

# A G E N D A

## JAMES CITY COUNTY BOARD OF SUPERVISORS

County Government Center Board Room

November 13, 2007

7:00 P.M.

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**I. REPORTS OF THE COUNTY ADMINISTRATOR**

**J. BOARD REQUESTS AND DIRECTIVES**

**K. CLOSED SESSION**

1. Consideration of a personnel matter, the appointment of individuals to County boards and/or commissions pursuant to Section 2.2-3711(A)(1) of the Code of Virginia
  - a. Community Participation Team (CPT)

**L. ADJOURNMENT to 4 p.m. on November 27, 2007**

**AT A REGULAR MEETING OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE 23RD DAY OF OCTOBER 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

William C. Porter, Jr., Assistant 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** - Clarence Johnson, a sixth-grade student at Toano Middle School, led the Board and citizens in the Pledge of Allegiance.

**D. PUBLIC COMMENT**

1. Mr. Dale Merriss, 104 Inverness, commented on the addition of land area to an existing residential planned community and the potential ordinance change, and stated his opposition to the change in ordinance language.

2. Mr. William Gibe, 104 Allwardly, commented on the potential changes for the R-4 residential planned community ordinances and stated his opposition to the proposed changes.

3. Ms. Debbie Cradder, 113 Long Point, commented on the potential changes to the R-4 residential planned community ordinance language and stated opposition to the proposed changes.

4. Mr. Ed Oyer, 139 Indian Circle, commented on the Hampton Roads Transportation Authority; traffic on Route 60; Matoaka Elementary School dedication; cable use franchise fees; green exit signs and flag pole location at Matoaka Elementary School; and the number of candidates for election.

5. Ms. Kensett Teller, 126 Lake Drive, on behalf of the James City County Citizens Coalition requested denial of ZO-0011-2007. R-4 (Residential Planned Community) Ordinance Amendment Initiating Resolution until after the Comprehensive Plan update.

**E. PRESENTATIONS**

1. James City County Citizens Coalition

Mr. David Jarman, on behalf of the James City County Citizens Coalition, gave a presentation on the Cumulative Impact Analysis developed by the Coalition which highlighted the impact of growth on the County due to water constraints, environmental and traffic impacts, and financial constraints. He requested that the Board incorporate the cumulative impact study into the 2008 Comprehensive Plan update, and also requested that the Board adopt as principle that no rezoning or special use permit (SUP) should be considered until the cumulative impact of such development is considered.

Mr. McGlennon asked how copies of the report could be obtained.

Mr. Jarman stated that copies were available at the Board meeting or he could be contacted for a copy.

Mr. Goodson requested the presentation be provided to the public on the County website.

Mr. Bradshaw asked in what election district Colonial Heritage would be considered.

Mr. Jarman stated the GIS database indicated it was in the Powhatan district, but this may have not been updated.

Mr. McGlennon stated that the numbers of approvals do not particularly correspond with the number of units that are built. He stated this needs to be taken into account. He stated he saw importance in providing full information, being able to respond to requests for different presentations of the information, and working with citizen groups to ensure consistent information, in order to understand the cumulative impact of individual approvals.

Mr. Jarman stated that some data has been requested beyond what was originally presented, but the information that was used was readily available through the Real Estate office. He recommended getting the information out to the public.

Mr. Icenhour thanked Mr. Jarman for working with staff to get the most accurate data to develop this tool and stated he felt there was an issue of uncertainty in when the approved units would be built.

2. HRACRE First Honor Award – Legacy Hall – Tom Tingle

Mr. Tom Tingle, on behalf of Hampton Roads Association for Commercial Real Estate, presented Mr. McGlennon with the HRACRE First Honor award for the Legacy Hall as the Best Institutional Public Building for 2007.

Mr. McGlennon stated that the Board is proud of the building and it is a popular venue for many different events due to its attractiveness and flexibility. He thanked businesses and staff involved in the development of Legacy Hall.

**F. HIGHWAY MATTERS**

Mr. Jim Brewer, Virginia Department of Transportation (VDOT), Williamsburg Residency Administrator, stated there were no updates from his office.



Mr. Icenhour asked for a traffic study on News Road to lower the speed limit and the need for turn lanes near Powhatan Secondary. He also asked for an update on the safety issue on Mooretown Road near the hospital where a house was damaged by a car.

Mr. Brewer stated that the study was done but the speed was maintained. He stated that a sign was placed near the site indicating there was a curve ahead.

Mr. Harrison asked Mr. Brewer to evaluate the intersections submitted to him by email.

Mr. Bradshaw asked about a Fenton Mill Road school bus stop on a curve where sight distance was not very good and asked about putting up a "school bus stop ahead" sign.

## **G. CONSENT CALENDAR**

Mr. Harrison made a motion to adopt the items on the consent calendar with the corrections to the minutes of October 9, 2007.

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

1. Minutes –
  - a. September 25, 2007, Work Session
  - b. October 9, 2007, Regular Meeting
2. Williamsburg Community Health Foundation Grant Award - \$33,625

## **RESOLUTION**

### **WILLIAMSBURG COMMUNITY HEALTH FOUNDATION GRANT AWARD - \$33,625**

WHEREAS, the Williamsburg Community Health Foundation has awarded the James City County Police Department a grant in the amount of \$33,625; and

WHEREAS, the funds will be used to for the purchase of 25 Automatic External Defibrillators (AEDs) with temperature control cases, fast response kits, and pads; and

WHEREAS, there are no matching funds required of this grant.

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

#### **Revenue:**

WCHF - AEDs	<u>\$33,625</u>
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#### **Expenditure:**

WCHF - AED	<u>\$33,625</u>
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3. Department of Criminal Justice Services (DCJS) Justice Assistance Grant Award - \$2,104

## **RESOLUTION**

### **DEPARTMENT OF CRIMINAL JUSTICE SERVICES (DCJS)**

#### **BYRNE JUSTICE ASSISTANCE GRANT - \$2,104**

WHEREAS, James City County has been awarded a Byrne Justice Assistance Grant in the amount of \$2,104 (\$1,894 Federal funds; \$210 local match) through the Virginia Department of Criminal Justice Services (DCJS); and

WHEREAS, the grant funds will be used to purchase and install a security camera in one of the hearing rooms of the courthouse; and

WHEREAS, the grant expires on December 31, 2007; and

WHEREAS, the grant requires matching funds of \$210, and these funds are available in the County's Grant Match Account.

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

#### **Revenues:**

Byrne JAG Grant	\$1,894
James City County Grant Match Account	<u>210</u>
Total	<u>\$2,104</u>

#### **Expenditure:**

Byrne JAG Grant	<u>\$2,104</u>
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4. Contract Award – Mobile Field Reporting and Computing Software for Public Safety Mobile Data Terminals - \$336,855

## **RESOLUTION**

### **CONTRACT AWARD – MOBILE FIELD REPORTING AND COMPUTING SOFTWARE**

#### **FOR PUBLIC SAFETY MOBILE DATA TERMINALS - \$336,855**

WHEREAS, it has been determined by the Purchasing Office that SunGard HTE, Inc. is the only source practicably available to provide mobile field reporting and mobile computing software for 118 public safety mobile data terminals with guaranteed compatibility with the existing SunGard HTE, Inc. Police Records Management System and Computer Aided Dispatch System; and

WHEREAS, the proposed rates have been determined to be fair and reasonable.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia,

hereby authorizes the County Administrator to execute the contract in the amount of \$336,855 for mobile field reporting and mobile computing software for 118 public safety mobile data terminals to SunGard HTE, Inc.

5. Virginia Public Assistance Fund – Division of Social Services, Renovation of Restrooms

**RESOLUTION**

**VIRGINIA PUBLIC ASSISTANCE FUND – DIVISION OF SOCIAL SERVICES**

**RENOVATIONS OF RESTROOMS**

WHEREAS, James City County Division of Social Services has designated \$57,700 in the Virginia Public Assistance Fund for rest room renovation; and

WHEREAS, the funds will allow for improvements/renovations to four Human Services Center rest rooms; and

WHEREAS, design specifications have been prepared and contractor proposals have been obtained and appropriately reviewed; and

WHEREAS, adequately constructed and safe rest rooms are critical to the fulfillment of our mission to serve citizens.

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

Revenues:

Virginia Public Assistance Fund	<u>\$57,700</u>
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Expenditures:

Contractual Line Item 007-081-3000	<u>\$57,700</u>
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**H. PUBLIC HEARINGS**

1. Case No. SUP-0025-2007. Colonial Penniman, LLC Waterline and Force Main Extensions

Mr. Matt Smolnik, Planner, stated Mr. James Bennett, on behalf of Williamsburg Developments, Inc., the Economic Development Authority (EDA) of James City County, BASF Corporation, and Colonial Penniman, LLC, has applied for a Special Use Permit (SUP) to allow for the construction of a 16-inch waterline, a four-inch force main, and a two-inch force main between the James River Commerce Center and the Colonial Penniman, LLC property, which is located at the BASF site in Grove. SUP-03-2002 was approved by the Board of Supervisors on April 9, 2007, for a waterline extension to the former Trusswood, LLC property which is now the Colonial Penniman, LLC property. A condition of this SUP required the property owner to obtain a land-disturbing permit within 24 months of the issuance, which was not obtained by the former owner. Therefore, the previous SUP is void and the landowners are applying for a new SUP for the waterline and force main extensions.

Staff found the plan to be consistent with the Comprehensive Plan and of negligible impact to the surrounding properties.

At its meeting on October 3, 2007, the Planning Commission recommended approval with the removal of one special use condition by a vote of 6-0 with one member absent.

Staff recommended approval of the application.

Mr. Icenhour asked if under previous rules before the most recent changes, some were RPA and some were not RPA, and what mitigation might be underway to help reestablish RPA buffer.

Mr. Smolnik stated that OED and Environmental has discussed conservation easements in the future, and the discussion is ongoing.

Mr. Icenhour asked if the area was already in need of conservation.

Mr. Smolnik stated it was.

Mr. McGlennon opened the public hearing.

1. Mr. James Bennett, 108 Colonial, on behalf of Colonial Penniman, LLC, stated the subject property consisted of 19.5 acres, and the property had utilities run from the adjacent BASF property. He stated that as BASF was marketing its property, the company does not want to provide water and sewer to the subject property in the future. He stated in 2002, the prior owner designed the proposed waterline and received SUP approval in 2002, with the design approved in 2003. He stated the previous owner did not start construction on the waterline, so the SUP lapsed after two years. Mr. Bennett stated his company bought the property in 2007 and is attempting to get an SUP approval to extend the waterline to serve the subject property and also 70 acres of EDA property and the BASF property upon development. He commented on the existing clearing in the RPA buffer and noted that two existing utility lines parallel a large part of the line that would be installed. He stated the clearing for the utility lines predated the RPA. buffer establishment and requested approval for the application.

2. Mr. Ed Oyer, 139 Indian Circle, stated he felt it would have an impact on traffic, so Route 60 needed to be fixed before the project is completed.

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

Mr. Goodson stated this was an important project for economic development in the County and made a motion to adopt the resolution.

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

## **RESOLUTION**

### **CASE NO. SUP-0025-2007. COLONIAL PENNIMAN, LLC WATERLINE &**

### **FORCE MAIN EXTENSIONS**

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, the applicant has requested an SUP to allow for the construction of up to a 16-inch water

transmission main and two force mains to serve adjacent parcels within the James River Commerce Center and the property and facilities owned by Colonial Penniman, LLC at the BASF complex in the M-1, Limited Business/Industrial, and M-2, General Industry, zoning districts, located at 8925, 8961, 8963, and 8965 Pocahontas Trail, further identified as Parcel Nos. (1-3), (1-4), (1-5A), and (1-45) on James City County Real Estate Tax Map No. (59-2); and

WHEREAS, a public hearing was advertised, adjoining property owners notified, and a hearing held on SUP No. 0025-2007; and

WHEREAS, the Board of Supervisors, following a public hearing is of the opinion that the SUP allowing for the above-mentioned waterline and two force mains should be approved.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve the issuance of SUP No. 0025-2007 as described herein with the following conditions:

1. For all portions of any temporary construction easements that have been cleared, but that do not need to remain clear after construction, as determined by the Director of Planning, seedlings shall be planted and shall be shown on a reforestation or re-vegetation plan to be approved by the Director of Planning. This plan shall be submitted within one year of the initial clearing of the easement. The reforestation or re-vegetation of any temporary construction easements shall be completed, as determined by the Director of Planning, within two years of the initial clearing of the easement. It shall be the responsibility of the developer to provide surety prior to final site plan approval guaranteeing implementation of the reforestation or re-vegetation plan, and to secure the necessary means to plant any temporary construction easements after the easements revert back to the property owner.
2. A Phase I Archaeological Study for the disturbed area shall be submitted to the Director of Planning for review and approval prior to land disturbance. A treatment plan shall be submitted and approved by the Director of Planning for all sites in the Phase I study that are recommended for a Phase II evaluation and/or identified as eligible for inclusion on the National Register of Historic Places. If a Phase II study is undertaken, such a study shall be approved by the Director of Planning and a treatment plan for said sites shall be submitted to, and approved by, the Director of Planning for sites that are determined to be eligible for inclusion on the National Register of Historic Places and/or those sites that require a Phase III study. If in the Phase III study, a site is determined eligible for nomination to the National Register of Historic Places and said site is to be preserved in place, the treatment plan shall include nomination of the site to the National Register of Historic Places. If a Phase III study is undertaken for said sites, such studies shall be approved by the Director of Planning prior to land disturbance within the study areas. All Phase I, Phase II, and Phase III studies shall meet the Virginia Department of Historic Resources' "Guidelines for Preparing Archaeological Resource Management Reports" and the Secretary of the Interior's "Standards and Guidelines for Archaeological Documentation," as applicable, and shall be conducted under the supervision of a qualified archaeologist who meets the qualifications set forth in the Secretary of the Interior's "Professional Qualification Standards." All approved treatment plans shall be incorporated into the plan of development for the site and the clearing, grading, or construction activities thereon.
3. Any crossing of the BASF complex sanitary sewer line and/or pump station shall be reviewed and approved by the James City Service Authority (JCSA).
4. Prior to the issuance of preliminary site plan approval, an agreement and plan between the developer and the JCSA, including implementation time lines, must be reviewed and approved by the JCSA on how the two Colonial Penniman, LLC properties and James

City County Real Estate Tax Map Nos. (59-4)(1-4) and (59-4)(1-5A) will be served with public sewer.

5. All required permits and easements, including the necessary approvals from the Newport News Water Works, shall be obtained prior to the start of construction, as defined in the James City County Zoning Ordinance.
6. Construction, operation, and maintenance shall comply with all local, State, and Federal requirements, including all Newport News Water Works requirements.
7. A Land-Disturbing Permit shall be obtained by the developer within 24 months from the date of the issuance of this SUP, or this SUP shall be void.
8. This SUP is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.

2. Ordinance to Permit Use of Golf Carts on Public Highways of the County

Chief Emmett Harmon, Police Chief, stated that several months ago he approached the Board to gain approval for the legal use of golf carts in certain neighborhoods. He stated the ordinance amendment made provisions to County Code to allow the use of golf carts on County streets. He said the standards developed incorporate safety measures, and the proposed ordinance adopted State Code restrictions as well as an additional restriction which requires insurance for recreational vehicles. He stated that future requests would require an application procedure, and he recommended adoption of the ordinance amendment and subsequently the ordinance to allow the use of golf carts in Chickahominy Haven, if approved.

Mr. Bradshaw asked about the speed study that was conducted in Chickahominy Haven.

Chief Harmon stated that two locations in Chickahominy Haven were evaluated in a speed study and stated that compliance was very good during the study. He noted that only 12 of 800 vehicles were ten or more miles-per-hour over the speed limit.

Mr. Bradshaw stated the newspaper reported the cost of the insurance for the proposal was \$60 per month.

Chief Harmon stated that the correct figure based on a local insurance company was \$60-\$70 per year for this particular coverage.

Mr. McGlennon opened the public hearing.

1. Mr. Donnie Martin, 617 Canal Street, stated he owns a golf cart, that the vehicles were pleasurable to drive, and some residents use them due to physical restraints. He stated the insurance was a drawback and stated that bicycle riders should be required to have the insurance also.

2. Mr. Gene Farley, 4049 South Riverside, thanked those involved in the process to allow golf carts in Chickahominy Haven. He stated those in opposition were more opposed to the misuse of golf carts and the proposed ordinance would regulate this. He stated there are other neighborhoods that would like to incorporate golf carts in their communities. He requested approval of the ordinances.

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

Mr. Bradshaw asked to consider both ordinances simultaneously.

Mr. Bradshaw made a motion to adopt the ordinance amendment to allow for the use of golf carts on public roads and also to adopt the ordinance to allow golf carts on public roads in Chickahominy Haven. He stated he was pleased with how the community and staff worked together on this matter.

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

3. Ordinance to Amend James City County Code Chapter 22, Wetlands

Ms. Jennifer Lyttle, Assistant County Attorney, stated the ordinance change proposed to the Wetlands Ordinance would require all ordinance permits to be routed through the Environmental Division rather than Code Compliance, as the Environmental office was not yet established when the ordinance was written. Ms. Lyttle stated the local information available to citizens was located in the Environmental Division before the permit would be issued and after it has gone before the Wetlands Board.

Mr. McGlennon asked if the Wetlands permit was approved through the Marine Resource Commission (MRC).

Ms. Lyttle stated the permit goes through the MRC and then goes to Environmental Division and then to the Wetlands Board.

Mr. McGlennon asked if the applications are posted on the website.

Ms. Lyttle stated when the information is available for the Wetlands Board meeting, the permit information is posted on the website.

Mr. McGlennon stated the County Wetlands Board must approve the permits filed through the MRC, which are sent to the County Environmental Division, and later brought before the Wetlands Board, who considers the case. He stated that prior to the Wetlands Board's consideration the meeting is advertised and information is available to the public.

Ms. Lyttle stated this is correct.

Mr. McGlennon asked if this was the procedure that we have been following.

Ms. Lyttle stated this has been the process for some time and that staff recently brought it to the attention of the County Attorney's office that the ordinance says the permit information should be routed to Code Compliance.

Mr. McGlennon opened the public hearing.

1. Ms. Liz Johnson, 210 Red Oak Landing Road, stated she has had trouble getting updated information from the MRC and it is difficult to find the information on the website. She stated she would prefer having local review of every application.

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

Mr. McGlennon asked staff if the current process required approval by the Wetlands Board.

Ms. Lyttle stated this was correct.

Mr. McGlennon asked if someone could sign up for a list to receive public hearing notices in advance.

Ms. Lyttle stated that if someone would like to be on a list to receive notification of public hearings through the Environmental division, he or should could contact that office for information.

Mr. McGlennon stated that the purpose of the ordinance amendment was to recognize the fact that the current agency reference is not the agency that holds the application information.

Ms. Lyttle stated this was correct.

Mr. Harrison stated the current process was not going to change.

Ms. Lyttle stated this was correct.

Mr. Harrison made a motion to adopt the ordinance amendment.

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

## **I. BOARD CONSIDERATION**

### **1. ZO-0011-2007. R-4 (Residential Planned Community) Ordinance Amendment Initiating Resolution**

Mr. David German, Planner, stated that staff has been made aware of a proposed addition to Ford's Colony and a literal reading of the ordinance would require the developer to own 400 acres or more, which would prevent normal and logical sale of lots to homeowners. He stated single ownership or control may be troublesome if not clearly defined in the ordinance. He stated that staff has submitted an initiating resolution for the Board to direct staff to work on amendments to be brought before the Planning Commission and Board of Supervisors for further consideration. He stated that the Board may not be ready to act on the resolution, but staff was seeking guidance on how to proceed with the proposed ordinance amendment.

Mr. Icenhour asked if staff's concern was in the event of an R-4 community that consisted of 500 acres without an addition would be in violation after 101 acres were sold.

Mr. German stated this was correct.

Mr. Icenhour asked if this was an actual interpretation.

Mr. German stated it has never been made before but it has been brought up in this potential case and that implication could be made.

Mr. Icenhour stated he did not understand the section dealing with additions to the property and asked if there was a clear connection back to the 400 acres.

Mr. German stated this section says amendments can be made to R-4 and all parameters which governed it before apply except the 400 acre requirement.

Mr. Bradshaw stated that the first condition was never intended to maintain 400 acres. He stated he was in support of clarifying this, but he felt there was not enough discussion about other issues dealing with additions. He asked if there was any harm in delaying the first portion of the resolution.

Mr. German stated he did not believe so.

Mr. Bradshaw stated if there was no harm in delaying the first clarification he was in favor of taking



time to consider the second issue.

Mr. Goodson stated the direction is to look into this issue.

Mr. Bradshaw stated an initiating resolution made a request to bring an ordinance amendment forward.

Mr. Icenhour made a motion to defer consideration to the next meeting to discuss the matter with staff but there should be some expression of the concerns and about what should be done. He stated he did not believe there was intent to sell the property beyond 400 acres. He stated the concerns were about the consideration of the addition to the property. He stated in Ford's Colony there have been many additions that do not fit into the perceived atmosphere of the development. He stated that some homeowners feel that the community they bought into was not maintained. He stated there should be protection for rights of homeowners.

He made a motion to defer.

Mr. Bradshaw stated he agreed with the motion to defer, but he stated that staff needed time to look at it from this prospective of a different and new policy. He stated he needed more analysis from staff. Mr. Bradshaw stated that staff should not craft this ordinance based on the impact of a proposal that may soon come before the Board. He stated that staff would need to develop a policy based on any R-4 community. He asked how a new policy would affect private contract rights.

Mr. Horne stated that this type of analysis would not be available in two weeks.

Mr. McGlennon stated that he would like to see a resolution that narrowly focuses on the confusing language and he felt uncomfortable rewriting this ordinance in the midst of a case that may incorporate it during the Comprehensive Plan process. He stated he would like to consider it in the broader sense. He stated the directive to staff would be to clarify the ordinance in the short term, bring it forward and bring forward the broader issue during the Comprehensive Plan process. He stated if the broader issue needed to be addressed immediately; it needed more analysis than can be available in two weeks.

Mr. Icenhour stated it may take more time to analyze this, but he felt it did not need to be put off through the entire Comprehensive Plan process. He asked that staff bring the issue back whenever they are able to give a broader perspective of the ordinance.

Mr. Harrison stated during the Comprehensive Plan update citizens and staff will be looking at the different zonings and this may be an appropriate time to look at this issue. He stated that a refinement of the ordinance language was something that could be done more immediately.

Mr. Bradshaw asked about changing the language of single ownership or control and noted that almost any way that it could be rewritten it may have implications to the broader issue as to the definition of control. He stated this may not simply be a clarification of language.

Mr. Horne stated that if the Board wants to clarify the first section, the second section could be evaluated more closely in relation to other localities and legal matters and staff would come forward with information rather than another ordinance. He stated staff would be able to produce this information within 30 to 45 days.

