

1 Minutes of the regular monthly meeting of the Planning Commission of the County of Henrico,
2 Virginia, held in the Board Room of the County Administration Building, Parham and Hungary
3 Spring Roads at 6:30 p.m., on March 12, 1998, Display Notice having been published in the
4 Richmond Times-Dispatch on Thursday, February 19, 1998, and Thursday, February 26, 1998.
5

6 Members Present: C. W. Archer, C.P.C., Chairman, Fairfield
7 Ernest B. Vanarsdall, C.P.C., Brookland
8 Mary L. Wade, Three Chopt
9 David A. Zehler, C.P.C., Varina
10 Randall R. Silber, Secretary, Acting Director of Planning
11 James B. Donati, Jr., Board of Supervisors, Varina
12

13 Members Absent: Elizabeth G. Dwyer, C.P.C., Vice-Chairman, Tuckahoe
14

15 Others Present: John Merrithew, AICP, Principal Planner
16 Allen D. Webb, Principal Planner
17 Mark Bittner, County Planner
18 Nancy Gardner, AICP, County Planner
19 Lee Yolton, County Planner
20 Judy Thomas, Office Assistant
21 Ms. Phyllis A. Errico, Assistant County Attorney, Schools Dwight
22

23 Grissom, Schools
24

25 Mr. Archer - (Comments unintelligible.) We'll call the meeting to order.
26

27 Mr. Silber - Thank you, Mr. Chairman. We do have a quorum. Elizabeth
28 Dwyer is not going to be here today. She's on vacation. The first item of business tonight is a
29 public hearing which is a public hearing on various ordinance amendments.
30

31 **AMENDMENT TO ZONING ORDINANCE:**

32 **AMENDMENT TO CHAPTER 24 (ZONING) OF THE CODE OF THE COUNTY OF HENRICO:**

33 An Ordinance to Amend and Reordain Sec. 24-11(b) pertaining to principal uses permitted in
34 certain residential districts.

35 This relates to non-school use of school facilities. The Planning Commission held a work
36 session on February 12th of this year and requested a hearing be set tonight on a suggested
37 Code amendment. That was Alternative 2; one of the two alternatives for amending the Code
38 that were suggested by the staff. In short, Alternative 2 allows greater utilization of school
39 facilities from a use standpoint, one of which would be allowing child care uses in public
40 schools. With that introduction, I will turn it over to Allen Webb, who is the project manager on
41 this proposed amendment.
42

43 Mr. Archer - Thank you. Mr. Webb, sir.
44

45 Mr. Allen D. Webb, Principal Planner - Good evening, Mr. Chairman, and members of the
46 Commission. For the record, I'm Allen Webb of the Planning Office. Tonight, I would also like
47 to introduce Ms. Phyllis A. Errico, on my right, an Assistant County Attorney, who is
48 representing the School Board. At her left is Mr. Dwight Grissom, who manages the school
49 administration facilities, and is familiar with the operation of all of their facilities. They are here,

50 tonight, to answer technical questions about the School system and the folks that regulate
51 them; the things that I cannot answer.

52
53 I will focus tonight on the zoning and land use issue because this is a zoning and land use
54 matter. In the nature of background, this is the fourth time that I've been before the
55 Commission to discuss this. The last time was a month ago when we went through background
56 material and discussed several possible alternatives.

57
58 But for the benefit of those who weren't at the last work session, let me go through this
59 background. I will try to be brief, Mr. Chairman.

60
61 This issue first arose in the fall of last year when a zoning complaint was filed with the
62 Planning Office regarding the YWCA program providing after school child care in about a
63 dozen of our elementary and middle schools. That caused the Planning Office to have to look
64 at the matter because it was an official complaint. As we began to look at it we said, "Well,
65 first of all, is this an activity that is permitted? Do we allow child care facilities in schools?
66 What does the language of the law say?" We went to the law and we looked and we
67 researched carefully back and forth and discussed the issues with the County Attorney. We
68 found that schools are a permitted activity in one family residence districts, and of course, in
69 the Agricultural District, by reference, because the A-1 code often refers back to things which
70 are allowed in the residence districts.

71
72 We found that in the residence districts, schools are a permitted use, with one exception. We
73 could not find child care facilities listed as a permitted use. That one exception states that
74 child care may be provided in a church. In other words, a church may provide child care
75 facilities and child care services. Thus, except for child care in churches, unless they are
76 being offered by the School system, it is not permitted anywhere in the residence or the
77 agricultural district. That finding was transmitted to the Superintendent of Schools in early
78 November of last year.

79
80 About a month and a half later, the School Board adopted a resolution requesting the Board of
81 Supervisors to initiate and adopt a zoning ordinance amendment which would provide that this
82 use be permitted in the Schools. The language was actually broader, because the School
83 Board asked the County Board to amend the code to permit the activities that they already
84 allow in the schools.

85
86 On January 14th, about two to two and one-half weeks later, the Board of Supervisors adopted
87 a resolution asking the Planning Director to prepare such an amendment and bring it to the
88 Commission for its consideration. On January 27, the Planning Commission initiated this study
89 and set a February 12th work session, a month ago. At that time we went through the history
90 and discussed two alternatives that would respond to the Board of Supervisors and resolve
91 this issue.

92
93 A month ago, we talked about two alternatives. One, a very simple alternative, says that child
94 care may be provided in a church or a school between the hours of 6:00 a.m. and 12:00
95 Midnight. It was a very simple alternative, but concern was expressed by the Commission
96 because, while being a simple change in the code, it didn't really address the issue totally.
97 The second proposal, Alternative 2, was to allow child care in the schools along with other
98 cultural services and activities. We discussed that to a great extent and some concern was
99 expressed by the Commission, in that there was confusion as to who could do what, and

100 where it could be done? We were getting away from the land use issue. This is purely a land
101 use issue. So, we focused our attention on the proposal.

102
103 The Commission asked that Proposal 2, which was the more broad concept, be advertised for
104 discussion and public hearing tonight. We have taken the concerns and thoughts expressed
105 by the Commission at the meeting last month, applied ourselves, and present to you, tonight, a
106 slightly modified alternative. It is still Alternate 2, but the language has been changed to make
107 it abundantly clear that we are dealing only with a land use issue. We are attempting to be
108 sure that this Code directs its attention to what can be done, and where it can be done. Any
109 references to what type of an agency or corporation have been excluded from this
110 consideration because it is purely a land use issue. So, with that background, ladies and
111 gentlemen, we have the first draft of the amendment before you. Copies have been placed in
112 the back of the room. There are also copies of a white paper there.

113
114 If you'll notice on Page 6 of that white paper before you, the language proposed to be added
115 by this amendment is highlighted in bold face type. This language says that churches and
116 parish houses are permitted uses in residential districts. Schools are permitted uses. Staff is
117 suggesting that uses in schools include, "child care, charitable, cultural and other community
118 service activities on school property," That is what is being done today and has been done for
119 many years. Adding a short phrase of a few words, we believe, will resolve the issue so that
120 it's clearly understood that child care is a permitted activity in a school, whether it be in an
121 agricultural district or a residence district

122
123 Mr. Chairman, we believe this is a solely a land use issue, and the phrase deals with the
124 question: "What can be done where?" This proposal would not change any of the long time
125 zoning and land use practices that have been in existence for many years as far as activities in
126 the schools.

127
128 We believe and realize that these school activities have been practiced for many years in the
129 schools, simply because all of us thought that they were allowed. Only until we delved into it
130 more deeply did we realize the actual language of the Code doesn't allow them. Why?
131 Because it omits them from the list of allowed activities. So, we believe that this particular
132 issue is a good example of what the folks in the legal profession describe as the "law of
133 unintended results." While it was the intention, we believe, of the framers of the code to allow
134 these activities, they failed to use the exact words that clearly say that they can be done. And
135 we believe that this proposal that you have before you tonight for public hearing would resolve
136 that omission and clearly state that this is a permitted use as, we feel, it has been intended all
137 along. I've tried to be brief, Mr. Chairman. Are there questions I might address?

138
139 Mr. Archer - Thank you so much. This is a public hearing, so we will invite
140 public comment, either pro or con, concerning this issue. But before we do, I'd like to see if the
141 Commission members have any questions for Mr. Webb.

142
143 Mrs. Wade - We're on Page 6, now? Where does the layout Plan of
144 Development come in? Is that the way it is now? This says, "with the approval of a layout
145 Plan of Development." That's the way it is now in the Ordinance?

146
147 Mr. Webb - Yes ma'am. There's no change proposed to that. This proposed
148 change simply says all these things are permitted, but schools have to have a Plan of
149 Development. Because it is a public facility, it goes to the Board of Supervisors. Therefore,

150 the Commission is not accustomed to seeing POD's for schools. Mr. Donati is accustomed to
151 seeing them. The only change proposed by this amendment is the language in the dark face
152 bold type, which is an addition to the Code as it is now written.

153

154 Mr. Archer - Is that clarified, Mrs. Wade?

155

156 Mrs. Wade - Yes.

157

158 Mr. Archer - Okay.

159

160 Mr. Zehler - Mr. Webb, on Page 5 on our previous recommendation, you see
161 "E" with the hours. That has been deleted on the new present recommendation?

162

163 Mr. Webb - The present recommendation, the one the Commission dealt
164 with, Mr. Zehler, or recommended, did not include hours of operation. The paragraph, which
165 allows and specifies that child care may be operated in a church, does specify the hours. In
166 other words, churches will be continued to be restricted to the hours of 6:00 a.m. to 12:00
167 midnight. This proposal, tonight, does not address hours of operation. The code section,
168 dealing with churches, does restrict them to that time period.

169

170 Mr. Zehler - So, basically, the hours of operation under the proposal we have
171 tonight does not address hours of operation?

172

173 Mr. Webb - Yes sir.

174

175 Mr. Donati - Mr. Webb, the language that we have tonight, does that, in any
176 way, restrict the uses that might be if this is passed by the Board of Supervisors as far as a
177 nonprofit group or a for-profit group?

178

179 Mr. Webb - This would not restrict that in any way.

180

181 Mr. Donati - It would be up to the School Board to make that decision?

182

183 Mr. Webb - Yes. That's why this proposal reads a little differently than our
184 proposal last month. Because we wanted to be absolutely certain that, as we discussed last
185 month, when there was concern about the differences, we wanted to be absolutely sure that it
186 did not deal with who provides the type of activity. That's not an issue for the zoning code. It
187 is not a land use question.

188

189 Mr. Donati - One more question. Say, in a church, for instance, if there was a
190 child care center. If it was "for profit" in a residential neighborhood, is that allowed?

191 Mr. Webb - The way its written in the Code, I would say it would be. It could
192 be controlled by the host and the Church would have the option of saying...

193

194 Mr. Donati - They would be in violation of it?

195

196 Mr. Webb - ...or if they wanted a nonprofit to do it, under its auspices or a
197 profit making, that's the option of the Church. This proposal, tonight, would be at the option of
198 the host too, whether it be a public or private school. This proposal would not intrude on the
199 ability of the school to determine who it wants to provide these services.

200
201 Mr. Vanarsdall - Mr. Webb, you said it would be up to the school board on the
202 previous question?
203
204 Mr. Webb - Yes, sir.
205
206 Mr. Vanarsdall - To make that the final decision?
207
208 Mr. Webb - Yes sir. This does not alter the privileges or responsibilities of the
209 School Board. The Board, or a private school, can still operate in the way it believes best for
210 its institutional facilities.
211
212 Mr. Vanarsdall - Okay.
213
214 Mr. Archer - So, Mr. Webb, to sum it all up, we're simply dealing with this as a
215 Land Use issue? Is that correct?
216
217 Mr. Webb - Yes sir, absolutely correct.
218
219 Mr. Archer - I'm sorry. Mrs. Wade.
220
221 Mr. Webb - This amendment is to remedy an omission in the Code.
222
223 Mrs. Wade - We haven't encountered the kind of problem they've had in the
224 City about uses; the Sunday feeding programs and things like that. It would seem to include or
225 allow all of those things.
226
227 Mr. Webb - Not to my knowledge. I haven't heard of issues like that.
228 Perhaps, Mr. Grissom, or perhaps Ms. Errico, may be able to address that
229
230 Mr. Zehler - No. The issue in the City about the use of the churches for
231 charitable other community service activities. So, this would allow any of that any time in a
232 Church?
233
234 Mr. Silber - Mary, if I could attempt to answer that.
235
236 Mrs. Wade - I'm not trying to complicate things, but I just happened to think
237 about that.
238
239 Mr. Silber - First of all, that was not contemplated with this Ordinance
240 Amendment. That has not been an issue that's been brought to the forefront in the County. I
241 don't think that this would prohibit that for happening. This proposal puts the burden on the
242 school or the church where it would be operating, to decide whether that's permitted or not.
243
244 Mr. Webb - Mrs. Wade, I asked Mr. Grissom and he said, no. There have not
245 been any problems with things of that nature. I wasn't aware of any and he confirmed there
246 haven't been any.
247
248 Mr. Zehler - Mr. Webb, we originally started, I believe because of the
249 infraction of the code on the nonprofit organization, but I understand now, based on Mr.

250 Donati's question, that not only can we help serve the nonprofit organization, but then we can
251 also open it for profit organizations?
252

253 Mr. Webb - This would allow the activities to be provided by either. Yes sir. It
254 would be the choice of the school as to how its done and by what provider.
255

256 Mr. Zehler - But, if the School Board made the decision to allow one, I think
257 they would have to allow all. Would they not?
258

259 Mr. Webb - Well, I don't know the answer to that. I can't speak to it, Mr.
260 Zehler. But, for the land use aspect of it, as far as the zoning ordinance is concerned, it clearly
261 says, everybody's welcome. Then, it's up to the host to decide which group or who is invited
262 in.
263

264 Mr. Zehler - Was that the intent when it was originally brought before us, Mr.
265 Donati, to include profit organizations? My understanding was that, when this originally came
266 before us, it was just addressing the issue of nonprofit organizations?
267

268 Mr. Donati - Well, we really didn't know for sure.
269

270 Mr. Webb - This proposal, Mr. Zehler, essentially would not change the
271 practice as it has been carried on for a number of years. It simply clarifies the language in the
272 code that these activities are permitted. But, it doesn't address who may do them. Rather, it
273 says everyone may do them.
274

275 Mr. Zehler - That's probably a legal question. Would it give the School Board
276 the authority to be able to accept who they want to and who they don't want? Then, it appears
277 it could open up a can of worms as far as discrimination suits of who we're going to allow and
278 who we're not going to allow.
279

280 Mr. Webb - I think we have two issues: first, the zoning issue, and land use
281 control issue. This resolves and clarifies that. But as far as the other issue, I think Ms. Errico
282 can address that far better than I can.
283

284 Ms. Phyllis Errico, Assistant County Attorney - I think there truly are two issues. One is a land
285 use issue and the other can be classified as whether something is an open public forum or a
286 limited public forum. Currently, School Board property, just as general County property, is
287 open for use by entities for non-commercial purposes.
288

289 So, right now, despite the land use issue, the question is what activities can take place in
290 schools on residential property; not who can conduct them, but what activities can take place.
291 This amendment would allow child care to take place no matter who was conducting that or
292 supervising that. The School Board, in turn, in its policies, would address who can use their
293 facilities and for what purposes. And they'll look at other legal issues and constitutional issues
294 in terms of separating groups of users.
295

296 Mr. Zehler - But if we were to stipulate that it was for "nonprofit" purposes only
297 in the ordinance, would that eliminate the Second Alternative? And a good legal question, can
298 we do that legally?
299

300 Ms. Enrico - Well, I would think that for land use purposes you would not go
301 down that road, because that's aiming at the user, not the use.

302
303 Mr. Silber - Mr. Zehler, typically, the Zoning Ordinance addresses uses that
304 are permitted, not who is going to operate, or do them, or whether they are going to be "for
305 profit" or "nonprofit." You won't find that in the code. I don't think we really want to get into
306 that as a practice from the zoning perspective. In this case, the question that was asked of the
307 Planning Office was; "Are child care uses permitted in schools?" The ruling the Planning
308 Office made was not necessarily, technically, the way the code was drafted. We're now going
309 to try to make that legitimate, but it doesn't speak to who would actually operate child care
310 uses.

311
312 Mr. Zehler - I think it was originally brought before us as a "nonprofit"
313 organization.

314
315 Mr. Silber - I think it was brought to the Planning Office from the perspective
316 of the child care use.

317
318 Mr. Donati - Are we making an exception to the code here in ruling on this? Is
319 this an exception to the Code?

320
321 Mr. Silber - I wouldn't necessarily call it an exception to the Code. I think the
322 way we have been operating through the years, if we make this amendment, it, basically,
323 makes all that legitimate. Basically, I guess, if you deny these alternatives, turn down the
324 alternatives, then that would be a change from our past practice.

325
326 Mr. Donati - Right. What is the current zoning code for a child care center
327 now? What classification?

328
329 Mr. Webb - Child care centers are now first permitted in R-5 General
330 Residence Districts. Then it carries into the R-6 Districts, and then into the Office Districts, and
331 finally into the Business Districts.

332
333 Mr. Silber - R-5 is where it's first permitted.

334
335 Mr. Webb - With that one exception that a church may provide the service in
336 a residence district, but only in a church.

337
338 Mr. Vanarsdall - Mr. Zehler, were you under the impression when we went through
339 this at the work session it was for "nonprofit?"

340
341 Mr. Zehler - That was my understanding. That's why I raised the question. It
342 started as "nonprofit." Now, I understand we're opening it to the general public.

343
344 Mr. Vanarsdall - I got that impression, too.

345
346 Mr. Zehler - I think that was the way it was presented to us, Mr. Vanarsdall.

347
348 Mr. Vanarsdall - I got the same impression.

349

350 Mr. Webb - Well, the language of the proposal that was before you last
351 month did imply, that, perhaps, some preference was given to non-commercial activities. We
352 sensed that, the concern of the Commission was that it should be considered a land use issue
353 and not deal with "profit" versus "nonprofit." Our Code simply doesn't address those factors,
354 and I have some doubts as to whether the question would stand the test of the Courts as far
355 as trying to restrict uses to one or another through zoning. The activity and the land uses I'm
356 comfortable with; but, I think when we get into the subject of who does it; that is akin to the
357 questions of free speech and the regulation of signs, for example.

358
359 Mr. Archer - So, again, to summarize, what we are here to do tonight is to
360 deal with it strictly from a land use standpoint and not get involved in the legalities of whether
361 or not it is "for profit" or "nonprofit?"

362
363 Mr. Webb - Absolutely, it is a land use issue. The question is: "Should it be
364 permitted in a school as a land use?"

365
366 Ms. Errico - I'm Phyllis Errico, Assistant County Attorney for Henrico County. I
367 represent the School System.

368
369 Mr. Archer - Thank you, Ms. Errico.

370
371 Mr. Donati - Mr. Chairman, it still seems to me that we're making a special
372 exception. Do we need to address the entire code for child care centers, because schools are
373 allowed in R-O through R-4? Child care centers are not. So, it still seems like we're making a
374 special exception.

375
376 Mr. Archer - Can you address that, Mr. Webb?

377
378 Mr. Donati - Do we need to change the whole code?

379
380 Mr. Webb - I think I understand what Mr. Donati is saying. Mr. Donati, you
381 used the term, "special exception." I understand your concern from that perspective, because
382 this proposal would introduce one more use into a residential district. I don't see it as a special
383 exception, but rather an enlargement of the uses that are permitted in the district, much like
384 amending the business code to let one more type of business go into a certain district. But,
385 this proposal is specifically oriented only to schools.

386
387 Mr. Silber - I think that's the point, Mr. Donati.

388
389 Mr. Webb - Churches and schools, by their nature they are...

390
391 Mr. Donati - So, if a school is in an R-O District, under your suggested
392 language, they would be able to have a child care center?

393
394 Mr. Webb - Yes. We're allowing them anywhere in a school. This proposal
395 doesn't allow them just anywhere, but where children are located now.

396
397 Mr. Donati - In turn, if a child care center wanted to build a child care center in
398 an R-O District, it would not be allowed?

399

400 Mr. Webb - That's correct.

401

402 Mr. Donati - So, it seems like it's a little unfair competition there.

403

404 Mr. Webb - Well, back in the 1980's, there was a period of about two years
405 that child care centers were permitted in the single family districts as a special exception. But,
406 after about two years, it became very controversial and difficult to administer, and the Board
407 repealed that provision. I guess one could say it was a very successful experiment, because
408 we learned what not to do. So, the focus of this amendment is only on schools. It broadens
409 the ability of a school to serve the community, essentially.

410

411 Mr. Vanarsdall - So, we're here tonight because the YMCA and YWCA are
412 operating in a zoning they're not authorized to operate in?

413

414 Mr. Webb - That's correct.

415

416 Mr. Zehler - And that being a nonprofit organization, that's where we're
417 getting confused, Mr. Vanarsdall, because it was first presented to us as a nonprofit
418 organization.

419

420 Mr. Archer - Okay. Any further questions of Mr. Webb? This is a public
421 hearing. So, we would like to invite comments from the public either pro or con concerning this
422 issue. Come up to the podium and identify yourself. We'll hear your comments now.

423

424 Mr. Vernon Holloman - Thank you, Mr. Chairman, members of the Commission. I'm not
425 from your fair County. I'm from the City of Newport News. I represent a State-wide
426 organization known as the Proprietary Child Care Association of Virginia. We're also known as
427 the Owners Association. We've been in existence since about 1980. We take positions on
428 various issues, mainly, State and Federal issues, but in this case, it's a local government issue.

429

430 I also wear a couple of different hats. I serve on the Child Day Care Council which is the
431 regulatory board. It promulgates minimum standards for licensed child care centers in the
432 Commonwealth of Virginia. I was originally appointed to that Board by Governor Wilder and
433 reappointed by Governor Allen. Under the Allen Administration, I've had the pleasure of
434 serving as Chairman of the Governors Advisory Commission of Welfare Reform which spans
435 five secretariats throughout state government. We've prepared some written comments and if
436 you'd be so kind to pass those on. Thank you very much.

437

438 In the written material my address and telephone number is there for the record. I'd first like to
439 start off by just telling you about the good people who represent the Commonwealth of
440 Virginia, particularly here in Henrico County and the surrounding Richmond area. I'm very
441 pleased to represent some of the finest child care facilities, not only in Virginia, but in the
442 country. You have some of those located right here in Henrico County. Those would include
443 the Tuckaway Child Care facility. It would include the Bundle of Joy facility. Mr. Womack, the
444 owner/proprietor of that facility is here tonight, as well as numerous others that I could mention
445 for you.

446

447 These people are proprietors. They are business owners as well as child care providers. They
448 have taken their own money, their own initiatives, their own time, their own expertise. They
449 have built their buildings, built their businesses literally from the ground up. They are dedicated

450 to high quality services. They are licensed. They meet every rule and regulation that the
451 Commonwealth of Virginia would have them meet, along with your County regulations. And,
452 most importantly, they produce tax dollar revenue and they're not supported by the
453 government and they're not subsidized by the government. In fact, they produce tax dollar
454 revenue to the government.

455
456 So, what I bring before you is an issue based on simple fairness, and fair play, and a level
457 playing field. I would like to, for just a moment, and I'll be as brief as possible, but to stand in
458 my shoes for just a moment. I'm also in the child care industry. I work for cities down in
459 Newport News, Hampton, and Williamsburg.

460
461 In fact, Mr. Womack owns two facilities here in Henrico County. These are people who get up
462 very early in the morning, like everyone else. They go down to the day care center just like the
463 sun comes up, and they provide good quality needed services in this County to those who
464 require them. And they do so at affordable rates. And they do so well within the licensed
465 structure. It's a regulated industry, as I said before, that must meet or exceed all of those
466 rules.

467
468 When this issue was first brought to me, I drafted a letter on Mr. Womack's behalf and mailed
469 that on October 7, 1997 to Dr. Mary Jackson, who is the Chairman of the School Board. It,
470 basically, just went through our basic position of where we stood on this issue. But the issue I
471 raise is, basically, a fairness issue on fair competition.

472
473 What you have is a School Board policy in Henrico that favors the nonprofit sector by basically
474 excluding any "for profit" operation from conducting this type of enterprise or any other
475 enterprise in your public school buildings. So, my first point is that "for-profits" by their very
476 nature, for no other reason except that they're "for profits," categorically excluded offering
477 these services in your schools. So, whether we wish to contract on them or not, they are
478 automatically excluded and cannot even participate in the process.

479
480 The second thing I'd like to mention to you is included in the package is a copy of House-
481 Senate Joint Resolution 62 from the 1988 General Assembly. While I won't read the whole
482 thing for you, I will read the part where it says, "...Resolved by the House of Delegates and
483 the Senate concurring that it is the sense of the General Assembly that localities should begin
484 to provide school-age child care after the date of this resolution...which was 1988, ... should
485 establish their programs within the boundaries of the essence of free enterprise by providing
486 the opportunity for all qualified providers, regardless of their profit status to offer contract of
487 services and also establish criteria for selection which is non-discriminatory and equal. Be it
488 further resolved and the Clerk of the House of Delegates prepare a copy of this Resolution for
489 presentation to the Chairman of School Boards for all localities within the Commonwealth."
490 And that took place back in 1988. So, that's been on the books for sometime.

