

AT A SPECIAL MEETING OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE 19TH DAY OF SEPTEMBER, NINETEEN HUNDRED NINETY-FOUR, AT 5:00 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
Frank M. Morton, III, County Attorney

B. PRESENTATION

1. Library Design - Bernard M. Farmer, Jr.

Mr. Bernard M. Farmer, Jr., briefly described the design, location of building on site, parking area and entrances, buffering and area for expansion of the library to be constructed on Croaker Road. He introduced Ms. Patsy Hansel, Williamsburg Regional Library Director, and Mr. Ed Lazon, Architect, Design Collaborative, Inc., in the audience.

On behalf of the Board, Mr. Magoon expressed thanks to all for their hard work.

C. MINUTES -September 6, 1994

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

Mr. Sisk made a motion to approve the 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 the speed limit on Ironbound Road had been reevaluated and would be posted at 45 miles per hour near the Mid-County Park entrance.

Mr. Taylor asked that tree limbs be cut along Old Stage Road (Route 746) to Barhamsville Road for safety reasons.

E. CONSENT CALENDAR

Mr. DePue asked if a Board member wished to remove any 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. Parks and Recreation Advisory Committee

RESOLUTION

PARKS AND RECREATION ADVISORY COMMISSION

WHEREAS, the Parks and Recreation Advisory Commission was established on March 22, 1982; and

WHEREAS, it is the desire of the Board of Supervisors to expand the membership of such Commission.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, that it hereby increases the number of Commission members from seven (7) to eight (8).

2. Additional State Allocations - Social Services Division

RESOLUTION

APPROPRIATION TO THE SOCIAL SERVICES DEPARTMENT

WHEREAS, the State Department of Social Services has provided supplemental funding to render additional services through the Day-Care Fee at Risk Program; and

WHEREAS, the 10 percent local match funds are available in Line Item No. 007-081-1001; and

WHEREAS, additional funds have also been provided for the Auxiliary Grants Aged Line Item No. 007-082-5702 and the Auxiliary Grants-Disabled Line Item No. 007-082-5703; and

WHEREAS, the 20 percent local matching funds are available in Line Item No. 007-082-5712; and

WHEREAS, additional funds have also been provided for Day-Care Software for Line Item No. 007-081-5400; and

WHEREAS, no local matching funds are required.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the following appropriation amendments:

REVENUES:

Revenues from the Commonwealth	<u>\$42,760.00</u>
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EXPENDITURES:

Auxiliary Grants-Aged (007-082-5702)	\$ 4,893.00
Auxiliary Grants-Disabled (007-082-5703)	4,894.00
Day Care Computer Software (007-081-5400)	1,850.00
Day Care Fee At Risk (007-083-5721)	36,756.00
State Local Hospital (007-082-5712)	(2,840.00)
Salaries Local (007-081-1000)	<u>(2,793.00)</u>
Total	<u>\$42,760.00</u>

F. PUBLIC HEARINGS1. Case No. SUP-10-94. St. George's Hundred (Continued from 9/6/94)

Mr. Matthew W. Maxwell, Planner, stated that the applicant had requested deferral of this case on September 6, 1994, until this meeting, and restated that Mr. J. R. Chisman had applied for a special use permit to allow a residential cluster development of 24 lots on 24.775 acres, located on the west side of St. George's Hundred Subdivision, zoned R-1, Residential, on a portion of Parcel No. (1-2C) on James City County Real Estate Tax Map No. (46-1).

In concurrence with staff, the Planning Commission unanimously recommended approval with conditions listed in the resolution. Staff also recommended approval of an added Condition 5.

Mr. DePue continued the public hearing.

1. Mr. Alvin Anderson, representative for Mr. Jimmy Chisman, owner and developer, briefly described the proposal. He requested Board approval of the case.

2. The Reverend J. Pickett Miles, Jr., 205 St. George's Boulevard, representative of the Homeowners Association, asked for deferral of the case so that residents could discuss concerns with Mr. Chisman.

Following Mr. Edwards' statement of support for the residents request for deferral, the Board agreed to continue the public hearing and emphasized that action would be taken at the October 3, 1994, Board of Supervisors' meeting.

Mr. Magoon asked staff to provide information promptly to the Board following the meeting with the applicant and St. George's Hundred residents regarding their concerns of cluster development.

