inches of asphalt. That pavement thickness and its width allow
2831 for fire access. I submit to John Marshall this morning a joint maintenance access agreement.
2832 That maintenance access agreement allows for the construction of the road by the developer, the
2833 common driveway, and maintenance by those three homeowners. It also includes that if they do
2834 not maintain it, the homeowners association has the right to come in and maintain it and assess
2835 their property, and, in fact, the homeowners association has the right, as most homeowners
2836 associations, to lien the property, to put a lien on it, similar to just submitting it to the tax liens. I
2837 think this gives the assurance to the County that this private access road is maintained and
2838 maintained properly. I would also submit to you that although this may be a difficult way of a
2839 private road to be maintained by more modest homes, these homes are a half million dollars to
2840 \$600,000 homes, and therefore, my concern of privacy and desire to give them some exclusivity
2841 with the close proximity of the interstate is also a reason why I had backed up the lots to the
2842 flood plain, fronted them on a private access strip, but between that private access strip and the
2843 interstate, I will be intensifying the buffer in this area right here (referring to rendering), so that
2844 the back of the houses look on to this 300 ft. expanse of floodplain. The front of the houses look
2845 out over that little private driveway, but then you have behind that Leyland Cyprus and a 35-foot
2846 buffer plus some trees in the interstate right of way that, basically as you walk out the front door,
2847 you see a green wall. The reason that the lots backed up to the floodplain and not backing up to
2848 the interstate is because the outdoor living area of a home is typically not the front. That is the
2849 formal area. It is the rear that is the outdoor living area. You don't have the decks, the pools,
2850 the play areas for the children in the front yard. You have them in the rear, and what I seek is to
2851 bring nature closer to the rear, where it is actually appreciated.

2852

2853 It is important to realize that the Corp permitting issues are a critical design issue. They used to
2854 not be. There are about 46 types of Corps permits. If you go over an acre, you go into an area of
2855 Corps permitting that is an indefinable time frame. I just experienced that with Greenbrooke and
2856 it took me over 12 months to get the Corps permit. If I can keep it below an acre, then I can get
2857 that within approximately 6 months. That time line is very critical to me. Right now the layout,
2858 as proposed, is .97 acres of wetland impacts. If I have to change the layout to expand the lot in

2859 lot 14 or to go to the County's design, that would throw me over an acre and would put me in an
2860 entirely different permitting requirement. Under Section 19.4 of the granting of this exception,
2861 you all have to meet certain criteria. We have established that we meet the zoning ordinance
2862 regulations for stem lots, but in your consideration and deliberations, you have to establish that it
2863 meets the criteria of granting an exception under the subdivision regulations. We believe that we
2864 have demonstrated to you all what is good design and we are proposing good design. We have
2865 compared it against their design, and we are not proposing bad design. We are trying to exercise
2866 avoidance and minimization of our wetland impacts to preserve the natural areas. By granting
2867 this exception, you will have indicated that there is a hardship on this particular piece of property
2868 due to its environmental flood plain and wetlands, but more importantly, you will have agreed
2869 that what I am proposing is "The exception substantially complies with the provisions of this
2870 chapter and does not defeat the chapter's purpose and protects the public interest." 2. "The
2871 exception will not be detrimental for the public safety, health and welfare or injurious to
2872 surrounding property or improvements." 3. "The conditions on which the exception request is
2873 based are unique to the property and are not generally applicable to other property and do not
2874 create a more inconvenience and that the exception is not based exclusively on financial
2875 considerations."

2876

2877 I will be glad to answer any questions that you have.

2878

2879 Mrs. Ware - Are there any questions for Mr. Tyler from the Commission?

2880

2881 Mr. Marshall - Lot 14 and Lot 7. They can both be accessed from the cul-de-sac, correct?

2882

2883 Mr. Tyler - Yes, sir. Directly.

2884

2885 Mr. Marshall - And that is where their drive will be?

2886

2887 Mr. Tyler - That is correct.

2888

2889 Mr. Marshall - That leaves us with 8, 9 and 10.

2890

2891 Mr. Tyler - I want to point out they are still classified as stem lots.

2892

2893 Mr. Marshall - I understand.

2894

2895 Mrs. Ware - And Mr. Cooper's change to that shows that each lot could be accessed
2896 from the cul-de-sac under your plan.

2897 Mr. Cooper - That is correct and he is right in showing the revised route would require
2898 additional wetland impacts than what was initially proposed. That is true.

2899

2900 Mrs. Ware - How significant are they?

2901

2902 Mr. Cooper - In my opinion it is correct. It is at the corner of the triangular piece of
2903 wetland area. To be honest, I don't have a square footage number to tell you whether or not it
2904 pushes him over an acre. He may very well know, but I would have to think that specific
2905 calculations showing that would definitely answer the question.

2906

2907 Mr. Silber - Would the impact on your proposed 9 be less with that lot size the way it
2908 is? It looks like there are still some wetlands impacted on 9. Could that be eliminated, that lot
2909 arrangement?

2910

2911 Mr. Cooper - You are correct. There are some wetlands shown to the rear of – even as it
2912 is shown now – to the rear of lot 10 that are shown as impacted. To be honest, I don't know why
2913 they are listed as impacted unless they are for clearing purposes. But certainly, they wouldn't
2914 have to be. They are in the rear yard, unless again there is a reason for limits of disturbance that
2915 require them to impact this.

2916

2917 Mr. Silber - Maybe Mr. Tyler can answer that question. I am just not sure why on
2918 your proposed lot 9 why those wetlands would be impacted. Perhaps it would be a swap of
2919 impacted areas. Do you understand my question?

2920

2921 Mr. Tyler - I can't tell you that that could be swapped out. Generally speaking, the
2922 County requires us to have a rear yard exclusive of wetlands or by the Ordinance requirement of
2923 40 feet they cannot have any wetlands preserved within the rear yard or setback. I don't know
2924 that I can meet that requirement by swapping out what with the wetland impacts on my proposed
2925 10 and you all's proposed 9. Therefore, I can't answer the question today as to whether or not I
2926 can swap out those impacts. I don't think I can, because I've got to meet a rear yard requirement
2927 exclusive of wetlands. Unfortunately, we are not allowed to preserve wetlands in lots nowadays.
2928 I don't agree with that, but I have to deal with the regulations as they currently exist.

2929

2930 Mrs. Ware - Mr. Cooper, did you have something you wanted to add to that?

2931

2932 Mr. Cooper - Yes, I just wanted to clarify that. In fact, wetlands can be in the rear yard.
2933 The required building setback must be measured from the limits of the wetlands, and in this case
2934 with the staff proposed plan, you will see that Lot 9 will provide more than enough room to
2935 adequately provide a home within a buildable area that does meet the setbacks from those
2936 wetlands, should they be preserved.