491
492 The next bit of information I'd like to share with you has to do with a brand new report that was
493 published by the Kator Institute, Washington D. C. dated October 23, 1997. It is called "The
494 Advancing Nanny State, Why the Government Should Stay Out of Child Care." This is a
495 startling report. As you know, most of the things that you hear about child care is there's not
496 enough child care. It's too expensive. Poor people can't afford it, etc. etc.

497
498 This report was done by a completely independent policy analysis research group in
499 Washington which has no stake whatsoever in child care policy. It is a highly respected

500 organization did this study, basically, on their own, because, as you know, the Clinton
501 Administration has a lot of child care proposals on the table right now.

502
503 Basically, they concluded that 96 percent of parents are satisfied with their child care
504 arrangements. Child care fees have not changed in real terms since the late 1970's. The
505 number of child care providers has kept pace with the swelling demand for child care.
506 Likewise, the National Day Care Home Study conducted from the Department of Human
507 Services found no indication that unregulated family day care is either harmful or dangerous to
508 children. The report goes on, and on, and on. It says that, if child care were too expensive,
509 we would expect to find parents, particularly low income parents, expressing great concern
510 about costs and dissatisfaction about their child care arrangements. This is not the case.

511
512 A sub-study of the National Child Care Survey found that 95 percent of low income families;
513 that is families with an annual income below \$15,000 are "satisfied or highly satisfied" with their
514 current child care arrangements.

515
516 Now, I could go on and on, but this report, basically, dispels the myth that there is somehow
517 not enough child care to go around and that it is too expensive for people to afford.

518
519 I would also like to point out that under the Allen administration, we worked very hard on child
520 care funding issues. As you know, Congress passed the Welfare Reform Act. Virginia has
521 already initiated its welfare reform act. We took care funding for direct purchase for low
522 income families for the combination appropriation of \$56 million to \$113 million. We doubled
523 the appropriation for direct purchase of child care services for low income families. What that
524 means is that low income families in Henrico, and any where else in Virginia who need child
525 care, they can get it and they can choose virtually any provider they wish, whether its a next
526 door neighbor, grandmother, the commercial child care, the YMCA, whoever. The funds were
527 there to pay for that.

528
529 Lastly, I brought with me a copy, or an excerpt, if you will, called the "Fair Competition
530 Handbook," published by the International Racket and Sports Association which was published
531 in 1991. This organization represents the sport and racquet club spas. The reason I bought
532 this to you is because this issue parallels our child care issue very well.

533
534 What you have is, basically, a time line, a history of the issue to where the YMCA's tax exempt
535 status has not only been challenged, it has been successfully challenged in different areas of
536 the United States, where they actually lost their tax exempt status because of their commercial
537 competitive enterprises competing with commercial health club spas, and in our case, that
538 would include child day care facilities. I'm not here to throw rocks and stones at the YMCA.
539 The YMCA is a valid institution. They provide many fine services to the community and we
540 certainly want to see them continue.

541
542 But I think that reasonable people can sit down to the table and come up with reasonable
543 conclusions on how we can settle this issue. I've already mentioned to you that, even if we
544 were allowed to contract for this service in Henrico Public Schools, which I believe I could do a
545 fine job, we are categorically excluded because for no other reason except "for profit," which
546 means we pay taxes. We fully meet all of the other regulations.

547
548 So, I think that's one hurdle that we meet. The other thing that we could possibly do is to look
549 at the terms under which these programs are established. We can talk about hours of

550 operation. We can talk about how much rent is paid on the facility. Certainly, that should be a
551 fair market rate. It's my understanding right now that the YMCA pays, what I would have to
552 call, a ridiculously low, unreasonable rental for the use of the public school buildings.
553 Certainly, we can talk about those two issues; the hours of operation; and how much rent is
554 paid. And we can talk about any number of other issues that would help balance this issue;
555 help level the playing field and resolve some of these competitive issues. Certainly, we are
556 willing to sit down to the table.

557
558 I can't speak for the YMCA. It's only our position on it. So, I thank you very much for hearing
559 us this evening and I thank you for your time.

560
561 Mr. Archer - Thank you, Mr. Holloman. We appreciate you bringing the report.
562 Do any of the Commission members have questions or comments for Mr. Holloman?

563
564 Mr. Donati - I'm a person that usually believes that if the private sector can not
565 provide a service for the need of the citizens, the public sector should step in and help. Is
566 there a shortage of child care facilities in the Richmond Metropolitan area right now?

567
568 Mr. Holloman - I don't believe that there is. One of the first things that I did as
569 the Chairman of the Welfare Reform Commission was to have, for the first time in Virginia, an
570 availability study conducted on child care. To my surprise, it had never been done in Virginia.
571 Even though we are spending millions and millions of dollars on this service, we had never
572 conducted an availability study.

573
574 What we found, particularly here in Richmond, Henrico, down in the Hampton Roads area, is
575 that there was an abundance of child care available and that it was available at a reasonable
576 price. In fact, as we phased in the entire state, district by district in welfare reform, the only
577 complaints, if you will, that we got in or concerns that were expressed about the availability of
578 child care was nighttime child care, after 6:00 p.m.; weekend child care on Saturdays and
579 Sundays, and care for mildly ill or sick children. That would be with a child say with a broken
580 arm that's recovering from that, or a child that had the measles or the flu, or what have you. I
581 can tell you that those areas are lacking in some communities. In the only part of the state we
582 found that needed child care, didn't have a sufficient supply of it was out in the southwest part,
583 the Abington District of Virginia.

584
585 Mr. Zehler - Mr. Holland, based on my previous questions, not only restricted
586 to nonprofit organizations, but to organizations for profit, if that is available to the open free
587 market as well as the nonprofit organizations, then does it make a fair ground for everybody?

588
589 Mr. Holloman - Well, it would. We could certainly look at the possibility of
590 contracting for those services. I suppose we're caught in the paradigm there. You know we've
591 already invested in land and buildings like Mr. Womack who has a beautiful brand new facility
592 out in Glen Allen which represents some of the best child care that you'll find. You have to
593 stand in our shoes again and say, "Well, why did we bid on doing business across the street,
594 from what I've said we've already spent upwards of a million dollars to have constructed when
595 we already have our own facility? So, again, we would just have to look at that from just a
596 plain business standpoint, I guess.

597
598 But I think its worth mentioning that the policy should be broadened, if its going to happen at
599 all. Certainly "for-profits" ought to be able to compete fairly with nonprofits.

600
601 Mr. Zehler - But in the same essence the way the ordinance is going to read,
602 if somebody such as yourself, or Mr. Womack would like to expand his services into other
603 areas rather than construct new buildings, he would have the opportunity of leasing school
604 space as well as the nonprofit organizations would be, which would make a fair ground for
605 everybody. Do you agree?

606
607 Mr. Holloman - Well, at least on the contracting side of it would, certainly. I don't
608 think we can talk about the unfair issues between "nonprofits" and "for-profits," in identical
609 arenas. That's probably more of an IRS issue than it is a Planning Commission issue.

610
611 Mr. Archer - Any further questions? Thank you, Mr. Holloman. Okay, is there
612 anybody else in the audience who wishes to speak on this issue? Come on up, ma'am.

613
614 Mrs. Sharon Needam - Good evening, Mr. Chairman, fellow board members and guests.
615 My name is Sharon Needam and I am the parent of a student at Lakeside Elementary School.

616
617 Parents in our community were very delighted to learn of the YMCA's after school program.
618 Our school had 78 to 90 children enrolled in the Henrico County recreational program.
619 Realizing that some of these families could not afford private day care facilities and that the
620 YMCA program was open to all children, including those families that needed financial
621 assistance participate, we invited the "Y."

622
623 Although this was new to Lakeside school, it was not new to Henrico County public schools.
624 The after school program has been in place in Henrico County for 13 years, currently at 11
625 schools, serving 600 or more children, approximately 40 percent of those children receive
626 financial assistance or scholarships. Many of you are here tonight as a result of the controversy
627 that has generated as a result of our school having this program. The complaint filed by a
628 local day care provider raised issues concerning unfair competition, and zoning.

629
630 I feel very strongly that the issues should be on safety and well being of our young people, not
631 on "profit" versus "nonprofit." What kind of example are we setting for our young people here
632 today? They look at the newspaper and they're asking questions. Several children have come
633 up to me, as a parent of the school, and said, "Mrs. Needam, are we going to lose the after
634 school program?"

635
636 With so many latch key children in our community today, we should be very fortunate to have
637 the YMCA. Having been a volunteer for the "Y," for a number of years, I know first hand how
638 the YMCA programs benefit our communities. The "Y" is doing a great job at making a better
639 tomorrow for so many children and families. Board members, the school is the place for our
640 children whether it be a "for profit" or "nonprofit" day care provider. We, the parents, have the
641 right to a choice. Let's come together for the future of our children. Please pass the zoning
642 amendment that would allow the day care facility to continue. Thank you.

643
644 Mr. Archer - Thank you. Any questions of Mrs. Needam before she takes her
645 seat? Thank you, Ms. Needam.

646
647 Mrs. Needam - Thank you.

648

649 Ms. R. C. Petaway - Good evening, Board. I, too, am a parent of a child in the YMCA
650 after school care program. I have an 8-year old. I have a family here in the State of Virginia.
651 Without the "Y," I would not be able to have my child in a facility. I, too, am a part of the
652 financial assistance. I also have an 18-year old who is in college. Without the "Y," I would
653 have my child home with no one to care for her. I cannot afford the private sector. Please do
654 not take the YMCA out of the schools. Without that, I would not have child care. Thank you.

655
656 Mr. Archer - Anybody else who wishes to speak for or against?...

657
658 Mr. Silber - I think its up to the Commission what they're to do.
659 Mrs. Wade - We keep getting back to the same issue, where is we're not
660 supposed to have the authority to decide what kind. It keeps coming back. Now, are we
661 supposed to let everybody in, or not let everybody in? Yet, if they tell us, that's not ours to
662 decide, and yet, it seems hard to separate that out.

663
664 Mr. Archer - It is hard, Mrs. Wade. I guess in order for us to make a decision
665 and to make something to pass along to the Board, we probably have to take Mr. Webb's
666 advice and just deal with this strictly from the land use issue. The other pertinent parts that go
667 along with it, I don't think we can solve at this level.

668
669 Mrs. Wade - Well, that's certainly what I understood.

670
671 Mr. Archer - But it is tough to separate. I agree with you. So, our duty tonight
672 is to, since this is an advertised public hearing on Alternative #2 which we chose at our
673 February meeting -- was it February or January?

674
675 Mr. Silber - February.

676
677 Mr. Archer - Then, I suppose we need to have a motion to either recommend
678 or to deny by the Board. I guess we'll have to let it deal with the other issues when they get it.

679
680 Mr. Silber - That is correct, Mr. Chairman. This would be a recommendation
681 to the Board of Supervisors. The Board of Supervisors would have to handle this matter and
682 deal with.

683
684 Mr. Archer - Okay. Do I have a motion?

685
686 Mr. Zehler - Mr. Chairman, since it is a land use issue and the concern of
687 whether it be "profit" or "nonprofit," and with the item we have before us, tonight, pretty much
688 opens the door for everybody, whether it be profit or nonprofit. Basically, what we're saying is,
689 are we going to allow our schools to be able to continue to use day care? If we continue to
690 allow schools for day care, then, basically, from my understanding tonight, private enterprise
691 has the right, as well as a nonprofit organization to be able to continue to use the schools.
692 The issue tonight before us is: "Are we going to be able to allow our schools to continue to
693 have day care, whether it be "profit" or "nonprofit" organizations in the existing schools? In my
694 personal opinion, its fair game for everybody.

695
696 As long as we open it up for everybody, I think it's a viable use. As some of the citizens have
697 said tonight, it's something we need, whether we cater to profit or nonprofit. The issue before

698 us is: "Do we want to allow day care in our schools in after school programs?" That's basically
699 the issue before us.

700
701 So, with that, I would move that the Ordinance Amendment before us tonight be recommended
702 to the Board for approval.

703
704 Mr. Archer - That's Alternative 2, right?

705
706 Mr. Zehler - Alternative 2.

707 Mr. Archer - Okay. Do I have a second?

708
709 Mrs. Wade - Second. Now, my understanding is that the School Board is
710 more than willing to make these decisions regarding who may be allowed to provide these
711 services.

712
713 Mr. Zehler - Well, I guess it'll have to.

714
715 Mr. Archer - Motion made by Mr. Zehler, seconded by Mrs. Wade. All those in
716 favor say aye—all those opposed by saying nay. The vote is 4-0 (Ms. Dwyer absent, Mr.
717 Donati abstained). The ayes have it and the motion is to recommend Alternative 2—the First
718 Draft of the recommended amendment. Thank you, Mr. Webb. Appreciate it.

719
720 Mr. Webb - Thank you, Mr. Chairman, Mrs. Wade, and gentlemen.

721
722 Mr. Silber - Would you like to move onto the 7:00 portion of the agenda?

723
724 Mr. Archer - Yes. I guess there are some people who want to file out, but
725 while they're doing that, we'll go ahead and start our regular meeting. Before I do, I'd like to
726 recognize Ms. Wendy Wagner from the Times-Dispatch. Ms. Wagner. All right, Mr.
727 Secretary.

728
729 Mr. Silber - Yes sir. Let me first make note that we are in our new and
730 improved Board room. I make mention of that because for the past three months we have
731 been in another facility that wasn't quite as elaborate. Didn't quite have all the automation
732 features that this one had. We are still working out some quirks with the system here. We
733 have all the experts we need here to get everything to work, but you will see shortly that we
734 have slides that will be electronically projected on the screen on either side here. The
735 Commission has screens in front of them. So, there is a lot of capability here, some of which,
736 we're still working through. So, please bear with us. I think you may be impressed if we can
737 get this to work half way well. But we do have some capabilities that we will be sharing with
738 you tonight.

739
740 Mr. Archer - Mr. Secretary, before you go further, I have something I need to
741 do.

742
743 Mr. Silber - Absolutely.

744
745 Mr. Archer - Mr. Ernest Vanarsdall, if you'll come down, please?

746
747 Mr. Vanarsdall - I thought you really had something to do.

748
749 Mr. Archer - Well, I do. It is I think and I hope a tradition of the Planning
750 Commission to present its outgoing chairman with a token or our great esteem and
751 appreciation. It has befallen my task to present this to you. I know we're late doing this. We
752 probably should have done it in January, but we felt like we wanted to do it in a better place
753 than in the Home Demonstration Kitchen. So, we waited until we moved back over here. I'd
754 like to present this to you now. You have to open it and tell us how much you like it.

755
756 Mr. Vanarsdall - Thank you.

757
758 Mr. Archer - How about a hand for Mr. Vanarsdall.

759
760 Mr. Vanarsdall - I don't have to save the paper? Hotdog, I know what this is.
761 Great Day. This is my style. I had wondered where it was, really. I really appreciate this. Just
762 the idea. It's nice. Thank goodness we got away from the plaques and all the stuff to hang on
763 the wall. Thank you very much.

764
765 Mr. Archer - Okay. Before we begin, I would like to welcome everybody to our
766 newly refurbished facility. There are a lot of things here, a lot of buttons to push, a lot of lights
767 to turn on, most of which we don't have the slightest idea what to do with. I would like to warn
768 you people who are here representing developers. Be careful of the buttons you push up
769 here, because you could boldly go where no man has ever gone before. With that I'll turn it
770 back over to Randy.

771
772 Mr. Silber - Thank you, Mr. Chairman. I think we can move into the 7:00
773 o'clock portion of the agenda dealing with the deferrals and withdrawals and Mr. Merrithew has
774 those, I believe.

775
776 Mr. John Merrithew, Principal Planner - Thank you, Mr. Secretary. Mr. Chairman, we have
777 several requests for deferrals and one required deferral on the 7:00 o'clock agenda. On the
778 first page of your agenda the first case in Varina:

779
780 **Deferred from the February 12, 1998 Meeting:**
781 **C-67C-97 Scott D. Stolte for Pendragon Development Company:**
782 Request to conditionally rezone from A-1 Agricultural District to R-3AC One Family Residence
783 District (Conditional), Parcel 238-A-31, containing 86.31 acres, located on the west line of I-
784 295 approximately 1,600' north of its intersection with New Market Road (State Route 5). A
785 residential subdivision is proposed. The R-2A District permits densities up to 3.23 units gross
786 density per acre. The Land Use Plan recommends SR 1 Suburban Residential 1
787 development, 1.0 to 2.4 units net density per acre, Office and Environmental Protection Area.

788
789 Because of the change in the zoning category they are requesting, they must readvertise the
790 case. So, you do not need to vote on this one, but it does have to be readvertised and
791 deferred. That deferral will be until April 9th.

792
793 Mr. Silber - Mr. Merrithew, I think it is still appropriate that they vote on the
794 deferral.

795
796 Mr. Merrithew - Okay.

797
798 Mr. Archer - Okay. We will then. Is there any one here in opposition to the
799 deferral of C-67C-97 Pendragon Development Company? Any opposition to the deferral?

800
801 Mr. Zehler - Is that per staff's request or per applicant's request?

802
803 Mr. Merrithew - Per applicant's request.

804
805 Mr. Zehler - With that, Mr. Chairman, I move that Case C-67C-97 be deferred
806 to April 9th per applicant's request.

807
808 Mr. Vanarsdall seconded the motion.

809
810 Mr. Archer - Motion made by Mr. Zehler, seconded by Mr. Vanarsdall to defer
811 Case C-67C-97 to April 9th. All those in favor say aye—all those opposed by saying nay. The
812 vote is 4-0 (Mr. Mrs. Dwyer absent, Donati abstained).

813
814 Mr. Merrithew - The next case in the Varina District.

815
816 **Deferred from the February 12, 1998 Meeting:**
817 **C-11C-98 Henry L. Wilton for Wilton Development Corp.:** Request to conditionally rezone
818 from R-4 One Family Residence District to R-5C General Residence District (Conditional), part
819 of Parcel 162-A-10A and Parcel 162-A-31, containing approximately 14.36 acres, located on
820 the south side of Gay Avenue approximately 600' east of Millers Lane and also fronting on the
821 north side of Denison Road at Altair Road. A multifamily apartment development is proposed.
822 The R-5 District permits densities up to 14.52 units gross density per acre. The Land Use Plan
823 recommends Urban Residential development, 3.4 to 6.8 units net density per acre. The site is
824 also in the Airport Safety Overlay District.

825
826 They have requested a deferral to April 9th as well.

827
828 Mr. Archer - Okay. Is any one here in opposition to deferment of C-11C-98
829 Henry L. Wilton for Wilton Development Corp. to the April 9, 1998 meeting?

830
831 Mr. Zehler - With that, Mr. Chairman, I move that Case C-11C-98 be deferred
832 to April 9th per applicant's request.

833
834 Mr. Vanarsdall seconded the motion.

835
836 Mr. Archer - Motion made by Mr. Zehler, seconded by Mr. Vanarsdall to waive
837 the time limit. All those in favor say aye—all those opposed by saying nay. The vote is 4-0
838 (Mr. Mrs. Dwyer absent, Donati abstained).

839
840 Mr. Merrithew - On Page 2 of my agenda and the first case in the Fairfield
841 District:

842
843 **Deferred from the February 12, 1998 Meeting:**
844 **C-8C-98 Jim Thornton for Virginia Center, Inc.:** Request to conditionally
845 rezone from B-3 Business District and R-2A One Family Residence District to B-2C Business

846 District (Conditional), Parcels 33-A-46 & 47, containing 16.047 acres, located at the southeast
847 corner of Brook Road (U. S. Route 1) and Virginia Center Parkway. Office, hotel and
848 restaurant uses are proposed. The use will be controlled by proffered conditions and zoning
849 ordinance regulations. The Land Use Plan recommends Office development.
850 They have requested a deferral until April 9, 1998.

851
852 Mr. Archer - Okay. Is any one here in opposition to deferment of C-8C-98
853 Virginia Center, Inc.? No opposition. I move deferral of C-8C-98 to the April 9, 1998 meeting
854 at the applicant's request.

855
856 Mr. Vanarsdall seconded the motion.

857
858 Mr. Archer - Motion made by Mr. Zehler, seconded by Mr. Vanarsdall to waive
859 the time limit. All those in favor say aye—all those opposed by saying nay. The vote is 4-0
860 (Mr. Mrs. Dwyer absent, Donati abstained).

861
862 Mr. Merrithew - On Page 3 of your agenda, again, the last item on the 7:00
863 o'clock agenda:

864
865 **C-13C-98 Ralph L. Axselle and Andrew M. Condlin for Windsor**
866 **Enterprises, LLC:** Request to conditionally rezone from A-1 Agricultural District and C-1
867 Conservation District to R-3C and R-3AC One Family Residence Districts (Conditional), Parcel
868 42-A-42 and part of Parcels 52-A-20 and 24B, containing 83.6 acres located on the north line
869 of Hungary Road approximately 510' east of Lydell Drive. A single family residential planned
870 community is proposed. The R-3 District permits densities up to 3.96 units gross density per
871 acre, and the R-3A District permits densities up to 4.59 units gross density per acre. The Land
872 Use Plan recommends Suburban Residential 1 development, 1.0 to 2.4 units net density per
873 acre, Suburban Residential 2 development, 2.4 to 3.4 units net density per acre, and
874 Environmental Protection Area.

875
876 The applicant also intends to file an application to vacate the Old Hungary Road right of way
877 which runs through the southern end of the site.

878
879 They have requested a deferral until April 9, 1998.

880
881 Mr. Archer - Any one here in opposition to deferment of C-13C-98 Windsor
882 Enterprises, LLC., April 13, 1998? I'm sorry. Do you have opposition to the deferment,
883 ma'am?

884
885 Lady from Audience - I misunderstood you.

886
887 Mr. Archer - I saw you raise your hand. That's all right. There's no
888 opposition. I move that C-13C-97 be deferred to the April 9, 1998 meeting at the applicant's
889 request.

890
891 Mr. Vanarsdall seconded the motion.

892

893 Mr. Archer - Motion made by Mr. Archer, seconded by Mr. Mr. Vanarsdall. All
894 those in favor say aye—all those opposed by saying nay. The vote is 4-0 (Mrs. Dwyer absent,
895 Mr. Donati abstained).

896
897 Mr. Merrithew - Thank you, Mr. Chairman. That's all I have for the 7:00 o'clock
898 agenda.

899 Mr. Archer - Thank you, Mr. Merrithew. Mr. Secretary.

900
901 Mr. Silber - I will call the first case.

902
903 **P-9-98 James W. Theobald and Charles H. Rothenberg for Sprint**
904 **PCS:** Request for approval of a provisional use permit in accordance with Sections 24-95(a)
905 and 24-122.1 of Chapter 24 of the County Code in order to construct and operate a
906 communication tower up to 160' high and related equipment and improvements on part of
907 Parcel 73-A-9 (1207 Hilliard Road) containing approximately 1,500 sq. ft. located on the south
908 line of Hilliard Road approximately 250' west of its intersection with Brook Road (U.S. Route 1).
909 The site is zoned B-3 Business District.

910
911 Mr. Archer - Thank you, Mr. Secretary. Is there any one here to speak in
912 opposition to P-9-98 Sprint PCS? No opposition. Mr. Bittner.

913
914 Mr. Mark Bittner, County Planner - Thank you, Mr. Chairman. I'd like to get into the material I
915 passed out. The staff is recommending some revised conditions; Conditions 1 and 2, and I'll
916 explain those real quickly. The first, as you know, is the issue with the R-5-zoned property,
917 which this would not be set back far enough from, based on Ordinance requirements.

918
919 After consulting the Zoning Administrator, we came up with this language, which we feel would
920 allow not only a variance, but a rezoning to happen in the future, as well. We felt that the
921 previous language in the staff report might have been restrictive and that a variance might be
922 the only way to go to meet that requirement.

923
924 The second condition, No. 2, was actually suggested by the applicant. That's because they
925 had redesigned the tower which is on the second sheet of the material I handed out to you.
926 They are now proposing a lattice tower, instead of a monopole. They would build it to be a
927 160 feet tall. However, it would also be constructed so that it could be heightened in the future
928 to 199 feet.

929
930 The Provisional Use Permit proposal is also for only 160 feet, meaning that if anyone else in
931 the future wanted to come and locate on this tower and heighten it, they would have to go
932 back through this process and receive a Provisional Use Permit as well. But still we would
933 have the capability to go up taller with this tower, instead of having, perhaps, another tower
934 built in the area.

