

**AT A REGULAR MEETING OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE 12TH DAY OF NOVEMBER, NINETEEN HUNDRED NINETY-SEVEN, AT 5:06 P.M. IN THE COUNTY GOVERNMENT CENTER BOARD ROOM, 101 MOUNTS BAY ROAD, JAMES CITY COUNTY, VIRGINIA.**

**A. ROLL CALL**

Robert A. Magoon, Jr., Chairman, Jamestown District  
Jack D. Edwards, Vice Chairman, Berkeley District

David L. Sisk, Roberts District  
Perry M. DePue, Powhatan District  
M. Anderson Bradshaw, Stonehouse District  
Sanford B. Wanner, County Administrator  
Leo P. Rogers, Deputy County Attorney

**B. WORK SESSIONS - Metropolitan Area Projects Strategies (MAPS), Hampton Roads Partnership**

Mr. Magoon called the meeting to order.

Mr. Sanford B. Wanner, County Administrator, introduced Mr. Barry E. DuVal, President, Hampton Roads Partnership and Mr. Richard Horrow, Facility Development Consultant. Mr. Horrow stated that the process known as MAPS involving systematic identification, prioritization and funding of projects that support the goals of the Hampton Roads Partnership had begun. He further stated that Phase I would enhance public awareness and develop a portfolio of projects to be implemented in Phase II.

Mr. Magoon declared a break for dinner at 6:00 p.m.

Mr. Magoon called the meeting to order at 7:02 p.m.

Mr. Magoon asked the audience to stand and give the Pledge of Allegiance in honor of Veterans Day.

**C. PRESENTATION - Fire Department Award of National Fire Academy Diploma**

Mr. Richard Miller, Fire Chief, presented the United States Fire Academy Diploma to Hugh Osborne, Deputy Fire Chief, who had completed the Academy's four-year Executive Fire Officials Program

**D. MINUTES - October 28, 1997**

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

Mr. Edwards made a motion to approve the minutes.

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

**E. CONSENT CALENDAR**

Mr. Magoon asked if a Board member wished to remove any item from the Consent Calendar, and asked that Item No. 2 be removed.

Mr. Sisk made a motion to approve Item No. 1 on the Consent Calendar.

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

1. Petty Cash Fund - Satellite Office

RESOLUTION

INCREASE OF THE SATELLITE OFFICE PETTY CASH FUND

WHEREAS, the Satellite Office uses a petty cash fund to make change for citizens when making payments to the County; and

WHEREAS, the Satellite Office is increasing the number of cash drawers from one to two; and

WHEREAS, sufficient security and accountability procedures are in place related to the fund.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby increases the Satellite Office Petty Cash Fund from \$50 to \$100.

2. Federal Communications Commission Resolution No. 97-296

Mr. Wanner stated that the Federal Communications Commission had issued a resolution which would severely restrict local zoning authority over television and radio broadcast towers in connection with the introduction of the new digital television technology. He recommended approval of the resolution stating the County's opposition to the FCC resolution and asking that FCC meet with representatives of local and state governments to develop guidelines that meet interests of all parties.

Mr. Magoon made a motion to approve the resolution.

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

RESOLUTION

RESPONSE TO THE FEDERAL COMMUNICATIONS RESOLUTION NO. 97-296

CONCERNING THE PREEMPTION OF STATE AND LOCAL AUTHORITY GOVERNING

THE SITING OF RADIO AND TELEVISION BROADCAST TRANSMISSION TOWERS

WHEREAS, on August 19, 1997, the Federal Communications Commission (FCC) issued a Notice of Proposed Rule Making (FCC 97-296) proposing to preempt certain state and local zoning and land use ordinances governing the siting, placement, and construction of radio television Broadcast Transmission Facilities because they represent "an obstacle to rapid implementation of digital television" (DTV); and

- WHEREAS, the accelerated DTV transition schedule will require extensive tower modification and construction; and
- WHEREAS, the proposed time limits in FCC 97-296 (21 days to modify existing broadcast facilities, 30 days to relocate existing broadcast transmission facilities, and 45 days for all other requests) for local action in response to request for approval would not allow James City County adequate time to permit our long standing responsibility to review the project proposal to ensure the facilities conform to land use, health, and safety regulatory objectives and, in addition, may cause a conflict with standing Virginia law; and
- WHEREAS, the passage of the Telecommunications Act of 1996 has implications for the national economy, the affected industries and the consumer, it also has significant implications for the established land use decision making processes.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby urges the Federal Communications Commission to reject the proposed preemption of local and state government authority in siting, placements, and construction of Broadcast Transmission Facilities as well as any other preemption of local and state land use and right-of-way management authority.

BE IT FURTHER RESOLVED that the FCC address the matter informally, by meeting representatives of local and state governments to develop guidelines that will meet the interests of the Federal government while respecting the policies and decision making processes of James City County.

#### F. PUBLIC HEARINGS

##### 1. Prohibition of Through Trucks on Longhill Road (Continued from October 14, 1997)

Mr. O. Marvin Sowers, Jr., Director of Planning, stated that the Board of Supervisors deferred this case at its October 14, 1997 meeting to determine the City of Williamsburg's position on renaming the City portion of Longhill Road. He stated the City of Williamsburg had requested cooperation in its effort to prohibit through-truck traffic on the portion of Longhill Road from Ironbound Road north to Longhill Connector Road to reduce volume of truck traffic and the amount of traffic noise. He stated that the City had acted to prohibit through-truck traffic on the portion of Longhill Road within the City of Williamsburg.

Staff recommended approval of the resolution.

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

Mr. Edwards made a motion to amend the language by adding the word "through" before truck traffic in the Now, Therefore, Be It Resolved paragraph and to approve the amended resolution.