3. Case Nos. Z-4-94 and Z-5-94. Colonial Capitol Development Company (Westray Downs Addition) (Continued from 9/6/94)

Mr. Mark J. Bittner, Planner, stated that these cases had been deferred at the September 6, 1994, Board of Supervisors' meeting, and reiterated that Mr. Clifford E. Henderson of Colonial Capitol Development Company had applied to rezone two parcels, approximately 4.5 acres from R-8, Rural Residential, to R-1, Limited Residential, to allow construction of additional single-family homes in the Westray Downs subdivision, located on the south side of John Tyler Highway (Route 5) approximately .5 miles east of the intersection of John Tyler Highway and Ironbound Road, further identified as Parcel Nos. (1-17) and (1-18) on James City County Real Estate Tax Map No. (47-2).

Mr. Bittner further stated that staff believed that a contribution of \$8,750 should be made toward financing and construction of additional traffic capacity in the Route 5 corridor, and the applicant proffered \$5,000.

Staff determined that the cases were consistent with land use type and densities of the Comprehensive Plan, but recommended denial for being inconsistent with the stated goal that developments mitigate their traffic impacts.

Mr. DePue continued the public hearing.

1. Mr. Alvin Anderson, representing the applicant, stated that the small expansion of existing subdivision would yield only 4 lots more than that available by right; no portion of existing subdivision or expansion was legally eligible for inclusion in the existing Route 5 transportation improvement district; and, most of the traffic generated by small expansion of subdivision would not utilize the proposed alternate Route 5. He asked for Board approval of the cases.

2. Ms. Willafay McKenna, representing the Planning Commission, stated that the Planning Commission felt that this subdivision was distant from the transportation improvement district and improvements of turn lanes and to the entrance were reasonable.

Mr. DePue closed the public hearing.

The Board and staff discussed having a consistent system applied to all properties when developed and the impact of that development on traffic in the entire Route 5 corridor.

Mr. Magoon made a motion to approve the resolutions.

On a roll call, the vote was: AYE: Magoon, Taylor, Sisk, DePue (4). NAY: Edwards (1).

RESOLUTION

CASE NOS. Z-4-94 AND Z-5-94. COLONIAL CAPITOL DEVELOPMENT COMPANY

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 Nos. Z-4-94 and Z-5-94 for rezoning approximately 4.5 acres from R-8 to R-1, with proffers, identified as Parcel Nos. (1-17) and (1-18) on James City County Real Estate Tax Map No. (47-2); and

WHEREAS, the Planning Commission of James City County, unanimously recommended approval of Case Nos. Z-4-94 and Z-5-94.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia does hereby approve Zoning Case Nos. Z-4-94 and Z-5-94, and accepts the voluntary proffers.

Mr. Magoon asked for discussion with Board, staff and Planning Commission on future development impact on Route 5.

3. Case No. SUP-21-94. Harvey Family Subdivision

Mr. Bittner stated that Mrs. Violet J. Harvey had applied for a special use permit to allow a family subdivision of a 2.934-acre parcel into 2 parcels, approximately 1.678 and 1.160 acres in size, zoned A-1, General Agricultural, located at 125 Maxton Lane, further identified as Parcel No. (1-30) on James City County Real Estate Tax Map No. (13-4).

Staff determined the proposal was consistent with the Comprehensive Plan and surrounding zoning and development and recommended approval of the case with a condition listed in the resolution.

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

Mr. Taylor made a motion to approve the special use permit.

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

RESOLUTION

CASE NO. SUP-21-94. HARVEY FAMILY SUBDIVISION

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 applicant has requested a special use permit to allow a family subdivision with lot sizes less than three acres in size in the A-1, General Agricultural District, on property identified as Parcel No. (1-30) on James City County Real Estate Tax Map No. (13-4).

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-21-94 as described herein with the following condition:

Final subdivision approval shall be secured within 18 months from the date of issuance of SUP-21-94.

4. Case No. SUP-20-94. VIP/Celebrity Limousine

Mr. Bittner stated that Mr. Tom Tingle, on behalf of Mr. Robert White, had applied for a special use permit to allow operation of a limousine service on approximately 0.5 acres, zoned B-1, General Business, located at 7346 Merrimac Trail, further identified as Parcel No. (1-46) on James City County Real Estate Tax Map No. (50-2).

Mr. Bittner further stated that the proposal was inconsistent with the Comprehensive Plan and consistent with surrounding development and zoning.

In concurrence with staff, the Planning Commission unanimously recommended approval of the case. Staff also recommended approval with conditions listed in the resolution.