935
936 Mr. Silber - Mr. Bittner, if I could ask, is the applicant aware that would
937 require resubmission of a provisional use permit to exceed 160 feet?

938
939 Mr. Bittner Yes. I have told him. I believe he's aware. With that, staff
940 recommends approval of this application, subject to those conditions listed in front of you. I'd
941 be happy to answer any questions you may have.

942
943 Mr. Zehler - Back to No. 1, it does not meet the setback requirements,
944 adjacent to an R-5?

945
946 Mr. Bittner - Correct. The flood plain, if you could look on the map, directly
947 south of the site is zoned R-5. Where they want to put the tower is too close to that. It has to
948 be set back at least 110 percent of its height from any residentially zoned district, which, in this
949 case, is about 185 feet or so. They are around 100 feet back from the R-5 property. However,
950 staff feels that property will never develop residentially because it is flood plain. Therefore,
951 staff does not have an objection to, perhaps, locating the tower in the area. But to meet all the
952 requirements, they would either have to obtain a variance in the future, or that property would
953 have to be rezoned.

954
955 Mr. Archer - So, they can't do it until the other is done?

956
957 Mr. Silber - Right.

958
959 Mr. Archer - Any other questions of Mr. Bittner by Commission members? I
960 would like to add one point because this actually came out of a meeting. At least, I think it did
961 from the meeting the applicant and I had with Mr. Yolton a couple weeks ago with regard to
962 building towers to their maximum height. I think it's something we're going to be seeing in the
963 future, so I'll try to make this explanation fit for all of the cases. We've got about four for
964 tonight.

965
966 We've been kind of selling ourselves on the idea that communication towers, if they are shorter
967 in height, are some way more attractive. Perhaps, they're not. At the same time we're trying
968 to entice collocation on each tower that we possibly can. And it seems like, from what I've
969 been able to gather, that we've done a pretty good job in Henrico of collocating. In fact, we've
970 just about used up all of our collocating towers. The one mistake that we may have made in
971 the past; I won't call it a mistake. We just didn't know any better. We allow towers to be built
972 up to a certain height because they were more attractive if they were shorter, which now
973 means, we are kind of defeating our own purpose because we have to build more of them,
974 since we can't collocate anybody else on the shorter towers. Mr. Yolton's idea, it makes more
975 sense to build the towers high as you can and, consequently, get as many users on one tower,
976 and, thereby, do away with having to build all these towers. Instead of having four, maybe you
977 could have one with one user, and three more. So, that's why we'll probably be seeing this
978 more in the future. Mr. Yolton, if that was your idea, I compliment you for it. I started to steal it,
979 but...

980
981 Mr. Vanarsdall - Along those same lines, I think this was brought up two, or three
982 years ago and that's when we didn't have as many people into the industry that we have now.
983 Everybody seems like they agreed to that, but I don't know what happened to it. I think
984 somebody "went to sleep at the wheel." So that is a good suggestion.

985
986 Mr. Archer - I think so, too.

987
988 Mr. Zehler - So, based on your statements, Mr. Chairman, we're going to see
989 less applications for towers now since we're going to be able to put more on them?

990

991 Mr. Archer - We'll start seeing more applications for provisional use permits to
992 collocate. Thank you, Mark. Mr. Rothenberg, I know you want to say something. Come on
993 up. There may be some questions for you, sir.
994
995 Mr. Vanarsdall - I don't think he really wanted to say anything, does he?
996
997 Mr. Archer - No, but make him anyway.
998
999 Mr. Chuck Rothenberg - I promise I won't touch anything. Mr. Chairman, ladies and
1000 gentlemen, my name is Churck Rothenberg, here on behalf of Sprint, tonight. Very briefly, this
1001 proposed tower is located adjacent to the VEPCO substation on Hilliard Road, just east of
1002 Brook Road. It's a compatible use with that area. I think the staff report indicates that we're
1003 not inconsistent with the Land Use Plan. Sprint does agree with the suggested conditions on
1004 the Provisional Use Permit. I'd be happy to answer any questions.
1005
1006 Mr. Archer - You don't have any problems with Nos. 1 and 1A with regard to
1007 the R-5 area?
1008
1009 Mr. Rothenberg - No. Those are fine.
1010
1011 Mr. Archer - You don't foresee any problem getting the rezoning, if you need
1012 to do it?
1013
1014 Mr. Rothenberg - Well, the filing date for the BZA is coming up on the 19th, I
1015 believe, and will get us on the May agenda for the BZA for a variance. We believe that the
1016 setback requirement for 110 percent from a residential zoning line is to make sure that if
1017 something absolutely horrendous happened and a tower, although this is I'm told structurally, if
1018 a tower fell over towards a residential property line, the tower would still fall short of the
1019 residential property line, because we're 110 percent of the tower height away from the
1020 residential property line. This floodplain is in R-5, as Mr. Bittner indicated. It is incredibly
1021 unlikely that that property will ever be developed for residential property. So, I think we've got
1022 a very good case before the BZA.
1023
1024 Mr. Archer - All right. Any questions of Mr. Rothenberg, by Commission
1025 members? Okay. We'll, we've studied this one at great length. It is in an area that is very
1026 near to the flood plain and also is next to a Virginia Power substation and kind of away from
1027 any development. So, with that, I move that we recommend approval of P-9-98 to the Board of
1028 Supervisors.
1029
1030 Mr. Vanarsdall seconded the motion.
1031
1032 Mr. Archer - Motion made by Mr. Archer, seconded by Mr. Mr. Vanarsdall. All
1033 those in favor say aye—all those opposed by saying nay. The vote is 4-0 (Mrs. Dwyer absent,
1034 Mr. Donati abstained).
1035
1036 REASON: Acting on a motion by Mr. Archer, seconded by Mr. Vanarsdall, the Planning
1037 Commission voted 4-1 (one absent, one abstention) to recommend that the Board of
1038 Supervisors **grant the requested revocable provisional use permit**, subject to the following
1039 conditions:

- 1040
1041 1. This permitted tower may be constructed if and when either:
1042
1043 a. The adjacent R-5 area is rezoned to other than an "R" district; or,
1044
1045 b. Relief from the requirement for setback from an "R" district is obtained.
1046
1047 2. The proposed tower and foundation shall be designed and constructed to permit the
1048 extension of the tower up to approximately 199 feet. A provisional use permit shall be
1049 required to construct the tower more than 160 feet high.
1050
1051 3. If the use of the tower for communication purposes is discontinued, the tower and all
1052 related structures shall be removed from the site within ninety (90) days.
1053
1054 4. Application for a building permit to install the tower must be made within one year after
1055 the Provisional Use Permit is granted by the Board of Supervisors, unless an extension
1056 of time is granted by the Director of Planning upon written request by the applicant.
1057
1058 5. The applicant shall obtain approval from the Henrico County Planning Commission
1059 should the FAA require the addition of standard obstruction marking and lighting to the
1060 tower (i.e., red lighting, and orange and white striping). The applicant shall notify the
1061 Henrico County Planning Director prior to making any changes to the original
1062 galvanized finish of the tower.
1063
1064 6. When site construction is initiated, the applicant shall complete requirements
1065 prescribed by Chapter 10 of the Henrico County Code. In particular, land disturbance
1066 of more than 2,500 square feet will require that construction plans include a detailed
1067 drainage and erosion control plan prepared by a professional engineer certified in the
1068 State of Virginia. Ten (10) sets of the construction plans shall be submitted to the
1069 Department of Public Works for approval.
1070
1071 7. A landscaping plan for the purpose of screening the base of the tower from view of
1072 public streets, shall be submitted to the Planning Office for approval prior to the
1073 issuance of a building permit for the tower. The Director of Planning may waive the
1074 enforcement of this condition if it is deemed unnecessary.
1075
1076 8. The applicant agrees to allow the collocation of as many additional users as technically
1077 possible at this site in accordance with the provisions of the Letter of Intent to Permit
1078 Collocation on Communications Tower filed by the applicant with this request.
1079

1080 The Planning Commission recommendation was based on its finding that the Provisional Use
1081 Permit is reasonable in light of the surrounding uses and existing zoning on the property; it
1082 would provide added services to the community; and it would not be expected to adversely
1083 affect public safety, health or general welfare.
1084

1085 **P-10-98 James W. Theobald and Charles H. Rothenberg for Sprint**
1086 **PCS:** Request for approval of a provisional use permit in accordance with Sections 24-95(a)
1087 and 24-122.1 of Chapter 24 of the County Code in order to construct and operate a
1088 communication tower up to 199' high and related equipment and improvements on part of

1089 Parcel 106-A-42A (State Fairgrounds and Auto Race Track), containing approximately 2,500
1090 sq. ft., located on the west side of Carolina Avenue approximately 0.4 mile north of Laburnum
1091 Avenue. The site is zoned M-2 General Industrial District.

1092

1093 Mr. Archer - Any one here in opposition to P-10-98? Mr. Bittner.

1094

1095 Mr. Mark Bittner, County Planner - Thank you, Mr. Chairman. This subject property is located
1096 on the north side of the main entrance to the State Fairgrounds from Carolina Avenue. The
1097 request is for a tower 199 feet tall. The site plan that they originally submitted, though, showed
1098 only a tower 157 feet tall. They have since revised that to show the tower that is 187 feet tall.
1099 Staff would prefer that they build it to the maximum height, which, in this case, is 199 feet.
1100 Beyond that, of course, several FAA regulations kick in. Staff would prefer, as I said, the
1101 tallest tower that they could build to maximize collocation opportunities. However, if the
1102 Commission ultimately decides to approve the application, staff recommends that it be
1103 approved with the conditions listed in the staff report. I'd be happy to answer any questions
1104 you may have.

1105

1106 Mr. Archer - Okay. Any questions of Mr. Bittner? I guess I need to ask Mr.
1107 Rothenberg, why just 187 feet? I'll ask him.

1108

1109 Mr. Chuck Rothenberg - Mr. Chairman, ladies and gentlemen, Chuck Rothenberg on
1110 behalf of Sprint. The reason why the plan showed this at 187 feet is because the stock
1111 monopole that Sprint typically uses is actually 180 feet tall. The antenna array sticks over
1112 about 2.5 feet above the top of the tower; and then a lightning rod needs to extend five feet
1113 above the antenna. That brings it to 187.6. We've discussed with Sprint. Sprint actually
1114 confirmed today that there's a company that makes a 190-foot tower, which is the tallest
1115 monopole that they can find. That would bring the tower height up to 197.5 feet. It would add
1116 about 10 feet some additional play room for a collocator, but that extension on the height
1117 would naturally increase structurally that the number of collocators that could be on that pole.
1118 It does, however, give you some more height.

1119

1120 Mr. Archer - So, you're saying we could have the same number of collocators
1121 at 187 feet as we could at 199? You're talking about 12 feet.

1122

1123 Mr. Rothenberg - Structurally, if the providers are using the same type of
1124 technology and antenna arrays, you could have three collocators, plus Sprint, so a total of four
1125 antenna arrays on this tower. But adding the additional 10 feet doesn't make room for a fifth
1126 antenna array because, structurally, the tower is only going to support four antenna arrays.
1127 What that extension does for you is, for example, if Sprint is at the top of the tower, their
1128 antenna array is located at 190 feet. The next array could be located at 175 feet, because of
1129 the spacing requirements between arrays. So, if another company came in and said, "Gee
1130 whiz, I'd like to be at 175 feet," that would work. If we were using a 187-foot pole, Sprint would
1131 be at 180 feet and the next array would have to be down at 165. So, there is some likelihood
1132 that a provider would need to have the 10 feet of additional height. I can only speculate as to
1133 that likelihood. It's probably unlikely, but we don't know. So, I think that's the advantage of
1134 having a higher tower.

1135

1136 Mr. Zehler - Is that the reason why you have not agreed to the additional
1137 height, because, basically, its really no use?

1138

1139 Mr. Rothenberg - Sprint is happy to agree to the 190 feet. We can just only
1140 speculate as to whether or not someone would actually need the 10 feet additional height in
1141 order to satisfy their coverage requirements.
1142
1143 Mr. Zehler - Basically, it's wasted. You cannot put another collocator on it.
1144
1145 Mr. Rothenberg - We're not adding any additional collocator capacity. We're not
1146 going to add a fifth antenna array.
1147
1148 Mr. Silber - Mr. Rothenberg, maybe I've lost it in my paperwork here, but I
1149 think there's a condition that says you would allow the collocation of a minimum of one
1150 additional user? I think that applies to this use permit.
1151
1152 Mr. Rothenberg - That's right.
1153
1154 Mr. Silber - You're not agreeable to having it increased to more than one?
1155
1156 Mr. Rothenberg - We are. This is a discussion that Mark Bittner and I had. We're
1157 fine having a condition provide for three collocators.
1158
1159 Mr. Archer - You're saying a minimum of one?
1160
1161 Mr. Rothenberg - Right. Mr. Bittner's position was that, that accomplished the task
1162 based on the last Planning Commission where we had that discussion by changing the
1163 phrasing to provide that we would provide a minimum of one spot for a collocator. We're
1164 getting over that.
1165
1166 Mr. Archer - I think that may have come out of the language that we were
1167 talking about at the last meeting, where it looked like we were locking ourselves into only one,
1168 instead of the minimum of one.
1169
1170 Mr. Zehler - Shouldn't it stipulate a maximum as well as a minimum, if you're
1171 going to stipulate the minimum?
1172
1173 Mr. Archer - Probably not, because we want to get as many on there as we
1174 could, I think, that the tower will bear anyway.
1175
1176 Mr. Zehler - Based on the height, he's already told us the maximum is three,
1177 other than himself, which would make a maximum of four. The way I'm reading this, if he uses
1178 it, and has one collocator, that's all he's required to do?
1179
1180 Mr. Archer - What he's saying is, there is a minimum of one additional. It could
1181 be as many as could actually fit on there, but at least one. I think the intent of the language is,
1182 if you say one collocator, then that means, technically, you can only have one. So, by just
1183 saying a minimum of one, it doesn't really establish a maximum. You can put as many as will
1184 fit, but at least one.
1185
1186 Mr. Zehler - But as long as he meets the one, he's met the minimum
1187 requirement, so he doesn't have to collocate any other users?
1188 Mr. Archer - No. I don't think that's his intent. No.

1189
1190 Mr. Zehler - It doesn't say that.
1191
1192 Mr. Silber - Mr. Bittner, do you want to elaborate from the Staff's perspective
1193 as to the appropriateness of one?
1194
1195 Mr. Bittner - The condition of that minimum of one does not specify any
1196 number of users other than more than one. Our objective is to get the tower built to the
1197 maximum height they can to maximize the total number that they could eventually get in the
1198 future. No. 6, as I read it, Condition No. 6, would allow two collocators, three, four, ten, twenty
1199 collocators if technically possible. But what we're seeking to have them do is to build a tower
1200 up to that 199 foot level which would maximize the opportunities in the future to get four, five,
1201 six, whatever.
1202
1203 Mr. Zehler - Does he satisfy his requirements if he builds the tower, he uses
1204 it, and he puts one collocator on there, and doesn't offer it to anybody else? There's nothing
1205 we can do about it, because he's already agreed that he's going to put one
1206 minimum?
1207
1208 Mr. Bittner - Well, I don't believe that condition says that he can only offer it to
1209 one, but refuse other collocators to come on there.
1210
1211 Mr. Zehler - But he's met the requirement of one minimum.
1212
1213 Mr. Bittner He's met the requirement of allowing collocation, No. 1.
1214 Technically, he's not a collocator. Other companies would come to us and say, "We're going
1215 to come to Sprint. We want to locate on your tower." If they're turned down by Sprint for
1216 whatever reason, the company, I'm assuming would come to us to, of course, build their own.
1217 Our first question would be, "Why don't you go to the Sprint tower. They can put five on
1218 theirs." Then we would settle at that point. But I don't believe Condition 6 locks us into two
1219 collocation opportunities at all.
1220
1221 Mr. Zehler - But how does it lock us into any additional collocators, other than
1222 the one?
1223
1224 Mr. Bittner - It doesn't lock us into any, but I'm saying the condition doesn't
1225 guarantee us four or five opportunities, let's say. Getting them to build a tower 199 feet would
1226 give us the most opportunities in the future.
1227
1228 Mr. Zehler - But how would we stand if they were allowed one collocator and
1229 they refused other collocators? Based on the way No. 6 is written, they've already met the
1230 requirement. It doesn't say how many maximum, but it stipulates one minimum. If they allow
1231 one collocator and they decide for some reason they don't want anybody else on that tower,
1232 what grounds do we have to say, "No. You can't?"
1233
1234 Mr. Bittner - I would say, our grounds would be, if people wanted to collocate
1235 on their tower and Sprint was refusing them, they would have to come to the County to ask for
1236 the right to build their own tower. We would say, "Why won't Sprint let you come on to their
1237 tower?" Then Sprint would have to demonstrate to us why they wouldn't allow this. If Sprint

1238 said, that that requires us to allow, two, I would say, "No. That's not the case. It requires you
1239 to provide a minimum of one, but it doesn't say, 'only one'".

1240
1241 Mr. Zehler - But he's met the requirement of the one? I think we're leaving
1242 ourselves wide open for a big issue.

1243
1244 Mr. Archer - Mr. Yolton, can you clarify this? I think I'm clear on it.

1245
1246 Mr. Yolton - I wanted just to add something. For every Provisional Use Permit
1247 for a tower, the applicants are required to submit a letter of intent to allow collocation on a
1248 tower. That letter, basically, says that they will negotiate in good faith with anyone who comes
1249 and approaches them and wants to locate on that tower. So, we do have that letter of intent in
1250 the file that, essentially says they will allow anyone as long as its technically feasible to
1251 collocate on this tower. So, I think it maybe sort of supercedes this condition, because we
1252 already have a letter in the file that says that they will allow anyone, after negotiating with
1253 them, to locate on this tower. So, I just wanted to add that. That is in the file.

1254
1255 Mrs. Wade - As I understand it, the height is not the only concern. It has to be
1256 structurally sound enough to hold more.

1257
1258 Mr. Archer - Right. Mr. Rothenberg, are we able to do a monopole at 199
1259 feet?

1260
1261 Mr. Rothenberg - The tallest stock monopole that's made is 190 feet. That's about
1262 as tall as you can go on a monopole, before you run into structural issues. Mr. Zehler, if you
1263 have any concern about that condition, Sprint is happy, as I communicated to you and Mr.
1264 Bittner before, to provide that we'll have a minimum of three collocations in accordance with
1265 the Letter of Intent. We're happy to do that. The intent certainly is to do that.

1266
1267 Mr. Zehler - Thank you. We have you on record...

1268
1269 Mrs. Wade - Can you put more on monopoles or lattice?

1270
1271 Mr. Rothenberg - The lattice are more accommodating for collocation because in a
1272 monopole, all the channels run up the center or the tower, unless you strap them to the
1273 outside. The cables, obviously, on a lattice can run up the sides of that and you have much
1274 more room to work with. So, the lattice towers have been a little bit more helpful in that sense.

1275
1276 Mr. Archer - Mr. Rothenberg, since there seems to be some confusion about
1277 this minimum, and you did say that is possible, there could be as many as three additional
1278 collocators. Based on the height that you now have, would you be willing to change that
1279 condition to say "a minimum of three additional users?"

1280
1281 Mr. Rothenberg - Yes sir.

1282 Mr. Archer - Would that satisfy you, Mr. Zehler?

1283
1284 Mr. Zehler - I don't know why we would have to say minimum. Why can't we
1285 say "collocation of three additional users." Why do we have to stipulate "minimum or
1286 maximum." Then just say, "plus three additional users."

1287

1288 Mr. Archer - I can live with that.
1289
1290 Mr. Zehler - That's, basically, what they're saying before us tonight.
1291
1292 Mr. Archer - "Applicant agrees to allow the collocation of three additional
1293 users."
1294
1295 Mr. Rothenberg - Yes sir.
1296
1297 Mr. Rothenberg - That's our intent.
1298
1299 Mr. Archer - All right. Very good. Any further questions of Mr. Rothenberg?
1300 Thank you, sir. Again, this is in an area that could be a benefit to the County. This is for a
1301 monopole. I think a monopole would be much more attractive at that location, which, I think, is
1302 right near Gate 6 at the Fairgrounds. In my opinion, a monopole would have more aesthetic
1303 appeal than a lattice, particularly when you look at the light poles that already surround the
1304 race track out there. I think I'm satisfied with this explanation for a maximum of 190 feet, as
1305 long as we can get the three additional collocators. So, with that, I move approval of P-10-98,
1306 subject to the staff report and the additional six conditions listed in that report, with Condition 6
1307 being amended to read, "The collocation of three additional users."
1308
1309 Mr. Zehler seconded the motion.
1310
1311 Mr. Archer - Motion made by Mr. Archer, seconded by Mr. Zehler. All those in
1312 favor say aye—all those opposed by saying nay. The vote is 4-0 (Mr. Mrs. Dwyer absent,
1313 Donati abstained).
1314
1315 REASON: Acting on a motion by Mr. Archer, seconded by Mr. Zehler, the Planning
1316 Commission voted 4-1 (one absent, one abstention) to recommend that the Board of
1317 Supervisors **grant the requested revocable provisional use permit**, subject to the following
1318 conditions:
1319
1320 1. If the use of the tower for communication purposes is discontinued, the tower and all
1321 related structures shall be removed from the site within ninety (90) days.
1322
1323 2. Application for a building permit to install the tower must be made within one year after
1324 the Provisional Use Permit is granted by the Board of Supervisors, unless an extension
1325 of time is granted by the Director of Planning upon written request by the applicant.
1326
1327 3. The applicant shall obtain approval from the Henrico County Planning Commission
1328 should the FAA require the addition of standard obstruction marking and lighting to the
1329 tower (i.e., red lighting, and orange and white striping). The applicant shall notify the
1330 Henrico County Planning Director prior to making any changes to the original
1331 galvanized finish of the tower.
1332
1333 4. When site construction is initiated, the applicant shall complete requirements
1334 prescribed by Chapter 10 of the Henrico County Code. In particular, land disturbance
1335 of more than 2,500 square feet will require that construction plans include a detailed
1336 drainage and erosion control plan prepared by a professional engineer certified in the

1337 State of Virginia. Ten (10) sets of the construction plans shall be submitted to the
1338 Department of Public Works for approval.
1339

1340 5. A landscaping plan for the purpose of screening the base of the tower from view of
1341 public streets, shall be submitted to the Planning Office for approval prior to the
1342 issuance of a building permit for the tower. The Director of Planning may waive the
1343 enforcement of this condition if it is deemed unnecessary.
1344

1345 6. The applicant agrees to allow the collocation of as many additional users as technically
1346 possible at this site in accordance with the provisions of the Letter of Intent to Permit
1347 Collocation on Communications Tower filed by the applicant with this request.
1348

1349 The Planning Commission recommendation was based on its finding that the Provisional Use
1350 Permit is reasonable in light of the surrounding uses and existing zoning on the property; and
1351 when properly developed and regulated by the recommended special conditions, it would not
1352 be detrimental to the public health, safety, welfare and values in the area.
1353

1354 **C-12C-98 Charles H. Rothenberg for Sprint PCS:** Request to amend
1355 proffered conditions accepted with rezoning case C-82C-94 on Parcel 53-A-20A, containing
1356 3.05 acres, located on the east side of Mountain Road approximately 600' northwest of Yellow
1357 Tavern Park Road. The amendment would add a communication tower as a permitted use.
1358 The site is zoned M-2C General Industrial District (Conditional). The Land Use Plan
1359 recommends Commercial Concentration development.
1360

1361 Mr. Archer - Thank you, Mr. Secretary. Is there any one here in opposition to
1362 C-12C-98 Charles H. Rothenberg for Sprint PCS? Any opposition? Mr. Yolton.
1363

1364 Mr. Lee Yolton, County Planner - Mr. Chairman, members of the Commission, as mentioned,
1365 this is a request for an amendment to the proffered conditions accepted with the 1994
1366 rezoning of this site to the M-2 Industrial District. The intent of the proffered condition
1367 amendment is to enable a site...(Gap in tape – testimony not recorded).
1368

1369 Mr. Archer - ...have this tower built so that it could also be raised to
1370 accommodate users beyond the 160 foot level. It would allow for collocation. Mr. Brewsters'
1371 argument was, if we're going to have collocation, then why do we need a proffer that says,
1372 we're going to have more than one tower in the same spot? I tried very hard, but I couldn't
1373 argue with his premise at all. He also was very much in favor of us having public hearings any
1374 time there is a potential change to land use. And I have to agree with him on that also. So,
1375 I've discussed this with Mr. Rothenberg and also with Mr. Yolton. He is agreeable to leaving
1376 the proffer, as it was originally stated, for one tower, but to allow for additional collocation. I
1377 just wanted the Commission members to understand that. So, that's why we want to change
1378 that proffer back to the way it originally read.
1379

1380 Mr. Chuck Rothenberg - I am Chuck Rothenberg on behalf of Sprint. That's correct.
1381

1382 Mr. Archer - For the record, you're in agreement for doing that?
1383

1384 Mr. Rothenberg - Yes sir.
1385

1386 Mr. Zehler - Mr. Chairman, is this the proffer that we're...I don't think I got a
1387 change.

1388
1389 Mr. Archer - You may not have gotten it. Mine was faxed to me yesterday.

