

1  
AT A WORK SESSION OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY,  
VIRGINIA, HELD ON THE 16TH DAY OF MAY, NINETEEN HUNDRED NINETY-FOUR, AT 5:02  
P.M. IN THE COUNTY GOVERNMENT CENTER BOARD ROOM, 101 MOUNTS BAY ROAD,  
JAMES CITY COUNTY, VIRGINIA.

**A. ROLL CALL**

Perry M. DePue, Chairman, Powhatan District  
David L. Sisk, Vice Chairman, Roberts District

Jack D. Edwards, Berkeley District  
Robert A. Magoon, Jr., Jamestown District  
Stewart U. Taylor, Stonehouse District  
Sanford B. Wanner, Assistant County Administrator  
Leo P. Rogers, Assistant County Attorney

**B. WORK SESSION - Shrink/Swell Soils**

Mr. Sanford B. Wanner, Assistant County Administrator, stated that this work session had been scheduled several months ago and introduced Mr. John T. P. Horne, Manager of Development Management, and Bernard Farmer, Jr., Director of Code Compliance, who explained soil conditions which influence distress to structures.

After discussion, the Board requested staff to compile a list of persons interested in serving on a task force and to prepare instructions and goals for that task force.

**C. MINUTES - April 19, 21, and 25, 1994 - Work Sessions  
May 2, 1994 - Regular Meeting**

Mr. DePue asked if there were additions or corrections to the minutes.

Mr. Edwards made a motion to approve the four sets of minutes.

On a roll call, the vote was: AYE: Magoon, Edwards, Taylor, Sisk, DePue (5). NAY: (0).

**D. HIGHWAY MATTERS**

Mr. Quintin Elliott, Williamsburg Resident Engineer, Virginia Department of Transportation, reported that paving contracts in County subdivisions would begin within the week.

Mr. Sisk asked for a review of the speed limit on Ironbound Road in the vicinity of Mid-County Park.

Mr. Taylor asked that a street sign be installed on Woodmont Road in Oakland subdivision.

Mr. Wanner responded that staff would investigate.

Mr. Magoon asked for removal of the highway signs that are no longer needed on Lake Powell Road near Lake Powell Dam.

Mr. Magoon requested correction of error in spelling on Powhatan Shores street sign.

Mr. DePue thanked Mr. Elliott for prompt response and solution to Mrs. Eleanor Jones' concerns with the highway construction of Route 199 near her residence on Richmond Road.

**E. CONSENT CALENDAR**

Mr. DePue asked if any Board member wished to remove an item from the Consent Calendar.

Mr. DePue made a motion to approve the Consent Calendar.

On a roll call, the vote was: AYE: Magoon, Edwards, Taylor, Sisk, DePue (5). NAY: (0).

1. National Transportation Week, May 16-20, 1994

**RESOLUTION**

**NATIONAL TRANSPORTATION WEEK (MAY 16-20, 1994)**

WHEREAS, the Nation is celebrating National Transportation Week from May 16-20, 1994, and transportation is vital to our community to meeting goals of economic development and self-sufficiency; and

WHEREAS, public transportation provides mobility for all including the young, elderly, disabled, and disadvantaged; and

WHEREAS, James City County Transit Company provides safe, efficient, and effective service for the people of the Greater James City County/Williamsburg Area.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, declares the week of May 16-20, 1994, as National Transportation Week and calls upon all citizens to recognize the role public transportation plays within our community.

2. Virginia Housing Development Authority Flexible Funds Program

**RESOLUTION**

**AUTHORIZATION TO SUBMIT APPLICATIONS**

**FOR RESERVATION OF FUNDS UNDER THE VHDA**

**FLEXIBLE FUNDS PROGRAM**

WHEREAS, the Virginia Housing Development Authority (VHDA) has announced its intention of accepting applications for low interest loan funds periodically under its Flexible Funds Program; and

WHEREAS, the Board of Supervisors of James City County has previously authorized the development of the Toano Trace Affordable Housing Development and the Affordable Housing Incentive Program; and

WHEREAS, the VHDA Flexible Funds Program may assist low- to moderate-income families to purchase homes through the Affordable Housing Incentive Program.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of James City County, Virginia, that the County Administrator be authorized to apply for and to accept commitments of loan funds to be provided to eligible home purchasers under the VHDA Flexible Funds Program.

3. Health Insurance Reserve Fund

**RESOLUTION**

**HEALTH INSURANCE RESERVE FUND**

WHEREAS, the County has received a refund of part of the health insurance premiums contributed by the County and employees; and

WHEREAS, the County wishes to help defray health insurance costs in a year with large premium increases; and

WHEREAS, employee life-style and behavior contribute to good health and lower medical costs.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby establishes a Health Insurance Reserve Fund, as a part of the County's General Fund, and authorizes the deposit of \$51,300 received as a premium refund from the County's Health Insurance Program.

**E. PUBLIC HEARINGS**

1. Case No. SUP-5-94. Rawls Byrd Elementary School/Temporary Classroom Trailers

Mr. O. Marvin Sowers, Jr., Director of Planning, stated that Mr. David Papenfuse had applied on behalf of the Williamsburg-James City County School Board to extend for two years the permit period for 3 of 6 temporary classroom trailers at Rawls Byrd Elementary School, on 12.63 acres, zoned R-2, General Residential, located at 112 Laurel Lane, further identified as Parcel (6-171A) on James City County Real Estate Tax Map No. (48-1).

Staff recommended approval of the special use permit with the condition listed in the resolution.

Mr. DePue opened the public hearing.

1. Mr. Bruce Abbott, representing Williamsburg-James City County Schools, stated the extension was requested for additional classes, not for overcrowding of classrooms.

Mr. DePue closed the public hearing.

Mr. Sisk made a motion to approve the resolution.

On a roll call, the vote was: AYE: Magoon, Edwards, Taylor, Sisk, DePue (5). NAY: (0).

