

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 HENRICO COUNTY GOVERNMENT**
4 **COMPLEX, ON THURSDAY, MARCH 23, 2006, AT 9:00 A.M., NOTICE**
5 **HAVING BEEN PUBLISHED IN THE RICHMOND TIMES-DISPATCH MARCH 2**
6 **AND MARCH 9, 2006.**

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33

Members Present: **James W. Nunnally, Chairman**
 Richard Kirkland, CBZA, Vice-Chairman
 Elizabeth G. Dwyer
 Helen E. Harris
 R. A. Wright

Also Present: **David D. O’Kelly, Assistant Director of Planning**
 Benjamin Blankinship, Secretary
 Paul Gidley, County Planner
 Priscilla M. Parker, Recording Secretary

8
9 Mr. Nunnally - Ladies and Gentlemen. We welcome you to the
10 March meeting of the Board of Zoning Appeals of Henrico County. Will you
11 please stand and join us in the **Pledge of Allegiance to the Flag of Our**
12 **Country**. Thank you. Mr. Blankinship, do you we have any deferrals or
13 withdrawals?
14

15 Mr. Blankinship - We have two requests for deferral, Mr. Chairman. A-
16 9-2006, BRC Richmond, the appeal and also UP 14-2006, Verizon Wireless,
17 temporary tower.
18

19 Mr. Nunnally - Verizon Wireless?
20

21 Kirkland - Mr. Blankinship, this is the second deferral on this
22 BRC case, is that correct?
23

24 Mr. Blankinship - Yes.
25

26 Kirkland - This is their last deferral?
27

28 Mr. Blankinship - I think as long as it’s at the applicant’s request that it
29 be deferred, the Board is free to defer it. I think what the Code does not allow is
30 for the Board to continually defer something.
31

32 Mr. Kirkland - Just wanted to make sure.
33

34 Mr. Kirkland: I make a motion we defer A-9-2006 until the next
35 meeting.

36
37 Mr. Nunnally - Motion by Mr. Kirkland to be deferred and do I have a
38 second?

39
40 Ms. Dwyer - Second.

41
42 Mr. Nunnally - Second by Ms. Dwyer. All in favor say aye. The case
43 has been deferred.

44
45 On a motion by Mr. Kirkland, seconded by Ms. Dwyer, the Board **deferred**
46 application **A-9-2006** an appeal by BRC Richmond, LLC of a decision of the
47 director of planning pursuant to Section 24-116(a) regarding the property at
48 9498 West Broad Street (Parcel 755-758-7804), zoned B-2, Business District
49 (Brookland).

50
51 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5
52 Negative: 0
53 Abstain: 0

54

55

56 Mr. Blankinship - The other was UP-14-2006.

57

58 Mr. Kirkland - I make a motion we defer it to the next meeting.

59

60 Mr. Nunnally - We have a motion by Mr. Kirkland to defer to the next
61 meeting.

62

63 Ms. Harris - Second.

64

65 Mr. Nunnally - Second by Ms. Harris. All in favor say aye.

66

67 On a motion by Mr. Kirkland, seconded by Ms. Harris, the Board **deferred**
68 application **UP-14-2006** for a conditional use permit to install a temporary
69 communication tower at 8716 W. Broad Street (Parcel 760-757-5611), zoned A-
70 1, Agricultural District and B-3, Business District (Brookland).

71

72 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5
73 Negative: 0
74 Abstain: 0

75

76 Ms. Dwyer - Is that with the concurrence with the applicant, Mr.
77 Kirkland?

78

79 Mr. Kirkland - Yes. They actually requested in writing.

80
81 Ms. Dwyer - Mr. Secretary, just a housekeeping matter. I notice
82 that two cases have the same number.
83
84 Mr. Blankinship - One is 2005 and one is 2006.
85
86 Ms. Dwyer - Okay.
87
88 Mr. Blankinship - Stumbled on that about five times in the last two
89 weeks.
90
91 Ms. Dwyer - Oh, that's good. Just wanted to make sure we weren't
92 doubling up.
93
94 Mr. Nunnally - Mr. Blankinship, would you read the rules and
95 regulations for this meeting?
96
97 Mr. Blankinship - Good morning, Mr. Chairman, Member of the Board,
98 ladies and gentleman. The rules for this meeting are as follows. Acting as
99 Secretary, I will call each case and while I'm speaking, the applicants should
100 come down to the podium. The Chairman will then ask everyone who intends to
101 speak on that case to stand and be sworn in. Then the applicant will present
102 their testimony. After the applicant has spoken, anyone else who wishes to
103 speak will have the opportunity. After everyone has spoken, the applicant and
104 only the applicant will have an opportunity for rebuttal. After everyone has
105 spoken and the Board has asked questions, the Board will take the matter under
106 advisement. They will render all of their decisions at the end of the meeting. So,
107 if you want to know their decision on a specific case, you can either stay until the
108 end of the meeting or you can check the Planning Office website. We get it
109 updated about half an hour after the meeting ends, or you can call the Planning
110 Department sometime this afternoon. This meeting is being tape recorded, so
111 we'll ask everyone who speaks to speak directly into the microphone on the
112 podium. State your name and everyone except the applicant, please spell your
113 last name. Finally, out in the foyer there are two binders that contain the staff
114 reports for each case, including the conditions that have been recommended by
115 the staff.
116
117 Mr. Nunnally - Thank you, Mr. Blankinship. Will you call the first
118 case please?
119
120 Mr. Blankinship - The first two cases are companions.
121
122 **UP-15-2005** and
123 **UP-16-2005** **Simons Hauling Company**, requests a conditional
124 use permit pursuant to Section 24-116(c)(3) to amend
125 conditions at the existing landfill at 1820 Darbytown

126 Road (Parcel 809-707-1585 (part)), zoned M-2,
127 General Industrial District (Varina).
128

129 Mr. Nunnally - Is anyone else here interested in this case? If so, will
130 you please stand and raise your right hand and be sworn in? All right, sir.
131

132 Mr. Blankinship - Raise your right hand please sir. Do you swear the
133 testimony you're about to give is the truth, the whole, and nothing but the truth,
134 so help you God?
135

136 Mr. Quinan - I do.
137

138 Mr. Nunnally - Please state your name for the record, sir, and tell us
139 what you're requesting.
140

141 Mr. Quinan - Yes. Mr. Chairman, my name's Michael Quinan. I
142 am with Christian and Barton. I'm the lawyer for Simons Hauling Company, the
143 applicant. Mr. Joseph Simons and Mr. Greenwood from Simons' Hauling are
144 also here. This case is here on a remand of Simons Hauling's two applications
145 to amend their conditional use permits to change the territory from which
146 materials can be accepted by the landfill. The applications were initially denied.
147 They went up to the Circuit Court. The Circuit Court found that there was no
148 basis in the record for the denial and has sent them back down and that's the
149 reason we're here today. It's our position that the amendment should at this
150 point be accepted and granted.
151

152 Mr. Nunnally - Let me ask you one thing, sir, before you go any
153 further. It seems like to me two months ago when you were here, a sale was in
154 force or you all were getting ready to sell it. You were going to buy it. You were
155 going to accept the conditions that Simon Hauling had on that.
156

157 Mr. Quinan - That's correct. That sale is still in the process. It has
158 not closed yet. The perspective purchaser has already acquired and you've
159 already approved a conditional use permit. But that's not who's here today.
160 Who's here today is the current owner, Simons Hauling Company.
161

162 Mr. Blankinship - I think the Chairman's question is that that new use
163 permit contains the previous condition.
164

165 Mr. Quinan - That new use permit contains the previous conditions
166 and does not contain the amendment that we're asking for here today.
167

168 Mr. Blankinship - Do you know what the East End Landfill, LLC intends
169 to do about that?
170

171 Mr. Quinan - I'm here representing Simons Hauling Company.
172 Although my firm does represent the East End Landfill, I haven't been involved
173 and I'm not authorized to say what the East End Landfill intends to do.

174
175 Ms. Dwyer - I think our concern is if this is passed today with the
176 amendment and then the sale goes through to the new owner, which set of
177 conditions would prevail.

178
179 Mr. Quinan - Well, the set of conditions that would prevail for the
180 new owner are the existing conditions that you've approved in their conditional
181 use permit. But they could come in and ask for a similar amendment.

182
183 Mr. Blankinship - But they would need to do that and I just hope
184 everyone's aware of it. If they expect to have the new condition, they're going to
185 have to come in again.

186
187 Mr. Quinan - I know they do understand that.

188
189 Mr. Blankinship - Mr. Chairman, I note that Mr. Jennings is here from
190 the Department of Public Works.

191
192 Mr. Jennings - Yes sir. Have you all seen a copy of the traffic report
193 on the number of trucks?

194
195 Mr. Quinan - I just two days ago on Tuesday received a copy of
196 that traffic study and I do understand that the County's Planning Department, I
197 guess, intends to talk about that this morning. It is our position that the traffic
198 study, well, I've got a couple of important points to make about that traffic study.
199 The first one is that the traffic study is not relevant to the amendments. The
200 amendments we are asking for are not in place yet, so the traffic study doesn't
201 demonstrate anything at all about the impact on traffic of changing the territory.
202 So, it's not relevant from that standpoint. It's also not relevant because the traffic
203 that comes to the landfill that Simons Hauling operates, is controlled by the DEQ
204 Permit. That's not going to change. The action on the amendment's not going to
205 have any affect on that. So, it's really not relevant. Now, another point, and we'd
206 be happy to elucidate for you, is that we don't believe that traffic study reflects
207 traffic going to the Simons Hauling landfill. It appears to reflect every truck that
208 turned off Darbytown Road at that point, but there are several other businesses,
209 including another landfill that access from that same turning point off Darbytown
210 Road. So, it appears to us that what was counted was every truck turning off and
211 not the trucks that were going to Simons Hauling's landfill with debris subject to
212 the conditional use permit.

213
214 Mr. Kirkland - Well, I was just wondering because those three
215 streets on here, if they were going to yours, that shows that you were in violation

216 of the permit at that time. So, I will ask Mr. Jennings, if you've finished with your
217 testimony.

218

219 Mr. Quinan - If I could just address the issue of possible violations.
220 Again, it appears to us that every truck that turned was counted and it also
221 appears to us that there's nothing in the report that indicates that the trucks that
222 use those three streets that the conditional use permit says are not to be used to
223 go to Simons Hauling. We don't know whether the conditional use permit for the
224 other landfill or whether the other business, which is not subject to any
225 conditional use permit at all, would there be any restriction on using those roads.
226 It is my understanding, and Mr. Simon is here to testify, that Simons Hauling's
227 drivers are instructed not to use those roads. So, it's our belief that it must have
228 been trucks going to other businesses.

229

230 Ms. Dwyer - What about the comment about the turn lane into the
231 site?

232

233 Mr. Quinan - Oh, the fact that it might be better if it were wider, if
234 there were a greater turning area?

235

236 Ms. Dwyer - Well, no. It says, "Darbytown Road is 24 feet of
237 pavement with no right or left turn lanes into the site." Do you have any
238 comments about that?

239

240 Mr. Quinan - Well, I'm a little bit troubled by the fact that we only
241 received this two days ago, so we haven't had a chance to address all of those
242 issues. We really came here today to talk about the amendment and we don't
243 think that's relevant to the amendment. But I'm not stating that we're unwilling to
244 talk to the County about issues like that. I do want to make it clear that we don't
245 think that has any relevance to the amendment that's before the Board right now,
246 because whether the trucks are coming from out of state or whether they're
247 coming from in state has no bearing upon the width of Darbytown Road there.

248

249 Ms. Dwyer - So, is it your position that even though the Board is
250 being asked to approve the use permit that includes a number of conditions, the
251 only one that we're allow to consider because you have asked for an amendment
252 to simply one, is any fact related to that one amendment. We're not permitted in
253 this review, even though we're reviewing the use permit, we are not permitted to
254 look at any other issue or any other condition that we're approving today.

255

256 Mr. Quinan - What the Code provides is if the requested
257 amendment, if there is evidence in the record that the requested amendment will
258 impact the other factors that are listed in the amendment, something like traffic,
259 then the Board could suggest or condition approval of the amendment on
260 changing some other condition in the conditional use permit. So, in other words,
261 if there were evidence that bringing trash in from out of state was going to affect

262 traffic in some way, then the Board could condition its approval. Now, the County
263 Code also provides that the applicant at that point can either accept that change
264 in condition or the Board's only option would be to deny the recommendation. But
265 our position in this case is there's no evidence in this traffic study, it has
266 absolutely nothing to do with the change from being only able to bring in material
267 within the Commonwealth of Virginia to the 150-mile radius, which extends to
268 some extent outside of the Commonwealth.

269
270 Mr. Wright - Let me ask Mr. Blankinship a question, Mr. Chairman.

271
272 Mr. Nunnally - Okay, sir.

273
274 Mr. Wright - Mr. Blankinship, when this permit was originally
275 issued, weren't this taken into consideration then about the lanes and all that
276 business? We've already issued the permit. Why all of a sudden is this being
277 raised at this late date?

278
279 Mr. Blankinship - Yes sir, they are able to operate under the previous
280 use permit.

281
282 Mr. Wright - If this is a concern, why didn't we address it initially
283 when we had granted the permit? We're coming in after the fact to do it now.
284 That's what concerns me. They've been operating under this permit. These
285 lanes have been there. If there had been a problem, we should have addressed it
286 before. To bring it up at the last minute, that's my only point.

287
288 Mr. Blankinship - I guess the other side is they have requested a
289 change to the operation of the property and that change could entail changes to
290 the traffic approach. It may not, but it may.

291
292 Mr. Wright - If someone comes up and shows us, there's no
293 reason why we couldn't address that, go back to them and seek their agreement
294 to make the changes to do it. That hasn't been explored; it just came to light
295 here a couple days ago.

296
297 Mr. Quinan - One other brief point. I don't think this is even an
298 issue right now, but Mr. Kirkland suggested that if these trucks that were using
299 the prohibited roads going to Simons Landfill, that could be a violation. The issue
300 of any violation hasn't been noticed and Simons Hauling hasn't received any
301 written notice and there's been no public notice of that for today. I don't believe
302 that's before the Board today. I expect we're all clear on that.

303
304 Ms. Dwyer - As I understand your answer to my question, you're
305 saying that this Board is only entitled to review your requested amendment and
306 cannot consider any other condition in the use permit today that may come to
307 light or be of interest.

308

309 Mr. Quinan - Not quite. The Board should first look at the
310 amendment. If there's evidence on the record before the Board that the Board
311 thinks demonstrates that making this change, accepting this amendment would
312 have an impact on the statutory factors, the factors that are set out in the rule,
313 then, let's just assume for a moment that impact on traffic is one of those. Then
314 the Board could say, "Well, we are inclined to grant this amendment, but we
315 would have to add this condition." At that point, the applicant could say, "Well, we
316 don't want the change with that condition," or they could take it. But in this case,
317 the issue of traffic has been raised here but there's been no connection
318 established in any way between the requested change and the impact on traffic.
319 So, in the context of requested amendments, the Board can't consider or impose
320 conditions that are irrelevant to the requested amendment. There are other ways
321 maybe the Board could do that, but not as a condition of granting of...

322

323 Ms. Dwyer - So, you're saying we're, essentially, we are limited to
324 consideration of the amendment and any impact that amendment may have.

325

326 Mr. Quinan - In this case, that's our position. Yes. The Circuit Court
327 judge has ruled that there's nothing in the record before this Board that would
328 support denial of the amendments. We are back here today. It looks like the only
329 other evidence that's going to come before the Board relates to a traffic study
330 that really doesn't have anything at all to do with where the debris materials are
331 coming from. Because there's no relevance, as we see it, there's nothing for the
332 Board to consider, and there being no grounds to deny the application, our
333 position is the Board should grant the amendment.

334

335 Ms. Dwyer - What is the time of use permit that's existing? When
336 does it expire?

337

338 Mr. Quinan - That's a question that I don't know the answer to. I'm
339 not aware of an expiration date. I don't believe there is an expiration date. Now,
340 these landfills have a certain lifespan, so as a practical matter, it doesn't go on
341 forever, but I don't believe there's an express expiration date.

342

343 Ms. Harris - Mr. Quinan, do you see it possible that if we granted
344 the amendment, there would be no increase in truck traffic?

345

346 Mr. Quinan - There will be no increase in the amount of traffic that
347 is permissible; that's for certain. That is controlled by the DEQ permit, which is
348 not changing.

349

350 Mr. Nunnally - How much traffic does that require? Does that tell
351 you how many trucks come in there?

352

353 Mr. Quinan - There was recent approval, which the County
354 acceded to, of a Part A application. I'm not a DEQ lawyer, so if I get my
355 phraseology wrong here, I hope you'll forgive me. My understanding is that there
356 is a 900-ton daily maximum. The County has looked at that and considered the
357 impact on traffic and said that that's acceptable.

358

359 Mr. Blankinship - Does it actually limit tons or yards?

360

361 Mr. Quinan - I think it's tons.

362

363 Ms. Dwyer - So, your position would be if we have issues with
364 trucks using residential streets, which they're prohibited from doing by existing
365 conditions, or if we think a right-turn lane should be placed into the property,
366 which is another condition that exists, then we would have to do that in some
367 other form, such as say that the applicant is not in compliance with existing
368 conditions and then bring the applicant before the Board to revoke the use
369 permit.

370

371 Mr. Quinan - In the normal course, which I think requires action at
372 the initial level by the Director of Planning. That would be if you think that there's
373 been a violation. We don't think there's been. We see what's in the traffic study,
374 but it appears to us that the trucks that may be of concern were not trucks that
375 were going to the Simons Hauling Landfill pursuant to the conditional use permit.

376

377 Mr. Nunnally - Any other questions? I think we got misled by our
378 attorney on this. The County Attorney is the one that requested that we find out
379 about this traffic. Right?

380

381 Mr. Blankinship - I think the County Attorney didn't know what the
382 results of the study would be.

383

384 Mr. Nunnally - I think this gentleman is right. I don't think we can
385 include this traffic in the request that he's asking for today. But, don't you think it
386 would be wise if we hear from Mr. Jennings?

387

388 Mr. Jennings - Good morning. I'm Michael Jennings. I'm the
389 Assistant Traffic Engineer with the County. We were asked to perform a truck
390 study for this case at the address of 1820 Darbytown Road. Mr. Quinan is
391 correct. I sent my crew out. We placed tubes in the roads on five locations in the
392 area and that does a classification, which is a federal classification of vehicles.
393 There are 13 classes all the way from a motorcycle to a tandem tractor-trailer.
394 That's how we classify our vehicles. Also, at the entrance, 1820, we did a manual
395 county of dump trucks and above that were coming to the site. Well, Mr. Quinan
396 is correct in the fact that we went to 1820 and we asked at the gate, "Is this
397 Simmons Hauling," and they said yes. I was not aware until I received an e-mail
398 from Mr. Blankinship yesterday that Cox Landfill was also beyond that gate, too.

399 So, our study of 180 vehicles entering/exiting the site on a given day includes all
400 the trucks coming in off of Darbytown Road into that entrance. I was not aware
401 that there were other businesses back there when we performed the study.

402
403 Mr. Nunnally - We don't know how many go to Cox.

404
405 Mr. Jennings - No sir. We were not aware that beyond that gate,
406 there was at least Cox Landfill and he said there might be three businesses back
407 there. We thought that off 1820, that driveway that led back in there, we thought
408 all that was the Simmons Hauling landfill. So, we did not go beyond that to
409 where it broke off into separate businesses. The trucks that we have entering
410 and exiting the site off Darbytown Road could be to all three businesses.

411
412 Mr. Nunnally - Any questions from the Board?.

413
414 Mr. Kirkland - Mr. Chairman, that answered my question about the
415 count. I appreciate the work you all do.

416
417 Ms. Dwyer - What about the need for a right turn lane?

418
419 Mr. Jennings - The only concerns we had with this site were the fact
420 that because it's a one-lane driveway, basically, coming in and out of the site, the
421 trucks were cued up waiting to come out. It also caused trucks waiting to come in
422 to stop on Darbytown Road. When we reviewed the whole area truck-wise we
423 were concerned about the trucks backing up on Darbytown Road waiting to come
424 in and out of the site. So yes, that is a concern without right and left turn lanes
425 into the site. At this time, we don't have any road plans to improve Darbytown
426 Road, but it is still a traffic concern with trucks backing up on Darbytown Road.

427
428 Ms. Dwyer - And you're aware that one of the conditions is that a
429 right-turn lane might need to be provided, if it's deemed necessary and practical.

430
431 Mr. Jennings - I have not seen the conditions placed on this case,
432 no.

433
434 Ms. Harris - Mr. Jennings, do we have a truck route that's
435 earmarked for that area?

436
437 Mr. Jennings - What?

438
439 Ms Harris - A truck route. Just the average citizen coming down
440 the road would be aware that this is the truck route not the residential one.

441
442 Mr. Jennings - Basically, the streets in the area of Darbytown Road
443 is actually a major collector so it's expected to handle a definite amount of truck
444 traffic. Midview Road, Bickerstaff, which is actually the portion north of Oakland

445 Road, and Oakland Road itself, they're minor collectors, so they're expected to
446 handle a fair amount of truck traffic. The other roads in the area are subdivision
447 streets and they should not be carrying much truck traffic, hardly at all, especially
448 tractor-trailers or anything. They would be allowed. The major collector roads
449 are expected to handle truck traffic in that area.

