

1 **MINUTES OF THE REGULAR MEETING OF THE BOARD OF ZONING**  
2 **APPEALS OF HENRICO COUNTY, HELD IN THE COUNTY ADMINISTRATION**  
3 **BUILDING IN THE GOVERNMENT CENTER AT PARHAM AND HUNGARY**  
4 **SPRING ROADS, ON THURSDAY, MARCH 28, 2013 AT 9:00 A.M., NOTICE**  
5 **HAVING BEEN PUBLISHED IN THE RICHMOND TIMES-DISPATCH MARCH**  
6 **11, 2013, AND MARCH 18, 2013.**

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

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

8  
9 Mr. Wright - Ladies and gentlemen, welcome to the March  
10 meeting of the Henrico County Board of Zoning Appeals. I ask you to please  
11 stand and join with me in pledging allegiance to the flag of our Country.

12  
13 Thank you. Mr. Blankinship, will you please read our rules.

14  
15 Mr. Blankinship - Good morning, Mr. Chairman, members of the Board,  
16 ladies and gentlemen. The rules for this meeting are as follows. Acting as  
17 secretary, I will call each case. And as I'm speaking, the applicant is welcome to  
18 come down to the podium. We will then ask everyone who intends to speak to  
19 that case to stand and be sworn in. Then the applicant will speak. Then anyone  
20 else who wishes to speak will be given the opportunity. And after everyone has  
21 had a chance to speak, the applicant, and only the applicant, will have an  
22 opportunity for rebuttal.

23  
24 After the Board has heard all of the arguments on both sides, they will take the  
25 matter under advisement and proceed with the next case. They will render all of  
26 their decisions at the end of the meeting. So if you wish to know their decision on  
27 a specific case, you can either stay until the end of the meeting, or you can  
28 check the Planning Department website—we usually update it about a half an  
29 hour after the meeting, or you can call the Planning Department this afternoon.

30  
31 This meeting is being recorded, so we ask everyone who speaks to speak  
32 directly into the microphone on the podium, state your name, and please spell  
33 your last name so we get it correctly in the record.  
34

35 And finally, out in the foyer there is a binder containing the staff report for each  
36 case, including the conditions that have been recommended by the staff. And it's  
37 particularly important that the applicants be familiar with those conditions.  
38

39 Mr. Chairman, we do not have any requests for deferral or withdrawal that I'm  
40 aware of.

41  
42 Mr. Wright - All right, sir. Please call the first case.

43  
44 **CUP2013-00003 RANDY AND KIM KELLEY** request a conditional use  
45 permit pursuant to Section 24-95(i)(4) of the County Code to build an accessory  
46 structure in the side yard at 1450 N Washington Street (Greendale Park) (Parcel  
47 828-726-5835) zoned A-1, Agricultural District (Varina).  
48

49 Mr. Wright - Will all persons who desire to speak on this case,  
50 whether for or against, please stand and be sworn.

51  
52 Mr. Blankinship - Raise your right hands, please. Do you swear the  
53 testimony you're about to give is the truth and nothing but the truth so help you  
54 God?

55  
56 Mr. Kelley - Yes.

57  
58 Ms. Kelley - Yes.

59  
60 Mr. Wright - All right. Would you please state your name for the  
61 record and spell it, and then present your case.  
62

63 Ms. Kelley - Kim and Randy Kelley. Last name is K-e-l-l-e-y. And  
64 we live at 1450 North Washington Street. We purchased the property about two  
65 years ago, and we would like to build a carport on what is considered the side  
66 yard. Because of the property line and our property being accessed through a  
67 private driveway, it's actually sitting next to our existing garage, but not attached  
68 to the garage. And we want to use it for parking our camper and other  
69 mechanical vehicles. It's going to be a building made of siding with a gravel floor  
70 using mobile home anchors. Nobody will be able to see it from the road. Those  
71 are similar structures of what it's going to look like. And we understood we  
72 needed a conditional use permit because of the zoning when we applied for our  
73 building permit.  
74

75 Mr. Wright - Are there any houses around your property close to  
76 you?  
77

78 Ms. Kelley - We sit in the middle of three acres. And the back of  
79 some houses are along the driveway coming in; you'll see them right there on  
80 the left.

81  
82 Mr. Wright - You would be facing the back of those houses.  
83  
84 Ms. Kelley - Yes sir.  
85  
86 Mr. Nunnally - They're about 300-and-some feet away from your  
87 property, right?  
88  
89 Ms. Kelley - Yes sir.  
90  
91 Mr. Wright - And why can't you put this in your technical  
92 backyard?  
93  
94 Ms. Kelley - There is a pond down there, and it slopes when you  
95 continue down that road. See right there where the tree is cut down?  
96  
97 Mr. Wright - Oh, yes.  
98  
99 Ms. Kelley - And those trees? That would be what is considered,  
100 we understand, our rear yard. And there's a pond down there, and it's quite a  
101 slope. Basically, the outline of those railroad ties right there is where the  
102 structure would go.  
103  
104 Mr. Wright - All right. Do you have any questions?  
105  
106 Ms. Harris - Yes. Could we see the aerial map, please? Not the  
107 site map, the aerial map. Yes. Can you point out the proposed carport location  
108 on this map?  
109  
110 Ms. Kelley - Exactly right there where the little marker is.  
111  
112 Ms. Harris - And how close to your house will the carport be?  
113  
114 Ms. Kelley - I think we measured it about thirty feet.  
115  
116 Mr. Kelley - Eighty feet.  
117  
118 Ms. Kelley - Yes, eighty feet from the corner of the house.  
119  
120 Mr. Kelley - Thirty-six feet. I'm sorry.  
121  
122 Ms. Kelley - Thirty-six, yes, because that's the existing house right  
123 there where the marker is. Right there, yes. That's our existing house. And the  
124 corner right there where we have the 36 is right where the existing garage is. So  
125 that structure is going to be—yes.  
126

127 Ms. Harris - Does this show your garage already on this?  
128  
129 Mr. Kelley - Yes ma'am.  
130  
131 Ms. Kelley - Yes ma'am. Right there where it has the 31 feet 6  
132 inches. Right there is the existing garage.  
133  
134 Ms. Harris - Thank you.  
135  
136 Mr. Wright - Any further questions from members of the Board?  
137  
138 Mr. Baka - One question. Will the garage be for personal use or  
139 commercial business use?  
140  
141 Ms. Kelley - Personal.  
142  
143 Mr. Wright - All right, hearing no further questions, is anyone here  
144 in opposition to this request? Hearing none, that concludes the case. Thank you  
145 very much.  
146  
147 Ms. Kelley - Thank you.  
148  
149 **[After the conclusion of the public hearings, the Board discussed the case**  
150 **and made its decision. This portion of the transcript is included here for**  
151 **convenience of reference.]**  
152  
153 Mr. Wright - Do I hear a motion on this case?  
154  
155 Mr. Nunnally - Mr. Chairman, I make a motion we approve this case  
156 because it will not cause any effect on the health, safety, and welfare of the  
157 persons residing or working on the premises or in the neighborhood, and it will  
158 not unreasonably impair the adequate supply of light and air to adjacent  
159 properties. I think it's a very good project they have, so I move we approve it.  
160  
161 Mr. Wright - Motion by Mr. Nunnally. Is there a second to that?  
162  
163 Ms. Harris - Second the motion.  
164  
165 Mr. Wright - Second by Mrs. Harris. Is there any discussion?  
166 Hearing none, all in favor say aye. All opposed say no. The ayes have it; the  
167 motion passes.  
168  
169 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by  
170 Ms. Harris, the Board **approved** application **CUP2013-00003, Randy and Kim**  
171 **Kelley's** request for a conditional use permit pursuant to Section 24-95(i)(4) of  
172 the County Code to build an accessory structure in the side yard at 1450 N

173 Washington Street (Greendale Park) (Parcel 828-726-5835) zoned A-1,  
174 Agricultural District (Varina). The Board approved this conditional use permit  
175 subject to the following conditions:

176  
177 1. This conditional use permit applies only to the location requirement for the  
178 proposed carport/storage structure. All other applicable regulations of the County  
179 Code shall remain in force.

180  
181 2. Only the improvements shown on the plot plan and building design filed with  
182 the application may be constructed pursuant to this approval. Any additional  
183 improvements shall comply with the applicable regulations of the County Code.  
184 Any substantial changes or additions to the design or location of the  
185 improvements will require a new use permit.

186  
187 3. The applicant shall apply for and obtain any required building permits prior to  
188 installation of the structure.

189  
190  
191 Affirmative: Baka, Bell, Harris, Nunnally, Wright 5  
192 Negative: 0  
193 Absent: 0

194  
195  
196 **[At this point, the transcript continues with the public hearing on the next**  
197 **case.]**

198  
199 **CUP2013-00004 GILLIES CREEK INDUSTRIAL RECYCLING, LLC**  
200 requests a temporary conditional use permit pursuant to Sections 24-52(d) and  
201 24-103 of the County Code to extract materials from the earth at 6650 Hines  
202 Road (Parcels 855-695-5768 and 855-695-8710) zoned A-1, Agricultural District  
203 (Varina).

204  
205 Mr. Wright - All persons desiring to speak on this case, whether  
206 for or against, please stand and be sworn.

207  
208 Mr. Blankinship - Please raise your right hands. Do you swear the  
209 testimony you're about to give is the truth and nothing but the truth so help you  
210 God?

211  
212 Mr. Hooker - Yes, I do.

213  
214 Mr. Wright - All right. Please state your name, spell it, and then  
215 present your case, please.

216  
217 Mr. Hooker - My name is Randy Hooker. Last name Hooker—H-o-  
218 o-k-e-r. I'm representing the case for Gillies Creek. I also have Lew Bryant with

219 me—B-r-y-a-n-t. He is with Gillies Creek. We're here to answer any questions  
220 you have. We've reviewed the report and see there are a few concerns.  
221  
222 Mr. Wright - Tell us why you're here again.  
223  
224 Mr. Bryant - We haven't completed the excavating or reclaiming  
225 the pit yet. We need to renew for another period to try to continue that operation  
226 and finish this off.  
227  
228 Mr. Wright - Well, I understand much hasn't been going on there  
229 in a while. When's the last time anything was processed on this property?  
230  
231 Mr. Bryant - It's probably been 2010, 2011, prior to the previous  
232 renewal in 2011.  
233  
234 Mr. Wright - What makes you think that you could now go forward  
235 and do something with it?  
236  
237 Mr. Bryant - It's just my hope and desire that we can find some  
238 market for that material out of the pit, find ways to import material into it to fill it  
239 in. When we purchased the property, we were hoping for some greater  
240 expansion in western New Kent, eastern Henrico. And obviously with the  
241 economy, it just hasn't happened.  
242  
243 Mr. Wright - How long has this operation been going on,  
244 Mr. Blankinship?  
245  
246 Mr. Blankinship - I'll see if that's in your report here.  
247  
248 Mr. Bryant - 1981.  
249  
250 Mr. Blankinship - 1981.  
251  
252 Mr. Wright - Since 1981.  
253  
254 Mr. Blankinship - For thirty years, thirty-two years.  
255  
256 Mr. Wright - You all have investigated or reviewed the situation?  
257  
258 Mr. Blankinship - Yes sir. We inspect it every month.  
259  
260 Mr. Wright - Tell me, what is the condition of the property there?  
261  
262 Mr. Blankinship - It's generally in good shape in that it has vegetation  
263 stabilizing the soil over most of it. Where there is bare soil it would drain into the

264 pit. So there's not really too much of an environmental concern with sediment  
265 being washed off the site.

266  
267 We do have a concern about the steep slopes. There is a requirement in the  
268 code that any slope over ten feet, if it is left that way for more than thirty days, is  
269 supposed to be cut back to a two-to-one or flatter slope. And there are some  
270 slopes that are taller than ten feet and steeper than two-to-one.

271  
272 Also, when we reviewed the site preparing for this meeting, we noticed that there  
273 were some tire tracks. It looked like somebody had been riding motorcycles or  
274 motorbikes or something on the property. And so that just raised some concern  
275 on staff's part, especially with the steeper slopes, if somebody is out there using  
276 the site—trespassing on the site, they could get hurt on those steeper slopes.

277  
278 Mr. Wright - I take it that such activity would violate the terms of  
279 the permit, would it not?

