

Minutes of the regular monthly meeting of the Planning Commission of the County of Henrico, Virginia, held in the Board Room of the County Administration Building, Parham and Hungary Spring Roads at 7:00 p.m., on September 10, 1998, Display Notice having been published in the Richmond Times-Dispatch on Thursday, August 20, 1998, and Thursday, August 27 1998.

Members Present: C. W. Archer, C.P.C., Chairman, Fairfield
Elizabeth G. Dwyer, C.P.C., Vice-Chairman, Tuckahoe
Ernest B. Vanarsdall, C.P.C., Brookland
David A. Zehler, C.P.C., Varina
James B. Donati, Jr., Board of Supervisors, Varina
John R. Marlles, AICP, Secretary, Director of Planning, Secretary

Members Absent: Mary L. Wade, Three Chopt

Others Present: Randall R. Silber, Assistant Director of Planning
John Merrithew, AICP, Principal Planner
Mark Bittner, County Planner
Ted McGarry, County Planner
Jo Ann Morgan Hunter, AICP, County Planner
Lee Yolton, County Planner
Judy Thomas, Recording Secretary

Mr. Archer - Good evening, everyone. We apologize for being six minutes late. We're going to get started right now. We will begin with requests for deferrals and withdrawals.

Mr. John Merrithew - Thank you, Mr. Chairman. We do have a number of requests. Most of them are up on the screens for people to see. The first request this evening is the first case, not the POD. The first zoning case.

Deferred from the August 13, 1998 Meeting:

P-28-98 James D. Thornton for Triton PCS, Inc.: Request for approval of a provisional use permit in accordance with Sections 24-95(a) and 24-122.1 of Chapter 24 of the County Code in order to construct, operate and maintain a communication tower up to 199' high and related equipment and improvements, on part of Parcels 142-13-B-9 and 11, containing 2,500 sq. ft., located on the southwest line of Nine Mile Road, approximately 100' west of Battery Avenue (St. Johns Catholic Church property, 813 W. Nine Mile Road). The site is zoned R-2A and R-4 One-Family Residence Districts.

Mr. Merrithew - They have requested a deferral until October 15, 1998.

Mr. Archer - P-28-98. Is there any one here in opposition to the deferment of P-28-98 Triton PCS, Inc.? No opposition.

Mr. Zehler - Mr. Chairman, I move that Case P-28-98 be deferred to October 15th at the applicant's request.

Mr. Vanarsdall seconded the motion.

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

September 10, 1998

Deferred from the August 13, 1998 Meeting:

P-25-98 Heidi H. Parker for 360 Communications Company: Request for approval of a provisional use permit in accordance with Sections 24-95(a) and 24-122.1 of Chapter 24 of the County Code in order to construct, operate and maintain a communication tower up to 199' high and related equipment and improvements, on part of Parcel 249-A-30, containing 4,200 sq. ft., located on the east line of Buffin Road, approximately 1200' northwest of Interstate 295. The site is zoned A-1 Agricultural District. The site is also located in the Airport Safety Overlay District. (

Mr. Merrithew - The next case, P-25-98, Heidi H. Parker for 360 Communications Company. That case has been withdrawn. So you don't have to take action on that.

C-46C-98 Andrew M. Condlin for Alva E. Kimrey: Request to conditionally rezone from R-2A One Family Residence District to M-2C General Industrial District (Conditional), Parcel 31-A-17 and part of Parcels 31-A-14 and 15, containing 4.818 acres, located 233' west of Old Washington Highway approximately 30' north of its intersection with Cemetery Road. Storage for an adjacent steel fabrication yard is proposed. The use will be controlled by proffered conditions and zoning ordinance regulations. The Land Use Plan recommends Light Industry development.

Mr. Merrithew - C-46C-98. They have requested a deferral until October 15, 1998.

Mr. Archer - Is there any one here in opposition to the deferral of this case? We have opposition to deferment.

Person from Audience - (Comments unintelligible. Not at microphone.)

Mr. Archer - Okay. Mr. Vanarsdall.

Mr. Vanarsdall - The applicant doesn't have the case ready yet and he hasn't finished getting together with people like you. So, it would be in the best interests of everybody if we defer it.

Person from Audience - (Comments unintelligible.)

Mr. Vanarsdall - No sir. We only meet twice a month and this is the time for the rezoning and it will take up right much time, so we will not have it in the daytime. I'm sorry that you won't be available.

Person from Audience - Isn't this the third deferral already?
Mr. Vanarsdall - Somebody will be here to represent you, won't they?

Person from Audience - (Comments unintelligible).

Mr. Vanarsdall - I'm sorry. Thank you. Mr. Chairman, I move that C-46C-98 be deferred to October 15th at the applicant's request.

Mr. Zehler seconded the motion.

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

Deferred from the August 13, 1998 Meeting:

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

Mr. Merrithew - In the Fairfield District, C-14C-98. They have requested a deferral until October 15th.

Mr. Archer - Okay. Is there any one here in opposition to the deferment of C-14C-98 to the October 15th meeting? Then, I move deferment of C-14C-98 to the October 15th meeting at the applicant's request.

Mr. Vanarsdall seconded the motion.

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

Deferred from the August 13, 1998 Meeting:

C-40C-98 Robert M. Atack for Atack Properties, Inc.: Request to conditionally rezone from R-3AC and R-2AC One Family Residence Districts (Conditional) to RTH Residential Townhouse District (Conditional), part of Parcels 23-A-72A and 32-A-94, containing 18.08 acres, located adjacent to the western terminus of proposed J.E.B. Stuart Parkway and north of the terminus of Proposed Magnolia Ridge Drive. Townhomes or condominiums for sale are proposed. The RTH District permits densities up to 9.0 units gross density per acre. The Land Use Plan recommends Suburban Residential 1 development, 1.0 to 2.4 units net density per acre and Suburban Residential 2, 2.4 to 3.4 units net density per acre.

Mr. Merrithew - C-40C-98, again in the Fairfield District. They have requested a deferral until October 15th 1998.

Mr. Archer - Is there opposition to the deferment of C-40C-98? I move deferral of C-40C-98 to the October 15th meeting at the applicant's request.

Ms. Dwyer seconded the motion.

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

C-57C-98 Joe Parker for Agnes S. Moss: Request to conditionally rezone from A-1 Agricultural District to R-3AC One Family Residence District (Conditional), Parcel 147-A-77, containing 1.0 acre, located at the southeast corner of the intersection of Oakleys Lane

and Yates Lane. A residential subdivision is proposed. The R-3A District permits densities up to 4.59 units gross density per acre. The Land Use Plan recommends Suburban Residential 2, 2.4 to 3.4 units net density per acre.

Mr. Merrithew - Next case, C-57C-98. They have requested a deferral until October 15th.

Mr. Vanarsdall - Did you say C-57?

Mr. Merrithew - That's correct. That just came in this evening.

Mr. Vanarsdall - It's not on the lineup is it?

Mr. Merrithew - That's right. They came in this evening with a problem with their paperwork and need more time.

Mr. Archer - Okay. Is there any one here in opposition to the deferment to C-57C-98? Then, I move the deferral of C-57C-98 to the October 15th meeting at the applicant's request.

Mr. Vanarsdall seconded the motion.

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

C-58C-98 James W. Theobald for Archstone Communities Trust:
Request to amend proffered conditions accepted with rezoning case C-115C-88 on part of Parcels 33-A-8 and 9, containing approximately 6.3 acres, located at the northwest corner of Brook Road (U.S. Route 1) and Virginia Center Parkway. The proposed amendment relates to the freestanding sign on the property that identifies the project. The current zoning is R-6C, General Residence District (Conditional). The Land Use Plan recommends Commercial Concentration and Multi-Family, 6.8 to 19.8 units per acre.

Mr. Merrithew - They have requested a deferral to September 22nd which is your POD meeting date.

Mr. Archer - Is there opposition to the deferment of C-58C-98 to the September 22nd meeting? I move deferment of C-58C-98 to the September 22nd POD meeting at the applicant's request.

Mr. Vanarsdall seconded the motion.

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

Mr. Merrithew - Mr. Chairman, that's the last case and the last deferral on the 7:00 o'clock agenda.

Mr. Archer - Thank you, Mr. Merrithew.

Ms. Dwyer - Maybe Mr. Merrithew could review, although I'm not proposing for a motion, the deferrals and the withdrawals for the 8:00 o'clock agenda, just case there are folks here in the audience.

Mr. Merrithew - Sure. I'd be glad to do that. On the 8:00 o'clock agenda in the Three Chopt District, P-8-97 J. Thomas O'Brien, Jr. for Short Pump Investors, L.P. This was a request for a Provisional Use Permit at the corner of Pouncey Tract and Broad Street. They have withdrawn that case, so there is no action necessary on that application.

The next case, C-48C-98 James Theobald for the Snyder-Hunt Corporation. A request to conditionally rezone approximately 425 acres of land between Shady Grove Road, I-295, Pouncey Tract and Nuckols Road which would be their proposed Twin Hickory project. They have requested a deferral until October 15th.

C-54C-98 Glenn Moore for ESA Management. A request to amend proffered conditions on approximately five acres of land at Dominion Boulevard and Sadler Road. They have requested a deferral until October 15th.

And then, finally, C-61C-98 Henry A. Shield which was a request to rezone from B-2 Business District to R-6 General Residence District must be deferred because they are amending their application. That will be deferred until October 15th. That's all the deferrals I have for the 8:00 o'clock agenda.

Mr. Archer - All right. Thank you so much, Mr. Merrithew. And with that, I will turn the proceedings over to our Secretary, Mr. Marlles.

PLAN OF DEVELOPMENT & SPECIAL EXCEPTION

POD-80-98

**The Glenns at Millers
Lane Apartments
(POD-110-89 Expired)**

Koontz-Bryant, P.C. for Varina Station Associates, LLC: Request for approval of a special exception for building height and a plan of development as required by Chapter 24, Sections 24-2 and 24-106 of the Henrico County Code to construct 12, three-story apartment buildings totaling 144 units and clubhouse with pool. The 24.5-acre site is located along both sides of Millers Lane approximately 250 feet south of Gay Avenue on parcels 162-A-13, 14, 15 and part of 162-A-10A. The zoning is R-6, General Residence District and R-4, One-Family Residence District and ASO (Airport Safety Overlay District). County water and sewer.
(Varina)

Mr. John Marles, Director of Planning - The first case of the evening is POD-80-98. Mr. Ted McGarry, on the Planning Staff, will present the staff report.

Mr. Archer - Is there opposition to POD-80-98?

Mr. Zehler - Mr. Chairman, as previously stated, in this case, the County Attorney has advised me I might have a possible conflict with this case, therefore, I'll be disqualifying myself.

Mr. Archer - Okay. Mr. Zehler. We do have opposition also. We'll get to you, ma'am.

Mr. Vanarsdall - I thought you were in opposition last time. Y'all in opposition this time too?

Mr. Archer - Mr. McGarry.

Mr. Ted McGarry, County Planner - Mr. Chairman, members of the Commission, ladies and gentlemen, the Plan of Development was deferred from your last meeting in August at the applicant's request. A revised site plan has been included in your packet, along with the first staff plan. The biggest change is that one of the multi-family buildings abutting 4700 Millers Lane has been swapped with the pool and the clubhouse.

Multi-family dwellings in an R-6 General Residence District must not exceed 35 feet in height. If the number of stories in a dwelling is to exceed 2.5 stories, it may be constructed pursuant to the condition of approval for a Special Exception which is before you. The story limitation in the R-6 District does not regulate the number of dwellings in a structure or a development. It is a bulk requirement not a density control.

Regarding the Special Exception, in keeping with normal procedure, the staff will make no recommendation regarding the applicant's request for that.

The revised plan meets the minimum building setbacks from the property line, and the BOCA Building Code for minimum building separation. Twenty-five feet is the standard and at least 30 feet is proposed at all locations. And it does not exceed the maximum density permitted by Code. The Code establishes the density limit of to 2,200 square feet for apartments and 2,253 square feet per apartment is proposed. In addition there are greater landscape buffers than the minimum provided around portions of the property.

In a letter I received today, the developer has agreed to four items which have been annotated on the revised plan as Items Nos. 4, 5, 6 and 7. These were referenced in a letter. If you would hand it out please. Staff recommends that those four be elevated to conditions of approval and labeled 30, 31, 32, and 33.

Finally, the staff would ask the developer to clarify the building material color to see whether it would be consistent with the color rendition that he has given the staff. With that, staff can recommend approval of this plan, subject to the standard conditions for developments of this type, Conditions 23-29 on your agenda, plus the four conditions outlined in the letter that has been given to you. I'd be happy to answer any questions.

Mr. Archer - Thank you, Mr. McGarry. Are there questions for Mr. McGarry by the Commission?

Ms. Dwyer - Mr. McGarry, just looking at these four new provisions, I'm wondering will Leland Cypress trees be specifically desired by the adjoining neighborhood, or would just a reference to "evergreen screen trees" be appropriate there?

Mr. McGarry - I'm afraid I'd have to defer that answer to the applicant, because he worked out those with the neighborhood.

Ms. Dwyer - The reason for my question is, I read recently that Leland Cypress are subject to a disease that, after a period of between twenty to thirty years, they just die. And if you relied on that screening for that period of time, and they are eliminated by the disease, I think we wouldn't be accomplishing our goals. So, just to leave that open for later.

Mr. McGarry - That would be fine.

Mr. Archer - Any further questions for Mr. McGarry? Okay. Thank you, Mr. McGarry. Do we need to hear from the applicant?

Mr. Vanarsdall - Yes sir.

Mr. Rodney Poole - Good evening, Mr. Chairman, members of the Commission. My name is Rodney Poole. I'm here representing Varina Station Associates and I'm an attorney practicing here in the Richmond area.

As Mr. McGarry has told you, this matter was continued, at the request of the applicant, for purposes of meeting with the residents and to discuss with the residents any additional aspects of this case that they wanted further input on.

As a result of that meeting on August 25th, which I attended along with the primary developer, Mr. Wilton, we arrived at the four conditions that are included in the letter that you have been given tonight.

With respect to your question, Ms. Dwyer, there were some suggestions there be Leland Cypress. I, too, read that article in the paper the other day. We are certainly willing to call that "evergreen" or to leave that to the staff's discretion in that respect. We chose Leland Cypress as a suggested screening from the neighborhood, but we're certainly flexible in that area and glad to leave that to the discretion of the staff.

Much of what you see in that letter has been directed at comments that were made prior to the meeting on August 25th and at that meeting. This was the fourth meeting between the neighborhood and the developer. There have been five different layouts of this particular project that have been considered.

We believe that the layout of the property now, as it stands, particularly given the movement of the one story building immediately adjacent to the property on Miller's Lane certainly provides the best use of this property. I would remind the Commission that this is R-6 property, and this use is permitted in this. What we're here tonight for is the approval of the Plan of Development and the consideration of the request for the Special Exception.

Now, the Special Exception, as Mr. McGarry has talked to you, and correctly stated, is not an issue of density. It is an issue of height. And, in essence, in the R-6 District, you cannot exceed 35 feet. And, in fact, in this particular project, the height does not exceed 35 feet. It is an average of 33.5 feet in height on all 12 of the buildings.

Where we need the Special Exception in this project is that there is a requirement that you not exceed 2.5 stories in height. What we're asking for in this Special Exception is an increase to a third story, as opposed to 2.5 stories, as is permitted by right.

The Special Exception provision in the R-6 District permits this Commission to expand this to eight stories and 80 feet. We are not asking for an increase in the height. We're asking an increase from the number of stories from 2.5 to 3. We do not believe that it will effect the health, safety and welfare. We do not believe that it will unreasonably impair an adequate supply of light or air. We do not believe it will unreasonably affect the public safety nor be incompatible. It's not incompatible with the general plan. It's not likely to reduce or impair the value of the buildings in the surrounding areas. It is in substantial accordance with the general purposes and objectives of the Ordinance, predominantly, because this use is permitted. I would suggest to you there is clear reason to give the Special Exception in this matter.

More importantly, is that this is a good project, using the property in a manner in which this County has zoned this property more than 30 years ago. The R-6 District was placed on this property in excess of 30 years ago. This is a permitted use.

The Staff has already told you that the Plan of Development, as it's proposed, meets all of the requirements as long as we agreed to the conditions. The developer authorizes me to state that we will comply with all of the conditions, including the additional four that we have offered today at the request of the neighborhood surrounding it, and that we are prepared to move forward with 144 units of moderate income housing that is needed; that is desirable and will be managed by a very well recognized national company, Boston Financial, who manages over 2,500 units in the Commonwealth of Virginia, and manages two projects in the County of Henrico. So there will be excellent management of this property. It will be well designed. It will meet the Codes in all respects. And I would urge that the Commission favorably consider the Plan of Development and the Special Exception. I'd be glad to answer any questions.

Mr. Archer - Thank you, Mr. Poole. Are there questions for the applicant from the Commission?

Mr. Donati - Yes. Mr. Chairman, I have a couple of questions here. Mr. Poole, you said, if you go to three stories, you could build 144 units?

Mr. Poole - Yes sir.

Mr. Donati - If you were building 2.5 stories, how many units would you have?

Mr. Poole - You would have substantially less. What you would have, Mr. Donati, is only two stories, so you would reduce it by a third. But, again, I would remind you, that the issue of the stories is not a density issue. It is an issue of height, and it is an issue of exception that has been removed from the R-1 through R-4 Districts, and, as I understand it, is under consideration for removal from the R-6 because of the confusion that it adds to the cases with respect to height versus density.

Mr. Donati - In a letter the staff received today, are the citizens aware of all of these?

Mr. Poole - I beg your pardon?

Mr. Donati - Are the citizens aware of these items?

Mr. Poole - These are all items that they requested, that we've put before this Commission at our meeting of August 25th.

Mr. Donati - Could you go over it for them?

Mr. Poole - I'd be happy not only to do that. I have extra copies here that I'd be delighted to pass out to them.

Mr. Vanarsdall - Why don't you pass them out and then we'll talk about them, or talk about them while they're looking at them?

Mr. Poole - I'd be glad to do that. Again, referring to the letter, it's directly from the primary developer, Mr. Wilton. And he is, again, outlining for you that these are the results of the requests of the homeowners at our August 25th meeting.

The four items that we're specifically referring to, and if you'd like, I'll just read them is, "We, herein agree to fence in the BMP areas and landscape the same. Landscaping to include, but not be limited to 50 Leland Cypress trees, a minimum of five feet in height." Again, in response to Ms. Dwyer's statement with respect to that, we'll use whatever type of evergreen screening that the staff feels appropriate. No. 2, we've agreed to remove the jogging trail to eliminate excess foot traffic near the Lawndale community.

In one of the previous site plans, the developer had proposed he thought, at the desire of the neighboring association, to have a jogging trail that would be available for the entire neighborhood. They've expressed to us that they don't want that. The developer is more than happy to withdraw that from this plan.

The third is, we've agreed to forego the construction of a playground area on any of the Lydell property. That is the property that's being acquired for purposes of building this project.