2937

2938 Mr. Jernigan - Mike, while you are up there, your drawing on Lot 11, where that is cut
2939 off, could that be extended down to the end of the cul-de-sac and retain the 35-foot buffer and
2940 get two lots out of 11?

2941 Mr. Cooper - That may be difficult because, again, preserving that 35-foot buffer along

2942 the interstate, we did look at that. I think it would be difficult. It is certainly something that
2943 could be looked at, but we did look at it and, again, without enough precise time to really look at
2944 it, we couldn't say whether or not they could definitely get another lot out of it.

2945

2946 Mr. Jernigan - And on your drawings, on Lots 5, 6, 7, 8, what is the lot width on that?

2947

2948 Mr. Cooper - The lot width for 5, 6, and 7 is essentially what is currently shown, which
2949 is at least 85 feet, which is the proffer requirement. Lot 8 is also 85 feet, and again that is
2950 measured at the front yard setback, so we did account for each one of those lots would meet the
2951 proffered lot width requirement, which is greater than the normal Code requirement, and they all
2952 do meet that in our design.

2953

2954 Mrs. Ware - In your design?

2955

2956 Mr. Cooper - Yes, ma'am.

2957

2958 Mrs. Ware - I have a question just for my own personal clarification that with the
2959 applicant's proposal for these lots and yours, the same amount of wetlands would be impacted
2960 regardless of what plan?

2961

2962 Mr. Cooper - It would depend on whether or not they were able to preserve what they
2963 are showing as impact to the wetlands in the rear of what is their Lot 10 and my Lot 9. If they
2964 were able to preserve that and not impact them, then it would probably be similar, but again I
2965 don't have specific calculations to show that, but it would certainly be close. If they had to keep
2966 the impacted wetlands in the back of my Lot 9, then yes, there would be an additional wetland
2967 impact based on staff's proposal. But, again, I would like to reiterate that this layout was not
2968 proffered with the rezoning case, and while Mr. Tyler did proffer that no home shall front the
2969 rear of another home, in fact that proffer is redundant, because the Code does not allow for it
2970 anyway, so we wouldn't consider it, regardless of the proffer.

2971

2972 Mr. Archer - Mr. Cooper or Mr. Tyler, was any consideration given and you can tell I
2973 am not an engineer, to reversing Lots 8, 9 and 10, and putting them adjacent to the 35-foot
2974 buffer, with the front coming in the other direction?

2975

2976 Mr. Cooper - I think Mr. Tyler, correct me if I am wrong, but I believe that Mr. Tyler
2977 would say it would require additional wetland impacts, more so than what they are proposing
2978 now.

2979

2980 Mr. Archer - Even if you ran the road on that side instead of the cul-de-sac?

2981

2982 Mr. Tyler - Mike Cooper's assessment is correct and would require more wetland
2983 impacts, and I am again trying to exercise avoidance and minimization. I personally believe that
2984 the value of lots are enhanced by backing up to the floodplain, rather than backing up to the
2985 interstate.

2986 Mr. Archer - Well, just looking at from the fact that 11, 12 and 13 are backed up toward

2987 the interstate...

2988

2989 Mr. Tyler - That is true but I had no alternative there, but on 5, 6, 7 and 8, 9 and 10, I
2990 believe I have enough alternatives, which is to put a road in, and again, I had to put the road in at
2991 a location where I am minimizing the crossing here.

2992

2993 Mrs. Ware - So, basically, you are saying your extreme hardship is based on wetland
2994 impact and we don't have specific information based on these two different plans and what
2995 might be other acceptable plans that well may not have been explored in order to avoid that
2996 impact, and avoid the stem lot situation, as well.

2997

2998 Mr. Tyler - Well, I have performed other layouts, but those other layouts created
2999 greater wetland impacts and it is not just the wetlands, but also the flood plain as well as the
3000 Interstate 295 location, as far as my hardships.

3001

3002 Mrs. Ware - As far as your hardships?

3003

3004 Mr. Tyler - The geometry of the land.

3005

3006 Mrs. Ware - But there is an acceptable avoidable plan to avoid the stem lots in what the
3007 staff is showing.

3008

3009 Mr. Cooper - Correct and then just trying to determine whether or not additional
3010 impacts would be necessary or if they can be swapped out, but certainly the layout is acceptable
3011 to the Corps and would eliminate cul-de-sac and stem lots on that road.

3012

3013 Mrs. Ware - And it would be incumbent upon the applicant to find out what those
3014 impacts would specifically be based on these two plans. Right?

3015

3016 Mr. Cooper - They would probably be able to provide a more scientific measurement of
3017 those wetland impacts than staff would.

3018

3019 Mrs. Ware - Thank you.

3020

3021 Mr. Silber - I think, let me just say, as Mr. Tyler has indicated, the Ordinance was
3022 amended a couple of years ago to allow for stem lots under unique and hardship situations, and it
3023 references, the zoning ordinance references back to the subdivision regulations where it speaks
3024 to the granting of exceptions, and while Mr. Tyler highlighted some of those exceptions, I think
3025 it is important that the Commission focus on those because I think it is really a call the
3026 Commission has to make, and it will certainly have a precedent-setting effect, I believe, from
3027 this point forward, but basically there are four criteria the Commission has to consider this
3028 exception, and it is classified under the granting of exceptions to be, the Commission finding it
3029 to be an extraordinary hardship that may result in the development of a particular parcel of
3030 property, but the four criteria are, one is the protection of the public interests and one is the
3031 public safety and welfare issue. The third relates to making sure it is not just a matter of

3032 inconvenience, and the fourth thing is that the exception is not based exclusively on financial
3033 considerations. So, I think the Commission has to consider this against those four tests in
3034 making their consideration. I think you have heard all sides of the situation here today, but I
3035 wanted you to bear in mind the tests you are supposed to be running this against.

3036

3037 Mrs. Ware - What was the second one?

3038

3039 Mr. Silber - The second one relates to the public safety, health and welfare.

3040

3041 Mr. Marshall - This does meet all of the requirement spelled out in the Code for stem lots.

3042

3043 Mrs. Ware - Pardon?

3044

3045 Mr. Marshall - It meets all of the requirements spelled out in the Code in Section 19 about stem
3046 lots, what has to be, as far as on the ground. It meets all of those requirements, about not
3047 backing up one house facing the back of another.