1390
1391 Mr. Silber - The original staff; green staff report, would not have made that
1392 change, so you can assume that is still correct, if Mr. Rothenberg changes it back.

1393
1394 Mr. Rothenberg - That's the proffer Sprint is agreeing to keep just the way it is.

1395
1396 Mr. Archer - Okay. Any further questions of Mr. Rothenberg? There being
1397 none, I move to recommend approval of C-12C-98 Sprint PCS to the Board.

1398
1399 Mr. Vanarsdall seconded the motion.

1400
1401 Mr. Archer - Subject to the original Proffer No. 2. Motion made by Mr. Archer,
1402 seconded by Mr. Vanarsdall. All those in favor say aye—all those opposed by saying nay.
1403 The vote is 4-0 (Mr. Mrs. Dwyer absent, Donati abstained).

1404
1405 REASON: Acting on a motion by Mr. Archer, seconded by Mr. Vanarsdall, the Planning
1406 Commission voted 4-1 (one absent, one abstention) to recommend that the Board of
1407 Supervisors **accept the amended proffered condition** imposed with **C-82C-94** because the
1408 changes do not greatly reduce the original intended purpose of the proffers; and it is not
1409 expected to adversely impact surrounding land uses in the area.

1410
1411 **P-11-98 Kevin C. Hardin, Sr.:** Request for approval of a provisional use
1412 permit in accordance with Sections 24-58.2(a) and 24-122.1 of Chapter 24 of the County
1413 Code to permit extended hours of operation to 2:00 a.m. for a restaurant (Lakeside Tavern) on
1414 part of Parcel 94-14-2-41 (Bryan Parkway Subdivision), containing 3,425 sq. ft., located on the
1415 west line of Lakeside Avenue approximately 26' south of New Bern Road (5404 1/2-5406
1416 Lakeside Avenue). The site is zoned B-2 Business District.

1417
1418 Mr. Archer - Okay. Thank you, Mr. Secretary. Any one here in opposition to
1419 P-11-98 Kevin C. Hardin, Sr.? Any opposition? Thank you. We'll get to you. Okay. Mark.

1420
1421 Mr. Mark Bittner, County Planner - Thank you, Mr. Chairman. This is 3,425 square feet in
1422 size. It is part of a shopping center that includes other businesses such as Coleman Brothers
1423 Florist, Lakeside Hair Design, and the Bryan Park Barber Shop. A single family neighborhood
1424 is adjacent to the rear border of this site. The closest residence is approximately 60 feet away.

1425
1426 The Police Department has expressed concern with this request. They state that the limited
1427 parking in this area tends to be a concern with the nearby residences, and that businesses in
1428 this area have complained about trash and beer cans left from the patrons of this restaurant in
1429 the past.

1430
1431 Lakeside Avenue is a commercial corridor. However, no other business along Lakeside
1432 Avenue, contacted by staff, currently stays open past 12:00 Midnight, other than the Dominio's
1433 Pizza Delivery Service which stays open until 12:45 a.m. on weekends only.

1434

1435 Staff has received a letter from the Lakeside Business Association in opposition to this
1436 request. We also received a letter tonight from Franco's also stating their opposition to this
1437 request.

1438
1439 Given the concerns expressed by the Police, the operating hours of surrounding businesses,
1440 and the proximity of single family residences, staff cannot recommend approval of this
1441 application. If this application is determined to be reasonable, staff recommends approval with
1442 the conditions contained in the staff report. I'd be happy to answer any questions you may
1443 have, and so would Kim Vann who is here from the Police Department tonight.

1444
1445 Mr. Archer - Thank you, Mr. Bittner.

1446
1447 Mr. Vanarsdall - So, you do not recommend approval?

1448
1449 Mr. Bittner - No. We do not recommend approval.

1450
1451 Mr. Zehler - Who was there first; the business or the residents?

1452
1453 Mr. Bittner - I can't answer that. I don't know.

1454
1455 Mrs. Wade - Do they park in the rear of this. Do you know?

1456
1457 Mr. Bittner - I'm not sure where they park. Parking is very tight on that site.

1458
1459 Mrs. Wade - I made the mistake of trying to drive around behind it.

1460
1461 Mr. Archer - Any further questions for Mr. Bittner? Thank you, Mark. We'll
1462 hear from the applicant. Is the applicant here?

1463
1464 Mr. Kevin Hardin - I'm the new owner of Lakeside Tavern. We requested this permit
1465 because there has been a restaurant/bar there for approximately 30 years under three
1466 different names. During that time, most of the time it has been open, even though they did not
1467 have a license. I did not know there was not a license in place until I tried to get the business
1468 license. I know the bar that's there now has been open until 2:00 a.m. since they opened.
1469 Before with Lakeside Tavern, it was Snookeys. They opened until 2:00 a.m. the majority of the
1470 time. I know, personally, because my grandfather and I used to go in there and shot pool.

1471
1472 Bringing up the issue of the beer cans and beer bottles outside, since this has come up, before
1473 we bought it when we were considering it, and most of the beer bottles and beer cans that are
1474 there are types that the tavern does not even carry. We keep somebody at the door so no one
1475 goes outside with alcohol. There's only ABC on license, not off. We have no problem with
1476 sending somebody, or us, personally, going out afterwards and walking that block and
1477 cleaning everything up.

1478
1479 I believe that a lot of the problems that have happened in the last year were because the
1480 people who own it now bought it because it had sat for awhile and it had caught fire;. Redid it
1481 to sell and retire. I don't think they really had a lot of concern with making it a big business.
1482 They've only had it open for, not quite a year, I believe, since it was redone after the fire. They
1483 didn't seem to be there a lot. So, I don't think they had a lot of concern with what really went

1484 on. They were just trying to sell it. We're buying it for a business to take care of and live off
1485 of. We'll be there, my wife and I, 90 percent of the time, Quite a few things will change.

1486
1487 As far as the parking, during the day, if the restaurant was slam packed, there would be a
1488 problem with parking. It doesn't work out that way. During the day, there's very few
1489 customers. Most of the business starts after 6:00 or after 5:00, actually, with dinner. Most
1490 everything in that shopping center closes between 5:00 and 6:00. And, at that point, there's
1491 plenty of parking. There's parking in the back, and there's parking throughout the entire
1492 shopping center all the way across the front and down both sides. As far as I know, after the
1493 hours the other stores have closed, there's not been any problem with parking.

1494
1495 Mr. Archer - Okay. Thank you, Mr. Hardin. Any questions for Mr. Hardin?

1496
1497 Mr. Vanarsdall - Mr. Hardin, did you have a blue and white sign in front of your
1498 place announcing this rezoning?

1499
1500 Mr. Hardin - I don't believe so.

1501
1502 Mr. Archer - I think there was. I think I saw one the other day.

1503
1504 Mr. Hardin - Nobody said I ever needed to have anything like that.

1505
1506 Mr. Silber - No. The blue sign that he's referring to is a sign that is posted by
1507 the County to inform persons who may drive by or live in the area of the change.

1508
1509 Mr. Hardin - I don't know. At the time this was going through, we did not
1510 have possession of the store. So, we started this when we got the business license. This was
1511 before we ever took it over. So, there may have been a sign there. I don't know.

1512
1513 Mr. Archer - Well, this would have been a sign posted recently announcing
1514 this rezoning case.

1515 Mr. Hardin - I still wouldn't know. We haven't taken the store over yet. We're
1516 still in the process of changing everything over.

1517
1518 Mr. Archer - Is the store open?

1519
1520 Mr. Hardin - Oh yeah. The store is in business now. We're there often when
1521 we go by and check it. We're in contact with the owners everyday. We haven't gotten the new
1522 health inspection yet. Things like that are just holding us up.

1523
1524 Mr. Zehler - You are not the property owner?

1525
1526 Mr. Hardin - Not right now. No. We don't own the property anyway. The
1527 property is leased. I mean the building is leased.

1528
1529 Mrs. Wade - Who owns the property in the area behind these stores?

1530
1531 Mr. Hardin - Well, the entire block is owned, I believe; well, it's managed by
1532 NationsBank through Pollard & Bagby. I'm not sure who owns it. It's owned in an estate. It's
1533 a private owner, but I couldn't tell you who that was.

1534
1535 Mr. Archer - Okay. Any further questions of Mr. Hardin? Ready for the
1536 opposition. Thank you, Mr. Hardin.

1537
1538 Mr. Peter Francisco, President, Lakeside Business Association - I'm a business owner on
1539 Lakeside Avenue and a property owner on Lakeside Avenue. I have a letter, tonight, from the
1540 Lakeside Business Association which is addressed to Mr. Bittner and also copies of that were
1541 given to the Chairman of the Planning Commission and also to the Brookland District
1542 Supervisor, and the Fairfield District Supervisor.

1543
1544 We're in opposition to the Provisional Use Permit to extend hours of the Lakeside Tavern. I
1545 also have letters written today from Mr. Franco and (unintelligible) to Mr. Britton which is talked
1546 about just a minute ago, addressed to the County staff stating his opposition. I also have a
1547 copy of the letter sent to Dick Glover today by Larry Moffitt of the Bryan Park Civic Association,
1548 expressing opposition by Bryan Park Civic Association.

1549
1550 One of the largest reasons for Bryan Park, as it was stated by him, residential houses are
1551 within 60 feet of this business. There are narrow streets and the businesses that exist there
1552 right now, do use these streets for parking. It's bad enough the businesses are allowed to stay
1553 open to 12:00 o'clock at night. With a lot of the rowdy behavior that has occurred in this area
1554 in the past, these people now would be subjected to rowdy up until 2:00 o'clock in the morning.
1555 I think this is just more than what should be called for.

1556
1557 The business, itself, has approximately fifty to sixty feet of frontage; maybe less than that. If
1558 they were to utilize the parking of the entire center at nighttime, then all the businesses would
1559 be kept from night business (unintelligible). They really don't have enough parking. They don't
1560 have the security. It's just been an eyesore type of business in there. I don't know that this
1561 company would change it. This has been the past history of it. If there are any questions, I'd
1562 be glad to answer them.

1563
1564 Mr. Archer - Are there any questions for Mr. Francisco?

1565
1566 Mr. Vanarsdall - Yes. Even previous owners way back have never had 12:00
1567 o'clock hours, have they?

1568
1569 Mr. Francisco - I'm not aware of any. No sir.

1570
1571 Mr. Archer - All right. Any further questions? Is there any one else to speak
1572 in opposition to P-11-98? I guess not. We'll have to have a motion. Well, I have driven by
1573 this establishment twice. Well, more than twice, actually. I wanted to come by it once at
1574 nighttime to see what the parking situation looked like. It is a small building, and it's utilized
1575 within what, I guess you would call, a strip row of businesses. It is very close to a residential
1576 neighborhood. I did get a letter from Mr. Francisco from the Lakeside Business Association
1577 which has 13 businesses listed on its letterhead as being involved in the Association. As Mr.
1578 Bittner said, we did get a further letter tonight. All of these are in opposition to extending these
1579 business hours. I haven't had anything at all supporting it. The Staff Police report that we got
1580 was also in opposition to allowing these extended hours.

1581
1582 One of the major tenets of this Commission is that we have to protect and preserve the health,
1583 safety, and welfare of the community. I don't know that we can enhance that in any way by

1584 advancing this request. Even though the Board may see differently, it will meet on the 8th of
1585 April is when this matter will be brought before the Board of Supervisors. But my
1586 recommendation is to deny the request for P-11-98.

1587
1588 Mr. Vanarsdall seconded the motion.

1589
1590 Mr. Archer - Motion made by Mr. Archer, seconded by Mr. Vanarsdall to deny
1591 the request. All those in favor say aye—all those opposed by saying nay. The vote is 4-0 (Mr.
1592 Mrs. Dwyer absent, Donati abstained).

1593
1594 REASON: Acting on a motion by Mr. Archer, seconded by Mr. Vanarsdall, the Planning
1595 Commission voted 4-1 (one absent, one abstention) to recommend that the Board of
1596 Supervisors deny the requested revocable provisional use permit, because the extension
1597 of hours could impact the health, safety, and welfare of residents in the area; and it could have
1598 a detrimental impact on property owners in the vicinity.

1599
1600 Man from Audience - Could I interject something, if you don't mind, with this case, very
1601 quickly?

1602
1603 Mr. Silber - Yes sir.

1604
1605 Mr. Joseph Watson - This is on C-17C-98 on the back page. We know builders have
1606 an obligation to notify the people living in the community if they want to change a rezoning
1607 request and things like this. So, this is twice this has happened to me in the last year and a
1608 half where we get notified of a zoning. We're never notified of a cancellation.

1609
1610 Mr. Vanarsdall - May I interrupt you, sir. May I interrupt you? Why don't you
1611 come to the microphone so we can get all this on tape, and that would be useful information
1612 for us.

1613
1614 Mr. Silber - Sir, before you go any further, if I could just advise you, and
1615 maybe you already know this, but if I could inform you, that request has been withdrawn.

1616
1617 Mr. Watson - Right. I realize this. That's my complaint. Not that it's been
1618 withdrawn, but that the builders, and this has happened twice now in a year and a half, have
1619 an obligation to send the neighbors notification of the rezoning. It appears to be no obligation
1620 at all to send notice to anybody that it has either been withdrawn or postponed or anything
1621 else. One time we came down, 26 people, and found out it was postponed. This time, there's
1622 two of us, but we contacted 10 other people to come down and protest against it. Now, we
1623 found it's withdrawn. It should be some regulation or something to notify that it's not being
1624 held, as well as when it is being held. We lost a lot of time, a lot of effort coming down here to
1625 protest it to find out they've done something else. It's just a comment.

1626
1627 Mr. Silber - Yes sir. If I could address that. First, may we have your name,
1628 please?

1629
1630 Mr. Watson - Mr. Joseph Watson. I'm living in Brookmeade in the Wyndham
1631 development.

1632

1633 Mr. Silber - Okay. If I could address your concern. I am sympathetic to some
1634 of these processes. That request was filed yesterday with the County. So, we have just
1635 received it. It's not like we've had it for some time. It's very difficult to inform everyone of
1636 withdrawals or requests for deferrals. In fact, deferrals have to be acted on by this
1637 Commission. So, it's not officially deferred until it's acted on by this Commission. I think it's
1638 really important that persons who are tracking a rezoning request or development proposal
1639 contact our office and find out what the latest status is. Either the day before or the day of the
1640 meeting, we'd be more than happy to let you know what's proposed to happen. But to have us
1641 contact all the surrounding property owners...
1642

1643 Mr. Watson - No. I'm not saying you. I'm saying the person who files the
1644 request. It's their responsibility.
1645

1646 Mr. Silber - I'm with you on that. If they are aware of who needs to be
1647 contacted, there are civic association leaders that could be contacted. But our office is here
1648 also to inform you of the latest status of any case.
1649

1650 Mr. Watson - Okay. I was just a little bit irritated to come down twice and have
1651 the same thing happen twice.
1652

1653 Mr. Silber - Understood.
1654

1655 Mr. Archer - Sir, we understand your irritation. If I might add something to
1656 what Mr. Silber just said. A deferral has to be voted on. A developer could possibly request a
1657 deferral, and the Commission votes not to grant it. And that means the case would be heard.
1658

1659 Mr. Watson - Well, the other time it was deferred. When we got here, it was
1660 deferred.
1661

1662 Mr. Archer - It's a dilemma that we don't have a ready answer for. We
1663 appreciate your concern.
1664

1665 Mr. Watson - Well, maybe you can do something. We'll try calling earlier. It
1666 just gets to me after awhile.
1667

1668 Mr. Archer - I understand.
1669

1670 Mrs. Wade - Generally, if they've been in contact with the neighborhood, of
1671 course, they let you know. As Mr. Silber said, we certainly try to encourage that. But we still
1672 recommend that at least one person come from the neighborhood with a withdrawal. I'm sorry.
1673 With a deferral.
1674

1675 Mr. Watson - Either one, it should be.
1676

1677 Mrs. Wade - It should.
1678

1679 Mr. Watson - Okay. Thank you.
1680

1681 Mrs. Wade - You might talk with Mr. (unintelligible).
1682

1683 Mr. Silber - I think what we'll do at this time, since it is 8:00 o'clock, I think the
1684 Commission is interested in taking a break. We will first handle the deferred cases. Mr.
1685 Merrithew, if you'll run through those, please?

1686
1687 Mr. Merrithew - Thank you. Deferred cases on the 8:00 o'clock agenda is the
1688 first case. I believe we're still in the Fairfield District.
1689

1690 **C-14C-98 James Thornton for Virginia Center, Inc.:** Request to
1691 conditionally rezone from O-3C Office District (Conditional) to M-1C Light Industrial District
1692 (Conditional), part of Parcel 24-A-8D, containing approximately 61.74 acres, located on the
1693 east line of I-95 approximately 1,620' north of Virginia Center Parkway within the Virginia
1694 Center development. Light Industrial uses are proposed. The uses will be controlled by
1695 proffered conditions and zoning ordinance regulations. The Land Use Plan recommends
1696 Office development.
1697

1698 They have requested a deferral until May 14, 1998.
1699

1700 Mr. Archer - Is any one here in opposition to deferment of C-14C-98 Virginia
1701 Center, Inc. to the May 14th, 1998 meeting? No opposition. I move the deferral of C-14C-98 to
1702 the May 14, 1998 meeting at the applicant's request.
1703

1704 Mr. Vanarsdall seconded the motion.

1705 Mr. Archer - Acting on a motion by Mr. Archer, seconded by Mr. Vanarsdall.
1706 All those in favor say aye—all those opposed by saying nay. The vote is 4 to 0 (Ms. Dwyer
1707 absent, Mr. Donati abstained).
1708

1709 Mr. Merrithew - On the same page of the agenda in the Three Chopt District.
1710

1711 **Deferred from the December 11, 1997 Meeting:**

1712 **C-84C-97 Robert M. Atack for Atack Waterfront L.L.C.:** (Request to
1713 conditionally rezone from A-1 Agricultural District to R-3AC One Family Residence District
1714 (Conditional), Parcel 18-A-17 containing 6.82 acres located on the east line of Shady Grove
1715 Road approximately 1,200' north of Hames Lane (5273 Shady Grove Road). A residential
1716 subdivision is proposed. The R-3A District permits densities up to 4.58 units gross density per
1717 acre. The Land Use Plan recommends Suburban Residential 2 development, 2.4 to 3.4 units
1718 net density per acre, and Environmental Protection Area.
1719

1720 They have requested a deferral until July 9, 1998.
1721

1722 Mr. Vanarsdall - You said July 9th?
1723

1724 Mr. Merrithew - July 9th. That's correct.
1725

1726 Mr. Archer - Okay. Is there any one here in opposition to deferring C-84C-97
1727 Atack Waterfront L.L.C.? No opposition. Is there a motion?
1728

1729 Mrs. Wade - I move that Case C-84C-97 be deferral to the 9th of July at the
1730 applicant's request.
1731

1732 Mr. Vanarsdall seconded the motion.

1733

1734 Mr. Archer - Acting on a motion by Mrs. Wade, seconded by Mr. Vanarsdall.
1735 All those in favor say aye—all those opposed by saying nay. The vote is 4 to 0 (Ms. Dwyer
1736 absent, Mr. Donati abstained). The case is deferred to July 9th.

1737

1738 **C-17C-98 Bryan E. Kornblau:** Request to conditionally rezone from R-2AC
1739 One Family Residence District (Conditional) to R-3AC One Family Residence District
1740 (Conditional), Parcels 10-4-A-1 and 2; 10-4-B-14,16-18, 22, 24, 26-28, 30-52; and 10-4-C-1, 2,
1741 4, 6, 8-15 (lots within Dominion Hills Subdivision), containing approximately 15.8 acres, located
1742 on the north line of Nuckols Road approximately 0.5 mile west of its intersection with Shady
1743 Grove Road. A single family residential subdivision is proposed. The R-3A District permits
1744 densities up to 4.59 units gross density per acre. The Land Use Plan recommends Suburban
1745 Residential 1 development, 1.0 to 2.4 units net density per acre, Office, and Environmental
1746 Protection Area.

1747

1748 Mr. Merrithew - The last item is the withdrawal of C-17C-98 Bryan E. Kornblau.
1749 The applicant has withdrawn the case which was originally to rezone from R-2AC One Family
1750 Residence District (Conditional) to R-3AC One Family Residence District (Conditional), and
1751 there's no action required on this application.

1752

1753 Mr. Archer - With that, is that the last one?

1754 Mr. Merrithew - That's the last one, sir.

1755

1756 Mr. Archer - Mrs. Wade, did we have one we wanted to move up?

1757

1758 Mrs. Wade - I was asking about moving up C-18C-98. Actually, it's in
1759 Tuckahoe, but would you ask if there's anybody here to speak to that, please?

1760

1761 Mrs. Wade - It shouldn't take but a minute.

1762

1763 Mr. Silber - Why don't I go ahead and call the case and we'll see if there's
1764 any opposition? We're going to skip ahead to Zoning Case C-18C-98.

1765

1766 **C-18C-98 Balzer & Associates for Jim Lowe:** Request to amend proffered
1767 conditions accepted with rezoning case C-49C-94, Parcel 66-24-B-21, containing 0.357 acre,
1768 located on the east line of John Rolfe Parkway off the Hillgate Court cul-de-sac in the Sutton
1769 Subdivision (2624 Hillgate Court). A reduction in setbacks is proposed. The site is zoned R-
1770 4C One Family Residence District (Conditional). The R-4 District permits densities up to 5.45
1771 units gross density per acre. The Land Use Plan recommends Suburban Residential 2
1772 development, 2.4 to 3.4 units net density per acre.

1773

1774 Mr. Archer - Is there any one here to speak in opposition to C-18C-98? No
1775 opposition. Do you want to hear it now?

1776

1777 Mr. Merrithew - Would you like to hear a presentation on this?

1778

1779 Mrs. Wade - Just a sentence or two of explanation, please.

1780

1781 Mr. Merrithew - This proffer amendment comes about because the house was
1782 constructed one foot too close to John Rolfe Parkway. They had proffered a 25-foot buffer in
1783 addition to the required setback. They ended up encroaching in that proffered overall setback
1784 by one foot. The house is constructed. The family has moved in without a Certificate of
1785 Occupancy, although we had not pursued that issue. Staff does not have an issue with the
1786 requested change. So, that is, in a nutshell, the situation. The house is one foot closer to the
1787 road than it should be. We're agreeable to the modification to the proffer.
1788

1789 Mrs. Wade - We don't encourage that sort of thing, but it only really, basically,
1790 takes one foot out of the landscaped buffer which is there in addition to the setback anyway for
1791 the house. It's all right with the Tuckahoe Commissioner. Unless somebody else has a
1792 comment or questions?
1793

1794 Mr. Archer - I don't have any. Any Commission members have any
1795 comments? I don't think so, Mrs. Wade.
1796

1797 Mrs. Wade - I move, then, that C-18C-98 be recommended for approval.
1798

1799 Mr. Vanarsdall seconded the motion.
1800

1801 Mr. Archer - Acting on a motion by Mrs. Wade, seconded by Mr. Vanarsdall to
1802 recommend approval of C-18C-98. All those in favor say aye—all those opposed by saying
1803 nay. The vote is 4 to 0 (Ms. Dwyer absent, Mr. Donati abstained). Motion to approve passes.
1804

1805 Mr. Silber - Next case, moving back to Page 3, would be Zoning Case C-
1806 15C-98.
1807

1808 **C-15C-98 Clement Tingley for Easy Living Corporation:** Request to
1809 conditionally rezone from A-1 Agricultural District to R-4AC One Family Residence District
1810 Conditional, Parcels 85-A-2, 3 and 5, containing approximately 31.0 acres, located on the
1811 north line of North Road at its intersection with Edgefield Court and Edgefield Street. A single
1812 family residential subdivision is proposed. The R-4A District permits densities up to 5.62 units
1813 gross density per acre. The Land Use Plan recommends Urban Residential development, 3.4
1814 to 6.8 units net density per acre.
1815

1816 Mr. Archer - Thank you, Mr. Secretary. Is there any one here in opposition to
1817 C-15C-98? Very good. Thank you.
1818

1819 Mr. Silber - Mr. Chairman, perhaps, since there is opposition to this case, let
1820 me go over to the Commission's rules relative to speaking on behalf of a rezoning request.
1821 The rules state that the applicant or any one speaking in favor of the request has 10 minutes
1822 to present his or her case. Some of that 10-minute period of time can be saved for rebuttal
1823 time. The opposition has a total of 10 minutes. That's a cumulative period of 10 minutes. So
1824 it may be best you have one or two speakers. Anyway, a total of 10 minutes in opposition. Any
1825 questions that the Commission has of the applicant or of the opposition do not count towards
1826 your 10 minutes. So, that would be expected in both cases of 10 minutes by the applicant and
1827 the opposition.
1828

1829 Mr. Archer - Thank you, Mr. Secretary. To reiterate what he said, if there are
1830 those of you here who have similar ideas and you've met together as a group, it would be to
1831 your benefit to have one person who could represent those ideas to speak for you. There may
1832 be more than one group, and I understand that. We want to hear from everybody, but that
1833 would save the rest of you some time. Thank you. Mr. Merrithew.

