

1  
2  
3  
4 HEARING  
5 before  
6 THE BOARD OF ZONING APPEALS OF  
7 JAMES CITY COUNTY  
8  
9  
10  
11  
12

13 in the  
14 Board Room  
15 of the  
16 Board of Supervisors  
17 James City County Complex  
18 Building C  
19 James City County, Virginia  
20

21 on  
22 April 28, 1983  
23

24 at  
25 7:30 p.m.

P-R-E-S-E-N-T

Mr. Gerald Mephram - CHAIRMAN

Mr. Warfield Robey - Member

Mr. David Hertzler - Member

Mr. Joseph Abdelnour

Ms. Elizabeth Vaiden - Member

Mr. Orlando A. Rintort - Director of Planning

Mr. Henry Stephens - County Planner

Mr. Dwight Dansby - Represents 64 Associates

S-P-E-A-K-E-R-S

Page

Mr. Orlando A. Rintort -----	3
Mr. Dwight Dansby -----	11
Mr. Scruggs -----	20
Mr. Alvin Anderson -----	26
Mr. Clint Bordon -----	38
Ms. Marie Shepard -----	40
Mr. Steve Tompkins -----	40
Mr. Bob Deeds -----	44
Ms. Sue Hill -----	46
Ms. Barbara Cochran -----	48
Mr. Dan Hemlick -----	49
Mr. John McFall -----	49
Mr. Andy Bradshaw -----	50
Mr. Steve Graber -----	58
Mr. Steven Francis -----	64
Mr. Mel Bryant -----	65
Mr. Hammond Branch -----	69
Mr. George Morrison -----	71
Mr. Rick Hutchins -----	72
Mr. John Filtruck -----	74
Mr. Bob Hornsby -----	77

S-P-E-A-K-E-R-S -- Continued

	<u>Page</u>
Mr. Anthony Domonic Malari -----	78
Mr. Steve Lentz -----	79
Mr. Frank Morton -----	82
Mr. David Hertzler -----	85
Mr. Warfield Robey -----	87

1 CHAIRMAN: The next case is  
2 ZA4-83.

3 MR. STEPHENS: Mr. Chairman, I have  
4 three more people who signed up. There are slips at the  
5 podium if anyone wishes to speak and has not already signed  
6 a slip on this case, we would appreciate you taking the  
7 opportunity to do that now so we don't interrupt anything.

8 Case Number ZA4-83 is an application  
9 by Mr. D. R. Dansby on behalf of 64 Associates appealing a  
10 Zoning Administrator's decision as it applies to Article  
11 Two and Article Four of the Code. Mr. Rintort, Planning  
12 Director Zoning Administrator will make staff presentation.  
13 Rintort.

14 MR. RINTORT: Mr. Chairman, Members  
15 of the Board of Zoning Appeals, ladies and gentlemen, my  
16 name is Al Rintort; I'm Director of Planning of James City  
17 County. In that capacity, I am also the Zoning Administrator  
18 for James City County. The Code of Virginia and the James  
19 City County Zoning Ordinance require the Zoning Administrator  
20 to enforce the Zoning Ordinance. In carrying out this duty,  
21 the Zoning Administrator often must make interpretations  
22 with regard to proposed uses and whether the uses are permitted  
23 in certain zoning districts.

24 Whenever there is a disagreement over  
25 decision of the Zoning Administrator, the Code of Virginia

1 and the County Zoning Ordinance provide for an appeal to  
2 the Board of Zoning Appeals. That is the situation on the  
3 proposed Croaker Service Center. Mr. D. R. Dansby on behalf  
4 of 64 Associates has filed an appeal to the Zoning  
5 Administrator's decision as they apply to Article Two,  
6 Site Plan and Article Four, Provision Two, Agricultural  
7 General District A-1 of the Zoning Ordinance.

8 The Zoning Administrator has  
9 interpreted that a preliminary site plan for the Croaker  
10 Service Center is for a truck stop which is not a permitted  
11 use in the A-1 District.

12 Also appealed is the Zoning  
13 Administrator's decision not to forward the preliminary site  
14 plan to the Site Plan Review Committee for review. On March  
15 15, of this year, Mr. Scruggs, on behalf of 64 Associates  
16 filed a preliminary site plan with the County for a project  
17 identified as the Croaker Service Center. Staff reviews  
18 of the preliminary plan indicated the project was truck stop  
19 because of its size, layout and proposed activities.

20 Uses represented in the site plan  
21 included motels, automobile repair shop, shopping center,  
22 grocery store, a restaurant, and a gas station with gift  
23 shop, cafe and wash station, on a 22 acre site.

24 Mr. Chairman, I'll move over to  
25 this map. Of special concern was the use of the southwest

1 corner of Route 607 and Route 625. Which showed about two  
2 and three quarters of acres devoted to a gas station,  
3 with gift shop and cafe, that's the white area here,  
4 a drive-through wash station, this little white area here,  
5 and eight fuel islands, four on each side.

6 The total asphalt pavement on this  
7 corner and that's shown in black and gray, was about 2.6  
8 acres when you take out the building area on that site.

9 Also, the number of fuel pump  
10 islands and acreage and asphalt was much larger than that  
11 commonly associated with gas stations in James City County,  
12 and I will have some exhibits and I apologize to the people  
13 over here as I'm using the slide.

14 (First slide.)

15 CHAIRMAN: There are several seats  
16 over on this side of the room if you gentlemen would like  
17 to move over here.

18 MR. RINTORT: I hope you all can  
19 see this. Two pages in this exhibit. What we did was survey  
20 all gas stations in James City County columns, the name  
21 of the station, fuel capacity, there's gasoline tanks,  
22 storage capacity, diesel tanks, storage, number of gasoline,  
23 pumps, whether they were diesel or gasoline, the number of  
24 those also, the number of pump islands, the paved area.

25 Now, you'll see in the first concern

1 there were eight proposed at the Croaker Service Center  
2 on this sheet. I guess a couple of gas stations had the  
3 proposed Croaker Service Station, had 115,000 square feet  
4 in asphalt. Most of the others had roughly half an acre  
5 or less.

6 This is the second list of gas  
7 stations. We have two -- large area of asphalt is Stuckey  
8 which has an acre and a half of asphalt. We did not receive  
9 information, (Number Three Slide), from the project on fuel  
10 capacity, storage for diesel, gasoline, number of gasoline  
11 pumps, the number of nozzles and number of diesel pumps and  
12 the number of nozzles.

13 I'll leave this up here because I  
14 have some other exhibits. As I indicated, the paved areas  
15 and gas stations usually run no larger than half an acre;  
16 one of the exceptions being Stuckey's and the number of fuel  
17 pump islands is usually less than four. The drive-through  
18 wash station, the gift shop and cafe are activities normally  
19 associated with truck stops.

20 Furthermore, the motels and  
21 restaurants proposed on the part of the 22 acre site are  
22 commonly associated with truck stops. The staff also looked  
23 at the definition of truck stops in the Book of Harvey  
24 Moskowitz and Carl Lindbloom, Development of Definitions and  
25 it seemed to fall within that category. The staff therefore



1 interpreted the project to be a truck stop. Because the A-1  
2 agricultural zone does not allow a truck stop as a permitted  
3 use, and after consultation with the County Attorney, the  
4 preliminary plan application and fifty dollar filing fee  
5 were returned to the applicant.

6 Sorry for the shuttle back and  
7 forth, Mr. Chairman. This is under the Zoning Ordinance  
8 (indicating), and it lists an agricultural general district  
9 A-1 structures to be erected or land to be used, shall  
10 be to one of the following uses and truck stop is not  
11 one of the listed uses listed in the A-1 District.

12 On March 24, Mr. D. R. Dansby and  
13 Mr. Scruggs refiled the preliminary site plan and the  
14 application was accepted on the advice of the County Attorney.  
15 The applicant asked that the site plan be presented to the  
16 Site Plan Review Committee for its review at a meeting scheduled  
17 for the 12th of 1983. The gasoline project identified  
18 itself as gasoline station, restaurant, motel, grocery store  
19 and automobile repair facility, and you were all given copies  
20 of the application.

21 The preliminary site plan, which was  
22 filed however, was similar to the one we had returned earlier.  
23 Further, the applicant provided the Department no additional  
24 information describing the character of the project to either  
25 support it or refute it, the Zoning Administrator's interpretation.

1                   For example, we weren't provided with  
2 additional information which would tell us the number of  
3 gasoline pumps, the number of diesel pumps, the size and  
4 number of underground gasoline, trucks, the expected truck  
5 travel to be served by the facility, the automobile traffic  
6 to be served by the facility, hours of operation, et cetera.

7                   On the advice of County Attorney on  
8 April fifth, 1983, the Department returned the site plan  
9 and filing fee to the applicant because the proposed use  
10 was not permitted in the A-1 Zone. The applicant was  
11 informed that the Department would not forward the site plan  
12 to the Site Plan Review Committee because we felt the review  
13 of a site plan for use that was not permitted would serve no  
14 useful purpose.

15                   The applicant was advised of  
16 alternatives open to him, for example, filing the rezoning  
17 application, or filing an appeal to the Board of Zoning  
18 Appeals, which you have before you, and I believe you were  
19 given the application for the appeal.

20                   It should also be noted that the  
21 scope of the Site Plan Review Committee does not include the  
22 interpretation of the Zoning Ordinance which is essentially  
23 defined as responsibility of the Zoning Administrator.

24                   On April seven, 1983, Mr. Dansby,  
25 Attorney on behalf of 64 Associates, filed the attached appeal

1 which you have which is now being heard. On April eight,  
2 the Site Plan Review Committee was informed that an appeal  
3 had been filed and that the Committee would not be receiving  
4 the preliminary site plan for review.

5 Finally, on April 19, Mr. Scruggs  
6 was advised by letter that the language of the M-1 Industrial  
7 Limited Zone could provide for the use truck stop. Section  
8 20-88 permitted uses states in the M-1 Limited District,  
9 buildings to be erected or land to be used shall be for  
10 one or more of the following or similar uses.

11 And one of the permitted uses in the  
12 M-1 Zone is the truck terminal. And -- this is from the  
13 Zoning Ordinance and the language says in the M-1 Limited  
14 Industrial District, buildings to be erected, lands to be  
15 used, shall be for one of the following or similar uses.  
16 And in conclusion, I would just contrast that language with  
17 the language in A-1 Zone, which says in the Agricultural  
18 General District Zone, A-1 structures to be erected or  
19 land to be used shall be for one or more of the following  
20 uses.

21 Now, that concludes my presentation,  
22 Mr. Chairman.

23 CHAIRMAN: Thank you. Any questions?

24 MR. DANSBY: I do. Mr. Rintort, you  
25 showed us a book there that you refer to as giving you

1 definition of a truck stop?

2 MR. RINTORT: Yes sir.

3 MR. DANSBY: Did you intend to present  
4 that now or later?

5 MR. RINTORT: I didn't intend to  
6 present it. I was just indicating that our interpretation  
7 of the project was not arbitrary in our view and that we  
8 did research the definition.

9 MR. DANSBY: Is there a definition  
10 of a truck stop, per se, in that book?

11 MR. RINTORT: Yes sir, there is.

12 MR. DANSBY: Could you find it for  
13 us and read it.

14 MR. RINTORT: Truck Stop. This is  
15 on page 198 of the book that's commonly found in planning  
16 offices. "Any building premises or land in which or upon  
17 which a business, service or industry involving the  
18 maintenance, servicing, storage or repair of commercial  
19 vehicles is conducted or rendered including the dispensing  
20 of motor fuel, or other petroleum products directly into  
21 motor vehicles, the sale of accessory or equipment for trucks  
22 and similar commercial vehicles." A truck stop also may  
23 include overnight accommodations and restaurant facilities  
24 solely for the use of truck crews.

25 MR. ROBEY: I have a question. Does

1 the book give the interpretation of a service center?

2 MR. RINTORT: I don't believe it  
3 does. I'll look. No, it gives a definition of automobile  
4 service station, not a service center.

5 MR. HERTZLER: How does that vary  
6 from what you just read? Would you read that to us, also?

7 MR. RINTORT: Yes sir. Automobile  
8 Service Station. "Any building land area or other premises  
9 or portion thereof used or intended to be used for the  
10 retail dispensing or sales of vehicular fuels and including  
11 as an accessory use the sale, installation, lubricants, tires,  
12 batteries and similar accessories".

13 That's all it says.

14 CHAIRMAN: Thank you.

15 MR. RINTORT: Thank you.

16 CHAIRMAN: At this time, we'll open  
17 the public hearing and the first person I'd like to speak,  
18 if you would like to, would be the applicant. Mr. Dansby.

19 MR. DANSBY: Ladies and gentlemen,  
20 I'm Dwight Dansby, I'm here on behalf of 64 Associates for  
21 an interpretation of two sections as you know. What I'd  
22 like to do is submit a brief presentation between myself  
23 and Mr. Scruggs rather than me acting as a conduit; Mr. Scruggs  
24 has extensive knowledge of this ordinance since he helped to  
25 develop it and he's also one of the gentlemen responsible

1 for zoning in Stone House district to begin with.

2                   The first part I want to address my  
3 request for interpretation of Section 20-18 regarding  
4 preliminary plans. I believe that the ordinance is intended  
5 for a reasonable reading not merely technical reading by an  
6 Attorney, and I would ask you to look at it with me and it  
7 seems to be very clear that it says seven copies of a preliminary  
8 site plan shall be submitted to the Administrator, his desig-  
9 nate, who shall review the plan for compliance with these  
10 regulations and the requirements for preliminary site  
11 plans and shall transmit such plans to the Site Plan  
12 Review Committee with his comments for their review.

13                   That's all Mr. Scruggs had asked for in  
14 his initial application. He received a letter back that  
15 it would not be considered or sent to the Site Plan Review  
16 Committee because the Zoning Administrator had determined  
17 it is a truck stop. The letter didn't state that more  
18 additional information was needed or any other comment of  
19 that sort.

20                   The Zoning Administrator summarily  
21 said it will not be considered and no where in the ordinance  
22 can I find that -- you Citizens have given the Zoning  
23 Administrator that power. A reasonable reading of this  
24 section says that he has the opportunity and the requirement  
25 to look at the preliminary site plans and make his comments,

1 and after he's done that, he shall transmit these site plans  
2 to the Site Plan Review Committee. And that is what Mr.  
3 Scruggs tried to do on his own without a lawyer.