280  
281 Mr. Blankinship - Yes sir. And I presume it's trespassing.

282  
283 Mr. Bryant - It's trespassing.

284  
285 Mr. Wright - Could you address these issues that have been  
286 raised by Mr. Blankinship?

287  
288 Mr. Bryant - Well, as far as the slopes go, two years ago I think we  
289 had our last renewal, the County inspector brought it to our attention. And we  
290 actually went out there and thought we pulled all the slopes back that were  
291 required. So if something is still out of repose, then we'll need to go down there  
292 and take a look at it again, because we did address the slope issue at the last  
293 renewal period and pulled those back. The DMME is in there monthly and hasn't  
294 raised any questions about the angle of the slopes. But we'll be happy to take a  
295 look at that.

296  
297 As far as the trespassing goes, we've done what we can and what we're required  
298 to do. The only access road is blocked and signed, "Open Pit. Danger. No  
299 Trespassing." The perimeter of the property is posted no trespassing.

300  
301 Mr. Wright - How do they access it?

302  
303 Mr. Bryant - Actually speaking with one of the neighbors, Ms.  
304 Sharpe here, maybe she can address that. But apparently they're accessing it  
305 through another neighbor's property, crossing their property, coming through the  
306 woods, and getting into the pit.

307  
308 Mr. Gidley: They also go around the gate at the entrance to the  
309 site.

310  
311 Mr. Wright - Is it possible to put a fence along that area or  
312 something?  
313  
314 Mr. Bryant - I think the mining area is twelve acres. It would take  
315 several thousand feet of fence to fence the entire pit off.  
316  
317 Mr. Wright - That's not required.  
318  
319 Mr. Blankinship - Well, there is a requirement that it be secured and  
320 that they post the "No Trespassing" signs.  
321  
322 Mr. Wright - Have you reviewed the conditions that are proposed  
323 for this case?  
324  
325 Mr. Bryant - Yes sir.  
326  
327 Mr. Wright - Are you in accord with these conditions?  
328  
329 Mr. Bryant - To my knowledge, yes. We're complying with all the  
330 conditions set forth by the permit.  
331  
332 Mr. Wright - You stated just a moment ago you would be happy to  
333 go out and check on the grade. Well that's required by these conditions. It's not a  
334 matter of being happy; you're required to do that. There ought to be some sort of  
335 follow-up or some sort of checking of what's going on there.  
336  
337 Mr. Bryant - Yes sir.  
338  
339 Mr. Blankinship - If I understood Mr. Bryant, he's disputing our finding  
340 that the slopes are in excess. And we did not have an engineer out on the site.  
341 We did not measure these slopes.  
342  
343 Mr. Bryant - It was my understanding the last time this issue came  
344 up we addressed it for the County. And the state is satisfied with the angle of all  
345 the slopes. But if the County thinks it's a problem, we will deal with it.  
346  
347 Mr. Blankinship - That may be more of a finding of fact that we can  
348 work with them to determine.  
349  
350 Mr. Wright - How many trucks do you propose to access this  
351 property when you begin to use it, I guess?  
352  
353 Mr. Bryant - I think the permit states that they're supposed to be  
354 spaced out so no more than three arrive at a time. And that's just a logistical  
355 matter we'll have to work within the confines of. I think we estimated there are



356 probably a hundred thousand yards of airspace left in that property to fill it  
357 according to the plans, which would be 1,000 to 1,500 loads at least to go in  
358 there. So in order to comply with the trucking constraints, I do have a time issue  
359 if the Board decides not to renew this. I understand I'd have twelve months to  
360 complete the reclamation. With that kind of time frame, we may have a lot more  
361 truck traffic on that road than I think everybody would be comfortable with.  
362

363 Mr. Wright - How long do you think it will take you to complete  
364 what you need to do on this?  
365

366 Mr. Bryant - I think this renewal period plus one year for  
367 reclamation, another three years, I think we can get it done.  
368

369 Mr. Wright - Well what happens if you are not able to do that?  
370

371 Mr. Bryant - I don't have an answer for you there.  
372

373 Mr. Blankinship - They'll be back here in two years.  
374

375 Mr. Bryant - I guess we're right back here with my hat in my hand  
376 again.  
377

378 Mr. Blankinship - You can't control the economy. You can't control the  
379 demand for material or the demand for hauling.  
380

381 Mr. Wright - Is this the type of material that is in demand when  
382 they need it?  
383

384 Mr. Bryant - Very much so. It's very high-quality sand and gravel  
385 remaining in that pit. And the airspace is valuable for excess dirt when people  
386 start developing again.  
387

388 Mr. Wright - Has the economy had any effect, you think, on your  
389 ability to use this property.  
390

391 Mr. Bryant - Yes sir, absolutely.  
392

393 Mr. Blankinship - When did Gillies Creek acquire this site?  
394

395 Mr. Bryant - 2005, I believe.  
396

397 Mr. Blankinship - Just in time.  
398

399 Mr. Bryant - Yes, just in time. We bought it at the height of the  
400 economy right before the crash.  
401

402 Mr. Wright - You you're sort of stuck with it, I guess.  
403  
404 Mr. Bryant - Right now we're stuck, yes sir.  
405  
406 Mr. Blankinship - And you acquired Meadow Road at about that same  
407 time.  
408  
409 Mr. Bryant - Meadow Road was 2001.  
410  
411 Mr. Blankinship - Oh, okay. That much earlier.  
412  
413 Mr. Bryant - Hines Road was the successor to Meadow Road. We  
414 capped Meadow Road off and needed a new place to move into. Thought this  
415 was the answer and then everything kind of went south.  
416  
417 Mr. Wright - I may be confused, but what does this other case  
418 have to do with this?  
419  
420 Mr. Blankinship - That's a separate site from the same applicant.  
421  
422 Mr. Wright - It doesn't have anything to do with this site.  
423  
424 Mr. Bryant - No sir.  
425  
426 Mr. Wright - Oh, okay. I thought there was some connection. I  
427 couldn't tell.  
428  
429 Ms. Harris - I have a few questions. In the conditions, Condition  
430 21 and 30, is that a duplication?  
431  
432 Mr. Blankinship - Yes ma'am, I believe it is.  
433  
434 Mr. Wright - It says the same thing.  
435  
436 Ms. Harris - Just about, just about.  
437  
438 Mr. Wright - Well, it's better to have more than you need.  
439  
440 Ms. Harris - I guess.  
441  
442 Mr. Blankinship - Unless it causes confusion. One of them is a few  
443 words longer.  
444  
445 Ms. Harris - They're almost identical.  
446

447 So I have several questions. There has been no activity since you were before  
448 us before in 2011?

449  
450 Mr. Bryant - No ma'am, I don't believe so.  
451

452 Ms. Harris - Okay. So you have not done anything toward  
453 reclamation at all.

454  
455 Mr. Bryant - Not in terms of bringing any material to consume the  
456 airspace. As Mr. Blankinship said, most of the area is stabilized with vegetation.

457  
458 Ms. Harris - But you have not done anything purposely to reclaim.

459  
460 Mr. Bryant - I have not brought any material in, no ma'am.

461  
462 Ms. Harris - Okay. What do you propose to do about the  
463 motorcycle problem?

464  
465 Mr. Bryant - That's a good one. I don't know what I can do. I would  
466 say that maybe I need some help from the police department, apparently.  
467 Obviously they're trespassing. Clearly they're coming across a neighbor's  
468 property and trespassing on his property. And they have to come down a main  
469 road. So if it's an ATV or a dirt bike, which is not street legal, they have to come  
470 down a County road. We've done all we can do, I think, practically, to keep  
471 people out of there and keep people safe.

472  
473 Ms. Harris - Except call the police?

474  
475 Mr. Bryant - Well, if I could catch them down there, I would call the  
476 police.

477  
478 Ms. Harris - Have you contacted the neighbors so they can  
479 contact you when this happens so that can be done?

480  
481 Mr. Bryant - Well, this is kind of news to me that this is going on. I  
482 found out about it in the staff comments that there were fresh tracks going  
483 through the pit.

484  
485 Ms. Harris - So will you offer the neighbors that option, that if they  
486 determine there are motorcyclists they could contact you so you could contact  
487 the police?

488  
489 Mr. Bryant - Absolutely. Or if they wanted to contact the police  
490 directly. If someone's trespassing, obviously we have a liability there. So I have  
491 no problem with that at all.

492

493 Mr. Wright - Is it possible that you could find where they access  
494 the property and at least block that? You wouldn't have to fence the entire  
495 property. And I don't know how it all lays out, but that may be something you  
496 could do.

497  
498 Mr. Bryant - I don't know how practical that would be because  
499 most of the property backs up to the White Oak Swamp. So if they have an easy  
500 route of access now, I don't think there'd be anything to keep them from just  
501 going through the woods if it is a dirt bike or an ATV. But Ms. Sharpe here I think  
502 knows where they're accessing the property; perhaps she can speak to that.

503  
504 Mr. Baka - Or at least post brand new "No Trespassing" signs at  
505 the likely point of entry.

506  
507 Mr. Bryant - Yes, that would be no problem.

508  
509 Mr. Wright - I think you should do everything you can to stop this.  
510 It is irritating. If I lived nearby, it would be irritating. One thing you could do is  
511 work with the neighbors to try to get them to help you. If they find somebody on  
512 it, call and get one of your people out there right away. Maybe get some names  
513 or license plates off of these vehicles, or whatever is necessary.

514  
515 Mr. Bryant - Absolutely. I have just as much interest in keeping  
516 them out of there as everybody else does.

517  
518 Ms. Harris - Look at Condition #13. Do you not have "No  
519 Trespassing" signs already there around the perimeter of the property?

520  
521 Mr. Bryant - We do. It's already posted.

522  
523 Mr. Baka - Put something new up.

524  
525 Ms. Harris - Look at Condition 13 where it says that the applicant  
526 shall furnish the chief of police a letter authorizing the division to enforce that.

527  
528 Mr. Bryant - Yes ma'am. I believe when we applied for our initial  
529 permit six year ago I supplied the department with that letter.

530  
531 Ms. Harris - And I have one other question, I believe. In the  
532 handout that we were given with a view from the top of the steep slope—I think  
533 it's the last page of your handout—do you have any idea how steep that slope  
534 is?

535  
536 Mr. Bryant - I don't know exactly where this picture was taken  
537 from, which part of the property. And as I said earlier, we had addressed this  
538 issue two years ago at our last renewal. And we were under the impression that

539 it was dealt with to the County's satisfaction. If it's not, then we'll have to go back  
540 and revisit this issue. So, when this meeting's done, we'll be going down there  
541 and checking out the slopes. I don't know if I could get copies of all the other  
542 pictures on the slideshow, but that might be helpful.

543

544 Mr. Blankinship - Sure, sure.

545

546 Mr. Bell - Could something like this be caused by erosion?

547

548 Mr. Bryant - No. More than likely it's just the excavation from when  
549 it was opened back in the '80s. This right here—this slope right here has been in  
550 that condition, I believe, since we acquired the property from its initial mining  
551 when it was first opened. And we'll have to go out and take a look at this slope.  
552 This looks close to two-to-one to me, and we'll have to go check this out and see  
553 if it is in excess of two to one. It's hard to tell from the perspective of this picture  
554 since the person's standing on the top of slope, but it doesn't look like it's more  
555 than three or four feet from the top of where he's standing to the bottom.

556

557 Mr. Blankinship - It is difficult to tell in that photo.

558

559 Mr. Bryant - How steep was it?

560

561 Mr. Gidley - I would say probably at least twelve feet.

562

563 Mr. Bryant - Oh yeah?

564

565 Mr. Gidley - You can see some of the small trees down there.

566

567 Mr. Blankinship - The most recent contour mapping we have was  
568 captured in 2011, so two years ago. But it may have been before you addressed  
569 those slopes. But it shows some thirty-foot slopes that are a little bit in excess of  
570 two to one.

571

572 Mr. Bryant - Do you know the date of this picture?

573

574 Mr. Blankinship - That was taken just a couple weeks ago.

575

576 Mr. Bryant - Okay. Well, I know which portion of the pit this is.  
577 We'll go down there and have that surveyed or investigated and make sure that  
578 it's not two-to-one or in excess. And if it is, we'll have to address it.