1834
1835 Mr. Merrithew - Mr. Chairman, as was mentioned earlier, this is a 31 acre tract on
1836 the north side of North Road. The request is to permit a proffered 87 lots in a single family
1837 detached residential subdivision. There are several older homes already on the site, but the
1838 site is generally cleared. There are woods along the perimeter and a ravine down the center of
1839 the site.

1840
1841 Surrounding uses in the area consist of apartments to the west, single family detached homes
1842 to the south, the Montrose historic site to the east, wetlands and park lands to the north.

1843
1844 The surrounding zoning consists of R-5, which covers the apartments and some single family
1845 homes to the west. And then, R-3 and R-4 covering the single family to the south. The R-3
1846 zoning is undeveloped. So, all of the single family homes in that neighborhood between
1847 Azalea and the site are zoned R-4.

1848 The Land Use Plan for the site calls for Urban Residential development on the site, itself,
1849 which, as you know, recommends densities of 3.4 to 6.8 dwellings units per net acre. The
1850 Urban Residential designation encourages and accommodates higher density single family
1851 homes, townhouses and condominiums. So, focus in this area is home ownership.

1852
1853 The surrounding area to the east and west is designated Multi-Family Residential, allowing
1854 residential densities up to 19 units a net acre. The applicant's proposal is for single family
1855 detached homes with an estimated net density of 3.7 dwelling units per acre, or the lower end
1856 of the recommended planned density. So, from the point of view of the use and the intensity
1857 of the use, it seems to comply with Plan policy. The issue then becomes a question of
1858 compatibility with the surrounding neighborhood and whether or not the use will elevate the
1859 quality of development and minimize the potential impacts.

1860
1861 The Montrose historic site needs to be protected. It is located immediately to the east of this
1862 site. It's an 18th century home with some civil war fortifications to the north of it. The
1863 opportunity exists to protect it by preserving a large stand of trees on the eastern edge of the
1864 applicant's property. We have encouraged the applicant to consider that. At this point there
1865 have been no proffers to that effect, or no indication of a commitment to protecting that historic
1866 site.

1867
1868 Then, there's the question of the impact on the traffic in the neighborhood. Proffered at 87
1869 lots, we can expect approximately 900 trips per day generated by the site. We would
1870 encourage that traffic to be directed towards the existing Edgefield Street and Taminai
1871 Avenue. Extending those two streets into this site would split up that traffic, hypothetically, and
1872 reduce the impact on any one particular part of the neighborhood. Those who travel back
1873 down to Azalea, the trip is the same on either one of those streets. So, if all the traffic is
1874 drained towards Taminai, for example, at a boulevard entrance, as has been stated by the
1875 applicant is his proposal, then all 900 trips are likely to take that route.

1876
1877 The applicant has proffered a minimum floor area of 1,000 square feet. That is proffered as
1878 finished livable floor area. That is about 50 feet larger than what is required by the ordinance

1879 in total square footage, and over 300 feet larger than what is required in terms of livable
1880 finished floor as required by the ordinance. So, it is slightly larger than the minimums of the
1881 ordinance.

1882
1883 The applicant has proposed this development in an existing neighborhood as a combination of
1884 newer and older homes; a mixture of sizes of homes. There are some on slabs. There are
1885 some on crawl space. There seem to be some split levels and single stories. We have no
1886 commitment from the applicant as to the design, or the product mix on their particular site.
1887 There is a potential for a single type of product. There is a potential for slab construction.
1888 There is a potential for minimum quality standards to be met by this application. We feel that
1889 there needs to be some commitment by the applicant towards quality to minimize again the
1890 impact on the neighborhood and to "raise the bar," if you will, in terms of the quality of
1891 development that exists in that neighborhood.

1892
1893 Without more detailed knowledge of the types of units to be constructed or the site layout, it's
1894 difficult to judge the compatibility with the surrounding neighborhood. Staff suggests that,
1895 without the more detailed information and a stronger commitment towards quality
1896 development, it's difficult to support a rezoning that's higher than what is currently in the
1897 neighborhood; that being R-4 and R-3 for single family detached development.

1898
1899 That being the case, although the application, from a use and intensity point of view, complies
1900 with the plan, staff feels there are still some issues that need to be addressed in terms of
1901 compatibility and impact on the neighborhood. At this point we are not recommending in
1902 support of the application. I'd be glad to answer any questions.

1903
1904 Mr. Archer - Okay. Thank you, Mr. Merrithew. Any questions of Mr.
1905 Merrithew?

1906
1907 Mrs. Wade - That Montrose House is not on this parcel? It's to the east of
1908 this?

1909
1910 Mr. Merrithew - It's on the next parcel to the east. That's correct.

1911
1912 Mr. Archer - John, I have one question. The staff report indicates that the
1913 phasing in of this property would put a severe burden on the elementary school, I believe.

1914
1915 Mr. Merrithew - That's correct. Laburnum Elementary School is currently over
1916 capacity. I discussed that issue with the School administration, and this would, again, increase
1917 that over capacity problem and require some rearranging of the school boundaries at a
1918 minimum to accommodate the students as they come on stream.

1919
1920 Mr. Archer - That was going to be my next question. Is that how we normally
1921 deal with that? We change school boundaries to allow...

1922
1923 Mr. Merrithew - That's really the only option until a new school is built somewhere
1924 in the area. Even with the new school being built, the boundaries have to be adjusted. So, the
1925 adjustment of boundaries is the first step.

1926
1927 Mr. Archer - Okay. Thank you. Any other questions of Mr. Merrithew by the
1928 Commission? No. Okay. We'll hear from the applicant. Mr. Tingley.

1929

1930 Mr. Silber - Mr. Tingley, would you like to reserve some of your 10 minutes
1931 for rebuttal?

1932

1933 Mr. Clement Tingley - Yes. I would. Please.

1934

1935 Mr. Silber - How much would you like to reserve?

1936

1937 Mr. Tingley - Five minutes.

1938

1939 Mr. Silber - Okay.

1940

1941 Mr. Tingley - Mr. Chairman, members of the Commission, Mr. Silber, ladies
1942 and gentlemen, my name is Clement Tingley. I'm the applicant on this rezoning application. I
1943 think your staff has done an excellent job of presenting my case. The application is in
1944 conformance with the Land Use Plan. There are some advantages to the community. Right
1945 now, there's no fire plugs for fire protection. My project will bring water lines on to North Road
1946 to provide for fire protection. I think that's important when you have a historic property located
1947 nearby.

1948

1949 In addition, I will be bringing public sewer lines into the area. It doesn't presently have them.

1950

1951 With regard to the historic site, the existing house is located about 300 feet from the property
1952 line and from the subject property. I'm not all convinced that another 10-foot of buffer is going
1953 to have a significant impact in terms of preserving it. There's already 300 feet there right now.
1954 In addition the Montrose property is shown on the Land Use Plan as being designed for multi-
1955 family residential.

1956

1957 Another point I would like to make is in regard to the adjacent zoning. I can call this podium a
1958 chair, all day long, but at the end of the day, it's still going to be a podium. This is the
1959 subdivision plat (referring to rendering). On the left is Azalea and off the plat to the right is the
1960 subject property. I would estimate 90 percent of these sites have 60-foot frontages on them,
1961 which is the frontage required for the R-4A zoning district. While using that, you may call this
1962 "R-4." At the end of the day, it's R-4A. This is already platted and an awful lot of the lots have
1963 already been built on.

1964

1965 In addition, the lots which are closest to the subject property, some of them are as small as 40
1966 feet by 20 feet or 4,800 square feet. They are, however, substantially in an undeveloped state
1967 at this time.

1968

1969 The area, which is zoned R-3, is not even adjacent to this property. This intervening property
1970 which the Master Plan calls for multi-family residential. Even if it were adjacent, that property,
1971 while undeveloped, there's a recorded plat on it. I'm not sure how your staff would deal with a
1972 recorded plat, but, nevertheless, many of the lots on that recorded plat meet R-3 standards.
1973 Most of them R-4 standards. Some of them, the lot widths would only meet the R-4A standard.
1974 So, I think what I am proposing, in terms of lot sizes, is, in fact, totally compatible with what is
1975 in the area. Obviously, the R-5 lots to the west are going to be smaller than the ones I'm
1976 proposing. With that, I would ask your favorable consideration of this application.

1977

1978 Mr. Archer - Thank you, Mr. Tingley. Are there any questions of Mr. Tingley
1979 by Commission members?
1980
1981 Mr. Zehler - Mr. Tingley, how come you have not submitted a conceptual plan
1982 as of this date?
1983
1984 Mr. Tingley - There's not been a formal request for one and I'm not sure I'm
1985 obligated to supply one.
1986
1987 Person from Audience - Excuse me. We didn't hear the question?
1988
1989 Mr. Zehler - Why has he not submitted a conceptual plan as staff has
1990 recommended in the report?
1991
1992 Mr. Tingley - I've seen the report, but I was not aware I had a duty to furnish
1993 that.
1994
1995 Mr. Zehler - It would be nice if we knew what type of subdivision layout design
1996 and lot sizes you're going to have...
1997
1998 Mr. Tingley - I can appreciate that, Mr. Zehler. It would be nice to know, today,
1999 all of the requirements that would be required on the detailed design of it and what would
2000 satisfy the requirements of the county. If I put something out there, and later find out that for
2001 whatever reason my plans aren't going to be successful, then I'm kind of tied into something
2002 that I've said that I'm not able to live up to. If I'm not confident that I can live up to something,
2003 I'd rather not put it out there.
2004
2005 Mr. Zehler - How about addressing the quality of construction, as staff has
2006 questioned. I don't see any proffered conditions as far as brick foundations, side walks...
2007
2008 Mr. Tingley - Well, Mr. Merrithew and I had a cross signal there. I wanted to
2009 make sure the proffered conditions that I had were consistent with what were done in other
2010 recent zoning cases. He sent me three examples of recent zoning cases, and none of them
2011 said anything about brick foundations and some of the other things that you've mentioned.
2012
2013 If they had been in there, "I fully intend to put in brick foundations, for example," If they had
2014 been there as represented. These were three recent rezonings. If they had been included as
2015 a part of the three recent rezonings, I would have addressed those issues. But I chose to
2016 address the issues that had been addressed in the three zoning cases that he sent to me.
2017
2018 Mr. Zehler - Is that your anticipation to do brick foundations?
2019
2020 Mr. Tingley - Yes sir.
2021
2022 Mr. Zehler - Have you met with these people at all?
2023
2024 Mr. Tingley - I've delivered some fliers. I've met with the owners of the
2025 Montrose property. I did that very early on. They indicated to me that they were opposed to
2026 the rezoning. I can certainly understand why. They have a beautiful property there.
2027

2028 Again, I delivered some fliers in the neighborhood and those fliers prompted three phone calls.
2029 One of the phone calls had an issue which I thought I could resolve for them. I researched
2030 and sent them a letter and tried to resolve, at least, that one issue. There's no civic
2031 association that I was aware of. I asked the staff, if there was one. I asked Mr. Archer, if there
2032 was one, because I certainly would have liked to have met with them if there had been one.
2033 I'm sorry, Mr. Archer.

2034
2035 Mr. Archer - That's all right. I was going to ask you, you indicated that your
2036 site would be approximately 300 feet. Is that from the property line of the historic house or
2037 from the house itself?

2038
2039 Mr. Tingley - I estimated that, from the location of the house to my
2040 westernmost property line and the property I propose to acquire, is approximately 300 feet,
2041 based on the topo sheets.

2042
2043 Mr. Archer - Okay. Any further questions of Mr. Tingley? Thank you, sir.

2044
2045 Mr. Tingley - Thank you.

2046
2047 Mr. Archer - Okay. We'll hear from the opposition or the representative of the
2048 opposition.

2049
2050 Ms. Gloria McGowen - Members of the Commission, my name is Gloria McGowen. We
2051 are Norman and Gloria McGowen who live at 519 North Road. We have been residents for 13
2052 years at that home. We set on the corner of Edgefield and North Road. North Road is only
2053 about a half block. The Azalea neighborhood watch, we met and we discussed certain
2054 oppositions. We are concerned about the high volume of traffic. If you can imagine, my
2055 bedroom sits on Edgefield at North Road. Can you imagine 400 vehicles coming by your
2056 bedroom every day? We have a concern, yes, about the overcrowding of the schools.
2057 Laburnum should have 400 students. It's presently 780 students. I am Vice-President of the
2058 PTA at Laburnum School. It was very stressful for Herbert Monroe, and I believe that was
2059 some of the reasons why he is not here with us today. We honor him. He was a great man.
2060 But the stress of the overcrowding of the school.

2061
2062 We're concerned about the trash. The development of those homes, if they're low income
2063 homes that would bring about trash and crime. What would it do for our neighborhood and our
2064 children? Our children can go out and play and they have that freedom. Low income homes
2065 sometimes bring about crime, drugs, and all sorts of things. We have a concern. What we
2066 would like to see, we're not against the homes per se; the development. But we want to make
2067 sure that those homes are of a high quality; at least 1,800 square feet. We would like to see
2068 quality homes built in that area; no bear minimum standards. We would like the homes to be
2069 an improvement to our area and to add to our area.

2070
2071 We just pray and hope that you take all of these things into consideration for our neighborhood
2072 to make it a better place to live for our children and our children's children. Thank you.

2073
2074 Mr. Zehler - Ms. McGowen, approximately how big or how many square foot
2075 house do you live in now?

2076
2077 Ms. McGowen - Thirty nine hundred (3,900) square feet.

2078
2079 Mr. Zehler - Have you had an opportunity to speak with Mr. Tingley and talk to
2080 him?
2081
2082 Ms. McGowen - Yes. I did call him and talk to him and told him my concerns.
2083 One was the access. And he told me, the majority of the access would be on Taminai and it
2084 probably would not affect me. And I told him I had a concern about the quality of the homes
2085 because, of course, lower value homes would lower the value of my home. I know my home is
2086 an over improvement for that area, but we bought there because it's nice and it's quiet. It's
2087 friendly. My child and my kids can run and play and don't have to worry about the other "stuff"
2088 that's going on in the world.
2089
2090 Mr. Zehler - And are you a member of the Azalea Neighborhood Watch?
2091
2092 Ms. McGowen - Yes. I am.
2093
2094 Mr. Zehler - Approximately how many people does that consist of?
2095
2096 Ms. McGowen - It's about 25. They vary.
2097
2098 Mr. Archer - Is that 25 families, ma'am, or 25 people?
2099
2100 Ms. McGowen - Twenty-five (25) families.
2101
2102 Mr. Zehler - Thank you.
2103
2104 Mr. Vanarsdall - What did you say you would like to see the square footage of the
2105 homes?
2106
2107 Ms. McGowen - At least 1,800 to be an improvement for the area. The bigger
2108 would be a little bit better. Thank you.
2109
2110 Mr. Archer - Thank you.
2111
2112 Mr. Silber - You have about 6.5 minutes.
2113
2114 Ms. Charlene Elliott - I live at 5320 Taminai Avenue. I've been there approximately 10
2115 years. I am one of the block captains for the Neighborhood Watch, and the Neighborhood
2116 Watch did ask me, because we did have a meeting on Tuesday, to come and voice our
2117 concerns in regards to this subdivision that this gentleman would like to build.
2118
2119 We are concerned with what Gloria said; the traffic, the trash, the crime; _____ and
2120 Laburnum Elementary already being overpopulated. But some of the concerns that we have
2121 found out over the past couple of days was the quality of homes this gentleman has built. I
2122 called him and he said, "Go to Cedar Fork Road and see my subdivision and see my new
2123 subdivision I built and speak to the people there." I did. They are not pleased. Now, am I
2124 allowed to speak on behalf to some people I spoke to? I do not know. But two gentlemen told
2125 me that I should talk to half the people in the Cedar Fork Subdivision. That they were
2126 extremely upset with the quality of homes this gentleman has built. Our neighborhood is old.
2127 Yes. It is old. Not only is it old, but four years since I've been a member of the neighborhood

2128 watch, crime has been minimum. That's made me feel very safe. I have a 6-year old and a 5-
2129 year old. They have about 15 friends that play in my yard every day. All of the children who
2130 live on Edgefield and North, Wilmer and Tamiami play together constantly.

2131
2132 We have a very low crime area. If we bring in more low quality homes, it's going to bring in low
2133 quality people. It's going to build the crime in the neighborhood. We don't want that. We
2134 don't want that at all. We really would like for it to stay A-1 Agriculture because there are a lot
2135 of homes on North Road. They all have acreage. They're not just sized down to lots. I
2136 currently sit on two acres on Taminai. Granted, I bought individual lots that were undeveloped,
2137 but they're mine.

2138
2139 If we cannot have an A-1 Agricultural area, we do ask that you force him to build quality homes
2140 and not what we've heard he's built. We've also heard about the complaint that was brought
2141 to, I don't want to get this wrong. The State Building Commission has had a number of
2142 complaints. I believe eight against his quality. I don't know if the people at Cedar Forks have
2143 complained officially or not. I don't want homes on slabs. I don't want homes that will bring my
2144 neighborhood down. We do live in an old neighborhood. If we can have a builder come in
2145 whose going to up build, bring us good quality homes; homes that are on one-acre lots that
2146 would bring value to the neighborhood, that would be a blessing to our neighborhood. Right
2147 now, what he's speaking of, is going to bring down the neighborhood, not bring it up. I thank
2148 you for your time.

2149
2150 Mr. Archer - I think we have some time left.

2151
2152 Mr. Silber - About 3.5 minutes.

2153
2154 Mr. Bruce Olson - Good. There's only three minutes. I can't be long. I live at
2155 Montrose at 400 North Road. We're concerned about this project, not only for the preservation
2156 for the oldest frame structure in Henrico County, but also from what our neighbors have just
2157 said about schools and crime and incompatibility and building not up to code. We're
2158 concerned about the reputation of the builder. The State Board of Contractors listed eight
2159 complaints and one violation and a fine against a company that was called "Atlantic Homes
2160 Corporation." That was the company that was before Easy Living Corporation. I think they just
2161 changed the name. There was a complaint in 1998. It was professional conduct. We're
2162 concerned about that.

2163
2164 We've lived in Montrose for about nine years and worked really hard on preserving that piece
2165 of property. We feel like 300 feet from the house, yes, but we're still farming that land that was
2166 farmed over 200 years. I make my living raising horses on the place. It's just kind of awful to
2167 think that we would have kind of affordable housing right on the fence here and then it's just
2168 going to be...I think the quality of the historic value of the property would very well be
2169 diminished if it was abutted up so close.

2170
2171 Mr. Archer - I didn't get your name.

2172
2173 Mr. Olson - Bruce Olson.

2174
2175 Mr. Archer - Thank you, Mr. Olson.

2176
2177 Mr. Silber - You have approximately a minute and a half.

2178
2179 Mr. Cath Campbell - Thank you. Good evening. I reside at 414 North Road which is
2180 on the southeast corner of Taminai and North Road. It's interesting that the prospective
2181 developer tried to allay the fears of a neighbor at Edgefield and North Roads by advising her
2182 that most of the traffic was going to come by my property.
2183 I share the concerns of those who have already spoken, and the position of Mr. Merrithew in
2184 that the developer hasn't given us much information. We don't know what's going to happen
2185 until we find out more about what he plans to do there. So, for that reason, we would like for
2186 you to at least continue any decision on this zoning until he gives us more information and
2187 gives you more information and until the concerned property owners in the neighborhood have
2188 had an opportunity to look at the whole thing and think more about it.
2189
2190 I might also say, as far as the existing neighborhood is concerned, Edgefield is probably the
2191 most significant subdivision in recent years in the area. And, it, of course, is made of homes
2192 that are much larger than those that are proposed for this area. And that to suggest that the
2193 existing homes to the south of North Road are small or mixed slab, cinderblock and so forth,
2194 there are only four slab homes and only two of cinder block, I know of, anywhere in the area.
2195 They're on very large lots and have been there for a long time. So, generally speaking, the
2196 homes in the area are better than those proposed for this subdivision. Thank you.
2197
2198 Mr. Archer - Mr. Campbell, did you say there are a total of four slab homes in
2199 that area and two cinder block?
2200
2201 Mr. Campbell - Two cinder block houses are two of the slab homes. They have
2202 been there forever. I've been familiar with this area for 50 years or more. At the end of
2203 Taminai was a little dirt road that ran to Montrose to the east, and that was it. There was no
2204 Edgefield. There wasn't a through street. Thank you.
2205
2206 Mr. Archer - Thank you, sir. That concludes the time for the opposition. Mr.
2207 Tingley, I believe you have reserved five minutes; six minutes?
2208
2209 Mr. Zehler - Just out of curiosity, Mr. Chairman, is there anybody else who
2210 would like to speak that didn't get an opportunity?
2211
2212 Mr. Archer - Is there another issue that didn't get listened to?
2213
2214 Mr. Zehler - I think these people have sat graciously this evening and they've
2215 come down. I think we ought to at least give them an opportunity to hear their opinions, Mr.
2216 Chairman.
2217
2218 Mr. Silber - That's up to the Commission.
2219
2220 Mr. Archer - Are the things that you have to talk about different from what
2221 we've heard already? Come up to the front, please?
2222
2223 Mrs. Annette Olson - I live at Montrose and I've been in this country for 25 years.
2224
2225 Mr. Zehler - Ma'am, what is your name.
2226

2227 Mrs. Olson - Annette Olson. This is my first meeting of this kind. I've been
2228 listening to you and I've been listening to people. I have had a business in Richmond, Virginia
2229 for 25 years. I see everything like construction like that will be a great increase taxes wise for
2230 the County of Henrico. But if I hear the contractor asking the County to build water lines going
2231 to the property at their expense, building more schools, and it's not a great increase in the
2232 future for Henrico. I'm just a little bit upset that I've always tried in my life to do the best I can
2233 to make the best. I don't think this man will do this. That's all I have to say. Thank you.
2234

2235 Mr. Archer - We'll hear from one more person if you have an issue that's
2236 different from what has already been discussed. Yes ma'am.
2237

2238 Ms. Sharon Williams-Barber - I live at 602 Hickorytree Drive, which borders into Edgefield. I
2239 would just like to make sure that the Planning Commission is aware that we are on the edge of
2240 Henrico. We border the City. I would like for you to think about the implications of how we are
2241 fighting to keep Henrico a nice place to live and how we have a problem with being so close to
2242 the City. I want to say it in a nice way. Henrico has very strict rules and we feel like it's a nice
2243 place to raise a family. I would like for you to think about our families, in that we're already
2244 fighting an element that's right at our back door. We've managed to have a really nice
2245 community now. So, anything that's added, we want it to be just the best. We can continue to
2246 make Henrico a good place. So, think about that. We are right there on the edge now. That's
2247 all I wanted to say.
2248

2249 Mr. Zehler - I think we have only two more, Mr. Chairman.
2250

2251 Mr. Archer - We'll hear one more.
2252

2253 Mrs. Wade - We'll have to give Mr. Tingley more time.
2254

2255 Mr. Zehler - We can.
2256

2257 Mr. Charles Brown - Good evening, everybody. I'm probably one of the recent
2258 neighbors in that area in the last two years. I feel like it is a real good area. I would hate to
2259 see the crime come in the area. I really would. I just would feel badly if you put low income
2260 houses in because it would draw so much crime. Right now, everybody is pretty comfortable
2261 with the way they're living out there. They're comfortable with their homes. They know that
2262 they can go away from home and leave the door open and don't have to worry about when
2263 they come back and everything will be there. But if this low income situation comes in and the
2264 developer puts those houses in there, you'll have a lot of everything. Thank you.
2265

