

1 Minutes of the regular monthly meeting of the Planning Commission of the
2 County of Henrico held in the County Administration Building in the Government
3 Center at Parham and Hungary Spring Roads, beginning at 7:00 p.m. January
4 10, 2013 Display Notice having been published in the Richmond Times-Dispatch
5 on December 24, 2012 and December 31, 2012.
6

Members Present: Mrs. Bonnie-Leigh Jones, C.P.C., Chairperson (Tuckahoe)
Mr. Eric Leabough, C.P.C., Vice-Chairman (Varina)
Mr. C. W. Archer, C.P.C. (Fairfield)
Mr. Tommy Branin (Three Chopt)
Mr. Robert H. Witte, Jr. (Brookland)
Mr. R. Joseph Emerson, Jr., AICP,
Director of Planning, Secretary
Mr. Richard W. Glover,
Board of Supervisors' Representative

Also Present: Ms. Jean M. Moore, Assistant Director of Planning
Mr. James P. Strauss, CLA, Principal Planner
Ms. Rosemary D. Deemer, A.I.C.P., County Planner
Mr. Benjamin Sehl, County Planner
Mr. Livingston Lewis, County Planner
Mrs. Lisa Blankinship, County Planner
Mr. Andrew Newby, County Attorney
Mr. Michael Jennings, Assistant Director of Public Works
Mr. John Cejka, Traffic Engineer
Ms. Kim Vann, Henrico Police
Ms. Sylvia Ray, Recording Secretary

7
8 **Mr. Richard W. Glover, the Board of Supervisors' representative, abstains**
9 **on all cases unless otherwise noted.**
10

11 Mr. Branin - Good evening and welcome to Henrico County's
12 Planning Commission meeting for January 10th. Happy New Year to everybody.
13 Hopefully, 2013 is going to be a very exciting and adventuresome year for all of
14 us. I would like to take this time to welcome our new Supervisor that sits with the
15 Commission, Mr. Glover.
16

17 Mr. Glover - Thank you.

18
19 Mr. Branin - Thank you, sir, for joining us this year. I'm sure you'll
20 bring great insight and wisdom to each and every one of our meetings.
21

22 Mr. Glover - You're bucking for a raise?

23
24 Mr. Branin - Yes sir, I am. If everybody would check their cell
25 phones, please, make sure they're either off or on vibrate. I'm usually the one

26 that forgets, but tonight I did remember because it's a new year. Now please join
27 me in standing for the Pledge of Allegiance.

28
29 Mr. Secretary, I don't believe there is any news media in the room this evening.

30
31 Mr. Emerson - No sir, I don't believe there are.

32
33 Mr. Branin - With that I'll let you take over.

34
35 Mr. Emerson - Thank you, Mr. Chairman. The first item on your
36 agenda tonight are the requests for withdrawals and deferrals, and those will be
37 presented by Mr. Jim Strauss.

38
39 Mr. Branin - Good evening, Mr. Strauss.

40
41 Mr. Strauss - Good evening members of the Commission, and
42 thank you, Mr. Secretary. We have one request for withdrawal this evening and
43 it's in the Fairfield District on page two of the agenda. It's case C-17C-12. No
44 action is required by the Commission.

45
46 **Deferred from the November 8, 2012 Meeting.**

47 **C-17C-12 Jennifer D. Mullen for Weatherfield Farms, LLC:**
48 Request to conditionally rezone from R-3C One-Family Residence District
49 (Conditional) to R-5AC General Residence District (Conditional) part of Parcel
50 811-732-3013 containing 31.02 acres located on the north line of Creighton Road
51 at its intersection with Carolee Drive and from R-3C One-Family Residence
52 District (Conditional) to C-1 Conservation District part of Parcel 811-732-3013
53 containing 21.22 acres located approximately 1,500' north of Creighton Road at
54 its intersection with Carolee Drive. The applicant proposes no more than 81
55 residential lots and a conservation district. The R-5A District allows a maximum
56 density of 6.0 units per acre. The uses will be controlled by zoning ordinance
57 regulations and proffered conditions. The 2026 Comprehensive Plan
58 recommends Suburban Residential 2, density should not exceed 3.4 units per
59 acre, and Environmental Protection Area.

60
61 Mr. Branin - Okay.

62
63 Mr. Strauss - We can move on to the deferrals now and the first
64 request for deferral is in the Three Chopt District, page one of the agenda. It's
65 REZ2013-00001, Danielle Kenny. The applicant is requesting a deferral to the
66 February 14, 2012, meeting.

67
68 **REZ2013-00001 Danielle Kenny:** Request to amend proffered
69 conditions accepted with Rezoning Case C-4C-99 on Parcel 747-766-4732
70 located on the west line of Sadler Road approximately 165' south of its
71 intersection with Sadler Green Place. The applicant proposes to amend Proffer 4

72 related to density. The existing zoning is R-3AC One-Family Residence District
73 (Conditional). The 2026 Comprehensive Plan recommends Suburban Residential
74 2, density should not exceed 3.4 units per acre.

75
76 Mr. Branin - Is anyone in opposition to the deferral of REZ2013-
77 00001, Danielle Kenny? No one? Then I would like to move for deferral of
78 REZ2013-00001, Danielle Kenny, to the February 14th meeting per the
79 applicant's request.

80
81 Mrs. Jones - Second.

82
83 Mr. Branin - Motion by Mr. Branin, seconded by Mrs. Jones. All in
84 favor say aye. All opposed say no. The ayes have it; then that motion carries.

