

September 5, 2001 - 7:00 p.m.

**1. Roll Call**

**2. Minutes**

**3. DEVELOPMENT REVIEW COMMITTEE REPORT (Separate Attachment)**

**4. Public Hearings**

**A. Case No. SUP-15-01. Williamsburg Pottery Factory - Building 7 Replacement.**

Mr. Rich Costello has applied on behalf of Williamsburg Pottery Factory Inc. to allow the construction of a new retail sales building of 6,750 square feet to replace an existing 5,750-square foot structure known as Building 7 or the "Haitian Building." The site is zoned M-1, Limited Business/Industrial, and is located at 6692 Richmond Road. The property is further identified as Parcel No. (1-24) on James City County Real Estate Tax Map No. (24-3).

**B. Case No. Z-2-01/MP-2-01. VA United Methodist Homes - Windsor Meade.**

Mr. Alvin P. Anderson has applied on behalf of Kaufman & Canoles to rezone approximately 9 acres from R-8, Rural Residential, and approximately 102 acres from R-8, with proffers, to MU, Mixed Use, for a continuing care retirement community consisting of 300 dwelling units and 119 continuing care beds located at 4692, 4694, 4740, 4710, 4704, and 4700 Old News Road and 144 Jesters Lane and can be further identified as Parcel Nos. (1-34), (1-7), (1-2), (1-5), (1-6), (1-8) and (2-18) on James City County Tax Map No. (38-3) and Parcel No. (1-8) on James City County Tax Map No. (38-1).

**C. Case No. SUP-2-01. JCSA Route 5 Water Main**

The James City Service Authority has applied to extend a 12-inch water main from the Seventh Day Adventist Church property, where it connects to an existing line along Route 5 to another existing waterline at Powhatan Creek. The application includes a pressure reduction valve at the entrance to St. George's Hundred. With the exception of Parcel No. (1-2B) on James City County Tax Map No. (46-1) the project is located entirely within Virginia Department of Transportation right-of-way.

**5. Planning Commission Considerations**

**A. Planning Commission Annual Report**

**6. Planning Director's Report**

**7. Adjournment**

A REGULAR MEETING OF THE PLANNING COMMISSION OF THE COUNTY OF JAMES CITY, VIRGINIA, WAS HELD ON THE SIXTH DAY OF AUGUST, TWO-THOUSAND AND ONE, AT 7:00 P.M. IN THE COUNTY GOVERNMENT CENTER BOARD ROOM, 101-C MOUNTS BAY ROAD, JAMES CITY COUNTY, VIRGINIA.

1. ROLL CALL  
Martin Garrett  
Don Hunt  
Joe McCleary  
Joe Poole  
Peggy Wildman

- ALSO PRESENT  
John Horne, Development Manager  
Greg Dohrman, Assistant County Attorney  
Don Davis, Principal Planner  
Paul Holt, Senior Planner  
Jill Schmidle, Senior Planner

2. MINUTES

Upon a motion by Joe Poole, seconded by Joe McCleary, the minutes of the July 2, 2001, meeting were approved by unanimous voice vote, as corrected.

3. DEVELOPMENT REVIEW COMMITTEE (DRC)

Peggy Wildman gave the report stating that the DRC reviewed one case for a septic tank exception to a residential lot at 2220 Lake Powell Road to allow for a Puraflo System. The next case was for approval of the new County complex building which they felt was in compliance with the Comprehensive Plan. The final case was for an exception to the rear-yard setback for an out parcel located in the Williamsburg Crossing Shopping Center. She said the DRC recommended approval for all three cases.

There being no questions, motion for approval was made by Joe Poole and seconded by Joe McCleary. In a unanimous voice vote, motion passed.

4. CASE NO. SUP-16-01. JCSA: NEW TOWN WATER STORAGE FACILITY

Paul Holt presented the staff report for the James City Service Authority's Infrastructure Plan for a 1.0 million gallon water storage facility to serve the long range water storage needs of the entire JCSA water system. Staff found that this proposal was compatible with surrounding zoning and uses and was consistent with the Comprehensive Plan. Staff recommended that the Commission recommend approval of this proposal as outlined in the staff report.

Larry Foster, Manager of JCSA, said he would be happy to answer any questions of the Commission.

Martin Garrett opened the public hearing.

There being no speakers, the public hearing was closed

Joe Poole made a motion, seconded by Peggy Wildman, to recommend approval of this application.

In a roll call vote, motion passed (5-0). AYE: Poole, Wildman, Hunt, McCleary, Garrett (5); NAY: (0).

5. CASE NO. Z-2-01/MP-2-01. VIRGINIA UNITED METHODIST HOMES - WINDSORMEADE.

Jill Schmidle presented the staff report stating the case had been deferred at the July 2,

2001, Planning Commission meeting in order to resolve outstanding proffer issues. She stated that the new information and proffer revisions reflected considerable effort by the applicant and staff to resolve these issues. She said the applicant submitted a new proffer offering a survey of small whorled pogonia, including a conservation plan, in addition to a new proffer which guaranteed run-off from this area would be collected and treated in a regional BMP. She also stated the applicant supplied new or revised proffers that addressed the following issues of water conservation, Jesters Lane access, pedestrian connections, enhanced landscaping, restriction of lighting along Jesters Lane, traffic signal pre-exemption devices, and archaeology proffers. She stated that the project would not generate school aged children, but staff felt that the fiscal impact would not be as positive as projected by the developer. She said that while considerable progress had been made, staff had concerns that the proffers submitted did not adequately address water supply, specifically the cash amount toward a desalination plant and the sunset clause limiting construction until permits for alternate water sources were received. Staff recommended that the Planning Commission recommend denial of this project.

Don Hunt asked if staff felt the cash contribution toward the water issue was at a standstill.

Jill Schmidle stated that it was not and staff was working on setting up a meeting with the applicant, their client, and officials of JCSA for continued discussions.

Elizabeth White of Kaufman and Canoles and representing Virginia United Methodist Homes, Inc. requested that the Commission grant a deferral of consideration of this application so they would have additional time to work with staff on the remaining issues of concern. She commented that considerable progress on the proffers had been made since the last meeting and that the two remaining issues concerning water were very complex.

Joe McCleary indicated his belief that a deferral at this time was more practical than a denial.

Jim Etchberger of 101 Jesters Lane requested to speak noting that he felt there were issues which could still be addressed during the deferral period. He said he was happy that the applicant had made several concessions for the residents of Jesters Lane but still had two items of major concern. The first being the ground water irrigation and the effect on private wells. He stated that according to the report no ground water would be used for irrigation unless approved by JCSA. He said if they did receive approval, there could be a significant effect on the existing private wells on Jesters Lane. The second being the change to a mixed use zoning. He said he was used to enjoying his quiet evenings and mornings and the only guarantee that he had that he would continue having those quiet times would be for a continuation of the residential zoning since there was no noise ordinance in James City County for any other zonings. He felt this needed to be addressed if commercial and residential development were adjacent to each other. He said if he could not make noise from 11 p.m. to 7 a.m. for good quality of life for his neighbors, then the neighbor across the street should have the same set of rules.

Peggy Wildman asked if Jim Etchberger was speaking on his own behalf or that of the neighbors and how many are there.

Jim Etchberger stated Jesters Lane had approximately 25 homes. He said he had spoken to several neighbors and they had voiced the same concerns as he had. He added that Jesters Lane has a large number of elderly residents and that it is not an affluent neighborhood. He went on to indicate that, through his conversations with neighbors he felt he was representing them but that he had not organized to represent them, instead he was speaking tonight only as a concerned citizen who lives on Jesters Lane.

Joe McCleary agreed with Jim Etchberger regarding wells and water usage and indicated that he hoped that the applicant could find ways to get all necessary irrigation water through natural means. He said he believed that if something occurred to the water table that affected the wells, JCSA would come in and do any repairs necessary in order to restore water service to those wells free of charge.

Larry Foster stated that it was not as simple as stated. He said unless the applicant has a ground water withdrawal permit issued by the DEQ, which is required for any entity that is withdrawing more than 300,000 gallons of water per day, they would have some proportionate responsibility for mitigating that particular well. He added that it would take much convincing for JCSEA to approve a well for irrigation for this particular project.

John Horne stated that while staff had not received the construction plans for this project, all the conversations to date with the engineers on storm water management indicate that they fully intend to utilize the water quality basins that would be necessary for their irrigation.

