

1 Minutes of the regular monthly meeting of the Planning Commission of the County of  
2 Henrico, Virginia, held in the Board Room of the County Administration Building,  
3 Parham and Hungary Spring Roads at 7:00 p.m., on March 8, 2001, Display Notice  
4 having been published in the Richmond Times-Dispatch on Thursday, February 15,  
5 2001 and Thursday, February 22, 2001.

6  
7 Members Present: C. W. Archer, C.P.C., Chairperson, Fairfield  
8 Elizabeth G. Dwyer, C.P.C., Vice-Chairperson, Tuckahoe  
9 Ernest B. Vanarsdall, C.P.C., Brookland  
10 Allen J. Taylor, C.P.C., Three Chopt  
11 Eugene Jernigan, Varina  
12 John R. Marlles, AICP, Secretary, Director of Planning  
13

14 Members Absent: David A. Kaechele, Board of Supervisors, Three Chopt  
15

16 Others Present: David D. O'Kelly, Principal Planner  
17 Randall R. Silber, Assistant Director of Planning (Arrived  
18 Late)  
19 Jo Ann Hunter, AICP, Acting Principal Planner  
20 Mark Bittner, County Planner  
21 Thomas M. W. Coleman, County Planner  
22 Lee Householder, County Planner  
23 Judy Thomas, Recording Secretary  
24

25 Mr. Archer - The Planning Commission meeting will come to order.  
26

27 Mr. Vanarsdall - Good evening, Mr. Chairman.  
28

29 Mrs. Dwyer - Good evening.  
30

31 Mr. Archer - Thank you so much. Its nice to answered. Is there any  
32 one present from the press tonight? No press members. Well, in any event, I think  
33 we've got a rather light agenda. I'll turn it over to our Secretary, Mr. Marlles.  
34

35 Mr. Marlles - Good evening, Mr. Chairman, members of the  
36 Commission, ladies and gentlemen. We do have a quorum tonight and we can conduct  
37 business. We do have a number of requests for deferrals tonight. And, I'm going to  
38 ask Mrs. Hunter if she will review those.  
39

40 Mr. Archer - Good evening, Mrs. Hunter.  
41

42 Mrs. Jo Ann Hunter, Acting Principal Planner - Good evening.  
43

44 Mr. Vanarsdall - Good evening, Mrs. Hunter.  
45

**March 8, 2001**

46 Mrs. Hunter - Almost the entire agenda is being deferred tonight. It may  
47 take awhile. The first one is in the Tuckahoe District on Page 1 of the agenda.  
48

49 **Deferred from the February 15, 2001 Meeting:**

50 **C-15C-01 Andrew M. Condlin for Lucor:** Request to conditionally  
51 rezone from R-3 One Family Residence District to O-1C Office District (Conditional), B-  
52 1C and B-2C Business Districts (Conditional), Parcels 90-2-A-1 (Johnson Heights) and  
53 90-A-19, 20 and 20A, containing 5.106 acres, located on the south line of Quioccasin  
54 Road approximately 150 feet west of Inez Road. A mixed-use development including  
55 office, retail and an automobile service use is proposed. The use will be controlled by  
56 zoning ordinance regulations and proffered conditions. The Land Use Plan recommends  
57 Suburban Residential 2, 2.4 to 3.4 units net density per acre, and Office.  
58

59 They are requesting a deferral to March 28, 2001. That would be our POD Meeting.  
60 That would be a two-week deferral.  
61

62 Mr. Archer - March 28, 2001. Thank you, Mrs. Hunter. Is there any  
63 one here in opposition to this deferment, C-15C-01 Andrew M. Condlin for Lucor?  
64 You're in opposition to the deferral, sir, or are you in opposition to the case?  
65

66 Man from Audience - I'm not in opposition, but I'm a little aggravated. I drove  
67 all the way from Chesapeake to be here. I was notified in the mail that this would go  
68 tonight after one previous deferral. I'm here. And, I only got another notice today,  
69 giving me specifics about this proposal. I happen to find that in the door.  
70

71 Mr. Archer - I don't know quite how; if the applicant requests a deferral,  
72 unless he's willing to withdraw the deferral, we don't have much of an option but to defer  
73 it, sir. I'm sorry you weren't notified.  
74

75 Man from Audience - Well, it is a concern. I hope there would be no further  
76 deferrals after the deferral that you grant tonight.  
77

78 Mr. Vanarsdall - Sir, when you were here before, you say you came once  
79 before?  
80

81 Man from Audience - I did not come before.  
82

83 Mr. Vanarsdall - Oh. I thought you said you did.  
84

85 Man from Audience - No.  
86

87 Mr. Vanarsdall - I'm sorry.  
88

89 Man from Audience - You were going to have this considered at an earlier date...

90 Mrs. Dwyer - Sometimes, sir, this case is in my district, and I've been  
91 involved in the deferral. So, I will speak to your concerns. I'm sorry you weren't  
92 notified earlier. It might be a good idea to check with Mr. Condlin who is the attorney  
93 representing the applicant before the next meeting. And he's here. Have you met Mr.  
94 Condlin?  
95

96 Man from Audience - Not yet, but I've spoken with him on the phone.  
97

98 Mrs. Dwyer - It might be good, before the next meeting, to just confirm  
99 that the case will go on. I do not expect any other deferrals after the 28<sup>th</sup>.  
100

101 Man from Audience - ...confirm with me. He has my name and phone number.  
102

103 Mrs. Dwyer - Okay. I'm sure he would be glad to do that. I would not  
104 expect additional deferrals. But, we will certainly try to contact you since you are out of  
105 town. I know it can be frustrating. Sometimes, matters just cannot be resolved  
106 completely before the next meeting. I think we do have a meeting of the minds as to how  
107 the case is going to proceed. But, the proffers, which are the written promises made by  
108 the applicant, were received by me yesterday, and there are some changes that I believe  
109 need to be made. And, we didn't have time to get those on paper before tonight's meeting  
110 to work through the process. So, I thought it would be better, rather than having the  
111 Commission having to review three different sets of proffers tonight, to work on getting  
112 those loose ends tied up so that we would all know exactly what the proffers or promises  
113 relating to the case would be before the next meeting.  
114

115 So, its just a question of a little more housekeeping, but really tying up some loose ends as  
116 far as the wording of the proffers is concerned that we need to do between now and the  
117 28<sup>th</sup>.  
118

119 Mrs. Hunter - If he'd like to leave his name and number with staff, we'd  
120 be happy to keep him informed.  
121

122 Mr. Archer - And I also say, if you have an opportunity, you might get  
123 together with Mr. Condlin, before you leave, to go back tonight and maybe some of your  
124 specific concerns can be answered.  
125

126 Mrs. Dwyer - Mr. Householder is coming to you now. He's a staff  
127 representative for the County who wrote the staff report. He'll take your name, then we'll  
128 make sure that you're contacted if its going to be deferred again. Thank you, sir.  
129

130 Mr. Archer - Thank you, Mrs. Dwyer. All right, we'll entertain a  
131 motion.  
132

133 Mrs. Dwyer - Okay, I move that Case C-15C-01, the Lucor case be  
134 deferred to March 28<sup>th</sup> at the applicant's request.

135  
136 Mr. Vanarsdall seconded the motion.

137  
138 Mr. Archer - Motion by Mrs. Dwyer, seconded by Mr. Vanarsdall. All  
139 those in favor say aye—all those opposed by saying nay. The vote is 5-0, Mr. Kaechele  
140 absent. The motion is carried, and the case is deferred until March 28<sup>th</sup>.

141  
142 Mrs. Hunter - The second case to be deferred is also a related case.

143  
144 **Deferred from the February 15, 2001 Meeting:**

145 **P-2-01 Andrew M. Condlin for Lucor:** Request for a  
146 provisional use permit under Sections 24-58.2(c) and 24-122.1 of Chapter 24 of the  
147 County Code in order to allow a 15,000 square foot enclosed, air-conditioned three-bay  
148 auto service station on Part of Parcel 90-A-19, containing 0.431 acres, located on the  
149 south line of Quioccasin Road approximately 250 feet east of Pemberton Road. The  
150 existing zoning is R-3 One Family Residence District but is proposed for B-2C Business  
151 District (Conditional).

152  
153 Mrs. Hunter - Again, the deferral is requested to March 28, 2001.

154  
155 Mr. Archer - Okay. Is there opposition to this deferral? No opposition.  
156 Mrs. Dwyer.

157  
158 Mrs. Dwyer - I move Case P-2-01 Provisional Use Permit for Lucor be  
159 deferred, at the applicant's request, to March 28<sup>th</sup>.

160  
161 Mr. Vanarsdall seconded the motion.

162  
163 Mr. Archer - Motion by Mrs. Dwyer, seconded by Mr. Vanarsdall. All  
164 those in favor say aye—all those opposed by saying nay. The vote is 5-0, Mr. Kaechele  
165 absent. Next.

166  
167 Mrs. Hunter - On Page 2 in the Brookland District Case C-17C-01.

168  
169 **BROOKLAND:**

170 **C-17C-01 L. Anderson Hughes, Jr. for Deborah Sperberg:**  
171 Request to conditionally rezone from R-5 General Residence District to O-2C Office  
172 District (Conditional), Parcel 103-16-A-17, containing 0.04 acre, located on the east  
173 side of Pinetree Drive approximately 129 feet south of its intersection with Park Lane  
174 (2115 Pinetree Drive, Mayfield Subdivision). Office parking is proposed. The use will  
175 be controlled by zoning ordinance regulations and proffered conditions. The Land Use  
176 Plan recommends Urban Residential, 3.4 to 6.8 units net density per acre.

177 The deferral is requested by the Commission member and not by the applicant, and that  
178 would be to the April 12, 2001 meeting.

179  
180 Mr. Vanarsdall - Is the applicant here?

181  
182 Mr. L. Anderson Hughes - Yes sir.

183  
184 Mr. Vanarsdall - I just wanted to say to you I appreciate you allowing me to  
185 defer it. Mr. Mark Bittner and one of the landscapers and I are going to get together  
186 on it, and I'll talk to you.

187  
188 Mr. Archer - All right, is there any opposition to the deferment? No  
189 opposition. Mr. Vanarsdall.

190  
191 Mr. Vanarsdall - Mr. Chairman, well, it could be called "housekeeping,"  
192 but its just a little strip of parking lot that goes with the building. Since I've known the  
193 building where it is, they've never landscaped it, done anything to it, so I feel like that  
194 anytime we rezone something, we should get something better. That's Mr. Bittner who  
195 ask Mr. Hughes to let us defer it.

196  
197 Mr. Archer - All right.

198  
199 Mr. Vanarsdall - With that, I defer C-17C-01 to April 12, 2001.