450

451 Ms. Harris - But we have no road markers to say this is a truck
452 route?

453

454 Mr. Jennings - As far as I'm aware, there are no markers that say it is
455 a truck route and I'm not aware of any restrictions on any of the streets in there
456 either, because I have not heard of any problems.

457

458 Mr. Nunnally - Any other questions from the Board or staff? Hearing
459 none, I will conclude the case.

460

461 Quinan - There's one point I'd like to make, just for the record,
462 and I apologize. My name is Mike Quinan, with a "Q." I read the sign up here
463 that says to spell our name and I still forgot to do it. It's Q-U-I-N-A-N. But I've
464 been called a lot worse things than "Quinan."

465

466 *[Laughter.]*

467

468 Mr. Nunnally - Thank you for coming.

469

470 Mr. Blankinship - Mr. Chairman, Mr. Tokarz has been waiting patiently
471 to discuss the first two cases.

472

473 Mr. Nunnally - I was going to start from the front. Let's start from the
474 front. We'll take each separately, Mr. Blankinship?

475

476 Mr. Blankinship - Probably be better, yes, to vote on separately.

477

478 **DECISION**

479

480 Mr. Nunnally - What does Mr. Tokarz have to say?

481

482 Mr. Tokarz - I was hear to answer questions; I didn't have anything
483 to offer.

484

485 Ms. Dwyer - I had a question about these two cases and it came
486 up as we were discussing it. My question is in these two cases, one amendment
487 has been proposed by the applicant to a condition among a number of conditions
488 that are existing on the property, and my question is, and it is presented by the
489 Board, are we limited to considering only that one amended condition and any

490 issues related to that or can we review any condition that is part of this use
491 permit request and consider that as part of our case?

492
493 Mr. Tokarz - My understanding of Code is when you advertise a
494 public hearing and you are considering a use permit, you are entitled to consider
495 all of the conditions that are applicable to the use permit under 24-116, you are
496 supposed to consider surrounding conditions like their affect on surrounding
497 properties and all that. So, while the applicant may have only requested an
498 amendment of one condition, I believe the BZA is entitled to consider all the
499 conditions of the case or any other new conditions it wishes to consider with
500 respect to the case. I took a look, for example, at the February 7th, 2006, letter
501 from the Court in which the Court found that the records that she reviewed had
502 not supported the Board's decision on the case, that the Board's letter gave a
503 rationale, but refers to evidence that was not found in the record, and then said
504 that as a conclusion that the case would be remanded to the Board to reconsider
505 the application in accordance with this procedure, including 24-116. That was
506 the February 7th, 2006 letter. Then the Court's order on February 27th – I believe
507 it's February 27th, let me just be sure. Excuse me; it was entered on March 3rd,
508 dated February 22nd. A judge ordered a decree that the matter be remanded to
509 the BZA to reconsider the applications of Simons Hauling in accordance with
510 these procedures, including Section 24-116, and in light of this Court's finding.
511 So, I believe, taking the letter and taking the order of the Court together, that
512 given the fact that there is a public hearing, given the fact that 24-116 directs the
513 Board of Zoning Appeals to consider a number of factors, that the Board can
514 consider all of the conditions of the case and any new conditions of the case at
515 any time, given the fact that there's a public hearing. That's my opinion.

516
517 Mr. Wright - When you take that a step further, if something comes
518 up at the hearing, whatever the change needs to be or the Board advocates
519 should be made apparent to the applicant so the applicant could speak to it.
520 Right? If you say we're going to change this condition "X," the Board ought to be
521 direct. They ought to say, "Well, we were going to consider changing this," and
522 the applicant ought to have an opportunity to address that change.

523
524 Mr. Tokarz - I agree that the applicant should have an opportunity
525 to address the change and I believe that and I haven't read it today, but I believe
526 24-116 provides that if the Board wishes to impose conditions, they're supposed
527 to seek the agreement of the applicant. Otherwise, if the agreement of the
528 applicant is not obtained, then to deny the use permit. I believe that's the
529 language of 24-116, so I agree with that. I wasn't present at the hearing, so I
530 don't know all that has gone on. I will tell the Board, though, that in addition to
531 the staff reports being shared with the applicant, the traffic study was also shared
532 with the applicant. I talked with Mr. Quinan yesterday or the day before, probably
533 the day before, and suggested that he may want to have somebody from Simons
534 Hauling to come here and address the traffic study because I told him I was

535 concerned by the fact that the traffic study indicated there were 46 violations of
536 one of the permit conditions in terms of access to the site.

537
538 Mr. Wright - That wasn't proved at the hearing.

539
540 Mr. Tokarz - Pardon me?

541
542 Mr. Wright - There was no evidence at this hearing today that
543 proved that.

544
545 Mr. Blankinship - The traffic count apparently included trips going to
546 other sites.

547
548 Mr. Wright - It was erroneous. When you talk about you should
549 have been here, it was not proven at this hearing today.

550
551 Mr. Tokarz - Mr. Wright, I'm not arguing for or against the traffic
552 study because I wasn't hear at the hearing. I'm not arguing.

553
554 Mr. Wright - Then I won't say there were violations when there
555 was no proof of violations today. Let me say it appeared...

556
557 Mr. Tokarz - It appeared from the study.

558
559 Mr. Wright - But not by Simons Hauling.

560
561 Mr. Tokarz - That may be the case, Mr. Wright. All I'm saying...

562
563 Mr. Wright - That didn't say that Simons Hauling had committed
564 any violations.

565
566 Mr. Tokarz - That's correct. All I meant to say, and let me be clear,
567 is that I talked with Mr. Quinan on Tuesday, told him I was concerned about the
568 report of 46 violations between the Midview and Bickerstaff, and there was
569 another Oakland Road access based on the traffic study. I didn't do the traffic
570 study, I haven't heard the evidence, so I'm not trying to argue the case for you
571 today. I simply am trying to say to you I did alert Mr. Quinan and send him the
572 traffic study and suggest he may want to have somebody here from Simons
573 Hauling. That's all I'm here to say.

574
575 Ms. Dwyer - Mr. Tokarz, if I can just give an example of my
576 question that's unrelated to the traffic study so we don't get involved in that. We
577 have two companion cases here and there were two use permits approved at
578 different times, so the provisions are different even though it's all basically the
579 same site. One of the cases requires a \$2,000-per-acre bond guarantee. The
580 other one requires a \$1,000-per-acre bond. So, one of my thoughts in reading

581 this was we would want to be consistent and have a \$2,000-per-acre bond for
582 both to make sure that we're covered. According to the applicant, I would not be
583 able to impose that condition because that's unrelated to the amendment that's
584 been requested, which relates to the geographic area from which debris can be
585 hauled. As I understand it, your position is that once this can of worms was
586 opened, that is once the use permit is being requested to be amended, all the
587 conditions are fair game and can be addressed by the Board, including that one,
588 for example.

589

590 Mr. Tokarz - My view is that if there is a public hearing that the
591 Board can consider the use permit application in it's totality, given the fact that
592 the applicant has requested an amendment of the condition. That makes the
593 whole use permit, in my opinion, fair game. Otherwise, I think the BZA would be
594 improperly limited in its consideration of all the circumstances because there may
595 well be many use permit conditions that would be affected by a requested
596 amendment.

597

598 Ms. Dwyer - So, we can only consider those conditions that would
599 be affected.

600

601 Mr. Tokarz - No, I'm not saying that. Let me say it again. I believe
602 that once a use permit application amendment comes to the Board, when there is
603 an advertised public hearing, all the conditions of the use permit, all of the
604 circumstances surrounding the use permit can be examined by the Board. That's
605 my opinion. I understand that Mr. Quinan wants to argue to the contrary, but I
606 am not aware of any statutory provision or any ordinance provision that provides
607 that when a use permit application is advertised, that you're limited only to the
608 terms that the applicant wishes you to consider. I think that's what Mr. Quinan's
609 position amounts to and I don't think that's appropriate.

610

611 Mr. Wright - Either way, any change in the condition should have
612 been brought up at the hearing and specifically articulated so that the applicant
613 could respond to it. All we had is general testimony. We didn't have any specific
614 change to the conditions other than the one that was of concern.

615

616 Ms. Dwyer - Right, because the applicant has to agree to those
617 changes.

618

619 Mr. Wright - We're talking ... about this particular case.

620

621 Mr. Tokarz - As I said earlier, the ordinance I believe says that if
622 the BZA wishes to impose a condition is to seek the agreement of the applicant
623 and otherwise to deny the permit application.

624

625 Mr. Wright - There was nothing to that effect done at that hearing
626 today.

627
628 Ms. Dwyer - The issue's relevant in terms of the traffic issue.
629
630 Mr. Wright - But no specific condition was proposed or change in
631 condition was proposed. We talked about it, but there was no specific change in
632 the condition proposed that could have been dealt with by the applicant in a
633 direct manner. That's my point. I have no problem if we articulated, if the staff
634 had come up with another change we wanted to make. It would have been
635 submitted to us for our consideration; we could have discussed it during the
636 hearing, fine. But it wasn't done.
637
638 Mr. Tokarz - I assume you're not asking me a question because I
639 wasn't at the hearing.
640
641 Mr. Wright - I'm just making a comment.
642
643 Mr. Tokarz - Are there any other questions?
644
645 Ms. Dwyer - That was my question.
646
647 Mr. Tokarz - All right. Thank you.
648
649 Mr. Nunnally - Thank you, sir.
650
651 Mr. Wright - You ready for a motion?
652
653 Mr. Nunnally - Ready for a motion.
654
655 Mr. Wright - I move we approve the Case UP-15-2005.
656
657 Mr. Nunnally - UP 15-2005.
658
659 Mr. Nunnally - We'll take them one at a time.
660
661 Mr. Wright - All right, 15. I move we approve the condition as it is
662 stated in our materials.
663
664 Mr. Nunnally - Motion by Mr. Wright it be approved. Do I hear a
665 second?
666
667 Mr. Kirkland - Second.
668
669 Mr. Nunnally - Second by Mr. Kirkland. All in favor say "aye."
670
671 Ms. Harris - Can I amend that motion?
672

673 Mr. Wright - Go ahead.
674
675 Ms. Harris - Okay. I wish to amend the motion that this will be
676 reviewed in 12 months because there are some unresolved issues. For example,
677 on the conditions that we had, the two pages of conditions. If we looked at
678 Condition #9 that talks about the permanent gate should not be opened except
679 when the superintendent is on site to control the dumping. And on the other case,
680 "The applicant shall erect and maintain gates at all entrances to the property." It
681 appears to me that the applicant has control over who comes through those
682 gates. So, if we had trucks that were turning in, 180 trucks turning into those
683 gates, yet we can't determine if they're going to Cox or they're going to Simons, I
684 feel that there is partial responsibility for those 180-some trucks going into those
685 gates that the traffic report determined. I don't see how we can very well discard
686 the traffic report. So, I feel that it should be re-visited in 12 months, a year from
687 this hearing. When we open up this to other localities, there will indeed be an
688 increase in truck traffic, whether we say or don't say it.
689
690 Mr. Wright - It cannot be beyond what's permitted.
691
692 Ms. Harris - We have new construction going on in the
693 communities right now, new apartments being constructed, new condos being
694 constructed. We don't know what type of adverse effect this increased traffic is
695 going to have on these residents. I feel that it's fair to the residents who are
696 buying those \$300,000+ homes who trust us to legislate this fairly, that we re-visit
697 this. It might be fine 12 months from now, but I do think we need to put a limit on
698 it.
699
700 Mr. Nunnally - Mr. Jennings, the Assistant Traffic Engineer, said that
701 they did the wrong count. It's 180 cars or trucks that came down there and were
702 going to not only Simons, but they were going to three other places.
703
704 Ms. Harris - There is one entrance there. He said they turn into
705 that entrance. But once they get into that road, you still have Simons and Cox.
706
707 Mr. Nunnally - Yeah, but he said there's also a few other businesses.
708
709 Ms. Harris - On the road. But once you turn into that entrance, it's
710 Simons and Cox.
711
712 Mr. Wright - I don't think that report tells anything.
713
714 Mr. Kirkland - I think the report was skewed because they put the
715 traffic counters on all of these roads and there's no way they could determine
716 which gate they were going into.
717

718 Ms. Harris - That's why 12 months from now they can do one
719 that's more accurate and we can be fair to the new residents.
720

721 Mr. Wright - We can bring them back, but we've got a limit. DEQ
722 has a limit as to traffic that can go in there and we agreed to it. Right? The
723 County agreed to it the last time.
724

725 Mr. Kirkland - Nine hundred tons.
726

727 Mr. Wright - That's what ought to be addressed if the limit's too
728 high. Can we differ from DEQ and require a lower limit?
729

730 Mr. Blankinship - I think you could, yes.
731

732 Mr. Wright - Okay. Well, maybe that needs to be monitored. I
733 think we would have the prerogative to call them back in if we had evidence that
734 there was something going on that was dangerous to the people.
735

736 Ms. Dwyer - There are two ways that I see to address your
737 concern. One is to do that study and if we find that Simons has violated the
738 provision that requires their trucks to stay off these roads, then we can call them
739 in for a violation. That's one way to deal with it. If we find there is a violation,
740 then we deal with that violation. The other thing, 24-116 does say, "any special
741 use permit may be authorized for a limited or an indefinite period of time." As I
742 understand Mr. Blankinship from my earlier question, this is an indefinite one. We
743 could issue it for a limited time and I'm assuming it's not a condition that would
744 have to be approved by the applicant because that's just part of what we do. The
745 applicant may have a different opinion. I assume we could issue this use permit
746 for a limited time, say 12 months, and we do that routinely for other cases.
747

748 Mr. Kirkland - That gives the County time to do accurate traffic
749 counts and number of loads going in. Is that what you mean, Ms. Dwyer?
750

751 Ms. Dwyer - I'm just saying I think we have the authority to issue a
752 use permit for a limited period of time or we cannot get into that issue and just
753 examine whether there's been a violation.
754

755 Mr. Wright - Aren't we adding a condition or changing something
756 that the applicant hasn't been notified of?
757

758 Ms. Dwyer - Well, I guess that would be the issue. Is that a
759 condition or not? I don't think it has to be a condition.
760

761 Mr. Wright - Yes, it is. It is a condition. It's limited to a certain
762 period of time.
763

764 Mr. Blankinship - That's how we typically do it.
765
766 Ms. Dwyer - By condition.
767
768 Mr. Kirkland - It's usually a numbered condition.
769
770 Mr. Wright - If that had been our desire, we should have brought
771 that up at the time.
772
773 Ms. Dwyer - If we consider it to be a condition, then it would have
774 to be agreed to by the applicant.
775
776 Mr. Wright - I believe it's a condition.
777
778 Ms. Dwyer - I'm not sure.
779
780 Ms. Harris - I frequent that way, as you know, daily. If someone is
781 injured because of all these new materials coming in, I would feel extremely
782 guilty being on this Board and not testing the impact of this new regulation on the
783 citizens and on this community.
784
785 Mr. Kirkland - We could do that, Ms. Harris. We can ask for another
786 survey or we can keep a check on it. I believe that at any time we deem there's
787 something going on that would require that, I think we could call a hearing and
788 address it for a violation. It's up to the County to keep abreast of the situation
789 and keep accurate counts for whatever time it takes.
790
791 Ms. Harris - So, you're telling me that the tonnage requirement is
792 the same no matter what trash we take, whether we take it from Georgia.
793
794 [Board members talking at the same time.]
795
796 Mr. Kirkland - If the tonnage requirement, if it's too high, then we
797 should address it and lower it.
798
799 Ms. Harris - Per day?
800
801 Mr. Blankinship - Mr. Quinan, do you know?
802
803 Mr. Quinan - There's a maximum tonnage requirement per day and
804 that's not going to change. That has nothing to do with this amendment.
805
806 Mr. Kirkland - I think that's a separate issue, but I think we ought to
807 address that. We ought to be concerned about whether it's too high, because
808 that would indicate how many trucks would come in, how much tonnage you get.

809 I think that's something we need to check and keep a check on, on all of these to
810 protect the community.

811

812 Ms. Harris - I really would like to restate my motion, because I
813 think it needs to be revisited 12 months from now to see where we are and
814 whether it's working.

815

816 Mr. Wright - We could revisit it, but I have concern about limiting
817 the duration of the permit without having addressed it. That's adding a new
818 condition.

819

820 Mr. Blankinship - The motion's been made.

821

822 Mr. Nunnally - We're not limiting the term of the commitment, are we,
823 we're just saying we're going to recheck it in 12 months.

824

825 Mr. Kirkland - That's something we could do; we don't have to have
826 anything in a motion to do it. We could have our own internal investigation of it.

827

828 Mr. Blankinship - We can ask Works for a traffic count any time we
829 want and we can be more specific about what we want.

830

831 Mr. Wright - That's what we need to do.

832

833 Mr. Nunnally - As long as we do that within 12 months, is that what
834 you're saying, Ms. Harris?

835

836 Ms. Harris - Yes.

837

838 Mr. Kirkland - And report back to us within 12 months and
839 periodically so it's not just a one-time shot.

840

841 Mr. Wright - That doesn't need to be part of this approval, does it?
842 That's separate.

843

844 Mr. Nunnally - Okay. As long as we've got Ms. Harris' suggestion
845 down here. All right. I have a motion by Mr. Wright, seconded by Mr. Kirkland to
846 be approved. All in favor say "aye." It's been approved.

847

848 Mr. Nunnally - UP 16-2006.

849

850 Mr. Wright - Move we approve it.

851

852 Mr. Nunnally - Motion by Mr. Wright. Have a second?

853

854 Mr. Kirkland - Second.

855
856 Mr. Nunnally - Second, Mr. Kirkland. All in favor say aye.
857
858 Ms. Harris - I abstain from both motions.
859
860 Ms. Dwyer - So, Ms. Harris, the upshot is that you are requesting
861 staff to monitor compliance with these conditions in terms of access.
862
863 Ms. Harris - In my limited time on this Board, it seems that once
864 you give carte blanche approval to conditions, it's hard to change them. So, I
865 don't think we should do that on this particular issue. I think it's too severe. I
866 think life and limb issues are at stake.
867
868 Mr. Wright - I don't disagree with that, but I—
869
870 Ms. Harris - I hope I'm wrong.
871
872 Mr. Wright - I think it's too late to bring it up and we should have
873 addressed that. That was my concern, legally.
874
875 Ms. Harris - I've seen us in motion come up with all kinds of
876 creative motions and the public hearing period is over.
877
878 Mr. Wright - We didn't change conditions unless it's addressed
879 during the hearing, supposedly.
880
881 Ms. Dwyer - If we've done it, we shouldn't have.
882
883 Mr. Nunnally - How do you vote, Ms. Dwyer?
884
885 Ms. Dwyer - Aye.
886
887 Mr. Nunnally - Okay. It's been approved.
888

889 After an advertised public hearing and on a motion by Mr. Wright, seconded by
890 Mr. Kirkland, the Board **granted** application **UP 15-2005 and UP 16-2005** for a
891 conditional use permit to amend conditions at the existing landfill at 1820
892 Darbytown Road (Parcel 809-707-1585(part)), zoned M-2, General Industrial
893 District (Varina). The Board granted the conditional use permits subject to the
894 following conditions:

895
896 **UP-15-2005:**

- 897
898 1. The applicant must present a complete grading, drainage, and erosion
899 control plan prepared by a Professional Engineer certified in the state of Virginia

900 to the Department of Public Works for approval. This plan must include the
901 necessary floodplain information if applicable.

902
903 2. The landfill shall be operated as a private facility for the applicant except
904 that other contract haulers licensed by the State of Virginia may be permitted to
905 deposit waste on the site. The facility shall not be open for use by the general
906 public.

907
908 3. The facility shall be operated in accordance with all the regulations of and
909 have all permits required by the Department of Environmental Quality of the
910 Commonwealth of Virginia.

911
912 4. The driveway to the landfill area shall be 24 feet in width and paved for at
913 least 400 feet off Darbytown Road. All necessary steps shall be taken to prevent
914 the tracking of mud or debris onto Darbytown Road.

915
916 5. The landfill operation shall be permitted between the hours of 7:00 a.m.
917 and 6:00 p.m. during Eastern Daylight Savings Time and between 7:30 a.m. and
918 5:00 p.m. during Eastern Standard time, Monday through Saturday.

919
920 6. No operations of any kind are to be conducted at the site on Sundays, nor
921 on national holidays.

922
923 7. All means of access to the property shall be from the established entrance
924 onto Darbytown Road.

925
926 8. A standard stop sign (R-1-B) shall be installed and maintained at the
927 Darbytown Road entrance.

928
929 9. The permanent gate shall be erected at the Darbytown Road entrance to
930 the property. The gate shall not be opened except when a superintendent is on
931 the site to control the dumping on the property as permitted under these
932 conditions. This entrance shall also serve as access for UP-9-93 and UP-10-93.

933
934 10. Standard "Truck Entering Highway" signs shall be erected on Darbytown
935 Road on each side of the entrance to the property. These signs will be placed by
936 the County, at the applicant's expense.

937
938 11. A Superintendent who shall be personally familiar with all the terms and
939 conditions of UP-23-93 shall be present at the beginning and conclusion of
940 operations each work day to see that all conditions of said Conditional Use
941 Permit are carefully observed.