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

### RESOLUTION

#### PROHIBITION OF THROUGH-TRUCKS ON LONGHILL ROAD

WHEREAS, the City of Williamsburg has closed the portion of Longhill Road in the City of Williamsburg to truck traffic; and

- WHEREAS, James City County wishes to also close the County's portion of Longhill Road from Longhill Connector Road to Ironbound Road in an effort to reduce traffic noise; and
- WHEREAS, Longhill Connector Road serves as a practical alternative route connecting Ironbound Road and Longhill Road; and
- WHEREAS, the Virginia Department of Transportation has a formal process in which localities, after holding a public hearing, may request by resolution that certain roads be closed to truck traffic.
- NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia hereby authorizes the County Administrator to forward a formal written request that the County's portion of Longhill Road from Longhill Connector Road to Ironbound Road be closed to through truck traffic.

2. Case Nos. Z-12-97 and MP-6-97. Hidden Property Rezoning

Mr. Paul D. Holt, III, Planner, stated that Mr. Lynn Evans, on behalf of Powhatan Crossing, Inc., had applied to rezone approximately 399 acres from R-8, Rural Residential and PUD-R, Residential Planned Unit Development, with proffers, to development 150 single-family detached units and 350 timeshare units, identified as Parcel No. (1-1) on James City County Real Estate Tax Map No. (46-2).

Mr. Holt detailed the proffers, access and traffic, surrounding development and zoning, environmental, archaeological, and utilities. Staff determined the proposal was generally consistent with surrounding development and zoning and the Comprehensive Plan.

In concurrence with staff, the Planning Commission unanimously recommended approval of the cases with proffers.

Board and staff discussed the traffic level of service figures of both two-lane and four-lane on Monticello Avenue, and that the Transportation Improvement District funds are only for two-lane roads.

Mr. Magoon opened the public hearing.

1. Mr. Vernon Geddy, Esq., representing Powhatan Crossing, Inc., emphasized the property was designated low density residential; there would be no access from Powhatan Crossing; environmental impact - no timbering since application; in Primary Service Area within Route 5 Transportation Improvement District; provision of stormwater management and housing compatible with surrounding area. He asked the Board to approve the cases.

Mr. Magoon reminded citizens of the five-minute limit for comments.

2. Mr. M. D. "Gabby" Galbreath, 113 Deerwood Drive, spoke in support of the cases.

3. Mr. George Anderson, 3408 Mallard Creek Run, asked that the Board deny the cases to preserve the Powhatan Creek ecological system.

4. Mr. George Wright, 148 Cooley, spoke in opposition of approval because of water situation and need for more schools.

5. Ms. Julie Leverenz, 3313 Running Cedar Way, asked the Board to deny the cases to protect the environmental treasure and repair damage done by timbering.

6. Mr. Bob Mouck, 4481 Powhatan Crossing, supported the compromises the applicant had made as the best that could be achieved with existing situation.

7. Ms. Laura Gossner, 3420 Deerlope Trail, spoke in opposition to the development so that current quality of life can be maintained.

8. Mr. Jay Sexton, 4488 Powhatan, Powhatan Homeowners Association, stated concerns remained regarding water, traffic, schools and environmentally sensitive Powhatan Creek.

Mr. Magoon declared a recess at 8:40 p.m. and reconvened the Board at 8:47 p.m.

9. Mr. Keith Nowaldy, 4702 Wood Violet Lane, emphasized that Alternate Route 5 could be built without approval of this case and asked what the real cost was of economic impact.

10. Mr. Jerry Moore, 145 Captain Graves, spoke of the past success of the hard efforts of all concerned to form the Transportation Improvement District.

11. Mr. Donald Milkavich, 4707 Wood Violet Lane, asked what the volume of water usage would be for the development and whether traffic study impacts included projected New Town figures.

Mr. Magoon closed the public hearing.

Individual Board members spoke to timbering and development simultaneously; approval not needed until a later date; Hidden property was considered a part of the Transportation Improvement District resolution when approved in 1993; no funding plan for construction of 4-lane road; need to protect resources; and current plan better than what might have been.

Mr. Magoon made a motion to approve the resolution.

On a roll call, the vote was: Bradshaw, Sisk, Magoon (3). NAY: Edwards, DePue (2).

## RESOLUTION

### CASE NO. Z-12-97. MP-6-97. HIDDEN PROPERTY REZONING

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-12-97; MP-6-97 for rezoning approximately 399 acres zoned R-8, Rural Residential, to PUD-R, Planned Unit Development Residential with proffers; and

WHEREAS, the Planning Commission of James City County unanimously recommended approval of Case No. Z-12-97; MP-6-97.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve Zoning Case No. Z-12-97; MP-6-97 and accepts the voluntary proffers.

### 3. Case No. SUP-25-97. Allen H. Nance Auto Repair and Service Garage

Ms. Jill E. Schmidle, Planner, stated that Mr. Allen H. Nance had applied for a special use permit to conduct general auto repair service in A-1, General Agricultural, located on 1.153-acre site at 2643 Jolly Pond Road, further identified as Parcel No. (1-4) on James City County Real Estate Tax Map No. (35-2).

The Planning Commission, by a 2-2 vote, failed to approve the proposal, with proffers. Staff recommended denial that the case was not consistent with suggested uses for the area as designated by the Comprehensive Plan, proposed use conflicted with nature and character of surrounding area and development, and Jolly Pond Road does not meet current standards and commercial uses that generate customers.

Staff recommended a resolution with several conditions should the Board of Supervisors choose to approve the case.

Mr. Magoon opened the public hearing.