3048

3049 Mr. Silber - That is correct and the Zoning Ordinance has certain criteria and the front
3050 of the house can't look into the back of another house or the side, etc. Those tests have to be
3051 met, and I believe those have been met in this case. Then you have to go to the Subdivision
3052 Ordinance where it deals with the granting of exceptions.

3053

3054 Mr. Archer - Mr. Secretary, I can recall, I guess it was maybe five or six years ago,
3055 when we had quite an intense study on flag lots and stem lots. I don't remember what year it
3056 was, but it was sometime ago, and I think it sprang from the fact that we had in the past had
3057 some subdivisions approved that were quite unwieldy, I guess is the way to put it. One I can
3058 recall quite clearly in my district that had a cul-de-sac that was shaped somewhat like a football,
3059 and people would come out their front door and look directly into someone else's back door, and
3060 I think to his credit, Mr. Tyler has done quite a bit to alleviate that situation, but I am not sure
3061 about the full criteria that you listed, that it would meet all of them, and I don't know what
3062 further tests would have to be proven to see that we do. But I understand the concern on both
3063 sides. I just remembered why we did this, why we amended the flag lot and stem lot ordinance in
3064 the first place, to alleviate some situations that were not good.

3065

3066 Mr. Silber - That is correct, Mr. Archer, and I certainly wouldn't classify these in the
3067 same category as some of those that we have seen before.

3068

3069 Mr. Archer - No. It is not.

3070

3071 Mr. Silber - It is not nearly as drastic. The Commission also could approve some
3072 variation of what Mr. Tyler is asking for. There is a stem lot request on Lot 14, which is
3073 somewhat different from the stem lot request on 7, 8, 9 and 10.

3074 Mr. Marshall - I think 7 is the same as 14.

3075

3076 Mr. Vanarsdall - Following up Mr. Archer, I remember that, too, and it was almost a joke,

3077 some of the things that we had to look at, the way the house were, but it seems like he is trying to
3078 get around that in what he is proposing, looking in the backs of the houses and all that. Like you
3079 said, I don't think we have had one for five years, have we?

3080

3081 Mr. Archer - It has been a while, as I can recall.

3082

3083 Mr. Vanarsdall - I had almost forgotten they were. Do you remember they added in there
3084 that the Commission could make an exception if it wanted to.

3085

3086 Mr. Jernigan - I guess on this if the criteria matters, at this point I don't like stem lots, I'll
3087 be straight up with you, but it isn't impacting anybody else. I think they said it is 300 feet
3088 through the wetlands area. What I am trying to think of is a better case than this. If we are going
3089 to have a stem lot, what would we do? Either we need to get rid of it, period, or I can't see
3090 anyway that we can improve this case, and I can't see where it hurts anything.

3091

3092 Mr. Marshall - And that is what I have been saying. I spent a lot of time at Mr. Cooper's drafting
3093 board the other day trying to figure out, and this was a result of some of the stuff he and I
3094 discussed on the drawing, but the problem was it did go over into the wetlands area. I think this
3095 drawing is almost identical to the one you saw in Wyndham and it showed you where the houses
3096 faced the golf course, and there is nothing behind them, which is a common area behind them, if
3097 he showed that. The only concern I had was that this private paved road, it is good in the
3098 document. I don't think you all have seen it, but it addresses part of what I was worried about,
3099 that a joint declaration be recorded in the courthouse and running with the lot, like an easement.
3100 It provides for the maintenance of this road that, as he said, is going to be built by the developer,
3101 be 16 feet wide, and the only thing I had was, what if?

3102

3103 Mrs. Ware - Who enforces that?

3104

3105 Mr. Marshall - My issue was, and I asked Mr. Tyler about this, and he had not thought of it, if he
3106 can give us a restriction – in the covenants a restriction that runs with each lot, that says that
3107 each one of these, and it would be 8, 9 and 10, that they would each be assessed \$300 a year
3108 separate from the normal homeowners association dues, payable to the homeowners association,
3109 to be held in a special fund in the event that these three lot owners didn't take care of the road,
3110 then the homeowners association, not only does that agreement there that you have allow the
3111 homeowners association to go in and fix the road, but they would then have the funds available,
3112 which would accumulate to the tune of \$900 every year, payable by the lot owners to the
3113 homeowners association, and the homeowners association would have that money on hand to do
3114 anything to that road if those three lot owners did not do it. And that is real money the
3115 homeowners association couldn't be able to spend it anywhere else.

3116

3117 Mr. Tyler - And I am agreeing to that.

3118

3119 Mr. Jernigan - You might end up paying for it though, Webb.

3120

3121 Mr. Tyler - No. I had to do that down at the beach in order to build a reserve fund,

3122 because I live on a private road down there, and in order to preserve the sand dunes. Down there
3123 it is over \$1,000 a year, a reserve fund. It is a mighty small amount of money.

3124

3125 Mr. Marshall - I am like you, these houses are all going to be in the same line going down the
3126 street facing the same direction, so none of them are turned different than their neighbors houses
3127 and their back yards will all be facing the same common wetland areas, a C-1 Conservation
3128 Area, and the front of the houses will be facing the buffer area from the interstate. I don't know
3129 that we will have a better case to do it, if they do the thing I am talking about to maintain the
3130 roads. The homeowners association will have the money, and in that document they have the
3131 right to go in and do it, even if they didn't have the money. Like I said 14 and 7, to me, they
3132 already have access off the cul-de-sac, so I did not have that big of a problem with them,
3133 anyway. I know what he is talking about with the wetland area, about getting over an acre. So,
3134 if he is willing to do that to provide us with the homeowners association to have the money to
3135 repair the road, then I think I can agree to it, because it is in the Code.

3136

3137 Mrs. Ware - Why are we getting involved in the covenants?

3138

3139 Mr. Marshall - To make sure that that the issue we have with the private nature of the road is that
3140 there are funds available for the homeowners association to fix the road down the line, instead of
3141 just saying, homeowners association go fix it, and then bill them for it.

3142

3143 Mr. Jernigan - This is about the best case scenario for a stem lot, but I will be truthful
3144 with you, I like Mr. Cooper's drawing a whole lot better than what Webb did here, but we are
3145 where we are. I would like to revisit the stem lot qualifications at some other point and maybe
3146 we just need to get rid of them altogether, but it is in the Code, and if you are going to have it.
3147 This meets the criteria the best I can see. I can't think of a case that would be any better than
3148 this one, but still I think Mr. Cooper's drawing actually makes the lots look a whole lot better,
3149 but we are not at that point, and that is somewhere else down the road. I mean, I can support this
3150 like it is.