942
943 12. Responsibility for maintaining the property, fences, and roads in a safe
944 and secure condition indefinitely, or of converting the property to some other safe
945 use, shall rest with the applicant.

946
947
948
949
950
951
952
953
954
955
956
957
958
959
960
961
962
963
964
965
966
967
968
969
970
971
972
973
974
975
976
977
978
979
980
981
982
983
984
985
986
987
988
989
990
991

13. The debris deposited on the site shall be spread, compacted, and covered in strict compliance with the state regulations governing these operations.

14. "No Trespassing" signs shall be posted and maintained on the property to warn against use of the property by unauthorized persons. The minimum letter height shall be three inches and signs are to be posted every 250 feet along the perimeter of the property. The applicant shall furnish the Chief of Police a letter authorizing enforcement by the County Police Officers of the "No Trespassing" regulations, and agreeing to send a representative to court for purposes of testimony whenever required or requested by the Division of Police.

15. That a suitable completion bond with surety satisfactory to the County Attorney or certified check, be posted with the Secretary of the Board of Zoning Appeals for 48 acres, in an amount of \$1,000.00 per acre for each acre of land included under development, for a total of \$48,000.00 guaranteeing that the land will be restored in accordance with the plans approved by the Department of Waste Management. The completion bond may provide for the termination of the obligations of the surety on such bond by the surety giving a 90 day notice in writing to the principal and obligee of the bond, and its intention so to do. Such notice shall be served upon the principal and upon the obligee as provided by law for the service of notices. At the termination of the aforesaid 90 day notice to the principal, all authority of the principal under this use permit shall cease provided the applicant has not furnished another bond suitable to the County within said 90 days. The principal shall then proceed within the next ensuing 90 days following the termination of its authority under this use permit, to accomplish the complete restoration of the land as provided for under the terms of this permit. A notice of termination by such surety shall in no event relieve the surety from its obligation to indemnify the County of Henrico for a breach of the conditions of this use permit.

16. The applicant shall furnish a certification from his bonding company each year, verifying that the bond is in effect, premiums have been paid, and the bonding company reaffirms its responsibility under the use permit conditions. This certification shall be submitted to the Board on December 16 of each year.

17. This permit does not become valid until the bond, required in condition No. 15, has been posted with the County, and the necessary approval received. This must be accomplished within 90 days of the Board's action or the action becomes invalid.

18. A 300 foot deep buffer of existing trees shall be preserved along Darbytown Road to screen this operation from public view.

19. No vehicles hauling to or from this site shall use Oakland, Midview, or Bickerstaff Roads as a route of travel to or from this site.

992
993
994
995
996
997
998
999
1000
1001
1002
1003
1004
1005
1006
1007
1008
1009
1010
1011
1012
1013
1014
1015
1016
1017
1018
1019
1020
1021
1022
1023
1024
1025
1026
1027
1028
1029
1030
1031
1032
1033
1034
1035
1036
1037

20. The facility shall not be used for the disposal of toxic or hazardous waste of any kind.

21. [AMENDED] The landfill shall be restricted to the disposal of material from within a 150 mile radius of the City of Richmond, only.

22. Simons Hauling shall actively pursue all possible recycling options and report to the Board of Zoning Appeals on the anniversary date of the permit each year of their progress.

23. Monitoring of water from the site shall be performed on a quarterly basis by the state or a private laboratory to determine the content of the water and the results furnished to the Henrico County Planning Office.

24. All trucks hauling material to the property must be covered with either a solid canvas or be completely enclosed.

25. A right turn lane shall be provided on Darbytown Road adjacent to the entrance to the area if it is engineeringly and practically possible. The applicant shall work with the Department of Public Works towards accomplishing this objective.

26. The permit holder shall daily monitor and clean up any trash along Darbytown Road within 2,000 feet of the entrance to the landfill area. This cleanup shall also include the removal of dust or mud found on Darbytown Road.

Affirmative:	Dwyer, Kirkland, Nunnally, Wright	4
Negative:		0
Abstain:	Harris	1

UP-16-2005

1. This use permit is subject to all requirements of the County Code.
2. Before beginning any work, the applicant shall provide a financial guaranty in an amount of \$2,000 per acre for each acre of land to be disturbed, for a total of \$11,000, guaranteeing that the land will be restored in accordance with Virginia Department of Environmental Quality regulations. 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, and within the next 180 days the applicant shall restore the land as provided for under the conditions of this use permit.

1038 Termination of such financial guaranty shall not relieve the applicant from its
1039 obligation to indemnify the County of Henrico for any breach of the conditions of
1040 this use permit. If this condition is not satisfied within 90 days of approval, the
1041 use permit shall be void.

1042

1043 3. Before beginning any work, the applicant shall submit erosion control
1044 plans to the Department of Public Works for review and approval. Throughout
1045 the life of the operation, the applicant shall continuously satisfy the Department of
1046 Public Works that erosion control procedures are properly maintained, and shall
1047 furnish plans and bonds that the department deems necessary. The applicant
1048 shall provide certification from a licensed professional engineer that the landfill
1049 facilities and sediment control structures meet the approved design criteria as set
1050 forth by the State. If this condition is not satisfied within 180 days of approval,
1051 the use permit shall be void.

1052

1053 4. Before beginning any work, the applicant shall obtain a permit from the
1054 Virginia Department of Environmental Quality. If this condition is not satisfied
1055 within one year of approval, the use permit shall be void.

1056

1057 5. In the event that the Board's approval of this use permit is appealed, all
1058 conditions requiring action within 90 days will be deemed satisfied if the required
1059 actions are taken within 90 days of final action on the appeal.

1060

1061 6. The applicant shall comply with the Chesapeake Bay Preservation Act and
1062 all state and local regulations administered under such act applicable to the
1063 property, and shall furnish to the Planning Office copies of all reports required by
1064 such act or regulations.

1065

1066 7. Hours of operation shall be from 7:00 a.m. to 6:00 p.m. when Daylight
1067 Savings Time is in effect, and from 7:00 a.m. to 5:00 p.m. at all other times.

1068

1069 8. No operations of any kind are to be conducted at the site on Sundays or
1070 national holidays.

1071

1072 9. All means of access to the property shall be from the established entrance
1073 onto Darbytown Road.

1074

1075 10. The applicant shall erect and maintain gates at all entrances to the
1076 property. These gates shall be locked at all times, except when authorized
1077 representatives of the applicant are on the property.

1078

1079 11. The applicant shall post and maintain a sign at the entrance to the site
1080 stating the name of the operator, the use permit number, the DEQ license
1081 number, and the telephone number of the operator. The sign shall be 12 square
1082 feet in area and the letters shall be three inches high.

1083

- 1084 12. The applicant shall post and maintain "No Trespassing" signs every 250
1085 feet along the perimeter of the property. The letters shall be three inches high.
1086 The applicant shall furnish the Chief of Police a letter authorizing the Division of
1087 Police to enforce the "No Trespassing" regulations, and agreeing to send a
1088 representative to testify in court as required or requested by the Division of
1089 Police.
1090
- 1091 13. Standard "Truck Entering Highway" signs shall be erected on Darbytown
1092 Road on each side of the entrances to the property. These signs will be placed
1093 by the County, at the applicant's expense.
1094
- 1095 14. The applicant shall post and maintain a standard stop sign at the entrance
1096 to Darbytown Road.
1097
- 1098 15. The applicant shall provide a flagman to control traffic from the site onto
1099 the public road, with the flagman yielding the right of way to the public road traffic
1100 at all times. This flagman will be required whenever the Division of Police deems
1101 necessary.
1102
- 1103 16. All roads used in connection with this use permit shall be effectively
1104 treated with calcium chloride or other wetting agents to eliminate any dust
1105 nuisance.
1106
- 1107 17. The operation shall be so scheduled that trucks will travel at regular
1108 intervals and not in groups of three or more.
1109
- 1110 18. The applicant shall maintain the property, fences, and roads in a safe and
1111 secure condition indefinitely, or convert the property to some other safe use.
1112
- 1113 19. If, in the course of its preliminary investigation or operations, the applicant
1114 discovers evidence of cultural or historical resources, or an endangered species,
1115 or a significant habitat, it shall notify appropriate authorities and provide them
1116 with an opportunity to investigate the site. The applicant shall report the results
1117 of any such investigation to the Planning Office.
1118
- 1119 20. If water wells located on surrounding properties are adversely affected,
1120 and the landfill operations on this site are suspected as the cause, the effected
1121 property owners may present to the Board evidence that the landfill operation is a
1122 contributing factor. After a hearing by the Board, this use permit may be revoked
1123 or suspended, and the operator may be required to correct the problem.
1124
- 1125 21. [AMENDED] The landfill shall only accept material originating within a 150
1126 mile radius of the City of Richmond, hauled by the applicant and other contract
1127 haulers licensed by the Commonwealth of Virginia. The material to be deposited
1128 on the site shall be limited to construction, demolition and land-clearing debris,
1129 such as stone, bricks, tile, sand, gravel, soil, asphalt, concrete and like materials,

1130 and shall not include any hazardous materials as defined by the Virginia
1131 Hazardous Waste Management Regulations.

1132
1133 22. A superintendent, who shall be personally familiar with all the terms and
1134 conditions of Section 24-103 of Chapter 24 of the County Code, as well as the
1135 terms and conditions of this use permit, shall be present at the beginning and
1136 conclusion of operations each work day to see that all the conditions of the Code
1137 and this use permit are observed.

1138
1139 23. Each day the applicant shall monitor and clean up any trash, dust or mud
1140 along Darbytown Road within 2,000 feet of the entrance to the site.

1141
1142 24. A progress report shall be submitted to the Board on March 31 of each
1143 year.

1144
1145 25. Failure to comply with any of the foregoing conditions shall automatically
1146 void this permit.

1147
1148
1149 Affirmative: Dwyer, Kirkland, Nunnally, Wright 4
1150 Negative: 0
1151 Abstain: Harris 1

1152
1153
1154 Mr. Nunnally - Next case, Mr. Blankinship.

1155
1156 **A-9-2006** **Deferred.**

1157
1158 **UP-9-2006** **Amusement Promotions, Incorporated**, requests a
1159 temporary conditional use permit pursuant to Section
1160 24-116(c)1 to host a carnival at 10101 Brook Road
1161 (Parcel 785-771-0111), zoned B-3C, Business
1162 District, Conditional (Fairfield).

1163
1164 Mr. Nunnally - Is there anyone else here interested in this case? If
1165 so, will you please stand and raise your right hand and be sworn in.

1166
1167 Mr. Blankinship - Raise your right hand. Do you swear the testimony
1168 you're about to give is the truth, the whole truth, and nothing but the truth, so help
1169 you God?

1170
1171 Mr. Nunnally - Please state your name for the record, sir, and tell us
1172 what you're requesting.

1173
1174 Mr. Stephenson - John Stephenson. We have been here in the past and
1175 we have a wonderful relationship with the Simon's Mall at Virginia Center

1176 Commons. We kind of already prematurely made arrangements at the trailer
1177 park to house our employees so they don't have to become unwelcome guests at
1178 Virginia Center Commons. What we would like to do is put on a carnival
1179 application to help promote Virginia Center Commons. We put that on and we
1180 coined it as a Family Fun Fair. We fence in the unit and we had an entrance in
1181 and out. We hire off-duty uniform police officers. We get a 30-yard trash
1182 dumpster that we have dumped as need be. We have port-a-potties that are
1183 brought in; I believe it's by Cox. They're out of Petersburg, Virginia and I use
1184 them at South Park Mall and they're wonderful. They come everyday and they
1185 clean the units and put them in a feasible site. The day afterward, they give the
1186 police time to use them and then they come and service them and take them on
1187 out. We put the location back in the same condition we received it. I've got a
1188 sweeper truck that they use at the mall and we pay them \$200 additional to
1189 sweep our entire area so it's put back in perfect condition. There again, I mention
1190 employees of the show stay in the trailer park and they go back and forth to the
1191 lot every day, which Lewistown Road is relatively close. It's nice that we do that.
1192 We have it fenced in all the way around and we have a security officer that we
1193 hire from the same security company that the mall has. We close it off and lock
1194 up the gate every night so there's no entrance in and out when there's nobody
1195 there to monitor and manage the facility. We have the insurance.

1196
1197 Mr. Kirkland - You say you have insurance. How much insurance
1198 do you have?

1199
1200 Mr. Stephenson - A million dollar liability with it's 2 million 10 general
1201 aggregate. I misplaced the insurance spec page, but I believe, from what we did
1202 last time, we included Henrico County as additional insurance on the policy.

1203
1204 Mr. Kirkland - I think that should be required in the condition.

1205
1206 Mr. Stephenson - It is. I was looking for the exact page.

1207
1208 Mr. Kirkland - It doesn't say that. It just says that you should have a
1209 million dollars insurance.

1210
1211 Mr. Stephenson - We have additional insurance anyway.

1212
1213 Mr. Kirkland - The County ought to be named in the additional
1214 insurance.

1215
1216 Mr. Stephenson - That's something we already do. Whether it's
1217 requested or not, we like to make sure the County is covered and does not have
1218 any opportunity to face any liability. A million per occurrence. I think it is two
1219 million and it could be up to five million general aggregate.

1220

1221 Mr. Kirkland - I'm going to believe it's at least three million
1222 aggregate.
1223

1224 Mr. Stephenson - I believe it's somewhere in that neighborhood. I deal
1225 with various shows and they go from five million to ten million, so it just depends
1226 on the show that I bring in. I bring you quality amusements and we have a third-
1227 party inspector by the name of Ken Martin and he comes over and above whom
1228 you would send to check the mechanical devices. We hire him and pay him six
1229 to eight hundred dollars depending on how many rides and what needs to be
1230 done. Our insurance requires that we hire a third-party broker or ride inspector
1231 and he's certified with the Commonwealth of Virginia. He's wonderful. He lives
1232 in Richmond, Virginia. Wonderful man. I've known him for 25 years of my life.
1233 He does wonderful jobs. In my 25 years of booking, I've never had an episode
1234 where anything was done incorrect with his inspections. The worse we get is
1235 kids tripping in the parking lot and having to give them Band-Aids and so forth.
1236 We have off-duty uniform police officers that we pay the funds for and I believe
1237 it's at \$25 per hour; that's what we paid last time.
1238

1239 Mr. Nunnally - You wouldn't have any problem with us adding the
1240 one million in, three million aggregate on this.
1241

1242 Mr. Stephenson - I'll make sure that it's covered, just to make sure that
1243 it's there. That's fine.
1244

1245 Mr. Nunnally - Add in the County as additional insured.
1246

1247 Mr. Stephenson - Yes, sir.
1248

1249 Mr. Wright - Mr. Blankinship, are these the same conditions that
1250 we had last time?
1251

1252 Mr. Blankinship - Yes sir, they're based on that. I mean, we changed
1253 the dates.
1254

1255 Mr. Wright - I mean the basic points.
1256

1257 Mr. Blankinship - Yes sir, they cover all the same.
1258

1259 Mr. Wright - Did we have any complaints for the last time or year
1260 before that?
1261

1262 Mr. Blankinship - I'm not aware of any. We did not receive any
1263 comments from police asking for anything to be done differently.
1264

1265 Ms. Dwyer - You have two additional guards on Saturday. Do you
1266 think there's any need to have, based on your experience, any additional security
1267 guards on Friday night?
1268

1269 Mr. Stephenson - Normally, the hundred dollars per hour for security,
1270 that's pretty sufficient to have four officers. We have the gate covered and we
1271 have it sealed all the way around. There's only one way in and one way out. But
1272 it's nice to have two officers inside and two at the front gate. That way it controls
1273 the crowd. They're not going to do anything devious or idiotic. The same as
1274 inside the mall. There are security officers inside the mall all over the place.
1275

1276 Mr. Kirkland - What I'm asking is you have the extra guards on
1277 Saturday night. Wouldn't it be wise to have them on Friday night, too?
1278

1279 Mr. Stephenson - Well, Saturday's are normally the busiest day, from
1280 my record of here. Friday night, it really differs here. The first Friday, we might
1281 want to bring on a couple extra officers, but the second Friday was like a ghost
1282 town. It was amazing. I've never seen an area take to the carnival the first
1283 weekend and not really enjoy it the second weekend; it's totally amazing.
1284

1285 Ms. Dwyer - So consistently, you have a larger crowd on
1286 Saturdays, but not consistently on Fridays.
1287

1288 Mr. Stephenson - The first Friday, possibly. So, what we have is some
1289 standby call-in. We can have a couple officers show up at 8:00 and they can
1290 report for two hours of duty, which is essentially all you need. By 10:30, 11:00,
1291 the people are starting to use their final tickets and they want to go home. The
1292 show people are kinda getting tired and they want to go home, too.
1293

1294 Ms. Harris - We did have Sunday hours last year?
1295

1296 Mr. Stephenson - Yes ma'am. I wasn't here last year. I was here, I
1297 believe, 2003 and 2004. Another show came in and booked in here last year.
1298 My friend, Mark, told me that I was beaten to the punch and come back next
1299 year. That's kinda how it was. Apparently, the show didn't happen last year
1300 because they didn't go through the meeting here with you all, which I think they
1301 should have done. We're looking for your blessing to put on this event.
1302

1303 Mr. Nunnally - Any other questions from the Board or staff? Is
1304 anyone here in opposition to this request? Hearing none, that completes the
1305 case. Thank you for coming.
1306

1307 Mr. Stephenson - Thank you all very much.
1308

1309 **DECISION**
1310

1311 Mr. Nunnally - UP 9-2006
1312
1313 Ms. Harris - I move that it be approved. Oh, the conditions. I do
1314 have the conditions. The insurance will be \$3 million for the aggregate and the
1315 County of Henrico will be the coinsured.
1316
1317 Mr. Kirkland - That's good.
1318
1319 Ms. Dwyer - We specify that the one million would be per
1320 occurrence?
1321
1322 Ms. Harris - Occurrence, yes.
1323
1324 Mr. Kirkland - I second that motion.
1325
1326 Mr. Nunnally - All right. Moved by Ms. Harris and seconded by Mr.
1327 Kirkland that it be approved. All in favor say aye. It's approved.
1328
1329 After an advertised public hearing and on a motion by Ms. Harris, seconded by
1330 Mr. Kirkland, the Board **granted** application **UP-9-2006** temporary conditional
1331 use permit to host a carnival at 10101 Brook Road (Parcel 785-771-0111),
1332 zoned B-3C, Business District, Conditional (Fairfield). The Board granted the
1333 conditional use permit subject to the following conditions:
1334
1335 1. This approval is only for a carnival at the Virginia Center Commons
1336 shopping center from April 20, 2006 until April 30, 2006.
1337
1338 2. The applicant shall satisfy all requirements of the Henrico County Division
1339 of Police concerning the security of the site and the patrons of the event. In
1340 addition to mall security, the applicant shall employ two off-duty police officers on
1341 site during all performances. Two additional officers will be provided on Saturday
1342 night between the hours of 7:00 PM to 12:00 Midnight.
1343
1344 3. The applicant shall satisfy all the requirements of the Henrico County
1345 Department of Health and the Henrico County Department of Building
1346 Inspections.
1347
1348 4. Hours of operation shall be limited to 5:00 PM to 11:00 PM Monday
1349 through Thursday, 5:00 PM to 12:00 Midnight Fridays, and 12:00 Noon to 12:00
1350 Midnight Saturdays and 2:00 PM to 11:00 PM on Sunday.
1351
1352 5. Adequate site distance must be provided entering onto public roads.
1353
1354 6. Prior to receiving a building permit or an amusement device permit, the
1355 applicant must submit and receive approval of a security plan from the Division of
1356 Police.

1357
1358
1359
1360
1361
1362
1363
1364
1365
1366
1367
1368
1369
1370
1371
1372
1373
1374
1375
1376
1377
1378
1379
1380
1381
1382
1383
1384
1385
1386
1387
1388
1389
1390
1391
1392
1393
1394
1395
1396
1397
1398
1399
1400
1401

7. All tents and accessory structures shall be removed from the site by May 1, 2006, at which time this permit shall expire.

8. [AMENDED] The applicant shall provide proof of liability insurance of at least \$1,000,000 per claim, \$3,000,000 aggregate liability, naming the County of Henrico as an additional insured.

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

Mr. Nunnally - Next case, Mr. Blankinship.

UP-10-2006 **Ariel Skelley** requests a conditional use permit pursuant to Section 25-95(i)(4), to build a swimming pool and gazebo in the front yard at 13 Highland Road (Westham) (Parcel 759-731-8984), zoned R-1, One-Family Residence District (Tuckahoe).

Ms. Skelley - Good morning, Mr. Chairman and Board members. I was in front of you...

Mr. Nunnally - We've got to get her sworn. Have you been sworn?

Ms. Skelley - Have I been sworn? No.

Mr. Nunnally - Is anybody else interested in this case? All right. Please raise your right hand and be sworn in, please.

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

Ms. Skelley - I do.

Mr. Nunnally - Please state your name for the record and tell us what you're requesting.

Ms. Skelley - My name is Ariel Skelley and my home is on 13 Highland Road in Henrico. I was in front of you on June 23rd, 2005, requesting to put a swimming pool in my backyard and I was denied this because your Board didn't have the jurisdiction at that time to review my swimming pool plans. I'm really tickled to be back here and that you now are able to review this pursuant to

1402 an amendment in the Virginia Code. Do you need me to give you the number of
1403 that Virginia Code, the amendment?

