

AT A REGULAR MEETING OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE 13TH DAY OF APRIL, 1999, AT 7:00 P.M. IN THE COUNTY GOVERNMENT CENTER BOARD ROOM, 101 MOUNTS BAY ROAD, JAMES CITY COUNTY, VIRGINIA.

A. ROLL CALL

Jack D. Edwards, Chairman, Berkeley District
David L. Sisk, Vice Chairman, Roberts District

John J. McGlennon, Jamestown District
Ronald A. Nervitt, Powhatan District
M. Anderson Bradshaw, Stonehouse District
Sanford B. Wanner, County Administrator
Frank M. Morton, III, County Attorney

B. PUBLIC COMMENT

1. Mr. Ray Basley, 4060 South Riverside, Lanexa, stated the importance of correct display of the American flag and that the County's flag ordinance should state that all persons are subject to the Federal Flag Code.

C. PRESENTATIONS

1. Williamsburg Area Convention and Visitors Bureau

Mr. Dave Shulte, Director, Williamsburg Area Convention and Visitors Bureau, gave an update on the results of investments in tourism marketing of the Williamsburg area.

2. Resolution of Appreciation, Phyllis J. Cody

Mr. Bradshaw read and presented the resolution to Ms. Phyllis J. Cody upon her retirement.

Ms. Cody thanked the Board, staff, and County citizens for their support during her employment with the County.

3. Resolution of Appreciation, C. Norman Engel, Jr.

Mr. Sam Peoples, Green Thumb, Inc., presented a plaque to Mr. C. Norman Engel, Jr., designated as Honorable Mention for the selection of Virginia's Outstanding Older Worker during the national campaign.

Mr. Edwards read and presented a resolution of appreciation to Mr. C. Norman Engel, Jr.

D. CONSENT CALENDAR

Mr. Edwards asked if a Board member wished to remove any items from the Consent Calendar.

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

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

1. Minutes of March 23, 1999, Regular Meeting, and March 24, 1999, Work Session
2. Additional State Allocations - Social Services Division

RESOLUTION**APPROPRIATION TO THE DIVISION OF SOCIAL SERVICES**

WHEREAS, the State Department of Social Services has provided additional funding for Title IV-E Foster Care, Family Preservation/Support, Foster Care/Adoptive Parent Training and Recruitment, and Day Care Non View-without a local match requirement; and

WHEREAS, these funds support mandated or critical programs.

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

Revenues:

From the Commonwealth	<u>\$81,227</u>
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Expenditures:

Title IV-E Foster Care	\$25,000
Foster Care and Adoptive Parent Training/Recruitment	3,750
Family Preservation	36,114
Day Care Non View 100 percent	<u>16,363</u>
Total	<u>\$81,227</u>

3. Right-of-Way Vacation in the Powhatan of Williamsburg Secondary Subdivision

RESOLUTION**CONSENT TO VACATE THE MILES MAHONE RIGHT-OF-WAY**

WHEREAS, Powhatan Enterprises, Inc. (the "Owner"), caused to be recorded in the Clerk's Office of James City County, Virginia, in Plat Book 63, page 31, a subdivision plat entitled "Plat of Powhatan of Williamsburg Secondary, Phase V-A, being a Subdivision of Property of Powhatan Enterprises, Inc., Berkeley District, James City County, Virginia" (the "Plat"); and

- WHEREAS, the Plat shows the location of the Miles Mahone right-of-way; and
- WHEREAS, the Owner has prepared a plat and an Agreement to Vacate Right-of-Way; and
- WHEREAS, the vacation will not impede or alter drainage or access for any lot owners other than the Owner; and
- WHEREAS, the Board finds the vacation to be reasonable and proper.

NOW, THEREFORE, BE IT RESOLVED that pursuant to Section 15.2-2272(1) of the Code of Virginia, as amended, the Board of Supervisors of James City County, Virginia, authorizes its Chairman to execute the said Agreement to Vacate Right-of-Way evidencing the consent of the County to the vacation of Miles Mahone, 50-foot right-of-way, of the Powhatan of Williamsburg Secondary subdivision.

4. Olde Towne Medical Center Staffing Plan for FY 2000

RESOLUTION

OLDE TOWNE MEDICAL CENTER

STAFFING PLAN FOR FY 2000

WHEREAS, the Board of Supervisors of James City County, Virginia, acting as fiscal agent for the OTMC, has been requested to approve the following full-time Other positions funded by the Williamsburg Community Health Foundation grant:

- * Family Nurse Practitioner
- * Registered Nurse; and

WHEREAS, the Board has also been requested to approve a part-time Other Dentist position (1,040 hours/yr); and

WHEREAS, the FY 2000 Staffing Plan for Olde Towne Medical Center also includes:

- * a new full-time Other position of CHIP Registered Nurse
- * a new full-time Other position of CHIP Home Visitor
- * a new full-time Other position of Practice Manager
- * 1,040 additional hours to make the part-time temporary Patient Services Representative position full-time Other
- * changing the position title of Administrative Manager to Business Manager.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia hereby approve the FY 2000 staffing plan for Olde Towne Medical Center effective July 1, 1999.

5. Process to Initiate Comprehensive Ordinance Revisions**RESOLUTION****INITIATING CONSIDERATION OF AMENDMENTS****TO THE ZONING ORDINANCE**

WHEREAS, the Board of Supervisors of James City County, Virginia, is authorized by Virginia Code §15.2-2286 to initiate amendments to the Zoning Ordinance and changes to the zoning map; and

WHEREAS, on January 28, 1997, the Board of Supervisors adopted the Comprehensive Plan, and desires to consider the adoption of materially revised Zoning Ordinance amendments to assist in achieving the goals which have been established in that Plan; and

WHEREAS, in order to make the Zoning Ordinance more consistent with the Comprehensive Plan, public review and comment of draft amendments was received by one of the Zoning Ordinance Review Committees of the Planning Commission and by the Planning Commission at a public hearing held on each ordinance amendment; and

WHEREAS, the Board of Supervisors is of the opinion that the public necessity, convenience, general welfare, and good zoning practice warrant the consideration of the proposed Zoning Ordinance amendments.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby initiate consideration of the following amendments to the James City County Zoning Ordinance in order to promote the public necessity, convenience, welfare, and good zoning practice by making the Zoning Ordinance more consistent with the Comprehensive Plan: Case No. ZO-2-99, Nonconformities; Case No. ZO-3-99, Administrative Variances; Case No. ZO-4-99, Criteria for Review; Case No. ZO-5-99, Fees; Case No. ZO-5-98, Residential Cluster Overlay District; Case No. ZO-13-98, Limited Residential District, R-1; and Case No. ZO-14-98, General Residential District, R-2.

E. PUBLIC HEARINGS

1. Proposed Fiscal Year 2000 Budget and 2000-2004 Capital Improvements Program
2. Ordinance Amendments/Fees
 - a. Section 9-3, Increase Fireworks Fees
 - b. Section 9-3, Establish Waste Open-Burning Permit Fee
 - c. Section 9-3, Establish Bonfire Permit Fee
 - d. Section 14-4, Establish Outdoor Gathering Permit Fee

Ms. Carol O. Davis, Assistant Manager, Financial and Management Services, briefly outlined the proposed FY 2000 budget operating expenses, costs recovered by user fees, revenues, and Capital Improvements Program. She further stated that James City Service Authority was supported entirely by user fees.

Staff recommended no action be taken after the public hearings.

Mr. Edwards opened the public hearings.

1. Mr. Rick Nahm, Senior Vice President, Colonial Williamsburg Foundation, spoke of a joint program with Williamsburg Hotel and Motel Association to attract visitors and increase volume of activity in the off-season.

2. Mr. Ed Oyer, 139 Indian Circle, questioned several items in the Proposed Budget.

Mr. Edwards closed the public hearings.

Mr. Bradshaw, on behalf of a constituent, asked staff to provide information about how often positions paid by grants become County paid positions and what basis of evaluation determines whether a position continues as County funded.

Mr. McGlennon invited citizens comments and communication with him during the upcoming budget work sessions.

3. Case No. ZO-2-99. Ordinance Amendment, Chapter 24, Article VII, Nonconformities, Sections 24-628 through 637

Mr. Paul E. Holt, II, Senior Planner, stated that the Grab Bag Committee recommended reformatting the sections and eliminating redundant language. He further stated that the Committee proposed adding Section 24-633(g), and that staff recommended a language amendment of Section 24-634(d).

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

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

Mr. Bradshaw made a motion to approve the ordinance amendment.

On a roll call for motion to approve, the vote was: AYE: Nervitt, Sisk, McGlennon, Bradshaw, Edwards (5). NAY: (0).

