VIRGINIA:

IN THE CIRCUIT COURT FOR CAROLINE COUNTY

GILBERT L. SHELTON AND JUDY L. SHELTON, AND JOSEPH W. PARKER AND PATRICIA PARKER,	)	
Complainants,	)	
v.	)	Civil Action No. _____
CAROLINE COUNTY BOARD OF SUPERVISORS, MOSS NECK MANOR PLANTATION, INC., CHANEY ENTERPRISES LIMITED PARTNERSHIP,	)	
Respondents.	)	

SERVE: Caroline County Board of Supervisors
Anne N. Cosby, County Attorney
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Richmond, Virginia 23218

Moss Neck Manor Plantation, Inc.
Registered Agent, Corporation Service Company
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1111 East Main Street
Richmond, Virginia 23219

Chaney Enterprises Limited Partnership
Registered Agent, Incorp Services, Inc.
7288 Hanover Green Drive
Mechanicsville, Virginia 23111

COMPLAINT FOR DECLARATORY JUDGMENT

1. The Complainants Sheltons and Parkers ("Complainants") hereby appeal the decision of the Caroline County Board of Supervisors ("BOS") to issue a Special Exception Permit ("Permit") to the Respondents Moss Neck Manor Plantation, Inc. and

Chaney Enterprises Limited Partnership ("Chaney") for the development of a sand and gravel mining operation in Caroline County located on the Moss Neck Manor Plantation.

VENUE

2. Venue is appropriate in this Court as the Caroline County BOS issued the Permit, and the property which is the subject of the Permit is located in Caroline County.

PARTIES

3. Gilbert and Judy Shelton are joint owners since 2005 of "Moss Neck Manor," an historic parcel of approximately 280 acres located at 18253 Moss Neck Manor Road, Fredericksburg, Virginia. The Shelton property borders and is adjacent to the special exception mining site identified as "Moss Neck Manor Plantation." The Sheltons' property, Moss Neck Manor, is historically significant, rich in civil war history and contains many civil war grave sites. The entire Sheltons' property is subject to a Virginia Historic Easement, and has been the site of many public tours and presentations by the National Park Service on area history and historic features of the Moss Neck Manor property. The Shelton property also borders in part with the boundary of Fort A.P. Hill, an active military training facility. The access road to and from the Shelton property to Route 17, is through and over "Burma Road," a narrow, gravel historic road over one mile that also borders Respondent Moss Neck Manor Plantation, the Chaney Mining Site and Fort A.P. Hill. Thus, the only access to and from the Sheltons' property home is the narrow gravel road that also borders the mining operations. Thus, the Sheltons will hear, see and experience the dust, noise,

lighting and unpleasant aspects of a major industrial sand and gravel operation at the Chaney mining site and must access their historic property by driving directly by the mining site. Although truck traffic from the mining operation will be prohibited on Burma road directly, all trucks will enter and exit directly from Moss Neck Manor Plantation to Route 17 only a few hundred feet above the Burma Road intersection with Route 17.

Unlike the owners of the mining site, the Shelton family has committed significant financial resources to historic preservation and live in a home once occupied by both Union and Confederate sides in the Civil War. The entire Shelton family parcel is under historic easement with the Virginia Department of Historic Resources, and is managed and operated in every way to maintain and protect the properties' cultural and historic heritage. The Shelton home, the grave yards, and the land are managed in a perpetual states of historic preservation. The Shelton property is unique.

The owners of Moss Neck Manor Plantation, the Silver Companies, have a different view of land management. Conflicts have continued between the two land owners over land uses, with the result that serious conflicts and threats of litigation have arisen over road use and markings along Burma Road. Respondent Moss Neck Manor Plantation recently installed a large number of hog pens directly adjacent to Burma Road so that the Sheltons' are offended by the odors every day of their traveling along Burma Road. While the hog pens may not be a part of the current special exception permit, the hog pens did cause significant odors on the Shelton property. The hog pens were unsightly and insulting to the historical nature of Burma Road and the Shelton property, and demonstrated that conditions at Respondents' property can significantly and directly impact the Shelton property because of both properties' close proximity to

one another.

The Chaney mining operation is proposed to extend over a 20 year period and will develop industrial operations on at least 544 acres of the 1200 acre Moss Neck Manor Plantation site. Large portions of the mining will occur on sites adjacent to or very near Burma road and the Shelton property. The mining operation will involve hundreds of truck trips every weekday and Saturdays, all entering and exiting on Route 17 a short distance from where the Sheltons must enter and exit Burma Road to Route 17. The truck traffic from the Chaney mining operation, about 200-400 trucks daily as stated in the application, will be added to existing permitted sand and gravel and other trucking operations along Route 17, yielding a total of authorized truck traffic to about 1,000 truck trips per day, or about one truck every two minutes during the typical eight hour day. However, since the greatest concentration of sand and gravel trucking can be expected to occur earlier and later in the day, there will be many periods when truck traffic will be heavier at any given time.

In addition to the disruption and noise from truck traffic, the Sheltons will experience excessive noise levels from the sand and gravel operation which the Sheltons allege are not adequately controlled, if at all, by the County noise ordinance, as alleged with particularity below.

The Shelton home is also compliant with all night sky lighting requirements of Fort A.P. Hill, a large military training facility where extensive training in night vision activities are conducted, and external night lighting adjacent to the training areas are not tolerated, as alleged with particularity below.

The Shelton property is located in a highly sensitive land use area. Both the Shelton and the Moss Neck Plantation Properties are zoned “Rural Preservation,” a zoning designation which is designed to protect and maintain agricultural and historic land uses. The Moss Neck Plantation Property and proposed Chaney mining areas are also located in a “Resource Sensitive Overlay District,” an area designed to be undisturbed for protection of stream water quality of Ware Creek, which runs adjacent to the mining site. The Caroline County Comprehensive plan prohibits sand and gravel mining in the Rural Preservation zone, as alleged below. The owners of the Moss Neck Manor Plantation have been issued violation notices of land use program requirements over the years and the Sheltons believe that such violations will continue.

Given the intense mining development, the additional truck traffic and the adverse impact on historic preservation, the Shelton family property will suffer a loss in property value, and it will be difficult to maintain and preserve the property as an historic resource. The Shelton family’s quiet and scenic enjoyment of their land will be disrupted by a road way next to a sand and gravel operation and spiteful hog farm. The Sheltons relied upon the Rural Preservation designation to maintain the historic preservation of their own property and have invested their own financial resources to maintain their historic property which also serves important public policy purposes. The Sheltons have conveyed significant future development rights of their property where not consistent with the Historic easement on the property. As alleged herein, the Sheltons suffered due process violations of their right to fair notice and hearing on the special use permit for the mine site, and never had a fair opportunity to address their concerns.