4 And when he was rejected, I was requested  
5 to come down and try to submit it myself, which I did. Now,  
6 we did get a letter of rejection after I submitted the plans  
7 a few days later, but at that time, we had been told that  
8 this project would not be considered by the Site Planning  
9 Committee and my only recourse was going to be to appeal  
10 to the Board of Zoning Appeals, which is why we're here.

11 The second letter, which was dated  
12 April the fifth, indicated at that time that they wanted  
13 certain information regarding the quantity of gasoline storage  
14 and that sort of thing. That's the first time we had  
15 known that and of course, that was after it was too late to  
16 do anything about it.

17 We are happy to give that information,  
18 if it is necessary, and we certainly know that the Site  
19 Plan Review Committee will take such things into  
20 consideration. I would submit that the members of the Site  
21 Plan Committee probably have more experience in the local  
22 community and with the ordinance itself than the Zoning  
23 Administrator, who decided not to let them do their function  
24 and review these plans. There is nothing in there that says  
25 the plan shall not go to the Site Plan Review Committee if the

1 Zoning Administrator has negative comments. It says they  
2 shall go with his comments. And that is the first part I'd  
3 like you to consider. The second part is the definition  
4 of A-1.

5 Now, this A-1 designation wasn't  
6 dreamed up overnight. From what I understand, many years  
7 and many considerations were given before the Zoning  
8 Ordinance was actually adopted. There was somewhat of a  
9 crisis some years back where a large majority of the more  
10 rural population didn't want any sort of zoning at all.  
11 There was very little development in the north and north-  
12 western part of the County, and there was a lot more, of  
13 course, around the City of Williamsburg. The more urban  
14 centers.

15 This particular Zoning Ordinance  
16 tried to cater to both needs; it did not make very good sense  
17 to leave a part of the County unzoned and another part zoned.  
18 A-1 seemed to be a compromise that was intended to satisfy just  
19 about every one.

20 A-1 was meant to encompass the  
21 more rural areas in the most permissive way possible, and it  
22 states in the preamble, "That the general -- that the  
23 Agricultural General District A-1 covers the more rural areas  
24 of the County farthest removed from the influence of urban  
25 development; the purpose of the district is to permit nearly



1 all activities to continue as they are and to allow  
2 development to occur with minimum regulation."

3 Now, of course what we have in this  
4 particular case is maximum regulation. We have before the  
5 project was even considered, we have a Zoning Administrator  
6 that refused to allow it to be considered. You can not be  
7 more regulated than that. I submit it's improper. I have  
8 also made inquiries regarding the intent of the wording.  
9 Of the statute. And what each particular district was  
10 designed to do, and I find that a lot of conversation was  
11 given and that's why you have about a dozen different uses,  
12 and without a doubt, A-1 is the most permissive use and  
13 the most intended to be the most unrestricted and it covers  
14 a large portion of the County that is farthest away from  
15 the City of Williamsburg, and most of the urban development.

16 Some people are under the  
17 misunderstanding that because it's Agricultural General A-1,  
18 it was designed to permit farming purposes. Well, that's  
19 incorrect. Agricultural Limited A-2 is designed to protect  
20 the farming purposes and also for an orderly urban  
21 development. A-1 is to permit nearly all activity with a  
22 minimum of regularities. Now, you have residential R-1  
23 through R-3, which are for development as low density areas,  
24 and they specifically prohibit commercial development.  
25 And there have been consideration given to a common owner for

1 a large amount of acreage in developing and in your R-4,  
2 you allow for cluster communities and like commercial  
3 uses, but you prohibit industry and you put a proviso on it  
4 that there has to be a common owner of 400 or more  
5 contiguous acres.

6 Now, in your business B-1, that is  
7 for General Business Purposes, and it is very similar to the  
8 A-1. I am told that when A-1 was developed, it was intended  
9 to permit all the uses that you could do in B-1 and then  
10 some. There are other things you can do in A-1 that you can  
11 not do in B-1. For example, dwellings, you can have a  
12 subdivision in A-1 and you can not in B-1. You have two  
13 different industrial locations, the M-1 and M-2 District,  
14 and those are designated for manufacturing and it is  
15 discouraging anything else other than manufacturing.

16 It is discouraging general business,  
17 and it doesn't allow residential use. So all the different  
18 things that you would expect to find in a society are provided  
19 for in here. Those that want to be protected in the  
20 residential uses, they can go to R-1 and R-3. Those who  
21 want just the business use, they got B-1, if it's near  
22 the City.

23 Those who want only manufacturing, of  
24 course, they got two industrial areas to choose from depending  
25 on what they need to do. I'm also informed the general wording

1 of the A-1 permit uses was to allow those who wanted to  
2 pursue commercial development to do so without having to  
3 rezone and permit those who wanted a more restrictive use  
4 of their particular property to go ahead and apply for  
5 rezoning to get the appropriate designation they wanted, whether  
6 it be commercial, light industrial, or residential.

7                   There have also been two comprehensive  
8 plans that were given great thought. I believe the first  
9 one was in 1975, and reviewing the area in question in  
10 Croaker and Route 64 in general, that has always been earmarked  
11 for commercial development. I understand there was consultants  
12 brought in either at that time or in 1982 when the second  
13 comprehensive plan was done, and it said the same thing.

14                   They expect commercial development,  
15 in fact, the intersection or interchanges along 64 are  
16 designated for commercial uses. That is the highest and best  
17 use, the most appropriate use.

18                   Now, I see by your ordinance here that  
19 there was no rezoning even though in 1975 and again in 1982,  
20 there were discussions about orderly development in the entire  
21 County. Everyone knows that the interchanges are to be  
22 commercial, yet they did not feel the need to change the  
23 zonings. And the reason they didn't change the zoning is  
24 because it was already zoned properly, A-1.

25                   Now, Mr. Rintort suggest that perhaps

1 Associates should apply for rezoning just doesn't make sense  
2 because it's not a single district that's more permissive  
3 than A-1. What could he rezone to. We would run into the  
4 same problem there that we're running into here.

5 B-1 is more restrictive than A-1.  
6 Now, I'm going to ask Mr. Scruggs to come up in a few  
7 minutes here. I'll give a highlight of what I expect, but  
8 before I do that, I would like to point out, we've got a  
9 mock-up here. You can't see it very well, so I'll go to your  
10 plan over here.

11 Now, the preamble to that A-1 zoning  
12 says it's for one or more permitted uses, and then it  
13 enumerates some of the uses. Now, it's been uncontested  
14 that the individual uses that we have asked for, motel,  
15 restaurant, general stores, retail stores, gas station,  
16 all those are permitted uses. That's been undisputed.

17 Now, I submit that if we had seven  
18 individuals, each one with a particular segment of this, let's  
19 say I am the owner of this service station; if I made an  
20 application to have this service station approved, I think  
21 that the County would have to approve it. It's clearly in  
22 there. And if Jack Scruggs owned this over here and wanted  
23 a motel in here just by itself, he could get it whether we  
24 did it individually one at a time over seven years, or seven  
25 of us got together and decided we wanted to submit our

1 applications all at the same time. Each one of these uses  
2 is permitted. There is nothing in the ordinance that  
3 indicates if there's a common owner that these are not to  
4 be considered as seven individual permitted uses, but to be  
5 considered something else.

6 In this case, something else has been  
7 called a truck stop. There is no wording to that effect.  
8 As I just told you, they have considered a common owner. In  
9 your R-4, I believe district. Where the common owner has to  
10 have at least 400 contiguous acres. I submit that if the  
11 interpretation of A-1 was to mean if you have a certain  
12 combination of uses that are not permitted, it would say so  
13 in there and it does not.

14 Now, Mr. Scruggs has a wealth of  
15 experience and he's going to tell you a little bit about the  
16 history; I think some of the people in this room might recall  
17 some memories about this. I think there are some others  
18 that participated in the zoning and in other interpretation  
19 of the ordinance.

20 The main point that I want to make is  
21 that the B-1 zoning was mainly designed for commercial uses  
22 like this for districts that were close to town, and A-1  
23 zoning was for districts that were further away from town.  
24 We've only got three or four examples, I think, to give you of  
25 things that could probably be called truck stops. Facilities

1 that are similar to ours; one of them is up at Anderson's  
2 Corner, I believe that is B-1 because that was the most  
3 developed area in that portion of the County at the time the  
4 Zoning Ordinance was initiated. I believe that Frank's  
5 was B-1 and remains B-1. I don't believe the rezoning  
6 was necessary on that.

7 I understand there's the True Value  
8 Hardware that has some -- in a close vicinity, we got gas pumps  
9 and gift stores and motel and eight acres of parking, and  
10 I believe that is still zoned A-1. We got the One Step  
11 Texaco and that has pumps, and I'm told that facility caters  
12 to buses and things like that, and motels nearby and  
13 restaurants in the motel, gift shop within walking distance,  
14 lounges, and I believe that might be B-1. It might have been  
15 rezoned from A-2.

16 Of course, A-2 doesn't have the  
17 permissive use that A-1 does. I'm also told that the  
18 comprehensive plan for James City County won a national award  
19 as being one of the best in the Country. And without further  
20 comment, I'd like Mr. Scruggs to come up now and give you a  
21 brief presentation and I'll be happy to answer any questions  
22 after his presentation.

23 MR. SCRUGGS: Mr. Chairman, ladies  
24 and gentlemen, I have the honor of appearing before you today  
25 to maybe to refresh some memories of James City County's

1 Zoning Ordinance, comprehensive plan. As you know, the  
2 Planning Commission of James City was created in 1953. I  
3 was honored to be one of the original members of the Planning  
4 Commission. The first Zoning Ordinance was presented to the  
5 Board of Supervisors in 1956. In 1969, the original ordinance  
6 was adopted by the Supervisors of James City County.

7 At that time, the members of the  
8 Planning Commission, which worked on this for a number of  
9 years to get an ordinance that was acceptable to the people  
10 and the Board of Supervisors, and I'd like to read some of  
11 these names. I think it would bring back some memories. We  
12 have Jerry Mephram, Ed Markus, Abe Frink, Mr. Renning, Vernon  
13 Cartwright, Sam Whittaker, A. G. Bradshaw, Bobby Wherr,  
14 Stuart Taylor and myself.

15 The Board Members in 1969 adopted the  
16 ordinance with the vote of two members, "Aye," would be  
17 obtaining and one "Nay," and the reason for this was the working  
18 out and the creation of the Agricultural District was one  
19 reason we got zoning in James City County. And the members  
20 on the Board at that time was Fred Frounry, Richard Coffee,  
21 William Petty, Charley Richards. All of us on the Planning  
22 Commission, myself, we worked with these gentlemen and  
23 we created a zone, A-1 zone and B-1 zone with the intent  
24 that all items in B-1 could be applied in the A-1 zone  
25 plus residential development, subdivisions which we have.

1 This was the uses, almost all of the business uses were in  
2 the area were conforming. It was no businesses in the A-1  
3 zone that's nonconforming uses at that time. In other words,  
4 the permitted development to occur was minimum in the A-1  
5 zone.

6 The intent were in the neighborhood  
7 or other activities desired more restrictive zonings, they  
8 could ask for it and be rezoned. We have had almost no  
9 changes in the A-1 zone since that time. The majority of  
10 the people that is developed and moved into the A-1, like  
11 the A-1 zone. It has been one of the most useable zones,  
12 the one that has caused less problems in the County of any  
13 of the zones we have.

14 I believe this leads you to believe it  
15 must be a pretty good zone. As Mr. Dansby mentioned about  
16 one zone was designed for use closer to the towns in the  
17 urban areas. A-1 zone was designed for the districts to  
18 allow all activities, plus residential development and all  
19 activities in the B-1 in that. The other uses were mentioned  
20 in the R zone, which we have 6-R zones which are restrictive  
21 in those areas.

22 And he mentioned three sites that  
23 we have in the area. I won't get into those. In the planning  
24 of a thorofare highway through James City County, I'm talking  
25 about I-64, when this was being planned, by the State Highway



1 Department, and others, passing through James City County,  
2 there were a number of Planning Commission members, Board of  
3 Supervisors and other interested Citizens of the County  
4 that lobbied the Highway Department and other agencies to  
5 get interchanges in James City County.

6 The reason for these interchanges  
7 were to provide the County with commercial area that would  
8 provide a better tax base. Therefore, helping the Citizens  
9 and the taxes of James City County. The interchange, after  
10 being properly developed in James City, were considered  
11 properly zoned for commercial under the present A-1 zone.  
12 And B-1 zone. In the area.

13 In referring to the comprehensive  
14 plan for the County, we'll go back approximately 1971, '72,  
15 when the study began on the comprehensive plan for James  
16 City County. The area, these areas were designated as  
17 commercial by the Planning Commission and the Comprehensive  
18 Planning Committee, which was a 15 member committee -- member  
19 committee that was appointed by the Supervisor, and I have  
20 the names of each one which appeared in the 1975 Comprehensive  
21 Plan.

22 The areas were considered then properly  
23 zoned for commercial development. I think it's noteworthy  
24 to say that after several years of work, including Citizens'  
25 participation, this plan was finally adopted and as Mr.

1 Dansby brought out, and I'm saying with Citizen participation,  
2 because if some of you remember the first '75 plan that took  
3 several years, and a lot of meetings and so forth to iron  
4 this out and to develop a plan which was capable of  
5 winning the award from the Virginia Chapter of the American  
6 Society of Planning.

7 And I think that was quite an  
8 accomplishment. The comprehensive plan adopted in 1982  
9 by the Board of Supervisors after the Planning Commission  
10 meeting with County residents, and I believe we had nine  
11 meetings around the County to get the input on the comprehen-  
12 sive plan, the interchanges were still zoned properly  
13 commercially B-1 and A-1. It was no need for changing the  
14 zoning.

15 The A-1 zone was designed for almost  
16 any type of business, including all of the business of A-1  
17 subdivisions, and so forth. The A-2 zone was designed to  
18 protect farming and other urban type developments. That's  
19 the A-2 zone, which is closer to your towns and your  
20 developments. Your R-1 to R-6 zones was designed to protect  
21 the residential density and restrict development in  
22 industrial development.

23 These zones are available for any  
24 person or any group or subdivision would like to ask to be  
25 rezoned. In addition, A-1 zone was created to avoid having

1 a large segment of the County not zoned for any type of use.  
2 Because in 1969, it was recommended that the zoning be  
3 applied to the two then districts in the lower part of the  
4 County in Stone House, and Powhatan District not be zoned.

