

1 **MINUTES OF THE REGULAR MEETING OF THE BOARD OF ZONING**
2 **APPEALS OF HENRICO COUNTY, HELD IN THE COUNTY**
3 **ADMINISTRATION BUILDING IN THE GOVERNMENT CENTER AT PARHAM**
4 **AND HUNGARY SPRING ROADS, ON THURSDAY JUNE 26, 2014 AT 9:00**
5 **A.M., NOTICE HAVING BEEN PUBLISHED IN THE RICHMOND TIMES-**
6 **DISPATCH JUNE 9, 2014, AND JUNE 16, 2014.**

7
Members Present: R. A. Wright, Chairman
James W. Nunnally, Vice Chairman
Greg Baka
Gentry Bell
Helen E. Harris

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

8
9 Mr. Wright - ...the flag of our country.

10
11 Mr. Blankinship, would you please read our rules.

12
13 Mr. Blankinship - Good morning, Mr. Chairman, members of the Board,
14 ladies and gentlemen, the rules for this meeting are as follows: Acting as
15 secretary, I will announce each case. And as I'm speaking, the applicant should
16 come up to the podium. We will then ask everyone who intends to speak to that
17 case to stand and be sworn in. Then the applicant will present their case. Then
18 anyone else who wishes to speak will be given the opportunity. After everyone
19 has had a chance to speak, the applicant and only the applicant will have an
20 opportunity for rebuttal. After the Board has heard all the evidence and asked
21 any questions, they will take that matter under advisement, and they will go on to
22 the next case on the agenda. They will render all of their decisions at the end of
23 the meeting. So if you wish to know their decision on a specific case, you can
24 either stay until the end of the meeting or you can check the Planning
25 Department website—we update it within about an hour of the end of the
26 meeting—or you can call the Planning Department this afternoon.

27
28 This meeting is being recorded so we ask everyone who speaks to speak directly
29 into the microphone on the podium, state your name, and please spell your last
30 name so we get it correctly in the record.

31
32 Finally, there's a binder in the foyer that contains the staff report for each case,
33 including the conditions that have been recommended by the staff. It's very
34 important that particularly the applicant be familiar with those conditions.

35
36 Mr. Wright - Are there any deferrals or withdrawals?

37 Mr. Blankinship - No sir.
38
39 Mr. Wright - Please call the first case.
40
41 **CUP2014-00009** **DOMINION GOLF OF VIRGINIA, LLC** requests a
42 conditional use permit pursuant to Section 24-89(c) of the County Code to
43 develop a wetlands mitigation bank at 300 Lee Avenue (Parcel 824-730-0699),
44 zoned Conservation District (C-1) and One-Family Residence District (R-2A)
45 (Varina).
46
47 Mr. Wright - All persons desiring to speak with reference to this
48 case, please stand, raise your hand, and be sworn. This is whether you're for or
49 against. Thank you.
50
51 Mr. Blankinship - Raise your hand, please. Do you swear the testimony
52 you're about to give is the truth, the whole truth and nothing but the truth so help
53 you God?
54
55 Mr. Wright - All right. Please state your name for the record, sir.
56
57 Mr. Mistr - Spud Mistr—M-i-s-t-r.
58
59 Mr. Wright - Please present your case.
60
61 Mr. Mistr - This case came up several years ago. All work within
62 the project has been completed. We placed a stockpile there because originally
63 the entire area was going to be a wetlands bank. The stockpile was going to be
64 used to fill the ponds to create wetlands when phases two and three were
65 constructed. After phase one was constructed, we decided not to move forward
66 with phases two and three, but to instead convert it into a nutrient bank, which is
67 phosphorous and nitrogen credits. That has been done. It's been approved by
68 the DEQ and the Corps of Engineers. The only thing left to do is get the County
69 to approve leaving the stockpile as a permanent berm. And that's why we are
70 here. We don't intend to do any more construction activity on the site. Up until
71 this morning, all conditions of the original use permit have been adhered to
72 except the stock pile encroachment onto the sanitary sewer easement.
73
74 Mr. Wright - Are you in accord with the conditions that have been
75 proposed by the staff?
76
77 Mr. Mistr - We're in agreement with them. I think as soon as the
78 use permit—they don't apply as soon as the use permit is ended which will be—
79 now they're all been complied with so far, yes.
80
81 Mr. Wright - Any questions from members of the Board?
82

83 Ms. Harris - Have you removed the stockpile from the easement
84 area?
85
86 Mr. Mistr - No, it hasn't been removed. We're asking to let it stay.
87 The Department of Utilities wants a little bit of it moved so the cover won't be
88 quite as deep over the sanitary sewer.
89
90 Ms. Harris - Where will you move it?
91
92 Mr. Mistr - To adjacent to the existing stockpile.
93
94 Ms. Harris - Will it go in the pond?
95
96 Mr. Mistr - No. Not intended. No, it will not.
97
98 Ms. Harris - Can you look at Condition #16? Are you able to
99 comply with this condition?
100
101 Mr. Mistr - Yes. In fact, I gave Mr. Blankinship a grading plan. It
102 was profiled this morning when—
103
104 Mr. Blankinship - Yes, that was left at your table.
105
106 Mr. Nunnally - Well you agree with all of these conditions. According
107 to Public Works that's what you have to do, correct?
108
109 Mr. Mistr - Correct, yes.
110
111 Mr. Blankinship - It took quite a bit of time to get survey crews out there
112 and locate exactly where the manholes were and be absolutely certain where the
113 pipe was. So this has been in the works for a while. But Utilities did finally meet
114 with the engineer on the site. They believe they've got it all resolved. If you look
115 on the plan on the screen, on the left side of the stockpile there are two places
116 where there's a circle with the letter "S" in it. Those are manholes. The "S" is for
117 "sanitary sewer." And you can see the stockpile extends between those two, and
118 that's where the pipe runs, from one manhole to the next. And they're just going
119 to move some of that soil from that point around the corner there to where you
120 see the shaded area.
121
122 Mr. Wright - Is staff in accord with this?
123
124 Mr. Blankinship - Public Utilities was the one that raised the concern in
125 the first place, and they're satisfied so the Planning Department would go along
126 with that.
127
128 Mr. Wright - How long will this take?

129 Mr. Mistr - The staff report said they wanted it done by the end of
130 August. We'd like to have until the end of October because there's growth in
131 there now, and it would a lot easier to do once all the vegetation dies in the fall.
132

133 Mr. Wright - What will be involved with trucks entering or leaving
134 the—
135

136 Mr. Mistr - There won't be any trucks.
137

138 Mr. Wright - There won't be any trucks?
139

140 Mr. Mistr - It will all be done with a backhoe or grader or
141 something like that.
142

143 Mr. Wright - So there won't be anything brought in or taken from
144 the area? No trucks.
145

146 Mr. Mistr - No, no trucks.
147

148 Mr. Wright - And this will be done with a backhoe.
149

150 Mr. Mistr - A backhoe or a—yes, a small grading machine, yes.
151

152 Mr. Bell - Mr. Mistr, a couple of really hindsight questions. As
153 you said, this has been going on for a couple of years. And the issue has been
154 16 20 from the original problem by moving this pile. It was supposed to be moved
155 two years ago in the original contract. Why wasn't it moved, is one of my
156 questions. And my second question is how will it be checked that it's moved this
157 time.
158

159 Mr. Mistr - I didn't hear your second question. How what?
160

161 Mr. Bell - How will it be checked to see if it's being moved this
162 time?
163

164 Mr. Mistr - The County can come down there at any time to
165 check. We'll let them know when we're going to move it. The plan was to move it
166 when the second phase was developed, but due to the economy for the last five
167 years it was—we decided to go in another direction.
168

169 Mr. Bell - Thank you.
170

171 Mr. Wright - Any further questions from members of the Board?
172

173 Ms. Harris - Yes. On this drawing that we see before us, are those
174 apartments to the left of the—yes. Are they apartments?

175
176 Mr. Blankinship - Those are townhouses.
177
178 Ms. Harris - Those are townhouses.
179
180 Mr. Blankinship - There are apartments due west of the stockpile. Yes,
181 right over there.
182
183 Ms. Harris - I noticed in the condition you say you will secure an
184 easement to cross Lee Avenue, the private property. Lee Avenue. Will you need
185 an easement if you're not going to have trucks crossing it?
186
187 Mr. Mistr - The easement was in there before we started. It's a
188 permanent easement that was there when it was a golf course.
189
190 Ms. Harris - To cross Lee Avenue, that portion of Lee Avenue.
191
192 Mr. Mistr - It's at the end of Lee Avenue. Where Lee Avenue
193 stops there's an easement across that property to get to this property.
194
195 Mr. Blankinship - But that portion of the project is all complete, right?
196
197 Mr. Mistr - The project is over. And when I say *trucks*, I'm talking
198 about dump trucks. When people go in there to hunt and fish they'll take pickup
199 trucks that will go down that road.
200
201 Mr. Wright - Mr. Mistr, you mentioned that it will expire. I'm
202 looking. What date is that?
203
204 Ms. Harris - October.
205
206 Mr. Blankinship - As of now it's August 31st. He's asked to extend it to
207 October 31st.
208
209 Mr. Wright - You're in accord with all of these conditions except for
210 that expiration date. Is that correct?
211
212 Mr. Mistr - Correct, yes sir.
213
214 Mr. Wright - And you want that to be October 31st?
215
216 Mr. Mistr - Yes.
217
218 Mr. Wright - Of 2014.
219
220 Mr. Mistr - Correct.

