

A G E N D A

JAMES CITY COUNTY BOARD OF SUPERVISORS

County Government Center Board Room

June 12, 2007

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MEMORANDUM

DATE: June 12, 2007

TO: The Board of Supervisors

FROM: Sanford B. Wanner, County Administrator

SUBJECT: Employee and Volunteer Outstanding Service Awards

The Recognition Program is designed to provide meaningful recognition of exceptional achievement, performance and improvements by employees and volunteers of James City County and James City Service Authority.

The following individuals and teams recognized at the June 12, 2007, Board of Supervisors meeting exemplify the County's Mission and demonstrate our Values:

- Six individual employees;
- Four employee teams;
- Four individual volunteers; and
- Three Lifesaving awards.



Sanford B. Wanner

SBW/gb
VolAwards07.mem

AT A WORK SESSION OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE 22ND DAY OF MAY 2007, AT 4:00 P.M. IN THE COUNTY GOVERNMENT CENTER BOARD ROOM, 101 MOUNTS BAY ROAD, JAMES CITY COUNTY, VIRGINIA.

A. CALL TO ORDER

B. ROLL CALL

John J. McGlennon, Chairman, Jamestown District
James O. Icenhour, Jr., Vice Chairman, Powhatan District
Jay T. Harrison, Sr., Berkeley District
Bruce C. Goodson, Roberts District
M. Anderson Bradshaw, Stonehouse District

Sanford B. Wanner, County Administrator
Leo P. Rogers, County Attorney

C. BOARD DISCUSSIONS

1. Ironbound Square Revitalization Project

Mr. Doug Powell gave a brief overview on the background of the Ironbound Square Revitalization Project and the acquisition process for the properties to be redeveloped. The Board was presented with alternate development options for the project and the positive and negative impacts of each alternative were outlined.

Discussion was held regarding the development options considering maintenance and preservation of the community with mixed-use zoning. The Board and staff discussed options for maintenance of roads, acquisition of parcels necessary to meet buffer and right-of-way requirements, and utilization of roads and facilities that have already been installed.

The Board and staff discussed options for negotiations with parcel owners and the fiscal viability of the project to benefit the community and fair treatment of the property owners.

2. Hampton Roads Transportation Authority

The Board and representatives from the Hampton Roads Partnership and Hampton Roads Planning District Commission discussed participation in the Hampton Roads Transportation Authority. Discussion was held about imposition of taxes, authority debt not being overlapping debt and would not be carried locally, funding prior to tolls being collected, and what regional projects would be completed.

3. James City Service Authority - Sewer System Overflows

Mr. Larry Foster, James City Service Authority General Manager, Mr. Danny Poe, Wastewater Chief Engineer, and Mr. Bob Smith, Assistant Manager, presented information about sewer system overflows with

County statistics in preparation for a resolution on June 26, 2007, authorizing the General Manager to enter into a consent order in relation to sewer system overflows. Mr. Foster stated that entering into the consent order with the Department of Environmental Quality (DEQ) would provide safe harbor protection for liability in the event of sewer system overflows, but increased costs would be inherent in improving infrastructure and waste water service.

The Board and staff discussed liability for sewer system overflows based on the safe harbor protection in the consent order, and staff explained that this provided protection against suits from environmental groups and provided a regional standard to be used as a defense in a lawsuit.

The Board and staff discussed costs shared by the Hampton Roads Sanitation District by an individual locality, and staff explained that a single utility would not bear the fiscal responsibility for another utility not meeting the regional standards.

D. RECESS

At 6:30 p.m., Mr. McGlennon recessed the Board until 7 p.m.

Sanford B. Wanner
Clerk to the Board

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AT A REGULAR MEETING OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE 22ND DAY OF MAY 2007, AT 7:00 P.M. IN THE COUNTY GOVERNMENT CENTER BOARD ROOM, 101 MOUNTS BAY ROAD, JAMES CITY COUNTY, VIRGINIA.

A. ROLL CALL

John J. McGlennon, Chairman, Jamestown District
James O. Icenhour, Jr., Vice Chairman, Powhatan District
Jay T. Harrison, Sr., Berkeley District
Bruce C. Goodson, Roberts District
M. Anderson Bradshaw, Stonehouse District

Sanford B. Wanner, County Administrator
Leo P. Rogers, County Attorney

B. MOMENT OF SILENCE

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

C. PLEDGE OF ALLEGIANCE - Katoria Wright, an eighth-grade student at James Blair Middle School led the Board and citizens in the Pledge of Allegiance.

D. PRESENTATION - Tapestry Hanging from Ipswich, England, depicting the *Godspeed*

Mr. William C. Porter, Jr., Assistant County Administrator, presented a tapestry hanging from Ipswich, England, depicting the *Godspeed* leaving the port at Ipswich. Mr. Porter explained that the tapestry hanging was commissioned by the Ipswich Arts Association along with the Charter Hangings that had been displayed at Legacy Hall and the Williamsburg Regional Library on Croaker Road. He explained that the tapestry hanging would be framed along with a photo of the people who made it and they would be on display. He also presented a CD with photos of the group creating the tapestry hanging.

Mr. McGlennon thanked Mr. Porter for his presentation and requested that the photos on the CD be available on the County's website for the public to view.

E. HIGHWAY MATTERS

Mr. Jim Brewer, VDOT Residency Administrator, stated he had attended a preconstruction conference on May 24 for Route 608 and will soon establish a schedule. He stated a speed study had been conducted on Route 602 which determined that no change be made. He noted that he requested the data for that study for Mr. Bradshaw; stated that VDOT has been repairing potholes on Old News Road and doing pipe work along News Road as an ongoing project which should be completed this week; and that the requested Settler's Mill speed limit signs would soon be installed along with the "Watch for Children" signs.

Mr. Brewer commented that his involvement with the 400th Anniversary activities was a pleasure.

F. PUBLIC COMMENT

1. Ms. Bridget Huckabee, 115 Deerrwood Drive, commented on the closure of Jolly Pond Road and requested more information about the status of the road reopening.

2. Ms. Marion Warburton, 2514 Jolly Pond Road, commented on the closure of Jolly Pond Road and difficulties that have arisen due to the closure.

3. Mr. Ed Warburton, Jr., 2514 Jolly Pond Road, commented on the closure of Jolly Pond Road and requested information about the progress of reopening.

4. Mr. Ed Warburton, III, 2626 Jolly Pond Road, commented on the closure of Jolly Pond Road and the funding required to reopen it.

5. Ms. Mary Lou Clark, 2035 Bush Neck Road, commented on the intention to expedite the opening of Jolly Pond Road and temporary repairs. She made note of a recent incident where a tractor trailer jackknifed on the road and requested action to reopen the road.

6. Mr. Michael Richardson, 2701 Jolly Pond Road, commented on roadblocks in the progress to repair the dam at Jolly Pond to allow for Jolly Pond Road to be reopened.

7. Mr. David Brown, 1502 Bush Neck Road, commented on the closure of Jolly Pond Road, and stated the landowner was now responsible for the dam rather than the County. He stated there were no side roads and if Jolly Pond Road was blocked, there would be no way out. He requested that the County absolve the landowner of responsibility.

8. Ms. Stephanie Allen, 2001 Bush Neck Road, requested Jolly Pond Road be opened as quickly as possible.

9. Mr. David Allen, 2001 Bush Neck Road, commented that the road should be reopened as quickly as possible because of the liability of not being able to access the road in the event of an emergency.

10. Ms. Maxine Canaday, 3003 Jolly Pond Road, requested that Jolly Pond Road be reopened.

11. Ms. Audrey Brown, 3096 Jolly Pond Road, requested that Jolly Pond Road be reopened.

12. Mr. James Canaday, 3040 Jolly Pond Road, requested that Jolly Pond Road be reopened.

13. Ms. Olivia Canaday, 3040 Jolly Pond Road, requested that Jolly Pond Road be reopened for accessibility by emergency vehicles.

14. Ms. Virginia Davis, 2200 Jolly Pond Road, stated the tractor trailer jackknifed in her driveway and she had no way to leave her home. She requested the road be reopened as quickly as possible.

15. Mr. John Davis, 2200 Jolly Pond Road, requested Jolly Pond Road be reopened.

16. Mr. Bob Bayton, 101 Deerwood Drive, stated he and others had met with County officials and State Dam Safety individuals regarding reopening Jolly Pond Dam which ended positively, but he had not heard anything further. Mr. Bayton commented on the tractor trailer incident which blocked the road and noted the emergency access needs that require the road to be opened and requested help from the County to repair the dam and reopen the road.

17. Mr. Ed Oyer, 139 Indian Circle, commented on traffic on Route 60 and transportation

funding; the railroad crossing at Busch Gardens; and potholes near Windy Hill Market.

18. Mr. Brian Oyer, 1025 Barnes Road, commented on the reopening of Jolly Pond Road; the stormwater utility fee; and property assessments.

Mr. Larry Foster, James City Service Authority General Manager, responded to the comments regarding the closure of Jolly Pond Road. He stated there has been an extensive amount of open discussion with the property owner, legislators, and representatives from Dam Safety. He said he felt that the issues for temporary repairs were resolved in April when he met with Dam Safety representatives, citizens, Mr. Icenhour, the owner, and County staff. He stated the County has completed a study and documentation for Dam Safety and once the owner signs, the repairs can be authorized. He explained that the State has required standards in place that will cost a substantial amount of money to upgrade the dam which cannot be avoided if improvements are made to the current structure. He stated to meet the standards the property owner would need to do a major upgrade of the dam. Mr. Foster said the property owner was very willing to do temporary repairs, but these later requirements have compelled him not to sign the documents required. He stated that everyone was willing and cooperative, but the County was only a facilitator and not the owner of the property.

Mr. Icenhour stated at the last meeting he thought there was a solution that was reached and thought the owner was comfortable enough with the arrangements to sign the documents. He stated that when dealing with private property, the County has to get permission to facilitate the opening of the road. He stated his goal was to open the road as soon as possible, but the General Assembly has passed a very restrictive law with requirements of the landowner to meet current Dam Safety standards if the dam is repaired. Mr. Icenhour explained that the liability issue needed to be looked at as soon as possible, but even if the temporary repairs were done, the current legislation requires a considerable amount of money within a few years to fully renovate the dam or else the State would require it to be breached. He said this issue needed to be evaluated in the long term.

Mr. Allen asked why the landowner would be responsible for any future action that would occur with the dam.

Mr. McGlennon responded that the State has enacted legislation that requires a higher standard for dam safety.

Mr. Allen stated there was a greater liability in having the road closed than the soundness of the dam.

Mr. McGlennon stated these concerns would be addressed and there would be a response to questions that were raised.

Mr. Goodson asked about the liability issue surrounding the controversy.

Mr. Foster stated that if the dam should fail, if someone should be injured while crossing the dam, or if there were any damages downstream, the owner would be responsible for those losses.

Mr. Goodson asked who would be responsible for public dams that were washed out.

Mr. Rogers stated there was no liability in those cases and explained that liability was assumed as a private property owner, and this liability is something that the County cannot assume. He stated that if the dam is repaired but not in compliance with State standards and then it breaches, the private property owner can be responsible for damage downstream.

Mr. Foster stated he reviewed the dam evaluation in regard to hydrology, and though the landfill may contribute to the runoff in the watershed, it was not identified as a major contributor, accounting for only 15

percent.

Mr. McGlennon stated that the Board and citizens all agreed about the urgency to reopen the dam, and directed that information should be distributed regarding progress of this goal.

G. CONSENT CALENDAR

Mr. Harrison requested to pull Item No. 6 to allow for Chief Tal Luton to introduce the assistant fire marshal.

Mr. Harrison made a motion to adopt the remainder of the consent calendar.

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

1. Minutes - May 8, 2007, Regular Meeting
2. Dedication of a Street in Grove Hill Estates, Section Three

RESOLUTION

DEDICATION OF A STREET IN GROVE HILL ESTATES, SECTION THREE

WHEREAS, the street described on the attached Additions Form AM-4.3, fully incorporated herein by reference, is shown on the plat 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 to add the street described on the attached Additions Form AM-4.3 to the secondary system of State highways, pursuant to § 33.1-229 of the Code of Virginia, and the Department's Subdivision Street Requirements.

BE IT FURTHER RESOLVED, 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. Dedication of Streets in Scott's Pond, Section One-C

RESOLUTION

DEDICATION OF STREETS IN SCOTT'S POND, SECTION ONE - C

WHEREAS, the streets described on the attached Additions Form AM-4.3, fully incorporated herein by reference, are 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 streets meet 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 to add the streets described on the attached Additions Form AM-4.3 to the secondary system of State highways, pursuant to § 33.1-229 of the Code of Virginia, and the Department's Subdivision Street Requirements.

BE IT FURTHER RESOLVED, 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.

4. Dedication of Streets in Settler's Mill, Section 6

RESOLUTION

DEDICATION OF STREETS IN SETTLER'S MILL, SECTION 6

WHEREAS, the streets described on the attached Additions Form AM-4.3, fully incorporated herein by reference, are 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 streets meet 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 to add the streets described on the attached Additions Form AM-4.3 to the secondary system of State highways, pursuant to § 33.1-229 of the Code of Virginia, and the Department's Subdivision Street Requirements.

BE IT FURTHER RESOLVED, 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.

5. Installation of “Watch for Children” Signs - Settler’s Mill Subdivision

RESOLUTION

INSTALLATION OF “WATCH FOR CHILDREN” SIGNS - SETTLER’S MILL SUBDIVISION

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 (VDOT) 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 Settler’s Mill community have requested that two “Watch for Children” signs be installed. Staff recommends that the signs be installed at the intersections of Level Way and Lakewood Drive, and Lakewood Drive and Mill Stream Way as illustrated on the attached map titled “Settler’s Mill Subdivision ‘Watch for Children’ signs.”

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

7. Contract Award - PPTA and PPEA RFP Development and Proposal Review Consultant

RESOLUTION

CONTRACT AWARD - PPTA AND PPEA RFP DEVELOPMENT AND

PROPOSAL REVIEW CONSULTANT

WHEREAS, a Request for Proposals (RFP) was publicly advertised for consultant services on an “as needed” basis to assist the County in developing solicited Public-Private Transportation Act of 1995 (PPTA) and Public-Private Education Facilities and Infrastructure Act of 2002 (PPEA) RFP, and reviewing both solicited and unsolicited PPTA and PPEA proposals; and

WHEREAS, the Evaluation Committee reviewed the four proposals submitted and selected McDonough Peck, Inc. as the most fully qualified and best suited to meet the County’s needs as defined in the RFP.

NOW THEREFORE BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, awards the contract for PPTA and PPEA RFP Development and Proposal Review Consulting Services to McDonough Bolyard Peck, Inc.

8. Appropriation - Surveillance Cameras for Williamsburg Area Transport Buses - \$92,840

RESOLUTION

APPROPRIATION - SURVEILLANCE CAMERAS FOR

WILLIAMSBURG AREA TRANSPORT BUSES - \$92,840

WHEREAS, Williamsburg Area Transport (WAT) received a grant to purchase surveillance cameras.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby appropriates the following FY 2007 revenues and expenditures to the WAT fund:

Revenues:

Federal Grants (STP)	\$88,000
State Grants (STP)	<u>4,840</u>
Total	<u>\$92,840</u>

Expenditures:

Surveillance Cameras	<u>\$110,000</u>
Local WAT Capital Funds	<u>(17,160)</u>
Total	<u>\$92,840</u>

BE IT FURTHER RESOLVED that the Board of Supervisors of James City County, Virginia, increases the approved Fiscal Year 2007 Budget in the amount of \$92,840.

9. Appropriation - Dominion Resources Grant for Jamestown Campground and Yacht Basin - Appropriation to Greenspace - \$250,000

RESOLUTION

DOMINION RESOURCES GRANT - JAMESTOWN CAMPGROUND AND YACHT BASIN -

APPROPRIATION TO GREENSPACE - \$250,000

WHEREAS, Dominion Resources has awarded \$250,000 to James City County via the Trust for Public Land towards the acquisition of the Jamestown Campground and Yacht Basin property; and

WHEREAS, the Board of Supervisors, in accepting the grant, would like to express its appreciation to Dominion Resources for its generous award and to the Trust for Public Land for its assistance in securing the grant; and

WHEREAS, the funds should be appropriated to the County's Greenspace account, within the Capital Budget, as partial reimbursement of the County's previous spending towards the acquisition of the Jamestown Campground and Yacht Basin property.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby accepts \$250,000 from Dominion Resources via the Trust for Public Land to assist in

the acquisition of the Jamestown Campground and Yacht Basin property and wishes to express its gratitude for that financial support.

BE IT FURTHER RESOLVED that the Board of Supervisors appropriates these funds as partial reimbursement to the Greenspace account in the County's Capital Budget.

6. Appointment of Assistant Fire Marshal, Authorization of Fire Prevention Powers and Authorization of Police Powers

Mr. McGlennon extended congratulation to Chief Tal Luton for the performance of emergency responders during Anniversary Weekend.

Chief Tal Luton introduced Michelle Toutaint and stated she has completed the necessary requirements for appointment as Assistant Fire Marshal in accordance with State code, and that the appointment must be authorized by the Board. He recommended approval of the resolution.

Mr. Harrison made a motion to adopt the resolution.

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

RESOLUTION

**APPOINTMENT OF ASSISTANT FIRE MARSHAL, AUTHORIZATION OF
FIRE PREVENTION POWERS AND AUTHORIZATION OF POLICE POWERS**

WHEREAS, Section 27-34.2 of the Code of Virginia, 1950, as amended, provides that James City County may authorize the local Fire Marshal to arrest, to procure and serve warrants of arrest, and to issue summons in the manner authorized by general law for violation of local fire prevention and fire safety and related ordinances; and

WHEREAS, Section 27-34.2:1 of the Code of Virginia, 1950, as amended, provides that James City County may authorize the local fire marshal to have the same law enforcement powers as a police officer for the purpose of investigation and prosecution of all offenses involving fires, fire bombings, attempts to commit such offenses, false alarms relating to such offenses, and the possession and manufacture of explosive devices, substances, and fire bombs; and

WHEREAS, Section 27-34.2:1 of the Code of Virginia, 1950, as amended, provides that James City County may authorize the local fire marshal to exercise the powers authorized by the Fire Prevention Code; and

WHEREAS, Section 27-34.2:1 of the Code of Virginia, 1950, as amended, provides that James City County may appoint Assistant Fire Marshals, who, in the absence of the Fire Marshal, shall have the powers and perform the duties of the Fire Marshal; and

WHEREAS, Michelle L. Toutaint has completed all minimum training and certification requirements of the Department of Criminal Justice Services and the Department of Fire Programs.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby appoints Michelle L. Toutaint as a James City County Assistant Fire Marshal with all

such police powers and authority as provided in Virginia Code Sections 27.30 et. seq.

H. PUBLIC HEARING

1. Resolution Approving the Powers Granted to the Hampton Roads Transportation Authority

Mr. Sanford Wanner, County Administrator, stated the resolution before the Board approved the powers granted to the Hampton Roads Transportation Authority. He stated that during the 2006 General Assembly session, there was a great deal of compromise and the Governor has approved the Hampton Roads Transportation Act, effective July 1, 2007. Mr. Wanner stated the Act requires the governing bodies of Hampton Roads adopt a resolution to accept the Act and each jurisdiction must vote to be a voting member of the Authority to impose the fees and taxes assessed. He stated the Act was a compromise and did not please everyone. Mr. Wanner said the legislation was an act by the General Assembly to avoid adequately funding transportation. He noted that the County would benefit from two of the projects that would be administered through the Authority, including the widening of I-64 and the improvement to the water crossings. He stated no locality was happy with this matter, but it was necessary to address the transportation needs of the region. He recommended approval of the resolution approving the powers granted to the Hampton Roads Transportation Authority and for the County to join the Authority.

Mr. McGlennon stated a work session was held prior to the meeting to address this matter and it was discussed extensively with members of the Hampton Roads Partnership.

1. Mr. Leonard Sazaki, 3927 Ironbound Road, stated the General Assembly was wrong to pass this issue on to local government. He commented that the money from the State would decrease and little progress would be made; asked what recourse would be given to the locality or its citizens; stated it was the function of the State to handle this issue; and requested the Board deny this resolution.

2. Mr. Michael Richardson, 2701 Jolly Pond Road, requested the Board deny this resolution. He stated taxes were too high as is and the State should not pass this responsibility onto local government. He requested tolls be put on the roads.

3. Mr. Hugh Sharpe, 124 Highland, commented that the State was imposing its responsibilities on local governments and the Authority could not be controlled.

4. Mr. Bill Thibeault, 137 Shinnecock, stated his opposition to the Hampton Roads Transportation Authority. He stated the same issue came forward in Northern Virginia years ago and it was rejected. He commented that the State was passing on its transportation responsibilities onto local government.

5. Mr. Dick Schreiber, President of the Greater Williamsburg Chamber and Tourism Alliance stated that transportation has been a need for years, and though the State ducked its responsibility and passed it onto local government, there would be no solution for years if it was rejected. He stated this was a legislative compromise and if the Board stood on principle against this matter, the current and future transportation issues would not be addressed and would get worse. He stated the Chamber and Tourism Alliance requested approval of the resolution.

6. Mr. Morris Halsey, 2265 West Island Road, asked why the public was not given more information about this matter.

7. Mr. James Taverna, 204 Hurlston, requested more information and requested a denial until guarantees were given regarding funding.

8. Mr. Ed Oyer, 139 Indian Circle, commented that this Authority dictates very inflexible taxes, fees, Comprehensive Plan designations, and other regulations. He noted that the General Assembly refuses to raise taxes of the State, but raises them locally through these types of initiatives. He commented that commercial trade will avoid these taxes and the burden will be on citizens.

9. Ms. Mary Magoon Delara, 92 Sandhill, stated her disapproval of the resolution. She requested that more information be given to citizens about the powers, authority, and fees, and suggested that more guarantees be made for funding of the transportation projects before this was considered.

10. Mr. Brian Oyer, 9025 Barnes Road, stated there was no benefit to the County and there was regional discontinuity on the issue; and 67 percent of voters turned down the transportation referendum. He requested the Board disapprove the resolution.

11. Dr. Christine Llewellyn, 16000 Heritage Landing Road, requested the Board vote against the resolution.

12. Mr. Gerard Smith, 10572 Harbor Road, asked what the County would get from this legislation and for what cost. He stated the Board should represent the citizens' wishes and work to benefit them. He requested the Board deny the resolution.

As no one else wished to speak to this matter, Mr. McGlennon closed the public hearing.

Mr. McGlennon stated that Northern Virginia has a transportation district and it was included in this legislation, but was not designated specific projects. He said for this area, six local projects developed by the Metropolitan Planning Organization (MPO) were identified by legislators to be funded by this Authority. Mr. McGlennon noted that the work session prior to the meeting was held to clarify some information and there has been significant information through State government, the Hampton Roads Planning District Commission (HRPDC), MPO, and newspapers. He noted that the HRPDC holds analysis of the taxes and fees that would be collected by this Authority. He commented that the Board needed to be able to explain the local importance of the six designated projects, as well as reasons for or against joining the Authority. He stated this is a complex problem and commented that citizens should address it to their State legislation and vote accordingly, but since this has not been done, it appears not to be a priority in people's consideration at the ballot box. He stated the Board had an opportunity to question some experts at the work session prior to the meeting and that the Board should not act on this resolution until the next regular meeting on June 12, 2007.

Mr. Harrison stated foresight needed to be used to see what the effect would be if the Authority was passed by other jurisdictions and imposed on the County. He also stated that citizens needed to address this issue with the State legislation at the ballot box.

Mr. Bradshaw stated he was very well informed at the work session and saw many faults with this legislation. He commented that the positive and negative effects of sending this matter back to Richmond needed to be considered further.

Mr. Goodson stated he appreciated the citizen and Board comments. He commented that he was interested in a solution and was unsure if the solution was to pass the resolution and modify the transportation authority from within to meet the needs requested by the citizens and provide more flexibility.

Mr. Icenhour stated this was a bad bill and struggled with what will be possible consequences of rejection of the item. He stated the Board needed to take the time to examine the matter further.

Mr. McGlennon stated this item would be considered on June 12, 2007.

I. BOARD CONSIDERATION

1. Case No. ZO-1-07. Mixed Use District Amendment

Ms. Ellen Cook, Senior Planner, stated this ordinance was presented at the May 8, 2007, Board meeting and was deferred to May 22, 2007. She stated there were two ordinances with staff recommending the original ordinance that designated the Planning Commission as the body to approve setback modifications. She noted that the alternate ordinance designated the Board of Supervisors as the approving body.

Staff recommended approval of the ordinance amendment.

Mr. Icenhour thanked Ms. Cook for her help in clarification of the matter. He stated he had visited the sites indicated and while there were a few setbacks for 50 feet, the average was 29 feet. Mr. Icenhour stressed the responsibility of the Board to be more careful in approving master plans.

Mr. Icenhour made a motion to approve the alternate ordinance that proposed setback modifications be approved by the Board of Supervisors rather than the Planning Commission.

Mr. Goodson stated his opposition and stated the Planning Commission was sufficient. He noted that the extra time required to bring the matter back to the Board would be an unnecessary delay. He clarified that there was always a maximum density cap on rezonings, so setbacks would not impact the number of units, but would actually impact the amount of greenspace and open areas in the development. He stated that there was a need for better design practices and said he would rather leave that decision to an expert in that area.

Mr. Harrison stated he supported the alternate ordinance because the Board was elected to make hard decisions and needed the additional oversight to get the project right. He stated there needed to be more binding master plans at the level of the Board of Supervisors approval.

Mr. McGlennon stated he felt the Planning Commission traditionally dealt with setbacks so they were an adequate means to handle this issue. He stated the setback modifications outlined in the memorandum were almost entirely in New Town, which were anticipated and they were part of the design of New Town. He said he does not see other examples where this would be a problem, and if the Board felt the waiver approvals should come back to the Board members, there should be a Comp Plan change for all districts and not just New Town. Mr. McGlennon agreed that the Board should be more careful during the approval phase when applicants were being bound to master plans. He clarified that this matter was not a vehicle to increase density in the developments and stated he was comfortable with ordinance recommended by staff.

On a roll call vote on the alternate ordinance, the vote was: AYE: Harrison, Icenhour. (2). NAY: Bradshaw, Goodson, McGlennon. (3).

Mr. Goodson made a motion to adopt the original ordinance amendment.

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

J. PUBLIC COMMENT

1. Mr. Ed Oyer, 139 Indian Circle, commented on local spending for education versus performance.
2. Mr. Michael Richardson, 2701 Jolly Pond Road, commented on assumption of liability for reopening Jolly Pond Road and the responsibility of the County as an upstream landowner.
3. Mr. Leonard Sazaki, 3927 Ironbound Road, thanked the Board for taking more time to evaluate the transportation authority resolution.

K. REPORTS OF THE COUNTY ADMINISTRATOR

Mr. Wanner stated Anniversary Weekend was very successful, with only minor incidents and a successful presidential visit. He stated the public safety officials collaborated with Federal and State officers and other officials to make the weekend a success. He also recognized Richard Drumwright and the outstanding service by those involved in the transportation planning. Mr. Wanner thanked the Board for its support and noted that the County will recognize staff in the future for their time contributions for the commemoration.

Mr. Wanner stated following a meeting of the James City Service Authority Board of Directors, the Board should hold a Closed Session pursuant to Section 2.2-3711(A)(1) of the Code of Virginia for the consideration of a personnel matter, the appointment of individuals to County boards and/or commissions, specifically the Thomas Nelson Community College Board and the Board of Zoning Appeals; and Section 2.2-3711 (A)(3) of the Code of Virginia for the consideration of the acquisition of a parcel of property for public use. He stated when the Board completed its business, it should adjourn until 7 p.m. on June 12, 2007.

L. BOARD REQUESTS AND DIRECTIVES

Mr. McGlennon responded to the educational spending comments by Mr. Oyer and stated that Mr. Oyer's percentages were correct. He stated the numbers Mr. Oyer referenced indicated, based on the State's formula for calculating fiscal responsibility for education, that the County was considered an affluent community and was held to a higher standard than York County, as compared by Mr. Oyer. He stated that the County often spends more on education than the State required, and that York County only expected to carry about one-third of the cost for the State standards whereas James City County was required to spend about twice as much. He stated that local spending is accounted for in the formula, and the State pays more of York's educational costs than James City County's.

Mr. McGlennon stated the 400th Anniversary commemoration was a wonderful event and thanked the Board for this opportunity. He thanked and congratulated organizations that were involved and recognized good action by the Board to acquire the property used for Anniversary Park for protection.

Mr. McGlennon recessed the Board for a meeting of the James City Service Authority.

M. CLOSED SESSION

At 9:32 p.m., Mr. Bradshaw made a motion to go into closed session pursuant to Section 2.2-3711(A)(1) of the Code of Virginia for the consideration of a personnel matter, the appointment of individuals to County boards and/or commissions, specifically the Thomas Nelson Community College Board and the Board of Zoning Appeals; and Section 2.2-3711(A)(3) of the Code of Virginia for the consideration of the

acquisition of a parcel of property for public use.

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

At 9:57 p.m. Mr. McGlennon reconvened the Board into open session.

Mr. Harrison made a motion to adopt the closed session resolution.

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

RESOLUTION

CERTIFICATION OF CLOSED MEETING

WHEREAS, the Board of Supervisors of James City County, Virginia, (Board) has convened a closed meeting on this date pursuant to an affirmative recorded vote and in accordance with the provisions of the Virginia Freedom of Information Act; and

WHEREAS, Section 2.2-3711 of the Code of Virginia requires a certification by the Board that such closed meeting was conducted in conformity with Virginia law.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby certifies that, to the best of each member's knowledge: i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this certification resolution applies; and, (ii) only such public business matters were heard, discussed, or considered by the Board as were identified in the motion, Section 2.2-3711(A)(1), to consider personnel matters, the appointment of individuals to County boards and/or commissions; and Section 2.2-3711(A)(3) for consideration of the acquisition of a parcel(s) of property for public use.

Mr. Icenhour made a motion to appoint Ms. Carol Scheid to an unexpired term on the Thomas Nelson Community College Board, term to expire on July 31, 2009, and a motion to recommend Ms. Barbara Moody to a five-year term on the Board of Zoning Appeals, term to expire February 29, 2012

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

N. ADJOURNMENT - until June 12, 2007, at 7 p.m.

Mr. Icenhour made a motion to adjourn.

At 9:58 p.m. Mr. McGlennon adjourned the Board until 7 p.m. on June 12, 2007.

Sanford B. Wanner
Clerk to the Board

052207bos.min

MEMORANDUM

DATE: June 12, 2007
TO: The Board of Supervisors
FROM: Darryl E. Cook, Environmental Director
SUBJECT: Dedication of a Street in Jamestown Hundred

Attached is a resolution requesting acceptance of a certain street in Jamestown Hundred into the State Secondary Highway System. This street has been inspected and approved by representatives of the Virginia Department of Transportation as meeting the minimum requirements for secondary roadways.

Staff recommends adoption of the attached resolution.



Darryl E. Cook

DEC/gb
JamestownHundred.mem

Attachments

RESOLUTION

DEDICATION OF A STREET IN JAMESTOWN HUNDRED

WHEREAS, the street described on the attached Additions Form AM-4.3, 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 to add the street described on the attached Additions Form AM-4.3 to the secondary system of State highways, pursuant to
§ 33.1-229 of the Code of Virginia, and the Department's Subdivision Street Requirements.

BE IT FURTHER RESOLVED, 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.

John J. McGlennon
Chairman, Board of Supervisors

ATTEST:

Sanford B. Wanner
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 12th day of June, 2007.

JamestownHundred.res

In the County of James City

By resolution of the governing body adopted June 12, 2007

The following VDOT Form AM-4.3 is hereby attached and incorporated as part of the governing body's resolution for changing the secondary system of state highways.

A Copy Testee Signed (County Official): _____

Form AM-4.3 (4/20/2007)
Asset Management Division

Report of Changes in the Secondary System of State Highways

Project/Subdivision: **Jamestown Hundred**

Type Change to the Secondary System of State Highways: **Addition**

The following additions to the Secondary System of State Highways, pursuant to the statutory provision or provisions cited, are hereby requested; the right of way for which, including additional easements required for fills and drainage, is hereby guaranteed:

Reason for Change: **New subdivision street**

Pursuant to Code of Virginia Statute: **§33.1-229**

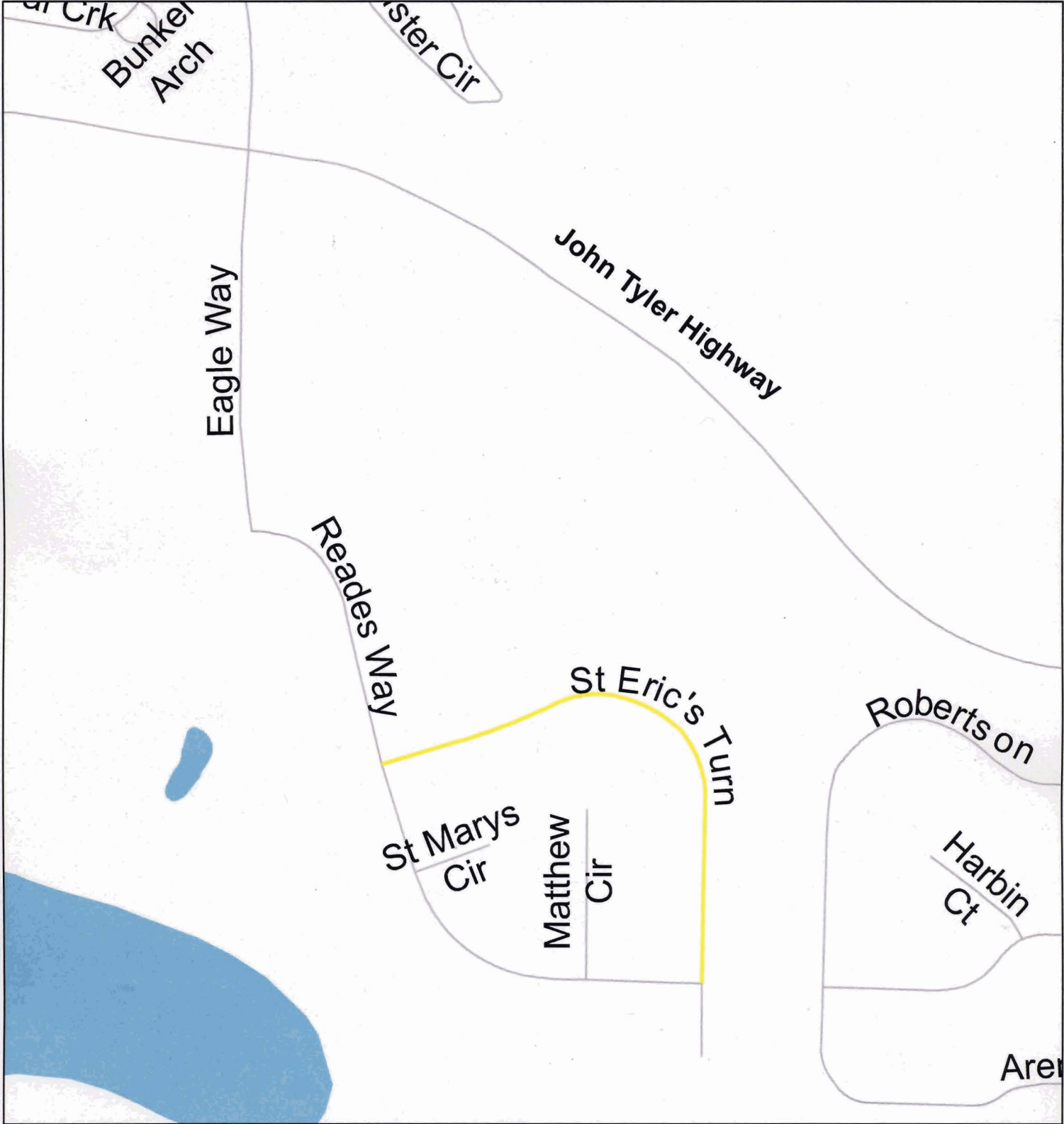
Street Name and/or Route Number

► **St. Eric's Turn (loop Road), State Route Number 1753**


Old Route Number: 0

- From: Route 1750 (Read's Way)
To: Route 1750 (Read's Way), a distance of: 0.30 miles.

