

AT A REGULAR MEETING OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE 13TH DAY OF JANUARY, 2004, AT 7:00 P.M. IN THE COUNTY GOVERNMENT CENTER BOARD ROOM, 101 MOUNTS BAY ROAD, JAMES CITY COUNTY, VIRGINIA.

A. ROLL CALL

Bruce C. Goodson, Chairman, Roberts District
Michael J. Brown, Vice Chairman, Powhatan District
John J. McGlennon, Jamestown District
M. Anderson Bradshaw, Stonehouse District
Jay T. Harrison, Sr., Berkeley District

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

B. MOMENT OF SILENCE

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

C. PLEDGE OF ALLEGIANCE

Shaylyn McDougald, a seventh-grade student at Toano Middle School, led the Board and citizens in the Pledge of Allegiance.

Mr. Goodson recessed the Board of Supervisors at 7:03 p.m. for a Williamsburg Area Transport Board of Directors meeting.

At 7:04 p.m. Mr. Goodson reconvened the Board of Supervisors.

D. PRESENTATION

1. Year of the Neighborhoods - 2004

Mr. Goodson presented Ms. Flossie Banks of Ironbound Square, the County's first connected neighborhood, with a resolution proclaiming 2004 as the Year of the Neighborhoods in James City County.

Mr. Vaughn Poller, Acting Neighborhood Connections Director, made a presentation regarding the connected neighborhoods in the County including highlights of the accomplishments over the past ten years, the goals of the Neighborhood Connections program; partnerships, training, and service opportunities offered to neighborhoods that are or become connected; and thanked everyone who helped create and those who support Neighborhood Connections.

F. PUBLIC COMMENT

1. Mr. Richard Bradshaw, Commissioner of the Revenue, provided the Board with an overview of the tax preparation services available to citizens and invited citizens to come in and see what services the office provides as well as the opportunity for citizens to make suggestions on how the office can better serve them.

2. Ms. Reba Bolden, Executive Director of the Community Action Agency (CAA), requested that Mr. George Drummond be reappointed to the CAA Board or be provided the opportunity to carry out the full term of his Chairmanship, term to expire in June 2004; stated that Mr. Drummond serves the community well and has the qualities and dedication that someone serving on the CAA board needs to be a good steward of public money; and asked the Board of Supervisors to permit Mr. Drummond to remain the Chairman of the CAA and to be reappointed to the CAA.

3. Mr. George Drummond, 156 Indian Circle, thanked the Board for the opportunity to have served on the Community Action Agency (CAA).

Mr. Drummond stated that he is the current Chairman of the CAA Board through June of 2004 and requested the Board reappoint him for the duration of his term as Chairman.

4. Ms. Nickie Whitehead, 104 Hurst Street, stated that since March of 2000, the landowners of Winston Terrace have been trying to maintain the drainage ditches and that in July 2001 staff from the Environmental Division came to assist with issues. Since that time, the ditch is partially clogged and the bio-log has pulled away from side of ditch. Ms. Whitehead stated that landowners have been trying to maintain the ditch, however they are unable to do so effectively and requested the County's assistance in the maintenance of the drainage ditch.

5. Mr. Randy O'Neill, 109 Sheffield Road, provided an update on the Virginia is for Education program and stated that the children of the County are interested in the program, provided an overview of some of the program benefits, outlined some of the services offered, and requested funding support from the Board for the continuation of the Program.

6. Mr. Ed Oyer, 139 Indian Circle, welcomed Mr. Bradshaw back to the Board of Supervisors; stated disapproval of a Board non-public meeting without the press and a Board Closed Session wherein there was possible discussion on topics other than appointments, stated concern that it appears that the Board and County Administrator endorse a third high school without public input, and inquired as to why there has been no response from County on questions he posed at the last Board meeting – specifically what happens to the money put aside for a third high school if it is not built.

F. CONSENT CALENDAR

Mr. Brown made a motion to adopt the items on the Consent Calendar including the amended resolution for the Reduction of Transportation Petroleum Use and the amended minutes of January 5, 2004.

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

1. Minutes

- a. October 28, 2003. Joint Work Session – Amended
- b. December 16, 2003. Work Session
- c. December 16, 2003, Regular Meeting

- d. January 5, 2004. Organizational Meeting
2. Williamsburg Community Health Foundation Grant – Smoke Detectors

RESOLUTION

WILLIAMSBURG COMMUNITY HEALTH FOUNDATION GRANT -

SMOKE DETECTORS

WHEREAS, the Williamsburg Community Health Foundation has awarded the Fire Department a grant in the amount of \$20,000 to purchase 250 custom smoke alarms and educational material; and

WHEREAS, the grant requires an in-kind match of \$8,680 which will be provided through staff assistance and instruction.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the acceptance of the Foundation grant and the following appropriation amendments to the Special Projects/Grants Fund:

Revenue:

Williamsburg Community Health Foundation	<u>\$20,000</u>
--	-----------------

Expenditure:

Smoke Detector Program	<u>\$20,000</u>
------------------------	-----------------

3. Reduction of Transportation Petroleum Use

RESOLUTION

REDUCTION OF TRANSPORTATION PETROLEUM USE

WHEREAS, the use of alternative, domestically produced non-petroleum fuels for transportation increases the energy independence of the United States, reduces emissions, and improves air quality; and

WHEREAS, because of its air quality maintenance area designation, the Hampton Roads area needs to do everything possible to improve its air quality, such as the use of non-petroleum alternative fuel vehicles; and

WHEREAS, the use of clean burning non-petroleum fuels has been used extensively to enhance the vacation experience of tourists; and

WHEREAS, the Hampton Roads Clean Cities Coalition has been acting as a regional information source on alternative fuels, alternative fuel vehicles, and grant opportunities for jurisdictions and private citizens in Hampton Roads.

- 4 -

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, encourages the County staff to actively consider alternative fuel vehicles and higher fuel economy vehicles when making purchasing decisions, and to work with the Coalition in **determining** appropriate and feasible opportunities to acquire vehicles capable of operating on non-petroleum alternative fuels, and to operate these vehicles on non-petroleum alternative fuels.

BE IT FURTHER RESOLVED that the Board of Supervisors of James City County, Virginia, encourages the County Administrator to establish a task force to investigate opportunities and their economic and fiscal impacts to reduce the County's annual usage of petroleum for transportation purposes by January 1, 2010, by twenty percent with respect to the amount used in calendar year 2003 by James City County, James City Service Authority, Williamsburg Area Transport Company, and Williamsburg-James City Schools, and to involve the Hampton Roads Clean Cities Coalition to the fullest extent possible in this process, and to report to the Board by September 1, 2004, on these potential opportunities and their impacts to achieve this target.

BE IT FURTHER RESOLVED that the task force is encouraged to incorporate, among others, the following approaches in their study:

Alternative Fuel Vehicles Acquisition and Use of Alternative Fuels

Acquisition of Higher Fuel Economy Vehicles.

4. Award of Contract – Dial-Tone Phone Service – Verizon

RESOLUTION

AWARD OF CONTRACT - DIAL-TONE PHONE SERVICE - VERIZON

WHEREAS, it has been determined by the Purchasing Office, in consultation with the County's Telecommunications Network Specialist, that Verizon is the only source practicably available to provide dial-tone phone service at the high levels of operational reliability and technical expertise required by the County; and

WHEREAS, the proposed rates have been determined to be reasonable and a proposed three-year agreement has been negotiated with Verizon.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the County Administrator to execute the contract for dial-tone phone services to Verizon.

