

1 **MINUTES OF THE REGULAR MEETING OF THE BOARD OF ZONING**
2 **APPEALS OF HENRICO COUNTY, HELD IN THE COUNTY ADMINISTRATION**
3 **BUILDING IN THE GOVERNMENT CENTER AT PARHAM AND HUNGARY**
4 **SPRINGS ROADS, ON THURSDAY, JANUARY 28, 2010, AT 9:00 A.M.,**
5 **NOTICE HAVING BEEN PUBLISHED IN THE RICHMOND TIMES-DISPATCH**
6 **JANUARY 7, 2010 AND JANUARY 14, 2010.**
7

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

Also Present: David D. O'Kelly, Assistant Director of Planning
Benjamin Blankinship, Secretary
Paul Gidley, County Planner
R. Miguel Madrigal, County Planner
Carla Brothers, Recording Secretary

8
9 Ms. Dwyer - Good morning. The January 28, 2010 session of the
10 Henrico County Board of Zoning Appeals will now come to order. Please rise for
11 the **Pledge of Allegiance**.

12
13 Good morning, Mr. Blankinship. Would you begin our meeting by reviewing the
14 rules?
15

16 Mr. Blankinship - I certainly will. Good morning everyone.
17

18 The rules for this meeting are as follows. Acting as secretary, I will call each
19 case, and as I'm speaking, the applicant should come down to the podium. We
20 will then ask everyone who intends to speak to that case to stand and be sworn
21 in. The applicant will then present their testimony. Then anyone else who
22 wishes to speak will be given the opportunity. Once everyone has had a chance
23 to speak, the applicant and only the applicant will have an opportunity for
24 rebuttal. After everyone has testified, the Board will take the matter under
25 advisement and they will render all of their decisions at the end of the meeting.
26 If you wish to know their decision on a specific case, you can either stay until the
27 end of meeting, or you can check the Planning Department website this
28 afternoon, or you can call the Planning Department.
29

30 This meeting is being recorded, so we'll ask everyone who speaks to speak
31 directly into the microphone on the podium, state your name, and please spell
32 your last name so we get it spelled correctly in the record. Out in the foyer, there
33 is a binder that contains the staff report for each case, including the conditions
34 that have been recommended by the staff. It is particularly important for the

35 applicants on use permit cases to be familiar with those conditions because
36 you'll be asked whether you agree with them.

37

38 Madam Chairman, while I have the floor, there is one request for deferral this
39 morning.

40 **UP-021-09** **RICHMOND RUGBY FOUNDATION** requests a
41 conditional use permit pursuant to Sections 24-52(a) and 24-12(b) to build a
42 picnic shelter and restrooms at 514 Whiteside Road (Parcel 833-710-5988),
43 zoned A-1, Agricultural District (Varina).

44

45 Mr. Blankinship - They have requested a deferral to next month's
46 meeting so that they can continue to work with their membership to decide how
47 they want to proceed.

48

49 Ms. Dwyer - That date will be February what?

50

51 Mr. Blankinship - I want to say the 26th. Here's a calendar. The 25th.
52 February the 25th.

53

54 Ms. Dwyer - Is there a motion on the request for deferral of UP-21-
55 09, Richmond Rugby Foundation?

56

57 Mr. Nunnally - I move we defer it until February 25, 2009.

58

59 Mr. Wright - Second.

60

61 Ms. Dwyer - Motion by Mr. Nunnally, seconded by Mr. Wright. Any
62 discussion? All in favor say aye. All opposed say no. The ayes have it; the
63 motion passes.

64

65 After an advertised public hearing, **UP-021-09, Richmond Rugby Foundation**,
66 been deferred until the February 25, 2010 meeting.

67

68 Affirmative: Dwyer, Harris, Nunnally, Witte, Wright 5

69 Negative: 0

70 Absent: 0

71

72

73 **A-001-10** **ROY L. CARTER** requests a variance from Section
74 24-95(b) to build a one-family dwelling at 3808 Austin Avenue (Timberlake
75 Property) (Parcel 800-736-8928 (part)), zoned R-4, One-family Residence
76 District (Fairfield). The lot width requirement is not met. The applicant has 48 feet
77 lot width where the Code requires 50 feet lot width. The applicant requests a
78 variance of 2 feet lot width.

79

80 Ms. Dwyer - Anyone who is here to speak to the case, please
81 stand and raise your right hand so that you can be sworn in.
82
83 Mr. Robert Carter - I'm going to have a hard time hearing, I think.
84
85 Mr. Blankinship - All right, we'll do the best we can. Raise your right
86 hand, please. Do you swear the testimony you're about to give is the truth and
87 nothing but the truth so help you God?
88
89 Mr. Robert Carter - I do.
90
91 Mr. Roy Carter - I do.
92
93 Ms. Dwyer - Please state your name and—
94
95 Mr. Robert Carter - Robert Carter.
96
97 Mr. Roy Carter - I'm Roy Carter. I'm the owner of the property. This is
98 my brother Robert Carter. C-a-r-t-e-r.
99
100 Ms. Dwyer - Please state your case.
101
102 Mr. Robert Carter - I'm sorry?
103
104 Ms. Dwyer - Please state your case.
105
106 Mr. Robert Carter - He owns an additional lot that's with the house and
107 the frontage is 48 feet. The requirement for a buildable lot is 50 feet. We were
108 looking for a variance of the two feet. In the original papers that we filled out in
109 December, it said to build a one-story dwelling on it. My brother's been
110 unemployed for 15 months. He was in the construction business. I have a
111 general contractor's license, which is not good either right now. When we filled
112 this paper out in December, he was very sure that he had employment, but
113 things have changed. The company changed their mind. They put off the hiring
114 process. So now we're kind of in a survival mode. I have been helping him with
115 his bills for the past 15 months. And now what's needed for him to keep the
116 house is a sale of the lot. To build a one-story dwelling now is completely out of
117 the picture. We're not able to do that now. The biggest thing now is to get a
118 variance for the lot so he can sell it. Maybe the money from the sale of the lot
119 would get him through until things get better. I've helped him as much as I can. I
120 don't see how he's going to be able to keep the house with the way things have
121 gone. He was in construction and I'm in construction, and we're both just about
122 dead in the water here. To build a house now with the way things are selling,
123 you'd never be able to—I don't think you'd have a change of selling it. I just
124 wanted to make it clear that we plan on selling the land.
125

126 There's a side porch on the existing house and that encroaches into the side
127 setback. With the 48-feet, we would have to pull a \$10,000 room off the house.
128 Then everything would meet the setback if the 48-foot variance was given. I don't
129 know how to get this across. We're into a money situation. From what I've seen,
130 I've talked to a few people, to pull that room off and then put the siding and
131 everything back, get it looking presentable, you're looking at least 5,000, plus
132 we're pulling \$10,000 equity off of the house.

133

134 One thing I was confused about. Paul, and I was talking to him, he said the
135 minimum side setback was 10% of the width. But on this piece of paper, he
136 says—Benjamin Blankinship. He says here the required setbacks, minimum
137 side, 7 feet. Is it 10% of the width?

138

139 Mr. Blankinship - It's 10% of the width but not less than 7 feet. So if
140 you're looking at both lots, which is 100 feet wide, 10% of that would be 10 feet,
141 so that would be your minimum. But if you're looking only at the individual lot—
142 50 feet or 48 feet wide—the 10% is less than 7 feet. It's 10% of the lot width or 7
143 feet, whichever is greatest.

144

145 Mr. Robert Carter - Oh, or 7 feet. Okay.

146

147 Ms. Dwyer - Mr. Carter, I have a question about the two feet on
148 Lot 2. It appears to me that Lot 3 has, at the present time, 50 feet.

149

150 Mr. Robert Carter - The lot that the house is on is 50 feet.

151

152 Ms. Dwyer - And then there's an extra two feet—

153

154 Mr. Robert Carter - Yes, the two feet is on the wrong side.

155

156 Ms. Dwyer - Right. So it's actually 52 feet, correct?

157

158 Mr. Robert Carter - Fifty-two, yes.

159

160 Ms. Dwyer - If you add lots 2 and 3 together, then you'll have 52
161 feet.

162

163 Mr. Robert Carter - And the vacant lot is 48.

164

165 Ms. Dwyer - Could you adjust the property line so that the
166 combination of lot 2 and 3 would equal 50 feet, and then the combination of two
167 feet from Lot 3 plus Lot 4 would equal 50 feet.

168

169 Mr. Robert Carter - I don't think that's going to work the way the two—I
170 don't know. This is my first variance I've been to, so I was hoping for help from
171 you. I know you don't care, but—

172
173 Ms. Dwyer - It's not that we don't care, it's we can't consider that
174 as part of the case.
175
176 Mr. Robert Carter - I know. But I'm just trying to get across if there was
177 some way that could be a buildable lot, maybe moving that line, instead of 48,
178 making it 45, some kind of way to get that to be a buildable lot without pulling the
179 room off.
180
181 Ms. Dwyer - I'm not sure you can get away without pulling the
182 room off. I'm not sure you can do that. I guess I'm trying to look for a solution.
183 My question is could you arrange the lot lines so that you have two 50-foot lots
184 instead of one 52-foot lot and one 48-foot lot.
185
186 Mr. Blankinship - The problem, Madam Chairman, is the location of the
187 existing dwelling.
188
189 Ms. Dwyer - Right.
190
191 Mr. Blankinship - I bet you'd probably be the one to tell me that.
192
193 Ms. Dwyer - But if you take the room off, would that give you
194 enough side yard?
195
196 Mr. Blankinship - If they were to take that room off, then they could—
197
198 Mr. Robert Carter - You lose, like I say, probably \$10,000 equity in the
199 house, plus another—That's okay, I guess okay. But the \$5,000 to pull it off. The
200 lot probably would sell between \$20,000 and \$25,000. I'm just trying to find the
201 best way for him to get the most money out of selling the lot so he can try to
202 spread the money out over time until this employment situation gets better.
203
204 Ms. Dwyer - What are the dimensions of the room that we're
205 talking about?
206
207 Mr. Roy Carter - Eight by fourteen.
208
209 Mr. Robert Carter - And \$100 a square foot is a low price for redoing a
210 room, so I just put \$100 a square foot.
211
212 Ms. Dwyer - Let me just be clear what I'm asking and maybe Mr.
213 Blankinship could—
214
215 Mr. Robert Carter - Probably because I can't hear you. That's the
216 problem.
217

218 Ms. Dwyer - Okay. I'll try to speak—does that help if I speak closer
 219 to the microphone?
 220
 221 Mr. Robert Carter - I don't know how we move that two feet.
 222
 223 Mr. Wright - They own it, don't they?
 224
 225 Ms. Dwyer - Redraw the lot lines and have a new plat drawn up. It
 226 seems to me that if you take the room off and you move the lot lines, then you
 227 could have two 50-foot lots that would comply with the law and would be ready to
 228 go; you wouldn't need a variance.
 229
 230 Mr. Robert Carter - Move the lot line.
 231
 232 Ms. Dwyer - You have a total of 100 feet now with the three lots
 233 together.
 234
 235 Mr. Robert Carter - So we have two feet here, and then we have the 50-
 236 foot house, and then we have the 48 feet.
 237
 238 Ms. Dwyer - Right. You move the lot line so that the 48-foot lot
 239 becomes a 50-foot lot, and then you add the two feet on the other side of the lot,
 240 which then gives you a 50-foot lot.
 241
 242 Mr. Robert Carter - That's with the room being removed.
 243
 244 Ms. Dwyer - With the room being removed, exactly.
 245
 246 Mr. Robert Carter - Do you think that's going to be the only way?
 247
 248 Mr. Wright - Yes, because you have—
 249
 250 Mr. Robert Carter - Is that the only—
 251
 252 Mr. Blankinship - That is a solution. The question is, is that the only
 253 solution.
 254
 255 Mr. Robert Carter - I was wondering if people smarter than I could come
 256 up with something that might save us the \$5,000 plus the \$10,000 equity. I don't
 257 know, that's why I'm looking for some help.
 258
 259 Mr. Wright - Here's the point. If we were to grant you the variance
 260 on the 48-foot lot, that would make your other lot non-conforming.
 261
 262 Mr. Robert Carter - Right.
 263

264 Mr. Wright - In order to do that, you would have to remove that.
 265
 266 Mr. Robert Carter - Or could the 48 feet become 45? Move that line.
 267
 268 Ms. Dwyer - You need 50.
 269
 270 Mr. Wright - You need 50. Forty-eight is bad enough, but when
 271 you cut it to 45.
 272
 273 Mr. Robert Carter - So another three is out of the question? Okay.
 274
 275 Mr. Wright - But you do have an answer here because you own
 276 the two feet on the other side. You add that two feet to Lot 3 and then shift that
 277 line on Lot 4 over two feet. You have two 50-foot lots that you could build on and
 278 you don't need a variance. Then if you sell Lot 4, you would have to take that
 279 little office thing off. Then you would be conforming.
 280
 281 Mr. Robert Carter - Do you send out a letter saying this?
 282
 283 Mr. Blankinship - Let me interrupt you. The one thing that I'm still not
 284 certain about there is the exception standards apply to the lots as they stood
 285 January 1, 1960. If you go adjusting the boundaries of the lots, it's not clear
 286 whether the exception standards would continue to apply. Normally we would
 287 say if you change the lot widths, you have to meet the current standard, which is
 288 65 feet. The exception standards were there to protect the lots that were in
 289 existence on January 1st. We have sometimes allowed some boundary
 290 adjustments and continued to go with the exception standards. But that's another
 291 complication that comes in if we talk about moving the lot line.
 292
 293 Mr. Wright - Then we could grant a variance on it.
 294
 295 Mr. Blankinship - Yes.
 296
 297 Mr. Robert Carter - It's not like we're trying to do something to make
 298 money. This was my uncle's house. He was put in assisted living. We were born
 299 and raised within a mile of this house. I used to go in the woods—before
 300 Laburnum Avenue ever came through—with my BB gun. We're from the
 301 neighborhood. It's not like we're outside trying to come in and raid the people. It's
 302 all family tied together here.
 303
 304 Mr. Blankinship - How long has this property been in the family?
 305
 306 Mr. Robert Carter - Sixty-nine or seventy years. Again, if he loses the
 307 house at his age, I don't know what's going to happen. Credit gets tied up for 10
 308 years at 65 years old. I mean, it's kind of a do or die thing. It's not your normal,
 309 I'm sorry to say.