Recordation Reference: Document #040028096



**DEDICATION OF A STREET IN
JAMESTOWN HUNDRED**

 Streets Being
Dedicated

1 inch equals 400 feet



MEMORANDUM

DATE: June 12, 2007

TO: The Board of Supervisors

FROM: Darryl E. Cook, Environmental Director

SUBJECT: Dedication of Streets in Longhill Station, Sections 3 and 4

Attached is a resolution requesting acceptance of certain streets in Longhill Station, Sections 3 and 4, into the State Secondary Highway System. These streets have been inspected and approved by representatives of the Virginia Department of Transportation as meeting the minimum requirements for secondary roadways.

Staff recommends adoption of the attached resolution.


Darryl E. Cook

DEC/gb
LonghillStation.mem

Attachments

RESOLUTION

DEDICATION OF STREETS IN LONGHILL STATION, SECTIONS 3 AND 4

WHEREAS, the streets described on the attached Additions Form AM-4.3, fully incorporated herein by reference, are 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 streets meet 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 to add the streets described on the attached Additions Form AM-4.3 to the secondary system of State highways, pursuant to § 33.1-229 of the Code of Virginia, and the Department's Subdivision Street Requirements.

BE IT FURTHER RESOLVED, 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.

John J. McGlennon
Chairman, Board of Supervisors

ATTEST:

Sanford B. Wanner
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 12th day of June, 2007.

LonghillStation.res

In the County of James City

By resolution of the governing body adopted June 12, 2007

The following VDOT Form AM-4.3 is hereby attached and incorporated as part of the governing body's resolution for changes in the secondary system of state highways.

A Copy Testee Signed (County Official): _____

Report of Changes in the Secondary System of State Highways

Project/Subdivision Longhill Station, Sections 3 And 4

Type Change to the Secondary System of State Highways: Addition

The following additions to the Secondary System of State Highways, pursuant to the statutory provision or provisions cited, are hereby requested; the right of way for which, including additional easements required for fills and drainage, is hereby guaranteed:

Reason for Change: **New subdivision street**

Pursuant to Code of Virginia Statute: **§33.1-229**

Street Name and/or Route Number

► **Mill Dam Court, State Route Number 1717**

Old Route Number: 0

- From: Route 1711 (Allegheny Road)
To: Route 1718 (New Court), a distance of: 0.22 miles.
Recordation Reference: DOC #010012366, Plat Book 82, Pages 63 - 66

► **Mill Dam Court, State Route Number 1717**

Old Route Number: 0

- From: Route 1718 (New Court)
To: Cul-de-sac, a distance of: 0.06 miles.
Recordation Reference: DOC #010012366, Plat Book 82, Pages 63 - 66

► **New Court, State Route Number 1718**

Old Route Number: 0

- From: Route 1717 (Mill Dam Court)
To: Cul-de-sac, a distance of: 0.05 miles.
Recordation Reference: DOC #010012366, Plat Book 82, Pages 63 - 66

Report of Changes in the Secondary System of State Highways

► **Red Wing Court, State Route Number 1719**

Old Route Number: 0

- From: Route 1711 (Allegheny Road)
To: Cul-de-sac, a distance of: 0.13 miles.

Recordation Reference: DOC #000016561, Plat Book 78, Pages 54 - 55

► **Allegheny Court, State Route Number 1711**

Old Route Number: 0

- From: Route 1714 (Blue Ridge Court)
To: Cul-de-sac, a distance of: 0.05 miles.

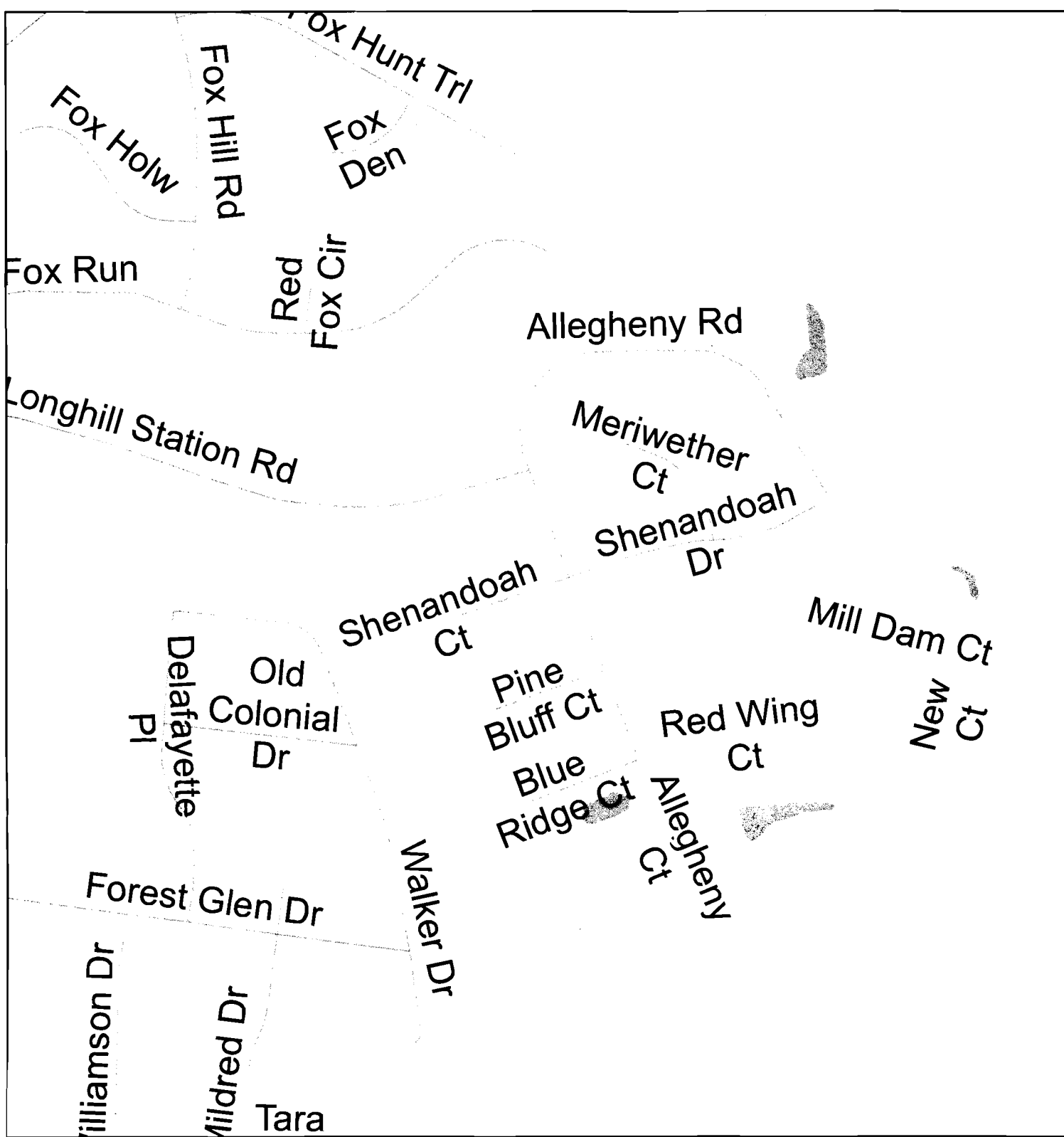
Recordation Reference: DOC #000016561, Plat Book 78, Pages 54 - 55

► **Allegheny Road (extension), State Route Number 1711**

Old Route Number: 0

- From: Route 1712 (Shenandoah Drive)
To: Cul-de-sac, a distance of: 0.04 miles.

Recordation Reference: DOC #010012366, Plat Book 82, Pages 63 - 66



DEDICATION OF STREETS IN LONGHILL STATION, SECTIONS 3 AND 4

 Streets Being
Dedicated

1 inch equals 400 feet



MEMORANDUM

DATE: June 12, 2007
TO: The Board of Supervisors
FROM: Darryl E. Cook, Environmental Director
SUBJECT: Dedication of a Street Known as WindsorMeade Way

Attached is a resolution requesting acceptance of a certain street known as WindsorMeade Way into the State Secondary Highway System. The street has been inspected and approved by representatives of the Virginia Department of Transportation as meeting the minimum requirements for secondary roadways.

Staff recommends adoption of the attached resolution.



Darryl E. Cook

DEC/gb
WindsorMeadeWay.mem

Attachments

RESOLUTION

DEDICATION OF A STREET KNOWN AS WINDSORMEADE WAY

WHEREAS, the street described on the attached Additions Form AM-4.3, 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 to add the street described on the attached Additions Form AM-4.3 to the secondary system of State highways, pursuant to
§ 33.1-229 of the Code of Virginia, and the Department's Subdivision Street Requirements.

BE IT FURTHER RESOLVED, 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.

John J. McGlennon
Chairman, Board of Supervisors

ATTEST:

Sanford B. Wanner
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 12th day of June, 2007.

windsormeadeway.res

In the County of James City

By resolution of the governing body adopted June 12, 2007

The following VDOT Form AM-4.3 is hereby attached and incorporated as part of the governing body's resolution for changes in the secondary system of state highways.

A Copy Testee Signed (County Official): _____

Report of Changes in the Secondary System of State Highways

Project/Subdivision **Windsormeade Marketplace**

Type Change to the Secondary System of State Highways: **Addition**

The following additions to the Secondary System of State Highways, pursuant to the statutory provision or provisions cited, are hereby requested; the right of way for which, including additional easements required for fills and drainage, is hereby guaranteed:

Reason for Change: **New subdivision street**

Pursuant to Code of Virginia Statute: **§33.1-229**

Street Name and/or Route Number

Windsormeade Way, State Route Number 1299

Old Route Number: 0

- From: SR 5000 (Monticello Avenue)
To: 365' NW of Intersection SR 5000 (Monticello Avenue), a distance of: 0.07 miles.
Recordation Reference: Document # 040024397

Windsormeade Way, State Route Number 1299

Old Route Number: 0

- From: 365' NW of Intersection SR 5000 (Monticello Avenue)
To: 865' NW of Intersection SR 5000 (Monticello Avenue), a distance of: 0.09 miles.
Recordation Reference: Document # 040024397

Windsormeade Way, State Route Number 1299

Old Route Number: 0

- From: 865' NW of Intersection SR 5000 (Monticello Avenue)
To: 1265' NW of Intersection SR 5000 (Monticello Avenue), a distance of: 0.08 miles.
Recordation Reference: Document # 040024397

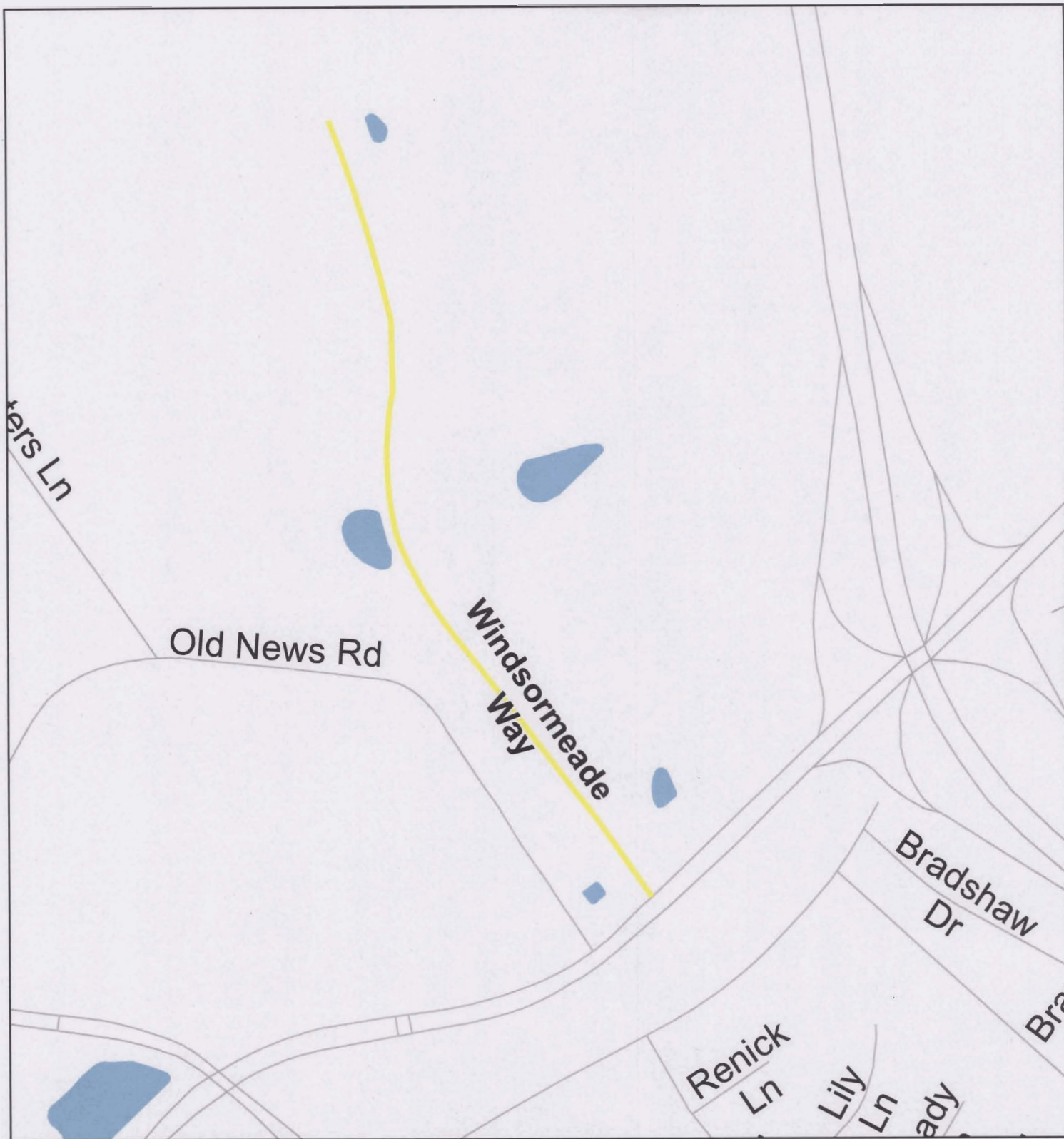
Report of Changes in the Secondary System of State Highways

Windsormeade Way, State Route Number 1299

Old Route Number: 0

- From: 1265' NW of Intersection SR 5000 (Monticello Avenue)
To: End of Cul de Sac, a distance of: 0.26 miles.

Recordation Reference: Document # 040024397



DEDICATION OF A STREET IN WINDSORMEADE MARKETPLACE



Streets Being
Dedicated

1 inch equals 400 feet



MEMORANDUM

DATE: June 12, 2007

TO: The Board of Supervisors

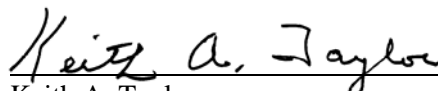
FROM: Keith A. Taylor, Secretary, Economic Development Authority (EDA)

SUBJECT: Resolution of the Board of Supervisors of James City County, Virginia, Approving the Issuance by the Economic Development Authority of James City County, Virginia, of not to Exceed \$10,000,000 Aggregate Principal Amount of the Authority's Revenue Bonds for the Benefit of Anheuser-Busch Companies, Inc., Anheuser-Busch Incorporated, Busch Entertainment Corporation, and/or a Related Entity for the Purpose of Financing or Refinancing the Cost of the Acquisition, and Installation of Certain Facilities and Other Matters Relating Thereto

At its May 17, 2007, meeting, the EDA approved a Resolution of Inducement not to exceed \$10 million aggregate principal amount of the EDA's revenue bonds for the benefit of Anheuser-Busch Companies, Inc., for the purpose of financing and/or refinancing the cost of upgrading sewage and solid waste disposal facilities at the Anheuser-Busch Brewery and Water Country USA.

In the matter of the Water Country USA portion of the project, the York County EDA voted its approval at its May 22, 2007, meeting, and the York County Board of Supervisors voted its approval at its June 5, 2007, meeting.

Staff recommends approval of the attached resolution.


Keith A. Taylor

KAT/gs
ResOfInducmt.mem

Attachments

RESOLUTION

RESOLUTION OF THE BOARD OF SUPERVISORS OF JAMES CITY COUNTY, VIRGINIA,
APPROVING THE ISSUANCE BY THE ECONOMIC DEVELOPMENT AUTHORITY OF JAMES
CITY COUNTY, VIRGINIA, OF NOT TO EXCEED \$10,000,000 AGGREGATE PRINCIPAL AMOUNT
OF THE AUTHORITY'S REVENUE BONDS FOR THE BENEFIT OF ANHEUSER-BUSCH
COMPANIES, INC., ANHEUSER-BUSCH INCORPORATED, BUSCH ENTERTAINMENT
CORPORATION, AND/OR A RELATED ENTITY FOR THE PURPOSE OF FINANCING OR
REFINANCING THE COST OF THE ACQUISITION, AND INSTALLATION OF CERTAIN
FACILITIES AND OTHER MATTERS RELATING THERETO

WHEREAS, Anheuser-Busch Companies, Inc., a Delaware corporation, on behalf of itself and its wholly-owned subsidiaries, Anheuser-Busch, Incorporated and Busch Entertainment Corporation (collectively, the "Applicant"), has requested that the Economic Development Authority of James City County, Virginia (the "Authority") issue its revenue bonds in an aggregate principal amount not to exceed \$10,000,000 (the "Bonds") for the benefit of the Applicant and/or a related or successor entity (the "Borrower") pursuant to Virginia Industrial Development and Revenue Bond Act, Chapter 49, Title 15.2, Code of Virginia, as amended (the "Act") to (i) finance the acquisition and installation of certain sewage and solid waste disposal facilities, including underground piping and related necessary and appropriate facilities to be located at the Applicant's brewery at 7801 Pocahontas Trail, in James City County near Williamsburg (the "Williamsburg Facilities"), and (ii) refinancing all or a portion of the sewage and solid waste disposal facilities previously financed by the Authority's \$7,700,000 outstanding principal amount of Sewage and Solid Waste Disposal Facilities Revenue Bonds (Anheuser-Busch Project) Series 1997, which facilities are located at the Williamsburg Facilities and at Water Country USA, 176 Water Country Parkway in York County near Williamsburg (the "Water Country Facilities," and collectively with the Williamsburg Facilities, the "Project"); and

WHEREAS, the issuance of the Bonds by the Authority must be approved by the governmental unit on behalf of which the Bonds are issued and a governmental unit having jurisdiction over the territorial limits in which the Project are located pursuant to the public approval requirement of Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code"); and

WHEREAS, the Williamsburg Facilities are located within the territorial limits of the County of James City, Virginia (the "County") and the Board of Supervisors of the County (the "Board of Supervisors") is the highest elected legislative body of the County; and

WHEREAS, the Water Country Facilities are located within the territorial limits of the County of York, Virginia, and the Board of Supervisors of the County of York, as the highest elected legislative body of the County of York, has concurred with the issuance of Bonds by the Authority to finance all or any portion of the Water Country Facilities and has approved the issuance of the Bonds by the Authority pursuant to the public approval requirement of Section 147(f) of the Code; and

WHEREAS, the Authority and the Borrower have requested that the Board of Supervisors approve the issuance of the Bonds by the Authority and the financing and refinancing of the Project with the proceeds of the Bonds pursuant to Section 147(f) of the Code; and

WHEREAS, a public hearing was held by the Authority on May 17, 2007, in the Main Conference Room, Building C, James City County Government Complex, 101 Mounts Bay Road, Williamsburg, Virginia, following duly published notice thereof in the *Daily Press*, a newspaper of general circulation in the County, on May 3, 2007, and May 10, 2007, and all persons desiring to be heard have been heard; and

WHEREAS, the Authority has recommended that the Board of Supervisors approve the issuance of the Bonds and has forwarded to the Board of Supervisors 1) a copy of the Authority's resolution approving the issuance of the Bonds, subject to terms to be agreed upon; 2) a copy of the Fiscal Impact Statement submitted by the Borrower; and 3) a reasonably detailed summary of the comments made at the public hearing.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of James City County, Virginia, as follows:

Section 1. The Board of Supervisors hereby approves the issuance of the Bonds, in an amount not to exceed \$10,000,000, to finance and refinance the costs of the Project. This resolution shall constitute approval of the issuance of the Bonds within the meaning of Section 147(f) of the Code and shall constitute the approval of the issuance of the Bonds within the meaning of the Act; provided, however, that this resolution shall not constitute an approval by the Board of Supervisors of the Project for any other purposes. The approval of the issuance of the Bonds does not constitute an endorsement to a prospective purchaser of the Bonds of the creditworthiness of the Project or the Borrower.

Section 2. All actions heretofore taken by the officers, employees and agents of the County with respect to the approval of the Bonds are hereby approved, confirmed and ratified, and the officers and employees of the County and their authorized deputies and agents are hereby authorized and directed, jointly and severally, to do any and all things and to execute and deliver any and all certificates and documents which they or bond counsel may deem necessary or advisable in order to consummate the issuance, sale and delivery of the Bonds and otherwise to effectuate the purposes of this resolution.

Section 3. Pursuant to the limitation contained in Temporary Treasury Regulation Section 5f.103-2(f)(1), this resolution shall remain in effect for a period of one year from the date of its adoption.

Section 4. The County, including its elected representatives, officers, employees and agents,

shall not be liable and hereby disclaims all liability for any damage to the Borrower or the Project, director or consequential, resulting from the Authority's failure to issue the Bonds for any reason.

Section 5. This resolution shall take effect from and after its adoption.

John J. McGlennon
Chairman, Board of Supervisors

ATTEST:

Sanford B. Wanner
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 12th day of June, 2007.

On a motion by Supervisor _____, seconded by Supervisor _____, the foregoing resolution was passed and adopted by the Board of Supervisors of James City County, Virginia, this ____ day of _____, 2007, by the following recorded vote, to wit:

AYES: Supervisors,
NAYES: Supervisors,
ABSENT: Supervisors,
ABSTAIN: Supervisors,

Clerk of the Board of Supervisors of
James City County, Virginia

**CERTIFICATE OF CLERK OF THE BOARD OF SUPERVISORS
OF JAMES CITY COUNTY, VIRGINIA**

I, Sanford B. Wanner, Clerk of the Board of Supervisors of James City County, Virginia, hereby certify that the foregoing is a full, true, and correct copy of a resolution duly adopted at the meeting of the Board of Supervisors of James City County, Virginia, duly and regularly held at the County Governmental Complex on _____, 2007, of which meeting all of the members of said Board had due notice.

I further certify that I have carefully compared the foregoing copy with the original minutes of said meeting on file and of record in my office; that said copy is a full, true, and correct copy of the original resolution adopted at said meeting and entered in said minutes; and that said resolution has not been amended, modified, rescinded, or revoked in any manner since the date of its adoption, and the same is now in full force and effect.

IN WITNESS WHEREOF, I have executed this certificate this ____ day of _____, 2007.

By: _____
Clerk of the Board of Supervisors of
James City County, Virginia

Fiscal Impact Statement
(Form Per Section 15.2-4907, Code of Virginia)

April 16, 2007
Date


To: Board of Supervisors of James City County, Virginia

Anheuser-Busch Companies, Inc.

Williamsburg Brewery [and York County] (Water Country USA)

- | | |
|---|-------------------------|
| 1. Maximum amount of financing sought | \$ <u>10,000,000</u> 1/ |
| 2. Estimated taxable value of the facility's real property to be constructed in the locality | \$ <u>500,000</u> |
| 3. Estimated real property tax per year using present tax rates | \$ <u>3,800</u> |
| 4. Estimated personal property tax per year using present tax rates | \$ <u>72,000</u> |
| 5. Estimated merchants' capital tax per year using present tax rates | \$ <u>N/A</u> |
| 6. a. Estimated dollar value per year of goods that will be purchased from Virginia companies within the locality | \$ <u>9,154,000</u> 2/ |
| b. Estimated dollar value per year of goods that will be purchased from non-Virginia companies within the locality | \$ <u>4,066,000</u> 2/ |
| c. Estimated dollar value per year of services that will be purchased from Virginia companies within the locality | \$ <u>10,976,000</u> 2/ |
| d. Estimated dollar value per year of services that will be purchased from non-Virginia companies within the locality | \$ <u>224,000</u> 2/ |
| 7. Estimated number of regular employees on year round basis 692 (535 hourly, 157 salaried) /3 | \$ (see left) |
| 8. Average annual salary per employee | \$ <u>86,407</u> /4 |

Signature



Chairman

Economic Development Authority of James
City County, Virginia

Note: If one or more of the above questions do not apply to the facility indicate by writing N/A (not applicable) on the appropriate line.

Footnotes:
1/ Approximately 261,000 will be attributable to Water Country USA, York County
2/ Pertains to Williamsburg brewery only
3/ Brewery employees only
4/ Including benefits est. at 30%

**RESOLUTION OF THE ECONOMIC DEVELOPMENT AUTHORITY
OF JAMES CITY COUNTY, VIRGINIA
AUTHORIZING THE ISSUANCE OF UP TO \$10,000,000
IN AGGREGATE PRINCIPAL AMOUNT OF REVENUE AND REFUNDING BONDS**

WHEREAS, the Economic Development Authority of James City County, Virginia, a political subdivision of the Commonwealth of Virginia (the "Authority"), is empowered by the Industrial Development and Revenue Bond Act, Chapter 49, Title 15.2 of the Code of Virginia, as amended (the "Act"), to issue its revenue bonds for the purpose of inducing manufacturing, industrial and commercial facilities to locate or remain in the Commonwealth of Virginia (the "Commonwealth") and promoting the commerce, safety, health, welfare, convenience or prosperity of the citizens of the Commonwealth and to issue refunding bonds to refund revenue bonds issued for such purposes;

WHEREAS, the Authority has received a request from Anheuser-Busch, Incorporated, a Delaware corporation and wholly-owned subsidiaries of Anheuser-Busch Companies, Inc., a Delaware corporation (the "Applicant"), having its principal place of business currently at One Busch Place, St. Louis, Missouri 63118, requesting that the Authority issue its revenue and refunding bonds to assist the Applicant in (i) defraying the not to exceed \$2,300,000 cost of the acquisition, construction, improving and equipping of sewage and solid waste disposal facilities, including underground piping and related necessary and appropriate facilities to be located at the Applicant's brewery located at 7801 Pocahontas Trail, in James City County, Virginia (the "County"), which sewage and solid waste disposal facilities are deemed necessary and convenient for the carrying out of the business activity of the Applicant (the "Project"), and (ii) refinancing all or a portion of the sewage and solid waste disposal facilities previously financed by the Authority's \$7,700,000 outstanding principal amount of Sewage and Solid Waste Disposal Facilities Revenue Bonds (Anheuser-Busch Project) Series 1997 (the "Prior Bonds"), which facilities are located at the site of the Project and at Water Country USA, 176 Water Country Parkway in York County, Virginia near Williamsburg (together with the Project, the "Facilities");

WHEREAS, the issuance of bonds for the Project will induce the Applicant to locate the Project in the County and thereby benefit the inhabitants of the County and the Commonwealth through the increase of their commerce and through the promotion of their safety, health, welfare, convenience and prosperity;

WHEREAS, the Applicant, in an appearance before the Authority by the Applicant's representatives and in the application filed with the Authority, has described the benefits of the Project and the refunding of the Prior Bonds;

WHEREAS, and a public hearing with respect to the issuance of the revenue and refunding bonds has been held as required by Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code"), and by the Act; and

WHEREAS, the Applicant has represented that the estimated cost of the Project, the refunding of the Prior Bonds and all expenses of the issue payable from bond proceeds will require an issue of revenue and refunding bonds in an aggregate principal amount not to exceed \$10,000,000 (the "Bonds");

NOW, THEREFORE, BE IT RESOLVED BY THE ECONOMIC DEVELOPMENT AUTHORITY OF JAMES CITY COUNTY, VIRGINIA:

1. It is hereby found and determined that the acquisition, construction and equipping of the Project will be in the public interest, will bring additional revenues and employment into the County and will promote the commerce, safety, health, welfare, convenience or prosperity of the Commonwealth, the County and their citizens. The Facilities are "authority facilities" within the meaning of the Act.

2. The Authority hereby agrees to assist the Applicant in financing and refinancing the costs of the Facilities by undertaking the issuance of its Bonds in an amount not to exceed \$10,000,000 upon terms and conditions mutually agreeable to the Authority and the Applicant and loaning the proceeds of the Bonds to the Applicant pursuant to a loan agreement or similar agreement which will provide payments to the Authority in conformity with the Act sufficient to pay the principal of, premium, if any, and interest on, the Bonds and to pay all other expenses in connection with the Facilities.

3. The Bonds shall be issued in form acceptable to, and pursuant to terms to be set by, the Authority, and the payment of the Bonds shall be secured by an assignment, for the benefit of the holders thereof, of the Authority's rights to payments under the loan agreement or similar agreement with respect to the Facilities and may be additionally secured by any other collateral, agreement or assignment. The Bonds may be issued in one or more series at one time or from time to time. The final terms of, security for, and other provisions of, the Bonds shall be determined by the adoption of a final bond resolution by the Authority.

4. It having been represented to the Authority that it is necessary to proceed immediately with the planning and acquisition, construction and equipping of the Project, the Authority hereby agrees that the Applicant may proceed with its plans for the Project, enter into contracts for construction, materials and equipment for the Project and take such other steps as it may deem appropriate in connection therewith; provided, however, that nothing herein shall be deemed to authorize the Applicant to obligate the Authority without its consent in each instance to the payment of any moneys or the performance of any acts in connection with the Project. The Authority agrees that the Applicant may be reimbursed from the proceeds of the Bonds for all costs so incurred by the Applicant, insofar as such costs are properly reimbursable under the Act and other applicable state and federal laws.

5. At the request of the Applicant, the Authority hereby appoints Kutak Rock LLP, Omaha, Nebraska, as Bond Counsel to supervise the proceedings and approve the issuance of the Bonds.

6. In adopting this Resolution, the Authority intends to take “official action” toward the issuance of the Bonds and to evidence its “official intent” to the extent necessary to allow for the use of the proceeds of the Bonds to reimburse the Applicant for “original expenditures” associated with the financing of the Project, to the full extent permitted by Treasury Regulation Section 1.150-2. The Applicant reasonably expects that it will reimburse the “original expenditures” with the proceeds of the Bonds.

7. All costs and expenses in connection with the financing and refinancing of the Facilities, including but not limited to the fees and expenses of the Authority, Authority counsel and Bond Counsel, shall be paid from the proceeds of the Bonds or funds provided by the Applicant. If for any reason the Bonds are not issued, it is understood that all such expenses shall be paid by the Applicant and that the Authority shall have no responsibility therefor.

8. The Applicant hereby agrees to indemnify and save harmless the Authority, its officers, directors, employees and agents from and against all liabilities, obligations, claims, damages, penalties, losses, costs and expenses in any way connected with the Facilities, the application submitted by the Applicant or the issuance of the Bonds.

9. Neither the Authority, including its officers, directors, employees and agents, nor the County shall be liable and hereby disclaim all liability to the Applicant and all other persons or entities for any damages, direct or consequential, resulting from the failure of the Authority to issue the Bonds for any reason.

10. The Applicant agrees to pay the Authority the fees set forth in the Authority’s application.

11. The Authority hereby (a) recommends that the Board of Supervisors of James City County, Virginia (the “Board”) approve the issuance of the Bonds to the extent required by Section 147(f) of the Code and by the Act within sixty days of the date of the adoption of this Resolution by the Authority and (b) directs the Chairman or Vice Chairman and the Secretary or Assistant Secretary of the Authority to file with the Board this Resolution, the Applicant’s Fiscal Impact Statement and a reasonably detailed summary of the statements made at the public hearing held by the Authority. The Authority also approves the submission of this Resolution to the Board of Supervisors of York County, Virginia.