1. Ms. Virginia Nance and Mr. Allen Nance, 2643 Jolly Pond Road, asked that the Board approve the case to allow Mr. Nance a source of income.
2. Mr. Ronald Horrell, 2649 Jolly Pond Road, spoke in favor of approval of the case.
3. Mr. M.D. "Gabby" Galbreath, 113 Deerwood, spoke in favor of the case and stated that the garage was a needed service in the area.

Mr. Magoon closed the public hearing.

Mr. DePue made a motion to amend the resolution by deleting the language in Condition 2 after the word properties, "behind a six-foot high solid fence with evergreen shrubs provided along the outside of the fence, both of which shall be" and adding the language "by evergreen shrubs and," and deletion of Condition 10 relating to the VDOT requirement for a commercial entrance.

The Board discussed the VDOT requirement of a commercial entrance; case was inconsistent with Comprehensive Plan; case was consistent with rural property.

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

## RESOLUTION

### CASE NO. SUP-25-97. ALLEN H. NANCE AUTO REPAIR AND SERVICE GARAGE

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 October 6, 1997, voted 2-2 on a motion of approval on Case No. SUP-25-97, to conduct general auto repair and service in an A-1, General Agricultural District, further identified as Parcel No. (1-4) on James City County Real Estate Tax Map No. (35-2).

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-25-97 as described herein with the following conditions:

1. Site plan approval shall be required. Automobile repair work shall be limited to the existing two-bay garage with all repair work performed inside the garage. All storage of items used in the automobile repair operation, including parts, shall be stored in this building.
2. All outdoor storage and parking areas for vehicles shall be screened from adjacent properties by evergreen shrubs and approved by the Planning Director. Evergreen vegetative screening

approved by the Planning Director shall be installed such that vehicles stored overnight are not visible from the road or surrounding properties. A landscape plan that incorporates these elements along with additional enhanced landscaping to protect the rural character of the area shall be submitted to the Planning Director with all landscaping improvements installed prior to issuance of a Certificate of Occupancy.

3. Vehicles to be repaired shall not be parked on the lawn or in the yard. Parking areas and the driveway shall be of a gravel surface.
4. No more than eight vehicles shall be kept overnight at one time. Vehicles shall not remain on the premises longer than 30 days.
5. On-site disposal of waste materials shall not be permitted. These materials shall include, but not be limited to, waste oil, brake fluid, solvents, anti-freeze and discarded auto parts.
6. Freestanding signage shall be limited to one four-square foot monument sign to be approved by the Planning Director.
7. Hours of operation shall be limited to 8:00 a.m. through 5:00 p.m. Monday through Friday. Lights not needed for security purposes shall be turned off after 9:00 p.m. All lighting shall utilize recessed fixtures and shall be approved by the Planning Director.
8. All outdoor storage of vehicles and repair of vehicles by the property owner (except for personal vehicles) shall take place at 2643 Jolly Pond Road on property identified as Parcel No. (1-4) on James City County Real Estate Tax Map No. (35-2).
9. All engine testing shall only be conducted while vehicles are properly equipped with mufflers that meet the original manufacturer's specification for the vehicle being tested. Engine testing for vehicles used for competition shall not be permitted.

4. Case No. SUP-27-97. Old Capitol Lodge

Mr. Gary A. Pleskac, Senior Planner, stated that Mr. James E. Hicks on behalf of Old Capitol Lodge No. 629 (OCL) had applied to renew an expired special use permit which was approved to allow expansion of the existing Old Capitol Lodge at 105-107 Howard Drive, further identified as Parcel Nos. (1-43) and (1-44) on James City County Real Estate Tax Map No. (52-3).

In concurrence with staff, the Planning Commission, by a 4-0 vote, recommended approval of the request with conditions listed in the resolution.

Mr. Magoon 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: Edwards, Bradshaw, Sisk, DePue, Magoon (5). NAY: (0).

RESOLUTION

CASE NO. SUP-27-97. OLD CAPITOL LODGE

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 October 6, 1997, recommended approval of Case No. SUP-27-97 by a vote of 4 to 0 to renew SUP-21-96 for the Old Capitol Lodge at 105-107 Howard Drive in Grove, further identified as Parcel Nos. (1-43) and (1-44) on James City County Real Estate Tax Map No. (52-3).

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-27-97 as described herein with the following conditions:

1. If construction has not commenced on the property within 12 months of the issuance of the special use permit it shall become void. Construction shall be defined as the obtaining of any permits required for building construction, clearing, and grading of the site, and the installation of foundations and footings for the proposed structure.
2. The design of the proposed addition to the Old Capitol Lodge and its utilities shall be reviewed and approved by the Director of Planning and the James City Service Authority prior to final site plan approval.
3. The size of the proposed expansion to the Old Capitol Lodge shall be limited to 2,400 square feet.
4. Any lighting proposed for the facility shall not glare on adjacent property and shall be approved by the Director of Planning.
5. A landscaping plan shall be submitted with the site plan and approved by the Director of Planning.

5. Case No. AFD-8-86. Casey (New Town Plan Withdrawal)

6. Case No. AFD-8-86. Casey (James City County/Williamsburg Courthouse Withdrawal)

Mr. Pleskac stated that Mr. Vernon Geddy, III, had applied on behalf of C. C. Casey, Ltd., to withdraw approximately 75 acres from the existing Casey Agricultural and Forestal District for initiating the first phases of Casey New Town Plan, located at the western side of Ironbound Road and Monticello Avenue intersection and further identified as a portion of Parcel No. (1-7) on James City County Real Estate Tax Map No. (38-4).

Staff recommended deferral of the cases to allow time to advertise an additional withdrawal request to be heard simultaneously at the December 9, 1997, Board of Supervisors meeting.