85
86 Mr. Glover - Mr. Chairman.

87
88 Mr. Branin - Yes sir.

89
90 Mr. Glover - At the beginning of the meeting I'd like to ask the
91 secretary to record the fact that as zoning cases come forward I will not be voting
92 since they do come before the Board of Supervisors. I will always abstain, if you'll
93 remember that, please.

94
95 Mr. Emerson - Yes sir.

96
97 Mr. Strauss - The next request for deferral this evening is in the
98 Varina District on page two of the agenda. That would be C-28C-12, E. J. Wade
99 Construction. The applicant is requesting deferral to the February 14th meeting.

100
101 **Deferred from the December 6, 2012 Meeting.**

102 **C-28C-12 Brian C. Mitchell for E.J. Wade Construction:** Request to
103 conditionally rezone from A-1 Agricultural District to M-2C General Industrial
104 District (Conditional) Parcel 843-701-2778 containing approximately 24.4 acres
105 located along the south line of Portugee Road approximately 2,300' east of its
106 intersection with Memorial Drive. The applicant proposes a contractor's
107 equipment storage yard, office, and maintenance facility. The uses will be
108 controlled by zoning ordinance regulations and proffered conditions. The 2026
109 Comprehensive Plan recommends Office and Environmental Protection Area.

110
111 Mr. Branin - Is anyone in opposition to the deferral of C-28C-12,
112 Brian C. Mitchell for E.J. Wade Construction? No one?

113
114 Mr. Leabough - Mr. Chairman, I move that we defer case C-28C-12,
115 Brian C. Mitchell for E.J. Wade Construction, to the February 14, 2013, meeting.

116
117 Mr. Witte - Second.

118
119 Mr. Branin - Motion by Mr. Leabough, seconded by Mr. Witte. All
120 in favor say aye. All opposed say no. The ayes have it; then that motion carries.

121
122 Mr. Emerson - Mr. Chairman, the next item on your agenda are the
123 requests for expedited items, if the Commission doesn't have any deferrals.

124
125 Mr. Branin - Do any Commissioners have any deferrals this
126 evening? None?

127
128 Mr. Emerson - Then the next item, Mr. Chairman, are the requests
129 for expedited items. Those will also be presented by Mr. Jim Strauss.

130
131 Mr. Strauss - Thank you, Mr. Secretary. On page two of the agenda
132 in the Varina District we have one request for expedited approval this evening.
133 It's case C-2C-12, Copart of Connecticut, Inc. The applicant proposes to amend
134 proffers accepted with rezoning cases previously approved related to the location
135 of motor vehicle storage, motor vehicle auctions, buffers, fencing, and
136 landscaping. Staff is recommending approval. We are not aware of any
137 opposition.

138
139 **C-2C-12 John W. Montgomery, Jr. for Copart of Connecticut, Inc.:**
140 Request to amend proffered conditions accepted with Rezoning Cases C-38C-
141 89, C-45C-00 and C-31C-02 on Parcels 833-716-9203 and 833-717-8501
142 located on the north side of Old Williamsburg Road at its intersection with
143 Whiteside Road. The applicant proposes to amend proffers related to site
144 location restrictions of motor vehicle storage and auctions, buffers, fencing and
145 landscaping. The existing zoning is M-1C Light Industrial District (Conditional).
146 The 2026 Comprehensive Plan recommends Planned Industry. The site is
147 located in the Airport Safety Overlay District.

148
149 Mr. Branin - Is anyone in opposition to case C-2C-12, John W.
150 Montgomery, Jr. for Copart of Connecticut, Inc.? No one?

151
152 Mr. Leabough - That being the case, Mr. Chairman, I move that we
153 recommend to the Board of Supervisors for approval of case C-2C-12, John W.
154 Montgomery, Jr. for Copart of Connecticut, Inc., subject to conditions 1 through
155 21 as attached to the staff report.

156
157 Mr. Archer - Second.

158
159 Mr. Branin - Motion by Mr. Leabough, seconded by Mr. Archer. All
160 in favor say aye. All opposed say no. The ayes have it; then that motion carries.

161
162 **REASON:** Acting on a motion by Mr. Leabough, seconded by
163 Mr. Archer, the Planning Commission voted 5-0 (one abstention) to recommend

164 the Board of Supervisors grant the request because the changes do not greatly
165 reduce the original intended purpose of the proffers and would continue to assure
166 development compatible with adjacent uses.

167
168 Mr. Emerson - Mr. Chairman that completes the requests for
169 expedited items this evening and takes us to the next item on your agenda,
170 which is the election of the Chairman for the calendar year 2013. As per Article 4
171 of the Planning Commission's Rules and Regulations, at the first meeting in
172 January every year you do reorganize and elect a Chairman and a Vice
173 Chairman.

174
175 Mr. Branin - Okay. Then we'll open up the floor for nominations for
176 Chairman.

177
178 Mr. Archer - Mr. Chairman, I would like to nominate Mrs. Bonnie-
179 Leigh Jones for Chairman.

180
181 Mr. Leabough - Second.

182
183 Mr. Branin - Are there other nominations? Nominations are
184 closed. Okay. Motion was made for Mrs. Jones by Mr. Archer, seconded by Mr.
185 Leabough. All in favor say aye. All opposed say no. The ayes have it; the motion
186 carries.

187
188 Congratulations, Mrs. Jones.

