

**A G E N D A**

**JAMES CITY COUNTY BOARD OF SUPERVISORS**

**County Government Center Board Room**

**November 26, 2002**

**7:00 P.M.**

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	<u>Page</u>
<b>A. ROLL CALL</b>	
<b>B. MOMENT OF SILENCE</b>	
<b>C. PLEDGE OF ALLEGIANCE</b> – Mr. Danny Protocollo, a student at Clara Byrd Baker Elementary School.	
<b>D. PUBLIC COMMENT</b>	
<b>E. PRESENTATION</b>	
1. Annual Financial Report - KPMG LLP .....	
2. Local Travel Industry Update - Dave Schulte .....	
<b>F. HIGHWAY MATTERS</b> – Steve Hicks	
<b>G. CONSENT CALENDAR</b>	
1. Minutes - November 12, 2002, Regular Meeting .....	
2. General Obligation Public Improvement Refunding Bond .....	
3. Riverview Plantation Water Rates	
<b>H. PUBLIC HEARINGS</b>	
1. Approval of Amendment to Deed of Easement for Open Space/Major Open Space /RPA Buffer 1528 Harbor Road in Governor’s Land .....	
<b>I. BOARD CONSIDERATION</b>	
1. Public Use Site - U.S. Home .....	
<b>J. PUBLIC COMMENT</b>	
<b>K. REPORTS OF THE COUNTY ADMINISTRATOR</b>	
<b>L. BOARD REQUESTS AND DIRECTIVES</b>	
<b>M. CLOSED SESSION</b>	
1. Appointment of Individuals to County Boards and/or Commissions, Pursuant to Section 2.2-3711(A)(1) of the Code of Virginia	
a. Clean County Commission	
b. Colonial Community Criminal Justice Board	
<b>N. ADJOURNMENT</b>	

MEMORANDUM

DATE: November 26, 2002  
TO: The Board of Supervisors  
FROM: Suzanne R. Mellen, Director of Budget and Accounting  
SUBJECT: Annual Financial Report - KPMG LLP

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Included in your Reading File are the FY 02 Financial Statements for James City County. Elizabeth P. Foster, Partner at KPMG LLP, will present an overview to the Board.

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Suzanne R. Mellen

CONCUR:

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John E. McDonald

SRM/gs  
audit02.mem

Attachments



2100 Dominion Tower  
999 Waterside Drive  
Norfolk, VA 23510

October 4, 2002

The Honorable Members of the Board of Supervisors  
County of James City, Virginia

Ladies and Gentlemen:

We have audited the financial statements of the County of James City, Virginia (the County) as of and for the year ended June 30, 2002, and have issued our report thereon dated October 4, 2002. In planning and performing our audit of the financial statements of the County, we considered internal control in order to determine our auditing procedures for the purpose of expressing our opinion on the financial statements. An audit does not include examining the effectiveness of internal control and does not provide assurance on internal control. We have not considered internal control since the date of our report.

During our audit, we noted certain matters involving internal control and other operational matters that are presented for your consideration. These comments and recommendations, all of which have been discussed with the appropriate members of management, are intended to improve internal control or result in other operating efficiencies and are summarized as follows:

For the year ended June 30, 2002, business license revenues were approximately \$3.9 million. As part of our audit, we reviewed the business license process and its related internal controls. During our procedures, we identified certain operational items, which we believe would improve the overall efficiency and functionality of this process.

Segregation of duties is fundamental to maintaining strong internal controls. During our testing, we noted that many of the functions within the Commissioner of the Revenue's office are performed by the same person, with minimal supervision. For example, business license assessments and collection of fees occur with one individual. We recommend that more individuals within the department could be utilized more effectively to improve the segregation of duties without increasing headcount.

During our testing, we also noted that there were significant time delays between the date that business license taxpayers became delinquent and the date the delinquent filer information was transmitted to the Treasurer's office for collection. As a result, the Treasurer's office was unable to pursue collection procedures on these delinquent filers until six months after the taxpayers became delinquent. The fact that business licenses are billed on a calendar year basis presents a challenge in recording revenue in the proper fiscal year. We recommend that the Commissioner of the Revenue's office formalize and communicate a schedule of key dates in the business license process and distribute it to other departments involved in the process. This timetable should be developed to ensure that the transmittal of delinquent taxpayer information occurs within a reasonable period of time. This should improve both the quantity and timing of business license revenues for the County.

Finally, due to the fact that the business license process is a significant revenue source for the County, we recommend that a multi-departmental committee conduct a review of all controls and procedures within the process. This committee should be comprised of at least one member from each of the departments which participate in the process and should work together to improve the operational effectiveness of the business license process.



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The Honorable Members of the Board of Supervisors  
County of James City, Virginia  
October 4, 2002  
Page 2

Our audit procedures are designed primarily to enable us to form an opinion on the financial statements, and therefore may not bring to light all weaknesses in policies or procedures that may exist. We aim, however, to use our knowledge of the County gained during our work to make comments and suggestions that we hope will be useful to you.

We would be pleased to discuss these comments and recommendations with you at any time.

This report is intended solely for the information and use of the Board of Supervisors, management, and others within the County and is not intended to be, and should not be, used by anyone other than these specified parties.

Very truly yours,

KPMG LLP



2100 Dominion Tower  
999 Waterside Drive  
Norfolk, VA 23510

October 4, 2002

The Board of Supervisors  
County of James City, Virginia

Dear Supervisors:

We have audited the financial statements of the County of James City, Virginia (the County) as of and for the year ended June 30, 2002 and have issued our report thereon dated October 4, 2002. Under auditing standards generally accepted in the United States of America, we are providing you with the following information related to the conduct of our audit.

#### **OUR RESPONSIBILITY UNDER GENERALLY ACCEPTED AUDITING STANDARDS**

We have a responsibility to conduct our audit in accordance with auditing standards generally accepted in the United States of America. In carrying out this responsibility, we planned and performed the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether caused by error or fraud. Because of the nature of audit evidence and the characteristics of fraud, we are to obtain reasonable, not absolute, assurance that material misstatements are detected. We have no responsibility to plan and perform the audit to obtain reasonable assurance that misstatements, whether caused by error or fraud, that are not material to the financial statements are detected.

In addition, in planning and performing our audit, we considered internal control in order to determine our auditing procedures for the purpose of expressing our opinion on the financial statements. An audit does not include examining the effectiveness of internal control and does not provide assurance on internal control.

#### **INDEPENDENCE**

With respect to the County, we are independent accountants within the meaning of Rule 101 of the Code of Professional Conduct of the American Institute of Certified Public Accountants.

#### **SIGNIFICANT (UNUSUAL) ACCOUNTING POLICIES**

The significant accounting policies used by the County are described in note 1 to the financial statements. No new accounting policies were adopted, and the application of existing policies was not changed during 2002. We noted no transactions entered into by the County during the year that were both significant and unusual and of which, under professional standards, we are required to inform you. We noted no transactions which lack authoritative accounting guidance or consensus.

#### **MANAGEMENT JUDGMENTS AND ACCOUNTING ESTIMATES**

Accounting estimates are an integral part of the financial statements prepared by management and are based on management's current judgments. Certain accounting estimates are particularly sensitive because of their significance to the financial statements and because of the possibility that future events affecting them may differ markedly from management's current judgments.



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The Board of Supervisors  
County of James City, Virginia  
October 4, 2002  
Page 2

#### **SIGNIFICANT AUDIT ADJUSTMENTS**

We proposed no corrections of the financial statements that were not recorded that could, in our judgment, either individually or in aggregate, have a significant effect on the County's financial reporting process.

#### **DISAGREEMENTS WITH MANAGEMENT**

There were no disagreements with management on financial accounting and reporting matters that, if not satisfactorily resolved, would have caused a modification of our report on the County's financial statements.

#### **CONSULTATION WITH OTHER ACCOUNTANTS**

To the best of our knowledge, management has not consulted with or obtained opinions, written or oral, from other independent accountants during the past year that were subject to the requirements of AU 625, *Reports on the Application of Accounting Principles*.

#### **MAJOR ISSUES DISCUSSED WITH MANAGEMENT PRIOR TO RETENTION**

We generally discuss a variety of matters, including the application of accounting principles and auditing standards, with management each year prior to retention as the County's auditors. However, these discussions occurred in the normal course of our professional relationship and our responses were not a condition to our retention.