7. Case Nos. MP-2-97 and Z-4-97. Casey New Town/Phase I

Ms. Tamara A. M. Rosario, Senior Planner, stated that Mr. Vernon Geddy, III, had applied on behalf of C.C. Casey Limited Company to rezone approximately 16 acres from M-2, Limited Business/Industrial, and R-8, Rural Residential, to MU, Mixed Use, and to rezone approximately 554 acres from M-1 and R-8 to R-8 with proffers, located off extension of Monticello Avenue between Ironbound Road and News Road, and bounded by College Woods and Ironbound Square to the east, Eastern State Hospital and Ford's Colony to the north, Jesters Lane to the west, and Brookhaven and Bradshaw's Ordinary to the south, further identified as Parcel No. (1-2) on James City County Real Estate Tax Map No. (38-3) and Parcel Nos. (1-1) and (1-7) on James City County Real Estate Tax Map No. (38-4).

8. Case No. Z-10-97. Williamsburg/James City County Courthouse

Ms. Rosario stated that James City County had applied to rezone 11.5 acres from M-1, Limited Business/Industrial, to MU, Mixed Use with proffers, for the purpose of constructing the new Williamsburg/ James

City County Courthouse, located at 5200 Monticello Avenue, further identified as Parcel No. (1-41) on James City County Real Estate Tax Map No. (39-3).

Ms. Rosario further stated that the applicant had requested deferral of these cases so that they could be considered concurrently with the Casey/New Town Agricultural and Forestal District withdrawals and rezonings. Staff concurred with the request.

Mr. Magoon opened the four public hearings.

1. Mr. Vernon Geddy, III, representative for the applicant, stated the design competition involved a tremendous investment of time, effort and money. He agreed with staff that the cases were consistent with the Comprehensive Plan, within the Primary Service Area, followed Master Plan guidelines for controlled concentrated growth and environmentally sensitive.

The Board and staff encouraged the public to come forward with comments or questions during the next two weeks so issues could be addressed before the December 9, 1997 Board of Supervisors meeting.

Mr. Magoon continued the four public hearings and deferred the cases until the November 25, 1997 Board of Supervisors meeting at which time public comment could be made.

9. Case No. ZO-2-97. Ordinance Amendment, Chapter 20, Zoning, Buffer, Greenbelt, and Setback Requirements for Timbering Activities

Mr. O. Marvin Sowers, Jr., Planning Director, stated that the requested changes would amend tree replacement requirements for timbering violations that occur in required buffers and establish civil fines for such violations, and would replace the term "greenbelt" in the 1997 Comprehensive Plan with community character corridor. He further stated that the proposed changes increased the size of trees from 1½ inches to 2½ inches for replanting in areas where buffer requirements were violated.

In concurrence with staff, the Planning Commission, by a 4-1 vote, recommended approval of the ordinance amendments.

The Board and staff discussed the Community Character Corridor roads, size of replaced trees, violations responsibility of owner of property, and replacement percentages of deciduous and evergreen trees.

Mr. Magoon opened the public hearing.

1. Mr. R. M. Hazelwood, Jr., Toano, spoke in opposition to increasing the buffer from 75 feet to 150 feet, and cost of replanting trees on the Community Character Corridor roads.

Mr. DePue made a motion to approve.

Board discussion followed regarding cost of replacement trees and enforcement of laws against the property owners.

Mr. DePue withdrew his motion.

Mr. Magoon continued the public hearing and deferred the case until the November 25, 1997, Board of Supervisors meeting.

10. Case No. AFD-3-86. Hill Pleasant Farm (Pettit Addition)

Mr. Pleskac stated that Mr. William Pettit had applied to add approximately 12 acres to the existing Hill Pleasant Farm Agricultural and Forestal District (AFD), zoned M-1, Limited Business/Industrial, further identified as Parcel No. (1-31B) on James City County Real Estate Tax Map No. (24-3).

Mr. Pleskac further stated that the 12-acre property is part of a larger 90-acre parcel located in York County, and staff determined that the property was compatible with surrounding land uses and development and suitable for inclusion into the Hill Pleasant Farm AFD which would be reviewed in October 1998.

In concurrence with staff, the AFD Advisory Committee, by a 7-0 vote, and the Planning Commission by a 4-0 vote, recommended approval of the request.

Mr. Magoon opened the public hearing.

1. Mr. William Pettit stated that he was available for questions.

Mr. Magoon closed the public hearing.

Mr. Sisk made a motion to approve the ordinance.

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

11. Case No. HW-1-97. Busch Gardens, Italy Expansion

Mr. Holt stated that Mr. Ronnie Orsborne, representing Langley and McDonald, had applied on behalf of Busch Entertainment Corporation for a height limitation waiver to allow construction of a 170-foot tall amusement attraction, zoned M-1, Limited Business/Industrial, further identified as part of Parcel No. (1-9) on James City County Real Estate Tax Map No. (51-4).

Mr. Holt further stated that the total height of the attraction would be 250 feet, with portions of the structure in a ravine. Staff determined that the attraction would be highly visible from nearby major roadways; proposed use, with its quiet technology, was consistent with intended uses in the Comprehensive Plan; and the proposed use was inconsistent with the Community Character Corridors' objectives in the Comprehensive Plan.

Staff recommended approval with the conditions listed in the resolution.

Mr. Magoon opened the public hearing.

1. Mr. Larry Giles, Vice President, Design and Engineering, described the proposed construction, and Mr. Ronnie Orsborne, Langley and McDonald, addressed exceptions to staff recommendations of color scheme, lighting, landscaping within interchange, and the 50-foot buffer between Route 60 and proposed expansion along Route 60. He requested deferral of the case.