Mr. DePue opened the public hearing.

1. Mr. Tom Tingle, representative for Mr. Robert White, reviewed the right-of-way setbacks, site, building which would house vehicles, and ingress and egress to the property.

Mr. DePue closed the public hearing.

Mr. Sisk made a motion to approve the resolution.

Mr. Magoon expressed his concern about illumination by sodium vapor lighting.

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

RESOLUTION

CASE NO. SUP-20-94. VIP/CELEBRITY LIMOUSINE

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 September 13, 1994, unanimously recommended approval of Case No. SUP-20-94 to permit the construction and operation of a limousine service at 7346 Merrimac Trail, further identified as Parcel No. (1-46) on James City County Real Estate Tax Map No. (50-2).

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-20-94 as described herein with the following conditions:

1. If construction on the project has not commenced within 24 months from the date of issuance of the special use permit, it shall become void. Commencement of construction shall be defined as the excavation, approved inspection of footings, and pouring of footings for any commercial buildings allowed under this permit.
 2. The design of the building shall be generally in accordance with the design shown on Guernsey/Tingle Architects Project 94012 titled V.I.P. and Celebrity Limousine, Inc., dated 8-1-94, and shall be subject to approval by the Planning Director prior to final site plan approval.
 3. All lighting on the site shall be sodium vapor and shall be 20 feet or less in height, except in bus parking areas. All lighting on the site shall be shielded from adjacent property that is zoned residential.
 4. An enhanced landscape plan for the buffer areas along all right-of-ways shall be submitted for approval by the Planning Director prior to final site plan approval.
 5. Any new fencing installed on the site shall be approved by the Planning Director.
5. Case No. SUP-23-94. VIP/Celebrity Limousine Temporary Site

Mr. Bittner stated that Mrs. Roxie White had applied for a special use permit to allow the operation of a limousine service, on 0.2 acres, zoned B-1, General Business, located at 6927 Pocahontas Trail, further identified as Parcel No. (1-1A) on James City County Real Estate Tax Map No. (41-3).

Mr. Bittner further stated that the Planning Commission unanimously recommended approval and staff recommended approval of the case with conditions listed in the resolution.

Mr. DePue opened the public hearing.

1. Mr. Tom Tingle, representative for Mrs. Roxie White, presented the proposal as a temporary site to be used during the time required to accomplish the construction approved by Case No. SUP-20-94.

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-23-94. VIP/CELEBRITY LIMOUSINE TEMPORARY SITE

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 September 13, 1994, unanimously recommended approval of Case No. SUP-23-94 to permit the temporary operation of a limousine service at 6927 Pocahontas Trail, further identified as Parcel No. (1-1A) on James City County Real Estate Tax Map No. (41-3).

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-23-94 as described herein with the following conditions:

1. This special use permit shall be valid for a period of one year after its date of issuance. Upon final site plan approval of the limousine operation at 7346 Merrimac Trail, this special use permit shall be extended for one year from the date of that approval.
2. Any new lighting installed on the site shall be shielded from adjacent property. Any new lighting installed on the site shall be sodium vapor, except that if another type of lighting is presently on the site, new lighting may be the same type.
3. Any new fencing installed on the site shall be approved by the Planning Director. Any new fencing installed on the site shall be removed when this special use permit becomes void. New fencing installed on the site shall be labeled as such on the site plan.
4. The Development Review Committee shall approve the site plan if there are unresolved problems between the applicant and adjacent property owners.

G. **BOARD CONSIDERATION**

1. Joint Facility Use Agreement - James City County, City of Williamsburg and Williamsburg-James City County Schools

Mr. Clayton Ashby, Senior Management Assistant, stated that the proposed agreement, developed by staff from James City County, the City of Williamsburg and Williamsburg-James City County Schools, provided for improved access and utilization of school buildings, athletic facilities and parks and recreation areas, and established a process for development of joint facilities.

Mr. Ashby stated that a revision to the agreement was recommended under Section X, A (2) a, b, and c with the language, "a. The Joint Facility Use Committee shall set custodian compensation.", and omit paragraph b, therefore, changing paragraph c to b.

Staff recommended approval of the agreement.

Mr. Edwards made a motion to approve the resolution.

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

RESOLUTION

JOINT FACILITY USE AGREEMENT

WHEREAS, James City County, the City of Williamsburg, and the Williamsburg-James City County School Board desire to improve the use of public facilities; and

WHEREAS, an agreement has been developed that encourages shared use of such facilities.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby approves the agreement and authorizes the Chairman to sign the agreement on behalf of the Board.