3151

3152 Mr. Vanarsdall - Mr. Marshall, would you put a condition on the case to that regard?

3153

3154 Mr. Marshall - Yes. We would have to put a condition on there that the homeowners, that the
3155 restrictive covenants that's Lots 8, 9 and 10 would be assessed the fee, and that Lot 7, I guess
3156 you would have to make sure that Lot 7 is not going to access that private road.

3157

3158 Mr. Tyler - I agree with that.

3159

3160 Mr. Vanarsdall - Why don't we go on from there, we've talked about it long enough, I
3161 think. I'm not the Chairman, but I am the vice.

3162

3163 Mr. Marshall - What was that?

3164

3165 Man in Aud. - The Fire Marshall would probably want the drive to be 20 feet wide.

3166

3167 Mr. Marshall - The road to be 20 feet wide?

3168

3169 Mr. Tyler - That can be worked out at the final approval subdivision plan and if that's
3170 what the Fire Marshall demands, that's what the Fire Marshall demands.

3171

3172 Mr. Marshall - Okay.

3173

3174 Mr. Silber - Mr. Marshall, I think that I see that the tendency of the Planning
3175 Commission and, of course, that's your choice, my only concern is the precedence this may set.
3176 The configuration of these stem lots, certainly 8, 9 and 10, could be employed in other situation
3177 where properties narrow, where configuration challenges exist and when you open the door to
3178 this type of lot arrangement, where you have these long stems, I can almost guarantee you that
3179 Mr. Tyler and some of his other creative engineers will run into situation with parts of
3180 configurations that will be challenged and this type of arrangement will be offered. That's why I
3181 like Mr. Cooper's layout and the look of that, even if there was some compromise where a stem
3182 lot is approved but maybe not with the long stem arrangement. But, it is the Commission's
3183 decisions but I believe this is going to be seen again.

3184

3185 Mr. Marshall - I understand but what bothers me about it is, why have it in there? They should
3186 put it in there and said here are the requirements and he meets them all.

3187

3188 Mr. Silber - He meets all of the requirements in the zoning ordinance but than you
3189 have to review it against the exception.

3190

3191 Mrs. Ware - Then the exception issues.

3192

3193 Mr. Marshall - And if there was ever going to be, like Mr. Jernigan said, I mean, if somebody
3194 comes back and wants one another time, where are they going to have this huge common area,
3195 wetlands behind them and nothing in front of them and all of the houses face the same direction?

3196

3197 Mrs. Ware - But, then based on the exception, the extreme....

3198

3199 Mr. Marshall - I mean, we don't have to do it every time.

3200

3201 Mrs. Ware - And I would be concerned about something like this in a district that is
3202 primarily infill as to open the door to this type of development and density issues and infill.

3203

3204 Mr. Marshall - But for it being in there, I would have a big problem with it but because it is in the
3205 subdivision ordinance and it says here that it meet these four things and then come talk to us.

3206 Mr. Silber - Would there be any consideration given by the Commission to deferring
3207 this for a month, allowing Mr. Tyler to look at other lot configuration that may not have the long
3208 stem arrangement. It may still end up with this stem lot but maybe a different design that may
3209 incorporate something closer to what staff has proposed.

3210

3211 Mr. Archer - Mr. Secretary, I sort of agree with that. I think we might have painted

3212 ourselves in a corner a little bit. You know, I thought years ago when we were dealing with the
3213 stem lot situation, we were trying to do away with them all together. Mr. Tyler has a
3214 configuration here that I think deserves consideration because of the fact that we are
3215 accomplishing something in not having houses that look at each other backwards and so forth,
3216 but at the same time, I'm not absolutely certain that we met all four of the criterias, and you
3217 listed one of them, of course, being financial consideration. And, however, we act on this one, I
3218 think, you know, going forward and trying not to set a precedence, maybe we ought to revisit the
3219 stem lot situation again and remove that part from the ordinance that allows them in anyway.
3220 And then we won't have to confront this again. You are right, it is going to set a precedence if
3221 we leave it like it is. It will probably be two months from now and somebody is going to come
3222 back with another one.

3223

3224 Mrs. Ware - Yes.

3225

3226 Mr. Archer - And I'm not saying that indefinitely, Mr. Tyler, because I think you did a
3227 good job in what you tried to design here but I think that that is a loophole that we need to close
3228 if we are going to deal with this thing.

3229

3230 Mr. Jernigan - Can I say something?

3231

3232 Mr. Marshall - Absolutely.

3233

3234 Mr. Jernigan - I just spoke to Mr. O'Kelly and we tried to get rid of stem lots at some
3235 point, but the Board overruled it.

3236

3237 Mr. Archer - Well, we can revisit the Board, I feel.

3238

3239 Mr. Jernigan - Would you clear that up, Dave? I mean, what I'm saying is, if the Board
3240 is going to overrule it, and we try to get rid of it, and they are going to say we are going to have
3241 stem lots, what better case could we get than this. I see what you are saying but I can't.... Like I
3242 said, I don't like the idea of it anyway. I like Mr. Cooper's drawing a whole lot better but if the
3243 Board backs up that we are going to have stem lots, what better conditions are we going to have
3244 than this.

3245

3246 Mr. Archer - Well, it probably won't be any. I think that's what I am saying. I'm
3247 saying that Mr. Tyler has done an admirable job with this one as is allowed by the ordinance, but
3248 what happen was when we initially visited this, I think our intention was to get rid of stem lots
3249 and flag lots, and we did. But, apparently somewhere along the line it's been revised so that
3250 we.... am I right, Mr. Tyler, that they are now allowable....

3251 Mrs. Ware - One moment before you speak, Mr. Tyler. Mr. O'Kelly wants to speak for
3252 a second.

3253

3254 Mr. O'Kelly - You are correct, Mr. Archer, in that the Board of Supervisors directed the
3255 staff to prepare an ordinance to eliminate flag lots. We started out in that process and during the
3256 process, and it happens many times in the ordinance amendment process, you open it up to

3257 debate and you get input from other folks and many times that results in a better ordinance. In
3258 this case, the Homebuilders Association went to the Board during the process and we were given
3259 a different direction and that was to work with the Homebuilders. There was a committee
3260 formed, which I was the chairman of, Mr. Tyler was a member of that committee, Mr. Theobald
3261 was also a member of that committee and we worked on the regulations that are currently in the
3262 ordinance for many months. Is that not correct, Webb?

3263

3264 Mr. Tyler - That is correct.

3265

3266 Mr. O'Kelly - And so the regulations that we have today, where we started out to
3267 eliminate flag lots, and we did eliminate that terminology, but now they are called stem lots.
3268 Previously, with flag lots we did not have the criteria that we do, that the Commission is asked to
3269 consider. I think that is important in considering any exception and the test is that the
3270 Commission is satisfied that this situation meets those exception requirements.