The Sheltons allege that some members of the Board of Supervisors had conflicts of interest because of family employment and Board of Directors involvement with the YMCA, which Complainants allege also involved solicitations to reduce county debt for the YMCA from the Respondent(s) during the pending special use permit. See allegations below. The Sheltons further assert that even if no direct conflict existed, there was an appearance of impropriety on the part of some BOS members, as alleged below, as some members of the BOS voted on the special exception permit while their agents sought contributions to resolve county debt from the owners of the mining site.

The BOS and Planning Commission were given numerous signed petitions purporting to show support for the mining project. At the BOS public hearing, however, it was revealed that the petitions contained the names of deceased persons and many other persons who never actually signed any such Petition, including the name of the very Board member who seconded the mining approval motion (Mr. Acors) and who claimed that he did not sign such petition. The Petitions were a fraud upon the Planning Commission and the BOS, constituted criminal acts and violated the Complainants' due process rights to a fair and honest evaluation of the proposed permit application.

The efforts of the Sheltons to maintain the night sky as requested by Fort A.P. Hill were thwarted by the BOS who approved the mining application even though the commanding officer of Fort A.P. Hill said the mining operation would ruin their night vision training programs. The Sheltons' protected property interests include the right to the peaceful enjoyment of their property and the right to convey their interests in the manner that they choose. The Sheltons' have maintained their property in compliance

with all governing land use restrictions and historic preservation obligations. The BOS denied the Sheltons a fair hearing on their concerns, and authorized a land use that degrades and devalues the Sheltons' property interests without meaningful consideration of their concerns and without adequate controls to protect the Sheltons' rights. The unreasonable and arbitrary decision harms the Sheltons' unique property interests and interferes with the peaceful enjoyment of their land.

4. Joseph and Patricia Parker own 5.5 acres of land located in the Rural Preservation zone on Route 17 across the street and about 500 feet below the Moss Neck Manor Plantation road entrance to Route 17, near where all truck traffic from the Chaney mining operation will enter and exit, in addition to any existing truck traffic from other permitted sand and gravel facilities. The Parkers have lived in their home/office for 27 years. Route 17 is a narrow two lane road with little or no shoulders. To enter or exit the Parker property, located directly on Route 17, all traffic must stop or slow in one or both lanes. The Parkers operate a private photography business at their home which is a by-right use of their property under the zoning ordinance, and specialize in taking photographs with a natural and/or outdoor background. The truck noise will be significant as the proximity to the Moss Neck Manor Property is so close that trucks will be continuously either accelerating or decelerating to enter or exit the Moss Neck Manor Plantation site. The Parkers report that even before this project was proposed, clients coming to their home expressed concern about the truck traffic and limitations on entering and exiting the Parker property to Route 17. The twenty year life of the mine may cause the Parker business to fail. The Parkers are so close to the proposed site that the odors from the Moss Neck Manor Plantation hog pens along Burma road

almost drove them from their home, and prevented outdoor environmental photography, confirming that activities on the Moss Neck Manor Plantation property can and do impact the Parkers' property rights. The Parkers will hear the heavy truck traffic on their property, and experience the noise from the mining site.

Like the Shelton family, the Parkers' notice and hearing rights to fair consideration of their concerns was severely compromised, if not rendered meaningless, by the conflicts and impropriety of at least two Board members who pushed the approval the hardest, the fraudulent Petitions, conflicts with seeking donations from the owners of Moss Neck Manor Plantation to reduce County debt while the application was pending before the Board, the abandonment of comprehensive plan restrictions and the disregard of the light impacts on the military base, all of which evidenced a pre-determined outcome and arbitrary decision process.

In addition to the disruption and noise from truck traffic, the Parker family will experience excessive noise levels from the mining operation, as alleged with particularity below. The noise that the Sheltons and Parkers will hear will not be abated by compliance with the subjective noise ordinance as alleged in Count IV below.

The BOS disregarded truck traffic concerns expressed by their own Sheriff's office, and decided the permit issue before receiving the full and complete report and analysis by the Virginia Department of Transportation ("VDOT").

5. Moss Neck Manor Plantation, Inc. is the owner of the approximate 1200 acre site, and upon information and belief is owned and/or controlled by the Silver Companies. The land is currently primarily agricultural and forestal in use, with two small residential homes. The site contains perennial streams within designated

Resource Protection Areas. The land is zoned Rural Preservation, which allows sand and gravel operations by special use permits. However, the subject property is located in a part of the Rural Preservation Area in which the County comprehensive plan prohibits sand and gravel operations. As the land owner, Moss Neck Manor Plantation is a necessary party. To the extent that the owners of Moss Neck Manor Plantation, Inc., and/or its agents, were involved in the permitting process and relations with the Board of Supervisors, and these contacts form the basis for some of the due process violations alleged by the Complainants.

6. Chaney Enterprises Limited Partnership is a family owned, Maryland based, Corporation which operates several sand and gravel operations in Maryland and Virginia. Chaney is the permit applicant and a necessary party.

7. The Caroline County Board of Supervisors is the elected governmental body of Caroline County, and the entity that granted the special use permit.

BACKGROUND AND FACTS

8. The Applicant for the proposed sand and gravel operation is Chaney Enterprises, LP, who applied for a Special Exception Use Permit pursuant to the Caroline County Zoning Ordinance under Article 4, Section 5 and under Article 17, Section 13, to develop a sand and gravel extraction and wash plant on property designated as Tax Map Parcel 4-A-10. The property is zoned Rural Preservation. The primary land is agricultural and forestal. There is no existing industrial activity on the south side of Route 17 where the site is located.

9. The subject property is subject to many special and restrictive land use controls. Portions of the subject property are included in the Chesapeake Bay Local

Assistance Program for land use protection, and falls inside the “Resource Protection Area” (“RPA”), an area intended for no development as a protective buffer to the Chesapeake Bay watershed.

10. The subject property is also part of the Resource Sensitive Overlay District and the Highway Corridor District. The Resource Sensitive Overlay District recognizes the unique features of the Rappahannock River Valley, which includes significant wetlands, endangered and threatened species and, notably, some of the best agricultural soils in Virginia, hence, the designated agricultural uses.

11. The Highway Corridor District designation reflects special concern for development along the land areas in the Rural Preservation zone and a designated interest in protection of the historic and scenic corridor from development that is inconsistent with the rural nature of the subject area, i.e., intense truck traffic.

12. A portion of the mining site is located within the 100-year flood plain and contains regulated wetlands.

13. The subject property is identified as a Resource Sensitive Area (“RSA”) by the current county comprehensive plan, and all activities in the area/site must be reviewed for consistency with the comprehensive plan and resource protection area planning.

14. The proposed sand and gravel operation must satisfy all general standards prescribed in the County Ordinance, may not be detrimental to the character and development of adjacent properties and must be consistent with the purpose and intent of zoning ordinances and the comprehensive plan.