Mr. Rogers stated that the issue may concern defining ownership and control of property and asked if this is the policy that the Board wants to have. He stated it has been interpreted by the Zoning Administrator with a very broad definition in R-4.

Mr. Horne stated he felt that this existed in other jurisdictions and this could help evaluate how the definition was interpreted in accordance with other places.

Mr. Bradshaw stated he agreed with going forward with amending the first section and deferring the second portion.

Mr. Porter recommended deferral of the item to amend the initiating resolution.

## **J. PUBLIC COMMENT**

1. Mr. Ed Oyer, 139 Indian Circle, stated all the candidates for the 96th seat are opposed to HRTA.

2. Mr. William Gibe, 104 Allwardly, asked Mr. Icenhour to ask VDOT to install a deceleration lane on Longhill Road before Ford's Colony going east from Centerville Road. He commented on over-clearing of wetlands, greed of site contractor for lumber and recommended fines assessed for value of lumber removed and the cost to restore it. He stated Chicago and New York homeowner's association's sign-off on changes or additions by developers to the community.

3. Mr. Howard Goldstein, 108 Shinnecock, stated when a planned community is established, the area and zoning are established and it should not expand. He stated if it does expand, it should expand according to what it is already planned.

4. Mr. Rich Costello, 10026 Sycamore Landing Road, stated Stonehouse was another development that may expand in a similar way as Ford's Colony. He stated the Board should think about other planned communities also.

5. Mr. Tony Obadal, 116 Mahogany Run, stated he did not feel there was any clarification required for "single ownership and control" separate liability is purpose of private entities. He stated this should be evaluated from a broad perspective, but it has come up in a case of context. He stated that ordinances should not be revised to accommodate a particular development and that the master plan is relevant because of the ordinance requirement that some things be placed in master plan, such as the required number of units. He stated that there are many instances where language interpretation does not match the ordinance as written.

6. Mr. Ronald Smith, 111 Western Gales, stated the Board should consider that homebuyers should be able to depend on the community they are presented without fearing changes in the development.

## **K. REPORTS OF THE COUNTY ADMINISTRATOR**

Mr. Porter stated that the Board should adjourn to November 13, 2007, at 7 p.m. and after adjournment, a meeting of the James City Service Authority Board of Directors should be held.

He stated that the Board must vote on the voting delegation for the Virginia Association of Counties (VACo) Annual Conference, and he recommended the Board appoint Mr. Icenhour as primary voting delegate and Mr. Goodson as alternate voting delegate.

Mr. Harrison made a motion to appoint the voting delegation to the VACo Annual Conference.

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

## **L. BOARD REQUESTS AND DIRECTIVES**

Mr. McGlennon stated the action tonight would have been an adoption of an initiating resolution that would send the ordinance amendment to the Planning Commission to see if there was a necessity to amend the ordinance. He stated that if the Planning Commission felt that there was a need to revise the ordinance, then the matter would come back before the Board and both of these meetings would be appropriately advertised and open to public discussion.

Mr. McGlennon stated the Director of Economic Development, Keith Taylor, was awarded the Cardinal Award, the top award of the Virginia Economic Development Association. He recognized Mr. Taylor's outstanding service to the County.

Mr. Icenhour made a motion to appoint Mr. Thomas Hitchens to fill the vacancy on the AFD Advisory Committee.

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

Mr. Harrison stated that the presentation earlier was by J4Cs about the cumulative impact of development and one recommendation dealt with staying rezoning. He requested this matter come forward on the agenda.

Mr. McGlennon asked that Mr. Harrison discuss the exceptions to the deferral of rezonings.

Mr. Harrison stated that applications with public benefit such as affordable housing, exceptional proffers, or environmental improvements above the norms that were not continuing to strain the important areas should be considered. He stated that other applications had the same rights to come forward, but the Board would be weighing those applications with these higher provisions with more favor to send a message that there are significant studies that need to be completed in order to move forward with clarity.

Mr. Bradshaw asked the process for deciding if there were public benefits and exceptional proffers. He stated that he did not understand how it would be a moratorium if some cases would still be considered.

Mr. Harrison stated he felt there was no proposal at this point that was worth approval. He stated the proposal adopted earlier in the evening was insufficient due to traffic issues, which was why he voted no.

Mr. Bradshaw stated this case referenced was not residential.

Mr. Harrison stated this would be considered for residential also.

Mr. Bradshaw asked how this would be considered.

Mr. Harrison stated that the public facilities test was not used, but if a proposal came forward with public benefit, then it would be considered.

Mr. Bradshaw stated he felt that every case that has come forward has projected some public benefit, whether it was approved or not.

Mr. Harrison stated it was based on personal perspective of growth and whether or not to finalize studies before further rezoning's done.

Mr. Bradshaw stated that there was no real choice, but he does not understand the process to determine what comes forward to be considered and what does not.

Mr. Harrison stated necessary studies are not completed to make these decisions.

Mr. Bradshaw stated that a proposal would be considered if there were public benefits, but this is different from not moving forward at all until studies were completed. He stated he did not understand how the determination would be made.

Mr. Harrison stated there was an attempt for flexibility in order for political support, but he felt personally that studies should be completed before any further rezoning's done.

Mr. McGlennon stated that with the flexibility the opportunity is provided for most cases to come forward anyway, such as Ironbound Square. He asked if this was something that should not have been approved.

Mr. Harrison stated he voted in favor of this proposal only because the matters were already moving forward.

Mr. McGlennon stated that if there was a moratorium that project would not have been considered.

Mr. Harrison stated matters that are already being considered should be grandfathered into the process.

Mr. McGlennon stated there was a difficulty in consideration of mixed use cases where a judgment call was required. He stated that the Board can choose to turn down cases if there is not a compelling argument for development.

Mr. Goodson stated that the major rezoning cases that have come forward have been New Town, Chestnut Grove which created a significant amount of affordable housing, and Ironbound Square. He said the others were mostly smaller cases since most developers were waiting for the Comprehensive Plan process to move forward before making a submission. He stated the developers do not want to wait a year to bring a matter back and the Board was not going to get cases without any public benefit.

Mr. Harrison stated they did not all start off with public benefit, but were added later on in the process. He stated the Board needed to send a message to the community.

Mr. McGlennon stated his feeling about the best way to do this was for individual Board members to consider the case. He stated that the State requires the Board to make decisions on rezoning's within 12 months, and after the 12-month period the Board would have to consider all of them at once with rapid decisions.

Mr. Harrison stated that there is an ability to view the cases.

Mr. McGlennon stated that this allows for consideration of the case and there may as well be a decision.

Mr. Harrison stated public opinion was that the Board is not taking a strong enough approach toward growth.

Mr. McGlennon stated that the best way to demonstrate this was to seriously consider a case and say yes or no.

Mr. Harrison stated that without important information on impacts, these cases cannot be considered seriously.

Mr. McGlennon stated that the measures are very wide and are likely not going to happen.

Mr. Harrison stated he recommended approval of the motion to defer the matter.

Mr. Icenhour stated that there was a fairly good record on significant rezonings. He stated three were approved with considerable affordable housing elements; he would like to consider this measure, but did not want to limit himself; there was either a recess or not and he was comfortable leaving the rezonings to the decision of the Board; there may be more comfort, but the record has been aggressive; and there did not need to be an artificial delay implemented.

Mr. Bradshaw stated unintended consequences would be realized if the Board did not consider new rezonings as there would be development of by-right uses in rural lands or lots or developments that could be improved would be forced to be developed under an old plan which may be substandard.

Mr. McGlennon stated a moratorium will not stop development.

Mr. Harrison read the resolution he developed which proposed a residential development recess.

Mr. Harrison made a motion to approve the resolution as read.

Mr. Goodson asked staff how the application process would be different if this was passed.

Mr. Horne stated he did not feel that the application process would be different as every applicant has the right by State Code to apply, but applicants would be informed of a Board-adopted policy to form reasonable expectations about approval and the timeline related to the application.

Mr. Goodson asked if these cases would not be brought forward on a Board agenda for twelve months.

Mr. Horne deferred to Mr. Rogers and stated he felt that staff could not refuse to place an item on the agenda.

Mr. Rogers asked for further clarification.

Mr. Goodson asked if the resolution was passed that required the Board not to vote on an application for a year, would the cases be placed on the Board's agenda.

Mr. Porter stated the Board could not refuse to consider an application. He said the Planning Commission has 90 days to consider a matter and if it is not acted on in 90 days, it then moves forward with a recommendation of approval. He stated once a case goes to the Board, the Board has a year to act on it, and if it is not acted on, the applicant can compel action by the Board. He stated an application could not be refused.

Mr. Rogers stated that it would not be acted on in a year and if this was adopted there would be a procedure from State Code. He stated that the resolution could allow a case to come before the Board but not put the case on the agenda for a year.

Mr. Icenhour asked if there was anything to preclude the Board from deferring any case for 12 months.

Mr. Rogers stated there was not.

Mr. Goodson asked who would determine which items would have public benefit. He noted that this would be binding a future Board to this policy of deferral.

Mr. Bradshaw stated that it was bad policy to bind a future Board with this kind of resolution.

Mr. Harrison stated it was good public perception.

Mr. McGlennon stated he did not agree with this to convince the people that there will be a tangible impact on development that will not be realized.

Mr. Harrison stated he understood this, but he felt that not acting on this matter was protecting development.

Mr. McGlennon stated there was an obligation to evaluate the cases and let the public know what the Board thinks. He stated the Board would still be required to do this.

Mr. Harrison stated the Board would be prohibited from evaluating the cases.

Mr. McGlennon stated the Board was committed to evaluate the cases and that if these matters needed to be considered to determine whether there would be significant public benefit, the case may as well be considered for action.

Mr. Bradshaw asked how by-right development would be effected.

Mr. Harrison stated that by-right development has not seen a windfall.

Mr. Goodson stated people could be moving into communities that are established, and may be pushing new development in places that are already established.

Mr. Harrison stated there have been more approvals of rezonings than by-right development that is impactful. He stated the motion was on the floor and the public has stated growth control needs to be considered he felt studies needed to be developed before any further development occurred.

Mr. Bradshaw asked about A-1 developments on the list.

Mr. Harrison stated by-right development was always a threat. He stated that the Board needs a strong message and should set benchmarks for public benefit.

Mr. Goodson suggested public input and has not been advertised, suggested advertising for next meeting.

Mr. Harrison stated there should be more public input on this matter.

Mr. Goodson stated the item was not published and no one has read the language of the resolution.

Mr. McGlennon stated the Board has read it and made a motion to table the issue indefinitely.

Mr. Harrison stated he felt this was a political issue as it was being deferred beyond the election date.

Mr. Rogers stated three motions were on the floor and the motion to defer took priority.

Mr. Goodson stated his motion was to defer to the next meeting and to publish the resolution on the website so the public can read it. He stated this was normal procedure for every resolution and stated this was especially due to the importance of this issue.

Mr. Harrison stated this issue has come forward before.

Mr. McGlennon stated this resolution came forward at the last meeting.

Mr. Harrison stated he has requested that it be put on the agenda.

Mr. Goodson stated he would like to defer to the next meeting for public input.

Mr. Harrison asked if the public would be allowed to comment.

Mr. Goodson stated the public would be allowed during the Public Comment segment of the meeting.

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

Mr. Porter stated that action on this item was deferred to the next meeting and will be placed on the agenda as a Board Consideration. He stated that comments from citizens would be taken during Public Comment period.

**M. ADJOURNMENT** – until 7 p.m. on November 13, 2007

Mr. Harrison made a motion to adjourn.

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

At 9:43 p.m., Mr. McGlennon adjourned the Board.

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William C. Porter, Jr.  
Deputy Clerk to the Board

**MEMORANDUM**

DATE: November 13, 2007

TO: The Board of Supervisors

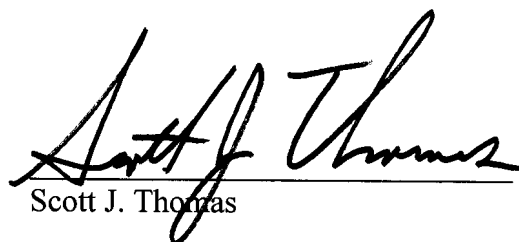
FROM: Scott J. Thomas, Environmental Director

SUBJECT: Dedication of Streets in Wellington, Section 5

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Attached is a resolution requesting acceptance of certain streets in Wellington, Section 5, 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.



Scott J. Thomas

SJT/gb  
WellingtonSecs5.mem

Attachments



## **RESOLUTION**

### **DEDICATION OF STREETS IN WELLINGTON, SECTION 5**

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

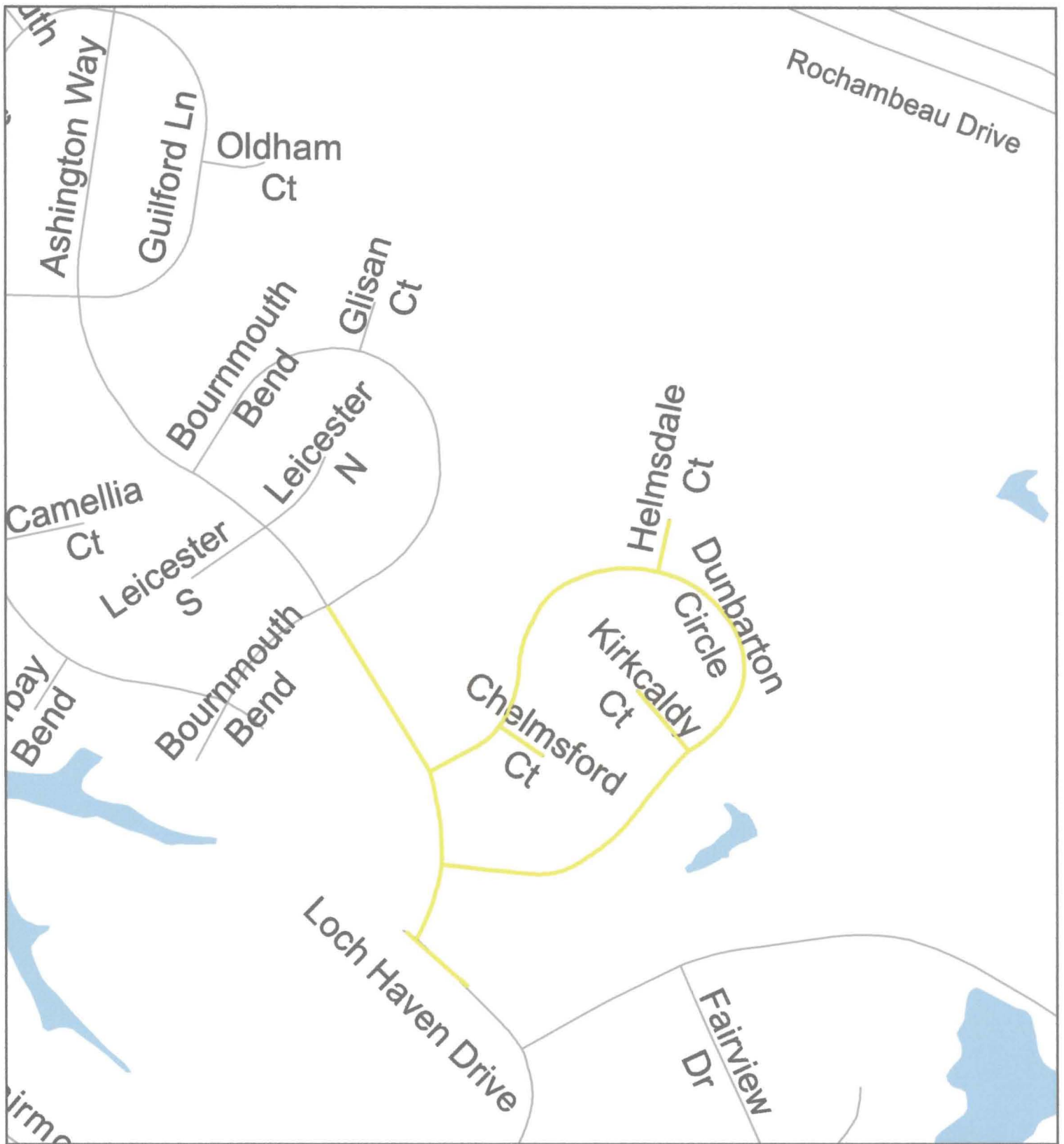
ATTEST:

---

Sanford B. Wanner  
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 13th day of November, 2007.

WellingtonSec5.res



## DEDICATION OF STREETS IN WELLINGTON - SECTION 5



Streets Being  
Dedicated

1 inch equals 400 feet



# In the County of James City

By resolution of the governing body adopted November 13, 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 **Wellington, Section 5**

**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 for cuts, fills and drainage, as required, is hereby guaranteed:

Reason for Change: **New subdivision street**

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

### **Street Name and/or Route Number**

#### **► Ashington Way (extension), State Route Number 1070**

Old Route Number: 0

- From: Route 1084 (Bournemouth Bend)  
To: Dunbarton Circle, a distance of: 0.11 miles.

Recordation Reference: DOC. 050025730

Right of Way width (feet) = 50 feet

#### **► Ashington Way (extension), State Route Number 1070**

Old Route Number: 0

- From: Dunbarton Circle  
To: Dunbarton Circle, a distance of: 0.05 miles.

Recordation Reference: DOC. 050025730

Right of Way width (feet) = 50 feet

#### **► Ashington Way (extension), State Route Number 1070**

Old Route Number: 0

- From: Dunbarton Circle  
To: Loch Haven Drive, a distance of: 0.04 miles.

Recordation Reference: DOC. 050025730

Right of Way width (feet) = 50 feet

## **Report of Changes in the Secondary System of State Highways**

### **► Dunbarton Circle, State Route Number 1085**

Old Route Number: 0

- From: Route 1070 Ashington Way  
To: Chelmsford Court, a distance of: 0.05 miles.

Recordation Reference: DOC. 050025730

Right of Way width (feet) = 50 feet

### **► Dunbarton Circle, State Route Number 1085**

Old Route Number: 0

- From: Chelmsford Court  
To: Helmsford Court, a distance of: 0.15 miles.

Recordation Reference: DOC. 050025730

Right of Way width (feet) = 50 feet

### **► Dunbarton Circle, State Route Number 1085**

Old Route Number: 0

- From: Helmsford Court  
To: Kirkcaldy Court, a distance of: 0.14 miles.

Recordation Reference: DOC. 050025730

Right of Way width (feet) = 50 feet

### **► Dunbarton Circle, State Route Number 1085**

Old Route Number: 0

- From: Kirkcaldy Court  
To: Route 1070 (Ashington Way), a distance of: 0.17 miles.

Recordation Reference: DOC. 050025730

Right of Way width (feet) = 50 feet

### **► Chelmsford Court, State Route Number 1086**

Old Route Number: 0

- From: Route 1070 (Ashington Way)  
To: Cul de sac, a distance of: 0.03 miles.

Recordation Reference: DOC. 050025730

Right of Way width (feet) = 50 feet

### **► Helmsdale Court, State Route Number 1087**

Old Route Number: 0

- From: Dunbarton Circle  
To: Cul de sac, a distance of: 0.03 miles.

Recordation Reference: DOC. 050025730

Right of Way width (feet) = 50 feet

## Report of Changes in the Secondary System of State Highways

### ► **Kirkcaldy Court, State Route Number 1088**

Old Route Number: 0

- From: Dunbarton Circle  
To: Cul de sac, a distance of: 0.05 miles.

Recordation Reference: DOC. 050025730

Right of Way width (feet) = 50 feet

### ► **Loch Haven Drive (extension), State Route Number 1644**

Old Route Number: 0

- From: Ashington Way  
To: Route 1644 Loch Haven Drive, a distance of: 0.04 miles.

Recordation Reference: DOC. 050025730

Right of Way width (feet) = 50 feet

MEMORANDUM

DATE: November 13, 2007  
TO: The Board of Supervisors  
FROM: John Rogerson, Zoning Officer  
SUBJECT: Code Violation Lien - Trash and Grass Lien

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The Zoning Administrator certifies that, having received a complaint, the Code Compliance Officer inspected the property listed below. Notification of a violation for trash and/or grass was sent to the property owner. Following failure of the property owner to take corrective action, the County contracted to have the property cleaned. Owner was sent notification of payment due. She failed to pay.

Owner: Mary Margaret Hancock  
8741 Merry Oaks Lane  
Toano, VA 23168

Description: 8741 Merry Oaks Lane

Tax Map/Parcel No.: 11-2-01-0-0007-B

Filing Fee: \$10.00

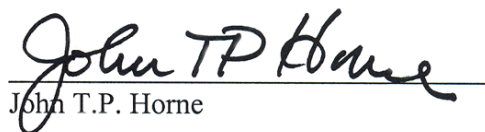
Total Amount Due: \$350.00

Staff recommends that the Board of Supervisors adopt the attached resolution to establish a lien.

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John Rogerson

CONCUR:

  
John T.P. Horne

JR/nb  
Hancock.mem

Attachment

## **RESOLUTION**

### **CODE VIOLATION LIEN – TRASH AND GRASS LIEN**

WHEREAS, the Zoning Administrator has certified to the Board of Supervisors of James City County, Virginia, that the property owner as described below has failed to pay a bill in the amount listed, for cutting of grass and weeds or removal of trash and debris, although the County has duly requested payment; and

WHEREAS, the unpaid and delinquent charges are chargeable to the owner and collectible by the County as taxes and levies and constitute a lien against the Property.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors, James City County, Virginia, that in accordance with Sections 10-7 and 10-5 of the Code of the County of James City, Virginia, the Board of Supervisors directs that the following delinquent charges for services rendered, plus interest at the legal rate from the date of recordation until paid, shall constitute a lien against the Property to wit:

#### **Cleaning of Trash/Debris and/or Cutting of Grass, Weeds, etc.:**

ACCOUNT: Mary Margaret Hancock  
8741 Merry Oaks Lane  
Toano, VA 23168

DESCRIPTION: 8741 Merry Oaks Lane

TAX MAP/PARCEL NOS.: 11-2-01-0-0007-B  
James City County, Virginia

FILING FEE: \$10.00

TOTAL AMOUNT DUE: \$350.00

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John J. McGlennon  
Chairman, Board of Supervisors

ATTEST:

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Sanford B. Wanner  
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 13th day of November, 2007.

Hancock.res

**MEMORANDUM**

DATE: November 13, 2007

TO: The Board of Supervisors

FROM: Richard B. Hanson, Housing and Community Development Administrator

SUBJECT: Appropriation of Funds - Disaster Housing Assistance Program - \$6,228

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The US Department of Housing and Urban Development (HUD), pursuant to an interagency agreement with the Federal Emergency Management Agency (FEMA), has developed the Disaster Housing Assistance Program (DHAP) to provide transitional housing assistance to certain individuals and families displaced by Hurricanes Katrina and Rita which struck the Gulf Coast in 2005. DHAP is to be administered by local Public Housing Agencies (PHAs).

