

# A G E N D A

## JAMES CITY COUNTY BOARD OF SUPERVISORS

County Government Center Board Room

February 10, 2004

7:00 P.M.

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**A. ROLL CALL**

**B. MOMENT OF SILENCE**

**C. PLEDGE OF ALLEGIANCE** – Chris Ford, a fifth-grade student at D. J. Montague Elementary School

**D. PUBLIC COMMENT**

**E. CONSENT CALENDAR**

1. Minutes
  - a. January 24, 2004, Retreat
  - b. January 27, 2004, Work Session
  - c. January 27, 2004, Regular Meeting
2. Lower Skiffe's Creek Watershed Study Grant Award and Builders for the Bay Grant Award
3. James City County Road Construction Revenue Sharing Program - FY 05

**F. PUBLIC HEARINGS**

1. Case Nos. Z-8-03/MP-9-03. Norge Neighborhood
2. Case Nos. Z-13-03/MP-12-03/SUP-29-03. Michelle Point
3. Case No. SUP-23-03. David A. Nice Builders Office Expansion
4. Case No. AFD-12-86. Gospel Spreading Church Agricultural and Forestal District - 2004 Gilley Addition
5. Case Nos. SUP-22-03/HW-2-03. Busch Gardens Oktoberfest Expansion
6. Case Nos. SUP-25-03/SUP-26-03/SUP-27-03. James City County Communications Towers

**G. PUBLIC COMMENT**

**H. REPORTS OF THE COUNTY ADMINISTRATOR**

**I. BOARD REQUESTS AND DIRECTIVES**

**J. CLOSED SESSION**

- a. Purchase of Development Rights (PDR) Committee
- b. Water Conservation Committee

**K. ADJOURNMENT**

**AT A RETREAT OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY,  
VIRGINIA, HELD ON THE 24TH DAY OF JANUARY, 2004, AT 9:00 A.M. AT THE JAMESTOWN  
4-H CENTER, 3751 4-H CLUB 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. RETREAT**

1. Employee Compensation

Ms. Carol M. Luckam, Human Resource Manager, provided the Board with an overview of the potential FY 05 employee compensation challenges including the increased cost to localities for the Virginia Retirement System and the cost of Health Insurance, conveyed employee concerns regarding salaries, and provided an overview of the pay for performance options for employee compensation.

The Board and staff discussed the concern that the average percentage performance increase does not correspond to the percent increase that most employees receive and the possibility of modifying the salary compensation program so that it is easier for constituents to understand how much employees are receiving. One suggestion was that every employee would get the same base pay increase and employees who met criteria, such as for sustained superior performance, would receive a one-time bonus.

The Board and staff discussed sharing the increase in the cost of health insurance premiums with employees.

The Board concurred to maintain the current compensation program for FY 05, but wanted to study potential changes for FY 06, and expressed a desire to have the average of raises awarded in FY 05 in addition to the percent of payroll budgeted for raises.

2. Affordable Housing for First-Time Homebuyers

Mr. Anthony Conyers, Jr., Community Services Manager, and Mr. Richard B. Hanson, Housing and Community Development Administrator, provided the Board with an overview of the shortage of affordable housing in the County and proposed the Board consider a Housing Trust Fund, a flexible mechanism used by states and localities to provide critical funding to support the production or preservation of affordable housing to low- and moderate-income households. Although the County has the authority to implement most components of a Housing Trust Fund, it would need General Assembly approval to implement such a program in its entirety.

The Board directed the staff to proceed with the actions that can be taken now to establish a Housing Trust Fund, and seek General Assembly approval for the remaining elements of the program in 2005.

3. Animal Control Facility

Mr. William C. Porter, Jr., Acting Manager of Development Management, provided the Board with an overview of the progress and present cost information for combining the Heritage Humane Society (HHS) animal shelter with the County Animal Control Facility and requested guidance on a preferred course of action and a level of funding to be considered in the five-year Capital Improvements Program.

The Board requested a Work Session on the issue with representatives of the Heritage Humane Society on February 24, 2004.

4. Stormwater Management

Mr. John T. P. Horne, General Services Manager, provided an overview of the issues related to stormwater management programming and funding for the utility in the County and requested guidance from the Board on the programming and funding methods for staff to pursue.

The Board concurred that it is interested in reevaluating the possibility of creating a stormwater utility and would wait to determine when it can be funded.

5. Establishment of a General Services Department

Mr. Wanner provided the Board with an overview of the County General Services Office that was established in 1983 and disbanded in 1985 and recommended the Board approve the establishment of the Department of General Services in its FY 05 Budget.

The Board concurred with Mr. Wanner and recommended the creation of a General Services Department, contingent upon funds being available.

6. Jamestown 2007 – Financial Planning

Mr. Wanner provided the Board with an overview of the 2007 Escrow Fund established in the late 1990s to enable the County to participate in the Jamestown 2007 event and have a legacy for its citizens after 2007.

Mr. Wanner recommended the Board approve a spending plan for the Fund and outlined a plan for the Board's consideration.

The Board discussed several issues about the proposed community building in New Town, including purpose of the building and the appropriateness of location.

7. Budget Guidance – FY 2005-2006

Ms. Suzanne R. Mellen, Director of Budget and Accounting, provided the Board with an overview of the projected County Operating Budgets and Capital Budgets including adjusted revenue estimate and expenditure growth, and requested Board guidance to assist the County Administrator in the development of the biennial budget.

The Board expressed a willingness to evaluate increases in certain fees for FY 05.

The Board directed staff to prepare a budget with an \$0.85 Real Estate Tax Rate, but to advertise an \$0.86 Real Estate Tax Rate.

The Board expressed hope that funding for a consultant study, to begin the implementation of a stormwater utility, could be included in the FY 05 Budget.

**C. ADJOURNMENT**

At 12:20 p.m., Mr. Goodson adjourned the Board until 4 p.m. on January 27, 2004.

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Sanford B. Wanner  
Clerk to the Board

012404bsretreat.min

**AGENDA ITEM NO. E-1b**

**AT A WORK SESSION OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE 27TH DAY OF JANUARY, 2004, AT 4:00 PM. 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. BOARD DISCUSSION**

1. Hurricane Isabel

Mr. Wanner gave a brief overview of the after-action reports dealing with Hurricane Isabel, and introduced Richard M. Miller, Fire Chief and Emergency Services Coordinator.

Chief Miller provided a review of County's response to Hurricane Isabel including the County's successes and areas of potential enhancement in the four phases of Emergency Management activities of mitigation, preparedness, response, and recovery.

Chief Miller stated that the James City Service Authority was the only utility in the Hampton Roads area that did not lose its public water supply or sewage collection system, although there were difficulties in the connections with the Hampton Roads Sanitation District and grinder pumps without power.

Mr. Brown stated that there was an information disconnect between localities and the State Emergency Operations Center (EOC) responding and tracking those requests, and inquired if a liaison could be staffed at or near the State EOC to keep information flowing smoothly.

Chief Miller stated that the State identified communication as an area that needs to be improved and that due to the limitation of facility space, a liaison at the State EOC would not be feasible and also stated that a tracking system is being developed to track requests and the information flow between the levels.

Chief Miller stated that having liaisons with utilities has been explored and an option of having a regional liaison at the State and utility sites has been suggested.

Mr. Bradshaw stated that the Salvation Army was the best equipped non-County entity and hoped the County would work with the Salvation Army in the future.

Mr. Bradshaw stated that there are other mitigation steps the County could take to assist citizens, such as annual notifications to residents in flood-prone areas to remind them to check insurance for adequate

coverage, and notification to those applying for a building permit when the parcel is located in a flood-prone area.

Mr. McGlennon recommended that information be posted in prominent places for citizens without power or cable access so they can be aware of the services available and any other important issues.

Mr. Harrison inquired if all the connected neighborhoods have prepared an emergency plan.

Chief Miller stated that not all the connected neighborhoods have prepared a plan.

Mr. Goodson stated that radio station WMBG was beneficial to citizens in being briefed on information and requested that the County continue to work with them.

Mr. Goodson inquired if the 800MHz radio system would have been impacted by the hurricane.

Chief Miller stated that the communication system would not have been interrupted by the hurricane.

Chief Miller stated that in looking at a local radio station to partner with, in addition to WMBG, the County looked at the College of William & Mary's radio station. Because the students may not be around to run the radio station in an emergency, the College recommended its radio station be used as a backup plan only.

### **C. 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 to consider a personnel matter involving the six-month performance evaluation of the County Administrator.

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

Mr. Goodson convened the Board into Closed Session at 4:50 p.m.

Mr. Goodson reconvened the Board into Open Session at 6:05 p.m.

Mr. Harrison 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 2.2-3711.1 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 and Section 2.2-3711(A)(1) to consider a personnel matter involving the six-month performance review of the County Administrator.

**D. RECESS**

At 6:07 p.m. the Board took a dinner break until 7 p.m.

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Sanford B. Wanner  
Clerk to the Board

**AT A REGULAR MEETING OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE 27TH 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**

Mr. Goodson led the Board and citizens in the Pledge of Allegiance.

**D. HIGHWAY MATTERS**

Mr. Jim Brewer, Virginia Department of Transportation, was available to answer any Board questions.

Mr. Harrison requested an update on the snow removal on secondary roads, specifically in subdivisions.

Mr. Brewer stated that snow removal crews are now in subdivisions.

**E. PUBLIC COMMENT**

1. Mr. Ed Oyer, 139 Indian Circle, commented on recent Letters to the Editor regarding the Board and School Board, stated that citizens want to be aware of what is being planned by the local government, and stated concern that a recent article suggested that revenues may fall short yet the County is moving forward with a Request for Proposals for a Sports and holding discussions on reducing the tax rates.

2. Mr. John T. P. Horne, Vice President of Housing Partnerships, thanked the Board for the increased funding last year, provided a brief overview of the activities that Housing Partnerships provide such as the preservation of affordable housing in the County, and requested the Board fund the Housing Partnership at the existing level in FY 05.

**F. CONSENT CALENDAR**

Mr. Harrison made a motion to adopt the items on the Consent Calendar including the amended minutes of January 13, 2004.

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

1. Minutes – January 13, 2003, Regular Meeting
2. Dedication of a Street Known as LaGrange Parkway

**RESOLUTION**

**DEDICATION OF A STREET KNOWN AS LAGRANGE PARKWAY**

WHEREAS, the street described on the attached Additions Form SR-5(A), fully incorporated herein by reference, is shown on plats recorded in the Clerk’s Office of the Circuit Court of James City County; and

WHEREAS, the Resident Engineer for the Virginia Department of Transportation advised the Board that the street meets the requirements established by the Subdivision Street Requirements of the Virginia Department of Transportation; and

WHEREAS, the County and the Virginia Department of Transportation entered into an agreement on July 1, 1994, for comprehensive stormwater detention, which applies to this request for addition.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby requests the Virginia Department of Transportation add the street described on the attached Additions Form SR-5(A) to the secondary system of State highways, pursuant to § 33.1-229 of the Code of Virginia and the Rural Addition Policy of the Commonwealth Transportation Board of the Virginia Department of Transportation as a no cost rural addition.

BE IT FURTHER RESOLVED that the Board guarantees a clear and unrestricted right-of-way, as described, and any necessary easements for cuts, fills, and drainage.

BE IT FURTHER RESOLVED that a certified copy of this Resolution be forwarded to the Resident Engineer for the Virginia Department of Transportation.

3. Office of Emergency Medical Services (OEMS) Grant Award

**RESOLUTION**

**OFFICE OF EMERGENCY MEDICAL SERVICES (OEMS) GRANT AWARD**

WHEREAS, the Virginia Office of Emergency Medical Services (OEMS) has approved a grant in the amount of \$30,326 with a State share of \$15,163 for the purchase a Laerdal SimMan simulator; and

WHEREAS, the grant requires a cash local match of \$15,163, which is available in the Operating Budget; and

WHEREAS, the grant will be administered by OEMS with a grant period of January 1, 2004, through December 31, 2004, thus allowing any unexpended funds as of June 30, 2004, to be carried forward to James City County’s next fiscal year.

NOW, THEREFORE ,BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the following appropriation to the Special Project/Grants Fund:

Revenues:

State Office of Emergency Medical Services	\$15,163
General Fund	<u>\$15,163</u>
Total	<u>\$30,326</u>

Expenditure:

Laerdal SimMan Simulator Grant	<u>\$30,326</u>
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4. Design Services Contract 9-1-1 Dispatch Center

**RESOLUTION**

**DESIGN SERVICES CONTRACT 9-1-1 DISPATCH CENTER**

WHEREAS, the 800-MHz trunked radio project will require the construction of a new 9-1-1 Dispatch Center to house the equipment and meet all trunked radio program requirements; and

WHEREAS, York County conducted a Request for Proposal (RFP) process and awarded a contract to Hening-Vest-Covey-Chenault Architects as part of its trunked radio system project; and

WHEREAS, York County included in its contract a provision for the firm to offer its services to James City County for design services and such provision is in compliance with the Virginia Procurement Act and James City County Purchasing Policy; and

WHEREAS, James City County staff have negotiated a design services contract with Hening-Vest-Covey-Chenault Architects for design services in the amount of \$192,800 and funds for such design services are available in the trunked radio Capital Improvement Project.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the County Administrator to enter into a contract with Hening-Vest-Covey-Chenault Architects in the amount of \$192,800 for design services for the 9-1-1 Dispatch Center.

5. Installation of “Watch for Children” Sign – St. George’s Hundred

**RESOLUTION**

**INSTALLATION OF “WATCH FOR CHILDREN” SIGN - ST. GEORGE’S HUNDRED**

WHEREAS, Section 33.1-210.2 of the Code of Virginia provides for the installation and maintenance of signs by the Virginia Department of Transportation, alerting motorists that children may be at play nearby, upon request by a local governing body; and

WHEREAS, Section 33.1-210.2 further requires that the funding for such signs be from the secondary road system maintenance allocation for the County; and

WHEREAS, residents of the St. George’s Hundred community have requested that a “Watch for Children” sign be installed on St. George’s Boulevard as illustrated on the attached drawing titled “St. George’s Hundred ‘Watch for Children Sign’.”

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby request that the Virginia Department of Transportation install and maintain one “Watch for Children” sign as requested with funds from the County’s secondary road system maintenance allocation.

**G. PUBLIC HEARING**

1. FY 2004-2009 Six-Year Secondary Road Plan

Mr. William Porter, Acting Manager of Development Management, stated that the Virginia Department of Transportation and County staff have been in discussion regarding several changes that need to be incorporated into the Six-Year Secondary Road Plan and recommended the Board defer action on the Plan until the changes have been incorporated.

Mr. Goodson opened the Public Hearing.

1. Mr. Ed Oyer, 139 Indian Circle, requested a list of the projects currently included in the Six-Year Secondary Road Plan.

Mr. Goodson deferred the Public Hearing until the changes have been incorporated into the Six-Year Secondary Road Plan as identified by staff and VDOT.

**H. PUBLIC COMMENT**

1. Ms. Mildred Walker, 897 Tyler Drive, stated that she would be attending the Board meetings regularly and commented that the cost of housing in the County is often too high for prospective homeowners.

**I. REPORTS OF THE COUNTY ADMINISTRATOR**

Mr. Wanner stated that a copy of a resolution in support of Senate Bill 123, Transportation Impact Fees for Chartered Counties, has been provided for the Board's consideration and requested the Board adopt the resolution.

Mr. Morton stated that the other two Chartered Counties have adopted a similar resolution.

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**

**SENATE BILL 123 - TRANSPORTATION IMPACT FEES FOR CHARTERED COUNTIES**

WHEREAS, the costs of new residential development often have a negative impact on the County's transportation infrastructure; and

WHEREAS, Senate Bill 123, patroned by Senator Watkins, offers certain chartered localities, including James City County, the ability to enact reasonable provisions for the assessment of transportation impact fees under certain terms and conditions as set forth therein.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby urges the General Assembly to pass Senate Bill 123.

**J. BOARD REQUESTS AND DIRECTIVES**

Mr. Harrison inquired if the task force appointed to review affordable housing in the County will continue or was it disbanded at the conclusion of the Comprehensive Plan update.

Mr. Wanner stated that it was disbanded at the conclusion of the Comprehensive Plan update.

Mr. Morton stated that a Public Hearing will be held at the Courthouse on March 1, 2004, at 8:30 a.m. in the Circuit Court regarding the establishment of a Sanitary District for the Riverview Plantation area.

**K. ADJOURNMENT**

Mr. McGlennon made a motion to adjourn until 7 p.m. on February 10, 2004.

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

Mr. Goodson adjourned the Board at 7:20 p.m.

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Sanford B. Wanner  
Clerk to the Board

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MEMORANDUM

DATE: February 10, 2004  
TO: The Board of Supervisors  
FROM: Michael Woolson, Watershed Planner  
SUBJECT: Lower Skiffe's Creek Watershed Study Grant Award and Builders for the Bay Grant Award

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The Department of Conservation and Recreation (DCR) has awarded the Builders for the Bay - James City County Roundtable a grant of \$5,000. The Builders for the Bay program encourages the voluntary adoption of up to 22 better site design principles that reduce environmental effects of residential and commercial development. A roundtable process is underway to reach consensus on appropriate measures to encourage use of better site design.

The DCR has also awarded a contract for the Lower Skiffe's Creek Watershed Management Plan project in the amount of \$19,300. This study will encompass the lower four square miles of the watershed, which is tidal and is experiencing growth pressures. This project supports implementation of the management measures for instream and riparian habitat, watershed protection, and existing development.

The grants require a local match of \$24,300, which is available in the Capital Improvements Budget.

Staff recommends adoption of the attached resolution.

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Michael Woolson

CONCUR:

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John T. P. Horne

MW/adw  
lowskif.mem

Attachment

**RESOLUTION**

**LOWER SKIFFE'S CREEK WATERSHED STUDY GRANT AWARD AND**

**BUILDERS FOR THE BAY GRANT AWARD**

WHEREAS, the Department of Conservation and Recreation (DCR) has approved two grants totaling \$24,300 for the Builders for the Bay - James City County and the Lower Skiffe's Creek Watershed Management Plan project; and

WHEREAS, the grant requires a local match of \$24,300, which is available in the Capital Improvement Program (CIP) Operating Budget; and

WHEREAS, the grant will be administered by DCR with a grant period of February 10, 2004, through January 31, 2005, thus allowing any unexpended funds as of June 30, 2004, to be carried forward to James City County's next fiscal year.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the following appropriation to the Special Project/Grants Fund:

Revenues:

From the Capital Projects Fund	\$24,300
Builders for the Bay Grant Award	5,000
Lower Skiffe's Creek Watershed Study Grant Award	<u>19,300</u>
Total	<u>\$48,600</u>

Expenditures:

Lower Skiffe's Creek Watershed Management Plan	\$38,600
Builders for the Bay	<u>10,000</u>
Total	<u>\$48,600</u>

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Bruce C. Goodson  
Chairman, Board of Supervisors

ATTEST:

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Sanford B. Wanner  
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 10th day of February, 2004.

lowskif.res

MEMORANDUM

DATE: February 10, 2004  
TO: The Board of Supervisors  
FROM: John T. P. Horne, Acting General Services Manager  
SUBJECT: James City County Road Construction Revenue Sharing Program - FY 05

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Each year the Virginia Department of Transportation (VDOT) invites localities to participate in the Revenue Sharing Program. This Program will match local dollars on a one-to-one basis not to exceed \$500,000. In the current fiscal year, James City County participated in the amount of \$500,000, which was allocated to the Public-Private Transportation Act (PPTA) projects on Route 199 and the project to rebuild the Monticello Avenue/Ironbound Road intersection. For FY 2005, staff recommends that the County participate up to \$500,000. The funds would be allocated as follows:

- \$250,000 - PPTA, Route 199;
- \$ 75,000 - Landscaping/Beautification, PPTA Segment 1; and
- \$175,000 - Underground Utilities, Monticello/Ironbound Intersection and Ironbound Road.

VDOT requires written notification of the County's intent to participate by March 1, 2004. County funding is to be included in the FY 2005 Budget, to be approved later by the Board. If that budget is approved at a lower amount, we can notify VDOT prior to its final allocation process.

Staff recommends approval of the attached resolution.

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John T. P. Horne

JTPH/gs  
revshare05.mem

Attachment

**RESOLUTION**

**JAMES CITY COUNTY ROAD CONSTRUCTION REVENUE SHARING PROGRAM - FY 05**

WHEREAS, the James City County Board of Supervisors has decided to participate in the Virginia Department of Transportation (VDOT) Revenue Sharing Program for FY 2005-06; and

WHEREAS, VDOT requires written notification of the County's intent to participate by March 1, 2004.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of James City County, Virginia, that the Chairman is authorized to notify VDOT of the County's intention to participate in the Revenue Sharing Program for FY 2005-06, with an amount not to exceed \$500,000.

\_\_\_\_\_  
Bruce C. Goodson  
Chairman, Board of Supervisors

ATTEST:

\_\_\_\_\_  
Sanford B. Wanner  
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 10th day of February, 2004.

revshare05.res

**Master Plan-9-03/Rezoning-8-03. Norge Neighborhood Site  
Staff Report for February 10, 2004, Board of Supervisors 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: November 3, 2003, 7:00 p.m. (Deferred)  
December 8, 2003, 5:30 p.m. (Deferred)  
January 12, 2004, 5:30 p.m. (Approved)  
Board of Supervisors: February 10, 2004, 7:00 p.m., Building F Board Room

**SUMMARY FACTS**

Applicant: V. Marc Bennett on behalf of Pete Henderson of Henderson, Inc.

Land Owner: Evelyn H. Anderson (co-executor)  
George C., Jr. and Sharyn L. Ford

Proposed Use: To rezone approximately 22.1 acres to allow for the construction of 80 multi-family units and two single-family houses having a gross density of 4.0 dwelling units and with office/commercial space along Richmond Road with up to 32,670 square feet on 1.5 acres.

Location: 7145 Richmond Road; 7147 Richmond Road; 75 Nina Lane; and 126 Rondane Place

Tax Maps and Parcel Nos.: (23-2) (1-50); (23-2) (1-49);(23-2) (1-50C); and (23-2)(1-51)

Primary Service Area: Inside

Parcel Sizes: 15.1 acres; 1.0 acre; 32 acres; and a portion of 5.8 acres

Existing Zoning: A-1; A-1; A-1; and R-2 and A-1

Comprehensive Plan: Low-Density Residential

Surrounding Zoning: North and West: Kristiansand subdivision, R-2  
North and East: Kristiansand Office, LB; Norge Center, B-1  
East: Hill Pleasant Farm, A-1  
South: Colonial Heritage development, MU  
Southeast: Williamsburg Dodge, auto dealership, B-1

Staff Contact: Sarah Weisiger - Phone 253-6685

## **STAFF RECOMMENDATION**

Staff finds the proposal with proffered conditions meets the expectations outlined in the Comprehensive Plan for residential development and limited commercial development within areas designated Low-Density Residential on the Land Use Map. On January 12, 2004, the Planning Commission recommended approval of the rezoning and acceptance of the voluntary proffers by a vote of 6-1. Staff recommends approval of this rezoning application with the proffered conditions.

### **Description of Project**

Mr. V. Marc Bennett, on behalf of Pete Henderson of Henderson, Inc., has submitted an application to rezone approximately 22.1 acres located on Richmond Road (Route 60) on the south side of Norge, from A-1, General Agricultural, and R-2, General Residential, to MU, Mixed Use with proffers.

The applicant proposes to use the assembled parcels to form a Mixed Use zoning district which would include a condominium community with 80 multi-family units, two single-family houses, and a maximum of 1.5 acres of office/commercial area allowing 32,670 square feet of floor space and a maximum height of 45 feet. The proposed development would include the removal of two single-family houses, while two existing single-family houses, off-site, would remain and would be surrounded by the proposed development.

The applicant does not currently have an identified commercial/office use for the site. Proposed uses for the site are those in the B-1, General Business zoning district with the exception of hotels, motels, fast food restaurants, retail food stores, and several other uses.

The applicant proposes to have one or possibly two vehicular entrances from Richmond Road to access the multi-family units and the commercial/office parcel, and a shared private drive from Nina Lane to access the existing and proposed single-family homes. A pedestrian/emergency access connection would extend between the multi-family units and the single-family units off of Nina Lane. Other pedestrian connections would connect the various portions of the development to Nina Lane.

### **Existing Zoning and Development**

Along Richmond Road, the parcels at the front of the proposed area of development currently include a house fronting Richmond Road and a house off of Nina Lane; the land is zoned A-1, General Agricultural. The largest parcel to the west is flat and open with steep forested ravines around its edges; it is zoned A-1. The rear parcel has a house that is accessed from Kristiansand, but would not be included in the development. The part of the rear parcel to be rezoned and purchased for the development is a steep wooded section along a stream; it is zoned R-2, General Residential.