1404

1405 Mr. Blankinship - No.

1406

1407 Ms. Skelley - Okay. Just to review where I was last year at this
1408 time. This is what was presented to you. This is an architectural rendering of the
1409 pool that I wanted to put in. It's a decorative pool. It's a house that's been highly
1410 designed. It's a house that is a restoration from the 1970's that has been
1411 renovated by architect Chris Fult. He always had this water in the back and I
1412 was really sad when we were not able to do it. I left you on June 23rd, licking my
1413 wounds, and deciding that Plan B would be to put water back there, but water
1414 that would be acceptable to you. So, instead, I put a fishpond in. Low and behold
1415 a couple months ago, a lawyer girlfriend called, screaming, saying that this
1416 amendment was possibly going to happen. Now, I have put some black lines
1417 around my drawing and I can bring this up to your attention, if you'd like. Existing
1418 right now is this smaller container, which is a fishpond. It was 80% built. We're
1419 on garden tour, so I'm sweating bullets here. This was put in for this year's
1420 garden tour for April 25th of this year. Everything is on hold now, hoping that we
1421 can, instead, do the pool in one month. Can I get a permit this afternoon
1422 possibly? So, that's it. The only other thing to review is I do have neighbors here
1423 with me. I have all of my contiguous neighbors. They're either here in person or I
1424 have letters from them. They are all in support of this. I'm afraid there are some
1425 other neighbors who do have some discussion that they'll bring to your attention.
1426 The only other thing that we need to discuss is a small gate. If you notice up
1427 towards the middle, slightly to the right-hand side on the perimeter of my
1428 property, I plan on putting a highly-decorative gate there. However, this gate will
1429 not be used; it will just be decorative in purpose. A perimeter of my property will
1430 be fenced with fencing that will be in code. I have an illustration of it here. It's a
1431 type of fencing that's code fencing.

1432

1433 Ms. Dwyer - Ms. Skelly, can you put that on the table so that
1434 everyone can see.

1435

1436 Ms. Skelly - I do have another person here, an expert. I have the
1437 contractor for the actual pool. If you have any questions about drainage or actual
1438 construction of this pool, I would refer to him. That's pretty much it.

1439

1440 Ms. Harris - Do you have copies of the neighbors who are
1441 agreeing with you that this should be done? Do you have copies of their letters or
1442 their consent?

1443

1444 Ms. Skelley - Yes, I have copies of the letters with me. There are
1445 three contiguous neighbors. Two of them I have letters, but two of them are
1446 here. One of them both sent a letter and is here in person. Would you like for
1447 me to give you those letters now?

1448
1449 Mr. Nunnally - No, why don't you let them come up and speak,
1450 please.
1451
1452 Ms. Skelley - One neighbor is not here. She actually sent the most
1453 effervescent letter.
1454
1455 Ms. Dwyer - I was going to suggest that we take for our record the
1456 letter from the person who is not here so that we would have that in our file. The
1457 application is actually for a gazebo and a pool. My understanding is that the
1458 decorative gate that you just showed us will really be in line with the fencing and
1459 the stonewall that it will not appear to be a building, it will just appear to be a
1460 continuation of the fence line.
1461
1462 Ms. Skelley - Exactly. It's a double gate. I own two of these. They
1463 will go parallel to each other. It will be a 5 by 7 structure and it will have a small
1464 pitched roof on it, very much like an Asian gate. It's really just decorative in
1465 nature.
1466
1467 Ms. Dwyer - In effect, to a person on the outside of your property,
1468 a neighboring home or from the street, it would just appear to be a continuous
1469 fence line that will either be sort of the aluminum or metal fence here with
1470 landscaping on both sides, if I understand it from the staff report.
1471
1472 Ms. Skelley - Correct.
1473
1474 Ms. Dwyer - This gate and then a continuation of the stone wall.
1475 My point is there will not appear to be an odd building jutting out in front of the
1476 fence line.
1477
1478 Ms. Skelley - Right. It'll appear to be in line with the stone fence.
1479
1480 Ms. Dwyer - And the building will be behind.
1481
1482 Ms. Skelley - Yes.
1483
1484 Ms. Dwyer - Will the pool be visible from any point outside of your
1485 property?
1486
1487 Ms. Skelley - No. There's a lot of vegetation that exists right now.
1488 We've put in more landscaping. And then on the one side, there's currently a
1489 stone wall there.
1490
1491 Ms. Dwyer - Could you describe the landscaping around the
1492 perimeter of this side of your home?
1493

1494 Ms. Skelley - I have another. It's actually the same illustration, but
1495 it just doesn't have the lines of the pool drawn in. As you can see, we have a lot
1496 of vegetation; it's old growth, 30-year-old holly. If you really made your mind up to
1497 it, you can see it here. It's just about impossible to see through it.
1498
1499 Ms. Dwyer - That's along East Highland, is that correct?
1500
1501 Ms. Skelley - Yes ma'am.
1502
1503 Ms. Dwyer - And the stone wall is along Highland.
1504
1505 Ms. Skelley - Yes.
1506
1507 Ms. Dwyer - Then on the outside of the stone wall, do you also
1508 have landscaping?
1509
1510 Ms. Skelley - Not up against the wall, but there is a pine growth
1511 between the wall and the street.
1512
1513 Ms. Dwyer - Thank you.
1514
1515 Mr. Nunnally - Anyone else want to speak in favor? State your
1516 name, sir.
1517
1518 Mr. Clarke - Good morning. My name is H. E. Clarke. My wife
1519 and I have lived at 11 Highland Road, which is next door, for 40 years. When we
1520 moved there, there was a big brick home on this Lot 13. It was purchased by
1521 Edward Gunst, which is a man I'm sure you'd be familiar with. It was torn down
1522 and the current house was built. The current house was placed on the lot
1523 sideways. In other words, the front of Ms. Skelley's house faces the side of my
1524 house. Now her house, of course, is on a corner. The back of her house is
1525 towards what was for many years, Crescent Lane, which several years ago was
1526 changed to East Highland Road. As you can see and as Ms. Skelley has stated,
1527 there are hollies back there about 30 feet tall. You can't see through them. You
1528 can't see the house, much less where a pool would be. Along Highland Road,
1529 there's a decorative fence. I understand that there are rules and regulations that
1530 you have to have, but it's very difficult to have them so that they will cover every
1531 instance. Common sense tells me that there's no reason why she shouldn't have
1532 that swimming pool as she desires because it would be totally hidden from the
1533 public.
1534
1535 Ms. Dwyer - Your address is 11 Highland?
1536
1537 Mr. Clarke - Next door.
1538
1539 Mr. Nunnally - Any other questions for Mr. Clarke?

1540
1541 Mr. Clarke - Thank you.
1542
1543 Mr. Nunnally - Thank you, sir. Anyone else?
1544
1545 Ms. Cardozo - Hi, I'm Whitney Cardozo and I live at 12 Highland
1546 Road, which is the house you can see peeking through directly across the street.
1547 I was up in my attic the other day and I could not see what is behind that wall.
1548 So, there is no visual other than the landscaping and the top of Ms. Skelley's
1549 house. We don't see any reason for not letting her have her pool.
1550
1551 Mr. Nunnally - Any questions?
1552
1553 Ms. Cardozo - Thank you.
1554
1555 Mr. Nunnally - Thank you, ma'am. Anyone else in favor? All right,
1556 sir.
1557
1558 Mr. Baldwin - Good morning. My name is David Baldwin and I
1559 represent D and S Pools, a Virginia contractor for swimming pools. I have been
1560 in contact with Ms. Skelley regarding the prospective building of the swimming
1561 pool in this location. We spent quite a bit of time reviewing the yard and also
1562 responding to the concerns that the neighbors have about the drainage and also
1563 about the appearance. I concur with the rest of the comments in agreement that
1564 this location would not pose a problem to the neighborhood. The reason I feel
1565 so, of course, we have a picture here that explains several reasons. There's a
1566 considerable amount of vegetation already on East Highland that gives very good
1567 blockage. As we travel back, of course, would be to the left of the picture going
1568 down the hill on East Highland. On that side, the neighbors live further down in
1569 the bottom. This house that Ms. Skelley's lives in is on a hill. Those neighbors
1570 can't see it coming up the hill; they can't see it turning off Highland into East
1571 Highland. It's very well blocked by a seven-foot wall, then you've got the trees in
1572 the way. Then on the short side towards the lower side, there's a three-foot wall
1573 that blocks you from seeing as you approach from the downhill side. So, the
1574 view is blocked very nicely. In fact, the proposed pool, as I measured it
1575 yesterday, the closest corner to East Highland would be 83 feet. It's approaching
1576 a hundred feet away from the road, plus the tall trees. She's trying real hard to
1577 make the neighbors happy. We don't want to cause any problems. We want to
1578 comply with whatever's necessary to put this pool in the smartest location. Also,
1579 with regards to drainage, there's one concern. I'd like to bring a photo that hasn't
1580 been brought to light. This is probably going to be resembling the negative ones
1581 you're bound to see. This photo is looking back at Ms. Skelley's house and this
1582 is from the downhill side. You see the three-foot sitting wall and to the left we
1583 see the large grove of trees there that's opposite the house. There's a short
1584 drainage pipe here and this is very close to the property line for Ms. Skelley. We
1585 see the short pines that she mentioned. There seems to be some big concern

1586 about this four-inch tile drain, which is simply a drain like you would use from a
1587 gutter. The landscaping contractor, on what would be the right side of this
1588 picture, on this side of the wall away from the pool the landscaping contractor
1589 along this side simply dropped gravel and a pipe to drain some of the water right
1590 at the edge of that property to prevent it from going over to the next home below.
1591 So, Ms. Skelley has drawn it away to protect the neighbor on that side and the
1592 water simply is diverted into the already existing flow of drain that would run off
1593 the property anyway. The property is fairly flat.

1594
1595 Ms. Dwyer - I just want to make sure I understand where this is. Is
1596 this the property line that's adjacent to the neighbor on East Highland?

1597
1598 Mr. Baldwin - Yes, yes. This neighbor is at a sharp drop-off below
1599 here and she wants to make sure that no water goes straight to that neighbor's
1600 driveway. The driveway is asphalt. She doesn't want any ice on the road from the
1601 rain. She's already showing interest in taking care of the other neighbors by
1602 diverting her water to the normal flow that would be natural to the location. This
1603 may be brought up. You can see why we say you can't see the pool because all
1604 you see is a sitting wall and the large trees. Then there's going to be a fence, too.
1605 We're very willing to try to cooperate with any arrangements regarding that. I
1606 want to mention that some may feel that a swimming pool is a cause for concern
1607 for water, but a pool is a watershed, much as when you develop property and
1608 you put in ponds, you are containing water. By putting in this pool, we're going to
1609 have 660 square feet of area that on an inch of rain is going to contain 400
1610 gallons that otherwise would run off the property. So, every effort is being made
1611 to contain water. Any water that may be disposed through the cleaning of the
1612 filter system can be disposed into the sewer system, as written in the
1613 arrangements for the instructions for a building permit or, if necessary, into a
1614 cistern in the ground, which would allow the normal seepage in the ground. So,
1615 every effort is being made to contain water in the area. Then inside of the area
1616 around the pool is going to be turf; it's not going to be pavement for water to have
1617 to run off. It's going to be turf grass that the water can soak into and it's a fairly
1618 level lot. There's a lot of vegetation to help keep the water and erosion from
1619 being a problem.

1620
1621 Ms. Dwyer - Our staff report notes that Public Works is aware of
1622 the drainage in the area and that the applicant is correctly discharging drainage
1623 from her property.

1624
1625 Mr. Baldwin - In the statements Ms. Skelley has given me, Public
1626 Works has visited the site and they see no violation at this time.

1627
1628 Mr. Nunnally - Any other questions from the Board or staff?

1629
1630 Ms. Dwyer - Not at this time.

1631

1632 Mr. Nunnally - All right. If we have some opposition, will you come
1633 down, please?
1634

1635 Mr. Crenshaw - Lee Crenshaw. I am the neighbor at 15 East
1636 Highland Road, which is down here next to Ms. Skelley. Our only concern here
1637 is not that she has a pool that I can see; it's just the proper drainage and the
1638 unsightliness of this particular drain that we're speaking and this water runoff. It's
1639 not that she's done anything wrong. We just asked her to address these issues
1640 so that it does not harm our other neighbor's property downhill and look
1641 unsightly, a diminution of potential value. I have some pictures that will show that
1642 there's a constant water flow that comes from this particular pipe down in front of
1643 my driveway. It's caused me not to be able to get out when the weather was cold
1644 the other day and it was frozen over. And it just looks very unsightly. One of my
1645 other neighbors, it pools in front of his driveway down here. I know she's trying
1646 to help one, but by helping one, it's caused other. We have only suggested that
1647 there may be potentially a French drain here or turned and drained into the
1648 natural drainage system up on Highland Road. So, these are our concerns that
1649 there are massive amounts of water here. I know that Steve Clarke has come out
1650 there and done that. I want her to have her pool. It's not a problem; we just
1651 want to have a solution that's not kind of this pipe sitting out here as you come
1652 down my street.
1653

1654 Mr. Wright - Mr. Crenshaw, what you're saying is the problem
1655 already exists before the pool is in, right? This is a drainage problem that was
1656 there before the pool. It doesn't appear to me from the testimony that the pool is
1657 going to make any difference to that; that problem is going to be there anyhow. I
1658 think it is something that needs to be attended to.
1659

1660 Mr. Crenshaw - That's all we're asking is that. There is not a question
1661 of whether she should or shouldn't have the pool; I'm just asking for a solution.
1662

1663 Mr. Wright - It looks like to me that the problem was there anyhow.
1664

1665 Mr. Crenshaw - Well, no, because you can clearly see from these
1666 pictures that this water is now coming down our road because it's been diverted
1667 from this particular pipe.
1668

1669 Mr. Wright - Yeah, but the pool is not in yet. That's what I'm
1670 saying, it's there before the pool.
1671

1672 Mr. Crenshaw - The pool is not a problem, but this particular piping
1673 and natural drainage is the issue.
1674

1675 Mr. Wright - Could I see those pictures?
1676

1677 Mr. Crenshaw - [Speaking off mike part of the time.] These were
1678 taken, so you know [unintelligible] rain. There's clearly water coming out of those
1679 pipes, runoff from the natural sprinkler system or the runoff from the house. My
1680 driveway is down there by those mailboxes. You can see this pool of water at
1681 one neighbor, running across his driveway and then down my driveway. Here's
1682 another one. [Unintelligible] a little wider.
1683
1684 Ms. Dwyer - Your house is downhill from this?
1685
1686 Mr. Crenshaw - [Off mike part of the time.] Now it's being diverted.
1687 Clearly, [unintelligible] happen before this particular pipe was here. Our concern
1688 is that the pool runoff [unintelligible]. I'm sorry. Our concern is basically this
1689 particular pipe and the County's address of this to the natural runoff here.
1690
1691 Ms. Dwyer - Have you spoken to any of the drainage engineers
1692 with the County? Our staff report states that Public Works "is aware of the
1693 situation and working with neighbors to find ways of reducing the impact of
1694 drainage within the right-of-way."
1695
1696 Mr. Crenshaw - Correct.
1697
1698 Ms. Dwyer - So, what has been done?
1699
1700 Mr. Crenshaw - Supposedly, they had some plans and they talked to
1701 Ms. Skelley about either a simple process of a French drain where this pipe
1702 would come from the ground and go into a hole with some gravel and just be
1703 natural runoff like she said and then the other pool, according to her, to your
1704 staff, that the drains from the pool or any other runoff would go into what's on
1705 Highland. We're just concerned here that one, our road will continue to get runoff
1706 down here like that and it will damage the road in the future, and that hopefully
1707 the County will look at this. It's really not opposition. We've talked with her and
1708 I'm happy with her pool. I love what she's done in that sense. We're just
1709 concerned about this particular pipe, unsightly as we come down the street here.
1710
1711 Ms. Dwyer - Is it going to stay in this state, do you know? Is Ms.
1712 Skelley's plan to keep what we see in the picture as-is, or will there be some
1713 improvements to it?
1714
1715 Mr. Crenshaw - I would assume there would be improvements to it,
1716 but still the pipe's there and the water standing after we've had rain last week.
1717 Every time she uses her watering system or runoff from that house, it flows from
1718 this pipe and down just like that everyday that that happens.
1719
1720 Ms. Dwyer - That was before the pool.
1721
1722 Mr. Crenshaw - That's before the pool.

1723

1724 Ms. Dwyer - So, we're talking about an existing drainage problem,
1725 it sounds like, that the pool is not going to be affecting.

1726

1727 Mr. Crenshaw - I believe not under the plan. That's our best estimate.
1728 That's all we want is some reassurance that this is not and simply hopefully we
1729 can come to a solution here. Those are just concerns. She's been more than
1730 happy to share these things with us, has come out here and seen this also. It's
1731 really not an issue from that standpoint, but we are concerned as tax-paying
1732 citizens. I've never lived in the County until recently. We're still Crescent Road,
1733 not East Highland, on your map. I even had the fire department come down here
1734 looking for me one time and said, "You don't exist, Mr. Crenshaw, on our
1735 records." So, this is our concern. You can clearly see that we live in a nice
1736 neighborhood. She's doing nice things to her home. We just want to be taken
1737 care of properly. Whether that's the County or working with her. we're not
1738 causing this, clearly.

1739

1740 Ms. Harris - Mr. Crenshaw, would you be in favor of the swimming
1741 pool that was proposed if the drainage pipe were repositioned?

1742

1743 Mr. Crenshaw - Yes.

1744

1745 Ms. Harris - That's all.

1746

1747 Mr. Crenshaw - I have some other pictures, too. I just want you to see
1748 that clearly this water runs down. I know when it rains, we're going to have
1749 water; I understand that. We can do nothing about that; we do live downhill. But
1750 this is now unnatural and was doing something different.

1751

1752 Ms. Dwyer - We'll pass these up here unless you want the
1753 audience to be able to see.

1754

1755 Mr. Wright - Mr. Chairman, I have a question for Mr. Blankinship.
1756 Mr. Blankinship, the County is aware of this pipe, I assume, the Works
1757 Department?

1758

1759 Mr. Blankinship - Is there anybody in the room from Public Works? We
1760 had asked staff from Public Works to be available this morning. I don't see them
1761 here.

1762

1763 Mr. Wright - Although this water pipe is not germane to this case
1764 or the swimming pool, I would like you to please stay in contact with Mr.
1765 Crenshaw and make sure that Public Works is aware of the problem and how to
1766 take care of this. I'm sure they'll come up with a working solution so everyone in
1767 the neighborhood can be happy. Again, I don't see how the pool will affect this
1768 situation. If you would assure these people that the County is looking into it.

1769
1770 Mr. Blankinship - We will certainly do that.
1771
1772 Mr. Crenshaw - I appreciate it.
1773
1774 Mr. Blankinship - If you're using the microphone on the podium, you
1775 don't need that one.
1776
1777 Mr. Gregory - Good morning. I'm Phil Gregory. I live at 17 East
1778 Highland. If you look at the picture, my house is the last one on the end where
1779 the automobile is parked. From my perspective, we don't have any objection to
1780 Ms. Skelley's pool. It's not visible to me and she has exercised, as far as I can
1781 tell, all the proper safeguards for visual improvement etcetera. I've discussed the
1782 pipe and the drainage problem with Ms. Skelley. This pipe was installed, I guess,
1783 two months ago, etcetera, maybe a little longer. Prior to that time, we did not
1784 have a drainage problem on East Highland other than just natural rains and
1785 natural conditions. Since that time, there have been a number of situations and
1786 daily occurrences that the water runs down the hill profusely. There is a lot of
1787 water. We don't have any assurance that once landscaping is put in and so long
1788 as this pipe remains, that this won't continue. It's very unsightly. I will let you
1789 know that the people from Public Works, first Jerry Kruger came. He took a look
1790 at this and I believe he had to be away. So, on two or three occasions since then,
1791 a gentleman by the name of Steve Clarke has been very responsive and as
1792 recently as, I believe, this past Tuesday—it could have been Monday—he left me
1793 a message that either a French drain of some type needed to be installed here
1794 and it should be of dimensions approximately three feet by three feet. If that
1795 were not the case, according to Ms. Skelley, the recent comments were the pipe
1796 was going to be totally removed and the water would be diverted to a well that's
1797 on her property. I have no additional information beyond that and Mr. Clarke said
1798 he thought we would be very content with that. So, that is the extent of my
1799 knowledge at this time.
1800
1801 Mr. Nunnally - Thank you, sir. Anyone else?
1802
1803 Mr. Boyd - My name is James Boyd. I live at 19 East Highland
1804 Road. I address the preposition, "before." None of this was going on before the
1805 work started up the road. The pool contractor said something about a sewer.
1806 The sewer that goes on Highland Road will not take that sort of water. It's a
1807 sewer; it's not a storm drain. I think that the water should be kept on the property
1808 where it's generated.
1809
1810 Ms. Boyd - My name is Carrie Boyd. I have a few illustrations.
1811 May I pass them out? On the first page are some conditions to consider. We've
1812 all talked about redirecting that drain pipe. We're all in favor of the pool, but doing
1813 the building of the pool, we would like some sort of environmental containment.
1814

1815 Mr. Nunnally - Excuse me, Ms. Boyd, could you give Ms. Skelley a
1816 copy of this?
1817
1818 Ms. Boyd - Sure.
1819
1820 Mr. Nunnally - Thank you, ma'am.
1821
1822 Ms. Boyd - I came over here yesterday and I was in the record
1823 room for quite a while looking at different plats.
1824
1825 Mr. Blankinship - Could you speak into the mike?
1826
1827 Ms. Boyd - Oh, sorry. I heard that there had been a well on the
1828 property; however, I was unable to find a plat where a well was shown. That's
1829 why I think that this water should be diverted into a dry well or a cistern of some
1830 variety, which could be under this shed or anywhere else on the property. I think
1831 the backwash should be diverted into a mulched area. I think in the future, if the
1832 pool ever needed to be emptied, the water would need to be trucked out,
1833 pumped and trucked out. I'm not really sure where this water originates that we
1834 see. It could come from all around the front of the house down to the side of the
1835 house. On the second page, you'll see the arrow coming down to East Highland
1836 Road. The water could come from the north part of that house, coming south and
1837 going down East Highland Road. We've never gotten an answer as to where this
1838 water originates. There were two drainage pipes that were clipped from the next
1839 lot being built on. That was the normal drainage.
1840
1841 Ms. Dwyer - I'm sorry, I don't understand what you just said.
1842
1843 Ms. Boyd - There were drainage pipes onto the property next
1844 door, which was built on.
1845
1846 Ms. Dwyer - On this property?
1847
1848 Ms. Boyd - Exactly. I'm thinking some of this water is diverted to
1849 East Highland Road that used to go into a meadow.
1850
1851 Ms. Dwyer - The neighboring property.
1852
1853 Ms. Boyd - Exactly. I'm not sure where all the water is coming
1854 from, but you can see that the pictures that I've provided are only from irrigation.
1855 The water, when it rains, is absolutely horrendous. I think, in a good neighborly
1856 way, Ms. Skelley should be able to adapt these conditions. We're all for the pool
1857 and gardens, but the water problem should be addressed. The mosquito
1858 problem is of great concern. I have a garden at the end of this. It's actually a
1859 County road, that Crescent area that went down to Westham Station Road. I've
1860 had to build a berm, a slight berm there to keep the water out of our property.