310
311 Ms. Harris - Mr. Carter, I have a question. If we did grant the
312 variance and allowed you to sell the 48-foot lot, would you apply for a variance
313 for the house next door, the office, the house that shows the office? What would
314 your next move be if we granted you this variance? According to our condition,
315 you would have to bring that into compliance. Look at Condition 3. That's page 5
316 of our report.
317
318 Mr. Wright - The last page.
319
320 Mr. Robert Carter - The last page?
321
322 Ms. Harris - Page 5.
323
324 Mr. Robert Carter - On this one?
325
326 Mr. Nunnally - No, the one he has in his hand.
327
328 Mr. Robert Carter - Which means remove the room?
329
330 Mr. Wright - Right.
331
332 Mr. Robert Carter - If the only thing we have is to remove the room, I
333 guess we would have to. I was just trying for the best situation where we could
334 save the \$5,000 tear-down cost, plus taking the \$10,000 equity out of the
335 existing house. But if the only way is to take the room off, that's what will have to
336 be done.
337
338 Ms. Harris - Or you could seek a variance to let it remain.
339
340 Mr. Blankinship - Get a second variance on the existing house. This
341 variance is for the vacant lot. You could apply for a second variance for the
342 existing house.
343
344 Mr. Robert Carter - We'd just get a demolition plan, wouldn't we, and tear
345 the room off.
346
347 Mr. Blankinship - You could do that or you could apply for a variance.
348
349 Mr. Robert Carter - We'd probably just have to tear the room off, I guess.
350
351 Ms. Dwyer - Anymore questions by Board members? Anything
352 else you'd like to add to your case?
353
354 Mr. Robert Carter - No, it's just a strange situation, that's all.
355

356 Mr. Wright - Would he need a continuance to get this thing worked
 357 out?
 358
 359 Mr. Robert Carter - I don't know. I was just hoping that you all could come
 360 up with something that I didn't know about. We've almost hit the end of our rope,
 361 that's all.
 362
 363 Ms. Dwyer - I see two options. One is the variance and the other is
 364 to tear the room off and adjust the lot lines. The question is, in my mind, what is
 365 the property taken as a whole. Clearly there is reasonable, beneficial use of the
 366 property as it stands now. It doesn't pass the Cochran test. All right. Any other
 367 questions by Board members? Okay, thank you. We'll make out decision at the
 368 end of the meeting.
 369
 370 Mr. Roy Carter - Thank you very much.
 371
 372 **[After the conclusion of the public hearings, the Board discussed this case**
 373 **and made its decision. This portion of the transcript is included here for**
 374 **convenience of reference.]**
 375
 376 Ms. Dwyer - A-001-10, Roy L Carter requesting a variance. Do I
 377 have a motion on the case?
 378
 379 Mr. Witte - I'll make a motion that we approve it with the
 380 requirement that the existing lot be brought up to the side yard standards, which
 381 will require removing part of that room or all of that room. My reason for that is I
 382 think the initial intent of this lot in this subdivision was to be a buildable lot. I think
 383 without the variance there is very little if any use for the property other than
 384 maybe a garden. Under those conditions, I make a motion that we approve this
 385 request.
 386
 387 Ms. Dwyer - For clarification, Mr. Witte, this case only deals with
 388 the 40-foot lot which—
 389
 390 Mr. Witte - Forty-eight foot lot?
 391
 392 Ms. Dwyer - Yes, which is Lot 4.
 393
 394 Mr. Witte - Right.
 395
 396 Ms. Dwyer - I understood part of your motion to include a
 397 requirement for Lot 3, which is not really technically part of this case.
 398
 399 Ms. Harris - That's a condition already in Condition 3.
 400
 401 Ms. Dwyer - Is it?

402
403 Ms. Harris - Yes.
404
405 Mr. Witte - Yes, I agree.
406
407 Ms. Dwyer - All right, we have a motion. Is there a second?
408
409 Ms. Harris - Second.
410
411 Ms. Dwyer - Motion by Mr. Witte, second by Ms. Harris. Any
412 discussion?
413
414 Ms. Harris - I do have a comment. In the survey that we have in
415 our packet, we see that the two feet was given to the other lot. I'm just
416 wondering, when did that really occur.
417
418 Mr. Blankinship - I believe it was 1942, Ms. Harris. I'm sure it was prior
419 to 1960.
420
421 Ms. Harris - Okay.
422
423 Mr. Blankinship - I think it was 1942.
424
425 Ms. Harris - I just needed clarification of that point.
426
427 Ms. Dwyer - Any other discussion? Mr. Blankinship, in terms of
428 the movement of the lot lines, if we could adjust them to account for the
429 reduction of the two feet on the one end and addition of two feet on the other,
430 would that be, in your view, a serious issue in terms of still applying that 50-foot
431 lot width requirement?
432
433 Mr. Blankinship - The County Attorney's Office has advised us in the
434 past that the technical, correct answer there is that if they change the lot they
435 lose the exception standard. I'm not going to say that we always go by that
436 advice, but that's the advice that we've received from the County Attorney.
437
438 Mr. Witte - So that would require the 65-foot lot width.
439
440 Mr. Blankinship - Yes sir.
441
442 Mr. Wright - Put us in a worse position.
443
444 Mr. Witte - Right.
445
446 Ms. Dwyer - This is more in the nature of—
447

448 Mr. Blankinship - An adjustment.
 449
 450 Ms. Dwyer - —a technical adjustment and not really a new
 451 drawing.
 452
 453 Mr. Blankinship - And there are cases where we're not actually
 454 approving anything, but where we are aware that a boundary line has been
 455 adjusted we don't make a big deal out of it. But we have been advised that
 456 technically the correct answer is if there's any change to the boundaries to what
 457 was in existence January 1, 1960, the exception standards should not apply.
 458
 459 Ms. Dwyer - It seems to me if you were able to do that, then he
 460 wouldn't need a variance. He's going to have to tear that room off.
 461
 462 Mr. Blankinship - I think we did determine if he could have bought back
 463 the two feet on the other side that would sold in 1942, then we would consider
 464 that to have been the original lot. But that's not possible.
 465
 466 Ms. Dwyer - Of course we're guessing here; so much time has
 467 passed. It looks to me like maybe the other two feet was purchased to
 468 compensate for the loss of the two feet. All right. Any other discussion? All right.
 469
 470 A motion's been made and seconded to approve this variance request. All in
 471 favor say aye. All opposed say no. The ayes have it; the motion passes.
 472
 473 After an advertised public hearing and on a motion by Mr. Witte, seconded by
 474 Ms. Harris, the Board **approved** application **A-001-10, Roy L Carter's** request
 475 for a variance from Section 24-95(b) to build a one-family dwelling at 3808 Austin
 476 Avenue (Timberlake Property) (Parcel 800-736-8928 (part)), zoned R-4, One-
 477 family Residence District (Fairfield). The Board approved the variance subject to
 478 the following conditions:
 479
 480 1. This variance applies only to the lot width requirement for one dwelling only.
 481 All other applicable regulations of the County Code shall remain in force.
 482
 483 2. The new dwelling on the lot shall contain a minimum of 1,000 square feet of
 484 finished floor area and be built on a brick foundation on all four sides.
 485
 486 3. Prior to the conveyance of Lot 4 or the issuance of a building permit,
 487 whichever comes first, the applicant shall bring the existing residence at 3810
 488 Austin Avenue into compliance with the side yard setback requirements.
 489
 490 Affirmative: Harris, Nunnally, Witte, Wright 4
 491 Negative: Dwyer 1
 492 Absent: 0
 493

494
495 **[At this point, the transcript continues with the public hearing on the next**
496 **case.]**

497
498 Ms. Dwyer - Next case, Mr. Blankinship.
499

500 **UP-001-10 UDR, INC.** requests a temporary conditional use
501 permit pursuant to Section 24-116(c)(1) to allow a temporary office trailer to
502 remain at 3900 Acadia Lane (Parcel 745-759-3247), zoned R-5C, General
503 Residence District (Conditional) Three Chopt).
504

505 Ms. Dwyer - Is there anyone else here to speak to this case? Sir,
506 would you raise your right hand to be sworn?
507

508 Mr. Blankinship - Do you swear the testimony you're about to give is
509 the truth and nothing but the truth so help you God?
510

511 Mr. Duggan - I do. My name is Greg Duggan—D-u-g-g-a-n—and I
512 represent UDR, Incorporated.
513

514 Mr. Wright - Tell us what you're asking.
515

516 Mr. Duggan - Certainly. We were here in June and you were kind
517 enough to grant us this action so that we could remodel our clubhouse building.
518

519 Mr. Nunnally - Sir, excuse me. Will you get closer to the mike for
520 me, please?
521

522 Mr. Duggan - Sure. We were here in June and you were kind
523 enough to allow us to put a temporary trailer in, in order to continue our
524 operations at the property while we did considerable remodeling on the
525 clubhouse building. We got a little bit of a late start and we ran into November,
526 which didn't help matters. When I was here in June, one of you asked is that
527 enough time, May 15th. I said certainly. Well, I didn't plan on November. So what
528 we believe we have is probably a late May completion on our building. We need
529 to get moved into that and then get rid of the trailer. That's presuming we don't
530 have any other issue. We're projecting July 15th is about the time that we'll be
531 able to move this trailer. We are asking for consideration to allow it to remain for
532 an additional two months.
533

534 Mr. Wright - Are you sure that's enough time?
535

536 Mr. Duggan - I knew that was coming. We have April coming, so
537 that traditionally means rain.
538

539 Mr. Wright - We have some snow coming up this weekend.

540
541 Mr. Duggan - We have a little bit of snow coming up. Our issue was
542 we were hit with the rain before we were able to actually do much of anything. As
543 you'll see in the other picture, we are only partially under roof at this point in time,
544 but we are making some—that picture is probably a couple of weeks old.
545
546 Mr. Blankinship - It's three weeks old.
547
548 Mr. Duggan - Right, right. So we have our steel up and we're
549 working on our roof. Am I certain? No, but July 15th seems pretty good at this
550 point.
551
552 Mr. Wright - Why don't we make it August.
553
554 Mr. Duggan - If you did that, that would be wonderful.
555
556 Mr. Wright - You're within the two years and we don't have any
557 problem. Obviously, there have been no complaints, right.
558
559 Mr. Blankinship - No sir.
560
561 Mr. Wright - You've complied with all our requests.
562
563 Mr. Duggan - We believe we have.
564
565 Ms. Dwyer - Which condition would we then change?
566
567 Mr. Blankinship - Number four.
568
569 Ms. Dwyer - To August. Have you read the conditions?
570
571 Mr. Duggan - I have.
572
573 Ms. Dwyer - And you're in agreements with those?
574
575 Mr. Duggan - Yes I am.
576
577 Ms. Dwyer - Any other questions by Board members?
578
579 Mr. Witte - So August would be better for you?
580
581 Mr. Duggan - It would.
582
583 Mr. Witte - It would make you more comfortable?
584

585 Mr. Duggan - There would be a much less likelihood of me coming
586 back here again, yes.

587
588 Ms. Harris - So will that be August 15th?
589
590 Mr. Wright - Make it August 31st.
591
592 Mr. Duggan - There we go.
593
594 Mr. Blankinship - We don't want you back, that's all.
595
596 Mr. Duggan - I don't want to be back.
597
598 Ms. Dwyer - All right. Any other questions? Anything else you'd
599 like to add?
600
601 Mr. Duggan - No ma'am. Thank you.
602
603 **[After the conclusion of the public hearings, the Board discussed this case**
604 **and made its decision. This portion of the transcript is included here for**
605 **convenience of reference.]**
606
607 Ms. Dwyer - The next case, UP-001-10, a request for a conditional
608 use permit for a trailer.
609
610 Mr. Wright - I move we approve this request and that we change
611 one of the conditions to August 31st.
612
613 Ms. Dwyer - That would be Condition #4.
614
615 Mr. Wright - Right.
616
617 Ms. Dwyer - All right. Motion has been made by Mr. Wright. Is
618 there a second?
619
620 Mr. Nunnally - Second.
621
622 Ms. Dwyer - Motion by Mr. Wright, second by Mr. Nunnally. Any
623 discussion? All right. The motion does include the amendment to Condition 4.
624 All in favor say aye. All opposed say no. The ayes have it; the motion passes.
625
626 After an advertised public hearing and on a motion by Mr. Wright, seconded by
627 Mr. Nunnally, the Board **approved** application **UP-001-10, UDR, INC's** request
628 for a temporary conditional use permit pursuant to Section 24-116(c)(1) to allow
629 a temporary office trailer to remain at 3900 Acadia Lane (Parcel 745-759-3247),

zoned R-5C, General Residence District (Conditional) Three Chopt). The Board granted the temporary conditional use permit subject to the following conditions:

1. Only the improvements shown on the plot plan and building design filed with the original application (UP-009-09) may be constructed pursuant to this approval. Any additional improvements shall comply with the applicable regulations of the County Code. Any substantial changes or additions to the design or location of the improvements may require a new Board of Zoning Appeals hearing.

2. The office building shall be skirted on all sides with a durable material as required by the building code for a permanent installation.

3. All landscaping materials shall be maintained in a neat and healthy condition at all times. Dead plant materials shall be removed within a reasonable time and replaced during the normal planting season.

4. [AMENDED] The trailer shall be removed from the property on or before August 31, 2010, at which time this permit shall expire.

5. Upon removal of the temporary office trailer, the applicant shall return the landscaped area to its original condition by removing any hardscaping and landscaping associated with the temporary trailer. The applicant shall also remove any temporary traffic directional signage associated with the temporary office trailer.

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

[At this point, the transcript continues with the public hearing on the next case.]

UP-004-10 **A & F I, LLC** requests a conditional use permit pursuant to Sections 24-52(d) and 24-103 to extract materials from the earth at 3740 Charles City Road (Parcels 827-702-8810 and 828-701-0583), zoned A-1, Agricultural District (Varina).