2. Mr. David Otey, representative for Busch Entertainment Corporation, stated staff requirements did not meet Busch Entertainment's intent. He stated they could work with staff and Colonial Williamsburg regarding the concerns on landscaping and visual impact of the attraction.

3. Mr. Ed Oyer, 139 Indian Circle, spoke in opposition to the new attraction as a sight distraction from area roads.

4. Ms. Nancy Sutter, 117 Pierce's Court, requested that the character of the area not be destroyed by negative impact of increasing exposure to the theme park.

Mr. Magoon continued the public hearing and deferred the case until the November 25, 1997, Board of Supervisors meeting.

Mr. DePue left the meeting at 11:50 p.m.

#### H. PUBLIC COMMENT

1. Mr. Ed Riley, 611 Tam-O-Shanter, gave the latest update on Lyme disease.
2. Mr. R. M. Hazelwood, Jr., Toano, asked the Board to consider how car decals would be handled with new governor's personal property tax proposal.
3. Mr. Bill Snider, 258 Sandy Bay Road, urged the Board to set a No Wake zone for all of Powhatan Creek for safety purposes.
4. Ms. Boots Johnson, 210 Red Oak Landing Road, asked the Board to consider No Wake restrictions in entire County within 100 to 150 feet of the shoreline.

#### I. REPORTS OF THE COUNTY ADMINISTRATOR

Mr. Wanner informed citizens that personal property tax bills should be paid on motor vehicles until the General Assembly acts on the new governor's campaign proposal.

Mr. Wanner recommended the Board recess until 5:00 p.m., Tuesday, November 25, 1997, for a work session on 1998 Legislative Program.

#### J. BOARD REQUESTS AND DIRECTIVES - None

Mr. Magoon made a motion to recess until 5:00 p.m., Tuesday, November 25, 1997, for a work session.

On a roll call, the vote was: AYE: Edwards, Bradshaw, Sisk, Magoon (4). NAY: (0).

The Board recessed at 12:07 a.m.

  
Sanford B. Wanner  
Clerk to the Board



970 019406

HIDEN PROPERTY PROFFERS

THESE PROFFERS are made as of this 29<sup>th</sup> day of October, 1997, by POWHATAN CROSSING, INC., a Virginia corporation, (together with its successors and assigns, the "Owner").

RECITALS

A. Owner is the owner of certain real property (the "Property") in James City County, Virginia consisting of approximately 403.7 acres more particularly described on Exhibit A attached hereto and made a part hereof.

B. The Property is designated Low Density Residential on the County's Comprehensive Plan Land Use Map, is within the County's Primary Service Area and is included within the Route 5 Transportation Improvement District (the "District") created to finance the construction of Alternate Route 5. Alternate Route 5 will bisect the Property. The Property is now zoned R-8.

C. Owner has applied for a rezoning of the Property from R-8, Rural Residential District, to PUD-R, Planned Unit Development-Residential District, with proffers, and in connection therewith has submitted a Master Plan in accordance with Section 20-484 of the County Zoning Ordinance entitled "Master Plan Hiden Property" and dated September 10, 1997 and revised October 15, 1997 (the "Master Plan").

D. Owner desires to offer to the County certain conditions

DEC 16 1997 01 07

on the development of the Property not generally applicable to land zoned PUD-R 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 Board of Supervisors of James City County of the applied for rezoning and the approval of the Master Plan, Owner agrees that it shall meet and comply with all of the following conditions in developing the Property. If the applied for rezoning is not granted by the County, the Proffers shall thereupon be null and void.

#### CONDITIONS

1. Owners Association. All owners of lots or units within the Property by virtue of ownership of their lot or unit shall be members of a property or timeshare owners association with the power to levy mandatory assessments. The articles of incorporation, bylaws and restrictive covenants (together, the "Governing Documents") creating and governing the association(s) shall be submitted to and reviewed by the County Attorney. The Governing Documents shall require that the association adopt an annual maintenance budget and shall require that the association (i) assess all members for the maintenance of all properties owned or maintained by the association and (ii) file liens on members' properties for non-payment of such assessments and for

DEC 10 5 01 08

the cost of remedying violations of, or otherwise enforcing, the Governing Documents.

2. Density. There shall be no more than 150 single family lots and 350 timeshare units permitted on the Property. The 350 units shown in Area 2 with a Master Plan designation of "C" shall be developed and operated only as a "time-share project" as defined in the Virginia Real Estate Time-Share Act, Va. Code §§55-360 et seq.

3. Road Improvements. (a) Alternate Route 5. (i) At the request of the County, Owner shall convey to the County or the District right-of-way for Alternate Route 5 up to 140 feet wide in the location shown on the Master Plan.

(ii) Owner shall make a contribution of \$2,800.00 to the County for each of the first 130 lots or units shown on subdivision plats or site plans of the Property. Such contributions shall be made available by the County for use by the District for the construction of Alternate Route 5 or used by the County for any other project included in the County's capital improvement program, the need for which is generated in whole or in part by the development of the Property. Such contributions shall be made at the time of (i) final subdivision plat approval for lots in areas designated "A", Single Family Detached on the Master Plan and (ii) final site plan approval for timeshare units in areas designated "C", Multi-Family (Timeshares) on the Master

DEC 10 0 109

Plan.