Don Hunt asked what was the anticipated maximum capacity for these basins.

Elizabeth White stated the basins were designed to accommodate not only this project but also for some of the adjoining properties and that it would serve as a regional BMP. She said they were asking, in the proffers, for the ability to go to JCSEA for extenuating circumstances only.

There being no further speakers, the public hearing was closed.

Peggy Wildman made a motion, seconded by Don Hunt, to defer this case to the September 5, 2001, meeting.

Prior to the vote, Joe Poole asked Jill Schmidle if the row of residential units on the southeast edge of the property, immediately abutting Rt. 199, extended further east or south than some of the existing residences in Ford's Colony. His concern was buffering.

Jill Schmidle said she would have to do some research but believed that the Ford's Colony buffer was 150 feet which was the amount shown on the master plan for WindsorMeade. She said there is a proffer for enhanced landscaping and/or a berm for this project.

Joe Poole commented that this type of development would fit into the vision of New Town but he remained cautious about proceeding without guarantees from the state DEQ that indeed we could have a ground water withdrawal facility. As he stated previously, he did not want to saddle tomorrow's resources with today's approvals.

Joe McCleary agreed with Joe Poole and understood the applicants problem financially but felt the applicant had to understand the County's position.

Martin Garrett stated he would vote in favor of the deferral but that he agreed with both Joe Poole and Joe McCleary. He said he could not approve this with the proffered sunset clause but understood from staff and others that there would probably be something in place by the time the sunset clause arose and asked if Larry Foster would comment.

Larry Foster said he felt as comfortable as he could that the County would obtain a permit by June of 2002 but he was equally concerned that if they did not have the permit, that they should hold firm on the approval of this until the permit is received.

Martin Garrett stated he wanted the applicant to know how the Commission felt and then noted that despite the difference in this application and that of U.S. Home, he was still in favor of a cash proffer of \$750 per unit.

There being no further comments and with a motion to defer, roll call was taken and motion passed (5-0). AYE: Poole, Wildman, Hunt, McCleary, Garrett (5); NAY: (0).

John Horne stated that if the Commission had any other issues they should notify staff within the next 7 to 10 days so staff can offer them to the applicant as soon as possible.

Joe Poole again expressed his concerns for a good buffer along Rt. 199 and stated he would consider a trade of the public Town Square so he would be assured of a more opaque screening of the corridor.

#### 6. PLANNING DIRECTOR'S REPORT

Don Davis presented the Planning Director's Report stating one item not mentioned was the hiring of the County's first Purchase of Development Rights Administrator. He stated the Administrator owns his own 600 acre farm in Surry County and holds a law degree from the College of William and Mary.

Mr. Davis stated that the County had contracted with Virginia Tech for the creation of a citizen survey and he would be meeting with the consultants on Friday, August 10<sup>th</sup> to begin their work.

Don Davis informed the Commission that a good portion of the 2000 Census Data was now on the County website: [www.james-city.va.us](http://www.james-city.va.us).

Mr. Davis also informed the Commission that staff had completed the Planning Commission Annual Report and that it would be presented to them at the September 5, 2001, meeting.

Don Hunt asked John Horne for the status of the high speed rail and the time line in which they expect this to occur.

John Horne understood that the main emphasis at this time was the high speed rail extension from Washington to Richmond and it would not be for at least the next 3 to 5 years. He felt it was a longer term prospect for Hampton Roads, though there appears to be more public support for the extension. He said there was a regional debate underway about either the possibility of doing an extension on the 460 corridor on the Southside of the James or an extension down the Peninsula corridor with the CSX tracks. He said that at the state level this had not been fully resolved and added that there was no timetable. He stated that all is dependent on action by the Virginia General Assembly.

#### 7. ADJOURNMENT

There being no further business, the August 6, 2001, meeting adjourned at approximately 7:50 p.m.

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Martin Garrett, Chair

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Marvin Sowers, Secretary

**Special Use Permit 15-01. Williamsburg Pottery Factory - Building 7 Replacement**  
Staff Report for September 5, 2001, Planning Commission Public Hearing

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*This staff report is prepared by the James City County Planning Division to provide information to the Planning Commission and Board of Supervisors to assist them in making a recommendation on this application. It may be useful to members of the general public interested in this application.*

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**PUBLIC HEARINGS**

Building C Board Room, County Government Complex

Planning Commission: September 5, 2001 - 7:00 p.m.  
Board of Supervisors: September 25, 2001 - 7:00 p.m. (tentative)

**SUMMARY FACTS**

Applicant: Mr. Richard Costello

Land Owner: Williamsburg Pottery Factory, Inc.

Proposed Use: Replacement retail sales building

Location: 6692 Richmond Road; Stonehouse District

Tax Map/Parcel: (24-3)(1-24)

Primary Service Area: Inside

Parcel Size: 18.86 acres

Zoning: M-1, Limited Business/Industrial

Comprehensive Plan: Mixed Use

Surrounding Zoning: North: B-1, General Business (Go-Karts Plus)  
South: M-1 (Western Sizzlin restaurant)  
East: M-1 (Williamsburg Pottery Factory)  
West: A-1, General Agriculture (Massie property - US Home rezoning)

Staff Contact: Jill E. Schmidle Phone: 253-6685

**STAFF RECOMMENDATION**

Staff finds the proposal consistent with the surrounding properties and uses. Staff also finds the proposal consistent with the Comprehensive Plan and consistent with previous actions taken by the Board of Supervisors. Staff recommends the Planning Commission recommend approval of this special use permit with the attached conditions.

## **Description of Project**

Mr. Richard Costello has applied on behalf of the Williamsburg Pottery Factory for a special use permit to allow the construction of a new retail sales building of 6,750 square feet to replace an existing 5,750 square foot structure known as Building 7 or the "Haitian Building."

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## **Surrounding Zoning and Development**

The property is located on Richmond Road and is zoned M-1, Limited Business/Industrial District. Property to the north is zoned B-1, General Business and contains Go-Karts Plus. To the east of the site is property zoned M-1 and contains the remainder of the Pottery site. Western Sizzlin restaurant is to the south of the site and is also zoned M-1. To the west of the site across Richmond Road is the undeveloped Massie property, zoned A-1, General Agricultural and the site of the U.S. Home rezoning proposal. Staff finds the proposed replacement to be compatible with surrounding zoning and development since it does not constitute a major expansion of the Pottery sales area nor does it intrude into undeveloped land.

## **Topography and Physical Characteristics**

The site contains an existing retail sales area on the Pottery complex. The topography is flat and stormwater runoff from the site drains to an existing BMP facility. This project constitutes a re-development of an existing impervious surface within the watershed currently being served by a BMP on the Pottery site. Stormwater management facilities for this portion of the Pottery were developed and updated as part of the continuing development and redevelopment of this area in an effort to ensure that both stormwater quantity and quality issues are being addressed. The BMP facility was reviewed in March 1994 and has been inspected and maintained as development has progressed on the Pottery site. This project does not directly impact any nearby streams or lakes. No environmentally sensitive areas are known to exist within or adjacent to this project site. Stormwater features on this site are of sufficient capacity to handle this re-development project and no additional stormwater management infrastructure will be required.

## **Public Utilities**

The property is served by public water and sewer and is located within the Primary Service Area. Adequate capacity is available to serve the replacement building.

## **Traffic Impacts and Access**

The Pottery is currently accessed from Richmond Road and Lightfoot Road. No new access points are being proposed with this request. A traffic study was completed in 1982 and determined that the Pottery site generates approximately 25 trips per day per 1000 square feet in the PM peak hour. The net increase in square footage for the replacement building is 1000 square feet, and the projected traffic increase is 25 trips per peak hour. Because the expansion is very small, staff has not requested an updated traffic study. No road improvements are recommended. Despite the age of the report, staff finds the conclusions remain valid and applicable to the current traffic conditions at the Pottery site.



## Comprehensive Plan

The property is designated Mixed Use on the Comprehensive Plan. Mixed Use areas are centers within the Primary Service Area where higher density development, redevelopment, and/or a broader spectrum of land uses are encouraged. Mixed use areas located at or near interstate interchanges, and the intersections of major thoroughfares are intended to maximize the economic development potential of these areas by providing areas primarily for more intensive commercial, office and limited industrial uses.