James City County Office of Housing and Community Development, the PHA serving James City County, has been contacted by and has verified the eligibility of an individual residing in James City County for DHAP rental assistance. Under the DHAP program, HUD will reimburse James City County for rental assistance payments made to a landlord on behalf of an eligible DHAP participant. HUD will also pay James City County administrative fees to reimburse for administrative expenses, including case management, housing inspections, rent reasonableness determination, and financial management and reporting.

Staff recommends approval of the attached resolution to appropriate the Disaster Housing Assistance Program grant funds.

  
Richard B. Hanson

CONCUR:

  
Doug Powell

RBH/gb  
DisasterHousingFunds.mem

Attachment



## RESOLUTION

### APPROPRIATION OF FUNDS - DISASTER HOUSING ASSISTANCE PROGRAM - \$6,228

WHEREAS, the US Department of Housing and Urban Development (HUD) and the Federal Emergency Management Agency (FEMA) executed an interagency agreement in July 2007, which established the Disaster Housing Assistance Program (DHAP) to provide transitional housing assistance to certain individuals and families displaced by Hurricanes Katrina and Rita that struck the Gulf Coast in 2005; and

WHEREAS, under DHAP, HUD intends to utilize its existing network of local Public Housing Agencies (PHAs) to administer the program; and

WHEREAS, the James City County Office of Housing and Community Development (OHCD) is the designated PHA administering the Housing Choice Voucher Program in James City County; and

WHEREAS, OHCD has been contacted by and has verified the eligibility of an individual residing in James City County for DHAP rental assistance.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes OHCD to administer and provide Federal DHAP grant assistance within James City County and hereby amends the Community Development Fund Budget, as adopted for the fiscal year ending June 30, 2008, as follows:

Revenue:

Disaster Housing Assistance Program Grant	<u>\$6,228</u>
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Expenditure:

Housing Assistance Payments	\$4,400
DHAP Program Administration	<u>1,828</u>
Total:	<u>\$6,228</u>

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John J. McGlennon  
Chairman, Board of Supervisors

ATTEST:

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Sanford B. Wanner  
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 13th day of November, 2007.

DisasterHousingFunds.res

MEMORANDUM

DATE: November 13, 2007

TO: The Board of Supervisors

FROM: Richard B. Hanson, Housing and Community Development Administrator

SUBJECT: Appropriation of Funds - Green Building Charrette Grant Award - \$5,000

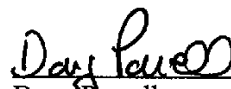
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The James City County Office of Housing and Community Development has been awarded a Green Building Charrette Grant in the amount of \$5,000 from Enterprise Community Partners for Green Communities. The funds are to be used to plan and conduct a green building seminar to promote green and sustainable building practices for affordable housing. The seminar scheduled for November 20, 2007, will include a facilitated discussion of green building criteria for single-family homes to be built within the Ironbound Square Redevelopment Area.

Staff recommends approval of the attached resolution to appropriate the Green Building Charrette Grant funds.

  
Richard B. Hanson

CONCUR:

  
Doug Powell

RBH/gb  
GreenBldgGrant.mem

Attachment

## **RESOLUTION**

### **APPROPRIATION OF FUNDS - GREEN BUILDING CHARRETTE GRANT AWARD - \$5,000**

WHEREAS, the James City County Office of Housing and Community Development has been awarded a Green Communities Green Building Charrette Grant in the amount of \$5,000 from Enterprise Community Partners for Green Communities; and

WHEREAS, the grant funds are to be used to conduct a green building seminar to educate builders, policy makers and community members and to foster green and sustainable building practices in the development of new single homes within the Ironbound Square Redevelopment Area; and

WHEREAS, no matching funds are required by this grant.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the acceptance of this grant and hereby amends the Community Development Fund Budget, as adopted for the fiscal year ending June 30, 2008 as follows:

#### **Revenue:**

Green Communities, Green Building Charrette Grant	<u>\$5,000</u>
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#### **Expenditure:**

Green Building Charrette for Ironbound Square	<u>\$5,000</u>
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John J. McGlennon  
Chairman, Board of Supervisors

ATTEST:

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Sanford B. Wanner  
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 13th day of November, 2007.

GreenBldgGrant.res

**MEMORANDUM**

DATE: November 13, 2007

TO: The Board of Supervisors

FROM: John T.P. Horne, Development Manager

SUBJECT: Appropriation of Funds - Dominion Virginia Power – Five Forks Project - \$500,000

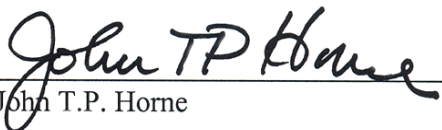
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The Five Forks underground utility project has been ongoing for several years and design is now complete and all rights-of-way have been acquired. This project is to convert overhead utilities to underground utilities and the tentative schedule of construction is January 2008 and shall be completed in the summer of 2008.

The County has completed plans and negotiations to accomplish the underground utilities for the Five Forks project. Most of the funding was initially anticipated to come from \$500,000 set aside in FY 2007 for underground utilities and those funds have been reserved in a fund balance. Residual funding beyond \$500,000 will come from the FY 2008 budget.

The attached resolution approves the project and appropriates the \$500,000 from the June 30, 2007, fund balance to complete the work.

Staff recommends approval of the attached resolution.

  
John T.P. Horne

JTPH/gb  
FiveForksPro.mem

Attachment

## **RESOLUTION**

### **APPROPRIATION OF FUNDS - DOMINION VIRGINIA POWER –**

#### **FIVE FORKS PROJECT - \$500,000**

WHEREAS, the Board has endorsed the Dominion Virginia Power Five Forks project to convert overhead utilities to underground utilities; and

WHEREAS, Dominion Virginia Power has now designed the project and is ready to proceed with construction.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of James City County, Virginia, that \$500,000 set aside for the project in the June 30, 2007, fund balance is appropriated to the underground utility project budget in FY 2008.

#### **Fund Balance:**

Miscellaneous	<u>\$500,000</u>
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#### **Expenditure:**

Non-Departmental Utilities	<u>\$500,000</u>
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John J. McGlennon  
Chairman, Board of Supervisors

ATTEST:

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Sanford B. Wanner  
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 13th day of November, 2007.

FiveForksPro.res

**MEMORANDUM**

DATE: November 13, 2007

TO: The Board of Supervisors

FROM: Bart J. Johnson, Risk Management Director

SUBJECT: Workers' Compensation Coverage for the James City County Board of Supervisors

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It is the intent of James City County to provide workers' compensation insurance coverage to the Board of Supervisors while they are performing all County related activities as Board members.

The State of Virginia Workers' Compensation Act requires a resolution or ordinance to be adopted in order for Board members to be defined as "employees" for the purpose of workers' compensation coverage. No such resolution or ordinance could be found on file within the County.

I recommend adoption of the attached resolution which will identify James City County Board of Supervisors' members as employees and provide them workers' compensation coverage in accordance with the State Workers' Compensation Act.

---

Bart J. Johnson

CONCUR:

---

John E. McDonald

BJJ/nb  
BOSwrksCmp.mem

Attachment

## **RESOLUTION**

### **WORKERS' COMPENSATION COVERAGE FOR THE JAMES CITY COUNTY**

#### **BOARD OF SUPERVISORS**

WHEREAS, James City County desires to afford workers' compensation coverage to the James City County Board of Supervisors; and

WHEREAS, Section 65.2-101 of the Code of Virginia, Definitions, Workers' Compensation Act identifies members of governing body as "employees" when coverage under this title is extended to such members by resolution or ordinance duly adopted.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of James City County, Virginia, that the James City County Board of Supervisors are hereby authorized to be included as employees for the purpose of the Workers' Compensation Act of the Commonwealth of Virginia, and entitled to all coverage provided under said Act.

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John J. McGlennon  
Chairman, Board of Supervisors

ATTEST:

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Sanford B. Wanner  
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 13th day of November, 2007.

BOSWrksCmp.res

**MEMORANDUM**

DATE: November 13, 2007

TO: The Board of Supervisors

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

SUBJECT: Endorsement of Bond Refunding for Williamsburg Landing by the City of Williamsburg Economic Development Authority and the Industrial Development Authority of Mathews County

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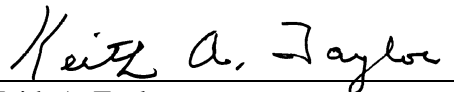
At its October 16, 2007, Work Session the Economic Development Authority (EDA) approved an Endorsement of Bond Refunding for Williamsburg Landing by the City of Williamsburg Economic Development Authority and the Industrial Development Authority of Mathews County. The City of Williamsburg Economic Development Authority and the Williamsburg City Council approved the bank-qualified Industrial Revenue Bonds for the completion of the present phase of the assisted-living facility project at the Williamsburg Landing James City County location.

The Industrial Development Authority of Mathews County and the Mathews County Board of Supervisors approved the bank-qualified Industrial Revenue Bonds for refunding of bonds issued by the James City County Economic Development Authority. The existing bonds have an interest rate reset every five years and the Landing has determined that now is a good time to have that rate fixed to maturity through a bank-qualified refunding.

By way of explanation, a letter from Mr. George Consolvo, Bond Counsel to Williamsburg Landing is attached. Williamsburg Landing seeks bank-qualified funding. James City County has exceeded its limit for such funding for the present calendar year.

Per the Virginia Code, Fiscal Impact Statements, Summary of Public Hearing Statements, and the signed EDA Resolutions (with Exhibit A) are also attached.

Staff recommends approval of the attached resolutions.

  
Keith A. Taylor

KAT/gb  
BondRefund.mem

Attachments



A RESOLUTION CONCURRING WITH THE ISSUANCE BY THE ECONOMIC  
DEVELOPMENT AUTHORITY OF THE CITY OF WILLIAMSBURG, VIRGINIA,  
OF ITS REVENUE BOND IN AN AMOUNT NOT TO EXCEED \$9,100,000 FOR  
WILLIAMSBURG LANDING, INC.

WHEREAS, there has been described to the Economic Development Authority of James City County, Virginia (the James City County Authority), the plans of Williamsburg Landing, Inc. (the Borrower), whose principal place of business is located in the County of James City, Virginia, at 5700 Williamsburg Landing Drive, Williamsburg, Virginia 23185, for the issuance by the Economic Development Authority of the City of Williamsburg, Virginia (the City of Williamsburg Authority), of its Revenue Bond (the Bond) in an amount not to exceed \$9,100,000 to assist the Borrower in (a) refinancing a loan to the Borrower to finance the construction and equipping of the Borrower's facilities for the residence and care of the aged, including independent living units and a fitness/wellness facility at 5700 Williamsburg Landing Drive, Williamsburg, Virginia, and (b) paying the cost of issuing the Bond; and

WHEREAS, the above facilities are owned by the Borrower; and

WHEREAS, a public hearing with respect to the Bond as required by Section 15.2-4906 of the Code of Virginia of 1950, as amended (the Virginia Code), and the Internal Revenue Code of 1986, as amended (the Code), was held by the James City County Authority on October 16, 2007; and

WHEREAS, the City of Williamsburg Authority also held a public hearing with respect to the Bond on September 19, 2007, and adopted an approving resolution (the City of Williamsburg Authority Resolution) with respect to the Bond on that date; and

WHEREAS, the James City County Authority has adopted a resolution (the James City County Authority Resolution) recommending that the Board of Supervisors of the County of James City, Virginia (the Board), concur with the City of Williamsburg Authority Resolution; and

WHEREAS, Section 15.2-4905 of the Virginia Code provides that the Board must concur with the adoption of the City of Williamsburg Authority Resolution prior to the issuance of the Bond; and

WHEREAS, the Code provides that the highest elected governmental officials of the governmental unit having jurisdiction over the area in which any facility financed with the proceeds of a private activity bond is located shall approve the issuance of such bond; and

WHEREAS, the Bond will refinance property located in the County of James City (the County) and the members of the Board constitute the highest elected governmental officials of the County; and

WHEREAS, a copy of the James City County Authority Resolution, the City of Williamsburg Authority Resolution, a summary of the comments made at the public hearing held by the James City County Authority and a statement in the form prescribed by Section 15.2-4907 of the Virginia Code have been filed with the Board.

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

1. The Board concurs with the adoption of the City of Williamsburg Authority Resolution, and approves the issuance of the Bond by the City of Williamsburg Authority to the extent required by the Code and Sections 15.2-4905 and 15.2-4906 of the Virginia Code.
2. The concurrence with the City of Williamsburg Authority Resolution, and the approval of the issuance of the Bond, as required by the Code and Sections 15.2-4905 and 15.2-4906 of the Virginia Code, do not constitute an endorsement to a prospective purchaser of the Bond of the creditworthiness of the Borrower or the project being refinanced and the Bond shall provide that no political subdivision of the Commonwealth of Virginia, including the County and the James City County Authority, shall be obligated to pay the Bond or the interest thereon or other costs incident thereto and neither the faith or credit nor the taxing power of the Commonwealth of Virginia or any political subdivision thereof, including the County and the James City County Authority, shall be pledged thereto.
3. 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, direct or consequential, resulting from the City of Williamsburg Authority's failure to issue the Bond for any reason.
4. This resolution shall take effect immediately upon its adoption.

Read and Adopted by the following vote:

Supervisor

Vote

M. Anderson Bradshaw  
Bruce C. Goodson  
James O. Icenhour, Jr.  
Jay T. Harrison, Sr.  
John J. McGlennon

---

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 13th day of  
November, 2007.

WilliamsburgEDA.res

A RESOLUTION CONCURRING WITH THE ISSUANCE BY THE INDUSTRIAL

DEVELOPMENT AUTHORITY OF MATHEWS COUNTY, VIRGINIA, OF ITS

REVENUE AND REFUNDING BOND IN AN AMOUNT NOT TO EXCEED

\$6,200,000 FOR WILLIAMSBURG LANDING, INC.

WHEREAS, there has been described to the Economic Development Authority of James City County, Virginia (the James City County Authority), the plans of Williamsburg Landing, Inc. (the Borrower), whose principal place of business is located in the County of James City, Virginia, at 5700 Williamsburg Landing Drive, Williamsburg, Virginia 23185, for the issuance by the Industrial Development Authority of Mathews County, Virginia (the Mathews Authority), of its revenue and refunding bond (the Bond) in an amount not to exceed \$6,200,000 to assist the Borrower in (a) currently refunding adjustable rate bonds issued by the James City County Authority to finance the construction, renovation and equipping of the Borrower's facilities for the residence and care of the aged, including independent living units and a fitness/wellness facility at 5700 Williamsburg Landing Drive, Williamsburg, Virginia, and (b) paying the cost of issuing the Bond; and

WHEREAS, the above facilities are owned by the Borrower; and

WHEREAS, a public hearing with respect to the Bond as required by Section 15.2-4906 of the Code of Virginia of 1950, as amended (the Virginia Code), and the Internal Revenue Code of 1986, as amended (the Code), was held by the James City County Authority on October 16, 2007; and

WHEREAS, the Mathews Authority also held a public hearing with respect to the Bond on September 20, 2007, and adopted an approving resolution (the Mathews Authority Resolution) with respect to the Bond on that date; and

WHEREAS, the James City County Authority has adopted a resolution (the James City County Authority Resolution) recommending that the Board of Supervisors of the County of James City, Virginia (the Board), concur with the Mathews Authority Resolution; and

WHEREAS, Section 15.2-4905 of the Virginia Code provides that the Board must concur with the adoption of the Mathews Authority Resolution prior to the issuance of the Bond; and

WHEREAS, the Code provides that the highest elected governmental officials of the governmental unit having jurisdiction over the area in which any facility financed with the proceeds of a private activity bond is located shall approve the issuance of such bond; and

WHEREAS, the Bond will refinance property located in the County of James City (the County) and the members of the Board constitute the highest elected governmental officials of the County; and

WHEREAS, a copy of the James City County Authority Resolution, the Mathews Authority Resolution, a summary of the comments made at the public hearing held by the James City County Authority and a statement in the form prescribed by Section 15.2-4907 of the Virginia Code have been filed with the Board.

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

1. The Board concurs with the adoption of the Mathews Authority Resolution, and approves the issuance of the Bond by the Mathews Authority to the extent required by the Code and Sections 15.2-4905 and 15.2-4906 of the Virginia Code.
2. The concurrence with the Mathews Authority Resolution, and the approval of the issuance of the Bond, as required by the Code and Sections 15.2-4905 and 15.2-4906 of the Virginia Code, do not constitute an endorsement to a prospective purchaser of the Bond of the creditworthiness of the Borrower or the project being refinanced and the Bond shall provide that no political subdivision of the Commonwealth of Virginia, including the County and the James City County Authority, shall be obligated to pay the Bond or the interest thereon or other costs incident thereto and neither the faith or credit nor the taxing power of the Commonwealth of Virginia or any political subdivision thereof, including the County and the James City County Authority, shall be pledged thereto.
3. 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, direct or consequential, resulting from the Mathews County Authority's failure to issue the Bond for any reason.
4. This resolution shall take effect immediately upon its adoption.

Read and Adopted by the following vote:

Supervisor

Vote

M. Anderson Bradshaw  
Bruce C. Goodson  
James O. Icenhour, Jr.  
Jay T. Harrison, Sr.  
John J. McGlennon

---

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 13th day of  
November, 2007.

MathewsIDA.res

# KAUFMAN & CANOLES

— | A Professional Corporation | —

**Attorneys and Counselors at Law**

George L. Consolvo  
757 / 624-3208  
glconsolvo@kaufcan.com

757 / 624-3000  
fax: 757 / 624-3169

*Mailing Address:*  
P.O. Box 3037  
Norfolk, VA 23514

150 West Main Street  
Suite 2100  
Norfolk, VA 23510

September 24, 2007

## VIA HAND DELIVERY

Keith A. Taylor, Director  
Economic Development Authority of  
James City County, Virginia  
101 Mounts Bay Road  
Williamsburg, VA 23185



Plan of Refinance with respect to the Edgewood Project  
at Williamsburg Landing, Inc. in James City County, Virginia

Dear Keith:

I have enclosed with this letter copies of the approving resolutions of the Economic Development Authority of James City County, Virginia (the James City County Authority), with respect to the plan of refinance of Williamsburg Landing, Inc. (Williamsburg Landing) with respect to its Edgewood Project. I have also attached the form of approving and concurring resolutions of the Board of Supervisors of the County of James City, Virginia.

The Edgewood Project, which is near completion, consists of the construction of sixty-three (63) independent living units, a 24,000 sq. ft. wellness/fitness complex and an 83,000 sq. ft. apartment building located at Williamsburg Landing whose address is 5700 Williamsburg Landing Drive in the County of James City, Virginia.

The Industrial Development Authority of Mathews County, Virginia (the Mathews IDA), will issue up to \$6,200,000 of its revenue bonds to redeem the Series 2003B revenue bonds issued by the James City County Authority to finance the construction of the Edgewood Project. The refinancing will result in debt service savings.

The Economic Development Authority of the City of Williamsburg, Virginia (the Williamsburg EDA), will issue up to \$9,100,000 of its revenue bonds to refinance a taxable note executed and delivered by Williamsburg Landing in 2006 to temporarily finance the completion of construction of the Edgewood Project. The refinancing will result in debt service savings.

In order to obtain the most favorable interest rate on the bonds to be issued by the Mathews IDA and the Williamsburg EDA, Williamsburg Landing is undertaking a plan of refinance utilizing

Disclosure Required by Internal Revenue Service Circular 230: This communication is not a tax opinion. To the extent it contains tax advice, it is not intended or written by the practitioner to be used, and it cannot be used by the taxpayer, for the purpose of avoiding tax penalties that may be imposed on the taxpayer by the Internal Revenue Service.

the issuance of "bank-qualified bonds" under Section 265(b)(3) of the Internal Revenue Code of 1986, as amended (the Code). Bank qualified tax-exempt bonds bear a low interest rate because the financial institution holding the bonds has the benefit of both tax-exempt interest and a partial income tax deduction with respect to the interest it pays on the funds it borrows to purchase and carry tax-exempt bonds. A portion of this additional tax benefit is passed on to the borrower under the bonds through a reduced interest rate.

The James City County Authority has issued in excess of \$10,000,000 of tax-exempt bonds for a 501(c)(3) organization this calendar year. Accordingly, the James City County Authority does not constitute a "small issuer" in calendar year 2007 within the meaning Section 265 of the Code, a "small issuer" being part of the criteria for qualification of bonds as "bank-qualified". Both the Mathews IDA and the Williamsburg EDA, however, are "small issuers" in calendar year 2007 within the meaning of Section 265 of the Code. Accordingly, Williamsburg Landing has requested the Mathews IDA and the Williamsburg EDA to issue bonds under the plan of refinance described above in calendar year 2007 as it cannot be determined whether any "small issuers" will be available in calendar year 2008.

Both the Mathews IDA and the Williamsburg EDA have adopted approving resolutions with respect to their respective bond issues and, as required by the Code, the City Council of the City of Williamsburg and the Board of Supervisors of Mathews County are expected to approve the issuance of bonds by their respective development authorities on or before October 11. Both the Mathews IDA and the Williamsburg EDA held public hearings prior to the adoption of their respective approving resolutions (on September 20 and September 19, respectively). There were no comments from the public at either such public hearing.

Since the Edgewood Project is located in the County of James City, however, public hearings with respect to the Mathews IDA bonds and the Williamsburg EDA bonds must be held by the James City County Authority and under the Code the Board of Supervisors of the County of James City must approve the issuance of the Mathews IDA bonds and the Williamsburg EDA bonds refinancing the Edgewood Project. Furthermore, under Virginia law, the Board of Supervisors of the County of James City must also concur with the resolutions of the Mathews IDA and the Williamsburg EDA approving the issuance of their respective bonds (those resolutions are attached as Exhibits to the James City County Authority resolutions).

Upon the issuance of the bonds by the Mathews IDA and the Williamsburg EDA, the James City County Authority and the Board of Supervisors of the County of James City will have no responsibilities or obligations with respect to the plan of refinance described herein.

The development of the Edgewood Project benefits the County of James City as the value of the real estate owned by Williamsburg Landing will increase which will increase real property tax revenues to the County of James City. Williamsburg Landing also benefits the residents of the



Keith A. Taylor, Director  
September 24, 2007  
Page 3

County of James City by providing a first class retirement and continuing care community in the County. Furthermore, residents of Williamsburg Landing shop and dine in the County and pay personal property taxes. Williamsburg Landing also pays for goods and services provided by companies located within the County and provides employment for County residents working as staff members at Williamsburg Landing.

I look forward to discussing the plan of refinance with the James City County Authority at its meeting on October 16, 2007, and greatly appreciate your coordinating this item for presentation at that meeting.