Ms. Dwyer - Is there anyone here who thinks they might want to speak to the case? If so, please stand and raise your hand to be sworn in.

Mr. Blankinship - Do you swear the testimony you're about to give is the truth and nothing but the truth so help you God?

Mr. Condlin - Madam Chair, members of the Board, Andy Condlin

676 from Williams Mullen. I'm here representing the applicant in this case. First off, I
677 would like to address any mistakes right up front. I got my year wrong; it was
678 2008 not 2007 in my memo when the prior case was approved. Give or take a
679 year. I'm getting old, so it's not that big of a deal ultimately.

680
681 This case, as you know, is the same property that was approved in the
682 conditional use permit in 2008 pursuant to that prior case. The focus of that case
683 in the application was for a potential contract related to a very specific road
684 project. It turned out that they got all of the dirt they needed for that road project
685 on site and did not need to bring in any dirt from off site. From that standpoint,
686 we've now once again been able to secure another contract requesting a use
687 permit to engage in borrow activity on this property. That contract is pending and
688 conditioned upon this approval. It's for work at the Richmond International
689 Airport. There are also other discussions continuing with other related capital
690 expansion projects at the airport. That's one of the reasons why we're coming
691 forward now, because of those contracts related to the airport expansion and
692 some of the improvements that are being done in that location.

693
694 Ultimately, this request is exactly the same as in 2007. I do have a number—as I
695 said in my memo and we clarified a few things based on the condition, but I
696 guess I'd like to get into a little bit of a discussion with the Board on four or five of
697 the conditions. I think they're relatively easy, but I would like to get into that
698 discussion to make sure we understand and clarify exactly what the conditions
699 mean from that standpoint. I'm going to just flip to the conditions that Mr.
700 Blankinship and your staff have provided.

701
702 I'm just going to go in order as they stand, which are items 2, 3, and 4. At the
703 end of items 2, 3, and 4, they have a provision that says, "If this condition is not
704 satisfied within 90 days of approval, the use permit shall be void." It's more of a
705 question on my part as to the intent of that, which is all of this talk about posting
706 the necessary bonds, getting the E and S permit taken care of, and then marking
707 the property necessary for the area that will be mined, all to occur within 90 days.
708 I would like to have that such that it's 90 days prior to work being done or prior to
709 work being done. That's one of the reasons the prior permit expired—I believe
710 that's right, Mr. Blankinship—because those weren't able to be complied with.
711 I've looked through some other applications. I'm not sure if this is typical or not,
712 but that's something where obviously those things have to be in place before
713 starting any work. That's where we'd like to have the condition, not that they be
714 done in the next 90 days. If the work's not able to be done or not necessary to
715 be done in the next 90 days, we don't want to have to go through that necessary
716 expense to get all that taken care of. We would prefer to have it so that it's not—
717 it's kind of a short timeframe from that standpoint to get together all the E and S,
718 post the bonds, get all that taken care of when we might not have to do that work
719 immediately. That would be my first request.

720
721 The other request by the applicant has to do with—

722
723 Mr. Wright - You want to change that from 90 days from the date
724 of approval to 90 days from the date that you—
725
726 Mr. Condlin - I was throwing out a compromise. I'd prefer to have,
727 "prior to any work being done," so that before we do any work out there, we'd
728 have to post our bonds. Before doing any work, we have to get our E and S done
729 and mark the site with the poles that they're talking about, which I think makes
730 sense. I'm not sure why the 90 days was put in there in the first place quite
731 frankly.
732
733 Mr. Wright - I take it they were assuming that you would begin
734 work pretty quick.
735
736 Mr. Blankinship - I think the concern is conditions change, people move
737 in and out of neighborhoods. We don't want applicants to come in, get a use
738 permit, and then not act on it. Then all of a sudden two years later, they start
739 running bulldozers in and out, and everything's changed, and the neighbors that
740 are there now never had a chance to come to the hearing. The idea is that you
741 don't apply until you're ready to begin work. Then once you get approval, we
742 expect you to work expeditiously.
743
744 Mr. Condlin - Yes. Well, of course it's a two-year—I'm not going to
745 object. There's a two-year timeframe on this anyway. It expires within a two-year
746 period, so certainly we're going to do it within that time period. But if it saves
747 posting bonds for a few months, and getting together the E and S, and locating
748 that area, it's just there's a lot of hurry-up work and we have to immediately do it
749 in the next 90 days when we could take our time and get it done right based on
750 our contracts.
751
752 Ms. Dwyer - I'd like to focus on this before moving on to the next
753 one.
754
755 Mr. Condlin - Sure, I'd love to do that, yes.
756
757 Ms. Dwyer - I want to make sure we have all of our questions
758 asked and answered. Before any work is done, the financial guarantee has to be
759 provided.
760
761 Mr. Condlin - Correct.
762
763 Ms. Dwyer - So this 90-day condition that we're talking about,
764 having to be satisfied within 90 days of approval means that you would have to
765 provide that guarantee within 90 days whether or not you've started work.
766
767 Mr. Condlin - Right.

768
769 Ms. Dwyer - And that's your concern, is that there might be a six-
770 month gap.
771
772 Mr. Condlin - Correct.
773
774 Ms. Dwyer - And then you'd be providing a financial guarantee
775 when there's no activity.
776
777 Mr. Condlin - Correct. Yes ma'am.
778
779 Ms. Dwyer - Mr. Blankinship, what is the issue as far as the
780 County is concerned?
781
782 Mr. Blankinship - These conditions were standard when I came here
783 ten years ago, so I can't speak authoritatively to the intent of them. My
784 understanding is the intent is the same as the rule that a variance if not acted on
785 within a certain period time expires. It's to discourage speculation. It's to
786 discourage people from getting these permits that they're never going to use, or
787 worse, that they've going to use two years from now when conditions may have
788 changed, people may have moved in and out of the neighborhood, and the
789 people then being affected never had the opportunity to attend a hearing. The
790 idea is when you're ready to go to work, you come in and get your use permit.
791 You don't come in and get your use permit just because you think you might
792 want to work sometime in the future.
793
794 Ms. Dwyer - Another alternative proposal might be to set a
795 different time. So rather than saying before the work is begun—which could be a
796 very long time from now—we could say 180 days instead of 90 days.
797
798 Mr. Blankinship - You did do that on one of the landfill cases. Our
799 standard condition there was 90 days. They just explained with DEQ permitting
800 and so forth, they could not get the work done for 110 days or something.
801
802 Mr. Condlin - We might be able to make it in the 90 days. It's just
803 going to be tight.
804
805 Mr. Wright - How about 180 days?
806
807 Mr. Condlin - If we're up here negotiating, that's fine. Quite frankly,
808 I'm willing to take whatever you place on here; I'm just trying to be reasonable
809 about that. I didn't know the reason. I'm not sure anybody knows the reason for
810 the 90 days, what's the magic with 90 days. I understand the concern.
811
812 Mr. Blankinship - Posting a bond doesn't take that long. Putting out the
813 barber poles doesn't take that long. Preparing the E and S plans and getting

814 them approved can take longer than that. But you know what? If you have plans
815 under review and that 90th day ticks by, we're not going to make you start over.

816
817 Mr. Condlin - Okay, okay. The other issue, of course, is that bonds
818 are money and you're paying interest on them maybe unnecessarily for three
819 months when you might be able to—you know.

820
821 Ms. Dwyer - That's why I was suggesting the 180 days because I
822 think it satisfies the County's concern that we're not extending it too far in the
823 future. It expands it a little bit so that you can work within it.

824
825 Mr. Condlin - I think that's reasonable. That's something I'd say
826 you might want to look at otherwise for other cases just from a timing standpoint.

827
828 The next item, if we're ready to move on, is the hours of operation. I know we
829 had talked at one time in my memo about some other things. I saw here that
830 there is no Saturday or Sunday work. We're requesting to have consideration for
831 Saturday work for limited hours, let's say 10 to 4 or something of that nature.
832 Just as construction goes, they need to keep moving. The concern is that a call
833 comes in about 24 hours and they're doing construction, and they need the time
834 to get that done. Again, that's a consideration, if that's a concern. I'll leave that to
835 you all, but that's something that we would like to have, maybe some limited
836 hours on Saturday.

837
838 Mr. Blankinship - Our response to that, Madam Chairman, is that there
839 are several use permits for extraction that do allow Saturday hours, but staff
840 always recommends the standard condition and leaves it to the Board to make
841 that choice. It's easier for you to take out the word *Saturday*, than for you to
842 realize, you know, in this case we shouldn't allow Saturdays either. We play it
843 safe by putting the condition there and leaving it to the applicant to ask you to
844 strike it.

845
846 Ms. Dwyer - The request is to strike Saturday from Condition #8.

847
848 Mr. Condlin - Right. I was assuming you'd probably want to limit the
849 hours a little bit, make them a little later on Saturday. Again, I'm trying to be
850 reasonable about this. I'll leave that to you all, but certainly that would make
851 sense to us, to just have the same hours. We'd love to have that, but again, I'll
852 leave that to you as to if you want to limit Saturday or not.

853
854 Mr. Nunnally - You mentioned 10 to 4.

855
856 Mr. Condlin - That will work, yes sir.

857
858 Mr. Wright - What about Sundays and holidays?

859

860 Mr. Condlin - I'm assuming the Board and the County don't want
861 Sundays. There's a church right nearby, too. I would add that. I want to be
862 honest about that. In driving around there that was my first thought, that it would
863 be a little aggressive to ask for Sunday. Not that I'm not aggressive, I'm just
864 saying.

865

866 Ms. Dwyer - So you're asking for Saturday, 10 to 4.

867

868 Mr. Condlin - Yes ma'am.

869

870 Ms. Dwyer - Okay. Next item.

871

872 Mr. Condlin - I'm doing well here.

873

874 Ms. Dwyer - Well, we haven't said we've approved it yet.

875

876 Mr. Condlin - I'm usually not so reasonable; maybe I've found a
877 new way here. Well, we're coming to where the rubber hits the road here, I
878 guess, which is #24 for us. It has to do with the language. I've got one question
879 on the clarification, which is whether structural fill is like material. That may be
880 an interpretation question for Mr. Blankinship and the County. Any time you
881 have a borrow area, you are bringing fill in, in this case. If you remember, we
882 have to do compaction, and we're going to be using structural fill. I just want to
883 make sure that this conversation, that those conditions saying these are what
884 you can maybe deposit on the site shall be limited to imperishable material such
885 as—and it lists them and says, "and like material." We have an obligation to fill
886 and compact. We want to make sure that structural fill is not an issue here. It's
887 more of a question for you. If it is an issue, I would like to include that in the list.

888

889 Ms. Dwyer - By structural material, do you mean wood products?

890

891 Mr. Condlin - I think that's part of it. There may be some of that, but
892 there's also dirt, fill dirt that's going to come in. So yes, it might be wood products
893 that might be part of that, but that's not for the compaction area. It's going to be
894 for the fill area only.

895

896 Mr. Witte - Will the wood products meet the compaction rate?

897

898 Mr. Blankinship - No. You'd have a serious problem there.

899

900 Mr. Witte - That's what I thought.

901

902 Mr. Condlin - Not for that area. But there are other areas that—well,
903 that's right. The compaction rate counts for the entire area, so they couldn't put it
904 in there.

905

906 Mr. Witte - Is there a CDR rating that they have to meet, Mr.
 907 Blankinship?
 908
 909 Mr. Blankinship - Yes. It's in Condition 31.
 910
 911 Mr. Condlin - Again, they're more concerned about fill dirt because
 912 the borrow area businesses, you take it off all their sites when they have extra,
 913 and you bring it in here, and then you take it out and put it in. Because of our
 914 compaction requirements, we have to bring in fill dirt. There was a technical
 915 requirement that when we looked at it we were—I just want to make sure that
 916 that's included.
 917
 918 Ms. Dwyer - Your question is, is fill dirt a "like" material that would
 919 be included in this list.
 920
 921 Mr. Witte - I think as long as it met the compaction rate.
 922
 923 Ms. Dwyer - That's a technical question I don't know the answer
 924 to.
 925
 926 Mr. Wright - We have soil in there. What did you want to add?
 927
 928 Mr. Condlin - The question was, is that structural fill dirt and
 929 structural fill that would otherwise be put in there. That's a technical term that
 930 they use in the business that not only includes stone and brick, but other
 931 materials that would fit that compaction requirement.
 932
 933 Ms. Dwyer - I understood you to say that if that included wood,
 934 that would not meet the compaction requirement.
 935
 936 Mr. Condlin - We wouldn't put it in there, that's right.
 937
 938 Ms. Dwyer - You're not going to be putting that in there anyway.
 939
 940 Mr. Condlin - So we don't need that word in there. I don't know
 941 what else is in there, but I just wanted to make sure that when we're talking
 942 about like materials, which is kind of open, and the fact that we have to meet
 943 #31, that we have some flexibility there, you know, in the discussion with the
 944 Board. Again, it's a concern that they have.
 945
 946 Mr. Nunnally - That wouldn't be under sand or soil, Mr. Blankinship?
 947
 948 Mr. Blankinship - I would think it would. I'm looking online right now for
 949 a definition of the term *structural fill*. I'm not sure exactly what the definition of
 950 that term is. I think clearly there's an understanding that we want them to be able
 951 to put whatever material needs to be in there to meet that 95% compaction.