221
222 Mr. Blankinship - Staff has no problem with that.
223
224 Mr. Wright - Staff has no problem with it. What happens when it
225 terminates?
226
227 Mr. Mistr - What happens when?
228
229 Mr. Wright - When this October 31st, 2014 occurs, what happens
230 at that point?
231
232 Mr. Mistr - When we move the dirt, we get the erosion control
233 bond back off of the stockpile we had posted with Henrico County. And it will
234 continue to operate and it just won't be any construction. It's in a preservation
235 easement. It's in a permanent preservation easement.
236
237 Mr. Wright - So from that point on, nothing will happen on the
238 property.
239
240 Mr. Mistr - Correct.
241
242 Mr. Baka - At that point on it'll be seeded and stabilized.
243
244 Mr. Mistr - It already is.
245
246 Mr. Baka - Yes. Full stabilization.
247
248 Mr. Mistr - No further moving of dirt.
249
250 Mr. Wright - So in lay terms it will just be sitting there.
251
252 Mr. Mistr - Yes.
253
254 Mr. Wright - Into the future.
255
256 Mr. Mistr - Yes. For longer than any of us will be here.
257
258 Mr. Wright - No activity, nothing coming, nothing going or anything
259 like that.
260
261 Mr. Mistr - No. There are people that hunt there and they fish
262 there. There are very few permits to do it. In fact, one of our owners was in court
263 a couple weeks ago with people for trespassing and fishing without a permit. The
264 game warden is aware of this, and the Henrico Police are aware of this. And they
265 know is allowed in and out of there. The homeowners in Chickahominy Woods

266 have been very good about calling when they see people back there that are not
267 supposed to be.

268
269 Mr. Wright - All right. Any further questions?

270
271 Mr. Nunnally - Mr. Mistr, the Chickahominy Woods Townhouse
272 Association, I believe we have a note from them about messing with the pond.
273 They don't want dirt from the stockpile placed in the pond.

274
275 Mr. Mistr - None will be in the pond, that's correct.

276
277 Mr. Nunnally - You won't mess that or the hill either.

278
279 Mr. Mistr - No. We won't touch the hill.

280
281 Mr. Wright - Any further questions from members of the Board? Is
282 there anything further you wish to state for the application?

283
284 Mr. Mistr - No sir.

285
286 Mr. Wright - Anyone here in opposition to this request? Please
287 come to the podium. Please state your name for the record.

288
289 Ms. Haller - I'm Judy Haller—H-a-l-l-e-r. I'm on the Chickahominy
290 Woods Townhomes board. We have a concern as to where they want to dump
291 the extra that they're taking off. Our Colonel Drive storm sewer system ends up
292 on their property. In fact, all three of our storm sewers end up on their property. It
293 goes down—I don't know if I can. 300 Colonel is the last unit up towards the hill.
294 Just past that is the end of one of our storm drains. It goes down through a gully
295 that's right on—kind of on the line. Yes, right where the hand is now. And it goes
296 in kind of like a dry creek bed going down the hill. But then it goes through a pipe
297 underneath the walkway right there. And it ends up right where they want to
298 dump that land—I mean dump that dirt. And we're afraid. We've already had
299 flooding on another end of Colonel Drive, which went through a lot to get fixed.
300 So we're kind of concerned that dumping it there might create a backlog of water
301 coming up into the gully. Those units on the end already have sump pumps.
302 We're afraid of flooding on our street.

303
304 The other thing, the other end of our drive is down on the opposite end of that
305 group of townhouses. Over a little bit. Okay. And it comes out where that
306 manhole is. Okay. And the water runs onto their property in the dry creek bed.
307 The two of them kind of join in a dry creek bed. The water from that joins on their
308 property. It probably would affect that one as much as it would the other one.

309
310 So we'd like to have that looked into because of the possibility of backing up our
311 sewer line.

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I think I've covered everything. We would like to have that checked out to make sure it's not—I received an e-mail from Mr. Gidley, and he said that you all were thinking they would be putting the excess dirt behind the stockpile away from us. And we agree with doing that rather than putting it where they want to put it. Okay?

Mr. Wright - Thank you very much. Any questions?

Ms. Harris - I may have missed something. Did the applicant state where he wanted to put the stockpile?

Mr. Blankinship - It's where the hatched area is.

Mr. Wright - That hatched area.

Ms. Haller - That hatched area on the bottom part. Originally we didn't like the pile there. But then after it grows green it's fine. And so the townhouse board said that's fine, leave the pile there. And we're fine with that. We just don't want it put in the pond, his pond, because that's our view. But where they're putting it now, I just to make sure that we don't have drainage problems because of where it's going. Okay?

Mr. Wright - Thank you. Yes ma'am.

Ms. Pezzella - Good morning. My name is Dawn Pezzella. Spelling is P-e-z-z-e-l-l-a. That's two z's and two l's. We thank you for your time this morning. I am a new homeowner in Chickahominy Woods. I closed last August, moved in in September. I am a member of the board, an elected treasurer. I'm here to support my community and my investment.

One of my concerns is that as a new homeowner we have paid quite a bit of money for the drainage issue that Judy mentioned earlier in the lower portion of Colonel, which is marked with the "s" for "sewage." Like any homeowners association, we have fifty units, so we're limited to the amount that we can spend for unexpected events.

Basically, when I looked into buying this property, one of my concerns was the fact that the golf course was no longer there. So therefore there is no maintenance. There are no people playing golf. There's no day-to-day viewing of what's going on. This lays dormant. Nobody comes there unless there's an issue. In my opinion—I'm a retired banker so I'm familiar with a lot of this—the deadline for August, the end of August should suffice because, as you've already point out here, we're looking at two-year prolonged issue. That is my concern as a new homeowner.

358 Also, as Judy has pointed out, we have the unit 300, which is very close to the
359 manhole. I have also been forwarded the e-mails that I believe the gentleman's
360 name is Mr. Gilley.

361

362 Mr. Blankinship - Gidley.

363

364 Ms. Pezzella - Gidley. Thank you. And it seems to us that if we're not
365 talking about heavy equipment, heavy trucks, as the gentleman that spoke earlier
366 has said, that if we're just simply talking grading to suffice to meet the County's
367 requirements for abatement of the extra dirt and therefore the wait with regard to
368 the sewage—which we certainly understand; obviously we're being facilitated by
369 the sewage as well in some way—that we could simply grade that. I mean they're
370 making it sound as though it's not going to be a major operation because they've
371 already said there are no trucks. Well if there are no trucks, then could we not
372 have it graded as was suggested by the Planning Department to simply grade
373 going back? That certainly would not affect our community. It is obviously vacant
374 land. That seems to me to be preferable. Now I'm not an engineer and I don't
375 know what it takes to grade, but if we're not talking heavy equipment—I do
376 gardening. I have to put the dirt somewhere. So if I'm not pulling it out in trucks
377 and we're just looking at I guess bringing in a flatbed and moving the earth, why
378 can't we simply move it from where it is to clear and meet the requirements,
379 which we certainly would like to comply with as an adjoining community, and
380 simply push it back to vacant properties where there is no issue with regard to
381 sewage. I think any one of us as homeowners—yourselves included—can
382 appreciate it's not just my generation, but my children and my grandchildren that
383 will obviously inherit that property, not have that as a concern. That's what my
384 main concern is going forward.

385

386 The community was built in the '70s, so we already have, as you can appreciate,
387 infrastructure issues. As your community depreciates, etcetera, it's rather hard to
388 get a group of fifty units to be able to take on something with regard to drainage
389 and all the issues that come from there. Basically we're on a swamp. I mean, you
390 have the Chickahominy behind us. The golf course was built on swamp. Every
391 single hole had a water feature, and there was a reason for it. They didn't dig it; it
392 was there. You're in swampland initially. So you have insects and mosquitoes
393 and snakes and so forth and so on. So we'd like to preserve and keep as much
394 away from the community as we possibly can.

395

396 We appreciate your time.

397

398 Mr. Wright - Your point is, after all that, that where they want to
399 move this dirt shown on this hatched area, you think that would cause a drainage
400 problem.

401

402 Ms. Pezzella - Yes sir.

403

404 Mr. Wright - Do you have any basis for that?
405
406 Ms. Pezzella - Well, we've already fixed a drainage problem and
407 spent thousands of dollars closer to the manhole, the unit that is at the far end.
408 The first manhole with the "s" is at 300. The one at the bottom there that joins it
409 there where the curvature comes around, we've just spent thousands of dollars
410 for a drain issue there.
411
412 Mr. Wright - I can understand that. I will find out now how many
413 feet that would be required for that little excess material.
414
415 Ms. Pezzella - Right.
416
417 Mr. Wright - Also, why do you object to giving them a little longer
418 to do it?
419
420 Ms. Pezzella - Why do we object giving them longer to do it?
421
422 Mr. Wright - From August to October.
423
424 Ms. Pezzella - That's just personal.
425
426 Mr. Wright - Two months.
427
428 Ms. Pezzella - Yes. As I say, I'm feeling that there is not a lot of
429 cooperation insofar as—this is a personal observation. I'm just giving my opinion.
430 Insofar as this has been a two-year process, and it seems to me that they would
431 accommodate an adjoining community and simply move the dirt back away from
432 the community as opposed to—
433
434 Mr. Wright - Well, that's not the point. That doesn't have anything
435 to do with giving them two more months to do it. How does that impact the
436 community?
437
438 Ms. Pezzella - We'll just leave that a moot point. It's not important.
439
440 Mr. Wright - Okay. Thank you. Any other questions from members
441 of the Board?
442
443 Mr. Baka - I guess the only comment I have is if the soil were
444 contained within that small area, that small area hatched for excess material, and
445 if it were seeded and stabilized, I'm trying to understand the impact to the inlet
446 features and the storm drain there.
447
448 Ms. Pezzella - If Judy could speak again? She's been more involved,
449 as I am a new member of the community. I'm concerned about the expenditure

450 that we've made in the lifetime that I've been there, which is on a related
451 drainage problem. We have issues with drainage onto the property of Old
452 Dominion. That's why we paid to put our own in. But Judy perhaps could speak
453 to the specifics with regard to the sewage.