2266 Mr. Zehler - What was his name?
2267

2268 Mr. Archer - Your name was Charles Williams, sir?
2269

2270 Mr. Brown - Brown.
2271

2272 Mr. Archer - Brown. Okay.
2273

2274 Mr. Vanarsdall - I wonder if we could make one more exception. This young lady
2275 here...
2276

2277 Mr. Zehler - I'd like to hear that young lady also.
2278 Ms. Jessica Query - I'm almost 12. Sometimes when I was younger, my dad and I
2279 would take walks in the woods. It was really nice. One time I had a project, I think, on erosion
2280 and went back there. We saw where some trees had fallen down and there's was a lot of
2281 erosion. More trees down would cause more erosion. Also, we're doing, in Science, we are
2282 working on Conservation. Yesterday, I read this article that my science teacher brought in.
2283 And, in it, it had a paragraph about trees and what they do for the environment. Some of the
2284 things it has in there are, it serves as a watershed. It keeps soil from eroding. It provides a
2285 habitat for wildlife and there are live deer and really pretty. It's really nice back there. Rabbits
2286 and everything. It's really nice just to go walk back there. Also, it provides recreation and
2287 everything. Not just this one thing, if this keeps on going and all of these forests are going,
2288 just one by one, it won't be as good in 50 years. It definitely will not be as good. Thank you.
2289
2290 Mr. Vanarsdall - She's about to have a fit. We want to try to bring people along at
2291 an early age.
2292
2293 Mrs. Wade - Come back next month.
2294
2295 Mr. Archer - Mr. Tingley, we owe you a little additional time if you need it, sir.
2296
2297 Mr. Tingley - I think I've been had, Mr. Chairman. First of all, let me respond to
2298 the personal attacks that were made here tonight. I used to be the regional manager for the
2299 Atlantic Homes Corporation. I left them in either 1991 or 1992. That Corporation operates in
2300 Newport News, Hampton, as well as in the Richmond Metropolitan area. Anything that has
2301 transpired with regard to that company, subsequent to that time, I would have had nothing to
2302 do with. Moreover, it is my understanding that the owner of that company had been very ill
2303 and was shutting down the company. That may have had an impact on some recent
2304 complaints. But just to set the record straight, I've had nothing to do with that company in very
2305 many years.
2306
2307 We did kind of a CMA of this area. And the real estate guy whose working with me, advised
2308 me that the average sales price in this general vicinity is in the 70's. I can tell you that, no
2309 matter what I do, I cannot produce a home today that will sell in the 70's. I would expect
2310 homes to probably be in the 90's, maybe in the 80's. So, I have some real problem with
2311 people automatically assuming because they are trying to reach out to the first-time
2312 homebuyer that these people are going to bring in crime and are going to bring in trash. Other
2313 people are just entitled to shelter as they are. And to think that these homes are going to bring
2314 in any different people than they are, I think is an unfair sentiment.
2315
2316 I'm sorry, I didn't get her name. Gloria McGowen indicated her home is 3,900 square feet; and
2317 she does, indeed, have a lovely home and it is, indeed, an exception to what is in that entire
2318 area. I haven't done any calculations, but, based on my memory, I would guess the average
2319 size of homes in that community is somewhere in the 1,200 to 1,500 square foot area. I think,
2320 if that is the average size of the home, certainly my business is market driven. The average
2321 size of homes that I would build, if I'm starting at 1,000 square feet, would fall within that
2322 range.
2323
2324 It's my intention to preserve the trees that are on the steep slopes. Just want you to know that.
2325 Thank you very much.
2326

2327 Mrs. Wade - Mr. Tingley, excuse me. Do you develop to build or both?
2328
2329 Mr. Tingley - I develop to build. Yes ma'am.
2330
2331 Mrs. Wade - Where are you working now?
2332
2333 Mr. Tingley - Well, I didn't develop the community, but I built the community in
2334 Cedar Fork Estates. I did the work in Almond Creek Estates. I'm starting a new community
2335 down in Chesterfield County called Amherst.
2336
2337 Mr. Vanarsdall - So, you can't see your way to upgrade the homes? Is that right?
2338 In another category?
2339
2340 Mr. Tingley - Mr. Vanarsdall, before the dust has settled, I suspect I'll be
2341 asking for a deferral this evening. At that time, I would hope to work with the community; work
2342 with Mr. Archer and see if we can't give them the assurances that would make them feel
2343 comfortable about this project.
2344
2345 Mr. Zehler - I did make note for you, Mr. Tingley, that the Azalea
2346 Neighborhood Watch would be a good start as far as a contact, as far as meeting a lot of
2347 these people.
2348
2349 Mr. Tingley - Thank you, Mr. Zehler. I got the message.
2350
2351 Mr. Archer - Mr. Tingley, before you take your seat, I guess we're approaching
2352 the time we have to move on this. In some discussions that you and I have had, I gathered
2353 that you had not had the opportunity to meet with the neighborhood at large to really determine
2354 what all of their concerns were, as a group. Is that correct?
2355
2356 Mr. Tingley - That's correct. Yes sir.
2357
2358 Mr. Archer - Okay. And during that conversation, we talked about some
2359 things that probably the staff and myself would like to see in terms of how we would determine
2360 what the quality of the houses would be. And, as indicated in Mr. Merrithew's report, we don't
2361 have a real good grasp as to what those items might be. And I'm sure the neighborhood really
2362 doesn't either at this point. In fact, we can tell from their comments that, you're poles apart, in
2363 terms of what they anticipate and what you say you propose to do. In that regard Mr. Zehler's
2364 suggestion is very salient. Of course, you indicated to me, in our last conversation, you had
2365 wanted to hear the concerns of the neighborhood, tonight. Once you got those things out on
2366 the table, it would give you a point from which to start. I also hear you saying that you're going
2367 to request a deferral. I think that's what you and I agreed that you could do, after hearing the
2368 neighborhood's concerns. But, prior to doing that, I would like to make it clear that you will
2369 have to find a suitable, large enough place that you can have a meeting with these people and
2370 others who might like to attend. You might need to meet more than once. You can address
2371 what these issues are and we'll try to attend also and see if we can't have some resolution to
2372 the vast differences that you have right now. So, with that, I'm open to your request.
2373
2374 Mr. Tingley - Reporting as ordered, sir. Yes. I would like to request a 30-day
2375 deferral...
2376

2377 Mr. Archer - Do you think 30 days is enough time?
2378
2379 Mr. Tingley - Well, I intend to move very quickly on it. I guess it's up to you
2380 and the community as to whether or not you are prepared to move that quickly.
2381
2382 Mr. Archer - I don't have any objection to 30 days, if you think you can
2383 prepare that quickly. Is there a place that you know you can meet, maybe the school?
2384
2385 Mr. Tingley - I will find one, sir.
2386
2387 Mr. Archer - Okay. All right. Well, with that, I move that we defer this case to
2388 the April 9th meeting at the applicant's request.
2389
2390 Mr. Vanarsdall seconded the motion.
2391
2392 Mr. Tingley - Thank you, very much.
2393
2394 Mr. Archer - You're quite welcome. Thank you all for coming.
2395
2396 Mrs. Wade - Just a second. I believe you said you were going to bring the
2397 water and sewer in the area?
2398
2399 Mr. Tingley - Just to clarify that, I wish that the County will extend the utility
2400 lines for me, but they will not. It is my responsibility to build all the sewer lines to this project; to
2401 build all the water lines to this project; build all the roads in the project; build all the curbing in
2402 the project; to build all of the storm drainage in the project; to build the BMP pond for the
2403 project, even though they are public facilities which may eventually become public, would be
2404 my responsibility.
2405
2406 Mr. Archer - Thank you, Mr. Tingley. Now, none of that was part of my
2407 motion. Motion by Mr. Archer, seconded by Mr. Vanarsdall, that we defer this case until the
2408 April 9th meeting. All in favor, indicated by saying aye. All those opposed by saying nay. The
2409 vote is 4-0 (Ms. Dwyer absent, Mr. Donati abstained).
2410
2411 Lady from Audience - Could we have 25 days so we could talk as a community, before
2412 we meet again...
2413
2414 Mr. Archer - Ma'am, I believe that might be in the best interest to do that,
2415 because we have to meet at the time that we meet is the Thursday following the second
2416 Wednesday of each month. The next meeting would be April 9th.
2417
2418 Lady from Audience - (Comments unintelligible).
2419
2420 Mr. Archer - He requested a 30-day deferral and we granted it.
2421
2422 Lady from Audience - (Unintelligible).
2423
2424 Mr. Archer - Yes ma'am. I suggest, then, that you make that a part of your
2425 discussion with Mr. Tingley and you all try to work...
2426

2427 Lady from Audience - He has already wrote me a letter that says he's not going to come
2428 down my road. I got the letter.

2429
2430 Mr. Archer - Maybe he'll change his mind.

2431
2432 Lady from Audience - (Unintelligible).

2433
2434 Mr. Archer - Thank you all for coming. Mr. Secretary.

2435
2436 **Deferred from the February 12, 1998 Meeting:**

2437 **C-83C-97 Glenn R. Moore for Costen Floors, Inc.:** Request to
2438 conditionally rezone from O-2C Office District (Conditional) and A-1 Agricultural District to M-
2439 1C Light Industrial District (Conditional), Parcels 48-A-70B, 58-A-21C and 58-A-22, described
2440 as follows:

2441
2442 Commencing at the point of beginning along Pemberton Road _____' south of W. Broad
2443 Street (U.S. Rt. 250); thence from the beginning of right curve from which the radius point
2444 bears S. 39° 09' 00" E., northeasterly a distance of 104.09' along the curve concave to the
2445 southeast, having a radius of 538.58' and a central angle of 11° 04' 23" to a point of cusp;
2446 thence N. 63° 35' 40" W., a distance of 23.95'; thence N. 63° 35' 40" W., a distance of 982.29';
2447 thence S. 26° 24' 20" W., a distance of 49.53' to the beginning of a curve tangent to said line;
2448 thence southwesterly a distance of 214.45' along a curve concave to the northwest, having a
2449 radius of 1513.84' and a central angle of 8° 06' 59" to a point of reverse curvature; thence
2450 southwesterly, southernly, and southeasterly a distance of 30.68' along the arc of said curve
2451 concave to the east having a radius of 20.40' and a central angle of 86° 09' 46" to a point of
2452 cusp on a curve, from which the radius points bears S. 38° 25' 18" W., thence southeasterly a
2453 distance of 179.50' along the arc of said curve concave to the southwest having a radius of
2454 524.28' and a central angle of 19° 36' 58"; thence S. 32° 00' 30" E., a distance of 102.94' to
2455 the beginning of a curve tangent to said line; thence southeasterly a distance of 279.09' along
2456 the curve concave to the northeast, having a radius of 670.00' and a central angle of 23° 52'
2457 00"; thence S. 55° 52' 30" E., tangent to said curve, a distance of 86.97'; thence N. 34° 05' 59"
2458 E., a distance of 92.95'; thence S. 82° 37' 39" E., a distance of 300.04'; thence N. 35° 37' 31"
2459 E., a distance of 96.13' to the beginning of a curve concave to the southeast having a radius of
2460 538.58' and a central angle of 15° 12' 39" and being subtended by a chord which bears N. 43°
2461 17' 02" E., 142.56'; thence northeasterly along said curve, a distance of 142.98' to the Point of
2462 Beginning, containing 860 acres, more or less.

2463
2464 Mr. Archer - Okay. Is there any one here in opposition to C-83C-97, Costen
2465 Floors, Inc.? There is opposition. Mr. Yolton.

2466
2467 Mr. Yolton - Mr. Chairman, members of the Commission, as mentioned, this is
2468 a request for a rezoning from the O-2C Office District and the A-1 Agricultural District to the M-
2469 1 Light Industrial District with proffered conditions. The site consists of a little over 8.5 acres
2470 located on the north side of Mayland Drive between Stillman Parkway on the west and
2471 Pemberton Road on the east. The site is between the West Park Shopping Center and the
2472 Pemberton Green Townhouses that are directly across Mayland Drive.

2473
2474 The staff report initially was prepared, and a hearing advertised, for the Planning
2475 Commission's meeting on December 11, 1997. The request has been deferred twice at the

2476 applicant's request. During that time, the applicant has met on several occasions with
2477 representatives of the Pemberton Green Townhouse Association and there have been
2478 numerous changes and modifications to the proffered conditions.

2479
2480 The most recent revisions to the proffers were received by staff today, and the applicant
2481 indicated that copies of the revised proffers had been delivered to each member of the
2482 Planning Commission. The Commission would need to waive the time limit to accept the
2483 amended and restated proffers. I'll address the proffers in just a moment. This is the first
2484 public hearing that we have had on this matter.

2485
2486 This property was part of a larger case that was approved by the Board of Supervisors in
2487 1985. That is when it received its present O-2 Conditional zoning. The exception is the Bell
2488 Atlantic switching station located on the property that is a part of this case. The Bell Atlantic
2489 switching station is the portion of the site that is currently zoned A-1 Agricultural District. For
2490 the time being the switching station is likely to remain as is; however, the proffered conditions
2491 address what might happen if this portion of the site ever were to redevelop. Also, at the
2492 corner of Pemberton Road and Mayland Drive, a portion of this site would keep its current O-
2493 2C zoning.

2494
2495 As the staff report indicates, the previous version of the proffered conditions left a lot to be
2496 desired in terms of clarity and enforceability. And after considerable discussion with the
2497 applicant, the revised proffers that you have before you tonight have been greatly improved.
2498 For the most part, staff would not object to accepting the revised proffers, should this case be
2499 approved. In other words, at this point they seem fairly clear and enforceable. Nevertheless,
2500 staff has made it clear to the applicant that revised Proffer No. 6, regarding signage, still
2501 causes some concern. It was suggested that the proffer simply limit the size to what is
2502 permitted in the O-2 Office District. The current proffer allows the number and the size of the
2503 signs to be somewhere between what's permitted in the O-2 District and what is permitted in
2504 the M-1 District. The current zoning of the site, therefore, is more restrictive in terms of signs.

2505
2506 The overall request for the rezoning of this property is to facilitate relocation of Costen Floors
2507 which specializes in installation, repair and maintenance of hardwood floors and other floor
2508 coverings. According to the preliminary site plan, Costen Floors proposes to use slightly over
2509 half of the available space to be built, so other users would be anticipated as well.

2510
2511 Several of the proffered conditions seem to be tailored to address Costen Floors' operation.
2512 For instance, Costen Floors has a fleet of vans, and the proffers address screening of the vans
2513 and where they will be parked overnight.
2514 Costen Floors also has a retail component and a showroom. The proffers limit the total
2515 amount of space which would be devoted to this use.

2516
2517 In general the proffered conditions are very comprehensive in addressing almost every aspect
2518 of site development architecture, building materials and operations.

2519
2520 In comparing the proposed proffers to those that currently apply to the site, there may be some
2521 advantages. For instance, the current proffers provide for a 25-foot buffer around the frontage
2522 of Mayland Drive. The proposed proffers provide for a 50-foot buffer directly across from
2523 Pemberton Green. Although it should be noted that this is the minimum requirement of the
2524 zoning ordinance.

2525

2526 The proposed proffers limit the building height to two stories; whereas, the existing proffers
2527 allow for three story buildings.

2528
2529 The proposed proffers allow for parking lot lights 20 feet tall versus 25 feet for the existing
2530 proffers.

2531
2532 Finally, I think its safe to say that the anticipated traffic generation may be less overall, and
2533 certainly less during peak periods than an office use would produce on this site. On the other
2534 hand, the existing proffers preclude any access to Pemberton Road, whereas the preliminary
2535 site plan for this project does show an entrance on Pemberton Road. And also, as I previously
2536 noted, signs would be more restricted with the current proffers on the site.

2537
2538 To conclude, Mr. Chairman, it's obvious that there are a lot of considerations and trade-offs
2539 involved in whether the proposed use of this site would be compatible versus what could be
2540 developed under its existing zoning. In 1985, the use of this site for offices was thought to be
2541 an appropriate transition between the commercial corridor along W. Broad Street and the
2542 residences along Mayland Drive. It's been about 13 years since it was originally zoned for
2543 Offices, and for whatever reason, the site has never developed for that use. Also, I should
2544 note that Costen Floors is a successful and expanding Henrico based business. County policy
2545 would certainly encourage their continued location in Henrico County. The essential question
2546 is, "Is this the right location for this use?" Given all of the revised proffered conditions, staff
2547 feels the location has been carefully considered for the Costen Floors operation. And,
2548 therefore, staff would not object to the approval of the request for the M-1 zoning.

2549
2550 I would reiterate, however, that staff is not in agreement with the proffered condition regarding
2551 the signs; and we would object to any proposed new entrance on Pemberton Road. Mr.
2552 Chairman, with that, I'd be happy to try to answer any questions the Commission may have.

2553
2554 Mr. Archer - Thank you, Mr. Yolton. Are there any questions for Mr. Yolton?

2555
2556 Mrs. Wade - So, the changes in the proffers have pretty much eliminated the
2557 objections that you had in the last staff report that we got two weeks ago?

2558
2559 Mr. Yolton - The objections in the staff report, basically, were about lack of
2560 clarity and enforceability of the proffered conditions. The burden it would have put on staff
2561 would be to monitor and enforce the operations. After extensive meetings with the applicant, I
2562 feel that the proffers have been changed so that they are now clear and enforceable, and
2563 except the sign proffer, do not place the burden on staff to monitor all the operations on the
2564 site.

2565
2566 Mrs. Wade - And what does the Comprehensive Plan call for on this?

2567
2568 Mr. Yolton - Offices.

2569
2570 Mrs. Wade - That's all I have, Mr. Chairman if anybody else...

2571
2572 Mr. Archer - Any further questions of Mr. Yolton by Commission members?
2573 Okay. Thank you, sir. Is the applicant here? Mr. Moore.

2574

2575 Mr. Silber - Mr. Moore, since there is opposition, you're aware of the 10
2576 minute limit. Do you want to save some time for rebuttal?

2577
2578 Mr. Glenn Moore - Yes sir, Mr. Silber. I would like to save, I think three minutes may
2579 be adequate. I think I may also have some people who may want to speak in support of the
2580 case.

2581
2582 Mr. Silber - That will be a part of your 10 minutes.

2583
2584 Mr. Moore - Right. Mr. Chairman and members of the Commission, my name
2585 is Glenn Moore. I'm an attorney. I'm here on behalf the applicant tonight, Costen Floors. With
2586 me also is Mr. Ralph Costen of Costen Floors.

2587
2588 I might mention that I think they're going to try some experiments with a couple of the exhibits
2589 that I have. If they don't work, I've got a couple of others I can hand out. With that, I'll go
2590 forward with my presentation.

2591
2592 Costen Floors has contracted to buy the portion of this property, which is the subject of the
2593 request, except the Bell Atlantic parcel which you see on your – this is a more current version
2594 than what you saw earlier. The brown building there and the property line around it is the Bell
2595 Atlantic parcel. That is part of the case, but not being acquired by Mr. Costen. Also, the
2596 property at the corner. It says, "Existing O-2 is to remain" is not a part of this case, but also
2597 would be acquired by Mr. Costen of Costen Floors and, hopefully, develop under its current
2598 zoning.

2599
2600 If rezoned as requested, Costen Floors intends to develop the property for an Office/Service
2601 project in a manner which is consistent with other development on M-1C-zoned properties in
2602 the vicinity of the site, most of which are located in Deep Run Business Center. But you can
2603 see at the lower left hand corner, it's not developed. However, there is some M-1C zoning
2604 directly adjacent to the townhouse community already in place. The zoning is, not any
2605 development on it.

2606
2607 The proffered conditions place extensive controls on development of this property. And I'll
2608 summarize some of those controls.

2609
2610 As you will note in Proffered Condition No. 1, the uses to be permitted on the site are very
2611 limited. We have specifically provided for a 50-foot landscaped buffer along the Mayland Drive
2612 frontage of the property across from the Pemberton Green Townhouse development. As Mr.
2613 Yolton pointed out, 50 feet is required by the ordinance. However, by proffering the 50-foot
2614 buffer, we've taken away the ability to reduce it with an alternative which is allowed under the
2615 Ordinance. It is our intent to have a 50-foot landscaped buffer.

2616
2617 Buildings on the property are to be developed in accordance with the site plan that you see.
2618 It's a part of the case. Approximately one half of the office/distribution area shown in Phase
2619 1, which is the left hand red building, or a series of buildings, will be occupied by Costen
2620 Floors. Mr. Costen intends to have his administrative offices, distribution facilities and
2621 showroom area within the building space. The balance of the floor space on Phase 1 will be
2622 available for other users, as will the building on Phase 2, which in all likelihood, would be sold.
2623 That's expected to be developed in the future as a second phase, is what we anticipate at this
2624 time.

2625
2626 The Mayland Drive elevation of the building in Phase 1 has been proffered. Can you show
2627 that? ...as part of the case. We've had a number of discussions with representatives of
2628 Pemberton Green. And the elevation that has resulted is, basically, been a result of those
2629 discussions.

2630
2631 The design of signs (referring to rendering), you can see a part of it. If you can look at that.
2632 That, basically, reflects how the left hand building will appear from the Mayland Drive frontage
2633 of the property. The size and design of signs has been addressed in the proffered conditions.
2634

2635 In Proffer Condition 6, "No building will exceed two stories in height." And actually, the only
2636 building that is two stories is on the right hand half of the building on the left hand side of the
2637 page which is where Mr. Costen intends to have his facilities.
2638

2639 It should be noted that, under the existing Office zoning, a three-story building would be
2640 permitted. Deliveries of inventory and other materials to the property are relegated to certain
2641 hours as are the hours of trash collection.
2642

2643 No outside storage will be permitted on the property, except as noted; commercial vehicles
2644 may be maintained in screened areas.
2645

2646 As has been noted, the property is currently zoned O-2 conditional. Development of the
2647 property, pursuant to the request, will result in less square footage of development and traffic
2648 than development pursuant to its existing zoning.
2649

2650 The proposed use of the property is compatible with the overall development scheme of the
2651 nearby Deep Run Business Center, as I've already noted. As has been noted again, the
2652 request is consistent with the goal of the Land Use Plan to support economic development and
2653 to retain and attract new and expanding commercial and industrial activities that will assist with
2654 the County's economic base.

2655 We submit, that with the modifications to the proffered conditions that were made as a result of
2656 Mr. Yolton's last staff report; and I believe that those modifications were essentially
2657 clarifications and not substantive changes to the proffers. I'm glad that he feels they are
2658 improved, however. That with those changes, the requested rezoning will allow development
2659 of the property in a manner which is appropriate at this location.
2660

2661 We further submit that the jurisdictional prerequisites for the Planning Commission to
2662 recommend approval of the case to the Board of Supervisors are satisfied. For these reasons,
2663 we would respectfully request that you waive the time limit for accepting the amended and
2664 restated proffered conditions and recommend this case to the Board of Supervisors for
2665 approval.
2666

2667 If you have any questions, I've just kind of skimmed over the conditions. I'll allow you all to ask
2668 any questions you may have about them.
2669

2670 Mr. Archer - Thank you, Mr. Moore. Are there any questions for Mr. Moore by
2671 Commission members?
2672

2673 Mrs. Wade - Would it be fair to say that these building materials, basically,
2674 flooring, is a building material?