H. PUBLIC COMMENT

1. Mr. Jay Everson, 3872 Fox Run, disagreed with staff report that the bicycle lockers (Intermodal Transfer Station) located at Williamsburg-James City County Recreation Center helped solve the air pollution problem. He felt the funding should have been spent on road improvement.

I. REPORTS OF THE COUNTY ADMINISTRATOR

Mr. Wanner recommended the Board go into executive session pursuant to Section 2.1-344(A)(3) of the Code of Virginia to consider acquisition of two parcels of property for public use.

Mr. Wanner asked Mr. Leo Rogers, Deputy County Attorney, to present an update on the status of Bell Atlantic's proposal for contiguous calling on the Peninsula and its impact on the 566 Toano exchange.

Mr. Rogers stated that the State Corporation Commission had advertised a public hearing on the contiguous calling proposal for Monday, October 17, 1994, in James City County Government Center Board Room from 1:00 to 6:00 p.m. He explained that the 566 Toano exchange had been excluded from the proposal and the sizable increase in public rates for that exchange were a concern.

Without Board objection, Mr. DePue stated that Mr. Rogers and Mr. Taylor would attend the public hearing, confirm Board support overall for the contiguous calling proposal, and express concern that the 566 Toano exchange was excluded from the proposal.

Mr. Wanner stated that Toano residents were encouraged to attend the public hearing and more information would be forthcoming in the media.

J. BOARD REQUESTS AND DIRECTIVES

Mr. Magoon asked for discussion by the Board, staff, and Planning Commission on future development impact on Route 5.

Mr. Magoon asked for future discussion by Board, staff, and engineering/design professionals regarding measuring illumination and types of lighting for development purposes.

Mr. DePue made a motion to go into executive session as recommended by the Assistant County Administrator, at 9:22 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 9:56 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: September 19, 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

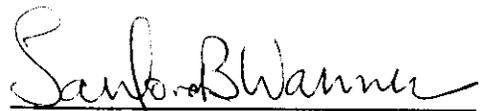
WHEREAS, Section 2.1-344.1 of the Code of Virginia requires a certification by the Board that such executive meeting was conducted in conformity with Virginia law.

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. DePue made a motion to recess until 5:00 p.m., Monday, October 3, 1994, for a work session with the Shrink/Swell Soils Task Force.

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

The Board recessed at 10:07 p.m.



Sanford B. Wanner
Deputy Clerk to the Board

PROFFER AGREEMENT

These Proffers are made as of the 10th day of August, 1994, by COLONIAL CAPITOL DEVELOPMENT CO., a Virginia general partnership ("the Owner"), together with its successors and assigns, which owns certain real property described on the James City County Tax Map as parcels (47-2)(1-18) and (47-2)(1-17) more particularly hereinafter described.

RECITALS

A. The Owner is the owner of certain real property in James City County, Virginia, hereinafter referred to as "the Property" and more particularly described as follows:

PARCEL 1

All that certain tract of land now or formerly situated in Berkeley District, James City County, Virginia, containing 3.75 acres, more or less, and bounded by the Westray Downs subdivision on the south and west, and Mill Creek on the east, being the same property conveyed to the Owner by Deed from the Sarah Ann Bailey Estate, recorded in James City County Deed Book 421, page 128, et. seq.

PARCEL 2

All that certain tract of land now or formerly situated in Berkeley District, James City County, Virginia, containing 0.75 acres, more or less, and bounded by the Westray Downs subdivision on the west, and the Sarah Anne Bailey Estate on the north, east and west, being the same property conveyed to the Owner by Deed from Curtis Pernel Pressey and Mary Jane Pressey, recorded in James City County Deed Book 688, page 756, et. seq.

B. The Owner has applied to James City County ("the County") for a rezoning of the Property from the R-8, Rural Residential Zoning District ("the Existing Zoning") to the R-1, Limited Residential District ("the Proposed Zoning").

C. The County's Comprehensive Plan Land Use Map specifically designates the Property as "Low Density Residential" expressly providing for conventional residential development patterns at densities of two dwelling units per acre or less.