(iii) At any time before the bidding of the construction contract for Alternate Route 5 by the District, Owner at its option may elect to either (x) construct at least 1,500 linear feet of Alternate Route 5 consisting of two lanes and a Class II bikeway within the right-of-way proffered above from the edge of the Conservation Area adjacent to Powhatan Swamp to the eastern boundary of the Property or within other right-of-way owned by the District or the County which road and bikeway shall be constructed in a manner consistent with the design plans and construction standards of the District for Alternate Route 5 or (y) Owner shall make a contribution of \$2,800.00 to the County for each of the 131st through 250th lot or unit shown on subdivision plats or site plans of the Property. Such contributions shall be made available by the County for use by the District for the construction of Alternate Route 5 or used by the County for any other project included in the County's capital improvement program, the need for which is generated in whole or in part by the development of the Property. Such contributions shall be made at the time of (i) final subdivision plat approval for lots in areas designated A Single Family Detached on the Master Plan and (ii) final site plan approval for timeshare units in areas designated 'C' Multi-Family (Timeshares) on the Master Plan. If Owner elects to proceed under (x) above, Owner shall

WCL 105 0110

construct such road prior to or contemporaneously with the construction of the balance of Alternate Route 5 by the District.

(iv) There shall be no more than two entrances into the Property from Alternate Route 5, one into the portion of the property south of Alternate Route 5 and one into the portion of the property north of Alternate Route 5. The two entrances shall be aligned. Owner shall construct right and left turn lanes on both approaches at the entrances to the Property from Alternate Route 5 at the time such entrances are constructed.

(v) Owner shall install a traffic signal at the intersection of Alternate Route 5 and the entrances to the Property at the earlier of (i) when Virginia Department of Transportation ("VDOT") signal warrants are met or (ii) when development has commenced on either side of Alternate Route 5 and the County has issued certificates of occupancy for more than 55 lots or dwelling units utilizing the entrances onto Alternate Route 5; provided that VDOT approves the installation of the traffic signal at that time.

(b) All road improvements proffered hereby shall be constructed in accordance with VDOT standards.

(c) Unless otherwise approved by the Director of Planning, Owner shall reserve a public right-of-way to provide a pedestrian connection from the Powhatan Secondary development to the Property and shall dedicate such right-of-way to the County upon

the written request of the County Administrator.

4. Alternate Route 5 Greenbelt. At the time of the conveyance of the Alternate Route 5 right-of-way to the County or the District, the Owner shall designate 150-foot greenbelt buffers along the Property's Alternate Route 5 frontage measured from a right-of-way line assuming a 120 foot right-of-way for Alternate Route 5 (measured 60 feet on either side of the centerline of the road). The greenbelt buffers shall be exclusive of any lots or units and shall be undisturbed, except for, with the approval of the Development Review Committee, utilities, drainage improvements, community entrance roads as shown generally on the Master Plan, pedestrian/bicycle trails, lighting, entrance features and signs.

5. Archaeology. (A) Before issuance of a land disturbing permit by the County for land disturbing within a Master Plan Area shown on the Master Plan, Owner shall submit a Phase I archaeological study that includes, at a minimum, that Master Plan Area to the Director of Planning for review and approval.

(B) (1) For all sites that the Phase I study recommends for Phase II evaluation or identifies as potentially being eligible for inclusion on the National Register of Historic Places (the "National Register"), Owner shall submit to the Director of Planning for review and approval a treatment plan. An acceptable treatment plan can consist of (i) performing a limited Phase II

DEC 10 5 01 12

study to establish the boundaries of the site and thereafter leaving the site completely undisturbed or preserving it in some other manner acceptable to the Director of Planning or (ii) performing a complete Phase II study of the site. If a complete Phase II study of a site is undertaken, such Phase II study shall be submitted to and approved by the Director of Planning.

(2) If the approved Phase II study concludes that a site is not eligible for inclusion on the National Register, Owner shall not be obligated to perform any further archaeological studies thereon.

(3) For all sites which the approved Phase II study indicates are eligible for inclusion on the National Register and/or those sites upon which a Phase III study is warranted, Owner shall submit to the Director of Planning for review and approval a treatment plan. An acceptable treatment plan can consist of (i) leaving the site completely undisturbed or preserving the site in some other manner acceptable to the Director of Planning and submitting an application to include the site on the National Register or (ii) performing a complete Phase III study of the site. If a complete Phase III study is undertaken on a site, the Phase III study shall be submitted to and approved by the Director of Planning.

(4) If the Phase II or Phase III study of a site determines the site is eligible for inclusion on the National

Register of Historic Places and such site is to be preserved in place, the treatment plan shall include nomination to the National Register of Historic Places.

(5) All approved treatment plans shall be incorporated into the plan of development for the site and the clearing, grading or construction activities thereon.

(C) All archaeological studies proffered hereby shall meet the VDHR Guidelines and the Secretary of the Interior's Standards and Guidelines for Archaeological Documentation and shall be conducted under the supervision of a qualified archaeologist who meets, at a minimum, the qualifications set forth in the Secretary of the Interior's Professional Qualification Standards as in effect at the time of the submission of the study.

6. Conservation Area. The Owner and/or the owners association shall grant, free of charge, to the Williamsburg Land Conservancy, another County approved land conservation entity and/or the County a conservation easement with terms consistent with these Proffers over the area designated on the Master Plan as Conservation Area generally in the locations shown on the Master Plan. The exact boundaries of the Conservation Area shall be shown on subdivision plats and/or site plans of the Property based on the buffer line and Conservation Area shown and set out on the map entitled "Revised Environmental Constraints Map Hiden Property" made by Williamsburg Environmental Group, Inc. and

dated 8/1/97 and revised 9/16/97. The conservation easement over the Conservation Area shown on each individual subdivision plat or site plan shall be granted at the time of final approval thereof by the County. The Conservation Area shall remain undisturbed and in its natural state, preserving indigenous vegetation except as set forth below. With the prior approval of the County Engineer or his designee on a case by case basis, (i) dead, diseased and dying trees or shrubbery and invasive or poisonous plants may be removed from the Conservation Area; (ii) select hand clearing and pruning of trees shall be permitted in the Conservation Area to permit sight lines or vistas, (iii) utilities, roads, pedestrian paths, trails and bridges may intrude into or cross the Conservation Area and (iv) stormwater best management practices shall be permitted in the portion of the Conservation Area outside the RPA. The greenway proffered in Proffer 7 below and County trails and passive recreational facilities and structures located therein shall be permitted within the Conservation Area. If vegetation is removed from the Conservation Area it shall be replaced by indigenous vegetation that is equally or more effective in retarding runoff, preventing erosion and filtering nonpoint source pollution. Owner, at the request of the County, shall retain an environmental consultant acceptable to the County to prepare a three tiered restoration plan for the areas indicated on the "Revised Environmental