### **Proffers**

The Mixed Use zoning district allows for up to 18 dwelling units per acre and permits 84 different commercial/office/light industrial uses. The MU District also requires only 10 percent of developable area to be reserved for open space. Staff evaluates the proffers and master plan in a rezoning case using the expectations for development in the Comprehensive Plan. As discussed in a later section of this report, this land is designated Low-Density Residential in the Comprehensive Plan, which recommends a maximum of four dwelling units per acre, large amounts of open space, and very limited commercial development. The applicant has submitted voluntary proffers to offset the impacts of this development and to limit uses within the proposed zoning district. These proffers will be discussed throughout this report.

## **Surrounding Zoning and Development**

Kristiansand, located north of the proposed development, includes approximately 200 single-family houses and is zoned R-2. Residential density in the area of Kristiansand adjacent to the proposed development is 2.7 dwelling units per acre. The newer area of Kristiansand to the west has larger lots with a density of approximately 1.7 dwelling units per acre. To the south, an adjacent subdivision in Colonial Heritage will have a density of 2.7 units per acre. To the east, across Richmond Road and across the CSX railroad tracks, there is a large farm which is part of the Hill Pleasant Farm Agricultural and Forestal District; it is zoned A -1, General Agricultural.

Non-residential development is located to the north and south along Richmond Road and Nina Lane. The Kristiansand Office Park across Nina Lane from the development has eight offices; it is zoned LB, Limited Business. A small strip shopping center on the corner of Richmond Road faces Nina Lane. Adjacent to the proposed commercial/office parcel on Richmond Road, is the Norge Center which contains several offices. To the south of the site is a recently constructed car dealership. These nearby parcels on Richmond Road are zoned B-1, General Business.

Staff finds that most of the potential commercial uses for the Norge Neighborhood site would be consistent with the surrounding office, residential, and small retail development. Staff also finds that although the proposed residential area has a higher gross density at four dwelling units per acre than that of surrounding residential development, the higher density would be sufficiently offset by the plan's provision of approximately 40 percent net developable open space and several other design features discussed throughout this report.

## **Utilities**

James City Service Authority (JCSA) would provide water and sewer service to the development. The owner has proffered that water conservation standards shall be submitted to and approved by JCSA prior to final site plan or subdivision approval. The owner has proffered a cash contribution for alternative water sources or other projects related to improvements to the JCSA water system.

The owner has also proffered a per dwelling unit cash contribution for sewer system improvements unless the owner upgrades, at its expense an existing sewer lift station. It is not clear that the capacity of the existing sewer facility, JCSA Lift Station 6-5, will be able to handle both Norge Neighborhood and adjacent parts of Colonial Heritage. A proposed JCSA Lift Station 9-9, which could possibly serve this development, has been designed, but not constructed. Proffer No. 4 states that a building permit for the development cannot be issued unless construction of Lift Station 9-9 has begun or an analysis of Lift Station 6-5 demonstrates that capacity is sufficient. Staff believes the proffer on sewer service is adequate and that development will not be able to occur prior to capacity being available.

## **Public Facilities**

Per the "Adequate Public School Facilities Test" policy adopted by the Board of Supervisors, all special use permit or rezoning applications should pass the test for adequate public school facilities. A proposed rezoning will pass the test if the schools which would serve the future development currently have adequate design capacity to accommodate the existing student population plus the additional school children generated by the development. For purposes of this policy, the schools shall be deemed adequate if the projected student population does not exceed 100 percent of the design capacity at the time of the application's review.

If any of the applicable public schools which would serve the future residential development exceed 100 percent of the design capacity, then the application will not pass the test for adequate school facilities. However, if the affected public schools currently exceed design capacity, but the school's student population will be brought under design capacity within three years of the time of the application's review through either physical

improvements programmed in the Capital Improvements Plan (CIP), and/or through a redistricting plan that was approved by the School Board prior to the application, then the application will be deemed to have passed the test.

Based on information provided by the applicant in its community impact study for the project, the impact to the schools of construction of the proposed units will generate students at the following schools as shown below:

<u>School</u>	<u>Current 2003 Enrollment</u>	<u>Design Capacity</u>	<u>Addition of Students from Norge Neighborhood Site</u>
Norge Elementary	639	760	11
Toano Middle School	842	775	5
Lafayette High	1,428	1,250	7

Staff finds the estimate of the number of students to be in keeping with the type of condominium units proposed in the materials submitted with the rezoning application. In the fiscal impact study section, construction investment for the condos is projected to be \$187,500 per unit. The figure of twenty-three students is derived from a County average per unit for mid- to upper-priced condos. It would appear the number is acceptable, given the type and proposed selling price of the units.

The applicant maintains and staff concurs that there is capacity for the projected student population at the elementary level, but the high school and middle school capacity is exceeded. In the Community Impact Study, the applicant points out that the James City County Board of Supervisors has voted to purchase land for a third high school. However, no physical improvements have been programmed into the Capital Improvement Plan to bring the high schools or Toano Middle School under design capacity by 2007. Therefore, this proposal does not pass the adequate public facilities schools test.

The applicant has proposed a cash proffer to mitigate impacts of the development on the County. The funds may be used for any project in the County’s capital improvement plan, for emergency services, school uses, off-site road improvements, library uses, and public use sites.

**Fiscal Impact**

The fiscal impact study for the Norge Neighborhood Site, prepared by The Wessex Group, Ltd. (TWG), estimates that the development would incur costs of \$414,000 per year to the County and produce an estimated \$284,000 annually in revenues. The annual fiscal impact of the proposal would be a net deficit of \$131,000. This study was based almost exclusively on the fiscal impacts of residential construction and the impact of a resident population on revenue and expenditures in the County. The study does not factor in retail tax revenue, for example, from the commercial/office part of the rezoning.

As noted under the section on public facilities, the owner has proposed a cash proffer to mitigate community impacts of the development on the County. The proffer would be at \$750.00 per dwelling unit, for a one time total of up to \$61,500. An additional \$250 per unit for a total of \$20,500 has been proffered to offset impacts on County recreation facilities.

**Environmental**

The properties in this rezoning are all located within the Yarmouth Creek watershed. Staff has pointed out that the “Yarmouth Creek Watershed Plan Draft Report” (adopted by the James City County Board of Supervisors in October of 2003) identified conditions on sites needing action or protection. These include special stormwater criteria, potential stream restoration for one of the streams ranked medium priority, and an identified shell marl deposit.

The banks along the two perennial streams will be subject to the Chesapeake Bay Preservation Area (CBPA) ordinance amendments as of January 1, 2004. The site plan for any rezoning that receives approval after that date will have to provide 100-foot Resource Protection Area (RPA) buffers for these streams. The owner has proffered to place a conservation easement of a similar width, as shown on the Master Plan. This means that both an easement and the RPA buffer will be placed on the steep wooded areas above the streams. The proffer is acceptable, but it must be noted that the CBPA ordinance requirements would supersede activities otherwise granted in the conservation easement by the proposed proffer.

The owner has proffered environmental protections beyond what is required under County ordinances. The stream to the west had been identified in the Yarmouth Creek Watershed Report as a distressed area due to uncontrolled run-off from earlier development in the watershed. The owner has proffered to provide a stream stabilization plan in the area indicated on the Master Plan. In addition, the owner will incorporate infiltration/recharge BMP(s) into the stormwater system, and/or preserve special on-site Hydrological soils, and/or use an existing BMP at Williamsburg Dodge for stormwater management for the front of the site. By utilizing one or all of these, staff believes that the developer will be able to provide stormwater management without using large BMPs and will in turn provide more open space for the development. Staff welcomes the changes in these proffers to provide guarantees that the work will be planned, bonded, and constructed at the time of the development.

Staff notes that for development on steep slopes (25 percent) such as those shown on Units No. 11 and No. 12 and adjacent to the stormwater facility in the area "Potential SWM Dam Location," a waiver must be granted by the Environmental Division. Nothing in this report should be interpreted as approving a waiver of ordinance requirements.

As stated in the Comprehensive Plan, unusual environmental protection is one way a development may be considered to go beyond one dwelling unit per acre in a Low Density Residential area. The applicant has improved its proposal for environmental protection. Staff now believes that the rezoning application as currently proposed does provide unusual environmental protections.

### **Condominium Association**

The applicant has proffered to have a condominium owners' association which will be responsible for maintenance of open space, private roads, sidewalks, and other common elements. The association shall participate in cost sharing agreements with the commercial parcel owner or owner association to maintain any stormwater facilities or roads shared by both properties. Staff is satisfied with the proposed changes to the proffers clarifying the ownership of common space and the procedure of review of change to any cost-sharing agreements between the association and the owner or the commercial parcel.

### **Open Space**

Innovative open space design is one of the other ways that a plan can achieve density as high as four dwelling units per acre in a Low-Density Residential area on the Comprehensive Plan Land Use Map. The Cluster Overlay District in the County's Zoning Ordinance spells out open space requirements for cluster development of up to four dwelling units per acre within Low Density Residential areas. Open space should be 40 percent of net developable lands to be set aside permanently and maintained for conservation and recreation purposes. This Master Plan provides approximately 40 percent of open space in developable areas including perimeters within the multi-family area (the Master Plan table gives a figure of 52 percent for the entire development including single-family and commercial). Although the land is not dedicated to remain or is proffered as open space, a Master Plan cannot be significantly altered without a rezoning amendment.

Staff finds that if developable open space in the multi-unit area is not reduced in the course of planning and development, this proposal will satisfy open space standards sufficiently to support the proposed density.

## **Streetscapes, Berms, and Lighting**

The applicant has proffered to place a landscaped berm in the perimeter setback area between Kristiansand and the multi-family area. A berm in this area may eliminate some of the car headlights from shining onto neighboring properties. Outdoor lighting standards have also been proffered to limit the height and amount of glare from streetlight poles and from lights mounted on the backs of buildings. Beyond the streetscapes discussed above, no landscaping beyond general landscaping requirements has been shown on the master plan or is proffered. There will be some further discussion of this in the section on setback modifications. Staff finds the berm and lighting proffers to be a positive contribution to the plan.

The applicant has proffered to provide streetscape landscape treatments along internal streets, along the shared driveway from Nina Lane, and along one side of the pedestrian/emergency access shown. Staff believes that the submitted proffers are adequate.

## **Sidewalk and Pedestrian Connections**

The provision of good pedestrian connections within a development and to adjacent properties is an important part of mixed use and residential cluster development and of meeting the goals of innovative open space design. As this proposal lacks vehicular connections with neighboring properties, safe sidewalk and bicycle connections are important to the integration of the project with the existing neighborhood and surrounding areas. Safe areas to walk can reduce the need for vehicle trips to nearby shops and offices thereby reducing the impact on Richmond Road traffic movements.

This Master Plan shows sidewalks on both sides of internal streets (except for the open space area in the center) and sidewalk and multi-use connections to the shared driveway on to Nina Lane. The owner has proffered a sidewalk to the commercial parcel and to Nina Lane and along Nina Lane. Staff agrees that sidewalks and pedestrian connections are necessary in these areas and are an essential factor in providing good open space design. Staff finds that the design of sidewalk and pedestrian connections and the proffered assurances for their installation are acceptable.

## **Traffic Impacts/Access**

The area of the proposed re-zoning is on Richmond Road, or Route 60, between Route 199 at Lightfoot and Croaker Road. The part of Richmond Road in front of the proposed development does not have a median, but does have a middle turn lane and two west bound and two east bound lanes for a total of five lanes. CSX Railroad tracks run parallel to Richmond Road in this area on the north side of the road; there is a grade crossing on a dirt road across from the site.

The owner has proffered one entrance to the multi-family and commercial site with a possible direct entry from Richmond Road for the commercial/office parcel. A traffic impact assessment was prepared by DRW Consultants, Inc., in August of 2003 for the rezoning of the property. According to the report and additional information requested by and provided to staff, the level of service for a single entrance onto Richmond Road in 2008 will be a "C" for left turns in the AM and PM peak hours and a "B" for right turns. The owner has also proffered a shared driveway for vehicular access to the existing and proposed single-family houses and for pedestrian access to the multi-family area.

The Virginia Department of Transportation (VDOT) has reviewed the traffic impact study for the project. Based on the development assuming 15,000 square feet of retail specialty shops and 80 multi-family units, VDOT recommends that the development provide a 200-foot right taper lane on Richmond Road at the entrance. This has been proffered by the applicant and staff believes that the taper lane would adequately address the impacts under these assumed conditions.

However, if a proposed commercial/office use has a higher trip generation than that found in the traffic impact study, the owner proffers to submit an updated traffic impact study and implement the recommendations of the study prior to issuance of certificate of occupancy for the parcel. The changes to Proffer No. 14 for the submittal of traffic impact studies in the case of land uses on the commercial site with higher vehicle trip generation rates are acceptable to staff.

### **Private Streets and Parking**

The applicant has proffered to provide private streets in keeping with VDOT construction standards and to deposit \$8,500 into a maintenance reserve fund maintained by the Association.

On January 12, 2004, the Planning Commission approved a waiver from the minimum off-street parking requirements to provide a minimum of 2.0 parking spaces per unit in the multi-family area instead of 2.2 spaces per unit as required in the Zoning Ordinance. Staff supported the request based on the parking requirements at an existing condominium development, La Fontaine Condominiums. (At the time of rezoning in 1993 for La Fontaine, the applicant proffered a minimum of 2.0 parking spaces per unit.)

However, staff remains concerned that should additional parking be required, the amount of open space provided would fall below 40 percent of the multi-family area. As discussed in the section of the report on open space, this plan could support the proposed density if the amount of developable open space remains above 40 percent.

### **Recreation**

The applicant has provided a 1.5 acre neighborhood recreation area which currently consists of an open field and a multi-use path connection to Nina Lane. In addition to the provision of a gazebo/shelter in the recreation area, the applicant proffers a cash contribution of \$250 per unit for use by the County for recreation capital improvements. Staff finds that the recreation amenities and proffered cash contributions satisfy the County's Recreation Proffer policy.

### **Comprehensive Plan Designation**

County expectations for residential development, commercial development and development in Community Character Areas and Corridors are provided in the James City County Comprehensive Plan.

The Comprehensive Plan Land Use Map designates all of the parcels included in this proposal as Low-Density Residential. Low density areas are suitable for residential developments with overall densities of one dwelling unit per acre. In order to encourage high quality design, development with density up to four units per acre is recommended if the development offers benefits such as mixed-cost housing, affordable housing, protection of wildlife habitats, adequate recreational areas, superior open space design, and superior environmental protections. According to the Plan, very limited commercial establishments are recommended for Low-Density Residential areas. Commercial and residential areas in a Community Character Area should follow the design guidelines for the area.

Staff is generally satisfied with the shape of the residential development as shown on the Master Plan. The open space, small stormwater facility, conservation areas, pedestrian connections, and the manner in which the proposed single-family area blends in with existing homes show superior design. The applicant has worked to improve commitments to include these environmental protections with the current proposal, enough to make it possible for staff to recommend the proposed maximum density of four dwelling units per acre in a Low-Density Residential area.

The proposed commercial uses (B-1 uses with some exceptions) have been limited somewhat since the previous proposal which, in part, prompted staff to recommend denial of this rezoning. The timing and volume of commercial development are very important within the County. The designation for this property, Low-Density Residential, was deliberately done in order to balance large unimproved commercially zoned lots in nearby Norge with the character of Norge. Staff had recommended, originally, a restriction of commercial uses for this site to permit Limited Business, LB, uses rather than General Commercial, B-1, uses to keep the proposal more consistent with the Comprehensive Plan. The most significant difference between the permitted uses in LB and the proposed uses is that of restaurants, tea rooms, and taverns. With regard to restaurants, the applicant has proffered to limit the site to only one restaurant with a maximum floor area of 3,000 square feet and no fast food restaurants. Staff supports this proposal and, in addition, believes that the superior commercial site design review proffered will sufficiently mitigate the visual impacts of the development.

Community Character is important to the citizens of the County and reflected in the Comprehensive Plan. Guidelines for site layout, architectural features, and landscaping within Norge and Toano are spelled out in the Community Character section of the Comprehensive Plan and have been incorporated into several sections of the County Zoning Ordinance. The applicant has proffered to submit a conceptual plan for the commercial parcel that will be reviewed and approved for general consistency with the architectural character of the Norge Community Character area, and in keeping with provisions for commercial development in Neighborhood Commercial areas and consistent with the landscape ordinance for development on major corridors. Staff requested that these items be included in the proposal, and is generally satisfied.

### **Perimeter Setback Modification Requests**

On January 12, 2004, the Planning Commission approved the applicant's requests for modification to zoning district perimeter setback requirements. Staff recommended approval of the requests which better integrate the mixed use development with adjacent neighborhoods and businesses. Staff noted that the applicant would need to change the Master Plan to reflect the approved request prior to this report. This has been done.

### **RECOMMENDATION**

Staff believes that this proposal addresses earlier staff concerns regarding the applicant's commitment to provide environmental protection, superior open space design, and superior pedestrian connections. On January 12, 2004, the Planning Commission recommended approval of the rezoning and acceptance of the voluntary proffers by a vote of 6-1. The proposal is consistent with surrounding development and therefore staff recommends approval of this rezoning application and acceptance of the voluntary proffers.

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Sarah Weisiger

CONCUR:

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O. Marvin Sowers, Jr.

SW/adw  
mp-9-03.wpd

Attachments:

1. Unapproved minutes of December 8, 2003, and January 12, 2004, Planning Commission Public Hearings
2. Location Map
3. Master Plan (provided under separate cover?)
4. Proffers
5. Resolution

**RESOLUTION**

**CASE NOS. Z-8-03/MP-9-03. NORGE NEIGHBORHOOD SITE**

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 No. Z-8-03, for rezoning approximately 22.1 acres from A-1, General Agricultural, and R-2, General Residential, to MU, Mixed Use, with proffers; and

WHEREAS, the Planning Commission of James City County, following its public hearing on January 12, 2004, recommended approval of Case Nos. Z-8-03/MP-9-03, by a vote of 6 to 1; and

WHEREAS, the properties are located at 7145 and 7147 Richmond Road, 75 Nina Lane, and a portion of 126 Rondane Place as shown on the Master Plan MP-9-03 and further identified as Parcel Nos. (1-50), (1-49) , (1-50C), and (1-51), on James City County Real Estate Tax Map No. (23-2).

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve Case Nos. Z-8-03/MP-9-03 and accepts the voluntary proffers.

\_\_\_\_\_  
Bruce C. Goodson  
Chairman, Board of Supervisors

ATTEST:

\_\_\_\_\_  
Sanford B. Wanner  
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 10th day of February, 2004.

mp-9-03.res

## **UNAPPROVED MINUTES TO THE DECEMBER 8, 2003, PLANNING COMMISSION MEETING**

### CASE NO. MP-9-03 & Z-8-03 Norge Neighborhood Site.

Ms. Sarah Weisiger stated that the applicant has requested deferral until the January meeting. Staff agreed with the request. Ms. Weisiger also stated that the applicant asked if members had any additional comments not included in the staff report.

Mr. McCleary informed members that he attended two community meetings held by the applicant. He felt the applicant was responsive to concerns and ideas from the neighbors. Mr. McCleary thought the only area of dispute concerned the types of uses to be allowed in the commercial areas.

Mr. Hagee felt this proposal is an ideal use of the property.

Mr. A. Joe Poole, III opened the public hearing.

Hearing no other requests to speak, Mr. Poole, III deferred the case until the January 12<sup>th</sup> meeting and kept the public hearing open.

Mr. Poole stated his concerns for additional residential construction in this area given the uncertainty of the impact the Colonial Heritage project will have on the infrastructure in the area.

Mr. Billups felt the Comprehensive Plan should be used as the guideline for determining the types of uses allowed in the area.

Mr. Hunt supported light commercial uses in the front of the property.

## UNAPPROVED MINUTES TO THE JANUARY 12, 2004, PLANNING COMMISSION MEETING

### CASE NO. Z-8-03 & MP-9-03 - Norge Neighborhood.

Ms. Sarah Weisiger stated that Mr. Marc Bennett, on behalf of Henderson, Inc., has applied to rezone approximately 22.1 acres from A-1, General Agriculture and R-2, General Residential to MU, Mixed Use with proffers to allow for the construction of 80 multi-family units and two single family houses. The applicant also proposed a maximum of 1 ½ acres of office/commercial area with up to 32,670 square feet of floor space. Staff recommended approval of the application with the proffered conditions. The applicant has proffered a landscape berm between the property and the adjacent Kristansand neighborhood. The applicant requested a waiver to the parking requirement and perimeter setbacks.

Staff found the proposal consistent with surrounding office, residential and small retail developments. Staff also found the proposed density would be off-set by design features including net open space.

Mr. McCleary was concerned about the request for modification of the perimeter setbacks.

Ms. Weisiger said the applicant proffered to provide additional landscaping and tree preservation.

Mr. Poole asked if the application meets the adequate public schools facilities test.

Ms. Weisiger said it does not.

Mr. Kale was concerned that the hard surface sidewalk could be used as a driveway.

Ms. Weisiger suggested the applicant address Mr. Kale's concerns.

Mr. A. Joe Poole, III opened the public hearing.

Mr. Vernon Geddy represented the applicant. Mr. Geddy reminded members that the applicant has twice met with surrounding neighbors for their impact on the project. This project meets the need for moderately priced housing. Mr. Geddy agreed with the staff report. The applicant is willing to install physical barriers to restrict the pedestrian connection's use as a driveway.

Mr. Kale felt the design for an infill development was well crafted.

Mr. McCleary suggested the developer monitor the sidewalk for driveway use.

Hearing no other requests to speak, Mr. Poole, III closed the public hearing.

Mr. Hagee agreed that the design was an outstanding concept.

Mr. Hunt made a motion to approve the request.

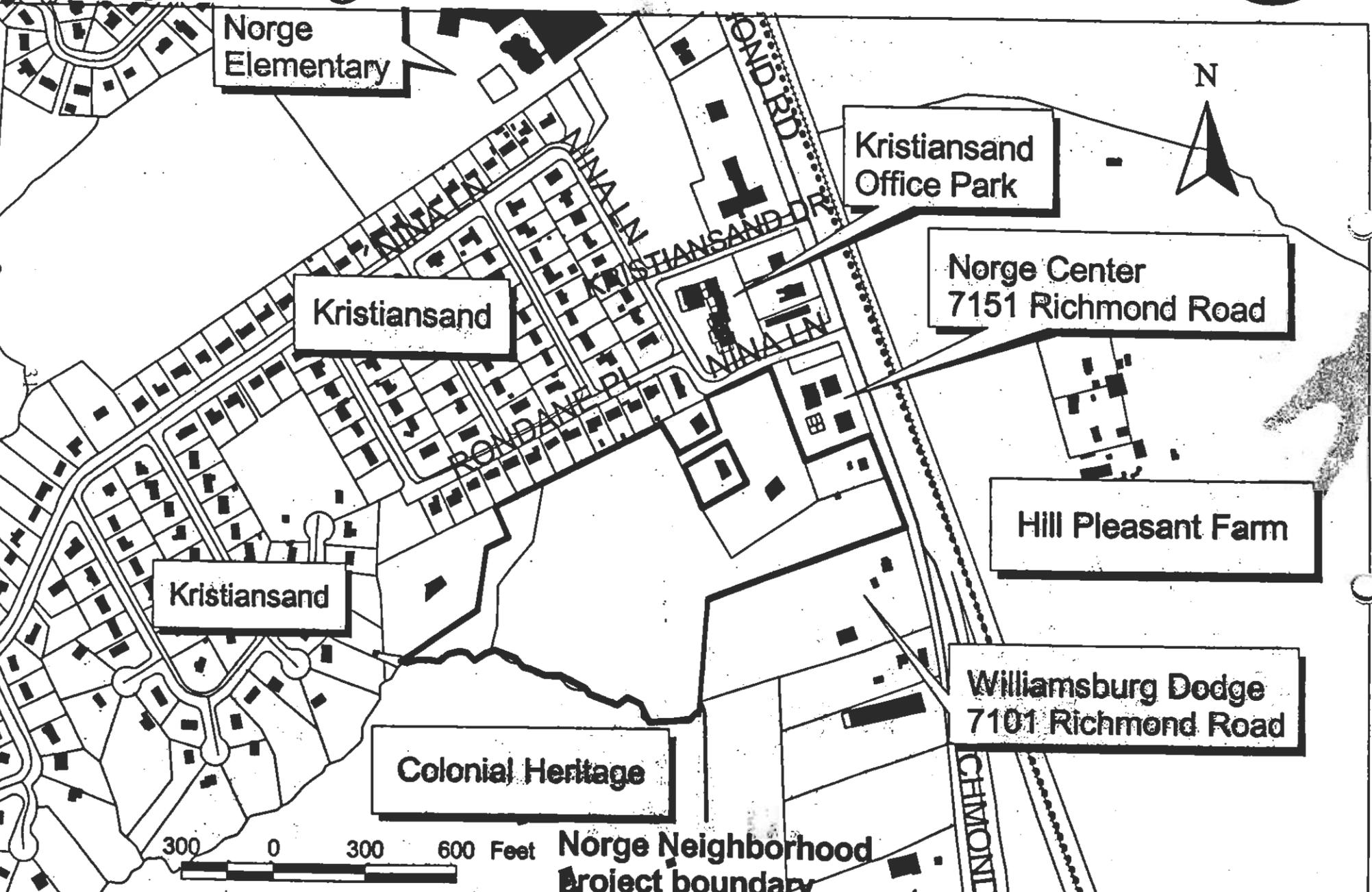
Mr. McCleary seconded the motion.