3271

3272 Mr. Tyler - I would like to point out that we did improve the ordinance, Mr. Archer,
3273 by not having the front of houses facing the rear of houses, number one. As is always the case
3274 with legislation it is a compromise, there are compromises. I as an engineer and land developer
3275 have to deal with regulations. Wetland laws has changed four times in 10 years, I feel like I am
3276 going around in a revolving door at times, but the point is when the project is approved it has to
3277 deal with the regulations that exist at the time that the approval is granted and that is exactly
3278 what I think I am doing.

3279

3280 Mr. Archer - I agree with you there. That's the point that I am trying to make. The
3281 case that you presented, and I will admit, I like Mr. Cooper's drawing better but it does falls
3282 within the criteria that the ordinance allows at this point.

3283

3284 Mr. Tyler - To date.

3285

3286 Mr. Archer - To date.

3287

3288 Mr. Tyler - If y'all eliminate stem lots tomorrow, then that's a whole other subject.

3289

3290 Mr. Archer - Well, I'm saying whatever we do with this, let's eliminate stem lots
3291 tomorrow. That's what I'm saying.

3292

3293 Mr. Jernigan - I'm fine with that.

3294

3295 Mr. Marshall - I'm fine with that too.

3296 Mr. Jernigan - But, what I'm saying is that today he meets Code. It's just like a
3297 conditional subdivision.

3298

3299 Mrs. Ware - But, then after it meets the Code it has to meet the four criteria for
3300 exception.

3301

3302 Mr. Archer - Well, that I'm not certain about.
3303

3304 Mr. Jernigan - Well first of all, let's say this. If we denied this case and it went to the
3305 Board and he appealed it to the Board, what would the Board say?
3306

3307 Mr. O'Kelly - It appeals to the Circuit Court.
3308

3309 Mr. Archer - They probably would have to revisit it.
3310

3311 Mrs. Ware - But it still has to meet the court.
3312

3313 Mr. Jernigan - Okay, of the four criteria what do we not meet?
3314

3315 Mr. Archer - Well, the one about the financial....
3316

3317 Mr. Marshall - In the subdivision ordinance....
3318

3319 Mrs. Ware - Mr. Archer, what were you saying?
3320

3321 Mr. Archer - Wouldn't you have to admit that if we used this design, it's because
3322 somebody would lose money along the line, that's the financial consideration.
3323

3324 Mrs. Ware - You are losing what, that you don't have, as Mr. Glover....
3325

3326 Mr. Archer - Both those are the criteria that are there now, that's one of them. Maybe
3327 we can say well we can meet three out of four and we can't meet the fourth one. But, I can
3328 guarantee you there's a financial consideration in here somewhere.
3329

3330 Mr. Jernigan - I'm pretty sure that Webb is not going to lose money on this deal.
3331

3332 Mr. Tyler - Which is very true and I don't deny that the fact that there is a financial
3333 consideration, but the ordinance reads: That the exception shall not be based exclusively on
3334 financial considerations, and it's not based exclusively on financial considerations.
3335

3336 Mr. Archer - I agree.
3337

3338 Mrs. Ware - So, there is an alternative way... So, it wouldn't be No. 3 because it's
3339 unique to the property but there are other options available, right?
3340

3341 Mr. Jernigan - All right. Let me ask this. If this one can't get approved, what one
3342 would?
3343

3344 Mr. Marshall - Right, that's my point.
3345

3346 Mr. Jernigan - I mean, I don't like it. I'll tell you I would just assume to get rid of one

3347 lot, but he meets code. I don't like the layout but after this meeting we need to look at, this time,
3348 getting rid of flag lots, stem lots, period.

3349

3350 Mr. Marshall - I agree.

3351

3352 Mr. Jernigan - And not even have them come to the Commission.

3353

3354 Mrs. Ware - But we need to focus on....

3355

3356 Mr. Archer - Mr. Jernigan, I think that's exactly what I am saying. I think we are
3357 backed into a corner on this one.

3358

3359 Mrs. Ware - I think we are missing the point as to what this case is meaning.

3360

3361 Mr. Marshall - Well, we shouldn't be put in a position for this to be here.

3362

3363 Mr. Archer - But, what I am saying is let this be the last one.

3364

3365 Mr. Jernigan - But, I don't know what else we can do to enhance it.

3366

3367 Mrs. Ware - But we are not.... Mr. Cooper, do you have something you would like to
3368 mention?

3369

3370 Mr. Cooper - I just wanted to add, and I hope that I am appropriate in saying this, but in
3371 regards to the exceptions, the four test within requiring or allowing for an exception, one is the
3372 unique hardships of the property. While I agree that there are wetlands on the site, I think we
3373 have wetlands on many sites and I would remind you that Mr. Tyler did rezone this property and
3374 did commit to providing the 35-foot buffer along I-295 and understood and committed to
3375 allowing for C-1 in awkward places where perhaps he could have impacted additional wetlands
3376 to redesign his lot. So, I just wanted to add that to the record as well.

3377

3378 Mrs. Ware - Thank you, Mr. Cooper. So, I guess, let's focus on this case in front of us.

3379

3380 Mr. Vanarsdall - I have a good suggestion, let Mr. Marshall make a motion.

3381

3382 Mr. Marshall - Do we have to write in the additional requirement about each lot? The condition
3383 that each lot be assessed \$300.00, lots 8, 9 and 10 be assessed \$300.00 per year payable to the
3384 Homeowners Association.

3385 Mr. Silber - I don't know if you want to get into the amount but I think your point is....

3386

3387 Mr. Marshall - No, that's what I want it to be.

3388

3389 Mr. Silber - Okay, then you can make that a condition of approval but that would be in
3390 the covenants. We can review it to make sure that it is in the covenants. We don't enforce
3391 covenants.

3392

3393 Mr. Marshall - Right. I understand that. The Homeowners Association would enforce it. So, we
3394 would have to do No. 23?

3395

3396 Mr. Silber - Yes.

3397

3398 Mr. Archer - Did we decide which layout that we are going to approve here, if we are
3399 approving it? Well, somebody had to ask that question.

3400

3401 Mrs. Ware - Thanks, Mr. Archer.

3402

3403 Mr. Marshall - Restrictive covenants shall impose \$300.00 per year.

3404

3405 Mr. Jernigan - See, Webb, if you want to give up a lot then you could be a pioneer in our
3406 new venture to get rid of stem lots all together. You could be the first man to....