4. Case No. ZO-3-99. Ordinance Amendment, Chapter 24, Zoning, Article VII, Administrative Variances

Mr. Holt stated that the Grab Bag Committee recommended amendment that the Zoning Administrator may grant certain types of variances administratively. He further stated that the Chairman of the Board of Zoning Appeals had endorsed the amendments.

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

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

Mr. Sisk made a motion to approve the ordinance amendment.

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

5. Case No. ZO-5-99. Ordinance Amendment, Chapter 24, Zoning, Article I, In General, Administrative Fees

Mr. Holt stated that the Administrative Variances Ordinance amendment would establish a new procedure of reviewing requests for administratively approved variances. Staff recommended that the amendment would require a \$100 application fee for consideration of administrative variances.

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

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

Mr. Bradshaw made a motion to approve the ordinance amendment.

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

6. Case No. ZO-4-99. Ordinance Amendment, Chapter 24, Zoning, Article III, Site Plan, Section 24-147, Criteria for Review

Mr. Holt stated that the Grab Bag Committee recommended reformatting of the ordinance language for clarity, and clarify criteria for review in terms of the number of dwelling units proposed rather than square footage.

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

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

Mr. McGlennon made a motion to approve the ordinance amendment.

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

7. Case No. AFD-11-86. Yarmouth Island Agricultural and Forestal District - 1999 Vermillion Addition

Mr. Holt stated that Mr. T. R. Vermillion had applied for addition of 749.69± acres, zoned A-1, General Agricultural, located adjacent to the Chickahominy River and Bush Neck Road; further identified as Parcel No. (1-8) on James City County Real Estate Tax Map No. (28-4).

Staff determined that the proposed addition was consistent with surrounding properties, zoning and the Comprehensive Plan.

Mr. Holt stated that the Agricultural and Forestal District (AFD) Advisory Committee recommended the addition by a vote of 6-0 with three absences. In concurrence with staff and the AFD Advisory Committee, the Planning Commission unanimously recommended approval of the addition.

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

Mr. Bradshaw made a motion to approve the AFD ordinance.

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

8. Outdoor Gathering Permit - Junior Women's Club

Mr. John T.P. Horne, Manager, Development Management, stated that the Junior Women's Club had applied to hold an outdoor gathering on Friday, May 21, 1999, from 6:00 p.m. to 11:00 p.m. at Williamsburg Jamestown Airport, 100 Marclay Road, Williamsburg.

Staff recommended approval.

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

Mr. Nervitt made a motion to approve the resolution.

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

RESOLUTION

OUTDOOR GATHERING PERMIT

WHEREAS, James City County has received an application from Junior Women's Club of Williamsburg to hold an outdoor gathering on Friday, May 21, 1999, from 6:00 p.m. to 11:00 p.m., at Williamsburg Jamestown Airport, 100 Marclay Road, Williamsburg, Virginia 23185; and

WHEREAS, the application was reviewed and approved with comments by the James City County Police Chief, Fire Chief, Emergency Medical Coordinator, the County Health Department, Building Official, and the Zoning Administrator.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, authorizes the County Administrator to issue a permit to Junior Women's Club of Williamsburg, to hold an outdoor gathering as proposed on the Outdoor Gathering Permit Application and the written comments made thereto.

9. Outdoor Gathering Permit - Rising Water - Falling Water/Fort Cherokee

Mr. John T. P. Horne, Manager, Development Management, stated that the Rising Water-Falling Water/Fort Cherokee had applied to hold an outdoor gathering on Friday-Sunday, May 14-16, 1999, from 10:00 a.m. to 6:00 p.m. at Williamsburg Campsite, 6967 Richmond Road, Williamsburg.

Staff recommended approval.

Mr. McGlennon stated a concern about parking and asked staff to check whether the Flea Market on Richmond Road in the same area would be in operation the weekend of the outdoor gathering.

Mr. Horne stated that staff would check on the event.

Mr. Edwards 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: Nervitt, Sisk, McGlennon, Bradshaw, Edwards (5). NAY: (0).

RESOLUTION**OUTDOOR GATHERING PERMIT**

WHEREAS, James City County has received an application from Rising Water-Falling Water/Fort Cherokee to hold an outdoor gathering on Friday-Sunday, May 14-16, 1999, from 10:00 a.m. to 6:00 p.m., at Williamsburg Campsites, 6967 Richmond Road, Williamsburg, Virginia 23188; and

WHEREAS, the application was reviewed and approved with comments by the James City County Police Chief, Fire Chief, Emergency Medical Coordinator, the County Health Department, Building Official, and the Zoning Administrator.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, authorizes the County Administrator to issue a permit to Rising Water-Falling Water/Fort Cherokee to hold an outdoor gathering as proposed on the Outdoor Gathering Permit Application and the written comments made thereto.

F. BOARD CONSIDERATION**1. Ironbound Square Community Development Block Grant Application**

Mr. Richard B. Hanson, Housing and Community Development Administrator, stated that authorization was requested to submit an application for a \$1 million Community Development Block Grant to assist in funding a multi-year comprehensive residential revitalization project in the Ironbound Square neighborhood.

Mr. Hanson showed a residential redevelopment concept plan with alternative access roads to eliminate curb cuts, proposed to be phased over six years, and to be coordinated with the widening of Ironbound Road. He explained the funding strategy of the CDBG grant, local funding and Virginia Department of Transportation funding.

Staff recommended approval of the resolution.

Board members and staff discussed the relocation of homes and the conceptual access from the neighborhood to Ironbound Road.

Without Board objection, Mr. Edwards extended an invitation to allow citizens to speak.

1. Ms. Hazel Morriss, 118 Watford Lane, asked the reasons for relocation of residents and widening of Watford Lane.

2. Mr. Lloyd Banks, Deacon, 4344 Ironbound Road, asked why redevelopment was planned for Ironbound Road and who would pay for the houses.

3. Ms. Harriett Banks, Minister, 109 Carriage Road, spoke in support of the improvement but stated that older persons should be allowed to live on property they have owned for many years.

4. Ms. Angie Dennis, 200 Alesa Drive, representative of the Ironbound Square neighborhood, spoke in favor of the program and stated the residents realized that the redevelopment would not be free.

5. Mr. William Strong, 114 Watford Lane, voiced his support for the program, stated the neighborhood needed houses and vegetation removed, and he wanted the neighborhood to remain revitalized once the redevelopment occurred.

Mr. Bradshaw made a motion to approve the resolution.

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

RESOLUTION

IRONBOUND SQUARE RESIDENTIAL REVITALIZATION PROGRAM

COMMUNITY DEVELOPMENT BLOCK GRANT APPLICATION

WHEREAS, financial assistance is available to units of local government through the Commonwealth of Virginia Community Development Block Grant Program (VCDBG); and

WHEREAS, two public hearings have been held regarding this application, in compliance with VCDBG citizen participation requirements; and

WHEREAS, James City County wishes to apply for \$1,000,000 in VCDBG funds to be used in undertaking a Multiyear Housing Preservation and Residential Redevelopment Project in the designated Ironbound Square area; and

WHEREAS, \$1,196,925 in local funds are allocated to the project, \$526,050 in State and Federal funds, and \$400,000 in private funds will be expended on this project; and

WHEREAS, the project is anticipated to benefit 92 households of whom 86 are low- and moderate-income by providing property clearance, development of a multipurpose path, and park improvements; and to benefit 50 low- and moderate-income households by providing housing rehabilitation, replacement, or relocation assistance.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of James City County, Virginia, that the County Administrator is authorized to file an application, including all understandings and assurances contained therein, with the Virginia Department of Housing and Community Development and to provide such additional information as may be required by the Department.

G. PUBLIC COMMENT - None

H. REPORTS OF THE COUNTY ADMINISTRATOR

Mr. Wanner reported that the County was presented an Arbor Day Award by the Williamsburg Council of Garden Club, for landscaping at Route 5/Route 199. Mr. Paul Tubach accepted the award for the County.

Mr. Wanner announced that the United States Postal Service would conduct a public hearing on April 27, 1999, to receive public comments on its proposal to build a postal facility in the County.

Mr. Wanner recommended an executive session pursuant Section 2.1-344(A)(3) of the Code of Virginia to consider acquisition of parcels of property for public use specifically transportation improvements. He recommended recess until Thursday, April 15, 1999, 7:00 p.m., in Building C Board Room at the Government Center for a FY 2000 Budget work session.

I. BOARD REQUESTS AND DIRECTIVES

Mr. Bradshaw reported that he had attended the dedication of public access landing at the Diascund reservoir.

Mr. McGlennon expressed appreciation to Social Services for its efforts to address child abuse.

Mr. Edwards made a motion to convene into executive session as recommended by the County Administrator, at 9:27 p.m.

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

Mr. Edwards reconvened the Board into open session and made a motion to approve the executive session resolution, at 9:44 p.m.