200  
201 Mr. Jernigan seconded the motion

202  
203 Mr. Vanarsdall - And this is a freebie. This one is on me.

204  
205 Mr. Archer - Request of the Commission.

206  
207 Mr. Vanarsdall - This is on the Commission.

208  
209 Mr. Archer - Motion by Mr. Vanarsdall, seconded by Mr. Jernigan. All  
210 those in favor say aye—all those opposed by saying nay. The vote is 5-0, Mr. Kaechele  
211 absent. No opposition. The motion carries.

212  
213 Mrs. Hunter - Continuing along on the agenda. The next case right after  
214 that in the Fairfield District, C-11C-01.

215  
216 **Deferred from the February 15, 2001 Meeting:**  
217 **C-11C-01 James W. Theobald for Daniel Corporation:** Request to  
218 conditionally rezone from R-2 One Family Residence District, O-2C Office District  
219 (Conditional), O/SC Office/Service District (Conditional), and PMD Planned Industrial  
220 District to R-5C General Residence District (Conditional), O-2C Office District  
221 (Conditional), and M-1C Light Industrial District (Conditional), Parcels 53-A-69, 71,

222 74B, 75-79, 81-84, and 87, containing 59.48 acres, located on the north line of Parham  
223 Road at St. Charles Road and on the east line of Scott Road approximately 450 feet south  
224 of Level Green Lane (private.). A mixed-use development including multi-family, light  
225 industrial and office uses are proposed. The R-5 District allows a maximum density of  
226 14.5 units per acre. The nonresidential uses will be controlled by zoning ordinance  
227 regulations and proffered conditions. The Land Use Plan recommends Suburban  
228 Residential 1, 1.0 to 2.4 units net density per acre, Office and Office/Service.  
229

230 The applicant has requested a 60-day deferral to May 10, 2001.

231

232 Mr. Archer - All right, is there any one here opposed to this deferral?  
233 No opposition. I move deferral of C-11C-01 Daniel Corporation to May 10, 2001 at the  
234 applicant's request.  
235

236 Mr. Vanarsdall seconded the motion.

237

238 Mr. Archer - Motion by Mr. Archer, seconded by Mr. Vanarsdall. All  
239 those in favor say aye—all those opposed by saying nay. The vote is 5-0, Mr. Kaechele  
240 absent. The motion carries. We're deferring them right in order here, aren't we?  
241

242

243 Mrs. Hunter - Yes sir.

244

245 Mr. Archer - Next.

246

247 Mrs. Hunter - Continuing in order in the Three Chopt District, that's  
248 Case C-49C-00.

249

**Deferred from the September 14, 2000 Meeting:**

250

**C-49C-00 James W. Theobald for Tascon Group, Inc.:** Request to  
251 amend proffered conditions accepted with rezoning case C-45C-99, on Parcels 58-A-3,  
252 6 and 6A and part of Parcels 58-A-4 and 5, containing approximately 38.3 acres,  
253 located on the north line of Three Chopt Road at its intersection with Pell Street. The  
254 amendment would allow a condominium development in place of a detached single  
255 family development and assisted living facility. The Land Use Plan recommends Urban  
256 Residential, 3.4 to 6.8 units per acre, and Environmental Protection Area.  
257

258

The applicant's requesting a 6-month deferral to September 13, 2001.

259

260 Mr. Vanarsdall - Six months?

261

262 Mr. Archer - September, what was that?

263

264 Mrs. Hunter - September 13<sup>th</sup>.

265

266 Mr. Archer - Okay. Is there any one here in opposition to this  
267 deferment? We have opposition to the deferral. All right. I suppose we have to hear  
268 from the opposition. Mr. Kovacs, how are you, sir?

269  
270 Mr. David Kovacs - Good day. I'm familiar with you now. My name is  
271 David Kovacs from the Cross Keys Civic Association area. This is the eighth time I've  
272 now been before the Henrico Planning Commission to address this piece of property in  
273 my short tenure in Virginia.

274  
275 It's the third time, now, with respect to Tascon's proposal. I am sort of the unofficial  
276 coordinator for about a half dozen civic associations and subdivisions in our  
277 neighborhood. They give me calls on what's going on and the like. So, I'm in touch  
278 with a few people on this. And when it came up, we thought it was going to be last  
279 month, and the folks called to see what they'd been hearing, and they made the  
280 contacts. So, that's why I've been involved with this quite a bit.

281  
282 I did send a letter to the Planning Director and to Mr. Taylor stating our opposition,  
283 because it is the third time. We're into more than a year. But, also there's some other  
284 questions I did raise to Mr. Marlles.

285  
286 One of my questions has to do with deferrals, and what's the policy on deferrals, when  
287 you no longer have the same development application that was the initial request. If  
288 there is anybody, it's going to be a different applicant and a different developer  
289 petition.

290  
291 It seems that its most appropriate to say, if we've got new applicant's and a new  
292 development proposal, we should start anew and have a new application come forward.  
293 So, my questions were, "Is this only a matter of money, that it cost \$100 extension as  
294 opposed to probably a couple thousand for a new application? Does it mean something  
295 else with respect to rules of the game, grandfathering, things of that sort?"

296  
297 I'd like to understand a little bit more about what the deferral process means, because it  
298 really is very inconvenient to citizens to keep coming out, and out on this sort of thing.  
299 And then after I hear those, I'd comment.

300  
301 Mrs. Dwyer - This case was originally scheduled to be heard on July of  
302 last year. Is that right?

303  
304 Mr. Kovacs - July, and then continued to September. And then it was  
305 read to go to February, but it got put on March agenda.

306  
307 Mr. Archer - Mr. Marlles, do you want to respond to that?

308

309 Mr. Marlles - Sure. Mr. Kovacs, if there is a policy, and I'm not sure  
310 there's a policy per se on deferrals, but I think its up to the staff and the individual  
311 Planning Commission member to determine if there's significant progress on a  
312 particular case. So it is something we look at on a case-by-case basis. I think, as you  
313 indicated, there had been some changes in terms of the owners and the plan here which  
314 may very well justify the deferral. We do, I think as indicated by the earlier applicant,  
315 we do try to notify citizens or groups that are interested in these projects. Sometimes  
316 its not possible. Sometimes it is. But, you know, we will try to do a better job of  
317 notifying you in the future if there is a deferral. The bottom line, it comes down to a  
318 case-by-case decision as to whether or not there's progress being made on that case.

319

320 Mr. Kovacs - My other question that I posed earlier, does the fact this  
321 application came in the spring of 2000, does that have any bearing on the rules of the  
322 game to whenever the proposal does come before you for approval? An example, is  
323 you have new wetlands rules in the State. They weren't around a year ago, but they're  
324 around now. So, when this project comes up, can the applicant say, "Oh, these don't  
325 apply because I made this application 18 months ago?"

326

327 Mr. Marlles - And, I'm not an attorney, and I think what you're asking  
328 is, is the fact that an application is submitted in a particular time and kept alive, does  
329 that somehow concur some sort of non-conforming status, if the law changes? To be  
330 quite honest with you, I don't know. If it is an active application that hasn't received  
331 final approval yet, it may very well be subject to hose changes in State or Federal law,  
332 but Mrs. Hunter seems to have some information.

333

334 Mr. Kovacs - If that's the case, I would strongly say, if we don't  
335 know...We do know ? Okay.

336

337 Mrs. Hunter - There's no vesting right by filing an application. It has to  
338 be approved.

339

340 Mr. Marlles - It has to be approved. That's the point. It has to be  
341 approved before there's any vesting right conferred.

342

343 Mr. Kovacs - In the event we do continue it, and certainly, I mean as a  
344 taxpayer, I think if its just a matter of money, then I think we ought to get the money,  
345 because, we, as citizens, certainly put in time and effort into this too.

346

347 When Carematrix came up, I said, "You know, now that it's a new application, are we  
348 going to be able to adhere to the rules that were established after July 1, 1999. And  
349 some staff folks said, "Well, that wouldn't be fair, unless they're just making slight  
350 adjustments." And, so, what I'm hearing now, that rationale really doesn't cut it.

351



352 When they come in, they will have a complete environmental assessment by the Public  
353 Works Department, and we'll be operating under the new rules of the game.

354

355 I would really make the point that, if it's a new proposal and a new applicant, we  
356 should start with a new petition. And, in that way, if they're ready to go early, they  
357 don't have to wait until September. They can pay their money, whatever the timeframe  
358 is to come forward. Thank you.

359

360 Mr. Archer - Thank you, Mr. Kovacs.

361

362 Mrs. Dwyer - Mr. Marlles, it was my understanding that if a case  
363 changes substantially, then a new case would have to be filed?

364

365 Mr. Marlles - I think that's a correct statement. But, again, I think its  
366 up to the individual commissioner to determine whether or not a new case should be  
367 filed or whether a case can be deferred where there has been significant proffers on that  
368 case.

369

370 Mrs. Dwyer - Okay.

371

372 Mr. Archer - Okay, any other comment from the Commission?

373

374 Mr. Vanarsdall - One question, to say its up to the individual  
375 Commissioner to find out why its necessary, and if the reasons are valid. So, I think  
376 you're saying the same thing I said, so.

377

378 Mr. Taylor - Mr. Chairman, is it appropriate that we hear from the  
379 applicant?

380

381 Mr. Vanarsdall - Here comes the man who will tell us about it.

382

383 Mr. James W. Theobald - Mr. Chairman, members of the Commission, my name is  
384 Jim Theobald. I'm here this evening, actually on behalf of the property owners, the  
385 Tedesco family. The reason for this deferral request is that this site has turned out to  
386 be far more challenging to develop than originally thought when Tascon filed the  
387 application. What, we have since learned through geotechnical studies, is that VDOT  
388 has aimed all their drainage off I-64 directly on to this site and that there are a few  
389 thousand cubic yards of fill material located on there as it was used for a borrow site in  
390 the construction of Interstate 64. This is, as you might expect, complicated in that fill  
391 is not necessarily stable. That has complicated the planning and changed how the site  
392 will ultimately be laid out.

393

394 As we have worked with different developers, who have tried to address these  
395 geotechnical studies, are, obviously, paramount. What happens, however, if the case is

396 denied or we withdraw the case, obviously, to bring back a substantially similar case,  
397 you have a one-year waiting period, which Mr. Kovacs is keenly aware of, and we lose  
398 our application fees. So, what I would suggest to you is, the minute we knew that the  
399 case was going to be deferred, I sent letters to Mr. Kovacs and about 20 other people  
400 who've expressed an interest in this case. So, it need not be inconvenient, except you  
401 want to make a trip down here to express your opposition. Those people were notified.  
402 I received one phone call from a gentleman at Cedarfield, just asking where the case  
403 stood, and that was basically it.

404

405 But, what I suggest to you, there literally is no downside to the six subdivisions that  
406 Mr. Kovacs claims to represent in deferring this case.