15. In addition, any special exception permit issued for the proposed mining operations may contain "conditions" imposed by the BOS as it deems necessary in the public interest to assure compliance with the general zoning standards, as well as any special standards that may be established for uses that are permitted within the Zoning Ordinance. "There are certain uses which, due to the nature of the use, can have an undue impact upon or be incompatible with other land uses within a zoning district or within an area of the County. These uses may be allowed to locate within certain designated districts under the controls, limitations and regulations of a special exception." Zoning Ordinance, Art. VXII, Section 13. B.

16. The permit application must be reviewed by VDOT, which must include an analysis of all truck traffic impacts on the road way and entry/exit points, both existing and proposed along Route 17. In this case, the applicant originally considered only impacts of truck traffic generated by the applicant. This approach was rejected by VDOT and the BOS made their final decision before the final analysis and report of VDOT was submitted, making same unavailable to the public or the BOS. See allegations contained in Count V, arbitrary and capricious, incorporated herein.

17. Mining operations generate noise, from the mining operations themselves, equipment and trucking operations. The BOS did not evaluate noise at all, except for a condition requiring compliance with the County noise ordinance, which Complainants allege as unenforceable and not applicable to sand and gravel operations. The BOS members discussed an alternative to the "back up beepers" notorious for noise generation at construction sites, but imposed no alternative conditions. Noise generation at sand and gravel mining and processing operations is well documented by

government studies by NIOSH and CDC. See allegations contained in Count IV, noise, incorporated herein.

18. Prior to the consideration of the subject mining permit proposal, the BOS had incurred a bond indebtedness to fund construction of a local YMCA. Two Board members in particular had assured the public that no taxpayer dollars would ever be used to pay off the YMCA debt, which was over six million dollars. Instead, these BOS members assured, the debt would be retired by payments from proffers and private contributions. At least one Board member, Mr. Acors, initiated efforts to solicit private contributions for this purpose, and these solicitations included, upon information and belief, approaches to the owners or representatives of the applicant Moss Neck Manor Plantation for a large contribution while the subject property had the pending application for the subject special use permit before the BOS. The details and specifics of these allegations are contained in a petition for recusal filed with the BOS prior to the BOS public hearing (Petition attached as Exhibit 1). It is alleged that such approaches to the applicant or the land owner during the pendency of the permit application were improper, and created an appearance of impropriety for the affected BOS members who should have recused themselves. Instead, the two BOS members so named publicly rejected the Petition and moved to approve the permit. See allegations contained in Count IX, incorporated herein.

19. The BOS and the Planning Commission were also presented with a number of Petitions in support of the mining project. At the public hearing before the BOS, it became apparent that the Petitions contained signatures of persons who were dead, or persons who did not, in fact, sign the Petition. Notwithstanding the criminal

acts in obtaining such petitions, they were presented to the BOS and several BOS members stated that such petitions affirmed the strong community support for the project, when, in fact, the petitions contained many false signatures. It also came out that such petitions were signed, or solicited, in the context of food give aways to the public of pork products allegedly from the Moss Neck Manor Plantation property and obtained as a show of support for the mining operation when in fact they were obtained in exchange for free food. See allegations contained in Count X, fraud and criminal acts.

APPLICATION AND LAND USE DECISION HISTORY

20. The application was filed by Chaney Enterprises L.P. on behalf of the owner, Moss Neck Manor Plantation, Inc., for a Special Exception Permit for Sand and Gravel Extraction. The permit is identified by the County as SPEX-02-2014 ("Permit").

21. After various administrative procedures, the permit application was presented to the Caroline County Planning Commission. A public hearing was held on June 18, 2014, , and the Planning Commission voted to approve the application by a 3-2 vote on August 20, 2014, with 34 conditions.

22. The BOS held a public hearing on November 13, 2014 and approved the project, 4-2, at the conclusion of the hearing. The BOS imposed the same 34 conditions, plus an added condition 35 that limited the approval to the Chaney applicant specifically.

23. The Complainants timely appealed to this Court the decision of the BOS to issue the subject Permit within 30 days of the decision.

COUNT I
DILLON RULE
EXERCISE OF AUTHORITY NOT AUTHORIZED BY STATUTE

24. The foregoing paragraphs 1 - 23 are realleged and incorporated herein.

25. All local governments in Virginia operate within the confines of the "Dillon Rule," and a corollary to the Dillon Rule, that provides that county boards of supervisors have only those powers that are expressly granted, those necessarily or fairly implied from expressly granted powers, and those that are essential and indispensable.

26. The BOS of Caroline County may impose "conditions" to special exception permits under the local zoning ordinance to assure compliance with the general zoning standards, as well as any special standards that may be established for uses that are contained within its ordinance. All such "conditions" must be consistent with the "zoning intent" of the zoning laws.

27. Special condition number 6 requires "all conditions and restrictions associated with the [Virginia] DMME (Dept. of Mines, Minerals and Energy) permit shall be incorporated as conditions of this special exception permit." Special condition number 9 requires the applicant to obtain all applicable permits from the Commonwealth of Virginia and its state agencies. Special condition number 10 then incorporates "all conditions and restrictions" associated with "any" permit required. Special Condition number 30 permits the BOS to direct, at any time, the Planning Commission to review the special exception permit for compliance with all conditions. If violations of the permit (including the conditions) are found, the applicant will be given a reasonable time to comply with such provisions, or post new bonds for compliance.

28. The incorporation of "all conditions and restrictions" of permits issued by state agencies into the BOS special exception permit, and the authorization of the Planning Commission to review and determine compliance, and then "cure" such violations, exceeds local government authority by (1) incorporating conditions of state agency permits without statutory authority; (2) incorporating conditions which do not follow, are not required to further the zoning intent, or potentially interfere with the intent of the Zoning Ordinance; and (3) establishing an enforcement mechanism through the Planning Commission for enforcement of issues not associated with zoning and which are the sole subject of state agency authority.

29. The special use permit conditions making "all" conditions and restrictions of "all" Commonwealth of Virginia permits, without specificity to any particular permit, an enforceable part of the special exception permit lacks sufficient nexus to the specific conditions of the special use permit, and is a blanket inclusion of state conditions and restrictions which have no direct relationship to the special exception permit conditions, and are void.

30. Special condition 28 violates local government authority as prescribed by the "Dillion Rule" as Caroline County has no statutory authority, nor authority inferred from the administration of land use ordinances, to regulate, supervise or enforce permit requirements imposed by other state agencies in the performance of their statutory functions exclusive to them or to regulate harm caused to third-parties by the permitted activity.