The land east of Richmond Road is developed as support uses for the Pottery. For lands west of Richmond Road, the principal suggested uses are large commercial developments and large office developments. Moderate density residential uses are encouraged as secondary uses.

Staff finds the proposed use is consistent with the Comprehensive Plan. The proposal constitutes redevelopment of an existing retail site within the Pottery complex, which is encouraged by the Comprehensive Plan. Although there is a net increase of sales area for the Pottery as a whole, the increase can be accommodated by the site, which is already an intensely developed area within the Pottery complex.

### **RECOMMENDATION:**

Staff finds the proposal consistent with the surrounding properties and uses. Staff also finds the proposal consistent with the Comprehensive Plan and consistent with previous actions taken by the Board of Supervisors. Staff recommends the Planning Commission recommend approval of this special use permit with the following conditions:

1. If a certificate of occupancy has not been obtained for the project within thirty six (36) months from the issuance of the special use permit, the permit shall become void.
2. This special use permit shall be limited to the following: the demolition of a 5,750 square foot building known as Building 7 or the Haitian Building and construction of a 6,750 square foot replacement facility. Development of the site shall be generally in accordance with the Conceptual Plan "Master Plan of Redevelopment - Building #7 for Special Use Permit Application - Williamsburg Pottery Factory" prepared by AES Consulting Engineers, dated June 2001.
3. This special use permit is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.

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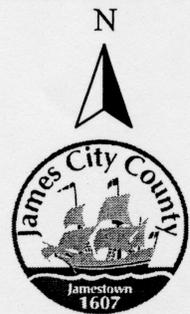
Jill E. Schmidle  
Senior Planner

#### Attachments:

1. Location Map
2. Project Layout



Case No. SUP-15-01  
Williamsburg Pottery Factory  
Building #7 Replacement



**Rezoning 2-01/Master Plan 2-01/Design Guidelines. Virginia United Methodist Homes, Inc.**  
Staff Report for the September 5, 2001, Planning Commission Public Hearing

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*This staff report is prepared by the James City County Planning Division to provide information to the Planning Commission and Board of Supervisors to assist them in making a recommendation on this application. It may be useful to members of the general public interested in this application.*

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**PUBLIC HEARINGS**  
Building C Board Room; County Government Complex  
Planning Commission: July 2, 2001, 6:00 p.m. (PC deferred)  
August 6, 2001, 7:00 p.m. (applicant deferred)  
Board of Supervisors: October 9, 2001 (tentative), 7:00 p.m.

**SUMMARY FACTS**

Applicant: Mr. Alvin Anderson  
Land Owner: C. C. Casey Limited Company  
Proposed Use: Continuing care retirement community (300 dwelling units and 119 continuing care beds)  
Location: 4692, 4694, 4740, 4710, 4704 and 4700 Old News Road and 144 Jesters Lane; Powhatan District  
Tax Map and Parcel No.: (1-34), (1-7), (1-2), (1-5), (1-6), (1-8) and (2-18) on Tax Map (38-3); (1-8) on Tax Map (38-1)  
Primary Service Area: Inside  
Parcel Size: 111 acres  
Existing Zoning: R-8, Rural Residential District  
Proposed Zoning: MU, Mixed Use  
Comprehensive Plan: Mixed Use  
Surrounding Zoning: North: R-4, Residential Planned Community (Ford's Colony)  
East: R-8, Rural Residential (undeveloped portion of New Town)  
South: R-8 (undeveloped portion of New Town)  
West: R-8 (Jester's Lane); R-4 (Monticello Marketplace)  
Staff Contact: Jill E. Schmidle - Phone: 253-6685

**STAFF RECOMMENDATION:**

This project was deferred at the August 6, 2001 Planning Commission meeting in order to resolve outstanding proffer issues. Staff finds that the revised cash proffer for water supply is acceptable and that water and water availability are public policy issues to be discussed by the Board of Supervisors at its September 12<sup>th</sup> work-session. Staff finds that the moratorium proffer is a public policy issue which also has significant private impacts and that the Board of Supervisors is the appropriate body to resolve the issue. For these reasons staff recommends the Planning

Commission take one of the following two actions:

- defer action until the Board of Supervisors resolves the water issue with appropriate public policy and proffers which reflect that policy; or
- act on the proposal based upon land use factors and allow the case to proceed to the Board of Supervisors while the Board determines future public policy on water.

### **Project Update**

Since the August 6, 2001 Planning Commission meeting, the applicant has submitted additional information and revised proffers that address the outstanding issues staff had regarding water.

### **Utilities/Water Supply**

Regarding the county's water supply issue, the applicant has revised the proffer for a cash contribution to water supply alternatives. After meeting with county staff, including staff from the James City Service Authority (JCSA), the applicant has provided a cash contribution of \$625 for each independent dwelling unit and \$500 per assisted living unit and nursing bed. The proffer will be paid at the time of final site plan approval. After consultation with JCSA staff, staff finds that the cash contribution adequately mitigates demands placed on the water supply as a result of this development and is an acceptable proffer.

The applicant also submitted a revised proffer regarding the timing of building permit issuance. The previous proffer stated that the applicant would not receive land disturbing permits until the county had received appropriate groundwater withdrawal permits. However this proffer contained a sunset clause stating the proffer would be valid until August 31, 2002. Staff's concern was that the sunset clause provided an opportunity for construction to occur and further impact the county's water supply before an alternate source of water has been secured. The revised proffers have eliminated the sunset clause. The new proffer states that should the Board of Supervisors enact a county-wide water moratorium restricting issuance of building permits based upon water resources, no building permits shall be issued for this development.

Please note that the Board of Supervisors has scheduled a work-session on September 12<sup>th</sup> to discuss water and water availability in the county. Staff finds that the moratorium proffer is a public policy issue which also has significant private impacts and that the Board of Supervisors is the appropriate body to resolve the issue.

### **Noise**

As a result of discussion at the August Planning Commission meeting, the applicant has submitted a new proffer regarding noise. The proffer states that upon rezoning to MU, Mixed Use, the property will comply with the County's noise ordinance that applies to residentially zoned areas. Staff finds this proffer to be acceptable since it provides assurances that the property will continue to adhere to the noise requirements of residentially-zoned areas.

### **Buffers**

A question arose at the August Planning Commission regarding the size of the Route 199 buffer compared to the Route 199 buffer adjacent to Ford's Colony. The project will have a 150-foot buffer along Route 199 which is consistent with the buffer adjacent to Section 16 of Ford's Colony

which is also 150 feet.

**RECOMMENDATION:**

This project was deferred at the August 6, 2001 Planning Commission meeting in order to resolve outstanding proffer issues. Staff finds that the revised cash proffer for water supply is acceptable and that water and water availability is a public policy issue to be discussed by the Board of Supervisors at its September 12<sup>th</sup> work-session. Staff finds that the moratorium proffer is a public policy issue which also has significant private impacts and that the Board of Supervisors is the appropriate body to resolve the issue. For these reasons staff recommends the Planning Commission take one of the following two actions:

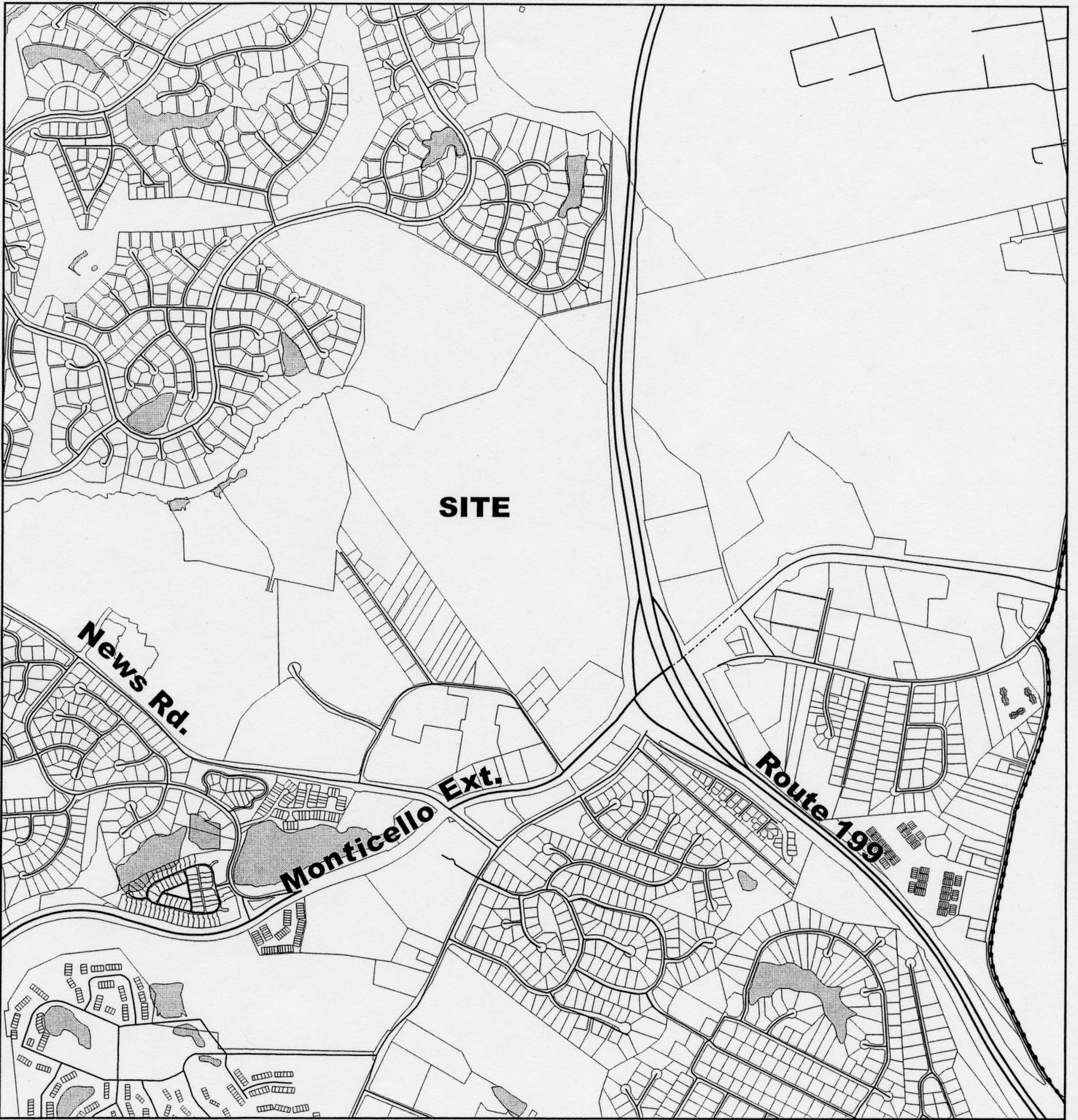
- defer action until the Board of Supervisors resolves the water issue with appropriate public policy and proffers which reflect that policy; or
- act on the proposal based upon land use factors and allow the case to proceed to the Board of Supervisors while the Board determines future public policy on water.

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Jill E. Schmidle

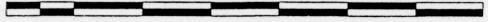
Attachments:

1. Site location map
2. Letter from Elizabeth L. White to John Horne, dated August 28, 2001
3. Proffers



Case No. Z-2-01/MP-2-01  
VA United Methodist Homes - Windsor Meade

500 0 500 1000 1500 2000 2500 3000 Feet



## WINDSORMEADE PROFFERS

THESE PROFFERS are made as of this 10th day of July, 2001, by **VIRGINIA UNITED METHODIST HOMES, INC.**, a Virginia corporation (together with its successors and assigns, "VUMH") (index as a "grantor"); **C. C. CASEY LIMITED COMPANY**, a Virginia limited liability company (the "Owner") (index as a "grantor"); and the **COUNTY OF JAMES CITY, VIRGINIA** (the "County") (index as the "grantee").

### RECITALS

R-1. Owner is the owner of certain parcels of real property in James City County, Virginia, portions of which parcels are more particularly described as "Parcel 1" and "Parcel 2" on EXHIBIT A attached hereto and made a part hereof "the Property".

R-2. Owner has contracted to sell certain interests in and to the Property to VUMH for development of a continuing care retirement community ("the Project") all of the buildings of which are planned to be located on Parcels "A" and "A-1" of Parcel 1 of the Property (the "Project Property").

R-3. A portion of "Parcel 1" of the Property designated on EXHIBIT A is currently subject to the New Town Proffers dated December 9, 1997, of record in the Clerk's Office of the Circuit Court for the City of Williamsburg and County of James City, Virginia (the "Clerk's Office") as document no. 980001284 ("the New Town Proffers").

R-4. None of "Parcel 2" of the Property designated on EXHIBIT A is currently subject to the New Town Proffers.

Attachment 2

Prepared by:  
Kaufman & Canoles, P.C.  
1200 Old Colony Lane  
Williamsburg, VA 23185

R-5. The New Town Proffers provide for development of that portion of the Property which is subject to the New Town Proffers in accordance with a conceptual master land use plan entitled, "NEW TOWN PLAN" prepared by Cooper, Robertson & Partners and AES Consulting Engineers, dated July 23, 1997, and revised December 8, 1997 (the "New Town Master Plan").

R-6. The New Town Proffers further provide for development of that portion of the Property which is subject to the New Town Proffers in accordance with design guidelines entitled "NEW TOWN DESIGN GUIDELINES, JAMES CITY COUNTY, VIRGINIA" prepared by Cooper, Robertson & Partners dated September 3, 1997 (the "New Town Design Guidelines").

R-7. In furtherance of the vision embodied in the New Town Master Plan and the New Town Design Guidelines, VUMH has applied for a rezoning of the Property from R-8 Rural Residential and R-8 Rural Residential with proffers, to MU, Mixed Use, with proffers. The rezoning of the Property to MU is in fact consistent both with the land use designation for the Property on the County's Comprehensive Plan and the statement of intent for the MU zoning district set forth in Section 24-514 of the County's Zoning Ordinance (the "Zoning Ordinance").

R-8. VUMH has submitted an updated Community Impact Statement which satisfies the requirements of Section 24-515(c) of the Zoning Ordinance and the New Town Proffers, which Community Impact Statement includes, without limitation, an updated Fiscal Impact Study which has been reviewed and approved by the County in connection with the rezoning request referenced above. The updated Community Impact Statement is on file with the County's Director of Planning.

R-9. Pursuant to subsection 2(b) of the New Town Proffers, there has been established a Design Review Board ("DRB") for development of the property subject to the New Town Proffers.

R-10. Pursuant to the New Town Proffers, the DRB is charged with the responsibility of rendering a written advisory recommendation to the County's Planning Commission and to the County's Board of Supervisors as to the general consistency with the New Town Master Plan and the New Town Design Guidelines of any proposed master plans and guidelines in future rezonings of the property subject to the New Town Proffers.

R-11. VUMH has previously submitted to the DRB, and the DRB has previously approved in writing, as consistent with both the New Town Master Plan and the New Town Design Guidelines: (1) a plan for variable width roadway improvements from Monticello Avenue to the Project entitled "PRELIMINARY LAYOUT WINDSORMEADE WAY, WINDSORMEADE OF WILLIAMSBURG, VIRGINIA UNITED METHODIST HOMES DATED DECEMBER 1, 2000" ("the WindsorMeade Way Plans"), (2) a master plan entitled "WINDSORMEADE OF WILLIAMSBURG, CONTINUING CARE RETIREMENT COMMUNITY, WILLIAMSBURG, VIRGINIA DATED JANUARY 19, 2001, REVISED APRIL 20, 2001 and July 19, 2001 (the "VUMH Master Plan"); and, (3) design guidelines entitled "WINDSORMEADE OF WILLIAMSBURG, A CONTINUING CARE RETIREMENT COMMUNITY BY VIRGINIA UNITED METHODIST HOMES, INC., MU MASTER PLAN AND DESIGN GUIDELINES DATED NOVEMBER 6, 2000", with amendments thereto dated May 3, 2001 (the "VUMH Guidelines"), copies of which WindsorMeade Way Plans, the VUMH Master Plan and the VUMH Guidelines are on file with the County's Director of Planning.

R-12. The rezoning application to which these Proffers are associated was filed on May 21, 2001, at which time no policy or moratorium or reservations had been imposed by the County in connection with water usage.