Mr. Poole commended the design but was hesitant to approve the application due to its inability to meet the adequate public schools test. He was also concerned about the future impacts of the Colonial Heritage development.

In a roll call vote the application was approved 6:1; AYE: (6) McCleary, Hagee, Hunt, Kale, Billups, Wildman; NAY (1), Poole.

# Case No. Z-8-03/MP-9-03

## Norge Neighborhood Site



## PROFFERS

THESE PROFFERS are made this 5<sup>th</sup> day of January, 2004 by Evelyn H. Anderson, individually and as co-executor of the estate of Frederick A Hoar, Marie A. Hovland, as co-executor of the estate of Frederick A Hoar and George Ford and Sharyn Ford, husband and wife (together with their respective successors in title and assigns, the "Owner") and Littlefeet, LLC, a Virginia limited liability company ("Buyer").

## RECITALS

A. Evelyn H. Anderson, individually and as co-executor of the estate of Frederick A Hoar, Marie A. Hovland, as co-executor of the estate of Frederick A Hoar are the owners of three contiguous tracts or parcels of land located in James City County, Virginia, one with an address of 7147 Richmond Road, Williamsburg, Virginia and being Tax Parcel 2320100049, the second with an address of 7145 Richmond Road, Williamsburg, Virginia and being Tax Parcel 2320100050, and the third with an address of 75 Nina Lane, Williamsburg, Virginia and being Tax Parcel 2320100050C (the "Hoar Property").

B. George Ford and Sharyn Ford, husband and wife are the owners of a tract or parcel of land located in James City County, Virginia, with an address of 126 Rondane Place, Williamsburg, Virginia and being Tax Parcel 2320100051 (the "Ford Property").

B. Buyer has contracted to purchase the Hoar Property and a portion of the Ford Property as shown on the Master Plan (defined below) conditioned upon the rezoning of the Property.

C. The Hoar Property is now zoned A-1. The Ford Property is now zoned R-2. The Hoar Property and the portion of the Ford Property shown on the Master Plan are hereinafter called the "Property". Owner and Buyer have applied to rezone the Property from A-1 and R-2 to MU, Mixed Use District, with proffers.

D. Buyer has submitted to the County a master plan entitled "Master Plan for Rezoning of Norge Neighborhood Site" prepared by AES Consulting Engineers dated September 17, 2003 and revised October 13, 2003 and November 17, 2003 and December 29, 2003 (the "Master Plan") for the Property in accordance with the County Zoning Ordinance.

E. Owner and Buyer desire to offer to the County certain conditions on the development of the Property not generally applicable to land zoned MU.

NOW, THEREFORE, for and in consideration of the approval of the requested rezoning, and pursuant to Section 15.2-2297 of the Code of Virginia, 1950, as amended, and the County Zoning Ordinance, Owner agrees that it shall meet and comply with all of the following conditions in developing the Property. If the requested rezoning is not granted by the County, these Proffers shall be null and void.

## CONDITIONS

1. **Density.** There shall be no more than 82 residential dwelling units on the Property, consisting of no more than two single family dwelling units located in the portion of the Property with a Master Plan area designation of "A" and no more than 80 multi-family dwelling units located in the portion of the Property with a Master Plan area designation of "B". All multi-family units on the Property shall be developed as a condominium project pursuant to the Virginia Condominium Act. The residential portions of the Property shall have an overall density of no more than four dwelling units per acre. The portion of the Property with a Master Plan area designation of "E, G" (the "Commercial Parcel") shall have a total maximum building coverage of 20%, no single building shall have a footprint of more than 3,000 square feet unless otherwise approved by the Director of Planning based on building architecture with varied roof lines, wall articulations, window placements and other features to reduce the mass and unbroken building lines that may occur in certain standard commercial building designs and no structure shall exceed two and one-half stories and 45 feet in height. There shall be no more than one restaurant on the Commercial Parcel and any restaurant shall contain no more than 3,000 square feet of floor area.

2. Condominium Owners Association. There shall be organized a condominium owner's association as required by the Virginia Condominium Act (the "Association") in accordance with Virginia law in which all condominium unit owners in the Property, by virtue of their property ownership, shall be members. The articles of incorporation, bylaws and condominium declaration (together, the "Governing Documents") creating and governing the Association shall be submitted to and reviewed by the County Attorney for consistency with this Proffer. The Governing Documents shall require that the Association adopt an annual maintenance budget, which shall include a reserve for maintenance of stormwater management BMPs, recreation areas, private roads and parking areas, sidewalks, and all other common elements (including open spaces) 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. The Governing Documents shall grant the Association the power to file liens on members' properties for the cost of remedying violations of, or otherwise enforcing, the Governing Documents. The Association and the owner of the Commercial Parcel and/or a property owners association formed for the Commercial Parcel shall enter into a costs sharing agreement setting forth the responsibilities of the respective parties with respect to the

maintenance of the portion of the private driveways and stormwater maintenance facilities utilized by both properties. Such agreement shall be subject to the approval of the County Attorney and shall not be amended without the prior approval of the Planning Director.

3. **Water Conservation.** Water conservation standards for the Property shall be submitted to and approved by the James City Service Authority and Owner and/or the Association shall be responsible 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. The standards shall be approved by the James City Service Authority prior to final site plan or subdivision approval.

4. **Sewer Service.** The County shall not be obligated to issue any building permits for structures on the Property until either: (i) the developer of the Colonial Heritage project and the County and/or the James City Service Authority ("JCSA") have entered into an agreement providing for the construction of proposed Regional Lift Station 9-9 and its associated cross country gravity sewer lines and the removal of Lift Stations 6-3 and 6-5 and construction has commenced; or (ii) a detailed

capacity analysis of existing Lift Station 6-5 accounting for flows reserved by the Colonial Heritage project and identifying the upgrades necessary to serve the development of the Property is submitted to and approved by the JCSA and Owner makes the necessary upgrades to existing Lift Station 6-5 at its expense.

5. Cash Contributions for Community Impacts. (a) A contribution of \$750.00 for each dwelling unit on the Property shall be made to the JCSA in order to mitigate impacts on the County from the physical development and operation 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 in whole or in part by the physical development and operation of the Property.

(b) A contribution of \$427.00 for each dwelling unit on 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 the Property unless Owner, at its expense, upgrades an existing Lift Station 6-5 as provided in Section 4(ii) above to serve the Property in which case no additional contribution shall be required. The JCSA may use these funds for development of sewer system improvements or any project related to improvements to the JCSA sewer system, the

need for which is generated in whole or in part by the physical development and operation of the Property.

(c) A contribution of \$750.00 for each dwelling unit on the Property shall be made to the County in order to mitigate impacts on the County from the physical development and operation 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 in whole or in part by the physical development and operation of the Property, including, without limitation, for emergency services, school uses, off-site road improvements, library uses, and public use sites.

(d) Owner shall make a contribution to the County of \$250.00 for each residential lot or unit shown on a final development plan for the Property for use by the County for recreation capital improvements.

(e) The contributions described above, unless otherwise specified, shall be payable for each dwelling unit on the Property at the time of subdivision or site plan approval for such unit.

(f) The per unit contribution(s) paid in each year pursuant to this Section shall be adjusted annually beginning January 1, 2005 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.

6. **Streetscapes.** The Owner shall provide and install streetscape improvements along both sides of the internal streets and the shared private driveway and on one side of the pedestrian/emergency access shown on the Master Plan in

accordance with the County's Streetscape Guidelines Policy. The streetscape improvements shall be shown on development plans for the Property and submitted to the Director of Planning for approval during the site plan approval process. Streetscape improvements shall be either (i) installed within six months of the issuance of a certificate of occupancy for any residential units in adjacent structures or, in the case of the streetscape improvements along one side of the pedestrian emergency access, within six months of the construction thereof or (ii) bonded in form satisfactory to the County Attorney prior to the issuance of a certificate of occupancy for any residential units in adjacent structures or, in the case of the streetscape improvements along one side of the pedestrian emergency access, at the time of completion of the construction thereof.

7. **Commercial Design Review.** Prior to the County being obligated to grant final development plan approval for any of the buildings on the Commercial Parcel, there shall be prepared and submitted to the Director of Planning for approval conceptual site plan, including dumpster locations, architectural and landscaping plans, including architectural elevations, for the Director of Planning to review and approve for general consistency with the architectural character of the Norge Community Character Area and the provisions of Section 24-370 (c) and 24-96 (d) (1) of the Zoning Ordinance as in effect on the

date hereof. The Director of Planning shall review and either approve or provide written comments setting forth changes necessary to obtain approval within 45 days of the date of submission of the plans in question. Final plans and completed buildings shall be consistent with the approved conceptual plans.

The design of the entrance into the Commercial Parcel from the main entrance drive into the Property shall be subject to the review for traffic safety and approval by the Director of Planning prior to final site plan approval.

8. **Archaeology.** A Phase I Archaeological Study for the Property 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.

9. **Environmental Protections.** (a) The Owner and/or the owners association shall grant, free of charge, to a 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. The conservation easement over the Conservation Area shown on each individual

subdivision plat or site plan shall be granted at the time of final approval thereof by the County. The Conservation Area shall remain undisturbed and in its natural state, preserving indigenous vegetation except as set forth below. With the prior approval of the County Engineer or his designee on a case by case basis, (i) dead, diseased and dying trees or shrubbery and invasive or poisonous plants may be removed from the Conservation Area; (ii) select hand clearing and pruning of trees shall be permitted in the Conservation Area to permit sight lines or vistas, (iii) utilities, pedestrian paths, trails and bridges may intrude into or cross the Conservation Area, (iv) stream restoration work shall be permitted in the Conservation Area and (v) stormwater BMPs may be located in the Conservation Area but shall not be located in nor impact the channel flow of perennial streams unless specifically approved by the Environmental Division. If vegetation is removed from the Conservation Area by development activities it shall be replaced by indigenous vegetation that is equally or more effective in retarding runoff, preventing erosion and filtering nonpoint source pollution. Except for existing utilities and to the extent reasonably feasible, new 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

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 or dwelling units.

(b) In order to achieve superior environmental protection, Owner shall utilize some combination of (i) an on-site infiltration/recharge BMP(s), and/or (ii) upgrading and using the existing BMP pond on the adjacent Williamsburg Dodge property as a regional facility and/or (iii) save existing onsite Hydrologic Soil Group A and B soils in the stormwater management system for the Property. The foregoing items shall be in addition to and shall not preclude use of an on-site BMP pond. The stormwater management plan for the Property shall be subject to the approval of the Director of the Environmental Division.

(c) Owner shall submit a streambed stabilization plan for the area shown on the Master Plan as "Area of Streambed Restoration" for review and approval by the Environmental Division prior to land disturbing activities for buildings 11 through 14 as shown on the Master Plan. The approved streambed stabilization plan shall either be (i) implemented or (ii) bonded in form satisfactory to the County Attorney prior to issuance of any land disturbing permits for buildings 11 through 14.

10. Entrance/Taper. Except as provided below, there shall be one entrance into the Property to and from Route 60 in the general location shown on the Master Plan. The Commercial Parcel shall not have direct access to Route 60 unless due to the unique nature of a proposed use or uses on the Commercial Parcel the Director of Planning and Virginia Department of Transportation approve a direct access. The portion of the Property with a Master Plan designations of "A" shall be served by a private shared driveway off Nina Lane as shown on the Master Plan. A eastbound right turn taper 200 feet in length on Route 60 shall be constructed at the entrance to the Property from Route 60. The taper proffered hereby shall be constructed in accordance with Virginia Department of Transportation standards and shall be completed prior to the issuance of the first certificate of occupancy. All signage along the Route 60 frontage of the Property shall be subject to review and approval of the Director of Planning in accordance with provisions of Section 24-69 of the Zoning Ordinance.

11. Sidewalk Connections. There shall be sidewalks on the Property generally in the locations shown on the Master Plan, including the internal sidewalk connection to the Commercial Parcel and to Nina Lane and along the Nina Lane frontage of the Property. Sidewalks along the entrance road shall be installed at the time of road construction. Otherwise, sidewalks shall be

installed prior to issuance of certificates of occupancy for adjacent dwelling units. There shall be no fence, gate, sign or structure to restrict pedestrian access to any of such sidewalks.

12. **Pedestrian Path/Emergency Access.** There shall be a multi-use path at least 12 feet in width, six feet paved and six feet of soil - reinforced earth shoulders, installed on the Property generally as shown on the Master Plan to provide pedestrian access and emergency vehicular access to and from the Property and Nina Lane. The path shall be located on property owned by the Association and shall be maintained by the Association. The path shall be either (i) installed or (ii) bonded in form satisfactory to the County Attorney prior to the issuance of any certificates of occupancy for any residential units in the adjacent buildings.

13. **Private Streets.** All streets on the Property shall be private and shall conform to VDOT construction standards. Owner shall deposit into the maintenance reserve fund maintained by the Association the amount of \$8,500.00 and shall provide evidence of such deposit to the Director of Planning at the time of final site plan or subdivision approval.

14. **Commercial Uses.** Except as further limited below, uses on the Commercial Parcel shall be limited to those uses permitted by right in the B - 1 zoning district under the James City County Zoning Ordinance as in effect as of the date of these proffers.

The following uses, otherwise permitted by right in the B - 1 zoning district, shall not be permitted on the Commercial Parcel:

- automobile service station
- fast food restaurant
- hotels, motels, tourists homes and convention centers
- indoor sports facilities
- indoor theaters
- lumber and building supply
- machinery sales and service
- marinas, docks, piers, yacht clubs, boat basins, and servicing, repair and sales facilities for the same
- marine or waterfront businesses to include the receipt, storage and transshipment of waterborne commerce or seafood receiving, packing or distribution
- public billiard parlors, arcades, pool rooms, bowling alleys, dance halls and other indoor centers of amusement
- radio and television stations and accessory antenna or towers and tower mounted wireless communications facilities
- retail food stores
- telephone exchanges and telephone switching stations
- wholesale and warehousing

If any use is proposed to locate on the Commercial Parcel with a materially higher trip generation based on ITE trip generation figures than the specialty retail (ITE Code 814) use used in the traffic impact study submitted herewith performed by DRW Consultants, Inc., then Owner shall submit with its proposed site plan an updated traffic impact study to the Director of Planning and VDOT based on the proposed use for their review and approval and shall implement the recommendations of the approved updated study prior to issuance of certificate of occupancy for the Commercial Parcel.

**15. Landscaped Berm.** There shall be a landscaped berm from two to six feet in height located between the multi-family

development on the Property and the Kristiansand subdivision, with the location and dimensions of the berm and the landscaping to be located thereon to be consistent with the detail and notes provided on the Master Plan and to be shown on development plan for the Property to be reviewed and approved in the plan review process.

16. **Lighting.** Street light poles at the Route 60 entrance and along the access drive extending the depth of the Commercial Parcel shall not exceed 20 feet in height. All other street light poles on the Property shall not exceed 15 feet in height. All building mounted external lights along the backs of the buildings on the Property shall be recessed fixtures with no globe, bulb or lens extending below the casing or otherwise unshielded by the case so that the light source is visible from the side of the fixture. These lights shall be shown on a lighting plan to be submitted to and approved by the Director of Planning and shall indicate that no glare defined as 0.1 footcandle or higher is cast off the Property onto adjacent properties.

17. **Shared Driveway.** There shall be a shared driveway at least 10 feet in width with at least a four inch stone base and one and one-half inches of asphalt serving the two single family residential lots on the Property generally as shown on the Master Plan with the design of the shared driveway to be approved by the

Director of Planning. The shared driveway shall be installed before the earlier of (i) final subdivision plat approval for the two single family lots or (ii) issuance of 40 certificates of occupancy for more than 40 multi-family units. Prior to final approval and recordation of the subdivision plat for those lots, Owner shall submit an instrument to the County Attorney for approval, setting forth provisions (i) creating the necessary easements for the shared driveway, (ii) for the permanent care and maintenance of the shared driveway, and (iii) establishing the method of assessing each lot for its share of the costs of administering, maintaining and replacing the shared driveway. The approved instrument shall be recorded with the final subdivision plat.

18. **Recreation.** Owner shall install a shelter/gazebo generally as shown on the Master Plan prior to issuance of a certificate of occupancy for any of the condominium units on the Property.

19. **Landscaped Setbacks.** The 35 foot landscaped setback shown on the Master Plan parallel to the entrance road and adjacent to the Williamsburg Dodge property shall contain the equivalent amount of landscaping as if the setback was fifty feet in width. The 35 foot landscaped setback adjacent to buildings 19 and 20 shall contain enhanced landscaping consisting of 125% of the landscaping otherwise required by the Zoning Ordinance and

clearing of the trees between 35' and 50' shall be the minimum necessary to properly install the buildings and appurtenances.

WITNESS the following signatures.

Evelyn H. Anderson *by Susanna B. Hickman her attorney in fact*

Evelyn H. Anderson, individually and as co-executor of the estate of Frederick A Hoar

Marie A. Hovland *by Susanna B. Hickman her attorney in fact*

Marie A. Hovland, as co-executor of the estate of Frederick A Hoar

George Ford *by [Signature] HER ATTORNEY IN FACT*

George Ford

Sharyn Ford *by [Signature] HER ATTORNEY IN FACT*

Sharyn Ford

Littlefeet, LLC

By: [Signature]  
Title: Member

STATE OF VIRGINIA AT LARGE  
CITY/COUNTY OF Williamsburg, to-wit:

The foregoing instrument was acknowledged this 5th day of January, 2004, by Evelyn H. Anderson, individually and as co-executor of the estate of Frederick A Hoar, by Susanna B. Hickman, her attorney in fact

[Signature]  
NOTARY PUBLIC

My commission expires: 12/31/04.

STATE OF VIRGINIA AT LARGE  
CITY/COUNTY OF Williamsburg, to-wit:

The foregoing instrument was acknowledged this 5th day of January, 2004, by Marie A. Hovland, as co-executor of the estate of Frederick A Hoar, by Susanna B-Hickman, her attorney in fact

Vern M Dobby, III  
NOTARY PUBLIC

My commission expires: 12/31/04.

STATE OF VIRGINIA AT LARGE  
CITY/COUNTY OF Williamsburg, to-wit:

The foregoing instrument was acknowledged this 5th day of January, 2004, by George Ford and Sharyn Ford, husband and wife, by John Wilson, their attorney in fact.

Vern M Dobby, III  
NOTARY PUBLIC

My commission expires: 12/31/04.

STATE OF VIRGINIA AT LARGE  
CITY/COUNTY OF Williamsburg, to-wit:

The foregoing instrument was acknowledged this 5th day of January, 2004, by John Wilson, as member of Littlefeet, LLC on behalf of the company.

Vern M Dobby, III  
NOTARY PUBLIC

My commission expires: 12/31/04.

**REZONING-13-03/MASTER PLAN-12-03/SPECIAL USE PERMIT-29-03.**

**Michelle Point**

**Staff Report for February 10, 2004, Board of Supervisors 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 F Board Room; County Government Complex  
Planning Commission:      January 12, 2004, 5:30 p.m.  
Board of Supervisors:      February 10, 2004, 7:00 p.m.

**SUMMARY FACTS**

Applicant:                      Jay Epstein of Health-E-Community Enterprises

Land Owner:                     Michelle Point, LLC

Proposed Use:                  90 single-family houses and 20 townhouses, with 20 percent affordable housing.

Location:                        9001 Barhamsville Road, Stonehouse District

Tax Map and Parcel No.:      (12-1)(1-3)

Parcel Size:                     38.58 acres

Proposed Zoning:               R-5, Multifamily Residential, Cluster, with proffers

Existing Zoning:                A-1, General Agricultural District

Comprehensive Plan:          Low-Density Residential

Primary Service Area:        Inside

Staff Contact:                  Ellen Cook - Phone: 253-6685

**STAFF RECOMMENDATION:**

Staff finds the Master Plan and proffers are consistent with surrounding development and zoning, and consistent with the Comprehensive Plan. Staff finds that the Zoning Ordinance criteria for the granting of a special use permit with regard to additional density has been satisfactorily met, and that the waiver request for the right-of-way buffer has been sufficiently supported by proffers. Therefore, staff recommends approval of the rezoning, special use permit, and buffer waiver request. At the January 12, 2004, Public Hearing, the Planning Commission voted 6-1 to recommend approval subject to the crossover issue being resolved; it has now been resolved.

## **Proposal Changes Made After Planning Commission Consideration**

The applicant has proffered a contribution of \$100,000 to the James City Service Authority if the gravity sewer line to the Fenwick Hills pump station option is not utilized in order to mitigate increased long-term maintenance costs.

### **Proffers**

Are signed and submitted in accordance with the James City County Proffer Policy.

### **Project Description**

Jay Epstein of Health-E-Community Enterprises, has submitted an application to rezone 38.58 acres located on Barhamsville Road (Route 30) across from Stonehouse Commerce Park from A-1, General Agricultural District, to R-5, Multifamily Residential District, Cluster, with proffers.

If approved, the applicant would use the parcel to create a mixed-income development, with 20 percent affordable housing. The development, to be known as Michelle Point, would consist of 110 units, 90 single-family detached and 20 single-family attached (townhouses). The project is possible through financing and/or support from State and Federal funding sources and private partnership funding through the Member Banks of the Federal Home Loan Bank system.

The parcel is wooded except for the eastern portion of the site, which has been used for agricultural activities and is open.

### **Density**

According to the Cluster provisions of the Zoning Ordinance, residential cluster developments of one unit per acre or less may be permitted in areas designated low-density residential on the Comprehensive Land Use Map. However, the Ordinance permits additional density up to four units per acre upon the issuance of a special use permit, and implementation of various policies or other measures. The applicant has proposed a net density of 3.6 DU/Acre. In accordance with Section 24-549 of the Zoning Ordinance, the applicant has provided for the following:

#### **For Density greater than 1 DU/Acre up to 2 DU/Acre:**

- Implementation of the County's Streetscape Guidelines.
- Implementation of the County's Archaeological Policy.
- Provision of sidewalks on one side of all internal streets.
- Provision of Recreation Facilities as recommended in the County's Comprehensive Parks and Recreation Master Recreation Plan.
- Implementation of the County's Natural Resources Policy.

#### **For Density from 2 DU/Acre up to 3 DU/Acre:**

- Provision of pedestrian trails connecting cul-de-sacs and recreation facilities.
- Construction of curb and gutter streets.

In addition, Cluster provisions state that at its discretion, the Board of Supervisors may award density bonuses to a gross-allowable base density of two dwelling units per acre for the following items, provided that no total density exceeds four dwelling units per acre in areas designated low-density residential on the Comprehensive Plan Land Use Map. To achieve a density above 3 DU/Acre, the applicant has provided for the following:

#### **For Density above 3 DU/Acre:**

- 0.5 DU/Acre for every 10 percent of the total number of dwelling units dedicated to affordable housing. *The applicant is proposing twenty percent affordable housing.*
- For a 0.5 DU/Acre total-density bonus: *Provision of superior layout and quality design which incorporates environmentally sensitive natural design features such as preserving scenic vistas, preservation of natural areas as suggested by the Natural Resources Inventory, protection of wildlife habitat corridors, and the creation of buffer areas around RMA wetlands, and sustainable building practices.*
- For a 0.5 DU/Acre total-density bonus: *Provision of superior layout and quality design which incorporates community design features such as interconnected streets, multiple entrance/exit points to the development, a mixture of unit types and/or unit prices, and group or shared parking.*

***Staff Conclusions:*** *Staff feels that the applicant has satisfied the requirements for a density up to 3 DU/Acre in accordance with Section 24-549 of the Zoning Ordinance, and has made sufficient provisions for implementation through inclusion on the Master Plan and/or in the proffers, as appropriate. In addition, staff feels that the applicant has met and exceeded the requirements for a density above 3 DU/Acre through provision of affordable housing, and by incorporating sustainable building practices, a mixture of unit types and prices, and other quality design features. Therefore, staff recommends approval of density bonuses up to the allowable 4 DU/Acre be permitted.*

**Public Impacts**

1. **Archaeology:** The subject property is not located within an area identified as a highly sensitive area in the James City County archaeological assessment “Preserving Our Hidden Heritage: An Archaeological Assessment of James City County, Virginia.”