31. The incorporation of such later conditions, as may be imposed or enacted long after the permit has been issued is illegal because such actions are post-hoc

modifications of the special use permit without hearing or comment, or BOS members' knowledge of same, and therefore violate the Zoning Ordinance and the Complainants' rights of due process notice and hearing.

COUNT II

ILLEGAL SAVING CLAUSE

32. The foregoing paragraphs 1- 31 are realleged and incorporated herein.

33. The Caroline County Ordinance requires that "[t]he Board of Supervisors shall designate, where appropriate, conditions and restrictions in the granting of use permits to assure that the use will be compatible with the neighborhood in which it is to be located and will meet the standards contained herein." Ordinance, Art. XVII, Section 13.C.2.

34. The Special Exception Permit in this case contains 35 conditions, including the severance or "savings" clause, condition 34. Each of these conditions is imposed to meet the requirements of the zoning ordinance, Art. XVII, Section 13.C.2. and the intent of the special exception authority.

35. Condition 34, or the savings or severance clause, states "[s]hould any of the aforementioned conditions or part of the conditions be found to be invalid or held unconstitutional, such decision shall not affect the provisions of this Special Exception as a whole, and the sand and gravel operation may proceed subject to the remaining conditions."

36. A special exception permit is different from other ordinances of more general application, and by definition, each condition assigned to the special exception

permit is both necessary and required to make the use compatible with the other established uses within the zoning district and the surrounding neighborhood. Furthermore, some special conditions may be required to satisfy legal mandates, such as provisions to protect off-site military installations.

37. The BOS found, as it must, by affirmative vote, that each condition imposed upon the special exception permit was necessary to protect the land use as required by the zoning ordinance and the Code of Virginia.

38. The inclusion of condition 34, the savings or severance clause, violates the zoning ordinance and is inconsistent with zoning intent, because such clause improperly authorizes the permit to remain valid under any circumstance by which any or all of the remaining 34 conditions are determined invalid or unconstitutional.

39. In a special exception permit, where all conditions, by law and ordinance, are deemed essential to the compatibility of the special exception with the specific use, there can be no presumption that one or more of the conditions may be invalidated and the permit presumed to still meet the ordinance requirements by the mere inclusion of such a savings clause.

40. The inclusion of a severance clause violates the Caroline County Zoning Ordinance because the Special Exception Permit does not, and cannot "assure the use will be compatible with the neighborhood in which it is located and will meet the standards contained [in the zoning ordinance]" if required conditions to achieve such purpose may no longer exist. In addition, there is no means of determining, from the BOS decision, whether the BOS intent, or the votes necessary for approval, would remain satisfied if one or more conditions were, in fact, severed from the whole.

41. The severance clause (condition 34) violates the principals of good zoning practice, puts public welfare at unknown risk, and is unreasonable, contrary to law, ordinance, and is arbitrary and capricious.

COUNT III
NONCOMPLIANCE WITH CHESAPEAKE BAY RESOURCE PROTECTION AREA LIMITATIONS, RURAL PRESERVATION AREA AND OVERLAY DISTRICT MANDATES

42. The foregoing paragraphs 1- 41 are realleged and incorporated herein.

43. The proposed site is within the Rural Preservation Zoning District, which allows the land use of sand and gravel mining operations as a conditional use.

44. The proposed site also is within the Chesapeake Bay Preservation Area Overlay District and within the Resource Protection Area designated under County ordinances implementing the Chesapeake Bay Local Assistance Act.

45. The "Chesapeake Bay Preservation Area Overlay District," by ordinance, "establishes the criteria to be used by Caroline County, Virginia, in granting, denying, or modifying requests to use, develop or subdivide land in Chesapeake Bay Preservation Areas ("CBPA"), " and in such areas "these criteria shall be applied in addition to . . . zoning . . .requirements of Caroline County."

46. Under the Chesapeake Bay Preservation Area Overlay District Ordinance "[p]ermitted uses, special exception uses, accessory uses and special regulations shall be as established by the underlying zoning district, unless specifically modified by the requirements of this Section."

47. Under the ordinance, “additional development criteria” are prescribed for Resource Protection Areas (“RPA”), which “shall also be required in all Resource Protection Areas.”

48. The criteria required of all additional development in the RPA is specified by ordinance, which specifies that “[l]and development may be allowed in the RPA, subject to approval by the Director, only if it meets the following criteria: (1) The development is water dependent; (2) The development constitutes redevelopment; (3) The development constitutes development or redevelopment within a designated Intensity Developed area; (4) The development is a road or driveway crossing satisfying the conditions set forth in subsection 17.9.D of this Section or; (5) The development is a new use subject to the provisions of subsection 17.9.B of this Section.

49. None of the prerequisite criteria listed in Section 17.9.A. are applicable to this project.

50. “Water dependent” facility is defined as “development which cannot exist outside of the RPA and must be located on a shoreline by reason of the intrinsic nature of its operation.” None of the examples cited as water dependent, nor the definition itself, addresses sand and gravel operations or the excavation of inland property inside the RPA. The sand and gravel operation is not “intrinsic” to water.

51. Further, there is no redevelopment here (criteria (2)), no new development within a designated intensity developed area (criteria (3)), not merely a roadway (criteria (4)); and is not a new use subject to Section 17.9.B, because new uses are defined as water dependent and the proposed industrial development does not comply with the comprehensive plan (criteria (5)).

52. The Chesapeake Overlay District "shall apply to all lands identified and designated as CBPAs. . . ." Only "bona fide silvicultural activities" are exempt from these requirements.

53. Therefore, the permit for the mining operation was granted in noncompliance with ordinance provisions.

COUNT IV
NOISE ORDINANCE

54. The foregoing paragraphs 1- 53 are realleged and incorporated herein.

55. Condition 24 of the special exception permit requires compliance with the Caroline County Noise Ordinance, Caroline County Code § 68-2.

56. The Caroline County Code section 68-2 states that "it shall be unlawful for any person to make, continue or cause to be made or continued any excessive, unnecessary, or unusually loud noise or any noise which either annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of others, within the limits of the County."

57. The objective limits for noise located in Chapter 68 of the County Code, for stationary sources, only provide objective limits for manufacturing, residential, commercial, and agricultural uses. No objective limits for noise are provided for mining or other similar resource extraction industry.

58. The only measure for unlawful noise for a mining operation is the subjective, vague and unconstitutional language in Section 68-2. In Section 68-4, additional factors are found in the narrative that lack objective limits.

59. Such noise ordinance language is unconstitutionally vague, subjective and allows for selective enforcement.

60. Complainants, their property, and their property rights will be harmed by the application of such an ordinance and the special exception permit condition applying such ordinance because of the inability to objectively enforce the noise ordinance. The Staff report admitted same stating that "[w]hile there will be visual and audible affects on neighboring properties, such affects should not be unreasonable, with proper conditions." "Proper conditions" inherently means the ability to regulate noise.