189
190 Mrs. Jones - Thank you, Mr. Branin.

191
192 We now have the election of the Vice Chairman for the Planning Commission for
193 2013. Is there a nomination?

194
195 Mr. Archer - Madam Chair Elect, I nominate Mr. Eric Leabough for
196 Vice Chairman.

197
198 Mr. Branin - Second.

199
200 Mrs. Jones - Are there other nominations? I declare the
201 nominations closed. All in favor of Eric Leabough as the Vice Chairman of the
202 Planning Commission for 2013. Motion was made for Mr. Leabough by Mr.
203 Archer, seconded by Mr. Branin. All in favor please say aye. All opposed say no.
204 The ayes have it; the motion carries.

205
206 Congratulations, Mr. Leabough.

207
208 Mr. Leabough - Thank you, Mrs. Jones.

209

210 Mr. Archer - Congratulations Madam Chair.

211
212 Mrs. Jones - Mr. Branin, could you come on down for a moment,
213 please? I just want to take a moment on behalf of the Planning Commission to
214 thank you for your Chairmanship this year, for your leadership, for your calming
215 influence on some difficult cases. It's been a year with maybe not as many cases
216 as we've had in years past, but those that we've had have been complex, and we
217 appreciate your role with that. It's actually been a banner year for you. So we
218 wish you the best, and thank you for your leadership. Here's a small token.

219
220 Mr. Branin - I'm supposed to open this up. Ah, it's beautiful. It's a
221 business card holder. Thank you so much.

222
223 Mr. Archer - You're quite welcome, sir.

224
225 Mr. Branin - Really, really quick. I would like to thank the
226 Commission for allowing me to be Chairman last year. It was an honor to be
227 Chairman with two new Commissioners. The County has experienced a lot of
228 change with the announcement of our County Manager retiring. We had one new
229 Board member, two new Commissioners. But the one thing that stayed
230 consistent in Henrico County is the leadership. This past year leadership was
231 headed by our Supervisor that's sitting with us this year, Mr. Glover, as Chairman
232 of the Board of Supervisors, Joe Emerson's leadership with the Planning
233 Department, and the dedication and consistency of the staff to keep striving for
234 consistency and raising the bar in our County, to maintain the quality of life that
235 all of our citizens rely on and count on. So thank you to staff, to the Board, and to
236 Mr. Emerson for the opportunity to be your Chair. Thank you.

237
238 Mr. Emerson - Madam Chair, now that we've played musical chairs,
239 on to the next part of our agenda. You have cases left to be heard this evening,
240 and you do have two, I believe, left to discuss. Beginning on page one you have
241 P-18-12.

242
243 **Deferred from the December 6, 2012 Meeting.**

244 **P-18-12 Brian Menditto for Innsbrook Foundation:** Request for a
245 Provisional Use Permit under Sections 24-62.2(f), 24-66(a), 24-120 and 24-122.1
246 of Chapter 24 of the County Code in order to continue operation of an outside
247 concert pavilion on part of Parcel 750-768-4593, located at the southeast ramp of
248 I-295 approximately 750' northeast of Nuckols Road. The existing zoning is M-1C
249 Light Industrial District (Conditional). The 2026 Comprehensive Plan
250 recommends Urban Mixed-Use.

251
252 Mr. Emerson - This staff report will be presented by Mr. Ben Sehl.

253
254 Mrs. Jones - Good evening, Mr. Sehl.

255

256 Mr. Sehl - Good evening, Madam Chair. Good evening,
257 members of the Commission.
258

259 Mrs. Jones - Is there anyone in the audience who is in opposition
260 to P-18-12 Brian Menditto for Innsbrook Foundation? We have no opposition.
261

262 Mr. Sehl - Thank you. This is a request for a Provisional Use
263 Permit to allow the continuation of outdoor concerts and events at Snag-A-Job
264 Pavilion located in the North Shore Commons office development.
265

266 The event area and stage is located within a gravel and grass-covered field
267 adjacent to an existing parking lot. The Pavilion has held outdoor concerts at this
268 location through previous Provisional Use Permits since 1999, and due to various
269 factors, the applicant is requesting another Provisional Use Permit to extend this
270 operation until December 31, 2015.
271

272 The pavilion would continue to be located in the location depicted on this exhibit,
273 which also shows the location of the future permanent pavilion and adjacent
274 office development. The staff report includes nine recommended conditions
275 which address parking, security, and a maximum attendance of 6,500 persons.
276 The conditions are very similar to those approved with the previous Provisional
277 Use Permits. However, due to noise complaints received in previous years, staff
278 is proposing a new condition with this request that would require music on
279 weekdays to end by 10:00 p.m.
280

281 To address concerns from public safety agencies, Condition #8 is proposed that
282 would require a pedestrian plan be submitted to the Director of Planning prior to
283 each concert season to ensure safe pedestrian routes for the events.
284

285 The 2026 Comprehensive Plan recommends UMU for the subject property. The
286 use is consistent with this designation and would be compatible with the existing
287 offices in the area. Staff has not received any opposition regarding this request,
288 which is the first step in the approval of the planned music events. The required
289 music festival permit, which would also be made a part of the conditions of the
290 PUP via Condition #3—as indicated in your staff report—will also address items
291 such as sanitation, the provision of food and water, emergency services, and
292 noise limitations. For these reasons, staff supports this request subject to the
293 recommended conditions in the staff report.
294

295 That concludes my presentation. I'll be happy to try to answer any questions you
296 might have.
297

298 Mrs. Jones - Questions by the Commission?
299

300 Mr. Branin - We have had complaints in the past. Do you have any
301 record of what areas have complained and where the complaints were coming
302 from?