1861 This has breached the berm on two occasions. I'm hoping that we can get some
1862 help with water and all be happy about it. I think it's very possible.

1863

1864 Ms. Dwyer - Have you spoken to any County representative?

1865

1866 Ms. Boyd - Yes. I spoke with Pat O'Bannon and she put me in
1867 touch with Jerry Creger. I must say that everybody I've seen—Mr. Gidley and
1868 Ms. Parker—have been absolutely wonderful, and also your Record Room.
1869 Thank you.

1870

1871 Mr. Nunnally - Thank you, ma'am. Anyone else? Do you need a
1872 little time for rebuttal?

1873

1874 Ms. Skelley - As you can see, I've really tested the patience of my
1875 neighbors and I have all wonderful neighbors. As you recall, I've been in front of
1876 you for almost a year now and we have extensive landscaping plans and we're
1877 on garden tour. This has to all come together in the next three weeks. After this
1878 meeting, I'm going to be staying here to get your answer. There is heavy
1879 equipment coming in, hopefully, tomorrow. I haven't been the nicest neighbor.
1880 I'm incredibly uncomfortable with my neighbors here. These are all really nice
1881 people, but there is placed to be tens of thousands of dollars of landscaping to go
1882 on in this property, that was poised to go on June 24th, the last time. But you
1883 have to remember, I've had a pool. Then, uh-oh, no go to the mode of a fish
1884 pond. Uh-oh. We're moving the entire fish pond to now go back to pool. By the
1885 way, in regards to the water and the drainage, which is a separate issue. It has
1886 nothing to do with the pool. You've been incredibly generous to listen to that. I
1887 don't want to be a bad neighbor. I don't want my water diverted there. By the
1888 way, God put that water there. I haven't put more water than normally rains there
1889 except for right now, four weeks ago, we had an irrigation system put in. I don't
1890 know when Mrs. Boyd built her berm, but I do know that for the last four weeks,
1891 yes, I have had water going down there. It's not been great. They are downhill
1892 from me. There is a drainage problem with Highland Road. I think that it does
1893 need to be addressed. The one neighbor right here, Mr. Crenshaw, this was
1894 taken from my property. He's way down in the gully. That water needs to be
1895 addressed, but that's not what we're doing here today. By the way, I'm so
1896 curious about this one list of stuff. Mrs. Boyd owns a swimming pool. I really
1897 only want to be held to the same standard. I don't know if I'm allowed to ask, but
1898 Mrs. Boyd, when you do your swimming pool, where does that wash up?

1899

1900 Mr. Blankinship - We're really getting too—

1901

1902 Ms. Skelley - Okay, I'm sorry. I just want to be held to the standard
1903 of everybody else.

1904

1905 Ms. Dwyer - Have you been working with County officials about—

1906

1907 Ms. Skelley - Yes, I have. The only time I knew this was a problem
1908 is no neighbor came to me and said, "Ariel, you've got a lot of water running back
1909 there." The first time I got notice of this is they had called three agencies trying
1910 to have a summons put on me before they ever came as a neighbor to me. The
1911 first one was environmental. The second was Jerry Creger. Ms. Boyd has
1912 accused me of emptying my fish pond out onto Highland Road. That's not true
1913 and Mr. Creger has come onto my property. The drains are all open and visible
1914 as of this moment. He could clearly see. And at the beginning of the, Mrs.
1915 Dwyer, I think that you actually said that Public Works has said that I am not in
1916 violation. That would have been Mr. Creger. So, I'm not in violation. Yes, I want
1917 to contain my water. As a good neighbor, I will contain it. But I'm feeling
1918 persecuted here.

1919
1920 Ms. Harris - If it boils down to just moving a drain supply, would
1921 that be worth everybody working in harmony and your getting your...

1922
1923 Ms. Skelley - But that is what I did. The reason this is here is I
1924 moved a drainage pipe. All I'm doing is what I think a responsible citizen does
1925 and I'm managing my water. My water was going onto another neighbors. They
1926 built a house and it was my decision to, instead, take it to the normal flow, which
1927 would be to take it to [unintelligible] on the street so that the storm sewers take
1928 up. That's all I did. There won't be this amount of water. It's just right now I've
1929 got an irrigation that's working itself out and it doesn't have landscaping to
1930 absorb it. I am willing. I'm not going to let water run down my hill. I don't know
1931 that I'm going to re-divert it, but I will talk to Jerry Creger. He's sick right now. I
1932 understand he's coming back shortly. We'll all make a game plan with him as to
1933 what the proper thing to do is. Right now, I'm not in any violation. I think that
1934 probably, to be a good neighbor, I'll talk to Jerry and it might be something like
1935 we put a cistern in. Maybe it's a two-foot cistern.

1936
1937 Mr. Nunnally - Thank you, ma'am. Appreciate it.

1938
1939 Ms. Dwyer - I have a few questions, Ms. Skelley. Have you
1940 spoken to anyone in the County specifically about how this could be handled or
1941 managed?

1942
1943 Ms. Skelley - Oh yes. I've got the telephone number memorized in
1944 my head. I called probably about twice a day for the last two months. This is a
1945 hill with big slopes on it on either side. Quite frankly, we have a problem on
1946 Highland Road, as well as East Highland. I'm not making the problem; the
1947 problem is, is there's a hill and the County really hasn't addressed drainage on
1948 our hill, period. I do think that it is a situation. I wish the County would look at it.
1949 Jerry Creger was really looking into it and I got the feeling that we were getting
1950 somewhere, but Jerry's just out of work for the moment. So, I hope we pick this
1951 discussion back up.

1952

1953 Ms. Dwyer - So, two suggestions. I believe Mr. Gregory mentioned
1954 that he has spoken to Steve Clarke. The French drain was one option and
1955 diverting the water to a well was another.
1956

1957 Ms. Skelley - I don't know where that came from. We do not have a
1958 well on our property. I never said I was diverting it to a well; we don't own one.
1959

1960 Ms. Dwyer - All right.
1961

1962 Ms. Skelley - We have another neighbor here and I know she would
1963 love to get up, because she's hoping mad. The French drain going back towards
1964 Highland Road is just making a problem in the other direction. All of this really
1965 seems silly, guys. The truth is, we're on top of a hill and within a thousand feet is
1966 the canal to the James River. The natural flow of the water, if it just goes
1967 downhill. We should manage our water. The water should be managed and go
1968 correctly down. It would be wonderful, since there are some good people who
1969 are directly affected and pay nice taxes. It's not in regards to my pool, it's just in
1970 regards to drainage. I would be all ears and I would love to come back and
1971 discuss that another time. I so appreciate your taking the time to review all of
1972 this and the fact that they are two very separate matters. I really like my
1973 neighbors. We're on garden tour in a couple of weeks and I really hope this can
1974 be smoothed out. I really don't want to be the bad guy, here.
1975

1976 Ms. Dwyer - One more question and this I wanted to get on the
1977 record because of why we're here, again, is the pool. I'm just going to
1978 summarize and you tell me if this is correct, just to try to shorten the testimony
1979 here. This is my understanding. Your house, when it was built in the 70's, was
1980 oriented in an unusual way; and that the legal front yard of your property is where
1981 you want to put the pool.
1982

1983 Ms. Skelley - Correct.
1984

1985 Ms. Dwyer - The actual front door of your property enters into what
1986 is the legal backyard or rear yard of your property. That's why we're here,
1987 basically, because your house is oriented in a very unusual way, making what
1988 you treat and is practically your backyard, making it the legal front yard, which is
1989 why it makes sense to put the pool there, but also why you run afoul of the
1990 zoning ordinance.
1991

1992 Ms. Skelley - Correct. However, it's not oriented that strange, but
1993 standards of that time. Probably a quarter of the houses on my street are
1994 eschewed to the road, as are a lot of the old, windy roads in Richmond, Virginia.
1995 So, it is unusual by subdivision if you were building it right now, but by our
1996 standards it not unusual at all.
1997

1998 Ms. Dwyer - So, other homes in the neighborhood are oriented in
1999 that way. They're on large lots. How much acreage do you have?

2000
2001 Ms. Skelley - One point three acres.

2002
2003 Ms. Dwyer - Okay. It's a fairly large parcel. So, visually, it doesn't
2004 appear to be unusual. It's unusual in terms of our zoning ordinance.

2005
2006 Ms. Skelley - Correct. True of the houses that touch my house,
2007 contiguous neighbors. Both of those houses are skewed to the road and are not
2008 at the traditional angle. Really, I think it's what makes the charm of the road
2009 quite frankly. It does need to be landscaped and I think that it makes us different
2010 looking. I guess that's the reason why our road is on garden tour. There will be
2011 six houses on garden tour and I hope you come and visit us; we really want to
2012 make Richmond shine. Thank you so much. Do you have any more questions?

2013
2014 Mr. Nunnally - I think we've heard enough. We thank you so much.

2015
2016 Ms. Skelley - I appreciate it.

2017
2018 Mr. Nunnally - That concludes the case. UP 10-2006.

2019
2020 **DECISION**

2021
2022 Ms. Dwyer - I move that we approve this request for a use permit
2023 as requested and there are two conditions in the staff report and those conditions
2024 would be part of this approval. I want to state my reasoning for that. This is a
2025 new ordinance that does allow a special exception to have structures in front and
2026 side yards. This is a unique property for a number of reasons. One, it has quite a
2027 bit of acreage, over an acre, so it's not your standard subdivision lot. All the
2028 roads are very winding and, as the applicant stated, many of the houses are
2029 oriented in a way that does not conform to our zoning ordinance. That is, the
2030 actual front of the house is not oriented to the legal front yard. That is the case
2031 with this particular property and I think that's why this makes this a good case to
2032 come under the exception that has been provided by the board, under Section
2033 24-95(i)(4). So, given the orientation of the house, given the fact that the
2034 improvements certainly do not detract or devalue the neighborhood, they clearly
2035 increase the value—

2036
2037 [Rest of discussion and decision on **UP-10-2006** not on recording.]

2038
2039 After an advertised public hearing and on a motion by Ms. Dwyer, seconded by
2040 Mr. Wright, the Board **granted** application **UP-10-2006** for a conditional use
2041 permit pursuant to Section 24-95(i)(4) to build a swimming pool and gazebo in
2042 the front yard at 13 Highland Road (Westham) (Parcel 759-731-8984), zoned R-

2043 1, One-Family Residence District (Tuckahoe). The Board granted the conditional
2044 use permit subject to the following conditions:

2045
2046 1. This use permit is only for the purpose of allowing the location of the
2047 accessory swimming pool and gazebo shown on the plan filed with the
2048 application to be located in the front yard. All other requirements of the County
2049 Code must be met including height and setback requirements.

2050
2051 2. Any substantial changes or additions may require a new use permit.

2052
2053
2054 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5
2055 Negative: 0
2056 Absent: 0

2057
2058
2059 Mr. Nunnally - Next case, Mr. Blankinship.

2060
2061 **UP-11-2006** **Ellen Staunton** requests a conditional use permit
2062 pursuant to Section 24-94(i)(4) to build a swimming
2063 pool in the side yard at 607 Walsing Drive (Mooreland
2064 Landing) (Parcel 743-732-3206), zoned R-1, One-
2065 Family Residence District (Tuckahoe).

2066
2067 Mr. Nunnally - Anyone else interested in this case? All right, sir.

2068
2069 Mr. Blankinship - Please raise your right hand, please. Do you swear
2070 the testimony you're about to give is the truth, the whole truth, and nothing but
2071 the truth, so help you God?

2072
2073 Mr. Pace - Yes sir, I do.

2074
2075 Mr. Nunnally - Please state your name for the record, sir, and tell us
2076 what you're requesting.

2077
2078 Mr. Pace - My name is Farrell Pace. I'm with the Jo-Pa
2079 Swimming Pool Company, requesting a conditional use permit to put a pool in
2080 the side yard at 607 Walsing Drive.

2081
2082 Mr. Nunnally - All right, sir.

2083
2084 Mr. Pace - This is Stanton's lot. I believe you have the
2085 paperwork there in front of you. By code, the front yard of a house is constituted
2086 by the longest length, which in this case is the front of her house. The side yard,
2087 which is causing us to be here trying to get this changed, is only 14 feet in
2088 difference.

2089
2090 Ms. Dwyer - I'm having trouble hearing you with all the commotion.
2091
2092 Mr. Wright - Shut the door. That's what the door is for.
2093
2094 Ms. Dwyer - Someone's shutting it. Okay. Excuse me; go ahead.
2095
2096 Mr. Pace - There's a 14 foot difference between the actual side
2097 yard and the front yard. That's why we're here today, just to ask for a variance for
2098 this particular case. They also own the lot directly behind them. Of course, it
2099 may go on sale one day or another. There are eight pools adjacent to this
2100 particular property, three of which have had these conditional use permits applied
2101 for.
2102
2103 Ms. Dwyer - I just want to make sure that we're correct. My
2104 understanding is that the legal front yard of this lot is on Forrest Ridge Court.
2105
2106 Mr. Blankinship - That's the legal front yard.
2107
2108 Mr. Pace - On Walsing Drive. I'm sorry.
2109
2110 Ms. Dwyer - The legal front yard, I think is Forest Ridge Court.
2111
2112 Mr. Pace - Is Forest Ridge Court. That's correct.
2113
2114 Ms. Dwyer - The legal front yard is Forest Ridge Court, but the
2115 actual front of the house faces Walsing Drive.
2116
2117 Mr. Pace - That's correct, yes ma'am.
2118
2119 Ms. Dwyer - In fact, the address is Walsing Drive.
2120
2121 Mr. Pace - Yes ma'am.
2122
2123 Ms. Dwyer - Okay. The house adjacent as we're looking at the
2124 aerial photograph, 611, which is across Forest Ridge, also is oriented toward
2125 Walsing Drive and has a pool.
2126
2127 Mr. Pace - Yes ma'am.
2128
2129 Ms. Dwyer - In the approximate location where this applicant wants
2130 to put their pool. Is that correct?
2131
2132 Mr. Pace - That's correct.
2133
2134 Ms. Dwyer - Can you talk a little about the screening of the pool?

2135
2136 Mr. Pace - From Forest Ridge Court, if you'll look at the profile of
2137 the driveways there, there are several terraces there. Where the pool is going,
2138 there's a third terrace directly behind the house. You can't even see it from
2139 Forest Ridge Road. It is a good 20 to 30 feet above that road in that area.
2140
2141 Ms. Dwyer - And is it within the stucco wall?
2142
2143 Mr. Pace - There is an existing wall directly behind the house. If
2144 you look at the aerial photographs, you'll notice there's a lower retaining wall, a
2145 second wall, and then inside that third wall on the top is where we're going.
2146
2147 Ms. Dwyer - How high is that wall?
2148
2149 Mr. Pace - That wall is five foot tall.
2150
2151 Ms. Dwyer - Okay. And it will surround the pool so the pool will not
2152 be visible from any house that may be built at 1900 Forest Ridge Court.
2153
2154 Mr. Pace - 9000.
2155
2156 Ms. Dwyer - I'm sorry, 9000.
2157
2158 Mr. Pace - They own that now, but from that fence line or from
2159 that terrace area, you'll notice those yellow dots kind of blotted out. That is
2160 screened already with a bush hedge that runs down through there that are about
2161 10, to 12 feet tall.
2162
2163 Ms. Dwyer - Have you had any opposition to this, any letters of
2164 comments?
2165
2166 Mr. Blankinship - No ma'am, not that I'm aware of.
2167
2168 Mr. Kirkland - Mr. Blankinship, is this gazebo included in this case,
2169 or that's just something we drew in on the map?
2170
2171 Ms. Dwyer - That's actually for the other case. That belongs to the
2172 Skelleys' layout.
2173
2174 Mr. Blankinship - I apologize.
2175
2176 Ms. Harris - Will the swimming pool be enclosed?
2177
2178 Mr. Pace - No ma'am. I believe there's a drawing of the pool
2179 itself in your package showing it fitted in the courtyard.
2180

2181 Ms. Dwyer - So, this is within an exiting courtyard. It's screened
2182 by walls and it is in the rear of the exiting house.

2183
2184 Mr. Pace - Exactly.

2185
2186 Ms. Dwyer - The actual rear if not the legal rear of the house.

2187
2188 Mr. Pace - Right.

2189
2190 Mr. Nunnally - Any other questions from the Board or staff? Then
2191 that completes the case. Thank you for coming, sir.

2192
2193 **DECISION**

2194
2195 Mr. Blankinship - All right, we're ready to go. Ms. Dwyer was making a
2196 motion.

2197
2198 Ms. Dwyer - My motion is to approve the three conditions in our
2199 staff report. The rationale for that under the 24-95(i)(4) and 24-116 is that, again,
2200 this is another lot in which the house is oriented in a way that doesn't match or fit
2201 the way the lot is designated under the zoning ordinance. The house actually
2202 faces Walsing Drive; it has a Walsing Drive address, but the legal front yard is on
2203 Forest Ridge Court. So, even though this request is for a swimming pool in what
2204 is the rear yard of the house, it is the legal side yard. So, again, I think this is an
2205 appropriate case in which to apply this exception. The pool will not be visible to
2206 any neighbors. It is surrounded by a wall and landscaping. This, again, is a large
2207 lot. It's also in conformity with the lot next to it, 611, which is oriented in the
2208 same way and has a pool in the approximate same location.

2209
2210 Mr. Wright - I second the motion.

2211
2212 Mr. Nunnally - Motion by Ms. Dwyer, second by Mr. Wright. All in
2213 favor say aye. It's been approved.

2214
2215 After an advertised public hearing and on a motion by Ms. Dwyer, seconded by
2216 Mr. Wright, the Board **granted** application **UP-11-2006** for a conditional use
2217 permit to build a swimming pool in the side yard at 607 Walsing Drive (Mooreland
2218 Landing) (Parcel 743-732-3206), zoned R-1, One-Family Residence District
2219 (Tuckahoe). The Board granted the conditional use permit subject to the
2220 following conditions:

2221
2222 1. This use permit is only for the purpose of allowing the location of the
2223 accessory structure (pool) shown on the plan filed with the application to be
2224 located in the side yard. All other requirements of the County Code must be met,
2225 including setback requirements.

2226

2227 2. Any substantial changes to the plan filed with the application may require
2228 a new use permit.

2229
2230 3. The applicant shall meet all the requirements of the Building Inspections
2231 Department, including safety fencing around the pool.

2232
2233
2234 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5
2235 Negative: 0
2236 Absent: 0

2237
2238
2239 Mr. Nunnally - Next case.

2240
2241 **UP-12-2006** **Ryan Homes** requests a temporary conditional use
2242 permit pursuant to Section 24-16(c)(1) to locate a
2243 temporary sales trailer at 1670 Midview Road
2244 (Midview Farms) (Parcel 806-703-3306), zoned R-
2245 2AC One-Family Residence District, Conditional
2246 (Varina).

2247
2248 Mr. Nunnally - Anyone else here interested in this case? If so,
2249 please stand and be sworn in.

2250
2251 Mr. Blankinship - Raise your right hand. Do you swear the testimony
2252 you're about to give is the truth, the whole truth, and nothing but the truth, so help
2253 you God?