We, in discussion, and quite frankly, lengthy discussions, with the homeowners, they indicated they felt that the playground area would cause more problems than it would do good. That it would cause foot traffic in there. As a matter of fact, we even got to the detail of talking about

problems occurred in the past with children coming into pumpkin patches and stealing pumpkins. I mean, we have really spent time and energy talking to the homeowners about this particular project.

And the fourth has to do with the R-4 property which, and I'm going to see if my technology has caught up with me, is this property here and this property here if I can get the dot to go down here, down at the lower part right down here (referring to slide). Those are the R-4 properties where lots would be placed, and the developer has committed to the Association, commits to this Commission, that the pricing on those properties will be offered at \$100,000 or more, and that the foundations will be all brick on all four sides.

These were all of the requests that were made by the homeowners association. And we agreed at that meeting that they were to have a meeting on Labor Day at one of the neighbor's houses and then they were going to get back in touch with us. Unfortunately, we have calls into the Association, and have not been able to get a response from them. But, as far as we know, these are all of the requests from the homeowners association, other than their requests that we not put apartments on this property at all. That's clearly been a request, and clearly, we believe, as a matter of right in the R-6 zoning, the ability to use that.

There is one individual homeowner, Mr. Hutchinson, whose property is down here at the bottom right there where the dot is below here (referring to slide) has requested that there be a fence put between his property, which is R-4, and the property that I pointed at, which is part of this project where single family dwellings will go. He has asked there be erected a fence along the entire property line.

The developer has declined that request, primarily because he feels its not appropriate to fence between an R-4 and an R-4. But that is one request that was made by an individual landowner. He's here tonight. I see Mr. Hutchinson back there. I did. There you are. He's here. I suspect that he'll have something to say about that. But he has made that request, and the developer has not chosen to honor that request.

Mr. Donati - How many houses can be built on the R-4 that you've acquired across the street from the apartments?

Mr. Poole - The property directly east of Millers Lane, there can be 11 lots placed there. It is tentatively platted for 11 lots. On the property to the south below the BMP ponds, up to 13 additional lots can go in there. But the siting of that has not been decided at this point. And that's in the future.

Mr. Donati - It is roughly 22, 23, 24 houses?

Mr. Poole - Correct. That's where we're proffering...

Mr. Donati - And all of those will be \$100,000 and up?

Mr. Poole - Absolutely. With all four sides having brick foundations.

Mr. Archer - Mr. Poole, it might be helpful in determining the value of those houses if you establish a minimum square footage as a method of determining how much you could offer them for. I'm just saying that, because we could just say, "We're going to sell these houses for less than \$100,000, and a potential buyer may not think it's the value there.

Mr. Poole - Quite frankly, Mr. Archer, we talked to the Association about that. They felt more comfortable in our discussions with the dollar limitations than they did with the square footage limitations. I must have been at two different meetings, Mr. Archer. I apologize. The square footages, as you know, is the normal way that we like to put limitations on this type of property.

Mr. Archer - I mention that because, if the potential house does not have enough size or other features that would make its value approach or exceed \$100,000, it might be difficult to sell. That's the only reason I mentioned that, not so much say we're saying they'll sell for \$100,000 or more. I'm not trying to throw a stick at what you're saying.

Mr. Poole - I understand. And the only square footage that I recall being mentioned at that meeting was 2,200 square feet, which is far in excess of the minimum that's required in this zoning and is unrealistic from an economic standpoint.

We were not able to reach a number of square feet that was agreeable. Twenty-two hundred (2,200) square feet is just not economically feasible. That's why I felt that we approached it by putting the \$100,000 limit on it. We're willing to live with that.

Mr. Archer - I understand that. I guess what I'm trying to get at is, just to have a way to be a little bit more sure that the house would sell for that amount, could sell for that amount, if there was an attempt to buy it, not just to confuse the issue. That's not why I said that. What is it, a 1,000 square feet is the minimum?

Ms. Dwyer - For a one-story house, it looks like it could be 900 square feet. And up to a third of that, it could be unfinished by the code.

Mr. Archer - Mr. Archer, if you or any of the Commission members feel that the square footage limitation is better, I'd be more than happy to amend that to say a minimum of 1,400 square feet. We talked about that number at the meeting. We're more than happy to amend that letter to say "a minimum of 1,400 square feet," if that's a better way to do it.

Mr. Archer - I was just curious as to how you may have arrived at how you would determine what the value would be.

Mr. Poole - Quite frankly, we've done a market analysis, Mr. Archer. We've done a very thorough market analysis of the area. All the experts are telling us that is the minimum price range in that area and that it is probably going to be higher than that, which is why we're perfectly comfortable putting that kind of limitation. But if the Commission feels it's a better idea to put in a 1,400 square foot limitation, we're more than happy to do that.

Mr. Vanarsdall - Are any of the houses going to have fireplaces? The only reason I'm asking that is, if they are, and they're going to have chimneys, they should have brick chimneys, if you want to. If you're not going to have chimneys...

Mr. Poole - I don't know the answer to that, Mr. Vanarsdall. Mr. Wilton is here and I'm certainly glad to ask him that question.

Mr. Vanarsdall - You say that you would proffer that 1,400?

Mr. Poole - Absolutely.

Mr. Vanarsdall - Is that "finished floor?"

Mr. Poole - I'm sorry?

Mr. Vanarsdall - Is that "finished floor?"

Mr. Poole - Yes sir.

Mr. Vanarsdall - That's all the questions I have.

Ms. Dwyer - What kind of a fence were you talking about to surround the BMP?
What sort of a fence would that be?

Mr. Poole - We had discussed board fencing. We would work with the staff in establishing criteria for the fencing. Quite frankly, the issue of fencing around the BMPs was a safety issue that the neighborhood was very concerned about. We are equally concerned about safety in the neighborhood. Our goal is to put fencing around there that is going to provide the safety of the neighborhood.

Ms. Dwyer - The black vinyl clad chain link is another option because it kind of disappears in the distance, particularly if you're going to have landscaping around it. Board fences tend to deteriorate so badly over time.

Mr. Poole - I can tell you, Ms. Dwyer, that this was a request of the homeowners association. We're more than happy to stay with black clad chain-link. That is perfectly acceptable to the applicant. We are putting it there together with the screening for clear purposes of safety and for the screening for the neighborhood.

Mr. Marlles - Mr. Chairman, I'd just like to take this opportunity to remind the Commission that this is a Plan of Development, not a rezoning request, so we're not really talking about proffered conditions. The other issue here is that the property, in question, is really where single family homes are proposed, is not a part of this site that is subject to the POD. So, it's possible for the applicant to make an agreement with the neighborhood to have a house of a certain finished size or cost, but it really is not something that can be made a condition of the POD. For clarification, I want that clear.

Mr. Vanarsdall - What you're saying, Mr. Director, is that anything that we would do here, it could not be enforced by the County?

Mr. Marlles - That is correct, because for those issues that are off-site, improvements are off site.

Mr. Vanarsdall - So, the deal is between them and him?

Mr. Marlles - Correct.

Mr. Vanarsdall - Thank you for bringing that to our attention.

Mr. Poole - But I would, if I could, Mr. Chairman, reiterate that it is a pledge of this developer to this Association, on the record, that these four items would be complied with.

Mr. Archer - Are there further questions of Mr. Poole? Mr. Poole, we neglected when we started to start the clock. And since there is opposition, you'll need some rebuttal time. So, we'll donate you five minutes if you need it, sir.

Mr. Poole - Thank you, Mr. Archer. I appreciate that.

Mr. Archer - I apologize for not having done that.

Mr. Poole - Thank you, Mr. Archer.

Mr. Archer - Thank you, sir.

Mr. Vanarsdall - Mr. Chairman, I have a question for Mr. Marlles. I don't think I'm confused, but I may be. Three floors is three floors. We're talking about a certain height. Could you clarify that? Thirty-five is more like two and one-half floors. Is that right?

Mr. Marlles - That is correct. And the applicant is requesting a special exception in order to get three full stories.

Mr. Vanarsdall - I know, but Mr. Poole mentioned, I thought I heard him say, its not floors, so much as it is height. Well, it reminds me of this Sun Suites case we had on rezoning, the height versus floors. I'm confused now, and I don't know how to explain it.

Mr. Archer - I think Mr. McGarry is going to answer that.

Mr. McGarry - The Code specifies a height limit of 35 feet.

Mr. Vanarsdall - The Code doesn't say "floors," does it?

Mr. McGarry - It also specifies a story limit of 2.5. There are two standards in there.

Mr. Vanarsdall - Okay. Two stories and it says height.

Mr. McGarry - And 2.5 is all that's allowed. He has to have the Special Exception to go to the three.

Mr. Vanarsdall - What is three stories?

Mr. McGarry - Three living units that meet the BOCA Code for height between the floor and the ceiling.

Mr. Vanarsdall - How high is it?

Mr. McGarry - Now, there are specific definitions that it goes into what determines a story in both the Zoning Code and as well as the building code.

Mr. Vanarsdall - I guess what I'm saying is, if you're looking at three stories, how high is it?

Mr. Poole - Do we know the height of the structures?

Mr. Vanarsdall - How high does the eyeball see?

Mr. McGarry - I believe the building is under 35 feet, but it has three stories. So, it violates the other provision under the Zoning Code.

Mr. Poole - Mr. Archer, I just wanted to reiterate that the average height of these buildings, as proposed, is 33.5 feet which is below the requirement, the maximum requirement in the R-6 District. It is the fact that we're asking for three stories that is the question and the issue on the Special Exception. We are below the maximum permitted height in the R-6 District. It is...

Mr. Vanarsdall - You answered it. Thank you. So, in other words, I'm looking at three stories, but I'm not looking at any more height. I'm just looking at more stories.

Mr. Poole - You're looking at less height than is permitted in this district.

Mr. Archer - Okay, any more questions, Mr. Vanarsdall? If not, we'll hear from the opposition.

Mr. Lyle Browning - Members of the Planning Commission, my name is Lyle Browning representing the Lawndale Farms Subdivision which is directly to the east of the proposed development.

Mr. Archer - May I interrupt you just a second, just to remind you, that you have a 10-minute time limit. So, if there are other speakers...

Mr. Browning - Members of the Planning Commission, with regard to the proposal by Varina Station Associates, LLC request for approval of an expired plan of development and special exception for building height on land adjoining Lawndale Farms Subdivision, we, the residents of and owners of property in the subdivision, have the following comments:

We are unalterably opposed to allowing an exception on apartments height on any part of the property. In this magisterial district alone, there are over 500 acres of land zoned for multi-family use, none of which has been built yet. We do not need more. The adverse economic impacts of apartments has been questioned by the Board of Supervisors. We agree with their assessment. The area is already saturated with apartments which drain services and utilities, including schools.

We are concerned about the potential for an increase in the crime rate if apartments are built. We have documented the increase in crime after other apartments were built when the same developer was attempting to force apartments on this and adjacent parcels earlier this year. We have also noted vandalism in the neighborhood and attempts at break-ins by people who do not live in Lawndale Farms. Apartment dwellers are, by their nature, more transitory, and less liable to maintain pride of ownership. We are concerned about the increased noise levels, the dumpster problems associated with apartments (trash scattered around the area and smells of garbage in the summer), and the increased level of lighting required by the Police Division will be detrimental to the Lawndale Farms Subdivision.

We are in favor of single family residence construction wherein the size of the residences to be

built is comparable in lot size, house square footage and scale with those of Lawndale Farms. We feel that any housing should be at least 1,600 square feet and built of brick. Any additional structures should be no less valuable than those in Lawndale and should be built of comparable or better materials. Henrico County officials have voiced these concerns already. We agree. Three-story apartment complexes will dwarf the structures on Denison and Altair. Due to the terrain, apartments can be screened from the backs of yards and the fronts, but not from the houses due to the height. We are totally opposed to any construction which will lower property values in our subdivision and we believe the construction of apartments and very small houses will adversely affect our property values.

We are totally opposed to any vehicular or pedestrian access through our neighborhood because we are a neighborhood and we want to keep our sense of neighborhood, which cannot be maintained with a drastically increased traffic count.

The safety of children and older people walking is a major concern. Mr. Wilton has stated that his development will not have access to Lawndale Farms via Altair, Denison or Mulford Road. No access should be allowed, period. Further, a fence should be erected to shield Lawndale Farms from the apartments and to prevent incidental traffic.

We are concerned about the drainage issues which have not been properly addressed. Drainage patterns are now inadequate and frequently cause backups of storm runoff. Increased housing density will only make the problems worse. Some of the proposed housing patterns lie squarely across the drainage path. We are concerned that the desire to shoehorn structures into a small space will result in further damage, not to mention the increase from the proposed apartments. The BMP ponds will face onto Lawndale Farms and will adversely affect property values.

We are concerned about the effect of placing a park/playground under an existing VA Power power line. The effects of electro-magnetic radiation are not definitively known at this time. Further, the park/playground may serve as a magnet for noisy and unruly behavior.

We are concerned that potentially significant archaeological sites exist on the proposed development property. Archaeological site 44HE35 is located near the property. Other sites may be located on the proposed build area. The property should be surveyed by a qualified professional archaeologist to determine whether additional sites are present. All sites located should be evaluated.

Further, Lawndale Farms subdivision may potentially be eligible for inclusion on the National Register of Historic Places as a National Register District. The presence of large apartment structures is incompatible with the existing viewshed for such a district. The subdivision should be surveyed by a qualified professional architectural historian to determine whether the subdivision is eligible, and if so, a mitigation plan will need to be prepared.

We are concerned that this is an attempt to circumvent the planned revision of the County Zoning System. This rush to bring back an expired plan, and then to seek an exemption, while knowing full well that it will, in all probability, not be allowed after Zoning System reworking, strikes us as a cynical exploitation of the system and should be disallowed.

If this land is allowed to be exempted from its current height restrictions, we have to ask who will benefit. Will it benefit Lawndale Farms? We don't think so. Will it benefit Henrico County? We don't see how. Will it stress the utilities and services that Henrico provides? We do think that it

will. It appears to us that the beneficiary of the exception will be the developer. Should one developer be allowed to adversely affect so many citizens? We don't think so. We are, as voters, asking the Planning Commission to turn down this exception request. The residents of Lawndale Farms Subdivision will see their property values go down. They will see increased traffic, increased crime, increased trash, increased drainage backups and other problems. The residents of Lawndale Farms will be negatively affected. We will be affected by decreased property values. We will have to live next to the development that the developer intends to create when there are other alternatives which will work for all concerned. The County Supervisors are already indicating that zoning ordinance changes are under consideration anyway. Please see this exception request for what it is and vote it down. We urge you to not allow a change.

I'd like to ask the next speaker to come up please. Mr. Hutchinson.

Mr. Archer - Any questions of Mr. Browning before he takes his seat?

Mr. Hutchinson - Mr. Chairman, members of the Board (sic), I'm Carper Hutchinson, 3610 Dennison Road. I'm here again. In our meeting with Mr. Wilton two days ago, what he did agree to do away with was the jogging trail and the playground. Of course, that's to his advantage and to our advantage. In other words, he don't have to spend money for that. So, I don't think he gave up too much on that. He states that he will not put the fence between my property and his property because its all zoned the same way. But that's not the point, because apartments are right next to it. That fence is not for my benefit. It is for all the benefit of the people, because I know how kids and people, if you have an open field and no fence, will come right across there. So, I agree with everything that Lyle has in his report. Lyle didn't mention, I believe we had a traffic survey, or we need one. The traffic we're definitely concerned. We need a traffic light on Gay and Millers. I understand there was a traffic count. Did y'all get any information on that for one-day traffic count? Was that not right, Richard?

Mr. Donati - We don't have the traffic count, but I think the staff has recommended that a traffic light is not warranted at this time. I don't know what that count is, but I'm going to look into that further.

Mr. Hutchinson - I thought somebody said they had a count out for one day and one day only. Another thing, I talked to the State Fire Chief in regards to building these retainers there for that gas pipeline. He is sending me some information on that, but he was real concerned about not the electric lines, but the pipeline. That concerns me greatly.

These holding ponds concerns me because, as you know, 10 years ago, it was turned down because all the water would come over on me and all the people that's on Dennison Road.

Mr. Wilton says that he owns that property that these ponds are going on. I have not read anything, or can find out anything to the effect that substantiates that he does own that property. So, my question is, how can he stand before us today and say, "I'm going to build these ponds and all," when you don't own the property even.

So, to me, the drainage is a big problem. The crime, as they say, is a big problem. I know that the traffic on that little Millers Lane is terrible right now. And the safety of that pipeline, plus the electric line. He says, that VEPCO will let him do this. Where is the paper work or the authority telling him he's going to do that?

In closing, the safety and the water situation is my concern. The fence would definitely have to be, in my book, a necessity to keep all those people from coming over on us. Thank you very much.

Mr. Archer - Are there any questions before he takes his seat? Sir, would you come back up to the mike. Sir, I'll ask you one more time. Your concern is the water; the BMP, they call it.

Mr. Hutchinson - Correct.

Mr. Vanarsdall - The "big mud puddle" they call it.

Mr. Hutchinson - Whether its correct he could even put it there because if you don't own the land, I don't know how you could put it there.

Mr. Vanarsdall - Your concern is the water and the drainage?

Mr. Hutchinson - Water, drainage, the fence that he says he will not build, and the safety as far as the gas line.

Mr. Vanarsdall - Thank you. I have no more questions, Mr. Chairman.

Mr. Archer - Before you take your seat, you know we were discussing the four items in Mr. Wilton's letter having to do with the neighborhood concerns. Does that satisfy your group?

Mr. Hutchinson - I agree with what Lyle had in his say. My wife said don't add this because I did last time. As you know, my property your know had it up to build apartments and houses and then when it all come up, it was turned down. The houses had to be a third of an acre and all. So, I don't think its right to go right across the street from me and do the same thing when mine was turned down. Thank you. Any more questions?

Mr. Archer - Sir, we have just about a minute and a half left for the opposition.

Mr. Willey Boone - I've heard the truth really played with very recklessly in the last year. I've heard of 900 to 1,200

Mr. Zehler - Mr. Boone, your name.

Mr. Boone - I'm Willey Boone. I'm chaplain over here at the jail. So, if I get unruly, you can lock me up over there with my constituents. I've heard of houses to be built of 900 to 1,200 square feet, be sold at \$90,000. Well, I offered to sell him my house 1,600 square feet which is brick, replacement windows and hardwood floors for \$100,000, and he won't go up \$10,000 more to buy it. I can't understand that when his is going to be vinyl siding.

When we're voting tonight, I wish Mr. Zehler could be here, cause I'd like to know which side he is on because you know it aint too many months away until we want to know what's going on. All these petitions that's signed right here, these is voters. We will be turning out in force. We've got to let our voices be known in our district. I wish that he could be here when you take a vote, because we'd like to know which side that he's on.

The drainage, when you put those BMPs in there, that's not going to take and hold the water that comes down through Lawndale Farms that comes from off of the apartments and from off that blacktop. I think we'll have more problems than we've ever had. Thank you so much.