5. Appropriation for Purchase of Buses

RESOLUTION

APPROPRIATION FOR PURCHASE OF BUSES

WHEREAS, Federal matching funds are available for this partnership between Williamsburg Area Transport (WAT), James City County, and the Colonial Williamsburg Foundation (CWF); and

WHEREAS, WAT, James City County, and CWF executed a lease and purchase agreement dated May 30,2003, that requires CWF to pay the 20 percent local match required for the purchase of these buses; and

WHEREAS, Federal Transit Administration Section 5309 – Grant Revenues has been included in the Hampton Roads Transportation Improvement Program in the amount of \$2,313,432.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, makes the following appropriation to the FY 04 WAT Budget:

Revenues:

Federal Funds	\$2,313,432
Local Match (CWF)	<u>578,358</u>
Total:	<u>\$2,891,790</u>

Expenditure:

Williamsburg Area Transport	<u>\$2,891,790</u>
-----------------------------	--------------------

6. Year of the Neiehhorhoods – 2004

RESOLUTION

YEAR OF THE NEIGHBORHOODS - 2004

WHEREAS, Neighborhood Connections' vision is that every neighborhood has the opportunity to succeed in realizing its full potential for contributing to a quality community in James City County; and

WHEREAS, Neighborhood Connections works with connected neighborhoods to:
empower citizens through training, information sharing, and use of resources,
facilitate direct linkages between neighbors and their government,
foster independent problem solving and sharing of assets within and among neighborhoods,
involve all community assets in expanding and sustaining safe and healthy neighborhoods; and

WHEREAS, Neighborhood Connections provides valuable assistance in helping connected neighborhoods to:
tr
organize and act on issues or ideas,
identify resources to help address neighborhood problems,
recognize neighborhood assets and strengths to build upon,
organize special events and projects,
improve communications between neighbors,
access information available on County and community issues and services; and

WHEREAS, during the past ten years:
128 neighborhoods have been connected,
28 neighborhoods have received Matching Grants, and

2,358 citizens have attended Neighborhood Conferences and seven different training programs.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby proclaim 2004 as "The Year of the Neighborhoods" in celebration of the 10th Anniversary of Neighborhood Connections.

H. PUBLIC HEARINGS

1. Pre-Budget Public Hearing – FY 2005-2006 Budget

Ms. Suzanne R. Mellen, Director of Budget and Accounting, recommended that the Board invite comments and suggestions from citizens for the County Budget for the Fiscal Years 2005-2006 to help guide staff in the preparation of a budget proposal for the Board's review in May.

Mr. Goodson opened the Public Hearing

1. Ms. Ruth Larson, 124 Old Meadows Road, requested the Board fund the School's Budget to ensure small class sizes, exceptional programming, and quality schools; and stated concern about issues facing the Schools such as adequate facilities to house the size classes found within the School Division.

2. Ms. Beth Hall, representing the James Blair Middle School PTA, inquired if air conditioning will be funded for the James Blair Middle School (School); stated concern that it appears the School has been shunted for funding and maintenance which causes concern that educational opportunities and facilities are being neglected; invited Board members to visit the School; stated appreciation for the renovated entrance and updated rest rooms; and requested funding for a School **facelift** for its 50th year.

3. Ms. Pamela Peace stated that the mental health system in the Commonwealth drew her to the County and thanked the Colonial Services Board and James City County for undoing 20 years of abuse and poor health care service; and requested the Board fund mental health service provided by the Colonial Services Board.

4. Mr. David Bush, representing the Williamsburg Land Conservancy (WLC) as its President of the Board of Directors, requested the Board restore funding to \$10,000 for the WLC to assist with preservation of land; highlighted some accomplishments over the past year such as the **contribution** to the Comprehensive Plan; stated that the Character Corridor Committee will serve the County well and the Purchase of Development Rights Program has been supported by the WLC; requested the Board fund the **Greenway Fund**; and stated that the WLC will partner with County to manage growth.

5. Ms. Nancy Lewis, 7661 Thacker Drive, stated support for the funding of the School's Budget; stated that growth in County has to stop because it is creating water shortages, and that schools are getting more packed with each new year; stated that the School Division is unable to cut its budget further and that the County needs to fund additional educational facilities through eliminating temporary classrooms; and encouraged Board members to visit every school.

6. Mr. Bill Christensen, 117 Congressional, commented on the planned uses for new Freedom Park and stated that he was pleased with the selection of the name for the park; stated support for the efforts of staff in educating the citizens about the park site and the history of land through the use of markers; request the Board create a **Dog Park (Park)** at Freedom Park with assistance from citizens willing to volunteer and support the development of the Park and development of regulations for the Park; requested funding for the proposed Park or development of a **public/private** partnership for the development of the Park; and

- / -

requested the Property Tax not be adjusted so the funding can be used for unfunded Commonwealth mandates.

7. Mr. Ken Lannin, 307 River's Edge, stated support for a Dog Park (Park) in the County, stated that members of the Parks and Recreation Advisory Commission supported the concept of the Park, requested the Board include funding in the FY 2005-2006 Budget for the Park, and stated that citizens will work with staff and assist with funding for the Park.

8. Ms. Linda Massie, 8644 Merry Oaks Lane, commented on the services offered by the Williamsburg Regional Library, commented on the benefits to the community through the services offered, and encouraged the Board's support of Williamsburg Regional Library.

9. Mr. Mike Ludwick, 4493 Village Park Drive West, stated support for the Board to fund the School's Budget, commented on the issues facing schools as outlined by the School Board, stated that no one wants to pay more taxes, and stated that if there is excessive money in the County's Budget, fund the School Budget rather than reduce the tax rates.

10. Ms. Connie Lee, 107 Quaker Meeting House Drive, requested the Board support and fund the Colonial Services Board (CSB) which provides early intervention services for youth in the County, and stated that the services to children and family by the CDR Program and the CSB are very beneficial.

11. Mr. Ed Oyer, 139 Indian Circle, requested the Board stop spending funds on recreation and focus on a third lane on Route 60 East between Busch Gardens and the Wal-Mart Distribution Center which is a higher priority as that segment of road poses a problem for emergency vehicle access, recapped some comments made by citizens during the 1992 Budget process including: stop raising taxes, concern of citizens on fixed incomes, no new schools, and no tax increases.

As no one else wished to speak to this matter, Mr. Goodson closed the Public Hearing.

2. Case No. SUP-16-03. Williamsburg Winery-Gabriel Archer Tavern

Ms. Sarah Weisiger, Planner, stated that Mr. Vernon Geddy, III, has applied on behalf of Patrick Duffeler of Williamsburg Farms, Inc., for a Special Use Permit (SUP) for the continued operation of a restaurant, Gabriel Archer Tavern, at the Williamsburg Winery on approximately 265.4 acres zoned R-8, Rural Residential, located off Lake Powell Road, further identified as Parcel No. (1-10) on the James City County Real Estate Tax Map No. (48-4).

At its meeting on December 8, 2003, the Planning Commission recommended approval of the permit by a vote of 6-0 subject to the final inspection of the Tavern's sewer connection.

Staff recommended the Board's approval of the permit with conditions

Mr. McGlennon inquired if the conditions of the permit have been satisfactorily met.

Ms. Weisiger stated that the conditions are satisfactory.

Mr. Goodson opened the Public Hearing.

