

A G E N D A

JAMES CITY COUNTY BOARD OF SUPERVISORS

County Government Center Board Room

December 11, 2007

7:00 P.M.

	<u>Page</u>
A. ROLL CALL	
B. MOMENT OF SILENCE	
C. PLEDGE OF ALLEGIANCE - Elijah Cordell Onks, a fifth-grade student at Matoaka Elementary School	
D. RECOGNITION	
1. Chairman's Awards	
a. Employee	
b. Citizen	
E. PRESENTATIONS	
1. Annual Financial Report – Goodman and Company	1
<i>Supports County's Strategic Pathway 1.a - evaluate service delivery costs</i>	
2. Historic Triangle Substance Abuse Coalition	3
3. Planning Commission Annual Report	
F. HIGHWAY MATTERS	
G. PUBLIC COMMENT	
H. CONSENT CALENDAR	
1. Minutes –	
a. November 27, 2007, Work Session	9
b. November 27, 2007, Regular Meeting.....	11
2. Dedication of Streets - Landfall At Jamestown, Phases 1a, 4, And 5	21
3. Erosion and Sediment Control Violation – Civil Charge – Busch Properties, Inc.....	27
<i>Supports County's Strategic Pathway 4.c - ensure private development and government operations are environmentally sensitive</i>	
4. Chesapeake Bay Preservation Ordinance Violation – Civil Charge – AIG Baker Williamsburg, LLC	31
<i>Supports County's Strategic Pathway 4.c - ensure private development and government operations are environmentally sensitive</i>	

- CONTINUED -

5. Contract Award – Master Plan for Jamestown Beach Campground, Jamestown Yacht Basin, and Chickahominy Riverfront Park	35
<i>Supports County's Strategic Pathway 3.e & 4.d - match community growth with the ability to maintain a high quality natural and man-made environment & seek partnerships, citizen committees, trusts and donations to protect the environment</i>	
6. Contract Award – Purchase of Human Resource Management and Payroll Software.....	37
<i>Supports County's Strategic Pathway 5.b - maintain a well-trained and high performing workforce for normal and emergency operations</i>	
7. Award of Contract – Design of Community Gymnasium Facility.....	39
<i>Supports County's Strategic Pathway 3.d - develop adequate water supply and provide sewer infrastructure to meet needs</i>	
8. Contract Award - James City/Williamsburg Community Center Partial Re-Roofing Project- \$174,750	43
<i>Supports County's Strategic Pathway 1.a - evaluate service delivery costs</i>	
9. Virginia Department of Transportation (VDOT) Enhancement Grant – Norge Depot Relocation and Restoration - Phase III	45
<i>Supports County's Strategic Pathway 4.a - highlight our natural environment and rich history in County facilities and publications</i>	
10. Transportation Enhancement Program Amendment to Project Development and Administration Agreement for the Norge Depot Relocation and Restoration (Phase III), EN01-047-120, P101, R201, C501-UPC#59767	47
<i>Supports County's Strategic Pathway 4.a - highlight our natural environment and rich history in County facilities and publications</i>	
11. Appointment to the Colonial Community Criminal Justice Board	49
12. Establishment of a Full-Time Regular Groundskeeper I Position for Grounds Maintenance. 51	
<i>Supports County's Strategic Pathway 5.b - maintain a well-trained and high performing workforce for normal and emergency operations</i>	

I. PUBLIC HEARINGS

1. Case No. SUP-0021-2007. Tiki Climbing and Grinding Professional Tree Services.	53
2. Case No. SUP-0026-2007. Williamsburg Dodge Trailer Sales.....	75
3. Case No. ZO-0009-2007. Zoning Ordinance Amendment-Wireless Communications Facilities - Height Limits Amendment	85
4. Case No. ZO-0008-2007. Zoning Ordinance Amendment-Residential Cluster Master Plan Consistency	111
5. Case No. ZO-0010-2007. Zoning Ordinance Amendment-Affordable Housing	117
6. A resolution to amend a conservation easement on approximately 98 acres of property located at 2875, 2945, and 2975 Forge Road	123
<i>Supports County's Strategic Pathway 4.c - ensure private development and government operations are environmentally sensitive</i>	
7. An Ordinance to amend Chapter 20, Taxation, of the JCC Code Article IV, Transient Lodging Tax, Section 20-14, Tax Levied	125
8. An Ordinance to amend JCC Code, Chapter 16A, Purchase of Development Rights Program	129

9. An Ordinance to amend JCC Code, Chapter 23, Chesapeake Bay Preservation, Resource Management Area Buffers 135
Supports County's Strategic Pathway 4.f - manage stormwater effectively and protect groundwater
10. Resolution authorizing the sale of a six-acre parcel of property located at 3100 John Tyler Highway and identified as RE Tax Map No. 4510100018 141

J. BOARD CONSIDERATIONS

1. Michelle Point Proffer Amendment (Deferred from November 13, 2007) 143
2. James City County Devolution Analysis – Secondary Roads Study (Route Nos. 600 and above) (Deferred from November 27, 2007)..... 171
Supports County's Strategic Pathway 1.b - identify services/programs with overlapping missions and/or constituents and increase efficiencies through shared or merged services
3. Route 60 Relocation - 1) Memorandum of Agreement between James City County and Newport News, 2) Amend the Route 60 Project Administrative Agreement to Administer the Project for the City of Newport News..... 175
Supports County's Strategic Pathway 1.b - identify services/programs with overlapping missions and/or constituents and increase efficiencies through shared or merged services
4. Chesapeake Bay Preservation Ordinance Transition – Amendments and Grandfathering/Vesting Rules 177
Supports County's Strategic Pathway 3.e - match community growth with the ability to maintain a high quality natural and man-made environment

K. PUBLIC COMMENT

L. REPORTS OF THE COUNTY ADMINISTRATOR

M. BOARD REQUESTS AND DIRECTIVES

N. ADJOURNMENT to January 2, 2008, at 4 p.m.

MEMORANDUM

DATE: December 11, 2007

TO: The Board of Supervisors

FROM: Suzanne R. Mellen, Assistant Manager of Financial and Management Services

SUBJECT: Annual Financial Report – Goodman & Company LLP

Included in the Reading File are the FY 07 Financial Statements for James City County and James City Service Authority. C. Frederick Westphal, Senior Partner at Goodman & Company LLP, will present an overview to the Board.

Suzanne R. Mellen

SRM/tlc
Audit07.mem

Historic Triangle Substance Abuse Coalition

Making a Difference to James City County

HTSAC Mission-

The mission of the Historic Triangle Substance Abuse Coalition is to strengthen the capacity of the Historic Triangle region to create and maintain a safe, healthy and drug-free community.

HTSAC Goals

- **Goal 1: (Systems Change)** -Establish and Strengthen collaboration among all sectors of the community, including private, non-profit agencies, federal, state and local governments, to support the Coalition efforts to prevention and reduce substance abuse among youth and adults.
 - **Goal 2: (Reduce, Prevent, Treat and Promote On-going Recovery from Substance Abuse)** – The Coalition, through its members, will strive to reduce substance abuse among youth, and overtime, among adults by addressing the factors in a community that increase the risk of substance abuse and promote on-going recovery and the factors that minimize the risk of substance abuse.
 - **Goal 3: (Form and Sustain the Coalition)** – The Coalition will operate through a formal written set of guidelines in partnership with its member organizations and the community. HTSAC will continue to maintain its inclusiveness, seek diversity in its representation, and expand and diversify its sources of revenue to achieve its mission and strategic goals.
-

JCC Youth Services Strategic Plan

- Increase Coordination of Programs and Services
 - Promote Family Involvement
 - Improve Access to Services
 - Increase Collaboration with Schools
-

2003 JCC Comprehensive Plan - Housing

- Achieve a range of choice in housing type, density and price range.
 - Eliminate substandard housing conditions.
 - Increase the availability of affordable housing.
-

JCC 2003 Comprehensive Plan - Transportation

- Develop and maintain an efficient, safe and attractive transportation system that increases mobility in the County, reinforces the goals of the Comp Plan, and contributes to the pedestrian and bicycle friendly community.
-

HTSAC Contributions to JCC

- **Promote Family Involvement**
 - Strengthening Families Program (6 Programs)
 - 43 families served
 - Social Norms Parent Campaign & Safe Homes Pledge
 - Reaching over 2,500 JCC parents
 - **Service Coordination**
 - Too Good For Drugs (1- complete/2 programs remain)
 - 415 youth completed the program.
 - Reality Store (2 programs)
 - FREE Youth
 - 8 JCC Youth – YADAPP, 4 - Washington DC
 - Law Enforcement
 - Trainings
 - Underage Drinking Prevention Tipline
-

HTSAC Contributions to JCC

- JCC Needs Assessment Data
 - CTC Youth Survey Data
 - JCC Parent Survey Data
 - Treatment Needs Assessment
 - Focus Groups
-

HTSAC Contributions to JCC

■ Housing

- ❑ Transitional Housing for males in recovery from SA 6 JCC residents
- ❑ CCC Housing Allowances

■ Transportation

- ❑ Stipends to CCC clients for local travel to Tx and Recovery programs.
-

Leveraged Funding

- HTSAC has leveraged over 2.9 million dollars since our inception in 2000
 - 71% has been redistributed back to the community through coalition partners for direct services.
-

Funds Awarded to JCC 2002 - 2007

■ Strengthening Families	\$14,358.51
■ Transitional Housing	\$47,000
■ Trainings & Training Materials	\$3,435.62
■ Safe Homes Pledge JCC Parents	\$177.60
■ Transportation Funds	<u>\$250.00</u>

Estimated: \$65,221.73

Value of JCC & HTSAC Partnership

- HTSAC functions as an information broker for substance abuse resource to JCC residents.
 - It is designed to uniquely address population level changes in substance abuse in JCC.
 - It gathers current data for JCC to understand youth and adult substance abuse trends and its impact on our community. (violence, homelessness, teen pregnancy)
 - Shared resources and use of JCCCS to implement evidence-based programs has been successful.
-

**AT A WORK SESSION OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY,
VIRGINIA, HELD ON THE 27TH DAY OF NOVEMBER 2007, AT 4:00 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, Absent
M. Anderson Bradshaw, Stonehouse District

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

C. BOARD DISCUSSIONS

1. Housing Market Analysis and Needs Assessment Study Presentation

Mr. Doug Powell, Community Services Manager, gave a brief introduction for Mr. Rick Hanson, Office of Housing and Community Development Director. Mr. Hanson gave the Board a brief overview of the research done by the Center for Housing Research at Virginia Tech and introduced Dr. Casey Dawkins, Director of the Center for Housing Research, to present those findings.

Dr. Dawkins presented the findings of the James City County/Williamsburg Housing Market Analysis and Needs Assessment. Dr. Dawkins highlighted some background on housing issues in the County, market characteristics for the area, population growth, projected housing demand, income and poverty in the area, employment and housing needs, and housing costs.

Discussion was held regarding the correlation between employment, education, and housing needs in the County.

Discussion was held regarding migration of workers between the County and Hampton and Newport News.

2. Route 60 Relocation - 1) Memorandum of Agreement between James City County and Newport News; 2) Amend the Route 60 Project Administrative Agreement to administer the project for the City of Newport News

Mr. Steven Hicks, General Services Manager, presented information about the administration of the Route 60 Relocation Project. Mr. Hicks explained the new location of the road and how it would service the citizens. He stated that according to the Memorandum of Agreement, the County would be administering the design and construction of the Project for the City with its input and support. Mr. Hicks outlined location, design, logistics and funding for the Project. Mr. Hicks indicated that a resolution would come forward at the December 11, 2007, meeting that would allow the County Administrator to enter into the Agreement.

Mr. Wanner discussed the meeting that he and Mr. Hicks had with the City of Newport News regarding the Agreement.

The Board and staff discussed the terms of the Agreement, with emphasis on the need for funding and the termination clause that is included in the Agreement.

3. Legislative Program

Mr. Rogers introduced Delegates William K. Barlow, 64th District; Phillip A. Hamilton, 93rd District; Delegate-elect Brenda Pogge, 96th District; and Senator Thomas K. Norment, Jr., 3rd District.

Mr. Leo P. Rogers, County Attorney, provided a brief update of the 2007 Legislative Program and a brief overview of a proposed 2008 Legislative Program of items to be introduced on behalf of the County and supported by the County.

The Board, staff, and the delegation discussed the legislative items.

The Board and staff discussed amendments to the Legislative Program, which would be assigned to the County's delegation in the General Assembly after adoption by the Board.

At 6:03 p.m., the Board broke for dinner.

Sanford B. Wanner
Clerk to the Board

AT A REGULAR MEETING OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE 27TH DAY OF NOVEMBER 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, Absent
M. Anderson Bradshaw, Stonehouse District

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

B. MOMENT OF SILENCE

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

C. PLEDGE OF ALLEGIANCE - Jasmine Nicole Martin, a seventh-grade student at James Blair Middle School, led the Board and citizens in the Pledge of Allegiance.

D. PRESENTATIONS

1. Resolution of Appreciation – Mr. Robert E. Gilley

Mr. McGlennon presented a resolution of appreciation for the outstanding contributions of the late Mr. Robert E. Gilley to his family.

2. Employee and Volunteer Outstanding Service Awards

Mr. McGlennon, assisted by the other Board members, presented outstanding service awards to the following individuals: Rita Davis, Dave Potter, Joel Schwartz, and Joseph Montgomery for volunteer services to the community; Timothy Cleary, Robert Cosby, Sean Fisher, Shereen Hughes, Ellen Cook, Terry Costello, Jose Ribeiro, and Michael Woolson for service on the Better Site Design Implementation Committee; Jason Purse, and Leanne Reidenbach for assistance in the creation of the Public Lands Zoning District; Patrick Murray and Stan Stout for solving a crime that led to an indictment on a 1993 murder investigation; Alan Robertson, Bernie Farmer, Danny Poe, John Horne, John McDonald, Leo Rogers, Scott Thomas, Stephanie Ahrendt, Wayland Bass, and William Porter for the Warhill Site Development; Alicia Lamm, Kelly Cross, and William Gibbs for a successful larceny investigation; Arlana Fauntleroy, Carla Brittle, John Carnifax, Nancy Ellis, Phil Mease, Scott Marshall, Stephanie Deal, and Veda McMullen for work on the Virginia Recreation and Parks Annual Conference; Gwen Mason for serving the interests of children; and William “Buddy” Stewart for alternative fuels.

E. HIGHWAY MATTERS

Mr. Jim Brewer, Virginia Department of Transportation (VDOT) Residency Administrator, asked the Board to watch for potholes and inform him when they occur and gave an update on the shoulder-widening project on Route 199.

Mr. Icenhour thanked Mr. Brewer for having signs put up for the Black Friday parking at Chisel Run. He asked about the yield signs or stop signs at Forest Glen and No Parking signs near the play lot. He stated that the speed guide he received will be passed on to the residents.

Mr. Harrison asked Mr. Brewer to reevaluate a speed study on Ironbound Road across from Mid-County Park with regard to pedestrian traffic.

Mr. McGlennon noted erosion on the shoulder at the intersection of Lake Powell Road and Rolling Woods Drive and asked that it be investigated.

F. PUBLIC COMMENT

1. Mr. Michael Richardson, 2701 Jolly Pond Road, commented on poor construction of affordable housing units in the County.

2. Mr. Ed Oyer, 139 Indian Circle, commented on a decrease in government spending.

3. Ms. Donna Windsor Smith, 1858 Berrow Drive, commented on air pollution in the County, the speed limit on Route 199, and development.

G. CONSENT CALENDAR

Mr. Bradshaw asked to pull Item No. 7 for separate consideration.

Mr. Harrison made a motion to adopt the remaining items.

On a roll call vote, the vote was: AYE: Harrison, Bradshaw, Icenhour, McGlennon. (4). NAY: (0).

1. Minutes -
 - a. October 23, 2007, Work Session
 - b. November 13, 2007, Regular Meeting
2. Resolution of Appreciation – Mr. Robert E. Gilley

RESOLUTION OF APPRECIATION

MR. ROBERT E. GILLEY

WHEREAS, Mr. Robert E. Gilley served the citizens of James City County until his untimely passing in 2007; and

WHEREAS, Mr. Gilley served as a member of the James City County Agricultural & Forestal District (AFD) Advisory Committee members from July 1986 to September 2007; and

WHEREAS, Mr. Gilley was elected Chairman by the AFD Advisory Committee members and served in this capacity for his entire term on the Committee; and

WHEREAS, Mr. Gilley demonstrated a deep and lasting concern for the development, management, and administration of AFDs throughout James City County; and

WHEREAS, Mr. Gilley, by his actions, helped preserve Agricultural and Forestal lands for future generations of James City County citizens.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby extend its appreciation and gratitude to the family of

MR. ROBERT E. GILLEY

in recognition of his 21 years of dedicated service to the citizens of James City County.

3. Williamsburg Community Health Foundation Grant Award - \$16,195

RESOLUTION

WILLIAMSBURG COMMUNITY HEALTH FOUNDATION GRANT AWARD - \$16,195

WHEREAS, the Williamsburg Community Health Foundation has awarded the James City County Fire Department a grant in the amount of \$16,195; and

WHEREAS, the funds will be used to for the purchase of EMS Software; 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:

Revenues:

WCHF – EMS Software	<u>\$16,195</u>
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Expenditures:

WCHF – EMS Software	<u>\$16,195</u>
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4. Award of Contract – Ambulance Purchase

RESOLUTION

AWARD OF CONTRACT - AMBULANCE PURCHASE

WHEREAS, funds are available in the FY 2008 Capital Improvements Program budget for purchase of a replacement ambulance; and

WHEREAS, cooperative purchasing action is authorized by Chapter 1, Section 5 of the James City County Purchasing Policy, and the Virginia Public Procurement Act, and the City of Newport News issued a cooperative purchasing contract to DPC Emergency Equipment as a result of a competitive sealed Request for Proposals; and

WHEREAS, Fire Department and Purchasing staff determined the contract specifications met the County's performance requirements for a medium-duty ambulance and negotiated a price of \$200,210 with DPC Emergency Equipment for a 2008 Freightliner M2/American LaFrance Type I Medium-Duty Ambulance unit.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, authorizes the County Administrator to execute a contract with DPC Emergency Equipment for a medium-duty ambulance in the amount of \$200,210.

5. Award of Contract – Mobile Data Terminals

RESOLUTION

CONTRACT AWARD - MOBILE DATA TERMINALS

WHEREAS, it has been determined by the Police and Fire Departments staff, in consultation with the Purchasing Office, that Motorola is the only source practicably available to provide mobile data terminals with guaranteed compatibility with the existing 800-MHz public safety communications radio system as required by the County; and

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

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, authorizes the County Administrator to execute the contract in the amount of \$430,661 for 67 mobile data terminals to Motorola.

6. Local Contribution – Circuit Court Mediation Program – \$6,000

RESOLUTION

LOCAL CONTRIBUTION - CIRCUIT COURT MEDIATION PROGRAM - \$6,000

WHEREAS, James City County Division of Social Services will provide one-time funding of \$6,000 from the Undesignated Local Match line item to provide funds to the Circuit Court for the Mediation Program; and

WHEREAS, the funds will attach the mediation administration to the Circuit Court Mediation Program; and

WHEREAS, specifications have been prepared by the Circuit Court staff; and

WHEREAS, James City County will no longer administer the Mediation Program through Social Services.

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

Revenue:

Undesignated Local Match (007-083-0336)	<u>\$6,000</u>
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Expenditure:

Circuit Court Mediation Fund	<u>\$6,000</u>
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7. Water Conservation Guidelines Revision

Mr. Foster stated that some revisions have been made to the document and the changes had been distributed to the Board – change to 5,000 square feet.

Mr. McGlennon stated that nonresidential development changes, restore those items – may need to encourage water efficiency.

Mr. Foster stated this could be revised.

Mr. Bradshaw made a motion to adopt Item No. 7 as amended.

On a roll call vote, the vote was: AYE: Harrison, Bradshaw, Icenhour, McGlennon. (4). NAY: (0).

RESOLUTION

WATER CONSERVATION GUIDELINES REVISION

WHEREAS, rezoning and special use permit applications include proffers or conditions to address water conservation practices to be incorporated into the proposed development to reduce water consumption; and

WHEREAS, the water conservation guidelines have been revised by staff and the Water Conservation Committee to emphasize reducing reliance on the James City Service Authority public water supply and encourage the use of other water sources for irrigation.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, endorses the attached revisions to the Water Conservation Guidelines.

H. PUBLIC HEARINGS

1. Devolution of Secondary Road System

Mr. Steven Hicks, General Services Manager, stated the County participated with VDOT in a study to take over the secondary road system. He stated the matter was discussed at the Board's retreat in January as well as in the October work session. He also stated the agreement with VDOT would allow the County to take over the construction and maintenance programs for secondary roads. He further stated staff is asking for a deferral of the resolution which allows the County Administrator to execute the agreement to enter into negotiations.

Mr. McGlennon stated the public could speak to this matter, but the Board would not act at this time. He stated the adoption would mean that the County would enter into negotiations to develop a plan and cost for taking over maintenance and construction projects for the secondary road system.

Mr. Hicks stated that the resolution authorized the County Administrator to enter into the agreement and authorized the County to enter into negotiations. He stated the actual costs would come before the Board before a decision would be made on actually taking over the construction and maintenance projects.

Mr. McGlennon opened the public hearing.

1. Mr. Michael Richardson, 2701 Jolly Pond Road, stated the expense to start the program was too high; asked how can they do better than VDOT, through workforce?; stated they are not in the business of subcontracting; and that he did not support this item.

2. Mr. Donny Martin, 7196 Canal Street, stated the cost was too much to take on the program when the State is currently administering it, and he commented on poor workmanship with contract work at his home.

3. Mr. Ed Oyer, 139 Indian Circle, commented on the public hearing advertisement for the devolution of the secondary roads; warned of lack of support from the State in the long term; and stated \$5 million is too high for a start-up cost.

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

Mr. McGlennon asked Mr. Hicks about prior public discussion.

Mr. Hicks stated that there have been several instances where this information has been made available to the public.

Mr. McGlennon stated this was not a new issue and asked if \$5million was the price of taking over all operations.

Mr. Hicks stated this was correct and that \$5 million was not the start-up cost. He stated the figure was based on a model developed by VDOT to start from scratch with a large public works project. He indicated that the General Services Department has a large portion of the equipment and facilities suggested in the model. He stated there were also discussions about what VDOT would provide to move this devolution process through and that the recommendation through the work session was to take incremental steps. He stated the agreement would allow the County to work with those contractors that work for VDOT, and the County would not take over systems until at least 2010, which would allow the County time to see if the arrangement was working.

Mr. McGlennon stated that what the State provides can also be taken away. He noted that cities in Virginia are given the responsibility to take care of the secondary roads as well as the County of Henrico.

Mr. Hicks stated this was correct and noted that Henrico County gets a large contribution toward its Secondary Road Program from the State. He noted that this initiative was only for roads numbered 600 and above and not all roads in the County. He stated that State funds have been cut for construction, but this initiative would allow the County to prioritize how to use the funds received.