579

580 Mr. Gidley - And the real steep slope is to the right of where  
581 they're riding.

582

583 Mr. Bryant - Okay. Right there?

584

585 Mr. Gidley - Yes, to the right here it drops off sharply.  
586  
587 Mr. Bryant - As I said, we'll investigate that and find out the true  
588 nature of the slope.  
589  
590 Mr. Wright - Is it your testimony that this condition existed when  
591 you purchased the property?  
592  
593 Mr. Bryant - I think this slope was already dressed to this angle  
594 when we purchased the property, because I don't think we've actually excavated  
595 anything beyond the toe of this slope. If this is where I think it is, this is the top of  
596 the road here going around the perimeter of the property. If I'm correct.  
597  
598 Mr. Wright - You purchased this property in 2005?  
599  
600 Mr. Bryant - I believe it was 2005, yes sir.  
601  
602 Mr. Wright - And did you commence operations as soon as you  
603 purchased it?  
604  
605 Mr. Bryant - When we purchased it, yes. We were—we did have  
606 activity in and out of the pit immediately after we purchased it. And it ended  
607 probably twelve months later as the economy slowed down.  
608  
609 Mr. Wright - So you were only able to use the materials for about  
610 one year from the date you purchased?  
611  
612 Mr. Bryant - Probably twelve to twenty-four months that we had a  
613 good market for the incoming and outgoing material.  
614  
615 Mr. Wright - Before we had the crash.  
616  
617 Mr. Bryant - Correct.  
618  
619 Ms. Harris - Mr. Bryant, look at page 205. According to what you  
620 said this morning, you did not initiate any mining for the last twelve months,  
621 right?  
622  
623 Mr. Bryant - We probably haven't been active in that pit for the last  
624 two years.  
625  
626 Ms. Harris - Right. But read this little paragraph that's in italics  
627 here. Page 205. Whenever the special use permit issued by the Board of Zoning  
628 Appeals shall have expired or whenever the operation shall have ceased for any  
629 period exceeding twelve consecutive months, then all plants, buildings—I'm  
630 reading from the paper—

631

632 Mr. Bryant - Yes ma'am.

633

634 Ms. Harris - —structures, fences, stockpiles, and equipment shall  
635 be entirely removed from the premises, and the premises shall be restored as  
636 required by the subsection above. So you're saying that because of the economy  
637 you're in violation of these particulars.

638

639 Mr. Bryant - I wouldn't say that we've ceased operations. We're  
640 still a going concern as a company. It's just that we have no utility for this  
641 particular property at this moment.

642

643 Ms. Harris - And can you foresee that changing?

644

645 Mr. Bryant - Like everyone else, I hope it will change. We are  
646 actively looking for markets for the saleable material and ways to bring dirt in  
647 there to finish the pit. We've owned the property for a while now, and it sat  
648 dormant, and it's not doing anything for us. And we would very much like to  
649 generate the revenue to fill it in, and get out of there, and move on.

650

651 Mr. Wright - Any further questions from members of the Board?  
652 Anyone here in opposition to this request? All right, have a seat a please, and  
653 we'll hear from the opposition. Please, ma'am, come forward. I believe you were  
654 sworn. Please state your name for the record, and spell your last name, and then  
655 state what you have to say.

656

657 Ms. Frazier - Certainly. My name is Joan Frazier—F-r-a-z-i-e-r. My  
658 husband and I live at 7350 Elko Road. Our property, our small farm, adjoins this  
659 pit. We purchased our property in about 1979, and it was our understanding at  
660 that time when E.R. Plaster bought this gravel pit in either '79 or '80, he came  
661 before this Board, and we were here. Mr. Clark asked Mr. Plaster's attorney how  
662 long this gravel pit would be in operation. He was told five years by Mr. Deal. And  
663 there was to be only three trucks on that road at any one time.

664

665 In the year you gentlemen considered the State Fair to be built on Williamsburg  
666 Road, this also came up before your Board. This pit was supposed to be for only  
667 two more years. Well gentlemen, it's now 2013, and that's something like thirty  
668 years of this. How much longer is this going to go on? Really, it is an attractive  
669 nuisance. These gentlemen are correct about the ATVs going down there. They  
670 make a lot of noise. And as you can see, our farm butts up against it. This has  
671 been an attractive nuisance for over thirty years. Frankly, if you don't mind my  
672 saying so, I'm tired of it. And that's all I've got to say.

673

674 Mr. Wright - All right, thank you. Any questions by members of the  
675 Board for Ms. Frazier? Thank you very much. No questions.

676

677 Ms. Sharpe - Good morning. My name is Ann Sharpe—S-h-a-r-p-e.  
678 And my mother owns land to the west of it, and my nephew now owns land to the  
679 south of it. It was all owned by my mother at one time, and she gave him land.

680  
681 A couple things that we would like addressed are, like Ms. Frazier, how much  
682 longer because it seems like I've been getting these notes for a long time. The  
683 poles that are back there to mark the boundaries where they can actually  
684 excavate, they're supposed to be red and white like barber poles. They need to  
685 be repainted because if they truly are going to be back in there, I want them  
686 within their boundaries and not encroaching on the buffer zone.

687  
688 Also, about this activity back there. Talking to Mr. Bryant this morning, he  
689 mentioned that some of the people across the swamp—I asked him who had  
690 permission to be back there. And we definitely need to know who has permission  
691 to be back there besides the gravel pit people. And if anybody truly does, then  
692 the rest—the neighbors need to know who has permission. And if they've  
693 granted permission for somebody to cross through there, then that needs to be  
694 cut out, in my opinion, because it's enough of a problem just with what he needs  
695 to be doing back there.

696  
697 My nephew lives the closest, and he can see and hear, and it has been a  
698 problem during the hunting season. And he's a self-employed young man, and  
699 he could not be here this morning. And he said just ask who is supposed to be  
700 back there because that is an issue.

701  
702 Thank you.

703  
704 Mr. Wright - Any questions by members of the Board?

705  
706 Ms. Harris - Yes, I do have a question. I'm not sure that Ms.  
707 Sharpe or Ms. Frazier would be the best person to answer it, since you don't  
708 actually live on the premises.

709  
710 Ms. Sharpe - I live across the road.

711  
712 Ms. Harris - Right. You heard Mr. Bryant say that if we deny the  
713 permit, they will have a year to clean up this operation, which would necessitate  
714 more truck traffic. So how do you feel about—

715  
716 Ms. Sharpe - I understand that. Through the years the truck traffic  
717 has been—the stipulation is they come in from Elko Road and that's the shortest.  
718 In fairness to these people, I think they've worked with the neighbors. But it just  
719 seems like—and I'm sure the economy has affected their business, but it  
720 continues to go on. Ms. Frazier is right, I mean, we've been here a long time  
721 dealing with this pit. And every year we hear that it's going to be starting to be  
722 reclaimed. And at this point nothing is happening.



723

724

The issue about what can be put in there, too. That needs to be enforced, too, as far as when he does start refilling it. Over the years that has been an issue at some point. Not necessarily with these people.

727

728

The truck traffic is going to be an issue, but at some point the pit's going to have to be filled in.

730

731

Ms. Harris - I'd like to ask Ms. Frazier the same question.

732

Ms. Frazier, would you step to the microphone, please?

733

734

Ms. Frazier - Yes ma'am.

735

736

Ms. Harris - If we deny this permit, you heard Mr. Bryant say that they would have to accelerate the truck traffic because they have to clean the operation up. So how would that affect the neighborhood?

739

740

Ms. Frazier - As far as I'm concerned, if we know those trucks are then filling in this area and reclaiming it, I'll put up with it. I don't like it, but I will put up with it if I know that's what's being done.

743

744

Mr. Bell - One other question, Ms. Frazier.

745

746

Ms. Frazier - Sure.

747

748

Mr. Bell - Are you close enough? Do you here the motorcycles or the other vehicles that are down in there?

749

750

751

Ms. Frazier - Oh, yes!

752

753

Mr. Bell - Ms. Sharpe, how about you? Do you hear them?

754

755

Ms. Sharpe - [Speaking off microphone.] I can't hear them; my nephew can.

756

757

758

Ms. Frazier - Now I will say this, too. Gillies Creek has not

759

approached us about calling the police. In fact, we really haven't had any contact

760

with them.

761

762

Mr. Bell - How often does this occur, would you say, say within

763

a six-month period?

764

765

Ms. Frazier - About every two weeks. And especially on the

766

weekends when we'd like a little peace and quiet.

767

768 Mr. Wright - If this is approved, could you work—well, it doesn't  
769 make any difference whether this is approved or not. It looks like to me those  
770 people are going to go there whether these people own it or somebody else  
771 owns it. So that problem won't be resolved unless you can work with the owner  
772 so they can get somebody out there to stop this activity.  
773  
774 Ms. Frazier - If they would give us permission to do so, sure.  
775  
776 Mr. Wright - Yes, that's what I'm saying.  
777  
778 Ms. Frazier - They have not approached us about this.  
779  
780 Mr. Wright - In my mind, if they were to sell it to somebody  
781 tomorrow, that wouldn't stop this.  
782  
783 Ms. Frazier - No it wouldn't.  
784  
785 Mr. Wright - The way is to try to work together to catch these  
786 culprits and see if we can eliminate this problem. We all have problems like that  
787 in a lot of areas. It's unfortunate, but we do. And we just have to work together to  
788 eliminate it.  
789  
790 Ms. Frazier - Another thing that concerns me is allowing hunters  
791 down there. I have horses back here, and if somebody doesn't know where that  
792 bullet's going, one of them could get shot.  
793  
794 Mr. Wright - Again, it wouldn't be a matter of who owned the  
795 property. Everybody has to work together. They're supposed to have "No  
796 Trespassing" signs, which they say they do.  
797  
798 Ms. Frazier - They do.  
799  
800 Mr. Wright - And if somebody goes on there to hunt, they're  
801 violating the law. They could be prosecuted. So it's just a matter of working  
802 together to try to eliminate those problems is what we have to do.  
803  
804 Ms. Frazier - I just felt like since Gillies Creek never said anything  
805 about it that it's none of my business. But it sure is a nuisance.  
806  
807 Mr. Wright - I think they should say something about it and be in  
808 touch with you so you all can work together to eliminate this problem.  
809  
810 Ms. Frazier - I'd love to.  
811  
812 Mr. Wright - Yes ma'am. Thank you.  
813

814 Ms. Harris - Ms. Frazier, I know you said they didn't contact you,  
815 but would you be willing to contact them? Since you're there, you know what's  
816 going on at that moment. Would you be amenable to contacting the owners?

817  
818 Ms. Frazier - Well, since this happens on Saturday and most  
819 people don't work on Saturday, it's hard to get a hold of them, to be able to call  
820 them and say hey, you have four ATVs down there right now.

821  
822 Mr. Baka - To pick up on Ms. Harris's comment, if it happens  
823 every other week, there is a chance this Saturday or the chance next Saturday  
824 that I'm sure the applicant probably wouldn't mind giving you a cell phone  
825 number or something to contact them directly, to contact the applicant on  
826 Saturday when it's happening when no one else hears it but yourself. That's one  
827 effective way to try to address the issue.

828  
829 Mr. Wright - Better yet, if it's occurring on some sort of frequency,  
830 like they're coming out there every Saturday, they could go out and be there on  
831 Saturday to anticipate this. You don't have to wait for it to happen. From what  
832 you're saying, it's a regular occurrence almost every other Saturday. Is that  
833 correct?

834  
835 Ms. Frazier - Just about. You can't really say on this day—

836  
837 Mr. Wright - I understand. But they need to take some steps to do  
838 whatever's necessary to eliminate it, whether it would be them, or if they were to  
839 dispose of the property, whoever owns the property has that responsibility.

840  
841 Ms. Frazier - So long as it's not a gravel pit.

842  
843 Mr. Wright - Thank you, ma'am. Appreciate it.

844  
845 Ms. Frazier - Thank you.

846  
847 Mr. Wright - Any further questions? Anyone further in opposition?  
848 Yes sir. Would you come down to the microphone? This is being recorded and  
849 we have to have a record of it. State your name, please.

850  
851 Mr. Dowdy - My name is Bailey Dowdy—D-o-w-d-y. I live adjacent  
852 to the entrance to Gillies Creek at 6670 Hines Road. I didn't take the oath earlier.  
853 Do I need to—

854  
855 Mr. Wright - No, if you've already been sworn, you're fine.