Mr. Archer - Thank you, sir. Any questions before he takes his seat?

Mr. Donati - Mr. Chairman, do you think you could get somebody from the staff to explain to the citizens about BMPs and the unnecessary water that we cannot put on adjacent property owners? Just briefly for their own information.

Mr. Archer - Thank you for volunteering, Ted.

Ms. Dwyer - Be the Drainage Engineer this evening, Mr. McGarry.

Mr. McGarry - The purpose of the BMP is to hold water to meet the County requirements that after a storm runoff will not exceed a certain ratio of the pre-construction runoff that would have happened had the land not been developed. So the BMP basins are necessary and they are very large. They appear to be designed to meet the County requirements to hold the correct amount of water and minimize any negative aspect to the neighbors after the development is constructed.

Mr. Vanarsdall - It came about because of the Chesapeake Bay Act.

Mr. McGarry - That's correct.

Mr. Vanarsdall - The Chesapeake Bay Act is what brought all this about.

Ms. Dwyer - So, if the neighbors are experiencing a problem from the existing apartments, this is not going to improve that? Is that correct? But it won't get worse.

Mr. McGarry - It should not get worse. It may not correct what exists.

Ms. Dwyer - If those apartments have created a drainage problem, we can't require another applicant whose applying to develop a separate piece of property to fix someone else's problem?

Mr. McGarry - That's correct.

Ms. Dwyer - We can only require him to handle the drainage that's generated by his property.

Mr. Browning - (Comments unintelligible – not at microphone).

Mr. Archer - Mr. McGarry.

Ms. Dwyer - Could you repeat the question for the record.

Mr. Archer - The question was, "Is there anything in the BMP requirements that speaks to mosquito abatement, pest control?"

Mr. McGarry - That is not a question I really know an answer to, because it's more of a Public Works design criteria.

Mr. Donati - Generally, I knew, at one time, that the County was allowed to go out and spray ponds; BMP areas, but the EPA stopped that because of the pollution of the water, so there is no abatement, no chemicals that you can put in there because of the Chesapeake Bay Act.

Mr. Archer - I've heard that question asked before, and I recall from a meeting last year, there is a method that can be used to control mosquitoes.

Mr. Donati - The Health Department will give you tablets.

Mr. Vanarsdall - It's like killing a roach.

Mr. McGarry - This BMP appears to be designed as a dry pond which means it's not intended to hold water more than 30 or so hours after a storm event. So, it's not going to be a wet pond or a swamp that would encourage the growth of mosquitoes.

Mr. Archer - I think Mr. Donati was asking that question because he wanted to make sure the neighborhood understood why there are BMPs and how they exist. Did we do that to your satisfaction? Does everybody understand why we have to have them.

Mr. Dennison - We understand what you're saying. We don't want (comments unintelligible-not at microphone).

Mr. Archer - There will still have to be BMPs.

Mr. Donati - There will still have to be BMPs because the law requires it.

Mr. Boone - Do we have to take the water, the mosquitoes, the crime?

Mr. Vanarsdall - Mr. Chairman, if I may, and Mr. McGarry, you back me up on this. The BMP is not an issue that the Planning Commission can settle. The BMP has been placed in the County Manger's Office and his deputies. And so, what the Public Works does, they find out where the flow of the water is naturally and that's where it goes because they can't make it run up hill. So, a lot of times you ride around town, you see the BMPs, say, "Well, why is it out front and why is it near the road?" Well, it has to be wherever the water is going to go into. So, we don't have any control over what that is. Public Works and the engineers decide that.

Lady from Audience - Has that decision already been made?

Mr. Vanarsdall - I didn't hear the question.

Mr. Archer - Has the decision already been made as to where the BMP would go?

Lady from Audience - (Comments unintelligible).

Mr. McGarry - Yes ma'am.

Mr. Vanarsdall - It has been. I would think it has been. Yes ma'am. It's already been reviewed by every department in the County, and the Public Works and the County Managers Office has reviewed that. Public Works has recommended this is the only place we could put it.

Ms. Dwyer - Well, I mean, is it possible to put it on the site itself where the apartments are going to be?

Mr. McGarry - The apartment site has wetlands which are being left undisturbed and the rest of the site would be developed.

Mr. Vanarsdall - I think that's a good question.

Mr. McGarry - The only option that would be left for an on-site BMP is the very expensive proposition of putting in pipes underground. We don't see very much of that in the County.

Ms. Dwyer - And you said they couldn't put the BMP in the wetland area?

Mr. McGarry - That's right. They cannot disturb the wetlands. That's why they're set aside and not a part of the apartment site.

Ms. Dwyer - Could they remove some of the apartment buildings and create a BMP location in place of the building, not in the wetland area?

Mr. McGarry - They could always do that.

Mr. Vanarsdall - Good question.

Mr. Archer - Any further questions?

Mr. Vanarsdall - Yes sir.

Mr. Archer - All right. Mr. Vanarsdall.

Mr. Vanarsdall - Mr. McGarry, of the four, and as Mr. Marlles said, we can't call them proffers, of the four conditions, we know that we have no control over the enforcement of No. 4.

Mr. McGarry - That's correct. I'm glad Mr. Marlles pointed it out.

Mr. Vanarsdall - How much control do we have over the other three?

Mr. McGarry - Staff has re-evaluated these four items in the letter that came in this morning by fax and would like to modify its recommendation to make the first one, a Condition No. 30 on the list of conditions. Nos. 2 and 3 are already annotated on the plan and remain there. No. 4, as correctly pointed out by the Director, this relates to something that is offsite and really should not be a part of this POD.

Mr. Vanarsdall - Number 30?

Mr. McGarry - Number 4. So, Number 4 is the private agreement between Mr. Wilton and the neighborhood.

Mr. Donati - These conditions that only apply to the POD that's being presented, tonight?

Mr. McGarry - That's correct.

Mr. Donati - If this POD is denied, tonight, these conditions do not apply?

Mr. McGarry - That's correct.

Mr. Donati - He can build the apartments and do whatever he wants to, I guess, basically, right? Is that correct as long as he meets the conditions of the County?

Mr. McGarry - That's correct.

Mr. Vanarsdall - Thank you. I have no more questions.

Mr. Archer - All right. Anyone else have questions for Mr. McGarry? Thank you, sir. Mr. Poole, I believe you had some rebuttal time if you care to use it, sir.

Mr. Poole - Thank you, Mr. Archer. I'll try to be brief. And I think that what we really want to focus on in our rebuttal is the issue of the Special Exception and the issue of height and density. This isn't a density question. This isn't a zoning question. This is a Special Exception to go from 2.5 to 3 stories. It is an anachronism within the zoning ordinance itself of the R-6. It's been removed from the R-1 through R-4. It still remains in the R-5 and R-6. Quite frankly, its there to give this Commission the right, under a Special Exception, to consider extensions of numbers of stories up to eight and height up to 80 feet. That's what you're permitted to do by Special Exception. We are not asking for any increase in the height. I reiterate the average is 33.5 feet. One and half feet below the maximum that's permitted in this property. What we are asking for is a half story for the purposes of creating a better looking, more attractive, better able to be run correctly property. So, that it will be more attractive for the neighborhood that's out there and more attractive for the people that will live there in the apartments.

I understood clearly that the opposition to this is primarily because they are opposed to apartments. It is primarily because they are single family residents. I understand that, but that is a zoning issue and that issue was decided by the County more than 30 years ago.

With respect to the drainage, I think that staff has given a correct example. And that is that BMP practices that were put into place because of the Chesapeake Bay Act require this site to be responsible for its own water. The drainage that's there has been approved by the staff here and the County. It has been carefully looked at. It has been gone over by the County experts. It's been gone over by our experts to meet the BMP requirements. Clearly, we will not exacerbate any problems with respect to drainage. There may be other problems for drainage in the area, but this site does not cause it.

With respect to the letter that was submitted today, it is a clear response to an additional meeting with the homeowners' association. It is a clear attempt on the part of the developer to make commitments to this neighborhood and commitments to this Commission. I agree that

Number 4 is not enforceable by the County, but, quite frankly, I'll reiterate and state it one more time for the record. That all four of the commitments made in the letter submitted today as part of the record are pledges made by this developer that he will live with. I believe that these are appropriate apartments. It's zoned for apartments. These will be attractively built. It will be well run by a professional management company that will do everything within their power to make this a successful place; a wonderful place for people to live.

I'd reiterate that the Special Exception is permitted under the Code. It gives this Commission the permission to grant that Special Exception. And I think that we have clearly shown all of the requirements under the Special Exception provision have been met. I would strongly urge the approval of the Plan of Development and the Special Exception. And if this has raised any questions, I'd be glad to answer them.

Mr. Archer - Thank you, Mr. Poole. Any further questions?

Mr. Poole - Thank you.

Mr. Archer - All right, I suppose we're ready for action.

Mr. Vanarsdall - Let me ask you. You all saw a copy of this (speaking to audience). And you know this would go along with the three floors. It wouldn't go along with anything less. You understand that, Mr. Riley?

Person from Audience - (Unintelligible comments).

Mr. Vanarsdall - I just wanted you to know it. I also wanted you to understand that we don't have the authority whatsoever to say, "No Apartments." We talked about that before. I want to make sure you understand that. This was zoned a long time ago. And, as Mr. Marlles said, this is not a zoning meeting. I want you to understand that.

The other question is, two weeks ago, we deferred the case so that the applicants could get together with you and make it a better case. I'm of the opinion, tonight, there's not much change. Is that true?

Person from Audience - (Unintelligible comments).

Mr. Vanarsdall - Thank you. Well, this is a most unusual case in a way. The only leverage we do have is the Special Exception. If the three stories went in, it would be 144 units. I believe Mr. Poole said, they take off a third for anything less. That would be approximately 96 units. We're talking about approximately 100 apartments. I don't believe it would be in the best interests, particularly since the County fathers have had a meeting and don't desire as many apartments as we do have now. I will add that within the metropolitan area of Goochland, Powhatan, Hanover, Richmond, Henrico; Henrico is about second in ownership. I think we are about 61 percent, aren't we, Mr. Marlles?

Mr. Marlles - Correct.

Mr. Vanarsdall - Sixty-one percent; whereas maybe Hanover is 79 and Goochland 80 or visa versa, something like that. and they are going to try to curtail the number of apartments. And that does not mean we won't have apartments, and it does not mean that

people won't live in apartments. There are a great number of people who do. Having said that, I recommend that the three stories, the Special Exception be denied.

Ms. Dwyer - Second.

Mr. Archer - Motion made by Mr. Vanarsdall, seconded by Ms. Dwyer to deny the three-story exception. All those in favor say aye—all those opposed by saying nay. The vote is 4-0 (Mrs. Wade absent, Mr. Donati abstained).

The Planning Commission denied the special exception for POD-80-98 The Glenss at Millers Lane Apartments.

Mr. Vanarsdall - Now, Mr. Chairman, I move POD-80-98 be approved, subject to the annotations on the plans, the standard conditions for developments of this type, and Conditions 23 through 29.

23. The developer shall provide fire hydrants as required by the Department of Public Utilities in its approval of the utility plans and contracts.
24. Any necessary off-site drainage easements must be obtained in a form acceptable to the County Attorney prior to final approval of the construction plans by the Department of Public Works.
25. Deviations from County standards for pavement, curb or curb and gutter design shall be approved by the County Engineer prior to final approval of the construction plans by the Department of Public Works.
26. Insurance Services Office (ISO) calculations must be included with the utilities plans and contracts and must be approved by the Department of Public Utilities prior to the issuance of a building permit.
27. Approval of the construction plans by the Department of Public Works does not establish the curb and gutter elevations along the Henrico County maintained right-of-way. The elevations will be set by Henrico County.
28. Prior to issuance of a building permit, the developer must furnish a letter from the Virginia Power and the natural gas company stating that this proposed development does not conflict with their facilities.
29. Prior to construction plan approval, the Director of Public Works shall grant approval of an off-site BMP, and Virginia Power shall grant permission for the BMP/storm sewer in their easement subject to the County Attorney's approval of the easement agreement.
30. The BMP shall be fenced with black vinyl clad chain link fencing and landscaped with a minimum of 50 evergreen trees planted at a minimum of five feet in height.

Ms. Dwyer - Including No. 30? Is that the new one.

Mr. Vanarsdall - Including No. 30.

Ms. Dwyer - Second.

Mr. Archer - Motion made by Mr. Vanarsdall, seconded by Ms. Dwyer to deny approve the plan of development. All those in favor say aye—all those opposed by saying nay. The vote is 5-0 (Mrs. Wade absent).

The Planning Commission approved POD-80-98 The Glens at Millers Lane Apartments, subject to the standard conditions attached to these minutes and the following additional conditions. Mrs. Wade was absent.

Mr. Vanarsdall - Thank you for coming.

Mr. Merrithew - Mr. Chairman, its already that time for the 8:00 o'clock deferrals.

Mr. Archer - Mr. Merrithew will go ahead and give us the 8:00 o'clock deferrals.

Mr. Merrithew - I'll wait until they're gone (referring to citizens in audience interested in the Plan of Development)?

Mr. Archer - If you would, please. Mr. Merrithew.

Mr. Merrithew - Mr. Chairman, the 8:00 o'clock deferrals. P-8-97.

Deferred from the July 9, 1998 Meeting:

P-8-97

J. Thomas O'Brien, Jr. for Short

Pump Investors, L.P.: Request for approval of a provisional use permit in accordance with Sections 24-58.2(a)(d) and 24-122.1 of Chapter 24 of the County Code to permit outside dining and extended hours of operation to 2:00 a.m. for proposed restaurants, on Parcels 36-A-19D (pt.), 21, 22, 23, and 24 located on the north line of W. Broad Street, 450' west of its intersection with Pouncey Tract Road. The site is zoned B-2C Business District (Conditional) and M-1 Light Industrial District. The site is also within the West Broad Street Overlay District.

They have withdrawn the case. There's no action required.

The first deferral this evening on the 8:00 o'clock agenda is C-48C-98.

Deferred from the August 13, 1998 Meeting:

C-48C-98

James W. Theobald for The Snyder-Hunt Corp.: Request to conditionally rezone from A-1 Agricultural District to R-2C, R-3C and R-4C One Family Residence Districts (Conditional), RTHC Residential Townhouse District (Conditional), R-5C, R-5AC and R-6C General Residence Districts (Conditional), O-2C Office District (Conditional), B-2C and B-3C Business Districts (Conditional) and M-1C Light Industrial District (Conditional), Parcels 18-A-11, 26-A-27A (pt), 30-32, 73, 27-A-3A, 5A, 6, 7, 8, 9A, 11 and 10 (pt.), and 37-A-1,10, 11, 12 (pt.),13 (pt.), containing 425.92 acres located at the southeast corner of the intersection of Shady Grove Road and Nuckols Road. A mixed use planned community is proposed. The R-2 District permits densities up to 2.42 units gross density per acre. The R-3 District permits densities up to 3.96 units gross density per acre. The R-4 District permits densities up to 5.45 units gross density per acre. The RTH District permits densities up to 9.0 units gross density per acre. The R-5 District permits densities up 14.52 units gross density per acre. The R-5A District permits densities up to 6.0 units gross density per acre. The R-6 District permits densities up to 19.8 units gross density per acre. The office, business and industrial uses will be controlled by proffered conditions and zoning ordinance regulations. The Land Use Plan recommends Government, Environmental Protection Area, Light Industry, Urban Residential 3.4 to 6.8 units net density per acre, Suburban Residential 2, 2.4 to 3.4 units net density per acre, and Rural Residential, not exceeding 1.0 unit net density per acre.

This would be their proposed Twin Hickory development. They've requested a deferral to October 15, 1998.

Mr. Archer - Okay. Is there any one here in opposition to the deferment of C-48C-98 to the October 15th meeting?

Mr. Archer - Yes sir, Mr. Theobald.

Mr. Merrithew - The requirement for the deferral is because the County staff miswrote the ad and left out one of the properties that was included in the application. It's not at the request of the applicant. It's because staff has got to rewrite the ad. I'm sorry.

Ms. Dwyer - Does that eliminate the Commission's the ability to defer this case at a later date if it should be decided...

Mr. Merrithew - Commission deferring in the future?

Ms. Dwyer - Yes sir.

Mr. Merrithew - It's the County's deferral.

Mr. Zehler - Whose deferral is this?

Mr. Merrithew - This is the County's deferral.

Mr. Zehler - Does the Planning Commissioner still have her deferral?

Ms. Dwyer - Apparently not.

Mr. Merrithew - Unless the County pays the fee. I don't think Randy wants to do that.

Ms. Dwyer - All right. I was wondering why the word, "required."

Mr. Merrithew - I didn't pick up on that. That's what Mr. Theobald was quickly pointing out to me. It is required because of the advertisement error.

Ms. Dwyer - All right, are we ready for a motion?

Ms. Dwyer - Mr. Chairman, I move deferral of C-48C-98 Snyder-Hunt Corporation...

Mr. Zehler - Excuse me, Mr. Chairman. There was somebody that has his hand raised that has opposition to deferral.

Mr. Archer - I'm sorry. I didn't see you.

Mr. Norm Edwards, 5520 Twin Hickory Lane - I don't have opposition to deferral.

Mr. Zehler - We need you to come down to the microphone, sir.

Mr. Edwards - My name is Norm Edwards, 5520 Twin Hickory Lane. I'm not asking for opposition for the deferral, but I would like to see it deferred until your September meeting due to the fact that's it's been deferred once or twice already and, personally, I can't make the October meeting. Since we're going to defer it again, I was wondering if it was possible to defer it to the September meeting rather than October?

Ms. Dwyer - You mean the September Plan of Development meeting?

Mr. Edwards - Your first meeting in September.

Ms. Dwyer - This is the first meeting in September.

Mr. Edwards - I meant, excuse me, October.

Mr. Archer - November.

Mr. Edwards - November's meeting. Excuse me.

Ms. Dwyer - I may be wrong on this, but I believe this is the County's request for deferral because of an advertising error. So, my understanding is that it would need to be deferred for at least a month, because we would have to readvertise and secondly, we don't have the authority to defer it more than approximately 30 days. So, I would not be able to comply with your request, because, by law, the county has to act within a certain number of days. If the applicant requests the deferral, they can defer for a long period of time, but we, on our own motion, cannot.

Mr. Edwards - I lost again.

Ms. Dwyer - Okay. Would the applicant come forward, please?

Mr. James W. Theobald - My name is James Theobald. I'm here on behalf of H. H. Hunt Company. We're in a rather interesting situation with this deferral. I had discussion, prior to her departure, deferring this case to the POD meeting for two weeks, which, according to my last

conversation with her, she was in agreement with. This evening, later on, we discovered that the advertisement, placed by the County, omitted a tax parcel, and we are unable to defer this case only until the POD meeting. The County is prepared to defer it 30 days, although, Ms. Dwyer, based on your comments, or inferences, you, perhaps, might like to defer this case longer, which I am at liberty to do. If the case is being deferred for 30 days, I'm happy to, basically, take that deferral, presuming the fee is waived, because I really don't intend for this to count against your time. But, I, honestly, cannot live with more than a 30-day deferral. So, that being said, under the circumstances, I would be more than happy to take the deferral if the fee is waived.