407

408 There is, however, a significant downside to the Tedesco family, should the case be  
409 denied, or were we to withdraw it. And, that is that. If, in fact, we go forward with a  
410 substantially similar request after the case has been withdrawn or denied, we have to  
411 wait a year under your Ordinance. And, so we sit there. And, basically, to file it, we  
412 paid thousands of dollars to file the case.

413

414 What I'm suggesting to you is that, we're trying to work with the site. Okay. We're  
415 trying to make sure that what we have is a responsible development, given the  
416 environmental limitations that exist. And we continue to work with Mr. Kovacs and  
417 the neighbors when we have a better idea of how that might occur.

418

419 We respectfully suggest there really is no downside to the folks in that area. But, there  
420 is, in fact, a real down side to the Tedesco family who's owned it for sometime and  
421 continue to pay taxes on it. And that's just all there is to it. So, I'd be happy to  
422 answer any questions.

423

424 Mr. Archer - I don't think we need to have any more discussion on it,  
425 Mr. Theobald.

426

427 Mr. Archer - All right, Mr. Taylor.

428

429 Mr. Taylor - Is there any one else in opposition?

430

431 Mr. Richard Solari - I'd like to make a couple comments? My name is Richard  
432 Solari, and I am a property owner of some property immediately adjacent to this  
433 proposal on Three Chopt Road. My objection to the deferral, I echo his objections.  
434 However, its not strictly on procedural grounds as much as it is based on the merits or  
435 lack thereof of the proposal. The fact of the matter here is, this proposal no longer  
436 exists. There's no proposal for this property. The Tascon Group, Inc. is no longer  
437 involved.

438

439 The only reason we had a rezoning request and a scheduled meeting at all was because  
440 of a proposal that was put forth by a company a year and a half before. That company  
441 is no longer involved. There's no proposal for a rezoning request to be based on.  
442 There's no reason to have another meeting. If someone was to come along with  
443 another proposal, yes, that should be evaluated on its own merits at the time. But, to  
444 cling to a rezoning request that somebody else put forth a year and a half ago, I don't  
445 think is reasonable. I think all the rezoning requests that go before you gentlemen and  
446 ladies here should be evaluated on their own merits from the beginning of the case  
447 based on the proposal that you can look at. And, right now, there's nothing to look at.  
448

449 Mr. Archer - Thank you, sir. I don't know that we are able, tonight, to  
450 make any kind of procedural change as to how we proceed with deferment, but I do  
451 appreciate the information that you've given us.  
452

453 Mr. Solari - He's mentioned the phrase several times, "significant  
454 progress," and in this case, there's been no progress at all. So, there certainly hasn't  
455 been any progress.  
456

457 Mr. Marlles - Would you give us your address, too, just for the record?  
458

459 Mr. Solari - Certainly. 10805 Three Chopt Road.  
460

461 Mr. Marlles - Thank you.  
462

463 Mr. Archer - Okay. Mr. Taylor.  
464

465 Mr. Taylor - Mr. Chairman, just following up on these comments, I've  
466 been working on this site now, for six months. Truly, it is a complicated site, with a  
467 number of different problems, technical problems, wetlands problems, debris problems,  
468 drainage problems. It's not as easy as was thought. Mr. Theobald has been working  
469 on behalf of the owners to try to come to some terms with what they can do with the  
470 property.  
471

472 And, looking at the fact that he does have a prospect looking at it right now, and that  
473 we have made significant progress in the understanding of the site, both the drainage  
474 areas and the geotechnical, I see nothing to be gained with not deferring this, and  
475 giving Mr. Theobald and his client and the owners another six months to see if they can  
476 work out a reasonable agreement. So, with that I would move approval Case C-49C-  
477 00.  
478

479 Mr. Marlles - Deferment?  
480

481 Mr. Taylor - Move forward with the deferment.  
482

483 Mr. Jernigan seconded the motion.

484

485 Mr. Archer - Motion by Mr. Taylor, seconded by Mr. Jernigan. All  
486 those in favor say aye—all those opposed by saying nay. The vote is 5-0, Mr. Kaechele  
487 absent. Deferral is granted to September 13, 2001. All right, Mrs. Hunter.

488

489 Mrs. Hunter - Our next one is also in the Three Chopt District on Page 3  
490 of the agenda. That is Case P-3-01.

491

492 **P-3-01 Eisenberg Architects for Panera Bread:** Request for a  
493 provisional use permit under Sections 24-58.2(d) and 24-122.1 of Chapter 24 of the  
494 County Code in order to provide outdoor dining for a bakery/cafe, on part of Parcel 48-  
495 A-38, containing 600 sq. ft., located at 10301 West Broad Street, on the south line of  
496 West Broad Street (U. S. Route 250) at its intersection with Gaelic Lane (The Gables  
497 Apt. complex). The existing zoning is B-2C Business District (Conditional).

498

499 They've requested a deferral to April 12, 2001.

500

501 Mr. Archer - Thank you, Mrs. Hunter. Is there any one here in  
502 opposition to this deferment? No opposition. Three Chopt, Mr. Taylor.

503

504 Mr. Taylor - Mr. Chairman, I move deferral of Provisional Use Permit  
505 P-3-01 Eisenberg Architects for Panera Bread to April 12<sup>th</sup>.

506

507 Mr. Vanarsdall - Second. At the applicant's request.

508

509 Mr. Taylor - At the applicant's request.

510

511 Mr. Archer - Motion by Mr. Taylor, seconded by Mr. Vanarsdall. All  
512 those in favor say aye—all those opposed by saying nay. The vote is 5-0, Mr. Kaechele  
513 absent. Are there more?

514

515 Mrs. Hunter - The next case on the agenda, C-18C-01.

516

517 **C-18C-01 Richard Vass for Kevin B. Spector:** Request to  
518 conditionally rezone from A-1 Agricultural District to R-3C One Family Residence  
519 District (Conditional), Parcel 57-A-33, containing 5.16 acres, located on the south line  
520 of Church Road at its southeast intersection with Guyana Drive. Single-family  
521 residential development is proposed. The R-3 District allows a minimum lot size of  
522 11,000 sq. ft. The Land Use Plan recommends Suburban Residential 2, 2.4 to 3.4  
523 units net density per acre.

524

525 The applicant has requested a deferral to April 12, 2001.

526

527 Mr. Archer - Thank you, Mrs. Hunter. Is there any one here opposed  
528 to this deferral? No opposition. Three Chopt. Mr. Taylor.  
529  
530 Mr. Taylor - Mr. chairman, I move deferral of - to what date was that?  
531  
532 Mrs. Hunter - April 12<sup>th</sup>.  
533  
534 Mr. Taylor - I move we defer Case C-18C-01 to April 12<sup>th</sup> at the  
535 request of the applicant.  
536  
537 Mr. Vanarsdall seconded the motion.  
538  
539 Mr. Archer - Motion by Mr. Taylor, seconded by Mr. Vanarsdall. All  
540 those in favor say aye—all those opposed by saying nay. The vote is 5-0, Mr. Kaechele  
541 absent. The motion is carried. If we defer the whole agenda, is this an official  
542 meeting?  
543  
544 Mr. Vanarsdall - Can you stretch a couple more, Mrs. Hunter?  
545  
546 Mrs. Hunter - We have one more on the expedited agenda.  
547  
548 Mr. Archer - Are those all the deferrals?  
549  
550 Mrs. Hunter - That's all of the deferrals. We've got two zoning cases  
551 left, and one of which is requested for expedited.  
552  
553 Mr. Archer - All right, moving right along.  
554  
555 Mrs. Hunter - The expedited agenda is one case tonight P-4-01.  
556  
557 **P-4-01 Denise Kranich for Innsbrook Foundation:** Request for  
558 a provisional use permit under Sections 24-62.2(f) and 24-122.1 of Chapter 24 in order  
559 to locate an outdoor recreational facility of a commercial nature (the outdoor Innsbrook  
560 Pavilion), on Parcel 28-A-22A, containing approximately 6.396 acres, located at the  
561 northeast intersection of I-295 and Nuckols Road. The existing zoning is M-1C Light  
562 Industrial District (Conditional).  
563  
564 Mr. Archer - All right, is there opposition to P-4-01?  
565  
566 Mrs. Dwyer - I have one question.  
567  
568 Mrs. Hunter - Okay.  
569

570 Mrs. Dwyer - Did we receive any complaints by the neighbors, say "The  
571 Cedars" last year as a result of any of the concerts?

572  
573 Mrs. Hunter - The Planning Office did not receive any. I'm not sure  
574 about the Police Department. The Police regulate it through the Music and Festival  
575 permit. They provided us some comments on the Provisional Use Permit, but they deal  
576 with most of it through the Musical and Festival Permit, and not through the  
577 Provisional Use Permit.

578  
579 Mr. Marlles - Mrs. Dwyer, we've actually had fewer complaints at this  
580 location, than at the original location closer to Broad Street.

581  
582 Mrs. Dwyer - I'm sure.

583  
584 Mr. Taylor - I think last season was very successful.

585  
586 Mr. Archer - All right, we're ready for a motion.

587  
588 Mr. Taylor - Mr. Chairman, I move approval of Provisional Use  
589 Permit P-4-01 Innsbrook Foundation on the Expedited Agenda.

590  
591 Mr. Vanarsdall seconded the motion.

592  
593 Mr. Archer - Motion by Mr. Taylor, seconded by Mr. Vanarsdall. All  
594 those in favor say aye—all those opposed by saying nay. The vote is 5-0, Mr. Kaechele  
595 absent. Ms. Kranich, you didn't get to say anything.

596  
597 Ms. Denise Kranich - Come on out.

598  
599 REASON:  
600 Acting on a motion by Mr. Taylor, seconded by Mr. Vanarsdall, the Planning  
601 Commission voted 5-0, (one absent) to recommend that the Board of Supervisors **grant**  
602 **the requested revocable provisional use permit**, subject to the following conditions:

- 603  
604 1. The Provisional Use Permit will expire on December 31, 2003, or at such time  
605 that all 3 office buildings on site are occupied, whichever comes first.  
606  
607 2. Security measures, including but not limited to fencing and security personnel,  
608 will be provided to restrict unauthorized access to portions of the property  
609 where site improvements associated with POD-82-00 are under construction.  
610  
611 3. A Music and Festival permit must be obtained as required by Article IV, Chapter  
612 4 of the Henrico County Code.  
613

614 4. The pavilion location and associated Zoning Ordinance requirements shall be  
615 illustrated on an Amendment to the Plan of Development to be submitted to the  
616 Planning Office, and be administratively approved by Henrico Planning. The  
617 amendment should address parking calculations and the permitted site  
618 construction affected by the temporary location of the pavilion.