303
304 Mr. Sehl - Yes sir. I have several maps if you'd like to see over
305 previous years beginning with 2009. Each triangle indicates a different date of a
306 concert. This information is pulled from police records regarding noise complaints
307 received during the time of potential events. I would also note that we can't be
308 100 percent sure that each complaint is directly related to the concert, but our
309 best estimate is that they are. So that's 2009 as shown on the map in front of
310 you, 2010 is indicated here, again with each triangle indicating a different date.
311 This is 2011, and then the most recent year of 2012. As you'll note, most of those
312 that we received during the 2012 concert season were for one event which
313 occurred in June.

314
315 Mr. Branin - That event on the thirteenth, do you know what that
316 was?

317
318 Mr. Sehl - I believe the event was called The Country
319 Throwdown. Gary Allan was the artist that was there. The applicant may be able
320 to speak to some of that more specifically, but from the concert list that we have,
321 that was the concert.

322
323 Mr. Branin - Is there any explanation on why there were more
324 complaints during that one event versus others?

325
326 Mr. Sehl - The applicant may be able to expand on that a little
327 bit, but my understanding is that they used multiple stages during that event, both
328 in addition to the main pavilion stage that was used previously, that could have
329 contributed to that.

330
331 Mr. Branin - So the direction of noise.

332
333 Mr. Sehl - The direction, simple volume, and amount of noise,
334 yes sir.

335
336 Mr. Branin - Okay. I don't have any more questions.

337
338 Mrs. Jones - I have a quick question. Mr. Sehl, I may have missed
339 it in here. Is there a differentiation for events during the week that are part of a
340 regular series versus a special holiday event?

341
342 Mr. Sehl - Staff is proposing with Condition #9 in the staff report
343 that events—music and entertainment on weekdays allowed by this permit would
344 end by 10:00 p.m. Chapter 4 of the County Code limits festivals as permitted by
345 the musical festival permits requires those events end at 11:00 regardless. So

346 the ten o'clock proposed by staff with this permit would be slightly more
347 restrictive than that.

348
349 Mrs. Jones - So July 4th wouldn't be any different from an August
350 midweek concert.

351
352 Mr. Sehl - No ma'am. Per the County Code they're limited to
353 eleven, but the ten o'clock limit noted here would be throughout the year for
354 events permitted via this Provisional Use Permit.

355
356 Mrs. Jones - Thank you for clarifying that. Mr. Branin, how would
357 you like to proceed? Would you like the applicant to come down?

358
359 Mr. Branin - Since there's no opposition, please. Do we have an
360 applicant in the room?

361
362 Mr. Emerson - Yes sir, Mr Branin, the applicant is present. Will you
363 come forward?

364
365 Mr. Menditto - Brian Menditto with Innsbrook Owners Association
366 and the Foundation. I can answer your questions. I could address the
367 Throwdown, if you'd like.

368
369 Mr. Branin - Please.

370
371 Mr. Menditto - That was a concert that had numerous bands, and we
372 had set up a couple extra stages, like we talked about, where it was acoustical,
373 early acts and all. And they were positioned so that the sound would project out
374 toward where we received a lot of those complaints. And also that same night we
375 had the main stage that we have in place. And the band that came in that night
376 brought in their own sound system and weren't able to manage it as well as we
377 had hoped they could have. So there was some noise effect coming out of there
378 as well. So that's why we received those—I believe it was thirteen calls or
379 something like that. That was also one of those nights, too, I believe, we went to
380 about 10:30. Most of the nights at Innsbrook we're done by 9:30, quarter to 10,
381 during the weekdays.

382
383 Mr. Branin - Okay. I truly believe that this concert series is a
384 benefit to the citizens of the County as a source of entertainment. But the
385 balance becomes is it enough of a benefit to outweigh the idea that it's a
386 nuisance to the people. I think the new conditions that are in this year's permit
387 may alleviate some of the issues with the sound and the complaints. I just would
388 hate to see a benefit end up being something that we would have to get rid of
389 simply because the citizens of the County can't tolerate it. So the idea of being a
390 good neighbor is always most important.

391

392 Mr. Menditto - Some things that we're, I don't know if I need to
393 expand or not, for some things we are looking at doing. We talked about the
394 sound system and all, and there's a little bit better control on that, the way that
395 they are hung on towers that that we can manage, how they project out and turn
396 slightly depending on the crowd and stuff like that. So we're learning from that.
397 That's a new system that's been in place about two years now. If you look back
398 at this year the two concerts that we had complaints on was the Throwdown,
399 which we've determined those kind of situations we're not going to have
400 anymore. And then the other one was later in the year where we had a cloud
401 issue, weather issue, and noise went out. But we were able to maintain that and
402 manage it. We have a good relationship with the Henrico Police. They are on our
403 soundstage with us. We do a boundary patrol that we check the decibel levels at
404 certain points throughout the concert, about every half hour. And then there's a
405 constant communication back if we need to turn down sound. Our sound
406 manager is on the stage and is in connection with the guy. So we're learning, and
407 we're taking steps to get that under control.