Ms. Dwyer - Well, my comment was, I couldn't defer it for more than 30 days, even if I wanted to, not necessarily that I wanted to.

Mr. Theobald - Okay.

Ms. Dwyer - So, we'll defer it, then, for 30 days to the October 15th zoning meeting at the applicant's request understanding that the County would waive the \$100 fee in light of the fact that it was our error that creates the need for this particular deferral.

Mr. Theobald - We would concur on that. Thank you.

Mr. Vanarsdall seconded the motion.

Mr. Archer - I have a motion and a second. All right. Motion made by Ms. Dwyer, seconded by Mr. Vanarsdall. All those in favor say aye—all those opposed by saying nay. The vote is 4-0 (Mrs. Wade absent, Mr. Donati abstained). Deferral is granted.

Mr. Vanarsdall - This is one meeting it didn't cost you anything, Mr. Theobald.

Mr. Merrithew - Mr. Chairman, if I could point out to the gentleman in the audience, the worse case scenario in your case, the case would be heard by the Board of Supervisors in November at the earliest point. You could attend and speak at that hearing just as this hearing.

C-54C-98 **Glenn R. Moore for ESA Management, Inc.:** Request to amend proffered conditions accepted with rezoning case C-12C-88 on Parcel 47-A-11A, containing 4.67 acres, located at the southwest corner of Dominion Boulevard and Sadler Road. The current zoning is B-3C, Business District (Conditional). The amendment would delete or revise proffers regarding numerous issues including site plan, elevations, building materials, uses, and access. The Land Use Plan recommends Commercial Concentration development.

Mr. Merrithew - Mr. Chairman, the next deferral is Case C-54C-98 Glenn R. Moore for ESA Management, Inc. They have requested a deferral to October 15, 1998.

Mr. Archer - Okay. Is there any one here in opposition to deferment of C-54C-98 ESA Management, Inc.? No opposition.

Ms. Dwyer - Mr. Chairman, I move the deferral of C-54C-98 ESA Management, Inc. to October 15, 1998 at the applicant's request.

Mr. Vanarsdall seconded the motion.

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

C-61-98 Henry A. Shield: Request to rezone from B-2 Business District to R-6 General Residence, Parcel 115-A-6A, containing 3.104 acres, located on the south line of Markel Road approximately 250' east of its intersection with Byrd Avenue and on the north line of Fitzhugh Avenue approximately 180' east of its intersection with Byrd Avenue. Apartments are proposed. The R-6 District permits densities up to 19.80 units gross density per acre. The Land Use Plan recommends Office and Environmental Protection Area.

Mr. Merrithew - Mr. Chairman, the final request for deferral this evening is C-61-98 Henry A. Shield. Again, this is a deferral that is required, because the applicant is changing from a regular rezoning to a conditional rezoning. That deferral would be until October 15, 1998. A motion would still be in order for that.

Mr. Archer - October 15th?

Mr. Merrithew - October 15th, that's correct.

Mr. Vanarsdall - I have a question about that after you find out if there's any opposition.

Mr. Archer - All right. Is there any opposition to the deferment of C-61-98 to October 15th? We have none. Do you want to ask the question first, Mr. Vanarsdall?

Mr. Vanarsdall - This is not conditioned now and you say, he's going to condition the case.

Mr. Merrithew - That's correct.

Mr. Vanarsdall - This will be R-6C?

Mr. Merrithew - As far as I'm aware of, this will be R-6C rather than just straight R-6.

Mr. Vanarsdall - The question is, does he still plan to have apartments for sale?
Mr. Merrithew - I'm not aware of any change in his proposal, other than to provide conditions to the case. So, I cannot answer that question. I don't know.

Mr. Vanarsdall - Thank you. Do you know, Ms. Dwyer?

Ms. Dwyer - I don't.

Mr. Zehler - Is this request per applicant?

Mr. Merrithew - I'm sorry.

Mr. Zehler - Is this deferral the applicant's request?

Mr. Merrithew - Yes. It is, because they are changing the application.

Mr. Archer - Okay. Do we have a motion?

Ms. Dwyer - Mr. Chairman, I move the deferral of C-61-98 to the October 15, 1998 meeting at the applicant's request.

Mr. Zehler seconded the motion.

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

Mr. Merrithew - Thank you, Mr. Chairman.

Deferred from the August 13, 1998 Meeting:

C-51C-98 Strange-Boston & Associates for Woodmen, LC: Request to conditionally rezone from R-3 One Family Residence District to R-6C General Residence District (Conditional), Parcels 51-A-98 and 99, described as follows:

Beginning at a point on the W. line of Woodman Road located 163.07' north of the N. line of Parham Road extended; thence along the W. line of Woodman Road N. 43° 12' 28" W., 432.92' to a point; thence S. 78° 56' 13" W., 246.07' to a point; thence S. 03° 34' 32" E., 137.03' to a rod; thence S. 16° 20' 28" W., 86.34' to a point; thence S. 46° 27' 50" E., 383.98' to a rod; thence N. 51° 54' 24" E., 349.78' to a point on the W. line of Woodman Road, the point of beginning, containing 3.919 acres.

Mr. Marlles - Mr. Bittner will be giving the staff report.

Mr. Archer - Is there any one in opposition to C-51C-98 Woodmen, L.C.? Mr. Bittner.

Mr. Mark Bittner, County Planner - Thank you, Mr. Chairman. This proposed use is an assisted living facility for residents that require assistance for some every-day living activities. Although not consistent with the Office designation of this property, this proposal is compatible with other developments in the immediate area, including the Parham Healthcare & Rehabilitation Center to the southwest, and a dental office and Patient First facility to the southeast.

Several issues associated with this proposal were outlined in the staff report. Since the printing of the report, revised proffers have been submitted. These revised proffers address all of the outlined issues with the exception that a percentage of open space has not been established for the site.

Proffer 5 addresses landscaping and buffering. Healthy trees of 4" or more in caliper would be preserved in the areas circled on the conceptual layout plan. Landscape buffers would also be established along the Woodman Road frontage and Laurel Dell Subdivision border. An 8-foot high masonry wall would also be constructed along the Laurel Dell Subdivision border. Although staff would prefer a percentage of open space to be established, the proffered buffers and landscaping are acceptable.

In summary, this proposed use seems reasonable at this location. It is consistent with adjacent development and it would provide living accommodations for a growing residential market.

Although a percentage of open space has not been proffered, several quality development controls have been incorporated into this proposal. Staff recommends approval of this application.

(Gap in tape).

Ms. Dwyer - ...what the wall will look like?

Mr. Bittner - The wall, precisely, no. This is the proposed structure here (referring to slide). We do not have an example of what the wall would look like, but it would be decorative block of some kind. I'm sure the applicant will strive to make it as compatible as possible.

Mr. Archer - Okay. Do we need to hear from the applicant?

Mr. Vanarsdall - Yes sir.

Mr. Archer - Would the applicant come forward, please?

Mr. Don Strange-Boston - Madam, and gentlemen of the Commission, I'm Don Strange-Boston, Architect, for the project and representing Woodmen, LLC, the owner of the project. This is a two-story assisted living facility that's being proposed. The purpose is to provide a sheltered living environment with help in normal daily activities where people 62 years or older are having trouble in possibly getting dressed, doing light housework, preparing their meals, and things of that nature. It's not a nursing home which would require a State Certificate of Need and it does not have an Alzheimer's care facility in it. So, these are just folks that are elderly. "Frail" is the word that the Housing and Urban Development Department use. The purpose is to provide for them a place that's reliable where they'll get their medication. Where their nutrition will be supervised. Where they'll have activities. We will have planned and organized activities in games, crafts, exercises, lectures, discussion groups, even dances. We're going to have a management operated van which will be available for small group excursions. We'll provide three meals a day available in a communal dining room. And maid and linen service, and periodic public health screening will be provided by qualified health care professionals. That's as much for their good, as it is for our care in determining the necessary levels of staff assistance that will be needed.

The exterior of the building is brick. The roofing will be asphalt shingles. It's set back in roughly the center of the site from the adjacent residential lots. There are three which abut the property on one corner. That's where we have added the decorative concrete masonry wall. There's a 35-foot setback where we'll preserve the natural foliage that's there. We'll probably have to clear out some of the poison ivy, which I had occasion to run into when I was out there looking at it. But, essentially, we feel that the staff has been very helpful in helping us modify these amended proffers, and we think the project has been approved because of it.

Among the things that were added, since our last submission, were a closed circuit T.V. system on the entry, with tapes to be saved and available to Henrico Department of Police in the event we ever need anything like that. We have an automatic timer, which at 10:00 o'clock, will set back the parking lot lights and the driveway lights to the lowest level that's consistent with safety, so they won't be glaring in people's eyes, in the residential area. We're going to limit the deliveries and the trash pick up on the site to 7:00 o'clock in the morning to 8:00 o'clock at night, and no Sundays. We think, by in large, the staff's been very helpful in helping us arrive at those and the project is better for it. We ask your approval of this project.

Mr. Archer - All right, thank you. Are there questions by the Commission?

Mr. Vanarsdall - Yes sir. Mr. Strange-Boston, I just want to say, I don't remember a case, for the lack of a word, I can't think of a case being any easier, and y'all made it easier. I want to thank Mark Bittner for the way he closely worked with you and Pete. And on the other side, you understood, being an architect, and, of course, Pete Runkle, being an Attorney, the proffers are volunteered. Sometimes, we come over by saying, "You've got to do this." That's why I always say at the end, you don't have to if you don't want to. But I don't know, and I'd like to tell the rest of the Commission that I don't know of anybody that did any more cooperating to try to get this a good case. You certainly did do a job and I appreciate it and I know Mark does and I know the Board's going to appreciate it.

Mr. Strange-Boston - Well, we think the project is better for it, and we thank the County.

Mr. Vanarsdall - I think it's going to be a good project. I'm very glad to be a part of it.

Mr. Strange-Boston - Thank you.

Mr. Archer - Thank you, Mr. Vanarsdall. Any more questions or comments? I suppose we're ready for a motion. Mr. Vanarsdall.

Mr. Vanarsdall - One major change that he didn't mentioned was, like everybody, it started out with a fence and ended up with a wall. Everybody likes a wooden fence until it gets old. Mr. Chairman, I move that C-51C-98 be recommended to the Board of Supervisors for approval.

Mr. Zehler seconded the motion.

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

REASON: Acting on a motion by Mr. Vanarsdall, seconded by Mr. Zehler, the Planning Commission voted 4-0 (one absent, one abstention) to recommend that the Board of Supervisors accept the proffered conditions and grant the request because it would provide for appropriate development, it would permit development of the land for residential use in an appropriate manner; and the proffered conditions will assure a level of development otherwise not possible.

P-35-98 James Thornton for Triton PCS, Inc.: Request for approval of a provisional use permit in accordance with Sections 24-95(a) and 24-122.1 of Chapter 24 of the County Code in order to construct, operate and maintain a communication tower up to 199' high and related equipment and improvements, on part of Parcel 22-A-11B, located in RF&P Park on the south side of Interstate 295. The leased area is about 5,000 square feet, located approximately 100' east of the existing communication tower (or as more particularly described on a plat kept on file in the Henrico Planning Office). The site is zoned M-2 General Industrial District.

Mr. Marlles - Mr. Yolton will be giving the staff presentation.

Mr. Archer - Any one here in opposition to this case? Mr. Yolton.

Mr. Lee Yolton, County Planner - Mr. Chairman, members of the Commission, as mentioned, this is a request to construct a wireless communication tower on County-owned property at RF&P Park in the Brookland District. The Park is zoned M-2 General Industrial.

Back in 1994, Richmond Cellular received a permit to construct a cellular telephone tower on the park property. And the new tower that's proposed by Triton, Inc. would be immediately adjacent to the existing tower. This is the first public hearing we've had on this matter.

Triton, Inc. proposes a steel lattice tower with a top mounted antenna and a lightning rod not to exceed 199 feet. This, essentially, is the same style and height that currently is on the property. The existing tower is filled to capacity and can't support any more additional equipment.

If the requested permit for the tower is approved, the applicants have indicated that a pending request, P-21-98, will be withdrawn. The pending request is on private property located nearby. But after several meetings with the residents in the area, it became apparent that the original location was not favorably received by the neighbors. And the neighbors requested that Triton seek to locate the tower on the RF&P Park property since it's significantly farther from the nearest homes.

Triton has reached an agreement with the County for leasing the property where the tower will be located. And the lease agreement will be on the Board's agenda the same night that the proposed tower permit will be considered. It's anticipated that there will be additional communication providers in the future that will want to co-locate their equipment on this proposed new tower, and it can certainly accommodate additional users. So, given all of the considerations involved, staff supports the request for the Provisional Use Permit at this location, subject to the conditions No. 1 through 6 that are contained in the staff report. Mr. Chairman, I'd be happy to try to answer any questions the Commission may have.

Mr. Archer - Thank you, Mr. Yolton. Are there questions of Mr. Yolton by the Commission?

Ms. Dwyer - How many users are there on the existing tower?

Mr. Yolton - There are three.

Ms. Dwyer - Three. And that's filled to capacity?

Mr. Yolton - Yes.

Ms. Dwyer - And how tall is that tower?

Mr. Yolton - It's 190 feet tall with a lightning rod on top.

Ms. Dwyer - So, we can only get three companies on a tower that's 190 feet?

Mr. Yolton - That particular tower, because it was built a number of years ago, three would max out their capacity. But the newer towers that are being constructed now, they've guaranteed that four can be located on the tower. And I think it's Condition No. 5, I believe, does

commit them to building the tower strong enough so that Triton can locate on it, and at least three other users can locate on it.

Ms. Dwyer - Could we possibly get more if it were even stronger?

Mr. Yolton - We could, but I think really the determining factor is the height that's available to mount the antennas. So, if you have a 190-foot tower, usually there's about 15 feet of separation needed between each provider's antenna and, then when you get more than four on the tower, four times 15 minus 190, well, you're down pretty low, below the tree level. I think that's really the limiting factor. The trees interfere with their radio signal. So, once you get below the trees, that's not very attractive.

Ms. Dwyer - When we first started out three years ago, we would approve towers say 150 feet tall. By my calculations, if you have a user at 190 and you go down 15 feet, you're at 175, 15 more feet, you're at 160, 15 more feet, you're at 145. That's four users and you're only down to 145 feet. We used to just build them 150 feet tall. So, it just seems to me that if you have 15 feet of separation, maybe we could go, maybe get another user on there at 130 feet. The point of my question is, is it because of the strength of the tower that we are limited to four, because it looks to me that distance-wise and separation-wise, we ought to be able to get more than four?

Mr. Yolton - Well, the condition does say, "the tower would be built to accommodate at least three additional co-locators..." So, perhaps, it would hold four, and I would ask the applicant maybe, but that fourth user would be down there around 135 feet or so, which is usually not real attractive. It depends on where their other antennas are and the relationship between the different sites that they have that form their network.

Ms. Dwyer - I think I want to press this point with the applicant, too, because we had the tower builder who's in the business of simply building towers, and it's in their commercial interest to get as many users as they can on that tower, and they claim they can get eight users on a 199 foot tower. So, if they can do it, why can't everybody else?

Mr. Yolton - And maybe it would support eight, but that eighth person is going to be way down there around 80 feet or so. So, I would ask the applicant maybe to address that.

Ms. Dwyer - Thanks.

Mr. Archer - Any further questions of Mr. Yolton by the Commission?

Mr. Zehler - Lee, the proposed tower that we're looking at along I-295, is that the one you said would go away if this one's approved?

Mr. Yolton - No sir. On the graphic, it says, "Proposed Communication Tower..." which is somewhat south of here. That's the request that would go away. It's on private property. It's not on the park property.

Mr. Zehler - And the proposed 199-foot communication tower along I-295 is what we're addressing tonight?

Mr. Yolton - That's what we're addressing tonight. Yes sir.

Mr. Zehler - Thank you.

Mr. Archer - Any further questions? All right, I suppose we need to hear from the applicant?

Mr. Vanarsdall - While he's doing that, I'd like to say something on Lee Yolton's behalf. When the Chesapeake Bay Act started in the County, Harvey Hinson became the foremost authority on the Chesapeake Bay. He had attorneys calling him to find answers. And I believe that Mr. Yolton has turned out to be the same with towers. I think that's a compliment.

Mr. Yolton - Thank you.
Mr. Vanarsdall - And he is now passing that on to Jo Ann. So, she'll be tower No. 2.

Mr. Archer - I'm not sure you want people to know that. Okay, Mr. Thornton.

Mr. James Thornton - Mr. Chairman, members of the Commission, my name is Jim Thornton. I'm here this evening on behalf of Triton PCS, Inc. Triton is a communications company with a license to engage in wireless telephone services in the greater Richmond area and several Mid-Atlantic markets. They are before you tonight for a Provisional Use Permit for a communications tower up to a height of 199 feet under Ordinance Section 24-95.

Before settling on this site, as Mr. Yolton touched on, Triton did consider several other alternate sites; the first being the existing 360 tower on RF&P Park. As was discussed, that tower does have three users on it now. That particular tower is at capacity for structural reasons. It wasn't built strong enough to carry more than three antenna arrays.

Triton then looked at the Virginia Power transmission lines which run through the area, but they were at a height that was too low to meet the service needs in this area. Triton settled on a location on the property of Mrs. Seay, at the end of Brookley Road.

During neighborhood meetings, there were a few people in favor of that site, but I think it's fair to say that the consensus of the vast majority of the people, I think to be fair, was that they could not support a tower on the Seay property, but could support it if it were moved onto the RF&P property. And Triton committed to re-approaching the County to see if there were a tower site that could be leased on RF&P Park. Negotiations, along those lines, were ultimately successful, thanks in large part to the efforts of Mr. Glover and Mr. Vanarsdall and also Mr. Hinson in getting those negotiations started and pointed in the right direction.

The proposal that's before you tonight, as you can see, is at the northern end of RF&P Park approximately 100 feet from the existing tower. It would be a lattice tower, scheduled to be 190 feet tall with the antenna arrays projecting slightly up above that to about 195 feet. There would be a 75 by 75 foot fenced compound at the base of the tower. That compound will be landscaped, in accordance with a plan to be approved by staff, prior to issuance of a building permit. There will be a small equipment shed within that compound.

Access to the tower will be from the same graveled road that serves the existing 360 tower, which will minimize the interference with the operations of the park and also minimize the interference with any future expansion plans.

In this area there any many other towers in place already. The red arrow you see there is the location of the proposed tower. The large blue dot next to that is the existing 360 tower, which will

be approximately the same height. The five larger red dots, all are Virginia Power transmission towers at a height of about 100 feet. The smaller red dots, that you see there are some 30 lighting towers, 50 to 70 feet high with flood lights providing illumination for the ball fields there. So, this proposal is consistent with the existing structures in RF&P Park. At the perimeter of the park, there's a great deal of existing vegetation that provides screening from the neighborhoods; Deersprings to the east, Brookley Acres to the south.