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

RESOLUTION

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

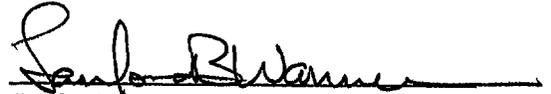
WHEREAS, Section 2.1-344.1 of the Code of Virginia requires a certification by the Board that such executive meeting was conducted in conformity with Virginia law.

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 were heard, discussed or considered by the Board as were identified in the motion, Section 2.1-344(A) (3), acquisition of parcels of property for transportation improvements.

Mr. Edwards made a motion to recess until Thursday, April 15, 1999, at 7:00 p.m. for a Budget 2000 work session.

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

The Board recessed at 9:45 p.m.



Sanford B. Wanner
Clerk to the Board

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**AGREEMENT TO VACATE RIGHT OF WAY
ADJUST LOT LINES
AND
REDESIGNATE LOT NUMBER**

This Agreement made this 22nd day of March, 1999 by and between: **THE**
COUNTY OF JAMES CITY, VIRGINIA, a political subdivision of the
Commonwealth of Virginia ("JCC"), to be indexed as Grantor, and **POWHATAN**
ENTERPRISES, INC., a Virginia corporation ("Powhatan"), to be indexed as both
Grantor and Grantee, provides as follows:

RECITALS

1. Powhatan is the owner of certain real property located in the County of James City, Virginia, commonly known as the Powhatan of Williamsburg Secondary subdivision.
2. Powhatan has caused to be recorded a subdivision plat creating Phase V-A, of the Powhatan of Williamsburg Secondary subdivision, as follows:

"Plat Of Powhatan Of Williamsburg Secondary, Phase V-A, Being A Subdivision Of Property Of Powhatan Enterprises, Inc., Berkeley District, James City County, Virginia" dated August 30, 1995, prepared by Langley and McDonald, P.C. recorded in Plat Book 63, page 31.
3. Powhatan is the sole owner of Lot 89 within Phase V-A of Powhatan of Williamsburg Secondary subdivision, as shown on the aforesaid plat.
4. The aforesaid plat created and dedicated a right of way shown as "Miles Mahone 50' R/W" providing access from Charter House Lane to adjacent undeveloped property.

APR 22 1999 0103

5. The Virginia Department of Transportation has never accepted the aforesaid "Miles Mahone 50' R/W" right of way, nor have any public funds been expended on establishment, construction or maintenance of the said right of way.

6. The parties hereto desire to vacate the aforesaid right of way and to adjust the boundary lines of Lot 89, Phase V-A and to redesignate Lot 89, Phase V-A as Lot 27, Phase V-B of Powhatan of Williamsburg Secondary subdivision.

7. Access to other property will not be impeded or altered by the provisions hereof.

8. The vacation of the "Miles Mahone 50' R/W" is done pursuant to and is authorized by section 15.2-2272 (1) of the Code of Virginia, 1950, as amended.

9. The boundary line adjustment is done pursuant to Section 15.2-2275 of the Code of Virginia, 1950, as amended.

PROVISIONS

Now, therefore, the parties hereto agree as follows:

The right-of-way described above shall be and hereby is vacated and the boundary lines of Lot 89, Phase V-A be and is hereby adjusted and said Lot 89 Phase V-A be and is hereby redesignated as Lot 27, Phase V-B all as shown on the plat attached hereto and made a part hereof entitled "Boundary Line Adjustment, Powhatan Of Williamsburg Secondary, Phase V-B, Lot 27, Property Of Powhatan Enterprises, Inc., Berkeley District, James City County, Virginia" dated 11/11/98, prepared by Langley and McDonald, P.C. recorded simultaneously herewith.

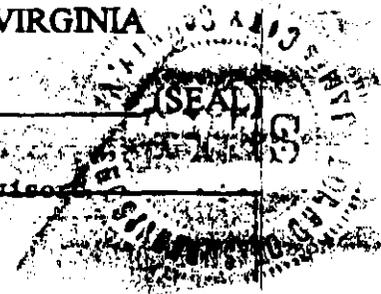
APR 22 2004 0104

Witness the following signatures and seals:

THE COUNTY OF JAMES CITY, VIRGINIA

By: J. Edwards (SEAL)

Title: Chairman, Board of Supervisors



POWHATAN ENTERPRISES, INC.

By: Lawrence E. Beamer (SEAL)
Lawrence E. Beamer

Title: President

COMMONWEALTH OF VIRGINIA:

~~CITY~~/COUNTY OF James City, to wit:

I, the undersigned, a Notary Public in and for the aforesaid jurisdiction, to hereby certify that this day personally appeared before me in my said jurisdiction, Lawrence E. Beamer, as President of Powhatan Enterprises, Inc., a Virginia corporation, and executed and acknowledged the foregoing document.

GIVEN under my hand this 12th day of April, 1999.

Carole C. Giuliano
NOTARY PUBLIC

My commission expires: May 31, 2002

APR 22 01 05

COMMONWEALTH OF VIRGINIA:

CITY/COUNTY OF James City, to wit:

I, the undersigned, a Notary Public in and for the aforesaid jurisdiction, to hereby certify that this day personally appeared before me in my said jurisdiction, Jack D. Edwards, as Chairman of the Board of Supervisors of James City County, Virginia and executed and acknowledged the foregoing document.

GIVEN under my hand this 14th day of ~~March~~ ^{April}, 1999.



Mary Frances Rieger
NOTARY PUBLIC

My commission expires: October 31, 2001.

C:\WP\AFD\Powhatan Ent\Agreement to Vacate RW - JCC & Powhatan Plantation, Inc. - 3-22-99

Document Prepared by:

Alvin Anderson
1200 Old Colony Lane
Williamsburg, VA 23185

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 14th day of April, 1999. This Agreement was presented with certificate annexed and admitted to record at 10:01 o'clock
Teste: Helene S. Ward, Clerk
by Mary Frances Rieger
Deputy Clerk

PLAT RECORDED IN
P.B. NO. 72 PAGE 100

APR 22 8 01 06

990008631

AFFIDAVIT AND CONFIRMATION

This Affidavit and Confirmation is made by **POWHATAN ENTERPRISES, INC.**, a Virginia corporation, to be indexed as Grantor

Whereas Powhatan Enterprises, Inc. ("Powhatan") is the owner of a parcel of land situate in James City County, Virginia, briefly described as:

All that certain lot, piece and parcel of land, with appurtenances thereto belonging, lying and being in Berkeley District, James City County, Virginia, known, designated and described as Lot 89, as shown on that certain plat entitled "PLAT OF POWHATAN OF WILLIAMSBURG SECONDARY PHASE VA, SUBDIVISION OF PROPERTY OF POWHATAN ENTERPRISES, INC., JAMES CITY COUNTY, VIRGINIA", made by Langley and McDonald, a Professional Corporation, Engineers-Planners-Surveyors, dated August 30, 1995 and recorded in Plat Book 63 at Page 31, in the Clerk's Office of the Circuit Court for the City of Williamsburg and County of James City, Virginia on December 5, 1995, reference to which is here made for a more accurate description, and Lots Number One (1) thru Ten (10) and Eighty-Nine (89), "PLAT OF POWHATAN OF WILLIAMSBURG SECONDARY PHASE VA, SUBDIVISION OF PROPERTY OF POWHATAN ENTERPRISES, INC., JAMES CITY COUNTY, VIRGINIA", made by Langley and McDonald, a Professional Corporation, Engineers-Planners-Surveyors, and recorded in the aforesaid Clerk's Office. ("Lot 89"). and

Whereas, Lot 89 is subject to a Supplemental Declaration of Covenants and Restrictions dated March 8, 1994 and recorded in James City Deed Book 765 Page 781, ("Declaration") and:

Whereas, Powhatan has now modified the boundaries of Lot 89 and redesignated it as Lot 27, Section V-B, Powhatan Secondary described as follows:

All that lot, piece or parcel of land, with appurtenances thereto belonging, lying and being in Berkeley District, James City County, Virginia, known, designated and described as Lot 27, as shown on that certain plat entitled: "BOUNDARY LINE ADJUSTMENT OF POWHATAN OF WILLIAMSBURG SECONDARY, PHASE V-B, LOT 27, BEING PROPERTY OF POWHATAN ENTERPRISES, INC., BERKELEY DISTRICT, JAMES CITY COUNTY, VIRGINIA", dated 11/11/98 made by Langley and McDonald, P.C., Engineer-Surveyors-Planners-Landscape Architects-Environmental Consultants, and recorded in Plat Book 72 at Page 100, in the Clerk's Office of the Circuit Court for the City of Williamsburg and County of James City, Virginia on 4/22/99, reference to which is here made for a more accurate description. ("Lot 27")

Now Therefore, Powhatan does hereby confirm that Lot 27 constitutes a parcel contemplated by the Declaration and shall be held, transferred, sold, conveyed and accepted subject to the covenants, restrictions, easements changes and liens set forth in the Declaration.