1. Mr. Patrick Duffeler, Applicant, stated that he would answer questions from the Board.

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

Mr. Harrison made a motion to adopt the resolution approving the permit.

- 8 -

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

RESOLUTION

CASE NO. SUP-16-03. WILLIAMSBURG WINERY - GABRIEL ARCHER TAVERN

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, Mr. Vernon Geddy III of Geddy, Harris, Franck And Hickman, L.L.P., has applied on behalf of Williamsburg Farms, Inc., for a special use permit to allow the continued operation of Gabriel Archer Tavern consisting of approximately 2,500 square feet including indoor and outdoor dining areas located on the first floor of a two-story structure near the Williamsburg Winery; and

WHEREAS, taverns are a specially permitted use in the R-8, Rural Residential, zoning district; and

WHEREAS, the property is located on land zoned R-8, Rural Residential, at 2638 Lake Powell Road, and can be Further identified as Parcel No. (1-10) on James City County Real Estate Tax Map No. (48-4); and

WHEREAS, the Planning Commission, following its public hearing on December 8, 2003, voted 6-0 to recommend approval of this application.

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-16-03 as described herein with the following conditions:

1. Prior to April 30, 2004, all of the following conditions shall be met for Gabriel Archer's Tavern, ("the Tavern"):
 - a. The Tavern shall have an approved site plan for water and sewer;
 - b. The Tavern shall have acquired all necessary building and accessory permits to bring the Tavern into compliance with the Virginia Uniform Statewide Building Code with all final inspections completed and approved;
 - c. The Tavern shall have connected to the James City Service Authority public water system;
 - d. The Tavern shall have paid all connection fees for water service; and
 - e. The Tavern shall have all connection fees and sewer service bills paid up to date.
2. The Tavern shall have no more than 72 seats; expansion of the Tavern shall require an amendment to this SUP and an approved site plan.
3. No outdoor amplified music or loud speakers shall be permitted in connection with the operation of the Tavern.

4. The Tavern shall only operate between 10 a.m. and 9 p.m.
5. The special use permit is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.

3. Z-10-03/MP-10-03. Hiden Property Proffer and Master Plan Amendment

Mr. Christopher Johnson, Senior Planner, stated that Mr. V. Marc Bennett of AES Consulting Engineers has applied on behalf of Powhatan Crossing, Inc., to rezone the Hiden property from PUD-R, Planned Unit Development, with proffers, to PUD-R, Planned Unit Development, with amended proffers to redefine the road alignment and acknowledge all streets as private in Area 2 at 3901 and 4101 Monticello Avenue and further identified as Parcel Nos. (1-9) and (1-10) on the James City County Real Estate Tax Map No. (37-4).

Staff found the revised proffers and master plan to be consistent with the surrounding zoning and development and consistent with the Comprehensive Plan.

At its meeting on December 8, 2003, the Planning Commission recommended approval of the applications by a vote of 6 - 0.

Staff requested the Board's approval of the changes and acceptance of the amended proffers.

Mr. Goodson opened the Public Hearing

1. Mr. Vernon Geddy, III, on behalf of applicant stated that he would answer questions the Board had regarding the proposal.

Mr. Harrison requested Mr. Geddy recap the amendments.

Mr. Geddy stated that the first amendment provides for the declaration of private streets in this section that will comply with the Virginia Department of Transportation standards, and the second proffer change regarding Monticello Avenue is an amendment to enhance the appearance of that section of road.

Mr. Harrison inquired if the applicant has held discussions with surrounding landowners regarding the amendments.

Mr. Geddy stated that no formal discussions have been held.

Mr. Brown stated that selective clearing, as approved by the Planning staff, along the buffer of Monticello Avenue would improve the appearance of the road.

Mr. McGlennon inquired how much of the frontage would be landscaped berms.

Mr. Geddy stated that the plan has not been developed that far.

Mr. Harrison inquired if the landscape plan would have to be approved.

Mr. Geddy stated that once developed, the landscape plan would have to be reviewed by the Planning staff.

Mr. McGlennon stated concern that there is no condition designating a certain level of landscaping requirements.

- 10 -

Mr. Geddy stated that the proposal is just a supplemental amendment to the original proposal.

As no one else wished to speak to this matter, Mr. Goodson closed the Public Hearing.

Mr. Bradshaw made a motion to adopt the resolution.

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

RESOLUTION

CASE NO. Z-10-03/MP-10-03. HIDDEN PROPERTY PROFFER AND

MASTER PLAN AMENDMENTS

WHEREAS, in accordance with § 15.2-2204 of the Code of Virginia, and Section 24-15 of the James City County Zoning Ordinance, a public hearing was advertised, adjoining property owners notified, and a hearing scheduled on Zoning Case Nos. Z-10-03/MP-10-03 for rezoning 218.3± acres from PUD-R, Planned Unit Development, Residential with proffers; to PUD-R, Planned Unit Development, Residential, with amended proffers; and

WHEREAS, the Planning Commission of James City County, following its public hearing on December 8, 2003, recommended approval of Case Nos. Z-10-03/MP-10-03, by a vote of 6 to 0; and

WHEREAS, the properties are located at 3901 and 4101 Monticello Avenue and further identified as Parcel Nos. (1-9) and (1-10) on James City County Real Estate Tax Map No. (37-4).

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve Case Nos. Z-10-03/MP-10-03 and accept the voluntary proffers

4. Case No. SUP-19-03. Christian Life Center

Ms. Karen Drake, Senior Planner, stated that Mr. V. Marc Bennett of AES Consulting Engineers has applied on behalf of the Christian Life Center for a Special Use Permit (SUP) for a two-phased expansion of the Center's facilities on 18.879 acres, zoned R-8, Rural Residential, located at 4451 Longhill Road and further identified as Parcel No. (1-3) on the James City County Real Estate Tax Map No. (32-3).

Staff found the proposed expansion to be consistent with the exiting church, surrounding development, zoning, and the 2003 Comprehensive Plan.

At its meeting on December 8, 2003, the Planning Commission voted 6-0 to recommend approval of the application.

Staff requested the Board's approval of the application with conditions.

Mr. Bradshaw inquired if staff could give an example of another one-way exit in the community.

Mr. O. Marvin Sowers, Director of Planning, stated that he could not recall another one-way exit off hand, but noted that the exits do work well.

Ms. Drake stated that the applicant has been working with the Virginia Department of Transportation so the exit will align with the Lafayette High School enhance across the street.

- 11 -

Mr. McGlennon stated that the alignment with the width of the Lafayette High School entrance of Longhill Road seems appropriate and inquired if this proposed expansion will max out the available land for further development on the site.

Mr. Bennett stated that further development would not be possible with land restrictions.

Mr. Bennett stated that for safety, the Virginia Department of Transportation **did not** want immediate lane changes across from Lafayette High School.

Mr. Goodson opened the Public Hearing.

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

Mr. Brown made a motion to adopt the resolution.

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

RESOLUTION

CASE NO. SUP-19-03. CHRISTIAN LIFE CENTER

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, houses of worship are a specially permitted used in the R-8, Rural Residential, zoning district; and

WHEREAS, the Planning Commission of James City County, following its public hearing on December 8, 2003, recommended approval of Case No. SUP-19-03 by a vote of 6 to 0 to **permit** the construction of an expansion to the house of worship at 4451 Longhill Road that can be further identified as Parcel No. (1-3) on James City County Real Estate Tax Map No. (32-3).