856  
857 Ms. Harris - He did not.

858  
859 Mr. Dowdy - I did not.

860  
861 Mr. Blankinship - If you'd raise your right hand. Do you swear the  
862 testimony you're about to give is the truth and nothing but the truth so help you  
863 God?

864  
865 Mr. Dowdy - Yes sir.

866  
867 Mr. Wright - Okay. If you'll now proceed.

868  
869 Mr. Dowdy - Thank you. Like I say, I live adjacent to the property.  
870 This is my house here. And, of course, this is the driveway that the truck traffic  
871 travels on. When Gillies Creek first brought the property, there was an extensive  
872 amount of truck traffic on there. I had Gillies Creek come down and look at the  
873 property on several occasions where the trucks leaving the entrance up to the  
874 property were running through the ditch. Hines Road is an extremely narrow  
875 road. On a couple of occasions they brought in some dozers that the blade was  
876 as wide as Hines Road is. I think I'm correct in stating that. There's about a  
877 twelve-foot blade on those dozers? That is a problem. The traffic and the  
878 equipment that comes in and out there.

879  
880 As for the motorcycles, dirt bikes, ATVs, a couple weeks ago there were two dirt  
881 bikes and an ATV that came down Elko Road, and turned onto a driveway of the  
882 gentleman that's behind my property, and traveled up that driveway to the  
883 entrance road that Gillies Creek has. And, of course, then they disappeared at  
884 the entrance to that property. Exactly where they entered it, I do not know. But  
885 they were using the Gillies Creek driveway, the hard surface road, to travel  
886 toward the property.

887  
888 My last concern is I just want it over with. If they can give us a time frame in  
889 which—you know, this date it'll be over with, I'll put up with the noise, and traffic,  
890 and all that goes along with it. Like I said, it's been going on a long time. I bought  
891 my property in 1990.

892  
893 So thank you very much.

894  
895 Mr. Wright - All right, sir. Any questions from members of the  
896 Board?

897  
898 Mr. Bell - You do hear the motorcycles when they go in and  
899 out?

900  
901 Mr. Dowdy - Yes. Not all the time. I don't see them that frequently.  
902 Just so happens that about two weeks ago they came across the back of my  
903 backyard. They're on ATVs and dirt bikes. They're not going to stop if you go out  
904 there and chase them. And I'm not as fast as I used to be.

905

906 Mr. Blankinship - What time of day was that?  
907  
908 Mr. Dowdy - Midday. And I believe it was a weekend. I'm pretty  
909 sure it was a weekend day. And about midday.  
910  
911 Mr. Wright - I might make a comment to go along with what you  
912 said. This permit, if it's granted, expires. It says excavation shall be discontinued  
913 by March 30, 2015. Two years. And restoration accompanied by not later than  
914 March 30, 2016. If the Board feels like we need to give them a little more—but  
915 that would—I can't speak for what will happen on this Board in 2015, but I don't  
916 think we can continue this thing forever, in my opinion. This would only allow  
917 them to go two more years.  
918  
919 Mr. Dowdy - All right. Well I do know that six years ago when they  
920 came—I think it was six years ago they came before the Board.  
921  
922 Mr. Wright - Same thing, yes.  
923  
924 Mr. Dowdy - Yes, it was the same thing. And they anticipated  
925 having it filled by the completion of that three-year period.  
926  
927 Mr. Wright - You have to admit, though, we have been through—  
928  
929 Mr. Dowdy - Oh, I know the economy has gone south.  
930  
931 Mr. Wright - I don't think any of us have experienced anything like  
932 we've experienced since 2007 in our economy.  
933  
934 Mr. Dowdy - Correct, yes.  
935  
936 Mr. Wright - I was living back in '29, but most of you weren't.  
937  
938 Mr. Dowdy - It would be nice to have a time frame or a date that  
939 we can say this is—  
940  
941 Mr. Wright - Well, we have one. I want to make sure you know  
942 that this permit will expire on March 30, 2015.  
943  
944 Mr. Dowdy - Yes sir.  
945  
946 Mr. Wright - They have to come back in before this Board again to  
947 have it extended.  
948  
949 Mr. Dowdy - Yes. Again.  
950

951 Mr. Wright - Yes sir, yes sir. You might say the Board's patience is  
952 beginning to wear thin.  
953  
954 Ms. Harris - Mr. Dowdy, is there a gate? When you say those  
955 motorcyclists come down this part of the road the trucks use, is there a gate to  
956 the site?  
957  
958 Mr. Dowdy - I have not been down to the entrance of the pit for a  
959 long time. I know there was a gate there; I can only assume that it's still there.  
960  
961 Mr. Blankinship - Yes, there is a gate, and it is maintained.  
962  
963 Mr. Dowdy - If you look at the aerial photograph, the kids, young  
964 men, whatever, that I saw the other day actually traveled down Elko Road and  
965 turned onto—this property line has a driveway that runs through that goes to the  
966 barn here. And they came down this property line to the road here and then up to  
967 the road. And, of course, by the time they got to where the gate would be, it's out  
968 of sight from where I was.  
969  
970 Ms. Harris - Okay, thank you.  
971  
972 Mr. Gidley - Ms. Harris, I can answer that because I went out and  
973 walked the site. There is a gate. I didn't go over it, but instead I just walked  
974 around it. And it looked like the motorcyclists had just simply done what I did, just  
975 went around the gate. I think that's one reason, the zoning ordinance doesn't  
976 anticipate these pits being there unused, open, year after year after year, on and  
977 on. You get into a safety issue.  
978  
979 Ms. Harris - Thank you.  
980  
981 Mr. Wright - Thank you, sir.  
982  
983 Mr. Dowdy - All right. Thank you.  
984  
985 Mr. Wright - Anyone else desire to speak in opposition? Hearing  
986 none, you have a chance to rebut now, a short rebuttal.  
987  
988 Mr. Bryant - Thank you. That was actually my only real question. I  
989 was curious as to how they were accessing. And I see they're coming down this  
990 driveway and then going down the road to the pit. The gate across the road there  
991 is for vehicle traffic. It's wooded on both sides of the gate, so foot traffic can just  
992 walk through the woods and get to there, and I guess that's what they're doing.  
993  
994 I don't know no who owns this property here. Perhaps—I'm sorry?  
995

996 Female: [Unidentified; speaking off microphone.] Dalton  
997 Carter.

998  
999 Mr. Bryant - Perhaps I need to speak to Mr. Carter, then, because  
1000 it appears that whoever is doing this is trespassing on both my property and his.  
1001 And maybe we can work together to solve this problem.

1002  
1003 Mr. Wright - All right, sir. Anything else?

1004  
1005 Mr. Bell - You say you've contacted the police several years  
1006 back with a letter?

1007  
1008 Mr. Bryant - The initial permit required that we provide them a  
1009 letter allowing them to enforce no trespassing, which we did.

1010  
1011 Mr. Bell - Also, since this has happened, working with your  
1012 neighbors there is an option, if you choose it. You could also give them some  
1013 sort of permission to act on your behalf to call the police.

1014  
1015 Mr. Bryant - Yes sir, that's kind of what I intend to do, if we can  
1016 speak to each other. If someone's down there, they can call me. We work  
1017 Saturdays. I'm in the office. I'm always available through a cell phone. Or they  
1018 can call the police directly. I think it's in everybody's best interest.

1019  
1020 Mr. Wright - Thank you very much.

1021  
1022 Mr. Bryant - Thank you.

1023  
1024 **[After the conclusion of the public hearings, the Board discussed the case**  
1025 **and made its decision. This portion of the transcript is included here for**  
1026 **convenience of reference.]**

1027  
1028 Mr. Wright - Do I hear a motion on this case?

1029  
1030 Ms. Harris - I move that we deny this request because clearly—I  
1031 didn't hear a proposal to address the steep slope problem, although we did hear  
1032 some type of conciliatory response to working with the neighbors in regard to the  
1033 motorcycle traffic. But since it has been dormant for this period of time, I think  
1034 that when we look at the conditions, it's really in violation of the conditions  
1035 already.

1036  
1037 Mr. Wright - All right. Ms. Harris has a motion on the floor to deny  
1038 CUP2013-00004. Is there a second to that? Hearing none, the motion fails. Do I  
1039 hear a motion to approve?

1040

1041 Mr. Baka - Mr. Chairman, I'd offer a few comments. I heard three  
1042 things that give me some reason to generally be inclined to make a motion for  
1043 the case. One, the applicant was looking at a two-year extension to March 30,  
1044 2015, a limited time frame. Understanding that it has gone on for thirty years,  
1045 understanding there have been concerns from the neighbors. But I also heard  
1046 there was a willingness with the applicant to work with both Ms. Frazier and  
1047 Ms. Sharpe, or any and all neighbors in the area, when there are potential  
1048 trespassers there on Saturdays or any weekend or any time of the week. And  
1049 thirdly, I also heard a willingness from the applicant to contact Mr. Dalton Carter  
1050 or any other property owners where the bikes may be using that east/west  
1051 driveway to access the access road. So I think there are some steps—some new  
1052 steps and new information that were taken that could ameliorate the impact that  
1053 was discussed. So at this point, I would go ahead and make a motion to approve  
1054 CUP2013-00004 with all the conditions that are written except to delete that  
1055 second duplicate condition. That's #30.

1056  
1057 Mr. Bell - Could I have a question before you make a motion?  
1058

1059 Mr. Baka - Before? Sure.  
1060

1061 Mr. Bell - I just have a comment. Ben, two things the lady  
1062 mentioned. I don't think it has to go into the conditions, but she did mention  
1063 about repainting the poles around the property. I don't know if that should be a  
1064 condition, something they can work out.  
1065

1066 Mr. Blankinship - That is a condition, yes.  
1067

1068 Mr. Baka - Which number?  
1069

1070 Mr. Blankinship - Yes, we can require that be done.  
1071

1072 Mr. Bell - Okay. And then secondly, there was conversation  
1073 about the motorcycles. Two years from now we don't know who is going to be  
1074 sitting here. Could there be something in the conditions maybe just to indicate  
1075 that the property owner would allow the neighbors permission to do what was  
1076 needed—call the police or whatnot—whenever the motorcycles came in? That  
1077 way the issue would have been clearly addressed. Is that needed? You may  
1078 have already covered it in your statement.  
1079

1080 Mr. Wright - We could add something there to enforce that.  
1081

1082 Mr. Bell - So two years from now they know that. We could also  
1083 put a comment in there about this has been going on for an extended period of  
1084 time.  
1085

1086 Mr. Wright - Well do we hear a second to the motion?



1087

1088

Mr. Baka - Do I need to conclude that motion to say that I make a motion to approve without Condition 30 and to make sure the condition of repainting the red and white poles is adhered to?

1090

1091

1092

Mr. Wright - Do I hear a second to that motion?

1093

1094

Mr. Nunnally - Second.

1095

1096

1097

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1110

Mr. Wright - All right, second. Now, I want to say one thing in discussion. This has been going on. These people have owned this property only since 2005. They took it in the condition it was in, and it wasn't very good. And I stated—you heard me state to these people that this will expire on March 30, 2015. I think the Board had been very patient. I agree with Ms. Harris it's a long time, but it's hard for us—I realize it because it hit me bad, the mess that we've been through since 2007. They did perform some—they did use the property and did try to take materials out and so forth prior to the crash. I think it would be a good idea to give them one more chance. I'm not saying I wouldn't do it next time. And if they don't show some significant effort here—and it's not their fault if people don't want to buy the material. But this is good material. We have to remember that. You don't find this material everywhere. And if we have—we are getting into a boom now in construction, etc. This material may be needed, and I think that sort of favors—kind of influences my decision. Okay. Any further discussion?

1111

1112

1113

1114

1115

Ms. Harris - Yes. I'm not sure that one more chance is going to do it because the person presenting the case said that he's not sure what's going to happen.

1116

1117

1118

Mr. Wright - Well, he doesn't know what the economy's going to do.

1119

1120

Ms. Harris - Exactly.

1121

1122

1123

Mr. Wright - You have to admit the economy's improving now, and construction is improving.