2254
2255 Mr. Lamphear - I do.

2256
2257 Mr. Nunnally - Please state your name for the record, sir, and tell us
2258 what you're requesting.

2259
2260 Mr. Lamphear - Good morning. My name is Rob Lamphear. I'm here
2261 on behalf of Ryan Homes. We're requesting an approval a temporary conditional
2262 use permit for a sales trailer. We'll be using that sales center just until we
2263 complete a model home on site to be used as our sales center. It will be
2264 landscaped and lit, as you see on your packages there. We will be happy to
2265 comply with all the five suggestions from staff. I think all the other details are in
2266 your packages. I'd be happy to answer any questions you have at this time.

2267
2268 Mr. Kirkland - One question I have, I know it says here in the
2269 conditions you're going to screen the port-a-potty. Where is it going to be located
2270 on the site?

2271

2272 Mr. Lamphear - I noticed that earlier. It's not on the rendering that you
2273 have. The anticipated location would be just beside the generator behind the
2274 trailer.
2275
2276 Mr. Kirkland - Behind the trailer.
2277
2278 Mr. Lamphear - Correct.
2279
2280 Ms. Dwyer - The trailer floor plan shows a toilet and sink in the
2281 trailer.
2282
2283 Mr. Lamphear - Right. Until the site is developed completely, there's
2284 not access to public sewer or water, so you have to provide temporary means for
2285 that.
2286
2287 Ms. Dwyer - So will that be connected later on or are you not going
2288 to use that?
2289
2290 Mr. Lamphear - We would not use that. Actually, I anticipate
2291 removing this trailer before that service is available.
2292
2293 Mr. Nunnally - Do you think it will take until June the 1st of 2007 to
2294 have it removed or are you going to get a model home up real quick?
2295
2296 Mr. Lamphear - We are at the mercy of the developer and the
2297 weather. They are two things I can't do anything about.
2298
2299 Mr. Nunnally - You can't do anything about the weather, but you can
2300 the developer.
2301
2302 Mr. Lamphear - A little bit, a little bit there. I will say that we build
2303 homes approximately three to four months is our build time. We would rather be
2304 in a model home than we would a sales trailer, so it's to our benefit to move into
2305 our permanent facility as fast as possible. Do I think it's going to take that long?
2306 No. But could it? Yes. We'll do everything we can to make it faster.
2307
2308 Ms. Harris - When will you remove it, when you sell the homes, or
2309 when will you remove it?
2310
2311 Mr. Lamphear - As soon as we can finish our model home.
2312
2313 Mr. Nunnally - Any other questions from Board or staff? Anyone
2314 here in opposition? Hearing none, that completes the case. Thank you for
2315 coming, sir.
2316
2317 Mr. Lamphear - Thank you.

2318
2319
2320
2321
2322
2323
2324
2325
2326
2327
2328
2329
2330
2331
2332
2333
2334
2335
2336
2337
2338
2339
2340
2341
2342
2343
2344
2345
2346
2347
2348
2349
2350
2351
2352
2353
2354
2355
2356
2357
2358
2359
2360
2361
2362
2363

DECISION

Mr. Nunnally - UP 12-2006.

Ms. Harris - I move that we approve.

Mr. Nunnally - Motion by Ms. Harris to approve.

Mr. Blankinship - Ms. Harris, do you want to make a statement of similar sort so that we have a record of the basis?

Ms. Harris - The temporary trailer, sales trailer will be removed as soon as the model home is constructed and this is in keeping with our policy in the past of allowing temporary sales trailers to be erected. We did address the port-a-johns. They will not be constructed directly in view of the road. So, I see no reason why it should not be approved.

Mr. Kirkland - Ms. Harris, I think the applicant agreed that he would place the port-a-john behind the trailer. Should we put that in there as a condition? He agreed to that during the hearing. Is that all right if we put that in under the condition about the screen from view?

Ms. Harris - That's fine with me.

Mr. Kirkland - Okay. That way we won't have to worry about it.

Mr. Nunnally - Do we have a second?

Mr. Kirkland - Second.

Mr. Nunnally - Second by Mr. Kirkland. All in favor say aye.

After an advertised public hearing and on a motion by Ms. Harris, seconded by Mr. Kirkland, the Board **granted** application **UP-12-2006** for a temporary conditional use permit to locate a temporary sales trailer at 1670 Midview Road (Midview Farms) (Parcel 806-703-3306), zoned R-2AC One-Family Residence District, Conditional (Varina).The Board granted the conditional use permit subject to the following conditions:

1. Only the improvements shown on the plan filed with the application may be constructed pursuant to this approval. No substantial changes or additions to the layout may be made without the approval of the Board of Zoning Appeals. Any additional improvements shall comply with the applicable regulations of the County Code.

2364 2. The trailer shall be skirted on all sides with a durable material as required
2365 by the building code for a permanent installation.

2366
2367 3. A detailed landscaping and lighting plan shall be submitted to the Planning
2368 Department with the building permit for review and approval. Approved
2369 landscaping shall be installed as soon as the weather permits. All landscaping
2370 shall be maintained in a healthy condition at all times. Dead plant materials shall
2371 be removed within a reasonable time and replaced during the normal planting
2372 season.

2373
2374 4. The trailer shall be removed from the property on or before June 1, 2007
2375 at which time this permit shall expire.

2376
2377 5. [AMENDED] Any portable toilet or holding tank placed on the site shall be
2378 located behind the sales trailer, next to the generator, and shall be screened from
2379 view.

2380
2381
2382 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5
2383 Negative: 0
2384 Absent: 0

2385
2386
2387 Mr. Nunnally - Next case, Mr. Blankinship.

2388
2389 **UP-13-2006** **Linda Hamilton and Julie Stevens** request a
2390 conditional use permit pursuant to Section 24-95(i)(4)
2391 to allow a shed to remain in the side yard at 1205
2392 Haverhill Road (Wildwood) (Parcel 787-754-6989),
2393 zoned R-2 One-Family Residence District (Fairfield).

2394
2395 Mr. Nunnally - Anyone else here interested in this case? If so,
2396 please stand, raise your right hand and be sworn.

2397
2398 Mr. Blankinship - Do you swear the testimony you're about to give is
2399 the truth, the whole truth, and nothing but the truth, so help you God?

2400
2401 Ms. Hamilton - I do.

2402
2403 Mr. Nunnally - Please state your name for the record, ma'am.

2404
2405 Ms. Hamilton - I'm Linda Hamilton. I, too, I guess, am the beneficiary
2406 of a code change allowing an accessory unit or whatever it's called. I was here
2407 in June requesting that the shed that's actually in our driveway versus the side
2408 yard that is cement and paved, due to the fact that the yard of the house is on is
2409 built, but then the yard really slopes steeply back. The shed is at the side of our

2410 house and we are requesting a second bite at the apple with the additional code
2411 change that it be allowed to remain there. It is visible from the street, but
2412 obviously, it's not in disarray. It's a brand new shed. The reason it's there
2413 versus in the backyard is, as I said, the condition of the backyard is a very steep
2414 slope. I think there might be some pictures. It would be almost inaccessible to
2415 get things in and out. There is a shed that was there with the house. It's already
2416 literally behind that shed, but down the hill that you can see. So, in order to have
2417 this shed accessible, we'd have to bring in dirt, build an additional structure,
2418 which would then require permits and things, to set it back. It's literally at the
2419 edge of where the backyard starts, so it would still be visible from the road if it
2420 was even in compliance, although 10 feet back. That would make it in
2421 compliance. We're hoping that with this additional code change, you can
2422 consider allowing it to stay. I did read the suggestions in the thing that's in the
2423 request that nothing additional would be added or things like that. We'd be more
2424 than happy to comply with that if the shed can stay there.

2425

2426 Mr. Wright - Your point is that if you moved it back, I don't know
2427 how many feet it would take to be in the backyard. It looks like it would just take
2428 maybe 10 feet.

2429

2430 Ms. Hamilton - Ten feet. It would be in the exact same visible
2431 position.

2432

2433 Mr. Wright - But it would be as visible from the front exactly as it
2434 would be in it's present location.

2435

2436 Ms. Hamilton - Correct, and what would have to happen is we'd just
2437 end up having to build a deck platform, of course, going into the ground with
2438 piling because it is very uneven. So, you might have some that are put down
2439 eight feet, some that might be only put down four feet so that the deck is level.
2440 The shed itself width is 10 feet. So, you're looking at the length right now, which
2441 is 16. But it literally, in order to be in compliance, would pick up and move back
2442 exactly 10 feet and be in the exact same visible location as it is, although,
2443 technically, that would be considered the backyard.

2444

2445 Ms. Harris - Ms. Hamilton, why did you fail to remove the shed
2446 after receiving the last notice?

2447

2448 Ms. Hamilton - Again, it's been from the difficulty of being able to find
2449 people to build it or build it ourselves and get the equipment back there, as well
2450 as the dirt that would need to be brought in and the expense. We had looked
2451 into it and it was about \$5,000. So, obviously, trying to get money together to do
2452 that and then, I guess, luck happened our way. We were in non-compliance; I
2453 understand that. We had tried to work with the woman agent that kept coming
2454 by. We had looked into it, but the cost was really up there and we just honestly
2455 didn't have \$5,000 to do that right away.

2456
2457
2458
2459
2460
2461
2462
2463
2464
2465
2466
2467
2468
2469
2470
2471
2472
2473
2474
2475
2476
2477
2478
2479
2480
2481
2482
2483
2484
2485
2486
2487
2488
2489
2490
2491
2492
2493
2494
2495
2496
2497
2498
2499
2500
2501

Ms. Dwyer - How did this come to light, this violation?

Ms. Hamilton - It came to light originally because we moved into the house and had gotten the shed. As you can see, the access to the backyard it sort of blocked, and then we wanted to do a little landscaping in the back, so we temporarily moved the shed, stupidly, where the car is, that you can see in the picture, for about two months in order to bring in some trucks that dumped dirt that we were then able to use to landscape and do some work in the backyard. Then we were stupid and lazy a little, just not realizing that it would annoy our neighbors. It was ugly. It was never intended to stay there. You get busy and one of those things and it was there longer than anticipated. We got a notice from the County that said, what's this ugly shed doing in the front yard, so to speak, and realized. As soon as we got that notice, we moved it immediately back to where it had originally had been where there were no complaints. We moved it to the visible front yard, a neighbor complained. Our neighbors, there's nobody that showed up, but obviously they've gotten letters. We haven't received any more complaints. We've talked to them and they don't have any problem with where it is now. Understandably, they had where it was and I get that. The original intent, we were doing work in the backyard to do that and then just time got away.

Mr. Blankinship - Once they had moved the shed to the side yard, the neighbors were satisfied. But we already had a case and it's technically in violation, so Community Maintenance had to continue pursuing the case even though the complainants were satisfied.

Ms. Dwyer - That could happen again, I guess, if you needed to go on the backyard. That might be one of the reasons why we don't allow sheds in side yards because it does block access to the rear yard. So, if you moved it back 10 feet, then you would have better access.

Ms. Hamilton - Well, you really wouldn't. It's hard to see, but at the edge of where the shed is backed up against the driveway ends and it's got a little wall to it. It's a little cement thing. The shed would basically be on a deck in order for us to have access to the shed. If the wall is that high, it would go right with that, so you would still have the same access problem, although it would be in compliance in the backyard. There is no way without doing, I don't even know what the solution would be to back it up 20 feet to build some sort of a structure to allow that access to the backyard. Our next door neighbor had said that they would be able to do that if we had to, to use their driveway to maybe get things over into our yard because of the issue.

Ms. Harris - When we concluded last time you were here, there was space on the reverse side of your yard, but it was more convenient where you have it here.

2502
2503 Ms. Hamilton - Actually, there's no way to get the shed from where it
2504 is now to the other side of the yard. You can't see it in this picture, but our
2505 property is actually a little bit closer. On the left-hand side of the property, the
2506 house goes almost to the edge. So, there would be no way to get the shed to
2507 that back side because you can't pick it up. You can see on the left-hand side it's
2508 right on the edge. You can't get the shed back there. As well as it is used to
2509 hold a motorcycle and the access would be difficult to then drive through the
2510 backyard and the front yard. I guess the last thing I want to say is back to the
2511 original. I mean, it would have the same visibility and aesthetics from where it is
2512 now if we were to move it back. My hope is that with the Code change that you
2513 would consider allowing it stay where it is.

2514
2515 Mr. Nunnally - Any other questions from the Board or staff? I ask
2516 again, is there any opposition? Hearing none, that concludes the case. Thank
2517 you, ma'am.

2518
2519 Ms. Hamilton - Thank you very much.

2520
2521 **DECISION**

2522
2523 Mr. Nunnally - UP-13-2006.

2524
2525 Ms. Harris - I move that we deny this application for the reasons
2526 it's not on a corner lot. I think she mentioned at the end that if she moved it on
2527 the left side of the house, the motorcycle had to be moved. Well, be that as it
2528 may, I had to ask myself the question that if all of us placed a building shed at
2529 the end of our driveway, what type of appeal would that have for Henrico
2530 County? I sense it would have a negative appeal. So, Fairfield District would like
2531 to avoid situations like this. I move that we deny.

2532
2533 Mr. Nunnally - Motion by Ms. Harris to be denied. Do we have a
2534 second?

2535
2536 Mr. Kirkland - I second it. I'd like to make another comment. I do
2537 not think that the new ordinance applies to this issue because the applicant had
2538 moved the shed to the front yard and moved it back to the rear yard. So, I see no
2539 reason why she couldn't have moved it 10 feet further back. I understand the
2540 grade is off, but it was possible to do it. So, I therefore second your motion, Ms.
2541 Harris.

2542
2543 Ms. Dwyer - It would be a detriment to the neighborhood as a
2544 whole, I think, to allow an encroachment in the zoning ordinance that this
2545 proposes. This is not a house that's oriented in an unusual way.

2546

2547 Mr. Kirkland - Right. This is a perfectly normal lot and all the
2548 applicant has to do is move the shed 10 feet. She's already moved it 25 to the
2549 front of the yard and then put it back in the side yard. I don't see any problem
2550 with moving it 10 feet.

2551
2552 Ms. Dwyer - The reason she moved it was because the shed was
2553 blocking access to the rear, which could easily happen again and be unsightly.
2554

2555 Mr. Wright - That's correct. It would be moved again.
2556

2557 Mr. Nunnally - Motion by Ms. Harris and second by Mr. Kirkland that
2558 it be denied. All in favor say aye. It's been denied.
2559

2560 After an advertised public hearing and on a motion by Ms. Harris, seconded by
2561 Mr. Kirkland, the Board **denied** application **UP-13-2006** for a conditional use
2562 permit to allow a shed to remain in the side yard at 1205 Haverhill Road
2563 (Wildwood) (Parcel 787-754-6989), zoned R-2 One-Family Residence District
2564 (Fairfield).
2565

2566 Affirmative:	Dwyer, Kirkland, Nunnally, Wright, Harris	5
2567 Negative:		0
2568 Absent:		0

2569
2570

2571 Mr. Nunnally - Next case, Mr. Blankinship.
2572

2573 **UP-14-2006** **Deferred.**
2574

2575 Mr. Nunnally - **UP-14-2006.** Verizon. That's **deferred**
2576

2577 **UP-15-2006** **Ridgetop Recreation Association** requests a
2578 conditional use permit pursuant to Section 24-12(b) to
2579 add lights to the existing tennis courts at 901
2580 Ridgetop Road (Parcels 762-738-6196, 1098 and
2581 2998, zoned R-3 One-Family Residence District
2582 (Tuckahoe).
2583

2584 Mr. Blankinship - Mr. Chairman, let me call your attention to the letter
2585 that was left on the table this morning, a handwritten letter.
2586

2587 Mr. Nunnally - Anyone else here interested in this case? If so,
2588 please stand, raise your right hand and be sworn.
2589

2590 Mr. Blankinship - If you'll raise your right hand. Do you swear the
2591 testimony you're about to give is the truth, the whole truth, and nothing but the
2592 truth, so help you God?

2593
2594 Mr. Nunnally - Please state your name for the record.
2595
2596 Mr. Biltz - My name's Randy Biltz. I'm with Higgins and
2597 Gerstenmaier, representing Ridgetop Recreation Association.
2598
2599 Mr. Nunnally - Before you get started, if you don't mind, the Board
2600 wants to take about a five-minute break. Okay?
2601
2602 Mr. Biltz - Okay.
2603
2604 **BOARD TAKES A FIVE-MINUTE BREAK.**
2605
2606 **THE BOARD RECONVENED.**
2607
2608 Mr. Nunnally - Let's reconvene the meeting. Please state your name
2609 for the record again, sir.
2610
2611 Mr. Biltz - Sure. My name is Randy Biltz. I'm with Higgins and
2612 Gerstenmaier, representing Ridgetop. We would like to add lighting to existing
2613 tennis courts that have been there since '62. There are substantial trees around
2614 the site and visibility is, even right now, at a very minimum from the pool and
2615 adjacent roads. The lights that I have specified for this job are 20-foot lights that
2616 are a true cut-off light. To make it short, once you step 25 feet off the court,
2617 there is no spill; it is dark. So, they are a true cutoff light. It's not a flood-lighting
2618 system. As my job is to make everything as efficient as possible and have the
2619 least impact to surrounding neighbors as possible.
2620
2621 Ms. Dwyer - Could you repeat that "no impact" statement? I'm not
2622 sure.
2623
2624 Mr. Biltz - The photometrics on the plan show—and it's kind of
2625 hard to read. But the photometrics are the light level at any given point in which
2626 the light will be. And I have a 20-foot offset shown to the top of the page.
2627
2628 Ms. Dwyer - Okay. That was one of my questions.
2629
2630 Mr. Biltz - Yes. It shows at that point there is very little light
2631 evident. We have a house 200 feet to the north and the closest house is 170 feet
2632 to the south.
2633
2634 Ms. Dwyer - This 20-foot offset, is that where you have it written or
2635 is that to where the zeros are on the edge?
2636
2637 Mr. Biltz - The zeros just continue. The 20-foot offset is just
2638 showing that at that point, we are within the standard County guidelines, which is

2639 point five. In most cases, point five foot candles is where we are allowed by
2640 County standards to be. At 20 feet, we're basically there. And once we get to the
2641 property line, we have been at zero for a substantial time.

2642
2643 Ms. Dwyer - So, these zeros are within your property.

2644
2645 Mr. Biltz - Oh yes. The closest house is 611 on Gardiner Road
2646 to the south of the tennis courts. I had passed a letter up to Mr. Blankinship from
2647 Fred Bruner. He could not be here, but he is in total support of the project and
2648 he is not a member of the club.

2649
2650 Ms. Dwyer - Is he the one who lives in that house?

2651
2652 Mr. Biltz - 611, yes.

2653
2654 Ms. Dwyer - 611. [Unintelligible.]

2655
2656 Mr. Biltz - Over the past two summers, we've been dealing with
2657 a lot of vandalism and kids going up there because it's dark. Obviously,
2658 everyone knows it happens when you have an isolated place, it's dark, kids do
2659 things they're not supposed to do. We're hoping that by having the lights, we can
2660 pull power up there and we can add an additional security light to keep the
2661 amount of vandalism down and the amount of police frequency there. We've had
2662 the same problem at our pool across the creek over on Devon Road. So, from
2663 the standpoint of visibility, I don't see a light as being a problem. We are aware,
2664 however, of a parking issue that does occur during matches or clinics for kids on
2665 Gardiner Road. There is an e-mail that we posted last October and we have
2666 posted on numerous other occasions asking our members not to use that road as
2667 a drop-off.

2668
2669 Ms. Dwyer - I don't think it's working.

2670
2671 Mr. Biltz - It's not.

2672
2673 Ms. Dwyer - I was there yesterday and couldn't even find a place
2674 to park.

2675
2676 Mr. Biltz - Right, it's not. As a Board, you can only do so much
2677 for the impact to the zoning. I know street parking is allowable, but as a good
2678 neighbor, we would rather people not congest that cul-de-sac. Most importantly,
2679 you couldn't get a safety vehicle in there to turn around during that time, which is
2680 a major problem. So, we have directed everyone to park down in our parking lot
2681 on Devon Road. It's just a matter of monitoring that and making sure it happens.

2682
2683 Mr. Wright - Mr. Biltz, have you seen this letter that has been
2684 submitted to us? Did you give him a copy of this letter?