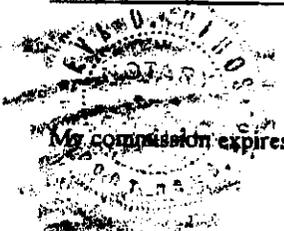
POWHATAN ENTERPRISES, INC.

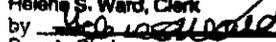


Lawrence Beamer, President

STATE OF VIRGINIA
COUNTY OF JAMES CITY

Sworn to and subscribed to before me this 21st day of April, 1999 by LAWRENCE BEAMER, President for Powhatan Enterprises, Inc.




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, this 21st day of April, 1999. This Affidavit was presented with certificate attached and admitted to record at 10:30 o'clock.
Teste: Helene S. Ward, Clerk
by 
Deputy Clerk

APR 22 1999 0107

APR 18 1999

ORDINANCE NO. 31A-188

BOARD OF SUPERVISORS
JAMES CITY COUNTY
VIRGINIA

AN ORDINANCE TO AMEND AN REORDAIN CHAPTER 24, ZONING, OF THE CODE OF THE COUNTY OF JAMES CITY, VIRGINIA, BY AMENDING ARTICLE VII, NONCONFORMITIES, SECTION 24-628, NONCONFORMING USES; SECTION 24-629, CONTINUATION OF NONCONFORMING USES; BY AMENDING AND RENUMBERING SECTION 24-630, PERMITTED CHANGES OF NONCONFORMING USES WITH NEW NUMBER 24-631; BY DELETING OLD SECTION 24-631, RESTORATION OF A NONCONFORMING USE DAMAGED BY CASUALTY; SECTION 24-632, EXPANSION OF NONCONFORMING USES; SECTION 24-633, USE OF NONCONFORMING LOTS; SECTION 24-634, VERIFICATION OF NONCONFORMING USES; BY ADDING NEW SECTION 24-630, VERIFICATION OF NONCONFORMING USES NEEDED PRIOR TO ANY CHANGE IN A NONCONFORMING USE; SECTION 24-632, REPAIRS AND MAINTENANCE TO NONCONFORMING USES; SECTION 24-633, EXPANSION/IMPROVEMENTS TO NONCONFORMING USE; SECTION 24-634, RESTORATION/REPLACEMENT OF A NONCONFORMING USE; SECTION 24-635, MOVING A NONCONFORMING USE; SECTION 24-636, USE OF NONCONFORMING LOTS; AND SECTION 24-637, APPEALS.

BE IT ORDAINED by the Board of Supervisors of the County of James City, Virginia, that Chapter 24, Zoning, is hereby amended and reordained by amending Article VII, Nonconformities, Section 24-628, Nonconforming uses; Section 24-629, Continuation of nonconforming uses; Section 24-630, Verification of nonconforming uses needed prior to any change in a nonconforming use; Section 24-631, Permitted changes of a nonconforming use; Section 24-632, Repairs and maintenance to nonconforming uses; Section 24-633, Expansion/improvements to nonconforming use; Section 24-634, Restoration/replacement of a nonconforming use; Section 24-635, Moving a nonconforming use; Section 24-636, Use of nonconforming lots; and Section 24-637, Appeals.

Chapter 24. Zoning

Article VII. Nonconformities

Sec. 24-628. Nonconforming uses.

(a) *Purpose and intent.* The purpose of this article is to regulate nonconforming uses in a manner consistent with sound planning and zoning principles. The general intent is that, over time, nonconforming uses will be discontinued in favor of uses conforming to this chapter and the zoning map. However, it is also recognized that nonconforming uses need not be entirely static and that under certain circumstances nonconforming uses may change according to law and the provisions of this chapter.

(b) *Term defined.* The term "nonconforming use" shall mean any use, lot or structure that was lawful on the date of enactment of this chapter, or amendment thereto, which has been continued although otherwise unlawful by such enactment or amendment. Any use, lot or structure that was unlawful on the date of enactment of this chapter, or amendment thereto, shall remain unlawful and shall not be a "nonconforming use." ~~any activity using land, building, sign, lot, and/or structure for purposes which were legally established prior to the effective date of this chapter, or subsequent amendment to it, and which would not be permitted to be established in a zoning district in which it is located by the currently adopted regulations.~~

(c) *Status.* The nonconforming status of any nonconforming use shall adhere solely to the use of the land and not to the owner, tenant or other holder of any legal title to the property or the right to make use thereof.

(d) *Accessory or incidental uses.* A use that is accessory or incidental to a permitted principal use cannot be made the basis for a nonconforming principal use.

~~(e) *Continuation of accessory uses prohibited.* No use accessory to a principal nonconforming use shall be continued after nonconforming status is lost for the principal use.~~

Sec. 24-629. Continuation of nonconforming uses.

(a) A nonconforming use may continue as it existed when it became nonconforming, ~~provided however, if any nonconforming use is discontinued for a period of two years, it shall lose its nonconforming status and any further use shall be required to conform to the provisions of this chapter.~~ A nonconforming use shall not be changed, altered, repaired, restored, replaced, relocated or expanded in any manner, including the addition of new accessory or incidental uses, except as provided for in section 24-630 et seq. of this article. ~~A nonconforming use shall not be changed unless provided for in section 24-631 of this article.~~

~~(b) If any nonconforming use is discontinued for a period of two years, it shall lose its nonconforming status and any further use shall conform to the provisions of this chapter.~~

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(c) For the purposes of this section, cessation of a nonconforming use for the aforesaid period shall be conclusively presumed to establish discontinuance.

(d)(b) Operation of only an accessory or incidental use to the principal nonconforming use during the two-year period shall not operate to continue the principal nonconforming use.

(c) No use accessory to a principal nonconforming use shall be continued after nonconforming status is lost for the principal use.

Sec. 24-630. Verification of nonconforming uses needed prior to any change in a nonconforming use.

(a) Prior to the approval of any change in, or restoration of, a nonconforming use permitted by section 24-631 of this ordinance, the lawful status of the use shall be verified in writing by the zoning administrator. The zoning administrator may also verify in writing the lawful status of a nonconforming use not proposed to change upon the request of the owner of the property on which the use is located or upon the request of a neighboring property owner.

(b) In verifying the lawful status of a nonconforming use, the zoning administrator shall determine the following:

(1) Whether the use is, in fact, a lawful nonconforming use as defined by this chapter, and, if so, then;

(2) The location and gross floor area (in square feet) of all buildings associated with the nonconforming use; and

(3) The location, use and size of all structures other than buildings associated with the nonconforming use; and

(4) The area of land (in square feet) devoted to all aspects of the nonconforming use (including buildings, parking, outside storage, travel ways, open spaces, etc.); and

(5) A description of the principal use(s) and all accessory uses that make up the lawful nonconforming use as a whole.

(c) All signs associated with the nonconforming use shall be brought into full compliance with the current zoning ordinance requirements for the zoning district assigned by the zoning administrator as a part of the nonconforming use verification process.

(d) Classification of use. If such determination results in the use, or any portion, being verified as a lawful nonconforming use, the zoning administrator shall classify the overall nonconforming use of the property based on the zoning district in which the use would be a permitted use. If the use would be permitted in more than one zoning district, the assigned classification shall be based on the zoning district that is the least intense of all districts where the use would be permitted. The assignment of such a zoning classification shall not operate to

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change the zoning of the property on which the nonconforming use is located, but shall be used only in determining the applicable criteria for change of the nonconformance use under the provisions of section 24-633.

(e) Basis for administrator's decision. The decision of the zoning administrator shall be based on information provided by the owner of the property on which the nonconforming use is located, on information provided by other persons with knowledge of the property and on any other information available to the zoning administrator as public record. Such information may include, but shall not be limited to, permits, licenses, tax records, receipts, business records, photographs, plats, plans, bills, utility information, assessment information, and sworn affidavits from individuals with personal knowledge of the use and/or the property on which the use is located.

Sec. 24-630. Permitted changes of nonconforming uses.

(a) A nonconforming use may be changed, altered, repaired, restored, replaced, relocated or expanded only in accordance with the provisions of this article and subject to the appropriate approvals (including, among others, verification of the nonconforming use, site plan approval, building permit approval and zoning approval under this chapter) otherwise required by law.

~~(1)(b)~~ A nonconforming use may change to a conforming use.

~~(2)~~ A nonconforming use may change to a more restricted nonconforming use, as set forth in paragraph (b) of this section.

~~(3)~~ A nonconforming use may be repaired, provided such repair constitutes only routine maintenance necessary to keep the structure in the same general condition it was in when it originally became nonconforming.

~~(4)~~ A nonconforming use damaged by casualty may be restored in accordance with the provisions of section 24-631. By casualty shall mean as a result of a fire or other cause beyond the control of the owner or by an act of God. By casualty shall not include damage caused by age or ordinary wear and tear or damage intentionally caused by the owner or an agent thereof.