5 The Planning Commission was very much  
6 in favor of zoning the whole County rather than two districts,  
7 so they were going to try to work up a compromise, a zone  
8 that would allow all of the people to participate in it.  
9 And we came up with the A-1 zone, which as I've mentioned  
10 has been a real good zone for James City County. It still  
11 is being used and as a realtor in the area, I have a copy  
12 of the zone, and in selling property and putting together  
13 developments, this is all we have to go by. It's what is  
14 permitted in the ordinance. And this is exactly what we  
15 have done. Thank you.

16 MR. DANSBY: I'll be happy to answer  
17 any questions.

18 CHAIRMAN: Do you have any questions  
19 you would like to ask now or later if you would like to?  
20 We may call on you later. All right, at this time, we'll hear  
21 from anyone else who would like to speak. I'd like to go  
22 down this list of names that we have who have signed up to  
23 speak first. And then anyone else who would like to speak,  
24 we'll have time for. I'd like you to -- limit your speech  
25 to five minutes or less if you possibly can. There are a

1 lot of people who would like to speak tonight.

2 First list is Croaker Coalition  
3 Mr. Clint Bordon.

4 MR. BORDON: I'd like to defer to Mr.  
5 Anderson, our Counsel.

6 MR. ANDERSON: I'll be happy to. I  
7 don't think you'll have any problem hearing me. I previously  
8 delivered to Mr. Stephens a file which each of you should  
9 have in front of you which highlights the portions of my  
10 presentation tonight. My name is Alvin Anderson of the  
11 James City County Law Firm, Anderson, Emmett and Franck, and  
12 my firm has been retained to represent certain Citizens of  
13 James City County who live in Elmwood Farms, Quaker Estates,  
14 Croaker, Sycamore Landing and Pine Ridge, and these Citizens  
15 are opposed to the applicant's position.

16 The opposition can best be summarized  
17 by examining two questions and two questions alone. Question  
18 number one, is what is it, question number two, is where is  
19 it allowed. And in answering these questions, I reflect back  
20 to my boyhood days in Richmond and I recall my father reading  
21 to me the story of Robinson Crusoe. You recall Crusoe was  
22 stranded on a desert island, thought he was there all alone  
23 and became distraught and went to sleep and when he woke up  
24 the next morning, he became so excited at what he saw, he  
25 fainted. Now, what did he see? Did he see a person, no.

1 Did he see a leg, no; did he see a foot? No. What he saw  
2 was a footprint and, of course, that footprint was the  
3 footprint of his good friend, Friday, and tonight I want  
4 you to look at the footprints in this case. Look at the  
5 tracks of the truth in answering these questions of what  
6 is it and where is it permitted.

7  
8 What is it? Well, what is it, I'm  
9 troubled by two things there. The answered questions, but  
10 more than that, the unanswered questions. The answered  
11 questions, the facility is designed to attract trucks.  
12 The contouring of the curbs, the placement and design of the  
13 fuel pump islands, the provision for long and short term  
14 parking, the provision for repairs, maintenance, sleeping  
15 accommodations, restaurant facilities.

16 Once this facility is built, there is  
17 no legal authority that can stop a truck or trucks from using  
18 it. The facility has eight fuel islands which are proposed  
19 in a paved area in the front around the fuel islands, which  
20 would permit the parking of some 20 trucks. These are the  
21 answered questions by the public files at James City County.

22 But the unanswered questions trouble  
23 me, too. How many gas pumps, how many diesel pumps, how many  
24 gas nozzles, how many diesel nozzles. How many underground  
25 storage gas tanks. How many underground storage diesel  
tanks. Capacity of underground storage for gas. Capacity

1 for underground storage for diesel. Anticipated auto  
2 traffic, anticipated truck traffic. I would refer you to  
3 Exhibit One in the file which has previously been delivered  
4 to you. The letter dated April fifth, 1983, from the  
5 Planning Director, Mr. Rintort to Mr. Scruggs, which he  
6 says in part, "Furthermore, you have not provided the  
7 Planning Department with substantive information to challenge  
8 our interpretation that the project is a truck stop. In the  
9 absence of additional information defining the character  
10 of your project, the number of pumps, the number of diesel  
11 pumps, size and number of underground storage tank for  
12 gasoline and diesel fuel, expected truck traffic, expected  
13 automobile traffic, our interpretation remains that this is a  
14 truck stop".

15                   The applicants had that opportunity  
16 to provide this information, but yet it's not a part of the  
17 public filing. Certainly somewhat curious there. The  
18 developer contends that the structure at the front  
19 of this project is a gasoline service station. So there's  
20 no question about it, a gasoline service station is a permitted  
21 use under the A-1 zoning ordinance. No question about it.

22                   But is this a gasoline service  
23 station or a truck stop or a truck terminal? Just to show you  
24 how some Courts have interpreted this question, Exhibit Two  
25 on page 743, a Maryland case, which of course is not binding in

1 Virginia, says in part on page 743 of the Case Section One-oh-One  
2 of the Baltimore County Zoning Regulations, defines a truck  
3 terminal as any building or other structure and or land  
4 devoted primarily to the transfer of merchandise from one  
5 truck or truck trailer to another or "or that's a big word  
6 there, "devoted to the layover of parking of trucks or  
7 trailers." But rather than get involved in a lot of legal  
8 cases of which there aren't very many to tell you what a  
9 truck stop is or isn't, I would urge you to use your sixth  
10 sense.

11                   You know, when the Lord put us here  
12 on the face of the Earth, he gave us each five senses. The  
13 sight, smell, touch, taste and hearing, but tonight I'm  
14 asking you to use your sixth sense. Use your common sense  
15 in determining what's a gasoline filling station. There's  
16 no definition of that in our James City County Code either  
17 what a gasoline service station is.

18                   But your common sense tells you to  
19 look around James City County. Look at this chart that Mr.  
20 Rintort put up on the overhead projector. Look at the  
21 number of pumps, the number of nozzles, the storage capacity  
22 of each of those facilities. And I tell you that that's  
23 the industry's definition of what a gasoline filling station  
24 is in James City County.

25                   The answered questions, the unanswered

1 questions, and common sense, these are the tracks of the truth  
2 and the tracks of the truth tell us that this is in fact  
3 a truck stop.

4 If it is a truck stop, where is it  
5 permitted? Now, the zoning ordinance here, well, I guess  
6 our zoning ordinance here has been criticized because a  
7 truck stop is not specifically excluded in the A-1 zoning  
8 ordinance. The position of the developer has been the A-1  
9 zoning ordinance designates some of the uses.

10 Well, I would refer you to Exhibit  
11 Three. Now, this is not something that I've dreamed up,  
12 but this is the Supreme Court of Virginia speaking on  
13 Exclusionary Zoning Ordinances and Inclusionary Zoning  
14 Ordinance. Page 683 of that opinion in the case of County of  
15 Fairfax versus Parker, states in part, "The permission of  
16 specified uses or specified classes of uses, but not all  
17 does not invalidate the ordinance. In fact, it is upon  
18 that principle of exclusion and with that purpose in mind,  
19 that the empowering legislation was enacted and the  
20 restrictive ordinances were adopted."

21 Moving forward to the next page,  
22 Section 84." I would point out the language in the sense of  
23 that page. This is key language right here. "Under an  
24 inclusive ordinance," that's an ordinance which says these are  
25 the permitted uses, that's the James City County Zoning



1 Ordinance, "Under an inclusive ordinance, only those uses  
2 which are specifically named are permitted and the burden is  
3 on the property owner, in this case the developer, to show  
4 that the purposes are included in one of the permitted uses."

5 If it's not specifically included,  
6 it is not excluded. Where is the truck stop permitted in  
7 James City County, if any zone? Mr. Scruggs has stated earlier  
8 tonight that the A-1 zoning district is the most permissive  
9 zoning district in James City County, and I take exception  
10 to that. And the reason I take exception to that is  
11 Exhibit Four, and I have assembled in Exhibit Four the cover  
12 sheet of each zoning district and you have to look at the  
13 language in the first two lines of the permitted uses  
14 paragraph. A-1.

15 Structures to be erected or land to  
16 be used shall be for one of the -- one or more of the  
17 following uses, a list of uses. You go forward, A-2, the  
18 same type of introductory language. R-1, identical. R-2,  
19 identical. R-3, identical, R-4, identical. R-5, identical.  
20 R-6, identical. B-1, identical. But you get over to M-1 on  
21 page 4-9-1, and the preamble there is slightly different  
22 but this slight difference creates a big effect.

23 In the M-1 limited industrial  
24 district, buildings to be erected or land to be used shall be  
25 for one or more of the following, and this is where the new

1 language comes in, "Or similar uses". You see, you can use  
2 implication with M-1, you can use implication with M-2, but  
3 that same implication is not permitted in the A-1 zoning  
4 ordinance.

5 I would also point out to you that  
6 in the M-1 zoning ordinance, in the M-2 zoning ordinance,  
7 a truck terminal is specifically permitted. Is a truck  
8 stop a similar use as a truck terminal? Mr. Scruggs stated  
9 earlier tonight that the A-1 zoning ordinance was not dreamed  
10 up overnight. I couldn't agree more. It's based on many  
11 things.

12 One of the things that the law requires  
13 it to be based upon is the comprehensive plan. Excuse me.  
14 Exhibit Five is a copy of the Code Section, 1950 Code of  
15 Virginia. Exhibit Five states in part that, "Zoning ordinances  
16 and districts shall be drawn with reasonable consideration  
17 to the existing land use plan."

18 It makes no difference whether you look  
19 at the 1975 land use plan which is Exhibit Six, or the 1982  
20 land use plan, which is Exhibit Seven. Both of these land  
21 use plans call for the subject property to be commercial.  
22 But does the land use plan stop by way of a map? The  
23 answer is no, the land use plan has a definition of what  
24 commercial is. And that definition can be found in Exhibit  
25 Eight, the excerpt from the land use plan. It defines

1 commercial on page 26 of that excerpt and it says, "Commercial  
2 are areas of general business activities, often serving  
3 populations of less than 5,000 people and usually having  
4 a modest impact on nearby development. These are designated  
5 as commercial."

6 They go on and talk about various  
7 criteria. Then on page 27 it says, "The timing of commercial  
8 development is controlled by growth of nearby population  
9 adequate to provide a market for the businesses."

10 "Adequate to provide a market for the  
11 businesses." What market is going to serve this? James  
12 City County? Or Interstate 64. The last sentence in that  
13 definition though, is the real track of the truth in this  
14 definition. Suggested uses are, "Medical offices, branch  
15 banks, small service establishments, day care centers, churches,  
16 convenience stores, and public facilities."

17 Is this a commercial development  
18 which serves a population of less than 5,000? Does this  
19 development have a modest impact on nearby development?  
20 Is the nearby population going to provide a market for this?  
21 The truth always invites examination and the examination should  
22 be of these questions. What is it, the truth says it's a truck  
23 stop. Where is the truck stop permitted? The truth says  
24 M-1 or M-2.

25 Mr. Scruggs said that the A-1 zone

1 is a pretty good zone. My clients want to keep it that way.  
2 Thank you.

3 CHAIRMAN: Anyone have any questions?

4 MR. HERTZLER: Yes, I do.

5 CHAIRMAN: Mr. Anderson.

6 MR. HERTZLER: I guess I'm puzzled  
7 by this whole thing, why it's before the Board of Zoning  
8 Appeals. The question you were asking, in your legal opinion  
9 don't you think you should be asking those to the Site  
10 Review Committee?

11 MR. DANSBY: I don't think the Site  
12 Plan has sufficient information in order for the Zoning  
13 Administrator to make a determination as to what the use is.

14 MR. HERTZLER: Don't you think Mr.  
15 Oliver Morton and Mr. Rintort jumped the guns in coming to  
16 us? Don't you think you should go back and start over  
17 again?

18 MR. DANSBY: No sir.

19 MR. HERTZLER: It sounds we're  
20 trying a criminal before he's committed a crime, and I don't  
21 think you would do that as a lawyer.

22 MR. MORTON: I don't think it is a  
23 fair question.

24 MR. HERTZLER: Let me ask you the same  
25 question, are you going to answer it?

1 MR. MORTON: Yes, I'll attempt  
2 to answer it. The Site Review Committee is to perform a  
3 technical function. It reviews sites and makes comments  
4 and works with proposed developers. Contrasted with that,  
5 is the Zoning Administrator who is in fact charged with  
6 making interpretations of the zoning ordinance. That is  
7 his responsibility, under both -- under the Virginia State  
8 Code. There's no question about that.

9 And there's no question that one of  
10 the duties of the Board of Zoning Appeals is to take appeals  
11 from interpretations of the Zoning Administrator. When  
12 the -- when the plan was submitted, the staff certainly  
13 addressed that question, Mr. Hertzler. And it was our  
14 interpretation that sending on a plan that was not permitted,  
15 that was clearly in our judgement not permitted under the  
16 A-1 district, would serve no useful purpose to provide a  
17 technical review of it.

18 MR. HERTZLER: Has this ever happened  
19 before in the history of the James City County that the  
20 Site Review Committee did not look at it first, in your  
21 estimation?

22 MR. MORTON: I can't answer the  
23 question. I can answer the question for the time I have been  
24 here and the answer would be no sir. To my knowledge, and  
25 I might be wrong, but to my knowledge, there's never been a

1 project that's been submitted in an area that was not a  
2 permitted use.

3 MR. HERTZLER: I guess -- what I'm  
4 so puzzled about is -- you know, one side says it's a service  
5 center, from what I can understand, it's for tourist and  
6 for the community. And one side says it's nothing but a  
7 truck stop, and the other side says it isn't. What I wanted  
8 to know, decide who is lying or what is this Board of Zoning  
9 Appeals supposed to do?

10 MR. MORTON: The Board of Zoning  
11 Appeals is to decide whether the interpretation made by  
12 Zoning Administrator are correct. And to either sustain  
13 his position or to overrule him. The Site Plan Review  
14 Committee could not in my judgement make that decision.  
15 Could not determine whether it is a permitted use. That is  
16 without the bounds of their authority.

17 MR. HERTZLER: I thought that was  
18 their authority?

19 MR. MORTON: No sir.

20 MR. HERTZLER: What is that, their  
21 authority?

22 MR. MORTON: To provide a technical  
23 service to Review Site Plans, to look at setbacks, to look --

24 MR. HERTZLER: Are you saying they  
25 couldn't give technical on this Site Review?

1 MR. MORTON: In my judgement,  
2 there is no -- the law does not require useless act and  
3 passing on a nonpermitted use for a technical review would  
4 have been a useless act.