1124

1125

1126

1127

1128

1129

Ms. Harris - Of course I'm in the minority here and my vote won't make a difference, but I do want to state that I do have concerns about this case because they haven't started reclamation. They are in violation of several things. And they're using—I don't know if they're using that as a scapegoat or not, not to do anything. But if I were a resident that had lived there since the '70s, I would be very concerned.

1130

1131

1132

Mr. Wright - Well, I agree with that.

1133 Ms. Harris - That's my area of discussion.  
1134  
1135 Mr. Wright - All right, discussion's over.  
1136  
1137 Mr. Blankinship - I'm sorry. Who seconded the motion?  
1138  
1139 Mr. Baka - Mr. Nunnally.  
1140  
1141 Mr. Blankinship - Oh, okay.  
1142  
1143 Mr. Wright - All in favor say aye. All opposed say no. The ayes  
1144 have it; the motion passes.

1145  
1146 After an advertised public hearing and on a motion by Mr. Baka, seconded by  
1147 Mr. Nunnally, the Board **approved** application **CUP2013-00004, GILLIES**  
1148 **CREEK INDUSTRIAL RECYCLING, LLC's** request for a temporary conditional  
1149 use permit pursuant to Sections 24-52(d) and 24-103 of the County Code to  
1150 extract materials from the earth at 6650 Hines Road (Parcels 855-695-5768 and  
1151 855-695-8710) zoned A-1, Agricultural District (Varina). The Board approved  
1152 this conditional use permit subject to the following conditions:

- 1153  
1154 1. This use permit is subject to all requirements of Section 24-103 of Chapter 24  
1155 of the County Code.  
1156  
1157 2. Throughout the life of this permit, the applicant shall maintain the surety bond  
1158 in the amount of \$3,000 for each acre of land to be disturbed, for a total of  
1159 \$31,200, guaranteeing that the land will be restored to a reasonably level and  
1160 drainable condition, consistent with the elevation of the land prior to the  
1161 beginning of excavation. The form of the surety bond shall be subject to  
1162 approval by the County Attorney. In the event of termination of the surety bond,  
1163 this permit shall be void, and excavation shall cease. Within the next 90 days of  
1164 termination, the applicant shall restore the land as provided for under the  
1165 conditions of this use permit. Termination of such surety bond shall not relieve  
1166 the applicant from its obligation to indemnify the County of Henrico for any  
1167 breach of the conditions of this use permit.  
1168  
1169 3. Throughout the life of this permit, the applicant shall continuously satisfy the  
1170 Department of Public Works (DPW) that erosion control procedures are in  
1171 accordance with the approved erosion and sediment control (E&S) plan and are  
1172 properly maintained. Due to changes in site conditions, an updated E&S plan  
1173 and subsequent revised E&S bond may be required as determined by DPW.  
1174  
1175 4. Throughout the life of this permit, the applicant shall maintain a mine license  
1176 from the Virginia Department of Mines, Minerals and Energy.  
1177

- 1178 5. Throughout the life of this permit, the areas approved for mining under this  
1179 permit shall be delineated on the ground by five-foot-high metal posts at least  
1180 five inches in diameter and painted in alternate one foot stripes of red and white.  
1181 These posts shall be so located as to clearly define the area in which the mining  
1182 is permitted.  
1183
- 1184 6. Throughout the life of this permit, the applicant shall comply with the  
1185 Chesapeake Bay Preservation Act and all state and local regulations  
1186 administered under such act applicable to the property, and shall furnish to the  
1187 Planning Department copies of all reports required by such act or regulations.  
1188
- 1189 7. Hours of operation shall be from 7:00 a.m. to 5:30 p.m. Monday through  
1190 Friday..  
1191
- 1192 8. No operations of any kind are to be conducted at the site on Saturdays,  
1193 Sundays, or national holidays.  
1194
- 1195 9. All access to the property shall be from the established entrance onto Hines  
1196 Road as shown on the approved plans.  
1197
- 1198 10. The applicant shall maintain the paved entrance road from its intersection  
1199 with Hines Road for a distance of 300 feet and a width of 24 feet. All roads used  
1200 in connection with this use permit shall be effectively treated with calcium  
1201 chloride or other wetting agents to eliminate any dust nuisance.  
1202
- 1203 11. The applicant shall maintain gates at the entrance to the property. These  
1204 gates shall be locked at all times, except when authorized representatives of the  
1205 applicant are on the property.  
1206
- 1207 12. The applicant shall maintain the sign at the entrance to the mining site  
1208 stating the name of the operator, the use permit number, the mine license  
1209 number, and the telephone number of the operator. The sign shall be 12 square  
1210 feet in area and the letters shall be three inches high.  
1211
- 1212 13. The applicant shall maintain "No Trespassing" signs every 250 feet along the  
1213 perimeter of the property. The letters shall be three inches high. The applicant  
1214 shall furnish the Chief of Police a letter authorizing the Division of Police to  
1215 enforce the "No Trespassing" regulations, and agreeing to send a representative  
1216 to testify in court as required or requested by the Division of Police. The  
1217 applicant shall also cooperate with the neighbors in efforts to prevent trespassing  
1218 onto the site.  
1219
- 1220 14. Standard "Truck Entering Highway" signs on Hines Road on each side of the  
1221 entrance to the property shall be maintained at the applicant's expense.  
1222

- 1223 15. The applicant shall maintain a standard stop sign at the entrance to Hines  
1224 Road.  
1225
- 1226 16. The applicant shall provide a flagman to control traffic from the site onto the  
1227 public road, with the flagman yielding the right of way to the public road traffic at  
1228 all times. This flagman will be required whenever the Division of Police deems  
1229 necessary.  
1230
- 1231 17. The operation shall be so scheduled that trucks will travel at regular intervals  
1232 and not in groups of three or more.  
1233
- 1234 18. Trucks shall be loaded in a way to prevent overloading or spilling of materials  
1235 of any kind on any public road.  
1236
- 1237 19. The applicant shall maintain the property, fences, and roads in a safe and  
1238 secure condition indefinitely, or convert the property to some other safe use.  
1239
- 1240 20. If, in the course of its operations, the applicant discovers evidence of cultural  
1241 or historical resources, or an endangered species, or a significant habitat, it shall  
1242 notify appropriate authorities and provide them with an opportunity to investigate  
1243 the site. The applicant shall report the results of any such investigation to the  
1244 Planning Department.  
1245
- 1246 21. If water wells located on surrounding properties are adversely affected, and  
1247 the extraction operations on this site are suspected as the cause, the effected  
1248 property owners may present to the Board evidence that the extraction operation  
1249 is a contributing factor. After a hearing by the Board, this use permit may be  
1250 revoked or suspended, and the operator may be required to correct the problem.  
1251
- 1252 22. Open and vertical excavations having a depth of 10 feet or more, for a period  
1253 of more than 30 days, shall be effectively sloped to a 2:1 slope or flatter to  
1254 protect the public safety.  
1255
- 1256 23. Topsoil shall not be removed from any part of the property outside of the  
1257 area in which mining is authorized. Sufficient topsoil shall be stockpiled on the  
1258 property for respreading in a layer with five inches of minimum depth. All topsoil  
1259 shall be stockpiled within the authorized mining area and provided with adequate  
1260 erosion control protection. If the site does not yield sufficient topsoil, additional  
1261 topsoil shall be brought to the site to provide the required five-inch layer of cover.  
1262 All topsoil shall be treated with a mixture of seed, fertilizer, and lime as  
1263 recommended by the County after soil tests have been provided to the County.  
1264
- 1265 24. No offsite-generated materials shall be deposited on the mining site without  
1266 prior written approval of the Director of Planning. To obtain such approval, the  
1267 operator shall submit a written request stating the origin, nature and quantity of  
1268 material to be deposited, and certifying that no contaminated or hazardous

1269 material will be included. The material to be deposited on the site shall be limited  
1270 to imperishable materials such as stone, bricks, tile, sand, gravel, soil, concrete  
1271 and like materials, and shall not include any hazardous materials as defined by  
1272 the Virginia Hazardous Waste Management Regulations. This material shall  
1273 only be used as part of the site's reclamation.  
1274

1275 25. A superintendent, who shall be personally familiar with all the terms and  
1276 conditions of Section 24-103 of Chapter 24 of the County Code, as well as the  
1277 terms and conditions of this use permit, shall be present at the beginning and  
1278 conclusion of operations each work day to see that all the conditions of the Code  
1279 and this use permit are observed.  
1280

1281 26. A progress report shall be submitted to the Board on March 31, 2014. This  
1282 progress report shall contain information concerning how much property has  
1283 been mined to date of the report, the amount of land left to be mined, how much  
1284 reclamation has been performed, when and how the remaining amount of land  
1285 will be reclaimed, and any other pertinent information about the operation that  
1286 would be helpful to the Board.  
1287

1288 27. Excavation shall be discontinued by March 30, 2015 and restoration  
1289 accomplished by not later than March 30, 2016, unless a new use permit is  
1290 granted by the Board of Zoning Appeals.  
1291

1292 28. The reclamation of the property shall take place simultaneously with the  
1293 mining process. The final grading of the site shall be consistent with the elevation  
1294 of the land prior to the beginning of excavation as shown on the approved  
1295 reclamation plan. Reclamation shall not be considered completed until the mined  
1296 area is covered completely with permanent vegetation.  
1297

1298 29. All drainage and erosion and sediment control measures shall conform to the  
1299 standards and specifications of the Mineral Mining Manual Drainage Handbook.  
1300

1301 30. Failure to comply with any of the foregoing conditions shall automatically void  
1302 this permit.  
1303

1304

1305 Affirmative:	Baka, Bell, Nunnally, Wright	4
1306 Negative:	Harris	1
1307 Absent:		0

1308  
1309

1310 **[At this point, the transcript continues with the public hearing on the next**  
1311 **case.]**  
1312

1313 **CUP2013-00005 GILLIES CREEK INDUSTRIAL RECYCLING, LLC**  
1314 requests a temporary conditional use permit pursuant to Sections 24-89(c) and

1315 24-103 of the County Code to develop a wetlands mitigation bank at 5500 White  
1316 Oak Drive (Parcels 860-709-5622, 863-706-3470 and 864-704-2093) zoned A-1,  
1317 Agricultural District and C-1, Conservation District (Varina).  
1318

1319 Mr. Wright - All persons desiring to speak to this case, either for or  
1320 against, please stand and be sworn.

1321

1322 Mr. Blankinship - You're already under oath, so we're good to go.

1323

1324 Mr. Wright - Again, state your name for the record since this is a  
1325 different case.

1326

1327 Mr. Bryant - Lew Bryant. Last name Bryant—B-r-y-a-n-t.

1328

1329 Mr. Wright - All right. Mr. Bryant.

1330

1331 Mr. Hooker - Randy Hooker—H-o-o-k-e-r.

1332

1333 Mr. Wright - All right. Go right ahead and present your case.

1334

1335 Mr. Hooker - I do not believe that there were as many concerns  
1336 with this project as with the previous case.

1337

1338 Mr. Wright - I can't hear you.

1339

1340 Mr. Hooker - I'm sorry. I do not believe that there are as many  
1341 concerns with this renewal—

1342

1343 Mr. Wright - Pull the microphone up some. There you go. Thank  
1344 you.

1345

1346 Mr. Hooker - I do not believe that there are as many concerns with  
1347 this case as the previous case. They are making progress, as stated in the  
1348 renewal. Their goal for this renewal is to wrap up mine two, and proceed to mine  
1349 three.

1350

1351 Mr. Blankinship - I did receive one phone call, which I forwarded on to  
1352 you, Mr. Bryant. Were you able to address that gentleman's concern?

1353

1354 Mr. Bryant - You'll have to refresh my memory; I don't recall.

1355

1356 Mr. Blankinship - A week or two ago, I received a call from one of the  
1357 property owners who is sort of close to mine four, as shown on your plans. He  
1358 asked about permission to come onto the site and just had some questions  
1359 about the long term. Were you not able to make contact with him?