R-13. The provisions of the Zoning Ordinance may be deemed inadequate for protecting and enhancing orderly development of the Property. Accordingly, VUMH, in furtherance of its

application for rezoning, desires to proffer certain conditions in addition to the regulations provided for by the Zoning Ordinance for the protection and enhancement of the development of the Property, in accordance with the provisions of Section 15.2-2296 *et seq.* of the Code of Virginia (1950), as amended (the "Virginia Code"), Section 24-16 of the Zoning Ordinance and the New Town Proffers.

R-14. The County constitutes a high-growth locality as defined by Section 15.2-2298 of the Virginia Code.

NOW, THEREFORE, for and in consideration of the approval by the Board of Supervisors of the County of the rezoning set forth above and approval of the WindsorMeade Way Plans, the VUMH Master Plan, the VUMH Guidelines and all related documents described herein, and pursuant to Section 15.2-2296 *et seq.* of the Virginia Code, Section 24-16 of the Zoning Ordinance, and the New Town Proffers, it is agreed that unless otherwise noted herein, all of the following conditions shall be met and satisfied in developing the Property. In the event the requested rezoning is not granted by the County, these Proffers shall thereupon be null and void.

#### CONDITIONS

1. Application of New Town Proffers, Master Plan and Design Guidelines. Unless otherwise specifically noted herein, these Proffers shall supercede and amend and restate in their entirety the New Town Proffers, the New Town Master Plan and the New Town Design Guidelines but only as to the Property.

2. Owner's Association. A supplemental declaration (the "Supplemental Declaration") shall be executed and recorded in the Clerk's Office to submit the Project Property to the applicable property owners association(s) for New Town (the "Association") and to the applicable Master Declaration of Covenants, Easements and Restrictions for such property in New Town, and the articles of incorporation and the bylaws governing the Association. In addition to

the Association, a separate owner's association for the Project Property may be organized to impose supplemental restrictive covenants on the Project Property. The Supplemental Declaration and any articles of incorporation, bylaws and declaration associated with a separate owner's association for the Project Property, if any, shall be submitted to and reviewed by the County Attorney for general consistency with this proffer.

3. Development, Process and Land Use.

(a) Development. All the Property (including, without limitation, Parcel 2) shall be developed in one or more phases generally in accordance with the WindsorMeade Way Plans, the VUMH Master Plan and the VUMH Design Guidelines, including, but not limited to, the land uses, densities and design set forth therein; however, all of such development shall be expressly subject to such changes in configuration, composition and location as required by all other governmental authorities having jurisdiction over such development.

(b) DRB Authority, Duties and Powers. The DRB shall review all subdivision plats, site plans, landscaping plans, architectural plans and elevations and other development plans for the Property for general consistency with the WindsorMeade Way Plans, the VUMH Master Plan and the VUMH Design Guidelines and shall render an approval of such plans prior to their submission to the County Department of Development Management. The procedures for the design review process, including submission requirements and time frames, shall be set forth in rules adopted by the DRB from time to time. The County shall not be required to review any subsequent development plans not receiving the prior approval of the DRB. In reviewing applications, development plans and specifications, the DRB shall consider the factors set forth in the WindsorMeade Way Plans, the VUMH Master Plan and/or the VUMH Design Guidelines. The DRB may approve development plans that do not strictly comply with the WindsorMeade Way Plans, the VUMH Master Plan and/or the VUMH Guidelines if circumstances, including, but

not limited to, topography, natural obstructions, hardship, economic conditions or aesthetic or environmental considerations, warrant approval. All structures and improvements on the Property shall be constructed generally in accordance with the approved plans and specifications as finally approved by the DRB.

(c) Procedures for Changes to the WindsorMeade Way Plans, the VUMH Master Plan and the VUMH Design Guidelines. Applications may be made to the Planning Commission or the Board of Supervisors, as appropriate, to change the WindsorMeade Way Plans, the VUMH Master Plan and/or the VUMH Design Guidelines as hereinafter provided.

The County Planning Commission may approve all of such amendments after receiving written confirmation from the County's Director of Planning that the changes do not significantly alter the character of land uses or other features or conflict with any conditions placed on the approval of the rezoning, without any requirement that the Board of Supervisors approve any such changes.

No amendment of the WindsorMeade Way Plan, the VUMH Master Plan and/or the VUMH Design Guidelines which significantly alters the character of land uses or other features or conflicts with any conditions placed on approval of the rezoning as determined by the County's Director of Planning shall be effective unless approved by the County Board of Supervisors. In considering applications for such amendments, the County's Director of Planning, and the County Board of Supervisors shall consider all appropriate factors, including, but not limited to, changes in circumstances that may have occurred.

Any change or amendment shall apply after its effective date but shall not require modification or removal of any previously approved construction. The procedures for amendments to the WindsorMeade Way Plans, the VUMH Master Plan and the VUMH Design

Guidelines, including submission requirements and time frames shall be set forth in rules adopted by the DRB, as in effect from time to time.

The DRB shall advise of either (i) the DRB's recommendation of approval of the submission, or (ii) the areas or features of the submission which are deemed by the DRB to be materially inconsistent with the applicable WindsorMeade Way Plans, the VUMH Design Guidelines and/or the VUMH Master Plan and the reasons for such finding and suggestions for curing the inconsistencies.

(d) Limitation of Liability. Review of and recommendations with respect to any application and plans by the DRB is made on the basis of aesthetic and design considerations only and the DRB shall not have any responsibility for ensuring the structural integrity or soundness of approved construction of modifications, nor for ensuring compliance with building codes or other governmental requirements, or ordinances or regulations. Neither VUMH, the Owner, the County, the DRB nor any member of the DRB shall be liable for any injury, damages or losses arising out of the manner or quality of any construction on the Property.

(e) Land Use. As a result of the rezoning sought in connection with these Proffers, "Table 1, Land Use and Density Tabulation: Residential, West Side" shown on page 2 of the New Town Master Plan is hereby amended to reflect the densities and land uses specified in EXHIBIT B attached hereto. Except as hereby amended, the Tables and Charts on page 2 of the New Town Master Plan shall remain unchanged.

4. Limitation of Use of Proposed Right of Way of the Property. Subject to such changes in configuration, composition and location as required by all other governmental authorities having jurisdiction over the same, the "Proposed Right of Way" area of the Property shall be limited in use to development of a roadway, parking, sidewalks, drainage, utilities, median, landscaping, lighting, signage and like improvements generally as depicted on the

WindsorMeade Way Plans until the adjacent property is rezoned by the County at which time any remaining property within said "Proposed Right of Way" area not developed as aforesaid may be utilized for such uses as permitted by and shall be otherwise governed by the subsequent rezoning of the adjacent property.

5. Traffic Study and Signal Improvements. In accordance with the requirements of Section 4 of the New Town Proffers, VUMH has submitted to the County an updated traffic study entitled "TRAFFIC STUDY FOR WINDSORMEADE OF WILLIAMSBURG (CASEY PROPERTY), JAMES CITY COUNTY, VIRGINIA", dated July 24, 2000, prepared by DRW Consultants, Inc., Midlothian, Virginia (the "Traffic Study"), which is on file with the County's Director of Planning. Notwithstanding the fact that the Traffic Study has determined that the level of service criteria as established by the New Town Proffers will be maintained after the development of the Project Property in accordance with the WindsorMeade Way Plans, the VUMH Master Plan and the VUMH Design Guidelines, without further offsite road improvements, the owner of the Project Property shall pay to the County up to the sum of \$10,000.00 upon the installation of a traffic signal to be installed later by others at the intersection of WindsorMeade Way and Monticello Avenue which said sum shall be used by the County toward the installation of traffic signal pre-emption equipment on said signal. In the event the monies are not used by the County for the purposes designated within ten years from the date of receipt by the County, the amounts not used shall be returned to the then owner of the Project Property, without interest.

6. Pedestrian Connections. The owner of the Project Property shall install pedestrian connections on the Property both within the Project Property and along WindsorMeade Way accessing the Project Property substantially as shown on the WindsorMeade Way Plans, the VUMH Master Plan and the VUMH Guidelines

7. Public Square at Entrance to Project. The WindsorMeade Way Plans and the VUMH Guidelines set forth a "Town Square" open for the use and enjoyment of the general public at the main entrance to the Project Property "to be developed and constructed by others." To assure the subsequent construction of the same, no residential development of the property immediately adjacent to the entrance of the Project Property shall occur unless said "Town Square" is first constructed or, the owner of the property immediately adjacent to the entrance to the Project Property shall enter into an agreement with the County and furnish to and maintain with the County a certified check, bond with surety or letter of credit in the amount of One Hundred Thousand and No/100 Dollars in form satisfactory to the County, along with such other agreements which are satisfactory to and approved by the County Attorney, all as more particularly set forth in Section 19-72 of the County Code as written on the date hereof. Notwithstanding the aforesaid, the configuration, composition and location of the design of the "Town Square" may be modified as provided by the provisions of paragraph 3(c) hereof and shall be further expressly subject to such other changes in configuration, composition and location as required by all other governmental authorities having jurisdiction over said area.