5 CHAIRMAN: That is part of the question  
6 that the applicant has asked us, requested that whether it  
7 should have been passed on to Site Plan Review Committee or  
8 not, and whether it is permitted use. Those are the two  
9 questions I think the applicant is questioning of us.

10 MR. DANSBY: Yes sir, it's a two part  
11 thing. The first part is very easy reading; it is clear  
12 whether he thinks it is a truck stop or not, he shall submit  
13 it to the Site Plan Review Committee. And --

14 CHAIRMAN: The question before us  
15 is not whether it is a truck stop or service station?

16 MR. DANSBY: No sir, I'm not here to  
17 talk on the permits. Merely whether the Zoning Administrator  
18 was supposed to, as it says in the ordinance and the second  
19 part, whether the uses we enumerated in our plan are indeed  
20 the A-1 permit and the clear comparison with the ordinance  
21 will say yes.

22 CHAIRMAN: Mr. John McFall, would  
23 you like to speak?

24 MR. ANDERSON: We haven't exhausted  
25 our time. Other members would like to speak.

1 CHAIRMAN: Should I call these names  
2 off or would you like to get up -- the people know who is  
3 on the list.

4 MR. ANDERSON: I think they do.

5 CHAIRMAN: State your name and address.

6 MR. BORDON: Clint Bordon, I live  
7 at 108 Tanbark Lane in Elmwood. I and several other members  
8 in the Croaker wood area have been working in the several  
9 weeks in opposition to the development, not because we are  
10 opposed to commercial development in the area, but because  
11 as residents of the area and Citizens of the County, we feel  
12 it is not a permitted use under the A-1 zone.

13 We have several hundred signatures by land  
14 owners, home owners in James City County that we've gathered by  
15 going door to door to attest to that. Let me read briefly the  
16 petition which we have the signatures. "We, the undersigned,  
17 being land owners in James City County, Virginia, are opposed to  
18 the planned truck stop at I64 and Route 607 in Croaker because a  
19 truck zone is not a permitted use in the A-1 zone; a truck stop  
20 is inconsistent with the James City land use plan; a truck stop  
21 will have numerous adverse impacts on adjacent areas including  
22 but not limiting to noise, pollution, traffic hazards and  
23 crime, and a truck stop will degrade the area's potential for  
24 future development."

25 Let me just speak briefly about what



1 our major concern is. We live in the A-1 zone; we, as Jack  
2 Scruggs says, also think it's a real good zone. But the A-1  
3 zone which we relied on to guide our own investment in the  
4 area, has neither no explicit mention nor really no  
5 implicit mention or no implicit definition of a -- of a use,  
6 anything like a truck stop.

7 Explicitly, the term "gasoline  
8 station" can not be stretched to encompass a development  
9 of this magnitude in terms of the size of the fuel tanks  
10 and so forth.

11 Implicitly, truck stops are very  
12 different impacts in our estimation on surrounding properties  
13 than other uses in A-1. No other A-1 use will generate  
14 the type of traffic, the level of noise, the fire and  
15 explosive hazards and the crime potential of a truck stop.  
16 So we ask you not only to recognize this development for  
17 what it is, but also to adhere to the purpose of zoning.  
18 Which under the State Ordinance is to protect the health,  
19 safety and welfare of the community, to provide for convenience  
20 of access and safety, facilitate the creation and convenience  
21 attractive and harmonious communities, and under that purpose  
22 to construe A-1 conservatively and to prevent the conflict  
23 between what we feel is an industrial use that belongs in M-1  
24 and the other uses in the predominantly rural residential  
25 zone.

1 I'd like to return to Marie Shepard  
2 to speak briefly for other Citizens of Croaker. Marie  
3 Shepard.

4 MS. SHEPARD: Members of the Zoning  
5 Board, I am Marie Shepard; I live in Croaker, Virginia  
6 on Route 607. I am here representing the Croaker community.  
7 We are opposed to a truck stop at the entrance to where we  
8 live. Most of the residents of this community are Senior  
9 Citizens and small families with teenage children and some  
10 cases there are both Senior Citizens and single women living  
11 alone.

12 We are home owners who have supported  
13 this County for many, many years and should not be trapped  
14 with the truck stop. There are many elements of danger here,  
15 crime, noise, and the transport of dangerous chemical;  
16 there's only one way out of the area and to have the truck  
17 stop at the major exit of the community is unreasonable; I  
18 would like to think that James City County and the Zoning  
19 Code should protect us from these kind of problems.

20 I have a list of Citizens who have  
21 signed the petition here and we are truly opposing the truck  
22 stop. Nothing else. Thank you.

23 MR. TOMPKINS: I'm Steve Tompkins and  
24 I live at 117 Woodland Road in Woodland Farms. I have two  
25 major concerns dealing with this particular project. One

1 is the County provide adequate fire and police protection to  
2 make a shopping center of this kind a safe use in this A-1  
3 zone. The second one is the same one as has previously been  
4 examined what will actually be built at this site.

5 The answers to both of these are  
6 really not clear as you've seen from the previous presenting.  
7 The fire protection service provided by the Toano Station  
8 is adequate for the current use in the A-1 zone. Will it be  
9 adequate with the proposed new use? I'm not sure that it  
10 will be adequate.

11 Can the volunteer fire fighters  
12 at this station adequately combat an oil and chemical fire  
13 often associated with the concentration of truck and or the  
14 fuel to be stored there.

15 The developer proposes a three-story  
16 motel at this site. The longest ladder the Toano Station  
17 is 35 feet. Could therefore a building of this size be  
18 adequately protected by the available equipment or will this  
19 mean additional cost for the County to provide the adequate  
20 protection they need.

21 The developer said the facility could  
22 be open on a 24 hour basis. If this is true, it seems to me  
23 a dangerously, extends our already extended police force  
24 at that end of the County, at least. What is the proposed  
25 use of this property? Many inconsistent and confusing

1 statements have been already been made by the developers to  
2 the Citizens in this area. I have a list of about ten. I'm  
3 not going to go through them; I want to give you an example  
4 of the one mostly concerns me.

5 On April the sixth in Norge, the  
6 developer said the proposed shopping center would not --  
7 could not be successful without the car and truck service  
8 center or service station. To be included in this facility.

9 They also said that the car and  
10 truck service station can be successful without the rest of  
11 the stores. They have said that the car -- excuse me, that  
12 the car and truck service station would be built first and  
13 this seems natural since this is probably the most -- the  
14 biggest money maker for the project.

15 At the same meeting, the developer  
16 said they expected to pump about three million gallons of  
17 fuel per year. This sounded much like a good sized truck  
18 stop to one oil representative or executive I talked to  
19 recently. Just two weeks and five days later, the developers  
20 decreased that estimate to about 1.6 gallons -- 1.6 million  
21 gallons a year. This is still about three times more than  
22 what Frank Truck Stop currently pumps. Toano businessman  
23 just this past Tuesday, said that a truck and car service  
24 station that caters to trucks can not co-exist with shops  
25 and stores.

1 I therefore am very concerned not  
2 only with the possible success of the stores and shops, but  
3 more important if these shops and stores will in fact be  
4 built once the car and truck service station is built.

5 Developers, the developers, excuse me,  
6 on both April the sixth and the 25th could not tell us  
7 specifically who would occupy the buildings, what kind of  
8 services, nor could they guarantee what finally would be  
9 built.

10 In summary then, I would like to  
11 reflect on my two questions. One, can the County currently  
12 provide adequate fire and police protection for this new use?  
13 I have seen no evidence that it can. Therefore, the proposed  
14 facility seems somewhat inconsistent with the current fire  
15 fighting capability in Toano.

16 My second concern, what will really  
17 be built at this new site by the developers; after wading  
18 through all the confusion, it seems to me that the intent is to  
19 build a truck stop. Thank you.

20 CHAIRMAN: Would any further speakers  
21 try to keep in mind what the two questions before us are  
22 tonight. They are whether this should have been sent on to  
23 the Site Plan Review Committee, and whether or not it's  
24 permitted use. Anyone else in the Croaker Coalition that would  
25 like to speak?

1 MR. DEEDS: Mr. Chairman, I did not  
2 fill out a slip, I got here a little late.

3 CHAIRMAN: State your name.

4 MR. DEEDS: My name is Bob Deeds,  
5 resident of James City County, resident of Elmwood Subdivision.  
6 I just have a couple of things to say. I'm currently of  
7 the Elmwood Civic Association. At a recent meeting, a  
8 vote was taken concerning the commercial development of the  
9 piece of property here that we're looking at tonight. The  
10 vote was overwhelmingly against the development, the part  
11 of that development we feel like constituted a truck stop.

12 We find no problems with the grocery  
13 store, drug stores, those type of things. The truck stop  
14 part is what we're concerned about. A couple of things I'd  
15 like to mention in regard to the issue whether it's a truck  
16 stop or not or intended to be. At a public meeting at the  
17 Norge Community Center, the owner of Frank's Stop, whose  
18 name I can't recall, I don't know whether he is here tonight  
19 or not, made a statement that acquaintance or friend of his  
20 in Virginia International Realty, Mr. Scruggs represents,  
21 made the statement to him that they intended to build a  
22 truck stop at this location.

23 That statement was supposedly made  
24 or made in December of 1982. Also, I can point out something  
25 on this layout over here. At that same meeting, a Site Plan

1 was put up for us to look at. A building in this area was  
2 labeled, "Wash." "Wash." The word, "Truck," had been blacked  
3 out which to me was an obvious case of deception on the part  
4 of the people developing this property.

5 Also, at another public meeting, Mr.  
6 Scruggs made the statement that his, the people he  
7 represented would be glad to buy the property of anybody in  
8 Elmwood who was worried about this development.

9 I have asked him to bring me a  
10 contract for my property at the assessed value, and he has  
11 not done so. That's all I have to say. Thank you.

12 MS. HILL: Could I ask a question  
13 before I say anything?

14 CHAIRMAN: Certainly.

15 MS. HILL: Do you all intend to ask  
16 the 64 Associates if they're going to -- any of the questions  
17 that have been brought up tonight? Specifically about the  
18 corner of the project.

19 MR. DANSBY: We're prepared to answer  
20 them. We didn't think this is the proper forum --

21 CHAIRMAN: I asked you the question.  
22 They are not -- if they're pertinent to our making the  
23 decision, we'll ask them.

24 MS. HILL: I just wondered if you  
25 felt they were.

1 CHAIRMAN: Well, we haven't heard  
2 all the people.

3 MS. HILL: My name is Sue Hill and  
4 I live in Elmwood. I want to restate that we in the Croaker  
5 area, in the Coalition whom I am representing, are not  
6 opposed to commercial development at this site. What we are  
7 concerned about it are the portions of the development which  
8 are intended which appear to be a truck stop to us and as  
9 for obvious reasons, that you can look at the site plan  
10 and see, and because the statements made to us at three  
11 public meetings, which I attended.

12 At each of these meetings, the  
13 developers proudly accented the grocery store and retail  
14 shops and they go on to admit these stores could not fly alone,  
15 and they do in fact admit the project exist and profit with  
16 only the fueling station on the 22 acres of land.

17 They have mentioned eight fueling  
18 islands with potential for more, and mentioned four pumps  
19 stations with island and they did admit four of the islands  
20 was for diesel sales and that was negotiable.

21 They acknowledged in public and  
22 private they could not and would not contour the curbs or  
23 change the design of the supposedly gasoline station so  
24 as to discourage truck traffic. They have admitted to off-  
25 street parking for at least 20 trucks. They have used, in fact,



1 2.7 acres of land for this fueling station alone; they're  
2 talking about huge volumes of diesel and gasoline sales.  
3 With this type of traffic volume design primarily for truck  
4 and commercial vehicles, I'm very concerned with the off-  
5 street traffic flow.

6 This truck stop will generate  
7 tremendous traffic and their projected diesel fuel sales of  
8 1.6 million gallons a year assure us that's true. I'm  
9 concerned about the 12 school buses that pass by Route 625,  
10 the entrance there, daily, and this does not include the  
11 ones which are gone around the I64, 607 interchange daily.  
12 This is just the ones passing down 625.

13 I'm concerned about the dangers that  
14 the 500 children, which would be passing on those buses  
15 daily would be subjected to. From 18 wheel trucks, tandem  
16 trucks, their cargo, their fuel and lack of maneuverability and  
17 I hope you will not forget these little people when you're  
18 arguing over this project.

19 I don't feel that we can afford  
20 to let the lack of definition be a determining factor in this  
21 issue. This development will increase congestion far  
22 and above that associated with the community shopping center.  
23 Therefore, this is not a use in harmony with the provisions  
24 of the Zoning Chapter and it clearly should be denied in areas  
25 zoned A-1.

1 MS. COCHRAN: My name is Barbara  
2 Cochran and I live in Woodland Farms; I gave you a speech  
3 or portions of it; due to the shortness of time, I would  
4 merely request that you read it and consider some of the  
5 things that are said in it because some are related to what  
6 you have asked us to be specific about, whether or not we're  
7 not to judge whether or not it's permitted, but as it's been  
8 stated over and over again by many Citizens here, and I  
9 represent several which we also have signatures from the  
10 Woodland Farms area.

11 Many, many Citizens are opposed to  
12 this. Now, if there's a technicality upon which this might  
13 be sent to the Site Review Committee, that is fine, but you  
14 know, don't trap us all in technicalities. Listen to the  
15 fact that there are a great many Citizens who live in this  
16 community.

17 The Woodland Farms, Pine Ridge, Elm  
18 Ridge, Old Quaker Estates; I don't think you have very much  
19 support from the Citizens for this truck stop and as everybody  
20 said, we're not opposed to commercial development, we're  
21 not opposed to any type of commercial development that would  
22 serve the residents, but we just don't want to see, you know,  
23 I64 moved into our back yards and, you know, I hope that that  
24 is taken into consideration even though this may not be the  
25 correct forum because this isn't -- you're asked whether or not

1 it is an approved site, we feel it is not and relied when  
2 we purchased our homes on the fact it wasn't a use.

3 I don't think anybody sat down and  
4 said, "Are they going to put a truck stop in here six years  
5 from now," but you know, we're definitely opposed to it.