1360

1361 Mr. Bryant - I have not made contact with him, that I recall, no.  
1362  
1363 Mr. Blankinship - Okay.  
1364  
1365 Mr. Bryant - Do you recall his name?  
1366  
1367 Mr. Blankinship - No, not off the top of my head; I'd have to look.  
1368  
1369 Mr. Wright - Have you reviewed the conditions proposed for this  
1370 case?  
1371  
1372 Mr. Hooker - Yes sir.  
1373  
1374 Mr. Wright - Are you in accord with all the conditions?  
1375  
1376 Mr. Hooker - Yes sir. Yes sir, I believe that we are.  
1377  
1378 Mr. Wright - Okay.  
1379  
1380 Mr. Blankinship - We did also have some communications with the  
1381 Department of Public Utilities regarding future potential locations for sewer lines  
1382 which run along the southwest boundary of this property, sometimes crossing  
1383 onto it, sometimes not on this property. Mr. Hooker was good enough to provide  
1384 us with a plan that shows those potential sewer corridors in relation to the mining  
1385 sites. And I have that with me if anyone wants to look at it. The short answer is  
1386 that there are no conflicts.  
1387  
1388 Mr. Wright - Just so we'll have something in the record, tell us  
1389 generally what you want to accomplish here, what you want to do with this  
1390 application.  
1391  
1392 Mr. Hooker - We're reclaiming four ponds that were previously  
1393 sand-and-gravel pits filled with water. That's the first phase right there, which is  
1394 essentially complete. What we did is we de-watered the pond, filled it in with soil,  
1395 planted it with wetlands plants. And then we're going to use it as a mitigation  
1396 bank to sell credits to other developers.  
1397  
1398 Mr. Wright - I understand that first you have to extract some  
1399 material to do this or has that been done?  
1400  
1401 Mr. Hooker - It's being done as we progress in phases. So when  
1402 we did Phase 1, we took some material out, brought in some excess material,  
1403 planted. We'll do the same with Phase 2, the same with Phase 3, the same with  
1404 Phase 4.  
1405  
1406 Mr. Wright - Do you already have a permit to do that?

1407  
1408 Mr. Hooker - Yes sir.  
1409  
1410 Mr. Wright - Oh, you do. So that's not in question here.  
1411  
1412 Mr. Hooker - A permit with the DEQ and the Corps?  
1413  
1414 Mr. Wright - To remove the materials.  
1415  
1416 Mr. Blankinship - It's part of this use permit. It's all one operation, the  
1417 extraction, the filling, and the—  
1418  
1419 Mr. Hooker - Correct.  
1420  
1421 Mr. Wright - But he says he's already doing it.  
1422  
1423 Mr. Blankinship - Right. They began a few years ago and they're  
1424 continuing—  
1425  
1426 Mr. Hooker - Yes.  
1427  
1428 Mr. Blankinship - —with another renewal.  
1429  
1430 Mr. Wright - This is a renewal. Oh, okay. I'm getting it now. I didn't  
1431 understand that. So this is a renewal of the other pit to complete that.  
1432  
1433 Mr. Hooker - Yes sir, to continue on with the three phases  
1434 remaining.  
1435  
1436 Mr. Wright - And then you'll develop a wetland mitigation bank.  
1437  
1438 Mr. Hooker - Yes sir.  
1439  
1440 Mr. Wright - Pursuant to all of these regulations which they set  
1441 out.  
1442  
1443 Mr. Hooker - Yes sir.  
1444  
1445 Mr. Bell - Since the entering and leaving of this property comes  
1446 from the New Kent side, has everything been satisfied with our adjoining county,  
1447 New Kent?  
1448  
1449 Mr. Hooker - Yes sir. When we initially applied for this permit four  
1450 or five years ago, we had a lot of interaction with New Kent County and their  
1451 planning department. So everything—they were satisfied at the initial permit  
1452 application, and since then there have been no problems with them.



1453  
1454 Mr. Wright - Now that you mention it, I remember that.  
1455  
1456 Mr. Blankinship - That was quite controversial at that time.  
1457  
1458 Mr. Wright - I hadn't connected that.  
1459  
1460 Mr. Bell - And then as far as we know, there has continued to  
1461 be no problems with New Kent?  
1462  
1463 Mr. Wright - Have you heard any complaints?  
1464  
1465 Mr. Blankinship - No sir, not since that. Not since the original  
1466 controversy.  
1467  
1468 Mr. Wright - Okay.  
1469  
1470 Ms. Harris - Mr. Bryant, look at Condition 17. Why is it that you  
1471 need fifty-six—why the increase in truck traffic during three months of the year?  
1472  
1473 Mr. Bryant - When the weather gets good in the summertime,  
1474 hopefully we get busier, so we need to bring more volume in there. I think this  
1475 was a compromise that we came up with, and this was part of the issues with  
1476 New Kent and VDOT. They were concerned about the amount of traffic coming  
1477 in across from Patriot's Landing on Route 60. So this was a way to limit the truck  
1478 traffic to satisfy them, but still be able to have enough volume coming in to make  
1479 it viable for us.  
1480  
1481 Mr. Wright - Is this the same condition that was in the other  
1482 permit?  
1483  
1484 Mr. Blankinship - Yes sir.  
1485  
1486 Mr. Wright - So this is the same permission that we worked out  
1487 before, Ms. Harris. Any further questions?  
1488  
1489 Mr. Baka - So during summer when school is out the traffic  
1490 doubles.  
1491  
1492 Mr. Bryant - Well, it's not specifically described as summertime. It  
1493 gives us a three-month window to get more material in there, when the weather  
1494 cooperates, when the work is available.  
1495  
1496 Mr. Baka - The only other question I had, sir, was the time frame,  
1497 April 30, 2015. Do you believe that's reasonable?  
1498

1499 Mr. Bryant - We won't be finished with the entire project by then,  
1500 no. Right now we're in the process of completing the second phase of the  
1501 project. It's our goal to finish Phase 2 and move into Phase 3 within this two-year  
1502 period.

1503  
1504 Mr. Wright - I think it's been our custom to grant these permits  
1505 only for two years. Then we have a little more control over it. They have to come  
1506 back. If they're done what they were supposed to do, we extend it. If they don't,  
1507 we can cut it off. Any further questions?

1508  
1509 Ms. Harris - Mr. Bryant, the economic downtown has not  
1510 adversely affected this project.

1511  
1512 Mr. Bryant - This project is a little bit different. There is not as  
1513 much material that necessarily needs to be brought into this project. The primary  
1514 goal of this site is not as a borrow pit or a site for excess dirt. The primary  
1515 function here to create the wetland mitigation banks.

1516  
1517 Mr. Wright - Any further questions?

1518  
1519 Mr. Blankinship - I misspoke. It was Kelby Morgan that I forwarded the  
1520 contact information to.

1521  
1522 Mr. Bryant - I'll talk to Kelby.

1523  
1524 Mr. Blankinship - Since the gentleman isn't here and hasn't contacted  
1525 me back, I can only presume that Mr. Morgan—

1526  
1527 Mr. Wright - Any further questions by members of the Board?  
1528 Anyone here in opposition to this request? Hearing none, that concludes the  
1529 case. Thank you very much for appearing.

1530  
1531 **[After the conclusion of the public hearings, the Board discussed the case  
1532 and made its decision. This portion of the transcript is included here for  
1533 convenience of reference.]**

1534  
1535 Ms. Harris - I move that we approve this mitigation bank. I think  
1536 we can see effort here that the reclamation process is fully underway, and  
1537 they're doing everything in compliance with the conditions. I don't think it would  
1538 adversely affect the health, safety, or welfare of the residents or community.

1539  
1540 Mr. Wright - Ms. Harris has moved approval of this application. Is  
1541 there a second?

1542  
1543 Mr. Nunnally - Second.

1544

1545 Mr. Wright - Second. Any further discussion? Hearing none, all in  
1546 favor say aye. All opposed say no. The ayes have it; the motion passes.

1547  
1548 After an advertised public hearing and on a motion by Ms. Harris, seconded by  
1549 Mr. Nunnally, the Board **approved** application **CUP2013-00005, GILLIES**  
1550 **CREEK INDUSTRIAL RECYCLING, LLC's** request for a temporary conditional  
1551 use permit pursuant to Sections 24-89(c) and 24-103 of the County Code to  
1552 develop a wetlands mitigation bank at 5500 White Oak Drive (Parcels 860-709-  
1553 5622, 863-706-3470 and 864-704-2093) zoned A-1, Agricultural District and C-1,  
1554 Conservation District (Varina). The Board approved this conditional use permit  
1555 subject to the following conditions:

1556  
1557 1. This use permit is subject to all requirements of Section 24-103 of Chapter 24  
1558 of the County Code. The operation shall be conducted in accordance with the  
1559 plans and narrative approved with the use permit, except as noted below.

1560  
1561 2. The applicant shall maintain a financial guaranty in an amount of \$3,000 for  
1562 each acre of land to be disturbed, for a total of \$245,700, guaranteeing that the  
1563 land will be restored to a safe, stable, and usable condition, consistent with its  
1564 elevation before excavation.

1565  
1566 3. Throughout the life of the operation, the applicant shall continuously satisfy  
1567 the Department of Public Works that erosion and sedimentation control is  
1568 performed and maintained in accordance with the approved plan. The erosion  
1569 control bond shall remain active throughout the life of the project.

1570  
1571 4. The applicant shall maintain all necessary permits from the United States  
1572 Army Corps of Engineers and the Virginia Department of Environmental Quality.

1573  
1574 5. The applicant shall comply with the Chesapeake Bay Preservation Act and all  
1575 state and local regulations administered under such act applicable to the  
1576 property, and shall furnish to the Planning Department copies of all reports  
1577 required by such act or regulations.

1578  
1579 6. Hours of operation shall be limited to 6:00 am to 6:00 pm when Daylight  
1580 Saving Time is in effect, and 7:00 am to 5:00 pm when Eastern Standard Time is  
1581 in effect. No operations of any kind are to be conducted at the site on Saturdays,  
1582 Sundays, or national holidays.

1583  
1584 7. All means of access to the property shall be from the established entrance  
1585 onto U.S. Route 60 in New Kent County. This condition shall be enforced in  
1586 cooperation with the Virginia Department of Transportation and New Kent  
1587 County.

1588  
1589 8. The applicant shall maintain all necessary approvals for the access road from  
1590 the Virginia Department of Transportation (VDOT) and New Kent County. These

1591 shall include, but shall not be limited to, site plan approval of the road, including  
1592 stormwater management and erosion and sediment control, County land  
1593 disturbance permit and VDOT Land Use Permit.

1594  
1595 9. The applicant shall maintain the 30-foot wide entrance, right turn lane with 200  
1596 feet of taper and 100 feet of storage, and left turn lane with 200 feet of taper and  
1597 200 feet of storage, all to Virginia Department of Transportation specifications.

1598  
1599 10. The applicant shall maintain gates at all entrances to the property. These  
1600 gates shall be locked at all times, except when authorized representatives of the  
1601 applicant are on the property. This condition shall be enforced in cooperation  
1602 with the Virginia Department of Transportation and New Kent County.

1603  
1604 11. The applicant shall maintain the sign at the entrance to the site stating the  
1605 use permit number, the name of the operator, and the telephone number of the  
1606 operator.

1607  
1608 12. The applicant shall maintain "No Trespassing" signs every 250 feet along  
1609 the perimeter of the property. The letters shall be 3 inches in height. The  
1610 applicant shall furnish the Chief of Police a letter authorizing the Virginia State  
1611 Police, the New Kent County Sheriff's Office, and the Henrico County Division of  
1612 Police to enforce the "No Trespassing" regulations, and agreeing to send a  
1613 representative to testify in court as required or requested.

1614  
1615 13. The applicant shall maintain standard "Truck Crossing" signs (MUTCD W8-  
1616 6) on U.S. Route 60 on each side of the entrances to the property, at locations  
1617 approved by the Virginia Department of Transportation (VDOT). This condition  
1618 shall be enforced in cooperation with VDOT and New Kent County.

1619  
1620 14. The applicant shall maintain at its expense any traffic sign or signal required  
1621 by the Virginia Department of Transportation (VDOT) or New Kent County at the  
1622 entrance to U.S. Route 60. This condition shall be enforced in cooperation with  
1623 VDOT and New Kent County.

1624  
1625 15. The applicant shall maintain the entrance road, which shall be paved for a  
1626 distance of 300 feet from its intersection with U.S. Route 60 and a width of 24  
1627 feet. All roads used in connection with this use permit shall be effectively treated  
1628 with calcium chloride or other wetting agents to eliminate any dust nuisance.  
1629 Wash racks shall be installed as necessary to prevent the tracking of mud onto  
1630 any public street. This condition shall be enforced in cooperation with the Virginia  
1631 Department of Transportation and New Kent County.