Notice of the public hearing to be held by the James City County Authority on October 16, 2007, will be published in The Virginia Gazette on September 26 and October 3.

The attached resolutions have been reviewed and commented upon by Steve Johnson.

Please let me know if I can be of any further assistance with respect to this matter or if you need any additional information at this time.

Very truly yours,

A handwritten signature in black ink, appearing to read "George", with a long, sweeping horizontal line extending to the right.

George L. Consolvo

GLC:mjd  
Enclosures  
cc: Stephen L. Johnson, Esquire (via e-mail w/encls.)

## THE VIRGINIA GAZETTE

Containing the Official Notices, Foreign and Domestic.

216 Ironbound Road, Williamsburg, VA 23188

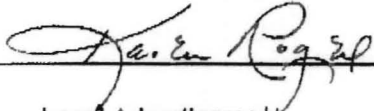
Williamsburg, VA October 3, 2007

This is to certify that the attached  
advertisement was published once a week  
for TWO successive weeks in THE VIRGINIA  
GAZETTE, the first publication being

SEPTEMBER 26, 2007.

THE VIRGINIA GAZETTE

BY



Legal Advertisement  
Public Hearing Notice

09/26 1 x 11.750 inches @ \$14.70 per inch =	\$172.73
10/03 1 x 11.750 inches @ \$14.70 per inch =	\$172.73
Total	\$345.46
	=====

Mary Jane Duvall  
James City County Economic Development Authority  
PO Bx 8784  
Williamsburg, VA 23187

409242 ad 1147331

NOTICE OF PUBLIC HEARING ON PROPOSED REVENUE BOND FINANCING BY THE ECONOMIC DEVELOPMENT AUTHORITY OF THE CITY OF WILLIAMSBURG, VIRGINIA, FOR WILLIAMSBURG LANDING, INC.

Notice is hereby given that on October 18, 2007, at 3:00 p.m., or as soon thereafter as a quorum of the Directors is present, the Economic Development Authority of James City County, Virginia (the Authority), will hold a public hearing, which may be continued or adjourned, in Building C, first floor Main Conference Room of the County of James City Government Center, 101-C Mounts Bay Road, Williamsburg, Virginia 23185, with respect to the issuance by the Economic Development Authority of the City of Williamsburg, Virginia (the City of Williamsburg Authority), of its revenue bond in an amount not to exceed \$9,100,000 to assist Williamsburg Landing, Inc. (the Borrower) in (a) refinancing a loan to the Borrower to finance the construction and equipping of the Borrowers facilities for the residence and care of the aged, including independent living units and a fitness/wellness facility at 5700 Williamsburg Landing Drive, Williamsburg, Virginia (the Project), and (b) paying the cost of issuing the bond. As required by Virginia law, neither the Authority, its Board of Directors nor any person acting on their behalf shall be liable personally on the bond by reason of the issuance thereof. The bond shall not be a debt of the County of James City or the Commonwealth of Virginia or any political subdivision thereof and neither the County of James City nor the Commonwealth of Virginia shall be liable for any payment of the bond and in no event shall such payment be made or become payable out of any funds, property or security except those of the City of Williamsburg. Authority specifically pledged to secure such payment. Persons interested in the issuance of the bond and/or the location or nature of the Project may appear and be heard at the public hearing. The address of the Authority is the County of James City Government Center, 101-C Mounts Bay Road, Williamsburg, Virginia 23185.

ECONOMIC  
DEVELOPMENT  
AUTHORITY  
OF JAMES CITY COUNTY,  
VIRGINIA

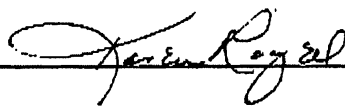
By: Keith A. Taylor,  
Secretary

THE VIRGINIA GAZETTE  
 Containing the freest Advice, Foreign and Domestic.  
 216 Ironbound Road, Williamsburg, VA 23188

Williamsburg, VA October 3, 2007

This is to certify that the attached  
 advertisement was published once a week  
 for TWO successive weeks in THE VIRGINIA  
 GAZETTE, the first publication being

SEPTEMBER 26, 2007.

THE VIRGINIA GAZETTE  
 BY   
 Legal Advertisement:  
 Public Hearing Notice

09/26 1 x 11.50 inches @ \$14.70 per inch =	\$169.05
10/03 1 x 11.50 inches @ \$14.70 per inch =	\$169.05
Total	\$338.10

Mary Jane Duvall  
 James City County Economic Development Authority  
 PO Bx 8784  
 Williamsburg, VA 23187

—NOTICE OF PUBLIC  
 HEARING ON PROPOSED  
 REVENUE AND REFUNDING  
 BOND FINANCING BY THE  
 INDUSTRIAL DEVELOP-  
 MENT AUTHORITY OF  
 MATHEWS COUNTY, VIR-  
 GINIA, FOR WILLIAMSBURG  
 LANDING, INC.

Notice is hereby given that on October 16, 2007, at 3:00, or as soon thereafter as a quorum of the Directors is present, the Economic Development Authority of James City County, Virginia (the Authority), will hold a public hearing, which may be continued or adjourned, in Building C, first floor Main Conference Room of the County of James City Government Center, 101-C Mounts Bay Road, Williamsburg, Virginia 23185, with respect to the issuance by the Industrial Development Authority of Mathews County, Virginia (the Mathews Authority), of its revenue and refunding bond in an amount not to exceed \$6,200,000 to assist Williamsburg Landing, Inc. (the Borrower) in (a) currently refunding adjustable rate bonds issued by the Authority to finance the construction, renovation and equipping of the Borrowers facilities for the residence and care of the aged, including independent living units and a fitness/wellness facility in the County of James City at 5700 Williamsburg Landing Drive, Williamsburg, Virginia (the Project), and (b) paying the cost of issuing the bond. As required by Virginia law, neither the Authority, its Board of Directors nor any person acting on their behalf in executing the bond shall be liable personally on the bond by reason of the issuance thereof. The bond shall not be a debt of the County of James City or the Commonwealth of Virginia or any political subdivision thereof and neither the County of James City nor the Commonwealth of Virginia shall be liable for

any payment of the bond and in no event shall such payment be made or become payable out of any funds, property or security except those of the Mathews Authority specifically pledged to secure such payment. Persons interested in the issuance of the bond and/or the location or nature of the Project may appear and be heard at the public hearing. The address of the Authority is the County of James City Government Center, 101-C Mounts Bay Road, Williamsburg, Virginia 23185.

ECONOMIC DEVELOPMENT  
 AUTHORITY  
 OF JAMES CITY COUNTY,  
 VIRGINIA

By: Keith A. Taylor,  
 Secretary

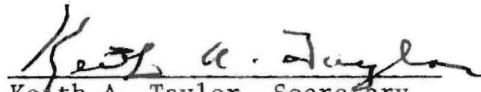
09-26-07; 10-02-07

## SUMMARY OF PUBLIC HEARING STATEMENTS

The Economic Development Authority of James City County, Virginia (the Authority), conducted a public hearing at 3:15 p.m. on October 16, 2007, in the first floor Main Conference Room of the County of James City Government Center, 101-C Mounts Bay Road, Williamsburg, Virginia 23185, on the issuance by the Economic Development Authority of the City of Williamsburg, Virginia (the City of Williamsburg Authority), of its revenue bond (the Bond) in an amount not to exceed \$9,100,000, pursuant to the Industrial Development and Revenue Bond Act, Chapter 49, Title 15.2, Code of Virginia of 1950, as amended (the "Act"), to assist Williamsburg Landing, Inc. (the Borrower), whose principal place of business is located in the County of James City, Virginia, at 5700 Williamsburg Landing Drive, Williamsburg, Virginia 23185, to (a) refinance a loan to the Borrower to finance the construction and equipping of the Borrower's facilities for the residence and care of the aged, including independent living units and a fitness/wellness facility at 5700 Williamsburg Landing Drive, Williamsburg, Virginia, and (b) pay the cost of issuing the Bond.

George L. Consolvo of Kaufman & Canoles, P.C., bond counsel, explained to the Authority the nature of the plan of finance, the uses of the bond proceeds, the legal requirements pertaining to the governmental approval process and addressed questions posed by members of the Authority. Mr. Steve Montgomery, Chief Executive Officer of the Borrower, addressed questions posed by members of the Authority concerning the Borrower's operations.

Thereafter, the Chairman of the Authority closed the public hearing at 3:30 p.m.

  
Keith A. Taylor, Secretary  
Economic Development Authority of  
James City County, Virginia

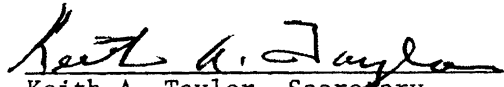
## SUMMARY OF PUBLIC HEARING STATEMENTS

The Economic Development Authority of James City County, Virginia (the Authority), conducted a public hearing at 3:00 p.m. on October 16, 2007, in the first floor meeting room in the County's Administrative Complex at 101-C Mounts Bay Road, Williamsburg, Virginia, on the issuance by the Industrial Development Authority of Mathews County, Virginia (the Mathews Authority), of its revenue and refunding bond (the Bond) in an amount not to exceed \$6,200,000, pursuant to the Industrial Development and Revenue Bond Act, Chapter 49, Title 15.2, Code of Virginia of 1950, as amended (the "Act"), to assist Williamsburg Landing, Inc. (the Borrower), whose principal place of business is located in the County of James City, Virginia, at 5700 Williamsburg Landing Drive, Williamsburg, Virginia 23185, to (a) currently refund adjustable rate bonds issued by the Authority to finance the construction, renovation and equipping of the Borrower's facilities for the residence and care of the aged, including independent living units and a fitness/wellness facility at 5700 Williamsburg Landing Drive, Williamsburg, Virginia, and (b) pay the cost of issuing the Bond.

George L. Consolvo of Kaufman & Canoles, P.C., bond counsel, explained to the Authority the nature of the plan of finance, the uses of the bond proceeds, the legal requirements pertaining to the governmental approval process and addressed questions posed by members of the Authority. Mr. Steve Montgomery, Chief Executive Officer of the Borrower, addressed questions posed by members of the Authority concerning the Borrower's operations and credit worthiness.

Thereafter, the Chairman of the Authority closed the public hearing at 3:15 p.m.

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Keith A. Taylor, Secretary  
Economic Development Authority of  
James City County, Virginia

RESOLUTION OF THE  
ECONOMIC DEVELOPMENT AUTHORITY OF JAMES CITY COUNTY, VIRGINIA  
FOR WILLIAMSBURG LANDING, INC.

WHEREAS, there has been described to the Economic Development Authority of James City County, Virginia (the Authority), the plan of refinance of Williamsburg Landing, Inc. (the Borrower), whose principal place of business is located in the County of James City, Virginia, at 5700 Williamsburg Landing Drive, Williamsburg, Virginia 23185, for the issuance by the Economic Development Authority of the City of Williamsburg, Virginia (the City of Williamsburg Authority), of its Revenue Bond (the Bond) in an amount not to exceed \$9,100,000 to assist the Borrower in (a) refinancing a loan to the Borrower to finance the construction and equipping of the Borrower's facilities for the residence and care of the aged, including independent living units and a fitness/wellness facility at 5700 Williamsburg Landing Drive, Williamsburg, Virginia, and (b) paying the cost of issuing the Bond; and

WHEREAS, the Authority has been advised that a public hearing with respect to the Bond as required by Virginia law and the Internal Revenue Code of 1986, as amended (the Code), was held by the City of Williamsburg Authority on September 19, 2007, and thereafter the City of Williamsburg Authority adopted a resolution (the City of Williamsburg Authority Resolution) approving the issuance of the Bond; and

WHEREAS, the Borrower has elected to proceed with a plan of finance pursuant to which the Bond will be privately placed with and held by a financial institution (the Lender) to be selected by the Borrower; and

WHEREAS, the Borrower in its appearance before the Authority has described the debt service cost savings relating to the issuance of the Bond as a "qualified tax-exempt obligation" within the meaning of Section 265(b)(3) of the Code and the benefits to the citizens of the County of James City, Virginia, (the County), to be derived from the issuance of the Bond; and

WHEREAS, the Authority has been advised that it will not be able to issue "qualified tax-exempt obligations" in calendar year 2007; and

WHEREAS, a public hearing with respect to the Bond as required by Virginia law and the Code has been held at this meeting;

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

1. It is hereby found and determined that the issuance of the Bond will promote health care in the County, benefit its inhabitants and promote their safety, health, welfare, convenience and prosperity.

2. To assist the Borrower in having the Bond issued for its benefit, the Authority hereby recommends that the Board of Supervisors of the County of James City, Virginia (the Board), approve the issuance of the Bond and concur with the City of Williamsburg Authority Resolution approving the Bond, the form of which Resolution is attached hereto as Exhibit A, as required by Section 15.2-4905



of the Code of Virginia of 1950, as amended (the Virginia Code), and hereby directs the Chairman or Vice Chairman of the Authority to submit to the Board the statement in the form prescribed by Section 15.2-4907 of the Virginia Code, a reasonably detailed summary of the comments expressed at the public hearing held at this meeting pursuant to Section 15.2-4906 of the Virginia Code, and a copy of this resolution.

3. All costs and expenses in connection with the financing plan, including the fees and expenses of the Authority, and the fees and expenses of counsel for the Authority, shall be paid promptly from the proceeds of the Bond to the extent permitted by law or from funds provided by the Borrower. If for any reason the Bond is not issued, it is understood that all such fees and expenses shall be paid promptly by the Borrower upon presentation of an invoice and that the Authority shall have no responsibility therefor. The Borrower agrees to indemnify and save harmless the Authority's directors, employees, agents and counsel from and against all liabilities, obligations, claims, penalties, losses, costs and expenses in any way connected with the issuance of the Bond and the Borrower's plan of finance as described herein.

4. All 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 Bond are hereby approved and confirmed.

5. The approval of the issuance of the Bond, as required by the Code and Sections 15.2-4905 and 15.2-4906 of the Virginia Code, does not constitute an endorsement to a prospective purchaser of the Bond of the creditworthiness of the Borrower, and, as required by Section 15.2-4909 of the Virginia Code, the Bond shall provide that no political subdivision of the Commonwealth of Virginia shall be obligated to pay the Bond or the interest thereon or other costs incident thereto except from the revenues and moneys pledged therefor and neither the faith or credit nor the taxing power of the Commonwealth of Virginia or any political subdivision of the Commonwealth of Virginia shall be pledged thereto.

6. This resolution shall take effect immediately upon its adoption.

The undersigned hereby certifies that the above resolution was duly adopted by the directors of the Economic Development Authority of James City County, Virginia, at a meeting duly called and held on October 16, 2007, and that such resolution is in full force and effect on the date hereof.

Dated: Oct. 16, 2007

  
Secretary, Economic Development Authority of James  
City County, Virginia

RESOLUTION OF THE  
ECONOMIC DEVELOPMENT AUTHORITY OF JAMES CITY COUNTY, VIRGINIA  
FOR WILLIAMSBURG LANDING, INC.

WHEREAS, there has been described to the Economic Development Authority of James City County, Virginia (the Authority), the plan of refinance of Williamsburg Landing, Inc. (the Borrower), whose principal place of business is located in the County of James City, Virginia, at 5700 Williamsburg Landing Drive, Williamsburg, Virginia 23185, for the issuance by the Industrial Development Authority of Mathews County, Virginia (the Mathews County Authority), of its revenue and refunding bond (the Bond) in an amount not to exceed \$6,200,000 to assist the Borrower in (a) currently refunding adjustable rate bonds issued by the Authority to finance the construction, renovation and equipping of the Borrower's facilities for the residence and care of the aged, including independent living units and a fitness/wellness facility at 5700 Williamsburg Landing Drive, Williamsburg, Virginia, and (b) paying the cost of issuing the Bond; and

WHEREAS, the Authority has been advised that a public hearing with respect to the Bond as required by Virginia law and the Internal Revenue Code of 1986, as amended (the Code), was held by the Mathews County Authority on September 20, 2007, and thereafter the Mathews County Authority adopted a resolution (the Mathews County Authority Resolution) approving the issuance of the Bond; and

WHEREAS, the Borrower has elected to proceed with a plan of finance pursuant to which the Bond will be privately placed with and held by a financial institution (the Lender) to be selected by the Borrower; and

WHEREAS, the Borrower in its appearance before the Authority has described the debt service cost savings relating to the issuance of the Bond as a "qualified tax-exempt obligation" within the meaning of Section 265(b)(3) of the Code and the benefits to the citizens of the County of James City, Virginia, (the County), to be derived from the issuance of the Bond; and

WHEREAS, the Authority has been advised that it will not be able to issue "qualified tax-exempt obligations" in calendar year 2007; and

WHEREAS, a public hearing with respect to the Bond as required by Virginia law and the Code has been held at this meeting;

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

1. It is hereby found and determined that the issuance of the Bond will promote health care in the County, benefit its inhabitants and promote their safety, health, welfare, convenience and prosperity.

2. To assist the Borrower in having the Bond issued for its benefit, the Authority hereby recommends that the Board of Supervisors of the County of James City, Virginia (the Board), approve the issuance of the Bond and concur with the Mathews County Authority Resolution approving the Bond, the form of which Resolution is attached hereto as Exhibit A, as required by Section 15.2-4905



of the Code of Virginia of 1950, as amended (the Virginia Code), and hereby directs the Chairman or Vice Chairman of the Authority to submit to the Board the statement in the form prescribed by Section 15.2-4907 of the Virginia Code, a reasonably detailed summary of the comments expressed at the public hearing held at this meeting pursuant to Section 15.2-4906 of the Virginia Code, and a copy of this resolution.

3. All costs and expenses in connection with the financing plan, including the fees and expenses of the Authority, and the fees and expenses of counsel for the Authority, shall be paid promptly from the proceeds of the Bond to the extent permitted by law or from funds provided by the Borrower. If for any reason the Bond is not issued, it is understood that all such fees and expenses shall be paid promptly by the Borrower upon presentation of an invoice and that the Authority shall have no responsibility therefor. The Borrower agrees to indemnify and save harmless the Authority's directors, employees, agents and counsel from and against all liabilities, obligations, claims, penalties, losses, costs and expenses in any way connected with the issuance of the Bond and the Borrower's plan of finance as described herein.

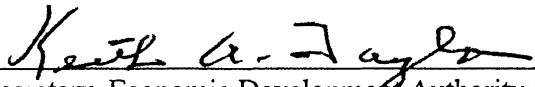
4. All acts of the officers of the Authority which are in conformity with the purposes and intent of this resolution and in furtherance of the issuance and sale of the Bond are hereby approved and confirmed.

5. The approval of the issuance of the Bond, as required by the Code and Sections 15.2-4905 and 15.2-4906 of the Virginia Code, does not constitute an endorsement to a prospective purchaser of the Bond of the creditworthiness of the Borrower, and, as required by Section 15.2-4909 of the Virginia Code, the Bond shall provide that no political subdivision of the Commonwealth of Virginia shall be obligated to pay the Bond or the interest thereon or other costs incident thereto except from the revenues and moneys pledged therefor and neither the faith or credit nor the taxing power of the Commonwealth of Virginia or any political subdivision of the Commonwealth of Virginia shall be pledged thereto.

6. This resolution shall take effect immediately upon its adoption.

The undersigned hereby certifies that the above resolution was duly adopted by the directors of the Economic Development Authority of James City County, Virginia, at a meeting duly called and held on October 16, 2007, and that such resolution is in full force and effect on the date hereof.

Dated: Oct. 16, 2007

  
Secretary, Economic Development Authority of James  
City County, Virginia

::ODMA\PCDOCS\DOCSNFK\1250422\3

EXHIBIT A  
RESOLUTION OF  
ECONOMIC DEVELOPMENT AUTHORITY  
OF THE CITY OF WILLIAMSBURG, VIRGINIA

WHEREAS, there has been described to the Economic Development Authority of the City of Williamsburg, Virginia (the Authority), the plan of refinancing of Williamsburg Landing, Inc. (the Borrower), whose principal place of business is located in the County of James City, Virginia, at 5700 Williamsburg Landing Drive, Williamsburg, Virginia 23185, for the issuance by the Authority of its Revenue Bond (the Bond) in an amount not to exceed \$9,100,000 to assist the Borrower in (a) refinancing a loan to the Borrower to finance the construction and equipping of the Borrower's facilities for the residence and care of the aged, including independent living units and a fitness/wellness facility at 5700 Williamsburg Landing Drive, Williamsburg, Virginia, and (b) paying the cost of issuing the Bond; and

WHEREAS, the Borrower has elected to proceed with a plan of finance pursuant to which the Bond will be privately placed with and held by a financial institution to be selected by the Borrower (the Lender); and

WHEREAS, the Borrower in its appearance before the Authority has described the debt service cost savings relating to the issuance of the Bond as a "qualified tax-exempt obligation" within the meaning of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended (the Code), and has represented that the Borrower is a corporation described in Section 501(c)(3) of the Code and which is exempt from federal income taxation pursuant to Section 501(a) of the Code; and

WHEREAS, the Borrower in its appearance before the Authority has described the health care and other benefits to the Commonwealth of Virginia to be derived from the issuance of the Bond and has requested the Authority to agree to issue the Bond under the Industrial Development and Revenue Bond Act, Chapter 49, Title 15.2, Code of Virginia of 1950, as amended (the Act), to assist the Borrower in refinancing the facilities described above; and

WHEREAS, the proceeds of the Bond will also finance the cost of issuing the Bond; and

WHEREAS, a public hearing has been held by the Authority as required by the Act and Section 147(f) of the Code on the date hereof;

WHEREAS, there have been presented to this meeting the forms of the following documents and instruments which the Authority proposes to execute to carry out the transactions described above:

(a) Bond Purchase and Financing Agreement (the Bond Purchase Agreement), dated as of October 1, 2007, among the Authority, the Borrower and the Lender, together with the Borrower's promissory note (the Note) payable to the Authority; and

(b) The Authority's Revenue Bond (Williamsburg Landing Project), Series 2007 (the Bond), in registered form, and payable, in the principal amount and bearing interest, all as set forth therein.

BE IT RESOLVED BY THE ECONOMIC DEVELOPMENT AUTHORITY OF THE CITY OF WILLIAMSBURG, VIRGINIA:

1. It is hereby found and determined that the plan of refinance described above is in accordance with the purposes of the Act and will benefit the inhabitants of the Commonwealth of Virginia and promote their safety, health and welfare.

2. To assist the Borrower in such plan of refinance, the Authority hereby agrees to undertake the issuance of the Bond.

3. Concurrently with the issuance of the Bond, the Chairman or Vice Chairman of the Authority is hereby authorized and directed to execute and to deliver the Bond Purchase Agreement to the other parties thereto.