408
409 The other component that we're looking at is over the years Innsbrook has been
410 a midweek kind of concert, and it seems like it's changed somewhat. And so we
411 as an organization are going back to the idea that it is going to be a Wednesday
412 concert so that people kind of have that familiarity that, okay, it's Wednesday
413 night, it's Innsbrook After Hours. They'll know that's going on versus maybe a
414 Thursday, maybe a weekend, or whatever. Then the other component is we just
415 feel like we need to do a better job communicating, working with our neighbors.
416 The Innsbrook After Hours component is key for Innsbrook because it really
417 helps us with what we do for the community in the way of charities, in the way of
418 programs, and benefits that are out there. So it's one of our ways of being a good
419 a neighbor, so we need to make sure that we're on that same page with
420 everybody.

421
422 Those are some of the things that we're incorporating in our plan for this year.

423
424 Mr. Branin - Madam Chair, I have no more questions for the
425 applicant.

426
427 Mrs. Jones - Are there any other questions?

428
429 Mr. Witte - I have one. That sixty-five decibels at the property
430 line, is that for the whole concert or is that per stage?

431
432 Mr. Menditto - For the concert.

433
434 Mr. Witte - For the whole concert.

435
436 Mr. Menditto - Yes.

437

438 Mr. Witte - So if you have multiple concerts then you have to
439 tone down—

440
441 Mr. Menditto - Yes. When we said the multiple stages, they were like
442 one started at four o'clock and it was acoustical, and then another one started.
443 They were programmed so they were not all going at the same time, on that
444 particular event. And once again, we're not doing that again, so. We're just doing
445 the one stage that you see that's on the presentation.

446
447 Mr. Witte - I'm good.

448
449 Mrs. Jones - All right. Mr. Branin?

450
451 Mr. Branin - The last thing is, I would like to call up Ms. Vann.
452 Thank you, sir.

453
454 Mr. Menditto - All right, thank you.

455
456 Mrs. Jones - Good evening, Ms. Vann.

457
458 Ms. Vann - Good evening. Kim Vann with Henrico Police.

459
460 Mr. Branin - Happy New Year, Ms. Vann.

461
462 Ms. Vann - Happy New Year.

463
464 Mr. Branin - Ms. Vann, I've talked about sound because we have
465 mapped out sound issues and complaints with that sound. The question is are
466 we sure that it's from the concert. I would assume yes. We kind of have to
467 assume yes that, it was due to the concert, the complaints we received. The one
468 thing that I haven't heard complaints about—I've heard it mentioned one time at
469 an Innsbrook meeting. With all of the different community meetings that we've
470 had with different cases, I haven't heard any issues about traffic or accidents or
471 those sorts of issues, muggings, any sort of issues, police issues, with this
472 concert series since I've been doing cases in the Three Chopt District, which
473 Innsbrook is in the Three Chopt District. Are there any issues with traffic? I
474 credit it to the Henrico County Police doing such a great job of managing the
475 traffic, and the flow of traffic, and people. We've changed some of the pedestrian
476 crossings and so forth with this case. Is there anything that we need to know
477 about or any concerns that Police have in regards to this?

478
479 Ms. Vann - The concerns you have highlighted tonight, I know the
480 Chief of Police, Colonel Middleton, has summarized some of the things. And it
481 sounds like everybody has discussed the items that he and the staff that have
482 coordinated this effort for a number of years have come up with. I know we did
483 do calls. I think we focused on the noise, but I think we did run calls for service

484 just for Innsbrook. But that's a little challenging because it's not—I don't know if
485 there is even a physical address for it; it's really like a park. We can look to see.
486 But I would say there are probably some issues just because of the crowd. But
487 you're right, I think the police that are on site, they know where the issues are.
488 They've been doing it so long they know how to start to work toward mitigating
489 any of those issues as the concert ends and the crowd starts to disperse. The
490 few concerts that I've been to I've never seen anything; I don't frequent them that
491 often. But I don't believe the number spoke greatly, though, from what we ran.
492 When we were looking at the calls for service, we were trying to focus on the
493 noise complaints. I can look through, if Mr. Sehl has the information, and get
494 back to you.

495
496 Mr. Branin - So there's nothing that jumps out.

497
498 Ms. Vann - No sir, no sir. I think if there was something that
499 jumped out, it would have been brought up not by me, but by the Chief.

500
501 Mr. Branin - Okay. I have no further questions.

502
503 Mrs. Jones - All right. Unless there are other comments or
504 questions, Mr. Branin, it's up to you.

505
506 Mr. Branin - Madam Chair, I'd like to move that P-18-12 Brian
507 Menditto for Innsbrook Foundation, move forward to the Board of Supervisors
508 with a recommendation for approval with Conditions 1 through 9.

509
510 Mr. Leabough - Second.

511
512 Mrs. Jones - Motion by Mr. Branin, seconded by Mr. Leabough. All
513 in favor say aye. All opposed say no. The ayes have it; that motion carries.

514
515 **REASON:** Acting on a motion by Mr. Branin, seconded by Mr.
516 Leabough, the Planning Commission voted 5-0 (one abstention) to recommend
517 the Board of Supervisors grant the request because it would provide continued
518 services to the community and when properly regulated by the recommended
519 conditions, it would not be detrimental to the public health, safety, welfare and
520 values in the area.

521
522 Mr. Emerson - Madam Chair that takes us to page two of the
523 agenda, PUP2013-00001 Jennifer Mullen for BurgerBusters, IV, LLC.