DEC 10 6 01 15

Constraints Map Hidden Property" made by Williamsburg Environmental Group, Inc. and dated 8/1/97 and revised 9/16/97 where timbering operations resulted in the removal of trees from or land disturbance within the Conservation Area to provide for the restoration of ground cover, shrubs and trees for that portion of the Conservation Area as determined to be necessary by the consultant. If stormwater BMP's are located in the Conservation Area, the restoration plan shall include a replanting plan for such BMP areas. The restoration plan shall include a phasing plan to ensure areas of the Conservation Area being restored have been stabilized prior to the commencement of development on adjacent developable areas. The restoration plan shall be submitted to the County Engineer for review and approval. Owner shall implement the recommendations of the approved restoration plan. Road and utility crossings shall be generally perpendicular through the Conservation Area and Owner shall endeavor to design utility systems that do not intrude into the Conservation Area. The Conservation Area shall be maintained by Owner unless the Williamsburg Land Conservancy, the other County approved land conservation entity or the County assumes responsibility therefor under its easement or the Conservation Area is conveyed to an owners association, at which time the association shall assume responsibility for its maintenance. The Conservation Area shall be exclusive of Lots.

7. Greenway. Owner shall grant the County an easement within the Conservation Area for a greenway through the Property in the general location shown on the Master Plan as "Trail Easement" as subdivision plats or site plans for adjacent Property are approved and/or recorded. The County shall be entitled to construct a trail with a minimum 10' wide travel path (which will be open to the general public), including necessary bridges, if any, through the Trail Easement and to install passive amenities such as benches, tables, gazebos, educational or descriptive markers or individual fitness stations. The location of the "Trail Easement" shall be varied within the Conservation Area by the County Engineer to ensure the ability to construct a viable trail network.

8. Recreation. (a) Owner shall provide the recreational facilities listed below in Area 1 shown on the Master Plan and make the cash contributions to the County described below before the County is obligated to approve final subdivision plats for more than 100 lots in Area 1:

- Parkland, including one playground of at least 1.9 acres.
- Cash contribution of \$9,900 in lieu of multi-purpose courts.
- Cash contribution of \$4,300 in lieu of playing fields.

(b) Owner shall provide the recreational facilities listed below in Area 2 shown on the Master Plan and make the cash contributions described below to the County before the County is

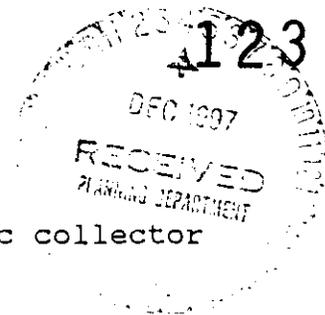
obligated to approve final subdivision plats or site plans for more than 235 dwelling units in Area 2:

- Recreation area of at least 2.5 acres.
- Cash contribution of \$13,650 in lieu of multi-purpose court.
- Cash contribution of \$5,950 in lieu of playing fields.

The recreational facilities in Area 2 may be open only to owners in Area 2.

(c) All cash contributions proffered by this Proffer 8 shall be used by the County for recreation capital improvements, which may include trails within the greenway proffered in Proffer 7. In lieu of the cash contributions for multi-purpose courts set forth above, Owner may construct one multi-purpose court in a location approved by the Development Review Committee. In lieu of the cash contributions for playing fields set forth above, Owner may construct one playing field in accordance with the standards of the Parks and Recreation Master Plan and in a location approved by the Development Review Committee. The exact locations of the facilities proffered hereby and the equipment to be provided at such facilities shall be subject to the approval of the Development Review Committee. All recreational facilities proffered hereby shall be conveyed to and maintained by the owners association and shall be open to all members of the association in good standing.

(e) Owner shall construct a Class II bikeway in accordance



with VDOT standards along both sides of the main public collector roads within the Property north of Alternate Route 5.

9. Entrance Signs. The entrance signs, lighting and entrance features at the entrances to the Property from Alternate Route 5 shall be subject to the review and approval of the Director of Planning before a sign permit for such signs is issued. The entrance signs shall be monument type signs.

10. Powhatan Crossing Buffer. The Owner shall maintain a buffer along the Property's common boundary line with the Powhatan Crossing subdivision with the width and in the locations shown on the Master Plan. This buffer shall be exclusive of any lots and shall be undisturbed, except for, with the approval of the Development Review Committee, berms, landscape features, walls or fences.

11. Area 2 Natural Open Space. At least 40% of the net developable acreage of Area 2 shall be retained as Natural Open Space.

12. Timeshare/Single Family Phasing. The County shall not be obligated to grant final subdivision plat approval for more than 100 lots in Area 1 until the County has granted Certificates of Occupancy for at least 100 units in Area 2.