619  
620 The Planning Commission's recommendation was based on the fact that the proffered  
621 conditions should minimize the potential impacts on surrounding land uses; and it would  
622 not be expected to adversely affect public safety, health or general welfare.

623  
624 Mr. Marlles - Mr. Chairman, the first case to be heard is at the bottom  
625 of Page 2 on your agenda. It was a case that was deferred from the February 15, 2001  
626 meeting.

627  
628 **Deferred from the February 15, 2001 Meeting:**  
629 **C-7C-01 Curtis D. Gordon for West End Developers, L.L.C.:**  
630 Request to conditionally rezone from A-1 Agricultural District to R-3C One Family  
631 Residence District (Conditional), Parcels 56-1-A-1 (Winngate Subdivision) and 56-A-4,  
632 containing 5.55 acres, located on the north line of Church Road 200 feet west of its  
633 intersection with Abbey Lane. A residential subdivision is proposed. The R-3 District  
634 allows a minimum lot size of 11,000 square feet. The Land Use Plan recommends  
635 Suburban Residential 2, 2.4 to 3.4 units net density per acre.

636  
637 Mr. Marlles - The staff report will be given by Mr. Lee Householder.

638  
639 Mrs. Hunter - On the first page of the agenda, the Ordinance Amendment.  
640 Mr. Marlles - Well, I apologize.

641  
642 Mr. Archer - We heard every word you said.

643  
644 Mr. Marlles - The first item on the agenda, actually, is a proposed  
645 amendment to the Zoning Ordinance.

646  
647 **AMENDMENT TO ZONING ORDINANCE:**  
648 AN ORDINANCE to amend and reordain Section 24-62.2 of the Code of the County of  
649 Henrico entitled "Provisional uses permitted," Section 24-94 entitled "Table of  
650 regulations," and Section 24-94.1 entitled "Yard and setback standards for tall  
651 buildings" to allow by Provisional Use Permit an increase in height for certain  
652 structures in the B-3 Business District.

653  
654 Mr. Marlles - That staff report will be given by Mr. O'Kelly.

655  
656 Mr. Archer - Mr. O'Kelly, how are you, sir?

657

658 Mr. David D. O'Kelly, Principal Planner – Mr. Chairman, I'm fine. Good afternoon,  
659 members of the Commission.

660

661 Mr. Archer - It's night, David. I know you're used to being here in the  
662 day time.

663

664 Mr. O'Kelly - I understand. Copies of this proposed amendment to the  
665 Zoning Ordinance are available tonight in the lobby should anyone be interested. The  
666 advertisement for tonight's public hearing appeared in the Richmond Times Dispatch on  
667 February 15<sup>th</sup> and February 22<sup>nd</sup>. There have been no changes to the draft which was  
668 distributed in your packet for tonight's meeting. That draft is dated February 26<sup>th</sup>.

669

670 The staff introduced this Ordinance to the Commission at a work session at your last  
671 meeting on February 28<sup>th</sup>. It is a relative simple Zoning Ordinance Amendment.  
672 Currently, in the B-3 District, the height of buildings and structures is limited to 45  
673 feet. However, buildings in excess of 45 feet, but not higher than 110 feet may be  
674 permitted with the approval of a special exception, and that's normally granted either  
675 by the Board of Zoning Appeals or by the Planning Commission. That's for all B-3  
676 uses in general.

677

678 The Amendment proposed before you tonight and, if adopted by the Board of  
679 Supervisors, would allow for certain entertainment uses such as coliseums, stadiums  
680 and race tracks a height greater than 110 feet, with approval of a Provisional Use  
681 Permit by the Board of Supervisors. And, again, that would be only for those certain  
682 entertainment uses permitted as a Provisional Use in the B-3 District.

683

684 The Provisional Use process, of course, requires such requests to first come before the  
685 Planning Commission for review and a recommendation to the Board of Supervisors.

686

687 So, this amendment, in essence, would provide the opportunity and a process for  
688 buildings and structures of certain types to exceed 110 feet by a Provisional Use  
689 Permit.

690

691 I'd be happy to try and answer any questions.

692

693 Mr. Archer - Thank you, Mr. O'Kelly. Any questions from the  
694 Commission for Mr. O'Kelly? Mr. O'Kelly, let me ask one question, because I feel  
695 like you ought to be asked one question.

696

697 Mr. O'Kelly - All right.

698

699 Mr. Archer - Will we particularly specify exactly what uses would be  
700 permitted under this change? When we say things, "such as racetracks," or will that be



701 on a selective basis anyway when the Board gets a chance to review any requests for a  
702 change?

703

704 Mr. O'Kelly - Actually, Mr. Archer, the proposed Ordinance is very  
705 strict on the type of uses that would be allowed this opportunity. Only coliseums,  
706 racetracks, and...

707

708 Mr. Archer - That's what I'm getting at. It's specified?

709

710 Mr. O'Kelly - Yes sir. In the language of the ordinance.

711

712 Mr. Archer - Okay. All right.

713

714 Mr. O'Kelly - I think the question was asked at the work session whether  
715 or not this provision would be allowed for the State Fair and their raceway facilities. It  
716 would be at their current location. They would have the opportunity for Strawberry  
717 Hill, for example, or any structures related to that activity, to apply for Provisional Use  
718 because the property is zoned B-3 and M-1. However, at the new location of the State  
719 Fair, that property is currently zoned A-1, and that opportunity would not be available.

720

721 Mr. Archer - Okay.

722

723 Mrs. Dwyer - Mr. O'Kelly, you and I discussed this earlier today, but  
724 I'll just mention it so that others will have the benefit of our discussion. And, my  
725 question earlier had related to Section 24-94.1. I just wanted to make sure that the  
726 intent was to require these larger buildings that can be taller than 110 feet to also  
727 require them to have additional rear, side and front yard setback. And, you indicated,  
728 that, yes, that was...

729

730 Mr. O'Kelly - That would be required. And, again, the zoning  
731 requirements are minimum requirements. Certainly, through the Provisional Use  
732 process, if the Commission or Board felt that additional setbacks greater than specified  
733 in the Ordinance would be necessary, then, you could add that as a condition. Of  
734 course, through the Provisional Use, that process allows the Commission or with final  
735 action by the Board, to add any condition you think is appropriate for the development  
736 of the property. It doesn't have to be volunteered by the applicant.

737

738 Mr. Archer - So, it will be a rare bird anyway. Okay, any further  
739 discussion? I suppose we're ready for a motion.

740

741 Mr. Taylor - Mr. Chairman, I'll move approval of the Amendment to  
742 the Zoning Ordinance to amend and reordain Section 24-62.2 of the Code of the County  
743 of Henrico.

744

745 Mr. Archer - We are making a recommendation to the Board? Is that  
746 correct, right?

747  
748 Mrs. Dwyer seconded the motion.

749  
750 Mr. Archer - Motion by Mr. Taylor, seconded by Mrs. Dwyer. All  
751 those in favor say aye—all those opposed by saying nay. The vote is 5-0, Mr. Kaechele  
752 absent. Thank you, Mr. Taylor. Thank you, Mr. O'Kelly. All right, Mr. Secretary.

753  
754 **Deferred from the February 15, 2001 Meeting:**

755 **C-7C-01 Curtis D. Gordon for West End Developers, L.L.C.:**  
756 Request to conditionally rezone from A-1 Agricultural District to R-3C One Family  
757 Residence District (Conditional), Parcels 56-1-A-1 (Winnate Subdivision) and 56-A-4,  
758 containing 5.55 acres, located on the north line of Church Road 200 feet west of its  
759 intersection with Abbey Lane. A residential subdivision is proposed. The R-3 District  
760 allows a minimum lot size of 11,000 square feet. The Land Use Plan recommends  
761 Suburban Residential 2, 2.4 to 3.4 units net density per acre.

762  
763 Mr. Marllles - Mr. Lee Householder will be giving the staff report.

764  
765 Mr. Archer - Mr. Householder. Is there any one here in opposition to  
766 this case before you start, sir? No opposition.

767  
768 Mr. Lee Householder, County Planner - Thank you, Mr. Chairman. This subject  
769 request would rezone 5.5 acres from A-1 Agricultural to R-3C One Family Residence  
770 District. The requested use is the development of a single-family subdivision. The  
771 property is located on the north line of Church Road, 200 feet west of the intersection  
772 with Abbey Lane. There is currently a residential structure located on this parcel, and  
773 the applicant has indicated that this structure will be removed and new homes will be  
774 constructed.

775  
776 A quick review of the surrounding zoning and subdivisions; its primarily R-4  
777 surrounding the property up in this area (referring to slide), and as you come down  
778 here, you've got A-1 and R-2A across the street. Then you have the Jehovah Witness  
779 Church to the west of the property.

780  
781 The surrounding subdivisions; this subdivision here is called Waterford. This  
782 subdivision here is Glen Gary (referring to slide), were built in the eighties and also,  
783 the Pine Run Subdivision is what's across the street.

784  
785 Currently, there are 10 lots in the Glen Gary Subdivision that are adjacent to this  
786 request and 13 lots in Waterford that are adjacent to the subject property. The  
787 requested zoning of R-3C does allow a minimum lot size of 11,000 square feet, and lot  
788 width of 80 feet. The 2010 Land Use Plan designation for this site is Suburban

789 Residential 2 which is a maximum of 3.4 units per acre. This request does conform  
790 with those guidelines.

791

792 Staff has attended several meetings over the past two months to discuss concerns with  
793 surrounding property owners with this case. Discussions have continued fairly  
794 regularly and consistently up until yesterday when representatives in each subdivision  
795 worked to resolve the last remaining issues with the case.

796

797 Final proffers for this case were submitted today, so, therefore, the time limit would  
798 need to be waived in order to accept these proffers.

799

800 The applicant has submitted what's called "a master plan," in the proffers and that  
801 shows 13 lots in this subdivision. The exhibit that you have attached to your proffers is  
802 not exactly the same as this one. We kind of enhanced and blew it up a little bit for  
803 presentation purposes.

804

805 I'd like to quickly review some of the proffers that were submitted by the applicant  
806 today. Proffers 1 and 2 reference this master plan specifically required to be  
807 substantially in accordance with this. One of the ideas is the offset lines between Glen  
808 Gary and the new subdivision which is mentioned in Proffer 2.

809

810 Proffer No. 4 would require a 20-foot buffer along the perimeter of the property.  
811 Within this buffer area, it would not allow trees of a caliper of 5 inches or greater to be  
812 taken unless diseased.

813

814 Proffer 5 would limit single story dwellings to these three lots here, here, and here  
815 (referring to slide), and the rest of the property would be two-story and colonial style.  
816 Proffer No. 7 would require this 20-foot common area (referring to slide), which is  
817 labeled as a buffer, which is adjacent to the Waterford Subdivision. And, in this area  
818 trees would be preserved and landscaping would be supplemented where needed with  
819 evergreen plantings, as mentioned in the proffer.