### RESOLUTION

#### CASE NO. SUP-5-94. RAWLS BYRD ELEMENTARY SCHOOL TEMPORARY

#### CLASSROOM TRAILERS

WHEREAS, the Board of Supervisors of James City County has adopted by ordinance land uses that shall be subjected to a special use permit process; and

WHEREAS, the owner of the property has applied to extend the permit period for three existing temporary classroom trailers on property identified as Parcel (6-171A) on James City County Tax Map No. (48-1).

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve the issuance of Special Use Permit No. SUP-5-94 as described herein with the following condition:

1. This permit period shall be valid until July 1, 1996.
2. Case No. SUP-6-94. D. J. Montague Elementary School/Temporary Classroom Trailers

Mr. O. Marvin Sowers, Jr., Director of Planning, stated that Mr. David Papenfuse had applied on behalf of the Williamsburg- James City County School Board to extend for two years the permit period for 2 temporary classroom trailers at D. J. Montague Elementary School, on 22.5 acres, zoned R-4, Residential Planned Community, located at 5830 Centerville Road, further identified as Parcel (1-49) on James City County Real Estate Tax Map No. (31-3).

Staff recommended approval of the special use permit with the condition listed in the resolution.

Mr. DePue opened the public hearing, and as no one wished to speak, he closed the public hearing.

Mr. DePue made a motion to approve the resolution.

On a roll call, the vote was: AYE: Magoon, Edwards, Taylor, Sisk, DePue (5). NAY: (0).

### RESOLUTION

#### CASE NO. SUP-6-94. D.J. MONTAGUE SCHOOL TEMPORARY

#### CLASSROOM TRAILERS

WHEREAS, the Board of Supervisors of James City County has adopted by ordinance specific land uses that shall be subjected to a special use permit process; and

WHEREAS, the owner of the property has applied for a special use permit to extend the permit period for two temporary classroom trailers on property identified as Parcel (1-49) on James City County Real Estate Tax Map No. (31-3).

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve the issuance of Special Use Permit No. SUP-6-94 as described herein with the following condition:

1. This permit shall be valid until July 1, 1996.
  
3. Case No. ZO-1-94. Ordinance Amendment, Chapter 20, Zoning, Article V, Districts, Division II, Limited Business/Industrial M-1, Sections 40-412 and 20-422, Utilities

Mr. Sowers stated that amendments would allow the Board flexibility to approve alternatives in the M-1 zoning district to public water and sewer requirement for golf courses.

In concurrence with staff, the Planning Commission unanimously recommended approval of the ordinance amendment.

Mr. DePue opened the public hearing, and as no one wished to speak, he closed the public hearing.

Mr. Sisk made a motion to approve the resolution.

On a roll call, the vote was: AYE: Magoon, Edwards, Taylor, Sisk, DePue (5). NAY: (0).

#### G. BOARD CONSIDERATIONS

1. Case Nos. Z-17-89 and SUP-46-89. Jack L. Massie Contractor, Inc.

Mr. Mark J. Bittner, Planner, stated that the cases were deferred at the May 2, 1994, Board of Supervisors' meeting to allow additional information about traffic and noise impacts on neighboring subdivision and differences between the previous and current proposals.

Mr. Bittner reiterated that Mr. Gary M. Massie of Jack L. Massie Contractor, Inc., had applied to rezone approximately 35.13 acres from A-1, General Agricultural, to M-1, Limited Business/Industrial; 17.26 acres from A-1 to M-2, General Industrial; 10.20 acres from A-1 to A-1 with proffers; and, 10.40 acres from R-1 to R-1 with proffers, property extending in a westerly direction from Cokes Lane along the CSX railroad line for approximately 3,500 feet, further identified as Parcels (1-1), (1-9), (1-9B), and (1-14) on James City County Real Estate Tax Map No. (13-4).

Mr. Bittner further stated that Mr. Massie had applied for a special use permit to allow construction, on the 17.26 acres to be rezoned M-2, of a ready-mix concrete plant and manufacture of stone products including cement treated aggregate.

Mr. Bittner indicated that revised proffers and a traffic study were submitted which adequately addressed staff's concerns.

The Planning Commission, at its April 12, 1994, meeting, recommended approval of the cases by a 7-1 vote, and staff recommended approval of the cases with conditions listed in the SUP-46-89 resolution.

Mr. Taylor spoke of his support for the industry tax base and made a motion to approve Case Nos. Z-17-89 and SUP-46-89.

The Board briefly reviewed the concerns of residents of Mirror Lakes, individually expressed empathy with those concerns, and indicated support for the cases which were consistent with the Comprehensive Plan.

On a roll call, the vote was: AYE: Magoon, Edwards, Taylor, Sisk, DePue (5). NAY: (0).

### RESOLUTION

#### CASE NO. Z-17-89. JACK L. MASSIE CONTRACTOR, INC.

WHEREAS, in accordance with Section 15.1-431 of the Code of Virginia, and Section 20-15 of the James City County Zoning Ordinance, a public hearing was advertised, adjoining property owners notified and a hearing scheduled on Zoning Case No. Z-17-89 for rezoning approximately 35.13 acres of land from A-1 to M-1 with proffers; 17.26 acres of land from A-1 to M-2 with proffers; 10.20 acres of land from A-1 to A-1 with proffers; and 10.40 acres of land from R-1 to R-1 with proffers, further identified as Parcels (1-1), (1-9), (1-9B), and (1-14) on James City County Real Estate Tax Map No. (13-3) that abuts the CSX railroad line and extends in a westerly direction from Cokes Lane along the CSX railroad line for a distance of approximately 3,500 feet and for rezoning approximately 0.65 acres of land from A-1 to M-1 with proffers, further identified as a portion of Parcel (1-40) on James City County Real Estate Tax Map No. (12-4) that is along Richmond Road approximately 400 feet from the intersection of Richmond Road and Bush Springs Road; and

WHEREAS, the Planning Commission of James City County, recommended approval of Case No. Z-17-89 by a vote of 7 to 1.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve Zoning Case No. Z-17-89, and accepts the voluntary proffers.