Mr. McGlennon stated that the resolution authorizes negotiations with VDOT. He stated that the \$5 million would only be required if the County took on all programs of construction, maintenance, and operations; used none of its own resources; and received no reimbursement from the State.

Mr. Hicks stated this was correct.

Mr. McGlennon deferred this item for action at a later date.

2. Ordinance to Amend James City County Code Chapter 18A - Stormwater Management

Ms, Ann Davis, Treasurer, stated it was the intention of staff to implement consistency and equity between real estate taxes and stormwater fees. She indicated that due to an oversight, the current County Code provides for interest on stormwater management fees rather than interest and penalty as it does with real estate taxes. She stated the intention of the ordinance amendment was to treat delinquencies of both fees equally so the fees would all be administered using the same business rules. She recommended adoption of the ordinance amendment.

Mr. McGlennon opened the public hearing.

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

Mr. Harrison made a motion to adopt the ordinance.

On a roll call vote, the vote was: AYE: Harrison, Bradshaw, Icenhour, McGlennon. (4). NAY: (0).

I. BOARD CONSIDERATION

1. Approving the County's 2008 Legislative Program

Mr. Rogers stated the resolution adopted the County's Legislative Program with the amendments discussed at the work session with the members of the General Assembly. He recommended approval of the resolution.

Mr. Bradshaw made a motion to adopt the Legislative Program with the amendments discussed at the work session.

On a roll call vote, the vote was: AYE: Harrison, Bradshaw, Icenhour, McGlennon. (4). NAY: (0).

RESOLUTION

APPROVING THE COUNTY'S 2008 LEGISLATIVE PROGRAM

WHEREAS, James City County has developed a Legislative Program for the consideration of the 2008 session of the General Assembly which outlines certain legislative policies which the Board believes ought to guide the General Assembly and proposes certain legislation that would benefit the County; and

WHEREAS, the Board has carefully considered its legislative program and believes that it is in the best interests of the citizens of James City County.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby approves the County's 2008 Legislative Program, and commends it to the County's representatives in the General Assembly for action.

BE IT FURTHER RESOLVED that a copy of the County's 2008 Legislative Program be forwarded to the County's elected representatives to the General Assembly.

J. PUBLIC COMMENT

1. Mr. Michael Richardson, 2701 Jolly Pond Road, commented on the devolution of secondary roads and stated that \$5 million was not enough to start the program. He commented on the dangers of students walking to Warhill High School in poor lighting with no sidewalk on one side of Centerville Road.

2. Mr. Donnie Martin, 7196 Canal Street, commented on the costs of the devolution of the secondary roads and other projects.

3. Mr. Ed Oyer, 139 Indian Circle, asked whether or not the housing units at Pocahontas Square were sold out.

K. REPORTS OF THE COUNTY ADMINISTRATOR

Mr. Wanner stated the Board had completed its business and it should adjourn to December 11, 2007, at 7 p.m. He noted that this would be the only meeting in December. He said that a meeting of the James City Service Authority Board of Directors needed to be held. He indicated to Mr. Richardson that he would provide him a copy of the VDOT study that gave the cost analysis of the devolution program.

L. BOARD REQUESTS AND DIRECTIVES

Mr. Bradshaw stated there was an initiating resolution for the zoning ordinance to offer regulation for payday lenders in the County by defining and creating a zoning category. He clarified that the resolution did not establish this zoning category, but rather starts the process of changing the ordinance. Mr. Bradshaw stated this required action because payday lenders are a different kind of facility from banks and other financial institutions in land use and other characteristics. He stated he would like to start the process so the next Board can define this zoning for payday lender facilities.

Mr. McGlennon stated this resolution starts the process for evaluating this type of business in accordance with the zoning ordinance and would propose amendments.

Mr. Bradshaw made a motion to adopt the resolution.

On a roll call vote, the vote was: AYE: Harrison, Bradshaw, Icenhour, McGlennon. (4). NAY: (0).

RESOLUTION

INITIATING CONSIDERATION OF AMENDMENTS

TO THE ZONING ORDINANCE

WHEREAS, the Board of Supervisors of James City County, Virginia, is authorized by Va. Code §15.2-2286, to initiate amendments to the zoning ordinance and changes to the zoning map; and

WHEREAS, on August 12, 2003, the Board of Supervisors adopted the Comprehensive Plan and desires to consider the adoption of zoning ordinance amendments to assist in achieving the goals which have been established in that Plan; 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 the proposed zoning ordinance amendments.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby initiate consideration of amendments to the James City County Zoning Ordinance in order to add a definition of "payday lenders" to James City County Code Section 24-2 and to consider whether payday lenders should be a permitted or specially permitted use in the various zoning districts in Chapter 24, Zoning, of the James City County Code. The Planning Commission shall hold at least one public hearing on the amendments of the Zoning Ordinance and shall forward its recommendation thereon to the Board of Supervisors in accordance with the law.

M. ADJOURNMENT – to December 11, 2007, at 7 p.m.

Mr. Harrison made a motion to adjourn.

On a roll call vote, the vote was: AYE: Harrison, Bradshaw, Icenhour, McGlennon. (4). NAY: (0).

At 8:04 p.m. Mr. McGlennon adjourned the Board to December 11, 2007, at 7 p.m.

Sanford B. Wanner
Clerk to the Board

112707bos.min

MEMORANDUM

DATE: December 11, 2007

TO: The Board of Supervisors

FROM: Scott J. Thomas, Environmental Director

SUBJECT: Dedication of Streets in Landfall at Jamestown, Phases 1a, 4, and 5

Attached is a resolution requesting acceptance of certain streets in Landfall at Jamestown, Phases 1a, 4, and 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
LandfallSts.mem

Attachments

RESOLUTION

DEDICATION OF STREETS IN LANDFALL AT JAMESTOWN,

PHASES 1A, 4, AND 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.

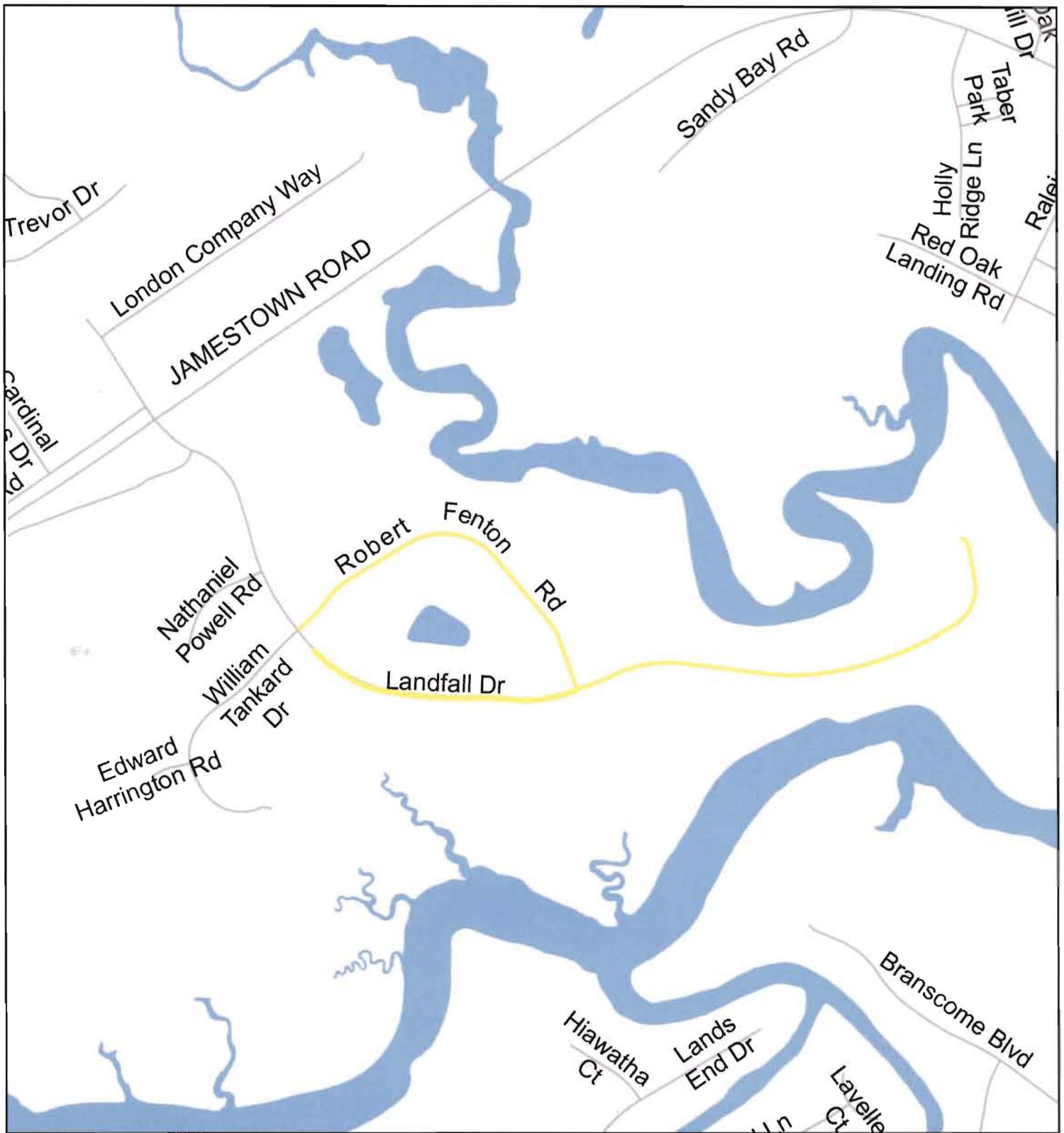
John J. McGlennon
Chairman, Board of Supervisors

ATTEST:

Sanford B. Wanner
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 11th day of December, 2007.

LandfallSts.res



DEDICATION OF STREETS IN LANDFALL AT JAMESTOWN, PHASES 1A, 4, AND 5

 Streets Being Dedicated

1 inch equals 584 feet



MEMORANDUM

DATE: December 11, 2007

TO: The Board of Supervisors

FROM: Scott J. Thomas, Environmental Director

SUBJECT: Erosion and Sediment Control Ordinance Violation – Civil Charge – Busch Properties, Inc.


Attached is a resolution for consideration by the Board of Supervisors involving a violation of the Erosion and Sediment Control Ordinance. The case involves the disturbance of land in excess of 2,500 square feet without a land disturbing permit. In accordance with provisions of the Ordinance, the County issued a Notice of Violation and requested that work stop. The owner, Busch Properties, Inc., has abated the violation. Under the provisions of the Ordinance, the Board may accept a civil charge of up to \$2,000 as offered by the responsible party. Rather than go to court, Busch Properties, Inc. has agreed to a civil charge of \$2,000. Staff believes that a civil charge of \$2,000 is equitable given the nature of the land disturbance and the cooperation exhibited by Busch Properties, Inc. in resolving the violation.

Staff recommends that the Board adopt the attached resolution accepting a civil charge for the erosion and sediment control violation.



Scott J. Thomas

CONCUR:



Leo P. Rogers

SJT/gb
BuschVio.mem

Attachment

RESOLUTION

EROSION AND SEDIMENT CONTROL ORDINANCE VIOLATION – CIVIL CHARGE –

BUSCH PROPERTIES, INC.

WHEREAS, on or about June 26, 2007, Busch Properties, Inc., Owner, violated or caused a violation of the County's Erosion and Sediment Control Ordinance by disturbing land without a permit at 210 Wareham's Pond Road East, Spencer's Grant, Williamsburg, Virginia, identified by property identification numbers 5130100004 and 5130100005 within the James City County Real Estate System and hereinafter referred to as the "Property"; and

WHEREAS, Busch Properties, Inc. has abated the violation at the Property; and

WHEREAS, Busch Properties, Inc. has agreed to pay \$2,000 to the County as a civil charge under the County's Erosion and Sediment Control Ordinance; and

WHEREAS, the James City County Board of Supervisors is willing to accept the civil charge in full settlement of the Erosion and Sediment Control Ordinance violation, in accordance with Section 8-7(f) of the Code of the County of James City.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes and directs the County Administrator to accept the \$2,000 civil charge from Busch Properties, Inc. as full settlement of the Erosion and Sediment Control Ordinance violation at the Property.

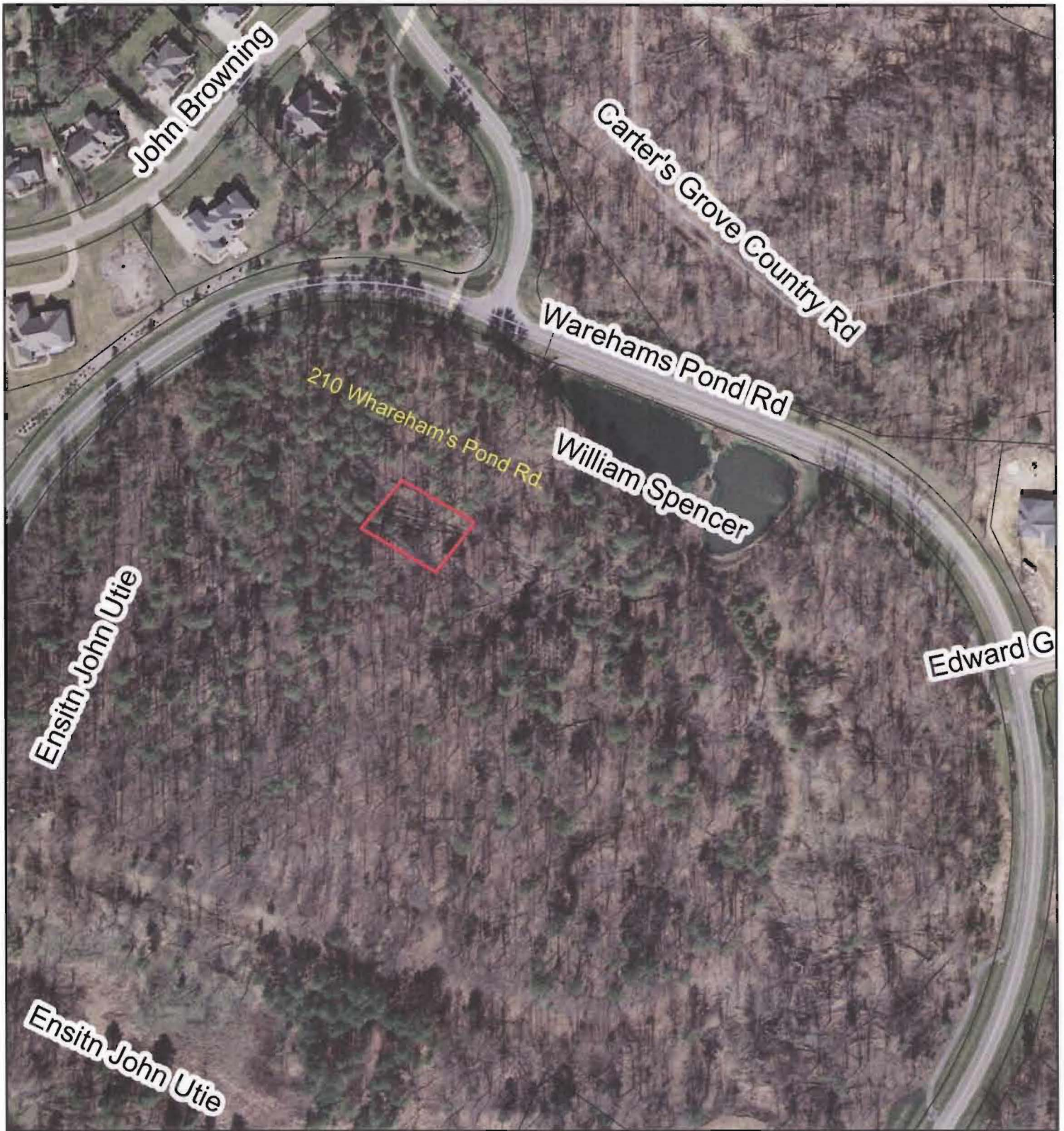
John J. McGlennon
Chairman, Board of Supervisors

ATTEST:

Sanford B. Wanner
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 11th day of December, 2007.

BuschVio.res



EROSION AND SEDIMENT CONTROL VIOLATION- BUSCH PROPERTIES INC -
210 WAREHAM'S POND ROAD

0 2550 100 150 200 250 300 350 400 450 500 550 600 650 700 750 800 850
Feet

 Approximate Area of Violation



M E M O R A N D U M

DATE: December 11, 2007

TO: The Board of Supervisors

FROM: Scott J. Thomas, Environmental Director
Leo P. Rogers, County Attorney

SUBJECT: Chesapeake Bay Preservation Ordinance Violations - Civil Charges - AIG Baker
Williamsburg, L.L.C.

Attached is a resolution for consideration involving violations of the Chesapeake Bay Preservation Ordinance. The case involves the unauthorized grading and the removal of vegetation from within the Resource Protection Area (RPA) located on the property. This case also involves the failure and neglect of the owner and their authorized agents to obey permit conditions, variances, and exceptions granted as part of their plan of development.

In accordance with provisions of the Ordinance, replanting of vegetation and civil charges are proposed to remedy the RPA violation. The property owner has voluntarily entered into a Chesapeake Bay Restoration Agreement with the County, submitted landscape plans, and provided surety to guarantee the implementation of the approved restoration plan to restore the impacted areas on their property.

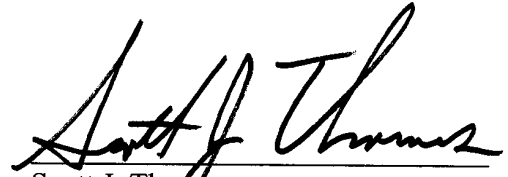
The attached resolution presents the specific details of the violations and recommended civil charges. Under the provisions of the Ordinance, the Board may accept civil charges for each violation of up to \$10,000. Staff and the property owner have agreed to the recommended civil charges of \$10,000 for the violation of Section 23-9 of the Ordinance and \$5,000 for the violation of Section 23-10 of the Ordinance. The total civil charges agreed to by staff and the owner are \$15,000.

The Chesapeake Bay Ordinance Civil Penalty Procedures Policy endorsed by the Board in August 1999 was used by staff as guidance. The Policy considers the water quality impact and the degree of noncompliance involved in the case.

For the violation of Section 23-9 of the Ordinance, the water quality impact and the violation intent have been assessed as significant and major by staff.

For the violation of Section 23-10 of the Ordinance, the water quality impact and the violation intent have been assessed as significant and moderate by staff.

Staff recommends the Board adopt the attached resolution establishing the civil charges for the Chesapeake Bay Ordinance violations presented.



Scott J. Thomas



Leo P. Rogers

SJT/LPR/gb
AIGBakerVio.mem

Attachments

RESOLUTION

CHESAPEAKE BAY PRESERVATION ORDINANCE VIOLATIONS - CIVIL CHARGES –

AIG BAKER WILLIAMSBURG, L.L.C.

WHEREAS, AIG Baker Williamsburg, L.L.C. is the owner of a certain parcel of land commonly known as 5224 Monticello Avenue, Williamsburg, VA, designated as Parcel No. 3840100003, within James City County's Real Estate system and commonly known as Settler's Market, New Town, Section 9, SP-74-06, herein referred to as the ("Property"); and

WHEREAS on or about October 10, 2007, AIG Baker Williamsburg, L.L.C. caused the removal of vegetation from within the Resource Protection Area on the Property; and

WHEREAS, AIG Baker Williamsburg, L.L.C. agreed to a Restoration Plan to replant 36 canopy trees, 72 understory trees, and 108 shrubs on the Property in order to remedy the violations under the County's Chesapeake Bay Preservation Ordinance and AIG Baker Williamsburg, L.L.C. has posted sufficient surety to guarantee the installation of the aforementioned improvements and the restoration of the Resource Protection Area on the Property; and

WHEREAS, AIG Baker Williamsburg, L.L.C. has agreed to pay a total of \$15,000 to the County as civil charges under the County's Chesapeake Bay Preservation Ordinance; and

WHEREAS, the James City County Board of Supervisors is willing to accept the restoration of the impacted area and the civil charges in full settlement of the Chesapeake Bay Preservation Ordinance violation in accordance with Sections 23-10 and 23-18 of the Code of the County of James City.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes and directs the County Administrator to accept the \$15,000 in civil charges from AIG Baker Williamsburg, L.L.C., as full settlement of the Chesapeake Bay Preservation Ordinance Violations.

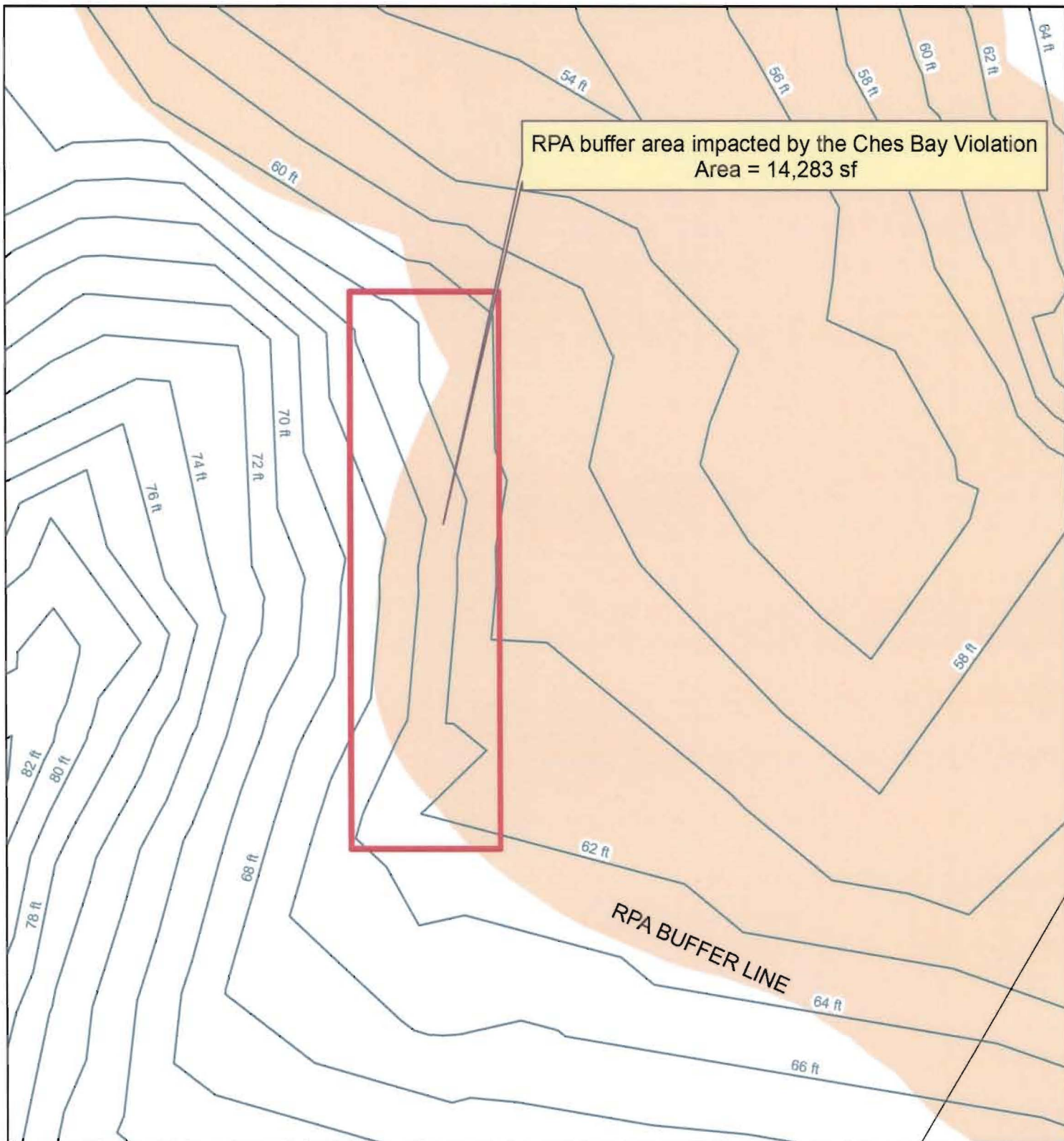
John J. McGlennon
Chairman, Board of Supervisors

ATTEST:

Sanford B. Wanner
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 11th day of December, 2007.