1632  
1633 16. Trucks leaving the site shall travel at reasonable intervals and not in groups  
1634 of three or more.

1635

1636 17. For nine months of each year, the average number of trucks entering and  
1637 leaving the site shall not exceed 28 per day. For three months of each year, the  
1638 average number of trucks entering and leaving the site shall not exceed 56 per  
1639 day. This condition shall be enforced in cooperation with the Virginia Department  
1640 of Transportation (VDOT) and New Kent County. The applicant shall maintain  
1641 records on site documenting all trucks entering or leaving the site. Such records  
1642 shall be available to staff of Henrico County, New Kent County and VDOT during  
1643 normal hours of operation. At the request of the New Kent County Zoning  
1644 Administrator, the Henrico County Director of Planning may approve increases in  
1645 the volume of trucks allowed by this condition. All requests for exceptions shall  
1646 contain the reason, duration, and magnitude of the exception requested.

1647  
1648 18. To limit the total number of truck trips into and out of the site, no truck shall  
1649 be allowed to haul material away from the site unless that truck was also used to  
1650 haul a full load of material to the site.

1651  
1652 19. Trucks shall be loaded in a way to prevent overloading or spilling of  
1653 materials of any kind onto any public road. This condition shall be enforced in  
1654 cooperation with the Virginia Department of Transportation and New Kent  
1655 County.

1656  
1657 20. The applicant shall maintain the property, fences, roads, and bridge in a  
1658 safe and secure condition indefinitely, or convert the property to some other safe  
1659 use.

1660  
1661 21. If, in the course of its operations, the applicant discovers evidence of cultural  
1662 or historical resources, or an endangered species, or a significant habitat, it shall  
1663 notify appropriate authorities and provide them with an opportunity to investigate  
1664 the site. The applicant shall report the results of any such investigation to the  
1665 Planning Department.

1666  
1667 22. If water wells located on surrounding properties are adversely affected, and  
1668 the operations on this site are suspected as the cause, the affected property  
1669 owners may present to the Board evidence that the operation is a contributing  
1670 factor. After a hearing, the Board may revoke or suspend this use permit, and  
1671 the operator may be required to correct the problem.

1672  
1673 23. No offsite-generated materials shall be deposited on the mining site without  
1674 prior written approval of the Director of Planning. To obtain such approval, the  
1675 operator shall submit a written request stating the origin, nature and quantity of  
1676 material to be deposited, and certifying that no contaminated or hazardous  
1677 material will be included. The material to be deposited on the site shall be limited  
1678 to imperishable materials such as stone, bricks, tile, sand, gravel, soil, concrete  
1679 and like materials, and shall not include any hazardous materials as defined by  
1680 the Virginia Hazardous Waste Management Regulations.

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1727

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

25. A progress report shall be submitted to the Board, with a copy to the New Kent County Zoning Administrator, on or about April 30, 2014. This progress report must contain information concerning how much rehabilitation has been performed, when and how the remaining amount of land will be rehabilitated, and any other pertinent information about the operation that would be helpful to the Board.

26. Operations shall be discontinued by April 30, 2015, and restoration accomplished by not later than April 30, 2016 unless a new permit is granted by the Board of Zoning Appeals. Restoration shall not be considered completed until the disturbed area is approved as a wetlands mitigation bank by the U. S. Environmental Protection Agency and U. S. Army Corps of Engineers Mitigation Bank Review Team.

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

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

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

**CUP2013-00006 REITHOFFER SHOWS, INC** requests a temporary conditional use permit pursuant to Section 24-116(c)(1) of the County Code to hold a carnival at 3000 Mechanicsville Turnpike (Parcel 800-731-0125) zoned B-1, Business District and M-1, Light Industrial District (Fairfield).

Mr. Wright - All persons desiring to speak with reference to this case, please stand, raise your right hands, and be sworn.

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

Mr. Wright - All right. Please state your name for the record, spell your last name, and then present your case.

1728 Ms. Lauther - My name is Lauren Lauther—L-a-u-t-h-e-r, and I am a  
1729 representative from Reithoffer Shows.  
1730  
1731 Mr. Wright - All right, present your case, please, ma'am.  
1732  
1733 Ms. Lauther - We're just looking to do a carnival at the Showplace,  
1734 3000 Mechanicsville Turnpike.  
1735  
1736 Mr. Wright - Is this the same carnival that you presented before? It  
1737 was last year?  
1738  
1739 Ms. Lauther - Yes sir.  
1740  
1741 Mr. Wright - Are there any changes?  
1742  
1743 Ms. Lauther - Not to my knowledge, no.  
1744  
1745 Mr. Wright - Everything is going to be basically the same as you  
1746 did it last time?  
1747  
1748 Ms. Lauther - Yes.  
1749  
1750 Mr. Wright - Have you reviewed these conditions that we've  
1751 proposed?  
1752  
1753 Ms. Lauther - I have, yes sir.  
1754  
1755 Mr. Wright - And are you in accord with these conditions?  
1756  
1757 Ms. Lauther - I believe we are.  
1758  
1759 Mr. Wright - Are these the same conditions we had last time, Mr.  
1760 Blankinship?  
1761  
1762 Mr. Blankinship - Yes sir. There was some change with the Division of  
1763 Police. Because this was the first time—last year was the first time this carnival  
1764 had been held at this location, police perhaps erred on the side of caution,  
1765 putting more officers on the site than turned out to be necessary for the crowds  
1766 that were drawn. So they have reduced the number of officers they're going to  
1767 require this year. And also there was mention of a crosswalk and overflow traffic  
1768 issues that turned out to have been, again, an excess of caution last time.  
1769  
1770 Mr. Wright - We're being careful and cautious.  
1771

1772 Mr. Blankinship - Yes, yes sir. Now that we have a little bit more  
 1773 experience with how a carnival will affect the neighbors of the site, we've refined  
 1774 the conditions a little bit.

1775 Mr. Wright - Were there any problems for this thing last time or did  
 1776 it create any problems that you know of?

1777  
 1778 Mr. Blankinship - None that I'm aware of, no sir.

1779  
 1780 Mr. Wright - So everything went smoothly?

1781  
 1782 Mr. Bell - What was the concern about a separate event being  
 1783 held at the same time?

1784  
 1785 Mr. Blankinship - There was the potential there for overcrowding the  
 1786 site. If the Showplace had been rented to one of their large events the same  
 1787 weekend that the carnival was in the parking lot, it could have been badly  
 1788 overcrowded. And there was a condition that they not have anything else booked  
 1789 on the site that weekend, and they violated that condition. But we've straightened  
 1790 all that out, and we've been assured that it won't happen again.

1791  
 1792 Mr. Wright - The conditions include the memorandum from the  
 1793 Henrico Police and also from the Fire Marshal. And I just want to ensure that  
 1794 you've checked all of these because there are a lot of conditions here. But  
 1795 they're basically the same ones that we had last year.

1796  
 1797 Mr. Bell - Ma'am, you said there weren't any changes, but it  
 1798 looks like there are more rides this year. Is that correct? Nineteen, I noticed.

1799  
 1800 Ms. Lauther - Right now we went ahead and applied for nineteen. It  
 1801 doesn't necessarily mean that we're going to use every single thing that we've  
 1802 applied for. When we get there, they're going to have to possibly rearrange stuff,  
 1803 you know, and things can change. So we like to over-apply rather than under-  
 1804 apply and have to go back through the process.

1805  
 1806 Ms. Harris - I have some questions. Did you notice the change of  
 1807 hours on weekends from the hours that you requested? Look at the conditions.  
 1808 They specify Saturday and Sunday hours, and that's not what you requested on  
 1809 your application.

1810  
 1811 Ms. Lauther - The application, I don't remember if I put 5:00 on  
 1812 here.

1813  
 1814 Ms. Harris - Weekends you have 12 p.m. to 12 a.m. And then in  
 1815 the condition, notice that they break those down and it's not the same. I think on  
 1816 Friday and Saturday, 12 p.m. to 11 p.m. Sunday, 12 p.m. to 10 p.m.

1817



1818  
1819 Ms. Lauther - I believe what's on your condition is what's correct,  
1820 not what's on the application.  
1821  
1822 Ms. Harris - Okay. The length of the event compared to last year.  
1823 Is it the same length of days?  
1824  
1825 Ms. Lauther - Ten days. Eleven days.  
1826  
1827 Ms. Harris - Okay. And will you have fireworks? I noticed that was  
1828 a—  
1829  
1830 Ms. Lauther - No ma'am.  
1831  
1832 Ms. Harris - No fireworks. And the restroom facility. What are you  
1833 going to use for that?  
1834  
1835 Ms. Lauther - We'll actually call a local sanitation company and  
1836 have them either bring trailers or portable restrooms.  
1837  
1838 Ms. Harris - I notice that they specify you will have handicap  
1839 restrooms.  
1840  
1841 Ms. Lauther - Yes ma'am.  
1842  
1843 Ms. Harris - Okay. I believe those are all the questions I have.  
1844  
1845 Mr. Wright - Okay. Any further questions by members of the  
1846 Board?  
1847  
1848 Mr. Baka - No questions, just a comment. It's good to see a  
1849 good, viable use on this vacant property.  
1850  
1851 Mr. Blankinship - Which won't be vacant for long.  
1852  
1853 Mr. Baka - Yes, that's coming up. It's been sitting this way for a  
1854 while, so.  
1855  
1856 Mr. Wright - Is anyone here in opposition to this request? Hearing  
1857 none, that concludes the case. Thank you very much for appearing.  
1858  
1859 Ms. Lauther - Thank you.  
1860

1861 **[After the conclusion of the public hearings, the Board discussed the case**  
1862 **and made its decision. This portion of the transcript is included here for**  
1863 **convenience of reference.]**

1864  
1865 Ms. Harris - I would like to move that we approve this permit to  
1866 hold a carnival on Mechanicsville Turnpike. I think it would be great  
1867 entertainment for the neighborhood. We didn't have any complaints last year. I  
1868 hope that the owners, however, are aware that the community is more populated  
1869 in this area than last year and that they will be vigilant in calling the police  
1870 department if they really need to.

1871  
1872 Mr. Wright - All right, is there a second?  
1873

1874 Mr. Bell - I'll second the motion because I don't see any  
1875 adverse effects on health, safety, or welfare of the persons residing in the area,  
1876 nor do I see any increased public danger from allowing it.

1877  
1878 Mr. Wright - All right, it's seconded. Is there any discussion?  
1879 Hearing none, all in favor say aye. All opposed say no. The ayes have it; the  
1880 motion passes.

1881  
1882 After an advertised public hearing and on a motion by Ms. Harris, seconded by  
1883 Mr. Bell, the Board **approved** application **CUP2013-00006, REITHOFFER**  
1884 **SHOWS INC's** request for a temporary conditional use permit pursuant to  
1885 Section 24-116(c)(1) of the County Code to hold a carnival at 3000  
1886 Mechanicsville Turnpike (Parcel 800-731-0125) zoned B-1, Business District and  
1887 M-1, Light Industrial District (Fairfield). The Board approved this conditional use  
1888 permit subject to the following conditions:

- 1889  
1890 1. This use permit is for the approval of a carnival to be held at the  
1891 Showplace exhibition venue (exterior grounds) from April 28, 2013 to May 13,  
1892 2013.  
1893  
1894 2. Concurrent use of the exhibition space and/or grounds for other shows or  
1895 events during the scheduled carnival is strictly prohibited.  
1896  
1897 3. The carnival shall be limited to the following dates and times:  
1898 a. Set-up:  
1899 i. Sunday, April 28, 2013 to Wednesday, May 1, 2013.  
1900 ii. Hours of operation: Sunday, 6:00 pm to 10:00 pm; Monday  
1901 to Wednesday, 7:00 am to 5:00pm  
1902 b. Carnival:  
1903 i. Thursday, May 2, 2013 to Sunday, May 12, 2013.  
1904 ii. Hours of operation: Monday through Thursday, 5:00 pm to  
1905 10:00 pm; Friday and Saturday, 12:00 pm to 11:00 pm; and  
1906 Sunday, 12:00 pm to 10:00 pm.  
1907 c. Break-down:  
1908 i. Monday, May 13, 2013.  
1909 ii. Hours of operation: 7:00 am to 8:00 pm.