There will be substantial benefits to the County from the proposed tower, in addition to the long-term lease revenues. Triton and the County have also agreed to structure the lease such that there will be a significant up front payment. And it's my understanding that the Parks & Recreation folks intend to use that to construct a picnic shelter in the park for the use of the enjoyment of the citizens in the area.

Triton has reviewed the conditions proposed by staff and are in agreement with all of them. The location of this tower, within an M-2 District, is appropriate and not in conflict with the Comprehensive Plan which shows the area for non-residential development. The tower meets all applicable guidelines for structural safety and signal strength. Health, safety, and welfare of the public will not be affected. There's no impact on utilities and, once the tower is built, it will create a negligible traffic volume and no need for off-site parking.

The setbacks, the distance from residences, the tower is approximately 1,800 feet from the nearest residence. And the existing vegetation provides the necessary safeguards for people and property values.

The requirements for the Provisional Use Permit having been met, we request that you follow the advice of staff and recommend approval of this case to the Board. You also have some neighbors here, tonight, in support of the case. I would like for Jim Smyers to come up and just say a couple of words, unless you have questions before he speaks.

Ms. Dwyer - I have a question. How many users could this structure support? I'm not talking about the distance between antennas, I'm talking about weight. You know the load factors in considering how much...about the structural support?

Mr. Thornton - Yes, structural strength. I understand where you're going. I don't see any problem with having this tower designed to support as many arrays as there are interested parties to put arrays on them. As Mr. Yolton mentioned, once you get down to a certain height, regardless of whether you could structurally accommodate additional antennas, you're not going to have interested users. And, in fact, as we mentioned, we've got 100 foot transmission line towers in that location now. So, there's really a lower limit to what can be done there.

Ms. Dwyer - Well, here's my thought on that. We've had, as I mentioned a minute ago, someone claimed they could get eight users structurally on a tower. Of course, they were motivated to get as many users as possible on the tower. And we have here an existing tower that is at capacity because it structurally cannot support another user. Of course, our interest is having the least number of towers in the County we can possibly have because they're unsightly and people don't like them, but we also understand that we need to provide the service. So, it just seems to me, as fast as technology is progressing, perhaps, at some future date, different companies could locate closer together than they can now, because of some technological advance. Might we, three years or five years from now, be stuck; you know, yes, we can have these users closer together, but structurally, we can't support it, so we can't have them on this tower? I think that we should build all the towers from here on out so they can hold more than three users.

Now, all you've really committed to here is three. I know you've said, "...as many as possible and at least three..." So, I guess my question is, how many could it support now, structurally?

Mr. Thornton - I believe the towers can be designed to accommodate as many users as they are interested in going on there. I don't think, Ellen, stop me if I'm wrong, but I don't think there's any problem in committing to raise that number. I think that is the number that had been requested and we complied with that. So, if you're looking for a commitment for a higher number, then I think Triton would certainly be open to that.

Ms. Dwyer - How about eight? I mean, that's what was committed to us in another meeting, so that's what stuck in my mind.

Mr. Zehler - If you were to say, "eight," that doesn't mean you would have to go eight.

Ms. Dwyer - It means the structure could support eight.

Mr. Zehler - The structure would support eight, but technically involved, or the electronics involved, and the tower would, let's say, only suffice to hold a maximum of five, well, that's what you would be expected to use is the five.

Mr. Thornton - Well, I understand that. I guess I question the wisdom of designing a tower to support the weight of 8 antennas, knowing full well, that no more than four or five at the absolute most could be used. As you get down, many of the tower users are requesting 20 foot separations now. But even if it were 15, you'd be down at the height of the surrounding transmission line towers once five users were on that tower.

Ms. Dwyer - So, you'll commit then, to at least build the tower so that it could structurally accommodate five users? It's better than three. What do you think, Mr. Yolton?

Mr. Yolton - Well, I was going to suggest that we have a technical RF engineering consulting firm on board and I'd like to maybe throw this question at them and see what kind of response we get from our technical consultant about how many, you know, co-locators is reasonable to require on the towers.

Ms. Dwyer - Again, in five years, who knows what kinds of advances will be made and we may be able to accommodate more technologically speaking. I just want to make sure we have the structure there. Obviously, that limited the tower that's right next door to this one, and we don't want to repeat that mistake, is my thought. So, between now and the Board meeting, maybe you'll approach the expert and say, "You know, how many could we reasonably ask for, but we'll do at least five."

Mr. Yolton - We'll get an answer.

Mr. Thornton - Well, we'll commit to five, and we'll participate in this discussion between now and the Board hearing.

Mr. Archer - Thank you, Mr. Thornton. Are there other questions of Mr. Thornton? I think that's a very good point Ms. Dwyer made. I assume we will be hearing this

more as time goes by and tower applications come up. Okay, if there are no further questions, Mr. Vanarsdall.

Mr. Vanarsdall - All right, Mr. Thornton touched on this. We had a meeting of the community twice. We had enough people to make the turnout; it could have been another Westhampton thing. Mr. Glover suggested he talk to the County and he had already done that. That was too high. So, he went to the Manager, and the Board decided, in many cases, it would be better to lower the rent and sometime give it away rather than get into a lot of disagreements with some neighborhoods and so forth. So, Jim, we appreciate you talking to the County and the Real Property Department, and getting that lease done. With that, I move that P-35-98 be recommended to the Board of Supervisors for approval.

Ms. Dwyer seconded the motion.

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

REASON: Acting on a motion by Mr. Vanarsdall, seconded by Ms. Dwyer, the Planning Commission voted 4-0 (one absent, one abstention) to recommend that the Board of Supervisors **grant the requested revocable provisional use permit**, subject to the following conditions:

1. If the use of the tower for communication purposes is discontinued for 180 days, the tower and all related structures shall be removed from the site within 90 days. Within ten (10) business days after written request by the County, the owner of the tower shall provide the County with written confirmation of the status of the tower, the number and identity of users on the tower, available co-location space on the tower and such additional information as may be reasonably requested.
2. Application for a building permit to install the tower must be made within one year after the Provisional Use Permit is granted by the Board of Supervisors, unless an extension of time is granted by the Director of Planning upon written request by the applicant.
3. The applicant shall obtain approval from the Henrico County Planning Commission if the FAA requires the addition of standard obstruction marking and lighting (i.e. red lighting and orange and white striping) to the tower. The applicant shall notify the Henrico County Planning Director prior to making any changes to the original galvanized finish of the tower.
4. When site construction is to be initiated as a result of this Provisional Use Permit, the applicant shall complete requirements prescribed by Chapter 10 of the Henrico County Code. In particular, land disturbance of more than 2,500 square feet will require that construction plans include a detailed drainage and erosion control plan prepared by a professional engineer certified in the Commonwealth of Virginia. Ten (10) sets of the construction plans shall be submitted to the Department of Public Works for approval.
5. A landscaping plan for the purpose of screening the base of the tower from view shall be submitted to the Planning Office for approval prior to the issuance of a building permit for the tower. The Director of Planning may waive the enforcement of this condition if it is deemed unnecessary.

6. The applicant shall allow the co-location of at least 3, and as many additional users as technically possible at this site in accordance with the provisions of the Letter of Intent to Permit Co-Location on Communications Tower, filed by the applicant with this request.
7. The Planning Commission recommendation was based on its finding that the Provisional Use Permit is reasonable; and when properly developed and regulated by the recommended special conditions, it would not be detrimental to the public health, safety, welfare and values in the area.

Deferred from the February 12, 1998 Meeting:

C-34C-97 J. Barry Lynn: Request to conditionally rezone from B-1C Business District (Conditional) to B-3C Business District (Conditional), Parcel 96-A-3, described as follows:

Beginning at the point of intersection of the north line of Azalea Avenue and the west line of Wilkinson Road; thence along the north line of Azalea Avenue S, 86° 50' 04" W., 183.85 feet to a point on the north Line of Azalea Avenue at the center line of Thrush Lane extended northwardly; thence N. 03° 09' 56" W., 474.50 feet to a point, thence N. 86° 50' 04" E., 192.09 feet to a point on the west line of Wilkinson Road; thence along the west line of Wilkinson Road S. 03° 08' 56" E., 458.77 feet to a point; thence continuing: along the west line of Wilkinson Road S. 24° 05' 04" W., 17.70 feet to the point of beginning and containing 2.09 acres.

Mr. Marlles - Mr. Mark Bittner will be giving the staff presentation.

Mr. Archer - All right, is there any one here in opposition to C-34C-97 **J. Barry Lynn?** Okay, Mr. Bittner.

Mr. Bittner - Thank you, Mr. Archer. The proposed car wash facility would not be the ideal use for this site. Given the adjacent multi-family residences to the north and west, and the availability of existing B-3 zoned property in the immediate area, staff feels that the existing B-1C zoning is preferable. Wilkinson Road is also planned to be realigned to run right through this property, and align with Thrush Lane on the opposite side along Azalea Avenue. Even with realignment of Wilkinson Road, some of the property would be available for development. However, the applicant has not indicated to staff what his plans are, if any, for this property.

Staff, therefore, recommends denial of this application, not only because of the unsuitability of the proposed use, but also because the realignment of Wilkinson Road will dramatically alter this property, and the applicant has not stated what he plans relative to this realignment. I'd be happy to answer any questions you may have.

Mr. Archer - Does any one have any questions for Mr. Bittner? Mr. Bittner, I know this is probably in this report somewhere, but do you know, has the Traffic Department given us any time table as to when the proposed realignment will happen?

Mr. Bittner - Yes. But I can't recall the dates right now. I have it on some notes written down. I can't recall the date.

Mr. Archer - 1999, 2000, somewhere in there.

Mr. Bittner - I believe it will be after the turn of the century is when this will be completed.

Mr. Archer - Okay. Any further questions for Mr. Bittner by the Commission? Thank you, sir. Is the applicant present? Is the applicant not here?

Mr. Zehler - Maybe he feels like he has a bad case, too.

Mr. Archer - This case has been deferred several times. Based on my discussion with staff and information that's contained in the report, and the fact that we are looking forward to having a realignment of the road at that point, it does not appear its feasible to do this rezoning. There's nothing at all favorable in zoning for it. Maybe between now and the time the Board meets on it, the applicant could be present and make the case. But based on the information that we have here, my motion is to recommend denial of C-34C-97.

Mr. Zehler seconded the motion.

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

REASON: Acting on a motion by Mr. Archer, seconded by Mr. Zehler, the Planning Commission voted 4-0 (one absent, one abstention) to recommend that the Board of Supervisors **deny** the request because the applicant failed to meet his burden to show that the requested changes are in the best interests of the welfare and future of the community; and it would not represent sound zoning or logical land use practices.

Deferred from the August 13, 1998 Meeting:

C-52C-98 A. G. Bertozzi for Addon Associates, LLC: Request to conditionally rezone from A-1 Agricultural District to R-3AC One Family Residence District, on Parcel 43-A-43, described as follows:

Beginning at a point, said point being approximately 146.3' east of the E. line of Tavern Green Road; thence from said point of beginning S. 88° 47' 58" W., 872.08' to a point; thence N. 01° 12' 02" W., 241.16' to a point; thence N. 88° 47' 58" E., 151.35' to a point; thence N. 49° 00' 48" E., 60.82' to a point; thence N. 88° 31' 50" E., 93.45' to a point; thence N. 01° 28' 10" W., 144.50' to a point; thence N. 88° 31' 50", 218.34' to a point; thence S. 01° 28' 10" E., 184.89' to a point; thence N. 88° 47' 58", 51.10' to a point; thence N. 11° 50' 24" E., 72.41' to a point; thence N. 88° 47' 58" E., 145.36' to a point; thence along a curve to the right having a radius of 328.00' and a length of 30.02' to a point; thence S. 85° 57' 24" E., 44.00' to a point; thence along a curve to the left having a radius of 372.00' and a length of 11.73' to a point; thence S. 85° 08' 13" E., 135.47' to a point ;thence S. 02° 03' 42" E., 31.97' to a point; thence S. 02° 03' 48" E., 8.96' to a point ;thence S. 05° 48' 50" W., 233.95' to the point of beginning, containing 6.3 acres.

Mr. Marlles - Mr. Bittner will be giving the staff report.

Mr. Archer - Okay. Is there any one opposition to C-52C-98? Mr. Bittner.

Mr. Bittner - Thank you, Mr. Archer. The proposed R-3AC zoning is consistent with development to the south, which is the Ayers Tavern Subdivision. This applicant is not developing Ayers Tavern, but is developing the adjacent property to the north which is the

Telegraph Run Subdivision. That is zoned R-2A. Staff feels it would be most logical to develop this site under R-2A zoning as an expansion of Telegraph Run since the same developer controls both properties. This rezoning application, however, affords the opportunity to ensure quality development on this site through proffers.

Revised proffers have been submitted and just been handed out to you. These new proffers address all the issues outlined in the staff report, with the following exceptions:

No. 1, dealing with covenants. The applicant has proffered to establish covenants for this proposed development. However, no specific criteria for inclusion in the covenants has been provided. Staff suggests that the proffers state that the covenants will address specific items, including, for example, driveway construction material.

The second issue is the Interstate 95 buffer along side the eastern part of this property.

The proffers include a provision of a 25-foot landscaped buffer along Interstate 95. However, only 15 feet of this buffer would be outside of the required setback area. This would result in a minimum rear yard setback of 50 feet. Generally, the rear yard setback area which in R-3A is 35 feet, becomes the back yard of a residence. If any or all of the I-95 buffer area is within the backyard, its width and effectiveness could be reduced. Staff feels that the entire 25-foot buffer should be outside of the rear setback area, resulting in a total setback from Interstate 95 of 60 feet. It should be noted that the Ayers Tavern Subdivision directly to the south has incorporated a full 25-foot buffer that is totally exclusive of rear setbacks.

In summary, this proposed use and zoning is reasonable at this location. However, some quality development controls are lacking that are found in neighboring developments. If the applicant provides the items listed tonight, staff could recommend approval. I'd be happy to answer any questions you may have.

Mr. Archer - Thank you, Mr. Bittner. I know you and I have discussed this, Mr. Bittner, but would you explain, for the benefit of myself, as well as the rest of the members exactly how the buffering would apply in terms of who can use it and who can maintain it and how much of it would actually be there for use of the owners? I think I phrased that right.

Mr. Bittner - Well, in this case, the owner owns the buffer. There would be an easement established along Interstate 95 requiring a 25-foot landscaped strip. Then the lots would be subdivided along Interstate 95, and each lot owner would own a piece of that easement. The easement, of course, they are not supposed to be able to cut into it or reduce it. In practice, however, if it's their own yard, it sometimes happens. The reason we'd like to see it outside of the rear yard setback is so to provide them an adequate rear yard; thereby, lessening the chances that they would cut into the buffer along Interstate 95.

Mr. Archer - Any other questions of Mr. Bittner? Mark, I may need you later, but I'd like to hear from the applicant, if I may.

Mr. Bernard Meyer - Mr. Chairman, members of the Commission, my name is Bernard Meyer. I'm an attorney here in Richmond. I'm also one of the principals of Addon Associates. A little bit of history of this parcel. The parcel to the north is R-2A was actually here for zoning for some higher density, and it remained R-2A. The property to the south of this is zoned R-3.

The property, in question, was owned by Mr. Colliston. It turned out it was an agricultural piece approximately 200 feet wide. It was between two zoned pieces of property. And I tell you about the 200 feet wide because it makes this property very difficult to development and some unique things have happened.

The two things, in question, that were a problem was, if we zoned this R-2A, that some of the building lots, the building pad site would actually be smaller than an R-3A lot. That was because of the configuration of the narrowness of the lot, and the engineer here, Mr. Kestner is here can actually explain those details. But our pad site for the house would actually get smaller in an R-2 than it would be under R-3. That mainly happens in the cul-de-sac coming in.

In fact, the land, in question, is so narrow that when we first applied for the zoning, Mr. Bittner, and rightfully so, asked us to change the configuration of what we were trying to zone because we couldn't even get full lots; or we couldn't develop the A-1 property without overlapping into the R-2 property, and we would end up with a number of lots that had split zoning. It's due to that configuration that we really desperately need the R-3.

As far as the road that goes across the back, that road was established, and it was not established by us. It was, basically, established from Stonefield to Ayers Tavern and on down. So, the location of the back road that parallels I-95 is in existence.

What we were trying to do by changing the proffer to, not exactly what Mr. Bittner asked, was to extend the pad site so that where we could build the building was approximately 55 feet deep instead of 45 feet deep. The builder who will buy all the lots is Ryan Homes. It was at their request so that they would have flexibility and could build a house that was a little bit larger on those back lots.

Since we proffered that our pad site could be 55 instead of 45, we've talked to Ryan Homes and Ryan really has no objection since it's really only three lots in question to eliminate the 10-foot overlap, if you would, of the buffer in the backyard. So, we would then have 60 feet. You have to realize it would lessen our pad site, and the house that could be built on that lot would have to be smaller than what possibly Ryan would like to do.

So, it is the configuration of those. As far as the restrictive covenants, Ryan Homes is going to restrict them. And I have a sample that they want us to use which we're going to use verbatim. And, basically, it establishes an association. It establishes an association where dues are paid to protect the common area. I really wasn't aware that was being questioned as a proffer. The common area is the BMP mainly, and possibly some signs. It will not only be on this parcel, but it will be on the R-2A parcel as like, even though that's not required. So, there will be restrictive covenants on the property.

As far as the driveway material, our driveway material is going to be comparable to the R-2A parcel and comparable to Ayers Tavern. It's not going to be hard surface. It's going to be gravel. Our proffers almost equal Ayers Tavern in every regard. I would be glad to change the proffer. It really doesn't matter much to us about the overlap of the buffer. When you do that, however, I would be taking away 10 feet from the pad site.

Mr. Archer - What's the maximum size house that could be built on the reduced pad site?

Mr. Meyer - Forty-five feet deep.

Mr. Archer - And what would you build if it were not that?

Mr. Meyer - Fifty-five feet deep. It's the 10 feet we're talking about.

Mr. Archer - Pertaining to the driveways, you're saying that the developments both north and south of this site all have gravel driveways now?

Mr. Meyer - The parcel to the north has no proffers at all. It was zoned many, many years ago. The property to the south does not have any type of asphalt requirement for the driveway. There is no proffer.

Mr. Archer - I guess I should have asked it that way; not what they have, but what they're permitted.

Proffer No. 9 says, "Entrance steps for dwellings shall be brick, stone, or wood." Ain't much left is there?

Mr. Meyer - That was the proffer, it came out of the report. I guess it could be concrete—poured concrete, cinderblock.

Mr. Archer - Well, what criteria would determine which one of these steps would be used on a particular house?

Mr. Meyer - I imagine it would be up to the customer.

Mr. Archer - So, in other words, it would depend on the model of the house that Ryan would offer?

Mr. Meyer - Yes.