AIGBakerVio.res



Chesapeake Bay Ordinance Violation Settler's Market - Newtown - SP-74-06

0 25 50 100 150 200 250 300 Feet



MEMORANDUM

DATE: December 11, 2007

TO: The Board of Supervisors

FROM: Stephanie Ahrendt, Purchasing/Management Services Director

SUBJECT: Contract Award – Master Plan for Jamestown Beach Campground, Jamestown Yacht Basin, and Chickahominy Riverfront Park

A Request for Proposals (RFPs) for development of a Master Plan for Jamestown Beach Campground, Jamestown Yacht Basin, and Chickahominy Riverfront Park was publicly advertised. The following seven firms submitted proposals:

Firm

Carlton Abbott
EDAW
Kimley Horn
LandDesign
LandStudio
Rhodeside and Harwell
Vanasse Hangen Brustlin

Staff evaluated the proposals and determined Vanasse Hangen Brustlin was the most fully qualified firm and its proposal best suited the County's needs as defined in the RFPs. A price of \$240,000 was negotiated with Vanasse Hangen Brustlin for this project. Funds in the amount of \$269,900 are available in the FY 08 Non-departmental Budget for this procurement.

Staff recommends approval of the attached resolution.


Stephanie Ahrendt

SA/nb
ContractAwd.mem

Attachment

RESOLUTION

CONTRACT AWARD – MASTER PLAN FOR JAMESTOWN BEACH CAMPGROUND,

JAMESTOWN YACHT BASIN, AND CHICKAHOMINY RIVERFRONT PARK

WHEREAS, a Request for Proposals (RFPs) to develop a Master Plan for Jamestown Beach Campground, Jamestown Yacht Basin, and Chickahominy Riverfront Park was publicly advertised and staff reviewed proposals from seven firms interested in performing work; and

WHEREAS, upon evaluating the proposals, staff determined that Vanasse Hangen Brustlin was most fully qualified, and submitted the proposal that best suited the County's needs as presented in the RFPs.

NOW THEREFORE BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, awards the \$240,000 contract to develop a Master Plan for Jamestown Beach Campground, Jamestown Yacht Basin, and Chickahominy Riverfront Park to Vanasse Hangen Brustlin.

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 11th day of December, 2007.

ContractAwd.res

MEMORANDUM

DATE: December 11, 2007

TO: The Board of Supervisors

FROM: Carol M. Luckam, Human Resource Manager
John E. McDonald, Manager, Financial and Management Services

SUBJECT: Contract Award – Purchase of Human Resource Management and Payroll Software

A Request for Proposals (RFP) for the purchase of an integrated Human Resource Management and Payroll software to replace the software that has been in use for the past ten years was publicly advertised. The following four firms submitted proposals:

PDS
Kronos
Highline
Tyler Technologies

Staff evaluated the proposals and determined PDS was the most fully qualified firm and its proposal best suited the County's needs as defined in the RFP. A price of \$296,047 was negotiated with PDS for the software and its installation. Funds in the amount of \$350,000 are available in the FY 2008 Capital Improvements Program budget for this procurement. The balance of the funds, \$53,953, will be used to purchase peripheral hardware and software for the time and attendance portion of this project, as well as hardware needed by the County's Information Technology group.

Staff recommends approval of the attached resolution.


Carol M. Luckam

John E. McDonald

CML/nb
SftwrePrchse.mem

Attachment

RESOLUTION

CONTRACT AWARD – PURCHASE OF HUMAN RESOURCE MANAGEMENT

AND PAYROLL SOFTWARE

WHEREAS, a Request for Proposals (RFP) for the purchase of an integrated Human Resource Management and Payroll software to replace the software that has been in use for the past ten years was publicly advertised and staff reviewed proposals from four firms interested in performing work; and

WHEREAS, upon evaluating the proposals, staff determined that PDS was most fully qualified and submitted the proposal that best suited the County's needs as presented in the RFP.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, awards the \$296,047 contract to implement an integrated Human Resource Management and Payroll software to PDS and authorizes the County Administrator to execute the contract.

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 11th day of December, 2007.

SftwrePrchse.res

M E M O R A N D U M

DATE: December 11, 2007

TO: The Board of Supervisors

FROM: Bernard M. Farmer, Jr., Capital Projects Coordinator

SUBJECT: Award of Contract – Community Gymnasium Design

In previous budgets, the Board of Supervisors allocated funding in the Capital Improvements Program Budget for design and partial funding of construction for a community gymnasium facility to be located at the Warhill Sports Complex. This Gymnasium Facility is to be used for community sports programming and may be made available for competitions or practice for indoor sports activities. Staff prepared and publicly advertised a request for proposals to do the necessary design effort for this facility. Nine proposals were received from various architectural firms and after review staff selected five firms for interviews. One firm withdrew its proposal with the following four firms interviewed by the selection committee:

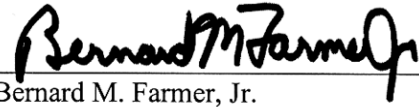
- Rodriguez, Ripley, Maddux, Motley Architects
- Hopke and Associates
- Rancorn, Wildman Architects
- Crabtree, Rohrbaugh and Associates Architects

After conduct of the interviews and careful consideration of the qualifications and experience of the principal consultants and their design teams, the staff committee selected the firm of Hopke and Associates as the preferred firm for the Community Gymnasium design. Hopke and Associates has teamed with Clough Harbor and Associates to provide site, structural, electrical and mechanical design. Subsequent negotiations were held between staff and Hopke and Associates in an acceptable scope of services and fee structure for the design efforts. The following fees were negotiated for the initial design effort:

<u>TASK</u>	<u>FEE AMOUNT</u>
Schematic Design	\$ 42,100
Design Development	42,100
Construction Documents	140,334
Bidding and Construction	52,337
Closeout	<u>2,807</u>
Total	<u>\$280,667</u>

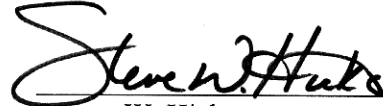
These amounts are considered by staff to be reasonable and appropriate fees for the work efforts required. Funds for this work are currently available in the Capital Improvements Program Budget.

Staff recommends adoption of the attached resolution authorizing the award of the Contract for Design of the Stadium Facility to Hopke and Associates in the amount of \$280,667.



Bernard M. Farmer, Jr.

CONCUR:



Steven W. Hicks

BMF/nb
CommGymDsgn.mem

Attachment

RESOLUTION

AWARD OF CONTRACT – DESIGN OF COMMUNITY GYMNASIUM FACILITY

WHEREAS, competitive proposal requests were advertised and received for the design of the James City County Community Gymnasium Facility to be located at the Warhill Sports Complex; and

WHEREAS, nine proposals were received and evaluated with the preferred proposer being Hopke and Associates; and

WHEREAS, staff has negotiated a satisfactory scope of services and fees that are appropriate for the work to be performed; and

WHEREAS, previously authorized Capital Improvements Program (CIP) budgeted funds are available to fund this design contract.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the County Administrator or his designee to execute the necessary contract documents for the schematic design of the James City County Stadium Facility at the Warhill Sports Complex in the total amount of \$280,667.

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 11th day of December, 2007.

ComGymDsgn.res

MEMORANDUM

DATE: December 11, 2007

TO: The Board of Supervisors

FROM: Grace A. Boone, General Services Operations Administrator

SUBJECT: Contract Award - James City/Williamsburg Community Center Partial Re-Roofing Project - \$174,750

Bids for the James City/Williamsburg Community Center Partial Re-Roofing Project were received on November 29, 2007.

Eleven firms submitted bids. The following bids were considered for award.

<u>Firm</u>	<u>Amount</u>
AAR of North Carolina, Inc.	\$174,750
Roofers Edge	193,000
Commercial Roofing	196,000
Roofing and Restoration	198,000
Universal Roofing	198,900
J. D. Miles & Sons	199,300
Melvin T. Morgan	222,713
National Roofing	249,000
Roof Systems of VA	260,200
Westor Roofing	268,800
Roof Services Corp	320,400

AAR of North Carolina, Inc. was the lowest responsive and responsible bidder. The bid amount of \$174,750 is consistent with funds available in the Capital Improvements Program budget for this project. Contract completion is required within 120 days.

Staff recommends adoption of the attached resolution authorizing the County Administrator to execute a contract in the amount of \$174,750 with AAR of North Carolina, Inc. James City/Williamsburg Community Center Partial Re-Roofing Project.


Grace A. Boone

CONCUR:


Steven W. Hicks

GAB/tlc
ReRoof_mem

Attachment

RESOLUTION

AWARD OF BID – JAMES CITY/WILLIAMSBURG COMMUNITY CENTER

PARTIAL RE-ROOFING PROJECT - \$174,750

WHEREAS, competitive bids were received for the James City/Williamsburg Community Center Partial Re-Roofing Project located at 5301 Longhill Road; and

WHEREAS, AAR of North Carolina, Inc. was the lowest responsive and responsible firm submitting a bid of \$174,750 out of the eleven firms submitting bids for the project; and

WHEREAS, previously authorized Capital Improvements Program (CIP) budget funds are available to fund this project.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby awards the contract in the amount of \$174,750 and authorizes the County Administrator or his designee to execute the necessary documents with AAR of North Carolina, Inc. for the James City/Williamsburg Community Center Partial Re-Roofing Project.

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 11th day of December, 2007.

ReRoof.res

MEMORANDUM

DATE: December 11, 2007

TO: The Board of Supervisors

FROM: Shawn A. Gordon, Capital Projects Coordinator

SUBJECT: Virginia Department of Transportation (VDOT) Enhancement Grant - Norge Depot Relocation and Restoration – Phase III

The Virginia Department of Transportation (VDOT) has awarded a grant of \$340,000 in Federal STP Transportation Enhancement funds for the Phase III, Interior Restoration of the Norge Train Depot. The grant requires a minimum 20 percent local match in the amount of \$85,000. Phase III will include the hiring of a restoration architect as a consultant for the project and restoration of the interior. The Depot was previously relocated from Peach Street to the new location at the James City County Library site in Croaker, Virginia. Appropriation of these funds is necessary to allow the award of contracts for the restoration to commence.

The Board of Supervisors endorsed the Norge Depot Enhancement Grant application for Phase III, Interior Restoration, on October 24, 2006.

Staff recommends approval of the attached resolution.


Shawn A. Gordon

CONCUR:


Steven W. Hicks

SAG/nb
VDOTEnhmntGrnt.mem

Attachment

RESOLUTION

VIRGINIA DEPARTMENT OF TRANSPORTATION (VDOT) ENHANCEMENT GRANT -

NORGE DEPOT RELOCATION AND RESTORATION – PHASE III

WHEREAS, in accordance with Commonwealth Transportation Board construction allocation procedures, the Virginia Department of Transportation (VDOT) has allocated \$340,000 in Federal STP Transportation Enhancement Grant funds for the relocation and restoration of the Norge Train Depot, Phase III.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby amends the previously adopted capital budget for the fiscal year ending June 30, 2008, and appropriates the following sum in the amount and for the purpose indicated.

FY2008 Capital Budget

Revenue:

VDOT STP Transportation Enhancement Grant	<u>\$340,000</u>
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Expenditure:

Norge Train Depot Restoration	<u>\$340,000</u>
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John J. McGlennon
Chairman, Board of Supervisors

ATTEST:

Sanford B. Wanner
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 11th day of December, 2007.

VDOTEnhmtGrnt.res

MEMORANDUM

DATE: December 11, 2007

TO: The Board of Supervisors

FROM: Shawn A. Gordon, Capital Projects Coordinator

SUBJECT: Transportation Enhancement Program Amendment to Project Development and Administration Agreement for the Norge Depot Relocation and Restoration (Phase III), EN01-047-120, P101, R201, C501-UPC#59767

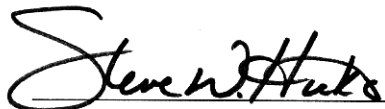
The County has received the Transportation Enhancement Program Amendment to Project Development and Administration Agreement for the Norge Train Depot Restoration, Phase III project by the Virginia Department of Transportation (VDOT). This amendment addresses the \$340,000 allocation received in July 2007 by the Commonwealth Transportation Board.

To administer the project, a signed resolution agreement by the locality's governing body, the James City County Board of Supervisors, is required by VDOT, stating that the official signing the Agreement has the authority to enter into this legal agreement on behalf of the locality.

Staff recommends that the Board of Supervisors adopt the attached resolution authorizing the County Administrator to execute the Transportation Enhancement Program to Project Development and Administration Agreement for the Norge Train Depot Relocation and Restoration (Phase III).


Shawn A. Gordon

CONCUR:


Steven W. Hicks

SAG/nb
TrnsptnAmend.mem

Attachment

RESOLUTION

TRANSPORTATION ENHANCEMENT PROGRAM AMENDMENT TO PROJECT

DEVELOPMENT AND ADMINISTRATION AGREEMENT FOR THE NORGE DEPOT

RELOCATION AND RESTORATION (PHASE III), EN01-047-120, P101, R201, C501-

UPC#59767

WHEREAS, James City County, Virginia has expressed its desire to administer the work of the Norge Depot Relocation and Restoration (Phase III) EN01-047-120, P101, R201, C501–UPC# 59767 project in the Stonehouse District; and

WHEREAS, the Virginia Department of Transportation requires a signed resolution agreement by the locality's governing body, the James City County Board of Supervisors, stating the official signing the Agreement has the authority to enter into this legal agreement on behalf of the locality.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the County Administrator to execute the Transportation Enhancement Program Amendment to Project Development and Administration Agreement for the Norge Depot Relocation and Restoration (Phase III).

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 11th day of December, 2007.

TrnsptnAmend.res

M E M O R A N D U M

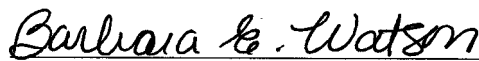
DATE: December 11, 2007

TO: The Board of Supervisors

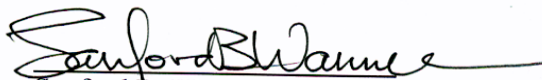
FROM: Barbara E. Watson, Acting Assistant County Administrator

SUBJECT: Colonial Community Criminal Justice Board Appointment

State Code which governs the Colonial Community Criminal Justice Board (CCCJB) requires the appointment of individuals from all its localities to be regulated by the Joint Exercise of Powers Agreement (JEPA) and the Code of Virginia. The Board of Supervisors appointed Mr. Michael McGinty to represent the County on the CCCJB, and his term was set to expire on July 31, 2008. Since that appointment, Mr. McGinty has been appointed to serve as York County's General District Court Judge and therefore no longer qualifies to represent the County on the CCCJB. Staff recommends the appointment of The Honorable Colleen Killilea to the CCCJB for an unexpired term set to expire on July 31, 2008.


Barbara E. Watson

CONCUR:


Sanford B. Wanner

BEW/nb
CCCJB Apptmt.mem

Attachment

RESOLUTION

COLONIAL COMMUNITY CRIMINAL JUSTICE BOARD APPOINTMENT

WHEREAS, the Board of Supervisors of James City County appointed Mr. Michael McGinty to serve as one of the County's representatives on the Colonial Community Criminal Justice Board (CCCJB); and

WHEREAS, in accordance with the Code of Virginia and the Joint Exercise of Powers Agreement, Mr. McGinty no longer qualifies to serve on the CCCJB; and

WHEREAS, Mr. McGinty's term was set to expire on July 31, 2008.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby appoint Williamsburg/James City County General District Court Judge, The Honorable Colleen Killilea, to an unexpired term on the CCCJB, set to expire on July 31, 2008.

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 11th day of December, 2007.

CCCJBApptmt.res

MEMORANDUM

DATE: December 11, 2007

TO: The Board of Supervisors

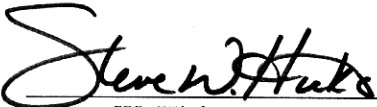
FROM: Steven W. Hicks, General Services Manager

SUBJECT: Establishment of a Full-Time Regular Groundskeeper I Position for Grounds Maintenance


The agreement between James City County and the Williamsburg-James City County (WJCC) Public Schools allows the County to request the establishment of a Groundskeeper I position and an appropriation of the needed funding, if necessary, when a WJCC Groundskeeper position becomes vacant. WJCC will then eliminate their vacant Groundskeeper position, but retain the funding to use for another purpose. In this way, the consolidation of grounds maintenance functions under the County's umbrella can be accomplished without taking funding away from WJCC.

Effective January 1, 2008, staff requests the Board establish a full-time (2,080 hours/year) regular Groundskeeper I position due to the resignation of a WJCC groundskeeper which was effective October 12, 2007. The cost of this position, prorated from January 1, 2008, to June 30, 2008, is approximately \$20,000. These funds are available within the Grounds Maintenance budget due to the challenges of attracting and hiring qualified candidates.

Staff recommends approval of the attached resolution.


Steven W. Hicks

CONCUR:


Sanford B. Wanner

SWH/tlc
GMposition_mem

Attachment

RESOLUTION

ESTABLISHMENT OF A FULL-TIME REGULAR GROUNDSKEEPER I

POSITION FOR GOUNDS MAINTENANCE

WHEREAS, an agreement between James City County and the Williamsburg-James City County (WJCC) Public Schools allows the County to request the establishment of a Groundskeeper I position and an appropriation of the needed funding, if necessary when a WJCC Groundskeeper position becomes vacant. WJCC will then eliminate their vacant Groundskeeper position, but retain the funding to use for another purpose; and

WHEREAS, the resignation of a WJCC groundskeeper was effective October 12, 2007, and funds are available within the Grounds Maintenance budget to fund this position for the remainder of this fiscal year.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby establishes one full-time (2,080 hours/year) regular Groundskeeper I position effective January 1, 2008.

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 11th day of December, 2007.

GMposition_res

**SPECIAL USE PERMIT-0021-2007. Tiki Climbing and Grinding
Staff Report for the December 11, 2007, Board of Supervisors Public Hearing**

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

PUBLIC HEARINGS

Planning Commission:

Building F Board Room; County Government Complex

October 3, 2007, 7:00 p.m. (deferred by applicant)

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

Board of Supervisors:

December 11, 2007, 7:00 p.m.

SUMMARY FACTS

Applicant:

Mr. Timothy Soderholm

Land Owner:

Mr. Timothy Soderholm

Proposal:

Contractors office and storage

Location:

6293 Centerville Road

Tax Map/Parcel No.:

2340200001

Parcel Size:

0.94 acres

Zoning:

A-1, General Agricultural

Comprehensive Plan:

Low-Density Residential

Primary Service Area:

Inside

STAFF RECOMMENDATION

Staff recommends denial of this application for several reasons. First, the proposed use is not compatible with surrounding land uses and is inconsistent with the County's Comprehensive Land Use Plan. Specifically, the lot is within an established single-family residential neighborhood and is designated Low Density Residential on the Comprehensive Plan. Although there are some nonconforming nonresidential uses in the area they front on Centerville Road. Second, the approval of the proposed contractors office and storage and its commercial use at this location would make it more difficult to defend against other similar commercial proposals in this area and in other low-density residential areas throughout the County. There is nothing unique about the site or proposed use that warrants special consideration or an exception to the Low Density Residential Comprehensive Plan designation. Such exceptions should generally support the attainment of the land use goals in the Comprehensive Plan. Staff believes that permitting such a use at this location would begin to undermine the long-range land use objectives of the County's Comprehensive Land Use Plan for residential uses in this area.

Should the Board of Supervisors wish to approve this application, staff recommends that the attached conditions be placed on the case.

Staff Contact:

Ellen Cook

Phone: 253-6685

PLANNING COMMISSION RECOMMENDATION

A motion to approve the application failed on a 3-3 vote. Upon a subsequent motion, the Planning Commission voted 6-0 to send the application to the Board of Supervisors with a neutral recommendation.

Proposed Changes Made Since Planning Commission Meeting

No changes have been made.

ITEMS OF NOTE AT THE PLANNING COMMISSION LEVEL

The following information is provided to the Board for informational purposes: this information was included in the staff report for the November 7, 2007, Planning Commission meeting and has simply been updated for the Board.

This case was first presented to the Planning Commission at its October 3, 2007, meeting, but was deferred to the November 7, 2007, meeting at the applicant's request so that the applicant could meet with neighbors and consider Commission suggestions. It is staff's understanding that the applicant met with neighbors in the intervening weeks, and staff also understands that the applicant circulated a petition. A filled-in copy of the petition had not been received as of the writing of the Board of Supervisors staff report. If it is received prior to the meeting, staff will distribute it.

Prior to the November 7, 2007, Planning Commission meeting, Mr. Soderholm updated the information previously provided to staff regarding the number of his employees who leave their vehicles on-site during the day (one part-time employee) and the equipment he stores on-site (one stump grinder instead of two). This information is reflected in the report below. After some question on the part of the applicant, staff also revisited the site and remeasured the gravel area to verify its size and adjusted the figures in pertinent areas of the report and revised the Master Plan to reflect the changes. The applicant also provided a conceptual landscape sheet to the County (see attached); staff would note as part of the Special Use Permit (SUP) condition. If approved, the Planning Director needs to approve a final landscape plan at the time of site plan approval that takes into account all the factors in the condition (the conceptual landscape plan as shown does not address all the factors included in the condition). In response to concerns raised at the October 3, 2007, Planning Commission meeting and as shown on the conceptual landscape plan, the applicant also stated that he would be willing to allow a bus stop on the property. Staff advised the applicant that the bus stop could be shown as part of the final site plan. Staff has not included a bus stop as a condition of the SUP that, while the applicant is offering to allow for one on his property, placing a condition requiring one as part of the use permit does not appear to fall within the guidelines for a legal nexus between the permit and the condition as advised by the County Attorney's Office. Finally, in response to items raised at the October 3, 2007, Planning Commission meeting, Condition 4 was modified to adjust the permitted start time for Saturday mornings, and Condition 10 was added to place a limit on the size of permitted equipment.