2675
2676 Mr. Moore - The building material is brick.
2677
2678 Mrs. Wade - I mean his product that he sells? Mr. Costen sells flooring.
2679
2680 Mr. Moore - He sells flooring and related products.
2681
2682 Mrs. Wade - Yes.
2683
2684 Mr. Moore - Carpeting and hardwood floors.
2685
2686 Mrs. Wade - What's the zoning where he is now? Do you know?
2687
2688 Mr. Moore - Do you know what it is, Randy? Is it M-1?
2689
2690 Mr. Randy Costen - Yes sir.
2691
2692 Mrs. Wade - Is outside storage allowed at his current location?
2693
2694 Mr. Moore - I would think it probably is. It is normally allowed in M-1 if its
2695 screened. However, as you know, we won't have any outside storage, except for vehicles.
2696
2697 Mrs. Wade - And his showroom now is in what shopping center?
2698
2699 Mr. Moore - His showroom is in a shopping center on Lauderdale Drive.
2700
2701 Since you asked about his existing facility, he currently has about 13,000 square feet of office
2702 and distribution area on Telegraph Road. Where he's going here, he'll have around 24,000
2703 square feet. So, he's going to have more space to be able to control...He's growing and he
2704 needs that additional space. That's why he wants to move. He will have the space.
2705
2706 Mrs. Wade - How long has the business been where it is now?
2707
2708 Mr. Costen - I think it has been about 25 years.
2709
2710 **(Gap in tape)** Mr. Moore is responding to Mrs. Wade's question about signage and lighting.
2711
2712 ...but that's similar to the way the signs would be lit. I might say that, a number of these
2713 conditions were noted. We worked at some length with the neighbors on these conditions.
2714 But the nature of the signage and the lighting of the signage is a direct result of those
2715 conversations.
2716
2717 Mrs. Wade - And the only place that you've indicated that the intensity of the
2718 lighting will not exceed a half foot candle is along Mayland?
2719
2720 Mr. Moore - No. Well, I thought I said along all property lines; along all
2721 streets. I meant to say that. If I didn't, I can certainly change that.
2722

2723 Mrs. Wade - No. You limited it to Mayland. It's not up there now. And the
2724 buffer on the Mayland side, as I understand it, there's some difference across from the RTH
2725 versus the rest of the...
2726
2727 Mr. Moore - The difference would be; across from residential zoning, we're
2728 required to have a 50-foot buffer. Where we're across from M-1 zoning, it's my understanding,
2729 we're not required to have a 50-foot buffer. We're showing a green area of 50-feet there. We
2730 have specified, across from the townhouse community, we will not have any easements
2731 running parallel to the buffer area, and also we'll have no above ground water quality features.
2732
2733 Mrs. Wade - But there could be ponds or something down at the corner of
2734 Stillman and Mayland? You haven't prohibited it.
2735
2736 Mr. Moore - Yes ma'am. We think that's very likely.
2737
2738 Mrs. Wade - How do you respond to the Highway Department comments
2739 about the access to Pemberton, which is a little unusual for them?
2740
2741 Mr. Moore - Well, my response is, if we can't have access to Pemberton
2742 Road, then we will not develop the property with access to Pemberton Road. I think it's a POD
2743 issue. I think that the way this property is going to be developed, there would be a limited use
2744 of that drive. I further think that the drive would never be allowed in that configuration; that we
2745 would have to combine it with Bell Atlantic. We've had discussions with them about that. But I
2746 really feel that's a POD issue. If we can't have it, we can't have it.
2747
2748 Mr. Silber - Mr. Moore, on the site layout, it shows for "future expansion,"
2749 towards the northern side of the property. That's also, I believe, to be a fenced in area for
2750 loading, etc. Is there ample space for parking and loading, etc., with that future expansion of
2751 that building?
2752
2753 Mr. Moore - I feel that the answer to that is, "yes." They spent a lot of time
2754 working on this layout to make sure that it would work for them. I think the answer is, yes.
2755
2756 Mr. Silber - So, it's not likely additional green space would be taken up in
2757 front of the site with parking to facilitate a future expansion of the building.
2758
2759 Mr. Moore - There's significantly more parking shown on the site plan than we
2760 anticipate would be required. You know the requirements for parking will vary, depending on
2761 how much office use you have within this development. And the more office you have, the
2762 more parking you're going to have to have. I think there is even more room in the back for
2763 parking, for that matter. I don't think that's going to be a problem, Mr. Silber.
2764
2765 Mrs. Wade - Actually, on the site plan that's shown, required is 107, and
2766 you're providing 190?
2767
2768 Mr. Moore - That's what somebody determined. I mean, you don't know what
2769 you're going to be required to have until you see what the uses are. I mean I don't think it's
2770 going to go to 190, if its 107 on the basis of say, two-thirds distribution.
2771

2772 Mr. Archer - Okay. Any further questions of Mr. Moore? If not, we'll hear from
2773 the opposition.
2774
2775 Mr. Moore - I think there are a couple of proponents.
2776
2777 Mr. Russ Malone - I'm in favor of this. We're owners of the land in the northwest
2778 corner of Stillman and Mayland, across the street from this. We think there are two real good
2779 reasons to approve this. First, this acts as a great buffer against the rear of the shopping
2780 center where all of the tractor-trailer traffic is and dumpsters and everything. And we feel like
2781 this buffers it a lot more than an office building that's three stories that would be parking
2782 around it and opening it up.
2783
2784 The traffic in the area is a big concern. If you ever go there at lunch time at the peak hours, it's
2785 extremely hard getting around and out on the roads. With approval of this zoning, we feel like
2786 it would really put the traffic about 50 percent or less than would be generated if you went with
2787 a three-story office building where you have 400 or 500 spaces there. So, we very much
2788 would like to see this ease the traffic permanently by doing this type of zoning. We're much in
2789 favor. Thank you.
2790
2791 Mr. Archer - Thank you. Any questions before he takes his seat?
2792
2793 Mrs. Wade - Which part? Where did you say you owned?
2794
2795 Mr. Malone - We own the northwest corner of Stillman and Mayland, right
2796 across the street at Stillman?
2797
2798 Mrs. Wade - Next to the Lube, or including the Lube?
2799
2800 Mr. Malone - Next to it.
2801
2802 Mrs. Wade - Where they're putting an office building?
2803
2804 Mr. Malone - Yes ma'am.
2805
2806 Mr. Archer - Are you in favor, sir? Was there somebody else, Mr. Moore, in
2807 support of?
2808
2809 Ms. Ann Bolton, 3511 Pemberton Road - I have lived here for the past 40 years. I'm speaking
2810 on behalf of four of us who own property on the east side of Pemberton Road, across from this
2811 proposed development. We've attended these meetings frequently in the past, as the rural
2812 nature of our area has disappeared. Sometimes we outright oppose new development, but
2813 mostly we saw to it, it was carried out in an attractive and well planned manner. We believe
2814 this proposed development is in keeping with the rest of the area.
2815
2816 Also, we have security problems with this land as it is now. It does abut that shopping center.
2817 And with all the commercial development, we have a lot of people roaming around that weren't
2818 there before. We've had some incidents with people going in those woods that we're not real
2819 sure what it's all about. We've had cars park on the upper part of that property at different
2820 times that had no business there.
2821

2822 Mr. Moore has worked with the neighbors to make it an attractive and well planned site, and it
2823 should have no more impact than any other office space, and has been pointed out, less. We
2824 are in favor of it.
2825
2826 Mr. Archer - Any one else?
2827
2828 Mrs. Wade - Ms. Bolton, would you come back just a minute, please? I have a
2829 question. I know a number of those other cases you were concerned about Pemberton Road
2830 traffic. And, also, some of you felt strongly about the traffic and that's why the sign is up there
2831 at the eastern end of the shopping center, which doesn't work.
2832
2833 Ms. Bolton - A lot of trucks still go in there.
2834
2835 Mrs. Wade - That's true and I expect the same thing would happen here.
2836
2837 Ms. Bolton - It will have a lot of noise from the shopping center, from the
2838 trucks, because all of the delivery area is in the back. The back of that, actually, we're in the
2839 curve on Pemberton, so it sort of faces us. We feel like this will be an improvement for the
2840 whole business there. I don't think the County is going to give them that entrance on
2841 Pemberton Road. So, I don't have to worry about another entrance on Pemberton Road. I
2842 can't imagine the County allowing another driveway on...
2843
2844 Mrs. Wade - It's a State highway.
2845
2846 Ms. Bolton - Well, State highway.
2847
2848 Mrs. Wade - The County has a lot of input in those things.
2849
2850 Ms. Bolton - Yes. That's true. There's an accident every day between the
2851 shopping center and the service station up on the corner. Supposedly, one of the deals with
2852 the shopping center, there was going to be no left turn. It was going to be a cement divider. I
2853 don't know what happened to that. So, I don't think the entrance onto Pemberton Road is
2854 going to be a problem. I don't think it's going to be an adverse traffic situation. It would be a
2855 lot worse put there trafficwise.
2856
2857 Mrs. Wade - Thank you. One more thing. Which house is yours? Are you the
2858 first one next to Creepy Creature Lane? I thought that was your house.
2859
2860 Ms. Bolton - No. I think that got named when Haynes Furniture was built.
2861 We're the first house next to Creepy Creature.
2862
2863 Mrs. Wade - The same people still live up there?
2864
2865 Ms. Bolton - On Creepy Creature Lane? Yes.
2866
2867 Mr. Archer - Okay. If there are any more proponents, the Secretary tells me
2868 we have about two minutes left. Of course, Mr. Moore has rebuttal time. So, if there is no
2869 more, we'll hear from the opposition.
2870

2871 Mr. Edward Gilliken - Mr. Chairman, members of the Commission, I am President of
2872 the Pemberton Green Townhouse Association Board; an Association representing 41 property
2873 owners located directly across Mayland Drive from the proposed project. I am a licensed
2874 architect and homeowner residing at 9900 Whitney Circle. Our Association Board has worked
2875 very hard with Mr. Moore and the developer to come to an agreement, but only yielded
2876 complex proffers and no satisfactory agreement to date.

2877
2878 Mrs. Wade - Have you all seen the latest final proffers?

2879
2880 Mr. Gilliken - I received a copy of the latest proffers. I really didn't see a
2881 change from just a couple weeks ago. It was complex and too difficult to enforce. I really don't
2882 see much difference. As homeowners, we purchased our property with the belief and wisdom
2883 of our County's Comprehensive Plan and Zoning Ordinance governing appropriate and
2884 compatible land uses. The current zoning for the property, in question, is O-2C, and is a buffer
2885 between our homes and the Westpark Shopping Center on Broad Street. The wholesale and
2886 minimal nature of Costen Floors is incompatible with Henrico County's Comprehensive Plan
2887 and the well being of our neighborhood.

2888
2889 The general appearance of the proposed project is a retail shopping center. If the project
2890 were to be built, there would be no means of preventing the owner from seeking special use
2891 permits for retail activity in the adjacent units. It would be difficult to turn down the request
2892 because of Costen Floors already minimal activity on the site. Our concern is that the
2893 proposed project suspiciously resembles a strip shopping center and not an office similar to
2894 nearby office parks like Gaskins Center or like North Run.

2895
2896 The position of our Board is simple. We welcome a true office/warehouse-type project which
2897 would conform to the intention of the comprehensive plan providing that: A.) The development
2898 actually resembles an office complex in the same vain as nearby Gaskins Center or the
2899 Westerre Center; and B.) Due to the conflicting use of Costen Floors with the Comprehensive
2900 Plan, would be unable to occupy their proposed location. That's all I have.

2901
2902 Mr. Archer - Thank you, sir. Are there any questions for Mr. Gilliken?

2903
2904 Mrs. Wade - Now, you all have heard all the horrible things that could happen
2905 to you in O-2? You're still in favor of the O-2 rather than the proposed... And I say "horrible"
2906 with quotations around it.

2907
2908 Mr. Gilliken - Sure. During the past 13 years we forget about the recession
2909 that construction has experienced, which is probably explains the non-development of that
2910 site. I think that an office/warehouse project is appropriate in this location, but this is not an
2911 office/warehouse. I plead to your sensibility on this. Thank you.

2912
2913 Mr. Chris Parcell - Mr. Chairman and members of the Commission, I live at 9938
2914 Whitney Circle. I'd like to start off by reading a letter from Sue Purvis, who is our Secretary of
2915 our Board, who is, unfortunately unable to speak.

2916
2917 "Mr. Chairman and Commission Members:

2918
2919 I regret not being able to personally address you this evening. I am fighting a cold and my
2920 voice in no more than a tiny squeak!

2921
2922 I purchased a townhouse in Pemberton Green at 9910 Whitney Circle in March, 1989.
2923 Although my townhouse has been rented for the past two years I have maintained a position
2924 on our Board of Directors.

2925
2926 I have met and discussed this case with Mr. Moore on numerous occasions and would like to
2927 thank him for his time. He has listened to all of our concerns and been extremely responsive
2928 to our requests. We have made significant improvements to this case since our first meeting,
2929 and I wanted to publicly thank Mr. Moore for his efforts.

2930
2931 Unfortunately for me, a significant concern and obstacle still exists. This obstacle being the
2932 proposed M-1 zoning and its associated proposed uses. The proposed development is simply
2933 not compatible with our residential community and I believe would adversely affect our property
2934 values. A townhouse Community should not have Office / warehouses with 24 hour access
2935 and retailing as its adjacent neighbor. My concern is quite clearly reflected in the revised
2936 Planning Staff Report.

2937
2938 We have been told that truck traffic will be directed to enter the project from Stillman Drive.
2939 Well, we all know that tractor trailers and delivery trucks are going to go wherever they want to
2940 go, because they are bigger than the rest of us. And they will end up entering the property
2941 from Mayland Drive, driving across the curbs and through the grass to get where they need to
2942 go. A high intensity of delivery trucks is dangerous for our community and our children.

2943
2944 The applicant has proffered a site plan referred to as Exhibit "A." The proffer also states
2945 "unless deviations thereto are requested by the developer at the time of P.O.D. review." The
2946 applicant has proffered Architectural treatments referred to as Exhibit "B." The proffer also
2947 states "unless deviations thereto are specifically requested by the Developer and approved at
2948 time of P.O.D. review." In my opinion, these are useless proffers and it frightens our
2949 Townhouse Community to think what the applicant might actually submit at the time of
2950 development. This type of proffer does not reinforce the "trust factor" that should exist
2951 between neighbors.

2952
2953 The proffers address issues such as delivery times, trash collection, exterior storage and
2954 maximum warehouse square footage. However, as stated in the Staff report the amount of
2955 County Official time that would be required to enforce these issues is excessive and I believe
2956 realistically impossible.

2957
2958 I am not opposed to the eventual development of this property, however, I believe a user such
2959 as our neighbor to the west, is more appropriate for this location. Costen Floors is currently
2960 located in a strip shopping center on Lauderdale Drive, and I believe that type of retail
2961 environment is where he should seek to relocate his operation.

2962
2963 With these thoughts, I respectfully request the Planning Commission recommend denial of
2964 case C-83C-97. Thank you for your time."

2965
2966 I'm also on the Board as Vice-President and all of us feel, we would like the request to be
2967 denied. I would just like to emphasize the point that Mr. Gilliken and Ms. Purvis made about
2968 the fear of the property values. I've been there about 14 months. When I bought it, I asked
2969 the owners what the land was zoned for across the street as well as behind it, understanding
2970 nothing had been done in 13 years. I know that office buildings are great neighbors. Nobody

2971 there on the evenings. Nobody's there on the weekends. Granted the traffic may be less
2972 overall, but you've still got the weekend traffic and the evening traffic. Whereas, with an office,
2973 I know Southern Health has four cars there on the weekend. Being an employee of Southern
2974 Health, I know exactly what's going on and I know why they're there right now. That will not
2975 continue.

2976
2977 I also have a letter from Southern Health, that Mrs. Wade has a copy of. I'm not sure if it's
2978 been distributed to the rest of the members, that I'd like to read now that was addressed to Mr.
2979 Kaechele.

2980
2981 "Southern Health would like to express our strong opposition to the proposed rezoning case
2982 referenced above. Southern Health's headquarters is located west along Mayland Drive of
2983 the proposed site and has been located within Henrico County since 1983. I would like to
2984 stress the importance of the fact that Southern Health has been a responsible corporate
2985 citizen, providing numerous jobs and contributing in excess of one million in business license
2986 fees to the County over the last four years.

2987
2988 When weighing the decision to purchase our current facility, a great deal of consideration was
2989 placed on being located within the Deep Run Office community. Southern Health felt secure
2990 that the subject land would maintain Office zoning, thus acting as a buffer and transition from
2991 West Park Shopping Center and ensuring a like kind use on the property.

2992
2993 We realize the proposed facility could be architecturally pleasing, but the use, itself, carries a
2994 negative connotation and is not consistent nor compatible with an adjacent office use.
2995 Southern Health is currently near capacity at this property and may require a new facility within
2996 Henrico County. As a result we will need to place our facility on the market. Rezoning in the
2997 area between Stillman Parkway and Mayland Drive and Pemberton Road at this time to M-1
2998 Conditional could be a detriment to our potential to dispose of our current facility and relocate.

2999
3000 Accordingly, Southern Health respectfully requests that you and the other members of the
3001 Board, as well as the members of the Planning Commission, deny this request to be held on
3002 March 12, 1998. Thank you for your time and consideration on this matter." It was signed,
3003 "Sincerely, George B. Wheeler, Jr., CPA, Vice-President, Finance, Chief Financial Officer."

3004
3005 Mrs. Wade - Actually, a letter was addressed to Mr. Kaechele, and I got a copy
3006 of it and Mr. Donati got a copy of it. I don't know if the others did, but they've heard it now
3007 already. Deep Run, the office community in which Southern Health is located, has its own set
3008 of covenants and rules and regulations, as I recall, as Deep Run does on the other side of
3009 Gaskins.

3010
3011 Mr. Parcell - I mean, within the general area, it's still part of an office, right?

3012
3013 Mr. Archer - Okay. Any further questions for Mr. Parcell? Okay. Thank you,
3014 sir. Is there any other opposition? If not, then Mr. Moore, I think you have a couple minutes
3015 left for rebuttal time.

3016
3017 Mr. Silber - You have two minutes.

3018
3019 Mr. Moore - Thank you, Mr. Chairman. And I would like to acknowledge, as
3020 well, we did have a number of meetings, and I felt like, and I still feel like, we made a lot of

3021 progress, and probably this case, whether it's approved or denied, is probably better as a
3022 result of those meetings. I'm sorry we didn't reach agreement, but I think the discussions were
3023 good.

3024
3025 With respect to Mr. Gilliken's comments on the architecture, one of the reasons we originally
3026 deferred this case in the first place was to try to work on the architecture. We started with a
3027 concept of; really we started with photographs of buildings in Deep Run Business Center. So,
3028 this is a concept that we had in mind. We moved away from that in an effort to address
3029 concerns we heard about whether we'd like to see something more residential in character.
3030 We came up with things like the pitched roofs and the mullions in the windows and things of
3031 that nature that are, I think, residential in character where you do see some things like that in
3032 some shopping centers. But I don't think that gives us the appearance of a shopping center. I
3033 would certainly say that, regardless of the appearance of the zoning, we're not allowed to
3034 become a shopping center.

3035
3036 But we worked very hard on this architecture. We feel like we have an attractive building, but
3037 we, basically, started with something like a Deep Run concept in the first place, and moved
3038 away from it in an effort to address concerns they expressed. Somehow, we must have
3039 missed the boat, but that was our goal.

3040
3041 With respect to the retail, all that is allowed for retail is the sale of flooring and related material.
3042 Currently, it really is solely for Costen Floors. Right now, Ralph has a showroom on
3043 Lauderdale Drive in the shopping center of Wellesley. He might average 10 or 12 people
3044 coming there. What they're, basically, doing is looking at samples of flooring or carpeting.
3045 They might buy some wax or something of that nature. There is occasional retail sales, but
3046 they are, basically, not a true retail operation. And that is all that is allowed.

3047
3048 I would say that the M-1 zoning that is criticised here, you have it immediately adjacent to the
3049 property. In fact, Southern Health is located on M-1-zoned land. I haven't seen that letter from
3050 Southern Health, and I have not talked to anyone at Southern Health. Listening to that letter, if
3051 they say what they want is a Deep Run-type project, I submit that that's what this is. So, I
3052 would like the opportunity to speak with them to see if there's a misunderstanding about the
3053 nature of this project. I'd be happy to answer any other questions that the Planning
3054 Commission members may have.

3055
3056 Mr. Archer - Thank you, Mr. Moore. Are there any questions of Mr. Moore?

3057
3058 Mr. Millard Jones - (Unintelligible).

3059
3060 Mr. Archer - Sir, are you in opposition or...?

3061
3062 Mr. Jones - I'm for it.

3063
3064 Mr. Archer - Well, we've just about used up all the time. We could give you a
3065 minute or so.

3066
3067 Mrs. Wade - (To Mr. Moore) Do you want another minute?

3068
3069 Mr. Archer - We'll balance it.

3070

3071 Mrs. Wade - So, basically, you're more rebuttal here, now, so, are they going
3072 to be able to rebut you?
3073

3074 Mr. Jones - Mr. Chairman and members of the Planning Commission, my
3075 name is Millard Jones and I'm with Morton Thalheimer Realtors. I've been a realtor for 34
3076 years here in Henrico County and have lived here that long. We're a pretty large firm. We
3077 used to get a call a week. We now get a call a day from suppliers and subcontractors who are
3078 thinking about coming to Virginia; more specifically Richmond. They're coming here in
3079 anticipation of doing work with the Motorola people. I take them out and show them property in
3080 the west end of Henrico County and they say, "We need to rent space," that's, according to
3081 your specifications, zoned M-1. It's 370 acres. It's going to be developed less than seven
3082 miles away. We need some facility to meet this tremendous need for industrial land and
3083 buildings to lease. I don't know. I can't find it, but there's none in western Henrico County.
3084 These out-of-town people really don't understand it. That's all I need to say there.
3085

3086 The other thing about Southern Health, I'd like to remind the people, Southern Health bought
3087 their building at a foreclosure sale. It was not built for them. It was not designed for them.
3088 They took advantage of a down market and small economy. They bought there because it
3089 was a good deal. So, don't let them sway you with their magnificent building, because they
3090 had nothing to do with it.
3091

3092 Mrs. Wade - You wouldn't criticize a good deal, now, would you, Mr. Jones?
3093

3094 Mr. Jones - No. I wouldn't criticize a good deal. But don't waffle.
3095

3096 Mr. Vanarsdall - Do you live anywhere near here?
3097

3098 Mr. Jones - Me, sir? No, I live off of Gayton Road near the Goochland line.
3099 But I've lived in Henrico County 35 years. I've been a broker 34 years.
3100

3101 Mr. Vanarsdall - So, it wouldn't affect your property as far as living, what they did
3102 with it?
3103

3104 Mr. Jones - Oh no. I'm just here to say I can't find the product for the people.
3105 I would like for the County, economically, to think about where it doesn't exist. There's none
3106 out there. Any other questions?
3107

3108 Mr. Archer - Okay. Thank you, Mr. Jones. I think the Commission and the
3109 staff is glad to hear someone is looking for M-1 property.
3110

3111 Mr. Zehler - Only in Varina.
3112

3113 Mrs. Wade - I don't think that's any mystery.
3114

3115 Mr. Archer - It's good to hear that. Okay. Did the opposition want another
3116 minute or so? We'll give you a minute, sir.
3117

3118 Mr. Gilliken - Yes. Just a minute. It's pretty obvious what his motives are. He's
3119 a realtor. First of all, no high tech, in their right mind, is going to lease (Could I see the
3120 elevation, please?); going to lease a space that looks like this. It's just inconceivable to me. I

3121 can't understand how you guys could see this as an office/warehouse. It does have potential.
3122 Like I said, we would support an office/warehouse at this location. But this is not an
3123 office/warehouse.

3124
3125 Mr. Archer - Thank you, sir. Okay. Mrs. Wade.

3126
3127 Mrs. Wade - I've been concerned about this ever since I first heard about it.
3128 Mr. Jones is right. There, obviously, is a market for; well, you know about Motorola and all
3129 these other businesses are looking for places to go. We've got an infill parcel here that was
3130 zoned before, or, at least, after a lot of the people moved into the townhouses. I want to get
3131 my timing right here. That was in 1985, zoned before the townhouse people moved in.

3132
3133 Although I know there's a need and I know Mr. Costen operates a good business in the
3134 County, we are interested in keeping and encouraging expansion in the County. This is a site
3135 that's quite visible on all three sides. We don't usually put an M-1 across the street from
3136 residences. I know they've gone a long way with the proffers toward making it acceptable.
3137 Hopefully, the way that they have with the neighbors, but they have the basic concern, I think,
3138 that the particular use is not compatible with residential areas. I'm not sure about the people
3139 on Pemberton. They have come, perhaps, to change their minds through the years about the
3140 use of this land, based on its sitting there all this time.

3141
3142 I'm reminded a little bit of the case that the Board had last night with the car lot off of
3143 Springfield, north of Broad, which got back far enough from Broad to impact the residential
3144 area. He also has a successful local business. But some of the comments that were made
3145 when we had the hearing on that, were somewhat significant about the fact that truckers don't
3146 know and don't care about property owners. And it's been our experience with businesses that
3147 are supposed to screen, or not have outside storage, that as the years go on, the temptation
3148 gets strong to spread your things around. I know, apparently, where it's located now, there's
3149 not supposed to be outside storage unscreened, but it's been there a long, long time.

3150
3151 The proffers seem to have gone a long way toward making this a really good zoning case. But
3152 still, as I've said a number of times here, people should be able to depend oftentimes on our
3153 Comprehensive Plan. This was considered in 1985, a transitional use, and if I may quote the
3154 applicant's attorney at the time, "...a reasonable, appropriate, and attractive transition between
3155 the shopping center and the residents on the south..." So, if it was good planning then, what's
3156 changed, other than the fact it hasn't been marketed, perhaps, as much as it might have
3157 been? I really can't judge that, but there's still a lot of flexibility in the way, included in the
3158 proffers, that they can always come back and ask for something else if a likely prospect comes
3159 along. And once the zoning gets in, it's hard to resist these things. The Board may well feel
3160 differently about this, but I would move, in its current condition, that...First I have to waive the
3161 time limit for accepting the amended proffers. I'm sorry. So, I move we waive the time limit to
3162 accept the proffers.

3163
3164 Mr. Vanarsdall seconded the motion.

3165
3166 Mr. Archer - Motion made by Mrs. Wade, seconded by Mr. Vanarsdall to waive
3167 the time limit. All those in favor say aye—all those opposed by saying nay. The vote is 4-0
3168 (Mr. Mrs. Dwyer absent, Donati abstained).

3169

3170 Mrs. Wade - Then I would move we recommend Case C-83C-97 to the Board
3171 for denial.

3172
3173 Mr. Archer - Is there a second?