Mr. Archer - Does anybody else have any questions? I'll probably have some more. I'm caught between how to deal with this issue with the 25-foot buffer. I guess I just need to find out a little bit more specifically about how it would affect the size of the house and lot. I'm trying to imagine in my mind, and let's look at it in terms of price. What would be the price be of the smaller houses as opposed to the... You don't know?

Mr. Meyer - I have a feeling, Mr. Archer, its more of a market flexibility thing. That's why, especially since there's only a small number of lots that Ryan was not really upset. In other words, if you took all of their models, there were some models that would not fit on those lots. So, therefore, they just could not be offered on those lots.

So, it is really not a big deal. To use, it was just a request of Ryan Homes. And Ryan certainly can live with the proffer of a 25-foot buffer, completely out of the rear setback requirement.

Mr. Archer - The problem I have with that, I guess, is I would like to see the larger house, because I think the smaller house might have some effect on the larger homes if they're larger than the one that you build on the smaller lot. But, at the same, time I certainly have sympathy with the reason why Mr. Bittner would like to have the larger buffer. And I'm just wondering if there's somewhere between 15 and 25 that we could get.

Mr. Meyer - Well between 15 and 25 is 7.5. I think we might be complicating it, and we just would redraw that and make the buffer completely outside of the setback would be fine with us.

Mr. Archer - Does Ryan, to your knowledge, that would fit on something a little bit larger than the 15?

Mr. Meyer - Like I said, it does eliminate some of the models that are selling in that area and then that's all.

Mr. Archer - Now, in terms of the protective covenants, you say you have a draft of the protective covenants that they use as standard? Could that become a part...Do you have one now?

Mr. Meyer - I don't have one with me, and its 50 pages long.
Mr. Archer - Mr. Bittner, could you come back up.

Mr. Zehler - Probably more so a part of their subdivision approval.

Mr. Archer - Are you somewhat familiar with the covenants that he's talking about?

Mr. Bittner - I have not seen that document. I'd be happy to review it, though.
That's not a problem.

Mr. Archer - Okay. I don't want to delay this any longer, to be honest with you. Since there's no opposition here, I think we probably need to discuss this some more between now and the time that it goes to the Board for final approval.

Mr. Meyer - That's fine.

Mr. Archer - I'm trying to figure out how I could word a motion that would take that into place.

Mr. Zehler - Can I ask one question, and give you time to think? You're saying no more than 19 lots shall be developed on this property.

Mr. Meyer - Yes.

Mr. Zehler - Has a layout design as far as streets and lot sizes been done to give us an idea...

Mr. Meyer - This was the tentative that was given to the...It should be in the staff report. To orient you, north is to the top, to the right would be Interstate 95, and to the left would be Telegraph Road. You can't see Telegraph Road. It's further down. The lots in question that Mr. Archer was asking about is 9, 10 and 11. I-95 being on that far right hand side of the page.

Mr. Archer - Mr. Meyer, I may have asked you this already, but let me do it again for clarification. What size house could be built on a 45-foot pad as opposed to 55?

Mr. Meyer - I don't know. I'm just parroting what Winston Read told me from Ryan Homes. We took the proffers that were suggested, went to Ryan Homes and that's what we came back with. While it's on its wish list, it eliminates a number of his models is all he told us.

Mr. Zehler - Are your Lots 9, 10, and 11, 17, 18, 19, and 20? Are all those 80 foot minimums which is required in the R-3?

Mr. Meyer - Mr. Kestner has to answer that?

Mr. Andy Kestner - My name is Andy Kestner. You're asking me the width of Lots 9-11 and 17-20?

Mr. Zehler - Yes sir. Can I have the road frontage?

Mr. Kestner - Yes sir. They have a minimum of, I can't recollect the exact minimum. I know they meet the R-3A standards.

Mr. Zehler - But if you don't have the depth, you have to add it to the frontage?

Mr. Kestner - Yes sir.

Mr. Zehler - Is that what's been done in this case?

Mr. Kestner - In this case what has happened is the alignment of the Stone Meadow Drive, which is the road to the right, was fixed to the north and fixed to the south, as well as, I-95 being to the east. I really didn't have a lot of decision process about where the road is going to go. When I connected the stub roads that were connected on both sides, dictated by default the lot widths and depths in that area.

Mr. Zehler - It would help if you had those dimensions.

Mr. Kestner - This was the conceptual plan that I gave staff to give them an idea of how the layout was going to be.

Mr. Zehler - But in the same essence, when you approximate, you had to use dimensions.

Mr. Kestner - Yes sir.

Mr. Zehler - To know your square footage on each lot as far as it meets the Code's minimum in the R-3?

Mr. Kestner - Yes sir. I know they meet the code minimum.

Mr. Zehler - You know that for a fact?

Mr. Kestner - Yes sir.

Mr. Zehler - So, then, if you know that for a fact, you know the length times the width.

Mr. Kestner - I do not know the length times the width standing here and talking with you, but I know when I did that layout back in July that I made sure that it met Code via length, width, depth and area.

Mr. Zehler - You know it and just don't want to tell us?

Mr. Kestner - No sir. I don't know offhand. I know that it meets Code.

Mr. Zehler - Based on this survey that I'm looking at, how do you know that, under the R-3 that the lot is 11,000 square feet if you don't know the length times the width?

Mr. Kestner - When I produced that drawing in the computer, I produced the drawing so that it met the minimum standards for the code back in July when I did that. And then I produced this drawing for the county, I was giving it as a conceptual plan of how the roads were going to be and how the lots were going to be. I didn't produce this drawing to have all the specific dimensions of a record plat. It was drawn as a conceptual plan. But I wouldn't have shown those as being lots if they did not meet the standards.

Mr. Zehler - What's making it difficult is the Chairman is going to make a motion on this case is looking at 9, 10, and 11, and they are looking at a 25-foot buffer versus a 15 foot buffer that you're requesting. Without having those dimensions of those three lots, it's making it difficult for us to make a decision.

Mr. Kestner - Now, I can tell you on Lots 9, 10, and 11, and Mr. Bittner and I spoke about this today, the smallest buildable depth on one of the lots 9, 10, and 11 was roughly varied from 32 feet on one side to 32 feet on the other side if we went with staff recommendations of 25 feet.

Mr. Zehler - Because looking at it, if the minimum is 80 feet, the depth you don't have based on the 80 feet, therefore, it looks like to me you've added on the frontage, so, therefore, your frontage is more than 80 feet?

Mr. Kestner - Yes sir. He's got it up there now.

Mr. Bittner - It might be a little hard to read, but on Lot 9, 32 feet on its northern boundary in the buildable area. The southern side is 42 feet. Then the other two lots are also 42 feet deep buildable area.

Mr. Zehler - Is that line across the back showing the 25-foot buffer?

Mr. Bittner - Yes. This would be staff's recommendation—25 foot buffer, 35 foot rear yard setback.

Mr. Zehler - That square you're showing me, is that actual buildable area?

Mr. Kestner - That would be the buildable area. Yes sir.

Mr. Zehler - I can't read it. What is it?

Mr. Bittner - Well, for No. 9, it's approximately 2,400 square feet of buildable area.

Mr. Zehler - What's the length times the width?

Mr. Bittner - About 65 feet and an average of 37.5 feet deep.

Mr. Zehler - And that meets the side yard minimum setbacks for that lot?

Mr. Bittner - That meets the R-3A requirements.

Mr. Zehler - As well as the frontage from Stockton Drive, or whatever it is?

Mr. Bittner - Stonemeadow, which is also a 35-foot front yard setback.

Mr. Zehler - So, based on what you are looking at, and why you came back with a recommendation of the 25 feet, versus the 15, is you feel like its feasible the way this is drawn to make it work the way you anticipate or the way the Code would anticipate to show to make that 25-foot minimum setback?

Mr. Bittner - We recommend this not only because Ayers Tavern has the same buffer along I-95 directly to the south, but also, the result in buildable area of about 2,500 square feet or so. They have proffered they'll have houses of 1,100 square feet at least. They've got plenty of room to build a house they have to build on that site. I haven't seen any house plans with a 45 foot deep house versus a 55-foot deep house, but they can build homes on this site.

Mr. Zehler - I have no other questions, Mr. Chairman.

Mr. Archer - Any other Commission members have questions? Mr. Bittner and I have met with the applicant on several occasions. At least twice, I think, and talked about this. The Assistant Director has indicated that we can probably do some more work with this. I think you gentlemen are agreeable to it between now and the time the Board meets. And they may see it differently to be honest with you. I can sympathize with the fact that you've got R-2A on one side and R-3 on the other side, so which way do you go? I think we compromised in reaching the depth portion of it. I'm going to leave it up to staff to judge it, but I will also participate in talking about this between now and the time it goes to the Board. Based on the fact that you're willing to work with us to try to come up with the best solution for it, I will recommend C-52C-98 for approval with that stipulation.

Mr. Zehler seconded the motion.

Mr. Archer - Motion made by Mr. Archer, seconded by Mr. Zehler. All those in favor say aye—all those opposed by saying nay. The vote is 4-0 (Mrs. Wade absent, Mr. Donati abstained). Were these proffers submitted in time to...

Mr. Bittner - Yes sir.

Mr. Archer - No need to waive the time limit. Thank you, gentlemen.

REASON: Acting on a motion by Mr. Archer, seconded by Mr. Zehler, the Planning Commission voted 4-0 (one absent, one abstention) to recommend that the Board of Supervisors **accept the proffered conditions and grant** the request because it is reasonable; it is appropriate residential zoning at this location; and it reflects the type of residential growth in the area.

paragraph at the top, "...The portion adjacent to Lexington, the minimum house size is proffered at 1,600 square feet..." I was confused by that disparity.

Mr. Yolton - Well, I guess the point was that the minimum proffered home size is actually a little bit larger than what the minimum proffered home size was for the adjacent subdivision.

Ms. Dwyer - Okay.

Mr. Yolton - One hundred feet larger.

Ms. Dwyer - You weren't referring to the portion of this property, as adjacent to Lexington? You were saying that Lexington proffered 1,600 feet.

Mr. Yolton - What I was saying was, the portion of Lexington that is zoned R-3A, just like this request...

Ms. Dwyer - Wait a minute. Let me find it. Okay.

Mr. Yolton - ...because there's a portion of Lexington, adjacent here, that's zoned R-4.

Ms. Dwyer - Right.

Mr. Yolton - And there's a portion that's zoned R-3A.

Ms. Dwyer - Right.

Mr. Yolton - And the portion that's zoned R-3A, the proffered condition was for 1,600 square foot homes; and whereas this application here proposed 1,700 square foot homes. So, it is slightly larger than what was approved next door.

Ms. Dwyer - So, you're referring then to Lexington in this?

Mr. Yolton - Yes.

Ms. Dwyer - Okay. I just wanted to clarify that. And you have reviewed the report that was submitted by the applicant relating to the mines and the mining activity that was on this parcel?

Mr. Yolton - I have reviewed it briefly, yes.

Ms. Dwyer - And it generally indicates that what has been done to stabilize that area is sufficient. There is no danger to people who might use the area proposed to be zoned for Conservation?

Mr. Yolton - In my look at the report, it mainly talks about what sort of foundations are needed for the homes that will be built on the R-3A portion. There are special treatments for foundations to account for the fact that the soil is a little unstable under certain circumstances. It does not address what the condition of the Conservation area is or what

measures might be taken to enhance safety. I would have to ask the applicant what the situation is with regard to the old mine shafts on that C-1 portion.

Ms. Dwyer - And what is the net density that they are proposing, when we consider just the R-3A portion?

Mr. Yolton - It's, essentially, about two homes per acre.

Ms. Dwyer - And that's not even counting the Conservation area?

Mr. Yolton - That's correct. The net density on this project would be about two homes per acre.

Ms. Dwyer - Thank you.

Mr. Zehler - There will be only one point of access into this subdivision; that being Anna Marie?

Mr. Yolton - Well, no sir. There will be two proposed points of access. One is called Boscastle Lane and the other is called Anna Marie Drive.

Mr. Zehler - Show me where on the map the second point of access is.

Mr. Yolton - I'll have to put up another graphic to show that. You see a portion of the existing Woodberry Subdivision has not yet been constructed even though the zoning has been approved.

Mr. Zehler - But you're showing two parcels in there that are not being shown.

Mr. Yolton - That's correct. I'll try to use this.

Mr. Zehler - Which is not part of this request?

Mr. Yolton - It is not part of this request. It is part of the future Woodberry Subdivision. This area in here, and this area right here, (referring to slide). Here's Anna Marie Drive coming here and this is Boscastle Road, which also connects to Springfield Road out here. So, technically speaking, they have two points of access. This area right here and right here (referring to slide).

Ms. Dwyer - Even though Boscastle joins Joseph which comes back to Anna Marie, so really Anna Marie provides the only point of access from the parcel that we're talking about tonight?

Mr. Yolton - For this area back here, there are 40 homes proposed here. So, this would provide a second point of access, which is the extension of Toston Lane. It's shown on this preliminary subdivision layout. So, that would satisfy the need for additional access into the area.

Mr. Zehler - I'm sure, as we sit here tonight, that the opposition is opposed to going through their subdivision, which is an existing subdivision. We hear it all the time.

Mr. Yolton - I suspect that might be what we're going to hear.

Ms. Dwyer - Let me ask you a question. How many lots, not counting the portion that we're zoning tonight, do you know how many lots are in this existing subdivision?

Mr. Yolton - I would have to ask the applicant.

Ms. Dwyer - Does this count as two points of access, not counting Toston, but with Anna Marie and Boscastle? Does that count as two point of access, even though the way to get into this parcel is through that one point of access?

Mr. Yolton - That's an excellent question.

Mr. Zehler - Well, they only need one point because they have only 40 units.

Mr. Yolton - That's correct. On this particular case, yes.

Ms. Dwyer - But what we do have to consider is the entire development when we're looking at points of access, ultimately, because the issue is public safety. The issue is making sure that fire trucks and rescue squads and other kinds of vehicles can get in if there is some sort of an emergency.

Mr. Yolton - That's correct. I think the Traffic Engineer was not aware, when he made his comments, that this subdivision plan would include this connection here (referring to slide). So, I believe for the existing Woodberry and Greensprings, they have satisfied the need for two points of access. The question is, when you add these additional 40 lots back here, do they, therefore, need this other point of access for safety reasons? I would have to ask the Traffic Engineer really to get his opinion. I have a hard time counting up how many lots are considered to be on one point of access. I need the Traffic Engineer to really do that for me.

Ms. Dwyer - He made a comment in the staff report on that.

Mr. Yolton - Yes. He did, but he had not seen this preliminary layout.

Ms. Dwyer - Because this not a part of this case. This is just a preliminary layout for the purposes of discussion. This is not a part of the zoning case?

Mr. Yolton - Yes ma'am.

Ms. Dwyer - So, even if this were approved, the question of access points would be resolved at Subdivision time?

Mr. Yolton - That's correct.

Ms. Dwyer - Thank you.

Mr. Zehler - Has the applicant discussed with you acquiring the other two parcels?

Mr. Yolton - I believe they already have. They own those parcels. Greensprings, Inc., you're speaking about the...

Mr. Zehler - The 7.36 acres on the left and...

Mr. Yolton - This and this (referring to slide)? The sketched in lots?

Mr. Zehler - Right.

Mr. Yolton - They already own those.

Mr. Zehler - Why isn't that a part of the request tonight?

Mr. Yolton - It's already zoned.

Mr. Zehler - It's already zoned?

Mr. Yolton - Yes. It's already zoned. It's R-3AC. In order to make this subdivision plan work, they had to acquire this additional property and get it zoned.

Mr. Zehler - Okay.

Mr. Archer - Okay. Further questions for Mr. Yolton by the Commission? Do you need to hear from the applicant?

Ms. Dwyer - Yes. I do.

Mr. John Marlles - Mr. Chairman, I'd like to remind the applicant and the opponents, our 10-minute rule is in effect. Would the applicant like to reserve some time for rebuttal?

Mr. Delmonte Lewis - Make it two minutes, but I certainly won't be that long.

Ms. Dwyer - Did you mention, we don't count when we ask questions?

Mr. Marlles - That's correct.

Mr. Lewis - Mr. Chairman, and members of the Commission, my name is Delmonte Lewis. I'm here tonight representing Greensprings, Inc. The request is for a total of 30.58 acres, if you look at all that we are asking for. Nine point nine one (9.91) acres is C-1 and the balance is for the R-3A. This piece of property is the balance of the property that Greensprings owns. And Mr. Zehler asked a question, "Who owned the other?" Well, Greensprings owns that, too, but the reason that has not been developed yet, although it is zoned, it was zoned in our second request that we did a couple years ago. During tentative approval of the last section that we have, one of the conditions was that we had to extend a road and tie into Toston Lane before we could develop more than so many lots. So, that's why we did not develop any more than we have so far.

Ms. Dwyer - I'm sorry. Could I stop you there? Could you repeat what you just said for me, please?

Mr. Lewis - In conditional approval?

Ms. Dwyer - Right.

Mr. Lewis - ...which is the conditional approval, really, of Woodberry...

Ms. Dwyer - Okay. The existing development.

Mr. Lewis - There was a condition on that approval that stated that we could only develop so many lots, which we maximized in the recordation, until such time as we connected to Lexington Subdivision.

Ms. Dwyer - Okay. And why is that, because you do have two points of access already?

Mr. Lewis - The reason for that is, in working with the zoning case, on the previous two cases with Greensprings, and with Mrs. Wade and Mr. Kaechele, there was always a desire to connect a road from Springfield Road over to Fort McHenry Parkway. That's always been in the plan since we first started the first development. So, that was kind of carried through in all of our zoning cases, and all of our tentative approvals. But, as you can see, by the map, we cannot make that connection until we do this zoning case. However, during the tentative approval for this section, if it's decided that connection is not to be made, we still have two points of access.

Now, our choking point will be where we have 54 lots, I believe, with one point of access. That's what you were asking about a while ago, Ms. Dwyer. How many lots are in the zoned property? It's approximately 40 lots in the part that we have zoned. But, in reality, connected with the part that we already have zoned, with one point of access, if you look at it that way the way, the Traffic Engineer did, if we did not connect to Toston Lane, we would have approximately 55 lots at that one point of access.

Ms. Dwyer - That one point being Anna Marie.

Mr. Lewis - That is Anna Marie and Joseph Drive connection.

Ms. Dwyer - Okay. Well, what about the Boscastle connection? Does that count as another point of access?

Mr. Lewis - Yes. It does, but the place I was speaking of was right here (referring to slide), this intersection right here.

Ms. Dwyer - I see.

Mr. Lewis - That's where our choking point would be as far as point of access.

Mr. Zehler - Would you pinpoint it again, please.

Mr. Lewis - I'm sorry. It's right here.

Ms. Dwyer - In other words you have to come through this single point of access to use either Boscastle or Anna Marie? So, even though Anna Marie and Boscastle provide two points of access to Springfield, there's a bottleneck here at that intersection?

Mr. Lewis - That's correct. And we would have more than 50 lots at that point. I think it's 55 or 54.

Ms. Dwyer - Okay. I see. So, that counts as the single point, that intersection that you pointed out?

Mr. Lewis - That's correct. Yes ma'am.