61. The noise ordinance is unconstitutional, has no objective limits for sand and gravel operations, and the permit condition imposing compliance with noise ordinance is therefore void and without effect and cannot protect the surrounding neighborhood.

62. The BOS knew of the deficiencies in the noise ordinance prior to the consideration of the subject mining project, but took no steps to remedy the noise ordinance deficiencies, and knew that the noise ordinance, as written, provided no noise protection for adjacent property owners.

63. Sand and Gravel operations, involving heavy equipment, large earth moving equipment, conveyors and machines to process the product materials, truck traffic, and the acts of excavation, produce noise. The applicant did not conduct, nor did the County require, any noise studies; the applicant did not provide noise studies from any of its existing facilities. The special exception permit contains no numerical noise limitations.

64. While it is impossible to allege specific noise conditions for a facility which has not yet been constructed or operated, it is possible to cite to reliable governmental authority on noise generation documented from actual sand and gravel operations. Published research from National Institute for Occupational Safety and Health looked at sand and gravel operations around the nation to assess worker safety, and in doing so measured noise levels at nine sand and gravel operations. This study not only recorded high noise levels regarding worker safety but documented levels of sound exceeding 75 decibels more than 400 feet from the facilities and sound levels exceeding 70 decibels much further out from the operations. Added to the operational noise levels will be all the truck noise, a significant added factor. Bauer and Spencer, "Snapshot of noise and worker exposures in sand and gravel operations," Hearing Loss Prevention Branch, Pittsburgh Research Laboratory, National Institute for Occupational Safety and Health, Pittsburgh, PA; this report was also published by the U.S. Centers for Disease Control and Prevention under the same title in March 2008. Other reports have consistently held that sand and gravel workers were exposed to "excessive noise exposures and significant hearing loss." Landen, et al., "Noise Exposure and Hearing Loss among Sand and Gravel Workers," J. Occup. Environ Hyg, 2004 August 1(8):532-41.

65. It is also possible to allege U.S. Government recommended noise levels for human health and safety. According to the U.S. EPA, the average outdoor acceptable noise levels are 55 decibels, and a quiet neighborhood averages 45 decibels. Adverse health effect may begin at 65 decibels. "Information on levels of environmental noise requisite to public health and welfare with an adequate margin of

safety." U.S. Environmental Protection Agency, EPA/ONAC Report 550/9-74-004 (1974). The subject permit does not provide any condition for noise measurement against these objective standards.

66. Given the above governmental reports and references, the lack of adequate and enforceable County noise ordinances, the lack of objective noise numbers, the lack of any noise studies produced by the County or the applicant, both within their capability to do so, Complainants allege in good faith and with basis therefore, that noise levels will interfere with the use and enjoyment of their property and harm their legal interests.

COUNT V
ARBITRARY AND CAPRICIOUS

67. The foregoing paragraphs 1- 66 are realleged and incorporated herein.

68. The BOS decision does not comply with the purpose and intent of the County Comprehensive Plan as it authorizes a use that is inconsistent, incompatible, and conflicts with surrounding land uses, and the "rural preservation" zoning, or the "Resource Sensitive Overlay District." The staff report to the planning commission states "the current zoning of the property is not in conformance with the comprehensive plan."

69. The County Comprehensive Plan prohibits sand and gravel mining in the subject Rural Preservation Area. In addition, not only did the BOS ignore the Plan's provisions in this case, the BOS have done so with other projects as well without, as here, proposing, changing or modifying the Plan. BOS member Underwood tried repeatedly to get the County Director of Planning to testify that the proposed permit was

in complete compliance with the Plan, which the Director refused to do. BOS member Underwood then declared that, in his view, the comprehensive plan was a "living document," apparently subject to change at will and without any legal significance. The failure of the BOS to consistently apply the comprehensive plan, and repeatedly do so, is an arbitrary and capricious application of such plan and indicates an illegal disregard for the comprehensive plan.

70. The BOS decision did not provide adequate control for noise reduction for adjacent property owners and the allegations of Count IV are incorporated herein.

71. The BOS decision did not incorporate or include the final assessment of the Virginia Department of Transportation on traffic impacts, and the staff report conceded that the final VDOT report was not even prepared or submitted, and not available to the public, at the time the BOS adopted the special exception permit. "As previously noted, the supplemental data referencing the analysis of road segments has not yet been reviewed by VDOT." The public and the Complainants were therefore denied the right to review and comment on highly relevant information and were reduced to listening to the staff tell the BOS what they thought VDOT would or would not approve.

72. Dump trucks can hold anywhere from 13 to 25 tons of sand or gravel, and by the pure laws of physics present significant potential for accidents or damage to other vehicular traffic. The BOS ignored the statements of the local Sheriff's Department that the proposed truck traffic, in combination with existing site approvals, was too heavy for this area of Route 17, was unsafe and that the special exception permit should not be granted. The only question of the BOS was whether a traffic light

would help in controlling traffic at the site, to which the Sheriff's representative said yes. However, no special condition imposed a traffic light requirement.

73. It was arbitrary and capricious for the BOS to consider in any way citizen petitions they knew to be fabricated, false and obtained through questionable means.

74. The position of the BOS member who made the motion to approve the mining permit (Taylor) was completely inconsistent with his prior statements to the BOS as a private citizen opposing other mining projects, wherein Mr. Taylor had repeatedly stated that truck traffic on Route 17 was too heavy and unsafe, even though traffic numbers for the other sites were lower than those contained in this application, and Mr. Taylor gave no basis for his new views.

75. The BOS did not give proper consideration to adjoining land uses, or the character and established pattern of development in the immediate area as required by the zoning ordinance.

76. The BOS permit does not exist in harmony with the uses permitted by right and previously approved by the BOS in the zoning district and therefore adversely affects the use of neighboring properties, a violation of the requirements of the zoning ordinances.

77. The BOS permit is detrimental to the property and improvements in the neighborhood, especially the adjacent historic preservation designations, and contrary to zoning ordinance requirements and law.

78. The BOS permit is not in accordance with the purposes of the zoning regulations and the comprehensive plan of Caroline County, and even the staff reports concede that, at best, the project is only "generally" consistent with the comprehensive

plan.

79. The BOS failed to adequately address the comprehensive plan's conditions that agriculture and forestry are the primary land uses that should be maintained to protect valuable soils.

80. The BOS failed in its statutory duty to protect adjoining military installations from adverse impacts of the special exception permit. See Count VIII, below, which is incorporated herein.

COUNT VI
PARCEL SUBDIVISION DIFFERENT
FROM PERMIT APPLICATION

81. The foregoing paragraphs 1- 80 are realleged and incorporated herein.

82. Complainants are entitled to rely on the application and lands identified therein as submitted in the application. The application filed with the County lists the property seeking a special exception permit as tax parcel "Tax Map 4-A-10."