4. The Chairman or Vice Chairman of the Authority is hereby authorized and directed to execute, the Secretary or Assistant Secretary is authorized and directed to affix and attest the seal of the Authority, and either is authorized and directed to deliver the Bond to the Lender upon the terms provided in the Bond Purchase Agreement; provided, however, that delivery of the Bond shall not occur until (a) the Bond has been approved by the City Council of the City of Williamsburg, Virginia (the Council); and (b) the Industrial Development Authority of the County of James City, Virginia, has conducted a public hearing in accordance with the Act and the Code with respect to the Bond; and the Board of Supervisors of the County of James City, Virginia, by resolution concurs with the adoption of this resolution in accordance with the Act. All terms of the Bond are by this reference thereto incorporated herein as a part of this resolution.

5. The Chairman or Vice Chairman of the Authority is hereby authorized and directed to execute and deliver to the Lender an assignment of the Note and of the rights of the Authority under the Bond Purchase Agreement (except for the reserved rights set forth therein).

6. The Bond Purchase Agreement, the Note and the Bond shall be in substantially the forms presented at this meeting which are hereby approved, with such completions, omissions, insertions and changes as may be approved by the Chairman or Vice Chairman of the Authority, his execution to constitute conclusive evidence of his approval of any such omissions, insertions and changes; provided, however, that if the principal amount of the Bond and the interest thereon have not been established as of the date hereof, such principal amount shall not exceed \$9,100,000 and such rate of interest shall not exceed 6.50%.

7. The officers of the Authority are hereby authorized and directed to execute and deliver all certificates and instruments, including Internal Revenue Service Form 8038, and to take all such further action as they may consider necessary or desirable in connection with the issuance and sale of the Bond and the undertaking of the plan of refinance described herein.

8. The Authority hereby agrees to the recommendation of the Borrower that Kaufman &



Canoles, P.C., Norfolk, Virginia, be appointed as bond counsel and hereby appoints such firm to supervise the proceedings and approve the issuance of the Bond.

9. All costs and expenses in connection with the financing, including the Authority's administrative fees, the fees and expenses of bond counsel, counsel for the Authority and counsel for the Lender, shall be paid from the proceeds of the Bond or from funds of the Borrower. If for any reason the Bond is not issued, it is understood that all such fees and expenses shall be paid by the Borrower and that the Authority shall have no responsibility therefor.

10. The Authority hereby designates the Bond a "qualified tax-exempt obligation" within the meaning of Section 265(b)(3) of the Code for calendar year 2007.

11. The Authority's officers shall perform such other acts and adopt such further resolutions as may be required to implement its undertakings as hereinabove set forth.

12. The Authority hereby recommends that the Council approve the issuance of the Bond and hereby directs the Chairman or Vice Chairman to submit to the Council the statement in the form prescribed by Section 15.2-4907 of the Act, to provide to the Council a reasonably detailed summary of the comments expressed at the public hearing required by Section 15.2-4906 of the Act, and to provide a copy of this resolution and, upon their receipt, a copy of the concurring resolution heretofore described.

13. Neither the Authority nor the Council have endorsed the creditworthiness of the Borrower or the ability of the Borrower to repay the Note and any purchaser of the Bond shall agree to purchase the Bond at his sole risk and that no representations of any kind have been made to the Lender by either the Authority or the Council.

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

The undersigned hereby certifies that the above resolution was duly adopted by roll call vote by a majority of the directors of the Economic Development Authority of the City of Williamsburg, Virginia, at a meeting duly called and held on September 19, 2007, and that such resolution is in full force and effect on the date hereof.

Dated: September \_\_, 2007

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Secretary, Economic Development Authority  
of the City of Williamsburg, Virginia

EXHIBIT A  
RESOLUTION OF  
INDUSTRIAL DEVELOPMENT AUTHORITY  
OF MATHEWS COUNTY, VIRGINIA

WHEREAS, there has been described to the Industrial Development Authority of Mathews County, Virginia (the Authority), the plan of refinancing of Williamsburg Landing, Inc. (the Borrower), whose principal place of business is located in the County of James City, Virginia, at 5700 Williamsburg Landing Drive, Williamsburg, Virginia 23185, for the issuance by the Authority of its revenue and refunding bond (the Bond) in an amount not to exceed \$6,200,000 to assist the Borrower in (a) currently refunding adjustable rate bonds issued by the Industrial Development Authority of the County of James City, Virginia, to finance the construction, renovation and equipping of the Borrower's facilities for the residence and care of the aged, including independent living units and a fitness/wellness facility at 5700 Williamsburg Landing Drive, Williamsburg, Virginia, and (b) paying the cost of issuing the Bond; and

WHEREAS, the Borrower has elected to proceed with a plan of finance pursuant to which the Bond will be privately placed with and held by a financial institution to be selected by the Borrower (the Lender); and

WHEREAS, the Borrower in its appearance before the Authority has described the debt service cost savings relating to the issuance of the Bond as a "qualified tax-exempt obligation" within the meaning of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended (the Code), and has represented that the Borrower is a corporation described in Section 501(c)(3) of the Code and which is exempt from federal income taxation pursuant to Section 501(a) of the Code; and

WHEREAS, the Borrower in its appearance before the Authority has described the health care and other benefits to the Commonwealth of Virginia to be derived from the issuance of the Bond and has requested the Authority to agree to issue the Bond under the Industrial Development and Revenue Bond Act, Chapter 49, Title 15.2, Code of Virginia of 1950, as amended (the Act), to assist the Borrower in refinancing the facilities described above; and

WHEREAS, the proceeds of the Bond will also finance the cost of issuing the Bond; and

WHEREAS, a public hearing has been held by the Authority as required by the Act and Section 147(f) of the Code on the date hereof;

WHEREAS, there have been presented to this meeting the forms of the following documents and instruments which the Authority proposes to execute to carry out the transactions described above:

(a) Bond Purchase and Financing Agreement (the Bond Purchase Agreement), dated as of December 1, 2007, among the Authority, the Borrower and the Lender, together with the Borrower's promissory note (the Note) payable to the Authority; and

(b) The Authority's Revenue and Refunding Bond (Williamsburg Landing Project), Series 2007 (the Bond), in registered form, and payable, in the principal amount and bearing interest, all as set forth therein.

BE IT RESOLVED BY THE INDUSTRIAL DEVELOPMENT AUTHORITY OF MATHEWS COUNTY, VIRGINIA:

1. It is hereby found and determined that the plan of refinance described above is in accordance with the purposes of the Act and will benefit the inhabitants of the Commonwealth of Virginia and promote their safety, health and welfare.

2. To assist the Borrower in such plan of refinance, the Authority hereby agrees to undertake the issuance of the Bond.

3. Concurrently with the issuance of the Bond, the Chairman or Vice Chairman of the Authority is hereby authorized and directed to execute and to deliver the Bond Purchase Agreement to the other parties thereto.

4. The Chairman or Vice Chairman of the Authority is hereby authorized and directed to execute, the Secretary or Assistant Secretary is authorized and directed to affix and attest the seal of the Authority, and either is authorized and directed to deliver the Bond to the Lender upon the terms provided in the Bond Purchase Agreement; provided, however, that delivery of the Bond shall not occur until (a) the Bond has been approved by the Board of Supervisors of Mathews County, Virginia (the Board); and (b) the Industrial Development Authority of the County of James City, Virginia, has conducted a public hearing in accordance with the Act and the Code with respect to the Bond; and the Board of Supervisors of the County of James City, Virginia, by resolution concurs with the adoption of this resolution in accordance with the Act. All terms of the Bond are by this reference thereto incorporated herein as a part of this resolution.

5. The Chairman or Vice Chairman of the Authority is hereby authorized and directed to execute and deliver to the Lender an assignment of the Note and of the rights of the Authority under the Bond Purchase Agreement (except for the reserved rights set forth therein).

6. The Bond Purchase Agreement, the Note and the Bond shall be in substantially the forms presented at this meeting which are hereby approved, with such completions, omissions, insertions and changes as may be approved by the Chairman or Vice Chairman of the Authority, his execution to constitute conclusive evidence of his approval of any such omissions, insertions and changes; provided, however, that if the principal amount of the Bond and the interest thereon have not been established as of the date hereof, such principal amount shall not exceed \$6,200,000 and such rate of interest shall not exceed 6.50%.

7. The officers of the Authority are hereby authorized and directed to execute and deliver all certificates and instruments, including Internal Revenue Service Form 8038, and to take all such further action as they may consider necessary or desirable in connection with the issuance and sale of the Bond and the undertaking of the plan of refinance described herein.

8. The Authority hereby agrees to the recommendation of the Borrower that Kaufman & Canoles, P.C., Norfolk, Virginia, be appointed as bond counsel and hereby appoints such firm to supervise the proceedings and approve the issuance of the Bond.

9. All costs and expenses in connection with the financing, including the Authority's administrative fees, the fees and expenses of bond counsel, counsel for the Authority and counsel for the Lender, shall be paid from the proceeds of the Bond or from funds of the Borrower. If for any reason the Bond is not issued, it is understood that all such fees and expenses shall be paid by the Borrower and that the Authority shall have no responsibility therefor.

10. The Authority hereby designates the Bond a "qualified tax-exempt obligation" within the meaning of Section 265(b)(3) of the Code for calendar year 2007.

11. The Authority's officers shall perform such other acts and adopt such further resolutions as may be required to implement its undertakings as hereinabove set forth.

12. The Authority hereby recommends that the Board approve the issuance of the Bond and hereby directs the Chairman or Vice Chairman to submit to the Board the statement in the form prescribed by Section 15.2-4907 of the Act, to provide to the Board a reasonably detailed summary of the comments expressed at the public hearing required by Section 15.2-4906 of the Act, and to provide a copy of this resolution and, upon their receipt, a copy of the concurring resolution heretofore described.

13. Neither the Authority nor Mathews County have endorsed the creditworthiness of the Borrower or the ability of the Borrower to repay the Note and any purchaser of the Bond shall agree to purchase the Bond at his sole risk and that no representations of any kind have been made to the Lender by either the Authority or Mathews County.

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

The undersigned hereby certifies that the above resolution was duly adopted by roll call vote by a majority of the directors of the Industrial Development Authority of Mathews County, Virginia, at a meeting duly called and held on September 20, 2007, and that such resolution is in full force and effect on the date hereof.

Dated: September \_\_, 2007

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Secretary, Industrial Development Authority  
of Mathews County, Virginia



FISCAL IMPACT STATEMENT  
SUBMITTED TO THE  
ECONOMIC DEVELOPMENT AUTHORITY OF JAMES CITY COUNTY, VIRGINIA

The undersigned applicant, in order to permit Williamsburg Landing, Inc., to submit the following information in compliance with Section 15.2-4907 of the Code of Virginia of 1950, as amended, states:

Name of applicant: Williamsburg Landing, Inc.

Facility: Located in the County of James City, Virginia, at 5700 Williamsburg Landing Drive,  
Williamsburg, Virginia

- |    |   |              |
|----|---|--------------|
| 1. | Maximum amount of financing sought  | \$6,200,000  |
| 2. | Estimated taxable value of facility's real property to be constructed in the locality                                 | \$13,938,469 |
| 3. | Estimated real property tax per year using present tax rates  | \$106,629    |
| 4. | Estimated personal property tax per year using present tax rates  | \$9000       |
| 5. | Estimated merchant's capital tax per year using present tax rates   | \$0          |
| 6. | a. Estimated dollar value per year of goods that will be purchased from Virginia companies within the locality        | \$10,000     |
|    | b. Estimated dollar value per year of goods that will be purchased from non-Virginia companies within the locality    | \$2,000      |
|    | c. Estimated dollar value per year of services that will be purchased from Virginia companies within the locality     | \$15,000     |
|    | d. Estimated dollar value per year of services that will be purchased from non-Virginia companies within the locality | \$0          |
| 7. | Estimated number of regular employees on year round basis   | 4            |
| 8. | Average annual salary per employee  | \$24,000     |

Dated: October 16, 2007

WILLIAMSBURG LANDING, INC.

By: SH Humphrey  
Authorized Representative

ECONOMIC DEVELOPMENT AUTHORITY OF JAMES  
CITY COUNTY, VIRGINIA

By: Mark  
Chairman

FISCAL IMPACT STATEMENT  
SUBMITTED TO THE  
ECONOMIC DEVELOPMENT AUTHORITY OF JAMES CITY COUNTY, VIRGINIA

The undersigned applicant, in order to permit Williamsburg Landing, Inc., to submit the following information in compliance with Section 15.2-4907 of the Code of Virginia of 1950, as amended, states:

Name of applicant: Williamsburg Landing, Inc.

Facility: Located in the County of James City, Virginia, at 5700 Williamsburg Landing Drive,  
Williamsburg, Virginia

- |    |   |              |
|----|---|--------------|
| 1. | Maximum amount of financing sought  | \$9,100,000  |
| 2. | Estimated taxable value of facility's real property to be constructed in the locality                                 | \$13,938,469 |
| 3. | Estimated real property tax per year using present tax rates  | \$106,629    |
| 4. | Estimated personal property tax per year using present tax rates  | \$9000       |
| 5. | Estimated merchant's capital tax per year using present tax rates   | \$0          |
| 6. | a. Estimated dollar value per year of goods that will be purchased from Virginia companies within the locality        | \$10,000     |
|    | b. Estimated dollar value per year of goods that will be purchased from non-Virginia companies within the locality    | \$2,000      |
|    | c. Estimated dollar value per year of services that will be purchased from Virginia companies within the locality     | \$15,000     |
|    | d. Estimated dollar value per year of services that will be purchased from non-Virginia companies within the locality | \$0          |
| 7. | Estimated number of regular employees on year round basis   | 4            |
| 8. | Average annual salary per employee  | \$24,000     |

Dated: October 16, 2007

WILLIAMSBURG LANDING, INC.

By: SH Kaufman  
Authorized Representative

ECONOMIC DEVELOPMENT AUTHORITY OF JAMES  
CITY COUNTY, VIRGINIA

By: Malcolm  
Chairman

**SPECIAL USE PERMIT-0028-2007 Raymond Minor One-Acre Family Subdivision  
Staff Report for the November 13, 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**

Board of Supervisors:

**Building F Board Room; County Government Complex**

November 13, 2007, 7:00 p.m.

**SUMMARY FACTS**

Applicant:

Mr. Raymond Minor

Land Owner:

Raymond N. Minor and Virginia M. Minor

Proposal:

The owners have requested a subdivision of their property that would result in the creation of two lots of less than three acres in size. The new lot created by this proposed subdivision would be transferred to and used by the Minor's daughter, Crystal L. Minor, for a single-family residence.

Location:

6111 Riverview Road

Tax Map/Parcel Nos.:

1630100004A

Parcel Size:

Parent Lot (Parcel A-1 + Parcel A-2): 3.351 acres

Proposed Lot (Parcel A-2): 1.00 acres

Remaining Parent Lot (Parcel A-1): 2.251 acres

Zoning:

A-1, General Agricultural

Comprehensive Plan:

Rural Lands

Primary Service Area:

Outside

**STAFF RECOMMENDATION**

Staff finds the proposal to be compatible with surrounding land uses, and consistent with Section 19-17 of the James City County Subdivision Ordinance. Staff recommends approval of this application with the conditions listed in the attached resolution.

Staff Contact:

David W. German

Phone: 253-6685

**PROJECT DESCRIPTION**

Mr. Raymond N. Minor has applied for a Special Use Permit (SUP) to allow for a family subdivision of a parent parcel of 3.351 acres. The proposed subdivision would create a new lot of 1.000 acre, leaving a parent parcel of 2.351 acres. The subject parcel is zoned A-1, General Agriculture, and is located at 6111 Riverview Road. The parent parcel may be further identified as Parcel No. (1-4A) on James City County Real Estate Tax Map No. (16-3), and is currently owned by Raymond N. and Virginia M. Minor. The Minors have owned this parcel since May 16, 1986. The property is located approximately 1,000 feet east of the Riverview Road (Route 606) and Newman Road (Route 646) intersection, and the Wexford Hills subdivision.

This subdivision is characterized by large, wooded lots (three acres or more in size) occupied by single-family homes. The neighboring properties surrounding the subject parcel are typically three acres or larger in size, and being used for single-family residences and agricultural uses. Directly across Riverview Road from this parcel is the York River State Park. The parcel is partially wooded and currently contains a manufactured

home and a small shed. Both lots associated with this application would be accessed by a proposed 25-foot-wide ingress/egress/utility easement from Riverview Road. A ten-foot-wide all-weather driveway, placed within this easement, would be required to provide access to the lots, pursuant to Section 19-17(4) of the James City County Subdivision Ordinance.

If the proposed subdivision is approved, the 1.000-acre parcel (Parcel A-2) would be conveyed to Ms. Crystal L. Minor, daughter of Raymond and Virginia Minor, and used for a single-family residence. The minimum lot size in the A-1 Zoning District for single-family dwellings is three acres. Section 24-214(d), however, allows for a minimum lot size of less than three acres (but not less than one) if the creation of said lot is for use by a member of the owner's immediate family, (children eighteen years of age or older, or parents, of an owner), with the issuance of a SUP by the Board of Supervisors. The Zoning Ordinance requires only Board of Supervisors approval of this type of SUP.

#### **Public Utilities**

Public water and sewer are not currently available to the site. Thus, each lot will be served by a private septic system and well. It should be noted that a JCSA waterline runs along Newman Road at this location, but the conditions of the SUP (SUP-0030-2004) that permitted this line prevent the connection of the new lot to the line.

#### **COMPREHENSIVE PLAN**

The subject site is designated as Rural Lands on the 2003 Comprehensive Plan Land Use Map. Recommended primary uses in the Rural Lands include agricultural and forestall activities and public or semi-public institutions that require a spacious site. Recommended residential uses include single-family developments at a low density, and small scale rural clusters. Such developments should be compatible with the natural and rural character of the area, and be in accordance with the Rural Lands Development Standards provided in the Comprehensive Plan. The Plan discourages conventional large lot residential development in the rural areas.

**Staff Comments:** While this area of the County typically features three-acre or larger lots, staff believes that the creation of the additional lot is not in conflict with the rural character of the area, and is compatible with surrounding land uses. The proposed family subdivision does not represent a large-scale residential development and will not negatively impact any agricultural or forestal uses.

#### **RECOMMENDATION**

Staff finds the proposal to be compatible with surrounding land uses, and consistent with Section 19-17 of the James City County Subdivision Ordinance. Staff recommends approval of this application with the conditions listed in the attached resolution.

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David W. German

CONCUR:



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O. Marvin Sowers, Jr.

DG/nb  
SUP\_028\_2007

#### **ATTACHMENTS:**

1. Subdivision Plat (provided under separate cover)
2. Location Map
3. Family Subdivision Affidavit

#### 4. Resolution

## **RESOLUTION**

### **CASE NO. SUP-0028-2007. RAYMOND MINOR ONE-ACRE FAMILY SUBDIVISION**

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, the applicants have requested an SUP to allow for a family subdivision on a lot zoned A-1 (General Agriculture), located at 6111 Riverview Road, further identified as James City County Tax Map Parcel No. 1630100004A; and

WHEREAS, a public hearing was advertised, adjoining property owners notified and a hearing was held on Case SUP-0028-2007; and

WHEREAS, the Board of Supervisors, following a public hearing, are of the opinion that the SUP to allow for the above-mentioned family subdivision should be approved.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve the issuance of SUP No. 0028-2007 as described herein with the following conditions:

1. This SUP is valid for a family subdivision that creates one new 1.000 acre lot, with one parent lot of approximately 2.351 acres remaining, generally as shown on the preliminary subdivision plat submitted with this application.
2. Final subdivision approval must be received from the County within 12 months from the issuance of this SUP or the permit shall become void.
3. Only one entrance shall be allowed onto Riverview Road. A shared driveway agreement for these parcels shall be completed prior to final subdivision approval.
4. This SUP is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.

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John J. McGlennon  
Chairman, Board of Supervisors

ATTEST:

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Sanford B. Wanner  
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 13th day of November, 2007.

SUP\_0028\_2007.res

OWNER'S CERTIFICATE

THE SUBDIVISION OF LAND SHOWN ON THIS PLAT AND KNOWN AS MINOR FAMILY SUBDIVISION IS WITH THE FREE CONSENT AND IN ACCORDANCE WITH THE DESIRE OF THE UNDERSIGNED OWNERS, PROPRIETORS AND/OR TRUSTEES.

\_\_\_\_\_  
DATE

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
NAME PRINTED

CERTIFICATE OF NOTARIZATION

COMMONWEALTH OF VIRGINIA  
CITY/COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, A NOTARY PUBLIC IN AND FOR THE CITY/COUNTY AND STATE AFORESAID, DO HEREBY CERTIFY THAT THE PERSONS WHOSE NAMES ARE SIGNED TO THE FOREGOING WRITING HAVE ACKNOWLEDGED THE SAME BEFORE ME IN THE CITY/COUNTY AFORESAID GIVEN UNDER MY NAME THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2007

\_\_\_\_\_  
SIGNATURE

MY COMMISSION EXPIRES \_\_\_\_\_  
NOTARY REGISTRATION NUMBER: \_\_\_\_\_

OWNER'S CERTIFICATE

THE SUBDIVISION OF LAND SHOWN ON THIS PLAT AND KNOWN AS MINOR FAMILY SUBDIVISION IS WITH THE FREE CONSENT AND IN ACCORDANCE WITH THE DESIRE OF THE UNDERSIGNED OWNERS, PROPRIETORS AND/OR TRUSTEES.

\_\_\_\_\_  
DATE

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
NAME PRINTED

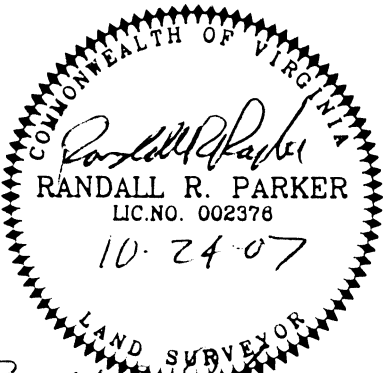
CERTIFICATE OF NOTARIZATION

COMMONWEALTH OF VIRGINIA  
CITY/COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, A NOTARY PUBLIC IN AND FOR THE CITY/COUNTY AND STATE AFORESAID, DO HEREBY CERTIFY THAT THE PERSONS WHOSE NAMES ARE SIGNED TO THE FOREGOING WRITING HAVE ACKNOWLEDGED THE SAME BEFORE ME IN THE CITY/COUNTY AFORESAID GIVEN UNDER MY NAME THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2007.

\_\_\_\_\_  
SIGNATURE

MY COMMISSION EXPIRES \_\_\_\_\_  
NOTARY REGISTRATION NUMBER: \_\_\_\_\_



I, Randall R. Parker HEREBY CERTIFY THAT THE PROPERTY SHOWN ON THIS PLAT WAS SURVEYED ON THIS DATE AND IS CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.  
THERE ARE NO ENCROACHMENTS OF OTHER BUILDINGS EXCEPT AS SHOWN.