**Proffers:** To meet the density provisions of the Cluster District, the applicant has provided a proffer implementing the County’s Archaeological Policy. A Phase I Study of the site has been completed and recommends that no further archaeological testing is warranted.

2. **Fiscal Impact:** Based on the fiscal impact analysis submitted by the applicant, the proposed development would result in a negative net fiscal impact. The analysis indicates that the County would be required to spend an additional \$410,900 per year once this development is built out and occupied. James City County Financial and Management Services has reviewed the Fiscal Impact Statement submitted with these applications and concurs that this development would result in a negative fiscal impact.

	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Buildout</b>
<b>Net Fiscal Impact</b>	\$26,200	\$141,700	(\$207,800)	(\$410,900)

**Proffers:** The applicant is proffering \$750 per nonaffordable unit (\$66,000 for 88 units) for use for projects in the County’s Capital Improvement Plan to mitigate impacts on County emergency, school, library, and other services.

3. **Housing:** The proposed development would have of a total of 110 units, consisting of 90 single-family detached units and 20 single-family attached (townhouse) units. Twenty percent of the units (22 of 110) would be affordable as specified in the proffers. Buyers of these units would need to meet specific financial requirements, with household incomes that would not exceed 80 percent of the median household income found in the Metropolitan Statistical Area. The remaining 80 percent of the units would be sold at market values, estimated to range between \$149,000 per unit and \$170,000 per unit; these prices are below the average sales price of a new home in James City County. All housing units would be constructed using sustainable methods, creating energy savings and a healthier indoor environment for the occupants.

**Proffers:** Eleven of the lots with single-family detached units would be offered for sale at a price at or below \$110,000, and eleven of the townhouse units would be offered for sale at a price at or below \$99,300 (both of these prices are subject to adjustment as set forth in the proffer).

4. Environmental Impacts:

Watershed - Ware Creek: The applicant projects that this site will meet or exceed its required 10 points for satisfaction of Chesapeake Bay water quality requirements through a combination of on-site structural best management practices, generally as shown on the Master Plan, through the placement of easements over sufficient qualifying on-site undisturbed natural open space, and through the treatment of previously untreated flows from adjacent off-site development.

**Proffers:** All land designated on the Master Plan as “Approx. Limits of 25% Slopes (Undevelopable) Wetlands and Floodplain Areas Contained Within Limits” would be granted to the County or a land conservation entity as a conservation easement.

*Environmental Division Comments: Concurs with this assessment.*

5. Public Utilities: The property is located inside the Primary Service Area (PSA) and will be served by public water and sewer. The basic design and layout of the water distribution system is acceptable to the James City Service Authority. Sanitary sewer could either be provided by constructing an on-site pump station that would force the project’s sewer flows directly to the 24-inch Hampton Roads Sanitation District (HRSD) force main located at the entrance of Stonehouse Commerce Park, or by collecting the sewer flows by gravity line and extending off-site gravity sewer from Michelle Point to the existing Fenwick Hills pump station located along Old Stage Road. Both the HRSD force main and the Fenwick Hills pump station have sufficient excess capacity.

**Proffers:**

- Pump Station or Gravity System. If all the necessary easements are acquired by March 1, 2004, the owner would utilize the gravity line option. If all the necessary easements were not acquired, the owner would utilize the force main option and make a contribution of \$2,000 per unit for the first 50 units to the JCSA to mitigate the long-term maintenance costs (total of \$100,000).
- Water Conservation. That appropriate water conservation measures be developed and submitted to the JCSA for review and approval prior to any site plan approval.
- Contribution. \$750 per non-price restricted unit contribution to JCSA (total of \$66,000 for 88 units).

*JCSA Comments: Concurs with the water and sewer study and has reviewed the proffers.*

6. Schools:

Adequate Public Facilities Test: Per the “Adequate Public Facilities Test” policy adopted by the Board of Supervisors, all special use permits or rezoning applications should pass the test for adequate public school facilities. With respect to the test, the following information is offered by the applicant:

<u>Schools serving Michelle Point</u>	<u>2003 Enrollment</u>	<u>Design Capacity</u>
Stonehouse Elementary	525	588
Toano Middle School	783	775
Lafayette High School	1,478	1,250

The applicant expects this project to generate 22 elementary students, 12 middle school students, and 15 high school students. This would bring enrollment at Stonehouse up to 547, enrollment at Toano up to 795, and enrollment at Lafayette up to 1,493. Enrollments at these levels would exceed the design capacities of Toano and Lafayette Schools.

***Staff Conclusions:** Based on the Board of Supervisors' policy, the development does not pass the adequate public facilities schools test. However, the applicant has provided a proffer (described in the Fiscal Impact Section above) to help offset the cost of County services, and would be providing 20 percent affordable housing.*

7. **Traffic and Access:** The traffic impact study provided with this application indicates that this development would generate approximately 77 a.m. peak hour vehicle trips and approximately 102 p.m. peak hour vehicle trips, and that the existing traffic conditions provide ample capacity for a development of this size.

The development would have access to and from the eastbound lanes of Barhamsville Road (Route 30). The Study indicates that the entrance sight distance as proposed is adequate. In accordance with the recommendations of the Virginia Department of Transportation (VDOT) Road Design Manual, a 150-foot right turn taper would be constructed at the development entrance. Emergency access would be provided through a connection with Highfield Drive to the south, and, as requested by the Fire Department, by a gravel emergency-only crossover from the westbound traffic lanes of Barhamsville Road.

**Traffic Proffers:**

- Barhamsville Road Entrance. The proffer provides for a 150-foot right-turn taper.
- Crossover. Emergency-only gravel crossover, with signage, for emergency vehicle access from westbound Barhamsville Road traffic lanes, as approved by VDOT and the Fire Department.

***VDOT Comments:** Agreed on the technical merits and general conclusions of the traffic study, VDOT has approved the emergency crossover concept.*

**Right-of-Way Buffer Waiver Request:** The applicant has requested a waiver from the buffer requirements of Section 24-544 of the Zoning Ordinance to allow the minimum right-of-way buffer along Route 30 to be reduced from 150 feet to 90 feet in some areas, primarily to the northeast and east of the townhouse units. It is possible to get a waiver from the zoning requirement under at least one of the following conditions:

1. The development is less than five acres and a majority of the development's units are dedicated to affordable housing; or
2. The developer demonstrates that due to natural or protected features, or due to adjoining physical features, a reduced buffer will screen the development effectively as a full buffer; or
3. The developer demonstrates that the development will be adequately screened and buffered from the road using berms and landscaping. Such a request shall be supplemented with a landscaping plan and/or planting plan with photos of the existing site.

**Proffer:** The applicant has proffered a variable width buffer along Route 30 that would place supplemental landscaping consisting of at least 125 percent of Zoning Ordinance requirements in areas where the buffer was less than 150 feet, in accordance with a plan approved by the Director of Planning.

**Staff Recommendation:** Given the proffered supplemental landscaping, staff recommends approval of the waiver request.

Comprehensive Plan:

- The Comprehensive Plan designates Barhamsville Road (Route 30) as a Community Character Corridor. The applicant has requested a waiver to allow the buffer to be reduced from 150 feet to 90 feet in some areas, as described above.

**Staff Comments:** The majority of the site would have a 150-foot buffer, which on the western portion of the site would preserve the wooded character and screen the single-family detached units, while preserving the open space qualities of the field on the eastern portion of the site. For those areas with less than 150 feet of buffer, the proffered supplemental landscaping would help screen the development from the road. Therefore, staff feels that the proposal is generally in accordance with the Community Character Corridor objectives of the Comprehensive Plan.

- The James City County Comprehensive Plan Land Use Map designates this property for Low-Density Residential development. One of the “Goals” in the housing section of the Comprehensive Plan is to increase the availability of affordable housing.

**Staff Comments:** Low-density residential developments are residential developments or land suitable for such developments with gross densities up to one dwelling unit per acre depending on the character and density of surrounding development, physical attributes of the property, buffers, the number of dwelling units in the proposed development, and the degree to which the development is consistent with the Comprehensive Plan. In order to encourage higher quality design, a residential community with gross density greater than one unit per acre and up to four units per acre may be considered only if it offers particular public benefits to the community. Examples of such benefits include: mixed-cost housing, affordable housing, unusual environmental protection, or development that adheres to the principles of open space development design. Depending on the extent of benefits, developments up to four units per acre will be considered for a special use permit. The location criteria for low-density residential require that these developments be located within the PSA where utilities are available. Examples of acceptable land uses within this designation include single-family homes, duplexes, cluster housing, recreation areas, schools, churches, community-oriented public facilities, and very limited commercial establishments.

**The proposal is generally consistent with both the Land Use and Housing policies of the Comprehensive Plan.**

**Recommendation**

Staff finds the Master Plan and proffers are consistent with surrounding development and zoning, and consistent with the Comprehensive Plan. Staff finds that the Zoning Ordinance criteria for the granting of a special use permit with regard to additional density have been satisfactorily met, and that the waiver request for the right-of-way buffer has been sufficiently supported by proffers. Therefore, staff recommends approval of the rezoning, special use permit, and buffer waiver request. At the January 12, 2004, Public Hearing, the Planning Commission voted 6-1 to recommend approval, subject to the crossover issue being resolved; it has now been resolved. Therefore, staff recommends that the Board of Supervisors defer this case until the March 9, 2004, Board of Supervisors meeting in order to allow more time to resolve all outstanding issues with the emergency crossover on Barhamsville Road.

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Ellen Cook

CONCUR:

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O. Marvin Sowers, Jr.

EC/gs

z-13-03/MP-12-03/sup-29-03.2

Attachments:

1. Unapproved Minutes from the January 12, 2004, Planning Commission meeting
2. Location map
3. Proffers
4. Community Character Corridor Buffer Waiver Request letter
5. Master Plan (separate cover)
6. Rezoning/Master Plan resolution
5. Special Use Permit resolution

**RESOLUTION**

**CASE NOS. Z-13-03/MP-12-03. MICHELLE POINT**

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 No. Z-13-03 for rezoning 38.58 acres from A-1, General Agricultural, to R-5, Multifamily Residential, Cluster, with proffers; and

WHEREAS, the Planning Commission of James City County, following its Public Hearing on January 12, 2004, recommended approval of Case Nos. Z-13-03/MP-12-03, by a vote of 6 to 1; and

WHEREAS, the proposed residential cluster is shown on the Master Plan prepared by LandMark Design Group, Inc., dated January 5, 2004, and entitled “Michelle Point: A “Green Community of Mixed Cost Housing”; and

WHEREAS, the property is located at 9001 Barhamsville Road and further identified as Parcel No. (1-3) on James City County Real Estate Tax Map No. (12-1).

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve Case Nos. Z-13-03/MP-12-03 and accepts the voluntary proffers.

\_\_\_\_\_  
Bruce C. Goodson  
Chairman, Board of Supervisors

ATTEST:

\_\_\_\_\_  
Sanford B. Wanner  
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 10th day of February, 2004.

Z-13-03\_MP-12-03.res

**RESOLUTION**

**CASE NO. SUP-29-03. MICHELLE POINT**

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. Jay Epstein has applied for a special use permit to allow for a density of up to four units per dwelling in a residential cluster; and

WHEREAS, the proposed residential cluster is shown on the Master Plan prepared by LandMark Design Group, Inc., dated January 5, 2004, and entitled "Michelle Point: A 'Green' Community of Mixed Cost Housing"; and

WHEREAS, the property is located on land to be zoned R-5, General Multifamily Residential District, and can be further identified as Parcel No. (1-3) on James City County Real Estate Tax Map No. (12-1); and

WHEREAS, the Planning Commission, following its Public Hearing on January 12, 2004, voted 6 -1 to approve 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. 29-03 as described herein with the following conditions:

1. Construction on this project shall commence within 36 months from the date of approval of this special use permit or this permit shall be void. Construction shall be defined as the first placement of permanent construction of a structure on a site, such as pouring of the slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation. Construction does not include land preparation, such as clearing, grading, or filling.
2. This special use permit is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.

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Bruce C. Goodson  
Chairman, Board of Supervisors

ATTEST:

---

Sanford B. Wanner  
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 10th day of February, 2004.

sup-29-03.res

## UNAPPROVED MINUTES TO THE JANUARY 12, 2004, PLANNING COMMISSION MEETING

### CASE NO. Z-13-03 & MP-12-03 & SUP-29-03 Michelle Point.

Ms. Ellen Cook stated that Mr. Jay Epstein, on behalf Health-E-Community Enterprises, has applied to rezone approximately 38.58 acres from A-1, General Agriculture to R-5, Multifamily Residential, with proffers. The application proposed 90 single family houses and 20 townhouses, with 20% affordable housing.

The development would be served by public water and sewer. The applicant and the JCSA are working to resolve issues related to the sewer service. The proposal does not meet the adequate public schools facilities test. The proposal sought a waiver from the community character corridor right of way buffer standard.

Staff found the Master Plan and proffers consistent with surrounding development and zoning, and consistent with the Comprehensive Plan. Staff recommended approval of the application contingent upon the resolution of any remaining emergency crossover issues.

Mr. McCleary asked if most residential developments provide a negative fiscal impact to the County.

Mr. Sowers said that was the case for affordable housing proposals.

Mr. Vernon Geddy, represented the applicant. The applicant has held community meetings to inform adjacent neighbors about the project. Mr. Geddy said the development will meet affordable housing needs with three price levels. Mr. Geddy also said the location across the street from Stonehouse Commerce Park will help draw business to the Park.

Mr. Kale asked why there was a need for a 2<sup>nd</sup> access road.

Mr. Geddy said this was to satisfy accessibility for emergency vehicle.

Mr. Kale asked if it would be blocked at all other times.

Mr. Geddy said yes.

Mr. Kale wanted to see a larger perimeter buffer.

Mr. Epstein, the applicant, said over 50% of the site will remain green areas.

Mr. Mark Rinaldi, Landmark Design, said there would be a 35 ft. perimeter buffer plus a 35ft. building setback.

Mr. Poole inquired about any prior uses of the property.

Mr. Epstein showed the field, Chesapeake Bank, and open space on a map.

Mr. McCleary asked if the applicant was satisfied with the contingency for VDOT approval.

Mr. Geddy said yes.

Mr. Billups wanted to know how much of the land remained buildable.

Mr. Epstein said he will not develop the area any more.

Mr. A. Joe Poole, III opened the public hearing.

Ms. Ken Wolf, 202 Highfield Drive, asked about the layout and maintenance of the emergency access road. He was also concerned about the effects on property values and schools.

Mr. David Obert, 103 Halfpenny Drive, did not agree with rezoning the property. He shared Mr. Wolf's concerns about property values and schools and also impacts on traffic.

Mr. Jim Salvatore, 101 Worplesdon, asked for a decision to be delayed until neighbor's concerns could be addressed. He also wanted to know if adjacent owners would be required to connect to public water and/or sewer.

Mr. Geddy said they would not be required to connect.

Mr. Peter Salvatore, 208 Highfield Drive, said duplex and townhouse residents do not typically keep their properties well maintained.

Mr. Ron McGee, 172 Old Stage Road, wanted to know how close the homes would be to a nearby stream. He did not want to be forced to pay tap fees for public water and sewer in the future.

Mr. Epstein said the buildings will be about 300 ft. away from the stream. He also said potential buyers must still qualify to purchase based on income and credit.

Mr. McCleary noted that a home owners association will police property upkeep.

Mr. Hagge thought the plan was exemplary.

Mr. McCleary commended Mr. Epstein on his Ironbound Village project.

Mr. Billups commended the application's preservation of open space. He encouraged County agencies to report on the overall impact of new developments.

Mr. Poole agreed with Billups. He was uncomfortable with the impact on schools.

Hearing no other requests to speak, Mr. Poole, III closed the public hearing.

Mr. McCleary made a motion to approve the request.

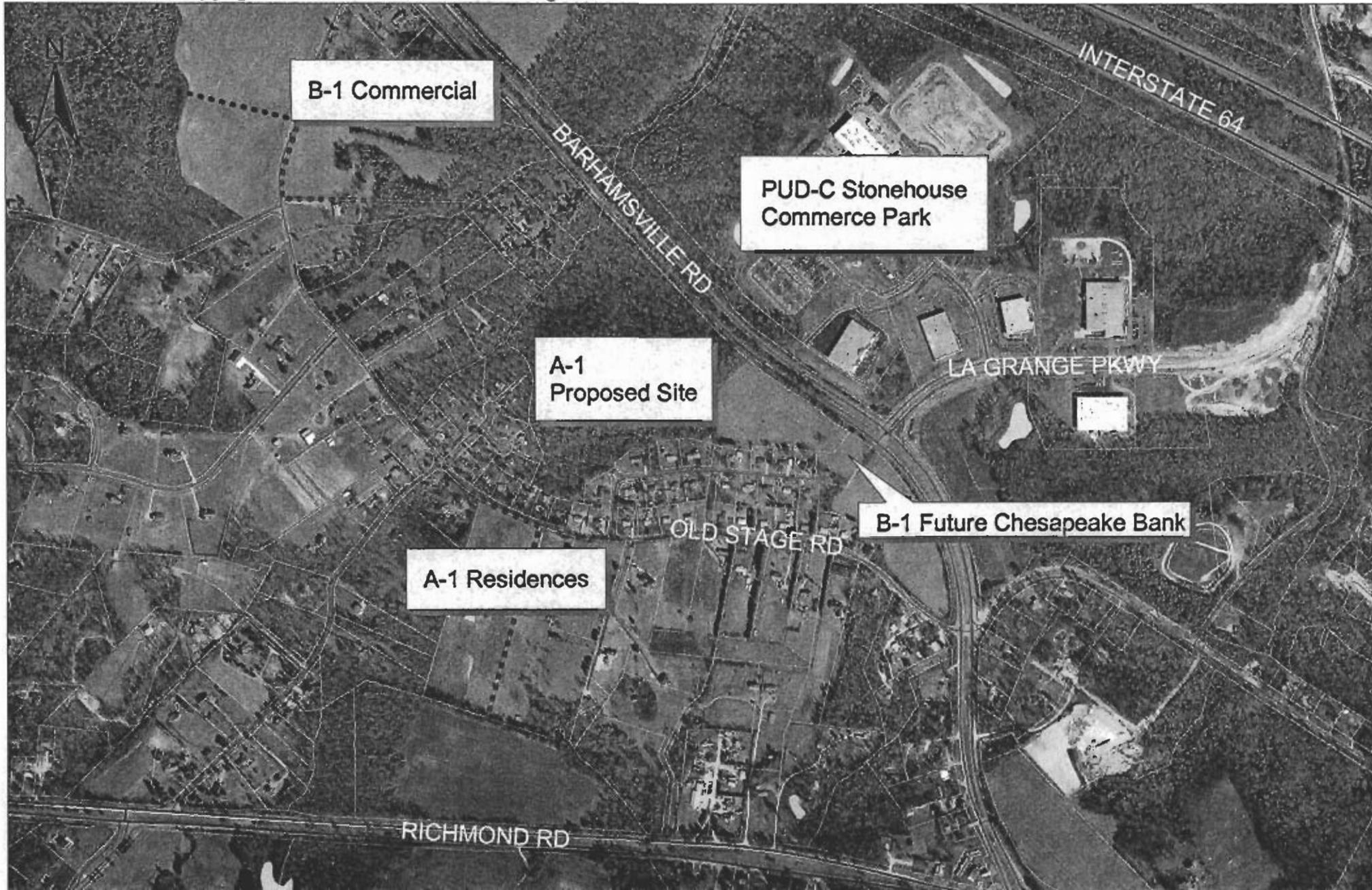
Mr. Hunt seconded the motion.

In a roll call vote the application was approved 6:1; AYE: (6) McCleary, Hagee, Hunt, Kale, Billups, Wildman; NAY: (1) Poole.

# Case No. Z-13-03/SUP-29-03/MP-12-03, Michelle Point



Aerial View Copyright 2002 Commonwealth of Virginia



PROFFERS

THESE PROFFERS are made this 28<sup>th</sup> day of January, 2004 by **MICHELLE POINT, LLC**, a Virginia limited liability company (together with his successors and assigns, the "Owner").

RECITALS

A. Owner is the owner of a tract or parcel of land located in James City County, Virginia, containing approximately 38.58 acres with an address of 9001 Barhamsville Road, James City County, Virginia and being Tax Parcel 1210100003 (the "Property"). The Property is now zoned A-1.

B. Owner has applied to rezone the Property from A-1 to R-5, Multifamily Residential District, with proffers.

D. Owner has submitted to the County a master plan entitled "Plan of Development, Michelle Point, a "Green" Community of Mixed Costs Housing" prepared by LandMark Design Group dated November 26, 2003 and revised December 19, 2003 (the "Master Plan") for the Property in accordance with the County Zoning Ordinance.

E. Owner desires to offer to the County certain conditions on the development of the Property not generally applicable to land zoned R-5.

NOW, THEREFORE, for and in consideration of the approval of the requested rezoning, and pursuant to Section 15.2-2297 of the Code of Virginia, 1950, as amended, and the County Zoning

Ordinance, Owner agrees that it shall meet and comply with all of the following conditions in developing the Property. If the requested rezoning is not granted by the County, these Proffers shall be null and void.

#### CONDITIONS

1. **Master Plan.** The Property shall be subdivided and developed generally as shown on the Master Plan, with only minor changes thereto that the Development Review Committee determines do not change the basic concept or character of the development.

2. **Owners Association.** There shall be organized an owner's association (the "Association") in accordance with Virginia law in which all property owners in the development, by virtue of their property ownership, shall be members. The articles of incorporation, bylaws and restrictive covenants (together, the "Governing Documents") creating and governing the Association shall be submitted to and reviewed by the County Attorney for consistency with this Proffer. The Governing Documents shall require that the Association adopt an annual maintenance budget, which shall include a reserve for maintenance of stormwater management BMPs, recreation areas, private roads and parking areas ("Reserve") , 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.

The Governing Documents shall grant the Association the power to file liens on members' properties for the cost of remedying violations of, or otherwise enforcing, the Governing Documents. Owner shall maintain all common areas on the Property until 90% of the lots/units on the Property have been sold to minimize Association dues during that period so as to not adversely affect purchasers ability to qualify for a home mortgage. At the time Owner's maintenance obligation under this Section ends, there shall be at least \$14,850.00 in the Reserve and Owner shall supply evidence of the same to the Director of Planning.

3. **Water Conservation.** Water conservation standards shall be submitted to and approved by the James City Service Authority and Owner and/or the Association shall be responsible 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. The standards shall be approved by the James City Service Authority prior to final site plan or subdivision approval.

4. **Affordable Housing.** A minimum of 11 of the lots with single-family detached dwelling units shall be reserved and offered for sale at a price at or below \$110,000.00 subject to

adjustment as set forth herein. A minimum of 11 of the lots with townhouse dwelling units shall be reserved and offered for sale at a price at or below \$99,300.00 subject to adjustment as set forth herein. The maximum prices set forth herein shall be adjusted annually as of January 1 of each year by increasing such prices by the cumulative rate of inflation as measured by the Consumer Price Index - Urban, U.S. City Average annual average change for the period from January 1, 2004 until January 1 of the year in question. The annual increase shall not exceed five percent (5%). The Director of Planning shall be provided with a copy of the settlement statement for each sale at a price at or below the maximum prices set forth above. Owner shall consult with and accept referrals of, and sell to, potential qualified buyers from the James City County Office of Housing and Community Development on a non-commission basis.

5. Archaeology. A Phase I Archaeological Study for the entire Property shall be submitted to the Director of Planning for review and approval prior to land disturbance. A treatment plan shall be submitted 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 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 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 Director of Planning 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 Property and the clearing, grading or construction activities thereon.

6. **Environmental Protections.** The Owner shall grant, free of charge, to a County approved land conservation entity and/or the County a conservation easement with terms consistent with

these Proffers over the area generally delineated on the Master Plan as "Approx. Limits of 25% Slopes (Undevelopable) Wetlands and Floodplain Areas Contained Within Limits" generally in the locations shown on the Master Plan (the "Conservation Area"). The exact boundaries of the Conservation Area shall be shown on subdivision plats and/or site plans of the Property. 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 by Owner and in its natural state, except as set forth below. Dead, diseased and dying trees or shrubbery and invasive or poisonous plants may be removed from the Conservation Area. With the prior approval of the Environmental Director utilities may intrude into or cross the Conservation Area and clearing and construction activities necessary therefor may take place in the Conservation Area. Pedestrian paths, trails and bridges generally as shown on the Master Plan or included in these Proffers may intrude into or cross the Conservation Area and clearing and construction activities necessary therefor may take place in the Conservation Area. Stormwater BMPs may be located in the Conservation Area but shall not be located in nor impact the channel flow of perennial streams unless specifically approved by the

Environmental Division. The Conservation Area shall be exclusive of lots or dwelling units.