8. Entrance to Property from Jester's Lane. The entrance/exit to/from the Project Property from/to Jester's Lane shall be limited to emergency uses only and shall not be used for construction purposes.

9. Enhanced Landscaping Adjacent to Jester's Lane. Within the setback for the Project Property immediately adjacent to existing improved lots which front on Jester's Lane as shown on the VUMH Master Plan, enhanced landscaping shall be provided so that when counted, the landscaping retained plus additional landscaping provided shall equal up to 133% of the number of plantings otherwise required. Such landscaping plan and materials shall be approved by the County's Director of Planning..

10. Lighting Limitations Adjacent to Jester's Lane. All parking area, drive isle and building lighting within the area designated on the VUMH Master plan as "Proffered Area of Lighting Restrictions" adjacent to the existing improved lots which front on Jester's Lane shall be limited to fifteen (15) feet in height above finished elevation. All such lighting fixtures within said areas shall be horizontally mounted recessed fixtures with no lens, bulb or globe extending below the casing unless otherwise shielded by the case so that the light source is not directly visible from the side of the fixture.

11. Enhanced Buffer of Project From Route 199. Within the area one hundred fifty feet (150') in width adjacent to Route 199, and along the eastern portion of the Project Property, the owner of the Project Property shall provide additional landscaping and/or berms to provide an enhanced visual and sound buffer between the Project and Route 199. The plan and materials shall be approved by the County's Director of Planning as a part of the site plan approval for the independent dwelling units adjacent to Route 199 as shown on the VUMH Master Plan.

12. Water Conservation. The owner of the Project Property and the Association shall be responsible for developing water conservation standards to be submitted to and approved by the James City Service Authority ("the JCSA"). The Association shall be responsible for enforcing these standards. The standards shall address such water conservation measures as limitations on the installation and use, if any, 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. Generally, unless approved by the JCSA, no groundwater or water supplied by a public water system as defined in the Zoning Ordinance shall be used for irrigation of the Project Property. All such standards shall be approved by the JCSA prior to the approval of the first site plan for the Project Property.

13. Water Source: Cash Contribution. A contribution shall be made to the County by the owner of the Project Property in the amount of Six Hundred Twenty-five Dollars (\$625.00) for each independent dwelling unit developed within the Project Property and Five Hundred Dollars (\$500.00) per assisted living unit and nursing bed (the "Per Unit Contribution"). The County shall make these monies available for either development of water supply alternatives, or in the discretion of the Board of Supervisors of the County, any other project in the County's capital improvement plan, the need for which is deemed by the County to be generated by the development of the Project Property. In the event the monies are not used by the County for the purposes designated within ten years from the date of receipt by the County, the amounts not used shall be returned to the then owner of the Project Property, without interest.

A. Such contributions shall be payable for each of the independent dwelling units, the assisted living units and the nursing beds developed within the Project Property at the time of final site plan approval by the County for the particular independent dwelling unit, assisted living unit or bed or grouping, phase or section of independent dwelling units, assisted living units or beds.

B. The Per Unit Contribution(s) paid in each year shall be adjusted annually beginning January 1, 2003 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 Six Hundred Twenty-five Dollars (\$625.00) per independent dwelling unit and Five Hundred Dollars (\$500.00) per assisted living unit and nursing bed. 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 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.

14. Age Restrictions. Prior to issuance of a building permit for the Project Property, there shall be submitted to the County restrictions to be recorded against title to the Project Property restricting permanent residency within the Project Property to residents over the age of eighteen (18) (or such higher age as determined by the owner of the Project Property in accordance with applicable law); provided, however, this age restriction may be amended from time to time or otherwise qualified to ensure compliance with applicable local, state and federal laws and regulations governing age restricted housing and the Federal Fair Housing Act, as amended from time to time.

15. Archaeological Study. A Phase I Archaeological Study for the Property site shall be submitted by the owner of the Project Property 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.

16. Small Whorled Pogonias. The owner of the Project Property shall cause surveys to be conducted of the Project Property for small whorled pogonias. The location of any small whorled pogonias located on the Project Property shall be shown on all subdivision or other development plans of the Project Property and the owner of the Project Property shall submit to the Director of Planning with any subdivision or development plan a conservation plan for such plants. The conservation plan shall provide for the conservation of such plants either through transplanting the plants to other suitable habitat within the Project Property or by preserving a 20 foot buffer around the plants and, if necessary planting additional overstory to shade the plants, all as determined by the owner of the Project Property. The conservation plan shall be approved by the Director of Planning before any land disturbing activity is allowed in the vicinity of the small whorled pogonias identified on the Project Property.

17. Drainage. All run-off from the impervious areas within the hatch-marked area of the Project Property shown on the Stormwater Management Master Plan section of the VUMH Master Plan shall be collected and treated within the area designated on said plan as “Proposed Stormwater/Irrigation Pond, Drainage Area = 156.9 Acres.”

18. Limitation On Building Permit Issuance. In the event the County’s Board of Supervisors enacts a County-wide water moratorium uniformly restricting issuance of all building permits for all property within the County based upon water resources (the “Moratorium”), Owner acknowledges that no building permit for any improvements shall be issued by the County for any development of any portion of the Project Property unless and until the County’s Board of Supervisors rescinds such Moratorium or such Moratorium is otherwise terminated. Notwithstanding the aforesaid, the owner of the Project Property may file with the County for approval all necessary site plans, subdivision plans, building plans, etc.; however, the approval of such plans by the County shall not result in the issuance of any building permits for any on the Project Property unless and until such Moratorium has been rescinded by the County’s Board of Supervisors or such Moratorium is otherwise terminated.

19. Noise. The Project Property shall comply with the County’s noise ordinance set forth in Section 15-20 of the County’s Code notwithstanding that, once rezoned, the Project Property will not be located in a “residential-zoned” area.

#### MISCELLANEOUS PROVISIONS

20. Void if Rezoning not Approved. In the event the requested rezoning is not approved by the County, these Proffers shall be null and void.

21. Severability. In the event that any clause, sentence, paragraph, section or subsection of these Proffers shall be adjudged by any court of competent jurisdiction to be invalid or unenforceable for any reason, including a declaration that it is contrary to the Constitution of

the Commonwealth of Virginia or of the United States, or if the application thereof to any owner of any portion of the Property or to any government agency is held invalid, such judgment or holding shall be confined in its operation to the clause, sentence, paragraph, section or subsection hereof, or the specific application thereof directly involved in the controversy in which the judgment or holding shall have been rendered or made, and shall not in any way affect the validity of any other clause, sentence, paragraph, section or provision hereof.

22. Conflicts. In the event there is a conflict between: (1) these Proffers, the WindsorMeade Way Plan, the VUMH Master Plan and the VUMH Guidelines; and (2) the New Town Proffers, the New Town Master Plan and the New Town Guidelines, then these Proffers, the WindsorMeade Way Plan, the VUMH Master Plan and the VUMH Guidelines shall govern.

In the event that there is any conflict between these Proffers and the Zoning Ordinance, the conflict shall be resolved by the County's Zoning Administrator subject to the appeal process to the Board of Supervisors and the Courts or as otherwise provided by law.

23. Conditions Applicable Only To The Project Property. Notwithstanding anything in these Proffers to the contrary, the failure to comply with one or more of the conditions herein in developing the Project Property shall not affect the rights of the Owner and its successors in interest to develop its other property in accordance with the other applicable provisions of the County Zoning Ordinances.

24. Successors and Assigns. These Proffers shall be binding upon and shall inure to the benefit of the parties hereto, and their respective heirs, successors and/or assigns. Any obligations of VUMH hereunder shall be binding upon and enforceable against any subsequent owner or owners of the Project Property or any portion thereof.