3407

3408 Mr. Tyler - In the interest of your time, I thought we developed a reasonable
3409 compromise five years ago.

3410

3411 Mr. Vanarsdall - We are waiting on your motion, Mr. Marshall.

3412

3413 Mr. Marshall - I'm writing the restriction, I mean, the condition.

3414

3415 Mr. Jernigan - Please, let this be the last one.

3416

3417 Mr. Marshall - Yes, please.

3418

3419 Mr. Archer - Yes, put a condition in there to let this....

3420

3421 Mr. Jernigan - Put a condition in there to please let this be the last one.

3422

3423 Mr. Marshall - All right. I'm going to make a motion that we approve Dalton Park at
3424 Greenbrooke (October 2004 Plan) with lots 14, 7, 8 9 and 10 being stem lots, subject to the
3425 standard conditions for subdivisions served by public utilities and additional conditions Nos. 12
3426 through 22 and added conditions No. 23 that the restrictive covenants for the subdivision shall
3427 impose a \$300.00 per year assessment on lots 8, 9 and 10 payable to the Homeowners
3428 Association for maintenance of the private drive.

3429 Mr. Vanarsdall - Second.

3430

3431 Mrs. Ware - The motion was made by Mr. Marshall and seconded by Mr. Vanarsdall.
3432 All in favor say aye....

3433

3434 Mr. Silber - Ask for clarification.

3435

3436 Mrs. Ware - Wait, wait.

3437

3438 Mr. Silber - So, what you are recommending is approval of the layout as submitted by
3439 the applicant with the added condition No. 23?

3440

3441 Mr. Marshall - Correct.

3442

3443 Mr. Silber - Okay.

3444

3445 Mrs. Ware - All right. The motion was made by Mr. Marshall and seconded by Mr.
3446 Vanarsdall. All in favor say aye...all opposed say nay. Aye. The motion passes.

3447

3448 Mr. Marshall - That's a nay.

3449

3450 Mrs. Ware - Nay. I oppose.

3451

3452 On a four to one vote, the Planning Commission granted conditional approval to Dalton Park @
3453 Greenbrooke (October 2004 Plan) subject to the standard conditions attached to these minutes
3454 for subdivisions served by public utilities, the annotations on the plans and following additional
3455 conditions. Mr. Donati exits during this case.

3456

3457 12. Each lot shall contain at least 11,000 square feet.

3458 13. The limits and elevation of the 100-year frequency flood shall be conspicuously noted on
3459 the plat and construction plans and labeled "Limits of 100-year floodplain." Dedicate
3460 floodplain as a "Variable Width Drainage & Utilities Easement."

3461 14. The detailed plant list and specifications for the landscaping to be provided within the 20-
3462 foot-wide planting strip easement along Belfast Road shall be submitted to the Department
3463 of Planning for review and approval prior to recordation of the plat.

3464 15. A County standard sidewalk shall be constructed along both sides of all interior drives.

3465 16. Any necessary offsite drainage easements must be obtained prior to approval of the
3466 construction plan by the Department of Public Works.

3467 17. The proffers approved as part of zoning cases C-3C-03, C-11C-04 and C-9C-04 shall be
3468 incorporated in this approval.

3469 18. Prior to requesting the final approval, a draft of the covenants and deed restrictions for the
3470 maintenance of the common area by a homeowners association shall be submitted to the
3471 Department of Planning for review. Such covenants and restrictions shall be in form and
3472 substance satisfactory to the County Attorney and shall be recorded prior to recordation of
3473 the subdivision plat.

3474 19. Any future building lot containing a BMP, sediment basin or trap and located within the
3475 buildable area for a principal structure or accessory structure, may be developed with
3476 engineered fill. All material shall be deposited and compacted in accordance with the
3477 Virginia Uniform Statewide Building Code and geotechnical guidelines established by a
3478 professional engineer. A detailed engineering report shall be submitted for the review and
3479 approval by the Building Official prior to the issuance of a building permit on the affected
3480 lot. A copy of the report and recommendations shall be furnished to the Directors of
3481 Planning and Public Works.

3482 20. A cash proffer, in accordance with the requirement of proffer #20 of rezoning cases C-
3483 9C-04 and C-11C-04, shall be paid by the developer to Henrico County prior to the
3484 issuance of any building permits.

3485 21. No building permits shall be issued for this property before **August 1, 2005**.

3486 22. A landscape plan addressing the requirements of proffer #13 of rezoning cases C-9C-04
3487 and C-11C-04 shall be submitted to the Department of Planning for review and approval
3488 prior to the recordation of the plat.

3489 23. The restrictive covenants for the subdivision shall impose a \$300.00 per year assessment
3490 on Lots 8, 9 and 10, payable to the Homeowners Association for maintenance of the
3491 private drive.
3492

3493 Mr. Archer - Mr. Secretary, since we are done with this one. I would like to propose
3494 that we revisit this issue having to do with stem lots and flag lots.
3495

3496 Mr. Marshall - I agree.
3497

3498 Mr. Jernigan - I do too.
3499

3500 Mr. Marshall - I do too, I do five.
3501

3502 Mrs. Ware - Okay.
3503

3504 Mr. Archer - I think the Board did a flip flop on this one.
3505

3506 Mr. Vanarsdall - Are we still going to take this ten o'clock item?
3507

3508 Mr. Silber - Yes, we are going to do the ten o'clock. If we can do the minutes of the
3509 September 22 meeting.
3510

3511 **APPROVAL OF MINUTES: September 22, 2004, Minutes**
3512

3513 Mrs. Ware - Do we have any changes to the minutes?
3514

3515 Mr. Vanarsdall - Chris, did you read the minutes?

3516 Mr. Archer - Yes, I did. Let me see what I have here. There were a few errors in there
3517 that were either just typographical or grammatical so I didn't really make much of a note of it. I
3518 don't have any additions.
3519
3520 Mrs. Ware - Do I have a motion to approve the minutes?
3521
3522 Mr. Vanarsdall - I make a motion to approve them.
3523
3524 Mr. Marshall - Second.
3525
3526 Mrs. Ware - The motion was made by Mr. Vanarsdall and second by Mr. Marshall. All
3527 in favor say aye...all opposed. The minutes pass.
3528
3529 The Planning Commission approved the September 22, 2004, minutes. Mr. Donati was absent.
3530
3531 Mr. Silber - Next, under the ten o'clock portion of the agenda....
3532
3533 Mr. Marshall - Do we have a motion to revisit the stem lots?
3534
3535 Mr. Silber - My suggestion would be, members of the Commission, would be you
3536 might want to talk to your Board members and see if there is any consensus because this went
3537 through months and months of consideration and although you may find it difficult to deal with
3538 in its current form, this is what the Board of Supervisors adopted. So, instead of you instructing
3539 me to initiate this ordinance amendment, I really think it would be my preference that you talk to
3540 your individual Board members and see if there is any type of consensus to revisit this.
3541
3542 Mr. Archer - I agree with that.
3543
3544 Mr. Vanarsdall - All right.
3545
3546 Mrs. Ware - Okay.
3547
3548 Mr. Jernigan - Why don't we do this, let's let them handle stem lot cases and we will take
3549 care of the rest of them.
3550
3551 Mr. Marshall - We propose an ordinance amendment to allow POD involving stem lots to be
3552 heard by the Board of Supervisors. We can do that can't we?
3553
3554 Mrs. Ware - Well, we probably should have deferred the case so that we could all make
3555 sure we read what was in there already.
3556
3557 Mr. Marshall - Can we do that?
3558
3559 Mr. Silber - No, sir.
3560