524
525 **PUP2013-00001 Jennifer Mullen for BurgerBusters IV, LLC:**
526 Request for a Provisional Use Permit under Sections 24-58.2(a), 24-120 and 24-
527 122.1 of Chapter 24 of the County Code in order to allow extended hours of
528 operation for an existing restaurant (Taco Bell) on Parcel 813-718-7327 located
529 on the west line of S. Laburnum Avenue approximately 176' north of its

530 intersection with Gay Avenue. The existing zoning is B-2C Business District
531 (Conditional). The 2026 Comprehensive Plan recommends Commercial
532 Concentration. The site is located in the Airport Safety Overlay District.

533
534 Mr. Emerson - That staff report will be presented by Ms. Rosemary
535 Deemer.

536
537 Mrs. Jones - Ms. Deemer.

538
539 Mrs. Jones - Is anyone in the audience in opposition to PUP2013-
540 00001, Jennifer Mullen for BurgerBusters, IV, LLC? I don't believe we have
541 opposition. Ms. Deemer?

542
543 Ms. Deemer - Good evening, Madam Chair, members of the
544 Commission. This is a request for a Provisional Use Permit to allow extended
545 hours of operation for an existing Taco Bell restaurant with drive-thru service.

546
547 The subject property, located in the Laburnum Park Shopping Center, was
548 rezoned B-2C in 1986 via case C-32C-86. The proffers that govern the property
549 address access points, architectural design, gross floor area, building height,
550 landscape buffering and parking lot lighting, and prohibited several uses but did
551 not restrict applying for extended hours.

552
553 The applicant has recently amended their application and is now requesting to
554 extend hours of operation only until 2 a.m. instead of 3 a.m. This addresses staff
555 concerns, and is consistent with staff's recommended Condition #2 and with
556 recent extended hours for the Cook-Out restaurant located in the same shopping
557 center, as well as in 2009 for the Steak-n-Shake located across Laburnum
558 Avenue in the Shops at White Oak Village.

559
560 The 2026 Comprehensive Plan recommends the site for Commercial
561 Concentration, which is consistent with the proposed use. It would also be
562 consistent with recent requests for extended hours in the area. Therefore, staff
563 supports this request with conditions 1-13 identified in the staff report.

564
565 I'd be happy to answer any questions.

566
567 Mrs. Jones - All right, are there questions for Ms. Deemer?

568
569 Mr. Leabough - No. I do have a question for Ms. Vann.

570
571 Mrs. Jones - All right. Thank you. Ms. Vann?

572
573 Mr. Leabough - Good evening, Ms. Vann.

574
575 Ms. Vann - Good evening. Kim Vann, Henrico Police.

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Mr. Leabough - Similar questions to Mr. Branin around incidents of crime. I think we ask this every time we have a PUP come before us. Anything that stands out to you in terms of calls for service or major crimes in this area?

Ms. Vann - For the Taco Bell, no sir. We ran crime stats from 2008 through the completion of 2012. And really for the most part there were not many calls at all. In 2011, they had the most calls and there were nine. Of those nine, eight were alarm calls, so they must have had something wrong with their alarm system. So for the most part it's been—I think one larceny, two disorderly drunks, and that type of thing. So really nothing of significance, no.

Mr. Leabough - And that was at the Taco Bell?

Ms. Vann - At the Taco Bell. I know we've gone over the crime stats for the area around it. They're pretty consistent across the board. Since the business has been in existence, we had some historical knowledge of what's going on there.

Mr. Leabough - Thank you.

Mrs. Jones - Ms. Vann, I have a quick question. We're beginning to develop a bit of a historical context as well for other restaurants in the area that are open until two.

Ms. Vann - Yes ma'am.

Mrs. Jones - Is there anything there that gives you concern about continuing to allow two o'clock extended hours?

Ms. Vann - Of course Taco Bell is a little different from some of the others. Steak-n-Shake and Taco Bell both don't serve alcohol, so it's a different clientele that would possibly frequent those restaurants. They're not there to drink and socialize; they're there for a different reason. The Applebee's and T.G.I. Friday's, Applebee's closes at twelve. T.G.I. Friday's came into compliance soon after the Steak-n-Shake. They did get a PUP approved, but they do have off-duty officers working there. So the potential problems, I understand that it's a very busy location there, so I feel like the immediate area, the sites that are extended hours now, either are a different type of business or they do employ off-duty officers on the nights that they need them. So nothing is happening beyond at those particular locations.

Mrs. Jones - Is it usually the service of alcohol that makes the difference between the need to have on-site security and not?

621 Ms. Vann - In the case of T.G.I. Friday's, it was their decision.
622 They actually employed off-duty Henrico Police even prior to securing the PUP.
623 So again, we had some historical knowledge of issues. It's not something we're
624 going to necessarily try to require, but a business does sometimes see that
625 issue.

626
627 Mrs. Jones - Sure. All right, thank you. Other questions? Thank
628 you, Ms. Vann. Would the applicant come down, please, to answer some
629 questions? If you wouldn't mind just identifying yourself?

630
631 Mr. Lloyd - Madam Chair, my name is Preston Lloyd. I'm here on
632 behalf of the applicant. And I am not Jennifer Mullen, my colleague from Williams
633 Mullen. She could not be here this evening.

634
635 Mrs. Jones - We had that figured out.

636
637 Mr. Lloyd - Thank you. We appreciate your time on this matter.
638 With me tonight are Joe Mangano and Tom Cook, who are with the owner.