820

821 Proffer No. 9 would require a 55-foot setback for these lots bordering the Glen Gary  
822 Subdivision, which is 15 feet greater than what's required than the R-3 District.

823

824 Proffer No. 11 is the landscaped buffer requirement of 25 feet with transitional 25  
825 landscaping requirements, which we've seen in other subdivision rezonings.

826

827 And the last proffer I'd like to mention, is Proffer 14, which requires a 30-foot side  
828 yard setback for these two lots adjacent to the Waterford and Glen Gary Subdivisions.

829

830 Overall, staff feels this proposal is consistent with the recommendation of the 2010  
831 Land Use Plan. And we feel the proposed use is reasonable, given the zoning of  
832 surrounding properties. We feel the applicant has addressed staff's concerns as well as

833 the concerns of surrounding property owners, and we recommend approval of this  
834 request. I'd be glad to answer any questions you may have.

835

836 Mr. Archer - Thank you, Mr. Householder. Are there questions from  
837 the Commission from Mr. Householder?

838

839 Mrs. Dwyer - Could we have a few minutes to review these proffers?

840

841 Mr. Householder - That's understandable. I will point out that I think there  
842 are places where the language might seem a little awkward. I have addressed that with  
843 the applicant. And the response was, which I'm sure he can say, but some of these  
844 requests were specifically made by the surrounding property owners.

845

846 Mr. Vanarsdall - They're not all changed, are they?

847

848 Mr. Householder - What's that?

849

850 Mr. Vanarsdall - I said, they're not all changed?

851

852 Mr. Householder - No.

853

854 Mr. Taylor - But they are voluminous.

855

856 Mr. Vanarsdall - Have you seen them before, Mr. Taylor?

857

858 Mr. Taylor - Several times, yes sir.

859

860 Mr. Vanarsdall - Satisfied with them?

861

862 Mr. Householder - I'll explain some of the process, reviewing the proffers.  
863 A lot of times they were e-mailed to staff. Comments were provided back on some  
864 things. We do kind of have a back and forth. We never had a formal submittal of the  
865 new proffers until Tuesday. We did have proffers that made the deadline. But, then  
866 they were changed again since Tuesday. The ones you see here is the final agreement  
867 between negotiations with surrounding property owners.

868

869 Mr. Taylor - And, I am, frankly, surprised that I have a copy in my  
870 hand and the ink is dry on it with no changes, because there are two 19's. So, I think  
871 there are actually 20 have been deliberated, debated, worked over with the staff with  
872 the developer, with the neighbors. And, I have to say, I'm proud that the staff did an  
873 exquisite amount of energy that Mr. Householder put into these. And there are some  
874 very interesting concepts envisioned in this that when we started this, it looked so  
875 simple, but it became so complicated. And what is complicated about it, is this is an

876 infill development between two very active developments with some community pride  
877 and have been being about nine or ten years.

878

879 So, we had to match the architecture. We had to work with the value systems of both  
880 of the adjacent developments. And, it required a great degree of work on behalf of the  
881 staff and all the developers. And I really think that Mr. Marlles and staff should be  
882 proud of the effort that the staff put in on these. There are some that are so interesting  
883 that it might be worthwhile going over them.

884

885 Mr. Householder - I can pick out a few that I think are; I mean, I did point  
886 out to the applicant that, we just got these proffers today and we do feel like we would  
887 like even more time to review them. The County Attorney hasn't had a chance to  
888 comment on them. But, I did indicate that I felt like, substantially, they met most of  
889 the concerns, that between now and the Board, we could work to tweak the language to  
890 meet County standards.

891

892 No. 13 is, typically, not a proffer that we would recommend by staff, which is, "A  
893 maximum number of seven lots shall have graveled driveways. And graveled  
894 driveways shall be brown, crush, and run, and all other driveways shall be paved."

895

896 Mr. Archer - Well, it does say, "may" instead of "should." Does that  
897 have any bearing on it?

898

899 Mr. Archer - That's exactly right. I mean, those are the type of  
900 wording changes that, as I read them more and more, that I'm picking up on.

901

902 Mrs. Dwyer - Are there existing utility easements along Church Road?

903

904 Mr. Householder - Yes.

905

906 Mr. Taylor - For the most part, yes. All are along Church Road.

907

908 Mrs. Dwyer - Because Proffer No. 11 says, "...All utilities shall run  
909 generally perpendicular to the landscape buffer area...", and if there are existing  
910 utilities running in a parallel fashion, then, this proffer would be in conflict with that.

911

912 Mr. Householder - My understanding of the proffer was, if any new utility  
913 easements would be required for the development that they would be made to be  
914 perpendicular. At least it would cover those...

915

916 Mrs. Dwyer - I guess it could be clarified by saying, "all new utility  
917 easements that are..." I don't know. Somehow, word that to make it clear...

918

919 Mr. Taylor - That would be good. I think most of the new utilities  
920 would run generally perpendicular with the landscaped buffer areas picking up the  
921 utilities that were in the street and then extending them.

922  
923 Mrs. Dwyer - The question that I have in the brief time I've had to look  
924 at this, I was looking at Proffer No. 4 and 14 where we talk about the buffer area and  
925 not cutting trees with a 5-inch caliper or greater within the buffer area. I think that  
926 that's perfectly reasonable to expect of a developer. I would have great reservations  
927 about having a proffer like that apply to a person who might purchase a home, and  
928 want to put a tool shed in their back yard or do something, a playground or something,  
929 and may want to cut down a tree. Maybe they don't like gumballs falling in the yard  
930 because their children go barefooted.

931  
932 You know, I mean, there are a host of reasons why a homeowner might want to cut  
933 down a tree. Having had experience in the past with proffers that developers agreed to,  
934 but are really difficult for the homeowner to necessarily continue to abide by, I would  
935 really recommend against having that particular provision apply in perpetuity to every  
936 owner of the property. I think its very reasonable to ask of the developer, however.

937  
938 Mr. Householder - To add on that, it is very difficult for staff to enforce over  
939 a long term the clearing of someone's own back yard. I think the applicant can quickly  
940 address why some of these things were worded the way they were, because that  
941 concern was brought out.

942  
943 Mrs. Dwyer - What that does is, in the future, it pits one neighbor  
944 against another neighbor with the County in the middle. And the one neighbor who  
945 lives there says, "This is my home. I pay the mortgage. Why can't I cut down this  
946 gumball tree?" You know. And I think that's the position the County doesn't want to  
947 be in. I think its an unreasonable position to put the County into and an unreasonable  
948 demand to make of a homeowner.

949  
950 Mr. Vanarsdall - You also run into the problem sometimes, the first person  
951 who occupies the house may have gotten the word, and the second or third doesn't.  
952 And, all of a sudden, there's nothing left standing. It's very difficult, like you said, to  
953 convey.

954  
955 Mrs. Dwyer - One other observation I would make; the single-level  
956 dwellings, as I saw you point them out in the beginning of the subdivision. And,  
957 usually, developers like to put their best house you know close to the front, because it  
958 creates an attractive entry and a more impressive entry.

959  
960 Mr. Householder - There's a lot of history behind the decision to put those  
961 single-family dwellings...

962

963 Mrs. Dwyer - Right. I'll just make that observation and drop it. The  
964 only thing I'm really concerned about is the trees.  
965  
966 Mr. Householder - I agree with you.  
967  
968 Mrs. Dwyer - Attempting to bind homeowners in perpetuity.  
969  
970 Mr. Marlles - Mr. Householder, you're fairly comfortable that these  
971 proffers can be tweaked before the Board meeting to your satisfaction?  
972  
973 Mr. Householder - I think so. The reason that I feel like they're not in the  
974 best shape, is because negotiations between the sides went to the last minute. And there  
975 has been a lot of work put into the case. And I did communicate that with the applicant  
976 that I felt like they still needed work. But, I did feel like we were confident they were  
977 the type of changes that we could make between now and the Board. Specifically, the  
978 tree issue would be one of those things.  
979  
980 Mr. Archer - And No. 20, I guess it should be. We had some  
981 discussion I recall last year, had some discussion about trying to make people aware  
982 that homeowner's associations do actually exist, particularly the second buyers, second  
983 or third buyer, whatever. Did we ever come up with any kind of language?  
984  
985 Mr. Vanarsdall - I remember we talked about it, but I don't think we  
986 adopted any certain language as I remember. Do you, Mrs. Dwyer?  
987  
988 Mrs. Dwyer - No.  
989  
990 Mr. Archer - We had quite of an opinion about it as I recall.  
991  
992 Mr. Householder - We had some covenant language I've seen in other  
993 subdivision cases. I could pull some of that and see if it gets at that.  
994  
995 Mr. Archer - Okay. I was just trying to see if we could enhance this a  
996 little bit. A lot of people buy and are not aware that these covenants exist and some of  
997 them just blatantly want to refuse to join a homeowners association as mandatory that  
998 they have to do it and pay dues. People resent that. And, when you get to a second or  
999 third ownership, that kind of filters out a little bit. I didn't remember what we did.  
1000 But, I thought we did something to try to create some language that would specify or  
1001 have the sales person specify that the buyer knows that this language does exist.  
1002  
1003 Mr. Marlles - And, Mr. Chairman, as I recall, too, I think the Assistant  
1004 County Attorney did research on that. I have to tell you, ...  
1005  
1006 Mr. Archer - He did.