D. The provisions of the County's Zoning Ordinance may be deemed inadequate for the orderly development of the Property.

E. The Owner desires 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 the County of the proffers hereinafter set forth and pursuant to § 15.1-491.1, et. seq., of the Code of Virginia, 1950, as amended, and § 20-16 et. seq. of the County Code, the Owner agrees that in developing the Property, it will meet and comply with such of the following proffers accepted by the County in developing the Property. In the event the zoning of the Property is not changed from the Existing Zoning to the Proposed Zoning, these proffers shall be withdrawn and shall become null and void.

PROFFERS

1. No buildings, structures or land disturbing activity shall be permitted within the 100 year flood plain of Mill Creek except for utility lines and structures and drainage structures, as approved by the Director of Code Compliance.
2. The Owner shall erect a permanent fence, 8' in height and similar in construction to the existing fence located along the eastern property line of the Westray Downs subdivision along the shared property line of the properties and adjacent lands owned by David E. Hooker and denoted on James City County Tax Map as Parcel (47-2)(1-15).
3. The Owner shall remove and properly dispose of any trash, rubbish, junk or abandoned motor vehicles and yard debris accumulated on any portion of the Property as a condition precedent to final subdivision approval of the Property.
4. The Owner agrees to contribute to the County \$5,000 towards the financing and construction of alternate Route 5 and/or Route 5 improvements prior to final subdivision approval.

BOOK 0729 PAGE 0595
GENERAL PROFFERS

1. Headings:

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

2. 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 signature and seal:

COLONIAL CAPITOL DEVELOPMENT CO.
a Virginia general partnership

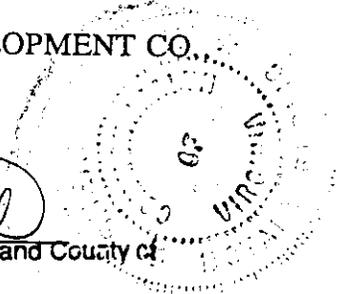
By: *Clifford E. Henderson*
General Partner

STATE OF VIRGINIA

COUNTY OF JAMES CITY, to-wit:

The foregoing instrument was acknowledged before me this 30th day of August, 1994 by Clifford E. Henderson, General Partner of COLONIAL CAPITOL DEVELOPMENT CO., a Virginia general partnership, its officer in its behalf first duly authorized.

Sheri L. Small
NOTARY PUBLIC
Notary Public for the City of Williamsburg and County of James City, Virginia



My commission expires: 9-30-97

I, Sheri L. Small, Notary Public for the City of Williamsburg and County of James City, Virginia, do hereby certify that the foregoing instrument was acknowledged before me on this 8 day of March, 1995. This proffer was admitted to record with certificate annexed and admitted to record at 12:51 o'clock.
3-3
Tester: Helene S. Ward, Clerk
by *Helene S. Ward*

AGREEMENT

JOINT FACILITY USE AGREEMENT

THIS AGREEMENT, made and entered into this _____ day of _____ 1994, by and between the Williamsburg-James City County School Board (Board) and the County of James City (County) and the City of Williamsburg, (Williamsburg), jointly referred to as "localities."

WHEREAS, the parties to this Agreement are desirous of entering into an agreement for the use of the property and facilities as described below situate at various school sites, excluding only James River Elementary.

NOW THEREFORE WITNESSETH, that for and in consideration of the mutual covenants and agreements set forth herein, the parties agree as follows:

SECTION I. PURPOSE

The Board and the localities recognize the financial and social benefits to the community of entering into a partnership for the joint use of the School and localities property and facilities located thereon, as defined in Attachment A, attached hereto and made a part hereof. The purpose of this Agreement is to maximize the educational and recreational facilities and opportunities for the residents of the localities in the most cost-effective manner.

SECTION II. TERM OF AGREEMENT

This Agreement shall commence on September 1, 1994, and continue for a period of five years. The Agreement shall renew automatically unless terminated as provided herein.

SECTION III. TERMINATION

This Agreement may not be terminated during the first year except for cause or by agreement of all parties. Thereafter, any party may terminate the Agreement by giving not less than 90 days written notice prior to the end of the school year.

All parties shall have a reasonable period of time, not to exceed 30 days, following termination of the Agreement, to remove personal property and equipment.

SECTION IV. JOINT FACILITY USE COMMITTEE

The Williamsburg-James City County Superintendent of Public Schools (Superintendent) and the County Administrator and the City Manager shall each appoint a designee of their respective staff who shall serve on a Joint Facility Use Committee, whose responsibility it shall be to oversee the community use of the schools and recreational facilities and resolve any conflicts arising under this agreement or in the use of the facilities hereunder. The team shall meet as necessary to evaluate the performance under this agreement and to plan for future use of the facilities. An annual report to the Board and localities will be made in June. Any proposed changes in the type of activities scheduled during the school day will be recommended at that time.