12. The Authority agrees to file a request to the Virginia Small Business Financing Authority for an allocation with respect to that portion of the Bonds relating to the Project, which allocation is a condition precedent to the issuance of the Bonds relating to the Project as tax-exempt obligations pursuant to federal law. The Applicant, in requesting the approval of this Resolution, understands that it may not receive an allocation of private activity bond volume cap from the State Ceiling or otherwise and understands that the adoption of this Resolution neither carries nor implies any assurance of or commitment for an allocation, nor any obligation with respect thereto. By accepting any proceeding under authority of this Resolution, the Applicant agrees (i) to indemnify and hold the Authority harmless for any damages, direct or consequential, suffered by it as a result of any action or inaction of the Virginia Small Business

Financing Authority with respect to such allocations or otherwise, (ii) to provide for such indemnification in all documents to which the Applicant and the Authority are parties, (iii) to provide in such documents that they will forbear to bring any action for such damages as aforesaid, and (iv) to assume the risk that the entire volume of tax exempt notes or bonds authorized to be issued in the Commonwealth in any period may be allocated to others.

13. All other acts of the officers of the Authority which are in conformity with the purposes and intent of this Resolution and in furtherance of the issuance and sale of the Bonds, the refunding of the Prior Bonds and the undertaking of the Project are hereby approved and confirmed.

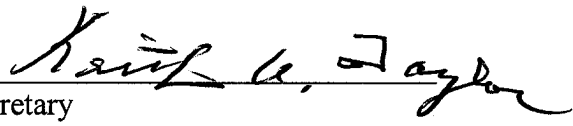
14. This Resolution shall take effect immediately upon its adoption.

ADOPTED: May 17, 2007

CERTIFICATE

I, the undersigned Secretary of the Economic Development Authority of James City County, Virginia (the "Authority"), hereby certifies that the foregoing is a true, correct and complete copy of the Resolution duly adopted by a majority of the Directors of the Economic Development Authority of James City County, Virginia present and voting at a meeting duly called and held on May 17, 2007, all in accordance with law, and that such Resolution has not been repealed, revoked or rescinded but is in full force and effect on the date hereof.

WITNESS my hand and the seal of the Authority this __ day of May, 2007.

By 
Secretary
ECONOMIC DEVELOPMENT AUTHORITY OF
JAMES CITY COUNTY, VIRGINIA

#1612618v2

MEMORANDUM

DATE: June 12, 2007

TO: The Board of Supervisors


FROM: John T. P. Horne, Development Manager

SUBJECT: FY 2007 Budget Appropriation - Prime Retail LLP - \$7,663

Under the Zoning Ordinance, applications for master plan amendments and special use permits require traffic impact studies to be submitted. For certain projects, such as those proposing large-scale development or expansion, or in critical locations in the County, a third-party traffic consultant is contracted to assist staff in reviewing technical data and impact analysis. This was the case with Prime Retail, LLP for both MP-1-06/SUP-4-06, approved in July 2006, and MP-11-06/SUP-32-06, approved in April 2007.

Because the application for MP-11-06/SUP-32-06 was reviewed so soon after the approval of its previous application, Prime Retail LLP agreed to reimburse the County for the costs incurred for the third-party traffic consultant on the most recent proposal. Correspondence from Mr. Paul Reed, Senior Vice President of Construction for Prime Retail, confirms the agreement to provide such a reimbursement.

Staff recommends appropriation of reimbursements to the Planning Division's Professional Services Account and adoption of the attached resolution.


John T. P. Horne

JTPH/gs
PrmOtltsBdgt.mem2

Attachment

RESOLUTION

FY 2007 BUDGET APPROPRIATION - PRIME RETAIL LLP - \$7,663

WHEREAS, the Board of Supervisors of James City County has been requested to approve the appropriation of funds from Prime Retail LLP to the Planning Division's Professional Services Account.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, authorizes the following appropriation to the Planning Division's Professional Services Account:

Revenue:

Miscellaneous	<u>\$7,663</u>
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Expenditure:

Professional Services	<u>\$7,663</u>
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John J. McGlennon
Chairman, Board of Supervisors

ATTEST:

Sanford B. Wanner
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 12th day of June, 2007.

prmOtltsBldg.res2

M E M O R A N D U M

DATE: June 12, 2007
TO: The Board of Supervisors
FROM: John E. McDonald, Manager, Financial and Management Services
SUBJECT: FY 2008 Budget Change - Emergency Communications

A lease agreement for a cellular tower site in Toano was not included in the adopted FY 2008 Budget. It has two components: 1) the rental income received from Cingular totaling \$26,000; and 2) an annual payment of 80 percent of that income, \$20,800, to Nice Commercial Properties, the owner of the tower site.

The revenue is proposed as additional Rental Income and the spending as an increase to the budget for Emergency Communications. The residual \$5,200 is proposed as an addition to Operating Contingency.

Staff recommends approval of the attached resolution.

John E. McDonald

JEM/gs
celltower.mem

Attachment

RESOLUTION

FY 2008 BUDGET CHANGE - EMERGENCY COMMUNICATIONS

WHEREAS, the Board of Supervisors of James City County has been advised that both revenue and spending associated with a lease of a tower site for emergency communications were not included in the adopted County budget for FY 2008; and

WHEREAS, rental payments to the County from Cingular total \$26,000 in FY 2008 and 80 percent of those payments need to be paid to the property owner, Nice Commercial Properties.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia hereby amends the adopted FY 2008 budget as follows:

General Fund Revenue:

Rental Income	<u>\$26,000</u>
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General Fund Expenditures:

Emergency Communications	\$20,800
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Operating Contingency	<u>5,200</u>
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Total	<u>\$26,000</u>
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John J. McGlennon
Chairman, Board of Supervisors

ATTEST:

Sanford B. Wanner
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 12th day of June, 2007.

celltower.res

M E M O R A N D U M

DATE: June 12, 2007

TO: The Board of Supervisors

FROM: Sanford B. Wanner, County Administrator

SUBJECT: Virginia Peninsulas Public Service Authority (VPPSA) Service Agreement for Curbside Recycling

James City and York Counties along with the Cities of Williamsburg and Poquoson contract with the Virginia Peninsulas Public Service Authority (VPPSA) for curbside recycling services. VPPSA then contracts out the collection and disposition of recyclables.

The current Service Agreement for curbside recycling services between VPPSA and James City County expires on June 30, 2007. VPPSA has provided this service to James City County, Poquoson, Williamsburg, and York County since November 2001 through a contract with Tidewater Fibre.

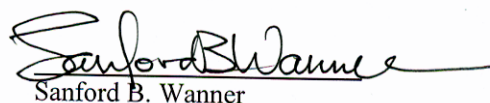
In June 2006, VPPSA issued a Request for Proposals for curbside recycling services on behalf of James City County, Poquoson, Williamsburg, and York County. Proposals were received in response to the Request for Proposals from Allied Waste, Grafton, Va.; Tidewater Fibre, Chesapeake, Va.; Waste Industries, Chesapeake, Va.; and Waste Management, Chesapeake, Va.

After review of the proposals and evaluation in accordance with the criteria set forth in the Request for Proposals, VPPSA selected Tidewater Fibre to proceed in the procurement process.

VPPSA has executed the agreement for curbside recycling services with Tidewater Fibre. In order for VPPSA to enter into a curbside recycling services agreement with Tidewater Fibre, VPPSA must enter into curbside recycling services agreements with member jurisdictions.

The attached Service Agreement is nearly identical to the current Service Agreement for curbside recycling services between VPPSA and James City County. Execution of the Service Agreement will allow for continued curbside recycling services for an additional seven years.

Staff recommends adoption of the attached resolution authorizing the County Administrator to enter into an agreement with VPPSA for curbside recycling services.



Sanford B. Wanner

SBW/gs
VPPAcurbagr.mem

Attachments

RESOLUTION

VIRGINIA PENINSULAS PUBLIC SERVICE AUTHORITY (VPPSA)

SERVICE AGREEMENT FOR CURBSIDE RECYCLING

WHEREAS, James City County is a member of and contracts with the Virginia Peninsulas Public Service Authority (VPPSA) for curbside recycling services; and

WHEREAS, VPPSA has issued a Request for Proposals for curbside recycling services for a period of seven years commencing July 1, 2007, and may be extended for one five-year renewal or five one-year renewals; and

WHEREAS, James City County wishes to continue contracting its curbside recycling services project with VPPSA.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes and directs the County Administrator to execute agreements with the Virginia Peninsulas Public Service Authority for curbside recycling services.

John J. McGlennon
Chairman, Board of Supervisors

ATTEST:

Sanford B. Wanner
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 12th day of June, 2007.

VPPSAcurbagr.res

AGREEMENT FOR CURBSIDE RECYCLING SERVICES
between the
VIRGINIA PENINSULAS PUBLIC SERVICE AUTHORITY
and
TIDEWATER FIBRE CORP

This Agreement for Curbside Recycling Services is made as of April 6, 2007 between the Virginia Peninsulas Public Service Authority (hereinafter referred to as the "Authority") and Tidewater Fibre Corp (hereinafter referred to as "Tidewater Fibre").

WHEREAS, the Virginia Peninsulas Public Service Authority operates a voluntary curbside recycling program; and

WHEREAS, the Virginia Peninsulas Public Service Authority desires to hire Tidewater Fibre Corp to provide Curbside Recycling Services as defined herein; and

WHEREAS, Tidewater Fibre, desires to provide Curbside Recycling Services as defined herein;

NOW THEREFORE, the Authority and Tidewater Fibre do hereby agree as follows:

Section 1 Definitions

For purposes of this Agreement, the following terms shall apply:

Authority-Designated Personnel: Shall mean designated members and alternates of the Authority Board of Directors, Authority employees or agents, and elected or appointed officials or employees of the member local governments of the Authority or such other public officials as the Authority may designate under this Agreement.

Curbside: That portion of the right of way within approximately 3 feet of the paved or traveled roadway.

Household: Single-family home, condominium, apartment, townhouse, manufactured home, individual unit in a duplex residential unit. Individual small businesses may be added as the parties mutually agree in writing.

Processing Facility: Facility for the purpose of accepting, sorting and/or preparing Recyclable Materials (as defined herein) for sale, to be operated and maintained by Tidewater Fibre



Recyclable Materials: Corrugated Cardboard, newspapers, mixed paper, glass bottles and jars, metal cans, aluminum foil products, HDPE (#2 plastic) and PET (#1 plastic) bottles and jugs, and other materials as the parties mutually agree in writing. Mixed paper shall include bond paper, computer paper, magazines, catalogs, bulk mailings, telephone and other directories, carrier stock, and chipboard. Mixed paper shall not include wax paper, carbon paper, chemically treated or coated paper that renders paper non-recyclable, envelopes with plastic windows, or any paper that does not tear. Glass shall include clear, brown and green bottles and jars. Metal cans shall include aluminum, steel, bimetal, and tin cans, excluding paint and pressurized containers. HDPE plastic bottles shall exclude, but not be limited to, automotive product containers and pesticide containers. Plastic bottles and jugs shall be defined as having a narrower neck, a pour spout, and a screw top. Recyclable Material shall be substantially clean, dry, and free from contamination.

Recycling Collection Services: Collection, processing, and marketing of Recyclable Materials by Tidewater Fibre for the term of the Agreement.

Recycling Containers: An 18-gallon container made of rigid plastic construction, or other such container as the parties mutually agree in writing.

Residue: Shall mean materials collected from either curbside or drop-off collection programs, which are not targeted for recycling by the Authority or have been rendered unmarketable by the processes of collection and processing.

Service Area: The service area for curbside collection shall include the jurisdictions of James City, Poquoson, Williamsburg, and York.

Section 2 Term of Agreement

The term of this Agreement shall commence on July 1, 2007, and end on June 30, 2014. This Agreement may be extended for one five-year renewal or five one-year renewals as the parties mutually agree in writing on or before September 30, 2013, and every September 30 thereafter until September 30, 2018.

Section 3 Scope of Services

3.1 Curbside

Tidewater Fibre shall perform Recycling Collection Services in the Service Area as follows:

3.1.1 General

Households shall be required to place their Recycling Container at the curbside no later than 7:00 a.m. on their collection day. Tidewater Fibre shall collect and remove all Recyclable Materials which are placed in or adjacent to Recycling Containers at the curbside or from some other specifically defined location as designated by both parties. Recyclable Materials placed adjacent to the Recycling Container must be in a paper bag or other container so that the materials are contained and clearly visible. Collection services shall be provided for each household in the Service Area once per week as designated by the Authority. The approximate number of households for which service is to be provided in each jurisdiction is as follows:

**Approximate Households
Curbside Collection
As of March 2007**

<u>Jurisdiction</u>	<u>Households</u>
Poquoson	4,200
Williamsburg	3,400
James City County	19,900
York County	20,300

3.1.2 Hours of Collection

Collection shall be made between the hours of 7:00 a.m. and 6:00 p.m. Monday to Friday on a schedule approved by the Authority. Collection activities may take place after 6:00 p.m. under unusual circumstances after Tidewater Fibre notifies the Authority. Collections may be made on Saturday during holiday weeks or, in the event of cancellation of service, as

described in Sections 3.1.14 and 3.1.15.

3.1.3 Containers

The households identified in Section 3.1.1 have been supplied with one or more Recycling Containers.

Tidewater Fibre shall procure, store, and deliver infill, second, and replacement Recycling Containers to households in the Service Area as requested by the Authority or Authority-Designated Personnel.

Recycling Containers provided by Tidewater Fibre shall be Rehrig-Pacific Company Huskylite 18-gallon recycling containers, or equal approved by the Authority. Substitution may be made only with prior approval by the Authority, which approval shall not be unreasonably withheld. Recycling Containers shall be green and imprinted on both sides with the logo provided by the Authority.

Tidewater Fibre shall maintain a sufficient inventory so that recycling containers are always available when needed for delivery.

Tidewater Fibre shall include educational / promotional materials provided by the Authority with the delivery of all Recycling Containers.

Recycling Containers delivered for households added to the collection program or provided to new residents in the service area, second containers provided to residents, or replacement containers for damaged, lost or stolen original containers shall be billed to the Authority at the prevailing unit cost. Replacement containers needed as a result of damage by Tidewater Fibre shall be provided at Tidewater Fibre expense.

Rehrig-Pacific lids and containers assembled with rollers will be provided as requested by the Authority or Authority Designated Personnel. If requested by the Authority, Tidewater Fibre will make lids and / or containers with rollers to residents and collect fees directly from the residents in accordance with the fees set forth in this Agreement.

3.1.4 Vehicles

Tidewater Fibre shall secure and maintain an adequate number of vehicles to support the regularly scheduled collections as described herein. Collection vehicles shall be equipped with communication equipment to allow immediate communication with office and field

supervisory personnel. Collection equipment shall be capable of preventing accidental discharge of materials, water, engine or hydraulic fluids, or any other contaminants.

All vehicles shall be equipped with spill kits and any accidental discharge shall be immediately cleaned up by Tidewater Fibre or its agent.

All vehicles, whether for collection or transportation of collected materials, shall be maintained in good repair, in a clean and presentable condition, and must ensure that no materials are allowed to fall or blow off the vehicle at any time. The intent of the Authority to promote recycling shall not be discouraged by equipment that is maintained or operated in an unattractive condition.

3.1.5 Office Contact

Tidewater Fibre shall maintain an office within the Service Area or the Cities of Hampton or Newport News for the purpose of providing a contact point for the Authority and Authority-Designated Personnel. Tidewater Fibre shall provide adequate office staffing to answer questions and to receive and respond to service requests. The office staff shall be able to immediately contact each of the collection vehicles and field supervisory personnel for resolving complaints or answering questions.

3.1.6 Supervision

Tidewater Fibre shall assign qualified persons to supervise the services described herein. Tidewater Fibre shall assign sufficient supervisory personnel who shall be available to monitor collections, receive and respond to complaints, answer inquiries, and resolve disputes with respect to the services provided pursuant to this Agreement. The office located within the Service Area or the Cities of Newport News or Hampton shall serve as the base of operations for the supervisory personnel.

Tidewater Fibre shall designate an adequate number of responsible field supervisors with vehicles who shall be present when collection operations are in progress.

It is the intent of this contract that the field supervisors or a designated customer service representative be available during normal collection hours to receive customer inquiries and complaints, to respond quickly, to resolve problems, and to present the recycling program and recycling philosophy positively.



In order to maintain consistency in the recycling collection guidelines, only designated supervisors shall address the public. All supervisors and drivers shall be dressed in official uniforms.

The Authority shall have the right to review with Tidewater Fibre the performance of the supervisory personnel or customer service representative and to request changes in personnel if in the opinion of the Authority the customer service and relations of Tidewater Fibre are not adequate. Such a request will be made in writing and responded to by Tidewater Fibre in writing.

3.1.7 Service Requests

Unless otherwise directed, all service requests from households will be made directly to the city or county in which the service is performed and then forwarded to Tidewater Fibre. Each service request shall be given prompt and courteous attention by Tidewater Fibre upon being notified. Service requests will include, but not limited to:

- Missed collections
- **Requests for delivery of Recycling Containers**
- Requests for collection of large quantities of corrugated cardboard
- Additions to the front porch collection list
- Reports of property damage

All service requests for missed collections received by Tidewater Fibre by noon shall be addressed by the end of the collection day. All service requests for missed collections received by Tidewater Fibre after noon shall be addressed by noon of the following collection day.

In the case of requests received on Friday or before a holiday, Tidewater Fibre shall make an effort to address the request on the day received. For the purpose of this section, "address" shall mean to determine the action to be taken and the time to complete the action, at a minimum. All service requests for missed collections will be resolved in less than 24 hours from receipt of the service request regardless of the day that the request is received.

All service requests for delivery of Recycling Containers, collection of large quantities of corrugated cardboard and additions to the front porch collection list shall be completed within one week after receipt of the request.

Tidewater Fibre shall maintain a web based system that will be used to receive and

document all service requests and responses to the requests. It is the intent of the Authority, Authority Designated Personnel and Tidewater Fibre that all service requests will be communicated to Tidewater Fibre through the web based system and not through email or others means of communication. Except as noted herein, only service requests communicated to Tidewater Fibre through the web based system will be considered for imposition of Administrative Assessments.

In the event that the web based system is not properly functioning, service requests and responses to service requests will be made by email.

3.1.8 Handling Contaminated/Non-targeted Material

Tidewater Fibre shall not be obligated to collect non-targeted materials or Recyclable Materials which are substantially contaminated or containers which are improperly set out. At the time that contaminated or non-targeted materials are set out or the container is improperly set out for collection, Tidewater Fibre will collect the non-contaminated targeted Recyclable Materials and leave the contaminated or non-targeted materials in the container. If a container is substantially contaminated, Tidewater Fibre may leave the entire contents of the container. On every occasion, that some material is left uncollected Tidewater Fibre will issue a notice to the household, which contains the reason that the material was not collected, and instructions for the proper preparation and placement of the container. If a household receives two such notices within a period of thirty (30) days, Tidewater Fibre shall notify the Authority immediately. The Authority will take appropriate actions to educate the residents on correctly participating in the program. If the matter cannot be resolved by the Authority, the Authority may elect to discontinue service to the household. Tidewater Fibre will not discontinue service to any household without specific direction from the Authority. Tidewater Fibre and the Authority agree that commingling of the Recyclable Materials shall not be construed as contamination.

3.1.9 Front Porch Collection

Tidewater Fibre agrees to provide "front porch" collection service to residents who, due to medical reasons or advanced age, are unable to carry the container to the curb, for up to two percent (2%) of the households for each jurisdiction in the Service Area. Requests for "front porch" service shall be directed to Authority-Designated Personnel who will direct Tidewater

Fibre to provide such service. Authority-Designated personnel will be responsible to verify that residents who receive this service qualify for the service based on the requirements set forth in this section. Tidewater Fibre shall provide the Authority a list of the "front porch" collections by address and jurisdiction and this list shall be kept current on a monthly basis. The recipient household addresses will be maintained on a list provided to collection crews on each route in the service area. Failure by Tidewater Fibre to provide "front porch" collection service to designated residences will only be excused by the Authority where any of the following apply:

- Access to the front porch is impeded by gates, which are inoperative, locked, or tied
- A dog is loose, tied near, or blocks free access to the front porch where the container has been placed
- The resident refuses initial delivery of the collection container
- The criteria specified in Section 3.1.8 hereof (Handling Contaminated/ Non-targeted Material) are met.

In the event that the Authority receives more applications for "front-porch" pick-up than the allowed number provided for under this Agreement, the Authority shall determine which households qualify for "front-porch" collection. Tidewater Fibre agrees to provide additional "front porch" collections above the 2% allocation if directed by the Authority. Additional front porch collections above the allocation of 2% shall be invoiced at the rate of an additional \$1.00 per household per month.

3.1.10 Large Quantities of Corrugated Cardboard

Tidewater Fibre shall provide for the collection of large quantities of corrugated cardboard generated from special circumstances from households receiving curbside collection service (for example, from recent occupants of households, or other situations in which large quantities of cardboard are generated). All corrugated will be flattened by the generator. If scheduled in advance, larger corrugated will be collected but will be required to be flattened and reduced in size to fit in a pick-up truck.

3.1.11 Infill Within Service Area

During the term of this Agreement, Tidewater Fibre agrees to provide curbside recyclable material collection service to newly constructed and occupied households located in

the Service Area. Tidewater Fibre shall provide service to new households on all streets that have been routed. Tidewater Fibre will provide service to households on streets not routed only after receipt of authorization from the Authority. Upon receipt of said authorization Tidewater Fibre shall provide the Recycling Container and program promotional material to initiate collection service delivery to the households. Tidewater Fibre may adjust the monthly billing to reflect the additional number of households included in the program resulting from infill development within the service area.

3.1.12 Distribution of Educational Materials

Tidewater Fibre shall deliver educational, promotional, or publicity materials to each household in the Service Area up to four times per calendar year. Materials will be delivered by placing in or under the Recycling Container after collection. Materials may include handouts or flyers and will be prepared or approved by the Authority.

3.1.14 Holidays

The following days shall be considered holidays for the purpose of this Agreement:

New Years Day

Independence Day

Thanksgiving Day

Christmas Day

Tidewater Fibre may decide to observe any or all of the above mentioned holidays by suspending service; however, Tidewater Fibre shall still provide once-a-week collection service during the same week. The schedule for service during a holiday week shall be determined by Tidewater Fibre. Every year on October 1, Tidewater Fibre shall notify the Authority of the holiday schedule for the upcoming year. Generally, any holiday falling on Monday or Tuesday will be made up on the preceding Saturday and any holiday falling on Wednesday, Thursday or Friday will be made up on the following Saturday. The Authority, at its sole discretion, may direct Tidewater Fibre to observe a holiday listed above without providing an alternate collection but Tidewater Fibre will receive compensation as if the collection was provided.

3.1.15 Cancellation of Service

Tidewater Fibre may temporarily cancel service to any or all portions of the Service Area due to inclement weather or other unforeseen circumstances. If service is cancelled, Tidewater Fibre will notify the Authority immediately so that notification can be made regarding cancellation of service and make up of the service, if it is to be provided.

If the service is not made up, Tidewater Fibre will receive 35% of the normal fee for that day based on the actual number of days in that month.

In the event that Tidewater Fibre has provided service to more than 75% of the households in the service area and service is cancelled due to inclement weather or other unforeseen circumstances, Tidewater Fibre will receive full compensation for the day.

3.1.16 Verification of Household Count

Tidewater Fibre and the Authority will agree on the household count as of July 1, 2007, in each jurisdiction.

If at any time during the term of the Agreement, the Authority or Tidewater Fibre demonstrates that the household count is inaccurate, appropriate adjustments will be made and future invoices will reflect the adjustments. Retroactive billing adjustments will not be made.

3.1.17 Route Sheets

Tidewater Fibre will maintain complete and accurate route sheets throughout the term of the Agreement. All route sheets will list all households, with addresses, in the order that collection services are normally provided. Route sheets will include special collection instructions such as front porch collections.

The Authority agrees to provide to Tidewater Fibre electronic lists of the households in each jurisdiction as they are available.

Tidewater Fibre agrees to provide all route sheets to the Authority upon request for the purpose of verifying household counts or for other purposes.

3.2 Performance Standards

Tidewater Fibre agrees that all collection activities will meet all of the following

performance standards at a minimum:

- Maximum number of reported misses per month
 - James City 31
 - Poquoson 10
 - Williamsburg 6
 - York 28
- No more than two reported incidents per month of missed streets or sections of streets
- 95% of all reported missed collections resolved in accordance with the time frame in Section 3.1.7
- No more than a total of four reported front porch misses per month
- Rejection notice issued on every occasion that any material is left uncollected
- No more than one reported repeat miss at same address in two month period
- Provide Hot List for following day and end of every day

The Authority and Tidewater agree that the maximum number of reported misses per month are based on the household count for February 2007 and agree to adjust the maximum number reported misses per month on July 1, 2007 and quarterly thereafter proportionally to any increases in the household count for each jurisdiction.

The Authority and Tidewater Fibre agree that while Tidewater Fibre may occasionally exceed the maximum number of reported misses and Tidewater Fibre agrees to consistently meet this performance standard over any six month period.

Section 4 Program Reports

Reports shall be prepared by Tidewater Fibre to provide data upon which to evaluate curbside and drop-off collection programs, as well as to assist the Authority in measuring progress toward achievement of the State-mandated recycling levels. Collection of data for these reports is necessary for the optimum development of the program. Data provided shall be factual and accurate to the best ability of Tidewater Fibre. The following are the minimum required reports, with additional reports to be prepared at the option of the Tidewater Fibre:

24 Hour Reports: The Authority shall be notified in writing by Tidewater Fibre within 24 hours of the occurrence of a significant event such as but not limited to missed collection of more than five percent (5%) of any neighborhood area, any occurrence of private property damage with an estimated cost of \$200 or more, or any personal injury to a member of the general public (not including collection crews) resulting from the recycling collection and transport operation.

Daily Reports: Tidewater Fibre will receive service requests from participating communities and/or the Authority on a daily basis. Tidewater Fibre shall respond to these requests immediately and provide a written response to the community.

Monthly Reports:

Household Count: The monthly report shall include a summary of household count by route and jurisdiction including:

- Household count at beginning of period
Households added during the period
- Households subtracted during the period
- Total households at end of period

Container Count: The monthly report shall include a summary of the container count by jurisdiction including:

- Containers issued at beginning of period
- Containers issued for damage or loss during period and to date
- Containers issued for request for second container during the period and to date
- Containers replaced as a result of defect or damage by Tidewater Fibre during period and to date
- Total containers issued at end of period

Weights of Materials Collected: Weights of material collected by routes and community. Weighing of recyclables collected by route shall be performed daily. When routes cover more

than one community, estimates of weights collected from each community's service area shall be derived from the combined community weight collected on that route.

Marketing Report: To verify existence and reliability of markets, each month Tidewater Fibre shall report sales of secondary materials by type, quantity, and range of sales prices.

Participation Report: Tidewater Fibre shall track and report monthly setout rates for each route in each community along with weights collected per route. The information will be used to generate a performance report for communities.

Service Requests/Rejection/Delivery Logs: Tidewater Fibre shall develop logs listing all service requests received during the month.

Section 5 Property Damage

Tidewater Fibre shall provide verbal notification within four working hours and written notification within 24 hours to the Authority of any property damage resulting from Tidewater Fibre's operation. Tidewater Fibre shall also contact any and all affected residents on the same day that the damage occurs. The damage shall be corrected by Tidewater Fibre Fibre within five (5) business days. If damage can not be repaired within five days, Tidewater Fibre will provide a written explanation to the Authority and a schedule for completion of the repair work. Tidewater Fibre will submit, in writing, a summary of the incident within one week of the incident (including cause, resolution, and remedy to prevent repeat damage).

Section 6 Expansion of Program

At such time as the Authority desires to expand the Recycling Collection Services into other areas within the Service Area as defined herein, the Authority will provide to Tidewater Fibre a written notice for such expansion. The notice shall include a description of the expansion area, the number of households to be added to the program and the required date for start up of services. The Authority will provide such notice at least 60 days prior to the required start up date. Tidewater Fibre will deliver Recycling Containers to all households in the expansion area one week before the start up of services in the expansion area, on the

collection day for the expansion area.

In the event that an expansion results in unbalanced routes, Tidewater shall notify the Authority and changes may be made to the routes, as necessary for Tidewater Fibre to most efficiently use its collection equipment, with written approval of the Authority, which will not be unreasonably withheld.

Section 7 Marketing of Materials

Tidewater Fibre agrees that all Recyclable Materials, with the exception of Residue, that are collected pursuant to this Agreement will be recycled. Tidewater Fibre shall have complete responsibility for the sale of such Recyclable Materials. Any Recyclable Materials disposed of in any manner other than as secondary materials shall require prior approval of the Authority. The Authority shall not unreasonably withhold such approval when Tidewater Fibre demonstrates that viable markets for a material do not exist.

Section 8 Processing Facility

Tidewater Fibre shall maintain one or more Processing Facilities. At least one of the facilities must be located within the Service Area or within the limits of the City of Newport News or Hampton at which Tidewater Fibre will accept Recyclable Materials delivered by the Authority from the drop-off collection sites listed in Section 3.3. All loads shall be weighed upon delivery to the Processing Facility.

Tidewater Fibre shall notify the Authority, in writing, not less than thirty (30) days before any relocation of the Processing Facility. Relocation outside the Service Area or the Cities of Newport News or Hampton may be made only with the prior written approval of the Authority.

Tidewater Fibre shall maintain all Processing Facilities in good repair at all times. Tidewater Fibre shall notify the Authority, in writing, if at any time the Processing Facility is in a condition in which processing capabilities or normal operations are expected to be interrupted for more than one week.

Tidewater Fibre shall be responsible for managing all rejects derived from both the curbside and drop-off collection programs. Tidewater Fibre shall bear all costs (unless specified otherwise herein) and full responsibility for the transport and disposal of rejects to a permitted disposal site located within the Authority's service area.

Section 9 Labor and Other Costs

Tidewater Fibre shall, at its sole cost and expense, except as otherwise provided herein, furnish all labor materials and equipment required to perform curbside collection and processing and marketing of Recyclable Materials pursuant to this Agreement.

Tidewater Fibre shall be responsible to perform only the services described in this Agreement and services that are customarily and reasonably considered to be a part of Curbside Recycling Services.

Section 10 Compensation for Services

Tidewater Fibre shall submit invoices monthly by the 10th day of the month for service rendered by Tidewater Fibre under this Agreement for the previous month.

The Authority agrees to make monthly payments to Tidewater Fibre , within thirty (30) days of receipt of a complete billing invoice.

If the Authority fails to make payment of any undisputed portion of an invoice within sixty (60) days, Tidewater Fibre may suspend service.

Payment for curbside collection services shall be based on the household count and the unit prices in effect at the time of service.

Tidewater Fibre 's billing invoice will not be considered by the Authority to be complete and payable if it fails to provide the required reports specified in Section 4 of this Agreement. Failure by Tidewater Fibre to include specified reports and appropriate documentation shall be deemed by the Authority as cause to withhold payment for the previous month of Recycling Collection Service by Tidewater Fibre until such time as the required reports and documentation are received by the Authority.

Tidewater Fibre will receive compensation as follows:

Curbside collection service

July 1, 2007 to June 30 2008	\$2.505 per household per month
July 1, 2008 to June 30 2009	\$2.580 per household per month
July 1, 2009 to June 30 2010	\$2.657 per household per month



July 1, 2010 to June 30 2011	\$2.737 per household per month
July 1, 2011 to June 30 2012	\$2.819 per household per month
July 1, 2012 to June 30 2013	\$2.904 per household per month
July 1, 2013 to June 30 2014	\$2.991 per household per month

At any time during the term of the contract, if Tidewater Fibre can not demonstrate that glass is being beneficially used, the Authority may give notice that glass will be removed from the program. Within 90 days after receipt of written notice from the Authority, glass will no longer be an acceptable material in the program and the compensation paid to Tidewater Fibre will be reduced as follows:

July 1, 2007 to June 30 2008	\$0.070 per household per month
July 1, 2008 to June 30 2009	\$0.072 per household per month
July 1, 2009 to June 30 2010	\$0.074 per household per month
July 1, 2010 to June 30 2011	\$0.076 per household per month
July 1, 2011 to June 30 2012	\$0.079 per household per month
July 1, 2012 to June 30 2013	\$0.081 per household per month
July 1, 2013 to June 30 2014	\$0.084 per household per month

18 gallon container

Tidewater Fibre will purchase, store and deliver containers and receive compensation from the Authority as follows:

July 1, 2007 to June 30 2008	\$9.00 per container
July 1, 2008 to June 30 2009	\$9.27 per container
July 1, 2009 to June 30 2010	\$9.55 per container
July 1, 2010 to June 30 2011	\$9.83 per container

July 1, 2011 to June 30 2012	\$10.13 per container
July 1, 2012 to June 30 2013	\$10.43 per container
July 1, 2013 to June 30 2014	\$10.75 per container

Lids for 18 gallon container

Tidewater Fibre will purchase, store and deliver lids for the containers and receive compensation from the Authority as follows:

July 1, 2007 to June 30 2008	\$5.73 per lid
July 1, 2008 to June 30 2009	\$5.90 per lid
July 1, 2009 to June 30 2010	\$6.08 per lid
July 1, 2010 to June 30 2011	\$6.26 per lid
July 1, 2011 to June 30 2012	\$6.45 per lid
July 1, 2012 to June 30 2013	\$6.64 per lid
July 1, 2013 to June 30 2014	\$6.84 per lid

If requested by the Authority, Tidewater Fibre will make lids and / or containers with rollers to residents and collect fees directly from the residents in accordance with the fees set forth in this Section.

Section 11 Administrative Assessments

The Authority or Authority-Designated Personnel will notify Tidewater Fibre of each service request reported to the Authority or the member jurisdiction. It shall be the responsibility of Tidewater Fibre to take whatever steps are necessary to address the service request. Failure to address the service request in accordance with the agreement may result in an administrative charge against Tidewater Fibre. In assessing administrative charges, consideration will be given to inclement weather conditions. It is hereby agreed that the Authority may deduct from any monies due or which may become due Tidewater Fibre, as administrative charges in the following amounts:

Failure to address all service requests \$10 per Household for service requests not addressed as required.
for missed collections by the end of
the current Work Day when Tidewater \$25 per Household for each
Fibre has been notified by the subsequent day.
Authority by noon OR by noon of the
subsequent Work Day when
Tidewater Fibre has been notified by
the Authority after noon.

Failure to leave rejection tag when \$25 per incident
some or all of the material in the
recycling container was left
uncollected.