In addition to the items above, staff provided some additional items of information in the November 7, 2007, staff report in response to Planning Commissioners' questions and comments. One item was a comparison of this Special Use Permit application to other recent applications that have some similarities, specifically the application associated with Case SUP-33-06. Johnny Timbers Tree Service. As noted at the Planning Commission meeting, that application was associated with a different Comprehensive Plan Designation, Rural Lands that contains different language regarding commercial uses. Importantly, that site was located in an area with a different character and on a relatively large lot of five acres, which allowed for a natural undisturbed buffer to mitigate visual and noise impacts and to retain a relatively rural character on the parcel in accordance with the Comprehensive Plan Designation. Another application with some parallels to this one is case SUP-13-07. Denley Brown Contractors Warehouse. This application was also for a parcel designated Rural Lands, and was also a larger parcel (eight acres) making the use relatively less intense on the site and allowing for buffers and placement of the use on the site so as to retain a more rural character. Staff also

would note that for that application, all storage of equipment was limited to an enclosed contractor's warehouse or the covered lean-to or covered storage area.

A second item discussed in the November 7, 2007, staff report was the relationship of this application to the Zoning Ordinance and the Comprehensive Plan. This parcel was recorded as part of a platted residential subdivision and takes access off Settler's Lane rather than Centerville Road, unlike other relatively nearby nonconforming commercial uses. It is part of one of a relatively few number of A-1 zoned subdivisions in James City County. The parcel in question has been zoned A-1 since before Comprehensive Plans were produced in the County, but since the first Comprehensive Plan and the several subsequent updates, this parcel has been reaffirmed as Low Density Residential due to the character of the area. In making policy decisions, such as this Special Use Permit application, staff believes the Comprehensive Plan Designation should take precedence over the Zoning Ordinance as the guiding language. Finally, staff would note that only one or two commercial uses are permitted by-right in A-1.

PROJECT DESCRIPTION

Mr. Soderholm is currently operating a contractor's office and storage use from his residence on Centerville Road. The property is zoned A-1, and an SUP is therefore required for this use. Mr. Soderholm is pursuing this SUP in order to bring his operation into conformance with the zoning requirements. Staff would note that the operation on the property exceeds the Home Occupation standards as defined in the Ordinance and therefore falls within the SUP category due to two factors: having outdoor storage of equipment on-site and having employees visit the site.

According to information provided by the applicant, the operation is a professional tree and landscaping service. In addition to the existing single-family house, permanent site features include a gravel parking/storage area, carport, and storage shed. The applicant has indicated that other items on-site associated with the business include three trailers, three pickup trucks, a chipper, one stump grinder, a bobcat, one mower, and various hand tools (chainsaws, weed whackers). The shed has personal items in half of it and business items stored in the remaining half. There are some business related items in the garage such as work tools for repair/maintenance of equipment.

The applicant has indicated that operating hours are generally from 7 a.m. to 5 p.m. with employees picking up equipment in the morning and dropping it off at night. The applicant has stated that he employs two full-time employees one of whom is dropped off, and one of whom walks to work; and two part-time employees, one of whom is dropped off and the other parks his vehicle in the back of the yard. The applicant has indicated that employees do not return to the site at lunch time. Customers do not come to the site and all work other than some basic equipment repair is conducted off-site. Job-related materials are dropped off at the dump at the end of each day and processing of trees does not occur on-site. The applicant has indicated that occasionally the employees will miss the dump hours and the full trailer will be parked on-site at the end of the day and taken to the dump in the morning.

As of the writing of the October Planning Commission staff report, there had been no screening fencing or landscaping along the property lines. (The applicant started putting up a screening fence along one property line and near the garage just prior to the October Planning Commission meeting.) Surrounding property on the north side of Centerville is all zoned A-1 and property on the south side is zoned R-8. Most surrounding property is residential in nature. There are two existing legally nonconforming businesses in the general vicinity (Crow's Auto, Handy-Ice) and one business which obtained an SUP in 1997 (Cobb's Striping).

The property was subdivided in the 1960s as part of the "James-Shire Settlement" which included all the lots along Settler's Lane. According to an adjacent property owner, the property was at one time subject to certain private covenants that may have prohibited the applicant's proposed business. The applicant has assured staff that these private covenants do not apply to his property, which appears correct based upon staff's research. Even assuming that the private covenants are in force and apply to this property, the County does not enforce such private covenants and it is a private matter to determine whether he is in conformance with them.

PUBLIC IMPACTS

Environmental

Watershed: Yarmouth Creek

Conditions:

- Condition 2a specifies requirements that would need to be met by the applicant at the plan of development stage.

Environmental Staff Comments: The final site plan for the project will need to address increased stormwater runoff from the site. Based on impervious cover, stormwater management/Best Management Practices (BMPs) will be required for the project. Stormwater quantity control will be necessary as well as ensuring the increased site runoff or discharge from stormwater management facilities is discharged into a well-defined, natural, or manmade receiving channel. If the receiving channel is situated off-site, drainage easements may be necessary.

Public Utilities

The property is served by public water and sewer.

Staff Comments: James City Service Authority (JCSA) staff reviewed the application and had no comments on, or objections to, the project.

Transportation

The property fronts on both Centerville and Settler's Lane. It takes exclusive access from Settler's Lane, which is a cul-de-sac street about 1,400 feet in length that also serves the James-Shire Settlement subdivision.

2005 Traffic Counts (Daily Traffic Volume): 10,364 (Route 60 to Ruth Lane)

2026 Volume Projected (Daily Traffic Volume): 15,000 (Longhill Road to Route 60)

Conditions:

- Condition 5 limits the property to one access from Settler's Lane.

VDOT Comments: Virginia Department of Transportation (VDOT) staff has reviewed the application and found that the trips generated from the use appear to be negligible. VDOT staff recommended that all access to the property be obtained solely from Settler's Lane.

Staff Comments: In addition to the trip generation associated with the single-family houses, the proposal would currently generate the arrival and departure trips of the full-time employee who is dropped off, as well as trips associated with the part-time employees. Based on ITE standards, 16 total trips would be generated with this use compared to an average of 10 for single family. As recommended by VDOT, staff also feels that due to existing traffic volumes and the Comprehensive Plan listing for this section of Centerville Road (it is listed as being in the "Watch" category), that a new addition driveway for this site should not be located on Centerville Road. Condition 5 therefore limits the property to one access from Settler's Lane.

COMPREHENSIVE PLAN

Land Use Map

Designation & Development Standards	Low Density Residential (Page 120): 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. Non-residential uses should not alter, but rather, complement the residential character of the low-density residential area in which they are located and should have traffic, noise, lighting and other impacts similar to surrounding or planned residential uses. Very limited commercial establishments, schools, churches, and community-oriented facilities should generally be located on collector or arterial roads at intersections where adequate buffering and screening can be provided to protect nearby residential uses and the character of the surrounding area.
	General Standard #1 (Page 134-35): Permit new development only where such developments are compatible with the character of

	<p>adjoining uses and where the impacts of such new developments can be adequately addressed. Particular attention should be given to addressing such impacts as incompatible development intensity and design, building height and scale, land uses, smoke, noise, dust, odor, vibration, light and traffic.</p> <p>Staff Comment: Staff does not find the proposal consistent with this designation. Examples of commercial establishments that have been approved by the Board in the past in Low Density Residential areas include limited day care establishments and beauty salons inside existing structures. While the traffic and incidental noise impacts of the proposal are not tremendous or atypical for a commercial use, staff does not find them to be materially similar to the surrounding residential uses. Furthermore, given the small size of the lot and the intensity of the use on it, staff finds that the use does not complement the residential character of the area. Staff believes the use would be best suited in an area of the County zoned and designated for Limited Industry.</p>
Goals, strategies and actions	<p><i>Strategy #2-Page 138:</i> Ensure development is compatible in scale, size, and location to surrounding existing and planned development. Protect uses of different intensities through buffers, access control, and other methods.</p> <p><i>Strategy #4-Page 138:</i> Encourage commercial and industrial uses to develop in compact nodes in well-defined locations within the PSA.</p> <p>Staff Comment: While there are several businesses within a half mile or so of the property along Centerville, two of the three are nonconforming, and the area in the immediate vicinity of the property is clearly residential in nature including the balance of Settler's Lane.</p>

Environment

General	<p><i>Yarmouth Creek Watershed Management Plan-Page 47:</i> A final watershed management plan with recommendations on preserving this watershed was completed in 2003.</p> <p>Staff Comment: The use of the property for this business is existing and has not gone through environmental review for conformance with Environmental regulations or the provisions of the Management Plan. Should the SUP be approved, a plan of development that meets these criteria would need to be submitted and approved. Special Stormwater Criteria would apply to the project.</p>
Goals, strategies and actions	<p><i>Strategy #2-Page 65:</i> Assure that new development minimizes adverse impacts on the natural and built environment.</p> <p>Staff Comment: There is approximately 4,335 square feet of impervious area associated with the operation of the use on the property (access areas and parking areas), or approximately 11 percent (Additional impervious area exists on site associated with the house and residential parking area.)</p>

Transportation

General	<p><i>Centerville Road (p.79):</i> The projected 2026 volumes suggest the road should be monitored (especially the section from Longhill Road to Route 60 West) to assess the need for possible turn lanes or other improvements.</p> <p>Staff Comment: The operation of the use would generate more trips than a typical single-family dwelling, but do not warrant any type of road improvements on Settler's Lane or Centerville Road. If approved, Condition 5 would limit the number of entrances to the property to a single driveway.</p>
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Community Character

General	<p><i>Centerville Road Community Character Corridor-Page 83-84:</i> 150 feet for residential and 50 foot buffer recommendation for commercial uses along this road. The commercial recommendations also include parking and other auto-related areas clearly as a secondary component of the streetscape. Providing enhanced landscaping, preservation of specimen trees and shrubs, berming, and other desirable design elements which complement and enhance the visual quality of the urban corridor.</p> <p>Staff Comment: Currently, the operation of the use on the property occurs in the area to the side and rear of the existing residence; this area is the on the portion of the lot furthest (over 50 feet) from Centerville Road. Prior to the current owner (the applicant for this SUP), this lot was an undeveloped forested lot. Since development, most trees on the property have been cleared, including the portion of the lot closest to Centerville Road. If the SUP were approved, Conditions 2c, 7, and 8 would require, respectively, screening of the use on the property; limitation on the signage to match "Home Occupation" standards in the ordinance; and limitations on lighting to reduce light impact on adjacent properties and public roads. In addition, Condition 2 would restrict the storage area to its current location on the lot.</p>
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Comprehensive Plan Staff Comments

As stated above, staff does not find the proposal to be consistent with the Comprehensive Plan Land Use Designation. While staff believes that certain conditions such as those related to screening, access, hours of operation, and lighting (see attached conditions) could help alleviate some of the impact of the proposal, staff believes that even with conditions, fundamental concerns about the use within this Land Use Designation would remain.

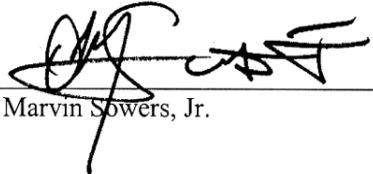
RECOMMENDATION

Staff recommends denial of this application for several reasons. First, the proposed use is not compatible with surrounding land uses and is inconsistent with the County's Comprehensive Land Use Plan. Specifically, the lot is within an established single-family residential neighborhood and is designated Low Density Residential on the Comprehensive Plan. Although there are some nonconforming nonresidential uses in the area they front on Centerville Road. Second, the approval of the proposed contractors office and storage and its commercial use at this location would make it more difficult to defend against other similar commercial proposals in this area and in other low-density residential areas throughout the County. There is nothing unique about the site or proposed use that warrants special consideration or an exception to the Low Density Residential Comprehensive Plan designation. Such exceptions should generally support the attainment of the land use goals in the Comprehensive Plan. Staff believes that permitting such a use at this location would begin to undermine the long-range land use objectives of the County's Comprehensive Land Use Plan for residential uses in this area.

Should the Board of Supervisors wish to recommend approval, staff recommends that the conditions listed in the attached resolution be placed on the case. Staff would note that the applicant had previously (prior to the October Planning Commission meeting) expressed concern with several elements of the conditions, but has since stated that he would comply with the conditions as written. For informational purposes, those concerns were: (1) the limitation on storage area in Condition 2, and (2) the sign condition, Condition 6. Staff continues to believe that if the SUP were approved, these conditions would be most appropriate as written. For the first one, staff would note that the ordinance requires maintenance of an all-weather surface for areas of outdoor operation and storage (Section 24-41) and that while additional gravel could be put down in other areas of the lot to meet that requirement and allow a larger area for storage, staff finds that doing so would increase impervious cover and increase the intensity of the use on the lot. For the second, the size limitation is consistent with the Home Occupations limit in the ordinance and is similar to the sign condition placed on other commercial proposals which have been approved in Low Density Residential designated areas.

Ellen Cook

CONCUR:



O. Marvin Sowers, Jr.

EC/gb
Sup-0021-2007.doc

ATTACHMENTS:

1. Master Plan
2. Location Map
3. Picture of Site
4. Applicant's Concept Landscape Plan
5. Planning Commission Minutes
6. Resolution

RESOLUTION

CASE NO. SUP-0021-2007. TIKI CLIMBING AND GRINDING

WHEREAS, the Board of Supervisors of James City County has adopted by Ordinance specific land uses that shall be subjected to a Special Use Permit (SUP) process; and

WHEREAS, Mr. Timothy Soderholm has applied for a SUP to allow for a contractor's office and storage; and

WHEREAS, the proposed project is shown on a Master Plan, entitled "Tiki Contracting Master Plan" and date stamped September 3, 2007; and

WHEREAS, the property is located at 6293 Centerville Road on land zoned A-1, General Agricultural, and can be further identified as James City County Real Estate Tax Map/Parcel No. 2340200001; and

WHEREAS, the Planning Commission of James City County, following its public hearing on November 7, 2007, gave a neutral recommendation of this application by a vote of 6-0; and

WHEREAS, the Board of Supervisors of James City County, Virginia, finds this use to be consistent with the 2003 Comprehensive Plan Land Use Map designation for this site.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, after a public hearing, does hereby approve the issuance of SUP No. 0021-2007 as described herein with the following conditions:

1. This SUP shall be valid for the operation of one contractor's warehouse, shed, office, and accessory uses thereto ("the Project") as shown on the Master Plan titled "Tiki Contracting Master Plan" date stamped September 3, 2007 (the "Master Plan") on the parcel, located at 6293 Centerville Road and identified as James City County Real Estate Tax Map No. 2340200001 (the "Property"). Development of the Project shall be generally in accordance with the Master Plan as determined by the Development Review Committee ("the DRC") of the James City County Planning Commission. Minor changes may be permitted by the DRC, as long as they do not change the basic concept or character of the Project.
2. All storage of equipment and parking of vehicles associated with the Project shall be located inside the "Storage Shed," under the "Car Port" or within the "Driveway/Outside Storage" as shown on the Master Plan. The driveway/outside storage shall be located as shown on the Master Plan and shall be limited to the side and rear of the dwelling (not the front). At a minimum the driveway/outside storage shall comply with the requirements of Section 24-41 of the Zoning Ordinance, and each of the following shall also be required:
 - a) A plan addressing stormwater drainage and management shall be submitted as a component of the site plan specified in Condition 8.
 - b) Maintenance of an all-weather surface of gravel, asphalt or better for the area shown on the Master Plan as "Driveway/Outside Storage."
 - c) Submission of a landscape and screening plan to be approved by the Planning

Director or his designee. The landscape and screening plan shall show, at a minimum, that such landscaping and/or fencing shall effectively screen the storage of Project equipment and motor vehicles associated with the Project from public roads and from adjacent properties. Specifically, there shall be provided an average 15-foot-wide landscape area along the property lines adjacent to James City County Real Estate Tax Map Parcel Nos. 3120100018 (northern property line only), 3120100004, and 2340200002, and the 15 feet shall be landscaped in accordance with the "General Landscape Area Standards (Section 24-94 of the Zoning Ordinance), except that the owner shall provide enhanced landscaping so that the required size of plants and trees equals, at a minimum, 125 percent of the requirements. In addition, a landscape area shall be provided along Centerville Road such that it meets the standards specified in the "Landscape area(s) along right(s)-of-ways" (Section 24-96 of the Zoning Ordinance), except that the owner shall provide enhanced landscaping so that the required size of plants and trees equals, at a minimum, 125 percent of the requirements. The applicant may use a fence to meet, in whole or in part, this screening requirement if specifically approved by the Planning Director after a finding that it would exceed the effectiveness of any such landscaping in screening the property and would not cause additional adverse impacts to adjacent properties. Any such fence shall be of a natural wood color and of a design and height to screen the outside storage area from the adjacent properties. The landscape and screening plan shall be submitted in conjunction with the site plan specified in Condition 8 and shall be installed or bonded in a manner satisfactory to the County Attorney within one year of issuance of this SUP.

3. There shall be no tree stumps, trunks, limbs, tree roots, chipped wood, mulch, sawdust, wood or plant by-products, or other related products, stored, placed, or processed on the property, except that material may be stored on-site on an occasional overnight basis.
4. Hours of operation shall be limited to 6 a.m. to 6 p.m. Monday through Friday. On Saturday, hours of operation shall be limited to 7:30 a.m. to 6 p.m.
5. Only one entrance shall be allowed for the Project, from the Property onto Settler's Lane, as shown on the Master Plan.
6. Signage shall be limited to one sign, not to exceed four square feet. Such sign shall be attached to the dwelling and shall not be illuminated.
7. Should new exterior site or building lighting be installed for the operation of the Project, any new exterior site or building lighting shall be comprised of recessed fixtures with no bulb, lens, or globe extending below the fixture housing. The housing shall be opaque and shall completely enclose the light source in such a manner that all light is directed downward and that the light source is not visible from the side of the fixture. Pole-mounted fixtures shall not be mounted in excess of 15 feet in height above the finished grade beneath them. No glare, defined as 0.1 footcandle or higher, shall extend outside the boundaries of the Property.
8. Site plan approval shall be obtained within one year of issuance of this SUP, or the SUP shall be void.
9. Any office use for this operation located in the residential dwelling on-site shall be

limited to not more than 25 percent of the first floor area.

10. Equipment associated with the Project shall be limited to the size and nature of the equipment stored on the Property at the time of SUP approval (including, but not limited to, trailers, pickup trucks, chipper, stump grinder, bobcat, mower, and various hand tools as shown in the photograph dated July 25, 2007, and included as attachment #3 to this staff report). Equipment such as bucket trucks, dump trucks, and other such equipment that in whole or in part exceeds approximately eight feet in height or exceeds approximately 6,500 pounds, shall be prohibited.
11. This SUP is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.

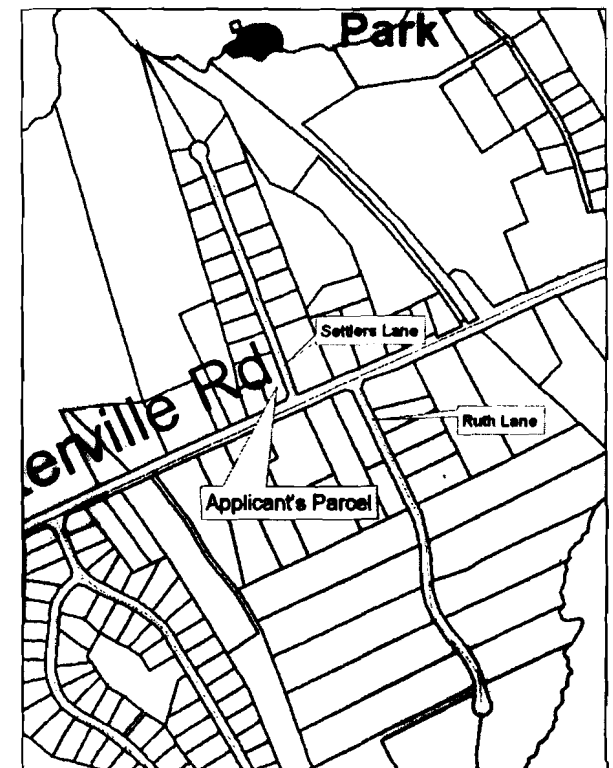
John J. McGlennon
Chairman, Board of Supervisors

ATTEST:

Sanford B. Wanner
Clerk to the Board

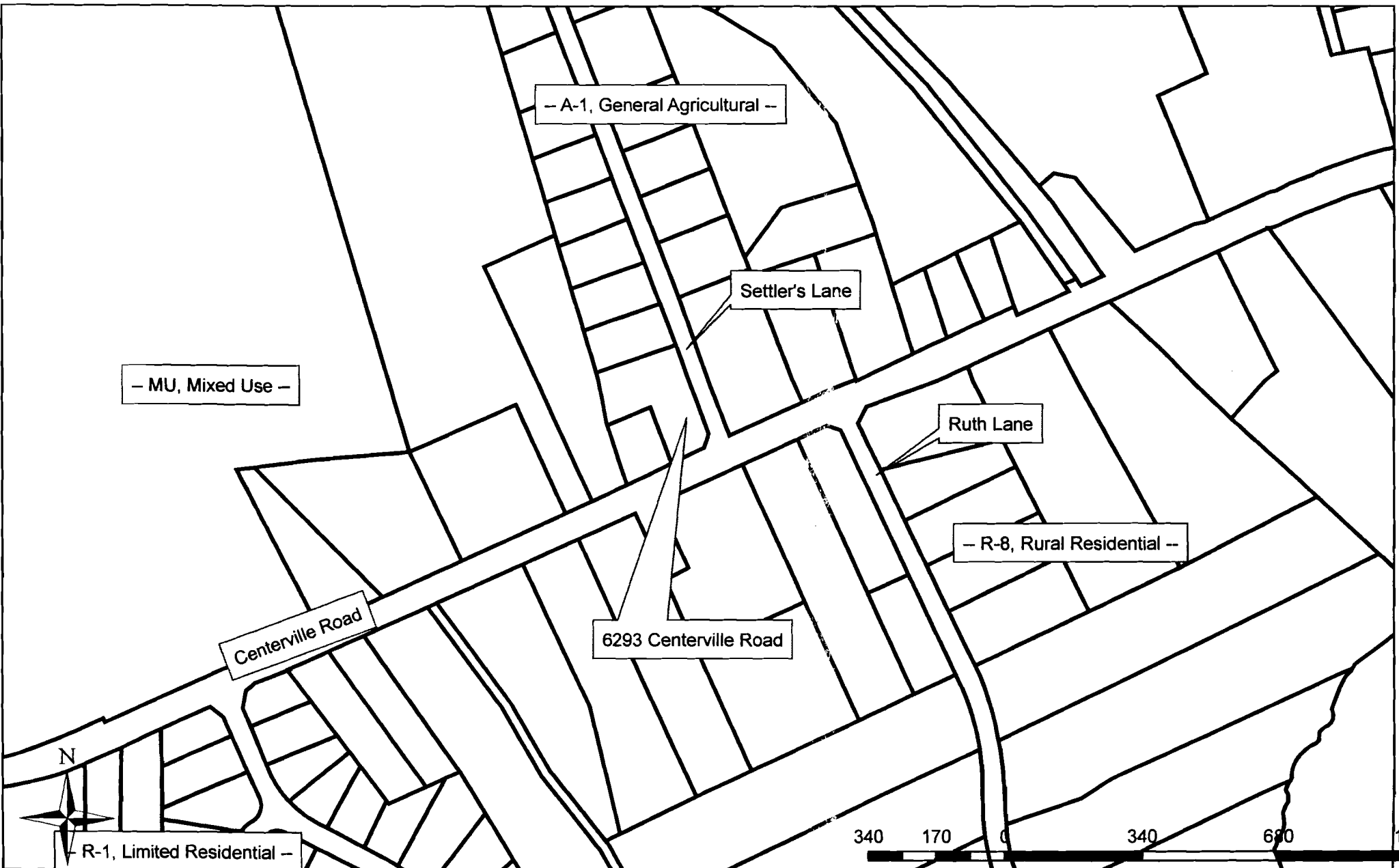
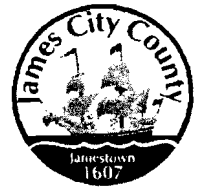
Adopted by the Board of Supervisors of James City County, Virginia, this 11th day of December, 2007.