454

455 Mr. Baka - When you say *sewage*, you mean storm drains.

456

457 Ms. Pezzella - The storm drain.

458

459 Mr. Baka - I'll be glad to address my question to either of you, but
460 let me just round it by saying if the area of soil is contained within an area for
461 excess material as shown, and you have an engineer from Virginia stamping an
462 erosion and sediment control plan showing that it will meet the minimum
463 standards, the minimum nineteen standards of DEQ's E&S handbook, I don't see
464 why it wouldn't prevent the drainage issue at that point. So I guess that's my
465 question to Judy at this point. Thank you.

466

467 Ms. Haller - Did they actually look at our property and our drain
468 system? A lot of times they do stuff there that they don't even know the drainage
469 system's there.

470

471 Mr. Blankinship - I'm sorry. It's more important to have you on the
472 microphone.

473

474 Ms. Haller - Right at the corner of that top unit 300. Okay. If you
475 go up just a tiny touch and you come at an angle down—oh, can I point? Oh,
476 okay. I have control of it. Okay. [Off microphone] Right here is a walkway. Okay.

477

478 Mr. Blankinship - We do need you on the microphone.

479

480 Ms. Haller - Right there is the walkway. Okay? Under the walkway
481 is a pipe that takes all the water coming from our street. It comes down the hill in
482 the gully between our two properties. It goes under the walkway through the pipe.
483 There is kind of like a groove or a dry stream bed here that the water flows into.
484 Over here where the other storm drain comes out, it goes through a pipe under
485 their walkway and goes into a dry stream bed that goes to here.

486

487 Do you see where—I don't know how far and how much dirt that's going to be.
488 But if they fill that with dirt, we no longer have water—I mean it would be like
489 putting a wall there and the water stops. Where's it going to go? We're on a hill;
490 we get lots of water. When it rains heavy, I mean, the rain comes down in
491 torrents. Even if it doesn't flood the street, it might end up flooding up here. We
492 looked at it and there's a lower-lying area in there where it could flood on the
493 property. The street ends here.

494

495 Mr. Wright - If they were to move—

496

497 Ms. Haller - I don't know if anybody ever checked that. It seems
498 like a lot of times things are done on the golf course property that are not taking
499 into consideration—well, I shouldn't say it because they did about the berm. I
500 mean they asked us about that, whether we wanted it there or not. But I mean
501 did anybody look at our drainage system? Or did they just look at the golf course
502 property? That's what I'm asking about is for them to check to see if this is going
503 to affect how the water comes off of our streets.

504

505 Mr. Wright - You're point is they should move it around to the back
506 side.

507

508 Ms. Haller - Yes. All I'm asking is for them to take this dirt and put
509 it back here or maybe they can put it in there. I don't know where they want—but
510 I mean can't you just shove it straight back to here where it doesn't harm
511 anybody? This to me is getting a little close to our drainage system for comfort.
512 It's possible that it might even fill in that. That pipe is probably right about here,
513 the end of the pipe that comes out. To tell you the truth, I think this map's a
514 little—well. It comes out right there. Did anybody check it? That's all I want to
515 know. Did anybody check that it's not going to affect our streets?

516

517 Mr. Wright - Any answer to that, Mr. Blankinship?

518

519 Mr. Blankinship - It was staff's recommendation that it be moved to the
520 east side of the stockpile—

521

522 Ms. Haller - I saw that.

523

524 Mr. Blankinship - —rather than the south. Mr. Mistr is probably the best
525 one to address that.

526

527 Ms. Haller - Right.

528

529 Mr. Wright - It doesn't look like that should be a big deal.

530

531 Ms. Haller - Me neither. I wouldn't think that putting it somewhere
532 else would be a big deal either, just to make sure that we don't have any more
533 flooding on our streets. We paid out tons of money for the flooding on our other
534 street. Granted, we had a broken pipe, but we also had a problem—

535

536 Mr. Blankinship - I was wondering how you could have a drainage
537 problem on the side of a cliff like that.

538

539 Ms. Haller - Oh, not over here. We had one here. We had a
540 drainage problem here.

541

542 Mr. Blankinship - If it was a broken pipe that would—
543
544 Ms. Haller - We ended up with a broken pipe, but we also needed
545 to do some stuff down at the bottom because it was kind of grown over with roots
546 at the end of the pipe and stuff. And that cost us tons of money. We just don't
547 want to go through that again. Okay? So if anybody could just at least check it. It
548 seems to me it would be a whole lot—I mean can't you just shove it back like
549 this? Right over here. That's where the County wanted it, right?
550
551 Mr. Blankinship - Yes.
552
553 Ms. Haller - And we agree with the County. That's all I want to
554 say.
555
556 Mr. Wright - All right. Thank you very much. Anybody else desire
557 to speak in opposition? Mr. Mistr, you have time to rebut, if you would. My
558 question to you is why wouldn't it be just as easy to put it around on the back
559 side rather than put it down on the end.
560
561 Mr. Mistr - We could put the dirt right there. If we put it right here,
562 we'd have to cut a lot of trees, which would be a view problem. But if they want it
563 over here, we can put it over here.
564
565 Mr. Blankinship - Not there, on the other side of the stockpile.
566
567 Mr. Baka - On the east side.
568
569 Mr. Blankinship - Can you push it over the top of the stockpile to the
570 other side?
571
572 Mr. Mistr - The stockpile is ten or fifteen feet high. It's much more
573 costly to put it over here than it is here or here. It would probably require—
574
575 Mr. Wright - I'm not worried about the cost. I'm worried about what
576 we need to do to protect—
577
578 Mr. Mistr - Oh, okay. Let me finish. We can put the dirt here.
579
580 Mr. Blankinship - We don't want it there. I'm sure we don't want it there.
581 Nobody wants it there.
582
583 Mr. Mistr - Why?
584
585 Mr. Blankinship - Because of knocking down the trees.
586

587 Mr. Mistr - No, there's no trees here. I'm saying there are trees
588 here. Not over here. Okay?
589
590 Mr. Baka - We're looking northwest. Wales Drive?
591
592 Mr. Mistr - No, we're not on Wales Drive. I'm talking about right
593 there. That's just brush; that's not trees.
594
595 Mr. Blankinship - That's where it would have the most impact on them.
596
597 Mr. Mistr - No, they are over here. They're here.
598
599 Mr. Blankinship - The most impact on the other—the apartment
600 dwellers.
601
602 Mr. Mistr - There's nobody there; they're vacant.
603
604 Mr. Blankinship - Oh. All of them?
605
606 Mr. Mistr - All of these.
607
608 Mr. Blankinship - Oh, okay.
609
610 Mr. Mistr - But to go back to it. We were talking about erosion
611 sediment control plans. I'm a licensed engineer in the state of Virginia. I do
612 erosion sediment control plans regularly. I worked with Henrico County's
613 committee to design the new environmental compliance manual which will take
614 effect next Tuesday on July the 1st. What we are proposing here will not affect
615 the drainage from Chickahominy Woods townhouses. We're not going to fill any
616 ditches. We can get it so that it doesn't.
617
618 This area is about ten to fifteen feet lower than the area of the townhouses. This
619 is not so much of a problem because that's an open channel. But over here it is a
620 problem, and it's been a problem for years. The pipe was broken and they've got
621 a bowl in there. There's no flood routing between those buildings. And the pipes
622 from the townhouses come out onto our property, which we allowed without an
623 easement. We allowed the association to come in and dig in our property to try to
624 fix where the problem was. I have met with them numerous times, and Mrs.
625 Haller has been out there. Giving them advice—engineering advice on how to fix
626 the problem. It's going to be expensive to fix it. They chose to go their own way
627 and spend money. I don't know if the problem is fixed yet or not. But we have
628 cooperated with them in every way that we could during this entire process,
629 including letting them have their yearly meetings in the clubhouse after it was not
630 used as a golf course, until it got vandalized so much we had to board the whole
631 thing up. So we have done everything we could. We have not created any

632 drainage problems and won't create any drainage problems. But if it makes
633 everybody happy, we can put the excess dirt here.

634

635 Mr. Blankinship - That wouldn't make anyone happy. Putting it where
636 he's showing now wouldn't make anyone happy.

637

638 Mr. Baka - There are units underneath the words "Wales Drive"?

639

640 Mr. Blankinship - Yes. Over there is where it should be.

641

642 Mr. Baka - What about that northeast side, Mr. Mistr?

643

644 Mr. Mistr - That's been stabilized and there are trees planted
645 there that the Corps of Engineers has approved. We'd have to go back to them to
646 pile it on those trees. That's part of the nutrient bank.

647

648 Mr. Blankinship - That side of the berm is part of the nutrient bank?

649

650 Mr. Mistr - The berm is part of the nutrient bank, yes.

651

652 Mr. Blankinship - Oh, okay. I didn't know that.

653

654 Mr. Wright - What would be the problem with putting it over on the
655 other side where he suggested, Mr. Blankinship?