**PARKER SURVEYING, INC.**  
101 DAWSON CRESCENT  
SEAFORD, VIRGINIA 23696  
PHONE: 757-833-7758

SHEET 1 OF 2

JCC-S-0065-2007 / SUP-0028-2007  
# 6111 RIVERVIEW ROAD

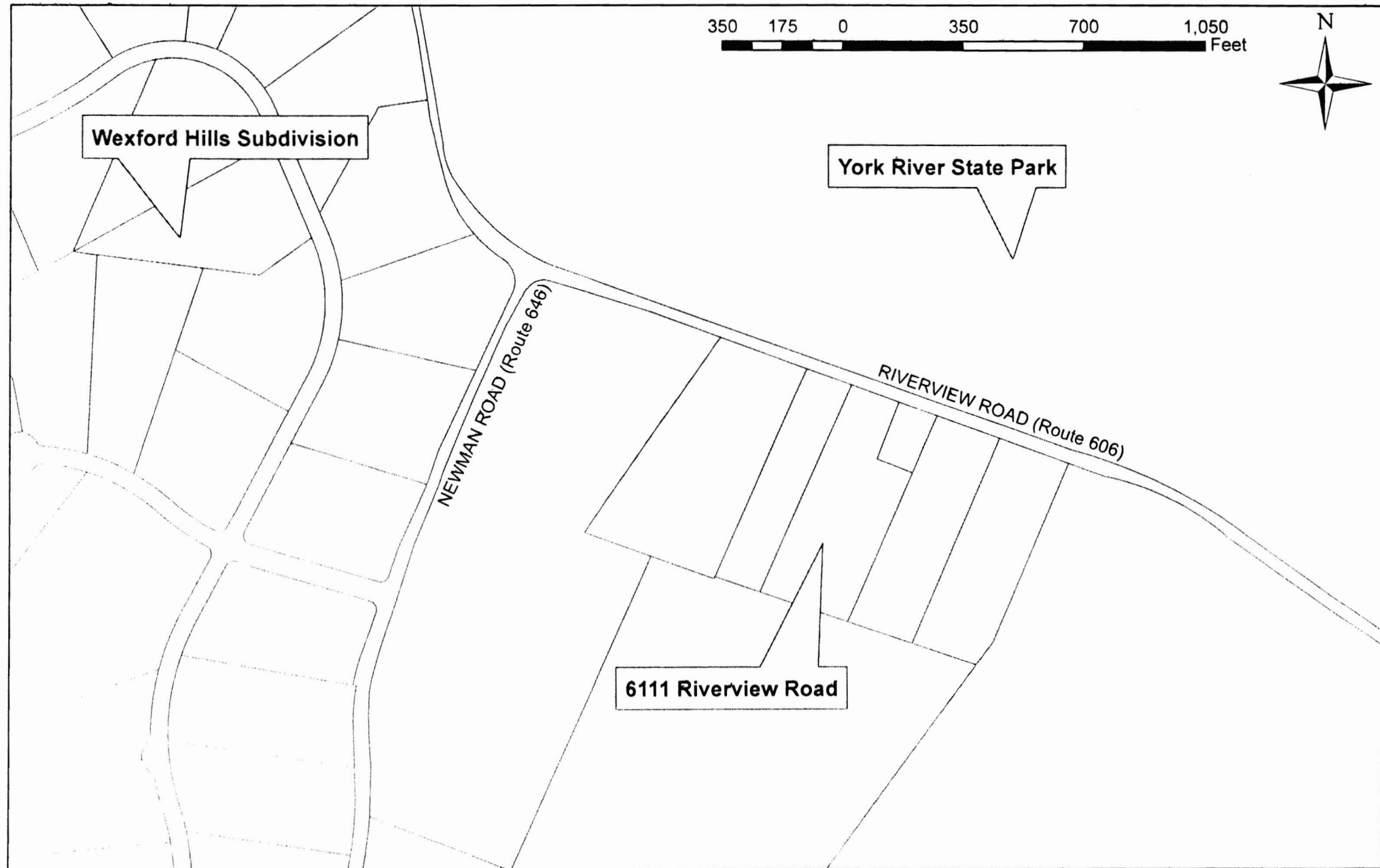
MINOR FAMILY SUBDIVISION PLAT

DIVISION OF PARCEL A (3.551 ACRES)  
SHOWN ON PLAT ENTITLED  
MALCOLM MARTIN  
D.B.255, PG.431  
JAMES CITY COUNTY, VIRGINIA

JOB #: 07-163	DRAWN: RRP	F.B.-PG: 21-44	TO: CBX	SCALE: 1"= 100'	DATE: 9-5-07
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# JCC-S-0065-2007 / SUP-0028-2007

## Raymond Minor One-Acre Family Subdivision





COUNTY OF JAMES CITY, VIRGINIA

FAMILY SUBDIVISION AFFIDAVIT

October 22, 2007

(Date)

Commonwealth of Virginia

County of James City

I, Raymond M. Minor and Virginia M. Minor, hereby request that James City County, Virginia, approve a family subdivision of One (1) parcel(s), consisting of 3.351 acres as set forth and designated on a plat entitled "Minor Family Subdivision Plat" made by Parker Surveying, Inc dated September 5, 2007

This subdivision is being made for the purpose of transferring a lot by sale or gift to:

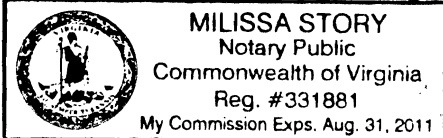
Crystal L Minor, (an) immediate family member(s), and specifically my Daughter, and is not made for the purpose of circumventing Section 19-17 of the Code of the County of James City, Virginia.

It is my intention that the deed(s) of transfer will be drawn and duly recorded as soon as reasonably possible subsequent to the approval of the plat submitted herewith.

Raymond M. Minor  
Owner

Virginia M. Minor  
Owner

Subscribed and sworn to before me this 22 day of October, 2007.



Milissa Story  
Notary Public

Notary Registration Number: 331881

My commission expires: August 31, 2011

Prepared by and return to:

Name: Ray & VA Minor  
Address: 168 Saddlehorn Road  
Williamsburg VA 23188  
Telephone: (757) 566-3090

**REZONING 0009-2007. Michelle Point Proffer Amendment.**

**Staff Report for the November 13, 2007, Board of Supervisors Public Hearing**

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

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**PUBLIC HEARINGS**

Planning Commission:

**Building F Board Room; County Government Complex**

September 12, 2007, 7:00 p.m. (deferred)

October 3, 2007, 7:00 p.m.

Board of Supervisors:

November 13, 2007, 7:00 p.m.

**SUMMARY FACTS**

Applicant:

Mr. Joel Almquist, Health E Community Enterprises

Land Owner:

Michelle Point, LLC

Proposal:

Mr. Almquist has requested revised language for Proffers #4, Affordable Housing, and #14, Cash Contributions for Community Impacts, to increase the sales price of the affordable units.

Location:

9001 Barhamsville Road

Tax Map/Parcel Nos.:

1210100003

Parcel Size:

38.58 acres

Existing Zoning:

R-5, Multi-family Residential, Cluster Overlay, with proffers

Proposed Zoning:

R-5, Multi-family Residential, Cluster Overlay, with amended proffers

Comprehensive Plan:

Low Density Residential

Primary Service Area:

Inside

**STAFF RECOMMENDATION**

Staff still finds that the overall project is generally consistent with the surrounding development and zoning and consistent with the Comprehensive Plan. Staff also finds the proposed revisions to represent positive measures and the amended sales prices for housing units to be within the range of affordability as defined by the James City County Office of Housing and Community Development. However, staff acknowledges that the standards for proffer packages have evolved over time and believes it is not prudent public policy to approve proffer amendments and rezoning proposals in a piecemeal fashion, more specifically in isolation from current school cash proffer policy. Staff recommends denial of the proposed proffer amendments.

Staff Contact: Kathryn Sipes

Phone: 253-6685

**PLANNING COMMISSION RECOMMENDATION**

On a vote of 6-0, the Planning Commission concurred with staff and recommended denial at their meeting on October 3, 2007.

### **Proposed Changes Made Since Planning Commission Meeting**

At the request of the Commission the applicant agreed to include 15-year soft second mortgages in the revised affordable housing proffer language. When adding this language the applicant revised the proffer wording; however, the proposed adjustment in sales prices remains the same as that presented to the Planning Commission. Additionally, the affordable housing proffer now contains language requiring the townhouse units to be available for sale prior to the closing on the first single-family unit. This language was added by the applicant to provide affordable units earlier.

The applicant has also added two new proffers since the Planning Commission meeting. Proffer #18 commits the applicant to incorporating “green” building practices and materials in each unit. Proffer #19 commits the applicant to providing homes that meet or exceed the Energy Star Certification for energy efficiency.

Staff also notes the dollar figures adjusted using both the Consumer Price Index and the Marshall Swift Index have been corrected in this staff report.

### **PROJECT DESCRIPTION**

The Michelle Point development is located on Barhamsville Road (Route 30) across from Stonehouse Commerce Park. Case No. Z-13-03, approved by the Board of Supervisors February 10, 2004, rezoned the property from A-1, General Agricultural, to R-5, Multifamily Residential, Cluster Overlay, with proffers. The approved project contains 90 single-family houses and 20 townhouses, with 20 percent affordable housing, at a gross density of 2.8 units per acre. A development plan has been approved for this project, but the units have not been built.

Approved Proffer #4 provides that eleven of the townhouse units will be offered for sale at a price at or below \$99,300, and eleven of the single-family detached units will be offered for sale at a price at or below \$110,000. This represents 22 total affordable units or 20 percent of the total 110 units in the project. The proffer also allows for an annual adjustment based on the Consumer Price Index (CPI). Applying this adjustment, the 2007 sales price for the townhouse units would be at or below \$108,027 and the sales price for single-family detached units would be at or below \$119,668.

Approved Proffer #14 provides for a cash contribution of \$750 per non-affordable or price restricted unit to the County to mitigate impacts on the County from the physical development and operation of the property. The proffer allows the County to use these funds for any project in the County’s capital improvement plan, including emergency services, school uses, off-site road improvements, library uses, and public use sites. At the time of the rezoning approval the total cash contribution was \$66,000 for 88 units. This proffer also allows for an annual adjustment based on the CPI. Applying this adjustment, the 2007 cash contribution would be \$815.93 per unit for a total of \$71,801.84 for 88 units.

The applicant has submitted a request to amend the affordable housing and cash contribution proffers to change the adjustment methodology from the CPI to the Marshall-Swift Index. Using the Marshall Swift index, the 2007 sales price for the townhouse units would be at or below \$121,940 and the sales price for single-family detached units would be at or below \$135,080. For the cash contributions the 2007 figure would be approximately \$976.50 per unit, or \$85,932 for 88 units. The Marshall-Swift Index has been the adjustment factor used in recent cases and is now the method preferred by James City County.

The reason cited by the applicant for the amendment is that the currently proffered price restrictions are not financially feasible due to building material shortages and price increases, International Building Code changes, sharp increases in labor prices, and increased project costs due to the newly adopted JCSA fees and transportation authority, as well as RPA, stream and wetlands mitigation costs. While the applicant’s costs may have increased, the County’s costs of providing facilities have also increased.

## **PUBLIC IMPACTS**

### **Archaeology**

#### **Proffers:**

- Existing Proffer 5 is the County archaeological policy.

**Staff Comments:** The County archaeological policy was proffered under the existing proffers and subsequently satisfied. No change is proposed.

### **Environmental**

#### **Watershed:** Ware Creek

#### **Proffers:**

- Existing Proffer 6 commits the applicant to creating Conservation Areas with recorded conservation easements.

**Staff Comments:** No change to environmental proffers is proposed and no other environmental protections were included in the approved rezoning. A development plan has been approved for this project. Final plat(s) have not yet been approved; approval will not be granted without proffered easements. Staff notes the development plan proposed impacts to RPA, as well as impacts to wetlands and streams. The applicant received approval for the RPA impacts from the Chesapeake Bay Board, conditional upon certain mitigation measures, including treatment of offsite stormwater, RPA restoration where feasible, and additional planting within the BMP to increase water quality efficiency. Additionally, the project required a permit from the Virginia Department of Environmental Quality (DEQ) for stream and wetland impacts; this permit was subsequently approved with mitigation measures totaling \$425,000 (based on information provided by the applicant).

### **Fiscal**

At the time of the rezoning this project was determined to have a negative net fiscal impact. The fiscal analysis submitted by the applicant at that time indicated the County would be required to spend an additional \$410,900 per year once the development was built out and occupied. James City County Financial and Management Services concurred with this conclusion.

#### **Proffers:**

- Existing Proffer 14 commits the applicant to cash contributions (\$750 per non-affordable or price restricted unit, or \$66,000 for 88 units) for use for projects in the County's Capital Improvement Plan to mitigate impacts on County emergency, school, library, and other services.
- Proposed Proffer 14 changes the adjustment factor from CPI to the Marshall-Swift Index.

**Staff Comments:** Existing proffer language uses the CPI to adjust this figure annually. At staff's suggestion, the applicant is proposing an amendment to this language changing the adjustment to the Marshall-Swift Index. If approved, this amendment results in language consistent with the proposed affordable housing proffer language. Based on staff calculations, the \$750 per unit becomes \$976.50 per unit using Marshall-Swift, versus \$815.93 using the CPI. This results in \$85,932 total for 88 units.

### **Housing**

#### **Proffers:**

- Existing Proffer 4 provides that eleven of the townhouse units will be offered for sale at a price at or below \$99,300, and eleven of the single-family detached units will be offered for sale at a price at or below \$110,000. This represents 22 total affordable units or 20 percent of the total 110 units in the project. The proffer also allows for an annual adjustment based on the Consumer Price Index (CPI). Applying this adjustment, the 2007 sales price for the townhouse units would be at or below \$108,713 and the sales price for single-family detached units would be at or below \$120,548 (see Table 1 below).
- Proposed Proffer 4 changes the adjustment factor from CPI to the Marshall-Swift Index (M-S). Please see Table 1 below for a price comparison.

Table 1.

<u>Dwelling unit type</u>	<u>Current proffer</u>	Current proffer with _____ CPI <u>adjustment</u>	Current proffer with _____ M-S <u>adjustment</u>
Townhouses	\$99,300	\$108,027	\$121,940
Single-family detached	\$110,000	\$119,668	\$135,080

**Staff Comments:** The applicant had originally submitted a request to amend the affordable housing proffer to increase the sales price for all affordable units in the development to \$140,000 and \$160,000 for townhouses and single-family detached units respectively. The original proposal also included the provision of soft second mortgages, a feature that preserves the affordability of the unit for a period of time. Staff, in consultation with Rick Hanson, Director of the JCC Office of Housing and Community Development (OHCD), prefers proffer language that includes soft second mortgages. However, staff believed the proposed sales prices were too high. Staff notes that all below market price housing meets an identified County need and Mr. Hanson indicated there were clients on his waiting list that could be placed in the residential units at the higher price. However, Mr. Hanson also indicated the importance of providing housing at multiple price points in order to serve a wide spectrum of residents. Table 2 below summarizes some past cases with proffered affordable housing relative to sales price and overall percentage of the development. It is the position of Mr. Hanson and the OHCD that modifying the sales prices of this project to more closely align with recently approved cases would result in all affordable units in the County being priced to a slice of the market. Consequently, no progress would be made in meeting the wider need.

Table 2.

<b>Project Name</b>	<b>Case Number</b>	<b>Affordable Housing Proffered</b>	<b>Affordable units proffered</b>	<b>Approval Date</b>
New Town Sections 2 & 4	Z-03-01	\$105,000 and \$140,500	4% at \$105,000 and 7% at \$140,500	11/1/01
Pocahontas Square	Z-03-03	\$100,000 and \$110,000	75% at \$100,000 & 25% at \$110,000	7/31/03
Michelle Point	Z-13-03	\$99,300 and \$110,000	10% at each price	1/28/04
Lightfoot Mixed Use	Z-06-04	\$110,000 and \$135,000	5% at each price	11/24/04
Pocahontas Square Proffer Amendment	Z-14-04	\$110,000 and \$155,000	25% at \$110,000 & 40% at \$155,000	2/24/05
Jennings Way	Z-19-05	\$135,000 and \$160,000	6% at each price	3/22/06
Chestnut Grove	Z-02-07	\$135,000 and \$165,000	20% (or 8 units) at each price level	5/15/07

Discussions between staff and the applicant resulted in a modified request to change the adjustment methodology from the CPI to the Marshall-Swift Index in lieu of unit price adjustment. Using the Marshall Swift index, the 2007 sales price for the townhouse units would be at or below \$121,940 and the sales price for single family detached units would be at or below \$135,080. This modified proposal did not include the provision of soft second mortgages.

The negotiations highlighted for staff two significant factors: it is critical that piecemeal adjustments not be made that may result in the entire proposal package no longer acceptable by the County, and it is equally critical that we strive to comprehensively address the County's market for affordable housing. Staff finds that this proposal does not represent a comprehensive reconsideration of the existing proffer package nor does it assist the County in meeting the goal of providing housing units for all income levels.

## **Public Utilities**

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

### **Proffers:**

- Existing Proffer 3 commits the applicant to providing Water Conservation Standards subject to the approval of the James City Service Authority. A development plan has been approved for this project and this proffer has been satisfied.
- Existing Proffer 14 commits the applicant to a cash contribution (\$750 per non-affordable or price restricted unit, or \$66,000 for 88 units) to the James City Service Authority to mitigate impacts on the County from the physical development and operation of the property. Final plat(s) have not yet been recorded; approval will not be granted until this proffer is satisfied.
- Proposed Proffer 14 changes the adjustment factor from CPI to the Marshall-Swift Index, resulting in a 2007 cash contribution of \$976.50 per non-price restricted unit, or \$85,932 for 88 units.

**Staff Comments:** The modified request, as described in the housing section in this staff report, included only language in the housing proffer be modified to use the Marshall-Swift Index as opposed to the CPI. At staff's request, the applicant also agreed to revise language in Proffer 14 in order to maintain a consistent adjustment factor for all cash adjustments.

## **Public Facilities**

### **Proffers:**

- Existing Proffer 14 provides a cash contribution to help offset the cost of county services, as discussed above in the Fiscal Impacts section.
- Proposed Proffer 14 changes the adjustment factor from CPI to the Marshall-Swift Index.

**Staff Comments:** At the time of the original rezoning the applicant expected this project to generate 22 elementary students, 12 middle school students, and 15 high school students, and was to be served by the Stonehouse Elementary, Toano Middle, and Lafayette High Schools. The project was found to not meet the adequate public facilities schools test at that time; existing Proffer 14 and the provision of affordable housing were accepted as mitigation. The project is now located within the Warhill High School district and the estimated student generation is 18 elementary students, 10 middle school students, and 13 high school students, based on revised student generation rates.

School	Design Capacity	Effective Capacity	Estimated 2007 Current Enrollment	Projected Students Generated	Enrollment + Projected Students
Stonehouse Elementary	588	650	699	18	717
Toano Middle	775	822	859	10	869
Warhill High	1,250	1,250	958	13	971

The Board of Supervisors first adopted a cash proffer policy for schools in September 2005, after this project was originally approved. The Board amended their cash proffer policy for schools at their July 24, 2007 meeting, which took effect for all rezoning applications received after June 12, 2007. This application was received after June 12. Staff notes the only proposed changes to the approved proffers are amending the adjustment factor from CPI to the Marshall-Swift Index. Staff further notes the proposed amendments do not result in increased units or increased density, and a development plan consistent with MP-12-03 (the master plan approved with the original rezoning application) has been approved. However, the original and revised cash proffer policies acknowledge the costs of specific impacts of residential development. Staff feels rezoning cases are considered for approval based on the total package of products and amenities proposed; modifying certain components of the project could result in a development that no longer meets County approval. Therefore, staff believes proposed amendments warrant careful consideration. For example, the Jennings Way and Chestnut Grove proffer

packages provide some cash contributions for both affordable and non-affordable units. Staff notes the approved proffers for Michelle Point, however, do not provide for similar cash contributions.

### **Parks and Recreation**

#### **Proffers:**

- Existing Proffers 10 and 13 commit the applicant to provide walking trails and specific recreational facilities for the project.
- Existing Proffer 15 binds the applicant, at the request of the County Administrator, to granting an easement within the existing Virginia Power easement in the buffer along Route 30 for a greenway trail.

**Staff Comments:** A development plan has been approved for this project; the amenities outlined in Proffers 10 and 13 must be installed or bonded prior to final subdivision plat approval, per the proffer. Final plat(s) have not yet been approved. No changes are proposed.

### **Transportation**

The traffic impact study provided with the original rezoning application indicated that this development would generate approximately 77 a.m. peak hour vehicle trips and approximately 102 p.m. peak hour vehicle trips. The existing traffic conditions were deemed at that time to provide ample capacity for this development.

#### **Proffers:**

- Existing Proffers 7 and 17 commit the applicant to provide a 150-foot right-turn taper to be constructed at the development entrance and emergency access through a connection with Highfield Drive to the south and, as requested by the Fire Department, a gravel emergency-only crossover from the westbound traffic lanes of Barhamsville Road.

**Staff Comments:** A development plan has been approved for this project satisfying both Proffer 7 and Proffer 17. No changes are proposed.

### **COMPREHENSIVE PLAN**

The Comprehensive Plan designates Barhamsville Road (Route 30) as a Community Character Corridor. At the time of the original rezoning application the applicant requested a waiver from the buffer requirements in Section 24-544 to allow the minimum right-of-way buffer along Route 30 to be reduced from 150 feet to 90 feet in some areas, primarily to the northeast and east of the townhouse units. Existing proffer 11 commits the applicant to provide supplemental landscaping consisting of at least 125 percent of Zoning Ordinance requirements in areas where the buffer was less than 150 feet. The waiver request was approved by the Planning Commission.

The property is designated low-density residential on the James City County Comprehensive Plan Land Use Map. Low-density residential developments are residential developments with gross densities up to one dwelling unit per acre depending on the character and density of surrounding development, physical attributes of the property, buffers, the number of dwelling units in the proposed development, and the degree to which the development is consistent with the Comprehensive Plan. In order to encourage higher quality design, a residential community with a gross density up to three units per acre may be permitted with a special use permit when the following is provided: implementation of the Streetscape Guidelines Policy and the Archaeological Policy; provision of sidewalks on one side of all internal streets; provision of recreation facilities as recommended in the county's Comprehensive Parks and Recreation Master Plan; provision of pedestrian trails which connect cul-de-sacs throughout the development to each other and to the recreation area or sidewalks on both sides of all internal streets, or a combination; and construction of curb and gutter design on all streets within the development. The approved development plan for Michelle Point satisfies all of the above. Additionally, density bonuses allowing a gross density up to four units per acre may be permitted with a special use permit for such features as affordable housing and superior layout and quality design. This project was approved at a gross density of 2.8 units per acre. No density bonus was awarded to Michelle Point, though affordable housing was proffered in the original rezoning.