SECTION V. FEES AND CHARGES; FINANCIAL PROCEDURES

It is the intention of each party to waive facility use fees which might otherwise be charged the other party; provided, charges tied directly to a program, including but not limited to staff overtime, shall not be waived. The parties agree to make every effort to limit staff overtime by cooperating in the scheduling of staff.

The Board and the localities shall follow their respective policies and procedures regarding financial transactions. Facility charges shall be itemized and provided to the prospective user. Prior to using the facility, any such charge shall be reviewed and accepted by the group, department or agency using the facility.

SECTION VI. FACILITY AND EQUIPMENT USE

The Board and the localities agree to share the use of all facilities and equipment when possible, including but not limited to, that set forth in Attachment A. Any damage as a result of improper use shall be the responsibility of the group, department or agency using the facility and/or equipment. Any group, department, or agency shall be permitted to arrange an inspection of the facilities through the facility supervisor.

The following school facilities will be made available during nonschool hours and after school programs have ended: classrooms, gymnasiums, cafeterias, auditoriums, multipurpose rooms, outdoor fields and facilities. With proper authorization and supervision additional areas may be utilized such as non-cafeteria kitchens, art rooms, music rooms. The County and City agree to make all recreational facilities available to the School Board during their normal operating season. Special consideration may be given to certain educational programs and uses.

SECTION VII. SCHEDULING OF FACILITY

Facility scheduling shall require the completion of the appropriate reservation forms. Application for use shall be as provided below to insure priority use. Application for facility use from community groups or the general public will not be approved until after the dates set forth below. Applications filed after the deadline shall not supersede an approved permit.

The County, the City and the School Board agree to notify each other, immediately, of any conflicts that arise after the start of the permitted period. Each party agrees to provide alternate space for use when these situations occur. No permits may be cancelled without twenty-four hours notice except under extreme circumstances, such as mechanical failure.

A. Planning Timetable

The facility planning timetable for scheduling interior and exterior facilities shall be as follows:

1. Interior and Exterior Facilities

By July 1 - Parties send lists of activities and facilities needed to each other for September-December.

By November 1 - Parties send lists of activities and facilities needed to each other for January-March.

By February 1 - Parties send lists of activities and facilities needed to each other for April-May.

By April 1 - Parties send lists of activities and facilities needed to each other for June-August.

By July 20, November 20, February 20, and April 20, County and City Parks and Recreation will send a list to the school principal of the scheduled dates, times, and groups using school facilities. Concurrently, the School Board Office will send a list to the respective recreation agency of all scheduled dates, times and groups using the respective parks and recreation facilities. In addition, the School Board Office will forward a list to each school principal of the scheduled dates, time and groups using such facilities. An updated list will be sent to the principal or parks and recreation director each month.

If principals need to schedule other activities after the notification of school activities and facilities requested has been sent to Parks and Recreation, the principal will call the recreation agency for an availability schedule.

When schools are closed early, or closed during the day due to inclement weather, or other emergency, no Parks and Recreation activity will be held. Parks staff shall notify school personnel when park facilities are not available due to inclement weather.

If a school activity must be canceled and rescheduled on the night of a Parks and Recreation activity due to building emergencies, or early school closings, the school principal will so inform the Parks and Recreation agency as soon as possible.

If the localities need to schedule other activities after the principals have received the facility activity schedule, the localities will call the principals for the availability schedule.

In the scheduling of County facilities, the County shall have the first priority; followed by cosponsored groups. City activities shall have third priority; followed by Board activities. All other activities or events scheduled shall follow. In the scheduling of City facilities, the City shall have first priority; followed by the County and Cosponsored Groups. Board activities shall have third priority. All other outside groups or agencies shall follow.

In the scheduling of school facilities, school events and programs shall have first priority; and recreation programs established by the County or City shall have second priority. All other activities or events scheduled by other groups or agencies shall have third priority. Any activities scheduled outside of the timetable shall be mutually agreed upon by the County, the City, and the school principals.

With regard to the location of the individual school site, the County shall have first priority to use of school facilities located in the County, and the City shall have first priority to the use of school facilities located in the City's corporate limits.