656

657 Mr. Blankinship - The apartments may be vacant now, but I don't
658 suppose they're always going to be vacant. That would be the area where it
659 would have the most impact on that property.

660

661 Mr. Mistr - Ben, it's only going to be about a foot of dirt on the
662 ground, and it's over brush now. Putting it there and spreading it out is not going
663 to have any impact on anybody.

664

665 Mr. Baka - So it wouldn't necessarily change the natural drainage
666 pattern if you put it on the west side between the stock pile and Wales Drive?

667

668 Mr. Mistr - It's mostly sheet flow. We would spread it an inch
669 thick over the whole property if we needed to and nobody would know it was
670 anywhere. But it's just not practical to do that. We can move the dirt in thirty
671 days. After we've moved it, nobody will know where it was if you went out there
672 watching where it was put down.

673

674 Mr. Bell - Do you think that the problems they have identified as
675 a potential problem will be a problem if you move it where you are going to move
676 it now?

677

678 Mr. Mistr - Where we propose to put it now is not going to create
679 a problem, no. And it's going to be right beside the existing berm, so all it's going
680 to be is maybe a foot thicker than it already was. There is very little dirt to be
681 moved.
682
683 Mr. Wright - Any further questions? Anything further you wish to
684 say, Mr. Mistr?
685
686 Mr. Mistr - I think we're fine.
687
688 Mr. Baka - What does that show?
689
690 Mr. Mistr - That's behind—see the brick on the right? That's the
691 end unit of the townhouses.
692
693 Mr. Baka - It's 300.
694
695 Mr. Mistr - We're not going to disturb any of those trees that you
696 see there in the background.
697
698 Female - [Off microphone] That's the valley you are talking
699 about—
700
701 Mr. Mistr - You can sort of see—the top of the berm goes like
702 that. What we have to move is down here. That's why pushing it overtop and
703 down the other side just—
704
705 Mr. Wright - I have one further question. If you were to change it
706 from where you have it on the map, on your plan, would that require you to go
707 back to DEQ?
708
709 Mr. Mistr - No.
710
711 Mr. Wright - So you could kind of move it around.
712
713 Mr. Mistr - I think we have some flexibility doing that.
714
715 Mr. Wright - Okay.
716
717 Ms. Harris - Question. The area for the excess material, you feel
718 that that is still a good area, that it would not impact those townhouses?
719
720 Mr. Mistr - That will not impact the townhouses, yes.
721
722 Ms. Harris - Or the flooding in the area?
723

724 Mr. Mistr - Correct. What we do is when we move the dirt, we'd
725 seed it, and plant a few trees on it, and it would be stabilized in sixty days.

726
727 Mr. Wright - Any further questions?

728
729 Ms. Harris - Did anyone from your team ever visit the area that
730 was called to our attention to see just what was going on there as far as flooding
731 before you came up with your plans?

732
733 Mr. Mistr - Before we started originally?

734
735 Ms. Harris - With this new plan that you are advancing.

736
737 Mr. Mistr - I've been out there several times, yes.

738
739 Ms. Harris - And you noticed the flooding in that area?

740
741 Mr. Mistr - I have been told about the flooding. I haven't noticed
742 it. But yes, there are some issues with the construction. It was done in the late
743 '60s and early '70s. That's been there a long time.

744
745 Ms. Harris - Okay.

746
747 Mr. Wright - Any further questions? That concludes the case.
748 Thank you very much for appearing.

749
750 Mr. Mistr - Okay. Thank you.

751
752 **[After the conclusion of the public hearings, the Board discussed the case**
753 **and made its decision. This portion of the transcript is included here for**
754 **convenience of reference.]**

755
756 Mr. Wright - Do I hear a motion on this case?

757
758 Mr. Baka - I have a couple comments before anyone makes a
759 motion. I guess one comment was when I saw the erosion and sediment control
760 plan, if an engineer prepares it and says that it will meet drainage requirements,
761 not being a civil engineer myself, I would take the assertion that it would appear
762 that it would meet those drainage standards and be acceptable. And be
763 acceptable in the way that you propose it on the south side or the bottom side of
764 that soil stockpile. Having said that, it appears there is room on the left side or
765 that west side of the soil stockpile that may make the situation even more
766 amenable to the townhouse owners. If it is moved, if someone makes a motion
767 that it is moved to that location, I wouldn't be opposed to that because it would
768 appear to avoid any hint of a future issue or future problem. I'm not convinced it

769 would be a problem if it's approved as-is, but if it is moved I would guess you
770 would avoid it.

771

772 Ms. Harris - Would your question be considered during the
773 discussion period?

774

775 Mr. Wright - Well we need a motion.

776

777 Ms. Harris - Right. So I'm going to move that we approve this
778 conditional use permit for the Dominion Golf of Virginia, LLC. I hope that they
779 keep the proposed placement that was on the plat that was submitted to us, the
780 plan that was submitted to us because I foresee if you move it near the
781 apartments you have another situation. Though the apartments may be mostly
782 vacant now, you're creating another situation that might come before the Board.
783 So I do move that we accept this conditional use permit.

784

785 Mr. Wright - With the extension?

786

787 Ms. Harris - With the extension being to October from August.

788

789 Mr. Wright - Is there a second to this motion?

790

791 Mr. Nunnally - Second.

792

793 Mr. Wright - Seconded. Now any further discussion? All in favor
794 say aye. All opposed say no. The ayes have it; the motion passes.

795

796 After an advertised public hearing and on a motion by Ms. Harris, seconded by
797 Mr. Nunnally, the Board **approved** application **CUP2014-00009, DOMINION**
798 **GOLF OF VIRGINIA, LLC's** request for a conditional use permit pursuant to
799 Section 24-89(c) of the County Code to develop a wetlands mitigation bank at
800 300 Lee Avenue (Parcel 824-730-0699), zoned Conservation District (C-1) and
801 One-Family Residence District (R-2A) (Varina). The Board approved the
802 conditional use permit subject to the following conditions:

803

804 1. The operation shall be conducted in accordance with the plans and narrative
805 submitted with the application, except as noted below.

806

807 2. The applicant shall apply for and obtain amended erosion and sedimentation
808 control plans from the Department of Public Works (DPW) showing the berm is to
809 be maintained permanently on the property. The erosion control bond necessary
810 for approval of the plan shall remain active throughout the life of the project until
811 release by DPW. Throughout the life of the operation, the applicant shall
812 continuously satisfy DPW that erosion and sedimentation control is performed
813 and maintained in accordance with the approved plan. The applicant shall
814 provide certification from a licensed professional engineer that dams,

815 embankments and sediment control structures meet the approved design criteria
816 as set forth by the State. If this condition is not satisfied within 90 days of
817 approval, the use permit shall be void.

818

819 3. The applicant shall obtain all necessary permits from the United States Army
820 Corps of Engineers and the Virginia Department of Environmental Quality. If this
821 condition is not satisfied within 90 days of approval, the use permit shall be void.

822

823 4. In the event that the approval of this use permit is appealed, all conditions
824 requiring action within 90 days will be deemed satisfied if the required actions are
825 taken within 90 days of final action on the appeal.

826

827 5. The applicant shall comply with the Chesapeake Bay Preservation Act and all
828 state and local regulations administered under such act applicable to the
829 property, and shall furnish to the Planning Department copies of all reports
830 required by such act or regulations.

831

832 6. Hours of construction shall be from 7:00 a.m. to 7:00 p.m. during Daylight
833 Savings Time and 7:00 a.m. to 5:00 p.m. during Eastern Standard Time.

834

835 7. No construction shall occur at the site on Sundays or national holidays.

836

837 8. All means of access to the property by vehicles or construction equipment
838 shall be from the northern terminus of Lee Avenue, following Lee Avenue to Nine
839 Mile Road. No construction equipment shall use Washington Street traveling to
840 or from the site. The applicant shall obtain any necessary easements to access
841 the site on the private portion of Lee Avenue.

842

843 9. The applicant shall erect and maintain a gate at both entrances to the
844 property. The gates shall be locked at all times, except when an authorized
845 representative of the applicant is on the property.

846

847 10. The applicant shall post and maintain a sign at the entrance to the site
848 stating the name of the operator, the use permit number and the telephone
849 number of the operator. The sign shall be 12 square feet in area and the letters
850 shall be three inches high.

851

852 11. The applicant shall post and maintain "No Trespassing" signs every 250 feet
853 along the perimeter of the property. The letters shall be three inches high. The
854 applicant shall furnish the Chief of Police a letter authorizing the Henrico County
855 Division of Police to enforce the "No Trespassing" regulations, and agreeing to
856 send a representative to testify in court as required or requested.

857

858 12. If, in the course of its preliminary investigation or operations, the applicant
859 discovers evidence of cultural or historical resources, or an endangered species,
860 or a significant habitat, it shall notify appropriate authorities and provide them

861 with an opportunity to investigate the site. The applicant shall report the results of
862 any such investigation to the Planning Department.

863
864 13. No offsite-generated materials shall be deposited on the wetlands mitigation
865 bank site. No soil shall be removed from the site.

866
867 14. Construction and restoration shall be completed by October 31, 2014, unless
868 a new permit is granted by the Board of Zoning Appeals. Restoration shall not be
869 considered completed until the disturbed area is covered completely with
870 permanent vegetation and is approved as a wetlands mitigation bank by the U. S.
871 Environmental Protection Agency and the U. S. Army Corps of Engineers.