6 Thank you.

7 MR. HEMLICK: My name is Dan Hemlick;  
8 I'm in the Christianson State Home Owners Association, Vice  
9 President of it. We have contacted 70 people about the  
10 so-called truck stop and 60 people are opposed. We feel  
11 that it is poor land useage and it will effect existing  
12 communities such as Elmwood. And I don't think we're talking  
13 about a truck stop as referring to it to Anderson's  
14 Corner or Frank's.

15 I think it's more in the scope of  
16 Jeralds on Interstate 95 or close to King's Dominion  
17 certainly approaching that. We feel it will change the  
18 complex of the area where it is located. Just for the record,  
19 the people in Christianson have been contacted, 70 people  
20 and 60 were opposed to it. Thank you.

21 CHAIRMAN: Anyone else from Croaker  
22 Coalition? If not, Mr. John McFall.

23 MR. McFALL: Well, I'm just a retired  
24 Citizen, but I have been working against what I consider to  
25 be a truck stop; when I see that much asphalt and when I talk

1 to truckers up at the 7-11, I got a lot of pictures of that;  
2 if you would like to see them of many truck stops we have  
3 there already. I think that -- I think everybody realizes  
4 and the truckers say whatever you call it, it's going to be  
5 a truck stop. If you put that much asphalt and the Federal  
6 Government is going to permit double trailers to come in  
7 here, we're going to have a terrible traffic hazard in the  
8 entrance, for not only Elmwood, but the rest of 607,  
9 Quaker Estates, and the other people around.

10 I think it will have a big impact  
11 on James City County, and I'm against it as a Citizen.

12 CHAIRMAN: Mr. Bradshaw.

13 MR. BRADSHAW: I'm Andy Bradshaw; I'm  
14 an Attorney in Toano and I represent Mr. and Mrs. Robert  
15 Wright who are the owners of a substantial part of the  
16 property. They have contracted to sell the property to the  
17 developers. Members of the Zoning Appeal Board, the Zoning  
18 Administrator's interpretation that this project was not a  
19 permitted use logically required that he make either of two  
20 decisions. Either he had to decide that a particular  
21 component of that plan was not a permitted use or he had  
22 to decide that a combination of permitted uses constitutes  
23 on nonpermitted use.

24 Let's look at that first choice that  
25 a particular component of the plan is not a permitted use.

1 The Zoning Administrator's presentation to you suggested  
2 the facility with eight fuel islands and two and a half acres  
3 of asphalt is not the permitted use. The Zoning  
4 Administrator labels that facility a truck stop and not  
5 finding that word among the listed uses in A-1, he determined  
6 it was not a permitted use.

7 This argument is incorrect because  
8 the Zoning Administrator has simply created a new undefined  
9 category that actually falls within a larger permitted  
10 category.

11 Let me give you some examples of what  
12 I mean by smaller categories within larger permitted  
13 categories. You'll find before you the County Code  
14 definition of a restaurant. The large category. Then  
15 specifically listed in defining it are some specific  
16 categories. Including cafe. And these are treated the same.

17 The specific use, in the larger  
18 category. Both permitted. You'll also find before you the  
19 definition of retail stores and by way of definition, they  
20 include a smaller category. That have food stores and again  
21 both are treated the same. The larger category, retail  
22 stores, the smaller category, food stores.

23 You'll find another one before you,  
24 that of a hospital. You'll also find a definition  
25 for a hospital special care. Now, hospital special care is a

1 use, a specific category within the larger category, but  
2 it's not treated the same. And please note the care with  
3 which the specific category is excluded, because they're  
4 treated differently.

5 We can assume then that unless  
6 there's some specific language excluding a smaller category  
7 within a larger permitted category, then that specific  
8 category is permitted.

9 Now, the general category permitted  
10 in A-1 zoning is that of a gasoline service station, very  
11 critical language. Gasoline service station. And that  
12 term has a relatively clear meaning. There are two rules  
13 of construction we need to consider. The first one is a  
14 general rule of construction of any zoning ordinance. And  
15 that is you were to use the common and accepted use of the  
16 language considering the structure of the ordinance as a  
17 whole.

18 The second and more specific rule  
19 of construction, is that we need to refer to the State Code  
20 for terms undefined in the County Code. And you'll find  
21 before you a copy of Section 1-2 of the County Code, which  
22 specifically says that, "All words, terms and so forth,  
23 not defined in this section or elsewhere in this Code, shall  
24 be construed as provided in the Code of Virginia."

25 Now, since we don't find within our

1 County Code a definition for gasoline service station,  
2 the next place we turn is the State Code. Before you you will  
3 find a copy of the definition from the State Code.

4 MR. DANSBY: Could I stop you; are  
5 you referring to things before us and I can't find them.

6 MR. BRADSHAW: Mr. Stevens.

7 MR. DANSBY: All right.

8 MR. BRADSHAW: I'm sorry.

9 MR. DANSBY: Excuse me.

10 MR. BRADSHAW: Again most of those  
11 definitions were simply by way of examples. The smaller  
12 categories within the larger categories. The one exception  
13 being the hospitals were a special included category was  
14 treated differently.

15 The next point then was what our  
16 County Code tells us to do in interpreting the language.  
17 First the general rule that we use -- common and accepted  
18 useage of a word considering the structure of the ordinance  
19 as a whole, and then it tells us to refer to the State Code  
20 for undefined terms. And that's the County Code, Section  
21 Two, the very first on the page.

22 So since gasoline service station  
23 is not defined in the County Code, we then look to the State  
24 Code. I believe it will be on the third page of those  
25 three that you find two State Code definitions. The first, a

1 service station. And it says in that particular article  
2 service station means an establishment whose principal  
3 business is selling or offering for sale gasoline, oil  
4 and automobile accessories. And then a further definition  
5 that of gasoline follows. It tells us it includes a number  
6 of products derived from petroleum or other sources, the  
7 only one being excluded is kerosene.

8 What this tells me is if we look to the  
9 gas station, a gasoline service station is going to mean an  
10 establishment whose principal business is selling or offering  
11 for sale gasoline which also includes by that definition,  
12 diesel fuel. There's no distinguishing between those two  
13 items. They're both considered gasoline.

14 So we look at this -- we look at  
15 that first argument of construction. What does the State  
16 Code tell us to do. We then turn to the second rule of  
17 construction. We look to the ordinance as a whole. First  
18 look to the A-1 statement of the intent, again that's before  
19 you, you've also seen it several times tonight, the critical  
20 language being in it we're to permit nearly all activities  
21 to continue, and it suggests we have a minimum of regulation.

22 The second thing we need to look at  
23 if we're going to review the ordinance as a whole, is how  
24 similar uses occur in more restricted zones. That's why I've  
25 included for you an excerpt from the zone R-4, a more



1 restricted zone. You'll find that on the second page of the  
2 handout, at the very bottom. James City County Code  
3 Section 20-78. And what it tells us is that in the  
4 residential plan community that being district R-4, the  
5 permitted use is an automobile service station, not a gasoline  
6 service station, an automobile service station. Again, a  
7 term not defined, turn back to the State Code.

8 What do we find the definition of  
9 service station, modified by automobile. Why the  
10 distinction. It's clear to me in the A-1 where we have --  
11 where we have less regulation, the service station need not  
12 be limited to automobiles.

13 In fact, it tells us what it's  
14 limited to, gasoline. Which by State definition includes  
15 diesel fuel. The Zoning Administrator's other specific  
16 criteria for labeling the facility a truck stop was a large  
17 paved area.

18 I simply comment to you a permitted  
19 use in the A-1 zone and again a copy of that is before you,  
20 is storage and repair of heavy equipment. Simply because  
21 we have a large area for storage of heavy equipment, which  
22 it seems to me would certainly include a tractor trailer; it  
23 specifically mentioned as a permitted use in zone A-1.  
24 You will notice in the more restricted zones, it says heavy  
25 equipment or storage area has to be under cover. We certainly

1 wouldn't expect this in R-4 then. It needs to be under  
2 cover there. So by looking at the entire zoning ordinance  
3 as a whole, by looking to the terms defined in the State  
4 Code, we can see the difference.

5 The Zoning Administrator's last  
6 specific argument was that the word, "Truck stop," is his name  
7 for the project was not listed. Let me remind you the absence  
8 of a specific name for a facility falling within a general  
9 category does not bar that specific use.

10 For instance, notice that we define  
11 retail store definition or had the retail stores are  
12 defined, but they never mention pharmacy, does that mean that  
13 James City County can not have a pharmacy. Certainly not,  
14 and yet that word never appears. Look at the definition of  
15 professional offices, it never mentioned a lawyer's office.  
16 Does that mean that James City County can never have a lawyer's  
17 office. No, although the word is not specifically listed,  
18 it is included within the larger category professional  
19 offices, and finally that of Government offices, and yet  
20 the Code never mentions a school board office. Obviously it  
21 does not mean we can't have a school board office. It's  
22 included within the larger category, even though it's not  
23 specifically mentioned.

24 Therefore, I think there is no  
25 particular component of the plan which is not a permitted use

1 in the A-1 zone. Recall then that the Zoning Administrator's  
2 other logical alternative is that a combination of permitted  
3 uses constitutes a nonpermitted use. And his letter suggests  
4 the combination of a service station, a restaurant and a  
5 motel makes this project something different.

6 Now that's not an irrational argument,  
7 but it is absolutely contrary to the clear language of the  
8 Code in the prior policy of our County Administration.  
9 Look first for the language of the Code. Again referring you  
10 to the A-1 uses where it says one or more of the following  
11 uses.

12 Certainly if a combination of  
13 permitted uses could possibly constitute a nonpermitted use,  
14 the Code would not say one or more of them. And in finally  
15 looking at the policy. Consider a shopping center or a  
16 shopping mall. Neither is ever defined, neither is listed  
17 as a permitted use in any zone whatsoever. Yet would  
18 either of those ever be challenged as a permitted use even  
19 though it might contain retail shops, gifts shops,  
20 restaurants, department stores, beauty shops. Provided its  
21 individual components are permitted, certainly the larger  
22 project would be and always has been permitted. There are  
23 only two possible decisions that could have justified the  
24 Zoning Administrator's interpretation.

25 First, that a particular use was not

1 permitted. We have examined the general and specific  
2 categories, we have examined the rules of construction, we  
3 looked at the State definitions, we contrasted the definition  
4 in the uses in the A-1 zone with the more restricted zone  
5 and we have noted that the absence of a specific name within  
6 a general category does not bar that specific use.

7 I hope then, therefore, that you will  
8 determine that the alleged nonpermitted use falls within the  
9 categories of permitted uses in zone A-1.

10 The second alternative, remember,  
11 was that a combination of permitted uses may be a special  
12 case and therefore not permitted. We have looked at the  
13 specific language of the Code, we've looked at the policy.  
14 I urge you therefore to rule that the proposed plan is a  
15 permitted use in the A-1 rule and direct that the plans be  
16 sent to the Site Review Committee. Thank you.

17 CHAIRMAN: Mr. Steve Lentz.

18 MR. LENTZ: I'd like to defer to  
19 Mr. Graber and speak after him, if I may.

20 MR. GRABER: I'm an attorney, Steve  
21 Graber in town. As a matter of course, I represent some  
22 of the residents out Elmwood way and they've asked me to speak  
23 on their behalf.

24 First of all I'd like to applaud the  
25 comments made by Mr. Anderson, who so far has given the only

1 proper exigencies of the law. The commercial zone there for  
2 the interchange for that particular interchange is commercial.  
3 Properly defined allows no service station, gasoline  
4 station, nothing. It only allows convenience stores. This  
5 Board or somebody has allowed the service -- the convenience  
6 stores, have convenience stores, 7-11, to be built there and  
7 what it is there speaks pretty loudly for what was intended  
8 for commercial development.

9 When you get into the legal application  
10 of why you're here, you mentioned two issues. One issue is  
11 to rule, a question to rule on whether or not the actions  
12 of Mr. Rintort were ultra vires beyond the scope of his  
13 authority. The law invests no judicial authority in this  
14 Board. You do not have the authority to make that sort of  
15 decision.

16 The only authority you have is to  
17 review his actions and either affirm or deny. And that is  
18 the case law, that has been the case law in Virginia since  
19 zoning became popular. It's well within the Board of Zoning  
20 Appeal's discretion to take practical application to the  
21 facts and determine that this is in fact an unpermitted use,  
22 a truck stop. It doesn't fall within the comprehensive plan.  
23 The Code of Virginia requires the comprehensive plan to be  
24 developed. It then states in the very next section, Section  
25 15.1-446, et seq, that that comprehensive plan is legally

1 binding to measure this community has adopted comprehensive  
2 plan. That says that interchange is commercial and then  
3 defines commercial as Mr. Anderson defines it.

4 It also defines major commercial.  
5 Which that intersection is not. That particular definition  
6 includes the term language shopping centers. The sign on  
7 that property out there today says, "Shopping Center."  
8 Shopping Center does not appear in the term commercial.  
9 Only small services. I.E., a convenience store. Also,  
10 the comprehensive plan next defines tourist commercial.

11 Of the three commercial definitions,  
12 this is the only definition that allows for an automobile  
13 service station. I am astonished and take exception to the  
14 quoting of the rule of construction that an ordinance is to  
15 be taken in its whole and then isolating on the term  
16 gasoline. I would more concur with Mr. Anderson's definition.

17 You take the ordinance as a whole,  
18 the whole ordinance is not A-1. The whole ordinance is  
19 A-1 through M-2. Going from limiting to delimiting. The  
20 language in M-1 says that that is for industrial use,  
21 particularly addressing nuisance factors which are not  
22 conducive to residential development.

23 It also includes hotels, motels,  
24 restaurants. Most of the things proposed here by the  
25 developers. Now, you've heard from the community. If there's

1 any question in your mind that this is going to be a nuisance,  
2 we'd submit to you that there is not any question, but the  
3 size and the gravamen of this particular project is far more  
4 within M-1, a nuisance which is not compatible with  
5 residential development. It's the only access to the area.

6 There's an interesting case that  
7 has been decided by the Supreme Court of Virginia. That case  
8 was Supervisors of Loudoun County versus Lerner. Up north  
9 there was an access road going into Dulles Airport and seven  
10 years before, they actually granted or talked about the  
11 permit, the planning people put together the comprehensive  
12 plan. That plan designated the interchange of the two  
13 routes involved for a shopping center.

14 Based on that information, one of  
15 the people who had some inside information bought up the land.  
16 And at the appropriate time came, applied to put his shopping  
17 center in. The Board, which would be your -- the same  
18 position you're in, denied that shopping center even though  
19 it was not -- not only in the same zone, it was the exact  
20 same use under the comprehensive plan.