83. The public notices provided for the Planning Commission public hearing specify a hearing on Tax Map #4-A-10.

84. The staff report and the papers submitted to the Planning Commission, and upon which the Planning Commission voted on, listed the subject parcel as Tax Map 4-A-10.

85. During the consideration of the application by the County BOS, the landowner unilaterally subdivided the single land parcel at Tax Map 4-A-10 as applied for into two separate parcels, now tax map parcels 4-A-10 and 4-A-10A, so that the parcel names before the BOS were no longer were consistent with the parcel identified

on the stated tax maps, the application submitted, and the vote of the Planning Commission.

86. The staff report submitted to the BOS for consideration now listed the application as being located on Tax Map parcels 4-A-10 and 4-A-10A.

87. The staff report to the BOS conceded the subdivision of the parcels "since the original filing of the special exception permit application," describing them as a "minor subdivision." The staff report failed to inform the BOS that the Planning Commission approved the original application before the subdivision of parcels.

88. As a matter of law, the tax parcel identified in the application must match the tax parcel(s) sought to be subject to any special exception permit, and by law, no action to grant a special exception can be given to tax parcels of land not properly identified in the application.

89. The owners' decision to subdivide the affected property, which included the areas proposed to be part of the mining operations, voided the application and the vote of the Planning Commission, and the BOS was without authority to act upon such application until formally refiled.

COUNT VII
UNCONSTITUTIONAL REGULATION OF THIRD PARTIES AND THEIR PROPERTY RIGHTS

90. The foregoing paragraphs 1- 89 are realleged and incorporated herein.

91. Condition 28 establishes a condition which purports to regulate abutting landowners, which would include the Complainant Sheltons, who are not parties to the application or the special exception process.

92. Condition 28 purports to require an abutting landowner who believes that the quality or quantity of his groundwater has been adversely impacted by the mining operation to notify the County with 7 days. The County, in concert with another state agency, the Virginia Department of Mines, Minerals and Energy, would then "correct" the water quality or quantity deficiency of the affected property owner. This violates Dillon Rule authority for the County.

93. Condition 28 is unconstitutionally vague as it purports to limit or control the private property rights of abutting landowners as a condition to continue the mining operation by directing the adjudication of the property rights of third parties to an administrative process from which the third party is excluded.

94. Neither the County nor DMME have constitutional authority to limit, control or direct any remedy of private abutting landowners damages to water quality or water quantity, or limit in any way the rights of such private landowners in a particular way to protect the continued mining operations of the applicant in any process within which the abutting landowner is not a party, and the extent to which condition 28 does so is unconstitutionally vague.

95. Condition 28 is an illegal exercise of County authority and is void; if so, then the entire special exception permit is void.

COUNT VIII
FAILURE TO PROTECT ADJACENT MILITARY FACILITIES

96. The foregoing paragraphs 1- 95 are realleged and incorporated herein.

97. The Chaney mining project is located adjacent to the A.P. Hill military base, and both the Moss Neck Manor Plantation and A.P. Hill Military base share a

common boundary along Burma road.

98. Although it is the general policy of the military not to openly endorse or oppose local land use decisions surrounding its borders, military commanders at A.P. Hill repeatedly expressed direct concern about dark sky conditions to be employed at the site to avoid interference with military night training activities.

99. It is the statutory duty of the local government to ensure that military facilities are protected from undue interference by adjoining land uses under the permitting control of the local government. Va. Code § 15.2-2283.

100. Members of the Regional Chamber of Commerce, including BOS member Calvin Taylor, signing for Caroline County, endorsed and signed an "Armed Forces Community Covenant" in May 2013 which, among other things, pledged the support of local government to help and assist the military programs in the Fredericksburg region, including Caroline County. The Covenant was violated by the BOS decision on the mine with BOS member Calvin Taylor making the motion to approve.

101. Although the BOS imposed special condition number 31 to require "dark sky" lighting at the mining operations, such condition was no more than what is now virtually uniform in all modern construction. Neither the condition itself, nor any staff or applicant assessment, contained any specific assessment or evaluation as to whether the dark sky condition would be sufficient or effective in addressing interference with A.P. Hill night training activities. The BOS had no information, nor did they seek any information, as to whether the perfunctory dark sky lights would be sufficient to address the military's concerns.

102. The Commanding officer at Fort A.P. Hill, Colonel David Meyer, testified at the public hearing, described the importance of the night vision programs and training exercises at A.P. Hill and then informed the BOS that "even dark skies technology would not fully mitigate the impact of light, and that the impact on aviation operations [of this project] . . . would render almost useless the Pender Camp and the Pender Airfield [night programs]." The BOS gave Colonel Meyer a perfunctory thanks for his services, asked no questions and ignored his comments.

103. The extent to which the BOS not only ignored their legal obligations under the code, but actually ridiculed the night training programs at A.P. Hill was captured by the comments of BOS member Taylor during the permit discussion after the close of the public hearing, wherein BOS member Taylor compared existing firing range noises to nearby residents to the night vision issues, saying as a result "A.P. Hill might have to endure a little bit of light." Still not satisfied, BOS member Taylor went on to say "they've [A.P. Hill] got 75,000 acres of land, I'm sure they can move far enough away from there to do whatever they want to do." No member of the BOS ever asked the Colonel what would be needed, nor were any changes made to the special exception condition the military had already told them was inadequate, and no effort was made to meet the BOS's statutory duty to avoid adverse impacts to the military base.

COUNT IX
CONFLICT OF INTEREST AND APPEARANCE OF IMPROPRIETY; FAILURE TO RECUSE BY BOS MEMBERS TAYLOR AND ACORS

104. The foregoing paragraphs 1- 103 are realleged and incorporated herein.

105. The motion to approve the special exception permit was made by BOS

member Calvin Taylor and seconded by BOS member Wayne Acors, who both voted for approval. Because the six member board voted 4-2 to approve, the votes of BOS members Taylor and Acors were required for the resolution to pass.

106. Both BOS members Taylor and Acors have a conflict of interest which prohibits their vote by law, and at the very least, both had such substantial and conflicting involvements with the owners of Moss Neck Manor Plantation, the Silver Companies, the Silver Family Foundation and/or the Silver family, that both should have recused themselves.

107. Both BOS Taylor and Acors were requested by Complainant Shelton to recuse themselves from voting on the Moss Neck Manor Plantation project by a formal Recusal Petition served by Complainants' counsel before the public hearing. The Recusal Petition is attached hereto and incorporated herein as Exhibit 1.

108. The Recusal Petition is very detailed and throughly documented by references and citations to county documents and will not be restated here as it is incorporated by reference.