Sup-0021-2007.res



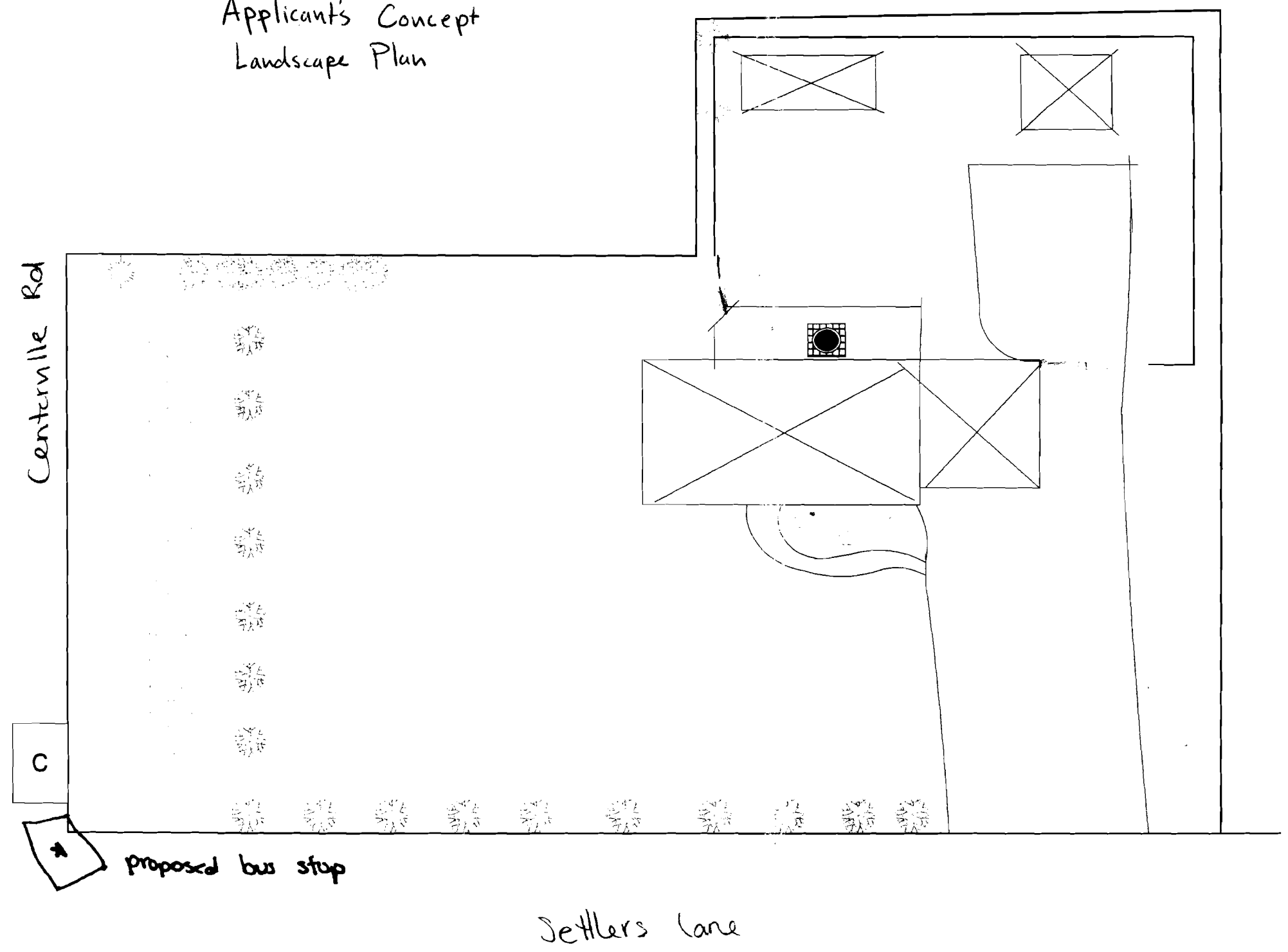
JCC-SUP-0021-2007

Tiki Climbing and Grinding





Applicant's Concept
Landscape Plan



**UNAPPROVED MINUTES OF THE November 7, 2007 MEETING OF
THE PLANNING COMMISSION**

SUP-21-07 Tiki Climbing & Grinding Professional Tree Service

Ms. Ellen Cook stated that this case was presented to the Planning Commission at its 10/3/07 meeting, but was deferred at the request of the applicant so that he could meet with neighbors and consider Commission suggestions. Ms. Cook stated that it is staff understands that the applicant met with neighbors in the intervening weeks, and staff also understands that the applicant has been circulating a petition. She stated that Mr. Timothy Soderholm has also updated the information previously provided to staff regarding the number of his employees that leave their vehicles on site during the day (one part time employee) and the equipment he stores on site (one stump grinder instead of two). She also stated that the applicant has also provided a conceptual landscape plan to the County as part of the SUP condition. Ms. Cook stated that the applicant has stated that he would be willing to allow a bus stop on the property. Staff has advised the applicant that the bus stop could be shown as part of the final site plan. Staff has not included a bus stop as a condition of the Special Use Permit as, while the applicant is offering to allow for one on his property, placing a condition requiring one as part of the use permit does not appear to fall within the guidelines for a legal nexus between the permit and the condition as advised by the County Attorney's Office. Ms. Cook stated that staff does not find the proposal consistent with the Low Density Residential Comprehensive Plan designation, consistent with the character of the surrounding area, and does not find that the size of the parcel, and the location and intensity of the use on the parcel, allow for conditions which would sufficiently overcome these concerns. For these reasons, staff recommends denial of this application to the Planning Commission. She also stated should the Planning Commission wish to recommend approval, staff recommends that the conditions listed in the staff report be placed on the case.

Ms. Hughes asked if the applicant ran his business as a home occupation at another location.

Ms. Cook stated that according to the County's Zoning records, the applicant ran his business as a home occupation from another location.

Ms. Hughes asked if the applicant filed a home occupation application for the current residence.

Ms. Cook stated that the business was in operation when staff was made aware of it, and that it was outside the scope of the definition of home occupation. She stated at that point it was determined a special use permit was required.

Ms. Hughes stated that the applicant listed his mailing address as Centerville Road, but that the driveway was on Settlers Lane. She asked what was the correct address.

Ms. Cook stated that for each corner lot, the Real Estate Office assigns two addresses. In this instance, Ms. Cook was unsure how the address was arrived at, but the lot was plotted as part of a residential subdivision in the 1960's.

Ms. Hughes opened the public hearing and asked the applicant if he wished to speak.

Mr. Soderholm stated that the address in all his closing documents was 6293 Centerville Rd and that it was zoned A-1. He did not realize that he needed a special use permit at this current address. He stated he did operate his business at another location but was forced to move due to the neighbors, and that the size of the lot was too small. Mr. Soderholm asked the post office which address to use and he was informed that he could use either one. He stated that he was not aware his lot was part of a subdivision.

Mr. Kevin Grady, speaking on behalf of Mr. Soderholm, stated that Mr. Soderholm did everything requested from the Planning Commission. Mr. Grady stated Mr. Soderholm met with the neighbors, invited them to look at the property and the equipment being stored there. He stated that Mr. Soderholm received the approval of 13 of the 18 neighbors in writing, although the neighbors did have some concerns. One of these was the bus stop for the children in the area. Mr. Grady stated that Mr. Soderholm contacted the Department of Transportation. Mr. Grady showed what the Department stated they would be willing to provide. He also stated that Mr. Soderholm would have to provide the Department with an easement, which he is willing to do. Mr. Grady stated that the neighbors wanted to have a fence installed on the side of the house. He stated Mr. Soderholm had plans to complete this. Mr. Grady stated the neighbors did not want this application to have an open ended agreement for growth. Mr. Grady stated that Mr. Soderholm was more than willing to keep things the same as it is now. Mr. Grady stated that Mr. Soderholm has agreed not to have a sign on the property. He stated that Mr. Soderholm's office is in a portion of his house, with just a desk, file cabinet, computer, etc. He stated that there are no individuals coming and going. He stated that Mr. Soderholm had his log books present to prove when employees are at the premises and the hours of operation. Mr. Grady stated that he and Mr. Soderholm are confident that the neighbors are satisfied with the improvements that Mr. Soderholm has done. He stated that the most important thing to Mr. Soderholm is to be able to run his business and support his family.

Mr. Soderholm showed pictures of his backyard and the equipment being stored. He stated that some of the equipment has been moved off of the property. He stated that the area used for storage is approximately 2800 square feet. Mr. Soderholm stated that from Centerville Road no equipment can be seen. He showed his landscape plan and what has already been installed.

Mr. Krapf asked Mr. Soderholm if he had an idea of the financial impact of stormwater management and the potential ramifications of an environmental assessment and if he had sufficient space on his property for a BMP and provides the safeguards.

Mr. Soderholm answered that he had 185 feet of 15 inch pipe that drains all water. To date there has not been any problem with standing water. He stated that the corner part of the lot tends to collect, but drains within 24 to 48 hours.

Mr. Krapf stated that it was his understanding that given the current circumstances that the pipe was not adequate for the amount of impervious cover that was on the property.

Ms. Cook answered that items that have been installed on the property have not been in coordination with the Environmental Division. She stated that with the site plan review, the environmental assessment and review would need to be done.

Mr. Soderholm stated that he is willing to comply with whatever is determined to be needed.

Mr. Obadal asked if Mr. Soderholm was contending that this application involved a home occupation.

Mr. Soderholm stated that he did work out of his home, however his equipment is stored at the residence and all consultations are done off site.

Mr. Obadal asked if there was a chipper on the property.

Mr. Soderholm answered, yes there was one stored, but it is used off site only.

Mr. Obadal questioned the idea of his business being a home occupation.

Mr. Soderholm stated that he did not know a special use permit was required to operate his business out of his home before buying the property.

Mr. Obadal asked if the chipper created noise at this site.

Mr. Soderholm answered no, it only creates noise where it is being used, and that this piece of equipment is only being stored at his residence.

Mr. Obadal questioned the idea that his property is part of a subdivision.

Mr. Soderholm stated that he had the option of putting a driveway either on Centerville Road or Settlers Lane. His driveway is on Settlers Lane.

Mr. Obadal discussed the A-1 ordinance stating the area requirements. He felt that the lot size is small for the business that is currently there.

Mr. Soderholm stated that if the special use permit is not approved, the only things that will be removed from the property will be a dump trailer, a bobcat, a chipper, and a flatbed trailer with a stump grinder. He stated that all this equipment takes up no more than 400 square feet on the property.

Mr. Obadal reiterated what is stated in the A-1 Zoning Ordinance.

Mr. Grady stated that Mr. Soderholm understands that he is not in compliance with the

current code requirements, that this is the reason he is seeking a special use permit. Most of this equipment is taken offsite and no noise is being made by the equipment.

Ms. Annette Gilbert, who lives at 6301 Centerville Road, spoke on behalf of the applicant. She stated that the applicant has done several things to gain approval of the neighbors. She asked Mr. Obadal to restate the definition of home occupation.

Mr. Obadal did so.

Ms. Gilbert answered that she lives across the street. She stated that she has seen employees coming to work, and that she does not hear any noises from any equipment, and that the employees use care when leaving and returning to the property. Ms. Gilbert stated that many neighbors run businesses out of their homes, yet they make demands on his business.

Ms. Kristin Wilson, who lives at 16 Settlers Lane, stated that she does not want Mr. Soderholm not be able to run his business out of his home and provide for his family, but was concerned this would undermine the area and it would become more commercial. She requested that if the special use permit is approved, that the open area on his property not be developed for any commercial use, and that the fencing be completed that the applicant spoke of, and that there be no signage at all.

Mr. Brent Peterson, who lives at 101 Ridgecrest Circle, spoke on behalf of the applicant. Mr. Peterson felt that Mr. Soderholm has made an effort to address all the stipulations that were given to him at the last meeting. He felt that Mr. Soderholm has made several improvements to his property. Mr. Peterson and Mr. Soderholm measured how much of his property is affected by the storage. Mr. Peterson stated that this amount is approximately 8 percent. He felt that this amount is small in regards to the size lot. He also stated that last time there were several people who spoke against this application, where at this meeting there were none.

Mr. Robert Soderholm, who lives at 46 Yeardley Loop, also spoke on behalf of his son, the applicant. He stated that his son had a desire to serve the community. He also stated that his son is a young business person who is trying to provide for his family. Mr. Soderholm also stated that he has never seen standing water on his son's property. He reiterated the statement that his son has agreed not to store any other additional equipment. He also stated that his son's services are needed during times of crisis and disaster. He further stated that if this application is denied, it will be inhibiting him from providing for his family and putting a further financial burden for him by relocating the business.

Mr. Obadal asked if the applicant was willing to use the property for a limited amount of storage.

Ms. Cook stated that there is a condition that limits the amount of storage to a certain area, and that the applicant is willing to comply.

Mr. Soderholm stated that the 4000 square foot in the back of the property is the only area allowed for storage.

Mr. Obadal asked whether the applicant was putting any landscaping between his property and his neighbor.

Mr. Soderholm stated he put a berm in to minimize noise from Centerville Road. He also stated that he is constructing a fence to go around the back part of the lot. Mr. Soderholm showed pictures of the berm and the fence that is partial installed. Mr. Soderholm also clarified what was his neighbor's fence and what he himself has installed.

Mr. Kennedy asked if the applicant had a business license.

Mr. Soderholm stated yes that he does have one.

Mr. Kennedy asked the applicant when he located on this property, did he get a new business license or did he use the existing one.

Mr. Soderholm stated that he did not apply for a new one at the time he moved, but did change the address once he had to renew the license.

Mr. Kinsman stated that the Commissioner of Revenue issues the business license and the Zoning Office checks for compliance.

Mr. Soderholm stated that when he re-applied for his business license is when his address was changed. Mr. Soderholm was contacted by the Zoning Office and informed that he would have to apply for a special use permit. He then submitted an application for a special use permit.

Mr. Kennedy stated that when he moved, that is the time he should have changed the address with the Commissioner of Revenue. He stated that he is concerned when applicants ask for forgiveness after the fact. He stated that he did appreciate that Mr. Soderholm now has the support of his neighbors.

Mr. Soderholm did not realize that a special use permit was needed in the A-1 District, and thought that this type of business would be allowed.

Ms. Hughes closed the public hearing.

Mr. Kennedy stated that he appreciates small business and he believes in home based businesses. He also appreciated the fact that the applicant has gained support from his neighbors. He did state he was concerned about the procedures that were and were not followed. Mr. Kennedy did state that he would be supportive of this application.

Mr. Krapf stated that he was sympathetic to the applicant and all his efforts. He stated that he had concerns with compatibility with the surrounding neighborhood and whether his business provides a public benefit. Mr. Krapf felt that the answer was no to both. He also felt that this was not compliant with the Comprehensive Plan. Mr. Krapf also felt that by denying this application it would not preclude the applicant from moving his business to another location.

He stated that he felt that the application should not be approved.

Mr. Billups stated that he felt since most of the neighbors supported his application, and that the applicant had agreed to conditions that were placed upon him, that the democratic process should prevail. Mr. Billups stated that he felt that requiring the applicant to provide stormwater management was beyond what should be required of him. He also stated that he felt this type of business was compatible with the A-1 Zoning. Mr. Billups felt strongly that this application should be approved, and if there are conditions, that they should be moderate and not place an undue financial burden on the applicant.

Ms. Jones stated that she will support this application with the attached conditions. She does have some reservations that the applicant did not show due diligence when changing addresses regarding the business license. Ms. Jones felt that the space used for storage was not that large. Ms. Jones did state that the applicant might want to consider the option of locating offsite. She felt that the conditions concerning stormwater management may become very costly to the applicant. Ms. Jones did state also that she felt this Mr. Soderholm's business did provide a public benefit.

Mr. Obadal stated he did not see a public benefit with this business. He also stated that Ordinances needed to be enforced and that the Comprehensive Plan needs to be used as a guide. He also stated that he felt the lot size was too small for this type of business. Mr. Obadal felt that the lot size requirement in the Zoning Ordinance was there to protect residential neighborhoods from commercial uses.

Ms. Hughes stated that she felt the applicant knew the procedures concerning the home occupation. She stated she appreciated the fact that he has a young business but she also felt that he circumvented the rules. She felt the applicant should have known what to do when he relocated his business. Ms. Hughes felt that this property is part of a residential subdivision and that this type of business is not appropriate at this site. She also mentioned that the stormwater management requirements will most likely be very costly. Ms. Hughes stated she cannot support this application.

Mr. Kennedy made a motion to approve the application

Ms. Jones seconded the motion.

In a roll call vote the result was a 3/3 tie (3-3). AYE: Jones, Kennedy, Billups. NAY: Krapf, Obadal, Hughes. (Absent: Fraley)

Mr. Kinsman stated that the Code requires that the Planning Commission give the Board some guidance. He stated that there are a couple of options, one being to wait until next month when seven members are available, and re-vote, or send to the Board of Supervisors with no recommendation.

Mr. Kennedy stated he had no problem sending it to the Board with no recommendation.

Mr. Obadal asked if it is sent to the Board with no recommendation, can the comments and suggestions be attached with the application.

Mr. Kinsman stated that there is a comprehensive set of minutes that is part of the application that is reviewed by the Board of Supervisors.

Ms. Sowers also stated there is a representative from the Planning Commission that attends the Board meetings; therefore if there can be added input. Mr. Sowers also stated that as long as the special use permit is moving forward the applicant is allowed to continue operating his business.

Mr. Kennedy asked if the application was heard at the December Planning Commission meeting would it be heard at the December Board meeting.

Mr. Sowers stated that there is only one Board meeting in December. He stated it could possibly go to this one.

Mr. Krapf made a motion to send the application to the Board of Supervisors with a neutral recommendation.

Ms. Jones seconded the motion.

In a unanimous voice vote, the motion was approved (6-0). (Absent: Fraley)

**SPECIAL USE PERMIT-0026-2007. Williamsburg Dodge Trailer Sales
Staff Report for the December 11, 2007, Board of Supervisors Public Hearing**

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

PUBLIC HEARINGS

Planning Commission:
Board of Supervisors:

Building F Board Room; County Government Complex

November 7, 2007, 7:00 p.m.
December 11, 2007, 7:00 p.m.

SUMMARY FACTS

Applicant: Mr. John Dodson

Land Owner: Williamsburg Auto Group

Proposal: To amend the existing special use permit (SUP) conditions to allow trailers to be sold at the Williamsburg Dodge Dealership

Location: 7101 Richmond Road

Tax Map/Parcel No.: 2410100008

Parcel Size: 6.4 acres

Zoning: B-1, General Business

Comprehensive Plan: Community Commercial

Primary Service Area: Inside

STAFF RECOMMENDATION

Staff believes the proposed amendment to sell utility trailers, in addition to selling automobiles at the existing Williamsburg Dodge dealership, is a valid commercial enterprise and complimentary land use. Staff also believes that the conditions placed on this Special Use Permit (SUP) mitigate possible aesthetic concerns about the display of the trailers along Richmond Road. Based on this information, staff recommends that the Board of Supervisors approve this application with the attached resolution.

Staff Contact: Jason Purse

Phone: 253-6685

PLANNING COMMISSION RECOMMENDATION

On November 7, 2007, the Planning Commission voted 6-0 to approve this application.

Proposed Changes Made Since Planning Commission Meeting

None

PROJECT DESCRIPTION

In September 1997, the Board of Supervisors approved a Rezoning and SUP application (Z-8-97 and SUP-20-97) allowing vehicle sales at the Williamsburg Dodge site on Richmond Road in Norge. The Williamsburg Dodge Dealership is currently operating at 7101 Richmond Road and is owned and operated by the Williamsburg Auto Group, who also owns and operates the Williamsburg Honda Dealership at 7277 Richmond Road. The Honda Dealership received an SUP in 2002 that allowed for the sale of trailers at that site. With the addition of new vehicles at the Honda site, the Williamsburg Auto Group has requested that the trailer sales portion of their business be relocated to the Dodge Dealership. No new infrastructure will be built as a part of this application; the only change would be the location of the trailers on the new site.

The utility trailers include flatbed trailers used to haul lawn equipment as well as enclosed trailers. Trailers range in length from approximately ten feet to up to 25 feet and are usually eight feet in width. The applicant proposed to display trailers in the front parking bay, as shown on the Master Plan, and store additional trailers in the rear of the dealership building. The first three conditions listed at the end of this report represent new conditions that would be placed on the site, and they are similar to conditions that were approved for the sale of trailers at the Honda Dealership. The remaining conditions are existing conditions from the previously approved SUP application for this site.

SUROUNDING ZONING

The property is bordered by Williamsburg Village at Norge to the North and East, which is zoned Mixed-Use. To the south the property is bordered by Colonial Heritage (MU) as well as other B-1, General Business, properties including Scavengers Paradise and the Econo Lodge. Across Richmond Road from the Dodge dealership is Hill Pleasant Farm, which is zoned A-1, General Agricultural.