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. 19-03 as described herein with the following conditions:

1. Master Plan: The Christian Life Center expansion shall be built in accordance with the submitted binding schematic plan for the "Christian Life Center" dated September 17, 2003. The Phase I building expansion shall be limited to a 5,000 square foot/floor separate building that shall be located at least 10 feet from the Resource Protection Area Buffer, construction of additional parking spaces, and a right-only exit driveway. The Phase II building expansion shall be limited to a three-story, 20,250 square foot/floor expansion attached to the existing three-story, 21,418 square foot/floor existing building.
2. Traffic: The second driveway exit shall be constructed and completed prior to the final Certificate of Occupancy of Phase I of the Christian Life Center expansion. The second exit shall be engineered to meet VDOT standards of a narrow width to provide a one-way, right-turn only exit out of the Christian Life Center, with no possibility of making a left turn from this exit or using it as a second entrance.

3. Architecture: Prior to final site plan approval for Phase I, the Planning Director shall review and approve the final architectural design of the new building and the expansion of the existing building. For the expansion of the existing main building, the building materials, scale, and colors of the addition shall be compatible with those of the existing structure. For the new two-story building, the building shall be reasonably consistent, as determined by the Planning Director, with the architectural elevations titled "Christian Life Center Youth Fellowship Building" submitted with this Special Use Permit dated September 2003 and drawn by Guernsey/Tingle Architects.
4. Landscaping: Prior to final site plan approval for Phase I, the Planning Director shall review and approve the proposed landscaping plan for the entire property. To mitigate the impact of the Church expansion on the Longhill Road Community Character Comdor, enhanced landscaping shall be provided along the entire frontage of the site with Longhill Road, in particular, any disturbed landscaping area around and between the existing driveway and the proposed second exit; and in all building perimeter landscaping located within one hundred feet of the property line fronting Longhill Road. Enhanced landscaping shall be defined as 133 percent of the County's Landscaping Ordinance requirements, inclusive of the landscaping previously planted and any existing trees currently residing in this area with a minimum of 33 percent of the required number of trees being evergreen, and a minimum of 50 percent of the total number of the trees of a species that will reach a minimum height of 60 feet at maturity, with such trees planted along Longhill Road. All dumpsters and heating and cooling units shall be screened from sight by landscaping or fencing as approved by the Planning Director.
5. Lighting: Prior to final site plan approval of Phase I, a lighting plan shall be submitted to the Planning Director for review and approval. All luminaries used shall be recessed fixtures with no bulb, lens, or globe extending below the casing. The casing shall be opaque and shall completely surround the entire light fixture and light source in such a manner that all light will be directed downward and the light source is not visible from the side. No glare defined as 0.1 footcandle or higher shall occur outside the property lines.
6. Water: Prior to final site plan approval for the Phase I expansion of the Christian Life Center, the owner shall be responsible for developing and enforcing water conservation standards to be submitted to and approved by the James City Service Authority. The standards may include, but shall not be limited to, such water conservation measures as limitations on the installation and use of irrigation systems and irrigation wells, the use of approved landscaping materials including the use of drought-tolerant plants where appropriate, and the use of water conserving fixtures and appliances to promote water conservation and minimize the use of public water resources.
7. Commencement of Construction: If construction of Phase I of the Christian Life Center expansion has not started within thirty-six months or Phase II of the Christian Life Center expansion has not started within sixty months from the date of issuance of this Special Use Permit, this permit shall become void. Phase I expansion shall include the two-story, 5,000 square foot/floor separate building, parking lot addition, and second entrance. Phase II expansion shall include the three story, 20,500 square foot/floor expansion attached to the main building. Construction shall be defined as obtaining permits for building construction,

clearing, and grading and approval of building inspection for installation of footings and/or foundations.

8. Hours of Construction: All construction activity on the Christian Life Center expansion, Phase I and Phase II, shall occur between 7:00 a.m. and 6:00 p.m., Monday through Saturday.
9. Best Management Practice (BMP): Prior to final site plan approval of Phase I, the Environmental Director shall review and approve modification plans to add a forebay in the upper end of the basin of the existing BMP.
10. Preschool/School: This Special Use Permit shall not allow for the operation by the Christian Life Center or organization of an adult day care, child day care, preschool, and/or school on the premises that would operate Monday through Friday as an additional use of the property to the primary use of the site as a house of worship.
11. Severance Clause: This Special Use Permit is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.

5. Case No. SUP-21-03. Milanville Kennels

Mr. Matthew Arcieri, Planner, stated that Marc and Elizabeth Illman have applied for a Special Use Permit (SUP) for the construction and operation of a kennel adjacent to their residence on 15.01 acres zoned A-1, General Agricultural, at 2878 Monticello Avenue and further identified as Parcel No. (1-6) on the James City County Real Estate Tax Map No. (44-2).

Staff found the proposal to be consistent with surrounding zoning and development and, with the proposed conditions, consistent with the Comprehensive Plan.

At its meeting on December 8, 2003, the Planning Commission recommended approval of the application by a vote of 4-2; with the recommendation that the archaeological condition not be required for this project.

Staff recommended approval of the proposal

Mr. Brown inquired how the application was passed by the Planning Commission without archaeological requirements for a highly sensitive area.

Mr. Arcieri stated that staff, in compliance with Board policy, recommended the archaeological requirement to the Planning Commission, but by a vote of 4-2, the Planning Commission recommended the condition be deleted. In accordance with the Planning Commission recommendation, the condition was removed.

Mr. McGlennon stated that in reviewing the Planning Commission minutes regarding this application, alternative actions to the archaeological requirements were discussed yet none made part of the conditions to the application.

Mr. Arcieri stated that was correct.

Mr. Goodson opened the Public Hearing.

- 14 -

1. Mr. Greg Davis of Kaufman & Canoles, representing the applicants, provided an overview of the application and proposal, commented that this kennel is not a large kennel by national standards; that this site is an ideal location for the proposal; that no clearing would be required for the proposal; that the neighbors have been supportive of the application and submitted a petition in support of the application; stated that the proposed conditions for the application adequately address the noise concerns associated with the kennel, and requested Board approval of the application.

Mr. Harrison inquired if the applicant would be opposed to doing an archaeological survey.

Mr. Davis stated that the cost of doing a Phase I Survey would be approximately 2.5 – 5 percent of the total project's cost and that fiscal factor led to the request by the applicant to the Planning Commission not impose the archaeological requirement.

Mr. McGlennon inquired if the Board restored the archaeological condition with flexibility in the archaeology policy and deferred action on the application until the policy is reviewed, would the applicant find that acceptable.

Mr. Davis stated that rather than defer the application, the applicant would request the Board impose the requirement as recommended by staff, limiting a Phase I Study to only the disturbed portion of the site, and approve the application.

As no one else wished to speak to this matter, Mr. Goodson closed the Public Hearing.

Mr. McGlennon made a motion to restore the archaeology policy condition as recommended by staff.

Mr. McGlennon stated concern that the Planning Commission would not impose a Board policy as part of an application and stated that he would consider amending the policy if needed.

Mr. Brown stated concern about the precedent this could create, stated that he had asked staff to research past cases to see if the policy had been waived, staff informed him it had not happened; stated that he could support reviewing and amending the policy if needed; and supported Mr. McGlennon's motion to restore the condition.

Mr. Goodson concurred with the Board to put the policy condition back into the application and supported the idea of reviewing the policy to ensure it is not an unfair burden on applicants.

Mr. Goodson requested a roll call vote on Mr. McGlennon's motion to approve the application with the restoration of the archaeological condition as recommended by staff.