~~(5)~~ Minor alterations, cosmetic modifications, interior renovations and similar changes for nonconforming uses may be permitted, subject to the following standards:

~~a.~~ Such changes shall not increase the land area occupied by any aspect of the nonconforming use and shall not increase the gross floor area of any nonconforming structure; and,

~~b.~~ Such construction shall meet all current zoning ordinance requirements for the zoning district in which the nonconforming use is located or the zoning district assigned by the zoning administrator as a part of the nonconforming use verification process, whichever requirements are more strict; and

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- ~~c. All signs associated with the nonconforming use shall be brought into full compliance with the current zoning ordinance requirements for the zoning district assigned by the zoning administrator as a part of the nonconforming use verification process.~~
- ~~(6) Except for signs, nonconforming uses other than buildings (such as, but not limited to, underground storage tanks, private sewage disposal systems and parking lots) may be restored or replaced when such structures become unsafe or unsound. A relocation on the same lot may be approved by the zoning administrator, provided the new location is less nonconforming than the original location, and further provided that the new location shall not cause a greater detrimental impact on conforming uses in the neighborhood.~~
- ~~(7) A nonconforming use may expand in accordance with the provisions of section 24-632 of this chapter.~~
- ~~(8) A nonconforming use may be extended throughout any part of a structure originally arranged or designed for such activity; provided, that current parking requirements shall be adhered to upon such extension.~~
- ~~(9) No structure used as a part of a nonconforming use shall be moved to any other lot unless such lot is properly zoned to permit the use, nor shall such a structure be moved within the lot on which it exists, unless a relocation is specifically provided for in section 24-628 et seq. of this article.~~
- ~~(10) A nonconforming office building meeting all current zoning requirements except connection to public water and sewer which is located within an industrial district may be replaced upon issuance of a special use permit excepting the use from the public water and sewer requirements. The replacement office building shall not exceed 4,000 square feet in floor area.~~
- ~~(11) Nonconforming mobile homes or manufactured homes in any agricultural or residential district may be replaced with manufactured homes upon issuance of a special use permit. For purposes of this article, a "nonconforming mobile home or manufactured home" shall be defined as any mobile home or manufactured home which does not meet all current zoning requirements which was:~~
- ~~a. Located in the county prior to April of 1969, or any replacement thereof;~~
- ~~b. Located pursuant to a conditional use permit, either with or without an expiration date;~~
- ~~c. Located pursuant to a special use permit; provided, however, any manufactured home located pursuant to a special use permit with an expiration date shall be removed from the site upon expiration of the special use permit unless a new special use permit is approved to lawfully continue the use; or~~
- ~~d. A replacement for a mobile home or manufactured home located pursuant to a conditional or special use permit not specifically prohibited by the permit.~~
- ~~(b) A nonconforming use may change as a matter of right to a more restricted nonconforming use upon issuance by the zoning administrator of an approval for such a change. The zoning administrator's approval, which shall not be given until the nonconforming status of the use has been verified in accordance with section 24-634 of~~

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this article, shall include a determination in writing that the proposed use is "more restricted" than the existing nonconforming use. If the zoning administrator determines the proposed use is not "more restricted" than the existing nonconforming use, the application for a change to a more restricted nonconforming use shall be denied. An appeal from such a determination shall be to the board of zoning appeals as provided by section 24-663 of this chapter.

~~(c) A nonconforming use may change to a more restricted nonconforming use upon approval by the zoning administrator. The zoning administrator's approval shall include a determination in writing that the proposed use is "more restricted" than the existing nonconforming use and shall not be given until the nonconforming status of the use has been verified in accordance with section 24-630 of this article. In determining whether a proposed use is a "more restricted" nonconforming use, the following factors, among others, shall be considered:~~

- ~~(c) In determining whether a proposed use is a "more restricted" nonconforming use, the following factors, among others, shall be considered:~~
- ~~(1) Whether the proposed use will change the size and scope of the existing use and the magnitude of such change;~~
 - ~~(2) Whether the proposed use will increase the intensity of the nonconforming use, including hours of operation, traffic, lighting, odor, noise and similar impacts;~~
 - ~~(3) Whether the proposed use will have a more or less detrimental effect on conforming uses in the neighborhood; and~~
 - ~~(4) How the quantum overall effect of the factors evaluated in preceding subsections (c)(1), (c)(2), and (c)(3), relate to the purpose, policies and objectives of this chapter.~~

~~(d) Upon the issuance of an approval to change to a more restricted nonconforming use, site plan approval, as set forth in this chapter, shall be required.~~

Sec. 24-631. Restoration of a nonconforming use damaged by casualty.

~~(a) A nonconforming use that is damaged by any casualty may be restored to its condition prior to the casualty, provided such restoration is begun within 12 months of the date of the casualty and completed within 24 months of the date of the casualty.~~

~~(b) Such restoration shall not include any minor alterations, cosmetic modifications, interior renovations or similar changes unless approved under the provisions of section 24-630(a)(5) of this article, nor shall such restoration include any expansion unless approved under the provisions of section 24-632. Such restoration may include changes that make the use less nonconforming than it was prior to the casualty.~~

~~(c) Prior to any restoration permitted by this section, the nonconformance of the structure shall be verified as set forth in section 24-634 of this article.~~

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~~(d) For all structures except a one-family dwelling, restoration of a nonconforming structure shall require site plan approval as set forth in this chapter.~~

Sec. 24-632. Expansion of nonconforming uses.

~~(a) *Conformity and location of expansion.* Nonconforming uses may expand only in accordance with the provisions of this section. Any permitted expansion shall occur only on the lot occupied by the nonconforming use and no area of any lot not originally devoted to the nonconforming use shall be utilized for any aspect of such expansion.~~

~~(b) *One-family dwellings.* For a nonconforming one-family dwelling use, the dwelling may be expanded without limitation, except as provided for in this section. In addition, new or expanded residential accessory structures and uses (such as a storage shed, garage, swimming pool, etc.) may be permitted subject to the provisions of this chapter. Expansion of the dwelling and new or expanded accessory structures and uses shall meet all current zoning requirements, including height, yard and setbacks, for the zoning district in which located or the R-1 zoning district if such dwelling is not located in a zoning district where a residential use is permitted. In no case shall a nonconforming one-family dwelling be modified to accommodate additional dwelling units.~~

~~(c) *Business or industrial uses.* For uses in any district where the activity is permitted in the zoning district in which the lot is located, but where the current zoning requirements (including, but not limited to, parking, yards, setbacks, landscaping, screening and buffering, height, signs, lot coverage, connection to public sewer and water) are not met, expansion of the building, and expansion of the land area within the lot devoted to activities other than buildings, may be approved, provided all current zoning requirements applicable to the expansion are met.~~

~~(d) *Businesses or industrial uses not connected to public water and sewer.* Expansion of a use pursuant to paragraph (c) above meeting all zoning requirements except for connection to public water and public sewer may be permitted upon approval of a special use permit excepting the use from the public water and public sewer requirements.~~

~~(e) *Expansion allowance resulting from right-of-way dedication.* Existing business or industrial uses permitted within any district which have been made nonconforming with respect to open space, perimeter landscape requirements or setback requirements as a result of a right-of-way dedication to the county or the Virginia Department of Transportation without compensation shall be allowed to expand in accordance with the current zoning ordinance under the conditions which existed prior to the dedication.~~

~~(f) *Verification of nonconforming use.* Prior to the approval of expansion of a nonconforming use under this section, the nonconforming use shall be verified as set forth in section 24-634 of this article.~~

Sec. 24-633. Use of nonconforming lots.