#### **DIFFICULTIES ENCOUNTERED IN PERFORMING THE AUDIT**

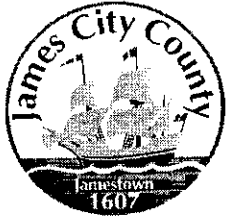
We encountered no difficulties in dealing with management in performing our audit.

\* \* \* \* \*

This report is intended solely for the information and use of the Board of Supervisors and is not intended to be, and should not be, used by anyone other than this specified party.

Very truly yours,

**KPMG LLP**



RICHARD W. BRADSHAW  
COMMISSIONER OF THE REVENUE

P O. BOX 283  
WILLIAMSBURG, VIRGINIA 23187-0283  
PHONE (757) 253-6695  
FAX (757) 253-6733

November 20, 2002

The Honorable Members of the Board of Supervisors  
James City County, Virginia

Dear Sirs:

The management letter dated October 4, 2002, included in the FY 2002 audit of James City County's financial statements addressed items involving the assessment and collection of business license taxes by the Commissioner of the Revenue.

Administration of the Business License tax is a significant portion of the duties performed by the Commissioner of the Revenue. Business licenses are issued on a calendar year basis and are based upon the gross receipts from the previous calendar year. There are currently nearly 4,000 licenses which will generate almost \$4 million in revenue for the 2002 license year. Approximately \$1.3 million of this will be collected by the Commissioner's Office. Any time this amount of revenue is generated, there is reason for concern as to the controls placed upon its receipt. In fact, some of the recommendations regarding segregation of duties within the attached management letter were put in place for the 2002 license year.

Segregation of processing duties is currently in effect during the regular processing season (January 1 through March 31). At this time, a clerk receives all incoming business license renewals. That clerk separates the return from any payment received and notes the amount of the payment on the return. The clerk then organizes the returns into batches of approximately 40 for processing by the License Inspector. Once a processing batch is completed, the payments are attached to the transmittal and taken to the Treasurer's Office for verification and deposit. During the interim period, the payments are locked in a secure area. This time period accounts for more than 85% of the license tax collected in the Commissioner's office and 60% of the licensed businesses

Late-filed returns which are received during the regular processing season are handled in the same manner as timely filed returns. Those which are received after April 1 are handled exclusively by the License Inspector. Most of these are filed in person with receipts given to the taxpayer creating a paper trail for subsequent audit purposes.

Delays in assessing delinquent filers are the direct result of attempts to obtain proper filing information. It has been the policy of this office to use administrative assessments only as a last resort for delinquent filers. A minimum of two delinquent notices are sent with ample response time

allowed before placing administrative assessments on these accounts. The administrative assessment program is completed within the current license year. This is a process which we may be able to accelerate.

Interdepartmental cooperation and coordination are essential to ensure that these controls are effective, but a multi-departmental committee would be of limited value in this process. Any such committee would have to include the Commissioner, Treasurer, Clerk of Circuit Court and Zoning and would be able to affect policy in obtaining documentation for new businesses, but would have little effect upon the renewal processes. The offices involved would have to include the Commissioner, Treasurer, Clerk of Circuit Court and Code Compliance.

In conclusion, the concerns expressed in the management letter regarding the business license process are very important to the Commissioner of the Revenue's Office. So much so, that the item of segregation of duties has already been addressed and we will be exploring methods of accelerating the administrative assessment process. This office has always encouraged and will continue to welcome suggestions which may increase the effectiveness in the performance of any and all of our functions.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Bradshaw', written in a cursive style.

Richard W. Bradshaw  
Commissioner of the Revenue  
James City County, Virginia



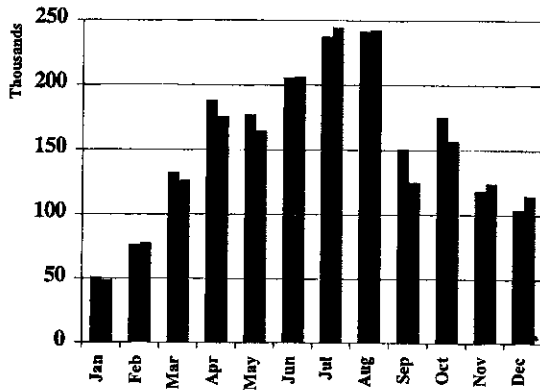
# **Local Travel Industry Report**

**James City County Board of Supervisors  
November 26, 2002**

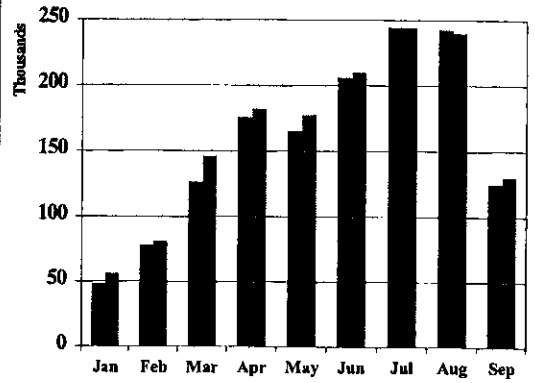
**Dave Schulte  
Executive Director  
Williamsburg Area Convention & Visitors Bureau**

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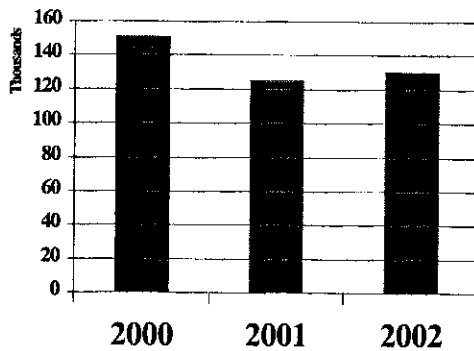
### Hotel Room Sales 2000 vs. 2001



### Hotel Room Sales 2001 vs. 2002



### September Hotel Room Sales



### 2002 Vacation Trends

Travel Industry Association of America

- Shorter vacations
- Closer to home
- Travel by car
- Stay with friends & relatives
- Spending less
- Booking via internet
- Booking at last minute

## *Destinations Most Affected*

- Dependent on international visitors.
- Dependent on air travel
- Dependent on business travel
- Large cities

## *Hotel Room Sales Through September 2002*

	<u>Rooms Sold</u>	<u>Occupancy</u>
United States	-0.4%	-2.1%
Las Vegas	-5.9%	-6.3%
Los Angeles	-3.6%	-5.5%
Miami	-8.7%	-8.1%
New Orleans	-1.4%	-5.6%
New York	-1.1%	-2.0%
Orlando	-2.7%	-4.7%
Washington, DC	-0.4%	-1.7%
<b>Williamsburg</b>	<b>+3.9%</b>	<b>+0.9%</b>

Source: Smith Travel Research

## *Challenges*

- Economy
- Virginia Tourism Corporation
  - Budget cut 42%
  - Grants program cut 45%
- Competition
  - Disney & Universal Studios
- Safety & Security

## *Domestic Travel Spending Forecast*

*Travel Industry Association of America*

2000	\$570.5 billion	
2001	\$537.2 billion	-5.8%
2002	\$535.3 billion	-0.4%
2003	\$560.1 billion	+5.0%

## *Strategies For 2003*

- Increase vacation packages marketing.
- Capitalize on travel media interest.
- Focus conference sales efforts on regional associations & corporations.
- Assure student & adult group tour operators about safety & security.
- Lobby General Assembly for funding of matching grants program.

## *2001-02 Tax Revenue Generated By Tourism\**

	<u>Room</u>	<u>Meal</u>	<u>Sales**</u>	<u>Total</u>
Williamsburg	\$4,055,032	\$5,288,426	\$1,868,692	\$11,212,150
James City	\$2,033,266	\$3,773,233	\$1,451,625	\$7,258,124
York	\$1,921,012	\$3,076,554	\$1,063,498	\$6,061,064
<b>Total</b>	<b>\$8,009,310</b>	<b>\$12,138,213</b>	<b>\$4,383,815</b>	<b>\$24,531,338</b>

\* Does not include real estate taxes and personal property taxes paid by travel industry businesses.

\*\*Reflects only the sales tax revenues received from the sale of rooms and meals. Does not include sales taxes paid by visitors at retail stores.

AT A REGULAR MEETING OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE 12TH DAY OF NOVEMBER, 2002, AT 7:00 P.M. IN THE COUNTY GOVERNMENT CENTER BOARD ROOM, 101 MOUNTS BAY ROAD, JAMES CITY COUNTY, VIRGINIA.