21 The reason they denied it was because  
22 the developer, Lerner, when he went to plan this and put it  
23 together, came up with an empirical data and he said it was  
24 going to take 100,000 people to support this particular  
25 project.

1                   We had done a radius within 15 miles  
2 and there are 100,000 people there. The Board said not  
3 good enough. Not only do you have to show us there are  
4 100,000 people there, you got to show us there are 100,000  
5 people who will use it, patronize it and supply its support  
6 base.

7                   On April sixth, I asked a question  
8 directly to the developers. I asked them for their  
9 empirical data that would show that they had a support base  
10 of 18,000 people, which was their figure of the support base  
11 required. That question went unanswered. I would ask you  
12 to hold their feet to the fire. Not only to show that empirical  
13 data, but to show the empirical data that demonstrates  
14 the commerce they project; the tax base they project will not  
15 be drawing from existing commerce, but will in fact be new  
16 commerce.

17                   I submit to you the very name I64  
18 tells us a lot. It's not Croaker Development Association,  
19 it's not Northern James City County Shopping Center, it's  
20 I-64. The scope and magnitude of this is far beyond the  
21 mere commercial designation that exists in the planning  
22 scheme and the law in Lerner says that isn't good enough.

23                   The Supreme Court of Virginia, which  
24 has been upheld -- the last time this case was upheld was  
25 December third of 1982. Every decision since this Lerner



1 case, which is in 1980, has upheld the decision. It says,  
2 look, you can't look out on the Highway I-64 and determine  
3 what your support base is going to be. You got to come up  
4 with some hard empirical data. You got to show us it's  
5 really going to happen and that's within your discretion.

6 Another thing about the law. The  
7 issue is whether this is fairly debatable. And if you all  
8 feel it's fairly debatable, it's fairly debatable. You  
9 don't have any burdens of proof. They got the burden of  
10 proof.

11 I think the practical demonstration  
12 and just the whole end of this in applying the interpretation  
13 of the zoning, if we want to talk beyond the comprehensive  
14 plan, the zoning ordinance you're talking from A-1,  
15 R-4, B-1, M-1, those are the only categories that address  
16 anything that has anything to do with commercial petroleum.  
17 And they go from gasoline, which is delimiting, to automotive,  
18 to automotive/petroleum storage, to automobile service  
19 stations and truck terminals.

20 It's incomprehensible to me that  
21 men and women of the intelligent quotient that we have sitting  
22 in our Government would say, "Listen, we really want to  
23 put trucks in A-1 and we want to have the truck stops  
24 there, but we're not going to say anything about trucks until  
25 we get to M-1."

1 I submit to you that is unreasonable  
2 and we are to take the ordinance as a whole. Certainly  
3 they designated truck terminals and trucks in M-1.  
4 Truck terminals provide a nuisance factor to residential  
5 development, that's why it is there. It's common sense  
6 again.

7 Mr. Anderson brought up the issue of  
8 common sense. So the first issue you have before you,  
9 should you send this back to the site plan. I submit to you  
10 the case law does not give you that prerogative. The  
11 second issue is this a permitted use. Taking the comprehensive  
12 plan to which you're legally bound does not provide for this  
13 sort of a demonstration, this sort of a -- of a project,  
14 and secondly, the overall zoning ordinance using the meaning  
15 of the ordinance tells you that there's one place trucks  
16 belong, that's in M-1. Thank you.

17 CHAIRMAN: Steve Lentz.

18 MR. LENTZ: I think everything that  
19 has been said has been said. I'd like to concur with Mr.  
20 Graber and Mr. Anderson; in the interest of time, I would say  
21 what they have said, I concur.

22 CHAIRMAN: Steven Francis.

23 MR. FRANCIS: As a resident of James  
24 City County and resident of Elmwood, about 12 hours from now  
25 I'll be purchasing a home in Elmwood and I would like to concur

1 with Mr. Graber and Mr. Anderson; I don't think the truck  
2 stop is in the best interest of the community and is basically  
3 be using the goings and commercial of I64 to keep -- keep  
4 it going as far as the commerce and the revenue of the  
5 project, and the name of 64 Associates does clearly  
6 determine what their intentions are. Thank you.

7 CHAIRMAN: Mr. Mel Bryant.

8 MR. BRYANT: Thank you, sir. Mel Bryant,  
9 I have been to the public hearing on this and I've heard  
10 people from different developments speak on the advantage  
11 of having this type facility and reasons for not having it.  
12 I live in Norge Court adjoining Norvalia.

13 I don't know how my neighbors feel  
14 about this. Having served on the Planning Commission, having  
15 retired after 23 years of service here in James City County  
16 working for State, Federal and County all at the same time,  
17 I feel that I can speak a little bit to the point that we  
18 have here.

19 One of the things you asked, should  
20 this be returned to the Site Plan Review Committee. I know  
21 some of the members of the Planning Staff are new to this  
22 area and I can not understand why in a situation like this,  
23 that this project wasn't returned or wasn't turned over  
24 to the Site Plan Review Committee instead of having to come  
25 to this Board of Zoning Appeals. It certainly is a better

1 answer to receive it from a group of people representative  
2 of your County than to receive it from the Chief Planner  
3 of James City County.

4 As to what you can do with your  
5 property, and now you gentlemen have the decision to make.  
6 It's been turned over to you and, lady, I'm sorry, Mrs.  
7 Vaiden. I don't want to leave you out. I feel it is  
8 in capable hands at this point with you to make the decision.  
9 I think the agricultural lands of James City County, which I  
10 have worked primarily with through the years up until two  
11 years ago, two and a half years ago, have been in good hands,  
12 and the Commission, the Planning Commission, the Site Plan  
13 Review, the Board of Zoning Appeals, and you have done a  
14 tremendous job with it.

15 As far as I'm concerned, the area  
16 of James City County will need shopping centers, we see  
17 the outlet mall going in at Lightfoot, I saw the lights go  
18 up, to stop me from traveling to Williamsburg to do my  
19 grocery shopping, and I said, "Well, another set of lights,"  
20 and I don't like stop lights. I don't think any of us like  
21 to wait for the other fellow to have his turn when we're  
22 on the main highway, but we got them at the pottery and you  
23 got them at Lightfoot now, and we're going to have  
24 development in James City County, whether we like it or not.

25 People want to move out of Newport News

1 and want to move to Haven, Chickahominy Haven, to Race-  
2 field which is out there by Barhamsville; some of you don't  
3 know where it is, I'll bet, and to the far reaches of James  
4 City County, up in that area and even down in Grove.

5 We didn't have the problems when  
6 Mr. Busch wanted to put the brewery down here, in the Kings Mill  
7 development sitting right in there, with some beautiful  
8 homes, and I hate to live in Grove or somewhere like that  
9 and have to get through all that traffic, not only cars,  
10 but trucks and buses and everything else. And I'm thankful  
11 I don't have to live down there, but this is something we  
12 have to face and these folks that own the land, when I  
13 came here, 23 years ago, have had an opportunity to sell it  
14 for development, and I think with Site Plan Review Committee  
15 and all the commissions that we have, and the County Board  
16 of Supervisors, we can do this thing and not have all of this  
17 talk about prostitution and what all, that we can't control.

18 We have one of the best fire  
19 departments anywhere in the area. We have police, I guess  
20 we're going to have a police chief. I don't believe he's  
21 been hired yet, employed. But I feel real safe in James  
22 City County where the police department, the fire department  
23 that we have.

24 And one thing I'd like to point out,  
25 after I left the office in Toano, one of the things that

1   grieved me when I went back up there was to find a garbage  
2   dump right in behind the County Office Building. There  
3   wasn't a public hearing held to determine whether a garbage  
4   dump should go in there in the small parking area for all  
5   of our people. To go to those offices, to Social Service  
6   Office was there at that time. And a lot of others when I  
7   was there.

8                   No one has a chance to say whether  
9   they wanted a garbage dump behind the office building or not.  
10   They put it there. Someone put it there. And just  
11   recently I attended a hearing where some of the neighbors  
12   were complaining about the rats in that area, right behind  
13   the office building and everything else.

14                  Now, I think that should have gone  
15   to the Site Plan Review Committee, but it didn't. And I am  
16   just asking that the Site Plan Review Committee representing  
17   all of the developments in James City County, the Board of  
18   Zoning Appeals, and the supervisors of this County, give it  
19   serious consideration that these things be taken step at a  
20   time rather than to turn it over to the department head  
21   who may have just come in here six months ago, I really  
22   don't know how long he's been here, to overrule decision and  
23   make the decision, it's got to go this way or not going at  
24   all because we got a lot of outland out there, people own  
25   it and want to do something with it. And I hope that you will

1 make the right decision.

2 I see nothing wrong with a store and  
3 the shops in the area we're talking about. I'm not going  
4 to say whether I can see a truck stop in there. I don't --  
5 object to truck stopping anywhere along the highway, the  
6 Interstate Highway particularly. I stopped at many truck  
7 stops and got some of my better meals there and better  
8 service there. Traveling from here to Blacksburg and other  
9 places on Interstate 84. I really can't see where there's  
10 going to be a large truck stop on this small property to  
11 start with.

12 But I can see no objection to it.  
13 I want to see some stores and shops in James City County  
14 where we don't have to come to Williamsburg and come through  
15 the stop lights and into all of this -- built up area to do  
16 our shopping. I thank you for your time.

17 CHAIRMAN: Mr. Branch.

18 MR. BRANCH: I'm Hammond Branch,  
19 tax payer of Stone House district. Under your guidelines,  
20 I can't say what I prepared to come down here to say. In  
21 the open hearing I would like to have a part in. But  
22 I'm -- I am in favor of this commercial enterprise. I see  
23 nothing wrong with it. And I agree with Mr. Bryant 100 percent.  
24 You ought to be thinking besides what is permitted so much  
25 here, nobody seems to know. Mr. Anderson didn't know and you

1 should be thinking about the long range of James City County.  
2 We need commercial development on sites that we got north  
3 of Lightfoot. There are very few other than that, and there  
4 are plenty of them up there. I had a lot to do with picking  
5 them out back here before we got Busch.

6 We had an economic committee that  
7 worked as advisory to the Board of Supervisors and I was the  
8 one that had to go around to the land owners to see if they  
9 would sell these commercial uses, and we were just about  
10 to get out a brochure when we got Busch and two or three  
11 other things, and then that ended that.

12 But I see nothing wrong with it; I  
13 really don't believe this can develop into a truck stop. And  
14 I know a lot about trucks. My daddy and I have hired  
15 thousands of tractor trailer trucks to go all over the Country  
16 and I know a lot about them and the truck -- truckers are  
17 going to stay on a big truck stop on the truck thorofare.  
18 This is nothing but a spur route for a truck from Richmond  
19 to Norfolk. Just to come down and unload and get back to  
20 Gerald's and some other big truck stop where they can get  
21 good service.

22 A truck stop, these folks here don't  
23 know what a truck stop is. Don't know much about trucks.  
24 A truck stop gives you the truckers information where to pick  
25 up the next load and all those things. They go up on the



1 bulletin board and they got big rooms there where truckers  
2 can relax while they're servicing that truck. Got a -- TV  
3 screen go almost across this room and that sort of thing.

4 A lot of easy chairs and -- I'm for  
5 it. I think you're making a mistake if you turn it down.

6 CHAIRMAN: Mr. Morrison.

7 MR. MORRISON: I'm George Morrison, I  
8 live at Norge. I live a little further away from this  
9 intersection and the people in Elmwood are probably a little  
10 closer to it than the people in Woodland Farms. As you call,  
11 most of you know, I sat on this Board for a number of years  
12 and you all have heard all the pro's and con's in this on a  
13 number of times. I'm going to be presumptuous enough to  
14 offer you all what I would consider a good solution to you  
15 all's dilemma here tonight.

16 Mr. Rintort's decision to arbitrarily  
17 turn this thing down has sidetracked the normal process.  
18 Which would have kept this out of you all's laps really.  
19 My thought tonight as a solution for you all tonight would be  
20 to approve the useage that has been applied for in this  
21 development, and request that it be sent on to the Site Plan  
22 Review Committee with Mr. Rintort's comments and leave it  
23 up to the Site Plan Review Committee, which my understanding  
24 is an advisory panel to developers to keep them within the  
25 zoning ordinance, see they comply and let the Site Planning

1 Review Committee and the developer work this thing out.

2 I don't see how you have any other  
3 choice, gentlemen, and Mrs. Vaiden. I am very much in favor  
4 of this; I think it would be really one of the worst things  
5 that could happen to set a precedent of turning down a  
6 development in an area that is got to be commercial sooner  
7 or later. People that come out from down on the  
8 Peninsula and come out here in the country and build homes  
9 to live, and build them close to the Interstate so they can  
10 access to it, and then turn around and object to the -- to  
11 the best commercial land in the County being developed  
12 seems to be pretty naive to me. I thank you.

13 CHAIRMAN: Mr. Rick Hutchins.

14 MR. HUTCHINS: Ladies and gentlemen,  
15 lady, is that better, I didn't come tonight to speak, but --  
16 in order for me to present my presentation, Mr. Rintort,  
17 you have that book that you quoted from that you -- used  
18 as your source of truck stop. May I use it?

19 (At this time, the  
20 book was handed to Mr. Hutchins.)

21 MR. HUTCHINS: Please look it up for  
22 me.

23 MR. RINTORT: It's marked with a paper  
24 clip and marked in alphabetical order, if it will help you.

25 MR. HUTCHINS: Right down to organic

1 waste. I must not be close yet. I think you have two  
2 questions before you tonight. They do not include, is a  
3 truck stop a good use of this land, do not include whether  
4 prostitution come in, do not include any of the other things  
5 that I heard tonight.

6 What they do include is number one,  
7 did Mr. Rintort do the proper thing in not going through  
8 the channels; to that I only submit what I heard someone  
9 else tonight say that the Code says that he shall do it.  
10 No more to be said about it.

11 The other thing, I believe you have  
12 a question as to whether this development constitutes a  
13 truck stop. There have been all kinds of things going around  
14 here tonight as to what is zoned a truck stop is permitted  
15 in and first of all, I'd like for you to look at this book  
16 Mr. Rintort has. Following truck stop, it has truck terminal.  
17 Truck terminal is listed in our Code book. It's in the  
18 County Code. Truck stop doesn't even appear. Why, I don't  
19 know. Maybe it's because it's not worth talking about, but  
20 I would like to -- to bring to your attention something in  
21 here about what a truck stop is, and I think this is -- the  
22 key word that you need to consider.