Any reported consecutive repeat miss \$25 per incident

Failure to clean up spillage caused by \$100 per incident
Tidewater Fibre after notification.

Failure to assign and make available, \$100 per Work Day
in a timely manner, a qualified field
supervisor as required by this
Agreement.

Failure to provide notification to the \$100 per incident per day.
Authority of non-compliance with the
hours of operation specified by this
Agreement.

Changing routes or route order, as \$100 per incident.
defined below, without proper

notification to the Authority.

Failure to deliver Recyclable Materials \$1000 per incident.
to an appropriate Processing Facility.

For the purposes of this Section, "Changing routes or route order without proper notification to the Authority" shall mean changing the day of collection and shall not mean changing the route path in which a route is collected or the number of people that start or finish a route.

The Authority shall notify Tidewater Fibre of its intention to assess any Administrative Assessments within 30 days of the month in which an assessment is due. Retroactive Administrative Assessments shall not be allowed.

An incentive payment of \$1,000 per month for each month when Tidewater Fibre performance is judged superior will be made to Tidewater Fibre by the Authority. Tidewater Fibre shall receive a monthly incentive of \$1000 when all of the following contract criteria have been satisfied:

- No administrative assessments,
- No unresolved service requests,
- No collections occurring prior to 7:00 a.m. or after 6:00 p.m., unless circumstances beyond Tidewater Fibre's control forced such collections (e.g. road closures, inclement weather),
- One hundred percent compliance with Performance Standards,
- One hundred percent on-time delivery of Recycling Containers,
- No Front Porch Service list misses,
- No repeat misses,
- No reports of litter or automotive fluid spills from vehicles,
- No reports of property damage,
- Invoicing and reports complete and on time,
- No instances of drivers out of uniform,

- No instances of equipment not conforming to standards for appearance.

If awarded, Tidewater Fibre agrees to distribute 100% of the incentive payment of \$1,000 to drivers, field supervisors and local office personnel responsible for providing service to the Authority.

Section 12 Non-Appropriation

The recycling program governed by this Agreement is funded solely through funds appropriated to the Authority by the participating local jurisdictions. Failure of any jurisdiction to appropriate or pay to the Authority the funds necessary to cover the cost of that jurisdiction's portion of the program service area shall terminate Tidewater Fibre's obligation to provide service under this contract in that jurisdiction and if such failure to appropriate or to pay results in fewer participating households at anytime after the dates indicated thereon, Tidewater Fibre shall be entitled to renegotiate the terms of this Agreement. In the event Tidewater Fibre and the Authority are unable to reach agreement on new terms, this Agreement shall terminate. Furthermore, should the Authority fail to appropriate funds for this Agreement, this Agreement shall be terminated when existing funding is exhausted. Failure by one or more jurisdictions to appropriate or pay funds to the Authority shall not be a breach or default under this contract and Tidewater Fibre's sole remedy shall be the right to terminate the Agreement.

In the event of non-appropriation by one of the participating local jurisdictions, said jurisdiction shall not contract for similar services with another vendor from the date of non-appropriation until June 30, 2014.

Section 13 Protection of Recyclable Materials

Tidewater Fibre shall take title to the Recyclable Materials upon set out of a curbside container or upon acceptance of the Recyclable Materials at the Processing Facility from a drop-off container. The Authority agrees to take such steps as may be reasonably necessary to protect Tidewater Fibre's ownership of all Recyclable Materials set out for curbside collection by residents of the service area for collection by Tidewater Fibre under the terms of this Agreement and shall encourage local governments to enforce any anti-scavenging or other ordinance as may be deemed necessary and which may be developed and adopted for the

purpose of this section subject to legal authority. Tidewater Fibre shall not take title to any hazardous or regulated medical waste delivered in the Authority drop-off containers.

Section 14 Permits for Processing Center & Recycling Collection Services

The Authority shall lend its full cooperation to Tidewater Fibre in connection with obtaining all permits (including zoning permits), licenses and approvals necessary for Tidewater Fibre to operate or construct a processing facility of sufficient size to administer the area-wide recycling program pursuant to this Agreement.

Section 15 Permits and Licenses

Tidewater Fibre, at its sole cost and expense, shall maintain throughout the term of this Agreement all permits, licenses and approvals necessary or required for Tidewater Fibre to perform the work and services described herein, including but not limited to the operation of the Tidewater Fibre Processing Facility.

Section 16 Compliance with Laws & Regulations

Tidewater Fibre agrees that, in its operation of Recycling Collection Services and the Processing Facility and the performance of other work and services required of it under this Agreement, Tidewater Fibre will qualify under and comply with any and all federal, state and local laws, regulations and permits now in effect, or hereafter enacted during the term of this Agreement, which are applicable to Tidewater Fibre, its employees, agents or subcontractors, if any, with respect to the work and services described herein. In the event changes in laws or regulations increase Tidewater Fibre's cost of providing the services, including but not limited to a redeemable deposit on any recyclable material or waste, Tidewater Fibre shall be entitled to renegotiate its rates with the Authority. If Tidewater Fibre and the Authority are unable to successfully renegotiate the rates, this Agreement shall terminate.

If at any time during the term of this agreement, Tidewater Fibre becomes aware of any non compliance with any federal, state or local law, regulation or permit Tidewater Fibre shall provide written notice to the Authority of such noncompliance within 24 hours. Such notification shall not be required if Tidewater Fibre disputes any alleged non-compliance.



Section 17 Law to Govern

This Agreement is entered into and is to be performed in the Commonwealth of Virginia. The Authority and Tidewater Fibre agree that the laws of the Commonwealth of Virginia shall govern the rights, obligations, duties, and liabilities of the parties to this Agreement and shall govern the interpretations of this Agreement.

Section 18 Independent Contractor

Tidewater Fibre shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant, or employee of the Authority. Except as otherwise provided under this Agreement, Tidewater Fibre shall have exclusive control of and the exclusive right to control the details of the services and work performed hereunder and all persons performing the same and nothing herein shall be construed as creating a partnership or joint venture between the Authority and Tidewater Fibre. No person performing any of the work or services described hereunder shall be considered an officer, agent, servant, or employee of the Authority, and no such person shall be entitled to any benefits available or granted to employees of the Authority or its member jurisdictions.

Section 19 Subcontractors

Tidewater Fibre hereby agrees that no subcontractor will be used to perform any of the services to be provided to the Authority under this agreement without written approval of the Authority. Tidewater Fibre further agrees that any subcontractor shall meet all Authority requirements imposed on Tidewater Fibre. The Authority agrees that approval of the use of a subcontractor will not be unreasonably withheld.

Section 20 Non-Assignment

Neither Tidewater Fibre nor the Authority shall assign, transfer, convey, or otherwise hypothecate this Agreement or their rights, duties or obligations hereunder or any part thereof without the prior written consent of the other.

Section 21 Insurance

Tidewater Fibre shall obtain and maintain throughout the term of this Agreement, at

Tidewater Fibre 's sole cost and expense, not less than the insurance coverage set forth below:

Workers Compensation & Employer's Liability

Coverage A - Statutory Requirements

Coverage B - \$100,000/\$100,000/\$500,000

Coverage C - \$100,000/\$100,000 Accident and/or Disease

All States Endorsement

Commercial Automobile Liability, Including Owned, Non-Owned, & Hired Car Coverage

Limits of Liability = \$1,000,000 each occurrence

Commercial General Liability

Limits of Liability = \$1,000,000 each occurrence

Including: A. Completed operations/products
 B. Contractual liability for specified Agreements

**Excess Liability over Employer's Liability, Commercial Automobile Liability and
Commercial General Liability**

Bodily Injury

OR

- \$5,000,000 each occurrence

Property Damage

Tidewater Fibre shall deliver to the Authority, prior to the execution date of this Agreement, Certificates of Insurance from carriers licensed in the Commonwealth of Virginia acceptable to the Authority for the limits specified above. The Commercial General Liability policy shall name the Authority and the member jurisdictions of the Authority as additional insureds on a primary basis, not contributing with and not excess of coverage, which the Authority or member jurisdictions may carry. In addition, the insurer shall agree to give the Authority thirty (30) days written notice of its decision to cancel, change, or fail to renew coverage.

Section 22 Performance Bond or Letter of Credit

Tidewater Fibre shall furnish to the Authority a performance bond for the faithful performance of this Agreement and all obligations arising hereunder for the period of July 1, 2007, to June 30, 2008, in the amount of one hundred percent (100%) of the contract amount for that period as determined by the annual budget adopted by the Authority Board of Directors.

The bond shall be executed by a surety company licensed to do business in the Commonwealth of Virginia in a form acceptable to the Authority. A certificate from the surety company showing that the bond premiums are paid in full shall accompany the bond. The bond shall be extended annually thereafter thirty (30) days in advance of the anniversary date in an amount equal to the total amount of the contract for that year.

The Authority may allow an irrevocable letter of credit in the amount of \$1,000,000 in lieu of the performance bond with a banking institution and on terms and conditions acceptable to the Authority.

Section 23 Indemnification

It is understood and agreed that Tidewater Fibre hereby assumes the entire responsibility and liability for any and all damages to persons or property caused by or resulting from or arising out of any act or omission on the part of Tidewater Fibre, its subcontractors, agents or employees, whether directly or indirectly employed, or anyone for whose acts Tidewater Fibre or any of its subcontractors may be liable under or in connection with this Agreement or the performance or failure to perform any work required by this Agreement. Tidewater Fibre shall save harmless and indemnify the Authority, its member jurisdictions and its agents, servants, employees and officers from and against any and all claims, losses or expenses of any kind whatsoever, including but not limited to attorney's fees, which any of them may suffer, pay or incur as the result of claims or suits due to, arising out of or in connection with any and all such damage, real or alleged, including damage attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, including the loss of use therefrom, except to the extent such claim, suit or damage results from the negligence, misconduct, violation of law or breach of this Agreement by the Authority, its member jurisdictions, its agents, servants, employees, or officers. Tidewater Fibre shall upon written

demand by the Authority assume and defend at Tidewater Fibre's sole expense any and all such suits or defense of claims for which Tidewater Fibre is liable to indemnify the Authority or its member jurisdictions.

Section 24 Default

In the event Tidewater Fibre defaults in the performance of any of the material covenants or agreements to be kept, done, or performed by it under the terms of this Agreement, the Authority shall notify Tidewater Fibre in writing of the nature of such default. Within fifteen (15) days following such notice:

Tidewater Fibre shall correct the default; or In the event of a default not capable of being corrected within fifteen (15) days, Tidewater Fibre shall commence correcting the default within fifteen (15) days of the Authority's notification. The Authority will grant an extension providing that, in the Authority's reasonable judgment, Tidewater Fibre is diligently pursuing a correction.

If Tidewater Fibre fails to correct the default as provided above, the Authority, without further notice, shall have all of the following rights which the Authority may exercise singly or in combination, in addition to any other right or remedy allowed by law.

The right to declare that this Agreement together with all rights granted Tidewater Fibre hereunder are terminated, effective upon such date as the Authority shall designate; and

The right to contract with others to perform the services otherwise to be performed by Tidewater Fibre or to perform such services itself; and

The right to pursue all legal and equitable remedies against Tidewater Fibre or on its bond or letter of credit posted under Section 23 hereof to recover the costs, expenses and losses caused by such default.

Section 25 Notices

All notices required or contemplated by this Agreement shall be personally served or mailed by U.S. Mail, postage prepaid - return receipt requested, addressed to the parties as follows:

To the Authority: Executive Director
 Virginia Peninsulas Public
 Service Authority
 475 McLaws Circle, Suite 3B
 Williamsburg, Virginia 23185

With a copy to: Vernon Geddy, III
 Geddy, Harris, Franck & Hickman
 P.O. Box 379
 Williamsburg VA 23187

To Tidewater Fibre : Tidewater Fibre Corp
 Michael Benedetto
 1958 Diamond Hill Road
 Chesapeake, Virginia 23323

With a copy to: Kaufman and Canoles
 Attn: Charles McPhillips
 One Commercial Place
 P.O. Box 3037
 Norfolk, VA 23514

Section 26 Tidewater Fibre Records

Tidewater Fibre shall maintain its books and records related to the performance of this Agreement in accordance with the following minimum requirements.

Tidewater Fibre shall maintain any and all ledgers, books of account, invoices, vouchers, and cancelled checks, as well as all other records or documents evidencing or relating to charges for services, expenditures or disbursements borne by the Authority for a minimum period of five (5) years, or for any longer period required by law, from the date of final payment to Tidewater Fibre pursuant to this Agreement.

Tidewater Fibre shall maintain all documents and records which demonstrate performance under this Agreement for a minimum period of five (5) years, or for any longer period required by law, from the date of termination or completion of this Agreement.

Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time, during regular business hours, upon written request by the Authority Designated Personnel. The records shall be available to the Authority Designated Personnel at Tidewater Fibre 's address indicated for receipt of notices in this Agreement or at such other location as designated in writing by Tidewater Fibre.

Section 27 Inspections

Tidewater Fibre agrees to permit Authority-Designated Personnel to inspect its routes, processing, and hauling facilities, recyclables, equipment, complaint logs, or procedures to the extent such facilities, equipment, etc. apply to the performance of this Agreement.

Section 28 Waiver

A waiver of any breach of any provision of this Agreement shall not constitute or operate as a waiver of any other breach of such provision or of any other provisions, nor shall any failure to enforce any provision hereof operate as a waiver of such provision or of any other provision.

Section 29 Force Majeure

Force Majeure shall mean any cause beyond the reasonable control of the party whose performance under this Agreement is affected, including but not limited to acts of God, war, riot, fire, explosion, wind storm, snow, flood, strikes, labor disputes, or action by governments not party to this Agreement.

It is mutually understood and agreed by the parties that Tidewater Fibre shall be relieved of its obligation under this Agreement during any period or periods of time when Force Majeure, render impossible its performance under this Agreement. Upon the occurrence of an event of Force Majeure, Tidewater Fibre shall promptly give the Authority notice of its best, good faith estimate of the period of time it expects Force Majeure to render impossible its performance hereunder.

Should Tidewater Fibre be unable to render performance under this Agreement by reason of Force Majeure, the Authority shall have the right to secure another vendor to perform any or all portions of the service provided by Tidewater Fibre under this Agreement for the period of expected Force Majeure set forth in the notice from Tidewater Fibre described herein.

The Authority and the participating local jurisdictions supporting the Authority in this Agreement shall have the right to negotiate for alternative service to be provided by any other vendor during Force Majeure. In the event the period of Force Majeure should end prior to the expiration of this alternative service Agreement, the Authority, in its sole discretion, shall have the right to continue service during the notice period with any alternate vendor procured during the notice period or instruct Tidewater Fibre to resume services notwithstanding anything herein to the contrary. The Authority shall resume service with Tidewater Fibre according to the terms of this Agreement after expiration of the notice period.

At any time that Force Majeure is in effect, it is understood by the parties to this Agreement that the Authority shall not be obligated to pay service fees to Tidewater Fibre for any or all service interrupted by reason of Force Majeure other than for work already completed.

Section 30 Employment Discrimination by Tidewater Fibre Prohibited

During the performance of this contract, Tidewater Fibre agrees as follows:

Tidewater Fibre shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability or other basis prohibited by state law relating to employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of Tidewater Fibre. Tidewater Fibre agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

Tidewater Fibre, in all solicitations or advertisements for employees placed by or on behalf of Tidewater Fibre, will state that Tidewater Fibre is an equal opportunity employer.

Notices, advertisements, and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

Tidewater Fibre will include the provisions of the foregoing paragraphs of this section in

every subcontract or purchase order of over \$10,000 so that the provisions will be binding upon each subcontractor or vendor.

Section 31 Drug Free Workplace

During the performance of this contract, Tidewater Fibre agrees to (i) provide a drug-free workplace for Tidewater Fibre's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in Tidewater Fibre's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of Tidewater Fibre that Tidewater Fibre maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000 so that the provisions will be binding upon each subcontractor or vendor.

For the purpose of this section, "drug-free workplace" means a site for the performance of work done in connection with this contract awarded to Tidewater Fibre in accordance with this section, the employees of whom are prohibited from engaging in unlawful manufacture, sale, distribution, dispensation possession or use of any controlled substance or marijuana during the performance of the contract.

Section 32 Titles of Sections

Section headings inserted herein are for convenience only, and are not intended to be used as aids to interpretation and are not binding on the parties.

Section 33 Amendment

This Agreement may be modified or amended only by a written agreement duly executed by the parties hereto or their representatives.

Section 34 Severability

The invalidity of one or more of the phrases, sentences, clauses, or sections contained in this Agreement shall not affect the validity of the remaining portion of the Agreement so long

as the material purposes of this Agreement can be determined and effectuated.

Section 35 Successors and Assigns

This Agreement shall be binding upon the parties hereto, their successors, and assigns.

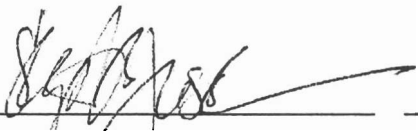
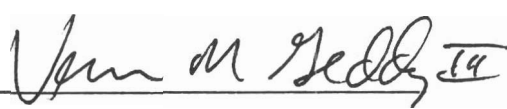
Section 36 Entirety

This Agreement and any Exhibits attached hereto contain the entire Agreement between the parties as to the matters contained herein. Any oral representations or modifications concerning this Agreement shall be of no force and effect.

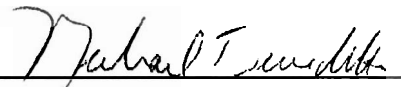
The signatories to this Agreement have been lawfully authorized by their principals to execute this Agreement.

**VIRGINIA PENINSULAS
PUBLIC SERVICE AUTHORITY**

APPROVED AS TO FORM

By:  
Stephen B. Geissler
Executive Director
Geddy, Harris, Franck & Hickman
Special Counsel to the
Virginia Peninsulas Public Service Authority

TIDEWATER FIBRE

By: 
Michael Benedetto
Executive Vice President

MEMORANDUM

DATE: June 12, 2007

TO: The Board of Supervisors

FROM: Sanford B. Wanner, County Administrator

SUBJECT: Virginia Peninsulas Public Service Authority (VPPSA) Service Agreement for Drop Off Recycling

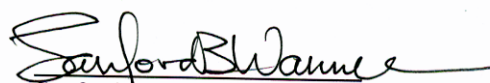
Since November 2001, James City County, as well as the Counties of Essex, King and Queen, King William, Mathews, Middlesex, and York have had a Service Agreement with VPPSA. The current Service Agreement for drop off recycling services between the VPPSA and James City County expires on June 30, 2007.

Under the current agreement, VPPSA provides containers at all sites, performs collection services as requested by the County, and delivers the recyclable materials to Tidewater Fibre. The County pays any disposal fees and receives credit for any revenue. Under the proposed agreement, VPPSA will have several outlets for delivery of the recyclable materials and will select the outlets to maximize material revenue and minimize delivery costs.

As part of the budget approved by the VPPSA Board of Directors in December 2006, unit rates for container rental and collection for the drop off recycling program have been established for FY 2008.

The attached Service Agreement is nearly identical to the current Service Agreement for drop off recycling services between VPPSA and the County. Execution of the agreement will allow for continued drop off recycling services for an additional five years.

Staff recommends the adoption of the attached resolution authorizing the County Administrator to enter into an agreement with VPPSA for drop off recycling services.



Sanford B. Wanner

SBW/gs
VPPSArecycleagr.mem

Attachments

RESOLUTION

VIRGINIA PENINSULAS PUBLIC SERVICE AUTHORITY (VPPSA) SERVICE AGREEMENT

FOR DROP OFF RECYCLING

WHEREAS, James City County is a member of, and contracts with, the Virginia Peninsulas Public Service Authority (VPPSA) for drop off recycling services; and

WHEREAS, VPPSA has bid household chemical collection services for the period of five years commencing July 1, 2007, and may be extended for one five-year renewal or five one-year renewals; and

WHEREAS, James City County wishes to continue contracting its drop off recycling services project with VPPSA.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes and directs the County Administrator to execute agreements with the Virginia Peninsulas Public Service Authority for drop off recycling services.

John J. McGlennon
Chairman, Board of Supervisors

ATTEST:

Sanford B. Wanner
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 12th day of June, 2007.

VPPSArecycleagr.res

Special Project Agreement
Drop Off Recycling Project

THIS AGREEMENT dated the ____ day of _____, 2007, is made by and between the Virginia Peninsulas Public Service Authority (hereinafter designated "VPPSA"), an authority created under the Virginia Water and Waste Authorities Act, VA.Code 15.2-5100 et seq. (the "Act"), and the County of James City (hereinafter designated as "Community").

The obligation of the parties under this Agreement is subject to participation by other member jurisdictions (hereafter designated as "local jurisdiction") listed below. Should the withdrawal of any local jurisdiction, or reduction in any service to any jurisdiction designated for participation in the drop off recycling project result in a change in prices, the Community shall have the option of continuing the participation at the negotiated cost or withdrawing from the project. Local jurisdictions initially included in the drop off recycling project are:

County of Essex
County of James City
County of King and Queen
County of King William
County of Mathews
County of Middlesex
County of York

Article I- Purpose:

This agreement is entered into pursuant to the authorization of the Act and in accordance with the Articles of Incorporation of the Virginia Peninsulas Public Service Authority, as adopted by its member jurisdictions. Its purpose is to establish a special project pursuant to paragraph (e) of the Articles.

VPPSA intends to provide drop off recycling services which shall include providing containers at locations designated by the Community, collection of the containers as requested by the Community, and delivery of the containers to a facility that will process and recycle the Recyclable Materials.

The Community agrees to participate in the project according to the terms and conditions of this Agreement including, but not limited to, performance of the following duties:

1. Designation of drop-off sites.
2. Designation of representative responsible for community supervision of the Project.
3. Requesting pick-up of drop-off containers except where this responsibility has not been assigned to VPPSA.
4. Approval of disposal of contaminated drop-off containers.

Article II- Recyclable Materials

The Recyclable Materials included in the drop off recycling project shall include a paper stream, which shall include corrugated cardboard, newspapers and mixed paper and a container stream which shall include glass bottles and jars, metal cans, aluminum foil projects, and HDPE (#2 plastic) and PET (#1 plastic) bottles and jugs.

Mixed paper shall include bond paper, computer paper, magazines, catalogs, bulk mailings, telephone and other directories, carrier stock, and chipboard. Mixed paper shall not include wax paper, carbon paper, chemically treated or coated paper that renders paper non-recyclable, envelopes with plastic windows, or any paper that does not tear.

Glass shall include clear, brown and green bottles and jars. Metal cans shall include aluminum, steel, bimetal, and tin cans. HDPE plastic bottles shall exclude automotive product containers and pesticide containers. Plastic bottles and jugs shall be defined as having a narrower neck, a pour spout, and a screw top.

Recyclable materials shall be substantially clean, dry and free from contamination.

Article III- Term of Agreement:

This Agreement shall become effective and operations hereunder shall commence on July 1, 2007 and continue for a term of five years. This Agreement may

be extended for one five-year renewal or five one-year renewals as the parties mutually agree in writing on or before August 30, 2012 and every August 30 thereafter until August 30, 2017.

Article IV- Delivery Conditions:

At VPPSA's request, the Community will take all reasonable and lawful actions which assist in successful implementation of the Project. Such actions may include but not be limited to designation of drop-off sites, and requests for additional drop-off containers, and subject to legal authority, prevention of scavenging of Recyclable Materials put out for collection.

Article V- Recyclable Material Collection, Processing and Marketing Service:

VPPSA shall provide drop-off recycling containers at the following locations:

Essex County:

- Champlain Convenience Center
- Airport Road Convenience Center
- Bray's Fork Convenience Center
- Center Cross Convenience Center
- Transfer Station

James City County:

- Toano Convenience Center
- Landfill Convenience Center
- Tewning Road Convenience Center

King & Queen County:

- Owenton Convenience Center
- Dahlgren Convenience Center
- Mascot Convenience Center
- Traveller's Rest Road Convenience Center

King William County:

- Epworth Convenience Center
- Landfill Convenience Center

VFW Road Convenience Center
Transfer Station

Mathews County:
Convenience Center

Middlesex County:
Jamaica Convenience Center
Hartfield Convenience Center
Deltaville Convenience Center
Transfer Station

York County:
Waste Management Center

VPPSA shall maintain agreements with one or more entities (hereafter referred to as the "Processor") who shall accept, process and market the Recyclable Materials. If VPPSA has agreements with more than one Processor, VPPSA shall at its sole discretion select the Processor to which Recyclable Materials will be delivered.

VPPSA shall provide to the community a list of Processors and the schedule of fees and revenues for each Processor. VPPSA shall provide to the Community any changes in the Processor's schedule of fees or revenues during the term of this agreement.

VPPSA will deliver drop-off recycling containers to the Processor as requested by the Community when the containers are full. Collections will be made before the close of business on the day following the request for the collection. VPPSA shall at its sole cost and expense, except as provided herein, furnish all materials, labor, and equipment required to provide the collection and delivery of Recyclable Materials from the designated drop-off location to the Processor for processing and marketing.

VPPSA shall, through the Processor, process and market recyclable material for reuse pursuant to State recycling mandates, and shall require proper disposal of rejected, non-recyclable material by the Processor in existing permitted landfills. VPPSA shall have the right to expand the list or targeted Recyclable Materials covered under

this recycling program provided that any increased charges for such expansion are acceptable to the Community.

Article VI- Service Fees:

The Community shall pay VPPSA, for services provided pursuant to this Agreement, at the Service Fees established by the VPPSA Board of Directors. For FY 08, the Service Fees have been established as follows:

Container Rental	-	\$54/month/container
Container Collection	-	\$189.78/collection

The Community also agrees to pay any fee charged by the Processor for delivery of material. Any revenue received by VPPSA for delivery of the Recyclable Material will be credited to the Community.

VPPSA will invoice the Community monthly with payments due 25 days after receipt of an invoice.

In the event that this Agreement is terminated for any reason, unused funds will be refunded to the Community.

Nothing in this article shall require the Community to pay service fees for Recyclable Material collections by anyone other than VPPSA.

Payments by the Community of Service Fees hereunder are payments for services rendered and the obligation to make such payments does not constitute a debt of the Community for constitutional, statutory or charter limitations.

Article VII- Title to Recyclable Materials:

The Community hereby assigns and transfers to the Processor all of their right, title and interest, if any, in and to all Recyclable Materials collectable under this Agreement upon delivery of the Recyclable Material to the Processor's facility

Article VIII- No Partnership:

Nothing herein shall be construed to constitute a joint venture between VPPSA and the Community or other jurisdictions or the formation of a partnership.

Article IX- Force Majeure:

"Force Majeure" shall mean any cause beyond the reasonable control of the party whose performance is affected, including but not limited to acts of God, war, riot,

fire, explosion, wind storm, flood, strikes, labor disputes or action by governments not party to this Agreement. Force Majeure shall not include equipment failure.

Failure of any party to perform under this Agreement by reason of Force Majeure shall not constitute default or be cause for termination of this Agreement. However, the party so failing to perform shall immediately notify VPPSA and the other participating local governments in writing of the failure, including reasons therefore, and shall make reasonable efforts to correct such failure and to continue performance at the earliest possible date.

Should VPPSA be unable to complete performance under this Agreement due to the Processor's failure to perform by reason of Force Majeure, it shall, where practicable, take all reasonable steps to secure another vendor to perform the work according to the already established schedule of rates, fees and charges. Should VPPSA be unable to secure a vendor to perform according to the established schedule of rates, fees and charges, the parties may agree to a new schedule by written amendment attached to this Agreement. If the parties are unable to agree on a new schedule, this Agreement shall terminate.

The Community shall have the right, but not the obligation, to collect or cause to be collected Recyclable Material from designated drop-off collection sites within its jurisdiction by means other than VPPSA at any time during which Force Majeure is in effect in the Community. For the period Force Majeure is in effect in the Community, VPPSA shall not impose any rate, fee or charge for Recyclable Material collection, processing and marketing and residue disposal by or within the Community. Any additional costs incurred by Community as a result of using another recyclable collection method (by reason of force Majeure) other than the vendor under contract to VPPSA shall be borne by the local government.

Article X-Termination:

1. In the event the Community participating in this Agreement lawfully fails to appropriate funds to pay for its services received or to be received under this Agreement, this Agreement shall terminate.
2. The Community shall endeavor to give VPPSA (30) days advance written notice of its intent to terminate its participation in the program under paragraph 1 above.

3. In the event that VPPSA or its contractor is unable to perform or remedy the non-performance, this Agreement shall terminate.

Article XI- Audit Provisions:

VPPSA's records, which shall include but not be limited to accounting records, policies and procedures, subcontract files (including proposals of successful and unsuccessful bidders), payroll records, original estimates, estimating worksheets, correspondence, change order files (including documentation covering negotiated settlements), and any other supporting evidence necessary to substantiate charges related to this agreement (all the foregoing hereinafter referred to as "records") shall be open to inspection by the Community and subject to audit and/or reproduction, during normal working hours or at such other times as are mutually agreed upon by the parties, to the extent necessary to adequately permit evaluation and verification of any invoices, payments or claims submitted by VPPSA or any of its agents or vendors pursuant to this Agreement.

For the purpose of such audits, inspections, examinations and evaluations, the Community's agent or authorized representative shall have access to records from the effective date of this agreement, for the duration of the Agreement, and until five (5) years after the date of final payment by the Community to VPPSA pursuant to this Agreement.

The Community's agent or authorized representative shall have reasonable access to VPPSA's facilities, shall have reasonable access to all necessary records, and shall be provided reasonable access to adequate and appropriate work space, in order to conduct audits in compliance with this article. The Community's agent or authorized representative shall give VPPSA reasonable advance notice of intended audits.

Article XII- Licenses, Permits and Certificates:

VPPS shall be responsible for requiring that all licenses, permits and certificates required in connection with any and all parts of the recycling project are secured by the Contractor.

Article XIII- Governing Law:

This Agreement shall be governed by the laws of the Commonwealth of Virginia.

Article XIV- Extent of Agreement:

This Agreement represents the entire agreement for the Drop Off Recycling Project between VPPSA and the Community and supersedes all prior negotiation, representations or agreements, either written or oral. This Agreement may only be amended by written document signed by both the Community and VPPSA.

Article XV- Dispute Resolution:

The parties hereto agree to undertake to resolve any disputes hereunder by good faith negotiation prior to instituting any legal proceedings related to such dispute.

Article XVI- Severability and Waiver:

In the event any provision of this Agreement shall be held to be invalid and unenforceable, the remaining provisions shall be binding upon the parties. One or more waivers by either party of any provision, term, condition, or covenant shall not be construed by the other party as a waiver of a subsequent breach of the same by the other party.

IN WITNESS WHEREOF, VPPSA and the Community have caused this Agreement to be executed on their behalf, as of the day and year first above written.

ATTEST:

VIRGINIA PENINSULAS PUBLIC
SERVICE AUTHORITY

By _____
Executive Director

APPROVED AS TO FORM:

Special Counsel to VPPSA

ATTEST:

COUNTY OF JAMES CITY

_____ By _____
County Administrator

APPROVED AS TO FORM:

County Attorney

REZONING Z-02-07/MP-03-07. Chestnut Grove
Staff Report for the June 12, 2007, Board of Supervisors Public Hearing

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.

PUBLIC HEARINGS

Planning Commission:
Board of Supervisors:

Building F Board Room; County Government Complex

May 2, 2007, 7 p.m.
June 12, 2007, 7 p.m.

SUMMARY FACTS

Applicant: Mr. Joel Almquist of Health-E-Communities Enterprises

Land Owner: Crumpler Properties Two, LLC, notarized

Proposal: To rezone a 9.018-acre parcel from a split-zoning of LB (Limited Business) and R-8 (Rural Residential) to R-5 (Multi-Family Residential), with Proffers, to accommodate a 40-unit townhouse development, at a proposed gross density of 4.43 dwelling units per acre.

Location: Southeast of the intersection of Wisteria Garden Drive and Pocahontas Trail (Route 60)

Tax Map/Parcel Nos.: 5910100024

Parcel Size: 9.018 acres

Existing Zoning: LB (Limited Business) and R-8 (Rural Residential)

Proposed Zoning: R-5 (Multifamily Residential), with Proffers

Comprehensive Plan: Moderate Density Residential

Primary Service Area: Inside

STAFF RECOMMENDATION

Staff finds this proposal to rezone the subject parcel from LB and R-8, to R-5, to be consistent with the James City County 2003 Comprehensive Plan, as outlined in this staff report. Due to the projected small traffic impact, the provision for affordable housing, the emphasis placed on open space and amenities, and the generally compatible nature of this proposal with respect to the surrounding community, staff supports this proposal and recommends that the Board of Supervisors approve this application to rezone the subject property for the use specified. Staff would also recommend that the Board consider the per unit cash contribution proffers for this proposal for "Community Impacts." Staff feels that these contribution amounts should be increased to keep them in line with those proffered on other similar projects, and because of the rising costs of providing County services.

PLANNING COMMISSION RECOMMENDATION

The Planning Commission voted 6-0 to recommend approval of this Rezoning application and its associated binding Master Plan, with the acceptance of the voluntary proffers, as amended (see "Proposed Changes," below).

Staff Contact: David W. German Phone: 253-6685

Proposed Changes Made Since Planning Commission Meeting

At the May 2, 2007, Planning Commission Meeting, the Planning Commissioners, in their recommendation of approval for this application, asked that three items be further addressed by the applicant. These items were: 1) that the proposed second park/picnic area at the southwestern corner of the lot be removed in favor of increasing the Community Character Corridor (CCC) buffer on the north side of the entry drive to 150 feet; 2) that the applicant make “Green Building Practices” part of the proffers (the applicant had verbally stated his intention to use such practices during his presentation); and, 3) that the applicant make the LID proffer stronger by citing specific benchmarks that would be met in the development. The applicant has responded favorably to all three of the Planning Commissioners’ requests. The Master Plan has been revised to reflect the increased CCC buffer, and the proffers have been amended to reflect that the second park/picnic area is no longer included in the proposed development (Proffer No. 16). (It should be noted that even without the second park/picnic area, the proposal still exceeds the James City County Parks and Recreation suggested park area proffer guidelines.) Additionally, Proffer No. 19 (LID Proffer) and Proffer No. 21 (Green Building Proffer) have been improved and added, respectively, in accordance with the Planning Commission members’ guidance.