**A. ROLL CALL**

James G. Kennedy, Chairman, Stonehouse District  
Jay T. Harrison, Sr., Vice Chairman, Berkeley District  
John J. McGlennon, Jamestown District  
Michael J. Brown, Powhatan District  
Bruce C. Goodson, Roberts District

Sanford B. Wanner, County Administrator  
Frank M. Morton, III, County Attorney

**B. MOMENT OF SILENCE**

Mr. Kennedy requested the Board and citizens observe a moment of silence.

**C. PLEDGE OF ALLEGIANCE**

Mr. Kennedy led the Board and citizens in the Pledge of Allegiance.

**D. PUBLIC COMMENT**

1. Mr. Ed Oyer, 139 Indian Circle, recapped his comments made on March 12, 1994, regarding opposition to a proposed referendum on a third high school.

**E. PRESENTATION**

Mr. Kennedy and the other Board members presented Outstanding Service Awards to the following: **Individuals:** JoDarah Prescott, Linda Reinke, Pauline Milligan, Eric Funkhouser, Jane Leonard, Greg Dohrman, Alan McDowell, and John Black; **Outstanding Teams:** *Greenway Master Plan Steering Committee* Ron Boyd, Camilla Buchanan, Loretta Garrett, Mary Higgins, Michael Kirby, Jim Tucker, Peggy Wildman, and Bill Williams; *2002 Neighborhood Conference Team* Terry Buntrock, Helen Clendenin, Kim Johnson, Alex Kuras, John McCabe, Alan McDonald, Patricia McDonald, Dave Volz, and Nancy Volz; *Booksmart Program* accepted by Ileen Moorman, Noreen Bernstein, Genevieve Owens, Vicki Sprigg, Renee Dino, and Patricia Banks on behalf of Candace Allshouse, Patricia Banks, Lillian Barrett, Betsy Barry, Noreen Bernstein, Ellen Bennett, Erin Bladergroen, Heather Blair, Linda Broughton, Crystal Clay, Natalie Collins, Garland Dalton, Marie DiBenigno, Renee Dino, Reba Friedrich, Benjamine Goldberg, Vanessa Grant, Katie Hoff, Marcia Hoff, Bob Hunt, Tom Jordan, Reuben Lantz, Dawn Lantz, Mac McFarland, Ileen Moorman, Madeline Moss, Barbara Murphy, Larry Murphy, Genevieve Owens, Howard Richardson, Nancy Ruhland, Vicki Sprigg, Noel Veden, and Morag Willey; *SWAT Team Readiness* accepted by Stan Stout, Steve

Rubino, and John Black on behalf of Jeremy Barnett, Chris Belote, John Black, Billie Booth, Tony Dallman, Tom Ezell, Sean Gormus, Art Latimer, Dave Luchard, Alan McDowell, Pat Murray, Chris O'Neil, Sterling Perry, Eric Peterson, Brad Rinehimer, Steve Rubino, Richard Schugeld, Stan Stout, Michelle Toutaint, Steve Vargas, and Jerry White; *Chesapeake Bay Gateways Network Grant* Carla Brittle, John Carnifax, Paul Tubach, and Mike Woolson; *E-Gov Initiatives* Renee Dallman, Alisa Fox, Sharron Jeffreys, Jean Kuo, Linda Odell, Patrick Page, James Wilson, and Bernie Winslow; *Homebound Program* Linda Ellis and Margaret Toscano; *Paws @ Your Library Program* Cherny Edwards and Debra Weiss; *Check Information Process Improvement* Terry Bazemore, Beasy Hutchens, Jean Kuo, Barbara Miller, Tara Moore, and Rosemary Randall; *Day of Caring* John Haislip and Carol Schenk; *Customer Service Team* Barbara Coughlan, Alyce Donelson, Alex Holloway, Liz Johnson, Sarah Noble, Ronnie Nowak, Christy Parrish, Rosemary Randall, Bobby Ratcliffe, Mary Frances Rieger, Brad Rinehimer and Jane Townsend; and *Online Catalogue Improvement* Brett Charbeneau, Stephen D'Amico, Judith Fuss, and Kraston Scott; and the **Life Saving Award** to Aminda Davis, Heather Reese, and Daniel Stanley.

**F. CONSENT CALENDAR**

Mr. Kennedy asked if a member wished to pull an item from the Consent Calendar.

Mr. Harrison made a motion to adopt the items on the Consent Calendar.

On a roll call vote, the vote was: AYE: McGlennon, Brown, Goodson, Harrison, Kennedy (5) NAY: (0).

1. Minutes

- a. October 22, 2002, Work Session
- b. October 22, 2002, Regular Meeting
- c. October 28, 2002, Budget Retreat

2. Temporary Appointment of Acting Zoning Administrator

**RESOLUTION**

**TEMPORARY APPOINTMENT OF ACTING ZONING ADMINISTRATOR**

WHEREAS, pursuant to Section 24-5 of the Code of the County of James City, the Board of Supervisors is responsible for appointing the Zoning Administrator; and

WHEREAS, an appointment of an Acting Zoning Administrator is necessary on a temporary basis beginning November 12, 2002, and ending January 31, 2003.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby appoints John T. P. Horne as Acting Zoning Administrator for the time period specified herein.

3. Chesapeake Bay Preservation Ordinance Violation – Civil Charge – Don and Paula Dazley

**RESOLUTION**

**CHESAPEAKE BAY PRESERVATION ORDINANCE VIOLATION -**

**CIVIL CHARGE - DON AND PAULA DAZLEY**

WHEREAS, Don and Paula Dazley are the owners of a 21.91± acre parcel of land, commonly known as 129 Saw Mill Road, designated as Parcel No. (16) on James City County Real Estate Tax Map No. (36-3), hereinafter referred to as the (“Property”); and

WHEREAS, on or about February 13, 2002, it was determined by County staff that vegetation was removed from approximately 22,000-square feet of area in the Resource Protection Area on the Property; and

WHEREAS, Mr. and Ms. Dazley agreed to a Restoration Plan to replant trees, and shrubs, install silt fencing and construct a fence to keep horses out, on the Property in order to remedy the clearing violation under the County’s Chesapeake Bay Preservation Ordinance and Mr. and Mrs. Dazley have provided surety to the County to guarantee the survival of the vegetation in the Resource Protection Area on the Property; and

WHEREAS, Mr. and Mrs. Dazley have agreed to pay \$4,000 to the County as a civil charge under the County’s Chesapeake Bay Preservation Ordinance; and

WHEREAS, the James City County Board of Supervisors is willing to accept the restoration of the impacted areas and the civil charge as an interim settlement of the Chesapeake Bay Preservation Ordinance violation, in accordance with Sections 23-10 and 23-18 of the Code of the County of James City.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes and directs the County Administrator to accept the \$4,000 civil charge from Don and Paula Dazley as an interim settlement of the Chesapeake Bay Preservation Ordinance Violation.

4. Police Department Grant

**RESOLUTION**

**POLICE DEPARTMENT GRANT**

WHEREAS, the Department of Motor Vehicles (DMV) has approved a grant in the amount of \$9,000 to the Police Department for traffic enforcement, overtime, and related equipment; and

WHEREAS, the grant only requires soft money local match, thus eliminating any additional spending by the Police Department, excluding court overtime and equipment maintenance; and

WHEREAS, the grant is administered by the DMV according to the Federal Government Fiscal Year, which runs from October 1 through September 30, thus allowing any unspent funds as of June 30, 2003, to be carried forward to James City County’s next fiscal year.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia,

hereby authorizes the following appropriation amendments:

Revenues:

Department of Motor Vehicles                      \$9,000

Expenditures:

Police Department Budget                              \$9,000

**G. PUBLIC HEARINGS**

1. Ordinance to Amend and Reordain Chapter 13, Motor Vehicles – Multi-Year Motor Vehicle Decal

Ms. Ann Davis, Treasurer, stated that following the Board’s endorsement of a multi-year decal on September 24, 2002, staff prepared an ordinance providing the provisions for a multi-year decal, set to expire on December 31, 2007.

Ms. Davis recommended adoption of the Ordinance.

Mr. Brown inquired about how the multi-year motor vehicle decal will impact the collection of delinquent taxes.

Ms. Davis stated that in addition to the original bill and second notice, a third notice will be sent prior to assessing liens or undertaking “DMV stops.”

Mr. Brown requested further clarification on the “DMV stops.”