872
873 15. The site is located within a Special Flood Hazard Area. Any structure must
874 comply with the applicable Code requirements for building within a Special Flood
875 Hazard Area.

876
877 16. Where grade changes are proposed, existing sewer must be profiled to
878 assess proposed depth of cover. Soil stockpiles shall not be located within utility
879 easements, except as shown on the stockpile regrading plans submitted for the
880 June 26, 2014 BZA hearing. The applicant shall ensure the maximum cover over
881 the sanitary sewer between MH 16 and MH 17 shall be no more than 17' over the
882 sanitary sewer.

883
884 17. No trees may be placed within utility easements.

885
886 18. Non-tree type landscaping must not conflict with or obscure visibility of
887 utilities at or above grade (i.e., manhole covers, hydrants, meter vaults, detector
888 check vaults, valve boxes, etc.).

889
890 19. Non-tree type landscaping within any utility easement or within 10 feet of
891 utilities in a right-of-way, provide the following note on the plan: "The owner is
892 responsible for replacement of any planting (i.e. shrubs, etc.) damaged or
893 removed by the Department of Public Utilities, or its agent, as required for
894 maintenance of County owned water and/or sewer facilities."

895
896 20. The Department of Public Utilities shall be able to maintain utility easements
897 as necessary to allow for accessibility to inspect or maintain County utilities.

898
899 21. The applicant shall diligently pursue the creation of streams on the property,
900 or the preservation of the pond next to the ninth green of the golf course, unless
901 prohibited by state or federal requirements.

902
903 22. The applicant shall maintain adequate sight distances onto public roads.

904
905 23. Failure to comply with any of the foregoing conditions shall automatically
906 void this permit.

907			
908	Affirmative:	Baka, Bell, Harris, Nunnally, Wright	5
909	Negative:		0
910	Absent:		0

911
912

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

915

916 **CUP2014-00021** **R. WAYNE BABER** requests a conditional use permit
917 pursuant to Section 24-95(i)(4) of the County Code to allow an accessory
918 structure in the side yard at 7000 Brinley Meadows Drive (BRINLEY MEADOWS)
919 (Parcel 837-697-1249), zoned Agricultural District (A-1) (Varina).

920

921 Mr. Wright - All persons desiring to speak with reference to this
922 case, either for or against, please stand and be sworn.

923

924 Mr. Blankinship - Raise your right hand, please. Do you swear the
925 testimony you're about to give is the truth, the whole truth and nothing but the
926 truth so help you God?

927

928 Mr. Baber - I do.

929

930 Mr. Wright - Please state your name for the record.

931

932 Mr. Baber - I'm William Baber. It's B-a-b-e-r.

933

934 Mr. Wright - Please present your case.

935

936 Mr. Baber - Thank you. My compliments to the Planning staff,
937 number one, for the staff report. It really describes the problem well. And if I
938 could draw your attention to the page that has the diagram of the well and septic
939 system. It would delineate the issue here very well.

940

941 We purchased the property in February; we moved in in April. Even though it's a
942 large lot, there are issues that prevent us from putting a two-car garage there.
943 Our original intent was to build a 26-foot by 40-foot totally enclosed two-car
944 garage. The location of the drainfield as built is closer to the home than on the
945 plan that was presented to me when we were considering the purchase of the
946 dwelling. We did not want the structure to come any closer to the street than
947 what you see from the street as the back wall of the house, which is very well
948 shown on the diagram there. But the bump-out for the great room and a
949 screened-in porch made the back wall ten feet further back than what we
950 consider to be the back wall.

951 The issue came in that the Health Department requires that we stay ten feet
952 away from the drain field. So instead of building a 26-foot by 40-foot enclosed

953 garage, we made it a 22-foot by 40-foot. And instead of being enclosed it's going
954 to be a carport because my pickup truck wouldn't go into a 22-foot garage and
955 allow me to walk around it. So we're going to leave the front and back open. But
956 we still needed a little bit of storage space. There you go. On the right side you
957 can see we're going to have a 22-foot-deep and 16-foot-wide storage area and
958 then a two-car carport right next to it. The intent is certainly to have a brick
959 foundation that matches the home. The vinyl siding will match the home. The
960 dimensional shingles will match the home, and the pitch of the roof will very
961 closely match the existing home.

962
963 I did meet with the homeowner immediately next door at 7004, and I met with the
964 homeowner directly across the street from him, which is 7001, and showed them
965 the plans. Neither one of them had any issues with this at all. You can see from
966 the drawing there is no neighbor across the street or to our right or behind us. So
967 the only two people that can see the structure certainly had no issues with it. But
968 again, the location of the drainfield is what's forcing us to move the structure
969 forward.

970
971 Mr. Wright - Anything further? Any questions from members of the
972 Board?

973
974 Mr. Bell - Well said.

975
976 Mr. Wright - Is anyone here in opposition to this request? Hearing
977 none, that concludes the case. Thank you very much for coming.

978
979 Mr. Baber - Thank you.

980
981 Mr. Wright - Oh, wait a minute.

982
983 Ms. Harris - Mr. Baber? I'm sorry. I do have a question. In the
984 background in the report that you may have seen or picked up when you came
985 in, we're calling this the end of a temporary cul-de-sac.

986
987 Mr. Baber - Yes ma'am.

988
989 Ms. Harris - Okay. When that area is developed, do you foresee
990 any problem with your proposed construction?

991
992 Mr. Baber - No ma'am, I don't foresee any issues at all. I think it
993 will blend in nicely. It will match the home perfectly. And it will certainly look nice
994 in the neighborhood.

995
996 Ms. Harris - Right. But if the cul-de-sac is developed further, will it
997 be visible, you think, from—

998

999 Mr. Baber - It would be visible from the home that could be across
1000 the street and a little catty-cornered. But they wouldn't see much of it because of
1001 the lay of the lot and the way it would go by the corner of our home. So no
1002 ma'am. The house immediately on the other side if they extend the road, it will be
1003 no issue at all. It won't be visible except in the back of the back yard from a next
1004 door neighbor on the other side.
1005
1006 Ms. Harris - Okay. Thank you.
1007
1008 Mr. Wright - I had one further question I meant to ask you.
1009
1010 Mr. Baber - Yes sir.
1011
1012 Mr. Wright - Have you read the suggested conditions?
1013
1014 Mr. Baber - Yes sir, I have.
1015
1016 Mr. Wright - Are you in accord with those?
1017
1018 Mr. Baber - Yes sir. In fact, the only one that I need to work on is
1019 the one about the erosion control. But we have already applied for the building
1020 permit, and we did speak to them about the erosion control plan. They told me
1021 last week that the plans have all been approved; we are just waiting for you all to
1022 make a decision on this issue.
1023
1024 Mr. Wright - All right. Thank you very much.
1025
1026 Mr. Nunnally - There are quite a few homes down there on your
1027 block that have detached sheds and all.
1028
1029 Mr. Blankinship - I think they all have attached garages.
1030
1031 Mr. Baber - There is one detached garage, and there are a few
1032 storage sheds, yes sir. Yes sir, there are.
1033
1034 Mr. Nunnally - Nice looking neighborhood.
1035
1036 Mr. Baber - Thank you. Thank you very much.
1037
1038 Mr. Wright - Thank you very much for appearing.
1039
1040 Mr. Baber - Thank you.
1041

1042 **[After the conclusion of the public hearings, the Board discussed the case**
1043 **and made its decision. This portion of the transcript is included here for**
1044 **convenience of reference.]**

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Mr. Wright - Do I hear a motion?

Mr. Nunnally - Mr. Chairman, I move we approve this carport. I move we approve it because it really looks nice down there. It's a nice neighborhood. It just improves the neighborhood and it wouldn't be detrimental to the other parts of the neighborhood or the character of it. So I move we approve it.

Mr. Wright - Is there a second?

Mr. Bell - I second it.

Mr. Wright - Seconded. Any discussion? All in favor say aye. All opposed say no. The ayes have it; the motion passes.

After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Mr. Bell, the Board **approved** application **CUP2014-00021, R. WAYNE BABER's** request for a conditional use permit pursuant to Section 24-95(i)(4) of the County Code to allow an accessory structure in the side yard at 7000 Brinley Meadows Drive (BRINLEY MEADOWS) (Parcel 837-697-1249), zoned Agricultural District (A-1) (Varina). The Board approved the conditional use permit subject to the following conditions:

1. This conditional use permit applies only to the construction of a combined carport and storage building in the side yard. All other applicable regulations of the County Code shall remain in force.
2. Only the improvements shown on the plot plan and building design filed with the application 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 shall require a new conditional use permit.
3. The new construction shall match the existing dwelling as nearly as practical in materials, color, and style.
4. The applicant shall maintain a 10 foot setback between the accessory building and septic drainfield.
5. Exterior mounted light fixtures shall not be installed on the north facing façade of the proposed accessory building.
6. At the time of building permit application, the applicant shall submit the necessary information to the Department of Public Works to ensure compliance with the requirements of the Chesapeake Bay Preservation Act and the code requirements for water quality standards.

1091			
1092	Affirmative:	Baka, Bell, Harris, Nunnally, Wright	5
1093	Negative:		0
1094	Absent:		0

1095
1096

1097 **[At this point, the transcript continues with the public hearing on the next**
1098 **case.]**

1099

1100 **CUP2014-00022 WEST END ASSEMBLY OF GOD** requests a
1101 temporary conditional use permit pursuant to Section 24-116(c)(1) of the County
1102 Code to allow a tent at 401 N. Parham Road (Parcel 753-736-0655), zoned One-
1103 Family Residence District (R-1) (Tuckahoe).