2685
2686 Mr. Blankinship - Yes, sir.
2687
2688 Mr. Biltz - Yes.
2689
2690 Mr. Wright - From Ms. Seal.
2691
2692 Mr. Biltz - Correct. It's 907 Ridge Road.
2693
2694 Mr. Wright - If she lives at 907, which appears to be a good
2695 distance from the tennis court but she states that today, she can see all the
2696 players on the tennis court. How will the light affect that?
2697
2698 Mr. Biltz - The light for her? She would never see the light
2699 source because it's a 20-foot cutoff, as every County-required lighting issue is.
2700 It's totally down lighting, so the light source can only be visible when you're down
2701 below it. At this time of year, with all the deciduous trees losing their leaves, there
2702 probably is a minor visibility over there. I would find it hard to believe that she
2703 could see every player on the court, but I would probably agree with the fact that
2704 the she could see the green of the courts right now. In another month, it'll be
2705 gone.
2706
2707 Ms. Dwyer - You're not lighting the court nearest her.
2708
2709 Mr. Biltz - The lower courts, there are lights shown on there
2710 because, as with every other project, I would rather ask for more than less. It is
2711 not anywhere in any budget to light those courts at this time. Those are the
2712 courts that are used the least because of the drainage problem we have on that
2713 lower court.
2714
2715 Ms. Dwyer - How high are the light fixtures?
2716
2717 Mr. Biltz - Twenty feet. Standard light for just about every
2718 recreation center in this area with the standard cutoff. No flood lighting.
2719
2720 Ms. Dwyer - That shoebox type of fixture, as you mentioned,
2721 where the lamp is inside the shoebox, so to speak, and it forces the light down
2722 and you don't have all this ambient air to the side and above.
2723
2724 Mr. Biltz - Correct. It is a reflection type light like you would see
2725 in all the parking lots around town where the light is thrown from a series of
2726 reflectors inside. The light source is not visible except for underneath.
2727
2728 Mr. Blankinship - You've got a cut sheet for that in your packets.
2729

2730 Ms. Dwyer - Since you're a landscaper, you're going to have some
2731 understanding of this. As I looked at the site, there were some holly trees up
2732 against the fence, at least one holly tree I'll say, up against the fence, kind of
2733 between the tennis courts and 611. Would it be possible to add some evergreen
2734 landscaping around that edge just to soften the impact of the lighting for those
2735 homes in the wintertime?

2736
2737 Mr. Biltz - Well, 611 is Mr. Bruner and, obviously, as the letter
2738 stated, he has no issues with it.

2739
2740 Ms. Dwyer - But we have to look at the long view.

2741
2742 Mr. Biltz - The landscaping could be a possibility in the long
2743 term. That holly there and the surrounding shrubs just keep getting taller and
2744 taller with each year. You try to avoid having landscaping right up on a tennis
2745 court for branches and for debris. And if you landscape below the court, you
2746 know, what the real issue is here is you have probably an eight-foot drop-off from
2747 that first court down. So, if we were to move the landscaping down one, we'd run
2748 into a shade problem and the landscape wouldn't get tall enough to help with
2749 that. You have a shade problem because it won't grow and it's not going to be
2750 as beneficial. But it would be an option that I would be willing to look at as we
2751 progress. I don't think it would have the immediate impact right now. In the long
2752 term, yes, because we are dealing with some drainage issues from Bandy Field
2753 right now, as well. Just in court maintenance, once we resolve our drainage, it
2754 may be the perfect time to put some other evergreens in to help with that, some
2755 fast-growing shrub, as long as the sunlight is adequate.

2756
2757 Ms. Dwyer - You've looked at the conditions.

2758
2759 Mr. Biltz - With the exception of the running time, I think those
2760 are the standard conditions that were on this pool already. The tennis courts, I
2761 have no problems with that time. That's the time I had offered up to Mr.
2762 Blankinship when I submitted the application.

2763
2764 Ms. Dwyer - That's Condition #7?

2765
2766 Mr. Biltz - Correct.

2767
2768 Ms. Dwyer - They would not be on constantly, is that correct?

2769
2770 Mr. Biltz - You would turn them on, as a member, you would
2771 have access to turn them on and they would have a dead 10:00 shutoff during
2772 that time, or 9:00 any other time. There is no saying, "Well, we're almost done
2773 with our match; let's finish it out." It's going to be on a timer.

2774
2775 Ms. Dwyer - Where is the security light that you mentioned?

2776
2777 Mr. Biltz - That's not on here. That was something that came to
2778 light after speaking with Mr. Bruner, who is in support of this project. We don't
2779 have the power to power up everything up there yet; that's all part of the project.
2780 That is going to have to be, that addresses something that I would like to take
2781 care of, but it also addresses something that people are worried about, constant
2782 lighting. Security lighting is going to be constant, but it's necessary with all the
2783 kids that we've had causing problems, drinking, whatever else they do up there.
2784 It would be on.
2785
2786 Ms. Dwyer - But that's not part of this case.
2787
2788 Mr. Biltz - No. All I'm asking for today is lighting.
2789
2790 Ms. Dwyer - Okay.
2791
2792 Mr. Nunnally - Any other questions from the Board or staff? All right.
2793 You can have a seat there and then we'll ask for the opposition. Do we have
2794 opposition? Will you come forward, please? Whoever wants to go first. I ask
2795 that we don't have any repetition here.
2796
2797 Mr. Bruni - I'm Rudolph Bruni, at 606 Gardiner Road. Our
2798 greatest problem has been and will be parking. You could potentially get 16
2799 tennis players up there, each one comes in an individual car. They cannot park
2800 in the pool parking lot because that's full of pool swimmers. The lights, I think,
2801 will affect our property. Here's some pictures of a usual day with the ladies
2802 coming in to play tennis. Cars are just loaded along the block. The tennis
2803 players don't pay any attention to the pool membership that says you don't park
2804 on Gardiner Road. It's inconvenient. You can see that's just a small part of the
2805 population parking. It's a relatively light day on the tennis courts. I can't figure
2806 where all these people who want to play tennis don't play at night. Why should
2807 we have lights? Then how many members of the Ridgetop Recreation
2808 Association play tennis? If they park down on the Gardiner Road, the turn
2809 around is very small. We're going to have some fender-benders, people backing
2810 into other cars. They block driveways. It's a problem. In regards to his lighting
2811 system, the deciduous trees, point out a deciduous tree. They're all pine and no
2812 branches, no foliage down low. This is the little walkway/driveway that goes up
2813 to the tennis courts. That's the tennis courts with their green awnings around it.
2814 Our major problem, I think, is parking.
2815
2816 Ms. Dwyer - That's a problem you have whether there are lights or
2817 not, is that correct?
2818
2819 Mr. Bruni - Well, we don't have problems at night because they
2820 don't play tennis. We have problems in the daytime because we're up almost to
2821 the capacity of Gardiner Road with parked cars. I don't know what's going to

2822 happen. We'd like to close it off at a reasonable hour. You can't ask the tennis
2823 players to cut the switch; they'll stay to 11 if you give them a chance.

2824
2825 Ms. Dwyer - It's on a timer, they said; it'll automatically cut off.

2826
2827 Mr. Bruni - It's got to be automatic. That is what they are doing.

2828
2829 Ms. Dwyer - Right. That's what they're doing.

2830
2831 Mr. Bruni - It has got to be automatic. Something's got to be done
2832 with their parking. The pool parking lot is jam-packed still, so the only place for
2833 the them to go is on Ridgetop Road and then down on our street, on Gardiner. I
2834 don't know what the impact is going to be. I don't know how many night tennis
2835 players they have. That is a question. Do they have enough night tennis players
2836 to play tennis at night? I don't know what the tennis membership of Ridgetop
2837 Recreation Association is.

2838
2839 Ms. Dwyer - Is there a problem with vandalism and kids using that
2840 area at night for unauthorized activity?

2841
2842 Mr. Bruni - I think the problem is going to be more or less parking
2843 trauma in the parking lot in the parking area. That's a very small turnaround at
2844 the end of Gardiner Road.

2845
2846 Ms. Dwyer - It's not an actual cul-de-sac, it's just kind of a dead
2847 end.

2848
2849 Mr. Bruni - Years ago when we moved there, the turnaround
2850 used to go all the way to the creek. Two cars can barely turn around. We get
2851 trucks coming up there; they can't get out. They have to back all the way down
2852 to Chandler Drive.

2853
2854 Ms. Dwyer - They're not playing tennis.

2855
2856 Mr. Bruni - Fire engines, ambulances. Once they get in there,
2857 they have a terrible job getting out.

2858
2859 Ms. Dwyer - That's an existing problem. I just want to focus on the
2860 issues related to the night tennis.

2861
2862 Mr. Bruni - Parking and lights. I'll look right at them. This is
2863 relatively a free way from the tennis courts to our house and to the neighbors.
2864 The Bruner's are great tennis players. Three of their children got scholarships for
2865 playing tennis, so they would have no objections to tennis players; they love
2866 them.

2867

2868 Ms. Dwyer - They mention in their letter that they would appreciate
2869 people engaging in legitimate activity there and some lighting because of the
2870 problems they have of kids setting off fireworks, smoking cigarettes, and drinking
2871 beer in the darkness.

2872
2873 Mr. Bruni - The whole Ridgetop Recreation Association
2874 properties are parking spots at night for lovers' lane. There's a lot going on down
2875 there. There are no gates and no blockage to people getting in there. They just
2876 drive in and sit in the parking lot. They start about dusk now.

2877
2878 Ms. Dwyer - Do you think they need security lighting back there?
2879

2880 Mr. Bruni - Well, they have some lights, but they need a security
2881 guard or chain or something to go across the property to keep the people out at
2882 night. It's wide open.

2883
2884 Ms. Dwyer - They'd have to have a fence around it.
2885

2886 Mr. Bruni - It would be nice to have fence between the pool and
2887 the parking lot. A high fence or a shrubbery boarder of some sort to block it off. I
2888 once had an office down in town and I was required to put seven-foot plants to
2889 start with, and, of course, they grew up to ten feet. They don't have that in
2890 Ridgetop.

2891
2892 Mr. Coates - My name is Carter Coates. 604 Gardiner, next to Dr.
2893 Bruni. I'm not going to repeat what he has said. We are also concerned with the
2894 parking and the traffic situation. We are very much concerned about the
2895 extension of the operating hours. I've been a member of the Recreation
2896 Association for 35, 40 years and I was here to support the acquisition of the
2897 additional tennis courts and rebuilding of the pool. We had an agreement on the
2898 hours and I am concerned, now, that we are starting to extend the hours beyond
2899 what was the original agreement.

2900
2901 Mr. Blankinship - Which was 9:00 p.m.?
2902

2903 Mr. Coates - Yes, 9:00. Since activity is not supposed to begin
2904 before 8, I brought it to the attention of the pool management last year that gas
2905 blowers, lawn mowers, and this sort of thing was starting at 6:15 to 6:30 in the
2906 morning. I also brought to attention that the dumpster was being serviced
2907 between 4 and 5 a.m. That makes a "boom" that's probably audible for half a
2908 mile. My point is, I'm not really satisfied that the Association is living up to the
2909 past agreements and I'm certainly reluctant that we can depend on the
2910 Association to live up to future agreements. Thanks.

2911
2912 Mr. Wright - Mr. Coates, can I as you a question?
2913

2914 Mr. Coates - Sure.
2915
2916 Mr. Wright - If they change that condition that they've got, #7, that
2917 the courts would not be lighted after 9 p.m. anytime, would that be better?
2918
2919 Mr. Coates - Oh yes, I certainly think so.
2920
2921 Mr. Kirkland - It's light till 9:00 during the summer, so you only get
2922 an hour more.
2923
2924 Mr. Coates - The question is, why do we need lights at all?
2925
2926 Ms. Barrett - My name is Linda Barrett. I live at 6919 Everview
2927 Road. I am the opposite side of the tennis court with this same view. I want to
2928 show this picture because this is also the view from my side. It's all the pine
2929 trees; there are no deciduous trees. There's a direct view of the entire tennis
2930 court from my house and from my deck that's on the back of the house. If we
2931 can switch back to one of the pictures that we had of the plot, the aerial view?
2932 Can we show that? It was a close-up of the aerial view.
2933
2934 Mr. Wright - What was your address again?
2935
2936 Ms. Barrett - 6919 Everview Road.
2937
2938 Mr. Blankinship - Immediately north of the tennis courts.
2939
2940 Ms. Dwyer - It looks like 6169.
2941
2942 Ms. Barrett - My number works both ways, upside down or right
2943 side up.
2944
2945 *[Laughter.]*
2946
2947 Ms. Barrett - If you can do the close-up one, the next one down,
2948 please. How about the next one, below the top one? Can you try the top one? I
2949 think that one will show. If you take that where it says 6169, my property comes
2950 straight down to the tennis courts. It does not fan out. It comes straight down
2951 and extends all the way to the pool and all the way back up through the end of
2952 the cul-de-sac. I have the whole end of the cul-de-sac plus a dog leg that goes
2953 straight across. My property intersects with the tennis court as close as this edge
2954 to there. That's the edge of my property to the edge of the tennis court. The
2955 tennis court drops straight away in the gully. There's a stream there and my
2956 property stops right behind it. The tennis courts are no further than the back of
2957 this room from my deck. I've lived there eight years. There have been many
2958 problems with the Ridgetop Center and one of the previous concerns was that
2959 the kids are out there at night and carrying on at night. That is a problem that I

2960 have seen. I don't think that lights are going to change that because I think they
2961 need a key access to get in there anyway. I think if they're going to hang out
2962 around there, they're going to hang out around there anyway. You can see at
2963 this distance, if you're lighting up from 20 feet from the ground to the ceiling, look
2964 how much lighting there is that far from my house, from my rooms, from my deck.
2965 It's not very far. You can see it's not the spillage of the light; this is all illuminated
2966 from the ground to the top. I think that would kind of destroy my quality of life to
2967 enjoy my backyard and my deck on the back of the house. I have had problems
2968 with the children crossing over into my yard. I've had to post "No Trespassing"
2969 signs down around the edge of the pool. One of the things they have in the
2970 documents that I've seen here is that the City owns the adjoining property. That
2971 is not true. I own the adjoining property that adjoins right up to the edge of the
2972 tennis courts and to the pool.

2973

2974 Mr. Blankinship - The City owns to the east.

2975

2976 Ms. Barrett - Yeah. But my side, I own right up to the edge of it.

2977

2978 Ms. Dwyer - Up to the stream.

2979

2980 Ms. Barrett - Yes, right to the stream. The property drops away.
2981 This picture is not representative of what it actually is. The tennis courts are up
2982 on a little hill, then it drops straight away and then back up to my house. So,
2983 there's a clear view. There's nothing in between. If there are any bushes, they're
2984 down in the gully and then it comes back up. I wanted to show that there is a
2985 direct view of the lights. I'm probably the one most affected because my property
2986 is the one that's going to get most of the light.

2987

2988 Ms. Dwyer - According to our staff report, your house is at least
2989 200 feet away.

2990

2991 Ms. Barrett - I have some pictures here.

2992

2993 Ms. Dwyer - Not your property line, but your house.

2994

2995 Ms. Barrett - Right, right.

2996

2997 Mr. Blankinship - A good bit farther than that.

2998

2999 Ms. Barrett - It doesn't seem much further than that.

3000

3001 Ms. Dwyer - I walked it yesterday.

3002

3003 Mr. Blankinship - If you picture a tennis between here and there, you
3004 can see the courts.

3005

3006 Ms. Barrett - There's a deck on the back of the house as well.
3007 Noise is a problem. There's noise from the tennis court. I can hear every single
3008 word of every single conversation that goes on, on the tennis court if I'm out on
3009 my deck at night. I've heard people's love problems; I've heard all kinds of
3010 affairs. I've heard everything going on just from sitting on my deck. Even when
3011 I'm inside in the house with the doors and windows shut, I can hear the
3012 conversations going on over there. I think if you extend the hours and light it up,
3013 we're going to have more of that noise. I work at home. I am a writer. I need to
3014 have an environment where I can actually make a living. I think if that noise
3015 problem increases, that it will affect my ability to make a living. I write at all
3016 hours. I've got deadlines to meet, so I end up working a lot of evening hours,
3017 things like that, to meet some of the deadlines. One of the problems I am
3018 concerned with is that the Ridgetop Association has not been following the rules
3019 so far. They have swim meets over there where they have agreements where
3020 they can use the loud speaker system three times a year. I call over there about
3021 once to twice a week to holler at them about using the loud speaker system
3022 during the day, during the afternoon, during the evening. I tell them, "You are not
3023 allowed to use that except on swim meet days." I've heard every hot dog sale
3024 they've ever had. This is something that concerns me, again, that they say
3025 they're going to turn them off, they say they're going to do these things. What
3026 we've seen so far is that they have not gone with what they have already said
3027 they would do. They have not. The attendance at the court is not filled. They
3028 never are filled up and I wonder why do they need the extra lighting, why do they
3029 need the extra time if they're not having a capacity crowd there now. It's very
3030 occasional that people are up there playing.

3031
3032 Ms. Dwyer - Was the pool in existence when you bought your
3033 house?

3034
3035 Ms. Barrett - Yes. I've been there eight years. It's a relief when it
3036 closures, and that's when I can get out on the deck and enjoy the peace and
3037 quiet in my own house. I'm afraid of not only the light, being able to see, that lit
3038 up thing. It'll be like the person all lit up right over there in full view and also the
3039 noise level that will increase over there. They have given us no concessions.
3040 I've called over there many times. I've gone in person to talk to people over there
3041 about the problems with the pool and the tennis courts and people trespassing.
3042 People have damaged my property coming over there. That's why I put up the
3043 signs. I've called the police before about people on my property and doing
3044 damage to the property. There's probably a police report on file about that. I just
3045 wanted to voice my concern about being the one that probably has the most view
3046 of the lights. Are there any questions?

3047
3048 Mr. Wright - Do you live in the County or the City?

3049
3050 Ms. Barrett - I live in the County.

3051

3052 Mr. Wright - You must be close to the line.
3053
3054 Ms. Barrett - We're about four houses into the County. Four of our
3055 houses are probably in the County and then the line changes to the City.
3056
3057 Ms. Dwyer - Have you met with any representatives of the
3058 Recreation Association prior to this about this lighting situation?
3059
3060 Ms. Barrett - No, I have not. Thank you.
3061
3062 Mr. Nunnally - All right, sir.
3063
3064 Mr. Peery - My name is John Peery. I live with my mother at 609
3065 Gardiner Road. I was born in that house. I've lived almost my entire life there,
3066 was a member of the pool growing up. Learned to play tennis, a member of the
3067 team. I'm a big tennis fan, although I don't play much anymore. I do have some
3068 things I want to say and I'll try not to be too repetitive. When I did hear about
3069 this, I did, like all the others, wonder why they were doing this. When I was
3070 growing up and these neighborhoods were all brand new, early 60's, late 50's,
3071 houses had three, five children. Everybody played tennis, everybody swam,
3072 even the parents. It was tough to get a court. None of that's like that anymore.
3073 It's pretty quiet there. I wasn't sure what was the point of having extra time and
3074 lights. Parking is a problem. The pictures you've seen don't really do it justice.
3075 Until recently, I worked at night, so I was always on the street during the day.
3076 Parking is primarily, I think, a problem with the women's team. They do seem to
3077 be a pretty big team. I don't think any of the other teams are like that anymore.
3078 They'll fill up the street past five, six houses to the crest of Gardiner Road. I have
3079 seen service vehicles have a terrible time getting in and out. I've seen damage
3080 done to parked cars. There's really nothing you can do about it; they have a right
3081 to park there. But they haven't been very good neighbors about it, which, again, I
3082 think she just made a valid point. We get promises about things or we may hear
3083 promises that certain things will be done, but there's no reason to think that it'll
3084 actually happen. They're supposed to close the pool at 9:00 except for three
3085 times during the summer. I'm pretty sure that's been edging up more than three
3086 times a summer. There are parties and things going on late at night there. She
3087 talks about security. If they want to turn the lights off by 10:00 during the
3088 summer months, that doesn't really offer much security. Foolishness is going to
3089 go on later than that, you know, 11, 12 and 1:00 a.m. I've heard things going on
3090 up on the tennis courts and in the field behind our house. I'm not sure why
3091 having lights on until 10 is going to diminish any of that. There is already a
3092 security light up there. There is also a security light as the land descends from
3093 the tennis courts to the pool, and there's a creek that demarcates that land.
3094 There's a security light right there at the creek. It doesn't stop people from, as
3095 we said, coming and using it at a lovers' lane. Fred Bruner's apparently had a
3096 terrible time chasing people off sort of hidden behind the backboard in their cars
3097 doing all sorts of stuff. It's a common problem, people coming in after dusk,

3098 climbing the fence, and using the pool. I'm not aware of too much damage being
3099 done there anymore, but when I was younger, it was a big problem, people
3100 throwing stuff in the pool.

3101

3102 They talk about light. I think it's a valid point this person that just talked said that
3103 they are level with the courts. She's level with the courts. The land descends to
3104 the cul-de-sac of Gardiner Road, but then begins to rise; 609 is equal to the
3105 courts. I can clearly see anybody I want to on the court. Fred Bruner had an
3106 entire screen, of four or five-story tall fir trees up and along the side of his
3107 property. That could have been a screen. They don't exist anymore; they've all
3108 been cut down. You can stand anywhere on the Gardiner Road area and see
3109 the courts. Now you're going to have lights so they're going to be higher than
3110 even that. I guess they're directional, but I'm not quite sure I really believe that.
3111 You go out and look at any of these convenience stores that are being built in
3112 relatively new areas, and they look like spaceships. They're just huge puddles of
3113 light that go out forever. I'm sure they're using some of the similar lights that are
3114 directed down. So, I think light intrusion is going to be a big problem. I think
3115 security is going to be unaffected by having lights. I'm not sure that it's even
3116 pertinent. I'm a tennis player and I don't want to deny people the use of the
3117 courts, but do you really have people that are going to be using it? If somebody
3118 comes up there to play, if you have two guys, does this mean that they turn on
3119 the lights and all four courts are lit up, or can it be controlled? Does it have to be
3120 as late as they want? If I had my druthers, I'd have you postpone approval until
3121 Ridgetop sat down and talked with us. I didn't know anything about this until
3122 Rudy got a letter about it and he's the only one on our street. Well, I guess Fred
3123 must have. As you can see, we live all up and down Gardiner Road and we have
3124 issues. Light, security, parking, parking, parking, parking.