1007 Mr. Marlles - ...I don't remember exactly what he came out with. They  
1008 were also researching it at the time, but we'd be glad to look into that and actually  
1009 bring that back to you.  
1010  
1011 Mr. Archer - Well, I was just thinking that, if we could just clean this  
1012 up a little bit while we had it, if we could find that language.  
1013  
1014 Mr. Marlles - We could certainly check with the County Attorney's  
1015 office.  
1016  
1017 Mr. Archer - Okay.  
1018  
1019 Mrs. Dwyer - So, is it planned that a covenant in the deed that will run  
1020 with the land will be the instrument that sets up this homeowner's association?  
1021  
1022 Mr. Householder - The applicant can address that. That's been specifically  
1023 talked about. Because some of the issues that they wanted proffered are not in here  
1024 regarding roof materials. I was hoping the driveway issue would be more of a  
1025 covenant.  
1026  
1027 Mrs. Dwyer - It usually is.  
1028  
1029 Mr. Householder - And the applicant has indicated that they wanted more  
1030 time to work on the covenants to present to the surrounding neighbors.  
1031  
1032 Mr. Taylor - And I think some of this will also transcend to the POD  
1033 that we'll be able to work on it. Is the applicant here? Would you like to hear from the  
1034 applicant?  
1035  
1036 Mr. Curtis Gordon - Good evening, members of the Commission. My name is  
1037 Curtis Gordon. I'm representing the applicant. I also have the unusual situation,  
1038 tonight, of asking to rezone the house where I grew up. It is actually my mother's  
1039 property who is here this evening. We have been there since the fifties.  
1040  
1041 We have seen Short Pump develop more than I ever would have dreamed when I was  
1042 little. I would also, before I address comments from the Commission, I would like to  
1043 echo Mr. Taylor's sentiments as to the hard work of Mr. Householder, but also  
1044 compliment Mr. Taylor for the countless hours he has put in this to this point. There  
1045 were several occasions when I did not think we'd be ever to reach.  
1046  
1047 Mr. Archer - Sir, did you give your name for the record?  
1048  
1049 Mr. Gordon - Yes sir.  
1050



1051 Mr. Archer - Thank you.  
1052  
1053 Mr. Gordon - I'll be happy to address any questions from members of  
1054 the Commission. I will represent that Mr. Shumate, who represents Glen Gary  
1055 Homeowners, or a group thereof, could not be here this evening. He is in New  
1056 Orleans, fortunately, for him. Some of the residents of Glen Gary are here who may  
1057 also wish to speak. But I'd be happy to answer any questions the Commission has.  
1058  
1059 Mr. Archer - Thank you, sir. Are there questions?  
1060  
1061 Mr. Vanarsdall - You heard what our concern was about the...  
1062  
1063 Mr. Gordon - If I were Mr. Shumate, and here, tonight, I think the  
1064 answer I would have to that question is that, that would be a very important condition  
1065 for the Glen Gary Homeowners. These proffers represent a long and hard fought  
1066 negotiations to reach a compromise that would be agreeable to everyone. And I think  
1067 that would be the best answer I could have to that question. And that is a very sensitive  
1068 issue to the members of Glen Gary, that the trees remain there. May I answer any  
1069 other questions?  
1070  
1071 Mrs. Dwyer - So, do you think that between now and the time the case  
1072 goes to the Board there may not be any resolution of it in the terms that the  
1073 Commission has discussed?  
1074  
1075 Mr. Gordon - I think that the resolution, as you see proffered as to the  
1076 tree save area, would be the final resolution that would go before the Board.  
1077  
1078 Mrs. Dwyer - So, you don't think the neighbors would be willing to  
1079 limit the tree cutting proffer to actions of the developer?  
1080  
1081 Mr. Gordon - That has been addressed, and you see the final product of  
1082 those discussions before you.  
1083  
1084 Mr. Archer - Oh, okay. So, this is a result of that discussion?  
1085  
1086 Mr. Gordon - Exactly.  
1087  
1088 Mr. Archer - That's way the proffer is worded this way.  
1089  
1090 Mr. Gordon - Exactly. In some great detail.  
1091  
1092 Mrs. Dwyer - So, I assume you could go either way, you know, as the  
1093 seller of the property. It's really, as I understand it, something that the neighbors...  
1094

1095 Mr. Gordon - It's a very sensitive issue to the neighborhood. Yes  
1096 ma'am. To address an earlier question, too, as to how you let subsequent homeowners  
1097 know of restrictive covenants. I believe if there were any one here who was a realtor,  
1098 the Board of Realtors mandates that there are, at time of contract, agents to disseminate  
1099 copies of restrictive covenants to potential homeowners.  
1100  
1101 Mr. Archer - I'm aware, sir, that it is there to be read, but...  
1102  
1103 Mr. Gordon - I was going to say, I can't say that's always done.  
1104  
1105 Mr. Archer - There's a lot to be read in a contract.  
1106  
1107 Mr. Gordon - It's supposed to be done. Could I answer any other  
1108 questions?  
1109  
1110 Mr. Archer - Any other questions?  
1111  
1112 Mr. Gordon - Thank you.  
1113  
1114 Mr. Archer - Thank you, sir.  
1115  
1116 Mr. Taylor - Thank you for all your hard work.  
1117  
1118 Mr. Gordon - Thank you, Mr. Taylor.  
1119 Mr. Archer - All right, Mr. Taylor.  
1120  
1121 Mr. Taylor - Mr. Chairman, there may be some other people who may  
1122 like to speak.  
1123  
1124 Mr. Archer - Oh. There are some.  
1125 Mr. Vanarsdall - Is he in opposition, or is he just going to speak?  
1126  
1127 Mr. Tom Dennison - I'm for the proposal. My name is Tom Dennison. And I  
1128 live in the Glen Gary Subdivision that borders the subject property.  
1129  
1130 Mr. Marlles - Sir, could you give your address, just for the record?  
1131  
1132 Mr. Dennison - 2737 Dalkeith Drive. Will Sumake, as Mr. Gordon said,  
1133 Will Sumake is an attorney, and represents me and a majority of the owners that are on  
1134 Dalkeith Drive that border the property. And, like it has been noted, tonight, he's had  
1135 an out of town commitment. And he wanted me to read this short statement on his  
1136 behalf in support of the case. "I apologize for my inability to be here tonight. But, in  
1137 fulfilling my commitment to the applicant, I wanted to speak favorably to the zoning  
1138 case as amended. As Mr. Taylor could attest, emotions ran deep in this case. The

1139 subject property is a very narrow parcel. It slices through the heart of two  
1140 subdivisions.

1141

1142 As you can imagine, agents with no connection to the home of the subject property,  
1143 assured most of my clients that the property was so narrow that it could not possibly be  
1144 developed. They bought their home precisely because of the woods and the privacy  
1145 those woods afforded.

1146

1147 The negotiations on this infill piece were hard, but, ultimately, I think successful. I  
1148 want to thank Mr. Taylor for the countless meetings he attended and helped to arrange.  
1149 I want to thank Lee Householder and staff for all their hard work.

1150

1151 Finally, I would like to thank the applicants for accepting my invitation yesterday to  
1152 come to my office and hammer out our differences. They handled themselves  
1153 professionally when negotiations were the toughest. He has asked me to submit the  
1154 proffers Mr. Gordon, Mr. Matthews, and I worked on at the meeting yesterday. I  
1155 understand that Mr. Householder may tweak the proffers. But so long as the substance  
1156 remains the same, I have no problems with minor revisions by staff. Also, the  
1157 applicant has agreed, in principal, to certain restrictive covenants which we simply did  
1158 not have enough time to complete those before this meeting. We have agreed to  
1159 resolve this matter between now and the Board. Mr. Dennison has mailed the proffers  
1160 to all my clients, and I've spoken to almost all of them about the latest proffers. Every  
1161 client to whom I've spoken thus far is satisfied. Thank you."

1162

1163 Mr. Archer - Thank you, sir. Any questions before he takes his seat?

1164

1165 Mr. Taylor - Thank you, Mr. Dennison.

1166

1167 Mrs. Dwyer - I have a question about Proffer No. 4, as I look at it  
1168 again. It says, "All lots that are adjacent to either Waterford or Glen Gary shall have a  
1169 20-foot buffer area around their perimeter." Does that mean the front, side and rear  
1170 yards of every lot will have a 20-foot buffer around them?

1171

1172 Mr. Householder - It's not intended to mean that. No.

1173

1174 Mrs. Dwyer - What does the proffer mean, then, because its not clearly  
1175 written, if that's not what it means?

1176

1177 Mr. Householder - I think the applicant might be best to address that.

1178

1179 Mr. Gordon - The buffer, as it is intended to be, be between the lots to  
1180 be created and the lots as they exist now. It would not be down between the new lots  
1181 that were created.

1182

1183 Mrs. Dwyer - So, it would be along the rear yard of the lots adjacent to  
1184 Glen Gary? Is that what you're saying?  
1185  
1186 Mr. Gordon - Yes ma'am.  
1187  
1188 Mrs. Dwyer - And, then there's one lot adjacent to Waterford, as I see  
1189 it, on this plan. Two lots, I guess.  
1190  
1191 Mr. Gordon - The lot I'm indicating now (referring to slide) would be  
1192 the only lot which would be adjacent to Waterford, and that would have a barrier down  
1193 the side.  
1194  
1195 Mr. Householder - I think it might be appropriate if you changed that word to  
1196 "along" instead of "around." Does that help, Mrs. Dwyer?  
1197  
1198 Mrs. Dwyer - No, because perimeter is a word that doesn't mean just  
1199 rear. It means all around.  
1200  
1201 Mr. Gordon - In retrospect, perhaps, it should read, "the border  
1202 between."  
1203  
1204 Mrs. Dwyer - Well, this is the problem when we get proffers for the  
1205 first time and we're reading them now.  
1206  
1207 Mr. Gordon - I agree.  
1208  
1209 Mrs. Dwyer - We're supposed to get proffers at least two days before  
1210 the Planning Commission meeting so that we don't have to hash out uses of words and  
1211 meanings, because we miss a lot of things when we don't do that. And, I will also say  
1212 that I'm very concerned about this tree proffer. It doesn't sound like this is something  
1213 that can be resolved easily between now and the Board, if I'm hearing the neighborhood  
1214 representatives appropriately. It sounds like, this is exactly what is wanted and there is  
1215 no room for negotiation on that particular proffer. So, the intent then, is to, in fact,  
1216 bind every property from here to perpetuity to never be able to cut a tree down in that  
1217 20-foot area.  
1218  
1219 Mr. Gordon - That is the intent. You're correct.  
1220  
1221 Mrs. Dwyer - And, that's not something that can be resolved between  
1222 now and the Board is my point, as the neighbors have indicated that's exactly the way  
1223 they want the proffer to read.  
1224  
1225 Mr. Gordon - Yes ma'am.  
1226

1227 Mrs. Dwyer - That's a problem, I think, for me.  
1228  
1229 Mr. Jernigan - Well, I'll agree. That's a problem for me, too. I don't  
1230 see how that the other landowners can dictate that you can never cut down a tree.  
1231  
1232 Mr. Gordon - When that discussion came up at a meeting with members  
1233 of staff, the answer was, the remedy would be that the homeowner, at that time, would  
1234 be required to replace the tree. Other questions?  
1235  
1236 Mr. Archer - Sir, that works, except, in the event like a case Mrs.  
1237 Dwyer mentioned, somebody may want to build a structure and the tree would be in  
1238 front...  
1239  
1240 Mr. Gordon - Effectively, what you have here, is you're going to have a  
1241 20-foot area that you could not build in.  
1242  
1243 Mr. Archer - Could not touch.  
1244  
1245 Mrs. Dwyer - Well, it doesn't say that.  
1246  
1247 Mr. Archer - It's almost in an RPA.  
1248  
1249 Mr. Gordon - Effectively. You could, in theory, build, and I suspect all  
1250 the trees in that buffer would be over 5-inches caliper. But, in theory, you could have  
1251 a lot where you'd have no trees now over 5-inches in caliper. You could cut them all  
1252 down and you could build back there. Or you could have three trees here, and no trees  
1253 there, and you could clear that part of your lot. That's why I said, "effectively," I  
1254 think it would, probably, because I believe most of the trees back there are over 5-  
1255 inches in caliper.  
1256  
1257 I think, what the neighborhood's concern is, is that they want to maintain a tree buffer  
1258 between themselves and the new homes, if I spoke correctly. Are there other  
1259 questions?  
1260  
1261 Mr. Archer - Sir, I can see that this issue is one that causes some  
1262 concern. Do you think, with another meeting, folks who were demanding this proffer  
1263 that you could explore it a little bit further to see whether or not they may be willing to  
1264 change their mind, or change the wording in a way what Mrs. Dwyer speaks of could  
1265 be accommodated, or have you already been there?  
1266  
1267 Mr. Gordon - We've been there a couple of times. Now, Mr. Dennison  
1268 may wish to speak to that point.  
1269