23 This is the last sentence in truck  
24 stop definition, it says, "A truck stop also," and I know  
25 what follows that question. "May include overnight

1 accommodations and restaurant facilities solely for the  
2 use of truck crews." They are proposing on this project  
3 125 motel rooms; it's already been told you tonight this  
4 monstrous bit of black top up here will accommodate 20  
5 trucks if it's all used for trucks. Who in his right mind  
6 would put in accommodations to park 20 trucks and think  
7 they're going to fill up 125 rooms. Two restaurants and  
8 a grocery store and all the other stuff. Thank you, Mr.  
9 Rintort.

10 MR. RINTORT: You're welcome.

11 CHAIRMAN: Mr. John Filtruck.

12 MR. FILTRUCK: It's quite hard  
13 to follow a group of lawyers. I thought we were having a  
14 convention of lawyers. I live out in the community. I  
15 moved in the James City County in 1971 and fortunately  
16 enough we had a lot of reasonable people. To allow you to  
17 develop and go ahead and help the community out. However,  
18 you know, it's nice if you can buy an acre of land over  
19 here in Skipwith and control what happens out in Stone House  
20 district, you can't do that.

21 Now, you people really got a problem.  
22 Your two issues tonight are this. You're going to figure  
23 how am I done. The hot potato has been thrown in your lap,  
24 do I throw it back or do I hold it or I go forward. The  
25 three mistakes been made. And I'm no lawyer by far.

1                               One, it wasn't covered in A-1  
2 thoroughly, it wasn't covered in M-1 thoroughly. Now, I  
3 put almost 20 years in transportation. I know ideal location  
4 for truck stops. Back when the Cuban Crisis, I sat out  
5 at Fort Eustis, stayed awake for a grand total of 52 hours  
6 moving almost every piece of equipment and establishing  
7 large strip maps, coordinate moves ahead, fuel stops, meal stops  
8 and non-stop trip from Fort Eustis to Opa-Locka, Florida,  
9 which is jumping off point at that time.

10                              I have been in trucks, I have been  
11 all over Europe in trucks; my family background is trucks in  
12 Cleveland, Ohio. Almost all my relatives are in trucks;  
13 I wouldn't want trucks in my immediate area, my back door  
14 running up and down the street.

15                              We're speaking of communities which  
16 are away from these, not right next door where you're going  
17 to hear them all night long. They hear them as well on 64.  
18 I live on Route 600 which is not far, I hear them. I can't  
19 control what's happening on 64, nor can you. But I believe  
20 you got these mistakes here that have to be rectified.

21                              One, the mistake was the potato  
22 was thrown back to you. You got to react to it. No use  
23 bouncing it back to these people. This truck stop should be  
24 proved if you want to call it a truck stop, and if you want to  
25 change your zoning to meet the next one, change it, but you

1 know that it's an ideal location. Right off of 64, you got  
2 a 28 acre site there, it's ideal for putting it like Mr.  
3 Hutchins spoke a few minutes ago, through experience, you're  
4 not getting over 20 trucks in there, that's all you're  
5 going to put in there; you're not talking about people not  
6 experienced drivers behind 18 wheelers, you're talking about  
7 people who drive professionally daily. They are not prone  
8 to have accidents. They are not going to run over your  
9 school buses.

10 Give a decent road to come in, the  
11 only thing you have to do in there is give Elmwood also  
12 a wider road. Now, the 7-11 Store every night over there,  
13 it's hard to get a parking spot, the truckers are all  
14 going to 7-11, so you know you're not going to defeat  
15 the purpose and stop the truck drivers.

16 Give them a place to go. Help the  
17 County expand and get up and say, "Look at the revenue it's  
18 going to bring in." Lawyer Anderson when he said sixth sense,  
19 I started thinking about Robinson Caruso, all I could think  
20 about a hot potato. Use your sixth sense. Approve the  
21 thing and that's the only thing I can see.

22 If you want to call it a truck  
23 stop, yes mam. Approve it, why not. You know then we went  
24 back to this -- what the people are going to do. How are  
25 the truckers going to react. They're going to react like

1 human beings like you do. They're not going to bring in a  
2 bunch of dope and gangs with them, they're coming in here  
3 to make a living. That's all they do when they go to the  
4 7-11; if they wanted to make a dope drop, they would  
5 make it at the 7-11. Let your conscious be your guide.

6 CHAIRMAN: Mr. Wilder.

7 MR. WILDER: My name is Thomas Long  
8 Wilder, Junior, and I live in Elmwood; I think one of the  
9 questions you need to address is whether or not Mr. Reintort  
10 acted responsibly. In refusing the site. In his opinion,  
11 and in the opinion of an awful lot of people you heard  
12 tonight, this is a truck stop which is apparently not a  
13 permitted use for this commercial land and I personally  
14 don't want a truck stop in my back yard and I don't think  
15 you folks do, either.

16 I think Mr. Rintort acted responsibly  
17 and I hope you do the same. Thank you.

18 (At this time, there  
19 was applause from the audience.)

20 CHAIRMAN: Is there anyone who hasn't  
21 spoken who would like to speak?

22 MR. HORNSBY: My name is Bob Hornsby  
23 and I didn't come to -- I live in Stone House district; I  
24 didn't come to make a comment for or against the truck stop  
25 at this time. I came frankly to get an idea of the issues

1 that were at hand here because I feel that it has been my  
2 opinion that what you all do, people have said you all  
3 don't have to decide here tonight whether or not this is a  
4 good -- truck stop is a permitted use. It was my opinion  
5 that Mr. Rintort was exercising his, one of his duties as  
6 Zoning Administrator in deciding he made an interpretation,  
7 I feel that this wasn't a permitted use.

8 Now, they are appealing, I feel,  
9 that they think it is. I think before you can send to the  
10 Site Planning Review Committee, you need to decide whether  
11 or not it's a permitted use because Mr. Rintort has said  
12 it's not and therefore he's not going to submit it on those  
13 grounds; I came because I feel this decision has a lot of  
14 precedent on how all the zoning ordinances are interpreted  
15 for all of us in James City County. That's all I want to  
16 say. Thank you.

17 CHAIRMAN: Anyone else who hasn't  
18 spoken who would like to speak? Did someone in the  
19 back?

20 MR. MALARI: My name is Anthony  
21 Domonic Malari; I live in Elmwood across the street from Mr.  
22 Scrugg. We have heard a lot of people talking tonight and a  
23 lot of legalities. But I'd like to appeal to your  
24 human sense. This is a fire lane coming across -- from where  
25 my front door is. When I moved out there two years ago,



1 I moved out there with the intentions of being out in the  
2 country, away from commercial development. I have two  
3 children that I care very much about. The development that  
4 is proposed out there is a truck stop. If you all look  
5 inward tonight and think of us, people who are struggling  
6 along in life who have yet not made a good living to where  
7 we can dart around the country and choose the best area  
8 to live in with children.

9 We can not possibly keep on running  
10 away from this. I have had my house on the market for  
11 approximately three weeks. There have been people looking  
12 at it but nobody is willing to put down a contract. This  
13 is a truck stop and I hope that you will take my children  
14 in consideration as well as your grandchildren. Thank you.

15 CHAIRMAN: Would you fill out a card.  
16 Anyone else who would like to speak?

17 MR. LENTZ: My name is Steve Lentz  
18 and I'm an attorney in town. And I would just like to say  
19 this. That we appreciate you all taking the time tonight  
20 to meet here and we know that this has been a contested  
21 situation. It's not an easy decision for you to make. I  
22 think there are a lot of human factors that have been brought  
23 up and I agree with the one gentleman that said there  
24 have been a lot of lawyers here tonight, so I'm not going to  
25 recap the law. But I did just want to say this. That

1 especially directing myself to Mr. Hertzler who had asked the  
2 pointed question to Mr. Morton, I believe in the overall  
3 governmental view of the County, that there are people that  
4 are hired to be professionals and to be learned in different  
5 areas to help facilitate the County's wishes as it has been  
6 expressed through the different zoning ordinances.

7 And I think it was very proper for  
8 Mr. Rintort as the Zoning Administrator to make a very  
9 crucial initial determination when the proposal was brought  
10 to him, and that's before we put the Site Review Committee  
11 to work with the tax payers' money, is this a project that  
12 even falls within the contemplation of a permitted use?  
13 That should take up their time when there are other things  
14 they can be doing, also. And as Zoning Administrator, he's  
15 hired to administer the zoning ordinances, he's hired to know  
16 what the zoning ordinances say, the different ordinances  
17 are listed what's permitted there, and reading down the list,  
18 his determination was that this was not a permitted use.

19 The County Attorney has said that  
20 the decision was a legal decision, that there's nothing illegal  
21 in what he said, and so I believe the real crucial issue  
22 before you tonight is that a permitted use. And if you find  
23 that it's not a permitted use, then Mr. Rintort's decision  
24 at that point is upheld and that is the finding of the Board.  
25 So I believe that a crucial decision that you must now address

1 tonight is, is this a permitted use under the ordinance,  
2 and I believe that the evidence and the different points  
3 that have been brought out are that A-1 is not a not  
4 restricted zone. It is restricted and there are specific  
5 things that are mentioned and M-1 as Mr. Anderson has brought  
6 out is the only one that permits similar uses.

7 Mr. Bradshaw brought up the point  
8 that there are general categories and then there are specifics  
9 under those categories, and I would just say that -- a gasoline  
10 service station is a small category and a truck terminal is  
11 a large category. And that if the A-1 zoning contemplated  
12 a truck stop or a truck terminal under their zoning,  
13 they would have put a broader category of truck terminal which  
14 encompasses automotive and truck uses.

15 The truck terminal is much broader  
16 specification and I think one thing which is the human  
17 point, but I think it is an important point for you to  
18 understand because the gentleman's comments here and that's  
19 that the residents that surround this area that have come  
20 tonight and have signed petitions who have feelings about this  
21 are not against commercial development..

22 I think that would be unrealistic  
23 and I think if that's what was being presented to you, that  
24 would be a very difficult situation for you to respond to  
25 because of course there's going to be commercial development in

1 this area. The residents and the surrounding people, home  
2 owners, are not opposed to commercial development on this  
3 site. They are only opposed to a truck stop. And I think  
4 that message has come through loud and clear through the  
5 petitions and through the different testimony, and I think  
6 the issue is, is that truck stop permitted in this area  
7 and if it's not, then I think it's really incumbent upon you  
8 to support Mr. Rintort in his decision tonight. Thank you  
9 very much. We appreciate your time very much, all of us do.  
10 Thank you.

11 CHAIRMAN: Is there anyone else who  
12 would like to speak? If not, the public hearing is closed.

13 MR. MORTON: If it's appropriate, I  
14 do have a couple of comments to address an earlier issue  
15 that Mr. Hertzler made or raised. I think rightly or wrongly,  
16 the real issue that is before you all is being muddled  
17 by the issue of the Site Plan Review.

18 Now, that's a determination that you  
19 all will have to make tonight and that's fine. But I do  
20 want to point out a couple of things and specifically, what  
21 the Site Plan Review Committee, what their responsibilities  
22 are under the zoning ordinance. And I don't know of any other  
23 way other than to read you some of the language. I'll try  
24 not to read it all. It says under Section 20-20, "The Site  
25 Plan Review Committee shall examine and consider site plans

1 with respect to "A", intensity of land use, including  
2 developable acreage, density and adequate provision of  
3 open space and recreational facilities, as appropriate to the  
4 site useage and to the comprehensive plan." That's A.

5 "Section B, design and layout of the  
6 site including buildings, signs, recreation facilities, garbage  
7 and trash disposal facilities, sedimentation and erosion  
8 control, storm drainage, sanitary waste, water supply," and  
9 it goes on like that; it mentions on site esthetics, public  
10 safety features, environmental, historic, and so on.

11 My point is very simple. The Site Plan Review Committee is  
12 without authority to make a determination as to whether a  
13 specific project is or is not a permitted use.

14 To buttress that, the Zoning  
15 Administrator on April the fifth, 1983, returned the Site  
16 Plan and pointed out that insufficient information had  
17 been submitted to overturn his previous determination that  
18 it was a truck stop. And that's already been read to you.  
19 It concerned the number of pumps, the nature of the fuel and  
20 the size and -- and the underground facilities. Let me read  
21 you a provision under Section 20-19 of the Zoning Ordinance.  
22 Again we're talking about submittals, preliminary site plan  
23 submittals; the last sentence of that section says, "The  
24 submittal of a site plan with insufficient information shall  
25 result in the return of the plans to the applicant without

1 review. Such deficiencies shall be noted in written form."  
2 I suggest to you that on April the fifth, 1983, that's what  
3 the Zoning Administrator did. The only other comment I want  
4 to make would concern a provision that Mr. Bradshaw talked  
5 about and that is that we must look at the State Code.

6 I don't agree that every time the  
7 zoning ordinance does not have a definition that you go to  
8 the State Code. But even if you would, in this particular  
9 incident, automotive service station is the matter that's at  
10 issue under Section 20-34.2 which is the A-1 district and  
11 gives definition -- or lays out some criteria for automotive  
12 service station.

13 I think if you look in the State Code  
14 and identify the word automotive, it is a vehicle under 7500  
15 pounds. It is not a truck -- it is not a truck. A truck  
16 is -- defined as vehicles over 7500 pounds. And that's  
17 all I wanted to say. I'll be happy to answer any questions.

18 CHAIRMAN: Am I correct in assuming  
19 that the Site Plan Review Committee can alter or reject part  
20 or all of any plan that comes to them?

21 MR. MORTON: I think as long as a plan  
22 meets the specific criteria and there's an underlying  
23 assumption it's a permitted use, Mr. Mephram, I don't think  
24 we can avoid. I think they look to the criteria and if they  
25 meet the --

1 CHAIRMAN: The list you read?

2 MR. MORTON: Right, if those are  
3 acceptable, then they must approve the plan because it is  
4 not in their purview to judge whether the specific  
5 submittal is or is not a permitted use.

6 MR. DANSBY: Mr. Morton, you  
7 indicated that the Zoning Administrator had the authority  
8 to send this plan back for further information if he  
9 considered it insufficient, but does not the insufficient  
10 information refer to 15 items that are the submittal contents  
11 for the Site Plan and did not they comply with the submittal  
12 contents as required by the ordinance.