In the scheduling of County/City facilities, the County, the City, and the Board agree to investigate the possibility of a linked, automated scheduling system that would help alleviate communication problems and scheduling conflicts.

SECTION VIII. FACILITY SUPERVISION

The party using another party's facility shall at all times provide sufficient trained personnel to adequately supervise and monitor the participants and spectators. When scheduling use of the facility, the reserving party shall inform the owner of the identity of the person who will be in charge. To ensure the using party's ability to maintain order while using facilities hereunder, each party hereto hereby grants to the other parties

the authority to promulgate rules and regulations for the use of facilities reserved hereunder during the period of reserved use.

SECTION IX. COOPERATIVE DEVELOPMENT OF FUTURE RECREATIONAL FACILITIES

If the parties determine it to be mutually beneficial to jointly undertake a future renovation or construction of recreational facilities, the parties shall enter into a separate written agreement which shall set forth the rights and obligations of the parties with respect to that development.

The localities and the Board agree to meet and confer with each other during the facility site selection, cost evaluation, and preliminary engineering process, so that the development of a new facility whether recreational or educational in nature, meets the needs of all parties.

SECTION X. MAINTENANCE OF FACILITIES/REIMBURSABLE COSTS

Maintaining Board facilities shall be the responsibility of the Board. Maintaining the localities parks and recreation facilities shall be the responsibility of the owner locality. The localities' and the Boards' incidental and ordinary costs (such as heat and light and wear and tear on fields) are deemed to be offsetting. However, direct costs incurred in making facilities available which are over and above the incidental or ordinary shall be reimbursable by either party to the other. Direct or reimbursable costs shall include, but are not limited to, repairs due to vandalism, janitorial services or special modifications of a facility which are required to be made to accommodate use by the other party. The parties hereby agree to maintain the premises of the other in good repair while they are under their control and to bear the cost for required repairs which are attributable to a breach of this duty.

A. Custodial Duties/Compensation

1. Duties of the Custodian
 - a. Opening and securing the building.
 - b. Remaining on-site through the duration of the scheduled event.
 - c. Performing routine maintenance and cleaning.
2. Custodian Compensation
 - a. The Joint Facility Use Committee shall set custodian compensation.
 - b. When a County/City recreation program or activity is in progress and a custodian is still on duty for the schools, there shall be no charge to the recreation agency as long as the amount of space can be adequately cleaned within the regular work hours of the custodial staff. The decision to supplement

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custodial staffing remains with the principal and the Director of Operations.

- B. Improvements - Any new additions or changes that require new funding.
1. Exterior Facilities - Improvements of turf and hard surface courts will be agreed upon and dealt with on a case-by-case basis each budget cycle between the County, City, and the Board.
 2. Interior Facilities - The maintenance of these facilities will be the responsibility of the Board with exception of the community use facilities which will be reviewed by the County, City and the Board.

SECTION XI. INSURANCE REQUIREMENTS

Property

The localities will be responsible for their property, including materials, supplies, furniture and fixtures. The Board will not provide any insurance coverages for any property owned, rented, leased or in the care, custody or control of the localities, either on or off premises, including the real and personal property of any volunteer or other organization providing such property to the localities for its use and enjoyment. In the event a party is required to obtain insurance under the terms of this Agreement, but is unable to do so because of a lack of an insurable interest, the party owning the property shall secure the insurance. The said owner shall be fully reimbursed so for the costs of the insurance by the party required to provide the insurance, but lacking the insurable interest.

The Board shall be responsible for its own real and personal property.

Commercial General Liability

The localities shall provide to the Board prior to assuming possession of the premises proof of insurance for the following:

1. A \$1,000,000 Combined Single Limit of Commercial General Liability insurance per occurrence with a \$2,000,000 Aggregate CGL limit, which policy shall include.
 - o Fire Damage Limit of at least \$250,000.
 - o Coverage for attorneys' fees as a result of a suit alleging child molestation and all other covered acts of all employees, volunteers, and visitors.
 - o The policy shall name the School Board as an additional insured for all coverages.

2. The localities shall provide a Certificate of Insurance reflecting the above items, with a 30-day notice of either cancellation or nonrenewal.
3. The localities will provide a Certificate of Insurance illustrating the existence of Workers Compensation and Employers Liability insurance coverages.

Hold Harmless Agreement

The localities shall be responsible from the time of the beginning of their operation at any location belonging to the Board for all injury or damage of any kind resulting from their operation, to persons or property regardless of who may be the owner of the property; provided that the extent of the localities' liability in all instances shall be limited by and payable from the valid and collectible insurance in force at that time; provided, further, the localities shall not agree to waive their right to governmental immunity in any action brought against the locality.