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

Cash Contribution Proffer Summary (2007 Dollars) (See Staff Report narrative and attached proffers for further details)	
Proffer Use:	Amount:
School Contribution (Affordable Units):	\$0 per townhouse (x8 townhouses)
School Contribution (Restricted Units):	\$650 per townhouse (x8 townhouses)
School Contribution (Market-Priced Units):	\$1,300 per townhouse (x24 townhouses)
CIP Projects Contribution (Affordable Units):	\$0 per townhouse (x8 townhouses)
CIP Projects Contribution (Restricted Units):	\$350 per townhouse (x8 townhouses)
CIP Projects Contribution (Market-Priced Units):	\$700 per townhouse (x24 townhouses)
Total Contribution Per Unit:	\$0 Affordable Units; \$1,000 Restricted Units; \$2,000 Market-Priced Units
Total Development Cash Contribution:	\$56,000

PROJECT DESCRIPTION

Mr. Joel Almquist of Health-E-Communities Enterprises has applied to rezone the subject property located at 104 Wisteria Garden Drive from a split zoning of LB (approximately 3.70 acres), and R-8 (approximately 5.318 acres), to R-5, with proffers, for the purpose of constructing 40 for sale townhouses. Eight of the townhouses (20 percent) will be “Affordable,” eight of the townhouses (20 percent) will be price and income “Restricted,” and 24 (60 percent) will be sold at market rate. The subject property is a total of 9.018 acres in size and is also known as Tax Map Parcel No. 5910100024.

The development would include once constructed, five attached townhouse buildings, perimeter buffers, open space areas, parking areas, two recreation areas collectively totaling 0.64 acres in size, (*note: based on changes recommended by the Planning Commission, this has been reduced to one recreation area of 0.45 acres in size*), an internal sidewalk network, a tot lot, and an internal paved six-foot-wide walking path. The sidewalks and walking path would feature connections to the existing sidewalk along Pocahontas Trail, Route 60. In the Illustrative Plan submitted with the Master Plan, the five-townhouse buildings consist of two nine-

unit buildings, two eight-unit buildings, and one six-unit building. The development would also include a stormwater management Best Management Practices (BMP). Roughly, 37 percent of the property (concentrated at its northeastern end) consists of non-developable wetlands and associated Resource Protection Area (RPA) buffers that are designated by the Comprehensive Plan as a Conservation Area.

The R-5 Zoning District has very specific standards for measuring density, as outlined in Section 24-312 of the Zoning Ordinance. Specifically, if less than 35 percent of a given property is deemed to be not developable due to the presence of wetlands, streambeds, areas subject to flooding, or areas with slopes exceeding a 25 percent gradient, then the developable area of the parcel shall be the total area of the parcel. For this application, we have rounded the parcel size to 9.02 acres, and summarized this calculation as follows:

Total Parcel Size	= 9.02 acres
Non-Developable Land	= 1.76 acres
Percentage of Total Parcel that is Non- Developable	= 19.51 percent

Because the non-developable land represents less than 35 percent of the total parcel, the gross acreage is considered the acreage of the entire parcel, or 9.02 acres. The density for the project is then calculated thusly:

Gross Density	= 40 dwelling units/9.02 acres
	= 4.43 dwelling units per acre

If the density were to be calculated *without* the Conservation Area included in the total area of the parcel for the calculation, the gross density would climb to 7.04-dwelling units per acre (40 dwelling units/5.68 acres), which would still be in keeping with the density requirements of the proposed Zoning District, which specifies that, for developments of 100 units or less, eight dwelling units per acre are permissible. No special density bonuses are being sought for this application. For the purpose of computing densities under Comprehensive Plan designations, staff has consistently used gross density of a parcel. This has included sites with large areas designated as “Conservation Area.” Regardless of whether the Conservation Area is included the proposed density falls within the four to twelve dwelling-unit-per-acre range recommended by the Comprehensive Plan Designation for this site. A special use permit (SUP) will also not be needed for this application, as the R-5 zoning designation allows for the construction of townhouses, which may be arranged in single structures that comprise up to 10 individual units. The applicant is seeking a reduction in the CCC buffer from the Comprehensive Plan recommended width of 150 feet to 50 feet as part of this rezoning proceeding. Staff generally supports this reduction request, due to the need for affordable housing in the County, the applicant’s proffer to enhance the remaining 50-foot buffer, and the County’s past practice of consistently granting this type of CCC buffer reduction along this portion of Route 60.

PUBLIC IMPACTS

Archaeology

◆ Proffer:

1. Proffer No. 5: A Phase 1 Archaeological study will be completed and submitted with the first Site Plan for the site. Phase 2 and Phase 3 studies will be undertaken as warranted.

- ◆ **Staff Comment:** Planning staff believes that adequate measures are in place to preserve and protect archaeologically significant discoveries that may be located on the site, by virtue of this proffer, which is consistent with the County's Archaeology Policy. The applicant has additionally proffered that treatment plans will be prepared in the event that Phase 2 and/or Phase 3 studies are warranted, and that all studies are subject to the review and approval of the Planning Director. The proposed project site is in close proximity to two historically significant properties to include Carter's Grove (located directly across Pocahontas Trail from the subject property) and Barlow's Lot, a small residential dwelling listed as No. 047-5056 by the Virginia Department of Historic Resources (DHR) (located to the northwest of the subject property, on the far side of the 7-Eleven property). Planning staff believes that the enhanced landscaping to be provided in the perimeter and Route 60 buffers, coupled with the low-traffic-intensity nature of the proposed development, will ensure that its impacts to these two historic sites will be minimal.

Environmental

- ◆ **Watershed:** Skiffe's Creek

- ◆ **Proffers:**

1. Proffer No 8: A nutrient management plan for the entire parcel, prepared by the Virginia Cooperative Extension Office (VCEO), a Virginia licensed soil scientist, an agent of the Soil and Water Conservation District, or other qualified professional, shall be submitted to and approved by the Environmental Director.
2. Proffer No. 19: LID features shall be added to the plan as generally shown on the Master Plan, to include saving existing trees, using wide and flat stormwater conveyance channels, encouraging infiltration, and the use of bio-retention cells with appropriate landscaping, subject to the review and approval of the Environmental Director.

- ◆ **Staff Comment:** After review of the project, the Environmental Division found no significant concerns with the proposal. The Environmental Division determined that all needed protective measures and efforts could be safely enacted at the site plan level of review for this project. Further, it was noted that there is no official subwatershed for the project area, but that it is, however, located directly adjacent to the mainstem of Skiffe's Creek. The Environmental Division commented that there are multiple opportunities for LID features on this site, and that the LID proffer would help to provide "extraordinary environmental compliance" assurances. Finally, the Environmental Division offered that there is no need to provide a Stormwater Master Plan proffer as this site will not undergo phased development. No development of any kind is proposed inside the Conservation Area, which includes RPA areas and associated buffers, located at the northeast end of the property.

Housing

- ◆ **Proffers:**

1. Proffer No. 2: There shall be a Homeowners Association for the property that will help to ensure that the development is properly cared for over time;
2. Proffer No. 4: There shall be eight "Affordable" townhouse units priced at \$135,000 each, eight price and income Restricted townhouse units priced at \$165,000 each, and 24 ("Market-priced") townhouse units. Each of the Affordable and Restricted units will be supported by a soft second mortgage that will be forgivable over a 15 Affordable or five Restricted year term;
3. Proffer Nos. 6 and 13: There shall be enhanced landscape buffers and minimum landscaping and elevation standards to help create an aesthetically pleasing community;
4. Proffer Nos. 9, 10, 11, and 12: Internal streets, parking areas, sidewalks, and walking trails shall be designed and built to specific standards subject to the approval of the Planning Director or the County Engineer; and
 - Proffer No. 15: Each townhouse shall be constructed to meet or exceed the HERS Energy Star Certification for energy efficiency.

- ◆ **Staff Comment:** Planning staff is encouraged by the various housing proffers, in that they, collectively, create an integrated mixed-income environment, provide at least 16 reasonably affordable workforce

housing units, and provide homes that are more energy efficient than what might otherwise be offered in the open marketplace. Mr. Rick Hanson of the James City County Office of Housing and Community Development was asked for feedback on this proposal. Mr. Hanson finds the affordable housing component of this proposed development to be acceptable, and gave a positive endorsement of the project overall, because of the new additional affordable housing stock being created. For comparisons between the proposed Chestnut Grove development and the nearby Pocahontas Square development currently under construction from the same developer, please see the “Comparisons of Pocahontas Square and Chestnut Grove Developments” attachment to this staff report.

Parks and Recreation

◆ Proffers:

1. Proffer No. 16: Recreational facilities to include one 0.45-acre open space to include a tot lot with playground facilities for five to six activities, and approximately 0.26 miles of walking trails; and
2. Proffer No. 16: A cash contribution of \$2,889, made in accordance with the Parks and Recreation Master Plan Proffer Guidelines, to be adjusted yearly by the Marshall Swift Index until paid.

- #### **◆ Staff Comment:**
- These proffers adequately meet the Parks and Recreation Master Plan Proffer Guidelines and help to provide for healthy, active outdoor activity for future residents of the development. Staff is especially supportive of the well-integrated network of walking trails and sidewalks in the proposed community, which will provide the development with internal pedestrian connectivity.

Public Facilities and Services

◆ Proffer:

1. Proffer No. 14: Cash contributions of \$350 for each Restricted Unit and \$700 for each Market-priced Unit (and \$0 for Affordable units) will be paid to the County for Capital Improvement Program (CIP) projects, to be adjusted yearly by the Marshall Swift Index until paid.

- #### **◆ Staff Comment:**
- Planning staff is concerned by the dollar value of these proffers. The Fiscal Impact Analysis (FIA) submitted by the applicant clearly shows that the proposed development will cost the County a net loss of \$21,600 per year. Analysis of the FIA submitted reveals that, depending upon the validity of some of the assumptions made in the FIA, the yearly cost (net loss) to the County may be substantially higher than this \$21,600 figure. The FIA correctly explains that the County’s net loss or gain is the difference between what the County makes in taxes, fees, and direct revenues generated from the development and the cost to the County of providing services (including schools, roads, emergency services, etc.) to the citizens living in the development. Planning Staff notes that the Proffers provided to the County by the same applicant on the nearby Pocahontas Square townhouse development were substantially higher, and is concerned that the County is now being asked to accept lower amounts of money—even as costs to the County to provide for its citizens continue to sharply rise. Please see the “Comparisons of Pocahontas Square and Chestnut Grove Developments” attachment to this Staff Report for further information.

Public Utilities:

◆ Proffers:

1. Proffer No. 3: A water conservation plan for the entire parcel to be reviewed and approved by the James City Service Authority (JCSA) Director.
2. Proffer No. 20: A 20-foot utility easement from the proposed on-site sanitary sewer main over to the neighboring property identified as 8792 Pocahontas Trail shall be dedicated to the JCSA on the property.

- #### **◆ Staff Comment:**
- This site is inside the Primary Service Area (PSA) and will be served by public water provided by Newport News Water Works, and public sewer provided by the JCSA. After review of the project, JCSA determined that no cash contribution for water improvements was warranted. Due to the close proximity of a properly sized sewer main, no sewer improvements or contributions would be needed. The JCSA did, however, ask that a 20-foot JCSA utility easement be proffered and dedicated from the sanitary sewer main to be located on the subject property to 8792 Pocahontas Trail (the

neighboring parcel to the southeast), and a guarantee that the proposed new development would be served only by gravity sewer be proffered as well. The JCSC did not anticipate any problems with providing an appropriate level of service for the subject property or the intended use.

Transportation

◆ **Proffers:**

1. Proffer No. 7: An emergency-only entrance will allow for direct access to the property for rescue vehicles should the primary entrance become blocked.
2. Proffer No. 17: An area of a suitable width shall be set aside and kept clear of utilities along the Pocahontas Trail (Route 60) frontage of the lot to accommodate a future shoulder bike lane, in accordance with the Regional Bikeway Map adopted by James City County, Williamsburg, and York County.
3. Proffer No. 18: The developer shall incur the costs of striping, delineation, and/or marking lanes on Route 60 to accommodate the entrance for the new development, subject to the direction and approval of the Virginia Department of Transportation (VDOT).

- ◆ **Analysis:** The subject property in this application fronts on Pocahontas Trail (Route 60) at a location that features 40-mph east-west travel lanes separated by a center turning lane. The entrance for the proposed development would be positioned approximately 40 feet from the eastern-most entrance of the adjacent 7-Eleven property, which abuts the subject property at its northwest corner. VDOT did express some concern at the proximity of this entrance (a driveway separation of at least 150 feet is preferable) but said that the proposed entrance would be permissible, given that little could be done to expand the separation.

The applicant provided a basic traffic analysis for the proposed project, which classifies the intended development as (Category 230) “Condo/Townhouse” under the Institution of Transportation Engineers (ITE) traffic classification system. The applicant has indicated that 28 PM peak hour trips would be generated from the site. Khoi Nguyen of VDOT concurred with this analysis, as does Planning staff. Because of this low level of projected trip generation, a traffic study was not warranted for this proposal.

2005 Traffic Counts (for Pocahontas Trail (Route 60)): Plantation Road (Route 1301) to Church Street (Route 655): 10,806 Average Daily Trips.

2026 Volume Projected (for Pocahontas Trail (Route 60)): York County line to BASF Drive: 8,000 Average Daily Trips (Listed in the “Okay” category; assumes the Route 60 Relocation is completed).

Road Improvements: No improvements to Richmond Road (Route 60), beyond the installation of appropriate signage/pavement markings, a standard entrance, and provisions for a shoulder bike lane were recommended by VDOT.

◆ **VDOT Comments:**

1. Planning concurs with the [projected] trip generation rates as presented within the submitted study. The proposed 40 townhouse [development has] the potential to generate 295 [total] daily trips (25 AM peak hour; 28 PM peak hour).
2. Based on VDOT’s hourly directional counts performed in January 2007, assigning all site trips to and from the proposed entrance, a right-hand treatment or left-turn lane is not warranted on Route 60.
3. An intersection capacity analysis performed by VDOT shows that all movements at the Route 60/proposed Chestnut Grove entrance intersection will operate at acceptable levels of service. The Route 60 eastbound left will operate at a LOS A in both the AM and PM peak hours, and the southbound shared left/right site entrance will operate at LOS B in both the AM and PM peak hours.
4. The James City County, Williamsburg, and York County Regional Bikeway Map, adopted by the respective Boards of Supervisors and City Council, denotes this segment of Route 60 as having a proposed shoulder bike lane. Staff recommends that this be accommodated along the frontage of the site.

- ◆ **Staff Comments:** No significant adverse traffic impacts are anticipated from this development. The

applicant has indicated that an access agreement has been reached with the owners of Wisteria Garden Parkway with respect to the emergency entrance that is being proposed for the Chestnut Grove development. There are Williamsburg Area Transit (WAT) stops in close proximity of the proposed development at Busch Gardens and at the Wal-Mart Distribution Center. The farthest away of the two WAT stops is approximately a 1.5 miles away (Wal-Mart Distribution Center stop).

It should be noted that if the property were to be developed under its current LB zoning designation (3.70 acres of the 9.02-acre parcel fronting onto Pocahontas Trail), it would be expected to generate substantially more traffic. In the absence of the Route 60 relocation project, the traffic conditions along this roadway are expected to continue to be a concern. Conversion of the LB zoning to R-5 helps to minimize further traffic increases. For example, if a drive-in bank was located on the subject property (a by-right use) it could conceivably generate up to 106.92 PM peak hour trips (*ITE Category 912*) “Drive-In Bank,” assuming a building size of 2,000 square feet). This is roughly 3.82 times the traffic generation of the proposed townhouse development and is representative of the difference in potential traffic impacts created under these two different zoning/development scenarios.

Williamsburg-James City County Schools

◆ **Proffer:**

1. Proffer No. 14: Cash contributions of \$650 for each Restricted unit and \$1,300 for each Market-Priced Unit (and \$0 for Affordable units) will be paid to the County for school uses, to be adjusted yearly by the Marshall Swift Index until paid.

- ◆ **Staff Comments:** With respect to the analysis of the direct impact of the proposed development to the Williamsburg-James City County Public School District, staff projects, based upon multipliers provided by Financial Management Services, that seven school-aged children will be generated by Chestnut Grove. Typically, three of these children will attend elementary school (44 percent), two will attend middle school (24 percent), and two will attend high school (32 percent). The applicant has indicated that the schools serving this location would be James River Elementary School, James Blair Middle School, and Jamestown High School. The following table is reproduced from the applicant’s proposal, and has been verified by staff:

Effective School Capacity^A

Existing Public School Facility	Design Capacity ^C	Effective Capacity	2006 Enrollment	Remaining Capacity	Percentage of New Chestnut Grove Students	Number of New Chestnut Grove Students
James River Elementary:	588	514	456	58	44%	3
James Blair Middle:	625	764	658	106	24%	2
Jamestown High:	1,250	1,177	1,591 ^B	-414 ^B	32%	2
Totals:	2,455	2,455	2,705	-250^B	100%	7

^A Source – 2007-2008 Five-Year Enrollment Projection Report.

^B Projected Enrollment for Jamestown High is 1,065; the lower number is due to the relief provided by the opening of the new third high school (Warhill High School) in September 2007.

^C Source – Williamsburg-James City County Public Schools Ten-Year Enrollment Projections (October 2003).

Based on this analysis, the seven students projected to be produced from the new development would not cause the enrollment levels for these three schools to exceed its effective capacities. The proposed development fails the Adequate Public Facilities (APF) Policy at the middle school level, as the Board of Supervisors adopted policy (June 23, 1998) is based on Design Capacity rather than Effective Capacity. If, however, the analysis is based on effective capacity, then the new proposal passes the APF Policy. As it is noted that a new middle school is scheduled to open in 2009, staff believes that this proposal would still meet the APF Policy Guidelines.

COMPREHENSIVE PLAN

Land Use Map

Designation	<p><i>Moderate Density Residential (Page 121):</i> Moderate density areas are residential developments or land suitable for such development with a minimum gross density of four dwelling units per acre, up to a maximum of 12 dwelling units per acre, depending on the character and density of surrounding development, physical attributes of the property, buffers, and the degree to which the development is consistent with the Comprehensive Plan, and public benefits outlined in the Comprehensive Plan.</p> <p>Staff Comment: The proposed use is consistent with this land use designation, as it offers mixed-cost housing, affordable housing, unusual environmental protection, and open space design. The application also proposes a density of 4.43-dwelling units per acre, which is consistent with this Comprehensive Plan designation. This proposal also meshes well with surrounding development, as nearby properties are typically designated Low Density Residential or Moderate Density Residential, and also because the density being proposed for this development is on the low-end of the permissible scale, which keeps it more in line with its neighbors. The proposal brings the zoning of the subject property into conformance with the Moderate Density Residential designation and thereby avoids commercial uses that may impact surrounding residents and visually impact Carter's Grove.</p>
Development Standards	<p><i>General Land Use Standards No. 01 (Page 134):</i> To permit new development only where such developments are compatible with the character of adjoining uses and where the impact of such new developments can be adequately addressed.</p> <p><i>General Land Use Standards No. 02 (Page 134):</i> Permit the location of new uses only where public services, utilities, and facilities are adequate to support such uses.</p> <p><i>Residential Land Use Standards No. 02 (Page 137):</i> Design residential developments in a manner that fosters a sense of place and community and avoids the image of continuous urban sprawl.</p> <p>Staff Comment: Staff finds the proposed use to be consistent with its neighboring uses. Surrounding the subject Property on three sides are residential properties that feature a mix of manufactured homes, townhouses, and single-family homes, which feature approximate densities of 3.41 Dwelling Units-per-acre (Wisteria Gardens Mobile Home Park), 6.68 Dwelling Units-per-acre (Heritage Mobile Home Park), and 6.86 Dwelling Units-per-acre (Pocahontas Square). Directly across Pocahontas Trail from the subject Property is Carter's Grove, which is well screened by its own vegetation, and which will also be screened by the buffer that will be planted and/or preserved on the subject property along Route 60. The proposed development is served by Public Water and Public Sewer as required by the Zoning Ordinance and recommended by the Comprehensive Plan for Moderate Density Areas. Because of attention to detail and considerable amenities offered to potential future residents by this proposal, this development is likely to foster a sense of community, and because of individual homeownership, of pride as well.</p>
Goals, Strategies, and Actions	<p><i>Goal No. 02 (Page 138):</i> Direct growth into designated growth areas in an efficient and low-impact manner.</p> <p><i>Strategy No. 06 (Page 138):</i> Promote the use of land consistent with the capacity of existing and planned public facilities and the County's ability to provide such facilities and services.</p> <p><i>Action No. 02 (Page 139):</i> Amend the Zoning Ordinance to ensure that allowed densities within residential zoning districts are consistent with densities recommended by the Comprehensive Plan.</p> <p>Staff Comment: Staff finds that the proposed use proposes to put growth and appropriate density onto land that is planned for such development. The subject property is served by public utilities and is situated in close proximity to shopping and services. The impact to public facilities and services should be well handled due to the scale of the development and the planned opening of Warhill High School. The development proposal will avoid generating adverse levels of dust, noise, odor, pollution, or vibration, and fits in well with its neighboring surroundings, due to this low level of impact and similar function. Staff finds that this proposed rezoning would put, if granted, an appropriate development on an appropriately zoned parcel that is consistent with the tenets of the Comprehensive Plan.</p>

Environment

General	<i>Natural Resources Protection and Management, Landowner Stewardship (Page 46):</i> Promotes effective conservation and resource protection by individual landowners.
	Staff Comment: The Environmental Division did not identify any significant concerns with the proposed use in terms of its potential impact upon the Skiffe's Creek Watershed. Staff is satisfied that any negative impacts generated by the proposed use will be very minor and properly mitigated by the protections built into current Environmental ordinances (e.g., Chesapeake Bay Ordinance, etc.) The carefully designed Turf Management Proffer will provide individual townhouse owners with effective tools and information to reduce the amounts of fertilizers and nutrients that are introduced in the watershed. Individual ownership tends to create pride in the maintenance of landscaping and open space areas.
Goals, Strategies, and Actions	<i>Strategy No. 02 (Page 65):</i> To assure that new development minimizes adverse impacts on the natural and built environment. <i>Action No. 05 (Page 66, item g):</i> To encourage the use of Better Site Design, Low Impact Development, and BMPs to mitigate adverse environmental impacts by reducing the rate of increase of impervious cover. <i>Action No. 13 (Page 66):</i> Minimize negative effects of urban development and agricultural practices on water quality through increased education and sound policies such as Watershed Planning, Agricultural Best Management Practices (BMPs), erosion control measures, stream bank buffers, and other nonpoint source controls. <i>Action No. 23 (Page 67):</i> To encourage residential and commercial water conservation.
	Staff Comment: The applicant will use BMP as required by ordinance, nutrient management testing and control measures, (Proffer No. 8), and water conservation measures, (Proffer No. 3). The applicant has taken steps to reduce impervious cover and to increase open space by increasing density, which is also of benefit.

Community Character

General	<i>Community Character Corridors (Page 83):</i> The proposed development fronts Pocahontas Trail (Route 60), a Community Character Corridor.
	Staff Comment: The applicant has submitted a design with a reduced-width but positively enhanced buffer to address the site's location along the Pocahontas Trail (Route 60) Community Character Corridor. By enhancing the landscape buffer with larger plantings, using architecture that is not incompatible to the area, taking steps to preserve as many existing trees as possible, and using enhanced planting measures in the perimeter buffers, the applicant has presented a development that meets or exceeds the minimum visual standards for Community Character Corridors.
Goals, Strategies, and Actions	<i>Goal No. 01 (Page 95):</i> Improve the overall appearance of the County's urban and rural environment.
	Staff Comment: By providing enhanced buffer plantings, and by potentially making pride-in-home-ownership (and the corresponding care for lawns, common areas, landscaping, and exterior maintenance) possible for many lower-income families, the proposed rezoning will potentially add to the aesthetic quality of the Pocahontas Trail (Route 60) Community Character Corridor.

Transportation

General	<i>Route 60 East Relocation / Pocahontas Trail (Page 76):</i> A relocation and upgrading project, this realignment will divert traffic from Route 60 East, which experiences traffic congestion from industrial and tourist traffic.
	Staff Comment: Planning Staff recognizes that Pocahontas Trail is ill equipped to handle the increasing traffic strain being placed upon it in this region of the County. Due to funding, design and engineering constraints, and time-to-construct, the proposed realignment of Route 60 may take several years to physically complete. By rezoning the subject property from LB to R-5, the potential for increased traffic impacts on Route 60 is lowered. (See example of LB development provided in the Transportation portion of the Public Impacts section of this staff report.)

Housing

General	<p><i>Affordability (Page 105):</i> For housing to be affordable for a family or household, housing expenses generally should not exceed 30 percent of gross monthly household income. Within a region, the term affordable housing generally refers to housing available to persons who have incomes below the area median income, provided that the occupant pays no more than 30 percent of gross income for housing costs, including utilities. The location of housing can greatly affect other expenses, especially that of transportation. Low-income households and rural households pay a higher percentage of income on transportation costs than those in moderate income or urban households. These higher costs can present a barrier to home ownership.</p> <p>Staff Comment: Planning staff believes that providing new opportunities for affordable housing in James City County is critical to the long-term economic health and viability of the County. Among others, teachers, government employees, fire, EMT and police personnel, and service workers all benefit from affordable housing. By having affordable housing located in James City County, lower-income individuals and families can live closer to the jobs they have here, easing congestion on our roadways, and providing a workforce for retail and service industry companies. The James City County Office of Housing and Community Development has reviewed the affordable housing component of this application, and finds that it will provide additional affordable housing stock for the County that is appropriately priced to benefit the local buyer's market.</p>
Goals, Strategies, and Actions	<p><i>Goal No. 02 (Page 106):</i> Eliminate substandard housing conditions.</p> <p><i>Goal No. 03 (Page 106):</i> Increase the availability of affordable housing.</p> <p>Staff Comment: By developing quality homes with HERS Energy Star ratings (Proffer No. 15) that can be sold at affordable prices, low-income homebuyers are presented with the opportunity to leave substandard housing conditions behind. There shall be enhanced landscape buffers, and minimum landscaping and elevation standards to help create an aesthetically pleasing community (Proffer Nos. 6 and 13), and internal streets, parking areas, sidewalks, and walking trails shall be designed and built to specific standards subject to the approval of the Planning Director or the County Engineer (Proffer Nos. 9, 10, 11, and 12). These features will help to ensure that no new substandard housing is created. This proposed development plan will add a minimum of eight Affordable and eight Restricted income single-family townhouse units to the County's housing stock.</p> <p><i>Strategy No. 11 (Page 107):</i> Promote infill residential development to minimize site development costs and unnecessary sprawl, and maximize the development potential of land convenient to public facilities and services.</p> <p>Staff Comment: The proposed development places affordable and lower-priced homes on a piece of property that is surrounded on all sides by already developed land. The subject lot has ready access to public water and sewer facilities, is located in convenient proximity to public facilities and services, and lends itself well to development in the proposed capacity.</p> <p><i>Action No. #04 (Page 107):</i> Ensure that adequate land for moderate-density housing is located in areas served by public utilities and is convenient to public transportation and major thoroughfares, employment centers, schools, recreation facilities, and shopping facilities.</p> <p>Staff Comment: By rezoning the subject property to allow for multifamily housing, the County can make more land available for moderate-density housing in a manner that is compatible with the Comprehensive Plan. The subject site is located close to many major arterials and transit options, as well as being in close proximity to many employment areas.</p>

- ◆ **Staff Comment:** Planning staff finds this proposal to be compatible with the James City County 2003 Comprehensive Plan, especially in the areas of Comprehensive Plan Land Use Designation and Affordable Housing.

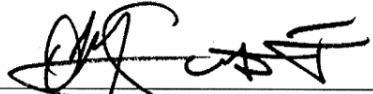
STAFF RECOMMENDATION

Staff finds this proposal to rezone the subject parcel from LB and R-8, to R-5, to be consistent with the James City County 2003 Comprehensive Plan, as outlined in this staff report. Due to the projected small traffic impact, the provision for affordable housing, the emphasis placed on open space and amenities, and the

generally compatible nature of this proposal with respect to the surrounding community, staff supports this proposal and recommends that the Board of Supervisors approve this application to rezone the subject property for the use specified. Staff would also recommend that the Board consider the per unit cash contribution proffers for this proposal for "Community Impacts." Staff feels that these contribution amounts should be increased to keep them in line with those proffered on other similar projects, and because of the rising costs of providing County services.

David W. German

CONCUR:



O. Marvin Sowers, Jr.

DWG/gs
Z-02-07/MP-03-07

ATTACHMENTS:

1. Unapproved Minutes from the May 2, 2007, Planning Commission Meeting
2. Board of Supervisors Resolution
3. Project Location Map
4. Comparisons of Pocahontas Square (2005) and Chestnut Grove (2007) Developments
5. Proffers
6. Applicant's Architectural Elevations (under separate cover)
7. Master Plan (under separate cover)

RESOLUTION

CASE NO. Z-02-07/MP-03-07. CHESTNUT GROVE

WHEREAS, in accordance with § 15.2-2204 of the Code of Virginia, 1950, as amended, 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 Case No. Z-02-07/MP-03-07, with Master Plan, for rezoning 9.018 acres from a split zoning of LB, Limited Business, (approximately 3.700 acres), and R-8, Rural Residential, (approximately 5.318 acres), to R-5, Multifamily Residential, with proffers; and

WHEREAS, the Planning Commission of James City County, following its public hearing on May 2, 2007, recommended approval, by a vote of 6 to 0; and

WHEREAS, the property is located at 104 Wisteria Garden Drive, and can be further identified on James City County Real Estate Tax Parcel ID No. 5910100024.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, following a public hearing, does hereby approve Case No. Z-02-07/MP-03-07 and accept the voluntary proffers.

John J. McGlennon
Chairman, Board of Supervisors

ATTEST:

Sanford B. Wanner
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 12th day of June, 2007.

z-02-27_mp-03-07.res

UNAPPROVED MINUTES OF THE MAY 2, 2007 MEETING OF THE PLANNING COMMISSION

Mr. David German presented the staff report stating that Mr. Joel Almquist has applied to rezone a 9.018-acre parcel from a split-zoning of R-8, Rural Residential and LB, Limited Business, to R-5, Multi-Family Residential, with proffers, to allow for the construction of forty townhouse units. The property is located at 104 Wisteria Garden Drive, and is further identified on the JCC Tax Map as Parcel # 5910100024. The property is designated Moderate Density Residential on the Comprehensive Plan Land Use Map. Recommended uses on property designated for Moderate Density Residential include residential developments with a gross density of four to twelve dwelling units per acre, and that offer particular public benefits to the community, such as mixed-cost housing, affordable housing, or unusual environmental protection.

Mr. Fraley confirmed with Mr. German that his comments had been forwarded to the applicant and then stated his concern that proffered LID (Low Density Impact) features are not specified on the storm water plan.

Mr. Cain stated that the LID features will have to comply with County systems regarding those areas designated for LID and will be evaluated during site plan review.

Mr. Fraley stated that the Commission does not have the opportunity to consider the layout and design to determine if it represents the most productive use of the site.

Mr. Cain stated that the Environmental Division would work with the applicant through the development of the plan.

Ms. Hughes asked Mr. Cain's opinion of the location of the proposed open space.

Mr. Cain stated that the soils, native vegetation, and proximity to buffers would have to be considered. He stated that with the density of the proposal preservation in the middle of the project is probably not possible.

Ms. Hughes stated her opinion that the most valuable open space location from an environmental and open space perspective is the area adjacent to the RPA (Resource Protection Area) buffer due to the mature forest and overlying A-B soils.

Ms. Hughes asked if the applicant would meet recreation area requirements if they increased the proposed Community Character Corridor Buffer to 100 feet in front of the property.

Mr. German said they might.

Mr. Fraley asked what the requirement is and the location of the recreation facilities.

Mr. German stated that the applicant is proposing 2 ½ to 3 times more than

required.

Mr. Fraley stated that only $\frac{3}{4}$ of acre is being proposed for recreation facilities so that allowing 100 feet for the buffer would bring them below the requirement.

Mr. Sowers suggested asking the applicant about the feasibility of increasing the proposed buffer.

Ms. Jones opened the public hearing.

Mr. Vernon M. Geddy, III of Geddy, Harris, Franck and Hickman introduced the applicants.

Mr. Joel Almquist presented the proposal stating that 40 % of the project is proffered to be affordable. He highlighted the proposed recreation facilities and stated that the affordable units will be mixed together with market-priced units in the development, and that all pricing is well below the JCC average. Mr. Almquist also stated that the location of BMP is due to the depth of that area allowing run-off from the site without interfering with the RPA buffer, and that the requested Community Character Corridor Buffer reduction to 50 feet is consistent with the surrounding area. Mr. Almquist explained the Health-E Homes Design aspects of the proposal.

Mr. Michael Ware stated that their sales prices target 60%-80% of average mean income in James City County. Mr. Ware noted that the different affordable options for buyers depended on their particular situations, and explained how forgivable second deeds of trusts benefit the buyer and help to avoid resale-for-profit scenarios.

Mr. Fraley stated that the LID proffer is not specific enough.

Mr. Almquist showed the location of the LID features on a map and stated that approval by the Environmental Division will be required.

Mr. Fraley asked about the LID proffer regarding saving existing trees whenever possible.

Mr. Sowers deferred to the question to Environmental since it concerns an LID feature.

Mr. Fraley said he did not consider it an LID feature.

Mr. Almquist stated their agreement to add stronger language within the proffers concerning LID.

Mr. Fraley stated his concerns that the project has negative fiscal impacts. He stated his appreciation of the affordability and building techniques.

Mr. Ware stated that they suffered a \$1,000,000 reduction in profit revenue on their previous project (referring to Pocahontas Square), and that they expect a \$400,000 reduction in profit revenue on this project due to the second mortgages offered. He also pointed out that 40% of project will be affordable.

Mr. Fraley said the affordable units represent 20% of the project, and questioned why the per-unit proffer contributions were lower on this project than on the Pocahontas Square project.

Mr. Jay Epstein explained the definition of affordability. He stated that increase proffer contributions would reduce the number of affordable units.