Ms. Davis stated that through the initiation of a “DMV stop,” a citizen will be unable to register any vehicle with the Department of Motor Vehicles until all delinquent taxes are paid including the cost of the fee to lift the DMV stop. Ms. Davis also stated that prior to the initiation of a “DMV stop,” the County would provide a 30-day notice of the intent to begin the DMV stop.

Mr. Kennedy opened the Public Hearing.

As no one wished to speak, Mr. Kennedy closed the Public Hearing.

Mr. Goodson stated support for the elimination of motor vehicle decals and stated support for this initiative towards that goal.

Mr. Goodson made a motion to adopt the Ordinance.

On a roll call vote, the vote was: AYE: McGlennon, Brown, Goodson, Harrison, Kennedy (5) NAY: (0).

2. Case No. Z0-2-02. Zoning Ordinance Amendment – Manufactured Home Replacement

Ms. Christy Parrish, Zoning Officer, stated that on April 8, 2002, the Virginia General Assembly amended Section 15.2-2307 to permit the replacement of a valid nonconforming manufactured home with a comparable one that meets HUD standards, and thereby localities can no longer require any further legislative approvals of such homes.



Ms. Parrish stated that the proposed Ordinance amendment eliminates references to requiring a special use permit and the language would mirror that of the Code of Virginia.

On October 7, 2002, the Planning Commission voted 7-0 to approve the Ordinance amendment.

Staff recommended approval of the amendment to ensure consistency between the County's Zoning Ordinance and the Code of Virginia.

Mr. Kennedy opened the Public Hearing.

As no one wished to speak, Mr. Kennedy closed the Public Hearing.

Mr. Goodson made a motion to adopt the Ordinance amendment.

On a roll call vote, the vote was: AYE: McGlennon, Brown, Goodson, Harrison, Kennedy (5) NAY: (0).

3. Vacation of a Portion of Right-of-Way for Louise Lane

Mr. Leo P. Rogers, Deputy County Attorney, provided the Board with an Ordinance of Vacation to vacate portions of the right-of-way as well as the conveyance of additional right-of-way to the County for Louise Lane in an effort to improve Louise Lane under the Dirt Street program and have Louise Lane accepted by the Virginia Department of Transportation (VDOT) into the State Secondary Road System.

Staff recommended adoption of the Ordinance.

Mr. Kennedy opened the Public Hearing.

As no one wished to speak, Mr. Kennedy closed the Public Hearing.

Mr. McGlennon made a motion to adopt the Ordinance.

On a roll call vote, the vote was: AYE: McGlennon, Brown, Goodson, Harrison, Kennedy (5) NAY: (0).

**H. BOARD CONSIDERATION**

1. General Obligation Public Improvement Refunding Bond

Ms. Suzanne R. Mellen, Director of Budget and Accounting, stated that bonds were issued at rates ranging from 5.6 percent to 5.85 percent for financing a portion of the costs for School improvements through the General Obligation Public Improvement Bonds issued by the County in 1994. Staff would like to take advantage of the lower interest rates and refund the portion of the bonds maturing on or after December 14, 2007, at a savings to the County of approximately \$16,000 to \$19,000 annually and total present value savings of approximately \$178,500.

Staff recommended the Board adopt the resolution to authorize the issuance and sale of \$4,280,000 General Obligation Public Improvement Refunding Bonds, Series 2002.

Mr. Goodson inquired if adoption of the resolution would extend the term of the Bonds.

Ms. Mellen stated that it would not.

Mr. Brown inquired if the \$16,000 - \$19,000 annual savings is a net savings.

Ms. Mellen stated that is an anticipated net savings.

Mr. McGlennon made a motion to adopt the resolution.

On a roll call vote, the vote was: AYE: McGlennon, Brown, Goodson, Harrison, Kennedy (5) NAY: (0).

## **I. PUBLIC COMMENT**

1. Mr. Ed Oyer, 139 Indian Circle, stated that other localities have turned down referenda on new schools due to conflicting information provided by the schools and requested that local educational opportunities include technical training.

## **J. REPORTS OF THE COUNTY ADMINISTRATOR**

Mr. Wanner stated that the Comprehensive Plan Steering Committee will be meeting on Mondays at 4 p.m. in the Building C Board Room at the Government Center, 101 Mounts Bay Road, and stated that citizens are invited to make comments regarding the Comprehensive Plan at the beginning and end of each meeting.

Mr. Wanner stated that at the High Growth Coalition meeting, Mr. Roger Wiley was engaged to represent the Coalition at the 2003 General Assembly. Mr. Wanner stated that the County's portion of Mr. Wiley's fee is \$1,000, and requested guidance from the Board on providing funding for this matter.

The Board supported the funding request of \$1,000.

Mr. Wanner requested Mr. Larry Foster, General Manager of the James City Service Authority, provide an update on the status of the Groundwater Desalinization Permit.

Mr. Foster stated that a Public Comment period would be open from November 17 – December 17 on the issuance of a Permit to James City Service Authority for Groundwater Desalinization. Mr. Foster stated that a Permit could be issued to the Service Authority as early as January of 2003 that would be another step forward in the development of the Groundwater Treatment Facility.

The Board and staff held a brief discussion regarding the conditions of the Permit and the impacts of a potential surface water source on the permit as well as the amount of groundwater withdrawal allowed by the Permit.

Mr. Wanner recommended that at the conclusion of the agenda, the Board adjourn until 4 p.m. on November 26, 2002.

## **K. BOARD REQUESTS AND DIRECTIVES**

Mr. Goodson requested the Board adopt an Emergency Ordinance to rescind the Ordinance adopted by the Board in answer to the Governor's Executive Order 33.

The Board, staff, and County Attorney held a discussion on the impacts of adopting this Emergency Ordinance on the Groundwater Withdrawal Permit and lapse of any outdoor watering regulations until the Board reinstates an outdoor watering ordinance.

Mr. Morton stated that in regard to the impacts on the Groundwater Withdrawal Permit, staff will contact the Department of Environmental Quality and alert them of the County's situation and seek guidance from them.

Mr. Kennedy requested a roll call on the motion to adopt the Emergency Ordinance.

On a roll call vote, the vote was: AYE: Brown, Goodson, Kennedy (3) NAY: McGlennon, Harrison (2).

Mr. McGlennon requested staff contact Cox Cable to have a representative before the Board and citizens to address concerns about the increasing rates for cable service and other issues.

Mr. Wanner stated that Hampton Road localities are coming together to address cable rate impacts to the localities and to create a model franchise agreement for future cable services.

Mr. Harrison stated that on November 21 at 6:30 p.m. in Rooms A and B of the James City/Williamsburg Community Center on Longhill Road, there will be a Berkeley District town meeting and invited all County residents to attend and voice any concerns or issues.

Mr. Kennedy stated that citizens are invited to participate in the next Community Conversations on the 2003 Comprehensive Plan Update on November 13 at 7 p.m. at the Toano Middle School.

Mr. Kennedy thanked the volunteers at the Volunteer Fire Department for their service and congratulated those that were part of the Installation Ceremony.

**L. ADJOURNMENT**

Mr. Harrison made a motion to adjourn until 4 p.m. on November 26, 2002.

On a roll call vote, the vote was: AYE: McGlennon, Brown, Goodson, Harrison, Kennedy (5) NAY: (0).

Mr. Kennedy adjourned the Board at 8:22 p.m.

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Sanford B. Wanner  
Clerk to the Board

MEMORANDUM

DATE: November 26, 2002  
TO: The Board of Supervisors  
FROM: Suzanne R. Mellen, Director of Budget and Accounting  
SUBJECT: General Obligation Public Improvement Refunding Bond

---

On November 12, 2002, the Board of Supervisors adopted a resolution authorizing the issuance of general obligation public improvement refunding bonds totaling \$4,280,000 at an interest rate of 3.75 percent per year. Since the preparation of the bond documents, SunTrust Bank has offered to reduce the rate on these bonds to 3.59 percent which will generate an additional \$48,000 in net present value savings.

Attached is a supplemental resolution that is required to take advantage of the lower interest rate. Staff recommends approval of the attached resolution.