3125

3126 Ms. Dwyer - Is there anyone else who's interested in speaking who
3127 has anything that is not redundant just to add? I think you've already spoken,
3128 ma'am. This is not the appropriate time to make this motion, but I'm just going to
3129 make this comment to let you know what I'm thinking as a Tuckahoe
3130 representative. I do think that the Recreation Association does need to have a
3131 meeting with the neighbors. It sounds like there are a number of issues that are
3132 overdue, particularly relating to security lighting, security, parking, noise. I will
3133 also say that when one chooses to live near a recreation association, one does
3134 assume that it's not going to be like living in a neighborhood where there are
3135 houses, that there are going to be some intrusions by noise and that kind of
3136 recreational activity. That has to be a given. You can't expect it to be a silent
3137 zone where children are not making noise, where there's no impact of the
3138 recreational activities that are going on. So, I would like everyone to keep that in
3139 mind. I would like to defer this for one month to allow the pool to discuss with the
3140 neighbors some of the activities that are going on that can be addressed.
3141 Relating to this particular case, I think that parking is an issue that relates to
3142 having activity on these tennis courts later on in the evening. It appears that the
3143 neighbors are affected by the parking; however, this is a public street and people

3144 are permitted to park on a public street. But if they're blocking driveways and
3145 that sort of thing, I think that may be something that can be addressed. So,
3146 those are my thoughts at the moment.

3147

3148 Mr. Wright - Mr. Chairman, I think the applicant is entitled to time
3149 to rebut.

3150

3151 Mr. Nunnally - I think she's raising her hand now. Oh, she's in favor.

3152

3153 Ms. Rhodes. - My name is Carrie Rhodes. I am a Board member of
3154 the Ridgetop Recreation Association and I have been such for four years. I've
3155 been a member of the pool for six and a resident of Ridgetop Road for seven
3156 years. The concerns that have been brought before you as a Board have never
3157 been raised with the Ridgetop Recreation Association in the last five years that
3158 I've been a part of it. We really do want to be good neighbors. I'm also the tennis
3159 Chair and I'll be happy to explain to these folks why we are going before you for
3160 lights. I have been a big part of raising interest in tennis. It is one of my true
3161 loves in life. We have gone from, in the last three years since I have been the
3162 tennis person with our tennis pro, we have gone from having three teams at
3163 Ridgetop, which were primarily the ladies teams, to this year having 13 to 16
3164 youth and adult teams. We had over 165 members involved in tennis clinics last
3165 summer, which is up from about 50 members in previous years, 50 to 60.
3166 There's been a huge surge of interest in tennis at Ridgetop. Our membership is
3167 very much in favor of extending play at Ridgetop. We played in a fall league this
3168 year. One of the issues is that once you have Daylight Savings, you really are
3169 limited in terms of the hours of play for members. I became aware of the issue of
3170 parking on Gardiner this previous fall. I play on the women's teams there. I saw
3171 that one of the neighbors had put up a "Please Don't Park on My Grass" sign,
3172 which prompted me as tennis Chair to immediately say there's obviously a
3173 problem. I shot that e-mail out that you all have to all the captains of all the
3174 teams and all the tennis people who attended clinics and said we want to be
3175 good neighbors, we do not want pickup on the street. Now enforcing that is,
3176 obviously, another matter. Ridgetop is a pool. It is purely a neighborhood pool. It
3177 is a really special place where everybody that does something there, we are
3178 volunteers. None of us are paid in any capacity at Ridgetop. Enforcement? I
3179 don't what the answer to that is, but as far as the Recreation Association is
3180 concerned, we don't want people parking on Gardiner. I sent out that e-mail in
3181 October and I have followed up. Now granted, as you can see, people are still
3182 parking there, but we are really in favor of helping you guys with that problem
3183 and doing whatever we can. I don't care if we put "No Park" signage and have
3184 the police enforce it. We want people to park at Ridgetop. I heard the comment
3185 that the Ridgetop parking is already packed. We have parking down Devon into
3186 the cul-de-sac and we also have a parking lot. The only time that I have ever
3187 seen that not be sufficient is during swim meets and then as a neighbor of
3188 Ridgetop, people park in front of my house and I live seven houses down from
3189 the pool. That does only happen three times a year. We only are allowed to have

3190 so many home meets. I can hear it from my house, but it is three times a year
3191 and to me the whole swim thing, but that's not what we're hear to talk about.
3192 We're hear to talk about lights. One of the things that came up was why do we
3193 need the lights or why do they need that. Ridgetop membership is requesting
3194 that and we have a huge percentage of the membership in kids and youth
3195 wanting to be part of that. We're engaging kids in positive activities at Ridgetop.
3196 I would welcome any of these folks. I was the Secretary on their Board so I have
3197 attended every meeting that we've had for two to three years and I have never
3198 once heard a complaint from the woman that was speaking that kids or there was
3199 a problem. I also play tennis all the time and from the courts, you can't see
3200 anything behind you. There are many deciduous trees. As a volunteer that has to
3201 blow the courts all the time before we play, we spend a good 45 minutes to an
3202 hour blowing leaves off the courts because that whole area is very wooded and
3203 very secluded. There are pine trees, no doubt, but there are deciduous trees
3204 there as well. The membership at Ridgetop has been very much for it and we
3205 are very in favor of and would sit down at any time with any of our neighbors and
3206 do the best we can do to address the concerns that are within our control to
3207 control. We definitely don't want people parking on Gardiner and I hear them
3208 loud and clear. We feel the same way so we really are behind that. I don't know
3209 how to enforce it, but we're behind it.

3210

3211 Mr. Nunnally - Mr. Blitz, you want to rebut?

3212

3213 Mr. Blitz - Yes. I just want to address a couple things in a very
3214 short manner. First, the lady to the north, I understand with kids going on the
3215 property because well, I was a kid, I did it, I went through the woods. Half the
3216 kids could be non-pool members who are just playing in the creek. But she is
3217 200 feet away from the courts and these lights aren't going to spill more than 30
3218 feet off the courts before they're at zero. The play in the summer until 10 is very
3219 relevant, especially to somebody like me. I work until 6:00 at night. It's light until
3220 9, but I typically play 8 to 10. That's all the way through. There are a lot of
3221 working people, especially in the fall and winter that need that. Most critical is
3222 606 Gardiner. The picture that he presented was taken from our property line
3223 inside our property. Yes, we can see our tennis courts from inside our property.
3224 You can't see the surface, but you can see one or two of the people. The
3225 driveway at 606 is a full 150 feet away from that fire lane, which is why there's an
3226 opening there. We have to have fire access. Once you step back, the view
3227 becomes skewed because of the trees around the corner. That's all I wanted to
3228 address.

3229

3230 Ms. Rhodes - (Speaking off mike)

3231

3232 Mr. Blitz - Obviously, being in my profession, yes, there are
3233 deciduous trees back there. I see the difference in playing now to then. I know
3234 at least two of you were out there so you can see the density of the forest. Right
3235 now, all these are going to be skewed because of the lack of leaves.

3236
3237 Mr. Nunnally - All right, thank you, sir.
3238
3239 Ms. Dwyer - Mr. Chairman, I didn't mean to cut anyone off who
3240 was in opposition with comments earlier. Is there someone else who wanted to
3241 speak?
3242
3243 Mr. Wright - What he's saying's not being picked up.
3244
3245 Mr. Blankinship - He's just saying that his concerns were already
3246 addressed.
3247
3248 Mr. Nunnally - Ms. Dwyer, you said that you're requesting that we
3249 defer it for a month and let them get together and talk about it, right?
3250
3251 Ms. Dwyer - Yes.
3252
3253 Mr. Nunnally - Do you all have any problem with that?
3254
3255 Ms. Rhodes - (Unintelligible)
3256
3257 Mr. Nunnally - Get up to the microphone please, ma'am.
3258
3259 Ms. Rhodes - I don't know what a month will do because I still think,
3260 we're behind people not parking on Gardiner.
3261
3262 Mr. Blankinship - It would allow you to meet with the neighbors and see
3263 if you can work out some solutions to some of these problems. We're now aware
3264 of the problems, but we're not aware...
3265
3266 Ms. Rhodes - But the problem is parking, which in relevance to
3267 lighting the tennis courts, and we're definitely willing to sit down with them.
3268
3269 Mr. Blankinship - That's all we want to establish.
3270
3271 Ms. Rhodes - But I don't know the relevance to the lighting issue.
3272 Short of police enforcement, I don't know what we can do other than notify
3273 members and say don't do it. I think it's other people, too. That's an access for
3274 Bandy Field. People walk their dogs. They park their cars and walk their dogs
3275 and all that kind of stuff, too. During matches, there is parking there and we
3276 need to stop it.
3277
3278 Mr. Nunnally - All right. We'll make a decision later on today. I think
3279 that's it then, Mr. Blankinship. UP 15-2006. Ridgetop Recreation Association.
3280
3281 **DECISION**

3282
3283 Ms. Dwyer - We heard a lot of testimony on this today and I don't
3284 want to revisit the testimony again, but I do want to defer this case for one month
3285 because I think the Recreation Association does need to meet with the
3286 neighbors. A lot of the concerns the neighbors brought up today I realize are not
3287 relevant to this particular application, but what is relevant is the parking issue and
3288 even though the Recreation Association doesn't want people to park there,
3289 people are parking there. So, I would hope that some communication between
3290 the neighbors and the Recreation Association might come up with some possible
3291 solution to that. I think the neighbors also just need to be heard about some of
3292 their complaints and it would be in the best interest of the Recreation Association
3293 to hear those and maybe to establish an ongoing meeting inviting neighbors to
3294 come and regularly have this kind of interaction. That's just a suggestion, not
3295 anything that we could require. The other thing that's relevant would be possible
3296 landscaping around the tennis court. I know you don't want to have anything
3297 deciduous that's going to leave trash on the tennis court, but there might be
3298 some way to put some even slow-growing evergreens in some location to
3299 somewhat shield the lighting of the tennis courts from the neighbors. What I
3300 would like to do is propose that we bring this case back again next month, after
3301 the Recreation Association has met with the neighbors, all those people here,
3302 and whoever else you want to include in that meeting would be fine. How you
3303 want to handle that, that is fine. Next month, I would like to only allow one
3304 person to speak on behalf of both the opposition and those in favor to
3305 summarize, perhaps, what they have agreed to or to summarize what has
3306 happened in the meeting, and to summarize any arguments in favor and
3307 opposed to the application. That's permissible, is it not, Mr. Blankinship?
3308
3309 Mr. Blankinship - Yes ma'am.
3310
3311 Ms. Dwyer - To limit testimony.
3312
3313 Mr. Blankinship - Oh, to limit the testimony.
3314
3315 Ms. Dwyer - Next time. To consider the full hearing was held today
3316 and we don't need to revisit everything next time.
3317
3318 Mr. Blankinship - I think if you ask that as a courtesy, you'll get it.
3319
3320 Ms. Dwyer - I know in the Planning Commission, sometimes we
3321 would defer for decision only.
3322
3323 Mr. Wright - We defer on that basis plenty of times.
3324
3325 Mr. Blankinship - You held a public hearing, you closed the hearing.
3326
3327 Mr. Wright - We don't want to hear any—

3328
3329 Mr. Blankinship - You could reconsider the case without taking any
3330 more testimony. So, I guess you can a limited amount. I'll check with Tom.
3331
3332 Mr. Wright - Limited the issue. That is the cooperation between.
3333
3334 Mr. Nunnally - They do it on the Planning Commission, don't they,
3335 Ms. Dwyer?
3336
3337 Ms. Dwyer - We defer for decision only. We usually don't allow
3338 any additional testimony. I would like to hear what the results of the meeting are.
3339 Something may come up in the meeting where they've agreed to add
3340 landscaping or do something for parking, so there may be a condition change
3341 that could result from the meeting. So, I would like to have some testimony but
3342 not the whole thing.
3343
3344 Mr. Wright - We could limit it to additional testimony, not to repeat
3345 what has been said.
3346
3347 Ms. Dwyer - That additional testimony meaning the result of the
3348 neighborhood meeting.
3349
3350 Ms. Harris - We've done that before.
3351
3352 Mr. Nunnally - Motion by Ms. Dwyer to be deferred to next month.
3353 Do I have a second?
3354
3355 Ms. Harris - Second.
3356
3357 Mr. Nunnally - Second by Ms. Harris. All in favor say aye. It's been
3358 deferred until next month, April meeting.
3359
3360 After an advertised public hearing and on a motion by Ms. Dwyer, seconded by
3361 Ms. Harris, the Board **deferred** application **UP-15-2006** for a conditional use
3362 permit to add lights to the existing tennis courts at 901 Ridgetop Road (Parcels
3363 762-738-6196, 1098 and 2998), zoned R-3, One-Family Residence District
3364 (Tuckahoe). The Board deferred the request from the March 23, 2006, to the
3365 April 27, 2006, meeting to allow time for the applicant to meet with the neighbors.
3366
3367
3368 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5
3369 Negative: 0
3370 Absent: 0
3371
3372

3373 Ms. Harris - Question. Do we have plans to attend the 2006
3374 Annual Conference for the Virginia Chapter of American Planning Association
3375 next week?
3376
3377 Mr. Wright - Not me.
3378
3379 Mr. Kirkland - Not me.
3380
3381 Mr. Blankinship - Mr. Chairman, I have a couple of favors to ask you
3382 before we adjourn. Everybody can kind of putter around. I'm sure you
3383 remember Tjitse and Lisa DeWolff who applied to put a pool in their front yard
3384 last month. The use permit was approved. Then once they had their use permit,
3385 their architect went out with the builder and did some more careful looking at the
3386 land and they realized that there is a lot more slope there than they thought there
3387 was. This is what they showed you at the use permit hearing, a one-story
3388 building with a very steep roof. The property slopes so much that they really
3389 decided that they needed to put a half basement under the building. So, the rear
3390 of the building is now two stories with this steep roof. On the side, you'll see on
3391 story following the two stories on both sides. The front remains pretty much as
3392 you approved it.
3393
3394 Ms. Dwyer - The two-story faces what?
3395
3396 Mr. Blankinship - Faces towards the road; that's the problem. The front
3397 faces the pool and across the pool to the house, but they are a good distance
3398 back from the road. It was different enough from what you approved that we did
3399 not feel comfortable approving it without discussing it with you, but it's similar
3400 enough that I didn't want to re-advertise it unless you asked to have it re-
3401 advertised.
3402
3403 Mr. Wright - Same footprint?
3404
3405 Mr. Blankinship - Yes, the footprint is identical.
3406
3407 Ms. Dwyer - I can't remember the lot.
3408
3409 Mr. Blankinship - I should have oriented you first.
3410
3411 Ms. Harris - It's a corner lot, right?
3412
3413 Mr. Blankinship - This is Lizfield Way. No, it was not a corner lot, but
3414 it's a very odd lot. There's a stream along here and a very steep slope. They
3415 drive around the house and park here, and the front of the house faces this way.
3416
3417 Mr. Wright - Isn't this Charles City County or something over here?
3418

3419 Mr. Blankinship - No, that would be [unintelligible]. So, the pool is here
3420 and the building we're talking about is right here. So, Lizfield Way is on that side
3421 of the property—
3422

3423 Mr. Kirkland - How far is that back?
3424

3425 Mr. Blankinship - One to fifty and that's a good six inches, so that's
3426 about 300 feet or more, maybe more than 300 feet back.
3427

3428 Ms. Dwyer - What's over here?
3429

3430 Mr. Blankinship - There is a dwelling, but it's a good distance away
3431 because there's a real steep ravine here with a stream.
3432

3433 Mr. Nunnally - [Unintelligible] be all right with me.
3434

3435 Mr. Kirkland - I don't have any problem.
3436

3437 Mr. Blankinship - The next thing we have to decide is how we're going
3438 to measure the height.
3439

3440 Mr. Nunnally - How about you, Ms. Dwyer?
3441

3442 Ms. Dwyer - It's all right with me.
3443

3444 Mr. Nunnally - Ms. Harris?
3445

3446 Ms. Harris - [Unintelligible.]
3447

3448 Mr. Blankinship - The other thing I just wanted to discuss informally with
3449 you was this issue of putting more information in the motion when you make it.
3450 That was kind of the basis of the Board remanding the Simons' cases was that
3451 the Court felt that we didn't follow the procedure in 24-116. Tom Tokarz
3452 mentioned this to you last month when he made his report on that remand. He
3453 made several suggestions and this was one of them. He would like to have you
3454 actually state in your motion that you made all the findings that are called for in
3455 24-116. I asked Tom to draft up what he meant by that.
3456

3457 Ms. Dwyer - We should have had this before the meeting.
3458

3459 Mr. Blankinship - Right. You'll have them before next meeting if you
3460 want to do something like this. I guess we can provide them to you and the
3461 person making the motion can either read this or do more like what Ms. Dwyer
3462 and Ms. Harris did, just sort of incorporate this information into your motion as
3463 you speak it.
3464

3465 Mr. Wright - When we state a motion similar to the new ordinance,
3466 should we state the new ordinance, do you think, with that section in it?
3467

3468 Mr. Blankinship - I don't think that's necessary because it's in the
3469 advertisement that it's pursuant to that section of the ordinance. I think the key
3470 think is to get in there it will not adversely affect the health and safety, that it's
3471 compatible with the zoning ordinance [unintelligible] the surrounding property. I
3472 don't like to spring changes on you all, so I wanted to discuss this with you before
3473 we did it. We're going to start attaching these, I think. Unless you object, we're
3474 going to start attaching these to the staff report. So, for each case at the end of
3475 your report, you'll have the condition and then you'll have another page with the
3476 two draft motions. You can do whatever you want with them. You can
3477 paraphrase them, you can read them, or you can complete ignore them.
3478

3479 Mr. Kirkland - That would be fine, that would be great.
3480

3481 Ms. Dwyer - I think also we would need to put the supporting facts.
3482 These motions don't include the facts of the particular case.
3483

3484 Mr. Kirkland - These are basically generic.
3485

3486 Mr. Wright - State the basis upon which you adopt this.
3487

3488 Mr. Nunnally - All right. Any other motion before adjournment? Are
3489 you through, Mr. Blankinship?
3490

3491 Ms. Dwyer - I have one thing. Notice Mr. Blankinship was
3492 preparing a staff studying the excavation of property in Henrico and how that
3493 property is to be restored based on some cases that we had. He had mentioned
3494 to me that they would like some more guidance about what kinds of information
3495 you want and I wrote down some notes, if I can find it. Did anybody else have
3496 any thoughts on that?
3497

3498 Mr. Blankinship - I've been able to find some information on
3499 reclamation, but it's very vague and general. If I had a more detailed idea of
3500 what information you want, it would help me in preparation of that study.
3501

3502 Ms. Dwyer - Okay. Here are the thoughts that I had and I'm sure
3503 that others may have some other ideas, too. First of all, how many acres are
3504 affected? How big is the problem? How many acres in Henrico? How many
3505 sites and how many acres have been excavated or are being excavated? How
3506 many have been restored and how many are still active. I would like to note that
3507 really is a question that gives rise to scope of this issue. I know that the legal
3508 department indicated that there had been some problems in the past. So, legal,
3509 environmental, anybody else you can think of, any other departments who might
3510 be interviewed to determine what issues have they had in the past that maybe

3511 we could address in our conditions. The main issue for me is what standards
3512 could we impose to insure that this property, once it's excavated, is restored so
3513 that it is useable and it's not just for perpetuity raw land that just has to be vacant
3514 and is not useable for any purpose. There might be different standards for
3515 different purposes. For example, maybe one standard of fill would allow you to
3516 use it as a park, another standard of fill might allow you to use it for homes.
3517 Specifically, what standards and for what purposes. Then one of the issues that
3518 was raised was the sufficiency of the bond and are we requiring enough of a
3519 bond in case somebody who's excavating goes bankrupt and leaves us with
3520 hazardous materials.

3521
3522 Mr. Kirkland - We even had one of those one time, the one that had
3523 the dam break of something.

3524
3525 Mr. Blankinship - Yes, on Darbytown.

3526
3527 Ms. Dwyer - I think Tom said there was a recent one, too, where
3528 the County's left holding the bag and the bond was insufficient. So, that's
3529 something we could act on pretty quickly, I would think. The standards might take
3530 more time. If you can't answer all the questions, just answer what you can and
3531 we can have it ongoing. Those are just some of my thoughts.

3532
3533 Mr. Blankinship - Is there anything else that anyone else would like to
3534 see in there?

3535
3536 Ms. Harris - Some type of water control something.

3537
3538 Mr. Kirkland- Mr. Chairman, I move we adjourn.

3539
3540 Mr. Nunnally - The motion we adjourn made by Mr. Kirkland. Stand
3541 up.

3542
3543
3544
3545
3546
3547
3548
3549
3550
3551
3552
3553
3554
3555
3556
3557
3558
3559
3560
3561
3562
3563
3564
3565

Ms. Dwyer - Aye.

There being no further business, and on a motion by Mr. Kirkland, seconded by
_____ the Board adjourned until **April 27, 2006**, at 9:00 a.m.

James W. Nunnally
Chairman

Benjamin Blankinship, AICP
Secretary