The location criteria for low-density residential require that these developments be located within the PSA where utilities are available. Examples of acceptable land uses within this designation include single-family homes, duplexes, cluster housing, recreation areas, schools, churches, community-oriented public facilities, and very limited commercial establishments.

The housing section of the Comprehensive Plan supports increased density in developments that provide affordable housing (Action #5, page 107).

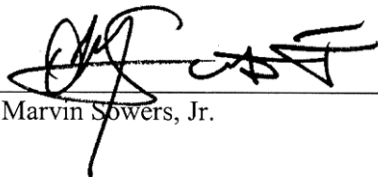
### **RECOMMENDATION**

Staff still finds that the overall project is generally consistent with the surrounding development and zoning and consistent with the Comprehensive Plan. Staff also finds the proposed revisions to represent positive measures and the amended sales prices for housing units to be within the range of affordability as defined by the James City County Office of Housing and Community Development. However, staff acknowledges that the standards for proffer packages have evolved over time and believes it is not prudent public policy to approve proffer amendments and rezoning proposals in a piecemeal fashion, more specifically in isolation from current school cash proffer policy. Staff recommends denial of the proposed proffer amendments.

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Kathryn Sipes, Senior Planner

CONCUR:



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O. Marvin Sowers, Jr.

KS/tlc  
Z-09-2007

### **ATTACHMENTS:**

1. Planning Commission Minutes
2. Proposed Proffers
3. Resolution



## **RESOLUTION**

### **CASE NO. Z-0009-2007, MICHELLE POINT PROFFER AMENDMENT**

WHEREAS, in accordance with §15.2-2204 of the Code of Virginia, and Section 24-13 of the James City County Zoning Ordinance, a public hearing was advertised, adjacent property owners notified, and a hearing was scheduled for Case No. Z-0009-2007 for amending the proffers for approximately 38.58 acres from R-5, Multi-family Residential, Cluster Overlay, with proffers, to R-5, Multi-family Residential, Cluster Overlay, with amended proffers; and

WHEREAS, the site can be further identified as Parcel No. (1-3) on James City County Real Estate Tax Map No. (12-1); and

WHEREAS, the Planning Commission of James City County, following its public hearing on October 3, 2007, recommended denial of Case No. Z-0009-2007 by a vote of 6 to 0.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, after a public hearing, does hereby approve Case No. Z-0009-2007 as described herein, and accepts the amended proffers.

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John J. McGlennon  
Chairman, Board of Supervisors

ATTEST:

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Sanford B. Wanner  
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 13th day of November, 2007.

Z-09-2007.res

**UNAPPROVED MINUTES OF THE October 3, 2007 MEETING  
OF THE PLANNING COMMISSION**

Z-9-07 Michelle Point Proffer Amendment

Ms. Kate Sipes presented the staff report concerning a request to amend the proffers of an approved residential development. The applicant was proposing amended proffer language in the way the 2004 dollar values, as stated in the approved proffers, are adjusted over time. The current language uses the Consumer Price Index (CPI); the applicant is proposing the Marshall & Swift Index be used. Staff acknowledged that the calculations in the staff report were not accurate. These figures have been corrected by the County's Proffer Administrator. The applicant proposed the base cash amounts in the approved proffers be adjusted each year using the Marshall & Swift Index. Staff noted that policies revised since 2004 significantly alter the standards for proffer packages, including the addition of the cash proffers for schools. Staff believed that it is not prudent public policy to approve proffer amendments and rezoning proposals in a piecemeal fashion; therefore, staff recommended denial of the proposed proffer amendments to the Board of Supervisors. Should the Planning Commission recommend approval to the Board, staff found the amended sales prices to be reasonable, but believed soft second mortgages assigned to James City County for a period of 15 years should be added to the amended housing proffer language.

Ms. Hughes asked if there were any comments/questions for staff.

Mr. Fraley verified his understanding of the figures presented.

Ms. Hughes asked if this case already had an approved site plan.

Ms. Sipes stated that there is an approved site plan.

Ms. Hughes asked if the only change to the proffer language was from the CPI to the Marshall & Swift calculation.

Ms. Sipes verified that this is true, that the base price in the proffer would stay the same; it would just be that the calculation method would be different.

Ms. Hughes opened the public hearing.

Mr. Joel Almquist spoke on behalf of the applicant, Health E Community. He stated that the request was to change the annual adjustment from the CPI to the Marshall & Swift Index. Mr. Almquist stated there was a need to update their prices due to delays of three years caused by wetlands, stream restoration, and mitigation permitting. The end result was an additional \$425,000 in mitigation costs along with increased building costs due to delays and increasing costs for material and labor. He stated that these delays have increased the per unit cost by \$18,000. He also stated that since 2005 the Marshall &

Swift Index has been the standard annual adjustment used in proffer submittals to James City County. Mr. Almquist stated that the Marshall & Swift Index is a more comprehensive index that is focused on building costs and will on average generate higher and more accurate annual adjustments for cash contributions and for building costs. In 2004 when the proffers were originally approved, the proffered price for the affordable townhome unit was \$99,300. If adjusted for 2007 dollars, using the CPI Index the prices would be \$108,027. If the Marshall & Swift Index was used the price would be \$121,940. There would be an increase of \$13,000 in using one index over the other. In 2004, the single family affordable unit was approved at \$110,000. Using the CPI Index the price would be \$119,688 and using Marshall & Swift it would be \$135,080. The difference between the two methods would be \$15,000. Mr. Almquist also noted that the Marshall & Swift adjusted price for a single family home is still considered affordable by the County's standards.

Mr. Almquist stated that when adjusting for price using the Marshall & Swift Index the cost to the developer for subsidizing the twenty two affordable units ends up being just over \$1,000,000. He also stated that the applicant would like to change the cash contributions to the Marshall & Swift Index in order to make it more consistent. When adjusted using the CPI Index the cash contribution would increase from \$750 to \$815. Using the Marshall & Swift Index it would increase from \$750 to \$976. Mr. Almquist stated that using the Marshall & Swift would provide an overall benefit to the County of \$28,000 over using the CPI Index. Mr. Almquist showed a breakdown of housing projects that have been submitted and approved by the County with an affordable component. He showed that 70% of the affordable units built are built by Health E Community. He stated that 30% if the units that Health E Community builds are affordable. Finally he noted that due to the applicant's affordable program, there were 10 homeowners in 2006 that were given forgivable deeds of trust in the amount of \$300,000. Mr. Almquist stated in 2007, the numbers rose to 52 homeowners with forgivable deeds of trust totaling over \$1,000,000. All of these homes were priced at \$160,000 or below. He stated that by allowing the adjustments according to Marshall & Swift index, the County will allow the applicant to continue to provide affordable housing within the County.

Mr. Kennedy stated that he has spoke with individuals and businesses in the community, and was informed that some building costs have decreased. Mr. Kennedy asked why this criteria is used in their proposal.

Mr. Almquist stated that since the original case was approved in 2004, the applicant's building costs have increased.

Mr. Kennedy asked for a comparative to show the Planning Commission.

Mr. Almquist stated that he did not have that information with him.

Mr. Kennedy stated that information is something he would like to see before he would use it in the equation to change the pricing of affordable housing. Mr. Kennedy

felt these changes were substantial. He asked Mr. Almquist what kind of allowance does the applicant leave for a changing market, that would factor in inflation, a rising market, etc.

Mr. Mike Ware, partner in Health E Community and counsel to the applicant spoke. He stated that their company has not seen a decrease in prices for cost and labor. The company buys in volume and when the market shifts the company's margins are so fine they do not see the decrease in costs. Mr. Ware did mention that the County increased its proffer requirements to \$17,000 and he felt this was largely due to increased costs that the County was incurring. He stated that the only way these projects function is with the forgivable deeds of trust. He also stated that the market priced units carry the load for the affordable units. The company loses money on them. Mr. Ware stated that if the market rate units do not sell, the company does not have the money to support the affordable housing. He further stated that using the Marshall & Swift Index is tied to building costs whereas the CPI is tied to consumers. When applying the Marshall & Swift, he stated the recovery to the County is greater and the expense to the builder is greater with respect to proffers. Mr. Ware stated that the applicant was here to state that the market has changed, and the goal is to get everything on equal footing. Everything currently is adjusted by Marshall & Swift.

Mr. Kennedy verified that Mr. Ware stated his prices have escalated.

Mr. Ware stated yes.

Mr. Kennedy asked for the numbers to verify the rising costs.

Mr. Ware said the applicant can provide this.

Mr. Kennedy asked about the wetlands and mitigation costs. He asked whether the applicant knew about these costs at the beginning of the project.

Mr. Ware stated that two environmental groups and James City County reviewed the site. When the company purchased the property, there were two studies done that stated there were no environmental issues. There was some discrepancy concerning 400 feet. DEQ and Corp of Engineers determined the land in question to be classified differently. In order to correct this problem, the company had to buy bottom land in New Kent County and put a deed of easement on it, so that the Corp and DEQ controlled it.

Mr. Krapf spoke about the requirement of soft second mortgages, and asked if they would be open to this?

Mr. Ware stated that they would not be opposed to this. He stated that this program is one of their trademarks.

Mr. Fraley asked for some clarification on Ms. Sipes spreadsheet.

Mr. Ware verified the numbers, stating what the original request was in 2004. It took some time working with the County to determine what the dollar amounts would be using Marshall & Swift.

Mr. Almquist stated that the soft second mortgage was included with the original request.

Mr. Fraley felt he was put in a position to rifle shot proffers. This particular proffer benefits the applicant. Mr. Fraley wanted the applicant to understand the complexity of the case. The project was approved with an entire set of proffers and this application is looking to change one particular section.

Mr. Ware did state that there is some benefit to the County with the increased amounts in the cash proffers using the Marshall & Swift Index.

Ms. Hughes asked for public comments.

Ms. Hughes closed the public hearing.

Mr. Kennedy had some difficulty deciding on this case without some kind of figures to back up the increased costs that the applicant was stating. Mr. Kennedy stated he would like to see this case come back before the Planning Commission. If this case goes to the Board of Supervisors, he feels that some documentation showing the increased costs should be included. Mr. Kennedy stated his inclination is to deny this application. He feels that when it comes to affordable housing, that when agreements are made, then it is final. When markets change and costs rise and fall, that is a risk a business owner takes.

Mr. Kennedy made a motion for denial.

Mr. Ware stated that he had the figures, but Mr. Kennedy said it was irrelevant at this point.

Mr. Billups stated the Policy Committee is working on the affordable housing definition. From a process perspective, the Board of Supervisors outlines those areas in which the County will accept proffers. As a business person, one takes a risk. This is all part of the process of projecting the costs. Mr. Billups stated he was against this application. By increasing the prices, he feels like it's another barrier and handicap. Mr. Billups would like to wait until the Policy Committee makes a recommendation to the Planning Commission regarding affordable housing.

Ms. Hughes stated this was a difficult case to review. It is weighing what seems to be a minor change in an existing proffer, but also the principle of allowing change to a couple of proffers, not the entire package. The entire package is what is approved by the Board. She would recommend denial of this case.

Mr. Fraley stated that it makes sense to use the more current calculation and the one used more often. He stated he was uncomfortable about approving with the stipulation of the soft second mortgages. Mr. Fraley would recommend denial.

Ms. Jones thanked the applicant for the opportunity for citizens to purchase affordable homes. She stated she had problems with piecemealing the proffers instead of considering the entire package. She would recommend denial.

Mr. Krapf seconded the motion.

In a roll call vote the application was denied. (6-0). AYE: Billups, Krapf, Jones, Kennedy, Fraley, Hughes. (Absent: Obadal)

AMENDED PROFFERS

FOR

MICHELLE POINT

November 6, 2007

## **PROFFERS**

THESE PROFFERS are made this 6<sup>th</sup> day of November, 2007 by Michelle Point, LLC a Virginia limited Liability Company (together with his successors and assigns, the “Owner”).

## **RECITALS**

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

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

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

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

NOW, THEREFORE, for and in consideration of the approval of the requested rezoning, and pursuant to Section 15.2-2303 of the Code of Virginia, 1950, as amended, and the County Zoning Ordinance, Owner agrees that it shall meet and comply with all of the following conditions in developing the Property. If the requested rezoning is not granted by the County, these Proffers shall be null and void.



## CONDITIONS

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

2. **Owners Association.** There shall be organized an owner's association (the "Association") in accordance with Virginia law in which all property owners in the development, by virtue of their property ownership, shall be members. The articles of incorporation, bylaws and restrictive covenants (together, the "Governing Documents") creating and governing the Association shall be submitted to and reviewed by the County Attorney for consistency with this Proffer. The Governing Documents shall require that the Association adopt an annual maintenance budget, which shall include a reserve for maintenance of stormwater management BMPs, recreation areas, private roads and parking areas ("Reserve"), and shall require that the association (i) assess all members for the maintenance of all properties owned or maintained by the association and (ii) file liens on members' properties for non-payment of such assessments. The Governing Documents shall grant the Association the power to file liens on members' properties for the cost of remedying violations of, or otherwise enforcing, the Governing Documents. Owner shall maintain all common areas on the Property until 90% of the lots/units on the Property have been sold to minimize Association dues during that period so as to not adversely affect 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 \$14,850.00 in the Reserve and Owner shall supply evidence of the same to the Director of Planning.

3. **Water Conservation.** Water conservation standards shall be submitted to and approved by the James City Service Authority and Owner and/or the Association shall be

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

**4. Affordable Housing.** A minimum of 11 of the lots with single-family detached dwelling units shall be reserved and offered for sale at a net sales price to buyer at or below \$135,080.00 subject to adjustment as set forth herein (“Restricted Units”). 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 single-family detached unit and the net sales price paid by the purchaser of the unit, 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 unit for the 11 single-family detached units sold through James City County for \$135,080.00 or less. 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 11 of the lots with townhouse dwelling units shall be reserved and offered for sale at a net sales price to buyer at or below \$121,940.40 subject to adjustment herein (“Affordable Units”). 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 11 townhouses sold through James City County for \$121,940.40 or less. 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. Per this proffer, the townhouse units shall be under construction and available for sale prior to the closing of the first single-family unit in order to expedite the availability of affordable housing in James City County.

The maximum prices set forth herein shall consist of the amount set forth above plus any adjustment as included in the Marshall and Swift Building Cost Index annually beginning January 1, 2008. Rates are to be taken from the January supplement index of the adjusting year. 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 land disturbance. A treatment plan shall be submitted and approved by the Director of Planning for all sites in the Phase I study that are recommended for a Phase II evaluation and/or identified as eligible for inclusion on the National Register of Historic Places. If a Phase II study is undertaken, such a

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

**6. Environmental Protections.** The Owner shall grant, free of charge, to a County approved land conservation entity and/or the County a conservation easement with terms consistent with these Proffers over the area generally delineated on the Master Plan as "Approx. Limits of 25% Slopes (Undevelopable) Wetlands and Floodplain Areas Contained Within Limits" generally in the locations shown on the Master Plan (the "Conservation Area"). The exact boundaries of the Conservation Area shall be shown on subdivision plats and/or site plans of the Property. The conservation easement over the Conservation Area shown on each individual subdivision plat or site plan shall be granted at the time of final approval thereof by

the County. The Conservation Area shall remain undisturbed by Owner and in its natural state, except as set forth below. Dead, diseased and dying trees or shrubbery and invasive or poisonous plants may be removed from the Conservation Area. With the prior approval of the Environmental Director utilities may intrude into or cross the Conservation Area and clearing and construction activities necessary therefore may take place in the Conservation Area. Pedestrian paths, trails and bridges generally as shown on the Master Plan or included in these Proffers may intrude into or cross the Conservation Area and clearing and construction activities necessary therefore may take place in the Conservation Area. Stormwater BMPs may be located in the Conservation Area but shall not be located in nor impact the channel flow of perennial streams unless specifically approved by the Environmental Division. The Conservation Area shall be exclusive of lots or dwelling units.

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

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

**9. Sidewalks.** There shall be sidewalks installed on one side of each of the public streets on the Property and may be installed in phases as residential units are constructed. Sidewalks shall be bonded prior to final subdivision plat approval and installed prior to issuance of certificates of occupancy for adjacent dwelling units.

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

**11. Route 30 Buffer.** There shall be a variable width buffer along the Route 30 frontage of the Property ranging from 90 to 150 feet in width generally as shown on the Master Plan. The buffer shall be exclusive of any lots or units and shall be undisturbed, except for the entrance, taper and the trails as shown generally on the Master Plan, and with the approval of the Development Review Committee, for utilities, sidewalks, trails, lighting, entrance features and signs. Dead, diseased and dying trees or shrubbery, invasive or poisonous plants, windfalls and deadfalls may be removed from the buffer area. In areas where the buffer is less than 150 feet, supplemental landscaping consisting of at least 125% of Zoning Ordinance requirements shall be installed between the townhouses and Route 30 and adjacent to any pump station located in the buffer to create a visual screen that partially but not completely blocks the view of the townhouses from Route 30 in accordance with a plan approved by the Director of Planning prior to final approval of development plans.

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

13. **Recreation.** (a) Owner shall provide the recreational facilities listed below as shown on the Master Plan and make the cash contributions to the County described below before the County is obligated to approve final subdivision plats for more than 30 lots on the Property:

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

(b) All cash contributions proffered by this Proffer 13 shall be used by the County for recreation capital improvements, the need for which is caused in whole or in part by the development of the Property. The exact locations of the facilities proffered hereby and the equipment to be provided at such facilities shall be subject to the approval of the Development Review Committee. All recreational facilities proffered hereby shall be conveyed to and maintained by the Association and shall be open to all members of the association in good standing.

14. **Cash Contributions for Community Impacts.** (a) A contribution of \$976.50 for each dwelling unit on the Property other than the 22 units whose prices are restricted pursuant to Proffer 4 above shall be made to the James City Service Authority ("JCSA") in order to mitigate impacts on the County from the physical development and operation of the Property. The JCSA may use these funds for development of alternative water sources or any project related to improvements to the JCSA water system, the need for which is generated in whole or in part by the physical development and operation of the Property.

(b) A contribution of \$976.50 for each dwelling unit on the Property other than the 22 units whose prices are restricted pursuant to Proffer 4 above shall be made to the County in order to mitigate impacts on the County from the physical development and operation of the Property. The County may use these funds for any project in the County's capital improvement plan, the need for which is generated in whole or in part by the physical development and operation of the Property, including, without limitation, for emergency services, school uses, off-site road improvements, library uses, and public use sites.

(c) The contributions described above, unless otherwise specified, shall be payable prior to final subdivision plat approval.

(d) The per unit contribution amount shall consist of the amount set forth in the above paragraphs plus any adjustment as included in the Marshall and Swift Building Cost Index ("Index") if payment is rendered on or after January 1, 2008. In no event shall the per unit contribution be adjusted to a sum less than the amounts set forth in preceding paragraphs in this section. 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. County Trail Easement.** Owner shall grant at the request of the County Administrator an easement 12 feet in width within the existing Virginia Power easement in the buffer along Route 30 for a greenway trail, with the exact location of the easement to be subject to the approval of the Owner, which approval shall not be unreasonably withheld. The County shall be entitled to construct a trail, including necessary bridges, if any, through the easement



area and to install passive amenities such as benches, tables, gazebos, educational or descriptive markers or individual fitness stations.

**16. Sewer Service.** If, as of March 1, 2004, JCSA has acquired all necessary easements to provide access for gravity sewer lines from the Property to the existing Fenwick Hills pump station, the Owner shall utilize such gravity sewer to the Fenwick Hills pump station. If, as of the date of approval of the requested rezoning of the Property, JCSA has not acquired all necessary easements to provide access for gravity sewer lines from the Property to the existing Fenwick Hills pump station, the Owner shall utilize an on-site pump station feeding into the Hampton Roads Sanitation District force main along Route 30. Should an onsite pump station feeding into the Hampton Roads Sanitation District force main along Rt. 30 be used, the Owner shall make a contribution of \$2000.00 per unit for the first fifty units to the James City Service Authority to mitigate maintenance costs. Such contribution shall be payable for each unit prior to final subdivision plat approval.

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

**18. Green/Sustainable Building.** 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 from 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 review and inspection process.

**19. Energy Efficient Homes.** All the town homes shall be certified by a HERS rater to meet or exceed the Energy Star Certification. A HERS rating is an evaluation of the energy efficiency of a home, compared to a computer-simulated reference house of identical size and shape as the rated home that meets the minimum requirements of the Model Energy Code (MEC). The HERS rating results in a score between 0 and 100; with the reference house assigned a score of 80. From this point, each 5% reduction in energy usage (compared to the reference house) results in a one point increase in the HERS score. Thus, an ENERGY STAR qualified new home is required to be significantly more energy-efficient than the reference house and thus must achieve a HERS score of at least 86. A copy of the HERS Energy Star Certification for each unit shall be provided to the Director of Planning upon request.

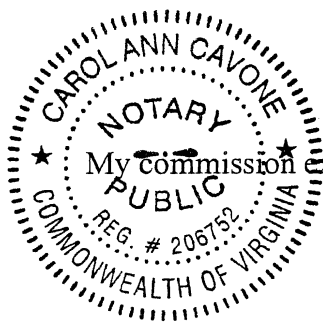
WITNESS the following signature.

MICHELLE POINT, LLC

By: Richard B. Ware  
Title: Managing Member

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

The foregoing instrument was acknowledged this 6<sup>th</sup> day of  
NOVEMBER, 2007, by RICHARD B. WARE, as MANAGING MEMBER  
of MICHELLE POINT, LLC on behalf of the LLC.



Carol Ann Cavone  
NOTARY PUBLIC

**SPECIAL REZONING-0007-2007. Powhatan Terrace**  
**MASTER PLAN-0005-2007. Powhatan Terrace**  
**SPECIAL USE PERMIT-0020-2007. Powhatan Terrace**  
**Staff Report for the November 13, 2007, Board of Supervisors Public Hearing**

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

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**PUBLIC HEARINGS**

Planning Commission:

Board of Supervisors:

**Building F Board Room; County Government Complex**

October 3, 2007, 7:00 p.m. (3-3 vote)

November 13, 2007, 7:00 p.m.

**SUMMARY FACTS**

Applicant:

Mr. Vernon Geddy, III, on behalf of Associated Developers, Inc.

Land Owner:

Investment Properties of Virginia, LLC

Proposal:

The applicant has proposed to rezone three parcels of land to R-2, General Residential, with a Cluster Overlay and to construct six 2-story buildings containing a total of 36 townhouse units at a gross density of 2.2 dwelling units per acre.