Ms. Jones stated that the applicant is requesting rezoning from LB Limited Business which has greater potential to produce a positive fiscal impact for a project that is negative fiscally. She stated her support for expanding the Corridor Buffer and detailed what the County was being asked to contribute to the project in exchange for eight affordable units.

Mr. Epstein disagreed with the number of affordable units, stating that the correct number of affordable units is sixteen.

Ms. Jones asked if any of the units in Pocahontas Square have been resold.

Mr. Epstein said no. He stated that prices do not typically increase until the developer has completed the project.

Mr. Obadal stated that the Community must recognize the need to compromise in order to achieve affordable housing. He stated that it is an attractive proposal and that he is comfortable with the reduced buffer. He asked the applicant's profit margin.

Mr. Epstein said it is not easy to determine until the project is complete due to land and environmental costs.

Ms. Hughes asked if the applicant can meet recreational requirements without reducing the buffer. She said the property is across the street from Carter's Grove, a historical property, and that building an urban setting adjacent to it is not desirable.

Mr. Epstein said it would hurt in terms of the recreation required.

Ms. Hughes asked if the buffer area could be increased and used for recreation. She stated that her concern that preserving trees is an LID features and that she would like the trees preserved near the RPA buffer.

Mr. Epstein stated that reduced building area by 20 feet means reducing the number of affordable units by one.

Mr. Krapf asked Mr. German about his statement that the County has been consistently favorable to reducing the Corridor Buffer along Route 60.

Mr. German noted some parcels in the area with zero or reduced Corridor Buffers. He also stated that concerning the landscape proffer the County's landscape planner would go out with developer prior to submission of site plan to establish which existing trees and vegetation would be preserved.

Mr. Almquist stated that a 150 foot buffer reduces the number of units by 5 units which means one entire eight-unit building would be lost.

Ms. Barbara Pheiffer, 103 Links of Leith, stated her concern about the reduced buffer. She stated her desire for this project to be better than surrounding uses. Ms. Pheiffer stated her support for increasing the buffer area and incorporating the recreational area. She also questioned the types of plantings to be used in the buffer.

Mr. Epstein asked if the 150 foot buffer could be used to satisfied recreation requirements.

The Commissioners discussed the proposal.

Mr. Fraley said they would be concerned with locating recreation by the road.

Mr. Epstein proposed to incorporate the picnic area into the buffer which would create a 150 foot buffer on that side of the project's entry road, and 50 feet on the other side.

Mr. Sowers and the Commissioners discussed keeping existing trees and adding additional ones.

Hearing no other requests the public hearing was closed.

Mr. Obadal motioned to approve the application as amended to include a 150 Community Character Corridor Buffer on one side of the project's entry road, and more specific proffers regarding LID and sustainable building techniques.

Mr. Krapf seconded the motion.

Ms. Hughes asked about Staff's recommendation.

Mr. Sowers said Staff's recommendation is still for approval.

Mr. Fraley said the reduced proffer contribution amounts would be considered by the Board of Supervisors.

In a unanimous roll call vote the application was recommended for approval (6-0). Obadal, Fraley, Hughes, Billups, Krapf, Jones (6); NAY: (0). (Kennedy absent)

JCC-Z-0002-2007 / JCC-MP-0003-2007

Chestnut Grove



COMPARISONS OF POCAHONTAS SQUARE (2005) AND CHESTNUT GROVE (2007)

Table 1: Selected Proffer Contributions Comparison:

Townhouse Type:	Capital Improvement Program (CIP) (Pocahontas Square):	Capital Improvement Program (CIP) (Chestnut Grove):
Affordable:	\$0.00	\$0.00
Restricted:	\$425.00	\$350.00
Market-Priced:	\$1,250.00	\$700.00

Note: This is a comparison of unadjusted Proffer Amounts in the final version of the proffers for each project.

Table 2: Proposed Development Composition:

Townhouse Type:	Proposed Number of Units: (Pocahontas Square):	Proposed Number of Units: (Chestnut Grove):	Percentage of Development: (Pocahontas Square):	Percentage of Development: (Chestnut Grove):
Affordable:	24	8	25.00%	20.00%
Restricted:	38	8	39.58%	20.00%
Market-Priced:	34	24	35.42%	60.00%
Totals:	96	40	100.00%	100.00%

Note: This is a comparison of unit type breakdowns in the final versions of each project.

Table 3: Proposed Unit Selling Prices:

Townhouse Type:	Proposed Selling Price: (Pocahontas Square):	Proposed Selling Price: (Chestnut Grove):	Adjusted Selling Prices (2007): (Pocahontas Square):
Affordable:	\$110,000.00	\$135,000.00	\$116,584.00
Restricted:	\$155,000.00	\$165,000.00	\$164,277.00
Market-Priced:	(Market)	(Market)	(Market)

Note: This table shows initially proffered price points, as well as the adjusted-for-2007-dollars price points for Pocahontas Square.

Table 4: Proposed Cash Reserve:

Development:	Total Cash Reserve:	Proposed Number of Units:	Cash Reserve Per Unit:
Pocahontas Square:	\$12,960.00	96	\$135.00
Chestnut Grove:	\$5,400.00	40	\$135.00

Note: This table illustrates that the developer per-unit contribution toward HOA Cash Reserve fund for both projects was calculated the same way, at \$135.00 per unit.

PROFFERS

THESE PROFFERS are made this ____ day of May, 2007, by Crumpler Properties Two, LLC, together with its successors and assigns (“Owner”), and Jay E. Epstein and/or assigns (“Developer”).

RECITALS

WHEREAS, Owner is the record title owner of land located in James City County, Virginia, with an address of 104 Wisteria Garden Drive, Williamsburg, Virginia, and being Tax Parcel 5910100024 (the “Property”);

WHEREAS, Developer has contracted to purchase the Property conditioned upon rezoning;

WHEREAS, Owner and Developer have applied to rezone the Property from LB and R-8 to R-5, Multifamily Residential District, with Proffers;

WHEREAS, Developer has submitted to the County a Master Plan entitled “Master Plan of Chestnut Grove” prepared by AES Consulting Engineers, dated the 16th day of March, 2007 (Revised on the 20th day of April, 2007) (the “Master Plan”), for the Property in accordance with the County Zoning Ordinance; and

WHEREAS, the Owner and Developer desire to offer to the County certain conditions on the development of the Property, not generally required under the current Zoning Ordinance.

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 James City 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 prepared by AES Consulting Engineers, identified as Project Number 9428, and dated April 20, 2007. Only minor deviations from this Master Plan, which do not change the basic concept or character of the development, shall be permitted, and must receive prior approval from the Development Review Committee.

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 the conditions and application. 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 road 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. Developer 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 purchaser's ability to qualify for a home mortgage.

At the time Developer's maintenance obligation under this Section ends, there shall be at least \$5,400.00 in the Reserve and Developer shall supply evidence of the mechanism to secure the same to the Director of Planning. In addition to said funds, at each closing prior to HOA conveyance, each new homeowner shall pay \$150.00 per unit to be deposited in said reserve account.

3. **Water Conservation.** Water conservation standards shall be submitted to and approved by the James City Service Authority and Developer and/or the Association shall be responsible for enforcing these standards. The standards shall address such water conservation measures as prohibitions 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 approval, and shall be installed by owner.

4. **Affordable Housing (Proposition 20/20).** A minimum of 20% (8 townhouses) of the townhouse dwelling units shall be reserved and offered for sale at a net sales price to buyer at or below \$135,000.00 subject to adjustment as set forth herein. A second deed of trust shall be assigned unto the James City County Office of Housing and Community Development for the difference of the appraised value of the townhouse and the net sales price paid by the purchaser of the townhouse, which shall be reflected on a settlement statement for review prior to closing. This deed of trust shall, subject to the request of James City County Office of Housing and Community Development, be assigned to James City County at the time of closing, utilizing appropriate approved

procedures and identifying the net sales price paid by the purchaser of the townhouse for the 8 townhouses sold through James City County for \$135,000.00 or less (“Affordable Units”). The second deed of trust will be prepared so as to provide the Purchaser a 15 year loan, forgivable during the 15 year term, in such form as approved by the Office of Housing and Community Development, the County Attorney, and the Virginia Housing Development Authority.

A minimum of 20% (8 townhouses) of the townhouse dwelling units shall be reserved and offered for a net sale price to buyer at or below \$165,000.00, subject to adjustment as set forth herein (“Restricted Units”). A second deed of trust will be prepared so as to provide the Purchaser a 5-year forgivable loan over the 5-year term, in such a form as approved by the Office of Housing and Community Development and the County Attorney. The second deed of trust may be held by the County or a third party nonprofit agency at the discretion of the developer. If the second deed of trust is held by a party other than the County, the deed of trust shall include such terms as to permit the County to monitor and administer the enforcement of the terms of the note. Such terms shall be approved in advance by the Office of Housing and Community Development and the County Attorney. The maximum prices set forth herein shall be adjusted semi-annually, on January 1st and July 1st of each year, by increasing such prices by the cumulative rate of inflation as measured by the Marshall and Swift Build Costs Index annual average change for the period from January 1, 2008, until July 1st or January 1st to reflect any increase or decrease for the preceding period in the Marshall and Swift Build Costs Index. In no event shall the prices be adjusted to a sum less than the initial “Affordable” or “Restricted” prices. 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. Developer 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 or with the initial Site Plan submission for this property. 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. **Landscape Buffers and Requirements.**

a.) ***Route 60 Landscape Buffer:*** There shall be a 50 foot landscape buffer along the Route 60 frontage of the Property measured from the edge of the right-of-way and extending from the southern property boundary to the entrance median. There shall also be a 150 foot landscape buffer along the Route 60 frontage of the Property measured from the edge of the right-of-way and extending from the entrance median to the northwestern property boundary. Prior to the County being obligated to grant final site plan approval for the Property, a landscaping plan for the 50 foot and 150 foot landscape buffers along the Route 60 frontage of the Property consistent with this Condition shall be prepared and submitted for review and approval by the Director of Planning. The landscaping plan shall include additional trees and shrubs at the quantity and mixture required by Section 24-04 of the James City County Zoning Ordinance, and that are sized at 125% of what is required in the Ordinance, to supplement the existing trees and shrubs in the buffer.

b.) ***Preservation of Existing Trees and Shrubs; Installation of Landscaping:*** Prior to the submission of a site plan for review by the County, the Developer shall meet onsite with the Landscape Planner of the Planning Division to identify existing trees and groups of trees that shall be protected and preserved in the setback, perimeter buffer, and open space areas of the property during clearing and construction, and included on the landscaping plan submitted as permanent trees for the property. The trees, shrubs, and other plants shown in the approved landscaping plan shall be either (i) planted on the Property or (ii) bonded in a form satisfactory to the

County Attorney prior to issuance of any building permits for the project. The buffers, setbacks, and open space areas shall be exclusive of any lots or units and shall be undisturbed, except for the landscaping proffered herein and, with the approval of the Director of Planning, utilities, the entrance as shown generally on the Master Plan, the pedestrian trail proffered hereby, sidewalk connections, recreation amenities, lighting, entrance features and signs.

c.) ***Perimeter Landscape Buffer:*** Wherever the 35' Perimeter Landscape Buffer abuts an LB zoned property, it shall be planted at the quantity and mixture required by Section 24-94 of the James City County Zoning Ordinance, with trees and shrubs that are sized at 125% of what is required in the Ordinance, to supplement the existing trees and shrubs in the buffer.

d.) ***Adjacent to Building Landscape Requirements:*** The landscaping plan shall reflect that 50% of the Adjacent-to-Building Landscaping is comprised of evergreen plantings.

7. **Entrance and Emergency Ingress and Egress.** There shall be only one entrance into the Property from Pocahontas Trail (Route 60). This entrance shall have one exiting lane and one entering lane. In addition thereto, there shall be a 14 foot gravel base, grass covered, emergency ingress and egress, with a knock down barrier (bollards) such as to prevent regular traffic use thereof. Said emergency access to be constructed in accordance with the Master plan prepared by AES dated April 20, 2007, and with the approval of James City County Fire Department.

8. **Turf Nutrient Management Plan.** The Association shall be responsible for contacting an agent of the Virginia Cooperative Extension Office ("VCEO") or, if a VCEO agent is unavailable, a soil scientist licensed in the Commonwealth of Virginia, an

agent of the Soil and Water Conservation District or other qualified professional to conduct soils tests and to develop, based upon the results of the soils tests, customized nutrient management plans (the “Plans”) for all common areas within the Property and each individual townhouse lot platted within the Property. The Plans shall be submitted to the County’s Environmental Director for his review and approval prior to the issuance of the eleventh certificate of occupancy for any townhouse unit on the Property. Upon approval, the Association shall be responsible for ensuring that any nutrients applied to common areas which are controlled by the Association be applied in strict accordance with the Plan. The Developer or Association shall provide a copy of the applicable Plan made for the individual townhouse lots to the initial purchaser thereof. Within twelve months after issuance of the certificate of occupancy for the final townhouse on the Property, and every three years thereafter, a turf nutrient management information seminar shall be provided by the Association and conducted on the site. The seminar shall be designed to acquaint residents with the tools, methods, and procedures necessary to maintain healthy turf and landscape plants.

9. **Sidewalk Connections and Construction.** There shall be two sidewalk connections from the internal sidewalks in the development to the existing sidewalk adjacent to Route 60, generally as shown on the Master Plan. Sidewalks may be installed in phases as residential units are constructed. All sidewalk connections and internal sidewalks associated with a particular building or phase of the development shall be completed or bonded in a form acceptable to the County Attorney prior to the issuance of any building permits for that building or phase.

10. **Sidewalk Design.** The design of all sidewalks shall be subject to the approval of the Director of Planning as part of the final approval of the site plan

submitted for the Property, to ensure adequate sidewalk placement and width to provide for pedestrian circulation.

11. **Pedestrian Trail.** There shall be a paved walking trail at least six feet in width installed on the Property, generally as shown on the Master Plan. The trail shall be located to avoid mature or specimen trees identified on the Landscape Plan (see Proffer #6), and otherwise where reasonably feasible, and the exact location and design of the trail shall be approved by the Director of Planning. (The trail shall be constructed or bonded in a form acceptable to the County Attorney prior to issuance of any building permits for the Property.)

12. **Private Streets.** The private streets and parking areas in the development shall be constructed in accordance with applicable James City County standards for private streets. All streets and parking areas shall be curb-and-gutter construction. All construction plans and cross-sections for streets and parking areas are subject to the review and approval of the County Engineer.

13. **Architectural Elevations.** The architecture and exterior elevations of the dwelling units on the Property shall be generally consistent with the proposed Typical Townhouse Elevations, as submitted in the appendix of the “Community Impact Statement for Chestnut Grove Rezoning Application,” prepared for and by Health-E Community Enterprises of Virginia, Inc., as determined by the Director of Planning.

14. **Cash Contributions for Community Impacts.** The project shall consist of no more than forty townhouse units, eight of which will be “Affordable,” eight of which will be “Restricted,” and twenty-four of which will be sold at market rates. Cash contributions to offset the fiscal community impacts of these units will be as follows:

(a) A contribution of \$650.00 for each Restricted 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 school use.

(b) A contribution of \$350.00 for each Restricted 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.

(c) The contribution of \$1300.00 for each dwelling unit other than an Affordable Unit or Restricted 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 school use.

(d) A contribution of \$700.00 for each dwelling unit other than an Affordable Unit or Restricted 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, future water needs, library uses, and public use sites. No contributions shall be required for the affordable housing units.

(e) The contributions described above, unless otherwise specified, shall be payable prior to final approval of the site plan for each unit.

(f) The per unit contribution(s) paid in each year pursuant to this Section shall be adjusted annually beginning January 1, 2008, to reflect any increase or decrease for the preceding year in the Marshall and Swift Build Costs Index (the "Index"). In no event shall the per unit contribution be adjusted to a sum less than the amounts set forth in paragraphs (a) through (d) 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 Index as of December 1st in the year preceding the calendar year most currently expired, and the denominator of which shall be the Index as of December 1st in the year preceding the calendar year most currently expired. In the event a substantial change is made in the method of establishing the Index, 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 the Index. In the event that the Index is not available, a reliable government or other independent publication evaluating information heretofore used in determining the Index (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. **Energy Efficient Homes.** All the townhouses shall be certified by a HERS rater to meet or exceed the Energy Star Certification. Each ENERGY STAR

qualified new home must achieve a HERS score of at least 86. A copy of the HERS Energy Star Certification for each unit, once available, shall be provided to the Director of Planning.

16. **Recreation.**

(a) The following recreational facilities shall be provided: (i) approximately .45 acres to include one playground (tot lot) with playground equipment for five to six activities; and (ii) approximately .26 miles of trails/paths. 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 Director of Planning.

(b) Developer shall pay a cash contribution of \$2,889 to be adjusted using the Marshall Swift Index yearly, beginning January 1, 2008, and again on the first day of each successive year, until paid in accordance with the Parks and Recreation Master Plan Proffer Guidelines.

(c) The recreational facilities and cash contribution proffered under this Section shall be installed or bonded in a form satisfactory to the County Attorney (or paid, in the case of the cash contributions) prior to the issuance of the 30th building permit for any townhouse unit on the Property.

17. **Bike Lanes.** Developer agrees to preserve the right-of-way area along the Route 60 frontage of the Property for the designation of a four foot wide bike lane, and agrees to not install any new underground or above ground utilities within such areas that may, as determined by the Director of Planning, prevent the construction of a bike lane.

18. **Route 60 Entrance.** At its sole cost and at the direction and approval of VDOT, the Developer shall stripe, delineate and/or mark the Route 60 roadway at the entrance of the Property.

19. **Low Impact Design (“LID”) Features.** The Developer shall install the following LID features as defined in the James City County Special Stormwater Criteria Practices Manual (the “SSCP”) and as generally shown on the Master Plan.

1. LID 1 – Bioretention Basin (SSCP #12) approx. 1500 sq/ft
2. LID 2 – Bioretention Basin (SSCP #12) approx. 2100 sq/ft
3. LID 3 – Infiltration Trench (SSCP # 16) approx. 1000 sq/ft
4. LID 4 – Flat/large swale (SSCP # 21) approx. 3400 sq/ft
5. LID 5 – Flat/large swale (SSCP # 21) approx. 900 sq/ft
6. LID 6 – Flat/large swale (SSCP # 21) approx. 2700 sq/ft


The LID features shall be bonded or installed prior to the issuance of the first building permit in conjunction with the stormwater retention basin sequence of construction as approved by the Director of the Environmental Division.

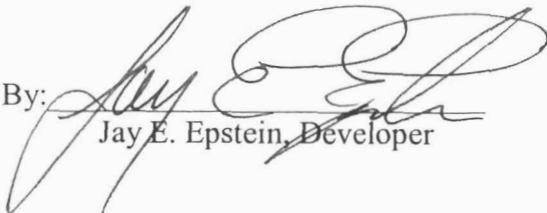
20. **JCSA Utility Easement.** The Developer shall record a 20-foot JCSA Utility Easement from the location of the proposed sanitary sewer main on the Property to the property located at 8792 Pocahontas Trail. The final location of the JCSA Utility Easement shall be determined by the JCSA and the Developer prior to final site plan approval.

21. **Green Building/Sustainable Materials.** The developer shall incorporate the use of “green” building practices and materials in each unit in the development as follows: paints low in volatile organic compounds (“VOC”), carpets certified by the Carpet and Rug Institute to be free of formaldehyde, low VOC sub-flooring, built-in dehumidifiers, transfer grills in each bedroom for balanced heating and cooling, value engineered framing, engineered lumber, and cellulose insulation. These items shall be shown on the architectural drawings for each unit, and shall be approved as part of the building permit review and inspection process.

WITNESS the following signatures:

CRUMPLER PROPERTIES TWO, LLC

By: 
Albert J. Taylor, Manager

By: 
Jay E. Epstein, Developer



Commonwealth of Virginia
CITY/COUNTY OF Portsmouth, to wit:

The foregoing instrument was acknowledged this 14th day of May, 2007, by Albert J. Taylor, Manager of Crumpler Properties Two, LLC.


Notary Public

My commission expires: November 30, 2010

Commonwealth of Virginia
CITY/COUNTY OF James City, to wit:

The foregoing instrument was acknowledged this 15th day of May, 2007, Jay E. Epstein.


Notary Public

My commission expires: 3/31/11

**SPECIAL USE PERMIT-1-07. Stat Restoration Services
Staff Report for the June 12, 2007, Board of Supervisors Public Hearing**

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.

PUBLIC HEARINGS

Planning Commission:

Building F Board Room; County Government Complex

April 4, 2007, 7 p.m. (applicant deferred)

May 2, 2007, 7 p.m.

Board of Supervisors:

June 12, 2007, 7 p.m.

SUMMARY FACTS

Applicant:

Mr. Mark Kaisand, Powhatan Springs, LLC

Land Owner:

Powhatan Springs, LLC

Proposal:

To construct two buildings totaling 12,000 square feet for business, governmental, and professional offices on a site zoned R-8

Location:

133 Powhatan Springs Road

Tax Map/Parcel Nos.:

4620100009 and 4620100009a

Parcel Size:

2.13 +/- acres

Existing Zoning:

R-8, Rural Residential

Comprehensive Plan:

Low-Density Residential

Primary Service Area:

Inside

STAFF RECOMMENDATION

Staff finds the proposal generally inconsistent with the surrounding zoning and development and generally inconsistent with the Comprehensive Plan; however, with the attached conditions, staff finds the proposal to be an improvement over the recent uses of this site and a positive improvement to the surrounding residential area which provides some public benefits, including stormwater management, removal of underground storage tanks, better protection of surrounding properties, and improved community appearance. Staff recommends the Board of Supervisors approve this special use permit (SUP) application with the attached resolution.

Staff Contact:

Jason Purse, Planner

Phone: 253-6685

PLANNING COMMISSION RECOMMENDATION

On May 2, 2007, the Planning Commission voted 6-0 to approve this application.

Proposed Changes Made Since Planning Commission Meeting

None

PROJECT DESCRIPTION

Mr. Mark Kaisand has applied on behalf of Powhatan Springs, LLC, for an SUP to allow the construction of approximately 12,000 square feet of office buildings at 133 Powhatan Springs Road. The rear building (6,500 square feet) will house the Stat Services business, along with its associated warehouse needs. The front building will house 5,500 square feet in other offices not necessarily associated with the Stat Services development. In addition to the proposed office buildings, the Master Plan for the development identifies parking areas and an area approximately 6,800 square feet in size for outdoor storage of containers and equipment. The applicant intends to remove all structures currently located on the site and any remaining construction equipment left by the previous owner. As part of the proposed improvements to the site, the owner will bring existing overhead utilities underground and remove an existing gas pump and underground fuel tank.

History

The Board of Supervisors approved an SUP for professional and business offices for this property on February 12, 2002, and April 13, 2004. The first applicant for that case chose not to develop the site and sold the property to Powhatan Springs, LLC, in June 2003. Due to the late date of the purchase of the property and the demands associated with building a new business, the owner determined that he would be unable to satisfy the engineering requirements for developing the site prior to the expiration date for the first SUP, which was February 12, 2004. The second SUP was approved on April 13, 2004. A site plan for that second SUP received preliminary approval from the Development Review Committee (DRC) on June 6, 2005. During that time frame, it became evident that this site needed an adequate receiving channel for stormwater. The neighboring project, the Villas at Five Forks, had a condition put on it during the rezoning process that provided drainage easements that allowed this site to drain towards a regional stormwater management facility. The development plans and dedication of drainage easements on the Villas project were not completed by the time the second SUP expired. All of those issues have now been resolved. The current proposal is consistent with the project that the DRC granted preliminary approval of in 2005.

The property has been utilized for over 30 years in a variety of uses including equipment sales and rentals and most recently as a base of operation for a construction company. Zoning records indicate that a construction company relocated in February 2001 and the site was purchased by General Corporate Services, Inc., the parent company of A-Stat Restoration and Emergency Rental Services. Prior to purchasing the property in April 2001, General Corporate Services, Inc. requested that staff conduct a verification of nonconforming use on the site. Following a review of business licenses, real estate assessment records, James City Service Authority (JSCA) records, and personal interview with adjacent property owners, staff concluded that the property could retain the existing use as a contractor's office and storage facility as a permitted nonconforming use. As a permitted nonconforming use, all structures on the property must comply with the current Zoning Ordinance. Business, government, and professional offices are a specially permitted use in the current R-8, Rural Residential, zoning district; therefore, the proposed professional or business office building required an SUP. The nonconforming status of the outdoor storage use on the site would remain in effect if this application is approved. The office would then become a specially permitted use subject to the conditions of the SUP.

Surrounding Zoning and Development

Staff finds that the proposed professional office and associated equipment storage area are generally inconsistent with the residential character of the surrounding area; however, with the attached conditions, staff finds the proposal to be an improvement over the most recent uses of this site and a positive improvement to the surrounding residential area. Staff has not received any objection from adjacent property owners on Powhatan Springs Road and, in fact, attached you will find a petition signed by members of the community supporting the project.

PUBLIC IMPACTS

Environmental:

- **Watershed:** Powhatan Creek
- **Staff Comment:** The Environmental Division has reviewed the proposal and concurs with the Master Plan and conditions as proposed. The conceptual Stormwater Management Plan has been approved by the Environmental Division, and similar to other applications, final site design, including stormwater management and Best Management Practices (BMP) design will be determined at the site plan stage.

Public Utilities:

This project is located inside the Primary Service Area (PSA) and will be served by public water and sewer.

Conditions:

- **Water Conservation:** The owner shall be responsible for developing and enforcing water conservation standards to be submitted to and approved by the JCSA. The standards may include, but shall not be limited to, such water conservation measures as limitations on the installation and use of irrigation systems and irrigation wells, the use of approved landscaping materials, including the use of drought-tolerant plants if and where appropriate, and the use of water-conserving fixtures and appliances to promote water conservation and minimize the use of public water resources. The water conservation standards shall be approved by the JCSA prior to final site plan approval.
- **Staff Comment:** The JCSA staff does not have any comments at this time, but as with other development plans, the project will need detailed water conservation measures to be reviewed and approved by the JCSA prior to final approval being granted.

Transportation:

In terms of traffic generation, staff does not believe that the proposed use represents a significant change over previous uses of the site and will not generate traffic volumes greater than what has come to be expected by the residents living on Powhatan Springs Road. The peak hour trips for this development have been estimated at 14 trips during the PM peak hour.

- **2005 Traffic Counts (Ironbound Road):** From John Tyler Highway to News Road there were 12,438 trips.
- **2026 Volume Projected:** From Route 5 to Route 199 there is anticipation of 13,000 trips and it is listed in the Watch category.
- **VDOT Comment:** VDOT concurs with the Master Plan and conditions as proposed.

COMPREHENSIVE PLAN

Land Use Map:

Designation	<i>Low-Density Residential - Page 10:</i> Suggested land uses include single-family homes, duplexes, cluster housing, recreation areas, schools, churches, community-oriented public facilities, and very limited commercial establishments.
	<i>Staff Comment:</i> Staff does not believe this project meets the Comprehensive Plan description of low-density residential, as it cannot be classified as very limited commercial. The plan also says that very limited commercial establishments “should generally be located on collector or arterial roads at intersections where adequate buffering and screening can be provided to protect nearby residential uses and the character of the surrounding area.” While staff recognizes this project’s inability to meet these goals, the project does provide a much higher quality development for the character of the neighborhood than what is currently present. Currently, there are old open storage areas, containers, automobiles, and a generally unkempt site. This project would provide an improvement in terms of visual quality by providing for new buildings, enhanced landscaping, and fencing to help screen the site from adjacent parcels. If this project was not approved, the current site would continue as an open storage area, without the benefit of conditions that this SUP would place on the site.

Development Standards	<p><i>General Standard #1 -Page 134:</i> Permit new development only where such developments are compatible with the character of adjoining uses and where the impacts of such new developments can be adequately addressed.</p> <p><i>General Standard #4 - Page 134:</i> Protect environmentally-sensitive resources including high-ranking Natural Areas, the Powhatan Creek and other watersheds and other sensitive resources by locating conflicting uses away from such resources and utilizing design features, including building and site design, buffers and screening to adequately protect the resource.</p> <p><i>General Standard #7 - Page 135:</i> Require underground utilities in new developments, including new line extensions and major improvements to existing lines, and provide screening and buffering of existing above ground utilities and encourage their placement below ground.</p> <p><i>Commercial & Industrial Standard #1 - Page 136:</i> Locate proposed commercial and industrial developments adjacent to compatible uses. Where a commercial or industrial development desires a location near a sensitive area, the site should be designed so that transitional uses such as offices and/or buffers are located between conflicting uses.</p> <p><i>Commercial & Industrial Standard #3:</i> Mitigate objectionable aspects of commercial or industrial uses through an approach including performance standards, buffering, and special setback regulations.</p> <p><i>Commercial & Industrial Standard #4:</i> Provide landscaped areas and trees along public roads and property lines, and develop sites in a manner that retains or enhances the natural, wooded character of the County.</p>
	<p><i>Staff Comment:</i> Although the Comprehensive Plan suggests that new development be placed in compatible places in the County, staff would note that this situation is different from other areas of the County. The existing nonconforming use on this site allows for the continued use of an incompatible use in this area. Staff feels that bringing the site into conformance also allows the project to become more compatible with the character of the surrounding neighborhood. The fencing and the landscaping help provide a buffer from the adjoining residential areas as well. In particular, Condition #5 states: “A landscaping plan shall be approved by the Planning Director or his designee prior to final site plan approval. The owner shall provide enhanced landscaping for the area along the Property frontage on Powhatan Springs Road, along the portions of the property adjacent to residential homes, and along areas designated on the Master Plan for parking. Enhanced landscaping shall be defined as 133 percent of the Zoning Ordinance landscape size requirements.”</p> <p>Staff notes that this project does help protect the environmental quality of the area. A condition has been placed on the site that will provide for the removal of underground fuel tanks on-site, and with a condition from the Villas at Five Forks project, the stormwater from this site will be treated at an off-site regional stormwater management facility. Staff believes that this project meets the goals of General Standard #4.</p> <p>As mentioned earlier, this project does provide for the Commercial Standards listed above. There are conditions for underground utilities and enhanced landscaping and buffering.</p>
Goals, strategies and actions	<p><i>Strategy #2 - Page 138:</i> Ensure development is compatible in scale, size, and location to surrounding existing and planned development. Protect uses of different intensities through buffers, access control, and other methods.</p>
	<p><i>Staff Comment:</i> This project is not generally incompatible with surrounding development, but staff feels the conditions placed on this application make it more compatible than the existing uses and conditions.</p>

Environment:

General	<p><i>Powhatan Creek Watershed Management Plan:</i> The Watershed Management Plan was adopted by the Board of Supervisors in 2002 with eight goals and 21 priorities. The goals and priorities help to limit the impact on the biodiversity and natural areas and prevent further degradation of water quality in this important watershed.</p>
	<p><i>Staff Comment:</i> Environmental staff has worked with this applicant, as well as neighboring applicants, in order to establish a regional stormwater management facility. The challenges to attaining the proper off-site drainage easements have been overcome, as development plans for both projects are ready to move forward. Staff is confident that this solution will prevent further degradation to the Powhatan Creek Watershed.</p>
Goals, strategies and actions	<p><i>Goal #4 - Page 65:</i> Promote development and land use decisions that protect and improve the water quality of the Chesapeake Bay and the bodies of water that discharge into the Bay.</p> <p><i>Strategy #2 - Page 65:</i> Assure that new development minimizes adverse impacts on the natural</p>

	and built environment.
	<i>Staff Comment:</i> Again, staff feels that this development, with the removal of the existing underground fuel tanks and with the regional stormwater management facility, will help minimize adverse impacts on the environment.

Transportation:

General	<i>Sidewalks and Bikeways-Page 69 - 70:</i> Strongly recommends development of sidewalks and related pedestrian facilities to connect residential to nonresidential areas, as well as construction of bike facilities and ensuring all new facilities and future plans meet the public's desires and needs. <i>Staff Comment:</i> This project will meet all ordinance requirements for sidewalks.
Goals, strategies and actions	<i>Strategy #2 - Page 80:</i> Continue to encourage landscaped roadways and roadway designs that enhance the County's image and reduce the visual impact of auto-related infrastructure. <i>Staff Comment:</i> There will be enhanced landscaping along the frontage of the property and a majority of the parking is interior to the site. The current site conditions have cars, trailers, and storage facilities scattered throughout the site.

Community Character:

General	<i>Neighborhood/Community Appearance - Page 88:</i> The preservation of trees and shrubs during development reduces the feeling of newness and helps new development blend in with older, existing areas of the community. In the zoning ordinance, detailed planting requirements for commercial and industrial site plans ensure that front, side, and rear yards are planted and that parking lot and building planting is provided. In addition, parking lots are required to be screened by landscaping or berming from public right-of-ways and minimum plant sizes and quantities are established. <i>Staff Comment:</i> There will be enhanced landscaping, including 133 percent of ordinance requirements for the frontage of the parcel, the sides of the parcel that are adjacent to residential structures, as well as for all of the parking areas. While this is not an ideal location for a professional or business office, staff feels that the buffering provided by this project is acceptable and above and beyond minimum requirements.
Goals, strategies and actions	<i>Strategy #2 - Page 95:</i> Ensure that development is compatible in scale, size, and location to surrounding existing and planned development. <i>Strategy #5-Page 95:</i> Encourage beautification of existing development to improve overall visual quality of the County. <i>Staff Comment:</i> This project will improve the existing development onsite, as well as improve the overall visual quality of Powhatan Springs Road.

COMPREHENSIVE PLAN STAFF COMMENT

Staff does not believe that the proposed development is consistent with the Low-Density Residential designation as it is not a limited commercial establishment, is not located at the intersection of a collector road, and the scale of the proposed structure does not complement the character of the nearby residential area.