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

RESOLUTION

CASE NO. SUP-21-03. MILANVILLE KENNELS

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, kennels are a specially permitted use in the A-1, General Agricultural, zoning district; and

WHEREAS, the Planning Commission of James City County, following its public hearing on December 8, 2003, recommended approval of Case No. SUP-21-03 by a 4-2 vote to permit the construction and operation of a kennel adjacent to the existing residence at 2878 Monticello Avenue and further identified as Parcel No. (1-6) on James City County Real Estate Tax Map No. (44-2).

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-21-03 as described herein with the following conditions:

- A. This special use permit shall be valid for the operation of a kennel of up to 7,000 square feet and accessory uses thereto. The number of outdoor kennel runs permitted on the property shall not exceed 80. The property shall be developed generally in accordance with the Master Plan submitted with the application, with minor changes approved by the Development Review Committee.
- B. No subdivision of this property shall be permitted while the kennel remains in operation.
- C. Final building location, orientation, and construction materials shall be approved by the Planning Director prior to final site plan approval. The intent of this condition is to ensure that the expansion is compatible with the design, scale, materials, and colors of the main residential structure and surrounding residences. The number and location of customer parking spaces, generally as shown on the Master Plan submitted with this application, shall be approved by the Planning Director.
- D. All animal waste shall be disposed of in an on-site septic system and all animal runs shall be constructed so that animal waste will drain to a septic system approved by the Virginia Department of Health.
- E. As part of site plan review, the applicant shall submit a noise abatement plan to the Planning Director for approval. The noise abatement plan at a minimum shall include provisions for sound-absorbing acoustical materials in the walls and ceilings. All doors and windows shall be closed while the kennel is in operation.
- F. All outdoor kennel runs and the dog exercise area shall be screened from adjacent properties with a wall or solid fence, as approved by the Planning Director, at least 72 inches in height.
- G. A Phase I Archaeological Study for any disturbed area shall be submitted to the Planning Director for review and approval prior to land disturbance. A treatment plan shall be submitted and approved by the Planning Director for all sites in the Phase I Study that are recommended for a Phase II evaluation and/or identified as eligible for inclusion on the National Register of Historic Places. If a Phase II Study is undertaken, such a study shall be approved by the Planning Director and a treatment plan for said sites shall be submitted to, and approved by, the Planning Director for sites that are determined to be eligible for inclusion on the National Register of Historic Places and/or those sites that require a Phase III Study. If in the Phase III Study, a site is determined eligible for nomination to the National Register of Historic Places and said site is to be preserved in place, the treatment plan shall include nomination of the site to the National Register of Historic Places. If a Phase III Study is undertaken for said sites, such studies shall be approved by the Planning

- 16 -

Director prior to land disturbance within the study areas. All Phase I, Phase II, and Phase III Studies shall meet the Virginia Department of Historic Resources' Guidelines for Preparing Archaeological Resource Management Reports and the Secretary of the Interior's Standards and Guidelines for Archaeological Documentation, as applicable, and shall be conducted under the supervision of a qualified archaeologist who meets the qualifications set forth in the Secretary of the Interior's Professional Qualification Standards. All approved treatment plans shall be incorporated into the plan of development for the site and the clearing, grading, or construction activities thereon.

- H. Any new exterior site lighting shall be limited to fixtures which are horizontally mounted on light poles not to exceed 15 feet in height **and/or** other structures and shall be recessed fixtures with no bulb, lens, or globe extending below the casing. The casing shall be opaque and shall completely surround the entire light fixture and light source in such a manner that all light will be directed downward and the light source is not visible from the side. No glare, defined as 0.1 footcandle or higher, shall extend outside the property lines.
- I. One freestanding sign shall be permitted on the site. The sign shall not exceed a cumulative size of 16 square feet, a height of six feet and shall be approved by the Planning Director. The sign shall not be illuminated.
- J. The pickup and drop-off of animals for boarding or grooming shall not occur prior to 7:00 a.m. or after 7:00 p.m., Monday through Saturday and shall not occur on Sunday prior to 3:00 p.m. or after 5:00 p.m.
- K. Between the hours of 7:00 p.m. and 8:00 a.m. all dogs shall be kept inside a fully enclosed building.
- L. Construction on this project shall commence within twenty-four months from the date of approval of this special use permit or this permit shall be void. Construction shall be defined as obtaining permits for building construction and installation and inspection of footings **and/or** foundations.
- M. This special use permit is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.

J. PUBLIC COMMENT

1. Mr. Bob Hershberger, Executive Vice President of the Williamsburg Area Chamber of Commerce spoke on behalf of many of those in audience, the Williamsburg Area Convention & Visitors Bureau, and the Williamsburg Hotel & Motel Association; requested support for a \$2/night lodging fee proposal which, with local jurisdiction support, will be presented to the General Assembly. The purpose of the funding proposal is to target marketing to overnight area tourists; and requested the Board's endorsement.

2. Ms. Catherine Chaplain, Chair of the Executive Committee for the Williamsburg Area Convention & Visitors Bureau and Director of Sales for the Sheraton Four Points Hotel & Suites, provided an overview of the decline of overnight tourism to the area, provided an overview of alternative methods to generate funds to market overnight tourists, requested the Board's support for the \$2/night lodging fee which will result in immediate funding, and stated that representatives from the visitor industry will shepherd the proposal through the General Assembly.

3. Mr. Don Messmer, 28 Ensigne Spence, stated support for the proposal and requested the Board's support for the proposal, provided an overview of the impacts of declining interest rates, possible contributors to the shortfall in tourism revenues, and the benefits to Virginia Beach from its initiative similar to this proposal.

4. Ms. Virginia Hartmann, President of the Williamsburg Soap & Candle Factory, stated support for the proposal, commented on the impacts of tourism on the Williamsburg Soap & Candle Factory and associated groups with which it does business, and requested the Board's support of the proposal.

5. Mr. Donnie Mills, General Manager of Ausch Gardens & Water Country USA, provided an overview of the hospitality sales, stated that the advertising dollars alone will not revitalize the tourism industry, proposed that the marketing plan also needs to be reviewed and revised to be effective, offered the services of the Busch Gardens and Water Country USA marketing staff, and requested deferral on the proposal of supporting a \$2/night lodging tax.

6. Ms. Reba Bolden, Executive Director of the Community Action Agency (CAA), emphasized the request that George Drummond be reappointed to the CAA or be permitted to continue his term through June of 2004.

Mr. Brown stated that appointments of individuals to County Boards and Commissions are considered during Closed Session.

7. Mr. Richard Costello of AES Consulting Engineers, stated that the Board's decision concerning the kennel case and the archaeology policy condition is a good compromise.

8. Ms. Kristina Coleman, a student at a Lafayette High School, commented on the school environment, and stated concern that in her geometry class the teacher needs 48 minutes to grade 28 student papers which limits the amount of time students have to ask questions in class, and requested the Board address school facility and class size issues.

9. Mr. Ed Oyer, 139 Indian Circle, commented on the merits of a hybrid vehicles article in Sunday's paper, requested the Board read the article, and also commented that recalls do happen at the local levels of government.

K. REPORTS OF THE COUNTY ADMINISTRATOR

Mr. Wanner recommended the Board recess for the James City County Service Authority organizational meeting and agenda, then reconvened into Open Session to go into Closed Session pursuant to section 2.2-3711(A)(1) of the Code of Virginia for the consideration of appointments of individuals to County boards and/or commissions.