COMPREHENSIVE PLAN

Land Use Map

Designation	<i>Community Commercial (Page 122 and 123):</i> General business activities located within the PSA and usually having a moderate impact on nearby development are designated Community Commercial. Suggested uses are community scale commercial, professional and office uses such as branch banks, churches, convenience stores, indoor recreation facilities, medical offices, office parks, public facilities, service establishments, shopping centers, restaurants, and theaters. Staff Comment: This project site is currently operating as an automobile dealership with an approved SUP that allows for vehicle sales. No new development or infrastructure changes are proposed with this application, the only change would allow for the sale of trailers on-site. This application is in conformance with the description of Community Commercial, as described in the Comprehensive Plan.
Commercial Land Use Standards	<i>Standard # 3 (Page 136):</i> Mitigate objectionable aspects of commercial or industrial uses through an approach including performance standards, buffering, and special setback regulations. Staff Comment: Conditions from the initial Rezoning and Special Use Permit called for enhanced landscaping with screening from adjacent property and along Richmond Road. Vehicles are currently parked in the areas that would be used for trailer storage, and staff believes that the screening is currently providing adequate screening for the site. Staff believes the current enhanced landscaping onsite will adequately mitigate the objectionable aspects of the sale of trailers.

Community Character

General	<i>Suburban and Urban CCC (Page 84):</i> A suburban or urban CCC is characterized as an area that has moderate to high traffic volumes, moderate to high levels of existing or planned commercial or moderate-density residential uses, and may contain some wooded buffer along roads. In urban CCCs landscaping should be more formal and the built environment and pedestrian and other streetscape amenities are dominant. Off-street parking should be a minor part of the streetscape. In these areas, the CCC designation would provide enhanced landscaping, preservation of specimen trees and shrubs, berming, and other desirable design elements which complement and enhance the visual quality of the urban corridor.
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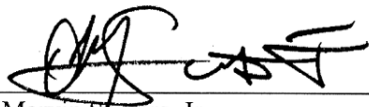
	<p><i>Norge Community Character Area (Page 86):</i> Norge has been significantly impacted by recent commercial development along Richmond Road. While Norge continues to have a unique, very identifiable residential component located off Richmond Road and some pedestrian-oriented storefronts, the early 20th century “village” character of its business and residential areas along Richmond Road has been significantly visually impacted by infill automobile-oriented development. Where possible, parking should be located to the rear of buildings. Parking should be screened from roadway and adjacent properties. New landscaping should be of a type, size, and scale to complement and enhance the building and site design. Native plant and tree species are encouraged.</p> <p>Staff Comment: Per a previous SUP condition, an enhanced landscaping plan was installed on-site to help mitigate the impacts of the vehicle sales on-site. Staff believes that this planting plan will also serve as an effective buffer for trailers in the front parking bay. Staff believes that the new expanded use on-site will not have any additional impact on the Community Character Corridor or Area. Staff also believes that since only a small portion of the trailers for sale will be visually located on the CCC (the remainder will be located behind the main structure) that this will help minimize the visual impact of the expanded use. Since the location of trailers will be limited to the 12 spaces in the northwest corner of the frontage, staff believes the impact will not be any greater than the currently existing use.</p>
Goals, strategies and actions	<p><i>Strategy #3 (Page 95):</i> Ensure that development along Community Character Corridors and Areas protects the natural views of the area, promotes the historic, rural or unique character of the area, maintains greenbelt networks, and establishes entrance corridors that enhance the experience of residents and visitors.</p> <p><i>Strategy #5 (Page 95):</i> Encourage beautification of existing development to improve overall visual quality of the County.</p> <p>Staff Comment: This project proposes no additional buildings or development on-site. Staff believes the additional trailers will not be any more visually impacting on the CCC than vehicle sales, as the uses are similar in nature. Staff believes the existing landscape buffer used for the vehicle sales will be sufficient to screen the trailers.</p>

RECOMMENDATION

Staff believes the proposed amendment to sell utility trailers, in addition to selling automobiles at the existing Williamsburg Dodge Dealership, is a valid commercial enterprise and complimentary land use. Staff also believes that the conditions placed on this SUP mitigate any possible aesthetic concerns about the display of the trailers along Richmond Road. Based on this information, staff recommends that the Board of Supervisors approve this application with the attached resolution.

Jason Purse

CONCUR:



O. Marvin Sowers, Jr.

JP/tlc
SUP26-07

ATTACHMENTS:

1. Unapproved Planning Commission Minutes from the November 7, 2007, meeting
2. Resolution
3. Location Map
4. Master Plan

RESOLUTION

CASE NO. SUP-0026-2007. WILLIAMSBURG DODGE TRAILER SALES

WHEREAS, the Board of Supervisors of James City County has adopted by ordinance specific land uses that shall be subjected to a Special Use Permit (SUP) process; and

WHEREAS, Mr. John Dodson has applied on behalf of the Williamsburg Auto Group for an SUP to allow for a sale of trailers on approximately 6.4 acres of land on parcels zoned B-1, General Business; and

WHEREAS, the conditions for this application replace the originally approved SUP conditions (SUP-20-99) for this parcel; and

WHEREAS, the proposed site is shown on a conceptual layout, entitled "Master Plan for cargo trailer display and parking," and dated August 27, 2007; and

WHEREAS, the property is located at 7101 Richmond Road, and can be further identified as James City County Real Estate Tax Map/Parcel No. 2410100008; and

WHEREAS, the Planning Commission of James City County, following its public hearing on November 7, 2007, recommended approval of this application by a vote of 6-0.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve the issuance of SUP-26-07 as described herein with the following conditions:

1. This special use permit shall allow for vehicle and trailer sales and service and accessory uses thereto as shown on the Master Plan titled "Master Plan for cargo trailer display and parking Williamsburg Dodge" dated August 27, 2007 (the "Project"). Development of the Project shall be generally in accordance with the above-referenced Master Plan as determined by the Development Review Committee (DRC) of the James City County Planning Commission. Minor changes may be permitted by the DRC, as long as they do not change the basic concept or character of the Project. The boundary of this property (the "Property") shall include the 6.4 acres of land for Parcel No. 2410100008 as shown on the Master Plan, for the purposes of the special use permit.
2. There shall be no more than twelve trailers displayed at any given time in the front bay of parking directly adjacent to Richmond Road. All twelve trailers shall be located in the parking bay closest to the northeast property corner of the site and the trailers shall be parked perpendicular to Richmond Road. All other trailers shall be stored in the parking area to the rear of the main building on-site as shown on the Master Plan. Of the twelve trailers displayed in front of the dealership in the spaces perpendicular to Richmond Road, no more than five shall be an enclosed trailer at any given time and none of the twelve trailers on display shall be longer than twenty feet. No signs or banners shall be placed on any trailers. All trailers shall be placed on existing paved areas.

3. The applicant shall be responsible for developing water conservation standards to be submitted to and approved by the James City Service Authority and subsequently for enforcing these standards. The standards shall address such water conservation measures as limitations on the installation and use of approved landscaping design and materials to promote water conservation and minimize the use of public water resources. The water conservation standards shall be approved by the James City Service Authority within three months of adoption of this special use permit and shall apply to any future building construction or renovation and any new landscaping plans.
4. Any proposed changes to the previously approved landscaping plan and installed landscaping shall be submitted to and approved by the Planning Director prior to alterations being made.
5. No exterior loudspeaker system shall be installed.
6. Lights not needed for security purposes shall be turned off after 9:00 p.m. Lights left on during non-business hours shall be identified on the lighting plan.
7. An enhanced landscaping plan shall be submitted to, and approved by, the Planning Director. For the purposes of this section, “enhanced landscaping” shall mean landscaping which includes specimen trees along Richmond Road placed in such a way as to establish a streetscape effect.
8. Landscape areas along Richmond Road shall remain free of all signage (with the exception of one monument style sign that conforms with the sign ordinance), vehicles, and display structures. For the purposes of this section, a “monument” style sign shall be defined as a free-standing sign with a completely enclosed base not to exceed thirty-two square feet in size and not to exceed eight feet in height from grade.
9. A six-foot sidewalk shall be constructed along Richmond Road.
10. With the exception of one American flag and one State of Virginia flag, not to exceed 12 square feet each, no flags shall be permitted.
11. Vehicles for sale shall remain at grade (i.e., no elevated display structures shall be allowed).
12. No service bays shall face Richmond Road.
13. The height of all structures shall be limited to 35 feet.
14. The on-site car wash shall be used exclusively by the dealership during regular business hours. The car wash shall be of a type that uses recycled water. The car wash shall not be open to the general public.
15. Additional right-of-way shall be reserved along Richmond Road to accommodate a Class II bike lane.

16. This special use permit is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.

John J. McGlennon
Chairman, Board of Supervisors

ATTEST:

Sanford B. Wanner
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 11th day of December, 2007.

SUP26_07_res

**UNAPPROVED MINUTES OF THE November 7, 2007 MEETING OF
THE PLANNING COMMISSION**

SUP-26-07 Williamsburg Dodge Trailer Sales

Mr. Jason Purse presented staff's report for a special use permit to allow for the retail sale of trailers at 7101 Richmond Road. No new infrastructure will be built as part of this application; the only change would be the sale of trailers on the Dodge Site. Currently, the Honda Dealership, also owned by the Williamsburg Auto Group is operating under an approved special use permit that allows for trailers sales, but with the addition of new stock they wish to switch the trailer sales portion of the business to the Dodge site. Mr. Purse stated that staff believes the proposed amendment to sell utility trailers, in addition to selling automobiles at the existing Williamsburg Dodge Dealership, is a valid commercial enterprise and complimentary land use. Staff also believes that the conditions placed on this special use permit mitigate possible aesthetic concerns about the display of the trailers along Richmond Road. He also stated based on this information, staff recommends that the Planning Commission recommend approval of this application to the James City County Board of Supervisors with the attached special use permit conditions.

Ms. Hughes opened the public hearing.

Mr. Dodson spoke on behalf of Williamsburg Auto Group. He stated that approximately five years ago the County granted a special use permit for utility trailer sales at their Honda site. He stated that he is not requesting to have two trailer sites. Mr. Dodson stated that if this application is approved, all of the trailers will be moved from the Honda site to the Dodge site, with the Dodge site being the only one selling the utility trailers. He stated that they have always used the Dodge site for delivery since it had an easier access off of Richmond Road. He stated that in the past these trailers have been moved to the Honda store. Mr. Dodson did state that the inventory would be in the back of the site. He stated that the twelve spaces up at the front of the site would be for display only.

Mr. Kennedy asked about the display that was at the Dodge site at one point

Mr. Dodson stated the only units stored at the Dodge site were those that had already been sold and were waiting to be picked up. He assured the Planning Commission that his company has never displayed trailers for sale at the Dodge site.

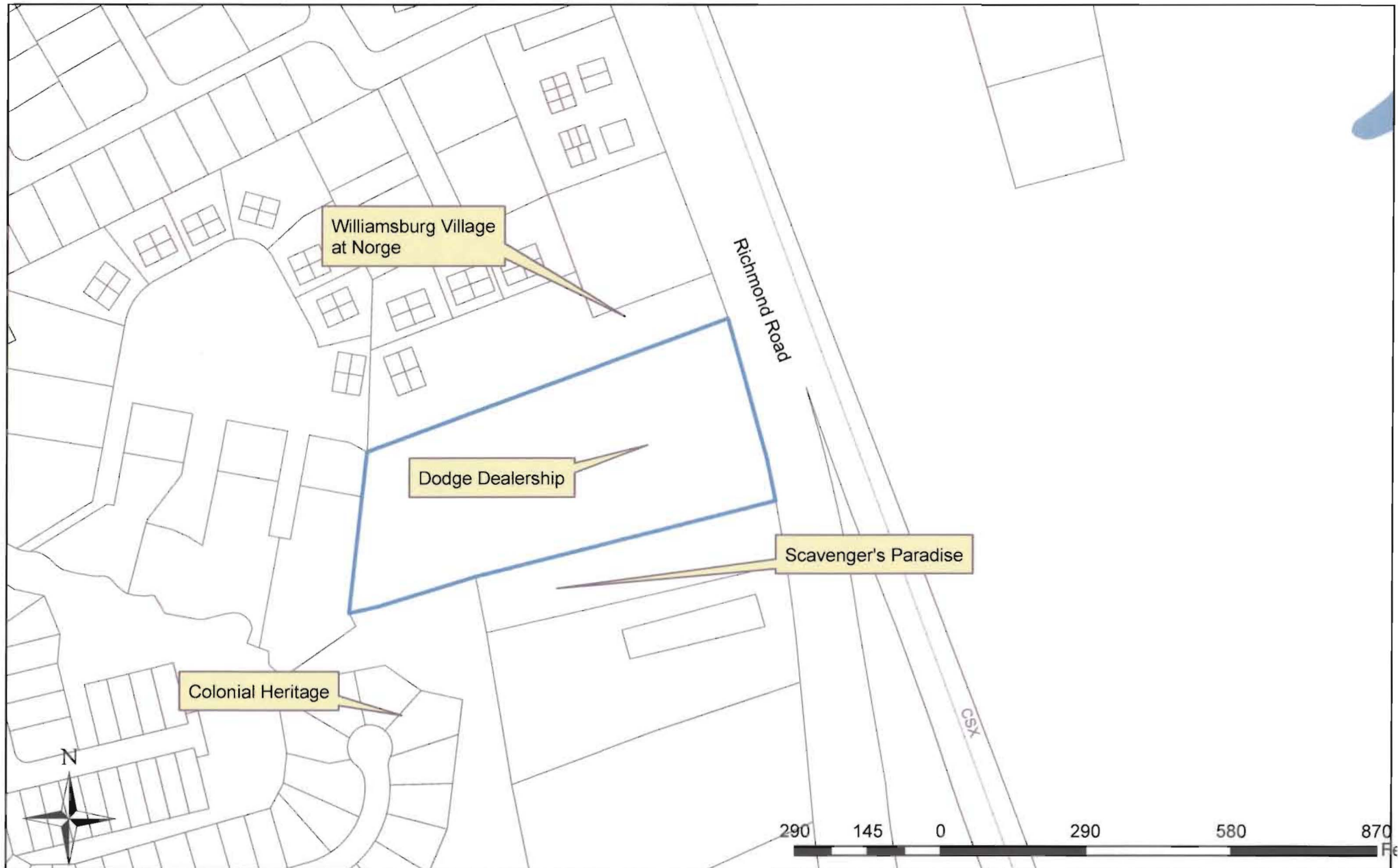
There being no further public comments, Ms. Hughes closed the public hearing.

Ms. Jones made a motion to approve the application.

Mr. Kennedy seconded the motion.

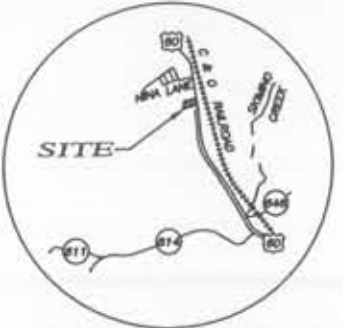
In a roll call vote the application was approved. (6-0) AYE: Krapf, Jones, Kennedy, Billups, Obadal, Hughes. (Absent: Fraley)

SUP-26-07, Williamsburg Dodge Trailer Sales



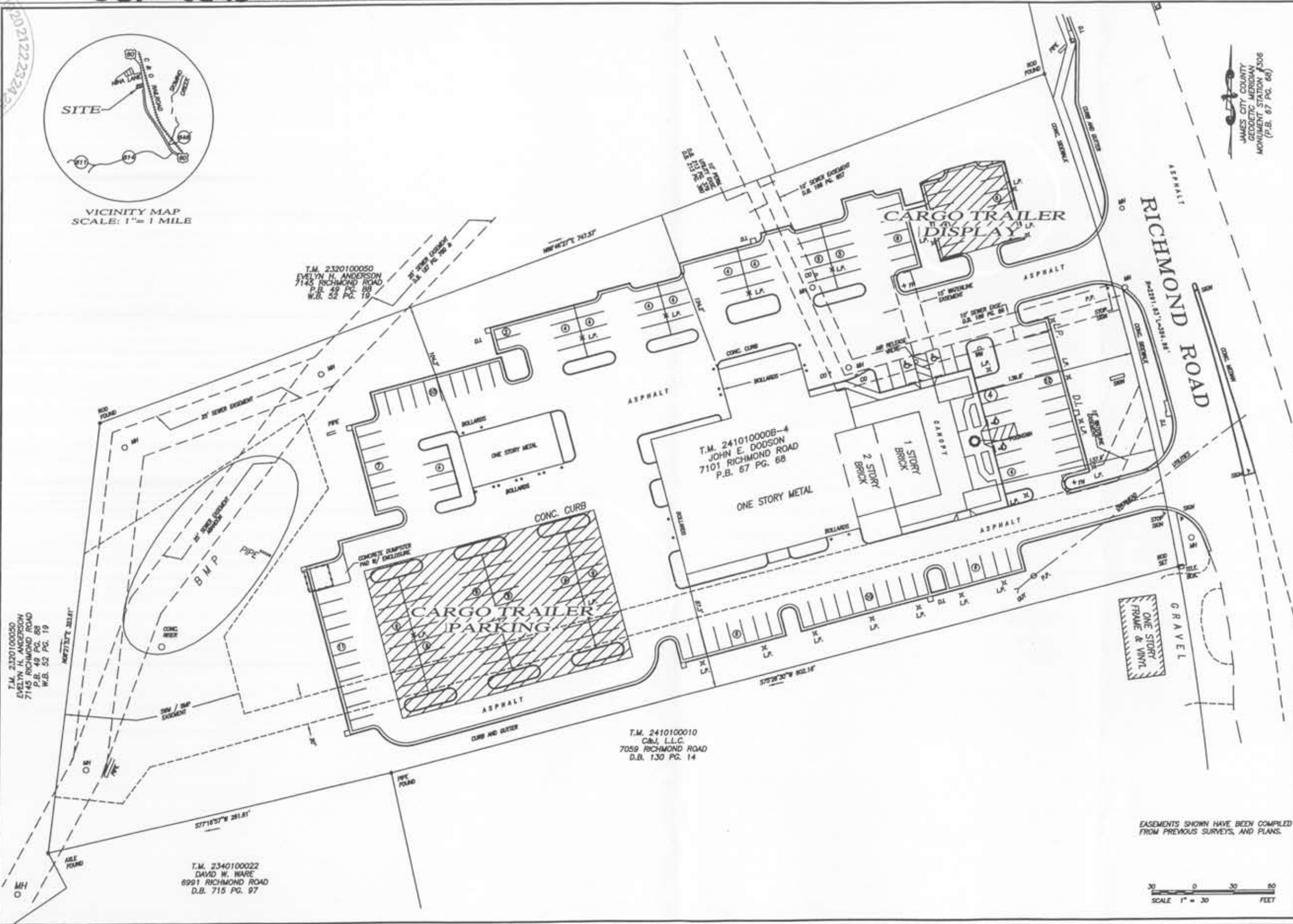
RECEIVED
SEP 2007
Planning Department

SUP 0026.2007



VICINITY MAP
SCALE: 1" = 1 MILE

JAMES CITY COUNTY
GEODETIC MERIDIAN
MONUMENT STATION 1306
(P.B. 67 PG. 66)



DESIGNED BY
DRAWN BY C.C.M.
CHECKED BY

POTTS, MINTER, AND ASSOCIATES P.C.
Engineers, Land Surveyors, and Planners
3520 S. Courthouse Road Suite B Richmond, Va. 23236
Phone: (804) 745-2876 Fax: 745-9571

MASTER PLAN FOR CARGO TRAILER
DISPLAY AND PARKING
WILLIAMSBURG
DODGE
POWHATAN DISTRICT
JAMES CITY COUNTY, VIRGINIA

DATE	08/27/2007
DATE	AUGUST 27, 2007
SHEET NO.	1 OF 1
SCALE	1"=30'
JOB NO.	9002-29

EASEMENTS SHOWN HAVE BEEN COMPILED
FROM PREVIOUS SURVEYS, AND PLANS.

SCALE 1" = 30' FEET

Supply as-built

MEMORANDUM

DATE: December 11, 2007

TO: The Board of Supervisors

FROM: Jason Purse, Senior Planner

SUBJECT: Z0-0009-2007. Alternative-Mounted Wireless Communication Facility Height Limit Ordinance Amendment

Staff has received a request from AT&T/Cingular wireless communications to amend the Zoning Ordinance to allow for alternative mounted wireless communication antennas atop water towers over the height of 120 feet. Currently the language in many of the Ordinance sections only allows alternative mounted structures up to 120 feet, however, other structures such as public water tanks can be approved (with an SUP and Height Waiver) to taller heights. Section 24-200(b) of the Zoning Ordinance allows the height of public water storage facilities to exceed the height limits specified in each of the individual Districts upon the issuance of a special use permit and height waiver. Staff believes it is important to allow alternative-mounted structures on already approved structures in order to minimize the need for conventional Wireless Communication Towers in the County and to avoid visual intrusion wherever possible.

The following Zoning Districts would require the amendment:

A-1, General Agricultural	LB, Limited Business
R-1, Limited Residential	B-1, General Business
R-2, General Residential	PUD, Planned Unit Development
R-4, Residential Planned Community	R-5, Multi-family Residential
R-6, Low-Density Residential	MU, Mixed-Use
R-8, Rural Residential	PL, Public Land

The following Zoning Districts do NOT require any amendments at this time, as there is no maximum height for an alternative mounted structure specified:

M-1, Limited Business/Industrial
M-2, General Industrial
RT, Research and Technology

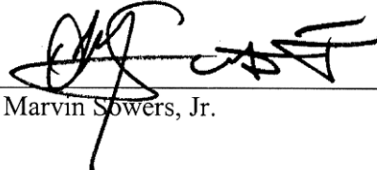
The language change would allow alternative-mounted structures over 60 feet, but NOT exceeding the maximum height of the already approved structure (building, water tower, etc.) with an approved height waiver. Furthermore, the language for R-5 would be changed to more closely match the language currently found in the other residential districts, as the previous language did not specifically mention alternative-mounted structures as it does in other Districts.

Staff has attached two documents for your reference. The first is a draft ordinance that contains all of the height limit section language of the Districts that require changes. The purpose of this attachment is to put into context the ordinance amendments with respect to all of the language present in the various Districts. The second attachment is the ordinance itself. The language is the same; however, some of the height limit section language for each District is not shown in order to limit the length of the actual ordinance.

Staff recommends approval of these Zoning Ordinance amendments. At their October 19, 2007, meeting, the Policy Committee unanimously recommended approval of amendments. At their November 7, 2007, the Planning Commission recommended approval of the amendments by a vote of 6-0.