13. No Access to Powhatan Crossing. Prior to final approval of the first subdivision plat or site plan for development on the Property, Owner shall (i) convey to the

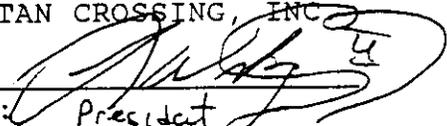
DEC 10 1997 0119

Powhatan Crossing Homeowners Association by quitclaim deed all its right, title and interest in and to the access easement from Powhatan Crossing Drive to the Property adjacent to the recreational lot in Powhatan Crossing, (ii) install a permanent cul de sac at the end of Powhatan Crossing Drive, and (iii) convey to the Powhatan Crossing Homeowners Association by quitclaim deed a strip of land between the permanent cul de sac and the Property such that the public road and the Property are no longer adjacent.

14. Headings. All section and subsection headings of Conditions herein are for convenience only and are not a part of these Proffers.

15. Severability. If any condition or part thereof set forth herein shall be held invalid or unenforceable for any reason by a court of competent jurisdiction, the invalidity or unenforceability of such condition or part thereof shall not invalidate any other remaining condition contained in these Proffers.

WITNESS the following signatures and seals:

POWHATAN CROSSING, INC  
By:   
Title: President

STATE OF Virginia  
CITY/COUNTY OF Williamsburg, to-wit:

The foregoing instrument was acknowledged before me

DEC 10 6 01 20

this 29<sup>th</sup> day of October, 1997 by C. Lewis Waltrip II as President of Powhatan Crossing, Inc.

Vernon M. Geddy III  
NOTARY PUBLIC

My commission expires:  
12/31/99

DEC 10 5 01 21

Prepared by:  
Vernon M. Geddy, III, Esquire  
Geddy, Harris & Geddy  
516 South Henry Street  
Williamsburg, VA 23185

Exhibit A

All that certain piece, or parcel of land described as the "Thomas & Martin Tract" containing 390.69 acres, more or less, but said land is sold in gross and not by the acre. The subject property is bordered by the Powhatan Swamp, Powhatan Crossing Subdivision, Powhatan Plantation and Powhatan Secondary Subdivision, as shown on that certain plat, entitled "P.W. Hiden Estate, Plat of Survey of the Thomas & Martin Tracts, Being Part of Powhatan Plantation, situated in Jamestown District, James City County, Virginia, Surveyed, November, 1944...", a copy of which plat is attached hereto and incorporated herein by reference, for a more complete description of the property sold herein.

Subject however to all easements, restrictions and conditions of record affecting the Property or apparent on the ground.

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

10 day of Dec, 1947. This Proffer

\_\_\_\_\_ was presented and certificate annexed and as \_\_\_\_\_ at \_\_\_\_\_ 10:33 o'clock

Tested before me, \_\_\_\_\_

by Deane Stuard  
Deputy Clerk

DEC 10 5 01 22

NOV 12 1997

RESOLUTION

BOARD OF SUPERVISORS  
JAMES CITY COUNTY  
VIRGINIA

ORDINANCE NO. 165A-6

HILL PLEASANT FARM AGRICULTURAL AND FORESTAL DISTRICT

(AFD-3-86) PETTIT ADDITION P-25-97

WHEREAS, an Agricultural and Forestal District has been established in the Hill Pleasant Farm area; and

WHEREAS, in accordance with Section 15.1-1511(F) of the Code of Virginia, property owners have been notified, public notices have been filed, public hearings have been advertized, and public hearings have been held on the application for an addition to the Hill Pleasant Farm Agricultural and Forestal District; and

WHEREAS, the Agricultural and Forestal Districts Advisory Committee at its meeting on October 2, 1997, unanimously recommended approval of the application; and

WHEREAS, the Planning Commission following its public hearing on October 6, 1997, unanimously recommended approval of the application.

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

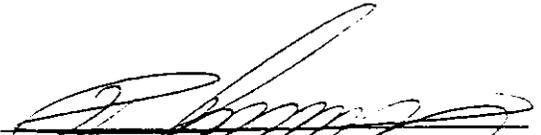
1. The Hill Pleasant Farm Agricultural and Forestal District is hereby amended by the addition of the following parcel:

Mr. William Pettit (24-3)(1-31B) 12.00 ac.

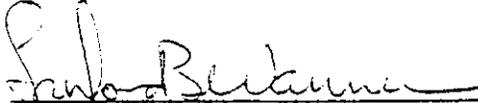
Total: 12.00 ac.

2. That pursuant to the Virginia Code, Section 15.1-1512, as amended, the Board of Supervisors requires that no parcel in the Hill Pleasant Farm Agricultural and Forestal District be developed to a more intensive use without prior approval of the Board of Supervisors. Specifically, the following restrictions shall apply:
  - a. The subdivision of land is to be limited to parcels of 25 acres or more, except where the Board of Supervisors authorizes smaller lots to be created for residential use by members of the owner's immediate family.
  - b. No land outside the primary service area and within the Agricultural and Forestal District may be rezoned and no application for such rezoning shall be filed earlier than six months prior to the expiration of the district. Parcels inside the primary service area and within the agricultural and forestal district may be withdrawn from the district in accordance with the Board of Supervisors' policy pertaining to Withdrawal of Lands from Agricultural and Forestal Districts Within the Primary Service Area, adopted September 24, 1996.

- c. No Special Use Permit shall be issued except for agricultural, forestal or other activities and uses consistent with State Code section 15.1-1506 et. seq. which are not in conflict with the policies of this district.

  
 Robert A. Magoon, Jr.  
 Chairman, Board of Supervisors

ATTEST:

  
 Sanford B. Wanner  
 Clerk to the Board

SUPERVISOR	VOTE
EDWARDS	AYE
BRADSHAW	AYE
SISK	AYE
DEPUE	AYE
MAGOON	AYE

Adopted by the Board of Supervisors of James City County, Virginia, this 12th day of November, 1997.

pettit2.res