7. **Entrance/Taper.** There shall be one entrance into the Property from Route 30 generally in the location shown on the Master Plan. The entrance shall have a right turn taper 150 feet in length from eastbound Route 30 into the Property. The taper proffered hereby shall be constructed in accordance with Virginia Department of Transportation ("VDOT") standards and shall be completed prior to final subdivision plat approval.

8. **Streetscapes.** Streetscape improvements shall be provided and installed along both sides of the internal streets shown on the Master Plan in accordance with the County's Streetscape Guidelines Policy. The streetscape improvements shall be shown on development plans for the Property and submitted to the Director of Planning for approval and may be installed in phases as residential units are constructed. Streetscape improvements shall be either (i) installed or (ii) bonded in form satisfactory to the County Attorney within six months of the issuance of a certificate of occupancy for adjacent residential units.

9. **Sidewalks.** There shall be sidewalks installed on one side of each of the public streets on the Property and may be installed in phases as residential units are constructed.

Sidewalks shall be installed prior to issuance of certificates of occupancy for adjacent dwelling units.

10. **Pedestrian Trail.** There shall be a paved walking trail at least six feet in width installed on the Property along its Route 30 frontage generally as shown on the Master Plan. There shall be a soft surface walking trail at least six feet in width installed on the Property in the other locations generally as shown on the Master Plan. The trails shall be located to avoid mature or specimen trees where reasonably feasible. The design and materials of the trail shall be subject to the approval of the Director of Planning. Both trails shall be either (i) installed or (ii) bonded in form satisfactory to the County Attorney prior to final subdivision plat approval.

11. **Route 30 Buffer.** There shall be a variable width buffer along the Route 30 frontage of the Property ranging from 90 to 150 feet in width generally as shown on the Master Plan. The buffer shall be exclusive of any lots or units and shall be undisturbed, except for the entrance, taper and the trails as shown generally on the Master Plan, and with the approval of the Development Review Committee, for utilities, sidewalks, trails, lighting, entrance features and signs. Dead, diseased and dying trees or shrubbery, invasive or poisonous plants, windfalls and deadfalls may be removed from the buffer area. In areas where the buffer is less than 150 feet, supplemental landscaping

consisting of at least 125% of Zoning Ordinance requirements shall be installed between the townhouses and Route 30 and adjacent to any pump station located in the buffer to create a visual screen that partially but not completely blocks the view of the townhouses from Route 30 in accordance with a plan approved by the Director of Planning prior to final approval of development plans.

12. Curb and Gutter. All streets on the Property shall be constructed using curb and gutter.

13. Recreation. (a) Owner shall provide the recreational facilities listed below as 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 30 lots on the Property:

- Parkland, including one playground of at least one acre, with tot lot equipment.
- Cash contribution of \$6,720.00 in lieu of multi-purpose courts.
- One multi-purpose playing field.

(b) All cash contributions proffered by this Proffer 13 shall be used by the County for recreation capital improvements, the need for which is caused in whole or in part by the development of the Property. 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 Association and shall be open to all members of the association in good standing.

**14. Cash Contributions for Community Impacts.** (a) A contribution of \$750.00 for each dwelling unit on the Property other than the 22 units whose prices are restricted pursuant to Proffer 4 above 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 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 in whole or in part by the physical development and operation of the Property.

(b) A contribution of \$750.00 for each dwelling unit on the Property other than the 22 units whose prices are restricted pursuant to Proffer 4 above shall be made to the County in order to mitigate impacts on the County from the physical development and operation 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 in whole or in part by the physical development and operation of the Property, including, without

limitation, for emergency services, school uses, off-site road improvements, library uses, and public use sites.

(c) The contributions described above, unless otherwise specified, shall be payable for each dwelling unit prior to the issuance of a building permit for such unit.

(d) The per unit contribution(s) paid in each year pursuant to this Section shall be adjusted annually beginning January 1, 2005 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.

15. **County Trail Easement.** Owner shall grant the County an easement 12 feet in width within the existing Virginia Power easement in the buffer along Route 30 for a greenway trail, with the exact location of the easement to be subject to the approval of the Owner, which approval shall not be unreasonably withheld. The County shall be entitled to construct a trail, including necessary bridges, if any, through the easement area and to install passive amenities such as benches, tables, gazebos, educational or descriptive markers or individual fitness stations.

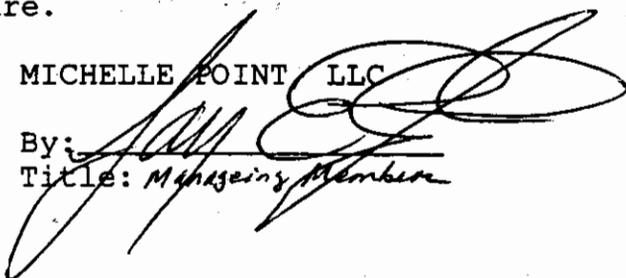
16. **Sewer Service.** If, as of the date of approval of the requested rezoning of the Property, JCSA has acquired all necessary easements to provide access for gravity sewer lines from the Property to the existing Fenwick Hills pump station, the Owner shall utilize such gravity sewer to the Fenwick Hills pump station. If, as of the date of approval of the requested rezoning of the Property, JCSA has not acquired all necessary easements to provide access for gravity sewer lines from the

station feeding into the Hampton Roads Sanitation District force main along Route 30. Should an on-site pump station feeding into the Hampton Roads Sanitation District force main along Route 30 be used, the owner shall make a contribution of \$2000.00 per unit for the first fifty units to the James City Service Authority to mitigate maintenance costs. Such contribution shall be payable for each unit prior to final subdivision plat approval.

17. **Emergency Crossover.** Prior to the issuance of any certificates of occupancy for residential units on the Property, there shall be a gravel surface emergency access crossover on Route 30 at the entrance to the Property, with signage to indicate emergency use only and with the design of the crossover being subject to the prior approval of the Fire Department and VDOT.

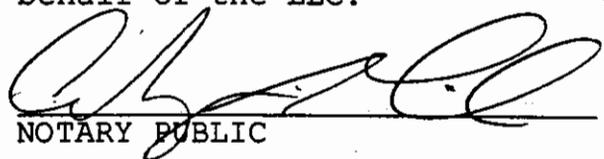
WITNESS the following signature.

MICHELLE POINT LLC

By:   
Title: Managing Member

STATE OF VIRGINIA, AT LARGE  
CITY/COUNTY OF Newport News, to-wit:

The foregoing instrument was acknowledged this 28<sup>th</sup> day of January, 2004, by Jay E. Epstein, as Managing Member of MICHELLE POINT, LLC on behalf of the LLC.

  
NOTARY PUBLIC

My commission expires: 11-30-05.

**GEDDY, HARRIS, FRANCK & HICKMAN, L.L.P.**

ATTORNEYS AT LAW

1177 JAMESTOWN ROAD  
WILLIAMSBURG, VIRGINIA 23185  
TELEPHONE: (757) 220-6500  
FAX: (757) 229-5342



VERNON M. GEDDY, JR.  
STEPHEN D. HARRIS  
SHELDON M. FRANCK  
VERNON M. GEDDY, III  
SUSANNA B. HICKMAN

ANDREW M. FRANCK  
RICHARD H. RIZK

January 5, 2004

Ms. Ellen Cook  
Planner  
James City County  
101-E Mounts Bay Road  
Williamsburg, Virginia 23187

Re: Z-13-03/MP-12-03/SUP-29-03 Michelle Point

Dear Ellen,

I am writing on behalf of the applicant to formally request a waiver pursuant to Section 24-544 (c) of the Zoning Ordinance for the variable width buffer proposed along the Route 30 frontage of the project. We are requesting this waiver pursuant to Subsection 3 of Section 24-544. In support of the request would call your attention to proffer number 11 which requires in areas where the buffer is less than 150 feet, supplemental landscaping consisting of at least 125 percent of zoning ordinance requirements to be installed between the townhouses and/or any pump station and Route 30 to create a visual screen which partially but not completely blocks the view of the development from Route 30, all in accordance with a plan approved by the Director of Planning prior to final approval of development plans. We submit this proffered condition will insure the development will be adequately screened and buffered from the road in question.

Please let me know if you need anything further.

Very truly yours,

GEDDY, HARRIS, FRANCK & HICKMAN, LLP

A handwritten signature in cursive script that reads "Vernon Geddy, III".

Vernon M. Geddy, III

VMG/ch  
Cc: Mr. Jay Epstein  
Mr. Mark Rinaldi

**SPECIAL USE PERMIT-23-03. David A. Nice Builders Office Expansion  
Staff Report for February, 10, 2004, Board of Supervisors 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 F Board Room; County Government Complex  
 Planning Commission:        January 12, 2004, 5:30 p.m. (Approved)  
 Board of Supervisors:        February 10, 2004, 7:00 p.m.

**SUMMARY FACTS**

Applicant:                        Mike Suerdieck

Land Owner:                     David A. Nice Builders, Inc.

Proposed Use:                    797-square-foot addition to an existing contractor's office

Location:                         4575 Ware Creek Road

Tax Map and Parcel No.:        (14-1)(1-15B)

Primary Service Area:         Outside

Parcel Size:                      0.93 acres

Existing Zoning:                 A-1, General Agricultural District

Comprehensive Plan:            Rural Lands

Surrounding Zoning:            All surrounding parcels are zoned A-1

Staff Contact:                    Sarah Weisiger - Phone: 253-6685

**STAFF RECOMMENDATION:**

Staff believes that this request does not set a precedent for future expansion requests in areas designated Rural Lands. The unique zoning history coupled with the physical aspects of the site and proposed addition help mitigate the impacts of this use. On January 12, 2004, the Planning Commission recommended approval of Special Use Permit No. 23-03 by a vote of 7-0. Staff recommends approval of this special use permit with conditions as written in the attached resolution.

## **Description of the Project**

The applicant proposes to add a second floor to an existing addition on a contractor's office located at 4575 Ware Creek Road. The proposed 797-square-foot addition would include three offices and a conference room and make the total size of the office 4,415 square feet. The second-story exterior would match the color and materials of the building. The applicant states that the addition will provide more space to accommodate the existing staff of 20 employees.

When the building at 4575 Ware Creek Road was first used as an office, contractor's offices were a permitted use in the A-1, General Agricultural District. In 1999, when the applicant sought to construct a one-story addition, a special use permit (SUP) was required because contractor's offices had become a specially permitted use in the A-1 District. At that time, SUP-26-99 was approved to allow the addition. This application seeks to amend a condition of that SUP, which limited the size of the expansion.

A warehouse for the business and two single-family residences are located on the adjacent 25.4-acre parcel. SUP-19-93 permitted the construction and use of the warehouse.

## **Surrounding Zoning and Development**

The site is surrounded by parcels zoned A-1, General Agricultural. Several single-family residences on one- to three-acre parcels are located nearby on Ware Creek Road. Behind the office on a separate parcel, there is a warehouse belonging to David Nice Builders, Inc. Across Ware Creek Road, a large lot is used for agriculture and is also wooded. Staff believes that the proposed expansion, given its size and scale, is compatible with the surrounding zoning and development.

## **Utilities**

The property is served by private well and septic systems. Because of the number of current employees, the Health Department has noted that they may require an expansion of the septic drainfield. The Health Department will review the project at the site plan stage.

## **Access**

The property shares a driveway with the nearby warehouse and two single-family residences at 4571 Ware Creek Road. The Virginia Department of Transportation has reviewed the proposal and recommends that the entrance be paved a minimum of 25 feet from the edge of roadway pavement. The applicant states that the area is currently paved. The entrance will also be reviewed at the time of site plan review.

## **Comprehensive Plan**

The property is designated Rural Lands on the Comprehensive Plan Land Use Map. Rural Lands are located outside of the Primary Service Area where utilities and urban services do not exist and are not planned for the future. Appropriate primary uses include agricultural and forestal activities, scattered houses, or recreational and public uses on spacious sites with natural and rural surroundings. Nonresidential uses may also be considered, including uses which require very low-intensity settings relative to the site in which it will be located. Staff believes that contractor's offices are not consistent with the Rural Lands designation. However, the contractor's office is an existing use and has been in the area for over 15 years. Also, the addition will not enlarge the building's footprint nor change the structure's residential character; these are factors that will help mitigate the impacts of this use. Staff believes that while this application does not alter the character of the area, further expansions of this use may begin to undermine the rural character of the area.

## Recommendation

Staff believes that the unique zoning history coupled with the physical aspects of the proposed addition will help mitigate the impacts of this use within an area designated Rural Lands. On January 12, 2004, the Planning Commission recommended approval of SUP-23-03 by a vote of 7-0. Staff recommends approval of this special use permit with conditions as written in the attached resolution.

---

Sarah Weisiger

CONCUR:

---

O. Marvin Sowers, Jr.

SW/gs  
sup-23-03

### Attachments:

1. Unapproved minutes from January 12, 2004, Planning Commission meeting
2. Location Map
3. Photo of existing addition with rendering of proposed addition
4. Boundary survey showing location of addition, December 2, 2003
5. Building Floor Plan and Elevation entitled "Office 2nd Level Addition" Sheets, T-1, A-1, and A-2.
6. Resolution

## RESOLUTION

### CASE NO. SUP-23-03. DAVID A. NICE BUILDERS OFFICE EXPANSION

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. Mike Suerdieck has applied on behalf of the David A. Nice Builders, Inc., for a special use permit to add a second floor to an existing addition on a contractor's office located at 4575 Ware Creek Road. The proposed 797-square-foot addition will increase the size of the structure to approximately 4,415 square feet; and

WHEREAS, the property is located on land zoned A-1, General Agricultural, and can be further identified as Parcel No. (1-15B) on James City County Real Estate Tax Map No. (14-1); and

WHEREAS, the Planning Commission, following its public hearing on January 12, 2004, voted 7-0 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. 23-03 as described herein with the following conditions:

1. If construction has not commenced on the project within twelve months from the issuance of the special use permit, the permit shall become void. Construction shall be defined as obtaining permits for building construction and a final framing inspection of the addition.
2. The addition shall not exceed 800 square feet in size and shall be designed and constructed as a second-story addition only as shown in the attached drawings prepared by Mike Suerdieck, and entitled "Office 2nd Level Addition," Sheets T-1, A-1, and A-2, dated December 14, 2001.
3. There shall be no more than 20 persons employed on the property.
4. The building materials and colors of the addition shall match those of the existing office building. The colors and building materials for the addition shall be submitted to and approved by the Planning Director prior to final site plan approval.
5. This special use permit is not severable. The invalidation of any word, phrase, clause, sentence, or paragraph shall not invalidate the remainder.

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Bruce C. Goodson  
Chairman, Board of Supervisors

ATTEST:

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Sanford B. Wanner  
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 10th day of  
February, 2004.

sup-23-03.res

## UNAPPROVED MINUTES TO THE JANUARY 12, 2004, PLANNING COMMISSION MEETING

### CASE NO. SUP-23-03 - Nice Office Building.

Ms. Sarah Weisiger stated that Mike Suerdieck, on behalf of David A Nice Builders, Inc., has applied to add a 797 square foot second floor addition to an existing addition on a contractor's office. The addition will house offices and a conference room. Contractor's offices are a specially permitted use in the A-1, General District where this property is located. The application proposed to amend a condition of SUP-26-99 which limited the size of a previous expansion.

Staff found that the unique zoning history coupled with the physical aspects of the proposed addition will help to mitigate the impacts of this use within the area designated Rural Lands. Staff recommended approval with the attached conditions.

Mr. Poole asked if the applicant agreed with the conditions.

Ms. Weisiger said yes.

Mr. A. Joe Poole, III opened the public hearing.

Mr. Suerdieck explained the proposed vertical expansion over the back side of the offices. He showed a photo depicting how the building will look with the addition.

Mr. McCleary noted that the most adjacent rear property belonged to the applicant. He also confirmed that an existing trailer would be removed.

Hearing no other requests to speak, Mr. Poole, III closed the public hearing.

Mr. Hunt made a motion to approve the request.

Mr. Kale seconded the motion.

In a unanimous roll call vote the application was approved 7-0; AYE: (7) Poole, McCleary, Hagee, Hunt, Kale, Billups, Wildman; NAY: (0).

SUP-23-03.

# David Nice Builders Expansion

1000 0 1000 2000 Feet



'F  
M WENGER  
) (3-2)

Property of Joseph Wenger  
Residential Use

N/A  
JOSEPH M WENGER  
(10-1) (3-1)

N 41° 52' 52" E, 62.66'

N 49° 04' 27" E - 274.80'

N 41° 43' 02" E - 144.09'

Property of David and Deborah L. Nice  
Residential Use

EXIST  
1-STORY  
FRAME HOUSE

A-M 47° 06"  
P-225.00'  
L-77.70'  
T-39.24'  
C-72.31'

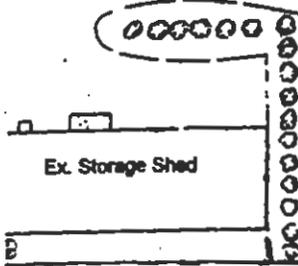
A-M 47° 06"  
P-175.00'  
L-60.43'  
T-30.52'  
C-60.13'

A-M 47° 06"  
P-24.95'  
L-39.24'  
T-25.00'  
C-35.32'

N 49° 35' 00" E - 53.00'

N 49° 35' 00" E - 75.00'

Property of David A. Nice Builders, Inc.  
0.68 acres



Ex. Storage Shed

N 40° 5' 36" W  
26.64'

Proposed  
Addition above  
1st floor on rear  
of Building

Ex. 2-Story  
Office Building

290.40'

1000'

EXISTING FRUIT TREE

Property of Simmons  
Residential Use

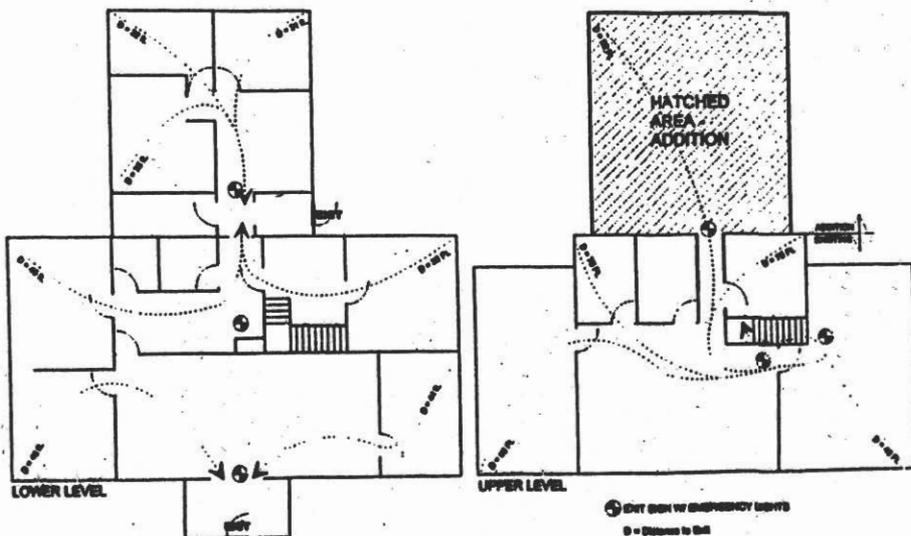
Proposed 2nd Floor Addition to  
DAVID A. NICE BUILDERS, INC. OFFICES  
4571 Ware Creek Road  
Williamsburg, VA 23188  
Drawn by:  
Mike Suerdieck, Project Coordinator 12/2/2003

WARE CREEK ROAD RT. 608 30' R/W

# OFFICE 2nd FLOOR ADDITION

## Project Description:

This project consists of adding a second level above the existing rear wing of the office building of David A. Nice Builders, Inc. The rear wing was constructed in 2000 with the framing of the roof joist designed to become the future floor joist of a second level. The addition shall be wood framed with wood siding and a shingle roof to match the rest of the office building. The additional area will be used for meetings and general office workspace. No site work will be required for this addition. New Addition will not extend beyond the existing foot print of the building.



MEANS OF EGRESS

SIZE OF BUILDING  
 Existing: 3,618 Sq. Ft.  
 Proposed Addition: 797 Sq. Ft.  
 TOTAL PROPOSED: 4,415 Sq. Ft.

TABLE OF CONTENTS	
T1	TITLE PAGE
A1	FLOOR PLAN / SECTION
A2	EXTERIOR ELEVATIONS

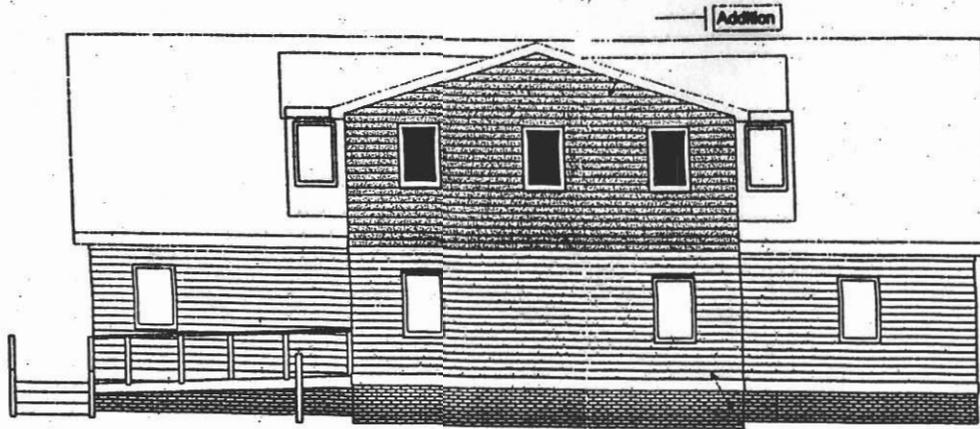
CONTRACTOR  
**DAVID A. NICE BUILDERS, Inc.**  
 4571 Ware Creek Road, Williamsburg, VA 23188  
 (757) 544-3033 - FAX (757) 544-4888 - www.danicbuilders.com

PROJECT  
 Office 2nd Level Addition  
 4571 Ware Creek Road  
 Williamsburg, VA 23188

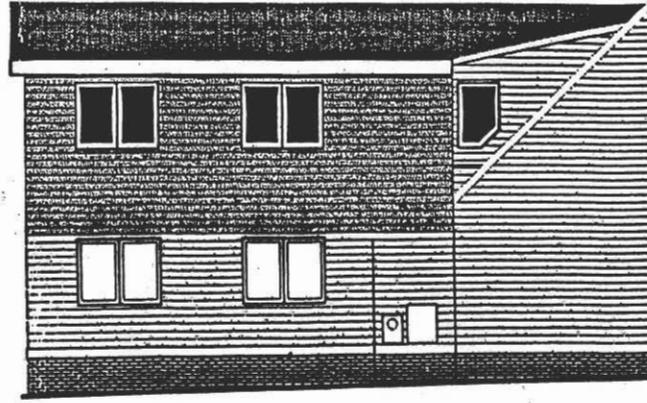
DRAWN BY  
 Mike Suerfleck  
 DATE  
 12/14/2001

**T1**





**REAR ELEVATION**



**SIDE ELEVATIONS**

CONTRACTOR



**DAVID A. NICE BUILDERS, Inc.**  
 4571 Ware Creek Road, Williamsburg, VA 23186  
 (757) 544-3032 • FAX (757) 544-4686 • www.davidnicbuilders.com

PROJECT

Office 2nd Level Addition  
 4571 Ware Creek Road  
 Williamsburg, VA 23188

DRAWN BY

Mike Suerdtieck

DATE

12/14/2001

**A2**

06

**Agricultural and Forestal District-12-86. Gospel Spreading Church AFD - 2004 Gilley Addition Staff Report for February 10, 2004, Board of Supervisors 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  
AFD Advisory Committee: December 16, 2003, 4:00 p.m. (Approved)  
Planning Commission: January 12, 2004, 5:30 p.m. (Approved)  
Board of Supervisors: February 10, 2004, 7:00 p.m., Building F Board Room

**SUMMARY FACTS**

Applicant: Mr. Robert E. Gilley

Land Owner: Mr. Robert E. Gilley

Proposed Use: Addition of parcel to Gospel Spreading Church Agricultural and Forestal District

Location: Along the west side of Mill Creek from an area adjacent to 223 Gatehouse Boulevard extending approximately two miles downstream to the Colonial Parkway.