952
 953 Mr. Condlin - Our engineer, if I can get him sworn in, I'd like for him
 954 to maybe speak to that issue. I can bring him up to speed. He just came a little
 955 late; I apologize.
 956
 957 Mr. Blankinship - Raise your right hand. Do you swear the testimony
 958 you're about to give is the truth and nothing but the truth so help you God?
 959
 960 Mr. Mitchell - I do.
 961
 962 Mr. Condlin - The question is, Mitch, the client had asked that in
 963 addition to the materials that are allowed to come here, including stone, bricks,
 964 tile, sand, gravel, soil, asphalt, concrete, and like materials, he wanted to make
 965 sure structural fill was provided in that. That's one of the questions, if there's a
 966 defined term.
 967
 968 Ms. Dwyer - If you would state your name.
 969
 970 Mr. Mitchell - Mitch Mitchell with Timmons Group.
 971
 972 Ms. Dwyer - Go ahead.
 973
 974 Mr. Mitchell - The intent was to make sure that the future access
 975 road connection with Britton, that road and the material brought into the site
 976 could be used for structural fill. The idea was 95% compaction of that material.
 977 Specifics on what soil characteristics were not gathered. That's certainly a
 978 material that is usable for the road for a future connection.
 979
 980 Mr. Blankinship - Are we talking about basically soils and rocks?
 981
 982 Mr. Mitchell - Yes sir.
 983
 984 Mr. Condlin - So that might be covered already. I appreciate that.
 985
 986 Mr. Wright - You have soil there.
 987
 988 Mr. Condlin - And you have gravel and like materials—and stone.
 989
 990 Mr. Blankinship - Sand.
 991
 992 Mr. Condlin - The ultimate answer is I think I've answered my own
 993 question and I apologize for taking the time. But I wanted to at least clarify that.
 994
 995 Ms. Dwyer - We learned something. So you're not asking for an
 996 amendment.
 997

Mr. Condlin - No, not on that. If we stay with that same one, here's the issue, the word *contaminated*. I know that's a bad word. There's a difference between contamination and hazard. Currently, Virginia Department of Environmental Quality provides for a definition and gives a permit for non-hazardous contaminated soil. It's a soil that's not hazardous, but it's contaminated. My guess is that the County of Henrico does not have a definition of contamination. DEQ does allow for contaminated soil to be brought in. It can meet the compaction, and it's not hazardous, and it's allowed for. It's just contaminated. It's actually a good use because then it would be capped by the road. The real question is, when you put in "not contaminated," there is a definition of *contaminated*. It's not referenced in this paragraph; it's not referenced in the Henrico County Code. As a matter of fact—Mr. Blankinship isn't aware of this yet—we do have a permit that we've received from the Virginia Department of Environmental Quality that allows, if we get this straight with Henrico County, and subject to Henrico County rules, to bring in contaminated soil. That's why, again, I wanted to have a discussion about whether we could take out the word "contaminated," or "contaminated as permitted by the State or Virginia DEQ."

Mr. Blankinship - What's it contaminated with?

Mr. Condlin - It could be any material that's not hazardous. There are some petroleum-based products that are not hazardous and otherwise wouldn't leech that you can take out. One part per million of something that's in there. Could be just about anything. It's a metal product that's not able to move and leech off of there. It's not hazardous to the soil, it's not moving within the soil itself. That's how they define that.

Ms. Dwyer - What is the DEQ definition of contaminated?

Mr. Condlin - If I had that on my computer, I could pull that up. It's a contaminated medium. It's the difference of the definition between hazardous and contamination. It could be contaminated with any foreign product provided in the soil. So if you're running an industrial site, for example, that has some metal in it, that would be an example of something that they would use that they would be able to put into the site.

Ms. Dwyer - I think I would at least need to have the definition of *contaminated* if we allow that. So I think I'd need some more clarification on what you're asking us to allow that we don't allow now.

Mr. Condlin - I guess when you say it's not allowed now, I know it's in the conditions, but Henrico County doesn't prohibit otherwise or preclude, or even define what's contamination. So I'm not sure what they're trying to get at with this location either.

1044 Ms. Dwyer - It's in your best interest to define it as well.
1045
1046 Mr. Condlin - Certainly. I think so. If I can just—
1047
1048 Ms. Dwyer - Okay. Maybe I could ask a question of Mr. Mitchell
1049 while Mr. Condlin—is that all right, Mr. Condlin? While we're talking about soils
1050 and hazardous and contamination, Mr. Condlin mentioned that this might be an
1051 appropriate location for contaminated but not hazardous soils because it would
1052 be capped by the road. But aren't you going to be filling in other portions of the
1053 property with this kind of fill.
1054
1055 Mr. Mitchell - There are other locations. It's phased such that you're
1056 bringing in material and you always have enough material if for some reason
1057 operations stop, you could that use that material and fill back in the site. The
1058 contamination, I'm not really familiar with the direction there. But I do know that
1059 the material brought on site is of good quality and it's going to be brought back
1060 up to grade with good compaction requirements.
1061
1062 Ms. Dwyer - The entire site is going to be brought back to grade.
1063
1064 Mr. Mitchell - Correct.
1065
1066 Ms. Dwyer - That was another question I think staff had in their
1067 report, what the standards would be for restoration.
1068
1069 Mr. Mitchell - One of the requirements that we came to agreement
1070 with Public Works was to make sure that we had enough site material on site at
1071 any given moment to refill the site if we were to stop operations. So we would
1072 never be leaving the site barren with a hole in the ground.
1073
1074 Ms. Dwyer - The whole site or just the roadway?
1075
1076 Mr. Mitchell - The whole site will ultimately be brought back to
1077 grade. So yes, in phases the whole site will be brought back to grade.
1078
1079 Ms. Harris - Mr. Mitchell, I have a question. Are you saying that
1080 you don't know if the structural fill dirt is contaminated or not?
1081
1082 Mr. Mitchell - Again, we're going to get some clarification on it. I'm
1083 not really sure of the type of materials coming in, but I do know that we have
1084 compaction requirements at a minimum that we have to meet for the Britton
1085 Road extension.
1086
1087 Mr. Wright - The question is what does *contaminated* mean.
1088
1089 Mr. Mitchell - Right.

1090
1091 Ms. Harris - When our use permit deals with that which affects the
1092 safety, health, and welfare of the residents, I think this is a huge issue. It deals
1093 with health so we need to—
1094
1095 Mr. Wright - I imagine any dirt is contaminated; it has something,
1096 germs and stuff in it.
1097
1098 Mr. Witte - Contamination in the soil could be stones, if you're
1099 getting topsoil.
1100
1101 Mr. Wright - The dirt around your house is contaminated.
1102
1103 Mr. Witte - Absolutely. Fertilizer contaminates the soil.
1104
1105 Mr. Wright - That doesn't cause any hazardous conditions to the
1106 occupants of the house.
1107
1108 Mr. Witte - I think as long as it's not hazardous, that would be the
1109 main issue. If the DEQ has come out and made a statement against the
1110 hazardous situation and they meet those requirements.
1111
1112 Mr. Wright - How are you going to determine whether or not it's
1113 contaminated?
1114
1115 Mr. Witte - You can't determine contamination, I don't believe.
1116 You can determine whether it's hazardous, whether it's hazardous to human
1117 health or animals or wells.
1118
1119 Ms. Harris - If you can't determine whether or not it's
1120 contaminated, why would you want that word eliminated from the condition.
1121
1122 Mr. Witte - Why would you want it eliminated?
1123
1124 Ms. Harris - I'm asking Mr. Mitchell and Mr. Condlin.
1125
1126 Mr. Wright - But you couldn't bring any dirt in at all.
1127
1128 Mr. Witte - It would have to be pure loam or pure sand or pure
1129 anything to be non-contaminated.
1130
1131 Mr. Wright - It's almost impossible to have something that's not
1132 contaminated.
1133
1134 Ms. Harris - Our responsibility is to tell the citizens that we are
1135 approving a use permit and okaying contamination, or contamination soil. I

1136 would love to hear the definition.
 1137
 1138 Mr. Blankinship - I'm finding lots of definitions for *hazardous*.
 1139
 1140 Ms. Harris - We had the word *or* in the condition; it didn't say
 1141 *and*—contaminated and hazardous. It's *or*.
 1142
 1143 Mr. Condlin - I just sent Mr. Blankinship the letter. We just received
 1144 it yesterday, actually. One of the things that it talks about is there's an
 1145 amendment in the permit that otherwise is provided through the Virginia Solid
 1146 Waste Management regulations. They don't provide in the letter the definition of
 1147 *contamination*. It says the contaminated soils must be consistent with all local,
 1148 state, and federal requirements, and that they must comply with the Special
 1149 Waste Acceptance Plan for operations being with Permit 524. I haven't brought
 1150 that with me. I can take a second and try to look that up or get someone from my
 1151 office to provide that to me, if you can provide us a few minutes. I didn't want to
 1152 waste your time and provide otherwise.
 1153
 1154 Ms. Dwyer - I'm not clear what that means, though.
 1155
 1156 Mr. Condlin - I'm not either. They're referencing, and I just need
 1157 someone from my office to send that to me so I can provide that definition for
 1158 you.
 1159
 1160 Ms. Dwyer - All right. Well, let's move on and we'll come back to
 1161 this. Is someone going to be forwarding that to you as we—
 1162
 1163 Mr. Condlin - I haven't asked them yet, but I can either do that now
 1164 or I can—
 1165
 1166 Ms. Dwyer - All right. Why don't you do that now and then maybe
 1167 by the time we finish our discussion we'll have that information.
 1168
 1169 Mr. Condlin - I'll just step out for one second.
 1170
 1171 Ms. Dwyer - Okay. All right.
 1172
 1173 Mr. Burcham - [Speaking off microphone.] How are you doing?
 1174
 1175 Ms. Dwyer - Okay. What our normal procedure is, is to let the
 1176 applicant speak. That gives you a chance to hear everything they have to say
 1177 and then—
 1178
 1179 Mr. Burcham - [Speaking off microphone; inaudible.]
 1180
 1181 Ms. Dwyer - Okay, sure. You will have a chance—don't worry—

when they finish putting on their case. Then you will have had a chance to hear everything that's at issue and you can respond to everything. Okay?

Mr. Condlin - Thank you. They're going to try to get that to us as we continue on. I actually only have—and I think it's one minor point from the standpoint of a—it's number 26 with respect to the progress report. The date is February 1, 2011. I looked it up. I don't know. Is it a written report? Do you want us to come to the hearing, because that's not the hearing date that's typical. And I guess that's what.

Mr. Blankinship - A written report.

Mr. Condlin - You just want a written report submitted, basically, to you on behalf of the County. That was an easy one. That's not a change or anything; it's just more of a clarification from our standpoint.

That just leaves the question of the contamination. I don't mind if the gentleman wants to speak. I can try to find something and he can certainly speak to that issue of contamination after we kind of address that issue again, if that's all right with the Board.

Mr. Wright - You said something here, 12 months from when mining activities begin rather than approval of the C—[blank section on the recording]. Does that still bother you?

Mr. Condlin - I decided to cut my losses and just go with the other thing. That wasn't a critical issue.

Mr. Wright - If you haven't done any work.

Mr. Condlin - After talking with Mr. Blankinship, there's a County concern of not wanting us to continue on, they just want—

Mr. Wright - He just wants to know what's going on.

Mr. Condlin - Exactly. And so that's fine. Again, he clarified what you're looking for in the date and all that, so that's not an issue for us.

Ms. Harris - Attorney Condlin?

Mr. Condlin - Yes ma'am.

Ms. Harris - In the letter we have, you have item 32 is a clarification that the County Department of Public Works will determine the site distance.

1228 Mr. Condlin - Yes. I don't think we need it. Again, talking with staff,
 1229 I don't think we need that clarified any further. That's done by the County, so I'm
 1230 not concerned about that. That's ultimately, practically going to be taken care of
 1231 by Public Works.
 1232
 1233 Ms. Harris - Okay. And then the other. There are a few other
 1234 insignificant and cleanup and corrections.
 1235
 1236 Mr. Condlin - Yes. I'll give you an example. Under #2, for example,
 1237 the third line says that the land will be restored to a reasonably level and
 1238 drainable condition. I thought that should be "reasonable level." It's little things
 1239 like that.
 1240
 1241 Mr. Blankinship - Reasonably level. *Level* is an adjective in that
 1242 sentence.
 1243
 1244 Mr. Condlin - Okay, so. Again, in talking with Mr. Blankinship, I think
 1245 we caught everything. I don't think there's anything in there that otherwise—
 1246 those are some comments that we had that Mr. Blankinship and I took care of.
 1247 So I don't think there's anything else otherwise.
 1248
 1249 Ms. Dwyer - All right, thank you. We may have some questions.
 1250
 1251 Mr. Condlin - Sure, absolutely.
 1252
 1253 Ms. Dwyer - Any questions by Board members? I had a couple
 1254 questions that were based on the staff report.
 1255
 1256 Mr. Condlin - Okay.
 1257
 1258 Ms. Dwyer - In the first paragraph, the staff report notes the
 1259 applicant has not submitted revised plans with this latest application. Is the
 1260 reason that there is no change whatsoever; we are relying on the plan submitted
 1261 for the 2008 approval?
 1262
 1263 Mr. Mitchell - Actually the plans have been resubmitted.
 1264
 1265 Ms. Dwyer - Okay.
 1266
 1267 Mr. Mitchell - It's basically waiting in Planning for the sign-off to go
 1268 to Public Works for the final sign-off. So they're in for signature as we speak.
 1269
 1270 Mr. Blankinship - Those were received after the report.
 1271
 1272 Ms. Dwyer - Okay, after. Okay, good. The staff typically
 1273 recommends a minimum of a 24-foot road whereas a 20-foot road had been

1274 provided for access. Is that an issue, Mr. Blankinship?
 1275
 1276 Mr. Blankinship - I'm not really sure how important that is to us because
 1277 it's such a short road. It's just something we wanted the Board to be aware of.
 1278
 1279 Ms. Dwyer - If it's important to Public Works or if it's important to
 1280 the County, or if it's not an issue. I'm looking page 1 and 2, Erosion and
 1281 Sediment Control Plan. It looks like it says a 24-foot roadway is provided.
 1282 Apparently it's not an issue, so I'm going to let that one pass. The third point
 1283 was the applicant doesn't state what the materials for restoration will be. I'm not
 1284 sure that they need to as long as the materials have been limited in our
 1285 conditions. I'm satisfied with that. Is there something that I'm missing as far as
 1286 the County's concerned?
 1287
 1288 Mr. Blankinship - No ma'am.
 1289
 1290 Ms. Dwyer - Public Works also requested clarification regarding
 1291 the timeframe for extraction of materials. Has that been defined sufficiently for
 1292 Public Works at this stage of the game?
 1293
 1294 Mr. Blankinship - As far as I know, their comments are still applicable.
 1295 They would like more information about the timeframe, but it's not really
 1296 available. The applicant doesn't know exactly when he's going to have these
 1297 materials.
 1298
 1299 Ms. Dwyer - But the permit expires in two years.
 1300
 1301 Mr. Blankinship - Right.
 1302
 1303 Ms. Dwyer - Finally, it says that staff recommends elevation be
 1304 restored to the existing grade of 156 feet. I believe the statement was made by
 1305 Mr. Mitchell that that is the case, that it will be restored. Did we not know that at
 1306 the time this was written because we didn't have the plans?
 1307
 1308 Mr. Blankinship - Right. There's not a reclamation plan as such here.
 1309
 1310 Male - [Speaking off the microphone; inaudible.]
 1311
 1312 Ms. Dwyer - It has been done or not been done at this point?
 1313
 1314 Mr. Gidley - [Speaking off the microphone.] The 2008 plans did
 1315 not clearly show the final elevations. They were subsequently put on there at my
 1316 request. The plans submitted recently, however, once again left it up in the air.
 1317
 1318 Ms. Dwyer - Okay. We don't have the plans other than the 2008
 1319 Erosion and Sediment Control Plans. Where is it?