---

Suzanne R. Mellen

CONCUR:

---

John E. McDonald

SRM/tlc  
bondrefund.mem

Attachment

**SUPPLEMENTAL RESOLUTION AUTHORIZING THE ISSUANCE AND SALE OF  
\$4,280,000 GENERAL OBLIGATION PUBLIC IMPROVEMENT REFUNDING BOND,  
SERIES 2002, OF THE COUNTY OF JAMES CITY, VIRGINIA,  
AND PROVIDING FOR THE FORM, DETAILS AND PAYMENT THEREOF**

WHEREAS, on November 12, 2002, the Board of Supervisors of the County of James City, Virginia (the "Board") adopted a resolution entitled "Resolution Authorizing the Issuance and Sale of \$4,280,000 General Obligation Public Improvement Refunding Bond, Series 2002, of the County of James City, Virginia, and Providing for the Form, Details and Payment Thereof" (the "Bond Resolution"). On November 20, 2002, in accordance with the Bond Resolution, James City County, Virginia (the "County") issued to SunTrust Bank (the "Bank") the County's \$4,280,000 General Obligation Public Improvement Refunding Bond, Series 2002 (the "Bond") bearing interest at the rate of 3.75 percent per year; and

WHEREAS, provided that the Board adopts this Supplemental Resolution (the "Supplemental Bond Resolution") on November 26, 2002, the Bank has agreed to a reduction in the interest rate payable on the Bond to 3.59 percent per year. The Board wishes to take advantage of this opportunity to reduce the interest rate on the Bond.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia,

**Section 1. Authorization of Reduced Interest Rate.** The Board hereby authorizes a reduction in the interest rate payable on the Bond to 3.59 percent per year, from and after November 27, 2002. All other payment terms set forth in the Bond, including the principal and interest payment dates, the principal installment payment schedule and the final maturity date of December 15, 2014, shall remain the same.

**Section 2. Ratification of Bond Resolution.** Except as noted in Section 1, the Board hereby ratifies all of the provisions contained in the Bond Resolution and in the documents and certifications referred to in the Bond Resolution.

**Section 3. Other Actions.** All other actions of the Supervisors, officers, staff, and agents of the County in conformity with the purposes and intent of this Supplemental Bond Resolution and in furtherance of accomplishing the reduction of the interest rate payable on the Bond are approved and confirmed. The officers and staff of the County are authorized and directed to execute and deliver all certificates and instruments and to take all such further action as may be considered necessary or desirable in connection with this Supplemental Bond Resolution.

**Section 4. Effective Date.** This Supplemental Bond Resolution shall take effect immediately upon its adoption. The Clerk and any Deputy Clerk of the

Board are hereby authorized and directed to see to the immediate filing of a certified copy of this Supplemental Bond Resolution with the Circuit Court of the County of James City, Virginia.

---

James G. Kennedy  
Chairman, Board of Supervisors

ATTEST:

---

William C. Porter, Jr.  
Deputy Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 26th day of November, 2002.

bondrefund.res

**CERTIFICATE OF THE CLERK OF THE  
BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA**

The undersigned Clerk of the Board of Supervisors of the County of James City, Virginia, certifies that:

1. A regular meeting of the Board of Supervisors of the County of James City, Virginia, was held on November 26, 2002, at the time and place established by the Board for such meetings, at which the following members were present and absent:

**PRESENT/ABSENT:**

James G. Kennedy	____/____
Jay T. Harrison, Sr.	____/____
Bruce C. Goodson	____/____
John J. McGlennon	____/____
Michael J. Brown	____/____

2. A resolution entitled "Supplemental Resolution Authorizing the Issuance and Sale of \$4,280,000 General Obligation Public Improvement Refunding Bond, Series 2002, of the County of James City, Virginia, and Providing for the Form, Details and Payment Thereof" was adopted by a majority of all members of the Board by a roll call vote, the ayes and nays being recorded in the minutes of the meeting as shown below:

**MEMBER**

**VOTE**

James G. Kennedy  
Jay T. Harrison, Sr.  
Bruce C. Goodson  
John J. McGlennon  
Michael J. Brown

3. Attached hereto is a true and correct copy of the foregoing resolution as adopted on November 26, 2002. This resolution has not been repealed, revoked, rescinded or amended and is in full force and effect on the date hereof.

WITNESS my signature and the seal of the Board of Supervisors of the County of James City, Virginia, this \_\_\_\_ day of November, 2002.

---

Deputy Clerk, Board of Supervisors  
of the County of James City, Virginia

(SEAL)

bondrefund.res

MEMORANDUM

DATE: November 26, 2002  
TO: The Board of Supervisors  
FROM: Larry M. Foster, General Manager, James City Service Authority  
SUBJECT: Riverview Plantation Water Rates

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The Riverview Plantation development located in the Stonehouse District is provided water from the only privately owned water system in James City County. The water system is owned by Tidewater Water Company located in Smithfield, Virginia.

Approximately 18 months ago representatives from the Riverview Plantation neighborhood appeared before the Board to express concerns for the operation of the water system and impending water rate increases. The fee increase was proposed to defray the costs incurred by the owner in addressing fluoride issues in other water systems owned by Tidewater Water Company. No improvement in service was proposed by the owner at the time. The Board directed that a letter be forwarded to the State Corporation Commission expressing opposition to the water rate increase. The rate increase was subsequently allowed.

Recently, Tidewater Water Company has been cited by the Virginia Department of Health for not completing required monthly water samples and for experiencing positive coliform samples. Coliform is an indicator of bacteria and does not present a health risk, only the possibility of presence of a more harmful bacteria. Fortunately, tests for more harmful bacteria were negative.

In addition, Tidewater Water Company has informed its customers in Riverview Plantation that it has filed with the State Corporation Commission its intent to increase the minimum charge for up to 6,000 gallons of water every two months from \$59 to \$60.75. The rate of \$2 per 1,000 gallons for water consumed over 6,000 every two months will remain the same. The cost of water to Riverview Plantation residents is over double the rate paid by James City Service Authority customers.

Representatives of Riverview Plantation have asked that the Board oppose the proposed rate increase since there has been no corresponding improvement in service.

Staff recommends that the Board approve the attached resolution authorizing the Chairman to forward a letter to the State Corporation Commission opposing any increase in water rates until the owner has improved water service to the Riverview Plantation neighborhood.

---

Larry M. Foster

LMF/gs  
riverviewwtr.mem

Attachment



**RESOLUTION**

**RIVERVIEW PLANTATION WATER RATES**

WHEREAS, the Riverview Plantation neighborhood is provided water by Tidewater Water Company;  
and

WHEREAS, investments in the water system and ongoing maintenance of the system infrastructure  
have been minimal and inadequate; and

WHEREAS, the owner has filed a notice with the State Corporation Commission with the intent to  
increase the water rates of customers served by the Riverview Plantation water system; and

WHEREAS, this is the second time in recent years that the rates to customers have been increased  
without improvements to service; and

WHEREAS, the Board of Supervisors of James City County went on record opposing the last rate  
increase.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia,  
directs its Chairman to forward correspondence to the State Corporation Commission  
opposing the rate increase proposed by Tidewater Water Company.

\_\_\_\_\_  
James G. Kennedy  
Chairman, Board of Supervisors

ATTEST:

\_\_\_\_\_  
William C. Porter, Jr.  
Deputy Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 26th day of  
November, 2002.

riverviewwtr.res

MEMORANDUM

DATE: November 26, 2002

TO: The Board of Supervisors

FROM: Darryl E. Cook, Environmental Director  
Leo P. Rogers, Deputy County Attorney

SUBJECT: Approval of Amendment to Deed of Easement for Open Space/Major Open Space/RPA Buffer  
1528 Harbor Road in Governor's Land

---

Attached for your consideration is a resolution authorizing the County Administrator to execute an Amendment to Deed of Easement for Open Space/Major Open Space/RPA Buffer with Ms. Karen A. Dewis. Ms. Dewis resides at 1528 Harbor Road in Governor's Land. In 1994, Governor's Land Associates conveyed a deed of easement to protect a 100-foot buffer around the Chesapeake Bay resource protection area. In 1998, the Environmental Division, upon request of Ms. Dewis to relocate her house, identified the exact location of the resource protection area. Based on the results of the field delineation, the County granted Ms. Dewis permission to relocate her home (see attached letter from Darryl E. Cook to Williamsburg Environmental Group dated May 26, 1998). The Amendment to Deed of Easement will relocate the resource protection area buffer consistent with the field delineation. Attached is a plat showing the change in the resource protection area buffer.

Staff recommends adoption of the attached resolution.

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Darryl E. Cook

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Leo P. Rogers

DEC/gs  
adeasm.mem

Attachments

November 18, 2002 (12:17 pm).