1270 Mr. Archer - I'm just wondering if there have been some thoughts that  
1271 may have been overlooked?  
1272  
1273 Mr. Gordon - No. I don't think so.  
1274  
1275 Mr. Archer - ...as to how stern this proffer really is.  
1276  
1277 Mr. Gordon - I don't think so. It was addressed several times.  
1278  
1279 Mr. Taylor - And, I might add, Mr. Chairman, the discussions on this  
1280 topic were rather heated. And the amount of heat was not beneficial from the  
1281 standpoint of forward progress. So, Mr. Gordon agreed that we'll try to do it the way  
1282 they asked. And, with their assurances that they'll make it work, we will go on. But,  
1283 we may want to hear from Mr. Dennison how his feeling is. Maybe we have another  
1284 solution here. Mr. Dennison.  
1285  
1286 Mr. Dennison - As Mr. Gordon said, the 20-foot was, I guess, a  
1287 compromise. We feel strongly about the 20 feet. In fact, we'd like more. But, we  
1288 realize that probably wouldn't happen. So far as speaking for the group, I can't speak  
1289 for the group. I'd have to have Will speak for Curtis. It is suggested that they go back  
1290 and talk. You know, Will's going to go back and talk with Mr. Gordon. But, we feel  
1291 firmly that we would like this buffer. I guess, because they're used to it. It's 200 feet  
1292 of trees and we'd like to keep 20 feet.  
1293  
1294 Mrs. Dwyer - I love trees, too, and I know exactly how you feel. I  
1295 don't blame you. And I think its appropriate to say to the applicant and to the  
1296 developer, "preserve those 20 feet." Do you understand my problem?  
1297  
1298 Mr. Dennison - Oh. I understand.  
1299  
1300 Mrs. Dwyer - Beyond that, is where I have an issue.  
1301  
1302 Mr. Dennison - I understand.  
1303  
1304 Mrs. Dwyer - It's extremely difficult to enforce. It pits neighbor against  
1305 neighbor. And it takes away the property rights of the person who buys that lot. You  
1306 bought your lot, and you want to have a certain amount of autonomy over your land.  
1307  
1308 Mr. Dennison - Sure.  
1309  
1310 Mrs. Dwyer - And the people who purchase these lots are going to feel  
1311 the same way. So.  
1312

1313 Mr. Dennison - I respectfully request, if there's anything to go back to the  
1314 drawing board with, Will and Mr. Gordon do it and let Will speak on behalf of myself  
1315 and the other homeowners. That's why we hired Will.

1316  
1317 Mr. Taylor - Mr. Chairman, would it be appropriate that we approve  
1318 the proffers as they are with the exception of No. 4, and we work on that later? Can  
1319 we do that?

1320  
1321 Mr. Archer - Well, you know, actually, proffers have to be offered by  
1322 the applicant. If he's willing to change it, we can, but we can, to either approve or  
1323 disapprove, a case as proffered. I'm still not certain that everybody understands the  
1324 magnitude of this. And the problem is, as Mrs. Dwyer stated, the person who lives in  
1325 this neighborhood now is controlling somebody that he may move a thousand miles  
1326 away and still has control over some trees in the place he used to live.

1327  
1328 Mrs. Dwyer - That are not on his property.

1329  
1330 Mr. Taylor - We faced this at least 10 times pursuing the discussion.  
1331 And no matter how I tried to express that, we still came around to the same point.  
1332 They understand that, but they don't want anybody to cut any of the trees down. In the  
1333 interest of going forward, we decided the best thing to do is to put it in this way and see  
1334 relatively sticky thought I might be, we'd leave to the neighbors the issue of ensuring  
1335 that their residents spare that tree. I know its not pretty, but we spent hours, and hours  
1336 and hours on this one issue, and we really did not make any progress. And, I think at  
1337 the end, Mr. Gordon decided, "We'll put it in there, and we'll see if it flies. We'll let  
1338 the Glen Gary people work out, to the best that they can, in the I interest of going  
1339 forward."

1340  
1341 Mr. Archer - Well, it seems like, you know, that may be the best we  
1342 are going to be able to do tonight. Ultimately, regardless of our recommendation, the  
1343 Board will have the final decision on it. At least, we have some discussion on it in the  
1344 record.

1345  
1346 Mr. Taylor - Well, the difficulty is, that having been here before and  
1347 knowing how the Glen Cary people feel, they would rather leave it in, than take it out  
1348 troublesome though it might be. And they have assured us that, even though its  
1349 difficult, even though its constrictive, this Item 4 is hard fought territory.

1350  
1351 Mrs. Dwyer - Well, I will say, having been there when one of these  
1352 proffers came to blows; when neighbors came to blows over a proffer, not exactly like  
1353 this, but a similar one.

1354  
1355 Mr. Taylor - We have not reached that state yet.

1356

1357 Mrs. Dwyer - I want to tell you that, even though the discussion was hot  
1358 over this, you ain't seen nothing yet. So, I cannot agree to putting something in that I  
1359 am fairly certain, if there's any disagreement, will be an absolutely impossible thing to  
1360 resolve in the future, and the County will be in the middle of it. So, its not up to the  
1361 neighbors to resolve it. The County will be in the crossfire. There is really no good  
1362 way to resolve when something like this comes up and neighbors do battle over a  
1363 proffer like this. And one person says, "This is my land. I paid for it. I want to cut  
1364 this gumball tree down because I don't like gumballs falling in my yard, and my kids  
1365 can't play in the yard barefooted." And the neighbor behind them says, "Oh no. We  
1366 decided that you can't do that and we decided that umpteen years ago, and here's the  
1367 proffer to prove it." And, then you get in a lawsuit. The heat that was at the meeting  
1368 discussing this is nothing compared to the heat that will be at the meeting in the future  
1369 when, and if there is disagreement between adjacent neighbors. And, only because I've  
1370 been there that I feel so strongly about it, Mr. Taylor. By putting it off to a future  
1371 date, we're only making the possible problem worse if we address it up front in a  
1372 reasonable and practical and doable way.

1373

1374 Mr. Randy Silber, Assistant Director of Planning - Mr. Chairman, I came in late, so I  
1375 may have missed some critical dialogue. But, I was in at least one meeting with Mr.  
1376 Taylor and the applicant and some of the neighbors. I guess this proffer comes as  
1377 somewhat of a surprise to me in that I thought we were trying to get some space  
1378 between the developments, but not necessarily preservation of trees forever. I'm just  
1379 wondering if, has there been any discussion of, or consideration of leaving these larger  
1380 trees at the time of development of the lot? Once the lot has been developed and a CO  
1381 has been issued; a Certificate of Occupancy has been issued, then, the merits of the tree  
1382 is up to the owner who buys the property?

1383

1384 Mrs. Dwyer - That was my suggestion, Mr. Silber.

1385

1386 Mr. Silber - Okay.

1387

1388 Mr. Archer - That's how this all started.

1389

1390 Mr. Silber - That's how it all started?

1391

1392 Mr. Archer - It's not working.

1393

1394 Mr. Silber - It's not working? Okay.

1395

1396 Mrs. Dwyer - You're now up to date.

1397

1398 Mr. Taylor - And it really hasn't worked up to now. You know, you  
1399 have a choice here of moving to remove No. 4 which I feel is not going to be  
1400 acceptable to Glen Gary.



1401 Mr. Silber - It wouldn't be removing No. 4. It would be modifying 4.  
1402  
1403 Mr. Taylor - Well, that's the point. We can't modify it to a point that  
1404 it becomes acceptable to the residents of Glen Gary. That has been the difficulty all  
1405 along.  
1406  
1407 Mrs. Dwyer - But, if the applicant wants to do that, that's the applicant's  
1408 option.  
1409  
1410 Mr. Archer - And absent that, you know, what we do, tonight, is a  
1411 recommendation. So, if we recommend to approve it, or disapprove it as is, it still has  
1412 to go before the Board for the final say.  
1413  
1414 Mr. Taylor - Yes. That's correct. And that gives us a chance in the  
1415 interim to work it out.  
1416  
1417 Mr. Archer - It does. Yes. Or not.  
1418  
1419 Mr. Gordon - The only problem I have is, as I try to conduct my  
1420 practice, is to do others as I would want to be done to me. If I were not present  
1421 because I were out of town, I would not want to have a critical part of something I  
1422 negotiated argued.  
1423  
1424 Mr. Archer - Understood, sir.  
1425  
1426 Mr. Gordon - So, therefore, I cannot feel like, in good conscience, I can  
1427 argue - I don't want to presume to argue for Mr. Shumate, and I do not feel I should  
1428 argue against him, since he is not here. Therefore, I will submit what you see as what  
1429 was hard fought negotiations.  
1430  
1431 Mr. Archer - Okay.  
1432  
1433 Mr. Vanarsdall - What you're telling us, you're not going to change  
1434 anything. So, I think what we're doing is riding a good horse to death. We either have  
1435 to make a decision to recommend to the Board or not recommend it, or something. I  
1436 don't see why we have got to continue to talk about it. You already said you're not  
1437 going to do anything, so I don't know why we're sitting here talking about it further.  
1438  
1439 Mrs. Dwyer - He didn't say that until just now.  
1440  
1441 Mr. Taylor - I think we're searching for some solution or some  
1442 compromise here.  
1443