Jason Purse

CONCUR:



O. Marvin Sowers, Jr.

JP/tlc
AltWCFheight.mem

Attachments:

1. Unapproved Planning Commission Minutes from the November 7, 2007, meeting
2. Draft Ordinance with complete language
3. Ordinance

ORDINANCE NO. _____

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 24, ZONING, OF THE CODE OF THE COUNTY OF JAMES CITY, VIRGINIA, BY AMENDING ARTICLE V, DISTRICTS, DIVISION 2, GENERAL AGRICULTURAL DISTRICT, A-1, SECTION 24-218, HEIGHT LIMITS; DIVISION 3, LIMITED RESIDENTIAL DISTRICT, R-1, SECTION 24-240, HEIGHT LIMITS; DIVISION 4, GENERAL RESIDENTIAL DISTRICT, R-2, SECTION 24-261, HEIGHT LIMITS; DIVISION 5, RESIDENTIAL PLANNED COMMUNITY DISTRICT, R-4, SECTION 24-293, HEIGHT LIMITS; DIVISION 6, MULTIFAMILY RESIDENTIAL DISTRICT, R-5, SECTION 24-314, REQUIREMENTS FOR IMPROVEMENTS AND DESIGN; DIVISION 7, LOW-DENSITY RESIDENTIAL DISTRICT, R-6, SECTION 24-335, HEIGHT LIMITS; DIVISION 8, RURAL RESIDENTIAL DISTRICT, R-8, SECTION 24-354, HEIGHT LIMITS; DIVISION 9, LIMITED BUSINESS DISTRICT, LB, SECTION 24-375, HEIGHT LIMITS AND HEIGHT LIMITATION WAIVERS; DIVISION 10, GENERAL BUSINESS DISTRICT, B-1, SECTION 24-397, HEIGHT LIMITS AND HEIGHT LIMITATION WAIVERS; DIVISION 14, PLANNED UNIT DEVELOPMENT DISTRICTS, SECTION 24-496, HEIGHT AND SPACING OF STRUCTURES; DIVISION 15, MIXED-USE, MU, SECTION 24-525, HEIGHT OF STRUCTURES; DIVISION 16, PUBLIC LAND DISTRICT, PL, SECTION 24-535.9, HEIGHT LIMITS.

BE IT ORDAINED by the Board of Supervisors of the County of James City, Virginia, that Chapter 24, Zoning, is hereby amended and reordained by amending Section 24-218, Height limits; Section 24-240, height limits; Section 24-261, Height limits; Section 24-293, Height limits; Section 24-314 (j), Requirements for improvements and design; Section 24-335, Height limits; Section 24-354, Height limits; Section 24-375, Height limits and height limitation waivers; Section 24-397, Height limits and height limitation waivers; Section 24-496, Height and spacing of structures; Section 24-525, Height of structures, Section 24-535.9, Height limits.

Chapter 24. Zoning

Article V. Districts

Division 2. General Agricultural District, A-1

Sec. 24-218. Height limits.

Structures may be erected up to two stories and shall not exceed 35 feet in height from grade, except that:

- (2) Church spires, belfries, cupolas, monuments, water towers, athletic field lighting, chimneys, flues, flagpoles, home television antennas, home radio aerials, silos and other structures normally associated with and accessory to farming operations and accessory or non accessory wireless communications facilities that utilize alternative mounting structures or are building mounted in accordance with division 6, Wireless Communications Facilities, may be erected to a total height of 60 feet from grade. Camouflaged wireless communications facilities may be erected to a total height of 120 feet from grade.

Upon application for a height limitation waiver, the payment of appropriate fees, notification of adjacent property owners and following a public hearing, the board of supervisors may grant a height limitation waiver for these structures to exceed 60 feet in height but not to exceed 100 feet, from grade to the top of the structure, and for wireless communications facilities that utilize alternative mounting structures or are building mounted to exceed 60 feet in height but not to exceed ~~120 feet in grade to the top of the structure~~ *the maximum approved height of the structure to which it is mounted*, upon finding that:

- a. Such structure will not obstruct light to adjacent property;
- b. Such structure will not impair the enjoyment of historic attractions and areas of significant historic interest and surrounding developments;
- c. Such structure will not impair property values in the surrounding area;
- d. Such structure is adequately designed and served from the standpoint of safety, and the county fire chief finds that the fire safety equipment to be installed is adequately designed and that the building is reasonably well located in relation to fire stations and equipment, so as to offer adequate protection to life and property; and
- e. Such structure will not be contrary to the public health, safety and general welfare.

Division 3. Limited Residential District, R-1

Sec. 24-240. Height limits.

Buildings may be erected up to two stories and shall not exceed 35 feet in height from grade, except that:

- (3) Church spires, belfries, cupolas, monuments, water towers, athletic field lighting, chimneys, flues, flagpoles, home television antennae and home radio aerials and wireless communications facilities that utilize alternative mounting structures or are building mounted in accordance with

division 6, Wireless Communications Facilities, may be erected to a total height of 60 feet from grade. Camouflaged wireless communications facilities may be erected to a total height of 120 feet from grade. Upon application for a height limitation waiver, the payment of appropriate fees, notification of adjacent property owners and following a public hearing, the board of supervisors may grant a height limitation waiver for these structures to exceed 60 feet in height but not to exceed 100 feet, from grade to the top of the structure, and for wireless communications facilities that utilize alternative mounting structures or are building mounted to exceed 60 feet in height but not to exceed ~~120 feet in grade to the top of the structure~~ *the maximum approved height of the structure to which it is mounted*, upon finding that:

- a. Such structure will not obstruct light to adjacent property;
- b. Such structure will not impair the enjoyment of historic attractions and areas of significant historic interest and surrounding developments;
- c. Such structure will not impair property values in the surrounding area;
- d. Such structure is adequately designed and served from the standpoint of safety, and the county fire chief finds that the fire safety equipment to be installed is adequately designed and that the building is reasonably well located in relation to fire stations and equipment, so as to offer adequate protection to life and property; and
- e. Such structure will not be contrary to the public health, safety and general welfare.

Division 4. General Residential District, R-2

Sec. 24-261. Height limits.

Buildings may be erected up to two stories and shall not exceed 35 feet in height from grade, except that:

- (3) Church spires, belfries, cupolas, monuments, water towers, athletic field lighting, chimneys, flues, flagpoles, home television antennas and home radio aerials and wireless communications facilities that utilize alternative mounting structures or are building mounted in accordance with division 6, Wireless Communications Facilities, may be erected to a total height of 60 feet from grade. Camouflaged wireless communications facilities may be erected to a total height of 120 feet from grade. Upon application for a height limitation waiver, the payment of appropriate fees, notification of adjacent property owners and following a public hearing, the board of supervisors may grant a height limitation waiver for these structures to exceed 60 feet in height but not to exceed 100 feet, from grade to the top of the structure, and for wireless communications facilities that utilize alternative mounting structures or are building mounted to exceed 60 feet in height but not to exceed ~~120 feet in grade to the top of the structure~~ *the maximum approved height of the structure to which it is mounted*, upon finding that:
 - a. Such structure will not obstruct light to adjacent property;
 - b. Such structure will not impair the enjoyment of historic attractions and areas of significant historic interest and surrounding developments;
 - c. Such structure will not impair property values in the surrounding area;
 - d. Such structure is adequately designed and served from the standpoint of safety, and the county fire chief finds that the fire safety equipment to be installed is adequately designed

and that the building is reasonably well located in relation to fire stations and equipment, so as to offer adequate protection to life and property; and

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

Division 5. Residential Planned Community District, R-4

Sec. 24-293. Height limits.

Structures may be erected up to 60 feet in height from grade to the top of the structure, including all penthouse, electrical, plumbing, elevator, water tank, athletic field lighting, or other accessory functions, which are part of the structure. Camouflaged wireless communications facilities may be erected to a total height of 120 feet from grade. A structure in excess of 60 feet in height but not in excess of 100 feet, from grade to the top of the structure, including all penthouse, electrical, plumbing, elevator, water tank, radio, television and microwave antennas and towers or other accessory functions, and accessory and non accessory wireless communications facilities that utilize alternative mounting structures or are building mounted in accordance with division 6, Wireless Communications Facilities in excess of 60 feet in height but not in excess of ~~120 feet in grade to the top of the structure~~ *the maximum approved height of the structure to which it is mounted*, may be erected only upon the granting of a height limitation waiver by the board of supervisors. Upon application for a height limitation waiver, the payment of appropriate fees, notification of adjacent property owners and following a public hearing, the board of supervisors may grant a height limitation waiver upon finding that:

- a. Such structure is in accordance with the uses, densities, design and traffic analysis shown on the original master plan;
- b. Such structure will not obstruct light from adjacent property;
- c. Such structure will not impair the enjoyment of historic attractions and areas of significant historic interest and surrounding developments;
- d. Such structure will not impair property values in the surrounding area;
- e. Such structure is adequately designed and served from the standpoint of safety and the county fire chief finds that the fire safety equipment to be installed is adequately designed and that the building is reasonably well located in relation to fire stations and equipment, so as to offer adequate protection to life and property; and
- f. Such structure will not be contrary to the public health, safety and general welfare.

Division 6. Multifamily Residential District, R-5

Sec. 24-314. Requirements for improvements and design.

(j) *Structure height.* Structures may be erected up to 35 feet in height from grade to the top of the structure, including all church spires, belfries, cupolas, monuments, penthouse, electrical, plumbing, elevator, athletic field lighting, water tank or other accessory functions which are part of the structure and accessory and non accessory wireless communications facilities that utilize alternative mounting structures, or are building mounted in accordance with division 6, Wireless Communications Facilities. Camouflaged wireless communications facilities may be erected to a total height of 120 feet from grade. A structure in excess of 35 feet in height from grade to the top of the structure, including all church

spires, belfries, cupolas, monuments, penthouse, electrical, plumbing, elevator, athletic field lighting, water tank, radio, television and microwave antennas and towers or other accessory functions, *and for wireless communications facilities that utilize alternative mounting structures or are building mounted to exceed 35 feet in height but not to exceed the maximum approved height of the structure to which it is mounted*, may be erected only upon the granting of a height limitation waiver by the board of supervisors. Upon application for a height limitation waiver, the payment of appropriate fees, notification of adjacent property owners and following a public hearing, the board of supervisors may grant a height limitation waiver upon finding that:

- (1) Such structure will not obstruct light from adjacent property;
- (2) Such structure will not impair the enjoyment of historic attractions and areas of significant historic interest and surrounding developments;
- (3) Such structure will not impair property values in the surrounding area;
- (4) Such structure is adequately designed and served from the stand point of safety and the county fire chief certifies that the fire safety equipment to be installed is adequately designed and that the building is reasonably well located in relation to fire stations and equipment, so as to offer adequate protection to life and property; and.
- (5) Such structure would not be contrary to the public health, safety and general welfare.

Division 7. Low-Density Residential District, R-6

Sec. 24-335. Height limits.

Buildings may be erected up to two stories and shall not exceed 35 feet in height from grade, except that:

- (2) Church spires, belfries, cupolas, monuments, water towers, athletic field lighting, chimneys, flues, flagpoles, home television antennas, home radio aerials, silos and other structures normally associated with and accessory to farming operations and accessory and non accessory wireless communications facilities that utilize alternative mounting structures or are building mounted in accordance with division 6, Wireless Communications Facilities, may be erected to a total height of 60 feet from grade. Camouflaged wireless communications facilities may be erected to a total height of 120 feet from grade. Upon application for a height limitation waiver, the payment of appropriate fees, notification of adjacent property owners and following a public hearing, the board of supervisors may grant a height limitation waiver for these structures to exceed sixty feet in height but not to exceed 100 feet, from grade to the top of the structure, and for wireless communications facilities that utilize alternative mounting structures or are building mounted to exceed 60 feet in height but not to exceed ~~120 feet in grade to the top of the structure~~ *the maximum approved height of the structure to which it is mounted*, upon finding that:
 - a. Such structure will not obstruct light to adjacent property;
 - b. Such structure will not impair the enjoyment of historic attractions and areas of significant historic interest and surrounding developments;
 - c. Such structure will not impair property values in the surrounding area;
 - d. Such structure is adequately designed and served from the standpoint of safety, and the county fire chief finds that the fire safety equipment to be installed is adequately designed

- and that the building is reasonably well located in relation to fire stations and equipment, so as to offer adequate protection to life and property; and
- e. Such structure will not be contrary to the public health, safety and general welfare.

Division 8. Rural Residential District, R-8

Sec. 24-354. Height limits.

Structures may be erected up to two stories and shall not exceed 35 feet in height from grade, except that:

- (3) Church spires, belfries, cupolas, monuments, water towers, athletic field lighting, chimneys, flues, flagpoles, home television antennas, home radio aerials, silos and other structures normally associated with and accessory to farming operations and accessory and non accessory wireless communications facilities that utilize alternative mounting structures or are building mounted in accordance with division 6, Wireless Communications Facilities, may be erected to a total height of 60 feet from grade and camouflaged wireless communications facilities may be erected to a total height of 120 feet from grade. Upon application for a height limitation waiver, the payment of appropriate fees, notification of adjacent property owners and following a public hearing, the board of supervisors may grant a height limitation waiver for these structures to exceed 60 feet in height but not to exceed 100 feet, from grade to the top of the structure, and for wireless communications facilities that utilize alternative mounting structures or are building mounted to exceed 60 feet in height but not to exceed ~~120 feet in grade to the top of the structure~~ *the maximum approved height of the structure to which it is mounted*, upon finding that:
 - a. Such structure will not obstruct light to adjacent property;
 - b. Such structure will not impair the enjoyment of historic attractions and areas of significant historic interest and surrounding developments;
 - c. Such structure will not impair property values in the surrounding area;
 - d. Such structure is adequately designed and served from the standpoint of safety, and the county fire chief finds that the fire safety equipment to be installed is adequately designed and that the building is reasonably well located in relation to fire stations and equipment, so as to offer adequate protection to life and property; and
 - e. Such structure will not be contrary to the public health, safety and general welfare.

Division 9. Limited Business District, LB

Sec. 24-375. Height limits and height limitation waivers.

(b) Church spires, belfries, cupolas, athletic field lighting, chimneys, flues, monuments, flagpoles and wireless communications facilities that utilize alternative mounting structures or are building mounted in accordance with division 6, Wireless Communications Facilities may be erected to a total height of 60 feet from grade. Camouflaged wireless communications facilities may be erected to a total height of 120 feet from grade. Upon application for a height limitation waiver, the payment of appropriate fees, notification of adjacent property owners and following a public hearing, the board of supervisors may grant a height limitation waiver for these structures to exceed 60 feet in height but not to exceed 100 feet, from grade to the top of the structure, and for wireless communications facilities that utilize alternative mounting structures or are building mounted to exceed 60 feet in height but not to exceed ~~120 feet in grade to the top of the structure~~ *the maximum approved height of the structure to which it is mounted*, upon finding that:

1. Such structure will not obstruct light to adjacent property;
 2. Such structure will not impair the enjoyment of historic attractions and areas of significant historic interest and surrounding developments;
 3. Such structure will not impair property values in the surrounding area;
 4. Such structure is adequately designed and served from the standpoint of safety, and the county fire chief finds that the fire safety equipment to be installed is adequately designed and that the building is reasonably well located in relation to fire stations and equipment, so as to offer adequate protection to life and property; and
 5. Such structure will not be contrary to the public health, safety and general welfare.
- (c) All accessory structures shall be less than the main structure in height.

Division 10. General Business District, B-1

Sec. 24-397. Height limits and height limitation waivers.

Structures may be erected up to 60 feet in height from grade to the top of the structure, including all church spires, belfries, cupolas, athletic field lighting, monuments, flagpoles, penthouse, electrical, plumbing, elevator, water tank or other accessory functions which are part of or on top of the structure and camouflaged wireless communications facilities may be erected to a total height of 120 feet from grade, in accord with the following criteria:

- (1) A structure in excess of 60 feet in height but not in excess of 100 feet from grade to the top of the structure, including all church spires, belfries, cupolas, athletic field lighting, monuments, flagpoles, penthouse, electrical, plumbing, elevator, water tank or other accessory functions which are part of or on top of the structure and accessory and non accessory wireless communications facilities that utilize alternative mounting structures or are building mounted in accordance with division 6, Wireless Communications Facilities in excess of 60 feet in height but not in excess of ~~120 feet in grade to the top of the structure~~ *the maximum approved height of the structure to which it is mounted*, may be erected only upon the granting of a height limitation waiver by the board of supervisors. Upon application for a height limitation waiver, the payment

of appropriate fees, notification of adjacent property owners and following a public hearing, the board of supervisors may grant a height limitation waiver upon finding that:

- a. The regulations of section 24-398 regarding building coverage, floor area ratio and open space are met;
- b. Such structure will not obstruct light from adjacent property;
- c. Such structure will not impair the enjoyment of historic attractions and areas of significant historic interest and surrounding developments;
- d. Such structure will not impair property values in the surrounding area;
- e. Such structure is adequately designed and served from the standpoint of safety and the county fire chief finds that the fire safety equipment to be installed is adequately designed and the building is reasonably well located in relation to fire stations and equipment, so as to offer adequate protection to life and property; and
- f. Such structure would not be contrary to the public health, safety or general welfare.

Division 14. Planned Unit Development District

Sec. 24-496. Height and spacing of structures.

- (b) A structure in excess of 60 feet in height but not in excess of 100 feet from grade to the top of the structure, including all church spires, belfries, cupolas, athletic field lighting, monuments, flagpoles, penthouse, electrical, plumbing, elevator, water tank, radio, television, and microwave antennas and towers or other accessory functions, and accessory and non accessory wireless communications facilities that utilize alternative mounting structures or are building mounted in accordance with division 6, Wireless Communications facilities in excess of 60 feet in height but not in excess of ~~120 feet in grade to the top of the structure~~ *the maximum approved height of the structure to which it is mounted*, may be erected only upon the granting of a height limitation waiver by the board of supervisors.

Upon application for a height limitation waiver, the payment of appropriate fees, notification of adjacent property owners and following a public hearing, the board of supervisors may grant a height limitation waiver upon finding that:

- (1) Such structure is in accordance with the uses, densities, design and traffic analysis shown on the original master plan;
- (2) Such structure will not obstruct light from adjacent property;
- (3) Such structure will not impair the enjoyment of historic attractions and areas of significant historic interest and surrounding developments;
- (4) Such structure will not impair property values in the surrounding area;
- (5) Such structure is adequately designed and served from the standpoint of safety, and the county fire chief finds that the fire safety equipment to be installed is adequately designed and that the building is reasonably well located in relation to fire stations and equipment, so as to offer adequate protection to life and property; and

Division 15. Mixed-Use, MU

Sec. 24-525. Height of structures.

(b) A structure in excess of 60 feet in height but not in excess of 100 feet from grade to the top of the structure, including all church spires, belfries, cupolas, athletic field lighting, monuments, flagpoles, penthouse, electrical, plumbing, elevator, water tank, radio, television and microwave antennas, and towers or other accessory functions, and accessory and non accessory wireless communications facilities that utilize alternative mounting structures or are building mounted in accordance with division 6, Wireless Communications Facilities in excess of 60 feet in height but not in excess of ~~120 feet in grade to the top of the structure~~ *the maximum approved height of the structure to which it is mounted*, may be erected only upon the granting of a height limitation waiver by the board of supervisors.

(c) Upon application for a height limitation waiver, the payment of appropriate fees, notification of adjacent property owners and following a public hearing, the board of supervisors may grant a height limitation waiver upon finding that:

- (1) Such structure is in accordance with the uses, densities, design and traffic analysis shown on the original master plan;
- (2) Such structure will not obstruct light from adjacent property;
- (3) Such structure will not impair the enjoyment of historic attractions and areas of significant historic interest and surrounding developments;
- (4) Such structure will not impair property values in the surrounding area;
- (5) Such structure is adequately designed and served from the standpoint of safety and the county fire chief finds that the fire safety equipment to be 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; and
- (6) Such structure would not be contrary to the public health, safety or general welfare.

Division 16. Public Land District, PL

Section 24-535.9. Height limits.

Structures may be erected up to two stories and shall not exceed 35 feet in height from grade, except that:

- (2) Spires, belfries, cupolas, monuments, water towers, athletic field lighting, chimneys, flues, flagpoles, home television antennas, home radio aerials, silos and other structures normally associated with and accessory to farming operations and accessory and non accessory wireless Communications facilities that utilize alternative mounting structures or are building mounted in

accordance with division 6, Wireless Communications Facilities, may be erected to a total height of 60 feet from grade and camouflaged wireless communications facilities may be erected to a total height of 120 feet from grade. Upon application for a height limitation waiver, the payment of appropriate fees, notification of adjacent property owners and following a public hearing, the board of supervisors may grant a height limitation waiver for these structures to exceed 60 feet in height but not to exceed 100 feet, from grade to the top of the structure, and for wireless communications facilities that utilize alternative mounting structures or are building mounted to exceed 60 feet in height but not to exceed ~~120 feet in grade to the top of the structure~~ *the maximum approved height of the structure to which it is mounted*, upon finding that:

- a. Such structure will not obstruct light to adjacent property;
- b. Such structure will not impair the enjoyment of historic attractions and areas of significant historic interest and surrounding developments;
- c. Such structure will not impair property values in the surrounding area;
- d. Such structure is adequately designed and served from the standpoint of safety, and the county fire chief finds that the fire safety equipment to be installed is adequately designed and that the building is reasonably well located in relation to fire stations and equipment, so as to offer adequate protection to life and property; and
- e. Such structure will not be contrary to the public health, safety and general welfare.

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 11th day of December, 2007.

AltWCFheight_ord

**UNAPPROVED MINUTES OF THE November 7, 2007 MEETING OF
THE PLANNING COMMISSION**

ZO-09-07 Zoning Ordinance Amendment – Wireless Communications

Mr. Purse stated that staff has received a request from AT&T/Cingular Wireless Communications to amend the Zoning Ordinance to allow for alternative mounted wireless communication antennas atop water towers over the height of 120'. He stated that the proposed language would allow alternative mounted structures over 60 feet, but not exceeding the maximum height of the already approved structure with an approved height waiver. Mr. Purse stated that staff believes it is important to allow alternative mounted structures on already approved structures in order to minimize the need for conventional Wireless Communication Towers in the County and to avoid visual intrusion wherever possible. The Policy Committee unanimously recommended approval of this revision, and staff recommends that the Planning Commission recommend approval to the Board of Supervisors.

Mr. Kennedy made a motion for approval.

Mr. Krapf seconded the motion.

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

Chapter 24. Zoning
Article V. Districts
Division 2. General Agricultural District, A-1

Sec. 24-218. Height limits.

Structures may be erected up to two stories and shall not exceed 35 feet in height from grade, except that:

- (1) The height limit for buildings may be increased to 45 feet and to three stories; provided, that the two side yards for the building are increased to a minimum of 15 feet plus one foot for each additional foot of the building's height over 35 feet.
- (2) Church spires, belfries, cupolas, monuments, water towers, athletic field lighting, chimneys, flues, flagpoles, home television antennas, home radio aerials, silos and other structures normally associated with and accessory to farming operations and accessory or non accessory wireless communications facilities that utilize alternative mounting structures or are building mounted in accordance with division 6, Wireless Communications Facilities, may be erected to a total height of 60 feet from grade. Camouflaged wireless communications facilities may be erected to a total height of 120 feet from grade.