### RESOLUTION

#### CASE NO. SUP-46-89. JACK L. MASSIE CONTRACTOR, INC.

WHEREAS, the Board of Supervisors of James City County has adopted by ordinance specific land uses that shall be subjected to a special use permit process; and

WHEREAS, the Planning Commission of James City County, following its public hearing on April 12, 1994, recommended approval of Case No. SUP-46-89, by a vote of 7 to 1, to permit the construction of a ready mix concrete plant; the manufacture of stone products including cement treated aggregate; the storage and distribution of crushed stone, sand and gravel; and the construction of towers and antennas in excess of sixty feet in height, further identified as Parcel Nos. (1-1) and (1-9) on James City County Real Estate Tax Map No. (13-3).

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve the issuance of Special Use Permit No. SUP-46-89 as described herein with the following conditions:

1. If construction has not commenced on some portion of the project within 36 months from the date of issuance of the special use permit, it shall become void.
2. A Spill Prevention and Control and Counter Measure Plan shall be approved by the Director of Code Compliance prior to the issuance of a Certificate of Occupancy for the ready-mix concrete plant and the cement treated aggregate plant.

3. All roads and parking areas shown as paved on the plan entitled "Cokes Lane Rezoning Legend" and dated February 8, 1994, shall be paved prior to the issuance of any Certificate of Occupancy for the ready-mix concrete plant.
4. The dust collection system to be utilized on the ready-mix concrete plant shall be equivalent in design and function to the C&W Manufacturing and Sales Company, Incorporated Model No. CW-RA-140 portable dust collection system.
5. A dust collection system shall be installed on the cement treated aggregate plant sufficient to keep visible airborne dust particles on-site.
6. The "reverse beepers" on all equipment which serve the ready-mix concrete plant and the cement treated aggregate plant shall be turned down to their lowest volumes.
7. All site lighting shall be of the sodium-vapor type. All site lighting shall be less than 30 feet in height.
8. No flags or signage shall be placed on the silos or aggregate hoppers or any other piece of permanent equipment.
9. There shall be either a 100-foot buffer consisting of berms and trees and vegetation, or a 50-foot enhanced evergreen landscaped screen with a 6-foot high earth berm along the frontage of Richmond Road. This buffer shall be subject to approval by the Planning Director.

2. Case No. SP-44-94. Busch Gardens 1995 Expansion - Phase II - Height Limitation Waiver Request

Mr. Sowers stated that Mr. Ronnie Orsborne of Langley and McDonald had applied on behalf of Busch Entertainment Corporation for a height limitation waiver for a Special Effects Building, 75 feet tall, located in Italian Village section of Busch Gardens, further identified as Parcel (1-8) on James City County Real Estate Tax Map No. (51-4).

Mr. DePue declared the case deferred until the June 6, 1994, Board of Supervisors' meeting to allow time for further review of plans.

**H. PUBLIC COMMENT**

1. Mr. Bill Bryant, 4985 Hickory Sign Post Road, on behalf of the Coalition for Quality Growth, expressed concern for the problems associated with shrink/swell soils and suggested that the proposed task force should recognize formally the nature of shrink/swell soils and to include slope/grade and drainage requirements.
2. Mr. Robert Stoddard, 186 The Maine, described the problem of expanding walls in his basement.
3. Mr. John Shostak, 109 Pasbehegh, spoke of costly replacement of his home's foundation which was excluded by insurance policy coverage.
4. Mr. Bill Weldon, 120 Pasbehegh, apprised the Board of his home's substandard construction and repairs, and complained of Code Compliance's perception and attitude toward service to the citizen.

5. Mr. Glenn Cornelisse, 250 Nina Lane, expressed appreciation for work being done now for drainage problem, but felt that sickness in his family could have been alleviated had the inspection been done correctly a year ago.

6. Ms. E. Susanne Millirons, 111 Smokehouse Lane, asked for an answer to the question of who was responsible and accountable for the drainage problem in the Gate House Farms subdivision.

7. Mr. Ken Jans, 102 Tendril Court, expressed anger of all the problems at his home caused by substandard construction.

8. Mr. Kevin Cooke, 110 Smokehouse Lane, stated that he was a new home owner and was not made aware of flooding and drainage problems when he purchased the house.

9. Mr. Michael Hansen, 113 Smokehouse Lane, stated the drainage problem in the Gate House Farms subdivision could be corrected by maintenance of the main drainage ditch to the subdivision.

10. Ms. Beverley Rodgers Connolly, 6 Guest House Court, stated the neighborhood had united in finding the solution to the drainage problem and obtaining maintenance of the drainfield in Gate House Farms.

Mr. Magoon expressed willingness to meet with Gate House Farms residents to find a solution to their concerns.

11. Mr. Alfred Jackson, 138 Berkeley Town Road, asked the Board for assistance in building a home on 4 acres without moving other family members from manufactured homes located on the acreage.

Mr. Taylor asked staff to review possibility of creation of a family subdivision with Mr. Jackson.

12. Ms. Linda Tiexeira, 904 Wood Duck Commons, stated that she hoped the Task Force members would act rapidly to relieve County residents of their concerns.

Mr. DePue asked concerned citizens, who have documented and experienced soil problems, developers, builders, etc. to call County Administration Office and express an interest in being considered for serving on the Task Force.

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

Mr. Sanford B. Wanner, Assistant County Administrator, recommended the Board go into executive session pursuant to Section 2.1-344(A)(1) of the Code of Virginia to consider a personnel matter, appointment of individuals to County boards and/or commissions.

## **J. BOARD REQUESTS AND DIRECTIVES**

Mr. DePue commended the community for construction of Kidsburg at Mid-County Park during the week of May 9-15, 1994. He emphasized the Board's thanks for the community effort.