~~(a) Any unimproved lot of record existing on the effective date of this chapter located in any district that is nonconforming as to the lot area, lot width or lot depth, or combination thereof, required in the zoning district in which the lot is located may be used for any permitted use in such zoning district, unless specifically prohibited.~~

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provided all other requirements of the zoning district are met or the board of zoning appeals establishes setbacks, side, and rear yards in accordance with section 24-650(c):

~~(b) In addition to the changes that may be allowed to nonconforming lots by section 24-630, nonconforming lots may change as follows:~~

- ~~(1) A nonconforming lot may be increased in lot size, lot width or both to make the lot less nonconforming.~~
- ~~(2) The boundaries of a lot that is nonconforming as to lot size or lot width, or both, may be adjusted along with the boundaries of any contiguous conforming lot, provided such adjustment does not make the conforming lot nonconforming and does not make the nonconforming lot more nonconforming.~~
- ~~(3) When a nonconforming lot is changed as set forth in subsections (b)(1) and (b)(2), or when two or more nonconforming lots are assembled to create a conforming lot, a plat of subdivision shall first be filed and approved in accordance with law.~~

Sec. 24-634. Verification of nonconforming uses:

~~(a) *Zoning administrator to verify lawful status.* Prior to approval of any change in a nonconforming use permitted by section 24-630, the lawful status of the use shall be verified by the zoning administrator. The zoning administrator may also verify the lawful status of a nonconforming use not proposed to change upon the request of the owner of the property on which the use is located or upon the request of a neighboring property owner.~~

~~(b) *Factors to be determined.* In verifying the lawful status of a nonconforming use, the zoning administrator shall determine the following:~~

- ~~(1) Whether the use is, in fact, a lawful nonconforming use as defined by this chapter; and, if so, then~~
- ~~(2) The location and gross floor area (in square feet) of all buildings associated with the nonconforming use; and~~
- ~~(3) The location, use and size of all structures other than buildings associated with the nonconforming use; and~~
- ~~(4) The area of land (in square feet) devoted to all aspects of the nonconforming use (including buildings, parking, outside storage, travel ways, open spaces, etc.); and~~
- ~~(5) A description of the principal use(s) and all accessory uses that make up the lawful nonconforming use as a whole.~~

~~(c) *Classification of use.* If such determination results in the use, or any portion, being verified as a lawful nonconforming use, the zoning administrator shall classify the overall nonconforming use based on the zoning~~

district in which the use would be a permitted use. If the use would be permitted in more than one zoning district, the assigned classification shall be based on the zoning district that is the least intense of all districts where the use would be permitted. The assignment of such a zoning classification shall not operate to change the zoning of the property on which the nonconforming use is located, but shall be used only in determining the applicable criteria for change of the nonconformance use under section 24-630(a)(5) of this article.

(d) *Administrator's decision, appeal to board of zoning appeals.* The decision of the zoning administrator under paragraphs (b) and (c) shall be final after 30 days unless an appeal is filed to the board of zoning appeals in accordance with section 24-663 of this chapter.

(e) *Basis for administrator's decision.* The decision of the zoning administrator shall be based on information provided by the owner of the property on which the nonconforming use is located, on information provided by other persons with knowledge of the property and on any other information available to the zoning administrator as public record. Such information may include, but shall not be limited to, permits, licenses, tax records, receipts, business records, photographs, plats, plans, bills, utility information, assessment information, and sworn affidavits from individuals with personal knowledge of the use and/or the property on which the use is located.

Sec. 24-632. Repairs and maintenance to nonconforming uses.

A nonconforming use may be repaired, provided such repair constitutes only routine maintenance necessary to keep the structure in the same general condition it was in when it originally became nonconforming.

Sec. 24-633. Expansion/improvements to nonconforming uses.

(a) *A nonconforming use may be extended throughout any part of a structure originally arranged or designed for such activity; provided, that current parking requirements shall be adhered to upon such extension.*

(b) *Any permitted expansion shall occur only on the lot occupied by the nonconforming use and no area of any lot not originally devoted to the nonconforming use shall be utilized for any aspect of such expansion.*

(c) *One-family dwellings.* For a nonconforming one-family dwelling use, the dwelling may be expanded without limitation, except as provided for in this chapter. In addition, new or expanded residential accessory structures and uses (such as a storage shed, garage, swimming pool, etc.) may be permitted subject to the provisions of this chapter. Expansion of the dwelling and new or expanded accessory structures and uses shall meet all current zoning requirements, including height, yard and setbacks, for the zoning district in which they are located or the R-1 zoning district if such dwelling is not located in a zoning district where a residential use is permitted. In no case shall a nonconforming one-family dwelling be modified to accommodate additional dwelling units.

(d) *Business or industrial uses.* For uses in any district where the activity is permitted in the zoning district in which the lot is located, but where the current zoning requirements (including, but not limited to, parking, yards, setbacks, landscaping, screening and buffering, height, signs, lot coverage, connection to public

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sewer and water) are not met, expansion of the building, and expansion of the land area within the lot devoted to activities other than buildings, may be approved, provided all current zoning requirements applicable to the expansion are met.

Businesses or industrial uses not connected to public water and sewer. Expansion of a use meeting all zoning requirements except for connection to public water and public sewer may be permitted upon approval of a special use permit excepting the use from the public water and public sewer requirements.

(e) Expansion allowance resulting from right-of-way dedication. Existing business or industrial uses which are permitted within any district and which have been made nonconforming with respect to open space, perimeter landscape requirements or setback requirements as a result of a right-of-way dedication to the county or the Virginia Department of Transportation without compensation shall be allowed to expand in accordance with the current zoning ordinance under the conditions which existed prior to the dedication.

(f) Minor alterations, cosmetic modifications, interior renovations and similar changes for nonconforming uses may be permitted, subject to the following standards:

- (1) Such changes shall not increase the land area occupied by any aspect of the nonconforming use and shall not increase the gross floor area of any nonconforming structure; and
- (2) Such construction shall meet all current zoning ordinance requirements for the zoning district in which the nonconforming use is located or the zoning district assigned by the zoning administrator as a part of the nonconforming use verification process, whichever requirements are more strict.

(g) Improvements may be made to the nonconforming use for the sole purpose of accessibility or public safety when such improvements are necessitated by a local, state, or federal law. Such improvements may be approved by the zoning administrator and are not subject to paragraphs (d) and (f) of this section.

Sec. 24-634. Restoration/replacement of a nonconforming use.

(a) A nonconforming use damaged by casualty may be restored in accordance with the provisions of this section, provided such restoration has started within 12 months of the date of the casualty and is complete within 24 months of the date of the casualty. By casualty shall mean as a result of a fire or other cause beyond the control of the owner or by an act of God. By casualty shall not include damage caused by age or ordinary wear and tear or damage intentionally caused by the owner or an agent thereof.

(b) Nonconforming uses other than buildings and signs (such as, but not limited to, underground storage tanks, private sewage disposal systems and parking lots) may be restored or replaced when such structures become unsafe or unusable. A relocation on the same lot may be approved by the zoning administrator, provided the new location is less nonconforming than the original location, and further provided that the new location shall not cause a greater detrimental impact on conforming uses in the neighborhood.

(c) Such restoration shall not include any minor alterations, cosmetic modifications, interior renovations or similar changes unless approved under the provisions of section 24-633 of this article, nor shall

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such restoration include any expansion unless approved under the provisions of section 24-633. Such restoration may include changes that make the use less nonconforming than it was prior to the casualty.

(d) Nonconforming mobile homes or manufactured homes in any district may be replaced with manufactured homes upon the issuance of a special use permit, however, a special use permit shall not be required where mobile or manufactured homes are a permitted use as stated in other sections of this zoning ordinance. For purposes of this article, a "nonconforming mobile home or manufactured home" shall be defined as any mobile home or manufactured home which does not meet all current zoning requirements and which was:

- (1) Located in the county prior to April of 1969, or any replacement thereof;
- (2) Located pursuant to a conditional use permit, either with or without an expiration date;
- (3) Located pursuant to a special use permit; provided, however, any manufactured home located pursuant to a special use permit with an expiration date shall be removed from the site upon expiration of the special use permit unless a new special use permit is approved to lawfully continue the use; or
- (4) A replacement for a mobile home or manufactured home located pursuant to a conditional or special use permit not specifically prohibited by the permit.

(e) A nonconforming office building meeting all current zoning requirements except connection to public water and sewer which is located within an industrial district may be replaced upon issuance of a special use permit excepting the use from the public water and sewer requirements. The replacement office building shall not exceed 4,000 square feet in floor area.

Sec. 24-635. Moving a nonconforming use.

No structure used as a part of a nonconforming use shall be moved to any other lot unless such lot is properly zoned to permit the use, nor shall such a structure be moved within the lot on which it exists, unless a relocation is specifically provided for in other sections of this article.

Sec. 24-636. Use of nonconforming lots.

(a) Any unimproved lot of record existing on the effective date of this chapter located in any district that is nonconforming as to the lot area, lot width or lot depth, or combination thereof, required in the zoning district in which the lot is located may be used for any permitted use in such zoning district, unless specifically prohibited, provided all other requirements of the zoning district are met or the board of zoning appeals establishes setbacks, side, and rear yards in accordance with section 24-650(c).

(b) In addition to the changes that may be allowed to nonconforming lots by this chapter, nonconforming lots may change as follows:

- (1) A nonconforming lot may be increased in lot size, lot width or both to make the lot less nonconforming;

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- (2) *The boundaries of a lot that is nonconforming as to lot size or lot width, or both, may be adjusted along with the boundaries of any contiguous conforming lot, provided such adjustment does not make the conforming lot nonconforming and does not make the nonconforming lot more nonconforming.*
- (3) *When a nonconforming lot is changed as set forth in subsections (b)(1) and (b)(2), or when two or more nonconforming lots are assembled to create a conforming lot, a plat of subdivision shall first be filed and approved in accordance with law.*

Sec. 24-637. Appeals.