Ms. Dwyer - And that's why you need...Okay. I'm clear on that. Thank you. We didn't need the traffic engineer after all.

Mr. Lewis - The site is surrounded by development. This is an infill piece. To the south is commercial development, zoned that way. To our east is apartments. And of course, to the west and to the north, is the residential.

We have offered certain proffers. One of the proffers that was not mentioned is one of the things the citizens asked for in the last zoning case; that there would be no slab construction. We have made that proffer.

I hope I'm not confusing the issue, but in the unzoned property and the zoned property, the maximum number of new lots will be 74. So, with everything that we have left, the maximum number of lots to be developed will be approximately 74 lots.

Ms. Dwyer - The unzoned property and the undeveloped zoned property?

Mr. Lewis - That's correct. Now, to answer some of the questions that you had about why did we have C-1? We had a very extensive geotechnical study done on this property. And the 9.91 acres that we're proposing C-1 does drop off into a flood plain. The mining activity, which was horizontal mining, was closer to the ground than where we're asking for rezoning. Although we could put houses in there probably, but the problem we have is the foundations would probably cost \$10,000 to \$15,000 to \$20,000 per house. Of course, that is not economically feasible to do. So, what we thought we would do, in talking to some of the neighbors in Greensprings, talking to one of the neighbors, Mrs. Betty Shecksneider, she said there's a lot of children here. And I know there are, because I see them when I drive out there. We felt that it would be well if we set this property aside, conveyed it to the homeowners association, and we intend to leave pedestrian walkways from the street into this property. And our idea is to go in there and clear about three acres of the vegetation and trees, grade it off, and seed it for a playing field. This playing field is not going to be marked off for baseball or football or anything like that. It will simply be a playing field so that the children can play whatever they like. We have explored this in another development in Chesterfield County. We think this is very successful and a very good use for this property.

I have also been in contact with a Mr. Larry Cohn who lives on one of the lots that backs up to our property, and we have agreed with him, because he was concerned on how many trees we'd be cutting down. We've agreed with him, by letter, that the lot that sides to his rear yard, we will establish a 20-foot building setback. In that 20 feet, we will not put a driveway. We will leave all of the mature trees. The only thing we will take out of there is underbrush and the dead trees, or if, for any reason, in the construction of the residence, the trees are so close to the line that it will be damaged to the point that it will be dangerous, then we'll take that out. We have worked very closely with him. He's accepted that. We gave him that letter today.

Ms. Dwyer - May I ask a question about that?

Mr. Lewis - Yes.

Ms. Dwyer - Is it your intent to limit the future resident on that parcel to limit their activity in that 25 foot area?

Mr. Lewis - Yes, it is.

Ms. Dwyer - How will that person be made aware that this agreement applies to their property?

Mr. Lewis - They will be made aware, because my clients are going to be developing the property. They have two or three builders. It can be put into the restrictive covenants. We prefer not to have a proffered condition, because I don't think the County would like that.

Mr. Neil Farmer, who is here with me today, is the real estate agent and manager of this piece of property. He's the one who signed the letter for the Holzgreffe family. He's been given the authority to do that. He will make the builder aware that this piece of property has that condition on it by letter. Mr. Cohn, I'm sure he will make sure that they understand that when they build the house.

Ms. Dwyer - I ask that because we've had cases in which actual proffers have limited peoples' use of their own residential property. And, the people who purchased, even though it was a proffer, which, you would think would be made known to potential buyers, it was not made known to them, and existing neighbors who relied on that proffer, insisted that it be complied with. And the new owners claimed to be unaware of it and it was a real mess. So, I become a little concerned when you have agreements that affect some future purchaser or some future residents' property. How are they going to know, as a practical matter, that they cannot use this 20 feet to put a shed on or, you know, whatever other...It seems to me that it would be important to have it as part of the deed. Something that would be discovered when the attorney goes through and does a title search and does that.

Mr. Lewis - Now, there would be a building setback on the subdivision plat.

Ms. Dwyer - Right.

Mr. Lewis - Which will limit them from putting any type of construction on there.

Ms. Dwyer - Right.

Mr. Lewis - And when the residence is built, the driveway will be built on the other side of the lot. In talking to Mr. Cohn, he understands that sometime in the future, the person who lives there may decide to do something in there, and they just have to work that out. I think he's comfortable with that.

Ms. Dwyer - Okay.

Mr. Lewis - He's here tonight and he can address that issue.

Ms. Dwyer - Well, I want to make it clear that this is not a proffer that would be enforced by the County, and it is something that is a private agreement between say, the owner

of the property now, and a commitment to where they will build. It may or may not be binding on a future owner. So, I think if we're clear on that? Actually, the Commission has nothing to do with that. It's a private agreement. But, just because of past experience, I wanted to make that clear to whoever is interested. Okay. Thank you.

Mr. Lewis - Yes. The other thing we've agreed to do, before we come before the Board, we'll offer a proffer limiting the amount of clearing for each lot. We do have a proffer that we have submitted today, but because of the time controls that you have in the Planning Commission, we did not have it come up as far as the Planning Commission. But it is submitted and will be coming before the Board as a proffer.

With that, you know, I submit to you that this certainly is in keeping with the Land Use Plan. It's compatible with the surrounding neighborhood. And I ask the Commission that they would pass this onto the Board with a recommendation to approve the zoning. Any other questions, I'd be glad to answer.

Mr. Archer - Thank you, Mr. Lewis. Are there other questions by the Commission?

Ms. Dwyer - You mentioned the access to the C-1. How do you envision that? Would it be one walkway or pathway or how would that be made available to the other residents so that they could get to this property?

Mr. Lewis - We envision that as possibly three pathways, 10 feet wide going between lots from the cul-de-sac. One from the Greensprings area, and two from the new proposed rezoned area.

Ms. Dwyer - So, that would go, obviously, between two property lines. And how would that be marked off so that it would be clear that the public would have access to there?

Mr. Lewis - What we would do, we would build a pedestrian pathway and it hasn't been established yet what material we would use to do that. I don't know whether it would be asphalt or whether it would be bark chip. We haven't decided that yet. It's just that we will provide them and construct a pedestrian pathway to the open field area that we intend to build.

Ms. Dwyer - And that's not in a proffer?
Mr. Lewis - No ma'am. It is not. That would come before you at the Planning Commission stage.

Ms. Dwyer - Subdivision.

Mr. Lewis - Tentative approval, yes.

Ms. Dwyer - Okay. Just a general question of mining. You and I spoke over the phone and you explained, at length, about what efforts had been taken to fill and cap and do various things to ensure that the mining activity would not be a problem for future users. So, you're committing that the mining activity that took place on the part that's to be zoned C-1 conservation area, that your technical survey and review by professionals, that is a safe environment for people to play and use?

Mr. Lewis - Yes. It is. The pits that are there now were exploratory pits. They will be filled in. We have a program to do that by filling them in with filter fabric with stone, big stone and large stone and topsoil on top of that.

Ms. Dwyer - And then to the extent, I know you've removed the houses from the area where most of the mining activity was, but to the extent there is any chance that soil may be unstable, you are increasing the foundation standards for those homes?

Mr. Lewis - Yes. On just one or two of the lots. Although we may have to put an additional footing in, and special care, because of the lots that you see up there, out of 74 lots, I think it was only seven lots that we did not drill. That was because they did not fall within an area that was mined.

The other lots we drilled at least one hole and some of them even with four holes where the houses would be. Those holes were drilled a minimum of 50-feet deep to make sure there were no voids in the area where we intended to put the house. That's why we have the layout. It's been actually surveyed where we intend to put the houses.

Mr. Archer - Thank you, Mr. Lewis. Now, is there someone here who represents the opposition who would like to speak? Come on up.

Ms. Genise Vincent - Mr. Chairman, and members of the Planning Commission, my name is Genise Vincent and I'm here on behalf of the members of the Lexington Community Association who are represented here by the homeowners as well. We would like to express our opposition to the proffer because of the increase in the traffic that it will bring to our community by joining three other communities with ours. Right now, we have a lot of traffic coming through with four school buses coming through in the morning and we feel that's going to increase with school children from the other communities; their buses coming through as well, and the construction traffic from the building of the homes in that area. Right now, we have a speed limit of 25 mph that's really not observed right now. We feel that probably will get worse.

Our neighborhoods also differ significantly from what has been described. The homes in the other subdivisions sell for less than for what our homes currently sell for, ranging from \$30,000 to \$40,000 less.

Ms. Dwyer - Excuse me, which other subdivisions are you referring to?

Ms. Genise Vincent - Greensprings.

Ms. Dwyer - So, Greensprings sells for less than?

Ms. Vincent - Than Lexington. Yes. And they are also different in terms of the requirements for our subdivision that we were required to have paved driveways and the other subdivision did not. They're not required to have garages. Our square footages for the homes that are going to be directly impacted by the opening to Toston Lane, the square footages of those homes are a minimum of 2,000 square feet, and as much as 2,500 square feet. There's a significant difference between the homes there.

We also have a concern regarding the drainage problem that exists with homes that are next to this planned community. There's currently a drainage problem, and we do not know what they plan to do, or what is going to be the impact of this new community on that drainage.

The two communities already have a working entrance and exit and Lexington also has their own two points of entry and exit from the communities. We didn't see why it was necessary to connect those communities, and we also have concern regarding the safety in our neighborhood. Because we've been living here for five years now, and we've been working hard to build our community up and to get people really involved. And we've had no crime in our community. We've worked hard in building a neighborhood watch. We know every car that's coming into our community. Everyone knows each other. We feel that it's greatly going to impact that community, and what we've built up over the past five years to bring our neighborhood together.

Our subdivision right now is very accessible, and we have a homeowner that is visually impaired. One of the things that has been a good outlook for him is being able to enjoy a neighborhood on his own and travel throughout it without the risk of being hit by a lot of cars coming through. We feel that's going to greatly impact this. And given the information that Mr. Lewis has given us today regarding the plan for Parcel B, we did not know what the plan was for that parcel in time. We have also been informed that Mr. Lewis is willing to meet with the other subdivisions to discuss the plans further. And we would like to have an opportunity to talk with him, and discuss these issues and how they're going to be worked out before it proceeds any further. We respectfully request that Madam Vice-Chairman recommend a deferment of this so that we can have an opportunity to meet with him.

Ms. Dwyer - You represent the Lexington Subdivision?

Ms. Vincent - Yes.

Ms. Dwyer - And you've not had a chance to meet with the applicant? Is that correct?

Ms. Vincent - No.

Ms. Dwyer - Thank you.

Ms. Vincent - Thank you.

Mr. Archer - Thank you, ma'am. Any questions...

Ms. Dwyer - I do have a question about the drainage problems. Can you elaborate on what those are?

Ms. Vincent - We've had a problem with just poor drainage; water not draining off on the homes that are located on the Toston Lane will, basically, Killiam and the homes located on Kittery. They have water, a spring or ditch or whatever draining through those homes. They've had just a lot of problem with getting that water to drain out of there. So, we're not sure what the impact is going to be on those homes, if something is built there. Is it going to get worse, or is it going to improve it, or what does the developer plan for that?

Mr. Archer - Okay. Is there any one else to speak?

Mr. Zehler - Mr. Chairman, just out of curiosity, if you will, will all the people in opposition to this case that live in Lexington, please raise your hand? That's what I thought.

Mr. Archer - Come on, ma'am.

Ms. Joan Leoni - Mr. Chairman and members of the Commission, my name is Joan Leoni and, I, too, am a resident of the Lexington community. I'm here tonight because our ability to maintain the safety and sense of neighborhood and community that we now enjoy, we feel is at risk here tonight. We are concerned for the safety of our children and for the older people who now enjoy walking in our neighborhood. My other neighbor also mentioned that Lexington is a safe neighborhood. We have no crime. We do know everyone that comes through. We know every bus. We know every commercial vehicle. That has allowed us to develop a neighborhood watch program that has kept our neighborhood safe for close to five years now. This would mean that our neighborhood would now open up to three additional developments. As we mentioned Greensprings, Woodberry, and now the proposed development.

The natural beauty that surrounds the Lexington development is exceptional. It is certainly one of the draws to Henrico County. We have been subjected, over the last several years, to an onslaught of residential and commercial development. Very few of these pockets of natural areas still exist. We would endeavor to do whatever it would take to maintain that.

Mr. Lewis has mentioned the Parcel B which would be a conservation area. However, that certainly is out of reach and out of view of the Lexington community. It may serve a purpose for Greensprings and for Woodberry, but it certainly does no justice to the Lexington community right now.

Ms. Dwyer - May I ask you a question about that? So are you suggesting that we should not allow this developer to develop this parcel?

Ms. Leoni - Yes.

Ms. Dwyer - So that you can enjoy the trees? Is that what you...

Ms. Leoni - Well, I certainly don't think that is an unusual request in this State and certainly in this community. It is one of the reasons that people are drawn to the area because of the beauty. We are certainly not lacking in commercial and residential development in this area. It is probably some of the greatest, and those are not hard statistics, certainly, but the development residentially and commercially is probably some of the greatest in the Country in this area right now.

I would submit that you could probably travel extensively in the far west end and not find what we have in the Lexington area, the unique qualities. Because of these valuable qualities, our property values continue to increase, as Lexington becomes a rare and increasingly desirable neighborhood. We are a rare breed. There are very few areas like ours left in this area. There is much at stake for us here tonight. We would request, at best, respectfully request, a recommendation to defer in order for us to gain more information. It feels, in listening to the proceedings tonight, that the Woodberry communities and the Greensprings communities have been considered at length in these plans and in these discussions, but the residents in the Lexington development have only just learned of this quite recently in the last several weeks. While we are opposed to it, we certainly are open minded and would like an opportunity to hear more about it and to you know, work to preserve the beauty and the value of the areas that surround our neighborhood. So, we would like the opportunity to meet with the developer and

gain the information that would still critically affect our livelihood and our development in Lexington. Thank you. Any questions? Thank you.

Mr. Archer - Thank you, ma'am. Is there someone else who needs to speak? We've got about two minutes left.

Ms. Betty Shecksnider - I live in Greensprings, and I've spoken to Mr. Lewis about this. In fact, I was the one who brought it to the attention of the Lexington Homeowners Association. When I bought my house almost three years ago, we understood there was going to be a back exit—back entrance. I was told, it was needed. We would have to have two points of access. I understand Boscastle comes out to Springfield Road, but I also understand that when they widen Springfield Road, they're going to be putting a median in. The median will not have an access to Boscastle. All the people living in Woodberry would have to come through Anna Marie Drive. That limits us down to one access, as far as I see it. I don't know how its read or anything like that.

All of the people that I've spoken to in our subdivision, a few are represented here tonight because it's really late at night. We all understood it was going to happen. Our only concern is, Anna Marie Drive is almost a straight shot from Springfield Road. We've asked Mr. Lewis, and he's looking into several ways that we could possibly slow down traffic. We do have a 25 mph speed limit as well. We've seen people in excess of 50 down there.

We have 75 homes in Greensprings, and another 39 in Woodberry. Of those homes, there is maybe five that do not have children. The rest of them have two or more. We have a considerable number of children in a small area. But we did understand, and I'm speaking for everyone within the neighborhood, that we did understand that it was going to be a back exit in case of fire or anything like that.

The prices of our homes, in Greensprings, we have a couple that are in excess of \$200,000 homes. Woodberry, there has been some that have sold for \$150,000, but generally, they're higher than that. The smallest home within Greensprings is just over 1,800 square feet, whereas the largest is closest to 3,000. Thank you.

Ms. Dwyer - Buzzer rang. I'm not sure that was opposition. So, we should let the next person, I think, who wants to speak come on down.

Mr. Creighton Davis - I believe I have two minutes. Is that correct? Chairman, and also members of the Board (sic), I thank you for allowing me. My name is Creighton Davis. We just moved here about a few months ago into the Lexington area. One of the things that drew us into this area was the beauty of it. And if you take a look at this with the subdivisions that are going around, I know this is not really a great argument. But it just seems like we just seem to be crowding into these areas very, very quickly. It's so nice to take a look. It's just one little strip there that is pretty well undeveloped. So, we are, I think, being selfish, on our part, saying we want to protect our neighborhoods in this. You know, it's not only our neighborhoods, but I think it's also the habitat in this area. I understand the developer does want to develop this area, and, perhaps, maybe he has a right to do so. But does he have the right at the expense of Lexington? That's my question. Does he have the right to take that access point through this area? Where my children live is just down the street from Toston. They ride in that area. They walk in that area. I have a very comfortable of feeling that they can go in that area. But, I know very well, and I think everybody in this room knows very well, that if this access point comes up, this neighborhood will be getting over into that other area of Innsbrook with traffic coming

through our neighborhood. So, we will expect increased traffic. We will expect increased problems in our neighborhood. And, I think we would just like to request one thing, and that is a deferment so that we can understand from the builder exactly what his plans are so we can just, at least, communicate. This thing was just thrown upon us very quickly, and I don't think we even had a chance to review this. So, I think, just out of pure right, if it's coming through our neighborhood, we have a right to at least ask for deferment to review this. Thank you.

Mr. Archer - Thank you. I think that about expires the time. Ms. Dwyer.

Ms. Dwyer - Mr. Lewis, can I ask you a question, please? I have a few comments that I would like to make in reference to some of the opposition, but normally on the Commission, we do encourage developers to meet with interested parties. I understand that Lexington has not been included in part of your discussions with the neighborhood. Would you be willing to meet with them if we were able to defer this case?

Mr. Lewis - Surely. Let me, if I may, just, while we're on the issues, I'd like to address some of the issues that were brought up. Mrs. Vincent brought some very interesting things to light and that was that they had two points of access. I don't think the access is a situation where we really should be discussing, because we're looking at what's the highest and best use of this property, not the access point. The access point, of course, is determined at the time of tentative approval. But, I'd like to keep in mind, the second point of access, I believe she's talking about, is the emergency access that someone would have to drive across a yard and it's roped off by two cables.

The other thing she brought out was, and I think has been addressed before by one of the owners in Greensprings and Woodberry, the homes in Woodberry and the ones that are being built now, if you ride in one subdivision that's being constructed now, Woodberry, and ride in Lexington, the houses almost look identical. Every one almost has a garage. All of them are, basically, the same square footage. Although we have proffered that our finished square footage would be higher than theirs, they have an option to leave a third of theirs unfinished.

I'd also like to address the drainage question. The drainage from Lexington comes through our property. We are the ones being affected by their drainage. They do have some areas in there that are non-tidal wetlands that have been preserved as wetlands. I did the zoning case for the R-3A part of Lexington, so I know a little bit about this. And I think the areas that she may be talking about are wetlands that have to be protected through the development of Lexington Subdivision. I really get the sense that maybe Mr. Davis, and definitely Mrs. Benson, their concern wasn't, "Is R-3A the right zoning for this piece of property?" But "Should we have the access?" We all know that access should be determined at the time of tentative approval.