Mr. DePue declared a break at 8:46 p.m.

Mr. DePue recessed the Board for a James City Service Authority Board of Directors' meeting, at 9:02 p.m.

Mr. DePue reconvened the Board into open session at 9:35 p.m., and made a motion to convene into executive session as recommended above by the Assistant County Administrator, at 9:35 p.m.

On a roll call, the vote was: AYE: Magoon, Edwards, Taylor, Sisk, DePue (5). NAY: (0).

Mr. DePue reconvened the Board into open session at 9:45 p.m., and made a motion to approve the executive session resolution.

On a roll call, the vote was: AYE: Magoon, Edwards, Taylor, Sisk, DePue (5). NAY: (0).

**RESOLUTION**

MEETING DATE: May 16, 1994

**CERTIFICATION OF EXECUTIVE MEETING**

WHEREAS, the Board of Supervisors of James City County, Virginia, (Board) has convened an executive meeting on this date pursuant to an affirmative recorded vote and in accordance with the provisions of the Virginia Freedom of Information Act; and

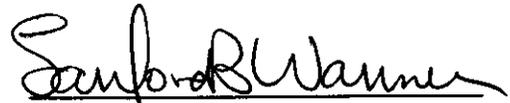
WHEREAS, Section 2.1-344.1 of the Code of Virginia requires a certification by the Board that such executive meeting was conducted in conformity with Virginia law.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby certifies that, to the best of each member's knowledge; (i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the executive meeting to which this certification resolution applies; and, (ii) only such public business matters as were identified in the motion convening the executive meeting were heard, discussed or considered by the Board.

Mr. Taylor made a motion to adjourn.

On a roll call, the vote was: AYE: Magoon, Edwards, Taylor, Sisk, DePue (5). NAY: (0).

The Board adjourned at 9:49 p.m.

  
Sanford B. Wanner  
Deputy Clerk to the Board

ORDINANCE NO. 31A-156

MAY 16 1994

BOARD OF SUPERVISORS  
JAMES CITY COUNTY  
VIRGINIA

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 20, ZONING, OF THE CODE OF THE COUNTY OF JAMES CITY, VIRGINIA, BY AMENDING ARTICLE V, DISTRICTS, DIVISION 11. LIMITED BUSINESS/INDUSTRIAL DISTRICT, M-1, SECTION 20-412. USES PERMITTED BY SPECIAL USE PERMIT ONLY, AND SECTION 20-422. UTILITIES.

BE IT ORDAINED by the Board of Supervisors of the County of James City, Virginia, that Chapter 20, Zoning, is hereby amended and reordained by amending Sections 20-412. Uses Permitted by Special Use Permit Only, and 20-422, Utilities.

## CHAPTER 20. ZONING

## ARTICLE V. DISTRICTS

## DIVISION 11. LIMITED BUSINESS/INDUSTRIAL DISTRICT, M-1

Section 20-412. Uses Permitted by Special Use Permit Only.

*Outdoor Sports Facilities, with water and sewer facilities for golf courses as approved by the Board of Supervisors.*

Section 20-422. Utilities

(a) *Unless otherwise specified in this district, all development in the Limited Business/Industrial District, M-1, shall be served by public water and sewer.*

Ordinance to Amend and Reordain  
Chapter 20. Zoning  
Page 2



Perry M. DePue  
Chairman, Board of Supervisors

ATTEST:



Sanford B. Wanner  
Deputy Clerk to the Board

SUPERVISOR      VOTE

MAGOON	AYE
EDWARDS	AYE
TAYLOR	AYE
SISK	AYE
DEPUE	AYE

Adopted by the Board of Supervisors of James City County, Virginia, this 16th day of May, 1994.

dv114-20.ord

**PROFFER AGREEMENT**

008224

These Proffers are made as of the 11th day of May, 1994, by JACK L. MASSIE CONTRACTOR, INC., a Virginia Corporation, MASSIE CORPORATION, a Virginia Corporation and SLEEPY HOLLOW CORPORATION OF TOANO, a Virginia Corporation (collectively "the Owner" or "the Owners"), together with their respective successors and assigns, which Owners collectively own certain real property shown on the James City County Tax Map 13-3 as Parcels 1-1, 1-9, 1-9B and 1-14 and on Tax Map 12-4 as a portion of Parcel 1-40.

**RECITALS**

A. JACK L. MASSIE CONTRACTOR, INC. is the owner of certain real property in James City County, Virginia, more particularly described as follows:

All that certain parcel of land in James City County, Virginia, containing by survey 34.48 acres, shown and described on that certain plat entitled "TOPOGRAPHIC PLAT OF 34.48 ACRES FOR JACK L. MASSIE CONTRACTOR, INC., JAMES CITY COUNTY, VIRGINIA", which plat is dated April 3, 1980, made by Evans Surveying Co., P.C., a copy of which is recorded in James City County Plat Book 41, Page 5.

Being the same property conveyed to Jack L. Massie Contractor, Inc. by Deed dated June 18, 1985 from George A. Marston, Jr., and Dorothy M. Marston, his wife, recorded in James City County Deed Book 274, Page 158, et. seq. on June 27, 1985.

MASSIE CORPORATION is the owner of certain real property in James City County, Virginia, more particularly described as follows:

All that certain tract or parcel of land situate, lying and being in Stonehouse Magisterial District, James City County, Virginia, fronting on Cokes Lane (State Route No. 602), containing 2.2076 Acres, shown and designated as "PARCEL B, AREA = 2.2076 ACRES" on plat of survey entitled, "PLAT OF PARCELS "A" & "B", BEING A SUBDIVISION OF PROPERTY STANDING IN THE NAME OF JACK L. MASSIE CONTRACTORS, INC., STONEHOUSE DISTRICT, JAMES CITY COUNTY", dated August 25, 1987, made by Langley and McDonald, P.C., Engineers, Planners, Surveyors, Virginia Beach and Williamsburg, Virginia, of record in the Clerk's Office of the Circuit Court for the City of Williamsburg and James City County, Virginia, in Plat Book 46, Page 59, to which plat reference is here made for a more accurate and particular description of the said property.