**RESOLUTION**

**APPROVAL OF AMENDMENT TO DEED OF EASEMENT FOR**

**OPEN SPACE/MAJOR OPEN SPACE/RPA BUFFER**

**1528 HARBOR ROAD IN GOVERNOR'S LAND**

WHEREAS, on September 13, 1994, Governor's Land Associates conveyed a Deed of Easement to James City County to protect certain resource protection areas consistent with the County's Chesapeake Bay Preservation Ordinance; and

WHEREAS, in 1998, the James City County Environmental Director granted Karen A. Dewis an exception to the Chesapeake Bay Preservation Ordinance based on a field delineation of the resource protection area at 1528 Harbor Road; and

WHEREAS, the Amendment to Deed of Easement relocates the resource preservation area in accordance with the 1998 field delineation; and

WHEREAS, the Board of Supervisors, following a public hearing, is of the opinion that it is in the public interest to accept the Amendment to Deed of Easement.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes and directs the County Administrator to execute the Amendment to Deed of Easement for Open Space/Major Open Space/RPA Buffer and such other documents as may be necessary to adjust the resources protection area buffer at 1528 Harbor Road in Governor's Land.

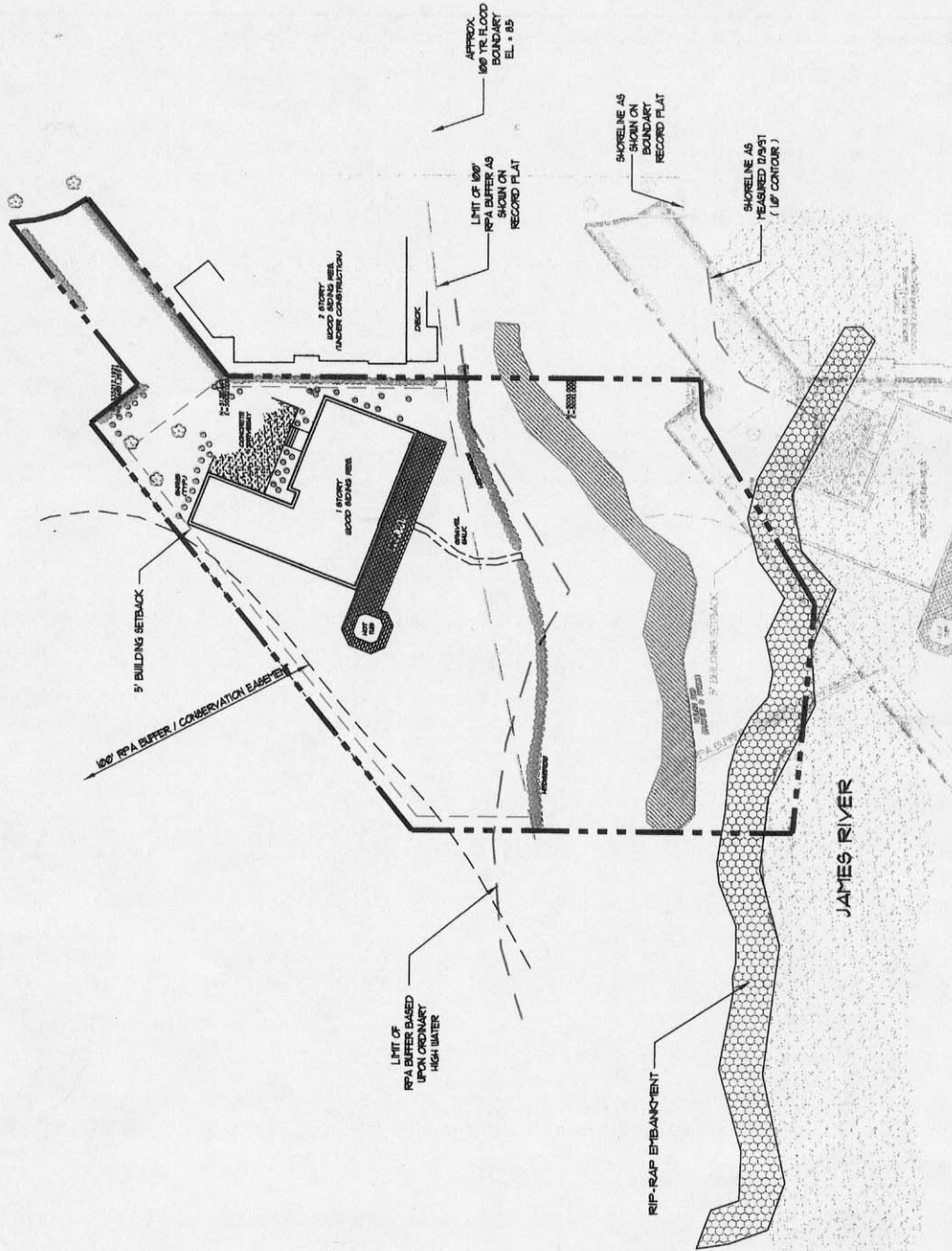
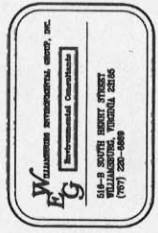
\_\_\_\_\_  
James G. Kennedy  
Chairman, Board of Supervisors

ATTEST:

\_\_\_\_\_  
Sanford B. Wanner  
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 26th day of November, 2002.

adeasm.res



THE HARBOR AT TWO RIVERS (LOT 6)  
**THE GOVERNORS LAND AT TWO RIVERS**  
 POWAHATAN DISTRICT, JAMES CITY COUNTY, VIRGINIA

LAST OF 1974 WATER EASEMENT UPON LOT 6

3248 Old Towne Road, Suite 1  
 Williamsburg, Virginia 23186  
 (757) 253-8540  
 Fax (757) 210-8954



DATE: MARCH 18, 1998  
 SCALE: 1" = 30'



## DEVELOPMENT MANAGEMENT

101-E MOUNTS BAY ROAD, P.O. BOX 8784, WILLIAMSBURG, VIRGINIA 23187-8784  
(757) 253-6671 Fax: (757) 253-6850 E-MAIL: devtman@james-city.va.us

CODE COMPLIANCE  
(757) 253-6626  
codecomp@james-city.va.us

ENVIRONMENTAL DIVISION  
(757) 253-6670  
environ@james-city.va.us

PLANNING  
(757) 253-6685  
planning@james-city.va.us

COUNTY ENGINEER  
(757) 253-6678  
INTEGRATED PEST MANAGEMENT  
(757) 253-2620

May 26, 1998

Mr. Ron Boyd  
Williamsburg Environmental Group  
516-B South Henry Street  
Williamsburg, VA 23185

RE: Exception Request for 1528 Harbor Road, Lot 6, The Harbor at Two Rivers,  
Governors Land

Dear Mr. Boyd:

Pursuant to your letter request of May 22, 1998, an exception from the Chesapeake Bay Preservation Ordinance to allow up to a thirty-foot encroachment into the platted Resource Protection Area (RPA) for relocation of the existing residential structure is granted. This exception is an administrative procedure that recognizes the discrepancy between the platted buffer and the actual physical RPA buffer present on the lot along the river.

The platted buffer line along the James River was established by determining the location of the RPA buffer at two points on the east and west Lot 6 property lines and then connecting those two points with a straight line across the lot. This determination did not take into account the variation of the shoreline on the lot. A field survey was conducted to determine the location of the shoreline and, thereby establish the actual location of the RPA based on the mean high water line along the James River. So while the exception is for an encroachment of approximately 30 feet into the platted RPA buffer, there is no encroachment into the physical James River RPA buffer based on mean high water which is the basis for establishment of the buffer location. The only actual encroachment is a two-foot encroachment (five square feet in area) into the RPA buffer adjacent to Major Open Space #24 for the northwest corner of the house which is also granted.

As shown on the plat dated 5/11/98, the hedge will need to be reestablished after the house is relocated. If you have any further questions regarding this matter, please call me at 253-6673.

Sincerely,

Darryl E. Cook, P.E.  
Environmental Director

MEMORANDUM

DATE: November 26, 2002  
TO: The Board of Supervisors  
FROM: John T. P. Horne, Development Manager  
SUBJECT: Public Use Site - U.S. Home

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On November 27, 2001, the Board of Supervisors approved Case No. Z-4-00/MP 01-01 that rezoned property for the U.S. Home project called "Colonial Heritage." As part of that rezoning case, certain proffers dated November 7, 2001, were approved by the Board of Supervisors and are recorded in the Circuit Court Clerk's office as Instrument No. 010022082.