Tax Map and Parcel No.: (48-3)(1-42)

Primary Service Area: Inside

Parcel Size: 71.33 acres

Existing Zoning: R-8, Rural Residential

Comprehensive Plan: Conservation Area

Surrounding Zoning: North: R-8: Parcels fronting Lake Powell Road  
South: R-8: Colonial Parkway, National Park Service  
East: R-8: Gospel Spreading Church Farm and AFD  
West: R-8, A-1: Gospel Spreading Church AFD  
R-1: Peleg's Point

Staff Contact: Sarah Weisiger, Phone - 253-6685

## **STAFF RECOMMENDATION**

On December 16, 2003, the Agricultural and Forestal District Advisory Committee recommended approval by a vote of 5-0 (one abstention, four members absent). On January 12, 2004, the Planning Commission recommended approval of this application by a vote of 7-0. This parcel would not be suitable in isolation for agricultural or forestal uses. However, because the existing Agricultural and Forestal District consists of marsh, farm land, and forests and surrounds most of the proposed area, staff recommends approval of the addition of this parcel to the Gospel Spreading Church AFD.

## **District History**

On August 13, 2002, the Gilley Agricultural and Forestal District, AFD-13-86, was terminated because the district had fallen to less than 200 acres, the minimum size for an AFD. The parcels from the Gilley District were transferred to the Gospel Spreading Church Agricultural and Forestal District, AFD-12-86. The Gospel Spreading Church AFD was renewed at that time and includes a total of ten parcels with 1,121.54 acres. The District is located on both sides of Treasure Island Road, on both sides of Mill Creek to the west, and includes parcels on Neck O'Land Road.

## **Site Description**

The property in the proposed addition consists of approximately 71.33 acres along Mill Creek beginning near the Colonial Parkway, and is located generally west or south of the Creek for approximately two miles upstream. It is located within the Primary Service Area (PSA). All of the parcel is in tidal marsh and located within the Resource Protection Area (RPA) of the Chesapeake Bay Preservation area. The parcel does not abut any State roads.

The tidal marsh is inundated by brackish water two times daily. The soil of the proposed addition, Levy silty clay, is continuously saturated with water. The proposed area has no developable land or land of agricultural or forestal significance. However, the land is contiguous with land in the AFD district that is owned by the applicant and has agricultural or forestal significance.

## **Surrounding Zoning and Development**

To the east, the land across Mill Creek from the proposed addition is zoned R-8 and is part of the Gospel Spreading Church AFD; it is undeveloped and has marsh, fields, and woods. The land north of the Creek is also zoned R-8 and consists of marsh and seven single-family homes on lots of more than six acres that front on Lake Powell Road. To the west, the properties adjacent to the marsh are mostly wooded and undeveloped; five of these parcels are already part of the Gospel Spreading Church AFD. The properties to the west are accessed from Neck O'Land Road and are zoned A-1, R-1, and R-8. The Colonial Parkway is located to the south of the proposed addition.

## **Comprehensive Plan**

The proposed Agricultural and Forestal District addition is designated Conservation Area on the Comprehensive Plan Land Use Map. Lands designated for conservation are intended to remain in their natural state. Preferred land uses for conservation areas include hunting and fishing clubs, fish and game preserves parks, and other open space that complement the natural environment. The surrounding parcels are designated Low Density Residential, Conservation, or, in the case of the Gospel Spreading Church Farm, Rural Lands. The Colonial Parkway is designated Park, Public, or Semi-Public Open Space. Staff finds that placing property in the AFD would be consistent with the goals for Conservation Areas.

## **Recommendation**

The proposed addition meets the minimum area and proximity requirements for inclusion into the AFD. The existing Gospel Spreading Church AFD contains 1,121.54 acres. If the 71.33 acre addition is approved, the District will have 1,192.87 acres. On December 16, 2003, the AFD Advisory Committee recommended approval by a vote of 5-0 (one abstention, four members absent). On January 12, 2004, the Planning Commission recommended approval of this application by a vote of 7-0. Because the property is adjacent to several parcels within the AFD and because staff believes that inclusion in the District will not be detrimental to the environment, staff recommends approval of this addition to the District subject to the conditions of the existing District as listed in the accompanying Board resolution.

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Sarah Weisiger

CONCUR:

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O. Marvin Sowers, Jr.

SW/adw  
afd-12-86.wpd

Attachments:

1. Unapproved minutes of January 12, 2004, Planning Commission Public Hearing
2. Location Map - with surrounding AFD parcels
3. Aerial photo
4. US Geological Survey Topographical map showing parcel
5. Resolution



Districts Within the Primary Service Area, adopted September 24, 1996.

- c. No special use permit shall be issued except for agricultural, forestal, or other activities and uses consistent with the State Code Section 15.2-4301 et. seq. which are not in conflict with the policies of this District. The Board of Supervisors, at its discretion, may issue special use permits for wireless communications facilities on AFD properties which are in accordance with the County's policies and ordinances regulating such facilities.

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Bruce C. Goodson  
Chairman, Board of Supervisors

ATTEST:

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Sanford B. Wanner  
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 10th day of February, 2004.

afd-12-86.res

## UNAPPROVED MINUTES TO THE JANUARY 12, 2004, PLANNING COMMISSION MEETING

### CASE NO. AFD-12-86 – Gospel Spreading Church – Gilley Addition.

Ms. Sarah Weisiger stated that Mr. Robert Gilley has applied to add approximately 71.33 acres to the Gospel Spreading Church Agricultural and Forestal District (AFD). Staff found that the parcel would not be suitable in isolation for agricultural or forestal uses. However, because the existing Agricultural and Forestal District consists of marsh, farm land and forests and surrounds most of the proposed area, staff recommended approval. On December 16, 2003 the AFD Advisory Committee recommended approval by a vote of 5-0 (1 abstention, 4 members absent).

Mr. Kale asked why the property would not be suitable in isolation.

Ms. Weisiger said that by itself there would not be enough agriculture and forestal benefit.

Mr. A. Joe Poole, III opened the public hearing.

Hearing no other requests to speak, Mr. Poole, III closed the public hearing.

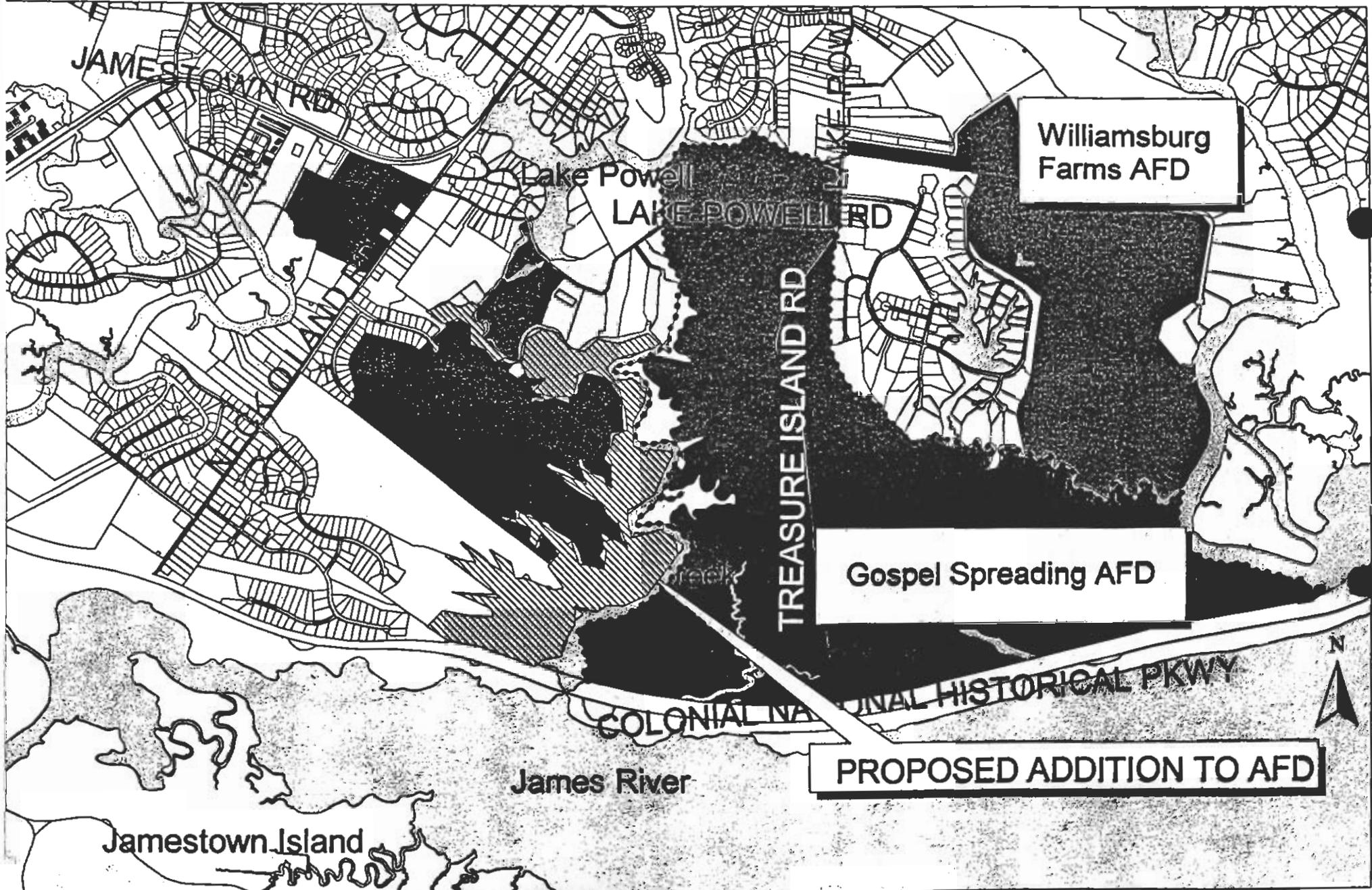
Mr. McCleary made a motion to approve the request.

Ms. Wildman seconded the motion.

In a unanimous roll call vote the application was approved 7:0; AYE: (7) McCleary, Hagee, Hunt, Kale, Billups, Poole NAY (0).

# AFD-12-86. Gospel Spreading Church AFD

## Gilley Addition



# Case No. AFD-12-86. Gospel Spreading Farm - Gilley Additon

2000 0 2000 4000 Feet

Aerial View Copyright 2002 Commonwealth of Virginia



JAMESTOWN RD

LAKE POWELL RD

NECK GLAND RD

Proposed Parcel  
for Addition

TREASURE ISLAND RD

COLONIAL NATIONAL HISTORICAL PKWY



SURRY QUADRANGLE  
VIRGINIA

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
GEOLOGICAL SURVEY

7.5 MINUTE SERIES (TOPOGRAPHIC)

43 WILLIAMSBURG 4.5 MI 76°45' 46 WILLIAMSBURG 4.5 MI 47°E



AREA NEXT TO  
MILL CREEK —  
PROPOSED ADDITION  
TO AFD-12-86  
12/1/2003



## Project Description

Mr. Ronnie Orsborne of LandMark Design Group has applied on behalf of Busch Entertainment Corporation for a special use permit to allow the construction of an approximately 40,000-square-foot pre-manufactured metal building to be located within Busch Gardens. A special use permit is required for any commercial building or group of buildings which exceeds 10,000 square feet of floor area.

The proposed building would be located in the Oktoberfest area of the Country of Germany. The site of the proposed building was previously the “Wild Izzy,” (or “Wild Maus”) which left the park at the close of the 2003 season. The proposed pre-manufactured metal building would have a peak height of 35 feet above grade, and house a state-of-the-art amusement attraction. Exterior building theming, which would require a height limitation waiver as described below, would be reminiscent of elements of the European countryside, and would be of a style and character in keeping with the Country of Germany.

## Height Waiver

The applicant has also requested a height limitation waiver from the Board of Supervisors. On property zoned M-1, structures may be constructed up to 60 feet as a matter of right; however, structures in excess of 60 feet may be constructed only if specifically approved by the Board. The applicant has requested that a height limitation waiver be granted to allow for the construction of themed elements up to 80 feet tall that would be added to the exterior of the proposed building to enhance guest experience. It is expected that the majority of the themed structure would be approximately 50 feet above grade with two or three areas approaching 75 feet above grade. Projected sight lines, as shown on “Busch Gardens Oktoberfest Expansion Sight Lines” Exhibits 1 and 2, indicate that these elements would have minimal visual impact on surrounding areas. In addition, the proposed elements would be well below the peak height of other rides, including the Alpegeist roller coaster, in the attraction’s immediate vicinity.

Section 24-419 of the James City County Zoning Ordinance states that structures in excess of 60 feet in height from grade may be erected only upon the granting of a height limitation waiver by the Board of Supervisors upon finding that:

1. Additional setbacks have been provided; however, the Board may waive additional setbacks for structures in excess of 60 feet;

Staff comment: The proposed building is 450 feet from the nearest boundary line and over 2,500 feet from the Pocahontas Trail right-of-way. The Zoning Ordinance requires a 73-foot setback for a structure that is 80 feet tall. Therefore, the setbacks are well in excess of those required by the Zoning Ordinance.

2. Such structure will not obstruct light from adjacent property;

Staff comment: Given the 450-foot distance to the nearest property line, staff finds that the proposed building would not obstruct light from adjacent property.

3. Such structure will not impair the enjoyment of historic attractions and areas of significant historic interest and surrounding developments;

Staff comment: The closest area of historic interest is Carter’s Grove Country Road, which is 650 feet from the proposed expansion. Projected sight lines shown in the Exhibits referenced above indicate that the building would have minimal visual impact from Carter’s Grove Country Road. Staff finds that the proposal would not interfere with enjoyment of historic attractions or areas of significant historic interest.

4. Such structure will not impair property values in the area;

Staff comment: According to Real Estate Assessments, there has been no appreciable decrease in the property values of surrounding homes when previous attractions were constructed.

5. Such structure is adequately designed and served from the standpoint of safety and that the County Fire Chief finds the fire safety equipment installed is adequately designed and that the structure is reasonably well located in relation to fire stations and equipment, so as to offer adequate protection to life and property;

Staff comment: Fire protection will be provided to the proposed site by means of a sprinkler system and on-site fire hydrants. In addition, the project is subject to a full County review process; staff feels confident this will ensure the proposed building is adequately designed from a safety standpoint.

6. Such structure will not be contrary to the public health, safety, and general welfare.

Staff comment: Staff feels that this attraction within the existing park will not adversely affect the public health, safety, or general welfare.

## **Surrounding Zoning and Development**

To the west of Busch Gardens is Kingsmill, a planned community zoned R-4, and Carter's Grove Country Road, on land owned by the Colonial Williamsburg Foundation. To the north of the park is the Anheuser-Busch Brewery on land zoned M-2, General Industrial. To the east of Busch Gardens is Route 60, the CSX rail lines, Route 143, and the Williamsburg Country Club and Golf Course. To the south is Grove, which contains residentially zoned properties. Staff feels that since the proposed building is within the existing theme park, it is compatible with surrounding land uses.

## **Access and Traffic**

This Special Use Permit (SUP) would not change any access into or out of Busch Gardens. The proposed building and the amusement attraction it contains would, in and of itself, likely have minimal impact on the total amount of traffic that is generated by Busch Gardens. Staff finds that traffic impacts from this proposal would be minimal.

## **Comprehensive Plan**

The 2003 James City County Comprehensive Plan designates the Busch Gardens property as Limited Industry. Limited Industry designates sites within the Primary Service Area for warehousing, office, service industries, light manufacturing plants, and public facilities that have moderate impacts on the surrounding area. In the consideration of acceptable land uses for Limited Industry areas, dust, noise, odor, and other adverse environmental effects, not size, are primary considerations.

Although an amusement attraction is not a traditional form of industrial development, it will not create dust, odor, or other adverse environmental effects. In addition, noise will be kept to a minimum since the attraction is completely contained within the building, and the building's external park sound system would be equivalent to the system already in place at the site. For these reasons, staff feels that the proposed use is consistent with the intended uses in the Comprehensive Plan designation.

Busch Gardens is also located along the Pocahontas Trail (Route 60 East) Community Character Corridor. The proposed building, located within the park and 2,500 feet from Pocahontas Trail, will not

intrude upon buffers or any landscaping along the Community Character Corridor. Therefore, staff believes the proposal would not have adverse effects on the Community Character Corridor.

## **Recommendation**

Staff finds that the proposed building would have minimal impact on surrounding areas due to its location well within Busch Gardens property lines, and well below the height of existing adjacent amusement attractions. Any potential impact will be further minimized by conditions limiting the maximum height of all building elements and ensuring that any site lighting does not create glare that affects surrounding areas. Therefore, staff recommends the Board of Supervisors approve this special use permit application with the attached conditions. At the January 12, 2004, Public Hearing, the Planning Commission voted unanimously to recommend approval.

1. This special use permit shall be limited to the construction of an approximately 40,000-square-foot building, which is generally located as shown on “BGW Oktoberfest Expansion: Sight Lines” prepared by LandMark Design Group, dated November 10, 2003, with minor changes approved by the Development Review Committee (DRC).
2. A lighting plan shall be submitted to, and approved by, the Planning Director or his designee prior to the issuance of a final Certificate of Occupancy. The plan shall indicate no glare outside the property lines: “Glare” shall be defined as more than 0.1 footcandle at the Busch Gardens property line.
3. All elements of this building shall be limited to a maximum height of 80 feet above grade.
4. Construction on this project shall commence within thirty-six 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.
5. This special use permit is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.

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Ellen Cook

CONCUR:

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O. Marvin Sowers, Jr.

EC/gb  
sup-22-03&2-03.wpd

Attachments:

1. Unapproved Minutes from the January 12, 2004, Planning Commission meeting
2. Location Map
3. Sight Line Exhibit (separate cover)
4. Height Limitation Waiver resolution
5. Special Use Permit resolution

**RESOLUTION**

**CASE NO. HW-2-03. BUSCH GARDENS OKTOBERFEST EXPANSION**

WHEREAS, Mr. Ronnie Orsborne, on behalf of Busch Entertainment Corporation, has applied for a height limitation waiver to allow for the construction of themed elements up to 80 feet tall; and

WHEREAS, a public hearing was advertised, adjoining property owners notified, and a hearing scheduled on Case No. HW-2-03; and

WHEREAS, the themed elements will be erected on the exterior of a building located within Busch Gardens, which is on property zoned M-1, Limited Business/Industrial District, and is further identified as Parcel No. (1-9) on James City County Real Estate Tax Map No. (51-4); and

WHEREAS, the Board of Supervisors finds that the requirements of Section 24-419 of the James City County Zoning Ordinance have been satisfied in order to grant a height limitation waiver to allow the erection of structures in excess of 60 feet.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve Case No. HW-2-03.

\_\_\_\_\_  
Bruce C. Goodson  
Chairman, Board of Supervisors

ATTEST:

\_\_\_\_\_  
Sanford B. Wanner  
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 10th day of February, 2004.

hw-2-03.res

## RESOLUTION

### CASE NO. SUP-22-03. BUSCH GARDENS OKTOBERFEST EXPANSION

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. Ronnie Orsborne has applied on behalf of Busch Entertainment Corporation for a special use permit to allow for the construction of an approximately 40,000-square-foot pre-manufactured metal building; and

WHEREAS, the proposed building is shown on the plan prepared by Landmark Design Group, dated November 10, 2003, and entitled "BGW Oktoberfest Expansion: Sight Lines"; and

WHEREAS, the property is located on land zoned M-1, Limited Business/Industrial District, and can be further identified as Parcel No. (1-9) on James City County Real Estate Tax Map No. (51-4); and

WHEREAS, the Planning Commission, following its public hearing on January 12, 2004, voted 7-0 to approve 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. 22-03 as described herein with the following conditions:

1. This special use permit shall be limited to the construction of an approximately 40,000-square-foot building, which is generally located as shown on "BGW Oktoberfest Expansion: Sight Lines" prepared by LandMark Design Group, dated November 10, 2003, with minor changes approved by the Development Review Committee (DRC).
2. A lighting plan shall be submitted to, and approved by, the Planning Director or his designee prior to the issuance of a final Certificate of Occupancy. The plan shall indicate no glare outside the property lines: "Glare" shall be defined as more than 0.1 footcandle at the Busch Gardens property line.
3. All elements of this building shall be limited to a maximum height of 80 feet above grade.
4. Construction on this project shall commence within thirty-six 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.
5. This special use permit is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.

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Bruce C. Goodson  
Chairman, Board of Supervisors

ATTEST:

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Sanford B. Wanner  
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 10th day of  
February, 2004.

sup-22-03.res

## UNAPPROVED MINUTES TO THE JANUARY 12, 2004, PLANNING COMMISSION MEETING

### CASE NO. SUP-22-03 & HW-2-03 Busch Gardens Oktoberfest Expansion.

Ms. Ellen Cook stated that Mr. Ronnie Orsborne, on behalf of Busch Entertainment Corporation, has applied to construct a 40,000 square foot pre-manufactured metal building to be located within Busch Gardens in the Oktoberfest area of the Country of Germany. It would house a state of the art amusement attraction. A height limitation waiver from the Board of Supervisors will be necessary because the building would have exterior elements exceeding 60 feet in height above grade.

Staff found that with the attached conditions the building and attraction would have minimal impacts on surround areas and be consistent with the Comprehensive Plan. Staff recommended approval.

Mr. Kale confirmed the location of the attraction.

Mr. McCleary asked about the height of the bulk of the building.

Ms. Cook said 50 feet above grade.

Mr. A. Joe Poole, III opened the public hearing.

Mr. Larry Giles, Busch Gardens Vice-President, concurred with the staff report.

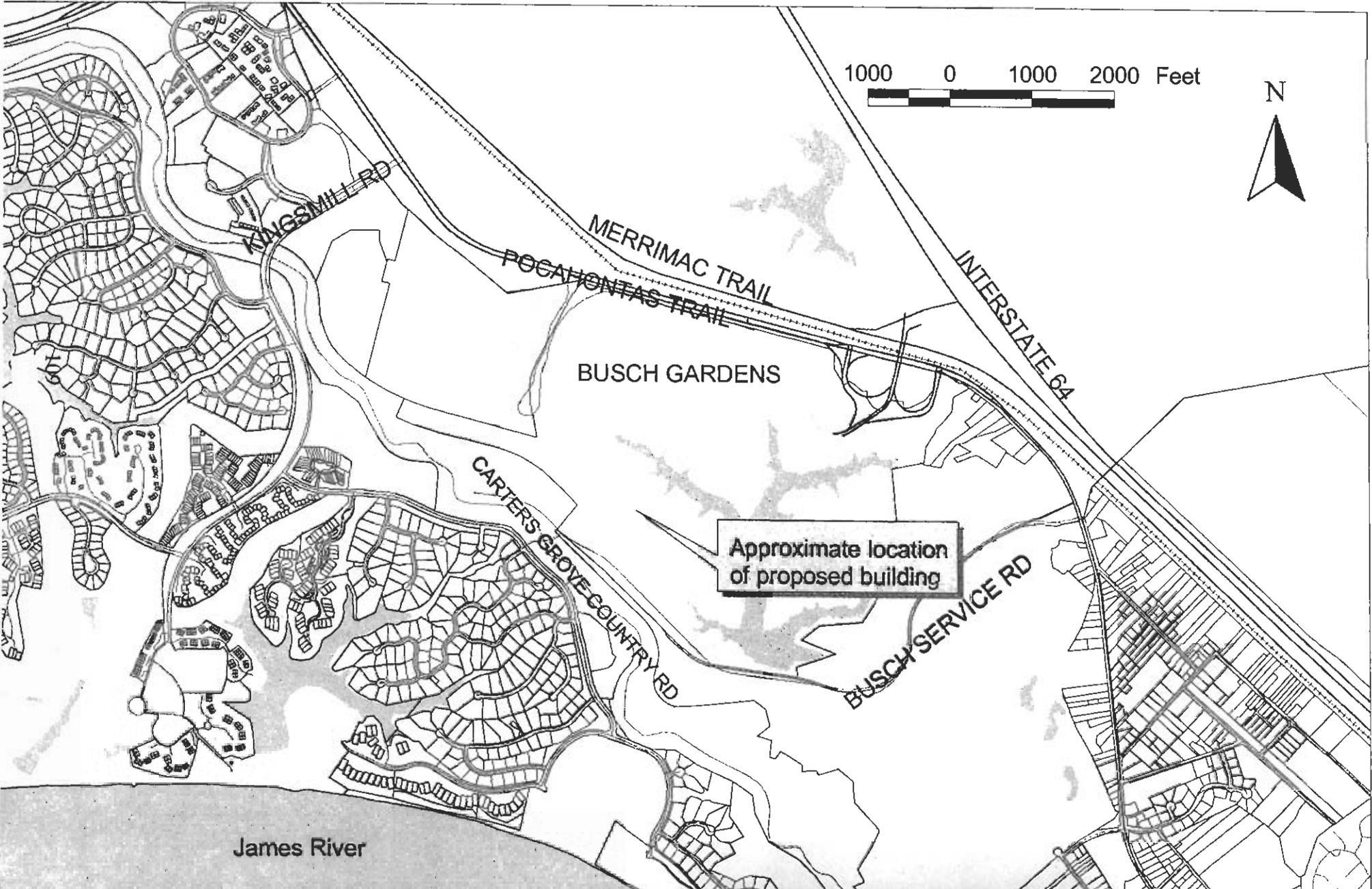
Hearing no other requests to speak, Mr. Poole, III closed the public hearing.