109. As noted in the Petition, Caroline County, at the urging and promises of BOS member Acors, and later supported by BOS member Taylor, committed the County of Caroline to a bond indebtedness of approximately six million dollars in principal and interest to pay for the construction of a local YMCA building in Caroline County. Acors, and later endorsed by Taylor, publicly promised that no tax dollars of the citizens of Caroline would ever be used to pay for this private facility. Acors and Taylor assured the public and stated that the bond money would be repaid solely from funds raised by proffers and private contributions.

110. The record shows that there was never any significant proffer money available to the County, which already had nearly a million dollars in unfunded committed proffers [proffers are not permitted in special use permits]. Mr. Acors knew this, or should have known this upon reasonable inquiry, and took it upon himself, using the support and aid of county staff and facilities, to raise private money through various funding campaign committees and fund raising entities composed of solicited citizens. One of the many persons solicited and used by Mr. Acors for these private fund raising efforts was David W. Storke, a local businessman and Mayor of the Town of Bowling Green in Caroline County.

111. Mr. Storke, through numerous papers and presentations before the Board repeatedly affirmed that it was his job to raise private funds for the specific purpose of retiring the Caroline County government debt incurred in the bond program funding of the YMCA. Mr. Storke's task, and that of other fund raising persons, was to contact and solicit private contributions for the YMCA for the specific purpose of retiring the County indebtedness. It is alleged, upon information and belief, that one of the big potential sources for a six or seven figure "gift" for the YMCA debt was the Silver Companies, either the Silver family directly or the Silver Family Foundation. The subject land, Moss Neck Manor Plantation, is owned or separately held by the Silver Family or Silver businesses.

112. Upon information and belief, during the period in which the application for the special exception permit was being considered by the BOS, Mr. Storke and/or others directly met with and approached the Silver organization for a major gift for the YMCA. This information was relayed by Mr. Storke himself to one or more members of

the BOS. Indeed, just weeks before the scheduled vote on the Chaney mine, Mr. Storke was scheduled to give the BOS an "update" on fund raising efforts for the YMCA, but the County Attorney canceled the presentation. Complainants believe that Mr. Storke was prepared to advise the BOS of contacts with the Silver entities.

113. BOS member Calvin Taylor also served on the Board of Directors for the YMCA. Such service is not a conflict in and of itself, but was a position in which Mr. Taylor could be involved in accepting donations or funneling contributions to retire the County debt for the YMCA, because the YMCA and County agreement required the YMCA to funnel all donations for construction money to the County. Even if not a direct conflict, Mr. Taylor should have recused himself to prevent the appearance of impropriety and his involvement in YMCA funding at both the YMCA and the County.

114. Upon information and belief BOS member Acors had a family member employed by the YMCA. This could be a direct conflict but also raises a question of impropriety.

115. At the BOS public hearing on the proposed special exception permit, both BOS members Taylor and Acors ridiculed the Recusal Petition and the attorneys who prepared it, and said that they had obtained a no-conflict opinion from the County attorney. Both Mr. Taylor and Mr. Acors failed to acknowledge that the law firm of the County attorney providing the no-conflict opinion also prepared the non-profit papers for Mr. Storke's fund raising organization, and was the County Attorney who advised against, and stopped, a presentation by Mr. Storke to the BOS on his fund raising efforts only a few weeks before the vote on the special exception permit. Instead, there were presentations to the Board about the public services performed by the YMCA.

116. Even if no direct conflicts existed, which is not conceded, the connection with Mr. Storke, the direct involvement, pledges, and representations of BOS members Taylor and Acors, and the involvement of county staff and resources in outside fund raising to retire a county debt involving approaches to the permit applicant landowner or his agents, presented an appearance of impropriety in voting on this project and both BOS members Acors and Taylor were required to recuse themselves. There is or was the clear appearance, if not actual expectation, of a qui pro quo vote for the Chaney mine to provide millions of dollars in revenues to the Chaney and Moss Neck Manor Plantation owners in exchange for a large gift to the YMCA proper, and the County debt retirement directly or indirectly. The two BOS members not only did not recuse themselves, members Taylor and Acors participated actively in the hearing process and decision making, and, as if to put an explanation point on their position, made the respective motion and second to approve the mine permit.

117. The fraudulent Petitions (alleged herein and in Count X) submitted to the BOS and the Planning Commission actually listed, as a reason to support the mining application, current county project needs such as “County museums, libraries and similar community enrichment projects,” i.e., the YMCA.

118. The actions of BOS members Acors and Taylor presented a clear appearance of impropriety, if not more, have arguable conflicts, and their participation in the Chaney mining permit tainted the local government decision process, the public trust therein, and denied the Complainants of a fair decision making process; thus, BOS members Acors and Taylor should be recused from their respective votes.

COUNT X
FRAUD ON THE PLANNING COMMISSION AND BOARD OF SUPERVISORS, CONTAMINATION OF THE RECORD BY FRAUD AND CRIMINAL ACTS RENDERING ALL DECISIONS VOID

119. The foregoing paragraphs 1- 118 are realleged and incorporated herein.

120. It is a felony misdemeanor to falsify or sign the name of another to a document with intent to create a false impression that the writing was signed by such person. Va. Code § 18.2-172.2.

121. Sometime in 2012 and extending into 2014, local communities were advised of the availability of free pork product food, to be given away at designated locations. The source of the free pork products was not provided.

122. At the designated food give away sites, however, persons appearing to receive the free pork were presented with petitions to sign endorsing the proposed sand and gravel mining operations at Moss Neck Manor Plantation.

123. Upon information and belief, this regular “give away” of pork was intended to influence opinions with the surrounding community about the pending sand and gravel permit. Many people who came to support the special exception permit stated that they did so because of these past activities, which they wanted to continue and somehow associated them with this proposed permit.

124. The result was a number of purported “Petitions” presented to the Planning Commission and entered into the record at both the Planning Commission and the BOS meeting. Many church ministers spoke to such petitions as evidencing strong community support for the mining project, some even approached people at the public hearing, and some BOS members recognized the Petitions and in particular BOS

member Taylor remarked about the strong “community support” for the Chaney project, in large measure based on the Petitions.

125. The Petitions were, however, in significant part, a fraud. As the BOS public hearing on the subject permit progressed, person after person came forward to say that they had never signed such a Petition, now known to be at least 134 false signatures. It was asserted at the hearing that at least half a dozen names on the Petitions were of persons who were deceased (now known to be at least 16). Indeed, it is likely that many people signed the names of others just to get the free food and had no idea of what the permit was about. BOS members first attempted to dismiss the “misnomers” as simple errors, but as the BOS members were increasingly faced with more members of the public complaining, the BOS was forced to address this issue. BOS member Acors announced that even his name was on one of the Petitions, which he also asserted he did not sign.