Together with a non-exclusive perpetual easement for ingress and egress over and along that fifty (50) foot street leading from Cokes Lane (State Route No. 602) in a generally northwesterly direction, shown and designated as "Entrance Road" on the plat of survey hereinabove referred to.

Being the same property conveyed to Massie Corporation by Deed dated May 27, 1988 from Jack L. Massie Contractor, Inc. recorded in James City County Deed Book 392, Page 556, et. seq. on May 31, 1988.

All that certain lot, piece or parcel of land situate, lying and being in Stonehouse District, County of James City, Virginia, containing  $17.257 \pm$  Acres, and designated as "PARCEL "C"  $17.257 \pm$  ACRES (FORMERLY PARCEL B)", as shown on that certain plat entitled, "PLAT OF PARCELS C and D STANDING IN THE NAME OF ALACO CORPORATION (D.B. 222, PG. 413) TO BE CONVEYED TO MASSIE CORPORATION, STONEHOUSE DISTRICT, COUNTY OF JAMES CITY, VIRGINIA," dated 9/21/88 and made by Langley and McDonald, P.C., Engineers, Planners, Surveyors, a copy of which plat is duly recorded in the Clerk's Office of the Circuit Court for the City of Williamsburg and the County of James City, Virginia, in Plat Book 49, Page 72, to which reference is here made.

Being a portion of the same property conveyed to Massie Corporation by Deed dated October 4, 1988 from Alaco Corporation recorded in James City County Deed Book 411, Page 90, et. seq., and James City County Deed Book 431, Page 503, et. seq. on October 7, 1988 and April 17, 1989, respectively.

**SLEEPY HOLLOW CORPORATION OF TOANO** is the owner of certain real property in

James City County, Virginia, more particularly described as follows:

All that certain tract or parcel of land situate, lying and being in Stonehouse District, James City County, Virginia, containing 12.465 Acres, more or less, designated "PARCEL "D"  $12.465 \pm$  ACRES (FORMERLY PARCEL A)" as shown on that certain plat entitled, "PLAT OF PARCELS C and D STANDING IN THE NAME OF ALACO CORPORATION (D.B. 222, PG. 413) TO BE CONVEYED TO MASSIE CORPORATION, STONEHOUSE DISTRICT, COUNTY OF JAMES CITY, VIRGINIA", dated September 21, 1988, made by Langley and McDonald, P.C., Engineers, Planners, Surveyors, a copy of which plat is duly recorded in the Clerk's Office of the Circuit Court for the City of Williamsburg and County of James City, Virginia, in Plat Book 49, Page 72, to which reference is here made.

Being the same property conveyed to Sleepy Hollow Corporation of Toano by Deed dated December 14, 1990 from Massie Corporation recorded in James City County Deed Book 498, Page 614, et. seq. on December 21, 1990.

All that certain tract or parcel of land situate, lying and being in Stonehouse District, James City County, Virginia, containing 8.21 Acres, more or less, as shown on that certain plat entitled, "PLAT OF LOT LINE ADJUSTMENT, PROPERTIES OF SLEEPY HOLLOW CORPORATION OF TOANO AND NICE PROPERTIES,

INC.", dated July 27, 1990, revised October 29, 1990, made by The DeYoung-Johnson Group, Inc., Engineers, Architects, Surveyors, Williamsburg, Virginia, a copy of which plat is to be recorded in the Clerk's Office of the Circuit Court for the City of Williamsburg and County of James City, Virginia and to which plat reference is here made.

Being a portion of the same property conveyed to Sleepy Hollow Corporation of Toano by Deed of Exchange dated December 17, 1990 from Stonehouse, Inc. recorded in James City County Deed Book 498, Page 611, et. seq. on December 21, 1990.

All those two certain tracts or parcels of land situate, lying and being in Stonehouse District, James City County, Virginia, designated "PARCEL 1", containing 0.3261 Acres, and "PARCEL 2", containing 0.3232 Acres, all as shown on plat of survey entitled, "PLAT OF PROPERTY TO BE CONVEYED BY FRANK L. AND MARY KAY FERNANDEZ TO JACK L. MASSIE CONTRACTORS, INC., STONEHOUSE DISTRICT - COUNTY OF JAMES CITY, VIRGINIA", dated June 15, 1990, made by Langley and McDonald, P.C., Engineers, Planners, Surveyors, Virginia Beach and Williamsburg, Virginia, a copy of which plat of survey is recorded in the Clerk's Office of the Circuit Court for the City of Williamsburg and James City County, Virginia, in Plat Book 52, Page 96, to which plat of survey reference is here made for a more accurate and particular description of the property herein conveyed.

Being a portion of the same property conveyed to Sleepy Hollow Corporation of Toano by Deed of Exchange dated August 28, 1990 with Delmarva Properties, Inc. and Stonehouse, Inc., recorded in James City County Deed Book 487, Page 124, et. seq. on August 30, 1990.

All of the above described properties are herein collectively referred to as "the Property".

B. The Property is more particularly shown on a plat entitled "COKES LANE REZONING LEGEND" and "MAP OF PARCELS WITH PHYSICAL FEATURES, JAMES CITY COUNTY, VIRGINIA", dated 2/8/94, prepared by Langley and McDonald, P.C., which drawing is hereinafter referred to as "the Rezoning Legend".

C. The Owners have applied for a rezoning of the Property. The rezonings requested include the following:

- 20.6750 Acres, more or less, from General Agricultural District, A-1 and Limited Residential District, R-1 to General Agricultural District, A-1 with Proffers and Limited Residential District, R-1 with Proffers ("the A-1/R-1 Property").