Mr. McCleary made a motion to approve the request.

Mr. Hagee seconded the motion.

In a unanimous roll call vote the application was approved 7:0; AYE: (7) Poole, McCleary, Hagee, Hunt, Kale, Billups, Wildman; NAY: (0).

# Case No. SUP-22-03/HW-2-03, Busch Gardens Oktoberfest Expansion



James River

**SPECIAL USE PERMIT-25-03/SUP-26-03/SUP-27-03. James City County  
Communications Towers  
Staff Report for February 10, 2004, Board of Supervisors 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 F Board Room; County Government Complex  
Planning Commission: January 13, 2004, 7:00 p.m.  
February 2, 2004, 7:00 p.m.  
Board of Supervisors: February 10, 2004, 7:00 p.m.

**SUMMARY FACTS**

Applicant: Richard M. Miller, James City County Fire Chief

Land Owners: Virginia Peninsula Regional Jail: Virginia Peninsula Regional Jail Authority; Landfill: James City County; Hankins Industrial Park: Nice Commercial Properties LLC

Proposed Uses: Three communications towers: 280 feet tall at the Virginia Peninsula Regional Jail, 380 feet tall at the JCC Landfill and 380 feet tall in the Hankins Industrial Park, serving as part of the JCC 800-MHz trunked radio system.

Locations: Virginia Peninsula Regional Jail: Merrimac Trail  
Landfill: Jolly Pond Road  
Hankins Industrial Park: 129 Industrial Boulevard

Tax Maps and Parcel Nos.: Virginia Peninsula Regional Jail: (60-1)(1-11)  
Landfill: (30-1)(1-4)  
Hankins Industrial Park: (12-4)(1-62A)

Zoning: Virginia Peninsula Regional Jail: R-8, Rural Residential  
Landfill: A-1, General Agriculture  
Hankins Industrial Park: M-2, General Industrial

Comprehensive Plan: Virginia Peninsula Regional Jail: Federal, State, and County Land  
Landfill: Federal, State, and County Land  
Hankins Industrial Park: General Industry

Primary Service Areas: Virginia Peninsula Regional Jail: Yes  
Landfill: No  
Hankins Industrial Park: Yes

Staff Contact: Matthew D. Arcieri - Phone: 253-6685

**STAFF RECOMMENDATION:**

Staff finds the proposals generally consistent with the County's Performance Standards for Wireless Communications Facilities and generally consistent with the 2003 Comprehensive Plan. In such cases where the proposal does not satisfy the criteria, these exceptions have been made in order to design a communication system to serve the larger public safety need. On January 13, 2004, the Planning Commission recommended approval of the Regional Jail and Landfill towers by a vote of 7-0. On February 2, 2004, the Planning Commission recommended approval of the Hankins tower by a vote of 7-0. Staff recommends the Board of Supervisors approve the special use permit applications with the attached conditions.

**Proposal Changes made after Planning Commission Consideration**

The applicant has requested modification of Condition No. 3 of the Regional Jail SUP to no longer require a shed roof on the equipment structure. This was done to limit costs and because existing buildings on the Regional Jail site have flat roofs. The change will not affect the visual impact of the site from Merrimac Trail.

**PROJECT DESCRIPTION AND PROPOSED OPERATION**

In FY 1996, James City County identified the need to replace the multiple radio systems used by various County agencies into one system. A Needs Assessment Study recommended the County seek licensing for a seven-channel trunked radio system in the 800-MHz band. James City County has partnered with York County on this project in order to share costs and implement a regional system. On August 12, 2003, the Board of Supervisors authorized the County Administrator to enter into a contract with Motorola and York County for the design and implementation of the 800-MHz trunked radio system.

The new system will require nine communication sites in James City County, York County, Williamsburg, and Poquoson linked together by a looped microwave network. Four of these sites will be located in James City County:

- A 140-foot self-supporting tower replacing the existing 190-foot tower at the County Emergency Operations Center (EOC) on Forge Road;
- A 280-foot self-supporting tower located adjacent to an existing 185-foot tower at the Virginia Peninsula Regional Jail on Merrimac Trail;
- A 380-foot guyed tower at the James City County Landfill on Jolly Pond Road; and
- A 380-foot self-supporting tower located adjacent to an existing 425-foot tower in the Hankins Industrial Park on Industrial Boulevard.

Attached to each tower will be an antenna measuring 13 to 20 feet in height. A portion of the top antenna may be higher than the tower; however, the slender nature of the antenna will limit its visibility. All four towers require special use permits. The Fire Department and Motorola are finalizing details for the tower at the EOC and have requested deferral of this case until the March 1, 2004, Planning Commission. The remainder of this report will only discuss the tower in the Hankins Industrial Park, Landfill, and Virginia Peninsula Regional Jail.

## PUBLIC IMPACTS

### *Visual Impacts*

A Balloon Test was conducted for the Landfill and Regional Jail towers on December 19, 2003. Photographs from both tests are attached.

- Landfill: The balloon for the Landfill test was only visible along the interior roads of the Landfill. The balloon was not visible along Jolly Pond Road or from any neighborhoods along Centerville Road. The tower will likely only be visible when viewed through the surrounding trees along portions of Jolly Pond Road immediately adjacent to the tower site.
- Regional Jail: The balloon test for the Virginia Peninsula Regional Jail site indicates the upper portions of the tower may be visible above the tree line from neighborhoods off of Pocahontas Trail and the GreenMount Industrial Park. A portion of the tower will also be visible above the tree line on I-64 and from portions of Merrimac Trail adjacent to the site.
- Hankins: In lieu of a balloon test for the Hankins Tower, the applicant provided graphical simulations of the proposed tower. Copies of this simulation are attached. Based on these graphical simulations and visual observations of the existing tower, the new tower will be visible from surrounding residential neighborhoods, including Mirror Lakes and Wellington, as well as from Richmond Road and Rochambeau Drive.

## TOWER POLICY

On May 26, 1998, the James City County Board of Supervisors adopted several performance criteria for Wireless Communications Facilities (a copy of these standards is attached). In accordance with the Zoning Ordinance, it is recommended that all facilities substantially meet the provisions of the performance standards.

### A. Co-location and Alternatives Analysis:

**Standards A1 and A2** call for the applicant to investigate and provide verifiable evidence of all possible alternatives for locating prior to making a request to construct new facilities. Working with Motorola and the Planning Division, the applicant worked to identify the potential for replacing existing towers or to co-locate on existing towers. However, given the design location requirements in order for the 800 MHz system to provide maximum coverage, no opportunities were identified.

- Landfill: There are no towers in the vicinity of the Landfill site to replace or co-locate on.
- Regional Jail: Although it could be possible to replace the existing jail tower, the additional costs and the logistical difficulties of doing so made this option unfeasible. Given the presence of an existing tower, the jail site meets the policy goal to minimize the number of new tower sites in the County.
- Hankins: Analysis of the existing tower in the Hankins Industrial Park revealed that the tower was unable to accommodate additional antennae and, although it could be possible to replace the existing tower, the additional costs and the logistical difficulties of doing so made this option unfeasible.

**Standards A3 and A4** call for a new tower to be sited to allow for the construction of a second tower and that all towers be designed to accommodate as many co-locations as possible. Each of the new towers will be able to accommodate two additional antennae.

- Landfill: There is ample property surrounding the Landfill tower to allow for the construction of a second tower.
- Regional Jail: The Virginia Peninsula Regional Jail tower would be the second on the property and satisfies this requirement.
- Hankins: Although on different pieces of property, the Hankins tower would be the second in the Industrial Park and satisfies this requirement.

B. Location and Design:

**Standard B1** states that towers and tower sites should be consistent with existing and future surrounding development and the Comprehensive Plan. Towers should be compatible with the use, scale, height, size, design, and character of surrounding, existing, and future uses while protecting the character of the County's scenic resource corridors and its view sheds.

- Landfill: The Landfill site is inconsistent with this standard due to the size of the tower and surrounding uses.
- Regional Jail: The jail site is generally consistent with this standard given the existing tower.
- Hankins: Although there will be additional impacts on the County's Community Character Corridors, the Hankins site is generally consistent given the existing tower.

**Standard B2** states that new towers should have minimal intrusion on residential areas and on scenic resource corridors (i.e., the tower should only be visible off-site when viewed through surrounding trees that have shed their leaves). For areas designated rural lands in the Comprehensive Plan within 1,500 feet of the tower, these same standards apply. For areas more than 1,500 feet from the towers, no more than the upper 25 percent of the tower should be visible.

- Landfill: Balloon tests for the Landfill tower indicate that the tower is not visible from surrounding residential areas or from adjacent property designated rural lands on the Comprehensive Plan. The tower will likely only be visible when viewed through the surrounding trees along portions of Jolly Pond Road immediately adjacent to the site. Staff finds that this tower satisfies criteria B2.
- Regional Jail: Based on the results from the balloon test, the upper portions of the Virginia Peninsula Regional Jail tower may be visible above the tree line from neighborhoods off of Pocahontas Trail and the GreenMount Industrial Park. Despite the presence of the existing tower, and that additional negative visual impact is minimal, staff finds that this tower does not satisfy criteria B2.
- Hankins: Based on graphical simulations and visual observations of the existing tower, the new tower will be visible from surrounding residential neighborhoods, including Mirror Lakes and Wellington, as well as from Richmond Road and Rochambeau Drive. Despite the presence of the existing tower, and that additional negative visual impact is minimal, staff finds that this tower does not satisfy criteria B2.

**Standards B3 and B4** state that the tower should be less than 200 feet to avoid lighting. Taller heights may be acceptable where views of the towers from residential areas and public roads are very limited.

- In order to provide the required coverage, the 800-MHz system requires heights well in excess of those recommended by County policy (380 feet at the Landfill, 280 feet at the Virginia Peninsula Regional Jail, 380 feet at Hankins). Due to this clear public safety need, staff finds the heights acceptable. All of the towers will be lighted in accordance with FAA regulations: a white strobe during the day and a red beacon light at night.

**Standard B5** states that towers should be freestanding and not supported with guy wires.

- Regional Jail and Hankins: The Virginia Peninsula Regional Jail and the Hankins site meet this requirement.
- Landfill: The Landfill site does not meet this requirement. In this case, staff believes that a guy tower at the Landfill is acceptable. The tower policy was written to encourage towers of less than 200 feet. Given that this tower will be 380 feet tall, the guy tower provides a more slender appearance critical to minimizing its visual impact.

C. Buffering:

**Standards C1 and C2** state that towers should be placed in a manner that maximizes buffering from existing trees, including maintaining a recommended 100-foot-wide buffer around the site, and that access roads should be designed in a manner that provides no off-site view of the tower base and facilities.

- Landfill: The Landfill tower has a 300 foot buffer from Jolly Pond Road. A special use permit condition is proposed to limit tree clearing and the placement of the access road in order to minimize visual impacts and satisfy these criteria.
- Regional Jail: The Regional Jail tower is adjacent to the jail parking lot and its base will be visible from Merrimac Trail. The tree buffer between the site and I-64 will not be impacted and the base will not be visible from the interstate. While the location of the jail tower does not satisfy the 100-foot wooded buffer standard, given that the tower is to be placed next to an existing tower, there will be minimal new negative visual impact.
- Hankins: The Hankins tower will be located behind a proposed two-story office building to be built in conjunction with development of the property for by-right light industrial use. The tree buffer along the rear of the site will be preserved and provide additional buffering to the site. While the location of the Hankins tower does not satisfy the 100-foot wooded buffer standard, given that the tower is to be placed behind the proposed office building, there will be minimal new negative visual impacts.

## COMPREHENSIVE PLAN

- Regional Jail and Landfill: The Regional Jail and Landfill sites are designated State, Federal, and County land. Both facilities are consistent with this designation.
- Hankins: The Hankins site is designated General Industry. General Industry sites are areas that, given the potential impacts, should be well buffered from adjacent uses, especially residential. Since providing maximum coverage for the radio system partially dictates the location of this tower, staff

finds that locating the tower in an established industrial park affords it acceptable buffering. In addition, the tower will be located adjacent to an existing tower.

- While the Comprehensive Plan also discusses the placement of towers and wireless communication facilities, it defers to the County's Performance Standards for Wireless Communications Facilities for specific criteria and guidance.
- By developing a regional system with York County, the proposal also satisfies Goal No. 4 of the public facilities element, "Emphasize efficient facilities and service delivery systems and develop public facilities as components of regional systems where feasible."

## **CONCLUSIONS AND CONDITIONS**

Staff finds the proposal generally consistent with the County's Performance Standards for Wireless Communications Facilities and generally consistent with the 2003 Comprehensive Plan. In such cases where the proposal does not satisfy the criteria, these exceptions have been made in order to design a communication system to serve the larger public safety need. On January 13, 2004, the Planning Commission recommended approval of the Regional Jail and Landfill towers by a vote of 7-0. On February 2, 2004, the Planning Commission recommended approval of the Hankins tower by a vote of 7-0. Staff recommends the Board of Supervisors approve the special use permit applications with the attached conditions (Note that the conditions are identical with the exception of Condition No. 2 for the Regional Jail and Landfill):

### ***Virginia Peninsula Regional Jail Tower:***

1. This special use permit shall be valid for a total of one (1) tower. The maximum height of the tower shall not be greater than 280 feet. The property shall be developed generally in accordance with the site layout titled "Special Use Permit Plan for Existing Cellular Tower Modification at Virginia Peninsula Virginia Peninsula Regional Jail" dated December 1, 2003, with minor changes approved by the Director of Planning.
2. Existing trees on the Virginia Peninsula Regional Jail site shall be preserved to the maximum extent possible as determined by the Director of Planning.
3. Final building design, location, orientation, and construction materials for any supporting structures, such as equipment sheds and huts shall be approved by the Director of Planning prior to final site plan approval.
4. A final Certificate of Occupancy from the James City County Codes Compliance Division shall be obtained within 24 months of approval of this special use permit or the permit shall become void.
5. Within 30 days of the issuance of a final Certificate of Occupancy by the James City County Codes Compliance Division, certification by the manufacturer, or an engineering report by a Virginia-registered structural engineer, shall be filed by the applicant indicating the tower height, design, structure, installation, and total anticipated capacity of the structure, including number and type of antennas, which could be accommodated, demonstrating to the satisfaction of the building official that all structural requirements and other safety considerations set forth in the 2000 International Building Code, or any amendment thereof, have been met.
6. The tower shall have a finish that is gray in color as approved by the Director of Planning. No additional lighting beyond the minimum required by the FAA or FCC shall be allowed on the tower.

7. No advertising material or signs shall be placed on the tower.
8. This special use permit is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.

***James City County Landfill Tower:***

1. This special use permit shall be valid for a total of one (1) tower. The maximum height of the tower shall not be greater than 380 feet. The property shall be developed generally in accordance with the site layout titled "Special Use Permit Plan for 380' Cellular Tower James City County Landfill" dated December 1, 2003, with minor changes approved by the Director of Planning.
2. The tower shall be located on the site in a manner that maximizes the buffering effects of the existing trees and minimizes tree clearing as determined by the Director of Planning. Access drives shall be designed in a manner that minimizes off-site view of the tower's base or related facilities as determined by the Director of Planning. A minimum existing tree buffer of 300 feet shall be maintained around the tower. This buffer shall remain undisturbed except for the access drive, guy wires, and necessary utilities for the tower.
3. Final building design, location, orientation, and construction materials for any supporting structures, such as equipment sheds and huts, shall be approved by the Director of Planning prior to final site plan approval.
4. A final Certificate of Occupancy from the James City County Codes Compliance Division shall be obtained within 24 months of approval of this special use permit or the permit shall become void.
5. Within 30 days of the issuance of a final Certificate of Occupancy by the James City County Codes Compliance Division, certification by the manufacturer, or an engineering report by a Virginia-registered structural engineer, shall be filed by the applicant indicating the tower height, design, structure, installation, and total anticipated capacity of the structure, including number and type of antennas which could be accommodated, demonstrating to the satisfaction of the building official that all structural requirements and other safety considerations set forth in the 2000 International Building Code, or any amendment thereof, have been met.
6. The tower shall have a finish that is gray in color as approved by the Director of Planning. No additional lighting beyond the minimum required by the FAA or FCC shall be allowed on the tower.
7. No advertising material or signs shall be placed on the tower.
8. This special use permit is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.

***Hankins Tower:***

1. This special use permit shall be valid for a total of one (1) tower. The maximum height of the tower shall not be greater than 380 feet. The property shall be developed generally in accordance with the site layout titled "Special Use Permit Plan for 380' Cellular Tower on the Nice Commercial Properties LLC" dated December 1, 2003, with minor changes approved by the Director of Planning.
2. Final building design, location, orientation, and construction materials for any supporting structures, such as equipment sheds and huts, shall be approved by the Director of Planning prior to final site plan approval.

3. A final Certificate of Occupancy from the James City County Codes Compliance Division shall be obtained within 24 months of approval of this special use permit or the permit shall become void.
4. Within 30 days of the issuance of a final Certificate of Occupancy by the James City County Codes Compliance Division, certification by the manufacturer, or an engineering report by a Virginia-registered structural engineer, shall be filed by the applicant indicating the tower height, design, structure, installation and total anticipated capacity of the structure, including number and type of antennas which could be accommodated, demonstrating to the satisfaction of the building official that all structural requirements and other safety considerations set forth in the 2000 International Building Code, or any amendment thereof, have been met.
5. The tower shall have a finish that is gray in color as approved by the Director of Planning. No additional lighting beyond the minimum required by the FAA or FCC shall be allowed on the tower.
6. No advertising material or signs shall be placed on the tower.
7. This special use permit is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.

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Matthew D. Arcieri

CONCUR:

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O. Marvin Sowers, Jr.

MDA/gs  
sup-25-03,26-03,27-03

Attachments:

1. Unapproved minutes of the January 12, 2004, Planning Commission Meeting
2. Location Maps (3)
3. Balloon Test Photos
4. Graphical Simulation Photos
5. Performance Standards for Wireless Communications Facilities.
6. Site Layouts (Under Separate Cover)
7. Resolutions (3)

## RESOLUTION

### CASE NO. SUP-25-03. JAMES CITY COUNTY COMMUNICATIONS TOWER -

#### MERRIMAC TRAIL

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, communication towers over 35 feet in height are a specially permitted use in the R-8, Rural Residential, zoning district; and

WHEREAS, the Planning Commission of James City County, following its public hearing on January 13, 2004, recommended approval of Case No. SUP-25-03 by a 7-0 vote to permit the construction and operation of a 280-foot-tall communication tower as part of the James City County 800-MHz trunked radio system at the Virginia Peninsula Regional Jail on 9320 Merrimac Trail and further identified as Parcel No. (1-11) on James City County Real Estate Tax Map No. (60-1).

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. 25-03 as described herein with the following conditions:

1. This special use permit shall be valid for a total of one tower. The maximum height of the tower shall not be greater than 280 feet. The property shall be developed generally in accordance with the site layout titled "Special Use Permit Plan for Existing Cellular Tower Modification at Virginia Peninsula Virginia Peninsula Regional Jail" dated December 1, 2003, with minor changes approved by the Director of Planning.
2. Existing trees on the Virginia Peninsula Regional Jail site shall be preserved to the maximum extent possible as determined by the Director of Planning.
3. Final building design, location, orientation, and construction materials for any supporting structures, such as equipment sheds and huts, shall be approved by the Director of Planning prior to final site plan approval.
4. A final Certificate of Occupancy from the James City County Codes Compliance Division shall be obtained within 24 months of approval of this special use permit or the permit shall become void.
5. Within 30 days of the issuance of a final Certificate of Occupancy by the James City County Codes Compliance Division, certification by the manufacturer, or an engineering report by a Virginia-registered structural engineer, shall be filed by the applicant indicating the tower height, design, structure, installation, and total anticipated capacity of the structure, including number and type of antennas, which could be accommodated, demonstrating to the satisfaction of the building official that all structural requirements and other safety considerations set forth in the 2000 International Building Code, or any amendment thereof, have been met.

6. The tower shall have a finish that is gray in color as approved by the Director of Planning. No additional lighting beyond the minimum required by the FAA or FCC shall be allowed on the tower.
7. No advertising material or signs shall be placed on the tower.
8. This special use permit is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.

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Bruce C. Goodson  
Chairman, Board of Supervisors

ATTEST:

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Sanford B. Wanner  
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 10th day of February, 2004.

sup-25-03.res

## RESOLUTION

CASE NO. SUP-26-03. JAMES CITY COUNTY COMMUNICATIONS TOWER -

### JOLLY POND ROAD

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, communication towers over 35 feet in height 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 January 13, 2004, recommended approval of Case No. SUP-26-03 by a 7-0 vote to permit the construction and operation of a 380-foot-tall communication tower as part of the James City County 800-MHz trunked radio system at the James City County Landfill on 1204 Jolly Pond Road and further identified as Parcel No. (1-4) on James City County Real Estate Tax Map No. (30-1).

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. 26-03 as described herein with the following conditions:

1. This special use permit shall be valid for a total of one tower. The maximum height of the tower shall not be greater than 380 feet. The property shall be developed generally in accordance with the site layout titled "Special Use Permit Plan for 380' Cellular Tower James City County Landfill" dated December 1, 2003, with minor changes approved by the Director of Planning.
2. The tower shall be located on the site in a manner that maximizes the buffering effects of the existing trees and minimizes tree clearing as determined by the Director of Planning. Access drives shall be designed in a manner that minimizes off-site view of the tower's base or related facilities as determined by the Director of Planning. A minimum existing tree buffer of 300 feet shall be maintained around the tower. This buffer shall remain undisturbed except for the access drive, guy wires, and necessary utilities for the tower.
3. Final building design, location, orientation and construction materials for any supporting structures, such as equipment sheds and huts, shall be approved by the Director of Planning prior to final site plan approval.
4. A final Certificate of Occupancy from the James City County Codes Compliance Division shall be obtained within 24 months of approval of this special use permit or the permit shall become void.

5. Within 30 days of the issuance of a final Certificate of Occupancy by the James City County Codes Compliance Division, certification by the manufacturer, or an engineering report by a Virginia-registered structural engineer, shall be filed by the applicant indicating the tower height, design, structure, installation, and total anticipated capacity of the structure, including number and type of antennas, which could be accommodated, demonstrating to the satisfaction of the building official that all structural requirements and other safety considerations set forth in the 2000 International Building Code, or any amendment thereof, have been met.
6. The tower shall have a finish that is gray in color as approved by the Director of Planning. No additional lighting beyond the minimum required by the FAA or FCC shall be allowed on the tower.
7. No advertising material or signs shall be placed on the tower.
8. This special use permit is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.

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Bruce C. Goodson  
Chairman, Board of Supervisors

ATTEST:

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Sanford B. Wanner  
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 10th day of February, 2004.

sup-26-03.res

## RESOLUTION

CASE NO. SUP-27-03. JAMES CITY COUNTY COMMUNICATIONS TOWER -

### INDUSTRIAL BOULEVARD

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, antennas and towers in excess of 60 feet in height are a specially permitted use in the M-2, General Industrial, zoning district; and

WHEREAS, the Planning Commission of James City County, following its public hearing on February 2, 2004, recommended approval of Case No. SUP-27-03 by a 7-0 vote to permit the construction and operation of a 380-foot-tall communication tower as part of the James City County 800-MHz trunked radio system on 129 Industrial Boulevard and further identified as Parcel No. (1-62A) on James City County Real Estate Tax Map No. (12-4).

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve the issuance of Special Use Permit No. 27-03 as described herein with the following conditions:

1. This special use permit shall be valid for a total of one tower. The maximum height of the tower shall not be greater than 380 feet. The property shall be developed generally in accordance with the site layout titled "Special Use Permit Plan for 380' Cellular Tower on the Nice Commercial Properties LLC" dated December 1, 2003, with minor changes approved by the Director of Planning.
2. Final building design, location, orientation, and construction materials for any supporting structures, such as equipment sheds and huts, shall be approved by the Director of Planning prior to final site plan approval.
3. A final Certificate of Occupancy from the James City County Codes Compliance Division shall be obtained within 24 months of approval of this special use permit or the permit shall become void.
4. Within 30 days of the issuance of a final Certificate of Occupancy by the James City County Codes Compliance Division, certification by the manufacturer, or an engineering report by a Virginia-registered structural engineer, shall be filed by the applicant indicating the tower height, design, structure, installation, and total anticipated capacity of the structure, including number and type of antennas, which could be accommodated, demonstrating to the satisfaction of the building official that all structural requirements and other safety considerations set forth in the 2000 International Building Code, or any amendment thereof, have been met.