1320
1321 Mr. Mitchell - I don't have any problem adding those lines back onto
1322 the drawings.
1323
1324 Ms. Dwyer - And we don't have the other plans to be looking at
1325 ourselves.
1326
1327 Mr. Condlin - Understood.
1328
1329 Ms. Dwyer - So I just want to make sure that something is on the
1330 plans that confirms what you said.
1331
1332 Mr. Condlin - Absolutely.
1333
1334 Ms. Dwyer - All right, Mr. Condlin, do we have something more on
1335 the—
1336
1337 Mr. Condlin - I'm using technology to my advantage. Our
1338 environmental attorney in our office who responded to me said that soil is in one
1339 of three stages with respect to DEQ. It's either in its natural state, meaning that
1340 there have been no manmade intrusions or otherwise introductions of any
1341 manmade material into the soil. Then there's hazardous, which is soil that has
1342 been caused with the presence of manmade chemicals to be hazardous to
1343 human—let's see if he has it; he just sent it to me here—soil that has been
1344 introduced with any solid, liquid, or gas that can harm people or other living
1345 organisms, property, or the environment. That's the definition of *hazardous*
1346 *material*. Contamination is between the two when there has been manmade
1347 product that's been introduced into the soil that has not otherwise been deemed
1348 hazardous material. The DEQ permit specifically provides it must be non-
1349 hazardous contaminated material which you're allowed to bring in. So it's either
1350 pure soil, meaning there's been no introduction of any manmade material, or
1351 manmade material that's not harmful to people, other living organisms, property,
1352 or the environment. If it is harmful, it's deemed hazardous and therefore it's not
1353 allowed.
1354
1355 Ms. Dwyer - What is the source of that definition? Is that a DEQ
1356 regulation?
1357
1358 Mr. Condlin - That was through the Special Waste Acceptance Plan
1359 and Virginia Solid Waste Management Regulations. That's with respect to what
1360 is hazardous. His understanding is that there is no definition otherwise of
1361 *contaminated*, other than it's the introduction of manmade material.
1362
1363 Ms. Dwyer - That's from the solid waste regulations?
1364
1365 Mr. Condlin - Again, I don't want to mislead you. That was his

definition. The second one, what is deemed hazardous, that came from that regulation. But when he responded to me, he said if it's non-hazardous and if it's contamination—I don't know if that's part of that. I have to be honest, I don't know if that's specifically from that regulation, what *contaminated* means. Just according to him. So those are the three stages soils can be. Natural. If it's contamination, it's the introduction of manmade material. If it's harmful, then it's deemed hazardous.

Ms. Dwyer - So the definition sounds like you're probably operating under here is that if there's anything harmful, i.e., hazardous in the soil, we would consider that to be hazardous material. *Contaminated* could mean something as minimal as—

Mr. Blankinship - Gravel.

Ms. Dwyer - —gravel that's been introduced by man into the soil, but it is otherwise not harmful, i.e., hazardous.

Mr. Condlin - I would suggest—as I've been doing all day here. There is no definition. Again, we looked long and hard. I do know the County of Henrico does not have a definition. I don't think there's anything wrong. We have to make a report to the County and to the Director of Planning. I don't have any problem using that definition regardless of what's otherwise allowed. If we tell them what we know is in the soil when we give our report, and you say okay. If it's contaminated, you're not allowed to put it in there. But I'd rather have that contamination allowed to be put in there as long as it's not hazardous as you just defined it. Something of that nature, if that makes sense. So we're allowed to put contaminated being that it's something other than just natural soil, but as long as it's not hazardous, that is, harmful to the environment, people, the land, etc.

Mr. Blankinship - What are you going to be putting in there?

Mr. Condlin - It could be anything. There's the list that we talked about there from the fill dirt that's otherwise, you know, permitted to be put in.

Mr. Blankinship - We've had some applications from companies that are in the business of taking soil or other excavated material from construction sites and bringing it to borrow pits.

Mr. Condlin - Yes, that's exactly right. Technically, there was a concern that that technically hit the definition of contamination just because it has gravel, trucks have been running overtop of it, it has introduction of different material that might have been put in there from a construction site, which technically we're allowed to put in, if you remember that long list. But it might just be nominal; it might be something a little bit more than that. But it's not deemed

1412 hazardous and otherwise not covered. That was a clarification they made with
1413 DEQ. That's one of the reasons they did that because we didn't want to be in
1414 technical violation. I might be making a bigger deal about this than it really is
1415 from a practical standpoint. But again, that's something I learned just as we were
1416 waiting here, what the definition of *contaminated* is. It's really the introduction of
1417 any manmade material into soil.

1418
1419 Mr. Wright - Can we take the word *contaminated* out and put in
1420 there what we want? Define what we don't want to go in.

1421
1422 Ms. Dwyer - Right.

1423
1424 Mr. Witte - Hazardous material.

1425
1426 Mr. Blankinship - At the end of that condition is, "Hazardous materials
1427 as defined by the Virginia Hazardous Waste Management Regulations." That's
1428 what we're concerned with.

1429
1430 Mr. Witte - I think we can just eliminate *contaminated*.

1431
1432 Mr. Wright - I wouldn't have any problem with that.

1433
1434 Ms. Dwyer - Nor would I, based on our discussion.

1435
1436 Mr. Wright - If they could come up with some kind of definition of
1437 something that would be different than *hazardous*. Otherwise, I don't see how
1438 you can put it in there. I mean, we don't know what it says.

1439
1440 Ms. Dwyer - Exactly.

1441
1442 Ms. Harris - Mr. Condlin, what about medical supplies, medical
1443 discard.

1444
1445 Mr. Condlin - No ma'am. This is not a landfill; this is only for soil
1446 materials and the gravel and things of that nature, the fill material that we're
1447 otherwise allowed to put in there to achieve that compaction. This is not
1448 permitted and not requested for a landfill per se, which that would qualify for that.

1449
1450 Mr. Witte - Medical supplies I think are deemed to be hazardous
1451 for the most part. And they're not compactable.

1452
1453 Mr. Condlin - Right.

1454
1455 Ms. Dwyer - They're perishable. We've limited this to imperishable
1456 materials such as stone, bricks, tile, sand, gravel, soil, asphalt, concrete, and like
1457 materials. We've eliminated wood, for example, because wood products would

1458 not satisfy this list.

1459

1460 Ms. Harris - I don't understand the fear of the word *contamination*,
1461 if we are concerned about the health, safety, and welfare of citizens. I don't
1462 understand why we're hung up on contamination.

1463

1464 Mr. Condlin - If I may, I'll approach it a different way. Technically,
1465 we're talking about the, "no contamination or hazardous material will be included."
1466 We're having trouble defining the word *contaminated*, yet it's prohibited. From
1467 our standpoint, we want to make sure there's no technical violation. If the word
1468 *contaminated* means that it's not a natural soil product, that it could include
1469 gravel or it could include sticks or it could include just a small amount of
1470 construction debris that gets caught up as you're doing road construction or
1471 runway construction or part of your building construction, then we don't want to
1472 have to go through and make pure soil or pure gravel, and that's the only thing
1473 we can put in here. So we're trying to make sure that we're not in a technical
1474 violation. The real concern, I think, from the health, safety, and welfare is
1475 whether it's hazardous. There are defined terms from the State through DEQ
1476 that define *hazardous*, dealing with harmful to people, living organisms, property,
1477 or the environment. I think that covers it, but of course there's a long list of what
1478 is hazardous and what particular material that DEQ and the EPA have. I think
1479 that's fine to define. And that's a defined and usable term. Hazardous or non-
1480 hazardous material are defined terms. *Contaminated* is not a commonly used,
1481 defined term in an environmental sense. That's why I balked, quite frankly, when
1482 Ms. Dwyer asked me was *contamination* coming out of the Virginia Regs. There
1483 is no real definition of what's contaminated. The common used definition is that
1484 it's just introduction of manmade materials. So contaminated, while sounding
1485 bad, is not hazardous. It's, by definition, not hazardous. We're willing to say it
1486 has to be non-hazardous material. It cannot be hazardous is okay. Quite frankly,
1487 if you put in the word *contaminated*, I think technically we'll be violating it from
1488 day one, unless it's pure soil. That's my concern.

1489

1490 Ms. Dwyer - In common parlance, we use the word *contaminated*
1491 to mean often something hazardous. But I think what we've done here is we've
1492 defined hazardous as being what we don't want and what is not permitted.

1493

1494 Mr. Condlin - Right. And that's perfectly fine.

1495

1496 Ms. Dwyer - The word *contamination* here muddies the water, first
1497 of all because we don't have a definition of what it means. And secondly
1498 because what we're really after is not having any hazardous materials and we've
1499 already said that. So why muddy the waters with some other vague word.

1500

1501 Mr. Condlin - Exactly.

1502

1503 Ms. Harris - Another question. How close is the residential

1504 community to this site?

1505

1506 Mr. Condlin - There's a home just to the right, my right, as I'm
1507 looking at—there you go right there. And I think there's one in the back, too, isn't
1508 there? And across the street, of course, too.

1509

1510 Ms. Harris - Do you know how many other sites similar to this that
1511 will be using truck traffic are close to the site?

1512

1513 Mr. Condlin - My understanding is there are two other sites.
1514 Approvals were given to the W. C. English Company on Britton Road and
1515 Monahan Road, which are about a mile and a half from this, but farther away
1516 from the airport. The airport is literally just on Beulah Road or Charles City Road
1517 from our location. I think that's one of the things we're trying to differentiate. This
1518 is even closer than what was approved back in 1998. It's 2008; I've lost ten years
1519 now. In 2008. It's actually even closer to a location of where the contracts are
1520 from that standpoint from what we're looking for. So I think that will help prohibit
1521 a lot of the truck traffic in the area. I have to be honest; I don't know where the
1522 construction entrances will be for the airport; that hasn't been defined per the
1523 contracts, to be let out yet. But obviously Beulah and Charles City are right near
1524 and next to, and adjacent to the airport. We're in a prime position and with
1525 proper [unintelligible], I think truck traffic in the area versus the other approved
1526 borrow pit areas.

1527

1528 Ms. Harris - Last question, I think. Do you think that striking the
1529 word *contaminated* would give the appearance to your neighbors that you're a
1530 good neighbor?

1531

1532 Mr. Condlin - I don't think it harms that issue because the question
1533 is whether it's hazardous or not, and whether that fits the definition of *hazardous*.
1534 I think it goes back to what Ms. Dwyer was referring to as that common parlance
1535 in the use of the word *contaminated*, we think of hazardous. We are having
1536 trouble defining the word *contaminated*. I think there is a difference between
1537 contaminated and hazardous.

1538

1539 Ms. Harris - I don't want to go back to that.

1540

1541 Mr. Condlin - I understand. So I don't think that's an issue,
1542 ultimately, for the neighbors. We are trying to be good. Certainly all the other
1543 conditions that have been placed in here—and there are quite a few in here—
1544 posting of the signs, and the aprons, and the timing of the trucks. This is an
1545 industrial area and planned for industrial uses, and we have to be careful of our
1546 neighbors. But I think the conditions otherwise help alleviate any of those
1547 concerns. We've gone a long way. Really, with these clarifications that we've
1548 talked about today, I think it will be very helpful for that.