- 20.3860 Acres, more or less, from General Agricultural District, A-1 with Special Use Permits (SUP 14-85, 4-89 & 14-90) to General Industrial District, M-2 with Proffers ("the M-2 Property").

- 31.9997 Acres, more or less, from the General Agricultural District, A-1 with Special Use Permits (SUP 14-85, 4-89 & 14-90) to Limited Business/Industrial District, M-1 with Proffers ("the M-1 Property").

D. The County's Comprehensive Plan Land Use Map specifically designates the A-1/R-1 Property as "Low Density Residential", the M-2 Property as "General Industry" and the M-1 Property as "Mixed Use".

E. The provisions of the James City County Zoning Ordinance may be deemed inadequate for the orderly development of the Property.

F. The Owners desire to offer to the County certain proffers on the development of the Property not generally applicable to land similarly zoned for the protection and enhancement of the community and to provide for the high quality and orderly development of the Property.

NOW, THEREFORE, for and in consideration of the approval by James City County ("the County") of the rezonings set forth above, and pursuant to §15.1-491.1, et. seq., of the Code of Virginia, 1950, as amended, and §20-16 of the County Code, the Owners agree that they will meet and comply with all of the following proffers in developing the Property. In the event all of the requested rezonings are not granted by the County, these Proffers shall thereupon become null and void.

#### **PROFFERS - THE A-1/R-1 PROPERTY**

##### Uses:

The uses of the A-1/R-1 Property shall be limited to:

- Preserves and conservation areas for protection of natural features and wildlife.
- Water impoundments, new or expansion of, less than 20 acres and with dam heights of less than 15 feet, which impoundments shall be used for

stormwater management facilities for the A-1/R-1 Property, the M-2 Property and the M-1 Property.

- Extensions or private connections to utilities which are intended to serve existing or future customers and which are accessory to existing or proposed development.
- Open space as defined by the County's Zoning Ordinance required for the development of the portion of the Property south of the CSX railroad.
- The Owner shall use its best efforts to limit the clearing of the A-1/R-1 Property to maximize to the extent reasonably practicable its effectiveness as a visual screen between the developed portion of the Mirror Lakes subdivision and the M-2 Property. Accordingly, the Owner shall submit all of its clearing plans of the A-1/R-1 Property to the Development Review Committee of the County's Planning Commission for its review and approval.

### **PROFFERS - THE M-2 PROPERTY**

1. Uses:

The following uses otherwise permitted under the County Zoning Ordinance on the M-2 Property shall be prohibited pursuant to these proffers:

- Boiler shops.
- Breweries and other necessary associated activities.
- Drop-forge industries, manufacturing forgings with a power hammer.
- Manufacture and processing of acrylic and other synthetic fibers.
- Manufacture and sale of manufactured homes, mobile homes, modular homes, and industrialized housing units.
- Manufacture of batteries.
- Manufacture of boats, marine equipment and boat trailers.
- Manufacture of cans and other metal products from previously processed metals.
- Manufacture of furniture.
- Manufacture of glass and glass products.
- Metal foundry and heavy weight casting.
- Drop hammers.
- Wood preserving operations.

2. Landscaping:

In conjunction with the development of the M-2 Property, the Owner(s) of the M-2 Property shall maintain a buffer of evergreen plant material consisting of Leyland Cypress or other buffering material as may be approved by the County Planning Director, placed between the railroad spur line and its mainline extending from the northeastern corner of the M-2 Property to the west approximately 315' until it

intersects the clear zone required for the crossover spur to the mainline. The plants shall be planted in 2 parallel rows each of which rows shall be approximately 4.5 feet apart. The plants in each row shall be staggered from the other row and be planted on approximately 12.5 foot centers.

3. Industrial Access Road:

The road providing direct access from U.S. Route 60 to the M-1 Property and the M-2 Property shall be constructed and dedicated to public use by the Owner(s) of the M-1 Property and the M-2 Property, all in accordance with the standards published by the Virginia Department of Transportation for similar industrial access roads. This road shall be approximately 1300' to 1500' in length and be constructed within a right of way not less than 50' in width with not less than 24' of paved surface. The road improvements shall also include moving the existing median break on U.S. Route 60 approximately 50 feet west to meet the access road and installing an eastbound left turn storage lane and taper and a westbound right turn storage lane and taper on U.S. Route 60. The length of all storage lanes and tapers shall be determined by the Virginia Department of Transportation.

The industrial access road, water service lines and sewer lines and/or force mains may be constructed in phases in accordance with approved plans of development. Upon completion of each phase, said roads and utility lines will be dedicated to the Virginia Department of Transportation or the James City Service Authority, as appropriate.

4. Ready-Mix Concrete Plant:

Prior to the issuance of a certificate of occupancy for the ready-mix concrete plant, the Owner(s) of the M-2 Property shall meet and satisfy all of the following conditions:

- a Spill Prevention and Control and Counter Measure Plan shall be approved by the Director of Code Compliance;
- all roads and parking areas shown as paved on the Rezoning Legend shall be paved;
- a dust collection system shall be provided equivalent or better in design and function to the C & W Manufacturing and Sales Company, Inc. Model No. CW-RA-140 portable dust collection system; and
- a facility shall be provided to control runoff from the wash area, cement loading area and waste storage area of the ready-mix concrete plant designed for a 25-year storm event of a 24-hour duration. This facility shall contain one additional foot of freeboard capacity in addition to the volume necessary for control of stormwater runoff.