3561 Mr. Marshall - We can't allow PODs.... I know some jurisdictions that the PODs are heard by
3562 the Board of Supervisors.

3563

3564 Mr. Silber - Well, the ordinance would have to be changed, but, yes, the Board of
3565 Supervisors could hear PODs.

3566

3567 Mr. Archer - Well, you know, in view of the way the ordinance is now, I think we
3568 really just got lucky on this one. This could have been a lot worse. I think Mr. Tyler did a
3569 decent job with it, but I don't know what the next one might entail.

3570

3571 Mr. Jernigan - Mike's drawing looked good.

3572

3573 Mr. Marshall - The problem was the wetlands, though.

3574

3575 Mr. Silber - Why don't we move on to the Public Hearing.

3576

3577 Mr. Vanarsdall - Yes, let's do that.

3578

3579 Mr. Silber - We have a public hearing now scheduled for ten o'clock.

3580

3581 Mr. Vanarsdall - Oh, George, I was wondering why you were here today. I thought they
3582 owned that property with Webb Tyler.

3583

3584 **PUBLIC HEARING:**

3585

3586 **ORDINANCE – To Amend and Reordain Section 24-5 of the Code of the County of**
3587 **Henrico titled “District boundaries and maps” to Classify as A-1, Agricultural All Parcels**
3588 **and Lots that Will Become Part of the County on January 1, 2005 under an Agreement to**
3589 **Relocate the Boundary Line Between the Counties of Goochland and Henrico**

3590

3591 Mr. Silber - This public hearing relates to a boundary shift between Goochland and
3592 Henrico County whereby Henrico ended up with some additional properties. We need to amend
3593 the zoning ordinance to allow for these properties to be appropriately zoned. So, Mr. Elmore is
3594 here to tell you about the proposed ordinance amendment. This is a public hearing. This is a text
3595 change to the zoning ordinance and you all would be holding this public hearing, taking
3596 testimony and then making recommendations to the Board of Supervisors. So, with that, perhaps
3597 we can hear from Mr. Elmore.

3598

3599 Mr. Elmore - Good afternoon, Madam Chairperson, members of the Commission, Mr.
3600 Silber. I'm here from the County Attorney's Office concerning these boundary line changes. I
3601 have a cold so if you have any problem hearing me let me know.

3602

3603 This arose out of a situation that we encountered in West Ridge Subdivision just by way of
3604 background. There was always in issue, we thought, concerning where that property line was, as
3605 far as the boundary with Goochland was concerned. The County undertook, and I think y'all are

3606 aware, extensive boundary line work based on the GPIN system, and as of a result of that we
3607 determined that the line was actually farther east than we thought it was, and I got just a map
3608 here or an aerial photo that will show you what I am talking about.

3609

3610 West Ridge is in the upper....

3611

3612 Mr. Silber - Would someone give Mr. Elmore the portable microphone.

3613

3614 Mr. Elmore - There are houses located on this side of West Ridge subdivision (referring
3615 to map on the screen) that we have treated as though they were residents of Henrico County. So,
3616 that was the basis on which the volunteer boundary work began with Goochland County.
3617 Subsequent to that, we began to talk to them because there were a number of parcels, and when I
3618 say them I mean the members of the staff of Goochland County and their Board of Supervisors,
3619 because there were a number of parcels of land in that area that straddle the line. In other words,
3620 part of them were in Henrico and part of them were in Goochland, and it made more sense at that
3621 time to see if we could do some things to bring some of these parcels into the County, and some
3622 that were otherwise situated in Goochland. So, what we ended up with was 18 parcels or lots
3623 that came into the County of Henrico matching a part that was already in the County and eight
3624 parcels that ended up in Goochland. And, this concerns about a 4.35 mile stretch that begins on
3625 the north side of the HHHunt property and ends up down at Fox Hall subdivision, which is down
3626 here (referring to map). It's just a small area there that would be impacted but there are two lots
3627 where the property was partially in Goochland County.

3628

3629 As a result of this, in May, Goochland approved the voluntary boundary line. In June, the
3630 County approved the voluntary boundary line agreement, or our Board of Supervisors did.
3631 Because of the way of the Code of Virginia is written, we had to get ratification and approval
3632 from our Circuit Court, which we have done. We also had to get clearance from the Justice
3633 Department because you are moving boundary lines and that has been done and that has been
3634 approved.

3635

3636 What we are asking you to review at this time, and the Board looked at it in September, is the
3637 fact that those parcels that are coming into the County, if we don't get a zoning change to
3638 Section 24-5 we will have C-1, Conservation District zoning. Most of the parcels on the County
3639 side, the adjacent property on the County, are zoned A-1 and that's why we have asked for the
3640 change as to these 18 parcels to go from C-1 to A-1, which I think is fair and I also think that it is
3641 consistent with the zoning that's out there. There are two exceptions, and I may have mentioned
3642 it, but there is some conservation zoning down here (referring to map) on the backside of the Fox
3643 Hall, Section 6 subdivision. There are to lots, lots 158 and 159. However, those lots are
3644 protected in other ways in that there is a floodplain ordinance, there is a utility ordinance and
3645 there is a drainage ordinance, excuse me, drainage easements that were dedicated to the County
3646 as part of the subdivision plat. So, they are protected but we wanted to do the job in a simple
3647 fashion as we could and make the ordinance a lot clearer.