3174 Mr. Vanarsdall seconded the motion.

3175
3176 Mr. Archer - Motion made by Mrs. Wade, seconded by Mr. Vanarsdall that C-
3177 83C-97 be recommended for denial. All those in favor say aye—all those opposed by saying
3178 nay. The vote is 4-0 (Mr. Mrs. Dwyer absent, Donati abstained). Mr. Secretary, that will be
3179 heard on...

3180
3181 Mr. Silber - This case will be heard by the Board of Supervisors on April 8,
3182 1998, at 7:00 o'clock in this room.

3183
3184 REASON: Acting on a motion by Mrs. Wade, seconded by Mr. Vanarsdall, the Planning
3185 Commission voted 4-1 (one absent, one abstention) to recommend that the Board of
3186 Supervisors **deny** the request because it would have a detrimental impact on the adjoining
3187 residential neighborhood; and does not conform to the recommendation of the Land Use Plan
3188 nor the Plan's goals, objectives and policies.

3189
3190 **C-16C-98 Jay M. Weinberg for Short Pump Associates, LLC:** Request to
3191 conditionally rezone from A-1 Agricultural District to M-1C Light Industrial District (Conditional),
3192 Parcel 36-A-14, described as follows:

3193
3194 Beginning at a point on the southern right-of-way line of Interstate 64 at its intersection with the
3195 western right-of-way line of Pouncey Tract Road; thence along Pouncey Tract Road S 18° 27'
3196 02" E., 82.71' to a point; thence S 04° 25' 52" E., 1.63' to a point, said point being the True
3197 Point of Beginning; thence S. 04° 25' 52" E., 151.84' to a point; thence leaving the right-of-way
3198 line of Pouncey Tract Road N 78° 03' 33" W., 215.22' to a point; thence N. 01° 50' 33" W.,
3199 150.00' to a point; thence S 78° 03' 33" E., 208.16' to the True of Beginning, containing
3200 approximately .71 acre.

3201
3202 Mr. Archer - C-16C-98 Jay M. Weinberg for Short Pump Associates, is anyone
3203 here in opposition to this case? Seeing none, Mr. Yolton, sir.

3204
3205 Mr. Lee Yolton, County Planner - Mr. Chairman, I'd like to be very brief on this. I really don't
3206 have anything to add to what's in the staff report. This is essentially a housekeeping-type
3207 measure. This is a residual parcel that would be included with the overall development of a
3208 larger parcel that was approved by the Board of Supervisors last night, and staff does
3209 recommend approval of this rezoning request. I'd be happy to try to answer any questions.

3210
3211 Mr. Archer - Are there any questions for Mr. Yolton?

3212
3213 Mr. Zehler - You say it's just a clean up?

3214
3215 Mr. Yolton - It's a clean up measure that staff recommended this parcel be
3216 included with a larger development. I'm not sure, if you remember, but a mini-storage...

3217
3218 Mr. Zehler - Is it the A-1 you see all around it?

3219
3220 Mr. Yolton - Yes. A mini-storage warehouse is proposed here. For whatever
3221 reason, this particular parcel was left out of that initial zoning request which was approved by
3222 the Board last night. So, this is kind of catching up to the other rezoning request that's already
3223 been approved.
3224
3225 Mrs. Wade - Was that the same proffers that the other one had?
3226
3227 Mr. Yolton - This does have the same essential proffers, although some of the
3228 proffers, because this is one individual parcel, they have to be tailored for this particular site.
3229
3230 Mrs. Wade - I understood from hearing the Board last night, the proffers had
3231 changed a little bit since we had it. They added something about access?
3232
3233 Mr. Yolton - Right. Access was an issue on the larger case. And an
3234 additional proffer was added that said, essentially, the Director of Public Works would have the
3235 authority to deny a use if it was considered to be too much traffic generation and the access
3236 couldn't handle it. I'm sure Mr. Weinberg can explain that in greater detail, if you'd like.
3237
3238 Mrs. Wade - I recall that access was one of the main issues in this location.
3239 Okay. Thank you.
3240
3241 Mr. Archer - Okay. Any further questions for Mr. Yolton by Commission
3242 members? Do you need to hear from the applicant, Mrs. Wade?
3243
3244 Mrs. Wade - Just to answer the question, please, about the...
3245
3246 Mr. Zehler - Plus, we can't let Mr. Weinberg sit here all night and not ask him
3247 a question.
3248
3249 Mr. Jay Weinberg - Mr. Chairman, members of the Commission, I represent Mr. Levy
3250 on Short Pump Mini-storage. I think, Mrs. Wade, your question was whether or not we added
3251 a proffer yesterday, or the day before, regarding traffic? The answer is, yes, we did. I'm
3252 happy to add it to this case.
3253
3254 Basically, the proffer reads as follows: "Traffic Restriction: No plan of development shall be
3255 granted for a use on this property other than for mini-storage warehouse facilities which will
3256 generate more trips per day that can adequately be handled in the opinion of the Director of
3257 Public Works, or until alternative vehicular access is obtained to serve the property..." And as
3258 I indicated last night with Mr. Kaechele, we are in the process of negotiating access just east of
3259 (unintelligible) through there. If you will recall, on the Plan for the other case, we proffered this
3260 layout. We had intentionally left it open in accordance with our agreement with VDOT. I'd be
3261 happy to add that to this case.
3262
3263 Mrs. Wade - I would think if you add it before it gets to the Board, it would be
3264 time enough.
3265
3266 Mr. Weinberg - I'll add it either tonight or in the morning. Well, let me say,
3267 Monday.
3268

3269 Mrs. Wade - Because I would expect Mr. Kaechele would be looking for the
3270 same thing.
3271
3272 Mr. Weinberg - This was negotiated with Mr. Kaechele. I intend to put it there.
3273 Let me just say one other point in response to Mr. Zehler's question. Last night the Board
3274 rezoned to M-1 everything in the cross-hatched (referring to rendering). This is just the one
3275 little lot that was left.
3276
3277 Mr. Silber - Mr. Weinberg, there was another question I raised with you last
3278 night relative to the location of the loading doors. I think there was a proffer in the zoning case
3279 last night that specified, "No loading doors on the eastern most building adjacent to Pouncey
3280 Tract." Would that apply to this piece of property as well?
3281
3282 Mr. Weinberg - I don't know how it could, but I don't have any problem putting it
3283 in there.
3284
3285 Mr. Silber - If the mini-storages were built, I guess, all the way over, it feasibly
3286 could be on this property, couldn't it?
3287
3288 Mr. Weinberg - Sure. But, okay, that proffer originally read, read as passed by
3289 the Board, "No loading doors shall be located on the eastern wall of any building closest to
3290 Pouncey Tract Road." Based on our conversation, I was going to write you a letter which said,
3291 "This means, no loading doors shall be located on the eastern walls of the building or buildings
3292 closest to Pouncey Tract." This is a rather esoteric point. We agreed with regard to any mini-
3293 storage warehouse building closest to Pouncey Tract, there would be no doors facing Pouncey
3294 Tract; no loading doors. Mr. Silber pointed out to me that could conceivably be interpreted to
3295 apply only to that building, which runs perpendicular. I said, clearly, that was not the intent.
3296
3297 By changing the language, "No doors shall be allowed on any buildings which are closest
3298 to..." it would include this, this, both (referring to rendering). I'll submit that language to you in
3299 draft form. If you'd like different verbiage, I'll give it to you. I'd also played with "which faces
3300 that are substantially parallel to", but I think the way I've worded it in the plural covers better.
3301
3302 Mr. Silber - It sounded fine.
3303
3304 Mrs. Wade - Do you have a copy of those in your pocket, tonight?
3305
3306 Mr. Weinberg - Sure. This is from the other case. They are the other two
3307 proffers.
3308
3309 Mrs. Wade - I didn't know, if you had them ready, to submit them tonight.
3310
3311 Mr. Weinberg - I can write them out in hand and then fax in tomorrow. I tell you
3312 what I can do, I can just tear this page off and give it to you. Why don't we just do this.
3313
3314 Mrs. Wade - I wouldn't have known you had new proffers, if I hadn't been here
3315 last night. There weren't any other changes made? It seemed to me, there were three things
3316 referred to last night, but I'm not sure. I have no idea what they were. I had the impression
3317 there were two that were amended and one that was added.
3318

3319 Mr. Weinberg - The one about proffering the layout plan is inapplicable because
3320 the buildings were further back. So, that's not part of this case. We have the architectural
3321 proffer instead. If you'll fax that to me in the morning, I'll get it typed up and shot back to you.
3322
3323 Mrs. Wade - All right, so we'll have to waive the time limit for those additions.
3324
3325 Mr. Archer - Okay. Are there any further questions for Mr. Weinberg?
3326
3327 Mrs. Wade - No. I think it's a good thing you've gotten this whole thing put
3328 together.
3329
3330 Mr. Archer - Mr. Vanarsdall, do you have a question?
3331
3332 Mr. Vanarsdall - No sir. I said, "None."
3333
3334 Mr. Archer - All right, Mrs. Wade.
3335
3336 Mrs. Wade - I move we waive, then, the time limit to accept the additional
3337 proffers.
3338
3339 Mr. Zehler seconded the motion.
3340
3341 Mr. Archer - Motion made by Mrs. Wade, seconded by Mr. Zehler that we
3342 waive the time limit to accept the additional proffers. All those in favor say aye—all those
3343 opposed by saying nay. The vote is 4-0 (Mrs. Dwyer absent, Mr. Donati abstained). And the
3344 case.
3345
3346 Mrs. Wade - As I just said, this is really just filling in the hole of the donut as
3347 Mr. Weinberg likes to say. It's just, basically, making for a better overall development in this
3348 location. So, I would move that Case C-16C-98 be recommended for approval with the
3349 additional proffers.
3350
3351 Mr. Vanarsdall seconded the motion.
3352
3353 Mr. Archer - Motion made by Mrs. Wade, seconded by Mr. Mr. Vanarsdall. All
3354 those in favor say aye—all those opposed by saying nay. The vote is 4-0 (Mr. Mrs. Dwyer
3355 absent, Donati abstained).
3356
3357 REASON: Acting on a motion by Mrs. Wade, seconded by Mr. Vanarsdall, the Planning
3358 Commission voted 4-1 (one absent, one abstention) to recommend that the Board of
3359 Supervisors **accept the proffered conditions and grant** the request because it conforms to
3360 the recommendations of the Land Use Plan; it would assist achieving the appropriate
3361 development of adjoining property, and the proffered conditions will provide appropriate quality
3362 assurances not otherwise available.
3363
3364 Mr. Archer - All right. Thank you, Mr. Weinberg.
3365
3366 Mr. Vanarsdall - Glad to see you, Mr. Levy.
3367

3368 Mr. Levy - Same here, Mr. Vanarsdall.
3369
3370 Mr. Vanarsdall - Enjoyed talking to you.
3371
3372 Mrs. Wade - We have to set a work session.
3373
3374 Mr. Silber - The next item on the agenda is, if I can have a few more minutes
3375 of your time, is a discussion item. This is to set a date for work session on what we are calling
3376 "Public Hearing Procedures." The Commission may be aware of the fact, perhaps not, that the
3377 Chairman and Vice-Chairman of the Planning Commission met with a couple of the staff to talk
3378 about potential ways of shortening the Planning Commission meetings. Some of these may
3379 occur in ways such as sticking more closely to the proffered conditions and the 48-hour
3380 requirement. It may involve imposing the 10-minute requirement, not only on zoning cases,
3381 but also in PODs and Subdivisions. A possible consent agenda or some aspect that is similar
3382 to that. In looking, perhaps, at other localities to see how they deal with their agenda.
3383
3384 The short of this is we would like to have a work session to talk more about this. We would like
3385 to entertain some ideas and run some ideas by the Commission and talk more about this. The
3386 Chairman and Vice-Chairman had, I think, some good ideas. We shared some ideas with
3387 them from staff. So, we were hoping that, perhaps, we could have a work session giving the
3388 staff some time to develop these; maybe the end of April, perhaps at the end of the POD
3389 meeting in April which is the 28th of April.
3390
3391 Mr. Archer - And I might add we're just attempting to try to see if we can be as
3392 efficient as we possibly and, perhaps, we're not being. We certainly would welcome any idea
3393 from anybody that might assist us. Tonight, believe it or not, we were relatively short.
3394
3395 Mrs. Wade - That's because you deferred everything.
3396
3397 Mr. Archer - Well, see, that's a good point. Maybe that's one of the things we
3398 can do.
3399
3400 Mr. Silber - Maybe because Elizabeth wasn't here.
3401
3402 Mr. Archer - Yes. Well, I won't tell her that.
3403
3404 Mr. Vanarsdall - Mr. Chairman, is there any particular thing we're aiming at, or
3405 several things?
3406
3407 Mr. Archer - Probably, I'd say several things, Mr. Vanarsdall.
3408
3409 Mr. Vanarsdall - Because we have talked about one time before, a Consent
3410 Agendas.
3411
3412 Mr. Archer - Yes. We did. Maybe we can come up with something that would
3413 be similar to that, if not directly that.
3414
3415 Mr. Vanarsdall - May I make a suggestion when we have the work session, of
3416 course, it will have to be all of us together. Can we have the work session similar to what the

3417 Board does? They sit in an environment where we're all sitting together at a table and see
3418 each other, rather than just a line here and on a microphone? Can we do that?
3419

3420 Mr. Archer - I'd be glad to. I'd welcome it.
3421

3422 Mrs. Wade - I heartedly endorse that. Could we move maybe up in the
3423 Conference Room or some place? I agree. If we're going to share ideas and things, its more
3424 conducive.
3425

3426 Mr. Archer - Mr. Silber suggested the 28th.
3427

3428 Mr. Vanarsdall - Did anybody ever find out what the Board talked about in the way
3429 of the Planning Commission holds public hearings.
3430

3431 Mr. Zehler - I know. That was a concern. I received that after the fact. I
3432 thought it was a meeting I missed.
3433

3434 Mr. Vanarsdall - I never saw so many titles in my life. Ongoing this and the
3435 Number 1 thing is the economy of the County. I've never seen such titles; headings. Did
3436 anybody ever find out – Did they ever accomplish anything? Harvey told me they were going
3437 to have a meeting with all of us. I don't know if that petered out or not.
3438

3439 Mr. Archer - I haven't head anything about it at all, Mr. Vanarsdall.
3440

3441 Mr. Zehler - What date did we schedule this for?
3442

3443 Mr. Silber - April 28th.
3444

3445 Mrs. Wade - After the POD.
3446

3447 Mr. Archer - After the POD meeting.
3448

3449 Mr. Vanarsdall - I think it's a good idea to do this. I'm all for it.
3450

3451 Mr. Zehler - What is the topic of this meeting?
3452

3453 Mr. Archer - We want to try to discover ways that we can be a little bit more
3454 efficient in our meetings and stop having to stay so late and so long and holding the public up,
3455 and maybe a more efficient way of handling cases. Some people have to sit so long and wait
3456 for something that might last for two minutes. Then they go.
3457

3458 Mr. Zehler - Maybe if we get behind closed doors, I can answer that question.
3459

3460 Mr. Archer - Yes. That's what we need to do. I can answer that real quick.
3461

3462 Mr. Archer - Staff has come up with some good suggestions, but we want to
3463 involve everybody in the process, because the best suggestion may not have been heard yet.
3464

3465 Mr. Zehler - Now, this is after PODs?
3466

3467 Mrs. Wade - After the POD meeting?
3468
3469 Mr. Silber - After the POD meeting. Now, if you would prefer we could break
3470 from the PODs. We could break from the meeting and have lunch for you and go to a
3471 conference or the demonstration kitchen across the hall or something like that.
3472
3473 Mr. Zehler - But it would be after this meeting?
3474
3475 Mr. Silber - After the POD meeting is fine. We could go up to the County
3476 Manager's Conference Room?
3477
3478 Mr. Zehler - Well, the second floor, the big room we go in all the time.
3479
3480 Mrs. Wade - The Planning Office Conference Room.
3481
3482 Mr. Zehler - No. Down the hall from there.
3483
3484 Mr. Silber - That's Public Utilities.
3485
3486 Mr. Zehler - Public Utilities room.
3487
3488 Mr. Vanarsdall - After lunch after POD.
3489
3490 Mr. Zehler - That would be lunch, Mr. Vanarsdall. That's lunch included.
3491
3492 Mrs. Wade - Is there anything else we need to have a work session on?
3493
3494 Mr. Silber - Mrs. Wade, if we have some information in advance, we can
3495 share that with you; getting you thinking about it.
3496
3497 Mrs. Wade - But, I mean, is there anything else we need to have a work
3498 session on that day, coming up?
3499 Mr. Silber - At this point I'm not aware of anything else.
3500
3501 Mrs. Wade - But we know a possible time if we do, if something comes up.
3502
3503 Mr. Silber - The other item that I had also was to...
3504
3505 Mr. Vanarsdall - Wait a minute. I had a question, Mr. Chairman, if it's okay I bring
3506 this up? Mr. Secretary. I've always, unless I was hiding from my wife or somebody, I've
3507 always liked to be where a phone is. So, do you know how we can find out what this phone
3508 number is and how are we going to be able to know when it's ringing when it blinks and we
3509 can't see it? You know we had a lot of jump up and down before. I had to go to Virgil
3510 Hazelett, myself, to ever get it to blink back here without going through the switchboard and
3511 through security at night and a whole bunch of stuff. We were assured it was wide open. If
3512 somebody called, they couldn't get through. To make a long story short, how can we have a
3513 phone here and just us know the number? We don't want the public to dare know that, just to
3514 know the number and be able, if somebody wants to call, at night, be able to call and it blinks
3515 and the light bulb goes on.
3516

3517 Mr. Silber - I'll be glad to look into that. It may not ring for a reason. They
3518 may not want it to be ringing.
3519
3520 Mr. Vanarsdall - I don't want it to ring.
3521
3522 Mr. Silber - That location, yes. We're not going to be able to see it blinking.
3523
3524 Mr. Archer - Well, we're going to be able to put an extension in the control
3525 room and whoever is in there would know that it's ringing.
3526
3527 Mr. Silber - Isn't there a phone in the control room, folks.
3528
3529 (The indication was no.)
3530
3531 Mr. Vanarsdall - There is no phone.
3532
3533 Mr. Silber - No. George, why don't you tell us who you are and see if you
3534 can answer his question.
3535
3536 Mr. George Salinis, the Project Manager for the County - We have made provision for a phone
3537 on the stage that will connect to the control room. So, we will have two phones. We will have
3538 one on the platform with direct control to the console room. And we will have one private
3539 phone as well. That will be an outside phone.
3540
3541 Mr. Vanarsdall - When can we expect that, George, by next meeting?
3542
3543 Mr. Salinis - We will definitely have it in place by the next meeting. Yes sir.
3544
3545 Mr. Vanarsdall - Good.
3546 Mr. Zehler - That will be put in when they put in the back door, right?
3547
3548 Mr. Vanarsdall - I found out we've got a nice back door, except it's a fence around
3549 it. When they take that fence down, it will be all right.
3550
3551 Mr. Salinis - That's a question that several people have commented on, and
3552 we definitely are going to make that provision.
3553
3554 Mr. Silber - The other item I had was not only the minutes; hang on one
3555 minute, but we also need to set a time for the public hearing on Billboards. Billboards come up
3556 on our April 9th meeting, a month from now. We did not set a time before.
3557
3558 Mrs. Wade - I thought it was 7:00 o'clock.
3559
3560 Mr. Silber - We didn't set it for 7:00, but if we want to have it at 7:00, that's
3561 fine. Or if you'd like, we could have it like we did tonight. We could have it early at 6:30.
3562 Whatever the pleasure of the Commission would be.
3563
3564 Mr. Zehler - Can you imagine what our April workload is already?
3565
3566 Mr. Merrithew - It's at least 20 cases.

3567
3568 Mr. Silber - April 9th meeting is going to be extremely long.
3569
3570 Mr. Zehler - We'll just have to go through them real quick.
3571
3572 Mr. Silber - My recommendation would be that we start maybe like 6:30 to
3573 get a head start. We can get the billboard people in here, hopefully, hear some of the
3574 testimony and get part the way through it before the zoning people arrive. Or, if you don't want
3575 to do that, we could have the billboards at 7:00, start zoning at 8:00 or sometime later.
3576
3577 Mr. Zehler - For me, I don't know about Jim, I'd rather do it later, because for
3578 me to come from the east end to the west end between 5:30 and 6:00 o'clock, I get hung in
3579 traffic. I left 40 minutes early tonight and I was still late. So, us coming from this side, we're
3580 going with the traffic which is difficult for us.
3581
3582 Mr. Silber - I certainly recognize that. My only concern, and I apologize you
3583 have to drive that far because I know that is a challenge. My concern is Billboards could take
3584 maybe an hour; maybe an hour and a half. We may not start the zoning cases until 8:00 or
3585 8:30 p.m. and we may have a heavier load than we've had for quite some time.
3586
3587 Mrs. Wade - I could have sworn we said 7:00 o'clock before.
3588
3589 Mr. Archer - Well, you can come on over and have lunch and we can sit
3590 around over there until time to go. That's what I'll do, too.
3591
3592 Mr. Zehler - Make it 6:00 o'clock?
3593 Mr. Silber - 6:00; 6:30?
3594
3595 Mr. Zehler - If you do 6:30, that's not even allowing you enough time. With
3596 our caseload, we need to start at 7:00 o'clock.
3597
3598 Mr. Archer - You mean start the zoning meeting at 7:00?
3599
3600 Mr. Zehler - Yes. There's no way you could put it afterwards, based on the
3601 caseload.
3602
3603 Mrs. Wade - He's going to have people coming from his end of town for this
3604 hearing.
3605
3606 Mr. Zehler - So, I would think you need to set this for 6:00 o'clock.
3607
3608 Mr. Archer - I think the billboard meeting is going to take at least an hour;
3609 maybe a little bit longer. I agree. I think we should.
3610
3611 Mr. Zehler - I don't think an hour is going to be enough.
3612
3613 Mr. Archer - It probably won't, but it's better than a half hour.
3614
3615 Mr. Zehler - It's better than a half hour.
3616

3617 Mr. Silber - Okay. Do you want to set it at 6:00 o'clock?
3618
3619 Mr. Archer - Is that agreeable with everybody—Billboard meeting at 6:00
3620 p.m.?
3621
3622 Mr. Silber - The advertisement has to be sent by tomorrow. We will advertise
3623 it for 6:00.
3624
3625 Mrs. Wade - Is Allen getting a notice out to everyone...
3626
3627 Mr. Zehler - Is this with dinner, or after dinner?
3628
3629 Mr. Archer - When ever we can get that in.
3630
3631 Mr. Zehler - Well, if I'm going to leave early enough, I won't catch the traffic.
3632
3633 Mr. Vanarsdall - I tell you one thing, 6:30 is not working good. Every time we have
3634 it at 6:30, we're still on it at 7:00.
3635
3636 Mr. Zehler - Just like I was telling them, you're kidding yourself if you're saying
3637 6:30.
3638
3639 Mr. Silber - Mr. Vanarsdall, are you going to be here on the 9th?
3640
3641 Mr. Vanarsdall - No. I will not.
3642
3643 Mr. Zehler - He doesn't care what time we start.
3644
3645 Mr. Silber - Why is he asking? Why does he care?
3646
3647 Mr. Archer - So, we're looking at 6:00 o'clock on the 9th.
3648
3649 Mr. Silber - 6:00 o'clock on the 9th.
3650
3651 Mr. Vanarsdall - Mr. Secretary, you could also work on some trash cans when you
3652 get the phone.
3653
3654 Mr. Silber - Trash cans, also? Okay.
3655
3656 Mr. Vanarsdall - And then if we could get some mufflers for this noise, that will
3657 help too.
3658
3659 Mr. Silber - Yes. They're working on the noise. Okay, the minutes.
3660
3661 Acting on a motion by Mr. Zehler, seconded by Mrs. Wade, the Rezoning Minutes of January
3662 15, 1998 were approved.
3663
3664 Acting on a motion by Mrs. Wade, seconded by Mr. Archer, the Rezoning Minutes of February
3665 12, 1998 were approved as corrected:
3666

3667 Page 13 - Lines 619-630 repeated.
3668 Page 39 - Line 1855 - Spelling of name; Madeline.
3669 Line 1884 - ...will not request...
3670 Page 51 - Line 2470 - I understand that...
3671 Line 2499 - These would be small homes...
3672 Page 56 - Line 2751 - every reason...
3673 Page 87 - Line 4240 - not take it...
3674
3675 Acting on a motion by Mrs. Wade, seconded by Mr. Vanarsdall, the Plan of Development
3676 Minutes of November 25, 1997 were approved.
3677
3678 There being no further business, on motion by Mr. Zehler, seconded by Mr. Vanarsdall, the
3679 Planning Commission adjourned its meeting at 10:40 p.m. on March 12, 1998.
3680
3681
3682
3683
3684 _____
3685 C. W. Archer, C.P.C., Chairman,
3686
3687 _____
3688 Randall R. Silber, Acting Secretary