In addition to the liability imposed upon the localities on account of personal injury, including death, or property damage suffered through the localities' negligence, or the negligence of their employees or volunteers, which liabilities are not impaired nor otherwise affected hereunder, the localities assume the obligation to save the Board, including its employees and volunteers harmless, and to indemnify the Board from every expense, liability or payment arising out of or through injury, including death, to any person or persons or damage to property, regardless of who may be the owner of the property, of any site at School in which the localities' operations are located, arising out of or suffered through any negligent act or omission of the localities, including their employees and volunteers or anyone directly or indirectly employed by or under the supervision of the localities' employee or volunteer, in the prosecution of the operations included in this agreement; provided that the extent of the localities liability in all instances shall be limited by and payable from the valid and collectible insurance in force at that time; provided, further, the localities shall not agree to waive its right to governmental immunity in any action brought against them.

SECTION XII. LIABILITY/ENFORCEMENT OF RULES AND REGULATIONS

To the extent permitted by law, the localities hereby agree to accept responsibility for any and all costs, damages or expenses arising from any injury to persons or property on the premises belonging to the Board which occurs while the locality is using the premises; and which are attributable to the negligence of the locality or its employees.

So as to assure the localities' ability to maintain order in its programs, the Board hereby grants the localities authority to promulgate rules and regulations for the use of the Board's premises and further grants to the localities the authority to enforce such rules and regulations on the subject premises during such times as they are under the control of the locality.

To the extent permitted by law, the Board hereby agrees to accept responsibility for any and all costs, damages, or expenses arising from any accident or other occurrence to persons or property on the premises belonging to the localities which occurs while the Board has control of the subject premises and which are attributable to the negligence of the Board or its employees.

So as to assure the Board's ability to maintain order in its programs, the localities hereby grants to the Board authority to promulgate rules and regulations for the use of the their premises and further grants to the Board the authority to enforce these rules and regulations during such times as they are under the Board's control.

SECTION XIII. ASSIGNMENT

The localities shall not sell, assign or convey their rights under this Agreement. However, the localities may enter into secondary agreements with other parties or agencies so as to permit the other parties or agencies to use the subject premises. Any secondary agreements shall be approved in writing by the other parties to this agreement.

SECTION XIV. NO DISCRIMINATION/THIRD PARTIES

Each party agrees that at no time shall it discriminate against any person on the grounds of race, religious affiliation, national origin, disability or age when using the facilities of the other parties.

Further, the parties agree that, to the extent that one party should make the subject facilities available to a third party, individual or organization, it will assure that the third party abides by this contract. Any third party agreements shall contain similar nondiscriminatory language.

SECTION XV. SEVERABILITY

It is hereby declared to be the intention of the parties that the sections, paragraphs, sentences, clauses, and phrases of the Agreement are severable, and if any phrase, clause, sentence, paragraph, or section of this Agreement shall be declared unconstitutional or otherwise invalid by the valid judgment or decree of a court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and sections of this Agreement.

Williamsburg-James City County School Board

Sondra Walker
Sondra Walker
Chairman

ATTEST:

Angela M. Mitchell

County of James City

Perry M. DePue
Perry M. DePue
Chairman, Board of Supervisors

ATTEST:

Sandra Blum

City of Williamsburg

Trist B. McConnell
Trist B. McConnell
Mayor

ATTEST:

FACILITIES**(ATTACHMENT A)****JAMES CITY COUNTY
DIVISION OF PARKS AND RECREATION**Upper County ParkMid-County ParkRecreation CenterLittle Creek ReservoirGrove Community CenterNeighborhood Parks

- a. Forest Glen
- b. Colby Road
- c. Carriage Road
- d. Grove

CITY OF WILLIAMSBURGWaller Mill ParkQuarterpath ParkKiwanis Park**WILLIAMSBURG-JAMES CITY COUNTY
PUBLIC SCHOOLS**County

- | | |
|--------------------------------|--------------------------|
| 1. Norge Elementary | 4. Rawls Byrd Elementary |
| 2. DJ Montague Elementary | 5. Toano Middle School |
| 3. Clara Byrd Baker Elementary | 6. Lafayette High School |

City

1. James Blair Middle School
2. Berkeley Middle School
3. Matthew Whaley Elementary