3648

3649 I think you had sent out to you copies of what we have proposed. It means an additional
3650 paragraph to Section 24-5 and that basically it states that these parcels that are coming into

3651 Henrico shall be zoned A-1 rather than C-1, and there is also a slight change in paragraph “D”
3652 before that to reflect the additional paragraph. This will be effective on January 1, 2005, at
3653 12:01 a.m. That was done for a lot of reasons, to get us time to get through the courts and get the
3654 Justice Department to approve them and to give us a little time to work on these zoning issues.
3655 So, that’s where we are. The Board of Supervisors looked at it in September, and they directed
3656 that the Planning staff prepare the amendments to the ordinance and to present it to y’all for your
3657 review and that is part of what I’m doing working with them today and as we have worked over
3658 the past month to get this straight. Are there any questions that I might answer for you?

3659

3660 Mr. Marshall - What on there is the actual line now?

3661

3662 Mr. Elmore - Okay. The actual line is the green line, here (referring to map). In other
3663 words, the HHHunt property will come in, and this is effective January 1, 2005. All of West
3664 Ridge subdivision will come in. There’s a parcel owned by a couple by the name of Koontz,
3665 that’s coming in and then it goes back to the original line then on the south side of I-64 there’s
3666 some property owned by Pruitt and some property owned by Cox. Then it jets back out to take
3667 in the remainder of a parcel owned by the Rhodes-Nuckols family. And, it is my understanding
3668 that they possibly want to build a home on that particular parcel, but a good part of it is in
3669 Henrico County. Then you come down here and these are parcels that are held in various
3670 ownerships but they are really part of West Creek the commercial park that’s there. It’s
3671 primarily, mostly wetlands and swampy areas and things of that nature. And then you come
3672 back in and we catch those last two lots and bring them totally into Henrico County. So, that’s
3673 what’s been done. I think it’s the fairest and equitable thing that I can see today. I’ve been
3674 fairly concerned about West Ridge because of the fact that children are going to our schools,
3675 receiving services from Henrico, if you have got an emergency vehicle situation or a fire
3676 situation, Henrico has been responding. So, that’s what we wanted to do. There is one other....

3677

3678 Mr. Silber - Mr. Elmore, before you put that away, Mr. Marshall may be interested in
3679 the southernmost piece that’s affected.

3680

3681 Mr. Marshall - It’s Mr. Koontz. At the end of King Road, oh you mean down the bottom? Yes,
3682 that’s the new section of Fox Hall, Section 6.

3683

3684 Mr. Silber - Do you have any common area in your subdivision that could be impacted
3685 that?

3686

3687 Mr. Marshall - No. I think that runs up against the swamp down there.

3688

3689 Mr. Silber - Yes, it does. Okay.

3690 Mr. Marshall - I was thinking about that piece at the end of King Road.

3691

3692 Mr. Archer - If there are any stem lots, put them in Goochland.

3693

3694 Mr. Marshall - That’s an efficient use of County value a two-sided....

3695

3696 Mr. Silber - Just looking out for taxpayer's money.
3697

3698 Mr. Elmore- This gives you some idea.... This is the Hunt property (referring to map),
3699 this is West Ridge, again, this is the Koontz property and then you can see where it slides down
3700 here and then we get the Rhodes-Nuckols property, and this is Pruitt and Cox and then you come
3701 on down and then it swings over here and those are those parcels that are in various partnerships
3702 that are owned by West Ridge. You go down a little bit farther and then you get, and I don't
3703 know if this depicts it quite accurately, but you get the backside of those two lots, I think they
3704 are lots 158 and 159, if I remember correctly.
3705

3706 Mr. Silber - Mr. Elmore, one more question. This ordinance amendment would only
3707 impact those properties that were previously thought to be in Goochland County that will now be
3708 in Henrico.
3709

3710 Mr. Elmore - That's correct.
3711

3712 Mr. Silber - So, the areas that are shaded in white here (referring to map) that has a
3713 boundary of green around it would be impacted by this ordinance amendment, not the ones that
3714 were already in what we thought was Henrico County because they already had zoning on them.
3715

3716 Mr. Elmore - The only thing involved are the 18 lots or parcels, and those are the ones
3717 coming in Henrico.
3718

3719 Mr. Jernigan - All right.
3720

3721 Mr. Vanarsdall - Very good, George.
3722

3723 Mr. Silber - This is a public hearing, and it looks like there are crowds of people here
3724 (joking).
3725

3726 Mrs. Ware - Are there any comments.
3727

3728 Mr. Jernigan - Unless the staff wants to comment.
3729

3730 Mr. Archer - Do any of y'all live in Henrico?
3731

3732 Mrs. Ware - Okay. Is there any one who wishes to comment?
3733

3734 Mr. Jernigan - Are there any disgruntled taxpayers out there that are going to get the
3735 Henrico rate instead of the Goochland rate.
3736

3737 Mrs. Ware - All right, so where do we go from here?
3738

3739 Mr. Silber - Do you have a recommendation from the Planning Commission to the
3740 Board of Supervisors on this ordinance?

3741
3742 Mrs. Ware - All right, may I have a recommendation? Do you want to do that for me,
3743 Mr. Jernigan?
3744
3745 Mr. Marshall - We don't have to read this thing, do we?
3746
3747 Mr. Vanarsdall - Well, you can, if you want to.
3748
3749 Mr. Marshall - It's recommended that the ordinance amendment be referred to the Board of
3750 Supervisors for approval?
3751
3752 Mr. Silber - Yes.
3753
3754 Mrs. Ware - That's correct.
3755
3756 Mr. Vanarsdall - Second.
3757
3758 The Planning Commission recommended the Ordinance title "District boundaries and maps" to
3759 Classify as A-1, Agricultural all Parcels and Lots that Will Become Part of the County on
3760 January 1, 2005 under an Agreement to Relocate the Boundary Line Between the Counties of
3761 Goochland and Henrico, to the Board of Supervisors. Mr. Donati was absent.
3762
3763 Mrs. Ware - We have a motion by Mr. Marshall and seconded by Mr. Vanarsdall. All
3764 in favor say aye...all opposed say nay. The motion passes.
3765
3766 Mr. Elmore - Thank you.
3767
3768 Mr. Marshall - Thank you.
3769
3770 Mrs. Ware - Oh, do we have a motion to adjourn.
3771
3772 Mr. Jernigan - So moved. You don't really need a motion to adjourn, you can just
3773 adjourn a meeting.
3774
3775 Mr. Marshall - Second.
3776
3777 Mrs. Ware - Okay, we are adjourned. Thank you.
3778
3779 On a motion by Mr. Jernigan and seconded by Mr. Marshall, the Planning Commission
3780 adjourned its October 27, 2004, meeting at 12:56 p.m.
3781
3782
3783
3784
3785

Lisa D. Ware, CPC, Chairperson

3786
3787
3788
3789
3790
3791
3792
3793
3794
3795
3796
3797
3798.
3799
3800
3801

Randall R. Silber, Secretary