25. Owner Consent. Owner joins in these Proffers to evidence its consent thereto.

26. Signature by County. The County's Director of Planning has executed these Proffers solely for purpose of confirming the filings and submissions described herein and confirming approval by the Board of Supervisors of the rezoning of the Property with these Proffers by Resolution dated \_\_\_\_\_, 2001.

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

WITNESS the following signatures, thereunto duly authorized:

VIRGINIA UNITED METHODIST HOMES, INC.

By: Wm. J. Fink  
Its: President

STATE OF VIRGINIA  
CITY/COUNTY OF Harrison, to wit:

The foregoing instrument was acknowledged before me this 23rd day of  
August, 2001 by Wm. J. Fink as  
President of Virginia United Methodist Homes, Inc.

Judy M. Walker

NOTARY PUBLIC

My commission expires: 9-30-04

C.C. CASEY LIMITED COMPANY

By:

Its:

Robert T. Casey  
Secretary

STATE OF VIRGINIA

CITY/COUNTY OF James City, to wit:

The foregoing instrument was acknowledged before me this 23<sup>rd</sup> day of August, 2001 by Robert T. Casey as Secretary of C. C. Casey Limited Company.

Margaret C. Bennett  
NOTARY PUBLIC

My commission expires: Sept 30, 2004

THE COUNTY OF JAMES CITY, VIRGINIA

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF VIRGINIA  
CITY/COUNTY OF \_\_\_\_\_, to wit:

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2001 by \_\_\_\_\_ as \_\_\_\_\_ for the County of James City, Virginia.

\_\_\_\_\_  
NOTARY PUBLIC

My commission expires:

APPROVED AS TO FORM:

\_\_\_\_\_  
County Attorney

EXHIBIT A

PARCEL 1

All those certain lots, pieces or parcels of land located in the County of James City, Virginia, and being designated as "PARCEL A 4,159,372 S.F. 95.49 Ac. ±", "PARCEL A-1 454,992 S.F. 10.45 Ac. ±" and "PROPOSED RIGHT-OF-WAY 471,733 S.F. 10.83 Ac. ±" on that plat entitled "CASEY PROPERTY, NEW TOWN, PROPOSED WEST SIDE SUBDIVISION OWNER/DEVELOPER: C.C. CASEY LIMITED COMPANY, BERKELEY DISTRICT JAMES CITY COUNTY VIRGINIA", dated 2/2/98, last revised 1/19/01, prepared by AES Consulting Engineers, a copy of which plat is on file with the James City County Director of Planning.

PARCEL 2

All that certain lot, piece or parcel of land, lying and being in James City County, Virginia, shown and set forth as Parcel A on that certain plat of survey entitled, "BOUNDARY LINE AGREEMENT BETWEEN THE PROPERTIES OF ROBERT E. BERRY (PARCEL A) AND SHIRLEY H. CASEY (PARCEL B) AND JOE E. & DOROTHY R. WILSON (PARCEL C), JAMES CITY COUNTY, VIRGINIA", dated June 6, 1998 and made by Walters Land Surveying, Ltd., which plat of survey has been recorded prior hereto and is made a part hereof by reference. (PB 72, Pg 40).

EXHIBIT B

CASEY NEW TOWN WEST SIDE  
 REVISED RESIDENTIAL LAND USE AND DENSITY TABULATION  
 (INCLUDES BERRY PROPERTY – PARCEL 2 OF THE PROPERTY)

<i>SECTION</i>	<i>PERMITTED USE</i>	<i>SECTION AREA IN ACRES</i>	<i>DEVELOPABLE AREA</i>	<i>MAXIMUM DWELLING UNITS (D.U.)</i>	<i>DENSITY D.U./ACRE</i>
11	E, G, C, D, M (CE) (CG) (GI), I, J	19.1	19.1	82	4.3
12	A, B, C, D, I, J	59.6	50.5	174	2.9
VUMH	A, B, C, D, M, (I D C E), E, I, J	106	85.2	300	2.8
F.C.	A	71.5	56.9	94	1.3
<b>Subtotal</b>		<b>256.2</b>	<b>211.7</b>	<b>650</b>	

#6009756 v15 - VUMH Proffers

**KAUFMAN & CANOLES**  
— | A Professional Corporation | —  
**Attorneys and Counselors at Law**

Elizabeth L. White  
757 / 259-3810

1200 Old Colony Lane  
P.O. Drawer Q  
Williamsburg, VA 23187  
757 / 259-3800  
fax: 757 / 259-3838  
elwhite@kaufcan.com

August 28, 2001

**VIA FACSIMILE, E-MAIL & HAND DELIVERY**

Mr. John Horne  
Development Planner  
James City County Offices  
101-E Mounts Bay Road  
Williamsburg, Virginia 23185

Re: Case No. Z-2-01/MP-2-01  
(Virginia United Methodist Homes – WindsorMeade)  
Our File No. 55850

Dear Mr. Horne:

As we have discussed, among other factors, the unique financing and pre-sale requirements for a Continuing Care Retirement Community ("CCRC") such as WindsorMeade, make the timing of permits and construction absolutely critical to the feasibility of the project.

As a not-for-profit (but real estate tax-paying) corporation, Virginia United Methodist Homes Inc. ("VUMH") intends to finance the construction of WindsorMeade with tax-exempt bond financing. We have previously provided you with a letter from VUMH's investment banker, PaineWebber, regarding the prerequisites to financing, which include, but are not limited to, the 70% pre-sale requirement and the ability to draw permits immediately upon closing.

We have also provided you with an annotated time line which illustrates the chronological steps which must be achieved in order to satisfy lending and regulatory requirements. With respect to the numerous State and Federal regulatory requirements applicable to CCRC's, we have directed your attention to the registration and disclosure requirements for continuing care facilities as set for the in Section 38.2-4900 et. seq. of the Code of Virginia.

We can not emphasize enough the importance of timing for this project. Any significant delay which would put the project "in limbo" for an indeterminate amount of time has the potential of derailing the project. Until the project is 70% pre-sold, WindsorMeade must self-fund all operations. Uncertainty in the project completion coupled with indeterminate delays will hinder WindsorMeade's ability to meet such 70% pre-sale requirement particularly in light of the average age (78) of current contract purchasers. As a not-for-profit entity, WindsorMeade does not have the ability to continue to fund operations and marketing indefinitely.

Attachment 2

Chesapeake  
757 / 647-7177

Hampton  
757 / 314-3900

Newport News  
757 / 873-6300

Norfolk  
757 / 624-3000

Virginia Beach  
757 / 491-4000

In addition to the materials we have already provided to you and to staff, you have asked us to provide, in "bullet" form, a list of the distinguishing characteristics of a CCRC, together with an explanation of how such a project differs from a residential development from a timing, financing and marketing standpoint. To this end, we offer the following:

### Unique Characteristics of a CCRC

- ◆ The financing requirements for a CCRC and a Not for Profit Operator are strictly regulated by state and federal laws. There are numerous requirements on the operator. Just a few are 70% pre-sales, buildable land, approved financial feasibility, and the ability to begin construction immediately (i.e. building permits issued or a definite date).
- ◆ A CCRC must have 70% of units under life care contract before financing can be obtained and construction begins. Presales are the critical path of the project.
- ◆ A CCRC does not sell real estate. It sells a Residency Agreement. The Residency Agreement provides guarantees for living accommodations and certain other care benefits.
- ◆ A CCRC requires significant amounts of up front completed design work and final pricing. For presales to begin, accurate floor plans, site plans, building elevations color renderings and pricing are necessary. This work is site specific and area specific. In contrast, a residential developer normally requires only a site plan and sells when, as and if units are sold.
- ◆ A CCRC development time line is critical. Presales drive the project and reasonable opening date must be available in order to give the purchaser a moving date. The average age of the typical CCRC resident at move-in is 78 years old. Time is critical to their planning. An open ended restriction on the commencement of development would in effect prohibit presales because the opening date could not be projected, pricing could not be committed and the client could not plan.
- ◆ CCRC's are highly regulated entities and are monitored closely by state SCC which requires annual financial disclosure statements.
- ◆ A CCRC provides many health-related services to its residents on site, in contrast to a residential development where residents of the development would have to seek services in the outside community.
- ◆ A typical Residential Developer will build streets and utilities. Dwellings will not be built until lots are sold. The process may take several years for complete build out. In contrast, the CCRC will build 100% of capacity immediately.