1549

1550 Ms. Dwyer - All right. Thank you, Mr. Condlin. Any other questions
 1551 by Board members?
 1552
 1553 Mr. Nunnally - Mr. Blankinship, on this 2008 use permit—I got the
 1554 date right, didn't I?
 1555
 1556 Mr. Condlin - You're better than I.
 1557
 1558 Mr. Nunnally - You haven't had any complaints or anything.
 1559
 1560 Mr. Blankinship - Well, they haven't really broken ground. They went
 1561 out and did some clearing initially and then stopped. They haven't dug the first
 1562 truckload of excavated material out of the site yet. So no, we haven't received
 1563 any complaints.
 1564
 1565 Mr. Condlin - It really expired by its terms, maybe because the
 1566 contract wasn't let out, the contract didn't come to fruition.
 1567
 1568 Ms. Dwyer - Any other questions? Thank you, Mr. Condlin.
 1569
 1570 Mr. Condlin - Thank you.
 1571
 1572 Ms. Dwyer - We can hear from our other speaker now. Good
 1573 morning.
 1574
 1575 Mr. Burcham - Good morning. I'm Stuart Burcham.
 1576
 1577 Ms. Dwyer - I'm sorry, what was last name?
 1578
 1579 Mr. Burcham - Burcham. B-u-r-c-h-a-m. I'm the house right there,
 1580 the neighbor, and there's another one up the road. We're just kind of worried
 1581 about our wells and stuff when they're coming in here doing all of this digging.
 1582 The other Old Beulah Road has new homes being put on it and I know they have
 1583 wells. I've been there for 25 years and I know that piece of property has a lot of
 1584 streams and creeks on it. Whatever they're going to do, I'm not sure about
 1585 everything they're doing over there. This is the first time I've been here. I've
 1586 heard they were going to take soil off of the property and stuff like that. There
 1587 used to be a home up there that they were renting and they quit renting it. I
 1588 guess they bought the whole works. The issue I have is I live on Beulah Road
 1589 and their entrance into that piece of property is right in front of my house. When
 1590 you get those extra large dump trucks, it can't even make the whole turn without
 1591 going into the other ditch right there. That road is 45 and that's the main road.
 1592 That road is traveled a lot with a lot of buses and everything. And there's a knoll.
 1593 Coming up a knoll, you can't see something like that pulling out all the time. It's
 1594 just a dangerous situation right there.
 1595

1596 Ms. Dwyer - Mr. Burcham, if I could summarize your concerns.
 1597 Your first concern is about your wells. With all this digging, will that affect the
 1598 water table and affect your well. The second is this entrance, which is, at this
 1599 point, unimproved, as we can see from the photograph. A large truck pulling out
 1600 might not easily been seen by—well, they can't make the turn, you're
 1601 suggesting?
 1602
 1603 Mr. Burcham - They have to back up and all to make the turn. If they
 1604 come out at Charles City Road, they'd have a wider road, if they approve the
 1605 digging or whatever they're doing. Coming out of there, that's a dangerous
 1606 situation. When they were just putting it in, they had a hard time.
 1607
 1608 Ms. Dwyer - Putting in this culvert.
 1609
 1610 Mr. Burcham - Ever since they put it in, you have people coming and
 1611 parking, bringing trash, and hunting, and shooting. I never had all of that.
 1612
 1613 Ms. Dwyer - So you're concerned about the sight distance, too.
 1614 Not just the truck pulling out, but of cars coming down the road not being able
 1615 to—kind of coming over that knoll and not being able to see.
 1616
 1617 Mr. Burcham - You have buses that run down there, two buses. They
 1618 have to almost stop to pass each other. Most people run 45 miles an hour down
 1619 that road. That is the speed limit.
 1620
 1621 Ms. Dwyer - The speed limit is 45? All right.
 1622
 1623 Mr. Blankinship - Madam Chairman, if I could read one condition to the
 1624 gentleman. Staff has recommended a condition on this permit, if it is approved.
 1625 It reads like this: "If water wells located on surrounding properties are adversely
 1626 affected, and the extraction operations on this site are suspected as the cause,
 1627 the affected property owners—" that's you—"may present to the Board evidence
 1628 that the extraction operation is a contributing factor. After a hearing by the Board,
 1629 this use permit may be revoked or suspended, and the operator may be required
 1630 to correct the problem." So if anything they do causes problems for your well
 1631 and your neighbor's well, you will have a—[blank section on the recording]—
 1632 without even going to court. You could just come back to this Board.
 1633
 1634 Mr. Burcham - If they do something like that, don't they have to leave
 1635 a cushion of woods?
 1636
 1637 Mr. Blankinship - Yes. They can't excavate within 200 feet of the road
 1638 right-of-way. So they will be 250 feet, at least, from your property.
 1639
 1640 Mr. Burcham - Right. There's only one other house on the road and
 1641 he couldn't come today because he's old. You have a lot of creeks and streams

1642 on that land. Whatever they're dumping, waste or whatever—I don't know what
 1643 they're doing.
 1644
 1645 Mr. Blankinship - They're not going to dump any waste.
 1646
 1647 Mr. Burcham - You know, going into the creeks.
 1648
 1649 Mr. Blankinship - They will be digging down into the water table.
 1650
 1651 Mr. Burcham - Right. Actually, are they making like a gravel pit?
 1652
 1653 Mr. Blankinship - Exactly, yes. They're going to dig sand and gravel out
 1654 of the site, and then they're going to fill it back up to what it was originally.
 1655
 1656 Mr. Burcham - What will they do with the property after that?
 1657
 1658 Mr. Blankinship - Actually, part of it the County wants to build a road
 1659 across. We're going to straighten Beulah Road to align with Britton Road.
 1660
 1661 Mr. Burcham - Right. I've seen where it comes back out.
 1662
 1663 Mr. Blankinship - Align it with the other road on the other side of Britton.
 1664
 1665 Mr. Burcham - Right.
 1666
 1667 Mr. Blankinship - It's going to align Britton and Beulah. So that's why in
 1668 this case they have to compact the soil that they put back, so that it's firm
 1669 enough to build a road over.
 1670
 1671 Mr. Burcham - Yes, I understand that.
 1672
 1673 Mr. Blankinship - The rest of it will just be returned to agriculture, I
 1674 guess.
 1675
 1676 Mr. Burcham - Right. I saw where they were going to move the road
 1677 over and make that one a dead end, I guess, the Old Beulah.
 1678
 1679 Mr. Blankinship - You can see it on the map there.
 1680
 1681 Mr. Burcham - That's basically all I had to say.
 1682
 1683 Mr. Blankinship - The truck traffic is going to be an issue for you.
 1684
 1685 Mr. Burcham - And I don't know about running dump trucks in there
 1686 on Saturdays and Sundays.
 1687

1688 Mr. Wright - There won't be any Sundays.
1689
1690 Mr. Burcham - My main issue is the trucks coming on Beulah Road
1691 right in front of my house.
1692
1693 Mr. Blankinship - If they damage your well, we can make them fix it.
1694 But if this is approved, there are going to be trucks on the road.
1695
1696 Mr. Burcham - That road right there is heavy-run all the time.
1697
1698 Mr. Condlin - If I may speak to that. Can you go back to that? Is
1699 that the site map? The one you just had up there, the last one. There you go. Is
1700 this your home? You can see here's the entrance. I think the existing entrance
1701 is at that location. The plan is, as you can see here, that would be moved to this
1702 location and it would be paved at the apron, as required by the conditions.
1703 That's what the plan is, to move it in between the homes, away from the existing
1704 entrance that he has with the trucks.
1705
1706 Mr. Wright - So that entrance will not be—
1707
1708 Mr. Condlin - At that location.
1709
1710 Mr. Wright - —across from your house.
1711
1712 Mr. Burcham - What are you going to do with that entrance, put a
1713 chain across it?
1714
1715 Mr. Blankinship - Actually, they're going to build a berm. They're going
1716 to build a big hill.
1717
1718 Mr. Condlin - Yes. It will be so that they couldn't use it.
1719
1720 Mr. Wright - That entrance will be blocked off.
1721
1722 Mr. Condlin - Yes. We have to build per this approved plan and we
1723 have that berm in there, so.
1724
1725 Mr. Wright - There will not be an entrance in front of your house,
1726 sir.
1727
1728 Ms. Dwyer - Mr. Condlin, would you describe the entrance that you
1729 are going to build? You said it would have an apron. It won't look like the one
1730 that we just saw on the screen.
1731
1732 Mr. Condlin - I'll let Mitch describe that.
1733

1734 Mr. Mitchell - That's correct. The entrance proposed into the site is
1735 a 24-foot-wide road, paved. So it will be an adequate entrance that will not be
1736 bringing dirt in and out of Beulah Road. It will be a solid entrance. At the end of
1737 it, we'll have a construction stone base feature that will clear the mud off the tires
1738 as they leave the site, if that's a concern as well.
1739

1740 Ms. Dwyer - How wide will it be at the point where it enters
1741 Beulah?
1742

1743 Mr. Mitchell - It's 24 feet wide.
1744

1745 Ms. Dwyer - According to your calculations, that's sufficient for the
1746 trucks to easily turn in and out?
1747

1748 Mr. Mitchell - Correct.
1749

1750 Ms. Dwyer - Without having to do any three-point turns or
1751 anything.
1752

1753 Mr. Mitchell - I do not foresee that.
1754

1755 Mr. Witte - Is there a turn lane involved in this?
1756

1757 Mr. Mitchell - No sir.
1758

1759 Mr. Witte - These dump trucks, how long are they?
1760

1761 Mr. Mitchell - We actually had this discussion early on with
1762 Transportation. The turning movements a typical dumpster truck makes really
1763 didn't require a turn lane. That was something that was discussed early on, but it
1764 was determined that the radii with these trucks didn't include having a turning
1765 lane. The length of the truck, I don't have an exact answer for that.
1766

1767 Mr. Witte - I've seen some of these dump trucks that are just
1768 huge.
1769

1770 Mr. Mitchell - Almost tractor-trailer length. I don't think the intent is
1771 to have that.
1772

1773 Mr. Condlin - I think these are typical dump trucks. I might suggest,
1774 then, under item—are we on 32? Where we talk about adequate sight distance,
1775 we might say adequate sight distance and turning radius shall be provided for
1776 the proposed construction entrance onto existing Beulah Road. Practically
1777 speaking, if there are concerns, we can either adjust that through permit
1778 construction or stopping the operation if it is causing a problem. But we might
1779 add in under 32, "adequate sight distance and turning radius." Is that the best

1780 way to say it, radii?

1781

1782 Mr. Burcham - I couldn't understand why they couldn't take the

1783 entrance to Charles City Road out. That's a wider road and you can see well. I

1784 couldn't understand why they did it on a short road.

1785

1786 Ms. Dwyer - That may have been the County's request. Mr.

1787 Blankinship, can you—

1788

1789 Mr. Witte - That was an environmental issue?

1790

1791 Mr. Blankinship - Mr. Mitchell is probably the best to address that.

1792

1793 Mr. Mitchell - Actually, that was the first entrance of choice. That

1794 came up. But after visiting the site and seeing the daily traffic, it just appeared

1795 the Beulah Road was a much safer entrance. We actually had the entrance

1796 closer to Charles City off Beulah, and that was another question that came up,

1797 we need to move it further away from Charles City to get the trucks as far away

1798 as possible from the major traffic thoroughfare of Charles City Road. We started

1799 in that direction, but with the environmental and traffic concerns of the County,

1800 we had to move it to Beulah.

1801

1802 Ms. Dwyer - Does that relate to traffic volume?

1803

1804 Mr. Mitchell - Correct. There's much more traffic on Charles City

1805 versus Beulah and it would be better suited to be an adequate distance away

1806 from Charles City and have an entrance there.

1807

1808 Ms. Dwyer - Okay.

1809

1810 Mr. Witte - The other issue with that is, as I've just found out, to

1811 put a road in from Charles City, they'd have to cross wetlands and disturb that

1812 area.

1813

1814 Ms. Dwyer - I think part of the problem is that Mr. Burcham has

1815 had some not-so-great experiences with that existing entrance. So that's a

1816 source of a lot of your concerns. It appears that these concerns have been

1817 addressed by the County by moving it, moving that entrance. It's constructed

1818 differently. I'm not sure what other safeguards we can put in. Can you think of

1819 anything, Mr. Blankinship, based on what has been said? If we required the

1820 turning radius to be adequate so the trucks don't have to back up—

1821

1822 Mr. Blankinship - We can also require a flagman. If there are issues,

1823 we can require they provide a flagman.

1824

1825 Ms. Dwyer - The point there, Mr. Burcham, is that if there is a

1826 problem with the traffic on Beulah or if the trucks are not able to make that turn,
1827 we can require them to reconstruct the entrance so that they do make the turn
1828 more easily—
1829

1830 Mr. Burcham - I thought Charles City was a better road because
1831 Beulah Road is traveled a lot. If you live on it, it's traveled probably more than
1832 Charles City Road. Where Charles City Road comes out, they repaved that and
1833 it's wide open where this farmhouse is. And they have a horse pasture. It's a
1834 perfect shot right through that. There are no creeks through there. They could
1835 shoot it right through there where people can see it. When they do it on Beulah
1836 Road, when they make their turn, those big trucks run in the ditch. They'll
1837 probably have to put pavement on the other side to make that turn because
1838 that's a skinny road. And like I said, people run 45 miles an hour through there all
1839 the time. That's the main road coming in every afternoon. They travel that road
1840 hard. I think it's a dangerous situation with the big trucks running in and out all
1841 day long. Then you have to deal with dust and dirt all the time.
1842

1843 Ms. Dwyer - Okay.
1844

1845 Mr. Condlin - Going back to what Mr. Mitchell had talked about.
1846 There was a concern from a broader standpoint of the traffic and the
1847 continuation of traffic on Charles City Road, a termination point right near Beulah
1848 Road and Charles City Road. The Traffic folks wanted that on there. I would
1849 also have the entrance on Beulah Road not on Charles City Road. Condition
1850 #15 does say that the applicant shall provide a flagman to control traffic from the
1851 site onto the public road. That's not even an option. So anytime that's triggered,
1852 we would have to do that. That's how we're reading it, so. We have to yield the
1853 right-of-way to the public. So really the trucks will only be coming in and out
1854 when there's room and there's not traffic.
1855

1856 Ms. Dwyer - Who would Mr. Burcham call if—
1857

1858 Mr. Blankinship - I was just going to say I don't have any business
1859 cards with me, but you should get one of my cards before you leave today. And
1860 Mr. Condlin I'm sure can provide you with the phone number for the person who
1861 will be running that site on a daily basis. If you have any complaints or any
1862 concerns, we want to know about them. You're the one on the spot there.
1863

1864 Mr. Burcham - I appreciate it.
1865

1866 Mr. Blankinship - There are conditions here that we can require them to
1867 fix anything they do wrong, except that there is going to be truck traffic on the
1868 road that you're not used to. If there's dust on the road or mud on the road—
1869

1870 Mr. Burcham - I know they have to do what they have to do. No one
1871 is going to stop what they're doing. It would be safer if it wasn't on that road.

1872
1873 Mr. Blankinship - But if there's dust on the road or mud on the road, or
1874 the trucks are blocking traffic, or anything like that, we have conditions to
1875 address them. And your water wells.
1876
1877 Mr. Burcham - Right.
1878
1879 Mr. Blankinship - If there's something wrong with your water and
1880 they've caused it, we can make them fix it.
1881
1882 Mr. Burcham - Okay, I appreciate it.
1883
1884 Mr. Condlin - Again, we were willing to and wanted to go onto
1885 Charles City, but Public Works and Traffic felt that it was better for the public and
1886 safer to come out on Beulah Road. So we followed their suggestion and their
1887 lead on that. We have to go with the professionals on that issue.
1888
1889 Ms. Dwyer - Any other questions?
1890
1891 Mr. Wright - Yes. Mr. Condlin, I notice in Condition #27,
1892 "Excavation shall be discontinued by February 12, 2012." Do you think it will be
1893 finished by that time or do you think there's a possibility you might need to
1894 extend it?
1895
1896 Mr. Condlin - I'd always like to have more time, especially given the
1897 last—
1898
1899 Mr. Wright - I didn't know how things were going. If things go along
1900 pretty well, wouldn't that pretty well take care of it?
1901
1902 Mr. Condlin - Yes. That should take care of it, yes sir.
1903
1904 Mr. Wright - We also have that it's going to be over February 1,
1905 2012.
1906
1907 Mr. Blankinship - If not, there will be another hearing and you'll get
1908 another notice.
1909
1910 Ms. Harris - I just want to give Mr. Burcham the conditions. I don't
1911 know if he has a copy of the conditions. Do you? Okay. He needs a copy of that
1912 so he can monitor what's going on, if it's going to go on.
1913
1914 Ms. Dwyer - Any other questions?
1915
1916 Mr. Condlin - The conditions may be revised, so you probably want
1917 to give him the new ones.