Mr. Wanner stated that the Community Action Agency request to rescind an appointment can be considered in Open Session; however the other appointments need to be considered in Closed Session.

Mr. Wanner recommended that at the conclusion of the Board's meeting, the Board recess to 9 a.m. on January 27, 2004, for a Board retreat at the Jamestown 4-H Center.

Mr. Wanner stated that the County offices will be closed on January 19, 2004 in observance of Martin Luther King, Jr. Day.

L. BOARD REQUESTS AND DIRECTIVES

Mr. Harrison made a motion to approve the \$2/night lodging tax, commented on the benefits of supporting the proposal including the revitalization of tourism to the area, and provided comments of concern for the proposal including the possible long-term decline of tourism to the area.

Mr. **Goodson** requested Mr. Wanner read the resolution.

Mr. Wanner read the resolution.

The Board discussed initial responses to the proposal and potential benefits of the proposal

Mr. **Goodson** stated that he would be unable to support this tax increase proposal without holding a Public Hearing for citizen input, and that he supported the right of counties to have equal taxation authority as cities and towns.

On a roll call vote, the vote was: AYE: Bradshaw, Harrison, Brown, **McGlennon** (4). NAY: **Goodson** (1).

RESOLUTION

WHEREAS, the Williamsburg Area Chamber of Commerce, the Williamsburg Area Convention and Visitors Bureau, and the Williamsburg Hotel and Motel Association desire to find a new source of funding for advertising the greater Williamsburg destination area (i.e., the City of Williamsburg, James City County and York County) to increase overnight business and increase lodging room occupancies; and

WHEREAS, an increase in overnight visitors to the Williamsburg area would result in a corresponding increase in sales tax and transient occupancy tax revenues to the City of Williamsburg, James City County and York County for the benefit of local citizens; and

WHEREAS, currently, the City of Williamsburg and York County have enacted a five percent transient occupancy **tax** and James City County has enacted a four percent transient occupancy tax, with the revenues so generated (above two percent) being allocated for tourism advertising and promotion; and

WHEREAS, in order to increase overnight visitors to the greater Williamsburg area, there exists a need to increase the advertising directly related to promoting the Greater Williamsburg area as a tourism destination.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby requests the General Assembly of the Commonwealth of Virginia to pass legislation to enable James City County and York County to enact a \$2 per night occupied room fee, which fee shall be used to fund an advertising initiative to increase overnight tourist lodging business in greater Williamsburg and the Historic Triangle Tourist Area and shall be expended as herein set forth.

BE IT FURTHER RESOLVED that if the General Assembly enacts such legislation, a Williamsburg, Area Destination Marketing Committee (WADMC) shall be created as a committee of the Williamsburg Area Convention and Visitors Bureau and shall be composed of 10 members (8 voting and **two** non-voting) as follows:

- 19 -

- One member selected by the Williamsburg Area Convention and Visitors Bureau Executive Committee.
- One member selected by the Board of Directors of the Williamsburg Hotel and Motel Association.
- One member from each of the following selected by the individual interest: (1) Colonial Williamsburg Foundation; (2) Anheuser Busch/Busch Gardens Williamsburg; and (3) Jamestown-Yorktown Foundation.
- The City of Williamsburg, James City County and York County shall each appoint a member for a total of three members, each of the locality members shall have two votes for a total of six votes.
- The Executive Directors of the Williamsburg Area Convention and Visitors Bureau and the Williamsburg Hotel and Motel Association each shall serve as ex-officio, non-voting members of the committee.

BE IT FURTHER RESOLVED that the WADMC shall organize itself in an appropriate manner and shall be responsible for directing how the Visitors Bureau shall expend all revenue generated by the \$2 lodging fee.

BE IT FURTHER RESOLVED that all revenue generated shall be expended to promote the Greater Williamsburg area as an overnight destination.

BE IT FURTHER RESOLVED that the Board of Supervisors of James City County, Virginia, hereby indicates its support for this proposal to the members of the local General Assembly delegation and, by the adoption of this Resolution, indicate its willingness to implement such a fee as soon as practicable upon approval of same by the General Assembly and the Governor.

BE IT FINALLY RESOLVED that the Board of Supervisors of James City County, Virginia, hereby requests that the enabling legislation approved by the General Assembly and the Governor shall include a sunset clause of December 31, 2007, removing the \$2 per night occupied room fee.

Mr. McGlennon stated that a task force has been requested to investigate alternative fuels for vehicles and the resolution requests the task force to investigate the question and not to come to a predetermined conclusion, that the task force should come back with recommendations on such proposals, and stated there are some issues that need to be considered by the task force such as emission inspections and possible significant Federal assistance.

Mr. McGlennon provided a background on the Community Action Agency appointments, stated that each member appoints an alternate, and that it would not be appropriate for another Board member to change a member's alternate; although if a Board member wished to change his alternate, the Board would support the recommendation.

Mr. Brown requested staff look at the archaeological policy, specifically the applicability and flexibility of the policy.

Mr. Wanner stated that staff will look at the policy, and staff will bring a recommendation back up through the Planning Commission to the Board.

- 20 -

Mr. Bradshaw stated that the policy **could be** crafted more carefully in reference to the Phase I Study, stated that exemptions from the policy are allowed, and commented that the policy could be written better.

Mr. McGlennon stated concern that he did not feel that the Planning Commission followed the policy's guidelines for permitting exemptions from the study requirements.

At 9:36 p.m. Mr. Goodson recessed the Board for a James City Service Authority Board of Directors meeting.

At 9:37 p.m. Mr. Goodson reconvened the Board into Open Session.

M. CLOSED SESSION

Mr. Harrison made a motion to go into Closed Session pursuant to Section 2.2-3711(A)(1) of the Code of Virginia for the consideration of appointments of individuals to County boards and/or commissions.

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

At 9:37 p.m. Mr. Goodson convened the Board into Closed Session.

At 9:47 p.m. Mr. Goodson reconvened the Board into Open Session.

Mr. McGlennon made a motion to adopt the Closed Session resolution.

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

RESOLUTION

CERTIFICATION OF CLOSED MEETING

WHEREAS, the Board of Supervisors of James City County, Virginia, (Board) has convened a closed 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 2.2-3711 of the Code of Virginia requires a certification by the Board that such closed 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 closed 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 2.2-3711(A)(1), to consider personnel matters, the appointment of individuals to County boards and/or commissions.

Mr. Goodson requested clarification on the term of the Community Action Agency alternates for Board members.

- 21 -

Mr. Morton stated that in the absence of language to the contrary, the term would run concurrent with the Board members' term.

Mr. Wanner stated that this has been the practice historically

Mr. McGlennon made a motion to appoint the County Administrator, Sanford B. Wanner, as the alternate to the Metropolitan Planning Organization (MPO) and appointed to the Hampton Roads Planning District Commission (HRPDC), terms to expire on January 13, 2005; and to reappoint Ms. Peggy Wildman to the Planning Commission for a four-year term, term to expire on January 31, 2008; and to appoint Jack L. Fraley, Jr., to the Planning Commission for a four-year term, term to expire on January 31, 2008.

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

Mr. Bradshaw made a motion to appoint John R. Filichko as his alternate to the Community Action Agency, term to expire on December 31, 2007.

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

N. RECESS

Mr. McGlennon made a motion to recess until 9 a.m. on January 24, 2004

Mr. McGlennon stated objection to the location of the retreat as it will not permit the meeting to be broadcast.