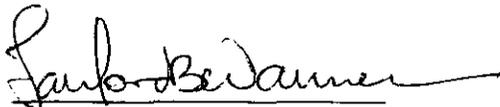
Administrator's decision; appeal to board of zoning appeals. The decision of the zoning administrator under section 24-631(c), section 24-630(c), and section 24-633(a)(3) shall be final after 30 days unless an appeal is filed to the board of zoning appeals in accordance with section 24-663 of this chapter.

Secs. 24-635 - 24-644. Reserved.



Jack D. Edwards
Chairman, Board of Supervisors

ATTEST:



Sanford B. Wanner
Clerk to the Board

SUPERVISOR	VOTE
NERVITT	AYE
SISK	AYE
MCGLENNON	AYE
BRADSHAW	AYE
EDWARDS	AYE

Adopted by the Board of Supervisors of James City County, Virginia, this 13th day of April, 1999.

APR 13 1999

ORDINANCE NO. 31A-189

BOARD OF SUPERVISORS
JAMES CITY COUNTY
VIRGINIA

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 24, ZONING, OF THE CODE OF THE COUNTY OF JAMES CITY, VIRGINIA, BY AMENDING ARTICLE VIII, APPEALS, BY RENUMBERING DIVISION 1, BOARD OF ZONING APPEALS TO NEW NUMBER DIVISION 2; BY RENUMBERING DIVISION 2, REGULATIONS GOVERNING APPEALS TO NEW NUMBER DIVISION 3; AND BY ADDING NEW DIVISION 1, ADMINISTRATIVE VARIANCES.

BE IT ORDAINED, by the Board of Supervisors of the County of James City, Virginia, that Chapter 24, Zoning, is hereby amended and reordained by amending Article VIII, Appeals, by renumbering Division 1, Board of zoning appeals with new number Division 2; by renumbering Division 2, Regulations governing appeals with new number Division 3; and by adding new Division 1, Administrative variances.

Chapter 24. Zoning

Article VIII. Appeals

*Division I. Administrative Variances**Sec. 24-644. Reduction in setback and yard requirements based on error in building location.*

Notwithstanding any other provision of this ordinance, the zoning administrator shall have the authority, as qualified below, to approve a reduction in the minimum setback and yard requirements in the case of any structure existing or partially constructed which does not comply with such requirements applicable at the time such structure was erected. Such a reduction may be approved by the zoning administrator in accordance with the following provisions:

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1. The zoning administrator determines, in writing, that:

a. The encroachment does not exceed one and one half linear feet, and

b. The noncompliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a building permit, if such was required, and

c. To force compliance with the minimum setback and yard requirements would cause undue hardship upon the owner, and

d. Such hardship is not shared generally by other properties in the same zoning district and the same vicinity, and

e. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity, and

f. The character of the zoning district will not be changed by the granting of the variance, and

g. It will not create an unsafe condition with respect to both other property and public streets; and

h. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

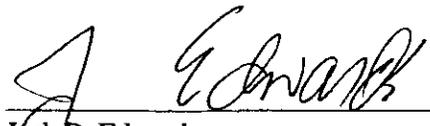
2. In approving such a reduction under the provisions of this section, the zoning administrator shall allow only a reduction necessary to provide reasonable relief and may prescribe such conditions, to include landscaping and screening measures, to assure compliance with the intent of this ordinance.

Ordinance to Amend and Reordain
Chapter 24. Zoning
Page 3

- 3. Upon the approval of a reduction for a particular building in accordance with the provisions of this section, the same shall be deemed to be a lawful building.
- 4. Prior to the granting of a variance, the zoning administrator shall give, or require the applicant to give, all adjoining property owners written notice of the request for variance, and an opportunity to respond to the request within twenty-one days of the date of the notice. If any adjoining property owner objects to said request in writing within the time specified above, the request shall be transferred to the board of zoning appeals for decision.
- 5. In accordance with the provisions set forth in section 24-633, the applicant shall have 30 days in which to appeal a decision made under Section 24-644 by the zoning administrator.

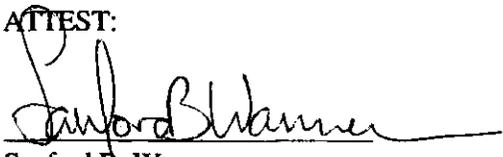
Division 12. Board of Zoning Appeals

Division 23. Regulations Governing Appeals



Jack D. Edwards
Chairman, Board of Supervisors

ATTEST:



Sanford B. Wanner
Clerk to the Board

SUPERVISOR	VOTE
NERVITT	AYE
SISK	AYE
MCGLENNON	AYE
BRADSHAW	AYE
EDWARDS	AYE

Adopted by the Board of Supervisors of James City County, Virginia, this 13th day of April, 1999.

APR 13 1999

ORDINANCE NO. 31A-190

BOARD OF SUPERVISORS
JAMES CITY COUNTY
VIRGINIA

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 24, ZONING, OF THE CODE OF THE COUNTY OF JAMES CITY, VIRGINIA, BY AMENDING ARTICLE I, IN GENERAL, SECTION 24-7, ADMINISTRATIVE FEES.

BE IT ORDAINED, by the Board of Supervisors of the County of James City, Virginia, that Chapter 24, Zoning, is hereby amended and reordained by amending Article I, In General, Section 24-7, Administrative fees.

Chapter 24. Zoning

Article I. In General

Sec. 24-7. Administrative fees.

Fees shall be charged at the time of application to offset the cost of making inspections, issuing permits, advertising notices and other expenses incident to the administration of this chapter or to the filing or processing of any appeal or amendment thereto. The following fees shall be charged and collected at the time of application:

Procedure

Fee

(1) Rezoning	\$800.00 plus \$40.00 per
	acre, not to exceed \$15,000.00

Ordinance to Amend and Reordain
Chapter 24. Zoning
Page 2

(2) Applications for special use permits:

- a. Generally (General special use permits processed with \$600.00 plus \$20.00
a rezoning shall pay a rezoning fee only) per acre, not to exceed \$5,000.00
- b. Manufactured home on an individual lot 100.00
- c. Family subdivision under section 24-214. 100.00
- d. Amendment to a special use permit 200.00
- e. Wireless communications facilities under division 6 1,500.00

(3) Master plan review:

- a. Initial review of any Residential Cluster, Mixed Use or a PUD
with less than 400 acres (PUD's with 400 acres or more shall
pay a rezoning fee only) 200.00
- b. Revision of approved plan:
 - 1. Residential Cluster 75.00
 - 2. R-4, PUD, Mixed Use 150.00

(4) Site Plan Review:

a. Administrative review:

- 1. Residential structures or improvements, \$300.00, plus \$60.00 per residential unit.
- 2. Nonresidential structures or improvements, \$300.00, plus \$0.024 per sq. ft. of building area.

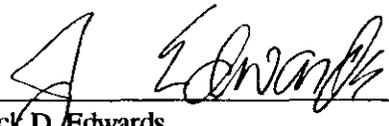
Ordinance to Amend and Reordain
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Page 3

3. Mixed Use structures or improvements, \$300.00, plus \$60.00 per residential unit plus \$0.024 per sq. ft. of nonresidential building area.
- b. Planning commission review:
1. Residential structures or improvements, \$900.00, plus \$60.00 per residential unit.
 2. Nonresidential structures or improvements, \$900.00, plus \$0.024 per sq. ft. of building area.
 3. Mixed Use structures or improvements, \$900.00, plus \$60.00 per residential unit plus \$0.024 per sq. ft. of nonresidential building area. .
- c. Amendment to an approved plan:
1. Residential structures or improvements, \$100.00, plus \$10.00 per residential unit.
 2. Nonresidential structures or improvements, \$100.00, plus \$0.004 per sq. ft. of building area.
 3. Mixed Use structures or improvements, \$100.00, plus \$10.00 per residential unit plus \$0.004 per sq. ft. of nonresidential building area.
 4. Residential or nonresidential structures or improvements where the number of dwelling units or area of building area, pavement, or open space is not changed more than 15 percent, \$100.00.
- d. Zoning administrator and fire department review only, \$20.00.
- (5) Sign permits, \$4.00 per square foot of gross sign area.
- (6) Appeals to the board of zoning appeals, \$250.00.

Ordinance to Amend and Reordain
Chapter 24. Zoning
Page 4

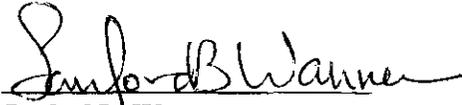
(7) Application for a height limitation waiver to the board of supervisors, \$200.00.