1444 Mr. Jernigan - I'd like to ask Mr. Dennison, do you have woods on the  
1445 back of your property line?  
1446  
1447 Mr. Dennison - On my line?  
1448  
1449 Mr. Jernigan - Yes.  
1450  
1451 Mr. Dennison - No.  
1452  
1453 Mr. Jernigan - So, when the developer came in, they cut it right back to  
1454 the property line?  
1455  
1456 Mr. Dennison - That's correct. That point was also discussed. I think  
1457 some do and some don't...  
1458  
1459 Mr. Archer - Well, at this point, Mr. Taylor, it seems like there won't  
1460 be any change from the applicant. So, I guess all we can do is just put it to a vote, and  
1461 we'll pass it along to the supervisors as we vote.  
1462  
1463 Mr. Vanarsdall - Right.  
1464  
1465 Mr. Marlles - Mr. Chairman, we also still have to waive the time limit  
1466 on the proffers.  
1467  
1468 Mr. Archer - We do. Yes.  
1469  
1470 Mr. Taylor - Yes. I know we do, Mr. Director. Let me do that. I will  
1471 first move that we waive the time limits for the proffers in the case of Case C-7C-01.  
1472  
1473 Mr. Jernigan seconded the motion.  
1474  
1475 Mr. Archer - Motion by Mr. Taylor, seconded by Mr. Jernigan to  
1476 waive the time limits. All those in favor say aye—all those opposed by saying nay. The  
1477 vote is 5-0, Mr. Kaechele absent. The proffers are accepted.  
1478  
1479 Mr. Taylor - Now, moving to the Board, I will move approval of Case  
1480 C-7C-01 Curtis Gordon for West End Developers.  
1481  
1482 Mr. Archer - Is there a second?  
1483  
1484 Mrs. Dwyer - I will second it to bring it to a vote.  
1485

1486 Mr. Archer - We have a motion and a second. All in favor of the  
1487 motion, let it be known by saying aye—all those opposed to the motion say no. Let the  
1488 motion show the vote is 5-0 in opposition. 4-0, I'm sorry, Mr. Taylor, you voted yes.  
1489  
1490 Mrs. Dwyer - No, he didn't.  
1491  
1492 Mr. Archer - You didn't vote, Mr. Taylor?  
1493  
1494 Mr. Vanarsdall - We need another motion, don't we, Mr. Chairman?  
1495  
1496 Mr. Archer - I was going to say 4 to 1. I didn't mean to say 5-0. Did  
1497 you vote for the motion, Mr. Taylor?  
1498  
1499 Mr. Taylor - No.  
1500  
1501 Mr. Archer - Okay. So, its 5-0.  
1502  
1503 Mr. Vanarsdall - Oh. Okay.  
1504  
1505 Mrs. Hunter - I think you need a motion to deny.  
1506  
1507 Mr. Marlles - The motion to approve fails.  
1508  
1509 Mr. Archer - All right, is there a motion? Do we need a motion to  
1510 recommend denial, now?  
1511  
1512 Mr. Silber - Yes.  
1513  
1514 Mr. Archer - I think we do.  
1515  
1516 Mr. Taylor - Mr. Chairman, rather than do that...  
1517  
1518 Mr. Archer - I think we have to, Mr. Taylor.  
1519  
1520 Mr. Taylor - Recognizing the fact that everybody has worked very hard  
1521 on this. This not an issue that hasn't been worked on with earnest goodwill on both  
1522 sides. It has been difficult to achieve that goodwill and maintain it in the heat of these  
1523 negotiations. And, I think, perhaps, the better thing to do would be a motion to give us  
1524 a little more time, a cooling off period so we can point out to both of the groups that  
1525 this was tested at the hearing; Planning Commission. It was discussed. The  
1526 impossibility of Item 4 on the proffers in real life seemed clear to everybody to the  
1527 point, we didn't want to do it. It begs some changes, and we provide time for that.  
1528 So, what I would do, is I will move to defer this for 30 days, at my request, to give  
1529 both sides the opportunity to recognize what happened when this came before the

1530 Commission, and recognize the difficulty of implementing Item 4 as its proffered, and  
1531 let us try to work towards some common solution either relaxing their stand in view of  
1532 the reality and what we see as a dim future or meet with the staff to come up with some  
1533 alternative wording.  
1534  
1535 Mr. Jernigan seconded that motion.  
1536  
1537 Mr. Archer - Wait a minute. Did we carry the other motion?  
1538  
1539 Mr. Vanarsdall - What is wrong with what he just did? He has 30 days  
1540 between now and the Board time to do what you're talking about. Get together with  
1541 staff, work out; tell the neighborhood in a meeting and just let it go forward?  
1542  
1543 Mr. Jernigan - Not if we've voted it down. If we defer it...  
1544  
1545 Mr. Marlles - It goes forward as a recommendation.  
1546  
1547 Mr. Vanarsdall - It has to go to the Board whether we vote it down, or  
1548 whether we recommend it.  
1549  
1550 Mr. Archer - The Board does not have to accept our recommendation.  
1551  
1552 Mr. Vanarsdall - We've already said no. And, the applicant has 30 days to  
1553 do whatever he wants to do. If he doesn't want to change it before it gets to the Board,  
1554 it may get a no at the Board.  
1555  
1556 Mr. Taylor - What I am concerned about is this message that we're  
1557 sending is really related to one of 20 proffers.  
1558  
1559 Mr. Vanarsdall - Mr. Taylor, what you're doing now is arguing my vote  
1560 and the other Commission votes, and that's not the way we're supposed to do that. It's  
1561 nothing wrong with denying a case. Every case does not have to be approved. So,  
1562 we've already had a vote here. You know you should have come forward with your  
1563 deferment before we did this.  
1564  
1565 Mr. Archer - I don't know that we could undo the motion, Mr. Taylor.  
1566  
1567 Mr. Vanarsdall - I'll do whatever the majority of the Commission wants to  
1568 do. But what I'm saying is, if you want to do something to give them time, he has 30  
1569 days from tonight before the Board takes action to either stay his course or change it,  
1570 and meet with the staff and meet with the neighbors and do anything he wants to. He  
1571 can't get any more time than that. We come back after a 30-day deferment and goes 50  
1572 more days before it ever goes to the Board, over something that really it probably  
1573 didn't make any sense to start with.

1574 Mr. Taylor - All right, then we'll leave it at 5-0.  
1575  
1576 Mr. Marlles - Mr. Chairman, let me jump in here. Right now, since the  
1577 motion to approve was defeated, there's no recommendation going forward to the  
1578 board. So, the Commission must approve an action.  
1579  
1580 Mr. Archer - So, we need a motion...  
1581  
1582 Mr. Marlles - Exactly.  
1583  
1584 Mr. Vanarsdall - That's what I said earlier. We need another motion.  
1585  
1586 Mr. Marlles - Either a motion to defer or a motion to deny.  
1587  
1588 Mr. Archer - Okay. We'll entertain a motion to defer or deny.  
1589  
1590 Mr. Vanarsdall - Okay. So, you want to defer it, so we'll entertain a  
1591 motion to defer it. Right? Is that what you said?  
1592  
1593 Mr. Taylor - Yes sir.  
1594  
1595 Mr. Archer - That's what the Secretary said. Are you sure we can still  
1596 entertain a motion to defer?  
1597  
1598 Mr. Marlles - I believe so. Yes sir.  
1599  
1600 Mr. Vanarsdall - I have never heard of that. I have never done that since  
1601 I've been on the Commission. We either deny. I'm not disputing your word.  
1602  
1603 Mr. Marlles - It's unusual, but I don't think there is not anything that  
1604 would restrict the Commission, at this point, approving a motion to defer.  
1605  
1606 Mr. Archer - Okay. Then, that's your choice, Mr. Taylor.  
1607  
1608 Mr. Taylor - Mr. Chairman, I would move we defer this for 30 days at  
1609 the request of the Commissioner.  
1610  
1611 Mrs. Dwyer seconded the motion.  
1612  
1613 Mr. Archer - Motion by Mr. Taylor, seconded by Mrs. Dwyer to defer  
1614 until our next zoning meeting.  
1615  
1616 Mrs. Dwyer - April 12<sup>th</sup>.  
1617

1618 Mr. Archer - April 12<sup>th</sup> at the request of the Commissioner. All those in  
1619 favor say aye—all those opposed by saying nay. The vote is 5-0, Mr. Kaechele absent.  
1620 This case will be deferred until the April 12<sup>th</sup> meeting.  
1621  
1622 Mr. Gordon - Thank you, members of the Commission. Good evening.  
1623  
1624 Mr. Vanarsdall - All right, we've got the minutes now.  
1625  
1626 Mr. Archer - Okay, Mr. Secretary.  
1627  
1628 Mr. Marlles - That concludes our cases. I do have two quick  
1629 announcements. I'd like to ask Mr. Tom Coleman to stand up. Many of you know  
1630 Mr. Coleman for a number of years, he worked for our Community Development  
1631 Block Grant Office. Prior to that, actually, Mr. Coleman worked for Comp Planning.  
1632 He is our newest member of Comp Planning. He's recently been hired as a Planner II.  
1633 You will start seeing him here. We're very pleased to have him and keep him on staff.  
1634 He will be learning how to do the rezonings and the work in Comp Planning over the  
1635 next several months. So, we are pleased to have him.  
1636  
1637 Mr. Archer - Welcome, sir.  
1638  
1639 Mrs. Dwyer - Hope you were taking notes on that last case.  
1640  
1641 Mr. Taylor - We hope we don't see anymore like that last case.  
1642  
1643 Mr. Vanarsdall - And, before that, he was at VCU. Right, Tom?  
1644  
1645 Mr. Marlles - Mr. Chairman, I just also wanted to announce; some of  
1646 you may be aware of this, but the results of the 2000 Census are out. And Henrico's  
1647 population is tabulated at 262,300. That's actually a little bit more growth than we  
1648 anticipated. It's also, I think, interesting that Henrico County's population is still  
1649 higher than Chesterfield County. So, we retain the status as far as being the most  
1650 populated county in the Richmond metropolitan area, and we are the third most  
1651 populated County for highest total, in terms of population, the third highest in the state  
1652 of all counties, cities and towns.  
1653  
1654 Mr. Vanarsdall - Who's first, Fairfax?  
1655  
1656 Mr. Marlles - Fairfax and Virginia Beach are ahead of us.  
1657  
1658 Mr. Silber - Prince William County.  
1659  
1660 Mr. Archer - Is there any further discussion? I think we have to  
1661 approve the minutes.

1662 Mr. Marlles - Yes sir.  
1663  
1664 Acting on a motion by Mr. Vanarsdall, seconded by Mrs. Dwyer, the Zoning Minutes of  
1665 February 15, 2001 were approved, as corrected:  
1666  
1667 Page 7, Line 299 - Take out word, "of" in sentence.  
1668  
1669 There being no further business, acting on a motion by Mr. Vanarsdall, seconded by Mrs.  
1670 Dwyer, the Planning Commission adjourned its meeting at 8:25 p.m. on March 8, 2001.  
1671  
1672  
1673  
1674  
1675 \_\_\_\_\_  
Chris W. Archer, C.P.C., Chairman  
1676  
1677  
1678  
1679 \_\_\_\_\_  
John R. Marlles, AICP, Secretary  
1680  
1681