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

At 9:51 p.m. Mr. Goodson recessed the Board until 9 a.m. on January 24, 2004, for a Board retreat to be held at the Jamestown 4-H Center.

Sanford B. Wanner
Clerk to the Board

0113004bs.min

040 002149

SECOND AMENDED AND RESTATED

HIDEN PROPERTY PROFFERS

THESE AMENDED AND RESTATED PROFFERS are made as of this 26th day of November, 2003, by POWHATAN CROSSING, INC., a Virginia corporation, (together with its successors and assigns, the "Owner").

RECITALS

A. Owner is the present or former 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. In 1997 the Owner applied for and James City County (the "County") granted a rezoning of the Property from R-8, Rural Residential District, to PUD-R, Planned Unit Development-Residential District, with proffered conditions as set forth in Hiden Property Proffers dated October 29, 1997 and recorded in the Clerk's Office for the Circuit Court for the City of Williamsburg and County of James City as Instrument No. 97019406 (the "Original Proffers"). In connection with the rezoning, Owner submitted and the County approved a Master Plan in accordance with the County Zoning Ordinance entitled "Master Plan Hiden Property" and dated September 10, 1997 and revised October

15, 1997 (the "Original Master Plan").

C. In 2003 the Owner applied for and the County granted approval of a master plan and proffer amendment for the Property. In connection therewith, Owner submitted and the County approved an amended Master Plan in accordance with the County Zoning Ordinance entitled "Master Plan Amendment for Hiden Property for Jamestown, LLC" made by AES Consulting Engineers, Project No. 9254, dated 2/24/03, revised 4/25/03 (the "Approved Master Plan") and Amended and Restated Proffers dated July 8, 2003 and recorded in the Clerk's Office for the Circuit Court for the City of Williamsburg and County of James City as Instrument No. 030021212 (the "Approved Proffers").

D. Owner has now applied for an amendment to the Approved Master Plan for the Property pursuant to the County Zoning Ordinance and, in connection therewith, desires to amend and restate the Approved Proffers.

NOW, THEREFORE, for and in consideration of the approval by the Board of Supervisors of James City County of the applied for amendment to the Original Master Plan and the Original Proffers and pursuant to Section 15.2-2297, et seq. of the Code of Virginia, 1950, as amended, and Section 24-16, et seq. of Chapter 20 of the Code of James City County, Virginia in accordance with

Section 24-497(d) of the Code of James City County, Owner agrees that it shall meet and comply with all of the following conditions in developing the Property. If the applied for amendments are not granted by the County, these Amended and Restated Proffers shall thereupon be null and void and the Original Proffers and Original Master Plan shall remain in full force and effect.

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 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, which shall include a reserve for maintenance of stormwater management BMPs, private roads and parking areas, if applicable, 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 the cost of remedying

violations of, or otherwise enforcing, the Governing Documents.

2. Density. (a) There shall be no more than 150 single family lots permitted in Area 1 on the Property.

(b) There shall be no more than 400 dwelling units permitted in Area 2 on the Property. All dwelling units developed in Area 2 shall be age restricted to persons fifty-five (55) years of age or older ("Restricted Units") in accordance with the following parameters:

(i) It is the intent of the parties that Restricted Units shall be occupied by persons fifty-five (55) years of age or older and that no Restricted Units shall be occupied by a person under the age of eighteen (18). In some instances, persons under the age of fifty-five (55) but over the age of eighteen (18) shall be entitled to occupy Restricted Units, subject, at all times, to the laws and regulations governing age fifty-five (55) and over restricted housing as more particularly set forth and described in subparagraph (ii) below.

(ii) Each Restricted Unit within the Property shall be developed and operated in compliance with applicable federal and state laws and regulations regarding housing intended for occupancy by persons fifty five (55) years of age or older, including but not limited to: the Fair Housing Act, 42 U.S.C.

53601 et seq. and the exemption therefrom provided by 42 U.S.C. §3607(b)(2)(C) regarding discrimination based on familial status; the Housing for Older Persons Act of 1995, 46 U.S.C. 53601 et seq.; the Virginia Fair Housing Law Va. Code 536-96.1 et seq.; any regulations adopted pursuant to the foregoing; any judicial decisions arising thereunder; any exemptions and/or qualifications thereunder; and any amendments to the foregoing as now or may hereafter exist. Specific provisions of the age restriction described above and provisions for enforcement of same shall be set forth in a declaration of restrictive covenants and property owners' association documents applicable to the Restricted Units and each deed to a Restricted Unit shall make reference to such provisions.

(c) Any accessory commercial uses located in Area 2, such as bank offices, beauty salons and barbershops, shall be located and designed to serve residents of Area 2. Commercial uses shall not be advertised from any public right-of-way.

3. Road Improvements. (a) Monticello Avenue. (i) Owner shall make a contribution of \$2,800.00 to the County for each of the first 250 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 Monticello Avenue 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 final subdivision plat or site plan approval for such lots or units.

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

(iii) At the request of the County, Owner shall install a traffic signal at the intersection of Monticello Avenue 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 Monticello Avenue and the County has issued certificates of occupancy for more than 55 lots or dwelling units utilizing the entrances onto Monticello Avenue; provided that VDOT and the County approves the installation of the traffic signal at that time. When

certificates of occupancy for 412 dwelling units on the Property have been issued and if the traffic signal has not been installed at that time, Owner shall cause an updated traffic signal warrant analysis using actual traffic counts shall be submitted to VDOT and the County.

(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. Monticello Avenue Greenbelt. At the time of the conveyance of the Monticello Avenue right-of-way to the County or the District, the Owner shall designate 150-foot greenbelt buffers along the Property's Monticello Avenue frontage measured from a right-of-way line assuming a 120 foot right-of-way for Monticello Avenue (measured 60 feet on either side of the centerline of the right-of-way). The greenbelt buffers shall be exclusive of any lots or units and, except as permitted below, shall be undisturbed. With the prior 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 may be located in the greenbelt buffer. A landscaping plan for the greenbelt buffer which may include, without limitation, select hand clearing and trimming of trees and other plants, planting of new landscaping, including trees and shrubs, and installation of landscaped berms, submitted to and approved by the Director of Planning may be implemented.

5. Archaeology. A Phase I Archaeological Study for Master Plan area shall be submitted to the Director of Planning for his review and approval prior to land disturbance. A treatment plan shall be submitted to, and approved by, the Director of Planning for all sites in the Phase I study that are recommended for a Phase II evaluation, and/or identified as being eligible for inclusion on the National Register of Historic Places. If a Phase II study is undertaken, such a study shall be approved by the Director of Planning and a treatment plan for said sites shall be submitted to, and approved by, the Director of Planning for sites that are determined to be eligible for inclusion on the National Register of Historic Places and/or those sites that require a Phase III study. If in the Phase II study, a site is determined eligible for nomination to the National Register of Historic

Places and said site is to be preserved in place, the treatment plan shall include nomination of the site to the National Register of Historic Places. If a Phase III study is undertaken for said sites, such studies shall be approved by the Director of Planning prior to land disturbance within the study area. All Phase I, Phase II and Phase III studies shall meet the Virginia Department of Historic Resources' Guidelines for Preparing Archaeological Resource Management Reports and the Secretary of the Interior's Standard and Guidelines for Archaeological Documentation, as applicable, and shall be conducted under the supervision of a qualified archaeologist who meets the qualifications set forth in the Secretary of the Interior's Professional Qualification Standards. All approved treatment plans shall be incorporated into the plan of development for the site and shall be adhered to during the clearing, grading and construction activities thereon.