126. Some BOS members then began to disavow any consideration of the Petitions, but many speakers had already appeared in support of the project relying in part on the Petitions and some BOS members, including BOS member Taylor, continued to refer to the “support” of the local communities for the Chaney mine project as a basis for his affirmative decision. The BOS failed to determine who was behind the Petitions or who was responsible for such fraud on the BOS. At the very least, the BOS was obligated to continue the hearing and ascertain the credibility of the applicant(s) with respect to these criminal acts. Yet, the BOS simply ignored the issue and voted anyway. In any event, the fraudulent nature of the Petitions was not revealed until the public hearing before the BOS; there was no indication that the Planning

Commission members, who approved the permit on a 3-2 vote, had any knowledge whatsoever of the fraudulent petition signatures. Therefore, as to the Planning Commission, all members accepted the petitions as bona fide. As such, the Planning Commission decision is void *ab initio* and must be re-decided by them as a prerequisite to the BOS decision.

127. BOS Acors was required to recuse himself, at least temporarily, until the issue was resolved, having admitted that his own signature was on one of the petitions, and the record corrected. He did not do so.

128. The petitions submitted to the BOS were part of the public record for this permit. Having clear evidence of fraud before them, and an implication that either the applicant or the land owner was involved, and the public having no voice or opportunity to inquire, the BOS should have, at the least, tabled the permit matter and resolved the criminal acts in the record, determined the responsible party(s) and then decided the credibility of the permit application. As of the filing of this action, the petitions have been found to contain the names of 16 deceased persons and 134 signatures by people who assert that they did not sign the Petition. This is a massive fraud on the BOS and there is no fair decision process when tainted by such criminal activity involving an applicant.

COUNT XI
VIOLATION OF SUBSTANTIVE AND PROCEDURAL DUE PROCESS RIGHTS UNDER THE VIRGINIA CONSTITUTION AND UNDER 42 U.S.C. § 1983

129. The foregoing paragraphs 1- 128 are realleged and incorporated herein.

130. By law, any person affected by a land use decision, and adjacent land owners, have at least two rights of procedural due process: timely notice and a fair opportunity to be heard. Neither properly occurred here.

131. As to notice, the County published the requisite newspaper notice of the application and hearing date. Such notices, however, are ineffectual where documents are not properly available in time for any affected person to have a chance to see them.

132. As already stated, the final VDOT report on traffic, one of the most critical considerations in this permit, was not complete and not available at the time of the public hearing.

133. The County's own Sheriff's department said that the intersection of Route 17 and mine entrance onto Moss Neck Manor Plantation needs a traffic signal if the project is to be permitted. There was no data provided on that recommendation and the BOS accepted the applicant's bare assertion that "they," the applicant, had determined that no signal was necessary.

134. Chaney's lawyers even tried to tell the Board that the Sheriff's department was not qualified to make such a decision.

135. In addition, Complainants, as well as other interested parties, had no way to respond to, or address the fraudulent Petitions submitted to the Board, and were given no opportunity to do so as the vote was taken immediately after the public comment period closed. Complainants therefore had no fair opportunity to investigate or challenge the credibility of the petitions filed. As the issue became immediately a subject of criminal investigation, Complainants have no opportunity to challenge or investigate the credibility of the petitions even at this time.

136. As to the public hearing, the statutory right to a public hearing has long been so qualified as to lose any real meaning. The adjacent property owners were limited to three minutes, which is just enough time to identify yourself and state your support or opposition and submit written comments, little else. Complainants filed written comments at the hearing with sufficient copies for all Board members, but since the BOS voted on the project at the close of the hearing, it is not known whether any BOS member ever read or considered such comments.

137. It is to be presumed that public and elected officials will discharge their duties honestly and in accordance with law. Where officials act arbitrarily or dishonestly, due process is served only when protection is afforded by appeal and review in the courts.

138. Due process is not served by criminal acts, nor by conflicts of interest or decisions made with an appearance of impropriety. Complainants' concerns are not fairly heard in such a tainted process. As shown in the attached Petition for Recusal, at least two BOS members had committed themselves to funding the YMCA without taxpayer dollars but had failed to do so after three years, and solicited contributions had been unable to even pay the interest on the loan. When other BOS members asked for an accounting of contributions in both amount, identity of donors and those solicited, they were given only partial information.

139. The Chaney project, by their own application materials, is a multi-million dollar project, costing nearly $4.6 million just to bring the site into operation, and yearly operating costs are estimated at $1.25 million. Over the life of the project, both Chaney and the land owner, Moss Neck Manor Plantation, can therefore be expected to gross

millions in income. Therefore, the potential relationship between approval of the pending project and a subsequent large gift for the YMCA fund is simply impossible to overlook. Given that, there should have been no contacts whatsoever between persons attempting to raise money to retire a huge county debt and any applicant with a pending permit request before the BOS. Similarly, if Mr. Storke was to have reported to the BOS that he was in contact with the permit applicant or related entities, it is a fact which the BOS should have been allowed to hear so that they could act accordingly. To simply say, as BOS Acors attempted to do, "that [YMCA] is a separate matter" is a self-serving comment which cannot exist in a veil of secrecy and obvious conflict.

140. Complaints were forced to assert their comments about adverse impacts to their land, as was their due process right, in a climate tainted, if not controlled, by conflicts of interests, appearance of impropriety, criminal acts and secret solicitations of gifts from the pending applicant or owner to retire a county debt. This was not due process, it was not a forum or climate in which due process rights could be asserted or entertained, and Complaints, as a constitutional right to due process, have a right to have their complaints heard by an independent court of competent authority.

141. The BOS's reliance on the applicant's opinion of traffic concerns rather than that of the County's own law enforcement officials, and without the benefit of analysis from VDOT, was without justification and not in the public interest.

142. Any consideration of public support for the mining operation represented by the petitions was without justification and was not in the public interest.

143. Any consideration of quid pro quo to assist the County with bond debt was without justification and was not in the public interest.

144. Complainants have constitutionally protected property interests in their rights to devote their lands to any legitimate use.

145. Complainants have reasonable expectations of entitlement in their property interests based on existing state, federal and local law.

146. The Complainants are deprived of their protected property interests by the arbitrary and irrational decision of the BOS which decision bears no substantial relationship to the public health, safety, or welfare, and was influenced by improper motive.

RELIEF REQUESTED

Complainants ask this Court to declare the Caroline County Board of Supervisors Special Exception Permit in violation of law, exceeding authority and arbitrary and capricious, contrary to good zoning practice, subject to improper voting and in violation of Complainants' due process rights, and therefore illegal and void for the reasons stated herein. The Court is asked to grant such other relief as the Court may deem fair and just, including attorney fees pursuant to 42 U.S.C. § 1988.

Respectfully submitted,

Gil Shelton, et al.
By counsel

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