August 28, 2001

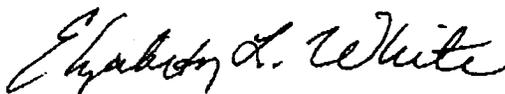
Page 3

- ◆ A CCRC is built basically under one (1) building permit, whereas a residential development would require separate permits for each lot when demand produced a sale.
- ◆ A CCRC provides permanent full time employment in addition to construction jobs, whereas a residential development provides construction jobs only. WindsorMeade will provide approximately 250 full time skilled positions. Recruiting workers for skilled positions is a time intensive process requiring significant advance planning.
- ◆ A CCRC provides community services not only for the residents, but to others. For instance, Cedarfield in Richmond provides employment for the deaf, English as Second Language classes for employees, and space for community programs.

During our meeting earlier this month, we shared with you another distinguishing feature of WindsorMeade, i.e., the fact that WindsorMeade will be located within "New Town" the plan of development for which associated densities and uses were approved with the rezoning of the land comprising "New Town" in 1997. In addition, pursuant to the proffers for New Town, WindsorMeade has obtained final approval from the Design Review Board for New Town, which approval involved the production of far more detailed plans and a more extensive plan approval process than typically required for a rezoning.

Should you desire any additional information relative to the above, please do not hesitate to call me.

Sincerely,



Elizabeth L. White

ELW/km  
Enclosure

cc: Dr. William Jeryl Fink (with enclosure)  
Mr. Marco J. Brancker (with enclosure)  
Mr. James B. Stewart (with enclosure)  
Mr. Larry Foster (with enclosure)  
Mr. Myrl L. Hairfield (with enclosure)  
Alvin P. Anderson, Esq. (with enclosure)  
Paul W. Gerhardt, Esq. (with enclosure)

#6018443 v1 - VUMH/CCRC/Residential/Devlp/Ltr

## **Special Use Permit 02-01. JCSA- Route 5 Water Main Installation**

Staff Report for the September 5, 2001, Planning Commission Public Hearing

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*This staff report is prepared by the James City County Planning Division to provide information to the Planning Commission and Board of Supervisors to assist them in making a recommendation on this application. It may be useful to members of the general public interested in this application.*

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### **PUBLIC HEARINGS**

County Government Complex

Planning Commission: March 5, 2001, 7:00 p.m. Building C Board Room (deferred until 4/02/01)  
April 2, 2001, 7:00 p.m. Building C Board Room (indefinite deferral)  
September 5, 2001, 7:00 p.m. Building C Board Room

Board of Supervisors: (Undetermined)

### **SUMMARY FACTS**

Applicant: Mr. Keith Letchworth, on behalf of James City Service Authority

Land Owner: James City Service Authority and Potomac Conference Corporation

Proposed Use: Installation of a 12" water main along Route 5 right-of-way from Seventh Day Adventist Church to the entrance of Saint George's Hundred. A pressure release valve will be installed at the entrance to St. George's Hundred. The line will then continue down Route 5 right-of-way and connect into an existing pressure release valve at the edge of Saint George's Hundred.

Location: Beginning along Seventh Day Adventist Church's West property line and extending to Route 5. The line will then run within VDOT right-of-way to the end of St. George's Hundred's property line along Route 5.

Tax Map/Parcel: (46-2) VDOT right-of-way and (46-1)(1-2B) Seventh Day Adventist Church

Primary Service Area: Inside

Existing Zoning: R-1, Limited Residential and R-8, Rural Residential;

Comprehensive Plan: Low-Density Residential

Staff Contact: Ben Thompson - Phone: 253-6685

### **STAFF RECOMMENDATION**

Since this case was submitted, there have been several changes to the application. Some of these changes have occurred since the public hearing advertisement. To ensure proper review time by staff and to allow adequate public notification of the new application, staff recommends that this item be deferred until the October 1, 2001 Planning Commission meeting. The special use permit public hearing will be re-advertised at that time to reflect the changes in the application.

## PLANNING DIRECTOR'S REPORT

SEPTEMBER, 2001

This report summarizes the status of selected Planning Division activities during the last 30 days.

1. Master Greenways Plan. The Greenways Advisory Committee (including Planning Commissioner Peggy Wildman) is currently engaged in an overall education process and learning more about potential greenways opportunities. The next meeting will be held on September 4, 2001. A Community Focus Group meeting is also scheduled for September 4<sup>th</sup>. The purpose of this meeting is to provide the general public with an opportunity to participate, provide input, and help mold the draft Greenways Master Plan
2. Purchase of Development Rights. A meeting with staff and the James City County Board of Agriculture was held on August 17 at the EOC building to discuss the PDR program. Staff will compile comments from this and future discussion for incorporation into a final draft Purchase of Development Rights program.
3. Architectural Survey. The consultant is in the process of preparing the final report and drafting recommendations for staff review. A public meeting will be scheduled to present the survey findings once staff has reviewed the draft report.
4. Casey New Town. There was no meeting held by the DRB for the month of August. A rezoning application for development of Sections 2 & 4 across from the Courthouse was submitted to the Planning Department and will be presented to the Commission at its September 5, 2001, meeting.
5. Citizens Survey. Staff selected Virginia Tech to conduct the citizen survey and is in the process of scheduling a kickoff meeting and finalizing the communications plan.
6. U.S. Census. The Census Bureau continues to release data. An intern has been hired for the summer to incorporate 2000 Census Data into the Comprehensive Plan Technical Manual. Information has been posted on the demographics section of the Development Management page of the James City County website at: [www.james-city.va.us](http://www.james-city.va.us).
7. Colonial Parkway Connections. This joint project by the National Park Service, VDOT and the County was completed in August. It includes the construction of multi-use paths connecting Treasure Island Road and Neck O'Land Road to the Colonial Parkway. The project was funded by a federal and state grant which was obtained by the Planning Division.
8. Rt. 199/Jamestown Road Intersection. VDOT has prepared engineering drawings of the locally preferred alternative endorsed by the Board of Supervisors and the Williamsburg City Council. Staff has sent comments to VDOT, and VDOT is expected to hold a public input meeting in the future.
9. Cash Proffers. The Board of Supervisors held a work session on cash proffers on June 27, 2001, and requested that staff draft the appropriate documents that would allow them to adopt a cash proffer policy. A date for Board consideration has not been scheduled.
10. Bottoms Bridge Weigh Station Relocation. The Virginia Department of Transportation has

completed Phase One of a study to analyze the relocation of the vehicle weighing station located on Interstate 64 at Bottoms Bridge. In the first phase of this project, potential sites along the corridor have been identified by a study commissioned by VDOT. One such site has been identified in James City County. The site is located in the northern portion of the County, just west of Interchange 227 between Bames Road and Ropers Church Road. County staff has reviewed the Phase I portion of this project and forwarded comments to VDOT in August.

11. Other Board Action. On August 14<sup>th</sup> the Board of Supervisors approved Case No. SUP-16-01 JCSA: Water Storage Facility and deferred Case Nos. Z-4-00/MP-1-01 Colonial Heritage of Williamsburg and Case No. AFD-6-86 Cranston's Pond Agricultural and Forestal District - Ware Withdrawal.
12. Upcoming Cases. New cases that are tentatively scheduled for the October 1, 2001, Planning Commission meeting.

CASE NO. Z-4-01/SUP-17-01. PRESTONWOOD AT WILLIAMSBURG CROSSING. Mr. James Bradford has applied on behalf of University Square Associates to rezone approximately 11 acres behind the existing retail stores at Williamsburg Crossing Shopping Center to a mixed use designation and construct 170 townhouse units.

CASE NO. Z-5-01. FORD'S COLONY. Mr. Vernon Geddy, III has applied on behalf of Realtec, Incorporated to amend proffers associated with the 1994 Ford's Colony rezoning. The amendment request would delete a restated proffer prohibiting access from Ford's Colony onto Lexington Drive or Country Club Drive.

CASE NO. SUP-18-01. WALTRIP CELLULAR TOWER. Ms. Mary Waltrip has applied for a special use permit to place a 165 feet monopole at 11 Marclay Road beside the Williamsburg Jamestown Airport. The proposed tower would have the structural capacity to hold several antennas for several cellular/ or other service providers. The site is zoned R-8, Rural Residential and shown as the Williamsburg Jamestown Airport on the Comprehensive Plan.

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O. Marvin Sowers, Jr.