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4. Carnival activities that generate excessive noise or light glare shall cease 1 hour after closing and cannot resume until 7:00 am the following day.
5. The applicant shall locate the carnival footprint adjacent to the northern boundary line of the property and shall not encroach further south into the asphalt parking field than the first row of parking lot lights.
6. Only the improvements shown on the site plan, submitted February 8, 2013, may be constructed pursuant to this approval. Any substantial changes or additions to the footprint of the carnival will require a new use permit.
7. The carnival shall maintain the following setback requirements: front, 60 feet to right-of-way; side, 30 feet to property line; and building, 60 feet separation. The applicant shall not allow guest parking within 20 feet of the perimeter fence on the parking lot side. These areas shall be maintained free and clear of any obstructions and shall double as emergency access routes for first responders.
8. The applicant shall comply with the Division of Police recommendations as outlined in the Inter-office Memorandum dated March 6, 2013 (see attached).
9. The applicant shall comply with the Division of Fire recommendations as outlined in the Inter-office Memorandum dated March 12, 2013 (see attached).
10. In the event that the carnival achieves maximum attendance or parking capacity, admittance onto the site shall be restricted. Patrons shall be allowed to enter the site as guests leave on a one for one basis during maximum capacity intervals.
11. The applicant shall provide adequate restroom (standard and handicap) facilities throughout the carnival. These facilities shall be serviced daily.
12. The applicant shall obtain required building and sub-trade permits for the proposed event. Associated inspections shall occur no later than noon on Wednesday, May 1, 2013, in order to allow sufficient time for physical corrections and re-inspection, if necessary.
13. All food vendors shall obtain necessary permits and clearances as required by the Health Department.
14. The applicant shall maintain the property so that noise and debris are controlled during the event. Adequate trash receptacles shall be provided throughout the carnival with regular pickups.

- 1955 15. Public address and sound amplification equipment shall not exceed 65 dB  
1956 at the limits of the property.
- 1957 16. The applicant shall install temporary traffic barriers to discourage public  
1958 access and parking behind the existing building.
- 1959 17. Construction materials, equipment, debris containers, and contractor  
1960 parking associated with renovation work of the exhibition hall shall be located at  
1961 the rear of the building during the carnival event.
- 1962 18. In the event that a significant weather event occurs during the carnival's  
1963 business hours, the property owner shall allow the use of the existing building as  
1964 a temporary shelter.
- 1965 19. The sale of alcoholic beverages shall be prohibited  
1966 during the event.
- 1967
- 1968
- 1969
- 1970
- 1971

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

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

**CUP2013-00007 VERIZON WIRELESS** requests a temporary conditional use permit pursuant to Section 24-116(c)(1) of the County Code to allow a temporary communication tower at 3810 Meadowbridge Road (Parcel 794-737-7079) zoned B-3, Business District (Fairfield).

- 1981 Mr. Baka - Mr. Chairman, if I may? At this point, I need to recuse  
1982 myself from this case. I'm doing some contractor work for Verizon Wireless
- 1983 Mr. Wright - All those desiring to testify in this case please stand  
1984 and raise your right hand, whether you are for or against this.
- 1985 Mr. Blankinship - Raise your right hands, please. Do you swear the  
1986 testimony you're about to give is the truth and nothing but the truth so help you  
1987 God?
- 1988 Mr. Rothenberg - I do.
- 1989 Mr. Wright - All right, sir, please state your name, spell your last  
1990 name, and then present your case.
- 1991
- 1992
- 1993
- 1994
- 1995
- 1996
- 1997
- 1998
- 1999
- 2000

2001 Mr. Rothenberg - Mr. Chairman, members of the Board, my name is  
2002 Chuck Rothenberg—R-o-t-h-e-n-b-e-r-g. And I'm an attorney on behalf of  
2003 Verizon Wireless.

2004  
2005 This is a request for a temporary communication tower up to 120 feet to  
2006 accommodate the increased traffic at the upcoming NASCAR races at Richmond  
2007 International Raceway, April 25<sup>th</sup> through the 27<sup>th</sup>. The site is on the paved  
2008 parking lot at Crowley's Funeral Home near the intersection of Meadowbridge  
2009 Road and Jackson Avenue. If approved, the site would be set up no sooner than  
2010 April 1<sup>st</sup> and removed by May 3<sup>rd</sup>. There will be no significant traffic to the site.  
2011 Any visual impact to the surrounding area will be temporary, obviously. And the  
2012 importance of this site is that it will provide an additional measure of convenience  
2013 and safety for the fans attending the races and increase Verizon's capacity to  
2014 handle the additional wireless traffic that will occurring at that period of time.

2015  
2016 We do accept the conditions recommended by staff. And we respectfully request  
2017 that you approve this application.

2018  
2019 Mr. Wright - I understand it's a 120-foot-tall tower. Is that correct?

2020  
2021 Mr. Rothenberg - Yes sir.

2022  
2023 Mr. Wright - When will this take place?

2024  
2025 Mr. Rothenberg - The period of time that we would start constructing  
2026 the tower would be April 1<sup>st</sup>, no sooner than April 1<sup>st</sup>. And it would be dismantled  
2027 by May 3<sup>rd</sup>.

2028  
2029 Mr. Wright - All right. Any questions by members of the Board?

2030  
2031 Ms. Harris - Yes. Are there similar towers in Henrico County to this  
2032 120-foot tower?

2033  
2034 Mr. Rothenberg - I believe at every NASCAR race there are some that  
2035 come up around the racetrack. So if you've been out there in previous years, I  
2036 believe that Verizon Wireless had a site out there last year, and at least one  
2037 other carrier. I can't remember which carrier that was.

2038  
2039 Mr. Wright - But we have approved towers in the past for the  
2040 races.

2041  
2042 Mr. Blankinship - I believe last year we had a request for seventy-five  
2043 feet.

2044  
2045 Mr. Rothenberg - I think that's right. I can't remember exactly what it  
2046 was last year.

2047  
2048 Ms. Harris - How long does it take you to install this tower?  
2049  
2050 Mr. Rothenberg - It is a little bit complicated in the sense that the  
2051 physical infrastructure needs to be put into the place. The tower is very securely  
2052 anchored to the ground with guy wires. And the complicated part is that the  
2053 surrounding communication towers and this one all need to be tuned, if you will,  
2054 so that this fits into the surrounding cells without dropping any calls. The issue  
2055 here is really the amount of coverage that this site will take from the surrounding  
2056 areas so that they're splitting up the much higher intensity of call levels and use  
2057 of the wireless services. So actually putting the equipment out there doesn't take  
2058 a long time, but I think that fine-tuning does take a significant period of time.  
2059  
2060 Ms. Harris - When you disassemble this tower, what condition  
2061 does that leave the property?  
2062  
2063 Mr. Rothenberg - This is actually called a COLT, which is a  
2064 Communications-Site-On-Light-Trailer, so it actually comes in on a rolling trailer  
2065 with highway-type wheels on it. There really is no change to the property other  
2066 than the anchors that are installed in the parking lot.  
2067  
2068 Ms. Harris - Will that rolling car or rolling device remain there?  
2069  
2070 Mr. Rothenberg - Yes, yes. The tower actually sits on that during the  
2071 race period.  
2072  
2073 Ms. Harris - So it supports the 120-foot tower.  
2074  
2075 Mr. Rothenberg - Yes ma'am.  
2076  
2077 Mr. Wright - Any further questions? I have one question. Will this  
2078 have any effect on telephones in the neighborhood or TVs or any electronic  
2079 apparatuses?  
2080  
2081 Mr. Rothenberg - No, it really shouldn't. The FCC jealously guards their  
2082 frequencies. So if there's ever any issue—there's actually a website for the FCC.  
2083 If anybody has any issue with interference, there's a system in place to contact  
2084 the FCC to start an investigation. Verizon Wireless is very careful to make sure  
2085 that they're not intruding on anybody else's frequency.  
2086  
2087 Mr. Wright - All right, sir. Any further questions by members of the  
2088 Board? Is there anyone here in opposition to this request? Hearing none, that  
2089 concludes the case. Thank you very much for appearing.  
2090

2091 [After the conclusion of the public hearings, the Board discussed the case  
2092 and made its decision. This portion of the transcript is included here for  
2093 convenience of reference.]  
2094

2095 Mr. Wright - Is there a motion on this?  
2096

2097 Mr. Bell - I move that we approve this.  
2098

2099 Mr. Wright - Mr. Bell moved that we approve it. Is there a second?  
2100

2101 Mr. Nunnally - Second.  
2102

2103 Mr. Wright - Second by Mr. Nunnally. Is there any discussion?  
2104 Hearing none, all in favor say aye. All opposed say no. The ayes have it; the  
2105 motion passes.  
2106

2107 After an advertised public hearing and on a motion by Mr. Bell, seconded by Mr.  
2108 Nunnally, the Board **approved** application **CUP2013-00007, VERIZON**  
2109 **WIRELESS's** request for a temporary conditional use permit pursuant to Section  
2110 24-116(c)(1) of the County Code to allow a temporary communication tower at  
2111 3810 Meadowbridge Road (Parcel 794-737-7079) zoned B-3, Business District  
2112 (Fairfield). The Board approved this conditional use permit subject to the  
2113 following conditions:  
2114

2115 1. Only the temporary cellular tower shown on the plot plan and building design  
2116 filed with the application may be constructed pursuant to this approval. Any  
2117 additional improvements shall comply with the applicable regulations of the  
2118 County Code. Any substantial changes or additions to the design or location of  
2119 the improvements will require a new use permit.  
2120

2121 2. The height of the temporary cellular tower shall not exceed 120 feet.  
2122

2123 3. The temporary cellular tower shall be removed from the property on or before  
2124 May 3, 2013, at which time this permit shall expire.  
2125  
2126

2127 Affirmative: Bell, Harris, Nunnally, Wright 4

2128 Negative: 0

2129 Abstain: Baka 1

2130 Absent: 0  
2131

2132 Mr. Blankinship - It's four to zero with Mr. Baka abstaining.  
2133

2134 Mr. Wright - Minutes. We have short minutes since we had a short  
2135 meeting. And we missed Mr. Nunnally the last time. We're glad to see Mr.  
2136 Nunnally back on the road to complete health. I hope you're going to feel better.

2137  
2138 Mr. Nunnally - Thanks a lot.  
2139  
2140 Mr. Wright - Do I hear a motion on the minutes?  
2141  
2142 Ms. Harris - I move that the minutes be approved as presented.  
2143  
2144 Mr. Wright - All right. Ms. Harris moved that they be approved.  
2145 Any second to that motion?  
2146  
2147 Mr. Baka - Second.  
2148  
2149 Mr. Wright - Motion's made and seconded. Any discussion?  
2150 Hearing none, all in favor say aye. All opposed say no. The ayes have it; the  
2151 motion passes.  
2152  
2153 On a motion by Ms. Harris, seconded by Mr. Baka, the Board **approved as**  
2154 **submitted the Minutes of the February 28, 2013**, Henrico County Board of  
2155 Zoning Appeals meeting.  
2156  
2157  
2158 Affirmative: Baka, Bell, Harris, Nunnally, Wright 5  
2159 Negative: 0  
2160 Absent: 0  
2161  
2162  
2163 Mr. Wright - Is there anything else to come before this Board?  
2164  
2165 Mr. Blankinship - No sir.  
2166  
2167 Mr. Wright - Nothing from the planning staff. Anything from  
2168 members of the Board?  
2169  
2170 Ms. Harris - No sir.  
2171  
2172 Mr. Wright - Do I hear a motion that we adjourn?  
2173  
2174 Mr. Baka - Motion to adjourn.  
2175  
2176 Mr. Wright - Second?  
2177  
2178 Mr. Nunnally - Second.  
2179  
2180 Mr. Wright - Second. All in favor say aye. All opposed say no. The  
2181 ayes have it; the motion passes.  
2182



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Affirmative:  
Negative:  
Absent:

Baka, Bell, Harris, Nunnally, Wright

5  
0  
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R. A. Wright  
Chairman



Benjamin Blankinship, AICP  
Secretary