639
640 As noted by Ms. Deemer, this is an application for extended hours for the Taco
641 Bell in the Laburnum Park Shopping Center. The owner purchased this property
642 some time ago from Taco Bell Corporate and has operated it for the duration,
643 since February 1999. The applicant originally proposed, as staff described, a
644 PUP that would allow them to operate until 3 a.m. But after discussing some
645 concerns with staff, we understand that 2 a.m. is a more appropriate time for this
646 area, as there are other uses in the vicinity that have been discussed that are
647 using the 2 a.m. time.

648
649 The Taco Bell has a good safety record in terms of its operation. And one aspect
650 that I would point out that also distinguishes it from some of the other restaurants
651 that operate until 2 a.m. is the fact that the dining room is closed after 10 p.m. So
652 all of the economic activity that's taking place is through the drive-thru; it's not
653 people coming into the restaurant.

654
655 There are two aspects principally that the owner uses to deal with safety and
656 security, one of which is capital investment in the property. There are thirteen
657 cameras on the site, three of which are outside. Is that correct? Sixteen, rather.
658 Excuse me. So thirteen inside the restaurant and three outside. There is also a
659 comprehensive security system. Not only does it deal with people who might be
660 crouching outdoors near the restaurant—it could detect that and send an alarm
661 to the police—but also people who try to test the outside door; that would also set
662 off the alarm. And as you heard from the Police Department, a lot of the
663 responses to this property were actually due to delivery people who forgot to type
664 in the right code and therefore set off the alarm when they tried the door. So that
665 helps explain some of the response rate to the property. We've checked our logs

666 as well. We can't discern any major security or safety incidents during the time of
667 ownership of the property that we feel obligated to disclose.

668
669 The second aspect that I failed to mention, other than the capital investment and
670 security and safety in the building, is the training of the employees. They get
671 extensive training in how to deal with any sort of security or safety-related
672 incident that might occur at the property. And as I mentioned, the dining room is
673 closed after ten, so it's a different kind of response than you would have at a
674 typical restaurant that's open at that time.

675
676 The request that staff described is consistent with the approved proffers for the
677 shopping center, and the Comprehensive Plan for commercial concentration, and
678 the previous cases approved in this area. The applicant has no issue with the
679 conditions described in the staff report.

680
681 We thank the Commission for their time and welcome any questions that you
682 may have concerning this matter.

683
684 Mrs. Jones - All right. Questions?

685
686 Mr. Leabough - I do have one quick question. Is the restaurant
687 operating today until 3 a.m.?

688
689 Mr. Lloyd - They are, Mr. Leabough. It's a matter that we've
690 discussed this evening, discussed with our client. Frankly, I think it was a
691 misunderstanding on their part. They received the Notice of Violation and
692 immediately contacted the County to figure out what they needed to do to be
693 brought into compliance. In the course of that e-mail exchange, the conversation
694 turned into how soon can we get before the Commission because we want to
695 make sure that we bring this into compliance at our earliest opportunity. They
696 were informed at the time that they did that the earliest they could get on the
697 docket would be for the January hearing, for this meeting. And in that e-mail—
698 and I'll quote—it said, "Will discuss the timing of this matter with Community
699 Revitalization, and I don't anticipate a problem with the timing of this case relative
700 to your NOV." Our clients, frankly, misunderstood that. They thought that that
701 was a "hold your horses, keep doing what you're doing, and we'll get you in as
702 soon as we can to figure out what we need to do to fix this." They did not
703 perceive that to be "you need to shut down at twelve until you get the required
704 approval from the Board of Supervisors." So again, that was a misunderstanding.
705 They have been operating, but they understand now that pending the approval
706 that the expectation is that they would comply with the Notice of Violation. I hope
707 that answers your question.

708
709 Mr. Leabough - I did a little bit of research, and I knew the answer to
710 that question. I would hope that you all would adhere to the violation notice until

711 the Board has approved the extended hours. So you all understand the hours of
712 operation allowed in a B-2C zoning district.

713
714 Mr. Lloyd - Understood.

715
716 Mr. Leabough - Okay.

717
718 Mr. Lloyd - Thank you.

719
720 Mr. Leabough - We can trust going forward that you all will adhere to
721 the 2 a.m. timeframe.

722
723 Mr. Lloyd - You may indeed.

724
725 Mr. Leabough - Okay. Thank you. I have no further questions.

726
727 Mr. Branin - Mr. Leabough, so I'm to understand that the applicant
728 understands that they're not to go beyond twelve o'clock until the Board makes
729 their decision.

730
731 Mr. Leabough - Yes. That's what I understood Mr. Lloyd to say.

732
733 Mr. Branin - I just wanted to get clarification.

734
735 Mr. Leabough - Am I correct?

736
737 Mr. Lloyd - Yes sir. Thank you.

738
739 Mr. Leabough - Thank you. No other questions.

740
741 Mrs. Jones - All right. Anything else? Thank you, Mr. Lloyd.

742
743 Mr. Lloyd - Thank you, ma'am.

744
745 Mrs. Jones - Mr. Leabough?

746
747 Mr. Leabough - With that, Madam Chairwoman, I move that we
748 recommend to the Board of Supervisors for approval PUP2013-00001, Jennifer
749 Mullen for BurgerBusters, IV, LLC, subject to conditions 1 through 13 as noted in
750 the staff report.

751
752 Mr. Witte - Second.

753
754 Mrs. Jones - I have a motion by Mr. Leabough and a second by Mr.
755 Witte. All in favor say aye. All opposed say no. The ayes have it; the motion
756 passes.