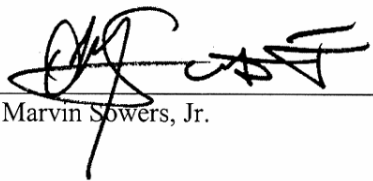
Staff does acknowledge that the proposed development would represent a significant improvement to the site over several of the previous uses of the property, and with the proposed conditions will better complement the residential character of the surrounding area. The addition to the enhanced landscaping and dark-color perimeter fencing in select areas and building features that attempt to complement the character of the surrounding area will provide a net positive improvement to the site and the surrounding area. Staff would note that a petition from the neighbors of this development supporting the project has been attached to this report. Staff does not believe that approval of the application will set a negative precedent, as there are few, if any, sites in the County that have a more nonconforming status in comparison to the surrounding area in which they are located.

RECOMMENDATION

Staff finds the proposal generally inconsistent with the surrounding zoning and development and generally inconsistent with the Comprehensive Plan; however, with the attached conditions, staff finds the proposal to be an improvement over the recent uses of this site and a positive improvement to the surrounding residential area which provides some public benefits, including stormwater management, removal of underground storage tanks, better protection of surrounding properties, and improved community appearance. Staff recommends the Board of Supervisors approve this SUP application with the attached resolution.

Jason Purse

CONCUR:



O. Marvin Sowers, Jr.

JP/gs
sup-1-07

ATTACHMENTS:

1. Unapproved Planning Commission minutes from the May 2, 2007, meeting
2. Resolution
3. Location Map
4. Master Plan
5. Neighboring property owners petition

RESOLUTION

CASE NO. SUP-1-07. STAT RESTORATION SERVICES

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 (SUP) process; and

WHEREAS, Mr. Mark Kaisand has applied on behalf of Powhatan Springs LLC for an SUP to allow for a business, governmental, and professional offices on approximately 2.13 acres of land on parcels zoned R-8, Rural Residential; and

WHEREAS, the proposed site is shown on a conceptual layout, entitled “Special Use Permit Exhibit for Stat Services, Inc.” and dated March 1, 2007; and

WHEREAS, the properties are located on land zoned R-8, Rural Residential, and can be further identified as a portion of James City County Real Estate Tax Map Parcel Nos. (46-2)(1-9) and (46-2)(1-9a); and

WHEREAS, the Planning Commission of James City County, following its public hearing on April 4, 2007, recommended approval of this application by a vote of 6-0.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve the issuance of SUP-1-07 as described herein with the following conditions:

1. Master Plan. This SUP shall be valid for the operation of business, governmental, professional offices and accessory uses thereto (the “Project”) as shown on the Master Plan titled “Special Use Permit Exhibit for Stat Services, Inc.,” prepared by LandTech Resources and dated March 1, 2007, (the “Master Plan”) on the two parcels identified as James City County Tax Map Nos. (46-2)(1-9) and (46-2)(1-9A) (collectively, the “Property”). Development of the Project shall be generally in accordance with the Master Plan as determined by the Development Review Committee (DRC) of the James City County Planning Commission. Minor changes may be permitted by the DRC, as long as they do not change the basic concept or character of the Project
2. Construction. If construction has not begun on the Project within 36 months of the issuance of the SUP, it shall become void. Construction shall be defined as securing permits for land disturbance and building construction.
3. Tank Removal. Prior to obtaining any Certificate of Occupancy, the owner shall remove the gas pump and underground fuel tank from the Property.
4. Lot Line Extinguishment. Prior to final site plan approval, the owner shall receive approval of and record a subdivision plat which extinguishes the lot line separating Parcels A and B on the property identified as Parcel No. (1-9) on James City County Real Estate Tax Map No. (46-2).

5. Landscaping. A landscaping plan shall be approved by the Planning Director or his designee prior to final site plan approval. The owner shall provide enhanced landscaping for the area along the Property frontage on Powhatan Springs Road, along the portions of the property adjacent to residential homes, and along areas designated on the Master Plan for parking. Enhanced landscaping shall be defined as 133 percent of the Zoning Ordinance landscape size requirements.
6. Signs. Signage on the Property shall be limited to a single ground-mounted, monument-style, freestanding sign further limited to a maximum of 16 square feet along the Powhatan Springs Road right-of-way. If the sign is to be illuminated, such illumination shall be external only. Both the sign and the illumination (if any) shall be approved by the Planning Director or his designee prior to final site plan approval.
7. Fence. Any existing perimeter fence, which is removed as part of the Project, shall be replaced with a black or dark green-colored chain-link fence or solid-wood fence, identified on the development plans, and approved by the Planning Director or his designee prior to final site plan approval.
8. Dumpsters. All dumpsters on the Property shall be screened by landscaping and fencing in a location approved by the Planning Director or his designee prior to final site plan approval.
9. Water Conservation. The owner shall be responsible for developing and enforcing water conservation standards to be submitted to and approved by the James City Service Authority (JCSA). The standards may include, but shall not be limited to, such water conservation measures as limitations on the installation and use of irrigation systems and irrigation wells, the use of approved landscaping materials, including the use of drought-tolerant plants if and where appropriate and the use of water-conserving fixtures and appliances to promote water conservation and minimize the use of public water resources. The water conservation standards shall be approved by the JCSA prior to final site plan approval.
10. Lighting. All exterior light fixtures, including building lighting, on the Property shall have recessed fixtures with no lens, bulb, or globe extending below the casing. In addition, a lighting plan shall be submitted to and approved by the Planning Director or his designee, which indicates no glare outside the boundaries of the Property. All light poles shall not exceed 20 feet in height unless otherwise approved by the Planning Director prior to final site plan approval. "Glare" shall be defined as more than 0.1 footcandle at the property line or any direct view of the lighting source from the adjoining residential properties.
11. Architecture. Prior to final site plan approval, the Planning Director shall review and approve the final building elevations and architectural design of the office building. Such approval as determined by the Planning Director shall ensure that the design, building materials, color, and scale of the office building and any future building additions are compatible with the surrounding residential area.
12. Severability. This SUP is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.

John J. McGlennon
Chairman, Board of Supervisors

ATTEST:

Sanford B. Wanner
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 12th day of
June, 2007.

sup-1-07.res

**UNAPPROVED MINUTES OF THE MAY 2, 2007 MEETING
OF THE PLANNING COMMISSION**

Mr. Jason Purse presented that staff report stating that Mr. Mark Kaisand, on behalf of Powhatan Springs LLC, has applied for a Special Use Permit (SUP) to allow for business, governmental, and professional offices, on approximately 2.13 acres of land, on a parcel zoned R-8, Rural Residential. The property is located at 133 Powhatan Springs Road. The property can further be identified as Parcel No. (1-9) on the JCC Tax Map No. (46-2). The site is shown on the 2003 Comprehensive Plan Land Use Map as Low Density Residential. Recommended uses for Low Density Residential land include very limited commercial establishments, churches, single family homes, duplexes, and cluster housing with a recommended gross density of 1 unit per acre up to 4 units per acre in developments that offer particular public benefits. Staff recommended approval.

Mr. Obadal asked why Mr. Purse stated that this case does not represent a precedent. He stated that each SUP is unique and therefore constitutes a precedent.

Mr. Purse stated that he was referring the inconsistency between Comprehensive Plan and Land Use.

Mr. Obadal asked if Staff could determine if the underground gas tanks had leaked and if so if it has been cleaned up.

Mr. Purse stated that Staff was not aware of a leak and deferred that question to the applicant.

Ms. Hughes asked at what point during the approval of the previous SUP was Five Forks Study approved.

Mr. Purse said it was approved in 2005 after the last SUP was approved by the Board (Board of Supervisors).

Mr. Sowers agreed.

Ms. Hughes asked if there is any other way to require the applicant to clean up to site.

Mr. Purse stated that outdoor storage is a permitted use and that most of the items currently being stored on the site could remain if the SUP is not approved. He stated that the proposed fencing and enhanced landscaping would not be required.

Mr. Obadal asked how and what period of time did the site become non-conforming.

Mr. Purse said he could research the answer.

Mr. Obadal stated that the fact that it has been non-conforming for a long period of time does not mean the use is non-conforming.

Mr. Purse stated his belief that when the zoning ordinance changed the use was in existence on the site

Mr. Sowers said Staff could research the specifics of this site. He stated that generally a change in the Zoning Ordinance normally changes use requirements so that something previously permitted under the use category changes and it reverts to a use that

is no longer permitted. Mr. Sowers added that the current use may predate the Zoning Ordinance which was adopted in 1969 and stated that the applicant may have more information.

Mr. Obadal asked when the prohibition against outdoor storage came into effect.

Mr. Sowers stated that the ability to store things inside or outside is part of the Zoning Ordinance and that he suspects it became non-conforming with adoption of the Zoning Ordinance or a change in the use category that occurred with a Zoning Ordinance amendment.

Mr. Obadal asked if includes specifically this prohibition to the use of land. He stated that the non-conformity may not apply to the Ordinance for the Zoning District.

Mr. Sowers agreed. He stated that it could be non-conforming due to the use itself or due to characteristic of that use such as outside storage and setbacks.

Mr. Billups stated his concern with Staff's recommendation for approval despite the number of inconsistencies indicted in the staff report. He asked if there are overriding circumstances leading to the recommendation.

Mr. Purse stated that the non-conforming use has resulted negative conditions on the site. He stated the proposal will make the site more visually aesthetic for neighbors.

Mr. Billups asked if there are other benefits in addition to the visual aesthetics. He said the non-conforming use prohibits the new buildings proposed.

Mr. Purse stated that the non-conforming use pertains to the outdoor storage. He stated that other benefits include the removal of the underground fuel tanks.

Mr. Billups asked if that is significant to override the Ordinance.

Mr. Purse stated this will bring the site into conformance. He stated the applicants desire to locate his business on the site.

Mr. Obadal stated that there are previous conditions on the site.

Mr. Purse explained that current proposed conditions are the same as those that were attached to previously approved SUPs and have expired.

Mr. Obadal said this applicant was the parent company for whom they were approved.

Mr. Purse confirmed.

Mr. Obadal asked why they were not enforced.

Mr. Purse explained the site plan was not approved prior to expiration of the SUPs.

Mr. Obadal said that was two years ago and in the meantime the situation has gotten worse.

Mr. Purse said the site plan was not approved that would have allowed the construction for the buildings because the applicant was waiting for approval of the drainage easements for the regional storm water management facility.

Mr. Obadal stated his concern that if the situation is bad enough long enough you can be cleansed of the whole thing by the granting of the SUP.

Ms. Jones said she understood Mr. Obadal's concerns and suggested that the applicant might be able to address some of them.

Ms. Jones asked Mr. Purse for more detail on the issue of storm water management.

Mr. Purse explained that after the SUP was approved and the site plan turned in it was determined that the applicant needed an adequate receiving channel for the storm water to be located off-site. He stated that the rezoning for the Villas at Five Forks required the granting of the necessary easements. Mr. Purse said the development plans for that project had to be approved so that the easement could be recorded before the site plan for this proposal could be approved. He added that the site plan received preliminary approval by the DRC in 2005 but could not be granted final approval which would have allowed construction of the building, landscaping, and fencing.

Ms. Hughes stated her concerns about the amount of impervious surface cover and lack of LID (Low Impact Design) and Better Site Design features all of which are recommended in the Five Forks Area Study.

Mr. Woolson stated that the plan was approved prior to the establishment of the Five Forks Study Guidelines and the Better Site Design Principles. He stated that Staff did not believe it to be fair to require those items when the delay in obtaining drainage easement acquisitions was not the fault of the applicant. Mr. Woolson stated that with regard to impervious surface cover the Villas at Five Forks drainage study accounted for approximately 60% of this sites drainage and incorporated it into the design of that basin. He stated that no opportunity for LID infiltration to due existing soil conditions.

Ms. Jones opened the public hearing.

Mr. Mark Kaisand stated that he purchased the property and business five years ago after the original SUP had been approved. He said has spent approximately \$ 40,000 removing the underground gas tanks, which had not leaked, and cleaning the site. Mr. Kaisand stated that the property was in worse condition when he purchased it and that he has met with neighbors who approve of the plan. He stated that the delay was due to staff not wanting two storm water basins in the same area and requiring a regional storm water basin Mr. Kaisand stated that by the time was done his SUP has expired. He also added that in addition additional filing fees he has had to rent space for his business in York County. Mr. Kaisand also stated that the site is being used for trailer storage and container storage that will be used for the business.

Hearing no other requests the public hearing was closed.

Mr. Krapf noted the lengthy history of the project and the applicant's frustration with the SUP expiring. He stated that the proposed conditions will significantly enhance property and neighborhood. Mr. Krapf stated that due to neighborhood support and bringing the site into conformation he is inclined to recommend approval.

Mr. Billups stated that the Ordinance does not allow extension of a non-conforming use and noted the building being erected on the site.

Mr. Purse stated that the non-conformity relates to the outdoor storage and that the amount of outdoor storage is not increasing.

Mr. Obadal said that is the only thing they are using the site for and asked if they can use the site for their business.

Mr. Purse said they can use the site for their business, outdoor storage and other uses permitted in the R-8 Zoning District.

Mr. Obadal asked if that is as of now.

Mr. Purse said yes.

Mr. Sowers stated the non-conformity relates specifically to the outdoor storage. He stated that that aspect can continue regardless of the approval of the SUP so that it really has no bearing on the proposal being considered.

Mr. Billups stated that the issue is inconsistency with the Comprehensive Plan. He stated his concern that he cannot find anything of substance in the staff report to support the recommendation for approval.

Hearing a request Ms. Jones reopened the public hearing.

Mr. Kaisand stated that the original use over the past forty years has been outdoor storage of heavy equipment. He stated that are other businesses on the street that are non-also conforming. Mr. Kaisand stated that the intent is to continue to current amount of outside storage currently being used for his business. He stated that a warehouse will be added and all but one other building has been demolished.

Mr. Obadal stated that the applicant has owned the property since 2002 and asked if he has been working with the County to clean the site.

Mr. Kaisand said there are no regulations requiring the clean up. He said is doing so on his own initiative.

Hearing no other requests the public hearing was closed.

Mr. Fraley stated that the previous application was approved and that the applicant has endured substantial delay and expense in order to address needed rework at that was noted during DRC review. He noted the neighborhood support and said he will approve the proposal.

Mr. Obadal stated his support stating that the applicant has given a good faith effort to improve the site. He stated that although he shared Mr. Billups' concerns he felt the proposal was overall the best benefit to the County.

Mr. Billups stated his concerns with the presentation. He stated that an impartial review of the staff report would hold the applicant hostage to something he is not responsible for. Mr. Billups stated that he would like more concrete information as opposed to value judgments to support approval of a case with so many Comprehensive Plan inconsistencies. He stated his support.

Ms. Jones stated that this was a difficult situation. She stated that the proposal was previous approved as was held up for environmental improvements. She stated her support.

Ms. Hughes indicated her agreement with the other Commissioners.

Mr. Fraley motioned to recommend approval of the application.

Mr. Krapf seconded the motion.

In a unanimous roll call vote the application was approved (6-0). AYE: Obadal, Fraley, Hughes, Billups, Krapf, Jones (6); NAY: (0). (Kennedy absent)

SUP-1-07

Stat Services



Feb. 9, 2007

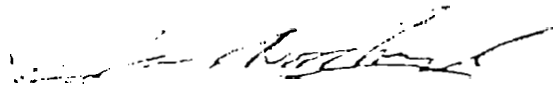
To: Powhattan Springs Road Residents.

STAT Services Inc. is utilizing the lot at 133 Powhattan Springs LLC as a storage yard and are in the process of getting the buildings built that have been planned for several years. The plans are to utilize the front building for our purposes and the back building for tenant usage in units of 1500 square feet. We have been asked that we update the neighboring property owners approval of the plan as was done originally in 2001. Please indicate your approval below or let me know your objections.

Sincerely, Mark Kataloff

(1) Jeanne Kataloff

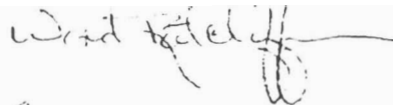
141 Powhattan Springs Rd



approved

(2) MARY KATALOFF

149 Powhattan Sp. Rd



(3) Brenda D. Rigney

161 Powhattan Springs Rd

Jandi A. Rigney

156 Powhattan Sp. Rd

(5) Jamie C. Fowler

152 Powhattan Springs Rd

(6) ROBERT S. BRYAN

157 Powhattan Springs Rd

Robert S. Bryan

(7) 102, 104, 106, 108 Powhattan Springs Rd.

Jane Hooker

Staff Report for the June 12, 2007, Board of Supervisors Public Hearing

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.

PUBLIC HEARINGS

Planning Commission:
Board of Supervisors:

Building F Board Room; County Government Complex

May 2, 2007, 7 p.m.
June 12, 2007, 7 p.m.

SUMMARY FACTS

Applicant: Mr. Tim Trant, Kaufman and Canoles

Land Owner: Denley and Amy Brown

Proposal: To allow for a contractor warehouse/office. Contractors' warehouses, sheds and offices are specially permitted uses in the A-1, General Agricultural zoning district.

Location: 272 Peach Street

Tax Map/Parcel No.: 2410100015a

Parcel Size: 8.074 acres

Zoning: A-1, General Agricultural

Comprehensive Plan: Rural Lands

Primary Service Area: Outside

STAFF RECOMMENDATION

Staff believes that this proposal is not consistent with the Comprehensive Plan Land Use Map designation. However, staff believes that the proposed conditions will sufficiently mitigate the impacts created by the proposed development. Based on this information, staff recommends that the Board of Supervisors approve this application with the attached resolution.

Staff Contact: Jason Purse Phone: 253-6685

PLANNING COMMISSION RECOMMENDATION

On May 2, 2007, the Planning Commission voted 6-0 to approve this application.

Proposed Changes Made Since Planning Commission Meeting

Based on concerns from adjacent property owners and separate from its recommendation of approval, the Planning Commission made the recommendation that the applicant and staff consider an additional condition directly limiting the amount of traffic generated by this project. As presented to the Planning Commission and Board of Supervisors in the attached conditions, several indirect measures, such as Master Plan expansion restrictions, hours of operation, and/or number of employees are included to indirectly limit the traffic associated with the project.

Based on conversations and phone recorded messages left for staff, the adjacent property owners objecting to

the project stated that they were not willing to work with the applicant through this process, but would seek legal counsel to discuss this access and traffic issue privately. Staff was not able to obtain any additional information about acceptable mitigation of the traffic created by this project from the adjacent property owner. In discussions with the applicant, several direct methods were explored but none were found to be acceptable. A change was made to Condition No. 2 that limited the expansion of the office use as a part of this Special Use Permit (SUP) as well.

PROJECT DESCRIPTION

The property located at 272 Peach Street is currently being used to store equipment and material associated with A+ Concrete, Inc. This business is currently operating without the required special use permit as contractors' warehouses, sheds, and offices are specially permitted uses in the A-1, General Agricultural, zoning district. The applicant moved to the County with his business last year and desired to have his occupation run from his home. When he moved from Newport News he brought his equipment to the site as well. When he came to the County he applied for all of the permits he thought he was going to need. Mr. Brown built a garage with the hopes of using it as a warehouse for his business. Mr. Brown also applied for a home occupation with the Zoning Division. Zoning officials informed Mr. Brown that since there were employees associated with the business that it would not qualify as a home occupation and that the warehouse and storage component would require an SUP. Mr. Brown has been diligently working with staff over the past few months to ensure that all the proper applications and documentation have been filed correctly.

The property is generally wooded and contains one single-family residence. The garage and access drive have already been constructed. This SUP and Master Plan would allow them to use the garage as a storage facility and allow the operation of his business on-site.

According to the applicant, the overwhelming majority of the work of the business, other than home office functions, occurs off-site on commercial construction sites. The applicant has stated that no manufacturing or construction takes place on-site as a part of this business. Most of the equipment of the business is carried home by employees at night or stored on the jobsite. The warehouse (garage) will house items such as concrete compactors, concrete forms, concrete blankets, and a trailer, all things associated with his business. The warehouse is 1,280 square feet in size with 1,200 square feet of covered lean-tos on the sides. The total structure is 2,480 square feet and will house all of the warehouse needs, as well as any future office needs of the business. Undisturbed buffer areas have been shown on the Master Plan to ensure that no future expansion will have adverse effects on adjacent properties. The business currently has 15 employees and six pickup trucks. The applicant has stated that employees visit the subject property on an infrequent basis to pick up and drop off equipment. He has gone on to state that it would be rare for more than two employee vehicles to be at the warehouse at any one time. The Master Plan shows a "parking area" at the end of the gravel drive next to the garage where vehicles would be able to park.

The property is located at the end of Peach Street, which is a private gravel drive that serves other single-family residential parcels. Prior to the submission of this application, the applicant conducted a community meeting with many of his Peach Street neighbors.

Environmental

Watershed: Skimino Creek Watershed

Staff Comments: Environmental staff has reviewed the application and concurs with the Master Plan and proposed conditions at this time.

Public Utilities

This site is served by private well and septic systems.

Staff Comments: The Health Department has reviewed the proposal and has no further comments at this time.

Transportation

Road Improvements: This project is located at the end of an access easement that is shared by the other residents of Peach Street. The applicant has stated to staff that there are no provisions in the agreement limiting uses or trips allowed through the access. All of the residents share the maintenance costs for the road. The applicant has stated that he does not anticipate any more than 10 additional vehicles trips per day as a part of his business. Again, these numbers are not independently verifiable by staff; they are based on estimates that the applicant anticipates.

VDOT Comments: VDOT staff has reviewed the application and since it is a private drive, not affecting its right-of-way, has no comments on the project at this time.

Staff Comments: Staff believes the proposal will have minimal traffic impacts, since very limited work takes place on-site, and few employees visit the site on a daily basis. The recommended conditions limit the impact of the development.

COMPREHENSIVE PLAN

Land Use Map

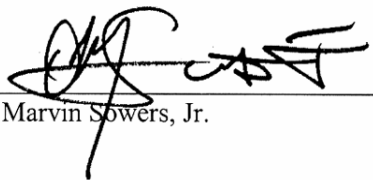
Designation	<i>Rural Lands (Pages 119 and 120):</i> Primary uses include agricultural and forestal activities, together with certain recreational, public or semi-public and institutional uses that require a spacious site and are compatible with the natural and rural surroundings. Retail and other commercial uses serving Rural Lands are encouraged to be located at planned commercial locations on major thoroughfares inside the PSA. A few of the smaller direct agricultural or forestal-supported uses, home-based occupations and certain uses which require very low intensity settings relative to the site in which it will be located may be considered on the basis of a case-by-case review, provided such uses are compatible with the natural and rural character of the area and in accordance with the Development Standards of the Comprehensive Plan.
	Staff Comment: This project does not constitute a primary agricultural use as referenced in the Comprehensive Plan, so is therefore not consistent with the land use description. However, with the proper conditions applied to the property, staff believes the use will not be disruptive to the areas rural character and will be more compatible with the surrounding residential dwellings. The limited nature of the on-site work will also help to mitigate impacts.
Rural Land Use Standards	<i>Standard # 1 (page 135):</i> Preserve the natural, wooded, and rural character of the County. Particular attention should be given to ...encouraging enhanced landscaping to screen developments, minimizing the number of street and driveway intersections along the main road and utilizing lighting only where necessary and in a manner that eliminates glare and brightness.
	Staff Comment: All of the structures that will be necessary for the operation of this business are currently existing on-site. Staff has recommended conditions that will prevent the further development and expansion of the project beyond what is shown on the Master Plan. Staff believes that with the limited nature of the existing development and the limitations on expansion, this project will not have a negative affect on the natural wooded and rural character of the County.
Goals, strategies and actions	<i>Strategy # 2 (Page 138):</i> Ensure development is compatible in scale, size, and location to surrounding existing and planned development. Protect uses of different intensities through buffers, access control and other methods.
	Staff Comment: Through special use conditions # 1, 2, 3, 4, 5 and 6, staff believes the use will be compatible with the size and scale of surrounding development and any impacts created by the proposal will be mitigated by the limitations imposed by the Master Plan; enclosure of all stored materials; lighting restrictions; limitations on future development; limitation on hours of operation; and limitation on signage.

RECOMMENDATION

Staff believes that this proposal is not consistent with the Comprehensive Plan Land Use Map designation. However, staff believes that the proposed conditions will sufficiently mitigate the impacts created by the proposed development. Based on this information, staff recommends that the Board of Supervisors approve this application with the attached resolution.

Jason Purse

CONCUR:



O. Marvin Sowers, Jr.

JP/gb
Sup-13-07.doc

ATTACHMENTS:

1. Unapproved Planning Commission Minutes from the May 2, 2007, meeting
2. Resolution
3. Location Map
4. Master Plan

RESOLUTION

CASE NO. SUP-13-07. DENLEY BROWN CONTRACTORS WAREHOUSE/OFFICE

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 (SUP) process; and

WHEREAS, Mr. Tim Trant, on behalf of Denley Brown, has applied for an SUP to allow a contractors warehouse/office on approximately 8.074 acres of land on a parcel zoned A-1, General Agricultural; and

WHEREAS, the proposed site is shown on a conceptual layout, entitled “Special Use Permit Exhibit for Denley Brown” and dated March 13, 2007; and

WHEREAS, the properties are located on land zoned A-1, General Agricultural, and can be further identified as a portion of James City County Real Estate Tax Map/Parcel No. (24-1)(1-15a); and

WHEREAS, the Planning Commission of James City County, following its public hearing on May 2, 2007, recommended approval of this application by a vote of 6-0.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve the issuance of SUP No. 13-07 as described herein with the following conditions:

1. This SUP shall be valid for the operation of one contractors warehouse, shed, and office and accessory uses thereto (the “Project”) as shown on the Master Plan titled “Special Use Permit Exhibit for Denley Brown” dated March 13, 2007, (the “Master Plan”) on the parcel, located at 272 Peach Street, and identified as James City County Real Estate Tax Map No. 2410100015a (the “Property”). Development of the Project shall be generally in accordance with the Master Plan as determined by the Development Review Committee (the “DRC”) of the James City County Planning Commission. Minor changes may be permitted by the DRC, as long as they do not change the basic concept or character of the Project.
2. All storage of equipment associated with the Project shall be located inside the “Contractor’s Warehouse” or under the adjacent “Covered Lean To” or “Future Covered Storage Area” as shown on the Master Plan. The storage area, for both the indoor and outdoor storage, as well as any future office expansion shall be limited to 2,600 square feet. The office use for this operation that is currently located in the residential dwelling on-site shall be limited to not more than 25 percent of the first floor area. Parking associated with the project shall be limited to the “proposed gravel parking area” as noted on the Master Plan.
3. Should new exterior site or building lighting be installed for the operation of the business, such fixtures shall have recessed fixtures with no bulb, lens, or globe extending below the casing. The casing shall be opaque and shall completely

surround the entire light fixture and light source in such a manner that all light will be directed downward and the light source is not visible from the side. Fixtures, which are horizontally mounted on poles, shall not exceed 15 feet in height. No glare, defined as 0.1 footcandle or higher, shall extend outside the boundaries of the Property.

4. With the exception of the drive aisle and warehouse, the area depicted as "Natural undisturbed area" on the Master Plan shall remain in a natural undisturbed state unless otherwise approved by the Planning Director.
5. Hours of operation, including the operation of power tools and machinery and truck deliveries and pickups, shall be limited to 6 a.m. to 6 p.m., Monday through Saturday.
6. Freestanding signage shall be limited to one monument style sign. For purposes of this condition, a "monument" style sign shall be defined as a freestanding sign with a completely enclosed base not to exceed 16 square feet in size and not to exceed six feet in height from grade.
7. This SUP is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.

John J. McGlennon
Chairman, Board of Supervisors

ATTEST:

Sanford B. Wanner
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 12th day of June, 2007.

Sup-13-07.res

UNAPPROVED MINUTES OF THE MAY 2, 2007 MEETING OF THE PLANNING COMMISSION

Mr. Jason Purse presented the staff report stating that Mr. Tim Trant of Kaufman and Canoles, on behalf of Denley Brown, has applied for a Special Use Permit to allow for a contractors office and warehouse, on approximately 8.074 acres of land, on a parcel zoned A-1, General Agricultural. The property is located at 272 Peach Street. The property can further be identified as JCC Tax Map No. 2410100015a. The site is shown on the 2003 Comprehensive Plan Land Use Map as Rural Lands. Recommended uses on property designated for Rural Lands are agricultural and forestal activities, together with certain recreational, public or semi-public and institutional uses that require a spacious site and are compatible with the natural and rural surroundings.

Mr. Obadal asked if the intent is to allow flexibility to an Ordinance so that any inequalities that are seen in practice can be corrected.

Mr. Purse said yes.

Mr. Obadal stated that the mitigation called for under the under the comp plan has to be a full mitigation from whatever the applicant seeks to mitigate from.

Mr. Purse agreed.

Ms. Jones opened the public hearing.

Mr. Tim Trant with Kaufman and Canoles represented the applicant giving an overview of the proposal. He stated that Mr. Brown had applied for a building permit for the warehouse and was not aware of the need to apply for a special use permit until denial of his business license and home occupation applications. Mr. Trant stated that warehouse will be used to store items associated with his business such as concrete blankets, forms, and equipment. He also stated that the 15 employees take the 6 pick-ups home with them and will visit the site infrequently and that no business will be conducted from the home other than storage and an administrative office. Mr. Trant stated that Mr. Brown has been responsible for maintenance of the shared road access with financial contributions from neighbors whom he has met with concerning his proposal.

Mr. Fraley asked if the traffic would increase with approval of the application.

Mr. Trant stated that the applicant is adamant that if the business is expanded he would move the business to another site. He stated that the warehouse will accommodate only a limited amount of storage.

Mr. Obadal stated his concerns about maintenance of the road and the possibility of manufacturing taking place on the property.

Mr. Trant stated that private restrictions require proportional shared maintenance of the driveway with an all-weather surface. He also stated that it is his belief that manufacturing is not a permitted use in the A-1 Zoning District and that approval of the SUP limits the uses on the property.

Mr. Obadal stated that manufacturing and power equipment can be used the site without restrictions.

Mr. Trant stated that while there are no restrictions on power equipment in practice there is no concrete manufacturing on the site

Ms. Jones asked Mr. Purse to address Mr. Obadal's concern regarding manufacturing.

Mr. Purse stated that the SUP request is for a contractor's office and warehouse, manufacturing would not be a permitted use on the site.

Mr. Sowers stated that regarding the road maintenance the Subdivision Ordinance requires the road to be maintained in an all-weather fashion meaning that at the very least it must be graveled.

Ms. Hughes stated that when loaded with equipment the applicants vehicles will be heavier resulting in more wear and tear than other residents.

Mr. Trant said that the conditions that currently exist require Mr. Brown to contribute proportionally to the maintenance of the road therefore if his use is greater his share will be larger. Mr. Trant stated that this is the current practice.

Ms. Carolyn Amos, 220 and 250 Peach Street, stated that she has no concerns with the application. She stated that there is little traffic and that the applicant maintains the road.

Ms. Sherry Matheney, 276 Peach Street, stated that she has no concerns with the business. She stated that rarely is there is any traffic or equipment in relation to the operation. Ms. Matheney also said that on the last two occasions the applicant has purchased the material for the road and her family helped lay it.

Ms. Laura Kirkpatrick stated that her family contributes to the maintenance of the road and she has no concerns with the application. She also stated that she has had no problems with the employees and that warehouse is well screened.

Mr. James Howard, 8603 Richmond Road, stated that he owns 15 acres in the area and pays the property taxes for the road because it is part of his property. He stated that he is concerned about the future impacts of the proposal.

Mrs. Howard added that she and Mr. Howard will be building a home on their property and are concerned about property values due to the influx of heavier traffic. She also stated that neighbors' complaints that they do not contribute to road maintenance is misleading because she and Mr. Howard pay the taxes for the road.

Ms. Jones asked Mr. Purse to address the easement issue.

Mr. Purse stated that the access easement is a private agreement between the owners and no documents were found limiting access trips or types of uses.

Mr. Obadal asked if the agreement was in existence when the Howards' purchased their property.

Mrs. Howard said they purchased their property in August 1999 and that they had attempted to have restrictions added.

Mr. Obadal asked the purpose of the easement.

Mr. Purse said it is to allow access to the parcels.

Ms. Jones asked Mr. Trant to address the issue.

Mr. Trant stated that the easement was created as part of a family subdivision in 1987.

Mr. Obadal asked for confirmation that the Howards purchased their property after that date.

Mr. Trant said that was correct. He stated that the applicant notified the Howards at their address of record about the neighborhood meeting and had not heard from them before tonight.

Mr. Obadal asked the definition of access under the law.

Mr. Trant stated that it is for ingress and egress.

Mr. Obadal asked if there is any inherent limitation.

Mr. Trant said no.

Mr. Obadal asked if the applicant could run a fleet of trucks from the parcel under the access easement.

Mr. Trant stated that ingress and egress to and from the parcel is unrestricted.

Mr. Billups said the owner has a right to have customers visit his business.

Mr. Trant said the applicant's home occupation license does not allow retail customers to visit site.

Mr. Billups questioned the restriction.

Mr. Trant said it would be a zoning violation. He stated that the SUP allows for a storage facility only.

Mr. Billups asked if the commercial aspect has any bearing the ingress and egress issue.

Mr. Trant stated that the ingress and egress limitations are private land use agreements between the owners' of the benefited parcels with no restrictions in the chain of title on ingress and egress to the various properties.

Mr. Billups stated that there have been class action cases involving private establishments on private property concerning the right to enter the property to conduct business.

Ms. Jones asked Mr. Kinsman about the legal impact of the easement on the application.

Mr. Kinsman stated that Staff looked at the documents and concluded that the easement was a private land use matter with respect to who can use the road, who owns it, and the types of use. He stated that the Commission may consider the adequacy of the road and can place conditions limiting of the amount of traffic if they desire.

Mr. Obadal asked if research had been done to determine if ingress and egress could be limited to the owners of the parcels to the exclusion of their agents.

Mr. Kinsman stated that the documents show the easement on the plat as a private matter so that no research was done to determine whether it is limiting in any fashion.

He stated that the applicant has stated his belief that they can use it and that other homeowners' can engage a private suit to protect their interests if they believe the applicant to be overstepping his ability.

Mr. Obadal stated that the Commission can limit the number of trips. He also said the applicant can be questioned about his expectations to see an agreement can be reached with the owners' of road.

Mr. Kinsman stated the Commission can consider the impact of the use on neighbors and can draft a condition limiting the amount of traffic to amount they find acceptable.