1918
1919 Mr. Witte - I think the main concern I have, especially with the
1920 possibility of the larger dump trucks, is having the entranceway at only 24 feet. I
1921 can understand the concern because, frankly, pulling out of a driveway in a large
1922 pickup truck onto a narrow road can be an issue. If there is more room to make
1923 that radius, there's less chance of having an issue, especially in inclement
1924 weather.
1925
1926 Mr. Wright - If we change #32 so it says, "Adequate sight distance
1927 and turning radius."
1928
1929 Mr. Witte - I think a 40-foot entrance would be much more
1930 conducive to the area, especially with the narrow road. The trucks can actually
1931 get an angle coming in and out without a problem.
1932
1933 Mr. Blankinship - A 40-foot entrance. Would it then taper back?
1934
1935 Mr. Witte - It would taper back.
1936
1937 Mr. Condlin - I would request that it be tapered back.
1938
1939 Mr. Witte - Tapered back to 24 feet so there's adequate room for
1940 a truck to come in or leave, actually, to take it an angle so there's no possibility,
1941 or very little possibility of them going off the road on the other side and causing
1942 damage. Also, if it's a large vehicle, they stand less chance of running off the
1943 edge of the culvert with the rear wheels while they're pulling out.
1944
1945 Mr. Mitchell - A VDOT standard entrance is a 50-foot radii. We
1946 could put those on both angles so in both directions you'd be covered. We could
1947 offer that.
1948
1949 Ms. Dwyer - What does that mean exactly?
1950
1951 Mr. Mitchell - It adds more pavement with a curve to it so it actually
1952 follows the tracking of the wheel. You don't have to go above and beyond to get
1953 in the sight. And when you leave the sight, you're leaving on pavement. It
1954 appears it is a perpendicular situation right now, a rectangle hitting a road. We
1955 would put radii with curves in the pavement so that you would have a steady flow
1956 of movement in both directions to make sure that—
1957
1958 Mr. Witte - How much would that add?
1959
1960 Ms. Dwyer - At its widest point.
1961
1962 Mr. Wright - He said 50 feet.
1963

1964 Mr. Blankinship - I guess all the way at the existing edge of pavement it
1965 would be 50 feet, but then it would immediately start to taper.
1966
1967 Mr. Mitchell - Correct.
1968
1969 Mr. Witte - Okay, that's—
1970
1971 Ms. Dwyer - How does one phrase that?
1972
1973 Mr. Blankinship - I think we have it there with the condition he added
1974 earlier about the radius, adequate sight distance and turning radius.
1975
1976 Ms. Dwyer - Do we need to specify—
1977
1978 Ms. Harris - I'm sorry.
1979
1980 Ms. Dwyer - He was suggesting that—
1981
1982 Mr. Witte - One has to wait. There won't be room.
1983
1984 Ms. Dwyer - What it says now is, "Adequate sight distance and
1985 turning radius shall be provided." You're suggesting quantifying that?
1986
1987 Mr. Mitchell - Correct.
1988
1989 Ms. Dwyer - How would we quantify that?
1990
1991 Mr. Mitchell - Fifty-foot turning radius. We could actually modify the
1992 plan accordingly to show that radius on the plan.
1993
1994 Ms. Harris - That's according to VDOT?
1995
1996 Mr. Mitchell - Yes ma'am.
1997
1998 Ms. Harris - So we can say this is conforming to VDOT
1999 regulations?
2000
2001 Mr. Mitchell - That's standard from where—
2002
2003 Mr. Witte - The 50-foot turning radius.
2004
2005 Mr. Blankinship - We're dealing with a County road, so let's go with
2006 Public Works rather than VDOT.
2007
2008 Mr. Condlin - I'm a little confused. Again, I just want to clarify.
2009 Whatever you say is okay, but are we saying it's a 50-foot turning radius or

2010 turning radius as approved by DPW?

2011

2012 Mr. Blankinship - Adequate sight distance and 50-foot turning radius

2013 shall be required.

2014

2015 Mr. Condlin - Okay, that's fine.

2016

2017 Ms. Dwyer - All right. Any other questions by Board members?

2018 Any other comments by Mr. Burcham or Mr. Condlin? Thank you.

2019

2020 Mr. Condlin - Thank you.

2021

2022 Ms. Dwyer - That concludes the case.

2023

2024 **[After the conclusion of the public hearings, the Board discussed this case**

2025 **and made its decision. This portion of the transcript is included here for**

2026 **convenience of reference.]**

2027

2028 Ms. Dwyer - The final case, UP-004-10.

2029

2030 Mr. Wright - I move we approve this application. It's basically what

2031 we approved back in 2008 with the changes in the conditions.

2032

2033 Ms. Dwyer - Should we enumerate those conditions, changes?

2034

2035 Mr. Wright - That would be Conditions 2, 3, and 4 to have 180

2036 days in lieu of 90 days.

2037

2038 Mr. Blankinship - And #5 actually also has the reference.

2039

2040 Mr. Wright - Number 5, okay.

2041

2042 Ms. Dwyer - So 2, 3, 4 and 5 to reference 180 days instead of the

2043 90 days.

2044

2045 Mr. Wright - And #8 to strike *Saturday*. Have it read: "No

2046 operations of any kind are to be conducted on the site on Sundays or national

2047 holidays, and it shall be limited to 10 a.m. to 4 p.m. on Saturday."

2048

2049 Mr. Blankinship - Number 7 you want to add the 10 a.m. to 4 p.m.?

2050

2051 Mr. Wright - Well, we can put it anywhere you want. Just put it in

2052 7 that Saturday will be 10 to 4? That's good. And strike *Saturday* from #8.

2053

2054 Ms. Dwyer - So now the hours of operation—#7—6 to 6 and 7 to

2055 5, now those apply Monday through Friday.

2056
 2057 Mr. Blankinship - Yes ma'am.
 2058
 2059 Ms. Dwyer - So we need to specify that now that we're adding
 2060 Saturday.
 2061
 2062 Mr. Wright - Except for Saturday, which will be 10 to 4.
 2063
 2064 Ms. Dwyer - I'm just suggesting that we specify that the other
 2065 times refer just to Monday through Friday, and that the Saturday hours you're
 2066 recommending in your motion are 10 to 4.
 2067
 2068 Mr. Wright - Right.
 2069
 2070 Ms. Dwyer - All right. So that would be an amendment to 7 and 8.
 2071
 2072 Mr. Wright - Right.
 2073
 2074 Ms. Dwyer - All right.
 2075
 2076 Mr. Wright - And 24, strike *contaminated or*.
 2077
 2078 Ms. Dwyer - We want, "no hazardous material."
 2079
 2080 Mr. Wright - No hazardous material.
 2081
 2082 Ms. Dwyer - All right. And then 32.
 2083
 2084 Mr. Wright - Thirty-two. And I think you had the wording on that
 2085 one, didn't you?
 2086
 2087 Mr. Blankinship - Yes. It will read, "Adequate sight distance and 50-foot
 2088 turning radius shall be provided for the proposed construction entrance onto
 2089 existing Beulah Road as required by DPW."
 2090
 2091 Mr. Wright - Right. That's it, I think.
 2092
 2093 Ms. Dwyer - All right. Motion by Mr. Wright. Is there a second?
 2094
 2095 Mr. Nunnally - Second.
 2096
 2097 Ms. Dwyer - Seconded by Mr. Nunnally. Any discussion?
 2098
 2099 Ms. Harris - I cannot support this motion even though I would
 2100 normally go along with what we did in 2008. I think we set a dangerous
 2101 precedent when we take out contaminated materials.

2102
2103 Ms. Dwyer - I think I understand some of the concern because of
2104 the way we use the word *contaminated* in normal conversation, that it normally
2105 means something that is harmful or implies that something is harmful. But I think
2106 in this case because we have eliminated the use of hazardous materials and
2107 because there is a great deal of confusion about what the word *contamination*
2108 means in this context, I have no problem taking it out. I think it doesn't add
2109 anything since we've already eliminated hazardous materials and it perhaps
2110 does confuse things. I share your concern about the safety and welfare of
2111 people, but I believe that we've covered that under the hazardous materials.

2112
2113 Ms. Harris - I think if you ever do a tour of that general area from
2114 Charles City Road to Darbytown Road and just observe some things with runoff
2115 water, I think there would be no confusion in our minds what contamination
2116 means. This definition sounds really nice. That's one extreme, but there is
2117 another extreme. I think we are going to set a dangerous precedent in dealing
2118 with these—and we have many sites like this or very similar—when we start
2119 striking words like *contaminated* or *contamination* out of the guidelines.

2120
2121 Ms. Dwyer - Any other discussion? The neighbor was concerned
2122 about the Saturday operations. So are there any second thoughts that we have
2123 about their request for Saturday operating hours?

2124
2125 Mr. Witte - I think we changed it from 10 to 4.

2126
2127 Ms. Dwyer - Before, they were not permitted to have any operation
2128 on Saturdays.

2129
2130 Mr. Wright - It might expedite taking the material out of this and
2131 get the thing over with more quickly. It's a tradeoff. Get it done and get them out
2132 of there.

2133
2134 Ms. Dwyer - If I were a neighbor, I would like to have at least my
2135 weekends quiet and not be disturbed with dirt and dust.

2136
2137 Mr. Wright - Well, it gave you plenty of sleeping time in the
2138 morning and it stops at 4, so it doesn't interfere with later activities. It's pretty
2139 restricted.

2140
2141 Ms. Dwyer - All right. Anymore discussion? All right. Motion has
2142 been made and seconded. All in favor say aye. All opposed say no. The ayes
2143 have it; the motion passes.

2144
2145 After an advertised public hearing and on a motion by Mr. Wright, seconded by
2146 Mr. Nunnally, the Board **approved** application **UP-004-10, A & F I, LLC's**
2147 request for a conditional use permit pursuant to Sections 24-52(d) and 24-103 to

extract materials from the earth at 3740 Charles City Road (Parcels 827-702-8810 and 828-701-0583), zoned A-1, Agricultural District (Varina). The Board approved the conditional use permit subject to the following conditions:

1. This use permit is subject to all requirements of Section 24-103 of Chapter 24 of the County Code. The operation shall be conducted in accordance with the plans and narrative submitted with the application, except as noted below.

2. [AMENDED] Before beginning any work, the applicant shall provide a financial guaranty in an amount of \$3,000 per acre for each acre of land to be disturbed, for a total of \$49,500, guaranteeing that the land will be restored to a reasonably level and drainable condition, consistent with the elevation before the beginning of excavation. This permit does not become valid until the financial guaranty has been approved by the County Attorney. The financial guaranty may provide for termination after 90 days notice in writing to the County. In the event of termination, this permit shall be void, and work incident thereto shall cease. Within the next 90 days the applicant shall restore the land as provided for under the conditions of this use permit. Termination of such financial guaranty shall not relieve the applicant from its obligation to indemnify the County of Henrico for any breach of the conditions of this use permit. If this condition is not satisfied within 180 days of approval, the use permit shall be void.

3. [AMENDED] Before beginning any work, the applicant shall apply for and obtain approval of erosion and sedimentation control plans from the Department of Public Works (DPW). The erosion control bond necessary for approval of the plan shall remain active throughout the life of the project until release by DPW. Throughout the life of the operation, the applicant shall continuously satisfy DPW that erosion and sedimentation control is performed and maintained in accordance with the approved plan. The applicant shall provide certification from a licensed professional engineer that dams, embankments and sediment control structures meet the approved design criteria as set forth by the State. If this condition is not satisfied within 180 days of approval, the use permit shall be void.

4. [AMENDED] Before beginning any work, the areas approved for mining under this permit shall be delineated on the ground by five-foot-high metal posts at least five inches in diameter and painted in alternate one foot stripes of red and white. These posts shall be so located as to clearly define the area in which the mining is permitted. They shall be located, and their location certified, by a certified land surveyor. If this condition is not satisfied within 180 days of approval, the use permit shall be void.

5. [AMENDED] In the event that the approval of this use permit is appealed, all conditions requiring action within 180 days will be deemed satisfied if the required actions are taken within 180 days of final action on the appeal.

2194 6. The applicant shall comply with the Chesapeake Bay Preservation Act and all
2195 state and local regulations administered under such act applicable to the
2196 property, and shall furnish to the Planning Department copies of all reports
2197 required by such act or regulations.
2198

2199 7. [AMENDED] Hours of operation shall be limited to Monday through Friday,
2200 6:00 a.m. to 6:00 p.m. when Daylight Savings Time is in effect, and from 7:00
2201 a.m. to 5:00 p.m. at all other times, and Saturday, 10:00 a.m. to 4:00 p.m.
2202

2203 8. [AMENDED] No operations of any kind are to be conducted at the site on
2204 Sundays or national holidays.
2205

2206 9. All means of access to the property shall be from the proposed entrance onto
2207 Beulah Road as shown on the plans submitted with this application.
2208

2209 10. The applicant shall erect and maintain gates at all entrances to the property.
2210 These gates shall be locked at all times, except when authorized representatives
2211 of the applicant are on the property.
2212

2213 11. The applicant shall post and maintain a sign at the entrance to the mining
2214 site stating the name of the operator, the use permit number, the mine license
2215 number, and the telephone number of the operator. The sign shall be 12 square
2216 feet in area and the letters shall be three inches high.
2217

2218 12. The applicant shall post and maintain "No Trespassing" signs every 250 feet
2219 along the perimeter of the property. The letters shall be three inches high. The
2220 applicant shall furnish the Chief of Police a letter authorizing the Division of
2221 Police to enforce the "No Trespassing" regulations, and agreeing to send a
2222 representative to testify in court as required or requested by the Division of
2223 Police.
2224

2225 13. Standard "Truck Entering Highway" signs shall be erected on Beulah Road
2226 on each side of the entrances to the property. These signs will be placed by the
2227 County, at the applicant's expense.
2228

2229 14. The applicant shall post and maintain a standard stop sign at the entrance to
2230 Beulah Road.
2231

2232 15. The applicant shall provide a flagman to control traffic from the site onto the
2233 public road, with the flagman yielding the right of way to the public road traffic at
2234 all times. This flagman will be required whenever the Division of Police deems
2235 necessary.
2236

2237 16. The entrance road shall be paved from its intersection with Beulah Road for
2238 its entire length, at a width of 24 feet. All roads used in connection with this use
2239 permit shall be effectively treated with calcium chloride or other wetting agents to

eliminate any dust nuisance.