1104

1105 Mr. Wright - All persons having an interest in the case and wish to
1106 speak either for or against, please stand and be sworn.

1107

1108 Mr. Blankinship - Raise your right hand. Do you swear the testimony
1109 you're about to give is the truth, the whole truth and nothing but the truth so help
1110 you God?

1111

1112 Mr. Bragg - Yes I do.

1113

1114 Mr. Wright - Please state your name for the record.

1115

1116 Mr. Bragg - That's Pat Bragg—B-r-a-g-g.

1117

1118 Mr. Wright - Please present your case.

1119

1120 Mr. Bragg - For a number of years our church has presented
1121 some theatrical productions at Easter and at Christmas. Each time we've needed
1122 additional storage space, we install a 30-foot by 30-foot tent that we construct
1123 behind the church. We have done this for about eight or nine years now and
1124 need to do it again. We have not seen any problems with the neighbors. There
1125 are a couple of neighbors on the back side of the church behind a tree line and
1126 fence line. There is one house currently under construction also that I did not see
1127 on the drawings here. But we have never had problems with the neighbors and
1128 have good relationships with all of them.

1129

1130 Mr. Wright - Have you read the conditions proposed?

1131

1132 Mr. Bragg - Yes sir.

1133

1134 Mr. Wright - Are you in accord with those conditions?

1135

1136 Mr. Bragg - Yes sir.

1137
1138 Mr. Wright - Any questions from members of the Board?
1139
1140 Ms. Harris - Yes. Mr. Bragg, how many parking spaces will this
1141 tent occupy?
1142
1143 Mr. Bragg - It's in an area that is open space next to the church
1144 and would take about four or five spaces, as you can see on there where the
1145 trucks are. We usually keep our golf carts there. We move them off to the side a
1146 little bit. The tent begins about where you see that ladder and moves over to the
1147 right in the photograph. So I see one, two, three, maybe four spaces that are
1148 taken.
1149
1150 Ms. Harris - Are any of those spaces for handicap parking?
1151
1152 Mr. Bragg - No ma'am.
1153
1154 Ms. Harris - Okay.
1155
1156 Mr. Bragg - I'm told that we have more parking spaces in the
1157 church parking lot than are required by the County, and we have more handicap
1158 spaces. We put more in. So we have more of them than are required.
1159
1160 Ms. Harris - All right. And you find that with the attendance that
1161 you've had through the years that you don't need that extra parking space.
1162
1163 Mr. Bragg - No. We've never used that space for it, and we've got
1164 a great parking lot team that keeps everything rolling smoothly.
1165
1166 Ms. Harris - Thank you.
1167
1168 Mr. Wright - Any other questions from members of the Board?
1169 Anyone here in opposition to this request? Hearing none, that concludes the
1170 case. Thank you very much for appearing.
1171
1172 **[After the conclusion of the public hearings, the Board discussed the case**
1173 **and made its decision. This portion of the transcript is included here for**
1174 **convenience of reference.]**
1175
1176 Mr. Wright - Do I hear a motion?
1177
1178 Ms. Harris - I move that we approve the West End Assembly of
1179 God's request for a conditional use permit. I think it does not adversely affect the
1180 health, safety, or welfare of the community. In fact, it enhances what the
1181 community is doing. They do produce excellent productions.
1182

1183 Mr. Wright - All right, the motion is made. Is there a second?
 1184
 1185 Mr. Nunnally - Second.
 1186
 1187 Mr. Wright - Seconded. Any discussion? Hearing none, all in favor
 1188 say aye. All opposed say no. The ayes have it; the motion passes.
 1189
 1190 Mr. Baka - Abstain.
 1191
 1192 Mr. Wright - You abstain?
 1193
 1194 Mr. Baka - Yes sir.
 1195
 1196 Mr. Blankinship - Mr. Baka has held leadership positions at the church
 1197 in the past and just feels uncomfortable with the potential perceived conflict.
 1198
 1199 Mr. Wright - I can understand that.

1200
 1201 After an advertised public hearing and on a motion by Ms. Harris, seconded by
 1202 Mr. Nunnally, the Board **approved** application **CUP2014-00022, WEST END**
 1203 **ASSEMBLY OF GOD's** request for a temporary conditional use permit pursuant
 1204 to Section 24-116(c)(1) of the County Code to allow a tent at 401 N. Parham
 1205 Road (Parcel 753-736-0655), zoned One-Family Residence District (R-1)
 1206 (Tuckahoe). The Board approved the temporary conditional use permit subject
 1207 to the following conditions:

- 1208
 1209 1. One 900-square-foot tent, as shown on the plot plan filed with the application,
 1210 may be installed pursuant to this approval. Any additional improvements shall
 1211 comply with the applicable regulations of the County Code. Any substantial
 1212 changes or additions to the design or location of the improvements shall require
 1213 a new conditional use permit.
 1214
 1215 2. The tent shall be installed no earlier, and removed no later, than the following
 1216 dates: Christmas 2014, October 1, 2014 to January 31, 2015; Easter 2015,
 1217 March 6 to May 5, 2015; Christmas 2015, October 1, 2015 to January 31, 2016.
 1218
 1219 3. The applicant shall obtain all necessary building permits.
 1220
 1221 4. No exterior lighting is authorized by this conditional use permit.
 1222
 1223 5. Fire lanes shall be marked and maintained in accordance with the Fire
 1224 Prevention Code.

1225
 1226
 1227 Affirmative: Bell, Harris, Nunnally, Wright 4
 1228 Negative: 0

1229 Absent: 0
1230 Abstain: Baka 1
1231
1232

1233 [At this point, the transcript continues with the public hearing on the next
1234 case.]
1235

1236 **VAR2014-00009** **JESSICA MCGIRT** requests a variance from Section
1237 24-9 of the County Code to build a one-family dwelling at 7215 Hughes Road
1238 (Parcel 862-696-6396), zoned Agricultural District (A-1) (Varina). The public
1239 street frontage requirement is not met. The applicant proposes 0 feet public
1240 street frontage, where the Code requires 50 feet public street frontage. The
1241 applicant requests a variance of 50 feet public street frontage.
1242

1243 Mr. Wright - All persons desiring to speak with reference to this
1244 case, either for or against, please stand and be sworn.
1245

1246 Mr. Blankinship - Do you swear the testimony you're about to give is the
1247 truth, the whole truth and nothing but the truth so help you God?
1248

1249 Mr. Wright - Please state your name for the record.
1250

1251 Mr. McGirt - My name is Terry McGirt—M-c-g-i-r-t. I am here
1252 representing my daughter Jessica. I'm giving her a lot on Hughes Road, and it
1253 doesn't meet the County's public road frontage. It has zero road frontage. It has a
1254 private road coming in which is—we have a fifty-foot right-of-way. So I'm
1255 requesting a variance to build her a house. I'm requesting the variance to waive
1256 the fifty-foot road frontage the County requires.
1257

1258 Mr. Wright - From my understanding, the purpose of this
1259 ordinance when it was enacted restricting construction on lots that did not front
1260 on a public road was access for emergency vehicles, etc. Would you address
1261 that? Talk about the access.
1262

1263 Mr. McGirt - We have a fifty-foot right-of-way. And we've had fire
1264 trucks and ambulances come back in there. They've not had a problem getting in
1265 our gravel road. We maintain the road and keep it in very good condition.
1266

1267 Mr. Wright - How long has the road been in existence?
1268

1269 Mr. McGirt - I bought my property in 1988, so the road was there
1270 before I moved in. So twenty-five-plus years.
1271

1272 Mr. Wright - So you've had fire trucks and emergency vehicles—
1273

1274 Mr. McGirt - Yes sir.

1275
1276 Mr. Wright - —into the property, down the road?
1277
1278 Mr. McGirt - Yes sir. Several times, yes sir.
1279
1280 Mr. Wright - Have you read the conditions proposed by the staff?
1281
1282 Mr. McGirt - Yes sir I have.
1283
1284 Mr. Wright - Especially number nine. Will you look at that one?
1285
1286 Mr. McGirt - Is that the one, "prior to the"?
1287
1288 Mr. Wright - Yes.
1289
1290 Mr. McGirt - Okay, yes sir.
1291
1292 Mr. Wright - The road shall be at least twelve feet wide, fourteen
1293 feet of overhead clearance.
1294
1295 Mr. McGirt - Yes sir we have that.
1296
1297 Mr. Wright - You can comply with that?
1298
1299 Mr. McGirt - Yes sir. We already comply with that, yes sir.
1300
1301 Mr. Wright - All right. What's the size of this lot?
1302
1303 Mr. McGirt - I think it's right at a two-acre lot. About two acres.
1304
1305 Mr. Baka - Two point three?
1306
1307 Mr. McGirt - Two point three?
1308
1309 Mr. Wright - Will the proposed dwelling conform to all of the other
1310 County requirements as to the front yard, side yard—everything else?
1311
1312 Mr. McGirt - Yes sir. It meets all the County requirements except
1313 for the road frontage. Yes sir.
1314
1315 Mr. Wright - You realize that you would have to be able to have
1316 clearance for a septic system?
1317
1318 Mr. McGirt - Yes sir. I've already had the property perked and it
1319 does perk. It meets all their requirements. All I need is your approval for the road
1320 frontage.