Mr. Sowers said the current conditions attached to the proposal indirectly limit traffic by limiting the size business in terms of the size of the building, and the amount of storage and parking. He added that the Commission can add other more direct conditions.

Mr. Obadal said he is still concerned about the number of trips.

Hearing no other requests to speak the public hearing was closed.

Mr. Fraley said the applicant has stated that he does not anticipate more than ten additional vehicle trips per day as part of the business. He suggested that that figure can be used as a basis for an additional condition.

Ms. Jones said she is comfortable with the current conditions and amount of oversight.

Ms. Hughes stated her concern about access from a private road. She stated that according to the Comprehensive Plan businesses should be located, if in a rural area, on a public road. Ms. Hughes said she is not comfortable approving a proposal that impacts parties that do not approve where that party would be responsible to mitigate the situation and assume legal fees. She stated her support for limiting the number of vehicles if the parties could agree.

Mr. Obadal asked if the applicant could request an increase in the numbers trips if his business expands and the Commission has set a limit of the number of trips.

Mr. Kinsman said he could apply for an amendment to the SUP.

Mr. Fraley said the applicant has stated that this is his home and that he would move the business elsewhere if it expanded.

Mr. Obadal asked if the applicant would be amenable to such a condition.

Ms. Jones re-opened the public hearing.

Mr. Trant stated that the applicant committed to number of trips generated stated but had not perceived a condition limiting the number. He requested a recommend for approval with an indication for the applicant to work with staff to development control on the number of trips before the application is considered by the Board of Supervisors.

Mr. Fraley asked if the applicant is amenable to working with the other property owners'

Mr. Trant answered yes.

Ms. Hughes stated her approval as long as all parties could agree.

Ms Jones asked Mr. Sowers the procedure for adding the recommendation.

Mr. Sowers explained that the Commission would be adding a recommendation as opposed to a condition so that staff could craft into an SUP condition at a later time.

Mr. Obadal stated his agreement.

Mr. Fraley asked for the Commissioners' agreement to request the applicant work with staff and property owners to craft a more direct SUP condition.

The Commissioners stated their agreement. Ms. Hughes stated her concerns should the parties not come to an agreement.

Mr. Fraley motioned to approve the application with the appropriate recommendation. He also confirmed with Mr. Sowers that if there is no agreement between parties and no condition is added then final decisions rests with the Board of Supervisors who have heard the Commission's recommendations.

Mr. Kinsman confirmed that the Commission would be recommended approval of the SUP and attached conditions and with a separate recommendation that the applicant work with the other owners and staff to draft a more direct condition. He added that if there is no agreement between the parties and therefore no condition then Planning Commissions would still be recommending approval by Board of Supervisors of the SUP and currently attached conditions.

Ms. Hughes expressed her desire that the wording of the recommendations be included in packet that the Board receives so that they are aware of the concerns.

Mr. Krapf seconded the motion.

Mr. Billups asked if the owners would be seeking agreement on all of the conditions currently attached or only the traffic issue.

Ms. Jones stated that the recommendation is only an amenable traffic level.

Mr. Obadal stated that the principals who must agree are the ones whose property the road runs through.

Ms. Jones said that would be passed on with the recommendation to the Board of Supervisors.

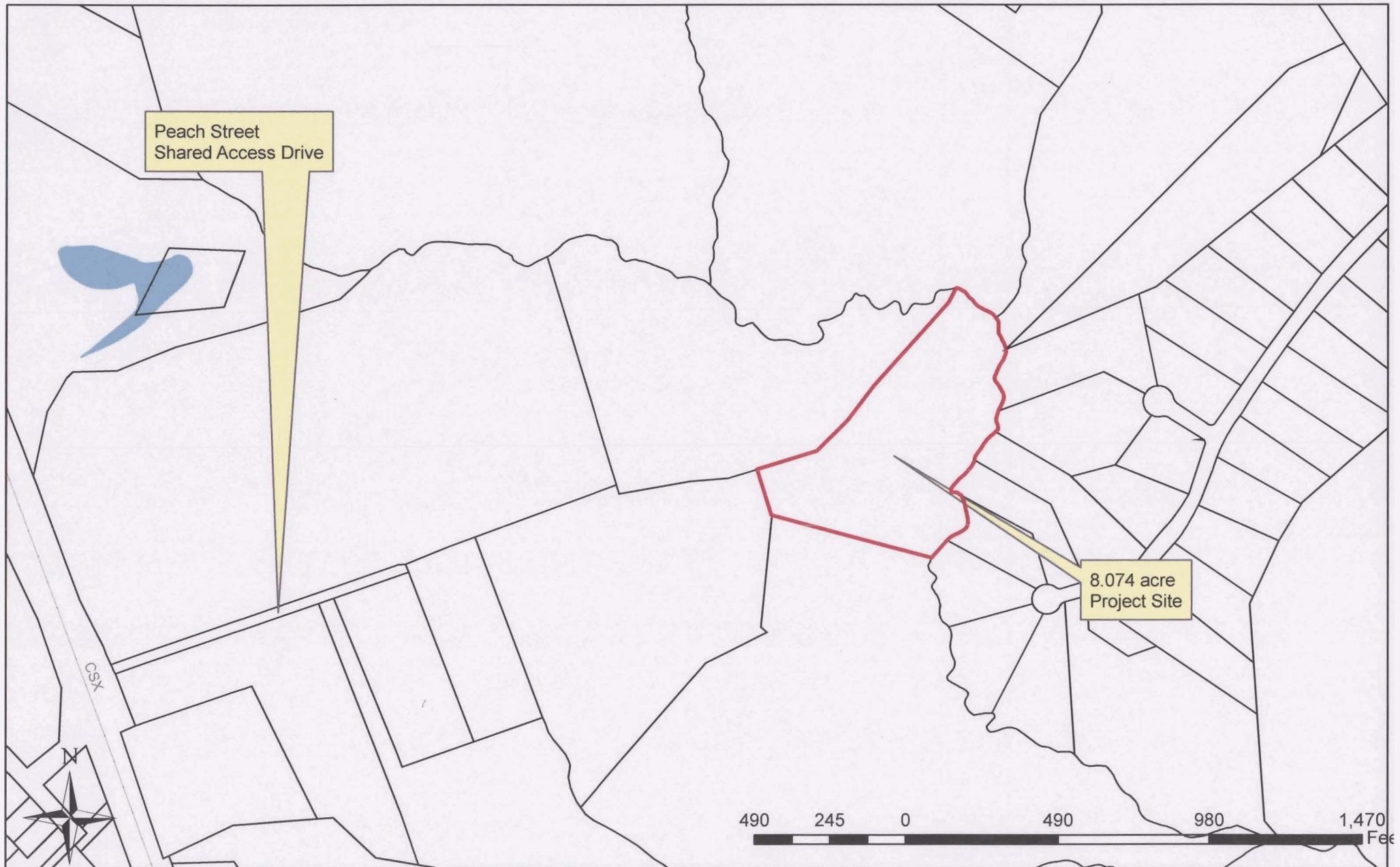
The Commissions discussed who would need to agree.

Mr. Sowers stated that if the parties are unable to reach agreement then recommendation is no longer applicable.

In a unanimous roll call vote the Planning Commission recommended approval of the application and attached conditions was forwarded a recommendation concerning traffic (6-0). AYE: Obadal, Fraley, Hughes, Billups, Krapf, Jones (6); NAY: (0). (Kennedy absent)

SUP-13-07

Denley Brown Contractors Warehouse



M E M O R A N D U M

DATE: June 12, 2007

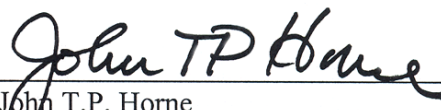
TO: The Board of Supervisors

FROM: John T. P. Horne, Development Manager
Leo P. Rogers, County Attorney

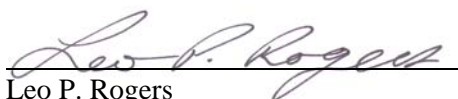
SUBJECT: Conveyance of 3.488 acres of Jamestown Campground Property to the Commonwealth of Virginia Department of Transportation

Attached for your consideration is a resolution authorizing the County Administrator to convey 3.488 acres of the Jamestown Campground property (Property) to the Commonwealth of Virginia Department of Transportation (VDOT) for \$2.5 million. The County acquired the Property in December 2006 along with the Jamestown Marina. The 3.488 acres to be conveyed to VDOT parallels Jamestown Road and is more accurately shown on the attached VDOT plans for Route 359, State Highway Project 0359-047-101, C501, Sheets 6, 6B, and 6C. VDOT's plan for the acquisition area is unknown at this time, although during acquisition discussing VDOT did mention the need to increase vehicle stacking capacity and security related to the ferry operations. VDOT has agreed to allow the County to continue to use the 3.488 acre area until it is needed for VDOT purposes. VDOT and the County have also agreed on future access arrangements for the remaining County property.

Staff recommends adoption of the attached resolution, authorizing the County to sell VDOT the 3.488 acres of the Property.


John T.P. Horne

CONCUR:


Leo P. Rogers

JTPH/LPR/tlc
ConveytoVDOT.mem

Attachments:

1. Resolution
2. VDOT Sheets 6, 6B, and 6C
3. Area Map

RESOLUTION

CONVEYANCE OF REAL PROPERTY TO THE COMMONWEALTH OF VIRGINIA

DEPARTMENT OF TRANSPORTATION

WHEREAS, James City County owns certain real property identified as Tax Parcel Nos. 4630100014, 4630100013, and 4630100005 ("Property"); and

WHEREAS, the Commonwealth of Virginia Department of Transportation ("VDOT") desires to acquire portions of the Property, being approximately 3.488 acres of the Property, which said area of acquisition is more particularly shown and described on Sheets 6, 6B, and 6C of VDOT plans for Route 359 State Highway Project 0359-047-101, C501 ("Plans"), attached hereto and made a part hereof; and

WHEREAS, the total purchase price for the 3.488 acres as shown on the Plans is \$2,500,000; and

WHEREAS, after a public hearing, the Board of Supervisors is of the opinion that the County should convey to VDOT the 3.488 acres as shown on the Plans for \$2,500,000.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of James City County, Virginia, that the County Administrator is hereby authorized and directed to execute any and all documents necessary to convey to VDOT the 3.488 acres of the Property, as shown on the Plans.

John J. McGlennon
Chairman, Board of Supervisors

ATTEST:

Sanford B. Wanner
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 12th day of June, 2007.

VDOTprop.res

SURVEYED BY: S. Q. HADDOX
SUPERVISED BY: R. W. WARD, 07/19/25-0099
DESIGNED BY: A. R. WARD, 07/19/25-0099

50' SCALE PLAN VIEW

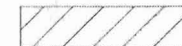
END PROJECT 0359-047-101
STA. 25+60.22

DESIGN FEATURES RELATING TO CONSTRUCTION OR TO REGULATION AND CONTROL OF TRAFFIC MAY BE SUBJECT TO CHANGE AS DEEMED NECESSARY BY THE DEPARTMENT

REVISED	STATE	FEDERAL AID	ROUTE	STATE	SHEET NO.
	VA.		359	0359-047-101, C501	6

THESE PLANS ARE UNFINISHED AND UNAPPROVED AND ARE NOT TO BE USED FOR ANY TYPE OF CONSTRUCTION.

NOTE: METES AND BOUND SURVEY SHEET 6c



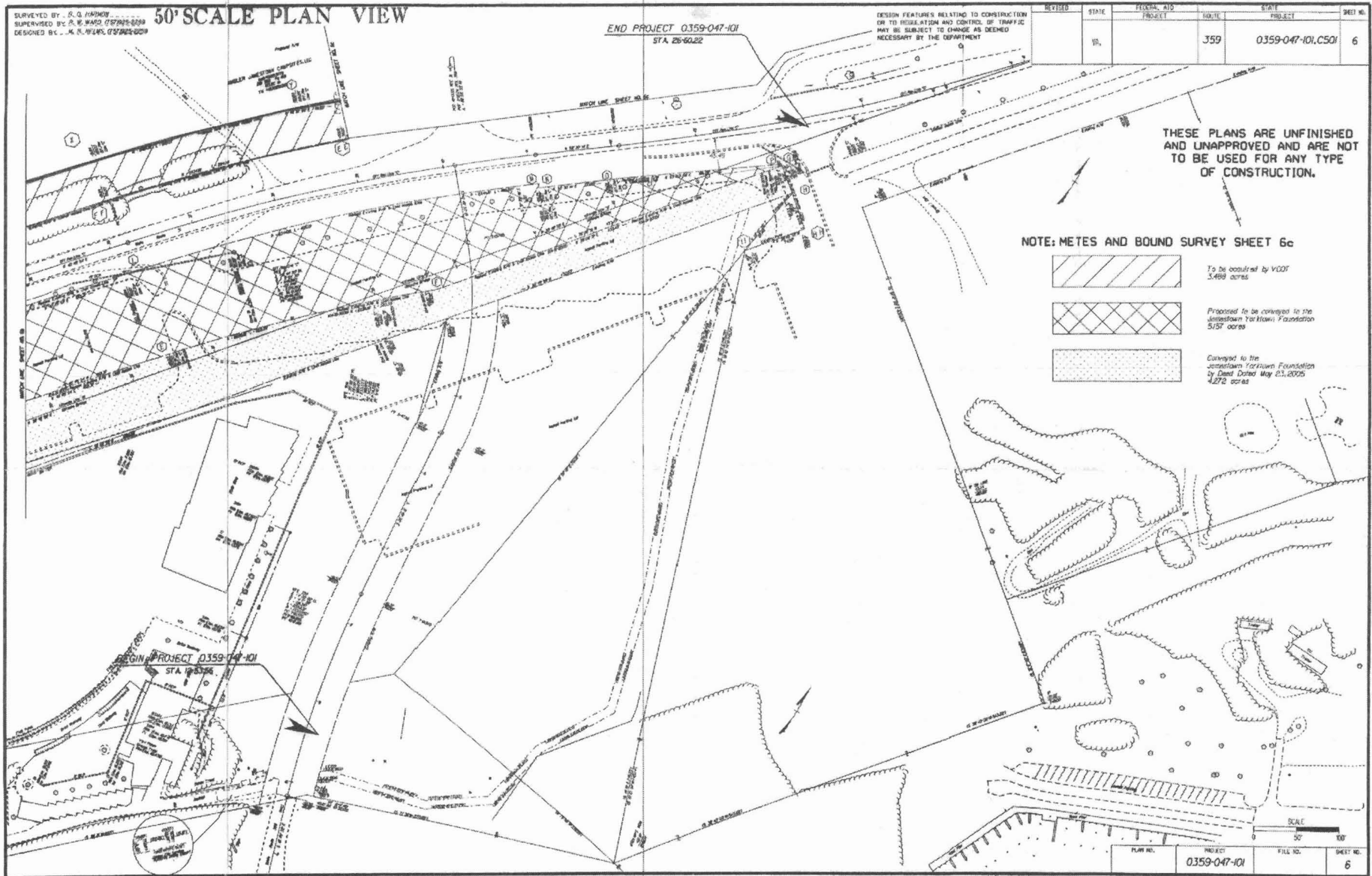
To be acquired by VDOT
3.488 acres



Proposed to be conveyed to the
Jamestown-Yorktown Foundation
5.157 acres



Conveyed to the
Jamestown-Yorktown Foundation
by Deed Dated May 23, 2005
4.272 acres



SCALE
0 50 100

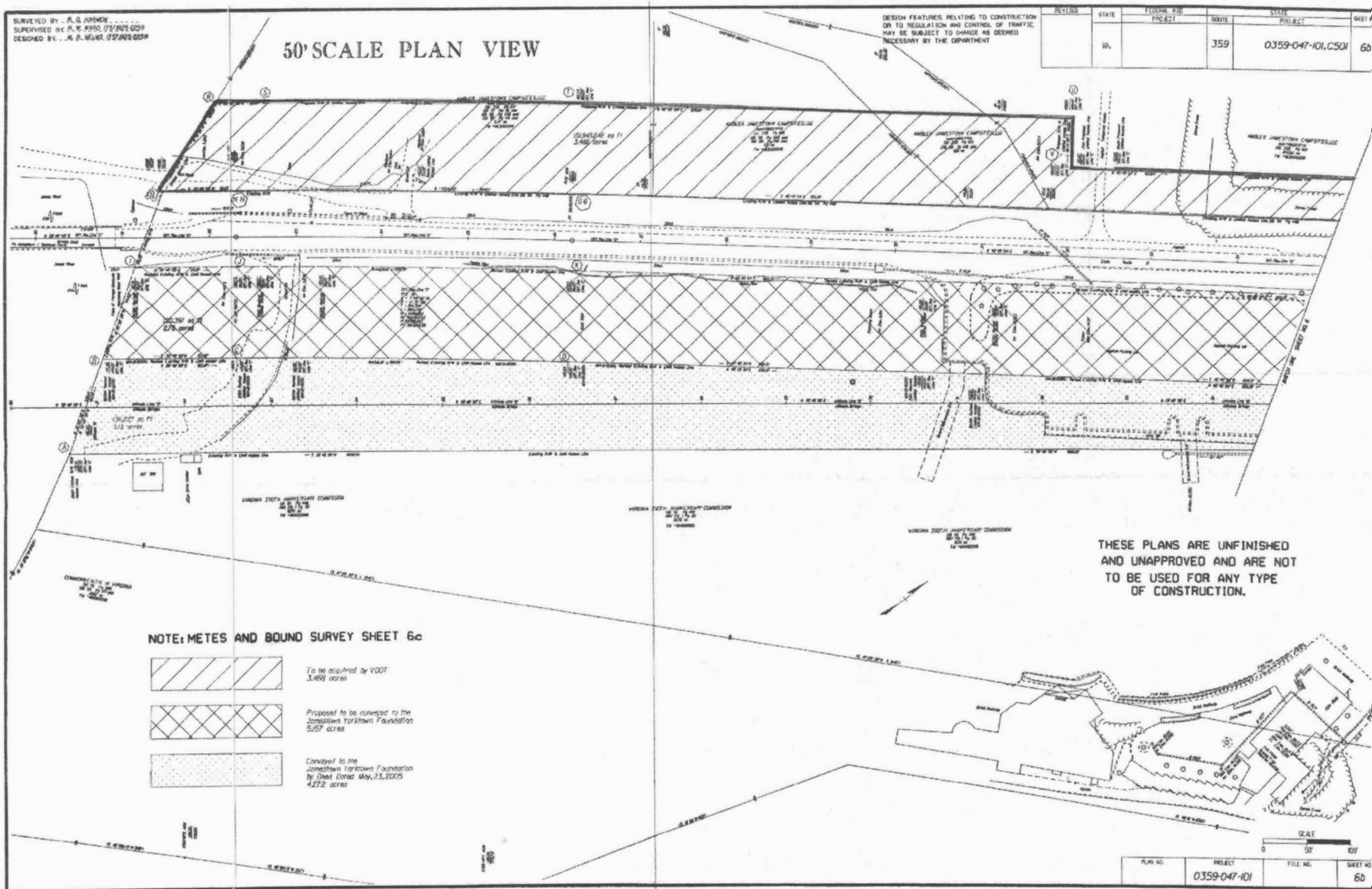
PLAN NO.	PROJECT	SHEET NO.	SHEET NO.
	0359-047-101		6

SURVEYED BY . R. G. NASHOR
SUPERVISED BY R. E. KASO. 07/2021-009
DESIGNED BY . M. R. NELMS. 07/2021-009

50' SCALE PLAN VIEW

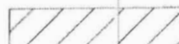
DESIGN FEATURES RELATING TO CONSTRUCTION
OR TO REGULATION AND CONTROL OF TRAFFIC
MAY BE SUBJECT TO CHANGE AS DEEMED
NECESSARY BY THE DEPARTMENT

FEDERAL AID PROJECT	STATE	ROUTE	PROJECT	SHEET #
WA		359	0359-047-101, C501	6b



THESE PLANS ARE UNFINISHED
AND UNAPPROVED AND ARE NOT
TO BE USED FOR ANY TYPE
OF CONSTRUCTION.

NOTE: METES AND BOUND SURVEY SHEET 6c



To be acquired by VDOT
1.468 acres



Proposed to be conveyed to the
Joniassen Yorktown Foundation
5,157 acres

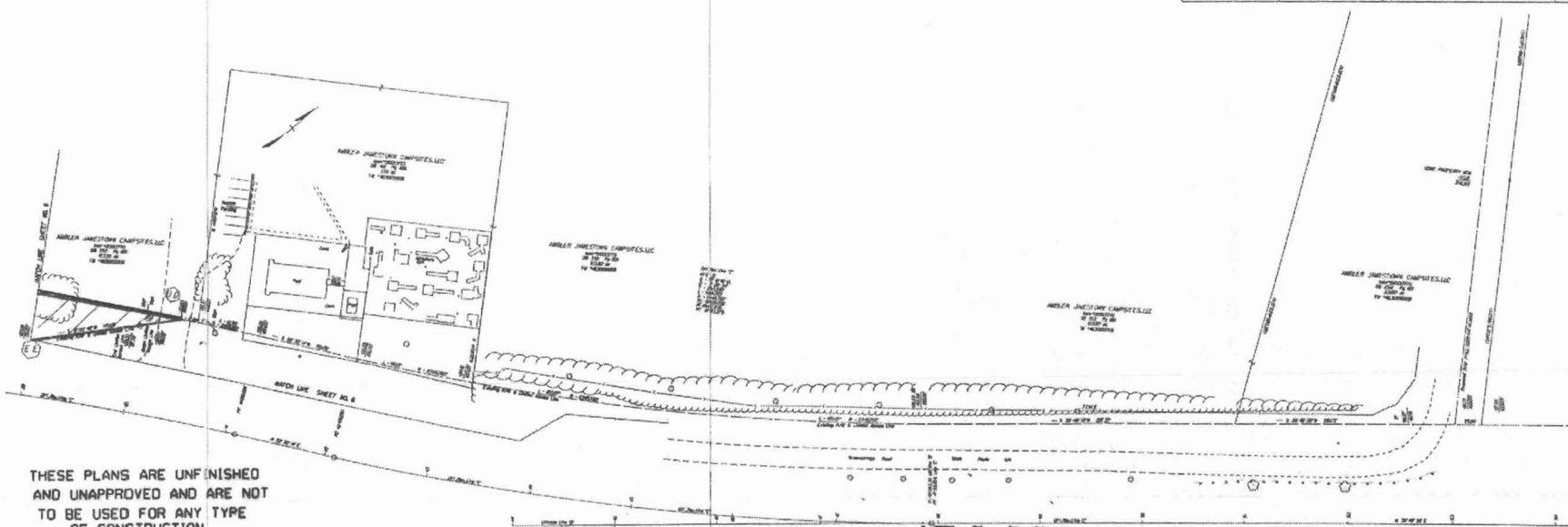


Conveyed to the
Jonestown Yarrtown Foundation
by Deed Dated May, 23, 2005
4272 acres

[illegible]

DESIGN FEATURES RELATING TO CONSTRUCTION
OR TO REGULATION AND CONTROL OF TRAFFIC
MAY BE SUBJECT TO CHANGE AS DEEMED
NECESSARY BY THE DEPARTMENT

REVISED	STATE	FEDERAL AID		STATE		SHEET NO.
		PROJECT	ROUTE	PROJECT		
	VA.		359	0359-047-101, CSOI		6c



THESE PLANS ARE UNFINISHED
AND UNAPPROVED AND ARE NOT
TO BE USED FOR ANY TYPE
OF CONSTRUCTION.

CONVEYED TO THE JAMESTOWN TOWNSHIP FOUNDATION						
LINE	BEARING	DISTANCE FT	CURD BEARING	CURD DISTANCE FT	RADIUS FT	ARC LENGTH FT
A-B	N32°02'30"W	118.55				
D-C	N38°46'30"E	153.47				
C-D			N37°40'25"E	384.89	136.36	384.39
D-E	N47°45'54"E	606.31				
E-F			N44°54'25"E	323.67	22.56	323.15
F-G	N39°00'37"E	433.43				
G-H	S50°07'00"E	34.57				
H-A	S33°40'50"W	132.61				
TOTAL AREA		4234 ACRES				
CONVEYED TO THE JAMESTOWN TOWNSHIP FOUNDATION						
LINE	BEARING	DISTANCE FT	CURD BEARING	CURD DISTANCE FT	RADIUS FT	ARC LENGTH FT
H-H1	S50°03'37"E	45.00				
H-H1	S34°40'50"W	74.58				
H1-H	N07°41'25"E	67.49				
TOTAL AREA		1007 ACRES				
TOTAL AREA CONVEYED		4292 ACRES				

PROPOSED TO BE CONVEYED TO THE JAMESTOWN YORKTOWN FOUNDATION						
LINE	BEARING	DISTANCE FT	COORD BEARING	COORD DISTANCE FT	RADIUS FT	ARC LENGTH FT
B+1	N30°02'50"W	144.33				
J-1	N30°48'58"E	100.07				
J-2	N40°43'54"E	100.51	N50°47'26"E	388.53	1484.06	308.59
J-4			N48°38'04"E	478.44	2244.85	460.28
J-6	S37°29'46"E	5.00				
M-0	N52°30'11"E	40.00				
D-0	N43°33'50"W	586.39				
D-5	S55°10'06"E	8.21				
P-F	S39°05'30"W	433.43				
E-E			S44°54'58"W	323.07	22.365	323.35
F-D	S48°45'54"W	100.31	S49°47'25"W	384.89	1335.86	304.68
D-6		15.347				
C-B		5.657				
TOTAL AREA		5,657 ACRES				

TO BE ACQUIRED BY VDOT						
LINE	BEARING	DISTANCE	COORD BEARING	DISTANCE	RADIOS	ARC LENGTH
		FT		FT		
D-R	N 67°59'20"W	108.59				
P-S	N 58°50'50"E	23.47				
S-T			N 37°40' 20"E	395.37	1850.49	395.39
T-L	N 47°45'54"E	579.67				
U-V	S 49°40'00"E	60.00				
V-X	N 40°45'54"E	401.64				
W-Y			N 43°50'45"E	238.14	2484.45	238.14
F-Q	N 67°59'20"W	108.55				
DQ-EE	N 58°50'50"E	145.08				
EE-FF	S 40°45'42"W	800.31	S 40°45'57"W	694.44	2434.36	294.60
FF-GG	S 40°45'42"W	800.31				
GG-HH			N 43°50' 20"E	396.63	1545.45	396.63
HH-I	N 67°45'50"W	90.07				
TOTAL AREA		3,469 ACRES				



To be acquired by VENT
3.488 acres



Proposed to be conveyed to the
Jamestown-Yorcktown Foundation
5/15/77 agree

Conveyed to the
Jamestown-Yorick Foundation
by Grant Dated May, 23, 2005
4272 acres

A horizontal scale bar with the word "SCALE" centered above it. Below the bar, there are two tick marks labeled "0" and "50". The bar is divided into two sections: the left section, from 0 to 50, is white with a thin black outline; the right section, from 50 to the end, is solid black.

PLAN NO.	PROJECT	FILE NO.	SHEET NO.
	0359-047-101		60

James City County Jamestown Campground



M E M O R A N D U M

DATE: June 12, 2007

TO: The Board of Supervisors

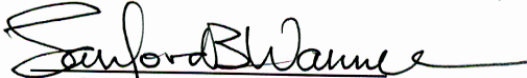
FROM: Sanford B. Wanner, County Administrator

SUBJECT: Resolution of the Board of Supervisors of the County of James City, Virginia, Approving the Powers Granted to the Hampton Roads Transportation Authority

During the 2007 General Assembly Session, the General Assembly enacted and the Governor of the Commonwealth has approved the Hampton Roads Transportation Authority Act. The Act, which becomes effective on July 1, 2007, creates the Hampton Roads Transportation Authority as a body politic and a political subdivision of the Commonwealth of Virginia embracing the Counties of Isle of Wight, James City, and York, and the Cities of Chesapeake, Hampton, Newport News, Norfolk, Poquoson, Portsmouth, Suffolk, Virginia Beach, and Williamsburg. The Act requires that the majority of the governing bodies of these political subdivisions vote to approve the powers granted to the Authority under the Act to impose or assess the fees and taxes authorized within that Act that each jurisdiction must vote to be a voting member of the Authority.

After additional time to consider the details of the legislation, the Hampton Roads Transportation Act still is not a very attractive offer; but, it remains a necessary compromise. The resolution approving the powers of the Hampton Roads Transportation Authority has been amended since the May 22, 2007, Board meeting to express the frustration of the Board and citizens with the General Assembly for not providing the appropriate funding for transportation initiatives across the Commonwealth. Amendments also recommend that the State increase the gasoline tax Statewide to generate transportation revenue for the Commonwealth and express disappointment with the disconnection between the taxes imposed and those who need the improvements and would benefit most.

I recommend the Board adopt the attached resolution to become a member of the Hampton Roads Transportation Authority.


Sanford B. Wanner

SBW/gs
HRTA.mem3

Attachment

RESOLUTION OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY,
VIRGINIA, APPROVING THE POWERS GRANTED BY THE GENERAL ASSEMBLY OF THE
COMMONWEALTH OF VIRGINIA TO THE HAMPTON ROADS TRANSPORTATION
AUTHORITY PURSUANT TO THE HAMPTON ROADS TRANSPORTATION AUTHORITY
ACT, SECTIONS 33.1-391.6 ET SEQ. OF THE CODE OF VIRGINIA OF 1950, AS AMENDED,
AND REQUESTING AMENDMENTS THERETO

WHEREAS, the General Assembly of the Commonwealth of Virginia has enacted, and the Governor of the Commonwealth of Virginia has approved, the Hampton Roads Transportation Authority Act, Sections 33.1-391.6 et seq. of Chapter 10.2 of the Code of Virginia of 1950, as amended (the Act);

WHEREAS, the Act, which becomes effective July 1, 2007, creates the Hampton Roads Transportation Authority (the Authority) as a body politic and political subdivision of the Commonwealth of Virginia embracing the Counties of Isle of Wight, James City and York, and the Cities of Chesapeake, Hampton, Newport News, Norfolk, Poquoson, Portsmouth, Suffolk, Virginia Beach, and Williamsburg;

WHEREAS, the voting members of the Authority consist of the chief elected officer of the governing body (or his or her designee, who shall be a current elected officer of such governing body) of the counties and cities embraced by the Authority;

WHEREAS, the Act empowers the Authority, among other things to impose or assess certain specified fees and taxes for imposition or assessment by the Authority, including a gasoline sales tax, a real property conveyance grantor's tax, a vehicle rental tax, a vehicle safety inspection fee, an initial vehicle registration fee, a sales tax on auto repair labor, an annual vehicle registration fee and tolls, in all the counties and cities embraced by the Authority;

WHEREAS, the Act provides that the fees and taxes authorized by the Act for imposition and/or assessment by the Authority shall only be imposed and/or assessed by the Authority if: i) at least seven of the twelve governing bodies of the counties and cities embraced by the Authority that include at least fifty-one percent (51%) of the population of the counties and cities embraced by the Authority pass a duly adopted resolution stating their approval of such power of the Authority to impose and/or assess the fees and taxes specified in the Act no later than December 31, 2007, and, thereafter; ii) at least seven of the twelve voting members of the Authority that include at least fifty-one percent (51%) of the population of the counties and cities embraced by the Authority vote in the affirmative to impose and/or assess all of the fees and taxes authorized by the Act for imposition and/or assessment by the Authority in all of the counties and cities embraced by the Authority; and

WHEREAS, this legislation requires Hampton Roads localities, upon the appropriate vote, to form the Hampton Roads Transportation Authority and to impose or assess the taxes and fees included in that legislation without regard to local choice on the revenues; and

WHEREAS, James City County Board of Supervisors is of the opinion that the Act is flawed legislation in that it did not include sufficient State revenue to meet the transportation needs of the Commonwealth including the Hampton Roads region; and

WHEREAS, James City County Board of Supervisors believes that it is incumbent upon the Virginia General Assembly to review this legislation during the 2008 session and to make necessary amendments to address the funding of transportation statewide; and

WHEREAS, the economic vitality of Hampton Roads and James City County and the citizens' reasonable expectations for efficient and convenient travel require the immediate commencement of improvements to our highway system, and

WHEREAS, the urgency and seriousness of the Hampton Roads regional transportation needs compels the acceptance of a flawed transportation funding plan.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby urges the General Assembly to study the effect of the Act on the Hampton Roads region and to make the necessary amendments resulting from that study during the 2008 and 2009 biennium.

BE IT FURTHER RESOLVED that the proposed amendments be discussed with local governments throughout the Commonwealth prior to any enactment.

BE IT FURTHER RESOLVED by the Board of Supervisors of the County of James City, Virginia, that:

1. It expresses its regret that the General Assembly abdicated its obligation to meet the transportation needs of the Commonwealth and passed on to Hampton Roads localities the responsibility for funding transportation improvements in Hampton Roads either by assessing taxes or imposing fees.
2. It is disappointed at the absence of a substantial connection between most of the taxes and fees being imposed to fund regional transportation improvements and the persons and businesses needing and benefiting from those improvements.
3. The County, as a member of the Hampton Roads Metropolitan Planning Organization, has supported over the past four years the recommendation that the State should increase the gasoline tax statewide as the preferred method of generating the necessary revenues to fund transportation improvements not only in the Hampton Roads region, but also across the Commonwealth.

BE IT FURTHER RESOLVED by the Board of Supervisors of the County of James City, Virginia that:

1. The Board of Supervisors of the County of James City, Virginia, as contemplated by the Act and in accordance therewith, hereby approves the powers granted to the Authority under the Act to impose and/or assess the fees and taxes authorized thereby and in the amounts specified therein, including a gasoline sales tax, a real property conveyance grantor's tax, a vehicle rental tax, a vehicle safety inspection fee, an

initial vehicle registration fee, a sales tax on auto repair labor, an annual vehicle registration fee and tolls, such fees and taxes constituting all of the fees and taxes authorized by the Act.

2. This resolution will take effect on July 1, 2007.
3. The Clerk of the Board of Supervisors of the County of James City, Virginia, shall provide a copy of this resolution to the Clerks of the House of Delegates and the Senate of the Commonwealth of Virginia as soon as practicable after the effective date hereof.

John J. McGlennon
Chairman, Board of Supervisors

ATTEST:

Sanford B. Wanner
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 12th day of June, 2007.

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