17. The operation shall be so scheduled that trucks will travel at regular intervals and not in groups of three or more.

18. Trucks shall be loaded in a way to prevent overloading or spilling of materials of any kind on any public road.

19. The applicant shall maintain the property, fences, and roads in a safe and secure condition indefinitely, or convert the property to some other safe use.

20. If, in the course of its preliminary investigation or operations, the applicant discovers evidence of cultural or historical resources, or an endangered species, or a significant habitat, it shall notify appropriate authorities and provide them with an opportunity to investigate the site. The applicant shall report the results of any such investigation to the Planning Department.

21. If water wells located on surrounding properties are adversely affected, and the extraction operations on this site are suspected as the cause, the effected property owners may present to the Board evidence that the extraction operation is a contributing factor. After a hearing by the Board, this use permit may be revoked or suspended, and the operator may be required to correct the problem.

22. Open and vertical excavations having a depth of 10 feet or more, for a period of more than 30 days, shall be effectively sloped to a 2:1 slope or flatter to protect the public safety.

23. Topsoil shall not be removed from any part of the property outside of the area in which mining is authorized. Sufficient topsoil shall be stockpiled on the property for respreading in a layer with five inches of minimum depth. All topsoil shall be stockpiled within the authorized mining area and provided with adequate erosion control protection. If the site does not yield sufficient topsoil, additional topsoil shall be brought to the site to provide the required five-inch layer of cover. All topsoil shall be treated with a mixture of seed, fertilizer, and lime as recommended by the County after soil tests have been provided to the County.

24. [AMENDED] No offsite-generated materials shall be deposited on the mining site without prior written approval of the Director of Planning. To obtain such approval, the operator shall submit a request stating the origin, nature and quantity of material to be deposited, and certifying that no hazardous material will be included. The material to be deposited on the site shall be limited to imperishable materials such as stone, bricks, tile, sand, gravel, soil, asphalt, concrete and like materials, and shall not include any hazardous materials as defined by the Virginia Hazardous Waste Management Regulations.

25. A superintendent, who shall be personally familiar with all the terms and

conditions of Section 24-103 of Chapter 24 of the County Code, as well as the terms and conditions of this use permit, shall be present at the beginning and conclusion of operations each work day to see that all the conditions of the Code and this use permit are observed.

26. A progress report shall be submitted to the Board on February 1, 2011. This progress report must contain information concerning how much property has been mined to date of the report, the amount of land left to be mined, how much rehabilitation has been performed, when and how the remaining amount of land will be rehabilitated, and any other pertinent information about the operation that would be helpful to the Board.

27. Excavation shall be discontinued by February 1, 2012, and restoration accomplished by not later than February 1, 2013, unless a new permit is granted by the Board of Zoning Appeals.

28. The rehabilitation of the property shall take place simultaneously with the mining process. Rehabilitation shall not be considered completed until the mined area is covered completely with permanent vegetation.

29. All drainage and erosion and sediment control measures shall conform to the standards and specifications of the Mineral Mining Manual Drainage Handbook.

30. The applicant shall provide clarification in regards to the expected timeline for the extraction of the materials from the earth and the restoration of the site.

31. The backfill shall be compacted to 95 % density in lifts of 6 inches with suitable material. The compaction of the backfill shall be verified through a geotechnical service and the report provided to the Planning and Public Works Departments. This condition shall be added to the notes regarding the Restoration Sequence on Sheet C2.1.

32. [AMENDED] Adequate sight distance and 50-foot turning radius shall be provided for the proposed construction entrance onto existing Beulah Road, as required by Department of Public Works standards.

33. The site shall be filled only to the elevation existing prior to excavation.

34. Failure to comply with any of the foregoing conditions shall automatically void this permit.

Affirmative:	Dwyer, Nunnally, Witte, Wright	4
Negative:	Harris	1
Absent:		0

2332
 2333 **[At this point, public hearings have concluded and the transcript continues**
 2334 **below with general Board discussion.]**
 2335
 2336 All right, why don't we go ahead and handle the cases in reverse order.
 2337
 2338 Mr. Blankinship - Madam Chairman, may I request that we handle them
 2339 in the order in which they occurred? I'll explain why later.
 2340
 2341 Ms. Dwyer - Okay. No one usually cares, so.
 2342
 2343 Mr. Blankinship - Yes. I'll explain why now then. When I was going
 2344 over the minutes this last time, I noticed that we had the two cases from the
 2345 same applicant. On the first case, there were comments in the record referring
 2346 back to the second case. The decisions were heard out of order, but they still
 2347 appear in the minutes in the order that the hearing occurred. It got ambiguous
 2348 and unclear, and I think if we decide them in the same order in which we've
 2349 heard them—it's not a big issue.
 2350
 2351 Ms. Dwyer - Right. Maybe references made to cases prior or after.
 2352
 2353 Mr. Blankinship - Somebody said, "Well, just like we did in the last
 2354 case." It was the next case in the minutes but it was the last case on which the
 2355 decisions were made.
 2356
 2357 Ms. Dwyer - I see your point. All right. Maybe we'll make that a
 2358 common practice then.
 2359
 2360 **[At this point, Board discussion now begins, starting with the first case, A-**
 2361 **001-10. These discussions are referenced in the transcript following the**
 2362 **public hearing on that case. After all case discussion and voting is**
 2363 **completed, the transcript continues below with the rest of the meeting.]**
 2364
 2365 Ms. Dwyer - That concludes the review of cases. The next item
 2366 on our agenda is the approval of the Minutes. Mr. Blankinship, I'm thinking
 2367 based on what you said earlier about the reference to a previous case that was
 2368 actually decided in a different order, could we put an editor's note in brackets
 2369 that explains what case that reference is made?
 2370
 2371 Mr. Blankinship - In the minutes from December?
 2372
 2373 Ms. Dwyer - Yes.
 2374
 2375 Mr. Blankinship - Yes ma'am, we can do that.
 2376
 2377 Ms. Dwyer - An editor's note that this references a case heard

2378 before it and you could just list the case number.
 2379
 2380 Mr. Blankinship - And put the line number. Sure, we can do that.
 2381
 2382 Ms. Dwyer - That will clarify it for anybody who might need to read
 2383 those minutes. Any other recommendations or amendments? Motion on the
 2384 minutes?
 2385
 2386 Mr. Wright - I move they be approved as submitted.
 2387
 2388 Ms. Dwyer - With the editor's note?
 2389
 2390 Mr. Wright - Yes, the editor's note that clarifies the references.
 2391
 2392 Ms. Dwyer - Motion by Mr. Wright to approve the minutes as
 2393 stated. Do I have a second?
 2394
 2395 Mr. Nunnally - Second.
 2396
 2397 Ms. Dwyer - Seconded by Mr. Nunnally. All in favor say aye. All
 2398 opposed say no. The ayes have it; the motion passes.
 2399
 2400 On a motion by Mr. Wright seconded by Mr. Nunnally, the Board **approved as**
 2401 **presented the Minutes of the December 17, 2009** Henrico County Board of
 2402 Zoning Appeals meeting.
 2403
 2404 Affirmative: Dwyer, Harris, Nunnally, Witte, Wright 5
 2405 Negative: 0
 2406 Absent: 0
 2407
 2408 Ms. Dwyer - Before we adjourn, I just thought I'd mention that Mr.
 2409 Wright and I have had some debate about the application of the statutes and
 2410 some discussion in our meetings. So the two of us decided to get together over
 2411 the last month and talk about the statute and try to come up with an outline that
 2412 we felt comfortable with and a review of the applicable law as we saw it. We've
 2413 done that and would like to share that with you, if you're interested in receiving it.
 2414 You can do with it whatever you want. We would like to share our work product
 2415 with you and perhaps discuss what we've done after our next meeting, if you're
 2416 inclined.
 2417
 2418 Ms. Harris - Is this homework?
 2419
 2420 Ms. Dwyer - Yes it is.
 2421
 2422 Mr. Wright - What we suggest is that we would pass these out
 2423 today. Do we have these available?

2424
 2425 Ms. Dwyer - Do you have copies?
 2426
 2427 Mr. Blankinship - You know what? I was not prepared to distribute them
 2428 today, but we can—
 2429
 2430 Mr. Wright - I just thought maybe they would have a chance to
 2431 look at them and then—
 2432
 2433 Mr. Blankinship - I'll have them in a few minutes.
 2434
 2435 Ms. Dwyer - All right.
 2436
 2437 Mr. Wright - They're both the same. Mine is a little more detailed.
 2438 We will give you both of these. At the conclusion of the February meeting, we
 2439 can go into executive session and discuss this and have lunch.
 2440
 2441 Ms. Dwyer - Yes, lunch is included. There is no disagreement in
 2442 terms of what we've come up with on paper; it's just a question of how we would
 2443 interpret it in a given situation. We just thought it would be a good opportunity to
 2444 get together and talk about this again because the statute is very confusing. It is
 2445 repetitive.
 2446
 2447 Mr. Wright - We're talking about variances. And we would have a
 2448 cheat sheet, one page on variance cases. At least you could find in there that
 2449 this is the reason we're denying it. Interpretations, we don't agree fully on all the
 2450 interpretations, but that's something else. We can discuss that, too. We had a
 2451 good session and worked out some of this. I think this is the idea. We wanted to
 2452 try to be more consistent in our application of the law. Not telling you how you
 2453 view the law, but at least you have it and you know how to address it.
 2454
 2455 Ms. Dwyer - Yes. So we're all sort of working from the same [blank
 2456 section in the recording] figuring out how do we organize the [blank section in the
 2457 recording]. Also, this will give us some language options [blank section in the
 2458 recording] our motion into the statute, the statutory language.
 2459
 2460 Ms. Harris - Let me ask you this. Are you examining the Cochran
 2461 case? In your handout are you delving deeper into that?
 2462
 2463 Mr. Wright - No, we're not really.
 2464
 2465 Ms. Harris - Okay.
 2466
 2467 Mr. Wright - We can discuss that. We address it. What this is is a
 2468 step-by-step process of what you go through when you approve or disapprove a
 2469 variance. If we went into all these details, we would be into volumes. This is to

2470 be a short synopsis of how we address the law, what we consider when we
2471 approve a variance application. The law is very confusing. It is not set forth in
2472 what I consider a logical manner. We were trying to unravel that so at least
2473 you'd have something to say this is the basis for my decision. We can get into
2474 much more of that when we have our discussion.

2475

2476 Ms. Harris - At the last meeting in the minutes, I noticed that
2477 someone mentioned another case that had come before the Court?

2478

2479 Mr. Blankinship - Yes. They have appealed both of those 50-foot
2480 cases.

2481

2482 Ms. Harris - In the minutes, they were referencing another case
2483 that had come up before the Supreme Court, I believe.

2484

2485 Mr. Blankinship - Yes. There are a number of Supreme Court cases
2486 that bear on the hearing of variances.

2487

2488 Ms. Harris - Okay.

2489

2490 Mr. Blankinship - Cochran certainly doesn't stand alone.

2491

2492 Mr. Wright - Well, Cochran deals with the basic issue of whether
2493 or not there is a beneficial use of the property. And good faith, we'll talk about
2494 that, too. That's the first requirement in approving a variance, that the property
2495 has to be acquired in good faith. That's number one. And then you go for *and*,
2496 and you add these other things.

2497

2498 Ms. Dwyer - It was helpful for me to go through this exercise. So
2499 we'll do that. I believe we're going to go into executive session.

2500

2501 Mr. Blankinship - If you would like, you certainly are entitled to since it
2502 is potential litigation.

2503

2504 Mr. Wright - Well, we're talking about the law.

2505

2506 Ms. Harris - We'll do this after the agenda items are discussed?

2507

2508 Mr. Wright - We'll adjourn and go to a conference room, I guess.

2509



2510 Mr. Wright - And have a lovely lunch.

2511

2512 Mr. Wright - Have a motion to go into executive session to discuss
2513 the law.

2514

2515 Ms. Dwyer - And Ben, you'll have the—I know there's a procedure

2516 that—
 2517
 2518 Mr. Blankinship - Yes.
 2519
 2520 Ms. Dwyer - —the County Attorney have given us. Okay, great. All
 2521 right.
 2522
 2523 Mr. Blankinship - I keep it with me at all times.
 2524
 2525 Ms. Dwyer - Any other business?
 2526
 2527 Mr. Wright - Better comply with that.
 2528
 2529 Ms. Dwyer - Motion for adjournment?
 2530
 2531 Mr. Wright - I move we adjourn.
 2532
 2533 Ms. Harris - Second.
 2534
 2535 Ms. Dwyer - Seconded by Ms. Harris. All in favor say aye. All
 2536 opposed say no. The ayes have it; the motion passes.
 2537
 2538 Affirmative: Dwyer, Harris, Nunnally, Witte, Wright 5
 2539 Negative: 0
 2540 Absent: 0
 2541
 2542
 2543 There being no further business, the Board **adjourned until the February 25,**
 2544 **2010 meeting at 9 a.m.**
 2545
 2546 
 2547 Elizabeth G. Dwyer
 2548 Chairman
 2549
 2550 
 2551 Benjamin Blankinship, AICP
 2552 Secretary
 2553
 2554