1321
1322 Mr. Nunnally - You say your daughter is going—you're giving it to
1323 your daughter? Is she going to live there?
1324
1325 Mr. McGirt - Yes, I think so. Yes sir. She's behind me. Yes sir.
1326
1327 Mr. Nunnally - If you look at condition five it says the ownership of
1328 the parcel shall remain in the immediate family for a minimum of five years.
1329
1330 Mr. McGirt - Yes sir. I think she plans on living there.
1331
1332 Mr. Nunnally - What I'm trying to say is she can't build a house on it
1333 in her name and then sell it to someone else.
1334
1335 Mr. McGirt - Right, yes sir. We understand that, yes.
1336
1337 Mr. Nunnally - It has to stay in the family.
1338
1339 Mr. McGirt - She'll probably stay there longer than that, yes sir.
1340 She works only what, ten minutes away. She's close to her job.
1341
1342 Mr. Wright - Any other questions from members of the Board?
1343
1344 Ms. Harris - I do. Are you familiar with the threshold question for
1345 the BZA that if you have reasonable or beneficial use of the property taken as a
1346 whole?
1347
1348 Mr. McGirt - Right.
1349
1350 Ms. Harris - If the answer is no, then we have no authority to go
1351 further. But I notice that in the past we have allowed for family division variances
1352 at least twice before. Right?
1353
1354 Mr. McGirt - Yes ma'am.
1355
1356 Ms. Harris - How do you resolve this threshold question?
1357
1358 Mr. McGirt - I'm sure I don't understand the question.
1359
1360 Ms. Harris - This is what we are supposed to go by.
1361
1362 Mr. McGirt - Right.
1363
1364 Ms. Harris - If you have beneficial use—
1365
1366 Mr. McGirt - I'm giving up a benefit. I'm giving it to her so.

1367
1368 Ms. Harris - Well they're saying that one house—you constructed
1369 how many houses on all of this?
1370
1371 Mr. McGirt - Three.
1372
1373 Ms. Harris - Three.
1374
1375 Mr. McGirt - Yes ma'am. I have four daughters.
1376
1377 Ms. Harris - Right. So you have received two variances?
1378
1379 Mr. McGirt - Yes ma'am. For my daughters.
1380
1381 Ms. Harris - Right. The house itself, when it was constructed, is
1382 what we consider taken as a whole.
1383
1384 Mr. McGirt - Right.
1385
1386 Ms. Harris - Okay. And we've departed from that at least twice.
1387
1388 Mr. McGirt - Right.
1389
1390 Ms. Harris - I'm just wondering how do you resolve that—we have
1391 to deal with this, but how do you resolve it? You're asking us to give you
1392 permission to build this or have this house on this land built for your daughter—
1393
1394 Mr. McGirt - Yes ma'am.
1395
1396 Ms. Harris - —through a variance—
1397
1398 Mr. McGirt - Yes ma'am.
1399
1400 Ms. Harris - —that's normally not given if you have reasonable
1401 use of the property taken as a whole.
1402
1403 Mr. McGirt - Right. Okay.
1404
1405 Ms. Harris - But you did have reasonable use of the property
1406 taken as a whole.
1407
1408 Mr. McGirt - Right. As a whole I divided it and gave lots to my
1409 daughters.
1410
1411 Mr. Wright - I can answer that.
1412

1413 Ms. Harris - Okay.
1414
1415 Mr. Wright - There is no definite solution or answer to this question
1416 if you look at the Cochran case. The Cochran case dealt with properties that
1417 were *there*. The property that was considered was the property that was before
1418 the Board of Zoning Appeals. Period. It didn't go backward or anything else. So
1419 the question is whether taken as a whole means *this* lot that we are considering
1420 or are you going to go back years and take the whole twenty-five acres. That has
1421 not been resolved by the Supreme Court of Virginia. As far as I'm concerned,
1422 taken as a whole means *this* lot. If you take *this* lot taken as a whole, he has no
1423 beneficial use of it unless you put a residence on it.
1424
1425 Mr. Blankinship - Would you put the family division plat up? May I ask a
1426 question? Mr. McGirt, you're familiar with this survey.
1427
1428 Mr. McGirt - Yes sir.
1429
1430 Mr. Blankinship - That's the division of your property for your family.
1431
1432 Mr. McGirt - That is, yes sir.
1433
1434 Mr. Blankinship - That was drawn in 1999.
1435
1436 Mr. McGirt - Right.
1437
1438 Mr. Blankinship - But apparently it wasn't recorded until 2006?
1439
1440 Mr. McGirt - Right. We were still making the decision—well we
1441 divided it. We were still deciding if that's what we were going to do, give them the
1442 property. We decided in 2006 that that's what we were going to do. So that's
1443 when we had the property, those three lots, deeded to my daughters. This is the
1444 lot in question. One of my daughters lives here and one—
1445
1446 Mr. Baka - So this is the final lot?
1447
1448 Mr. McGirt - This is the final lot in my family subdivision, yes sir.
1449
1450 Mr. Wright - Furthermore, we have an ordinance that was adopted
1451 to take care of these situations with reference to *family* divisions. And there's a
1452 technicality I believe you point out, because of the time or the date this was
1453 done? Well in the spirit of that, this would be completely acceptable by the
1454 County. This is a family subdivision.
1455
1456 Mr. McGirt - Yes sir.
1457

1458 Ms. Harris - Okay. Since this plot was laid out for—did you say
1459 1999? The Cochran case I thing was 2006, right?

1460
1461 Mr. Blankinship - Two thousand four.

1462
1463 Ms. Harris - Two thousand four. I see that it falls within what is
1464 normally done with family divisions in Henrico County.

1465
1466 Mr. Blankinship - And that's why when we wrote the staff report it's if
1467 you look at it this way you get this answer; if you look at that way you get that
1468 answer. As staff, we leave the responsibility of making that legal determination
1469 with the Board.

1470
1471 Ms. Harris - Thank you.

1472
1473 Mr. Wright - Any further questions from members of the Board.
1474 Anyone here in opposition to this request? Hearing none, that concludes the
1475 case. Thank you very much for appearing.

1476
1477 Mr. McGirt - Thank you.

1478
1479 **[After the conclusion of the public hearings, the Board discussed the case**
1480 **and made its decision. This portion of the transcript is included here for**
1481 **convenience of reference.]**

1482
1483 Mr. Wright - Do I hear a motion on this case?

1484
1485 Mr. Nunnally - I move we approve it. I feel like it's a family
1486 subdivision and it won't be detrimental to that neighborhood.

1487
1488 Mr. Wright - Motion's made that we approve VAR2014-00009. Is
1489 there a second?

1490
1491 Mr. Baka - Second.

1492
1493 Mr. Wright - Seconded. Is there any discussion? All in favor say
1494 aye. All opposed say no. The ayes have it; the motion passes.

1495
1496 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by
1497 Mr. Baka, the Board **approved** application **VAR2014-00009, JESSICA**
1498 **MCGIRT's** request for a variance from Section 24-9 of the County Code to build
1499 a one-family dwelling at 7215 Hughes Road (Parcel 862-696-6396), zoned
1500 Agricultural District (A-1) (Varina). The Board approved the variance subject to
1501 the following conditions:

1502

- 1503 1. This variance applies only to the 50 foot public street frontage requirement
 1504 for one dwelling only. All other applicable regulations of the County Code shall
 1505 remain in force.
 1506
- 1507 2. Only the improvements shown on the plot plan filed with the application may
 1508 be constructed pursuant to this approval. Any additional improvements shall
 1509 comply with the applicable regulations of the County Code. Any substantial
 1510 changes or additions to the design or location of the improvements will require a
 1511 new variance.
 1512
- 1513 3. Approval of this request does not imply that a building permit will be issued.
 1514 Building permit approval is contingent on Health Department requirements,
 1515 including, but not limited to, soil evaluation for a septic drainfield and reserve
 1516 area, and approval of a well location.
 1517
- 1518 4. At the time of building permit application, the applicant shall submit the
 1519 necessary information to the Department of Public Works to ensure compliance
 1520 with the requirements of the Chesapeake Bay Preservation Act and the code
 1521 requirements for water quality standards.
 1522
- 1523 5. At the time of building permit application the owner shall demonstrate that the
 1524 parcel created by this division has been conveyed to members of the immediate
 1525 family, and the subdivision ordinance has not been circumvented. Ownership of
 1526 the parcel shall remain in the immediate family for a minimum of five years.
 1527
- 1528 6. The applicant shall present proof with the building permit application that a
 1529 legal access to the property has been obtained.
 1530
- 1531 7. The owners of the property, and their heirs or assigns, shall accept
 1532 responsibility for maintaining access to the property until such a time as the
 1533 access is improved to County standards and accepted into the County road
 1534 system for maintenance.
 1535
- 1536 8. The applicant shall install a post with the house address at the intersection of
 1537 their private driveway and the private road as per §319.1 of the 2009 Virginia
 1538 Residential Code.
 1539
- 1540 9. Prior to the issuance of a certificate of occupancy, the applicant shall ensure
 1541 that a continuous, durable gravel or asphalt roadway exists to the site. The
 1542 private road shall be at least 12 feet wide and have 14 feet of overhead
 1543 clearance to provide access for police, fire, and emergency medical services and
 1544 other traffic.
 1545

1546	Affirmative:	Baka, Bell, Harris, Nunnally, Wright	5
1547	Negative:		0
1548	Absent:		0

1549
1550 Mr. Wright - The minutes. And these really are minutes. Do I hear
1551 a motion?