Location:

1676 and 1678 Jamestown Road and 180 Red Oak Landing

Tax Map/Parcel Nos.:

(47-3) (1-36), (47-3) (1-37), and (47-3) (1-39)

Parcel Size:

16.5 acres

Existing Zoning:

LB, Limited Business, (4.7 acres) and R-2, General Residential, (11.8 acres)

Proposed Zoning:

R-2, General Residential, with a Cluster Overlay

Comprehensive Plan:

Low-Density Residential and Conservation Area

Primary Service Area:

Inside

**STAFF RECOMMENDATION**

The applicant has requested an indefinite deferral for the above-referenced case to allow additional time to continue meeting with interested parties and to consider whether revisions to the project are possible.

Staff Contact:

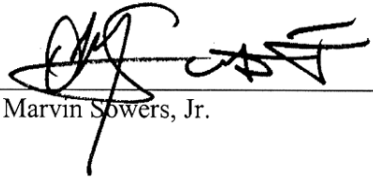
Matthew J. Smolnik, Senior Planner

Phone: 253-6685

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Matthew J. Smolnik

CONCUR:



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O. Marvin Sowers, Jr.

MJS/gb  
PowhatanTerrace.doc

ATTACHMENT:

1. Deferral letter from applicant

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

ATTORNEYS AT LAW

1177 JAMESTOWN ROAD

WILLIAMSBURG, VIRGINIA 23185

TELEPHONE: (757) 220-6500

FAX: (757) 229-5342

VERNON M. GEDDY, JR. (1926-2005)  
STEPHEN D. HARRIS  
SHELDON M. FRANCK  
VERNON M. GEDDY, III  
SUSANNA B. HICKMAN  
RICHARD H. RIZK  
ANDREW M. FRANCK

MAILING ADDRESS:  
POST OFFICE BOX 379  
WILLIAMSBURG, VIRGINIA 23187-0379

November 2, 2007



Mr. Matthew J. Smolnick  
Senior Planner  
James City County Planning Division  
101-A Mounts Bay Road  
Williamsburg, VA 23185

Re: Powhatan Terrace Z-7-07  
MP-5-07 and SUP-20-07

Dear Matt:

I am writing on behalf of the applicant to request that the Board of Supervisors indefinitely defer consideration of this case to give us an opportunity to continue meeting with interested parties and to consider whether revisions to the project are possible.

Thanks for your help.

Sincerely yours,

Vernon M. Geddy, III

VMGIII/rlc

cc: Mr. Henry Stephens

**HEIGHT WAIVER-0002-2007. New Cingular Wireless Height Waiver  
Staff Report for the November 13, 2007, Board of Supervisors Public Hearing**

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

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**PUBLIC HEARINGS**

Board of Supervisors:

**Building F Board Room; County Government Complex**

November 13, 2007, 7:00 p.m.

**SUMMARY FACTS**

Applicant: Lisa Murphy, New Cingular Wireless

Land Owner: William Lewis Palmer, Jr.

Proposal: Height waiver from Section 24-261 of the Zoning Ordinance to co-locate a cellular antenna on an existing Dominion Virginia Power Pole

Location: 90 Whiting Avenue

Tax Map/Parcel Nos.: 5230200054

Parcel Size: 2.89 acres

Zoning: R-2, General Residential

Comprehensive Plan: Low-Density Residential

Primary Service Area: Inside

**STAFF RECOMMENDATION**

Staff finds the proposal consistent with the requirements stated under Section 24-261 of the Zoning Ordinance. Staff recommends that the Board of Supervisors approve this application.

Staff Contact: Luke Vinciguerra Phone: (757) 253-6783

## **PROJECT DESCRIPTION**

Ms. Lisa Murphy of New Cingular Wireless has requested a height limitation waiver from the Board of Supervisors. On property zoned R-2, General Residential, wireless communications facilities that utilize alternative mounting structures may be erected to a total height of 60 feet from grade, or, with approval of a height limitation waiver by the Board, may exceed 60 feet in height but not to exceed 120 feet. The applicant has specifically requested that a height limitation waiver be granted to allow for the placement of a cellular antenna mounted at 105 feet, with a total antenna height of 117 feet, on an existing 105-foot-tall Dominion Virginia Power Pole. A utility transmission structure such as the Dominion Power Pole qualifies as an alternative mounting structure as defined under the Zoning Ordinance. Placement of an antenna on the pole would involve installation of support equipment at the base of the pole. A site plan for the antenna and support equipment will be required if the height waiver is approved. The Wireless Communications Facilities section of the Zoning Ordinance specifies certain requirements that a site plan would need to address, including provisions for screening of support equipment, submission of documentation that the antennas will not interfere with radio/television broadcasts or with public safety communications, and documentation that the non-ionizing electromagnetic radiation emitted by the antennas will fall within Federal Communications Commission guidelines. The applicant has submitted a site plan created by a professional engineer and is currently being reviewed by staff.

## **ANALYSIS**

Section 24-261 of the James City County Zoning Ordinance states that wireless communications facilities that utilize alternative mounting structures exceeding 60 feet in height but not to exceed 120 feet may be erected only upon the granting of a height limitation waiver by the Board of Supervisors and upon finding that:

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

**Staff comment:** The proposed antenna installation will only increase the overall structure height by 12 feet and isn't large enough to block a noticeable amount of light.

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

**Staff comment:** The proposed location is not immediately adjacent to any historic structures. Visual impact will be limited to the residents located along Whiting Avenue directly adjacent to the existing Dominion Virginia Power transmission line. Given that the antenna is only 12 feet high on a 105-foot pole and the presence of another pole with a structure on top of it, the antenna addition will be negligible and would not further impair enjoyment of surrounding areas. The impact will primarily be from the support equipment on the ground rather than the antenna. The support equipment will be screened by fencing and landscaping as required by the Zoning Ordinance.

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

**Staff comment:** The Planning Division has discussed the case with the Office of Real Estate Assessments and concluded that from the information provided, there is no indication that the antenna will impair property value.

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



**Staff comment:** The antennas and support equipment will require building permits and inspections from the County, which should ensure that the structures are adequately designed from a safety and structural soundness standpoint. The site plans will also be reviewed by the Fire Department.

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

**Staff comment:** Based on the current proposal and supporting information submitted by the applicant, staff believes the cellular antenna array will not unduly or adversely affect the public health, safety, or general welfare.

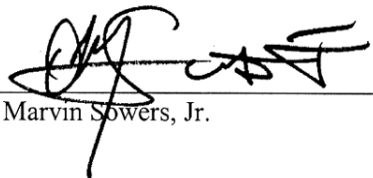
### **RECOMMENDATION**

Staff finds the proposal consistent with the requirements stated under Section 24-261 of the Zoning Ordinance. Staff recommends that the Board of Supervisors approve this application.

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Luke Vinciguerra

CONCUR:



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O. Marvin Sowers, Jr.

LV/gb  
Hw-0002-2007.doc

### **ATTACHMENTS:**

1. Location Map
2. Photographs
3. Coverage maps
4. Resolution

## **RESOLUTION**

### **CASE NO. HW-0002-2007. NEW CINGULAR WIRELESS HEIGHT WAIVER**

WHEREAS, Ms. Lisa Murphy of New Cingular Wireless has applied for a height limitation waiver to allow for the placement of a single cellular antenna on an existing Dominion Power Pole with a maximum antenna height of 117 feet from grade; and

WHEREAS, a public hearing was advertised, adjoining property owners notified, and a hearing conducted on Case No. HW-0002-2007; and

WHEREAS, the proposed antenna array will be located on property zoned R-2, General Residential, and is further identified as James City County Real Estate Tax Map No.5230200054; and

WHEREAS, after a public hearing the Board of Supervisors finds that the requirements of Section 24-261 of the James City County Zoning Ordinance have been satisfied in order to grant a 57-foot waiver to the height limitation requirements to allow for the erection of a wireless communications facility that will not exceed 117 feet from grade that utilizes an alternative mounting structure in excess of 60 feet in height.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve Case No. HW-0002-2007, as described herein.

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John J. McGlennon  
Chairman, Board of Supervisors

ATTEST:

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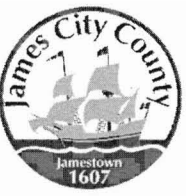
Sanford B. Wanner  
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 13th day of November, 2007.

Hw-0002-2007.res

# JCC--HW-02-07

## Cingular Wireless Height Waver





**NF488D**  
**Route 60 / Wysteria Garden**  
**Whiting Avenue**



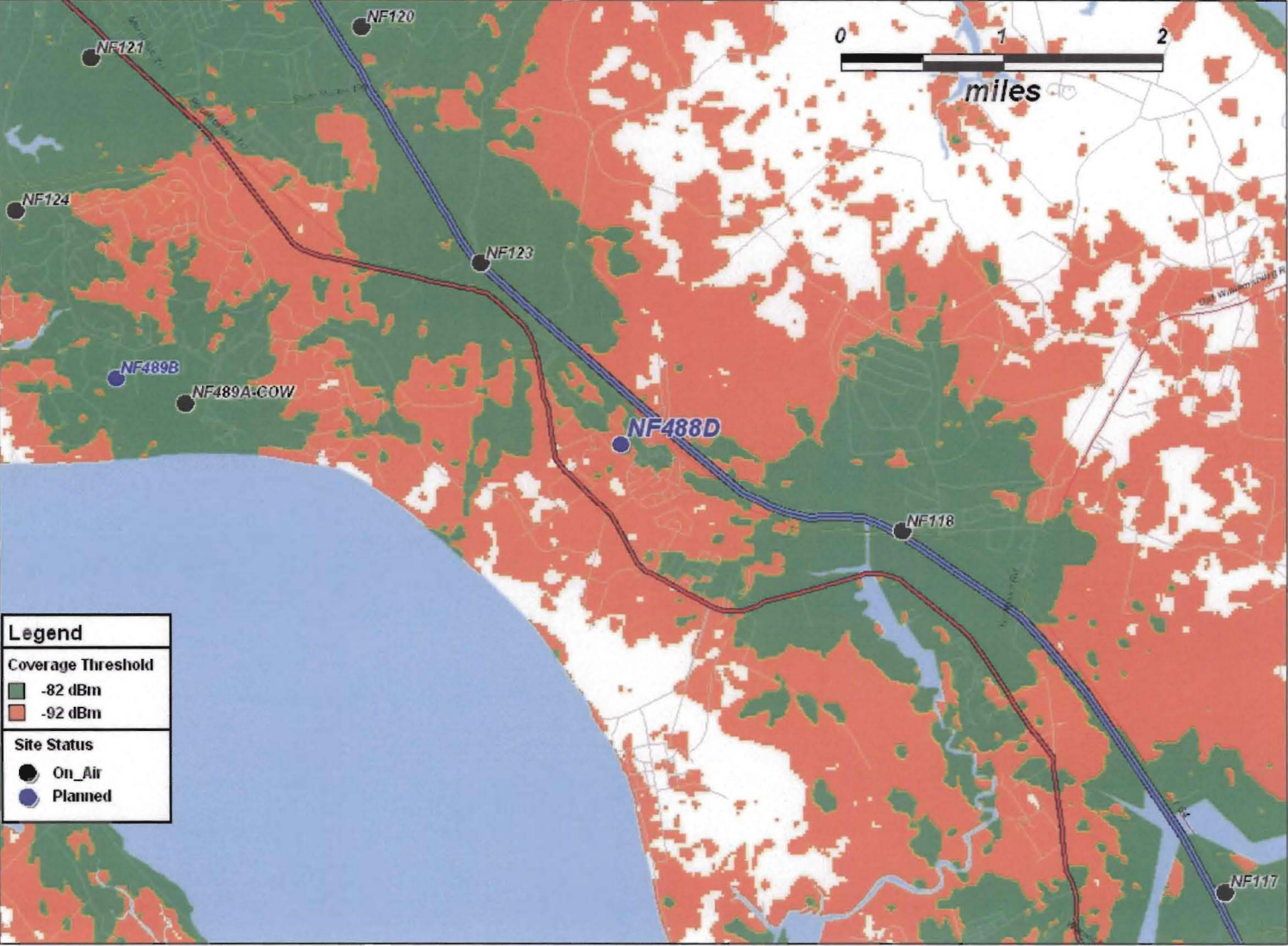
Illustration of antenna

Existing Pole

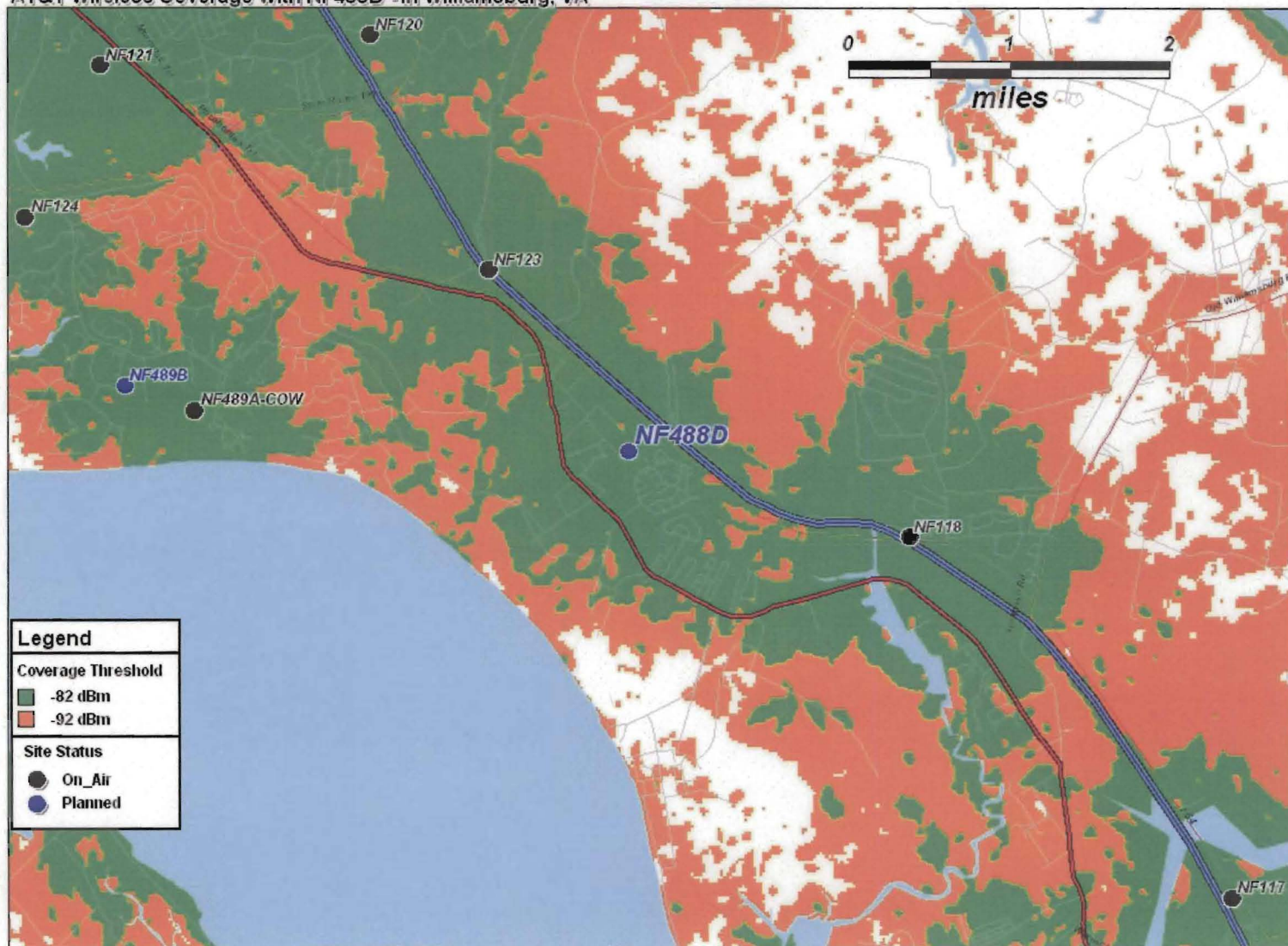
Illustration of  
supply shed



AT&T Wireless Coverage Without NF488D - in Williamsburg, VA



AT&T Wireless Coverage With NF488D - in Williamsburg, VA



## M E M O R A N D U M

DATE: November 13, 2007

TO: The Board of Supervisors

FROM: David W. German, Senior Planner

SUBJECT: ZO-0011-2007. R-4 (Residential Planned Community) Ordinance Amendment-Initiating Resolution

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At the Board of Supervisor's Meeting of October 23, 2007, staff presented an initiating resolution to the Board instructing staff to prepare and present language to revise Sections 24-275 and 24-283 of the Zoning Ordinance. These sections are worded in such a manner as to potentially prohibit the development of Residential Planned Communities in the County, which are governed by the R-4 Article of the Zoning Ordinance.

After deliberation, the Board instructed staff to narrow its initial focus to only Section 24-275, and, specifically, to address language in the requirement for 400 acres found in this section. Under a strict reading of this language, a developer who wished to develop a R-4 Zoned Residential Planned Community would need to maintain "400 acres or more under single ownership or control" *in perpetuity*, in order to maintain compliance with the Zoning Ordinance over time. Staff believes that the intent of the ordinance is to establish a 400-acre minimum area, and to require a single ownership or controlling interest for a new R-4 District at the time of application, rather than in perpetuity. To date, the ordinance has been applied in this manner by staff, the Planning Commission, and the Board of Supervisors in the approval of all R-4 communities that have been created in the County.

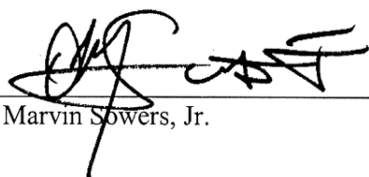
The Board further instructed that additional research be performed with respect to two items in the R-4 Zoning Ordinance. First, the "single ownership or control" and "same ownership or control" phrases, which appear in Sections 24-275 and 24-283, respectively, are not defined. The interpretation of these phrases could prove, under some circumstances, to be problematic or legally contentious. Second, new questions have been raised about Section 24-283 that might lead to entirely new language that further governs the expansion of existing Residential Planned Communities, and possibly, that would introduce a component of Homeowners Association participation and control, as well.

Staff recommends adoption of the attached resolution to initiate consideration of an amendment to Section 24-275 of the Zoning Ordinance, to clarify and correct the language of the 400-acre requirement. After conducting the Board requested research, staff will provide a report in Section 24-283, and request the Board of Supervisors' direction on additional ordinance amendments.

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David W. German

CONCUR:



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O. Marvin Sowers, Jr.

DWG/nb  
ZO\_0011\_2007.mem

Attachment

## **RESOLUTION**

### **ZO-0011-2007. R-4 (RESIDENTIAL PLANNED COMMUNITY) ORDINANCE AMENDMENT –**

#### **INITIATING RESOLUTION**

WHEREAS, the Planning Commission of James City County, Virginia, is charged by Virginia Code §15.2-2286 to prepare and recommend to the Board of Supervisors various land development plans and ordinances, specifically including a zoning ordinance and necessary revisions thereto as seem to the Commission to be prudent; and

WHEREAS, in order to make the Zoning Ordinance more conducive to proper development, public review and comment of draft amendments is required, pursuant to Virginia Code §15.2-2286; and

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

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby initiate review of the Zoning Ordinance to consider amending the language of Section 24-275 of Article V. Districts, Division 5. Residential Planned Community District, R-4, by amending the provisions and procedures relating to the 400-acre requirement for proposed residential planned communities found in this Section. The Planning Commission shall hold at least one public hearing on the consideration of amendments of said Ordinance and shall forward its recommendation thereon to the Board of Supervisors in accordance with law.

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John J. McGlennon  
Chairman, Board of Supervisors

ATTEST:

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Sanford B. Wanner  
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 13th day of November, 2007.

ZO\_0011\_2007.res



MEMORANDUM

DATE: November 13, 2007

TO: The Board of Supervisors

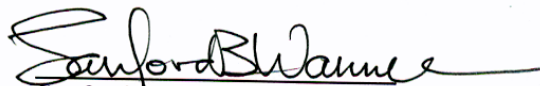
FROM: Sanford B. Wanner, County Administrator

SUBJECT: Development Recess

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At the October 23, 2007, Board meeting, suggested by Mr. Harrison, the Board discussed and proposed a resolution dealing with deferral of residential rezoning applications for a period of one year. After discussion, the Board instructed staff to place the resolution on the November 13 Board agenda. The resolution would state a Board policy on approval of residential rezoning applications. As noted by staff at the October 23 meeting, once a rezoning application has been submitted and acted upon by the Planning Commission, Section 15.2- 2286 of the State Code requires the Board to take action on the application in a time period not to exceed 12 months.

Attached is the resolution discussed at the October 23 Board meeting.

  
Sanford B. Wanner

SBW/gb  
DevelopRecess.mem

Attachment

## **RESOLUTION**

### **DEVELOPMENT RECESS**

WHEREAS, James City County has experienced rapid population growth since 1970; and

WHEREAS, there already exists in James City County properly zoned residential lots in sufficient numbers to accommodate large numbers of additional residents; and

WHEREAS, an existing 11,000-plus units have been approved, but not built; and

WHEREAS, there is currently a large amount of housing on the market; and

WHEREAS, such rapid population growth has caused stress to the County's infrastructure, to its populace, to its financial condition, and to its environment; and

WHEREAS, the stress from such population growth may not be limited to James city County, but may extend to the Chesapeake Bay, to the various related aquifers, and to the regional air quality; and

WHEREAS, rezoning land from nonresidential to residential, or rezoning residential land to permit more lots than intended, has cumulative impacts not yet understood; and

WHEREAS, the County staff is presently executing several important studies, including the Gordon Creek Watershed, rural lands, comprehensive storm water drainage, cumulative impact, and public facility test review, that will help the supervisors better understand the impact, both positive and negative, of further population growth, and

WHEREAS, the County is in the early stages of revising its Comprehensive Plan, whereby County citizens can express their preferences regarding the changing character of the County.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, will not approve any application to rezone a residential lot for a period of one year from this date. This pause would not prohibit commercial development, by-right development, applicants already in the legislative process, and applicants that are proposing truly substantial public benefits such as affordable housing. Those that add continued stress on our infrastructure will wait until the much needed studies are complete and the cumulative impacts of further development can be determined.

BE IT FURTHER RESOLVED that the backlog of approved, but not built, units will provide developers continuing construction activity during the one-year period. This pause will provide the time for development of a clear plan of where we want the County to be in ten or more years. It will permit key stakeholders such as the Planning Department staff, the Planning Commission, the Development Community, and citizens' groups to address a plan review process that would apply to all development cases, commercial and residential.

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John J. McGlennon  
Chairman, Board of Supervisors

ATTEST:

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Sanford B. Wanner  
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 13th day of  
November, 2007.

DevelopRecess.res