757 Thank you very much.

758

759 **REASON:** Acting on a motion by Mr. Leabough, seconded by
760 Mr. Witte, the Planning Commission voted 5-0 (one abstention) to recommend
761 the Board of Supervisors grant the request because it is reasonable in light of
762 the surrounding uses and existing zoning on the property and it would not be
763 detrimental to the public health, safety, welfare and values of the area.

764

765 Mr. Emerson - Madam Chair, that now takes us to page three of your
766 agenda to a discussion item. It is that time of the year again where we hear from
767 the County Manager and the Department of Finance regarding the Capital
768 Improvement Program, and you hold a public hearing regarding that Capital
769 Improvement Program. I would request that the Commission take action to
770 schedule a public hearing for February the 14th, at 6 p.m. to consider the fiscal
771 year 2013-2014 through fiscal year 2017-2018 Capital Program. That hearing
772 would be here in this room.

773

774 Mrs. Jones - Mr. Emerson, that does not require any kind of a work
775 session or a meeting prior to the six o'clock hearing. Is that correct?

776

777 Mr. Emerson - No ma'am, it does not. But normally we do provide
778 dinner when you come in early, and I was planning on advising you that we
779 would have you in between 5:15 and 5:30. I suggest no later than 5:30 for dinner.

780

781 Mr. Archer - Will that be here or upstairs?

782

783 Mr. Emerson - We would have that upstairs, probably in the large
784 conference room in the Planning Department. I'm not sure. I checked today. I
785 think the Manager's Conference Room may be tied up.

786

787 Mrs. Jones - Is it the will of the Commission to gather early prior to
788 the hearing for a quick dinner? Can everyone make that? All right, then. Why
789 don't we say 5:15 because that just gives us enough time to get organized, have
790 a meal, and come on down.

791

792 Mr. Archer - That would work.

793

794 Mrs. Jones - All right, 5:15—happy Valentine's Day—on February
795 14th.

796

797 Mr. Emerson - Yes ma'am. We do need to schedule the hearing for 6
798 p.m.

799

800 Mrs. Jones - And that will be followed by a public hearing at 6:00,
801 February 14th, to consider the Capital Improvement Program.

802

803 Mr. Branin - Madam Chair, do we need a motion?
804
805 Mr. Emerson - I think we probably need a motion.
806
807 Mrs. Jones - I so move.
808
809 Mr. Archer - Second.
810
811 Mrs. Jones - All right, I have a motion by Mrs. Jones, seconded by
812 Mr. Archer. All in favor say aye. All opposed say no. The ayes have it; the motion
813 passes.
814
815 Mr. Emerson - Madam Chair, the next item on your agenda would be
816 consideration of approval of the minutes from the Planning Commission's
817 December 6, 2012, meeting. You also do have an errata sheet that will serve for
818 corrections to those minutes.
819
820 Mrs. Jones - Anyone have additional corrections to the minutes?
821
822 Mr. Branin - I have none.
823
824 Mrs. Jones - Was the errata sheet distributed?
825
826 Mr. Emerson - Yes ma'am. It should have been in your information at
827 your seat.
828
829 Mrs. Jones - I'm sorry.
830
831 Mr. Archer - I didn't see it.
832
833 Mr. Branin - I didn't see it either.
834
835 Mrs. Jones - Well, if you all trust me.
836
837 Mr. Emerson - Mr. Strauss, do you not have the errata sheet?
838
839 Mr. Strauss - The minute book behind you has the errata sheet.
840
841 Mrs. Jones - It's sitting right here; I'm sorry. All right. If anyone is
842 vitally interested, here you go.
843
844 Mr. Leabough - I move that we approve the minutes from the
845 December 6, 2012, meeting, subject to the corrections on the errata sheet.
846
847 Mr. Branin - Second.
848

849 Mrs. Jones - We have a motion by Mr. Leabough, seconded by Mr.
850 Branin. All in favor say aye. All opposed say no. The ayes have it; the motion
851 passes. The minutes are approved.

852 All right. Mr. Secretary, do you have anything else for the Commission?
853

854 Mr. Emerson - No ma'am, I have nothing further for the Commission
855 this evening.
856

857 Mrs. Jones - I would like to wish everybody on the Commission
858 and staff a Happy New Year, and a special welcome to Mr. Glover. We're looking
859 forward to having you with us this year. And thanks to my fellow Commissioners
860 for the vote of confidence in having me lead the Commission as Chairman this
861 year, and congratulations to Mr. Leabough.
862

863 Mr. Leabough - Same to you.
864

865 Mrs. Jones - I look forward to working with you. And to everyone,
866 looking forward to a productive and a very good year. Do we have a motion to
867 adjourn?
868

869 Mr. Leabough - I move to adjourn.
870

871 Mr. Archer - Second. Thank you, Madam Chair.
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873 Mrs. Jones - Thank you so much. Meeting adjourned.
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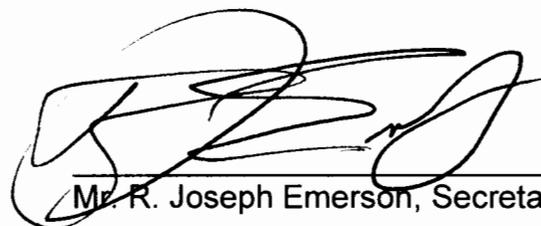
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Mr. R. Joseph Emerson, Secretary



Mrs. Bonnie-Leigh Jones, Chairperson