6. Environmental Protections. (a) 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 "Master Plan Amendment for Hiden Property for Jamestown, LLC" made by AES Consulting Engineers, Project No. 9254, dated 2/24/03, revised 4/25/03. 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, and (iii) utilities, roads, pedestrian paths, trails and bridges may intrude into or cross the Conservation Area. No stormwater best management practices ("BMPs") shall be permitted in the 100 foot Resource Protection Area ("RPA") imposed by County ordinance along the main stem of Powhatan Creek. With the prior approval of the County

Environmental Division on a case by case basis, BMPs may be located in other RPAs and elsewhere in the Conservation Area, including RPA extensions shown on the Master Plan, but shall not be located in nor impact the channel flow unless specifically approved by the Environmental Division. 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 Constraints Map Hiden 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 temporary 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 Environmental Division 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.

(b) All stormwater runoff from paved parking areas or roads and from all building structures over 150 square feet in Area 2 of the Property shall be directed into BMPs unless otherwise approved by the Environmental Division

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 "James City County Greenway Trail" 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 during daylight hours only), including necessary bridges, if any, through the James City County Greenway Trail and to install passive amenities such as benches, tables, gazebos, educational or descriptive markers or individual fitness stations. The location of the "James City County Greenway Trail" shall be varied within the Conservation Area by the Environmental Division to ensure the ability to construct a viable trail network. Owner shall grant the County suitable parking opportunities (through shared use of parking facilities required by site improvements) to the general public using the trail.

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 areas of at total of 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. 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.

(d) Owner shall construct a shoulder lane bikeway in accordance with VDOT standards along both sides of the main

public collector roads within the Property north of Monticello Avenue.

9. Entrance Signs. The entrance signs, lighting, landscaping and entrance features at the entrances to the Property from Monticello Avenue 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 or utility easements.

11. Cash Contributions for Community Impacts. (a) A contribution of \$750.00 for each of the first 50 dwelling units developed on Area 2 of the Property shall be made to the James City Service Authority ("JCSA") in order to mitigate impacts on the County from the physical development and operation of Area 2 of the Property. The JCSA may use these funds for development of alternative water sources or any project related to improvements

to the JCSA water system, the need for which is generated by the physical development and operation of Area 2 of the Property.

(b) A contribution of \$700.00 for each of the first 50 dwelling units developed on Area 2 of the Property shall be made to the County in order to mitigate impacts on the County from the physical development and operation of Area 2 of the Property. The County may use these funds for any project in the County's capital improvement plan, the need for which is generated by the physical development and operation of Area 2 of the Property, including, without limitation, for emergency services equipment replacement and supply, traffic signal preemption equipment, library uses, and public use sites.

(c) A contribution of \$500.00 for each of the first 50 dwelling units developed on Area 2 of the Property shall be made to the County in order to mitigate impacts on the County from the physical development and operation of Area 2 of the Property. The County may use these funds for any project in the County's capital improvement plan, the need for which is generated by the physical development and operation of Area 2 of the Property, including, without limitation, stream stabilization or other stormwater management projects in the Powhatan Creek watershed.

(d) The contributions described above, unless otherwise

specified, shall be payable for each of the dwelling units developed within Area 2 of the Property at the time of final subdivision plat or final site plan approval by the County for the particular phase or section of dwelling units.

(e) The per unit contribution(s) paid in each year pursuant to this Section shall be adjusted annually beginning January 1, 2004 to reflect any increase or decrease for the preceding year in the Consumer Price Index, U.S. City Average, All Urban Consumers (CPI-U) All Items (1982-84 = 100) (the "CPI") prepared and reported monthly by the U.S. Bureau of Labor Statistics of the United States Department of Labor. In no event shall the per unit contribution be adjusted to a sum less than the amounts set forth in paragraphs (a) and (b) of this Section. The adjustment shall be made by multiplying the per unit contribution for the preceding year by a fraction, the numerator of which shall be the CPI as of December 1 in the year preceding the calendar year most currently expired, and the denominator of which shall be the CPI as of December 1 in the preceding year, In the event a substantial change is made in the method of establishing the CPI, then the per unit contribution shall be adjusted based upon the figure that would have resulted had no change occurred in the manner of computing CPI. In the event that the CPI is not

available, a reliable government or other independent publication evaluating information heretofore used in determining the CPI (approved in advance by the County Manager of Financial Management Services) shall be relied upon in establishing an inflationary factor for purposes of increasing the per unit contribution to approximate the rate of annual inflation in the County.

12. 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 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.

13. Water Conservation. The Owner and/or the owners association shall be responsible for developing water conservation standards to be submitted to and approved by the

JCSA and subsequently for enforcing these standards. The standards shall address such water conservation measures as limitations on the installation and use of irrigation systems and irrigation wells, the use of approved landscaping materials and the use of water conserving fixtures and appliances to promote water conservation and minimize the use of public water resources, including groundwater. The standards shall be approved by the JCSA prior to final subdivision or site plan approval.

14. Height Limitation. There shall be no building greater than two and one-half stories in height located within 300 feet of the Powhatan Crossing subdivision

15. Private Streets. All streets (as defined by the County Code) within Area 2 of the Property shall be private and shall conform to VDOT construction standards. All private streets shall be certified to the satisfaction of the County Engineer as required by Section 19-49 of the County Code.

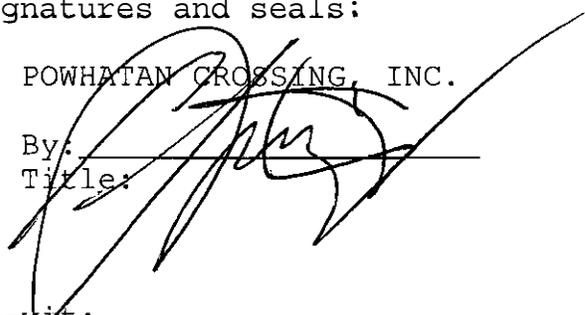
16. Headings. All section and subsection headings of Conditions herein are for convenience only and are not a part of these Proffers.

17. 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.

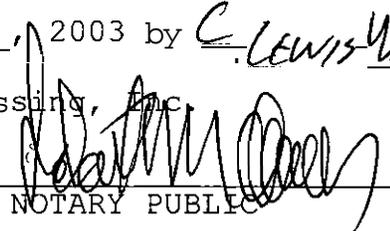
WITNESS the following signatures and seals:

POWHATAN CROSSING, INC.

By: 
Title: _____

STATE OF VIRGINIA
CITY/COUNTY OF JAMES CITY, to-wit:

The foregoing instrument was acknowledged before me this 26 day of NOVEMBER, 2003 by C. LEWIS, PRESIDENT of Powhatan Crossing, Inc.


NOTARY PUBLIC

My commission expires:
9/30/07

VIRGINIA: CITY OF WILLIAMSBURG & COUNTY OF JAMES CITY
This document was admitted to record on 21 Nov 04
at 11:39 AM/PM. The taxes imposed by Virginia Code
Section 58.1-801, 58.1-802 & 58.1-814 have been paid.

STATE TAX	LOCAL TAX	ADDITIONAL TAX
\$ _____	\$ _____	\$ _____

TESTE: BETSY B. WOOLRIDGE, CLERK
BY: Betsy B. Woolridge Clerk