Now, Ms. Dwyer, I've spoken to you before. I don't think it would make the world come to an end if we defer. If the Commission feels like that they would like to make a recommendation, I'll be more than happy to meet with these people between now and the Board, knowing that the Board has the final say. Or if you feel more comfortable with deferring and coming back and hearing the arguments, I'll be glad to do that. I will meet with those people.

Mr. Zehler - Mr. Lewis, is it absolutely necessary to have the connection on Toston Lane?

Mr. Lewis - Not as far as I'm concerned. The only reason that its shown there is because, I stood out there with Mr. Kaechele when we started developing Greensprings

before any development to our west was even started. He has always told me that he wanted a connection between Springfield Road and the subdivision that would take place next to Thornberry. So, that's the only reason I show it. As far as I'm concerned, as we're concerned, you know, it's not going to create a situation where I cannot develop the property. As long as I can get at least 54 or 55 lots out of that choking point.

Mr. Zehler - I believe that's your answer to make all of this go away here, tonight. Of course, the question was asked, Lexington, and all of them are Lexington. I believe that's their biggest concern, the cut through.

Mr. Lewis - Mr. Zehler, I know that was their concern. I spoke with Mrs. Wade before she went out of town. She said there may be a concern. Just had a feeling. But that concern certainly should be discussed at the time of tentative approval, because there is where we decide where the roads go, what's connected, and this sort of thing; not what type of zoning we are.

Mr. Zehler - Well, as you know, we're very limited when it comes to subdivision approval what we can do and what we can't do. I think now would be a very good time to address that issue.

Mr. Lewis - Y'all have made some pretty good recommendations on me before that I've had to...

Ms. Dwyer - I'd like to make it clear that what we're looking at is not a part of this case. This is a sketch that shows how this property could be laid out in lots. One comment that was made by Mr. Yolton was that this is a fairly circuitous route. And he didn't believe, based on the street layout, that there'd be a lot of cut through traffic from Springfield to Broad. And I know that's probably one of your concerns.

Looking at, you know, you have Gaskins Road as an access from Springfield to Broad that's a fairly easy access. If you want to avoid the intersection of Springfield and Broad, you can do it by going down Gaskins, rather than taking all of these little streets and turns. But there may also be a different design that you could come up with that would make it even more inconvenient for cut through traffic from Springfield to Broad, which, to me, is the main legitimate concern. I don't see; I've made this gratuitous comment. I think connecting neighborhoods like this and having a school bus, perhaps, that goes from one to the other is not significant issue. I think it is a significant issue if this street system would draw traffic between Springfield and Broad. But, I think if two neighborhoods that have similar houses, although they may not be exact houses connecting those two neighborhoods, I personally don't see that as a concern. That having been said, we're not approving street layouts tonight. We're not asked to approve street layouts. That's something that is done at the time of subdivision review, which is separate review that comes before this body. So, I just wanted to make that very clear. This is just an idea of how these lots would be laid out. There are no commitments to this. This is not a part of our approval. Our approval, tonight, is solely for the zoning which would allow residential development on this A-1 property.

Mr. Lewis - Yes.

Ms. Dwyer - Thank you.

Mr. Archer - Thank you, Mr. Lewis. Any further questions by anyone or comments? Ms. Dwyer.

Ms. Dwyer - This is not my district. Mrs. Wade is out of the Country and asked me to handle this case. So, I'm reluctant to push forward given the level of opposition and the fact that the people out in the Lexington neighborhood have not had a chance to meet with the developer to discuss exactly what is planned, and what their specific concerns are to see if, perhaps, there are some proffers that the developer could offer that would be reasonable, as far as the developer is concerned, and would satisfy some of the concerns of the neighborhood. So, I think that a deferral would be the appropriate thing to do at this point to try to, if there is any common ground, to try to reach that common ground in the meantime. We usually try to have our cases in real good shape before we send them to the Board of Supervisors. So, I think, given that Mrs. Wade is out of the Country, I think she may appreciate having the opportunity to be involved in this, as well, since it is a matter in her district. So, for those reasons, I'm going to defer it. But I've already made one gratuitous comment about connection, and I will make another one just to try to help put things in perspective. I can really sympathize with people who live next door to wooded areas and enjoy the scenery that they provide, because I've lived next to woods, myself, for the last 11 years, and now there's a housing development going up. So, I have enjoyed those woods, and I'm sorry they're coming down and that there's a housing development now. But the bottom line is, if we don't own the property, we cannot expect the owner to provide us with a view of undisturbed property. There are certain property rights that an owner of property has. I just wanted to express that and make that clear. We can't expect other people to own and pay taxes on land so that we can look at the nice trees. That's not realistic. As much as I would like to be able to do that, I'm not sure that we're going to be able to do that. I don't think that's a realistic expectation on the part of the neighbors. So, Mr. Lewis, would this be a deferral at the applicant's request, or the Commission's request?

Mr. Lewis - Let me ask the question, when is Mrs. Wade coming back?

Ms. Dwyer - I believe she won't be back until next week. Does anyone know? She'll be back before the zoning meeting.

Mr. Lewis - I didn't know what your plans were as far as deferral.

Ms. Dwyer - Right.

Mr. Lewis - Mr. Farmer asked if there was any possibility if we could have it come up at a two-week meeting rather than 30 days?

Ms. Dwyer - I'm not sure it would give Mrs. Wade enough time.

Mr. Lewis - Well, certainly, we don't have a problem, you know, requesting the deferral to be able to meet with them, if it's your desire.

Ms. Dwyer - Okay. I appreciate your accommodation on that.

Mr. Lewis - What we may do is, if we work it out, we may work it out so that the tentative plan can come before the Commission the same month that the Board acts on it, just to let you know what's going to happen.

Ms. Dwyer - Okay. The other thing I will say, again, street alignment and street access, access points are something that we review at Subdivision time. It's not necessarily

something that we would address at zoning. Please keep that in mind as you have your discussions with the developer. So, with that, I move that the Commission defer Case C-59C-98 to our October 15, 1998 meeting at the applicant's request.

Mr. Zehler seconded the motion.

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

C-60C-98 E. D. Lewis & Associates for The Kittrell Company: Request to amend proffered conditions accepted with rezoning case C-29C-97 on Parcel 38-15-A-2 (4204 Riverdale Avenue, Stewart Meadows Subdivision), containing 0.629 acre, located on the west line of Riverdale Avenue at its intersection with Thorncroft Drive. The proposed amendment relates to the front yard depth of Lot 2. The current zoning is R-2C, One Family Residence (Conditional). The Land Use Plan recommends Suburban Residential 1, 1.0 to 2.4 units net density per acre.

Mr. Marlls - Mr. Merrithew will be giving the staff presentation.

Mr. Archer - Thank you, Mr. Secretary. Is there any one here in opposition to C-60C-98? Mr. Merrithew.

Mr. Merrithew - Mr. Chairman, this application is to accommodate a one-foot mistake in the proffered front yard setback of a piece of property that was rezoned last year and on which sits a nearly completed house. The property is situated on the south side of Riverdale Avenue. The lot is 27,000 feet approximately in size. As I said, the house is built.

The Zoning Ordinance requires a setback of 45 feet. However, if you recall, during the rezoning case, that happened last year, there was some discussion about making these lots as large as possible, setting the houses back as far as possible from the roads. Hence, the applicant proffered a 50-foot setback. When the building permit application was submitted, it was submitted with a 50-foot setback, so it was properly approved. However, in the surveying of the property, news to me, surveyors survey property in a clockwise pattern. The developer, looking at a property after it was surveyed, asked that the surveyor back the house up a bit. Well, when you surveying clockwise, backing up meant pulling the house closer to the road to the surveyor. So, they made that one foot change by mistake.

Given the setback, it is still 49 feet. Given the size of the lots and the separation of the houses, you will not be able to tell the difference in setback from one house to the next on this property. We think it would be kind of a tough call to recommend moving the house at this point, therefore, staff is agreeable to this amended proffer. I'd be glad to answer any questions.

Mr. Archer - Any questions for Mr. Merrithew?

Mr. Zehler - Move the house a foot?

Mr. Merrithew - Well, it's actually .9 of a foot.

Mr. Zehler - Nine tenths of a foot.

Ms. Dwyer - How many inches is that?

Mr. Zehler - That's nine inches.

Mr. Zehler - How much trouble would that be?
 Mr. Merrithew - It would be very expensive, I assure you.

Ms. Dwyer - Okay. Let's move it along. Do we have any opposition?

Mr. Archer - No. No opposition.

Ms. Dwyer - All right, I think it's a reasonable request to accommodate human error. So, I move that we recommend to the Board for approval C-60C-98.

Mr. Zehler seconded the motion.

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

REASON: Acting on a motion by Ms. Dwyer, seconded by Mr. Vanarsdall, the Planning Commission voted 4-0 (one absent, one abstention) to recommend that the Board of Supervisors **accept the amended proffered condition** imposed with **C-29C-97** because the changes do not greatly reduce the original intended purpose of the proffers; and it is not expected to adversely impact surrounding land uses in the area.

P-34-98 Julian's Restaurant: Request for approval of a provisional use permit in accordance with Sections 24-58.2(d) and 24.122.1 of Chapter 24 of the County Code in order to construct an approximately 1,200 square foot patio for outdoor dining on part of Parcel 47-A-56D, located at the southwest corner of the intersection of Three Chopt Road, Church Road and Cox Road. The site is zoned B-2C Business District (Conditional). The Land Use Plan recommends Commercial Concentration.

Mr. Marlles - Mr. Merrithew will be giving the staff presentation.

Mr. Merrithew - The applicant wishes to construct a 1,200 square foot patio and provide for outside dining. The new Julian's Restaurant is located in the Barony Village Shopping Center. They have included, with their submittal, the proposed layout of the outside dining area. Staff's concerns in this situation was, "Would this outside dining area require more parking or parking beyond what was already provided on the lot?" We determined that it would necessitate five additional parking spaces and that the property does have sufficient parking to meet the additional requirement. The requirement, in total, would be 96 spaces. They are providing 127. However, at the time the applicant comes in to seek building approval of this area, they will have to show sufficient parking no matter what the Ordinance calls for. So, they've been asked by staff to demonstrate that sufficient parking exists.

The proposal is for a slightly raised patio that is closed off to the public, and the entrance would be through the restaurant. They are proposing a metal railing, as you can see there, as the enclosure structure.

In recommending approval of this case, staff is proposing five conditions. "No outside amplified music. Any outside speakers would have volume controls and could not be heard more than 100 feet from the source. The outside dining area shall be limited to 1,200 square feet, as shown on the attached diagram. With regard to that particular condition, I would like to suggest, this evening, that we specifically identify the diagram in the wording of the condition as being the Julian's Restaurant Patio by Keith James Hunter, AIA, dated 4/14/98. And the applicant is agreeable. And I would like to stipulate also, in that condition, that, in addition to be limited to 1,200 square feet, as shown on the attached diagram. It shall be designed and constructed in accord with the diagram to make it a little more clear that they will build it to what is being shown on that illustration.

Then the final two conditions: Trash receptacles shall be provided and properly serviced. Access to the dining area shall be only available through the restaurant. Patrons may not walk directly from the parking area to the outside dining area. That is a condition that the Police has asked be included with this application.

We do not see an impact on adjoining properties. We do not see a parking issue with this application. Therefore, staff is recommending approval, hopefully, with the conditions as I've amended them this evening. I'd be glad to answer any questions.

Mr. Archer - Any questions of Mr. Merrithew by the Commission?

Ms. Dwyer - So, parking is sufficient then?

Mr. Merrithew - Parking is sufficient, yes.

Ms. Dwyer - The fence, I asked this of Ms. Gardner over the phone, but maybe I should ask the applicant about the actual fence, how its going to look.

Mr. Merrithew - That would be fine. The diagram shows, regarding the material, the diagram shows channel metal and channel pickets.

Ms. Dwyer - Metal? And they are narrow bars? It's hard to tell from this diagram whether it's a side slatted fence or whether it's a narrow bar-type fence.

Mr. David Hickman, Julian's Restaurant - It's metal constructed fence which will have narrow bars to prevent any small children or anybody else...

Ms. Dwyer - Okay.

Mr. Zehler - Did you bring any raisin bread samples with you tonight? I'm one of your biggest fans on Broad Street.

Ms. Dwyer - So, it's not wide slat, its narrow bars?

Mr. Hickman - I believe four inches is the width spacing.

Ms. Dwyer - Okay. All right, my other question had to do with the triangle. It looks like there is a gap here...

Mr. Hickman - Are you on the right side?

Ms. Dwyer - Yes. On the right side.

Mr. Hickman - There is a gap in the original plan that is a handicap ramp. That was in the original plans. Because of the proffers you have asked, we would be closing that gap off to the building.

Ms. Dwyer - How do we handle that, Mr. Merrithew?

Mr. Merrithew - Well, Condition No. 5, I believe, already stipulates that access will only be available through the restaurant.

Ms. Dwyer - But then we say its going to be constructed according to the diagram?

Mr. Merrithew - I see the discrepancy right now. Well, what I would suggest is then, leaving the original for Condition No. 3; not putting in the change that I had suggested about being designed and constructed.

Ms. Dwyer - Okay.

Mr. Merrithew - I think the intent is clearly to design and construct it with the change in the plans to close it off or provide some other closure there as may be approved...

Ms. Dwyer - Couldn't we simply annotate as we do in POD's annotate this diagram, tonight, to close that gap?

Mr. Merrithew - Okay.

Ms. Dwyer - I know you've had some discussions about whether you would want to put a gate there, and you can resolve that between now and the Board and that's fine.

Mr. David Hickman, Julian's - We are concerned that anyone may have disabilities trying to get out there. We want to be able to make it accessible to them. They are fully accessible through the dining room and through the building.

Mr. Marlles - Would you state your name for the record?

Mr. Hickman - I'm David Hickman with Julian's Restaurant. Sorry about that.

Ms. Dwyer - What was your last name?

Mr. Hickman - Hickman.

Ms. Dwyer - I wasn't sure Ms. Thomas could get that. All right, so we'll just annotate that. Could we just draw a line there?

Mr. Merrithew - You just want to draw a line?

Ms. Dwyer - Maybe Mr. Hickman would initial it, and then we'll add the language that you recommended for Condition No. 3. Then if you wanted to change that to allow for a gate that's locked, or whatever, for handicapped access, that would be fine between now and Board. I don't think that would be a problem. Okay? Are we ready for a motion?

Mr. Archer - Yes ma'am.

Ms. Dwyer - All right, I move that the Commission recommend to the Board approval of P-34-98 Julian's Restaurant, including the five conditions outlined in the staff report, and also including the changes recommended by Mr. Merrithew to Condition No. 3, which will, first of all, identify the diagram, and secondly, will state that the outdoor dining area shall be constructed as shown on the diagram, and also, that the diagram, itself, will be annotated to close the gap in the fence.

Mr. Zehler seconded the motion.

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

REASON: Acting on a motion by Ms. Dwyer, seconded by Mr. Zehler, the Planning Commission voted 4-0 (one absent, one abstention) to recommend that the Board of Supervisors **grant the requested revocable provisional use permit**, subject to the following conditions:

1. No outside, amplified music performances shall be permitted.
2. Any outside speakers or sound system shall comply with the following standards:
 - a. Sound systems must be equipped with controls permitting full volume adjustment.
 - b. Sound from the system must be inaudible at 100 feet from the source.
 - c. Sound systems may be used only when outside dining is permitted.
3. The outdoor dining area shall be limited to 1200 square feet and constructed as shown on the "Proposed Plan," Julian's Restaurant Patio, prepared by Keith James Hunter, dated April 14, 1998, and revised by the applicant on September 10, 1998.
4. Trash receptacles shall be provided and properly serviced to control litter generated by this use.
5. Access to the outdoor dining area shall only be available through the restaurant; patrons may not walk directly from the parking area to the outdoor dining area.

The Planning Commission recommendation was based on its finding that the Provisional Use Permit is reasonable, and when properly developed and regulated by the recommended special conditions, it would not be detrimental to the public health, safety, welfare and values in the area.

Mr. Marlles - Mr. Chairman, we do have a short presentation by Mr. Silber, a very brief presentation, tonight.

Mr. Vanarsdall - Is it over?

Mr. Randall Silber, Assistant Director of Planning - I'm not even going to go down to the podium. I'm going to speak from right here. This is a continuation of a discussion we had on the Rules and Regulations. If you recall, this was brought to you last month and there were some concerns by the County Attorney about some minor aspects of this. We have revised the

Rules and Regulations. This deals with the Expedited Review Agenda. So, hopefully, you've had a chance to review this. We have sent you a revised copy. Again, to remind you, this would deal with Subdivisions and PODs. The applicant would have to agree to, by way of a letter, agree to have this Consent Agenda Expedited Review Agenda placed on your agenda. It would have to be acted on independently by the Planning Commission. We will be starting this immediately. So, with the adoption of these Rules and Regulations, we will start this at the end of this month.

Mr. Archer - We need to move on this, do we not?

Mr. Silber - Yes sir, Mr. Chairman.

Ms. Dwyer - I move we adopted the Rules and Regulations drafted as of September 10, 1998.

Mr. Vanarsdall seconded the motion.

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

Ms. Dwyer - May I make a comment, Mr. Silber?

Mr. Silber - Yes, you may.

Ms. Dwyer - It's always helpful for me to have the underline, you know the additions underlined and omissions stricken through. We had that earlier.

Mr. Silber - Staff told me that was sent to you earlier when it was in draft form. This was for your action. In the future, you'd like to get it underlined?

Ms. Dwyer - You said they were just minor changes, so that's fine.

Mr. Silber - I understand.

Mr. Vanarsdall - It does help. I agree with you. Mr. Chairman, may I make a comment?

Mr. Archer - Yes sir, you may.

Mr. Vanarsdall - I think Mr. Silber ought to be congratulated for such a brief presentation.

Mr. Marlles - I do have one quick announcement, Mr. Chairman. On September 21st, Mr. Donati will be holding his town meeting. There are a couple items that are scheduled for that evening that may be of interest to the Commission.

First of all, there will be a public information meeting on the Williamsburg Road Technology Boulevard Plan. That will be conducted by the consultants and the Planning Staff. Also, there will be a presentation on, I guess you could call it, a Master Development Plan for the Elko Tract. That will probably be of interest to the Commission, as well.

Mr. Archer - When is that, again, John?
Mr. Marlles - September 21st.
Mr. Zehler - The same day of our town meeting.
Ms. Dwyer - It is the town meeting.
Mr. Zehler - Where is it? Is it going to be at the Eastern Government Center?
Mr. Marlles - That's my understanding, Mr. Zehler. If it's not, I will send out a notice to the Commission.
Mr. Silber - It is the town meeting.
Mr. Zehler - It is the town meeting?
Mr. Marlles - It is the town meeting. That's correct.
Mr. Archer - 7:00 o'clock?
Mr. Marlles - Yes sir.

Acting on a motion by Mr. Vanarsdall, seconded by Ms. Dwyer, the Planning Commission adjourned its meeting at 10:49 p.m. on September 10, 1998.

C. W. Archer, C.P.C., Chairman

John R. Marlles, AICP, Secretary

Last revised October 16, 1998.