One provision of the proffers deals with the possible donation of a public use site by U.S. Home for certain public uses needed to offset public costs associated with the U.S. Home project. As an alternative to the donation of a public use site, the Board of Supervisors has the option of electing to receive \$750,000 for use by the County for the acquisition of public use sites or other capital projects, the need for which is generated by the U.S. Home development.

The proffers require that the Board of Supervisors make an election to receive the cash payment or real property on or before the later of: i) 30 calendar days after a draft groundwater withdrawal permit for a desalinization plant has been issued to the County; or ii) September 30, 2002. A copy of the applicable section of the proffers is attached.

A draft groundwater permit has been issued to the James City Service Authority, dated October 30, 2002. The Board of Supervisors must, therefore, make its election to select either cash or land, the site to be designated by U.S. Home. If the Board of Supervisors fails to adopt a resolution making the election, the proffers allow U.S. Home to make the election. Should the County choose to receive a public use site in lieu of cash, then U.S. Home is given the option of selecting which of two possible public use sites they will convey to the County. Maps of the two public use sites are attached.

During the rezoning, the most widely discussed possible use for the public use sites in question was a public high school. The School Board has evaluated both public use sites, and has determined, for a variety of reasons, that neither site is appropriate for the construction of a high school. Attached is the list of allowable uses for the public use sites as contained in the current proffers. County staff does not believe that there is a foreseeable need to utilize the sites for any of the uses listed.

Staff recommends the Board of Supervisors adopt the attached resolution electing to receive the cash contribution of \$750,000 from the applicant as allowed for under the proffers.

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John T. P. Horne

CONCUR:

---

Sanford B. Wanner

JTPH/gs  
USHomeproffer.mem  
Attachments

**RESOLUTION**

**PUBLIC USE SITE - U.S. HOME**

WHEREAS, the Board of Supervisors approved Case No. Z-4-00/MP-01-01 on November 27, 2001;  
and

WHEREAS, as part of that case, certain proffers were accepted, one of which dealt with a public use  
site or cash contribution; and

WHEREAS, the above proffer allows the Board, by resolution, to elect to receive a site or \$750,000 in  
cash.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia,  
does hereby elect to receive a cash contribution of \$750,000, as provided for in proffers  
accepted as part of Case No. Z-4-00/MP-01-01.

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James G. Kennedy  
Chairman, Board of Supervisors

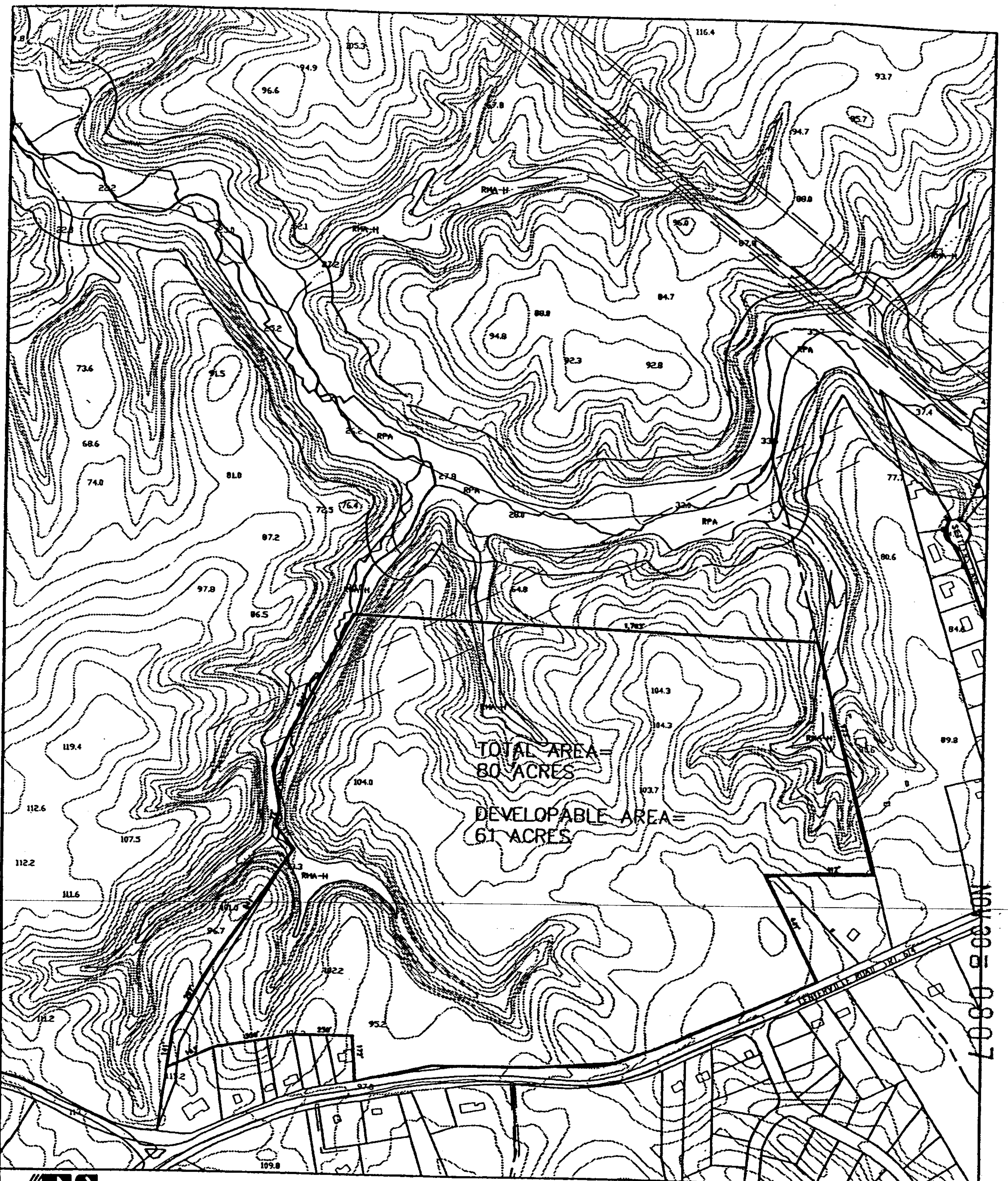
ATTEST:

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William C. Porter, Jr.  
Deputy Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 26th day of  
November, 2002.