5. The tower shall have a finish that is gray in color as approved by the Director of Planning. No additional lighting beyond the minimum required by the FAA or FCC shall be allowed on the tower.
6. No advertising material or signs shall be placed on the tower.
7. This special use permit is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.

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Bruce C. Goodson  
Chairman, Board of Supervisors

ATTEST:

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Sanford B. Wanner  
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 10th day of February, 2004.

sup-27-03.res

## UNAPPROVED MINUTES TO THE JANUARY 12, 2004, PLANNING COMMISSION MEETING

CASE NO. SUP-24-03 - Communications Tower - 3135 Forge Road

CASE NO. SUP-27-03 - Communications Tower - 129 Industrial Boulevard

CASE NO. SUP-28-03 - Communications Tower - 137 Industrial Boulevard

Mr. Matt Arcieri stated that Mr. Richard Miller, on behalf of James City County Fire Department, requested deferral of these three special use permits until the February 2<sup>nd</sup> meeting of the Planning Commission in order to finalize the locations and site layouts of the communications towers. Staff concurred with the request.

CASE NO. SUP-25-03 - Communications Tower - 9320 Merrimac Trail

CASE NO. SUP-26-03 - Communications Tower - 1204 Jolly Pond Road

Mr. Matt Arcieri stated that Mr. Richard Miller, on behalf of James City County Fire Department, has applied to construct and operate two communications towers, 289 feet tall at the Virginia Peninsula Regional Jail and another 380 feet tall at the JCC landfill, serving as part of the JCC 800-MHz trunked radio system. The County has partnered with York County on this project to share costs and implement a regional system. This was authorized by the Board of Supervisors on August 12, 2003.

Staff found the proposal generally consistent the County's Performance Standards for Wireless Communications Facilities and generally consistent with the 2003 Comprehensive Plan. Staff recommended approval of the application with the attached conditions.

Mr. Hunt asked why members were not asked to vote on all five applications.

Mr. Arcieri said the applicant was still finalizing the locations.

Mr. Billups asked if a precedent would be set for private carriers.

Mr. Arcieri stated that this is a public safety need and would not set a precedent.

Mr. Sowers gave further details about the unique nature of the project.

Mr. Hunt informed members that this need has existed for some time.

Mr. Kale asked if this system will interface with the state wide system.

Mr. Miller, Fire Chief, said yes and added that co-location with the State Police will eliminate the need for additional towers in the future.

Mr. McCleary asked if consideration has been given to rental use for private individuals.

Mr. Miller said it was very high on the priority.

Mr. Hunt asked if any existing towers were being torn down.

Mr. Terry Hale, project engineer, said the size of one tower would be reduced.

Mr. Kale asked if the state police would continue use of an older tower.

Mr. Hale answered that they would still use the older tower in addition to utilizing this new system.

Mr. Billups inquired about the tower on Route 143 near the Naval Weapons Station.

Mr. Hale said it is at maximum capacity and could not be utilized for this project.

Mr. A. Joe Poole, III opened the public hearing.

Hearing no other requests to speak, Mr. Poole, III closed the public hearing.

Mr. Kale made a motion to the approve SUP-25-03 and SUP-26-03.

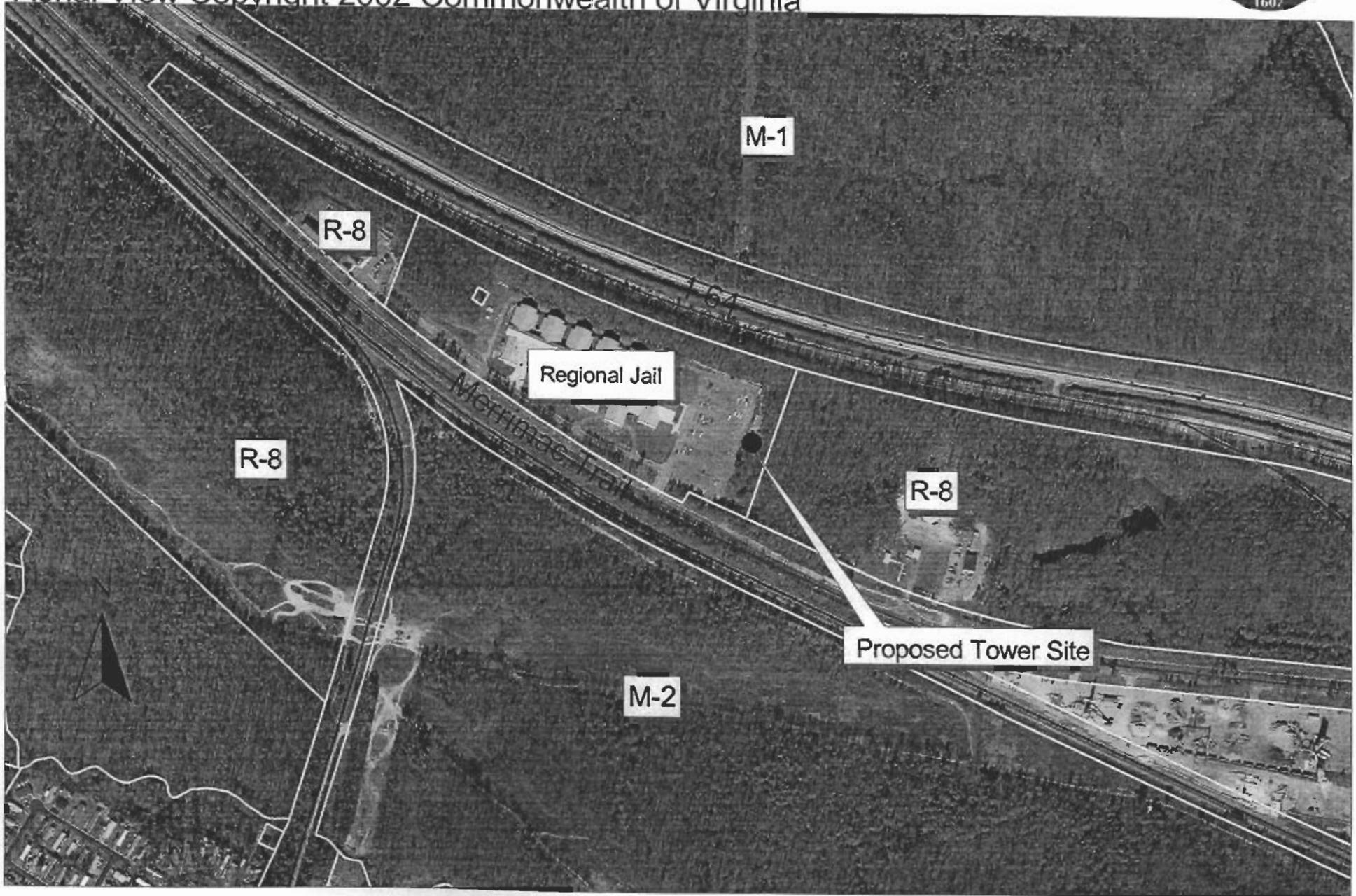
Mr. Billups seconded the motion.

In a unanimous roll call vote the applications were approved. (7-0). AYE: (7) Poole, Billups, Wildman, Kale, McCleary, Hunt, Hagee; NAY (0).

# SUP-25-03, JCC Communication Tower Regional Jail (Merrimac Trail)



Aerial View Copyright 2002 Commonwealth of Virginia



# SUP-26-03, JCC Communication Tower JCC Landfill (Jolly Pond Road)

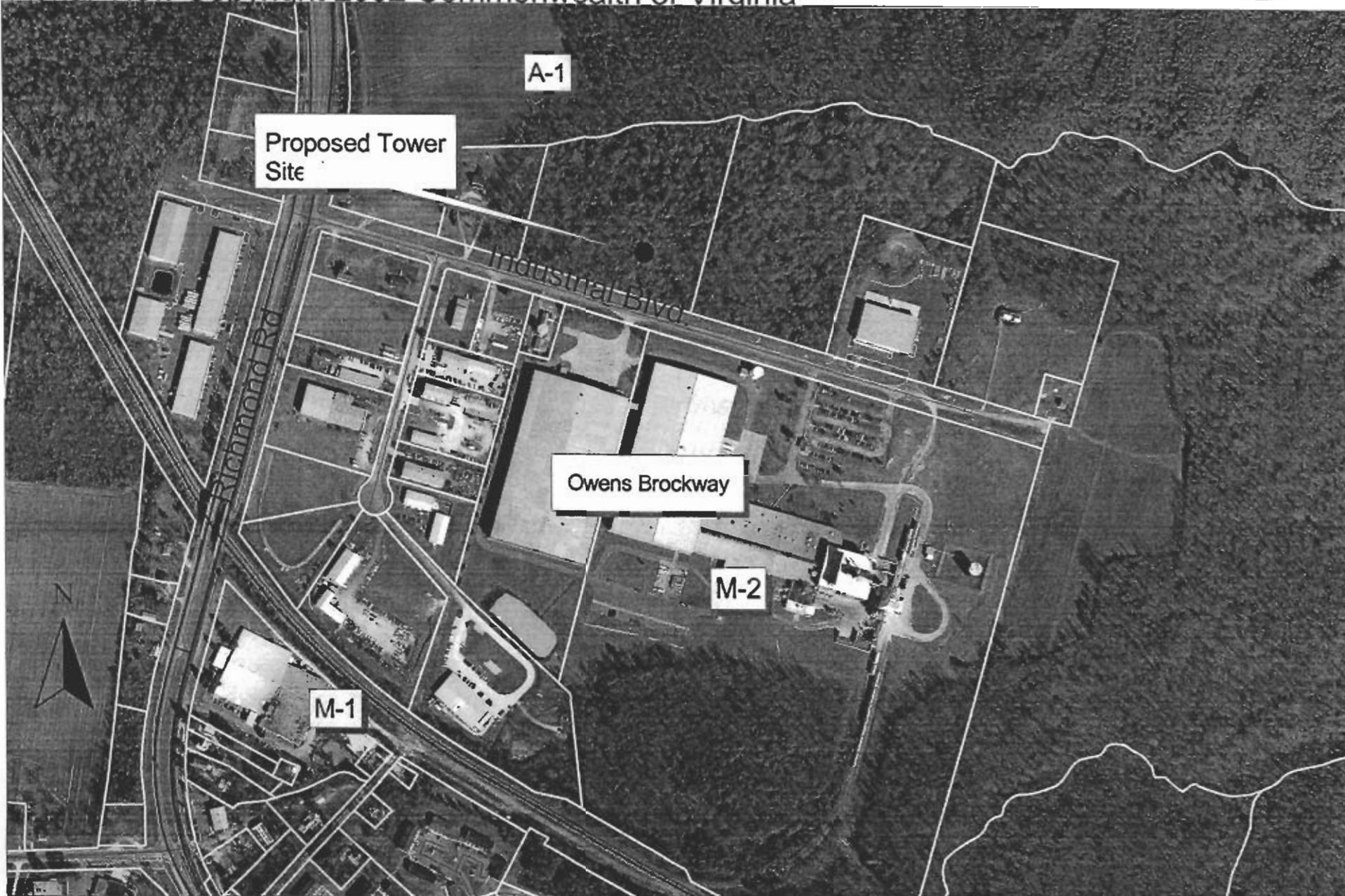


Aerial View Copyright 2002 Commonwealth of Virginia



# SUP-27-03, JCC Communication Tower Hankins Industrial Park (Industrial Blvd.)

Aerial View Copyright 2002 Commonwealth of Virginia



## Regional Jail Balloon Test



From I-64 South



From the Juvenile Detention Facility (Merrimac Center)

## Regional Jail Balloon Test



From the VDOT Maintenance Facility



From Walmart Distribution Center

## Regional Jail Balloon Test



From Jan Rae Circle (Windy Hill)

# Landfill Balloon Test



From Landfill



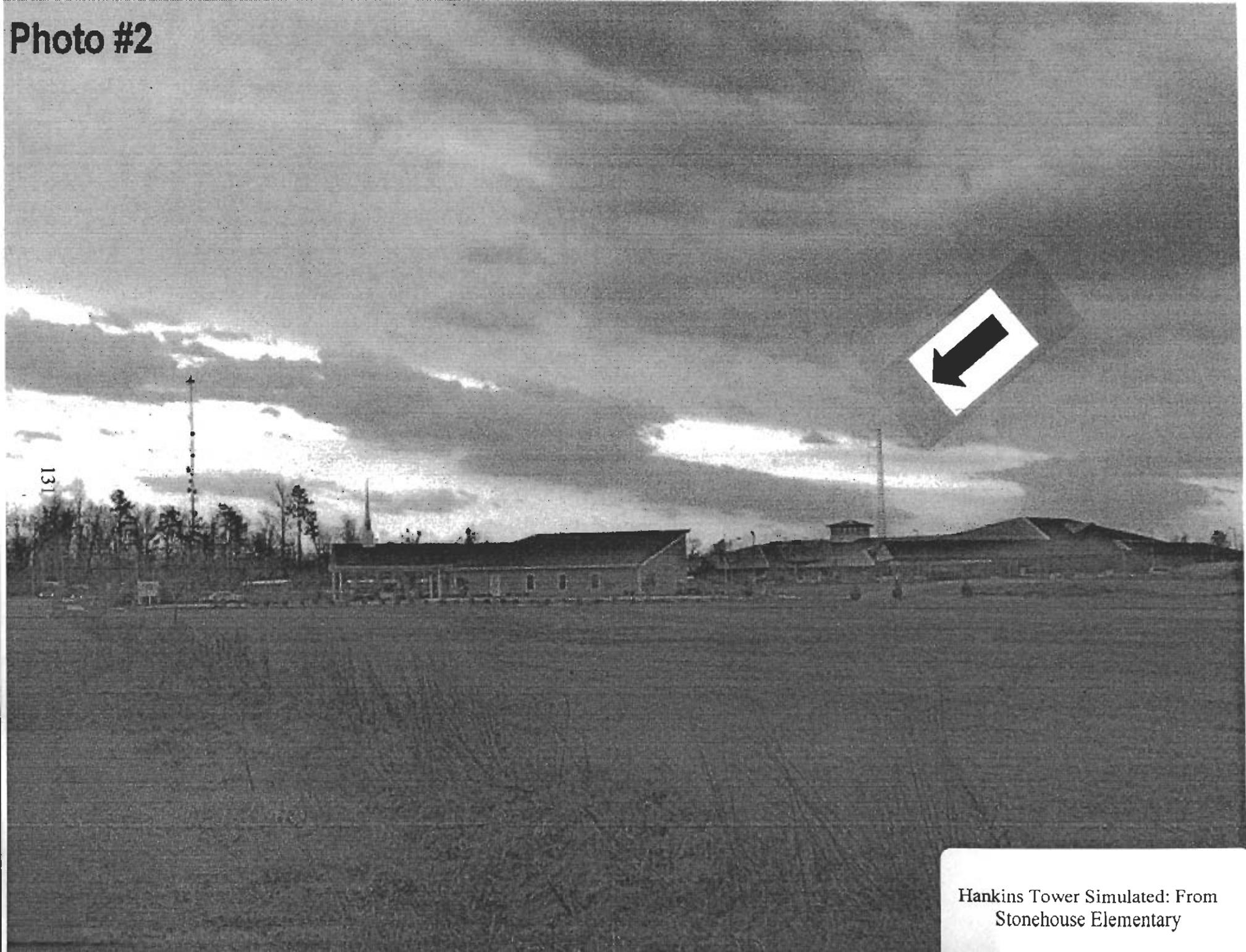
From Jolly Pond Road

Photo #1



Hankins Tower Simulated: From  
Mirror Lakes

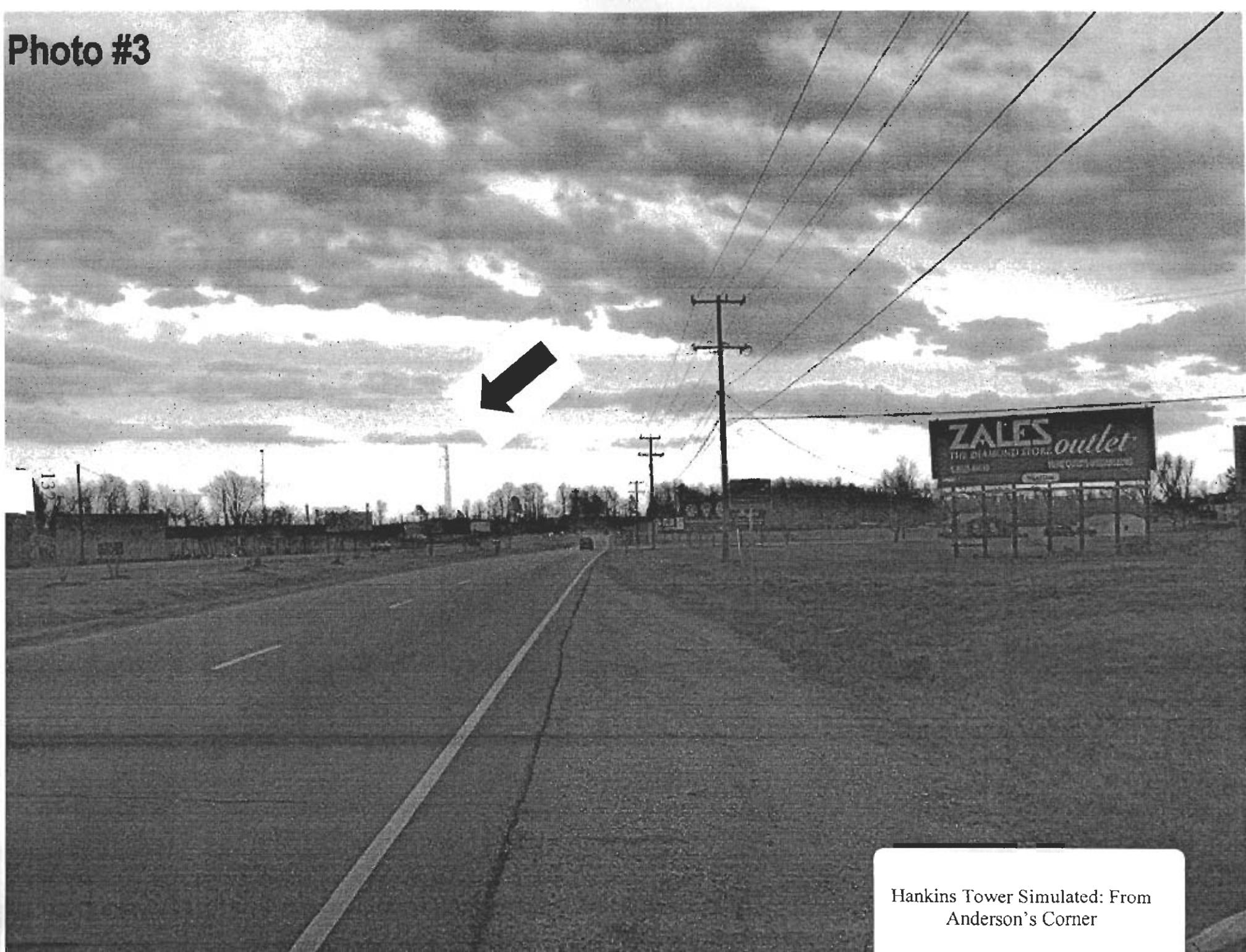
**Photo #2**



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Hankins Tower Simulated: From Stonehouse Elementary

Photo #3



Hankins Tower Simulated: From Anderson's Corner

**PERFORMANCE STANDARDS FOR WIRELESS COMMUNICATIONS FACILITIES  
MAY 26,1998**

In order to maintain the integrity of James City County's significant historic, natural, rural and scenic resources, to preserve its existing aesthetic quality and its landscape, to maintain its quality of life and to protect its health, safety, general welfare, and property values, tower mounted wireless communications facilities (WCFs) should be located and designed in a manner that minimizes their impacts to the maximum extent possible and minimizes their presence in areas where they would depart from existing and future patterns of development. To implement these goals, the Planning Commission and the Board of Supervisors have adopted these performance standards for use in evaluating special use permit applications. While all of the standards support these goals, some may be more critical to the County's ability to achieve these goals on a case by case basis. Therefore, some standards may be weighed more heavily in any recommendation or decision on a special use permit, and cases that meet a majority of the standards may or may not be approved. The terms used in these standards shall have the same definition as those same terms in the Zoning Ordinance. In considering an application for a special use permit, the Planning Commission and the Board of Supervisors will consider the extent to which an application meets the following performance standards:

**A. Collocation and Alternatives Analysis**

1. Applicants should provide verifiable evidence that they have cooperated with others in co-locating additional antenna on both existing and proposed structures and replacing existing towers with ones with greater co-location capabilities. It should be demonstrated by verifiable evidence that such co-locations or existing tower replacements are not feasible, and that proposed new sites contribute to the goal of minimizing new tower sites.
2. Applicants should demonstrate the following:
  - a. That all existing towers, and alternative mounting structures and buildings more than 60 feet tall within a three-mile radius of the proposed site for a new WCF cannot provide adequate service coverage or antenna mounting opportunity.
  - b. That adequate service coverage cannot be provided through an increase in transmission power, replacement of an existing WCF within a three mile radius of the site of the proposed WCF, or through the use of a camouflaged WCF, alternative mounting structure, or a building mounted WCF, or a system that uses lower antenna heights than proposed.

The radii of these study areas may be reduced where the intended coverage of the proposed WCF is less than three miles.

3. Towers should be sited in a manner that allows placement of additional WCF facilities. A minimum of two tower locations, each meeting all of the requirements of the Zoning Ordinance and these standards, should be provided at all newly approved tower sites.
4. All newly permitted towers should be capable of accommodating enough antennas for at least three service providers or two service providers and one government agency. Exceptions may be made where shorter heights are used to achieve minimal intrusion of the tower as described in Section B.2. below.

**B. Location and Design**

1. Towers and tower sites should be consistent with existing and future surrounding development and the Comprehensive Plan. While the Comprehensive Plan should be consulted to determine all applicable land use principles, goals, objectives, strategies, development standards, and other policies, certain policies in the Plan will frequently apply. Some of these include the following: (1) Towers should be compatible with the use, scale, height, size, design and character of surrounding existing and future uses, and such uses that are generally located in the land use designation in which the tower would be located; and (2) towers should be located and designed in a manner that protects the character of the County's scenic resource corridors and historic and scenic resource areas and their view sheds.
2. Towers should be located and designed consistent with the following criteria:

**Proposed Location of Tower**

**Impact Criteria**

a. Within a residential zone or residential designation in the Comprehensive Plan	Use a camouflaged design or have minimal intrusion on to residential areas, historic and scenic resource areas or roads in such areas, or scenic resource corridor
	For areas designated rural lands in the Comprehensive Plan that are within 1500 feet from the tower, the same standards apply. For rural lands more than 1500 feet from the tower, no more than the upper 25% of the tower should be visible
b. Within a historic or scenic resource area or within a scenic resource corridor	Same criteria as above
c. Within a rural lands designation in the Comprehensive Plan	Same criteria as above
d. Within a commercial or in an industrial designation in the Comprehensive Plan	Same criteria as above

**Notes for the above table:**

1. Exceptions to these criteria may be made on a case by case basis where the impact of the proposed tower is only on the following areas: (1) An area designated residential on the Comprehensive Plan or zoning map which is not a logical extension of a residential subdivision or which is a transitional area between residential and nonresidential uses, (2) a golf course or a golf course and some combination of commercial areas, industrial areas, or utility easements, provided the tower is located on the golf course property, or (3) a scenic easement.
2. A tower will meet the minimal intrusion criteria if it is not visible off site above the tree line. Such tower should only be visible off-site when viewed through surrounding trees that have shed their leaves.
3. Camouflaged towers having the design of a tree should be compatible in scale and species with surrounding natural trees or trees native to Eastern Virginia.

4. Towers should be less than 200 feet in height in order to avoid the need for lighting. Taller heights may be acceptable where views of the tower from residential areas and public roads are very limited. At a minimum, towers 200 feet or more in height should exceed the location standards listed above.
5. Towers should be freestanding and not supported with guy wires.

C. Buffering

1. Towers should be placed on a site in a manner that takes maximum advantage of existing trees, vegetation and structures so as to screen as much of the entire WCF as possible from view from adjacent properties and public roads. Access drives should be designed in a manner that provides no view of the tower base or related facilities.
2. Towers should be buffered from adjacent land uses and public roads as much as possible. The following buffer widths and standards should be met:
  - a. In or adjacent to residential or agricultural zoning districts, areas designated residential or rural lands on the Comprehensive Plan, historic or scenic resource areas, or scenic resource corridors, an undisturbed, completely wooded buffer consisting of existing mature trees at least 100 feet wide should be provided around the WCF.
  - b. In or adjacent to all other areas, at least a 50 foot wide-vegetative buffer consisting of a mix of deciduous and evergreen trees native to Eastern Virginia should be provided.