5. Traffic signal(s) - U.S. Route 60:

The Owner shall, at its expense, commission a traffic study for the intersections of Cokes Lane with U.S. Route 60 and the Industrial Access Road with U.S. Route 60 prior to the issuance of a Certificate of Occupancy for any building which would exceed 200,000 square feet of building area on the M-1 Property and on the M-2 Property. Building area shall include all existing and new buildings, but not include the ready-mix concrete plant and the cement treated aggregate facility. The traffic study shall address the requirement, if any, of a traffic signal at either or both of said intersections based on the traffic generated by the Property at the point of study and at the full buildout stage of the Property, the then existing background traffic on U.S. Route 60 and safety considerations. After the review and approval of the traffic study by both the County and the Virginia Department of Transportation, the Owner shall pay for the cost of the purchase and installation of a traffic signal at either or both of said intersections if such signal(s) is(are) required as determined by the traffic study.

### PROFFERS - THE M-1 PROPERTY

1. Uses:

The following uses otherwise permitted under the County Zoning Ordinance on the M-1 Property shall be prohibited pursuant to these proffers:

- Automobile sales
- Barber and beauty shops.
- Book stores.
- Candy stores.
- Carpet stores.
- Department stores.
- Dressmaking stores.
- Drugstores.
- Dry cleaners.
- Employment services or agencies.
- Farmer's markets.
- Feed, seed, and farm supply stores.
- Florist stores.
- Furniture stores.
- Furrier stores.
- Greeting card stores.
- Home appliance sales and service.
- Hotels, motels or convention centers with accessory retail sales, barber shops and beauty shops located within the hotel, motel or convention center for the principal benefit of the resident guest.
- Ice cream stores.
- Indoor sport facilities, health clubs, exercise clubs, and fitness centers.
- Jewelry sales and service.

- Locksmith and gunsmith shops excluding shooting ranges.
- Manufacture and assembly of musical instruments, toys, novelties, and rubber and metal stamps.
- Manufactured home or mobile home sales.
- Music and record stores.
- Non-emergency medical transport.
- Pet stores.
- Picture framing stores.
- Places of worship.
- Plant and garden supply and hardware and paint stores.
- Post Offices.
- Tearooms and taverns.
- Retail food stores, bakeries and fish markets.
- Security service offices.
- Shoe stores.
- Sporting goods stores.
- Stamp and coin stores.
- Tailor shops.
- Tobacco and pipe stores.
- Toy stores.
- Travel bureaus.
- Veterinary hospitals and kennels.
- Wearing apparel stores.
- Yard goods stores.

2. Certain Permitted Uses with Additional Restrictions:

The signage for the following generally permitted uses shall not be visible from either U.S. Route 60 or Cokes Lane; the buildings for said uses shall neither face U.S. Route 60 or Cokes Lane nor be used by persons other than Owners, operators, employees, customers and subcontractors of the other generally permitted uses on the Property:

- Automobile service with major repair (limited to a fully enclosed building).
- Automobile service stations with or without the sale of fuel.
- Restaurants.
- Tire, transmission, glass, body and fender and other automotive product sales and service with major repair (limited to a fully enclosed building) and vehicle storage screened from adjacent property by landscaping and fencing.
- Vehicle and trailer sales and service, with major repair (limited to a fully enclosed building).

3. Landscaped Earthen Berms:

The Owner(s) of the M-1 Property shall maintain each of the following existing landscaped earthen berms on the M-1 Property:

- the 8' high landscaped berm located 20' from the southeastern corner of the M-1 Property adjacent to and paralleling the eastern boundary of the M-1 Property being approximately 350' in length; and
- the 10' high landscaped berm located adjacent to and paralleling the southern border of the M-1 Property (adjacent to property of Van Driem) being approximately 410' in length.

4. Additional Landscaping:

In conjunction with the development of the M-1 Property, the Owner(s) of the M-1 Property shall plant (or maintain in the case of existing landscaping) as necessary a buffer of evergreen plant material consisting of Leyland Cypress or other buffering material as may be approved by the County Planning Director. The plants shall be planted in 2 parallel rows each of which rows shall be approximately 4.5 feet apart. The plants in each row shall be staggered from the other row and be planted on approximately 12.5 foot centers at the following locations:

- along that portion of the southern and eastern boundaries of the M-1 Property abutting the Wallace property;
- along that portion of the western boundary of the M-1 Property abutting the Bell property;
- along that portion of the southern boundary of the M-1 Property abutting the Van Driem property, excluding that portion of said boundary along which is currently constructed a 10' landscaped earthen berm;
- along that portion of the southern boundary of the M-1 Property abutting the Taylor Estate property, excluding that portion of said boundary for which planting has previously been accomplished in conjunction with previously approved site plans; and
- along that portion of the northern boundary of the M-1 Property between the CSX railroad and the spur line on the M-1 Property.

5. Building and Site Lighting Arrangement:

In order to mitigate possible noise, light and dust impacts to adjacent property, the Owner(s) of the M-1 Property shall arrange all buildings, doors, points of access for shipping and receiving and site lighting (for all structures for which site plan approval has not been previously granted by the County) as follows:

- the front of buildings will face away from adjacent properties which are not zoned Industrial; and
- doors and points of access for shipping and receiving and site lighting shall be reviewed and approved by the Development Review Committee so as to minimize adverse impacts on adjoining properties which are not zoned Industrial; however, access to the approved railroad spurs and the meeting of all code requirements shall not be limited by this provision.

6. Industrial Access Road:

The road providing direct access from U.S. Route 60 to the M-1 Property and the M-2 Property shall be constructed and dedicated to public use by the Owner(s) of the M-1 Property and the M-2 Property, all in accordance with the standards published by the Virginia Department of Transportation for similar industrial access roads. This road shall be approximately 1300' to 1500' in length and be constructed within a right of way not less than 50' in width with not less than 24' of paved surface. The road improvements shall also include moving the existing median break on U.S. Route 60 approximately 50 feet west to meet the access road and installing an eastbound left turn storage lane and taper and a westbound right turn storage lane and taper on U.S. Route 60. The length of all storage lanes and tapers shall be determined by the Virginia Department of Transportation.