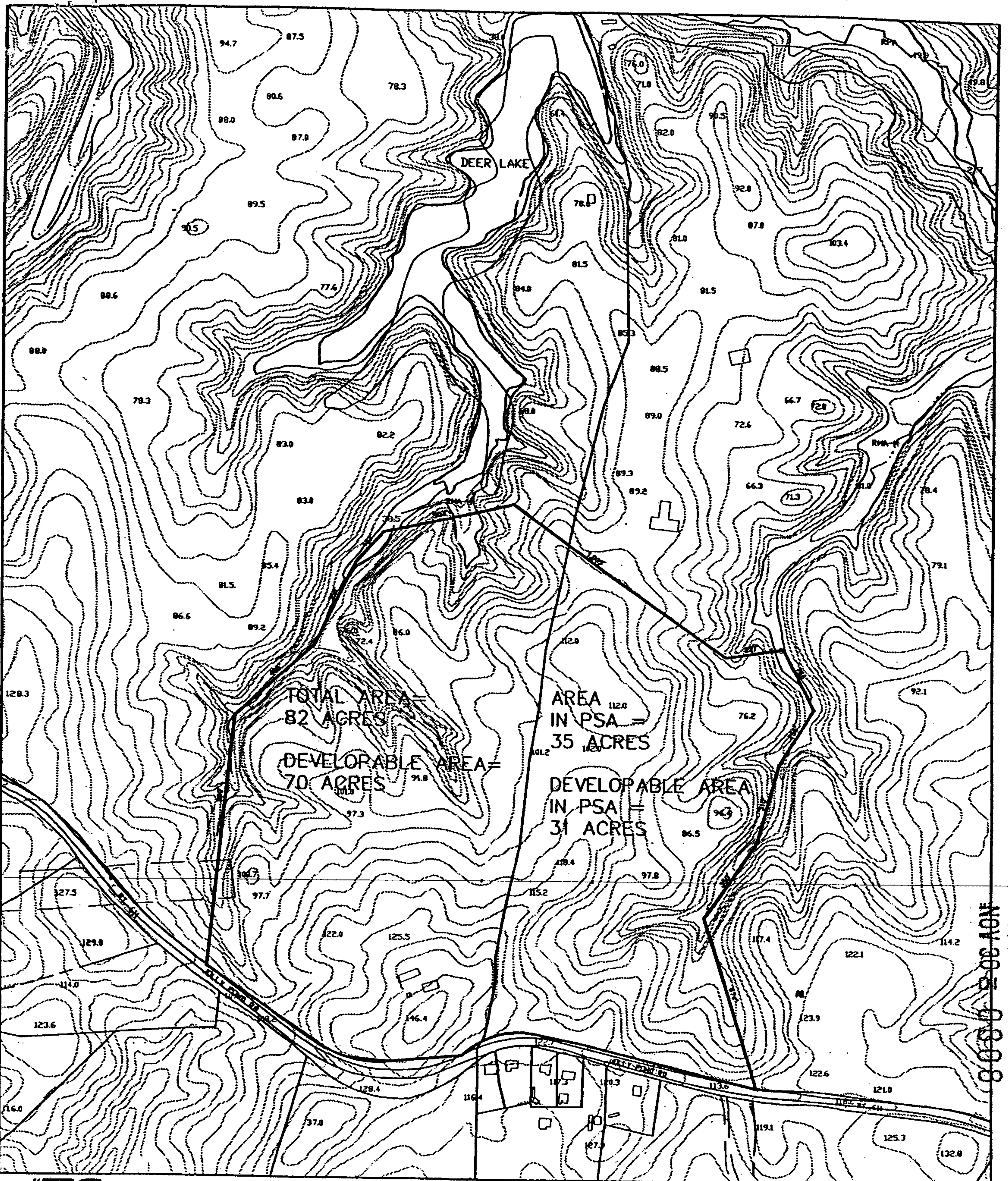
ushomeprofer.res



101 20 2 0807

<b>Consulting Engineers</b>		<b>Engineers, Surveyors, Planners</b>		<b>Williamsburg, Virginia</b>	
Designed AES	Drawn AES	<h2 style="margin: 0;">COLONIAL HERITAGE - PUBLIC USE SITE A</h2>			
Scale 1" = 500'	Date 10/18/01				
Project No. 8881					
Drawing No. 10F2					





10.18.01-11:15 EXHIBIT-2.dwg

0.000.0 2.00 ACRES

HBK



**Consulting Engineers**

**Engineers, Surveyors, Planners**

**Williamsburg, Virginia**

Designed AES	Drawn AES
Scale 1"=500'	Date 10/18/01
Project No. 8881	
Drawing No. 2 OF 2	

**COLONIAL HERITAGE -  
PUBLIC USE SITE B**

Natural Heritage ("DCR/DNH"). These investigations will be conducted by personnel who are qualified to conduct such studies and be submitted to and approved by the County Director of Planning prior to issuance of a land disturbance permit for any portion of the development of the Property occupied by any Natural Heritage Resource. If the natural resource inventory confirms that a Natural Heritage Resource exists on the Property, a conservation management plan will be prepared, submitted, and approved by the County Director of Planning, as well as any other agency responsible for the protection/conservation of the specific species inventoried prior to issuance of any land disturbance permit for the affected portion of the Property. All inventories and conservation management plans shall meet or exceed DCR/DNH standards. All approved conservation management plans shall be incorporated into the development plan of the Property and if unavoidable impacts will occur as a result of clearing, grading or construction, an appropriate mitigation plan will be developed by the Owners and approved by the County Director of Planning and the appropriate regulatory agency prior to issuance of a land disturbance permit for any portion of the development of the Property occupied by any Natural Heritage Resource.

7. Sidewalks. Sidewalks shall be constructed on one side of the road along those portions of Richmond Road and Centerville Road which abut the Property. These sidewalks shall be constructed prior to issuance of a building permit by the County for the 250<sup>th</sup> Residential Unit within the Property. Should VDOT or other permitting issues delay completion of the sidewalks described in this paragraph, the Owners may be issued building permits beyond 250 Residential Units after bonding pursuant to §19-72 of the County Code.

8. Public Use Site or Cash Contribution.

A. In order to mitigate impacts upon the County of development of the Property, either cash payments pursuant to paragraph B below, or a conveyance of real property pursuant to paragraph C below shall be made to the County. The election to receive cash payments or real property as described below shall be made by resolution adopted by the County Board of Supervisors on or before the later of (i) thirty (30) calendar days after a draft groundwater withdrawal permit for a desalinization plant has been issued as described in Section II, paragraph 15 below, or (ii) September 30, 2002, *time being of the essence*. Should the County Board of Supervisors fail to adopt a resolution making the election described above within the time period described herein, the election shall be made by U.S. Home.

B. In the event that cash payments to the County are elected as described above, the following terms shall apply:

(1.) A contribution shall be made to the County in the amount of Seven Hundred Fifty Thousand and No/100 Dollars (\$750,000.00) to be used by the County for acquisition or improvement of a Public Use Site(s), or any other project in the County's capital improvement plan, the need for which is generated by development of the Property. This contribution shall be payable at the rate of Seven Hundred Fifty and No/100 Dollars (\$750.00) for each of the first one thousand (1,000) Residential Units developed on the Property (the "Per Unit Contribution"), payable upon the earlier of the time of final subdivision plat or final site plan approval by the County of each said Residential Unit or grouping, phase or section of Residential Units.

(2.) The Per Unit Contribution(s) paid in each year shall be adjusted annually beginning January 1, 2003 to reflect any increase or decrease for the preceding year in the Consumer Price Index, U.S. City Average, All Urban Consumers (CPI-U) All Items (1982-84 = 100) (the "CPI") prepared and reported monthly by the U.S. Bureau of Labor Statistics of the United States Department of Labor. In no event shall the Per Unit Contribution be adjusted to a sum less than Seven Hundred Fifty and No/100 Dollars (\$750.00) per Residential Unit. The adjustment shall be made by multiplying the Per Unit Contribution for the preceding year by a fraction, the numerator of which shall be the CPI as of December 1 in the year preceding the calendar year most currently expired, and the denominator of which

shall be the CPI as of December 1 in the preceding year. In the event a substantial change is made in the method of establishing the CPI, then the Per Unit Contribution shall be adjusted based upon the figure that would have resulted had no change occurred in the manner of computing CPI. In the event that the CPI is not available, a reliable government or other independent publication evaluating information heretofore used in determining the CPI (approved in advance by the County Manager of Financial Management Services) shall be relied upon in establishing an inflationary factor for purposes of increasing the Per Unit Contribution to approximate the rate of annual inflation in the County.

C. In the event that conveyance of real property to the County is elected as describe above, the following terms shall apply:

(1.) The Owners shall convey to the County for use as a public use site that certain portion of the Property more particularly shown and described on the attached plat/drawing entitled: "COLONIAL HERITAGE – PUBLIC USE SITE A" ("Public Use Site A"). Public Use Site A shall be subject to restrictive covenants benefiting the Owners and the Association, prohibiting the uses and/or development except as described in subparagraph 3. Public Use Site A shall be conveyed to the County on or before such date as is three (3) years from the date of final approval of the rezoning of the Property with these Proffers by the County Board of Supervisors; or in the alternative at any time prior to the conveyance of Public Use Site A to the County, the Owners may convey a site in accordance with subparagraph 2.

(2.) The Owners may, at their sole and exclusive option, convey to the County for use as a public use site that certain property shown on the attached plat entitled: "COLONIAL HERITAGE – PUBLIC USE SITE B" ("Public Use Site B"). Public Use Site B shall be conveyed subject to restrictive covenants benefiting the Owners and the Association, prohibiting uses and/or development except as described in subparagraph 3 below.

(3.) The public use site conveyed to the County pursuant to this proffer (either Public Use Site A or Public Use Site B described above) shall be conveyed subject to restrictive covenants running with the land which shall limit the use and/or development of the public use site to uses intended to mitigate the impacts of development of the Public Use Site on the Property and to protect and enhance development of the remainder of the Property. Accordingly, use of the public use site described and conveyed above shall be restricted to the following uses permitted by the MU-Mixed Use Zoning District ("MU Ordinance") defined within the County Code as of the date hereof:

- Community recreation facilities, including parks, playgrounds, swimming pools, ballfields, tennis courts, and other similar recreational facilities
- Fire station
- Health, exercise and/or fitness center
- Hospital
- Indoor sport facility
- Library
- Parking lot
- Public meeting hall
- School(s)