1552
1553 Mr. Nunnally - I move we approve them as submitted.

1554
1555 Mr. Wright - Motion is made. Is there a second?

1556
1557 Mr. Baka - Second.

1558
1559 Mr. Wright - Seconded. Any discussion? No changes? All in favor
1560 say aye. All opposed say no. The ayes have it; the motion passes.

1561
1562 On a motion by Mr. Nunnally, seconded by Mr. Baka, the Board **approved as**
1563 **submitted the Minutes of the May 22, 2014**, Henrico County Board of Zoning
1564 Appeals meeting.

1565
1566
1567 Affirmative: Baka, Bell, Harris, Nunnally, Wright 5
1568 Negative: 0
1569 Absent: 0

1570
1571
1572 Mr. Wright - Mr. Blankinship, I believe you told me we have one
1573 case next time?

1574
1575 Mr. Blankinship - Yes sir. We have one turkey shoot for next month.

1576
1577 Mr. Wright - A turkey shoot.

1578
1579 Mr. Blankinship - Whatever you do, don't oversleep. You don't want to
1580 miss that. I do have one matter I would like to bring up, Mr. Chairman, if I may.

1581
1582 Mr. Wright - All right.

1583
1584 Mr. Blankinship - I would like to suggest that you consider amending
1585 your rules of procedure. There have been two changes to state law in the last
1586 couple of years that we're not in violation of, but have just changed the way
1587 things can be done, and I want to put them forward for your consideration.

1588
1589 One of them is having a standard for what do to in case of inclement weather.
1590 The Planning Commission adopted a policy about three months ago setting when
1591 a meeting would be postponed to. The statute does give the chairman the
1592 responsibility of determining whether or not the meeting is to be postponed. But
1593 then once that decision was made, everyone would know what date it would be
1594 moved to. It would just clarify questions that today we kind of play by ear. Now

1595 we haven't had a postponement in the fifteen years I've been here, and I don't
1596 know that we will this year or next year.

1597

1598 Mr. Wright - I don't recall it in the forty-two years I've been here.

1599

1600 Mr. Blankinship - But it is something that the statute now specifically
1601 addresses.

1602

1603 Mr. Bell - Do we follow the County code policy?

1604

1605 Mr. Blankinship - The same policy as the Planning Commission? We
1606 can look at that, yes, if that's what you want to do.

1607

1608 Mr. Bell - Once you give the code, the building is going to be
1609 closed anyway because nobody's coming to work.

1610

1611 Mr. Blankinship - Oh, on whether or not to close. Yes. The statute does
1612 say that it's up to the chairman. But I presume if I call the Chairman and say
1613 they've closed the County building, he's going to say we're not having a Board
1614 meeting.

1615

1616 Mr. Wright - Unless we have it in the parking lot.

1617

1618 Mr. Baka - Ben, if you really did have a true blizzard, would we
1619 have to—if you were to cancel a case—and it's never happened in forty-two
1620 years—would you have to re-advertise in the newspaper?

1621

1622 Mr. Blankinship - That's one of the reasons for the policy. If there is an
1623 adopted policy, then no, because everybody is on notice that if a meeting is
1624 postponed they know what date it's postponed to.

1625

1626 Mr. Baka - Okay.

1627

1628 Mr. Wright - Could you send us a—

1629

1630 Mr. Blankinship - I will. I'll put this on the agenda if it's something you'd
1631 like to discuss.

1632

1633 Mr. Wright - Yes.

1634

1635 Mr. Blankinship - The other question is this matter we've had many
1636 times of two-to-two cases when there's a member absent or an abstention from
1637 the vote that leaves you with a tie vote on a matter or we have a two-to-one vote.
1638 Technically that's not—you have to have three affirmative votes to carry. So even
1639 if you have a two-to-one vote that's not—the code has changed on that a couple
1640 of times and our rules are a little bit behind those last couple changes. It's still not

1641 where I'd like the state code to be. I would like to make a recommendation of a
1642 change in your rules for that matter as well.

1643
1644 Mr. Wright - Could you include that for our consideration?

1645
1646 Mr. Blankinship - Yes sir.

1647
1648 Ms. Harris - What does the state code say about that?

1649
1650 Mr. Blankinship - It says that you have to have an affirmative vote of a
1651 majority of the members of the Board. But there is now an additional provision
1652 that says if there is a two-to-two tie or if there is a tie vote the matter may be
1653 automatically carried over to the next month, which has been our policy, our
1654 procedure, but it's not written in our policy that way.

1655
1656 Mr. Baka - I thought a two-two fails?

1657
1658 Ms. Harris - Yes.

1659
1660 Mr. Wright - That's what we've done, I thought.

1661
1662 Mr. Blankinship - But generally you would say at that point that this will
1663 have to be deferred until next month, until we have that fifth member here.

1664
1665 Mr. Baka - No, no. The vote fails.

1666
1667 Mr. Wright - I thought we said a two-two vote failed right there.

1668
1669 Ms. Harris - It's denied.

1670
1671 Mr. Baka - Yes.

1672
1673 Mr. Wright - And that's really not fair in a way. Except we offer the
1674 applicant the option of deferring. We always do that.

1675
1676 Ms. Harris - Before the hearing.

1677
1678 Mr. Wright - Last time we did and nobody took us up on it. And we
1679 didn't have any problems.

1680
1681 Ms. Harris - Right.

1682
1683 Mr. Gidley - [Off microphone.] I remember one time someone read
1684 the minutes and Elizabeth Dwyer or somebody was gone, and then she came in.
1685 That was the fifth vote that decided it. So I think what Ben said is correct.

1686

1687 Mr. Blankinship - It came back the next month?
1688
1689 Mr. Gidley - [Off microphone.] Yes sir. And that was the fifth vote.
1690
1691 Mr. Wright - Would it make sense to have something in writing so
1692 that we wouldn't have questions about it?
1693
1694 Mr. Blankinship - All right, I'll put that on your agenda for next month.
1695
1696 Mr. Wright - I haven't read our rules recently. I have them and I
1697 will. Do we have to have any notice or any time, expiration, before we vote on
1698 that? If you send it to us, would it be proper for us to adopt that at the next
1699 meeting?
1700
1701 Mr. Blankinship - Yes sir.
1702
1703 Mr. Wright - It wouldn't have to lay over.
1704
1705 Mr. Blankinship - No. It says they can be amended at any time by a
1706 majority.
1707
1708 Mr. Wright - I thought that's what it said.
1709
1710 Mr. Baka - So Ben, one comment on that. If you bring that back,
1711 three items to put in that, one would be what's the current state code now say or
1712 revised state code; two, the current policy of the BZA; and three, any
1713 recommendations or suggested changes staff would have to the current policy of
1714 the BZA. So those three would be really helpful.
1715
1716 Ms. Harris - And the Planning Commission and the Board of
1717 Supervisors both go by the latest Virginia code?
1718
1719 Mr. Blankinship - I don't know what the Board of Supervisors does. The
1720 Planning Commission just recently adopted—and I'll include in that packet a copy
1721 of what they just adopted. Theirs is more complicated because they meet twice a
1722 month. One meeting is on a Thursday evening and the other is a Wednesday
1723 morning. They wanted one policy that would work for both, so it's more
1724 complicated.
1725
1726 Mr. Wright - It is surprising that in all these years we haven't had
1727 to. We had a close one time.
1728
1729 Mr. Blankinship - I remember there was snow on the ground.
1730

1731 Mr. Wright - Nat Newman used to live in my neighborhood, and I
1732 went by and picked him up. It was snowing, but we went on with the meeting. It
1733 worked somehow or another.
1734

1735 Mr. Blankinship - We had one about ten years ago when there was
1736 snow on the ground when we came on, but it was just a dusting.
1737

1738 Mr. Baka - He lived in your neighborhood?
1739

1740 Mr. Wright - For a while, yes. I moved. He was across the street.
1741 Then I moved again back into Three Chopt. I remember that one. That's the
1742 closest that we've come. This past winter was horrible.
1743

1744 Mr. Baka - Yes, it was heavy snow.
1745

1746 Mr. Wright - But we dodged the bullet.
1747

1748 Mr. Baka - No blizzard next month though.
1749

1750 Mr. Wright - No, I don't think.
1751

1752 Ms. Harris - Is the meeting adjourned?
1753

1754 Mr. Wright - Do I hear a motion that we adjourn?
1755

1756 Ms. Harris - So move.
1757

1758 Mr. Wright - Second?
1759

1760 Mr. Baka - Second.
1761

1762 Mr. Wright - All in favor say aye. All opposed say no. The ayes
1763 have it; the motion passes.
1764

1765

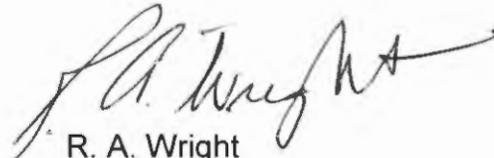
1766	Affirmative:	Baka, Bell, Harris, Nunnally, Wright	5
1767	Negative:		0
1768	Absent:		0

1769

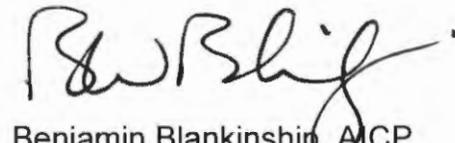
1770

1771 Now we are officially adjourned.
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1792



R. A. Wright
Chairman



Benjamin Blankinship, AICP
Secretary