~~(8) Application for administrative variance, \$100.00.~~



Jack D. Edwards
Chairman, Board of Supervisors

ATTEST:



Sanford B. Wanner
Clerk to the Board

<u>SUPERVISOR</u>	<u>VOTE</u>
NERVITT	AYE
SISK	AYE
MCGLENNON	AYE
BRADSHAW	AYE
EDWARDS	AYE

Adopted by the Board of Supervisors of James City County, Virginia, this 13th day of April, 1999.

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APR 13 1999

ORDINANCE NO. 31A-191

BOARD OF SUPERVISOR
JAMES CITY COUNTY
VIRGINIA

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 24, ZONING, OF THE CODE OF THE COUNTY OF JAMES CITY, VIRGINIA, BY AMENDING ARTICLE III, SITE PLAN, SECTION 24-147, CRITERIA FOR REVIEW.

BE IT ORDAINED, by the Board of Supervisors of the County of James City, Virginia, that Chapter 24, Zoning, is hereby amended and reordained by amending Article III, Site Plan, Section 24-147, Criteria for review.

Chapter 24. Zoning.

Article III. Site Plan

Sec. 24-147. Criteria for review.

(a) Upon application and review, the development review committee (DRC) and the commission, or the commission's designee(s), shall consider site plans if any of the following conditions are present:

- (1) ~~The site plan proposes a single building or group of buildings which contain a total floor area that exceeds 30,000 square feet;~~
- (2) ~~The site plan proposes two entrances on the same road or proposes a fast food restaurant or a shopping center; or~~

~~(1) The site plan proposes:~~

- ~~a. a single building or group of buildings which contain a total floor area that exceeds 30,000 square feet or a multifamily unit development of 50 or more units, whichever is less; or~~

Ordinance to Amend and Reordain
Chapter 24. Zoning
Page 2

- b. *two entrances on the same road; or*
- c. *a fast food restaurant; or*
- d. *a shopping center; or*

(3)(2) There are unresolved problems between the applicant, adjacent property owners or any departmental reviewing agency.



 Jack D. Edwards
 Chairman, Board of Supervisors

ATTEST:


 Sanford B. Wanner
 Clerk to the Board

SUPERVISOR	VOTE
NERVITT	AYE
SISK	AYE
MCGLENNON	AYE
BRADSHAW	AYE
EDWARDS	AYE

Adopted by the Board of Supervisors of James City County, Virginia, this 13th day of April, 1999.

APR 13 1999

ORDINANCE NO. 172A-4BOARD OF SUPERVISORS
JAMES CITY COUNTY
VIRGINIAYARMOUTH ISLANDAGRICULTURAL AND FORESTAL DISTRICT (AFD-11-86)1999 VERMILLION ADDITION

WHEREAS, an Agricultural and Forestal District has been established in the Yarmouth Island area; and

WHEREAS, in accordance with Section 15.2-4305 of the Code of Virginia, property owners have been notified, public notices have been filed, public hearings have been advertised, and public hearings have been held on the application for an addition to the Yarmouth Island Agricultural and Forestal District; and

WHEREAS, the Agricultural and Forestal District's Advisory Committee, at its meeting on February 17, 1999, recommended approval of the application by a vote of 6-0; and

WHEREAS, the Planning Commission, following its public hearing on March 1, 1999, recommended approval of the application by a vote of 5-0.

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

1. the Yarmouth Island Agricultural and Forestal District is hereby amended by the addition of the following parcel:

T. R. Vermillion (28-4)(1-8) 749.69 acres

provided, however, that all land within 25 feet of the road rights-of-way of Jolly Pond Road (Route 611) and Bush Neck Road (Route 633) shall be excluded from the District.

2. pursuant to the Code of Virginia, Sections 15.2-4312 and 15.2-4313, as amended, the Board of Supervisors requires that no parcel in the Yarmouth Island 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 limited to 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, as defined in the James City County Subdivision Ordinance. Parcels of up to five acres, including necessary access roads, may be subdivided for the siting of communications towers and related equipment provided: 1) the subdivision does not result in the total acreage of the District to drop below 200 acres; and 2) the subdivision does not result in a remnant parcel of less than 25 acres.

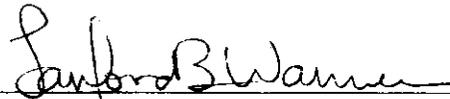
- b. No land outside the Primary Service Area (PSA) and within the Agricultural and Forestal District may be rezoned and no application for such rezoning shall be filed earlier than six months prior to the expiration of the District. Land inside the PSA, and within the Agricultural and Forestal District, 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 the State Code, Section 15.2-4301 et. seq., which are not in conflict with the policies of this District. The Board of Supervisors, at its discretion, may issue special use permits for wireless communications facilities on AFD properties which are in accordance with the County's policies and ordinances regulating such facilities.



Jack D. Edwards
Chairman, Board of Supervisors

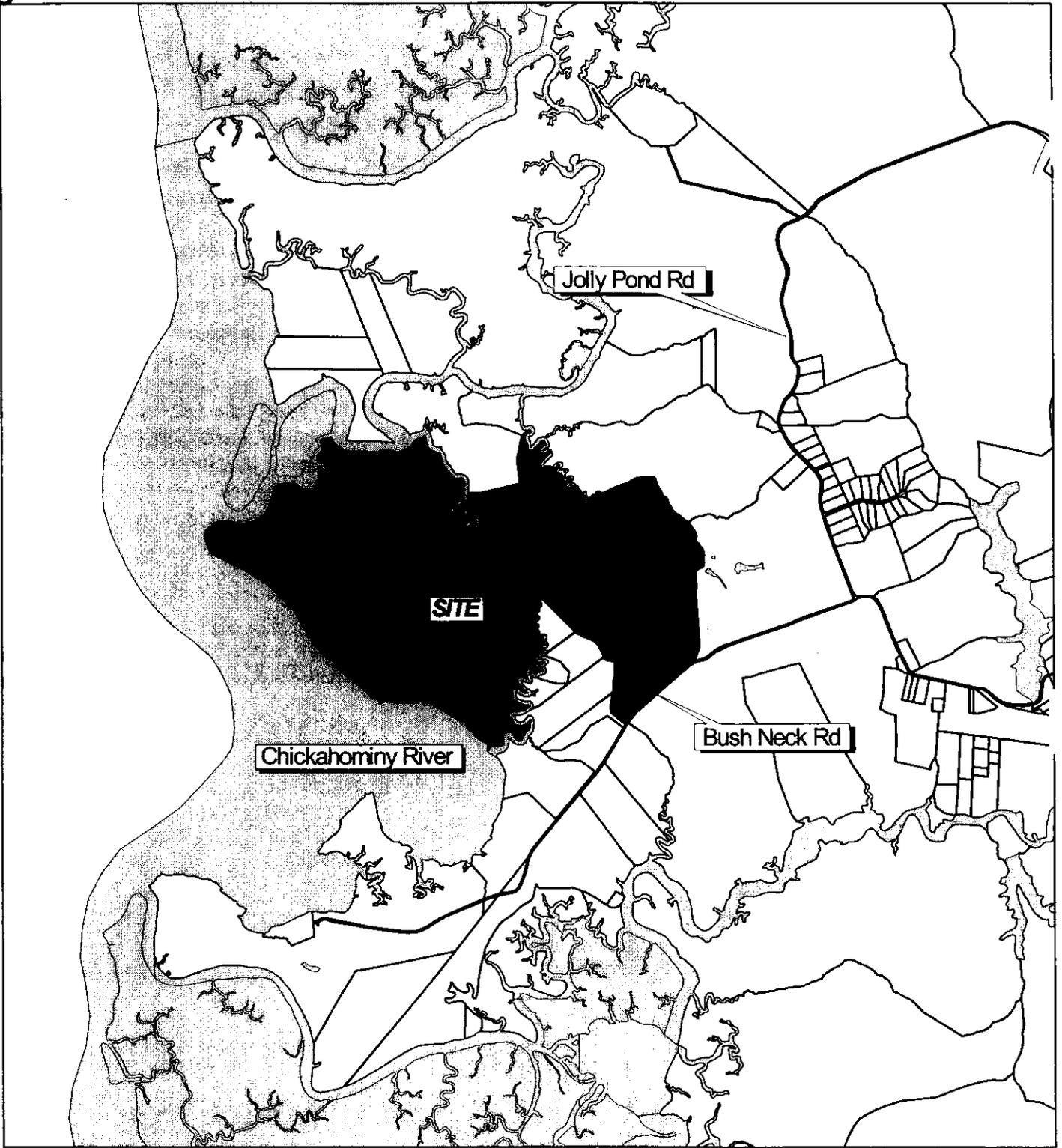
<u>SUPERVISOR</u>	<u>VOTE</u>
NERVITT	AYE
SISK	AYE
MCGLENNON	AYE
BRADSHAW	AYE
EDWARDS	AYE

ATTEST:



Sanford B. Wanner
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 13th day of April, 1999.



AFD-11-86. Yarmouth Island 1999 Vermillion Addition