The industrial access road, water service lines and sewer lines and/or force mains may be constructed in phases in accordance with approved plans of development. Upon completion of each phase, said roads and utility lines will be dedicated to the Virginia Department of Transportation or the James City Service Authority, as appropriate.

7. Traffic signal(s) - U.S. Route 60:

The Owner shall, at its expense, commission a traffic study for the intersections of Cokes Lane with U.S. Route 60 and the Industrial Access Road with U.S. Route 60 prior to the issuance of a Certificate of Occupancy for any building which would exceed 200,000 square feet of building area on the M-1 Property and on the M-2 Property. Building area shall include all existing and new buildings, but not include the ready-mix concrete plant and the cement treated aggregate facility. The traffic study shall address the requirement, if any, of a traffic signal at either or both of said intersections based on the traffic generated by the Property at the point of study and at the full buildout stage of the Property, the then existing background traffic on U.S. Route 60 and safety considerations. After the review and approval of the traffic study by both the County and the Virginia Department of Transportation, the Owner shall pay for the cost of the purchase and installation of a traffic signal at either or both of said intersections if such signal(s) is(are) required as determined by the traffic study.

8. Landscaping of Buffer Along U.S. Route 60 (Richmond Road):

The Owner(s) of the M-1 Property shall submit for review and approval to the Development Review Committee of the County's Planning Commission a plan for an enhanced evergreen landscaping with berms and/or moguls along the U.S. Route 60 (Richmond Road) frontage of the M-1 Property to a depth of 50 feet. Except for the Industrial Access Road shown on the Rezoning Legend, no other roads or driveways shall cross this buffer area. The existing billboard within the buffer shall be removed within 62 months from the date hereof.

**GENERAL PROFFERS**

1. Headings:

All section and subsection headings of this Agreement are for convenience only and are not part of these proffers.

2. Rezoning Legend:

The Property will be developed in accordance with the Rezoning Legend. The Owner(s) may from time to time, in final subdivision plats or site plans submitted to the County, relocate the specific uses shown on the Rezoning Legend (provided that such uses are permitted by the County's Zoning Ordinance and these proffers) provided that the Planning Commission determines that said relocations do not alter the basic concept or character of the development.

3. Phasing of Additional Landscaping:

The additional landscaping required pursuant to this Agreement may be installed in phases in accordance with approved site plans.

4. Conflict with Vested Rights:

These Proffers are subject and inferior to the Owner's vested rights pursuant to site plans previously approved by the County. Any conflict between the terms of these Proffers and the Owner's vested rights shall be resolved in accordance with the Owner's vested rights.

5. Severability of Provisions:

If any clause, sentence, paragraph, section or subsection of these Proffers shall be adjudged by any Court of competent jurisdiction to be invalid for any reason, including a declaration that it is contrary to the Constitution of the Commonwealth or of the United States, or if the application thereof to the Owner or to any government agency or circumstance is held invalid, such judgment or holding shall be confined in its operation to the clause, sentence, paragraph, section or subsection hereof or the specific application thereof, directly involved in the controversy in

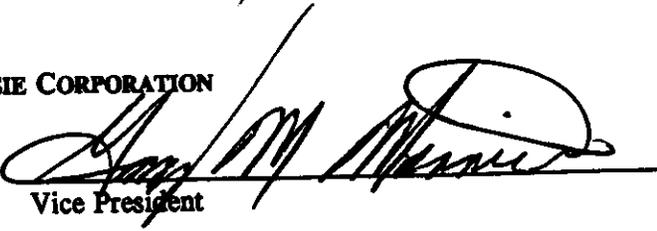
which the judgment or holding shall have been rendered or made, and shall not in any way affect the validity of any other clause, sentence, paragraph, section or subsection hereof, or affect the validity of the application thereof to the Owner or to any other government agency, person or circumstance.

WITNESS the following signatures and seals:

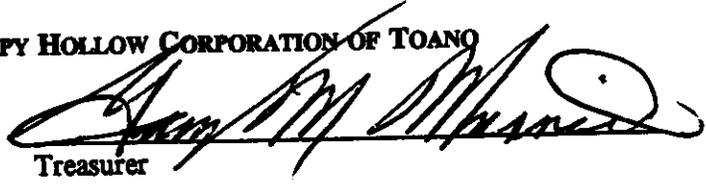
**JACK L. MASSIE CONTRACTOR, INC.**

By:   
Vice President

**MASSIE CORPORATION**

By:   
Vice President

**SLEEPY HOLLOW CORPORATION OF TOANO**

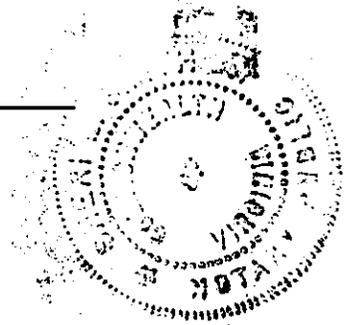
By:   
Treasurer

STATE OF VIRGINIA

COUNTY OF JAMES CITY, to-wit:

The foregoing instrument was acknowledged before me this 11th day of May, 1994 by GARY M. MASSIE, Vice President of JACK L. MASSIE CONTRACTOR, INC., a Virginia corporation, its officer in this behalf first duly authorized, GARY M. MASSIE, Vice President of MASSIE CORPORATION, a Virginia corporation, its officer in this behalf first duly authorized, and GARY M. MASSIE, Treasurer of SLEEPY HOLLOW CORPORATION OF TOANO, a Virginia corporation, its officer in this behalf first duly authorized.

Cheri L. Smith  
NOTARY PUBLIC



My commission expires: 9-30-97

VIRGINIA: City of Williamsburg and County of James City, to Wit:  
In the Clerk's office of the Circuit Court of the City of Williamsburg and County of James City the 18 day of May, 1994. This Deed was presented with certificate annexed and admitted to record at 3:48 o'clock  
Teste: Helene S. Ward, Clerk  
by Helene S. Ward  
Deputy Clerk