13 MR. MORTON: Again, in my judgement,  
14 the items that were submitted demonstrated that this was a  
15 nonpermitted use. And that being so, there has been nothing  
16 further submitted to change the Zoning Administrator's  
17 interpretation.

18 MR. HERTZLER: Well, the 7-11 be closed  
19 down if we turn this down, that's next door?

20 MR. MORTON: I don't know anything  
21 about the 7-11, Mr. -- certainly they would be -- under any  
22 provision, they would be a nonconforming use. I don't think  
23 there's any intent to -- to address the 7-11. I'm not familiar  
24 with it.

25 MR. HERTZLER: The 7-11 gets trucks

1 in there and I suppose it's a truck stop, truck stop 7-11.

2 SPECTATOR: No diesel fuel.

3 MR. MORTON: I don't think that's  
4 the issue.

5 MR. HERTZLER: In the district A-1,  
6 as I read down over this thing, of all the things that are  
7 permitted, truck stop would be one of the nicer things that  
8 can go in the A-1 district.

9 SPECTATOR: Put it next to your house.

10 MR. HERTZLER: Let me read you  
11 Group Quarters for agricultural workers that's first on the,  
12 then it's Group Quarters for agricultural workers. In A-1  
13 zone. I sympathize with everyone here because I've had  
14 the same thing happen to me that I thought were -- were not  
15 right, but if we look at this thing here, you can process  
16 food and store it there, but you can't kill animals, that's  
17 the only thing you can't do in your zone; in A-1, you can  
18 store all the meat you want, seafood, any smell that may -- come  
19 from food, you can have them and it doesn't say how far away,  
20 it just says in A-1. It can be next door.

21 SPECTATOR: Mr. Chairman, we're not  
22 objecting to processed foods or not.

23 MR. HERTZLER: I guess I have to go  
24 back to -- I'm confused, yes.

25 MR. ROBEY: Maybe I can help straighten



1 you out. We're not here to judge what's nice and what is not  
2 nice. We're here for two reasons; first, we're here, the  
3 Zoning Administrator has interpreted a primary site plan  
4 for the Croaker service center for a truck stop, which is  
5 not a permitted use in A-1. Now, the question of what is nice  
6 and what we like is not -- that's not the point right now.  
7 The 7-11 store is not the case, so we can forget about the  
8 7-11 or any other store.

9                   The next one, also, appealed is the  
10 Zoning Administrator's decision not to forward the primary  
11 site plan to the Site Review Committee for review. Now, these  
12 are the only two things we're here to make a decision on  
13 tonight. And as far as this, the powers of the Board, if you  
14 read, I won't attempt to read it, but if you take the  
15 zoning ordinance and turn to 6-1-2 and 6-1-3, it will spell  
16 it out exactly what the powers of the Zoning Administrator are.

17                   And I might read number six here, first  
18 line, it is to hear and decide appeals for the decision of  
19 the Zoning Administration -- Administrator, or application  
20 for special exceptions for use of property in a manner contrary  
21 to the provisions of this chapter. There's a lot more here.  
22 These are our responsibilities and I know how you feel, you  
23 know -- like you say, I don't like to have to make the decision  
24 either, but we can't get around it.

25                   CHAIRMAN: Mr. Robey out that pretty

1 well. One other thing we need to remember, that is this  
2 isn't for the Croaker interchange, it isn't for Anderson  
3 Corner, it is for all of A-1. Not just -- this question put  
4 before us tonight is not just for the Croaker interchange,  
5 it's all for A-1 whether it fits or doesn't fit.

6 MR. DANSBY: May I have another minute  
7 sir in response -- some things were --

8 SPECTATOR: The hearing has been  
9 closed.

10 CHAIRMAN: We still have room for  
11 discussion if that's okay with you.

12 MR. DANSBY: What I would like to  
13 point out, things were taken out of context; I'm looking  
14 at 20-20 Mr. Morton referred to the Site Review Committee, it  
15 says the Site Plan Review Committee and the Zoning  
16 Administrator shall examine and consider the items he went  
17 down. On 20-19, that he also sited, 64 Associates had  
18 complied with all those 15 items that are enumerated. We  
19 are well aware of his last paragraph that says submittal of  
20 a site plan with insufficient information shall result in the  
21 return. But if you would look to the letter of rejection that  
22 is attached to my appeal, you'll see there was no request  
23 for further information, and no citation of insufficient  
24 information. It says that it's a truck stop and therefore not  
25 going to be considered and sent to the Site Plan Review

1 Committee.

2                   The second letter been brought up  
3 by a couple of lawyers today, in the second letter dated  
4 April five, we were given the opportunity to present other  
5 information and to refute the original interpretation. And  
6 that is entirely incorrect. I went down there personally  
7 and asked to give such extra information to the Zoning  
8 Administrator, who would not see me. I was instructed that  
9 everything had to go through Mr. Morton. And previously  
10 that morning, I had learned that Mr. Morton was not available.

11                   I got this April five letter on  
12 April six and if you will read it, it says I have to submit  
13 my appeal before April seven. And that gave me no time to  
14 do anything, and when I did try, I was rejected.

15                   And I think it's very unfair the way  
16 these things have been taken out of context, but it is correct  
17 we're here on two issues that effect everything in A-1.  
18 The interpretation of 20-18, which says that the Zoning  
19 Administrator shall give these plans to the Site Plan Review  
20 Committee should apply to this project and any other  
21 preliminary site plan that is submitted. And the second  
22 request I made was to look down each of the individual uses  
23 that we have submitted, and see if they don't fall in that  
24 A-1 category, and you will see that they do and I'm asking  
25 for a ruling that yes, indeed, they're there.

1                   Again, it is certainly unfair to  
2 say that because one developer is going to own all of these  
3 projects that he can not do it because we're going to call it  
4 something else; we'll call it a truck stop or maybe I'll  
5 call it the Moulin Rouge. We can't do it because we have  
6 a common owner. If we had two or three more individuals to  
7 file these simultaneously or at different times, there  
8 would be no ability for anyone to say the service station  
9 isn't a service station, the motel is not a motel. Or anything  
10 like that.

11                   I would say that the issues are fairly  
12 simple. And ask that you rule in our favor on both.

13                   MS. COCHRAN: Barbara Cochran; I have  
14 one more question or comment, more or less. One thing that  
15 has been stated several times and taken out of context was  
16 the fact about 20 trucks, no more than 20 trucks. And it's  
17 foolish to make that much space for 20 trucks. It was Mr.  
18 Scruggs who indicated no more than 20 trucks were anticipated  
19 when we asked how many, our concern of course is that the  
20 black top will handle many more trucks than 20. Assuming  
21 you decide or anybody, this is not a truck stop and it goes  
22 in and you got two and a half acres of black top, what happens  
23 when it becomes a truck stop. You know, it's built, it's  
24 there and now there's 100 trucks there. What do we do as  
25 residents.

1 MR. BORDON: Clint Bordon. Let me  
2 just speak to that issue. Further, very briefly. We have  
3 met with the developers on three separate occasions in  
4 public meetings and on each occasion, we continually asked  
5 them for some sort of guarantee or assurance this kind of  
6 development would go through as a parcel; at least two  
7 occasions they said they could give us no guarantee. In  
8 fact, one meeting at Norge Community Center, in the previous  
9 meeting at the Baptist Church in Croaker, they said the  
10 project would be built in stages which to us meant they  
11 could begin with the service station of the project and in  
12 fact black top the whole area, and if the certain developers  
13 and lessors, who they have not named, did not come forth  
14 as they may not, as they said there are no guarantees, do not  
15 come forth to build the project, they may feel their  
16 economic necessity demands that they simply black top the  
17 whole area and use the entire area as a truck stop.

18 As far as I'm aware, there's nothing  
19 to prevent them from doing that once the plan is approved.  
20 You can't hold them economically to that.

21 CHAIRMAN: Thank you, but -- you  
22 know -- what the developer plans to do it is not the question  
23 before us.

24 MR. BORDON: With respect to the  
25 question, the intent of the development and its true nature, and

1 I think that bears on it.

2 MR. SCRUGGS: These are mistruths and  
3 I could correct these if you like them to be corrected. I  
4 may call them something else.

5 CHAIRMAN: That will serve no useful  
6 purpose. What are the wishes of the Board?

7 MR. DANSBY: I'd like to ask one  
8 more question.

9 CHAIRMAN: Certainly.

10 MR. ABDELNOUR: I'd like to ask one  
11 more question. Mr. Rintort, if the site plan is approved  
12 such as the Croaker Service Center, can it be built in stages,  
13 that is without coming back to the -- to the Planning  
14 Department with a -- submittal for a revised plan or just  
15 the service center portion?

16 MR. RINTORT: They can build it  
17 any way they want to prove it.

18 MR. ABDELNOUR: Is it not true they  
19 have to start the project within one year of site plan  
20 approval?

21 MR. RINTORT: That's right, there is  
22 a time limit how long a site plan is valid.

23 MR. ABDELNOUR: In the event they  
24 built the service center, what would they have to do after a  
25 year's time to come in with a supermarket, for example?

1 MR. RINTORT: Nothing.

2 MR. ABDELNOUR: Nothing? Just  
3 because they built the service center part?

4 MR. RINTORT: That's right, they have  
5 to start construction within that period of time.

6 MR. ABDELNOUR: Are they locked  
7 in with this particular plan once they begin the construction  
8 of the service center portion?

9 MR. RINTORT: Unless they change it.  
10 They can request a change.

11 MR. ABDELNOUR: Then it is blown  
12 into a full blown truck stop, then you'll be back here again,  
13 I presume.

14 MR. RINTORT: Right. I'll be happy  
15 to answer any other questions. I just want to point out  
16 that my original letter, which is being appealed, I did  
17 indicate that if Mr. Scruggs had any questions, please call  
18 me.

19 CHAIRMAN: Thank you.

20 MR. ROBEY: Well, I'll make the  
21 motion. I make it in two parts here. First I'd like to make  
22 a motion that this permit be denied. This permit that the  
23 Croaker Service Center be built in zone A, be denied.

24 CHAIRMAN: That's not the question  
25 before us.

1 MR. ROBEY: What is the question?

2 CHAIRMAN: The question before us  
3 whether Mr. Rintort acted right in not sending this to the  
4 Site Plan Review Committee. That's the question one, and  
5 second question is whether these uses are permitted in  
6 A-1. That's what the applicant requested of us.

7 MR. ROBEY: I withdraw my motion.

8 MR. RINTORT: We sent you as  
9 required everything on this case. Every piece of paper we  
10 had, we sent you. Which may become confusing.

11 MR. MORTON: I think the proper motion  
12 would be what you were trying to say and I don't want to  
13 put words in your mouth, would be to sustain Mr. Rintort's  
14 interpretation that the submittal was not a permitted use.

15 (At this time, there  
16 was applause from the audience.)

17 MR. ROBEY: Okay, then I'll make a  
18 motion sustaining Mr. Rintort's statement that the plan was  
19 not a permitted use.

20 CHAIRMAN: You heard the motion. Is  
21 there a second to the motion?

22 (No second to the  
23 motion.)

24 CHAIRMAN: If not, the motion is  
25 not passed for lack of a second. Anyone else would like to make



1 a motion?

2 MR. ABDELNOUR: I expect I'll be  
3 the one to do it. I move we approve the contemplated use  
4 of the property for the Croaker Service Station and we refer  
5 the matter back to the Planning Administrator with direction  
6 that it be sent on to the Site Plan Review Board for review.

7 SPECTATOR: That's not the question  
8 according to the Chairman.

9 CHAIRMAN: I'm sorry, but that is the  
10 question.

11 SPECTATOR: It wasn't before.

12 CHAIRMAN: As I interpret what he said  
13 is. Was your motion these were permitted uses in A-1?

14 MR. ABDELNOUR: Yes sir, we determine  
15 they be permitted uses.

16 CHAIRMAN: Is there a second to that  
17 motion?

18 MR. HERTZLER: Yes sir.

19 CHAIRMAN: Motion is made and  
20 seconded. Is there discussion on the motion?

21 MR. ABDELNOUR: I think some  
22 explanation may be in order. I've heard everything here today  
23 and I think the people have been very eloquent and very  
24 comprehensive in their comments, and I didn't think we had  
25 a whole lot of repetition either. I think I'm persuaded

1 by the legal argument that "Where the intent and meaning of  
2 terms embraced in the zoning ordinance are clear, the power  
3 of the Zoning Authority to control land use for the purpose  
4 of promoting public health, safety, and general welfare is  
5 to be broadly construed."

6 However, we also have the rule of  
7 law that, "Zoning ordinances are in derogation of the common  
8 law and, hence, are to be construed in favor of the free use of  
9 private property; the provisions of the zoning ordinance,  
10 to operate in derogation of the common law, must be in clear,  
11 unambiguous and peremptory terms."

12 I think we have an interpretation of  
13 this zoning as outlined by Mr. Bradshaw that is reasonable,  
14 that the uses set forth in the A-1 zone contemplate gasoline  
15 service station which would include servicing of trucks. I  
16 do not think that -- we have a definition of a truck stop  
17 here sufficient to be excluded by the definition of a gasoline  
18 service station.

19 Consequently, I ask that the rest  
20 of the members of the Board support the motion that I  
21 proposed.

22 CHAIRMAN: Any further discussion?  
23 If not, will you call the role, please?

24 MR. STEPHENS: Mr. Hertzler.

25 MR. HERTZLER: Yes.

1 MR. STEPHENS: Mr. Abdelnour?

2 MR. ABDELNOUR: Yes.

3 MR. STEPHENS: Ms. Vaiden?

4 MS. VAIDEN: Yes.

5 MR. STEPHENS: Mr. Robey?

6 MR. ROBEY: Nay.

7 MR. STEPHENS: Mr. Mephram?

8 MR. MEPHAM: Yes.

9 MR. STEPHENS: The motion passed  
10 four to one.

11 (At this time, the  
12 hearing was concluded.)

13  
14 - - - oOo - - -  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

CERTIFICATE OF COURT REPORTER

I, Morris Schneider, hereby certify that I, having been duly sworn, was the Court Reporter in the Board Room of the Board of Supervisors, James City County, Virginia, on April 28, 1983, at the time of the hearing herein.

I further certify that the foregoing transcript is a true and accurate record of the testimony and other incidents of the hearings herein.

Given under my hand this 28 day of April, 1983.

MORRIS SCHNEIDER, Court Reporter

- - - oOo - - -