Upon application for a height limitation waiver, the payment of appropriate fees, notification of adjacent property owners and following a public hearing, the board of supervisors may grant a height limitation waiver for these structures to exceed 60 feet in height but not to exceed 100 feet, from grade to the top of the structure, and for wireless communications facilities that utilize alternative mounting structures or are building mounted to exceed 60 feet in height but not to exceed ~~120 feet in grade to the top of the structure~~ *the maximum approved height of the structure to which it is mounted*, upon finding that:

- a. Such structure will not obstruct light to adjacent property;
 - b. Such structure will not impair the enjoyment of historic attractions and areas of significant historic interest and surrounding developments;
 - c. Such structure will not impair property values in the surrounding area;
 - d. Such structure is adequately designed and served from the standpoint of safety, and the county fire chief finds that the fire safety equipment to be installed is adequately designed and that the building is reasonably well located in relation to fire stations and equipment, so as to offer adequate protection to life and property; and
 - e. Such structure will not be contrary to the public health, safety and general welfare.
- (3) No accessory building which is within 15 feet of any lot line shall be more than one story high. All accessory buildings shall not be more than 45 feet in height; except that silos, barns and other structures normally associated with and accessory to farming operations are controlled by subsection (2) above and may exceed 45 feet in height.
 - (4) Communication towers permitted by a special use permit by the board of supervisors may be in excess of 35 feet in height.

Division 3. Limited Residential District, R-1

Sec. 24-240. Height limits.

Buildings may be erected up to two stories and shall not exceed 35 feet in height from grade, except that:

- (1) The height limit for dwellings may be increased to 45 feet and to three stories; provided, that there are two side yards for each permitted use each of which is a minimum of 15 feet plus one foot or more of side yard for each additional foot of building height over 35 feet.
- (2) A public or semipublic building such as a school, church or library may be erected to a height of 60 feet from grade, provided that the required front, side and rear yards shall be increased one foot for each foot in height over 35 feet.
- (3) Church spires, belfries, cupolas, monuments, water towers, athletic field lighting, chimneys, flues, flagpoles, home television antennae and home radio aerials and wireless communications facilities that utilize alternative mounting structures or are building mounted in accordance with division 6, Wireless Communications Facilities, may be erected to a total height of 60 feet from grade. Camouflaged wireless communications facilities may be erected to a total height of 120 feet from grade. Upon application for a height limitation waiver, the payment of appropriate fees, notification of adjacent property owners and following a public hearing, the board of supervisors may grant a height limitation waiver for these structures to exceed 60 feet in height but not to exceed 100 feet, from grade to the top of the structure, and for wireless communications facilities that utilize alternative mounting structures or are building mounted to exceed 60 feet in height but not to exceed ~~120 feet in grade to the top of the structure~~ *the maximum approved height of the structure to which it is mounted*, upon finding that:
 - a. Such structure will not obstruct light to adjacent property;
 - b. Such structure will not impair the enjoyment of historic attractions and areas of significant historic interest and surrounding developments;
 - c. Such structure will not impair property values in the surrounding area;
 - d. Such structure is adequately designed and served from the standpoint of safety, and the county fire chief finds that the fire safety equipment to be installed is adequately designed and that the building is reasonably well located in relation to fire stations and equipment, so as to offer adequate protection to life and property; and
 - e. Such structure will not be contrary to the public health, safety and general welfare.
- (4) No accessory building which is within 15 feet of any lot line shall be more than one story high. All accessory buildings shall be less than the main building in height; provided, however, the height of an accessory building may exceed the height of the main building if the grade of the lot is such that the elevation of the main building exceeds the elevation of the accessory building. The elevation of the main building and the accessory building shall be measured from the level of the curb or the established curb grade opposite the middle of the main building. In no case shall an accessory building be more than 35 feet in height.

Division 4. General Residential District, R-2

Sec. 24-261. Height limits.

Buildings may be erected up to two stories and shall not exceed 35 feet in height from grade, except that:

- (1) The height limit for dwellings may be increased to 45 feet and to three stories; provided, that there are two side yards for each permitted use each of which is a minimum of 15 feet plus one foot or more of side yard for each additional foot of building height over 35 feet.
- (2) A public or semipublic building such as a school, church or library may be erected to a height of 60 feet from grade, provided that the required front, side and rear yards shall be increased one foot for each foot in height over 35 feet.
- (3) Church spires, belfries, cupolas, monuments, water towers, athletic field lighting, chimneys, flues, flagpoles, home television antennas and home radio aerals and wireless communications facilities that utilize alternative mounting structures or are building mounted in accordance with division 6, Wireless Communications Facilities, may be erected to a total height of 60 feet from grade. Camouflaged wireless communications facilities may be erected to a total height of 120 feet from grade. Upon application for a height limitation waiver, the payment of appropriate fees, notification of adjacent property owners and following a public hearing, the board of supervisors may grant a height limitation waiver for these structures to exceed 60 feet in height but not to exceed 100 feet, from grade to the top of the structure, and for wireless communications facilities that utilize alternative mounting structures or are building mounted to exceed 60 feet in height but not to exceed ~~120 feet in grade to the top of the structure~~ *the maximum approved height of the structure to which it is mounted*, upon finding that:
 - a. Such structure will not obstruct light to adjacent property;
 - b. Such structure will not impair the enjoyment of historic attractions and areas of significant historic interest and surrounding developments;
 - c. Such structure will not impair property values in the surrounding area;
 - d. Such structure is adequately designed and served from the standpoint of safety, and the county fire chief finds that the fire safety equipment to be installed is adequately designed and that the building is reasonably well located in relation to fire stations and equipment, so as to offer adequate protection to life and property; and
 - e. Such structure will not be contrary to the public health, safety and general welfare.
- (4) No accessory building which is within ten feet of any lot line shall be more than one story high. All accessory buildings shall be less than the main building in height; provided, however, the height of an accessory building may exceed the height of the main building if the grade of the lot is such that the elevation of the main building exceeds the elevation of the accessory building. The elevation of the main building and the accessory building shall be measured from the level of the curb or the established curb grade opposite the middle of the main building. In no case shall an accessory building be more than 35 feet in height.

Division 5. Residential Planned Community District, R-4

Sec. 24-293. Height limits.

Structures may be erected up to 60 feet in height from grade to the top of the structure, including all penthouse, electrical, plumbing, elevator, water tank, athletic field lighting, or other accessory functions, which are part of the structure. Camouflaged wireless communications facilities may be erected to a total height of 120 feet from grade. A structure in excess of 60 feet in height but not in excess of 100 feet, from grade to the top of the structure, including all penthouse, electrical, plumbing, elevator, water tank, radio, television and microwave antennas and towers or other accessory functions, and accessory and non accessory wireless communications facilities that utilize alternative mounting structures or are building mounted in accordance with division 6, Wireless Communications Facilities in excess of 60 feet in height but not in excess of 120 feet in grade to the top of the structure ~~the maximum approved height of the structure to which it is mounted~~, may be erected only upon the granting of a height limitation waiver by the board of supervisors. Upon application for a height limitation waiver, the payment of appropriate fees, notification of adjacent property owners and following a public hearing, the board of supervisors may grant a height limitation waiver upon finding that:

- a. Such structure is in accordance with the uses, densities, design and traffic analysis shown on the original master plan;
- b. Such structure will not obstruct light from adjacent property;
- c. Such structure will not impair the enjoyment of historic attractions and areas of significant historic interest and surrounding developments;
- d. Such structure will not impair property values in the surrounding area;
- e. Such structure is adequately designed and served from the standpoint of safety and the county fire chief finds that the fire safety equipment to be installed is adequately designed and that the building is reasonably well located in relation to fire stations and equipment, so as to offer adequate protection to life and property; and
- f. Such structure will not be contrary to the public health, safety and general welfare.

Division 6. Multifamily Residential District, R-5

Sec. 24-314. Requirements for improvements and design.

(a) *Sewer and water.* All dwelling units within the Multifamily Residential District, R-5, shall be served by publicly owned and operated sewer and water systems.

(b) *Open space.* At least 35 percent of the gross area of the site shall be retained in open space as defined in section 24-2.

(c) *Recreation.* A playground area or areas with playground equipment shall be provided by the developer. Such areas shall be centrally located and total at least one-half acre for every 50 dwelling units; provided, that the total shall not exceed ten percent of the gross area of the site. For multifamily projects with less than 50 dwelling units, the recreation areas shall total ten percent of the gross acreage of the site. The developer shall provide and install playground equipment specified on the site plan prior to the issuance of any Certificates of Occupancy. Recreation areas and facilities may be deeded to a residents' association.

(d) *Utility lines.* All utility lines, including electrical, telephone and cable television, shall be placed

below ground.

(e) *Parking*. Off-street parking facilities shall be provided in accordance with section 24-53 of this chapter.

(f) *Streets*. All streets shall meet the design and construction requirements of the Virginia Department of Transportation or the requirements of the county subdivision regulations, whichever is greater. All streets shall be consistent with the major thoroughfare plan of the county Comprehensive Plan. The traffic generated by a Multifamily Residential District, R-5, shall not exceed the capacity of adjoining thoroughfares. The daily traffic shall be determined by multiplying the number of proposed dwelling units by the appropriate trip generation rate as listed in the latest edition of a book entitled *Trip Generation* published by the Institute of Transportation Engineers and compared to the existing traffic and road capacity as determined by the highway engineer. The construction of private streets shall be guaranteed by appropriate surety, letter of credit, cash escrow or other form of guarantee approved by the county attorney and director of code compliance.

(g) *Fire hydrants*. Fire hydrants shall be at locations and of types approved by the director of code compliance and county fire chief. No structure within the project shall be further than 400 feet from a hydrant.

(h) *Trash collection*. If containers are provided, they shall be conveniently located to serve all dwelling units. The sites for such containers shall be attractively screened by natural vegetation, landscaping or fences.

(i) *Streetlights*. Streetlights shall be provided, as required by section 24-53(c)(3) of this chapter and the county subdivision ordinance. All streetlights shall be specified on the site plan, generally at intersections and in parking lots and other public areas. The light shall be directed so as not to produce objectionable glare on adjacent property or into residences within the development. No lighting fixture on pedestrian or bicycle paths or parking lots shall exceed a height of 15 feet.

(j) *Structure height*. Structures may be erected up to 35 feet in height from grade to the top of the structure, including all church spires, belfries, cupolas, monuments, penthouse, electrical, plumbing, elevator, athletic field lighting, water tank or other accessory functions which are part of the structure and accessory and non accessory wireless communications facilities that utilize alternative mounting structures, or are building mounted in accordance with division 6, Wireless Communications Facilities. Camouflaged wireless communications facilities may be erected to a total height of 120 feet from grade. A structure in excess of 35 feet in height from grade to the top of the structure, including all church spires, belfries, cupolas, monuments, penthouse, electrical, plumbing, elevator, athletic field lighting, water tank, radio, television and microwave antennas and towers or other accessory functions, ~~and for wireless communications facilities that utilize alternative mounting structures or are building mounted to exceed 35 feet in height but not to exceed the maximum approved height of the structure to which it is mounted~~, may be erected only upon the granting of a height limitation waiver by the board of supervisors. Upon application for a height limitation waiver, the payment of appropriate fees, notification of adjacent property owners and following a public hearing, the board of supervisors may grant a height limitation waiver upon finding that:

- (1) Such structure will not obstruct light from adjacent property;
- (2) Such structure will not impair the enjoyment of historic attractions and areas of significant historic interest and surrounding developments;
- (3) Such structure will not impair property values in the surrounding area;
- (4) Such structure is adequately designed and served from the stand point of safety and the county fire chief certifies that the fire safety equipment to be installed is adequately designed and that the building is reasonably well located in relation to fire stations and equipment, so as to offer adequate protection to life and property; and.

- (5) Such structure would not be contrary to the public health, safety and general welfare.
- (k) *Maximum number of units and facade variety.* A maximum of ten townhouse units shall be included in one structure. The facade of townhouses within a group shall be changed by variation in the depth of front yards, building materials and/or design so that no more than two abutting units shall be of like appearance.
- (l) *Private yards.* Each two-family dwelling unit and each townhouse unit shall open directly into a private yard of a minimum of 200 square feet.
- (m) *Minimum distances.* The distance between two main structures on a single lot shall be a minimum of the height of the taller structure. Accessory structures shall be a minimum of ten feet from any other structure.
- (n) *Drainage facilities.* Adequate facilities for the control of stormwater, erosion and sedimentation shall be provided in accordance with the *Virginia Erosion and Sediment Control Handbook* and the Virginia Department of Transportation's *Drainage Manual*.
- (o) *Natural features and amenities.* Existing features which would enhance the residential environment or the county as a whole such as trees, watercourses, historic spots and similar features shall be preserved to the maximum extent possible.
- (p) *Guarantee for improvements.* The zoning administrator shall not issue any certificate of occupancy until the applicant has guaranteed the completion of public improvements, including, but not limited to, public roads, public water and public sewer facilities, shown on the approved site plan by providing either a letter of credit, certified check, cash escrow, cash payment, or other surety, approved by the county attorney.
- (q) *Maintenance of common open space, recreation facilities, etc.* The maintenance of common open space, recreation facilities, sidewalks, parking, private streets and other privately owned but common facilities serving the project shall be guaranteed by the developer, project owner or a properly established homeowners' association.

Division 7. Low-Density Residential District, R-6

Sec. 24-335. Height limits.

Buildings may be erected up to two stories and shall not exceed 35 feet in height from grade, except that:

- (1) The height limit for dwellings may be increased to 45 feet and to three stories; provided, that the two side yards for the dwelling are increased to a minimum of 15 feet plus one foot for each additional foot of the building's height over 35 feet.
- (2) Church spires, belfries, cupolas, monuments, water towers, athletic field lighting, chimneys, flues, flagpoles, home television antennas, home radio aerials, silos and other structures normally associated with and accessory to farming operations and accessory and non accessory wireless communications facilities that utilize alternative mounting structures or are building mounted in accordance with division 6, Wireless Communications Facilities, may be erected to a total height of 60 feet from grade. Camouflaged wireless communications facilities may be erected to a total height of 120 feet from grade. Upon application for a height limitation waiver, the payment of appropriate fees, notification of adjacent property owners and following a public hearing, the board of supervisors may grant a height limitation waiver for these structures to exceed sixty feet in height but not to exceed 100 feet, from grade to the top of the structure, and for wireless communications facilities that utilize alternative

mounting structures or are building mounted to exceed 60 feet in height but not to exceed ~~120 feet in grade to the top of the structure~~ *the maximum approved height of the structure to which it is mounted*, upon finding that:

- a. Such structure will not obstruct light to adjacent property;
- b. Such structure will not impair the enjoyment of historic attractions and areas of significant historic interest and surrounding developments;
- c. Such structure will not impair property values in the surrounding area;
- d. Such structure is adequately designed and served from the standpoint of safety, and the county fire chief finds that the fire safety equipment to be installed is adequately designed and that the building is reasonably well located in relation to fire stations and equipment, so as to offer adequate protection to life and property; and
- e. Such structure will not be contrary to the public health, safety and general welfare.

(3) No accessory building which is within 15 feet of any lot line shall be more than one story high. All accessory buildings shall be less than the main building in height; provided, however, the height of an accessory building may exceed the height of the main building if the grade of the lot is such that the elevation of the main building exceeds the elevation of the accessory building. The elevation of the main building and accessory building shall be measured from the level of the curb or the established curb grade opposite the middle of the main building. In no case shall an accessory building be more than 35 feet in height, except that silos, barns and other structures normally associated with and accessory to farming operations are controlled by subsection (2) above and may exceed the height of the main structure and may exceed 35 feet in height.

Division 8. Rural Residential District, R-8

Sec. 24-354. Height limits.

Structures may be erected up to two stories and shall not exceed 35 feet in height from grade, except that:

(1) The height limit for buildings may be increased to 45 feet and to three stories; provided, that the two side yards for the building are increased to a minimum of 15 feet plus one foot for each additional foot of the building's height over 35 feet.

(2) A public or semipublic building such as a school, church or library may be erected to a height of 60 feet from grade, provided that the required front, rear and side yards shall be increased one foot for each foot in height above 35 feet.

(3) Church spires, belfries, cupolas, monuments, water towers, athletic field lighting, chimneys, flues, flagpoles, home television antennas, home radio aerials, silos and other structures normally associated with and accessory to farming operations and accessory and non accessory wireless communications facilities that utilize alternative mounting structures or are building mounted in accordance with division 6, Wireless Communications Facilities, may be erected to a total height of 60 feet from grade and camouflaged wireless communications facilities may be erected to a total height of 120 feet from grade. Upon application for a height limitation waiver, the payment of appropriate fees, notification of adjacent property owners and following a public hearing, the board of supervisors may grant a height limitation waiver for these structures to exceed 60 feet in height but not to exceed 100 feet, from grade to the top of the structure, and for wireless communications facilities that utilize alternative mounting

structures or are building mounted to exceed 60 feet in height but not to exceed ~~120 feet in grade to the top of the structure~~ *the maximum approved height of the structure to which it is mounted*, upon finding that:

- a. Such structure will not obstruct light to adjacent property;
- b. Such structure will not impair the enjoyment of historic attractions and areas of significant historic interest and surrounding developments;
- c. Such structure will not impair property values in the surrounding area;
- d. Such structure is adequately designed and served from the standpoint of safety, and the county fire chief finds that the fire safety equipment to be installed is adequately designed and that the building is reasonably well located in relation to fire stations and equipment, so as to offer adequate protection to life and property; and
- e. Such structure will not be contrary to the public health, safety and general welfare.

(4) No accessory building which is within 15 feet of any lot line shall be more than one story high. All accessory buildings shall be less than the main building in height; provided, however, the height of an accessory building may exceed the height of the main building if the grade of the lot is such that the elevation of the main building exceeds the elevation of the accessory building. The elevation of the main building and accessory building shall be measured from the level of the curb or the established curb grade opposite the middle of the main building. In no case shall an accessory building be more than 45 feet in height; except that silos, barns and other structures normally associated with and accessory to farming operations are controlled by subsection (3) above and may exceed the height of the main structure and may exceed 45 feet in height.

(5) Communication towers permitted by a special use permit by the board of supervisors may be in excess of 35 feet in height.

Division 9. Limited Business District, LB

Sec. 24-375. Height limits and height limitation waivers.

(a) Structures may be erected up to 35 feet in height from grade to the top of the structure, including all penthouse, electrical, plumbing, elevator, water tank or other accessory functions which are part of or on top of the structure. Parapet walls may be up to four feet above the height of the building on which the walls rest.

(b) Church spires, belfries, cupolas, athletic field lighting, chimneys, flues, monuments, flagpoles and wireless communications facilities that utilize alternative mounting structures or are building mounted in accordance with division 6, Wireless Communications Facilities may be erected to a total height of 60 feet from grade. Camouflaged wireless communications facilities may be erected to a total height of 120 feet from grade. Upon application for a height limitation waiver, the payment of appropriate fees, notification of adjacent property owners and following a public hearing, the board of supervisors may grant a height limitation waiver for these structures to exceed 60 feet in height but not to exceed 100 feet, from grade to the top of the structure, and for wireless communications facilities that utilize alternative mounting structures or are building mounted to exceed 60 feet in height but not to exceed ~~120 feet in grade to the top of the structure~~ *the maximum approved height of the structure to which it is mounted*, upon finding that:

1. Such structure will not obstruct light to adjacent property;
2. Such structure will not impair the enjoyment of historic attractions and areas of significant

historic interest and surrounding developments;

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

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

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

(c) All accessory structures shall be less than the main structure in height.

Division 10. General Business District, B-1

Sec. 24-397. Height limits and height limitation waivers.

Structures may be erected up to 60 feet in height from grade to the top of the structure, including all church

spires, belfries, cupolas, athletic field lighting, monuments, flagpoles, penthouse, electrical, plumbing, elevator, water tank or other accessory functions which are part of or on top of the structure and camouflaged wireless communications facilities may be erected to a total height of 120 feet from grade, in accord with the following criteria:

(1) A structure in excess of 60 feet in height but not in excess of 100 feet from grade to the top of the structure, including all church spires, belfries, cupolas, athletic field lighting, monuments, flagpoles, penthouse, electrical, plumbing, elevator, water tank or other accessory functions which are part of or on top of the structure and accessory and non accessory wireless communications facilities that utilize alternative mounting structures or are building mounted in accordance with division 6, Wireless Communications Facilities in excess of 60 feet in height but not in excess of ~~120 feet in grade to the top of the structure~~ **the maximum approved height of the structure to which it is mounted**, may be erected only upon the granting of a height limitation waiver by the board of supervisors. Upon application for a height limitation waiver, the payment of appropriate fees, notification of adjacent property owners and following a public hearing, the board of supervisors may grant a height limitation waiver upon finding that:

a. The regulations of section 24-398 regarding building coverage, floor area ratio and open space are met;

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

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

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

e. Such structure is adequately designed and served from the standpoint of safety and the county fire chief finds that the fire safety equipment to be installed is adequately designed and the building is reasonably well located in relation to fire stations and equipment, so as to offer adequate protection to life and property; and

f. Such structure would not be contrary to the public health, safety or general welfare.

(2) Parapet walls may be up to four feet above the height of the building on which the walls rest.

(3) No accessory structure which is within ten feet of any lot line shall be more than one story high. All

accessory structures shall be less than the main structure in height.

Division 14. Planned Unit Development District, PUD

Sec. 24-496. Height and spacing of structures.

(a) Structures may be erected up to 60 feet in height from grade to the top of the structure, including all church spires, belfries, cupolas, athletic field lighting, monuments, flagpoles, penthouse, electrical, plumbing, elevator, water tank or other accessory functions which are part of the structure and accessory and non accessory wireless communications facilities that utilize alternative mounting structures or are building mounted in accordance with division 6, Wireless Communications Facilities. Camouflaged wireless communications facilities may be erected to a total height of 120 feet from grade.

(b) A structure in excess of 60 feet in height but not in excess of 100 feet from grade to the top of the structure, including all church spires, belfries, cupolas, athletic field lighting, monuments, flagpoles, penthouse, electrical, plumbing, elevator, water tank, radio, television, and microwave antennas and towers or other accessory functions, and accessory and non accessory wireless communications facilities that utilize alternative mounting structures or are building mounted in accordance with division 6, Wireless Communications facilities in excess of 60 feet in height but not in excess of ~~120 feet~~ *the maximum approved height of the structure to which it is mounted*, may be erected only upon the granting of a height limitation waiver by the board of supervisors.

Upon application for a height limitation waiver, the payment of appropriate fees, notification of adjacent property owners and following a public hearing, the board of supervisors may grant a height limitation waiver upon finding that:

- (1) Such structure is in accordance with the uses, densities, design and traffic analysis shown on the original master plan;
- (2) Such structure will not obstruct light from adjacent property;
- (3) Such structure will not impair the enjoyment of historic attractions and areas of significant historic interest and surrounding developments;
- (4) Such structure will not impair property values in the surrounding area;
- (5) Such structure is adequately designed and served from the standpoint of safety, and the county fire chief finds that the fire safety equipment to be installed is adequately designed and that the building is reasonably well located in relation to fire stations and equipment, so as to offer adequate protection to life and property; and
- (6) Such structure would not be contrary to the public health, safety or general welfare.

Division 15. Mixed-Use, MU

Sec. 24-525. Height of structures.

(a) Structures may be erected up to 60 feet in height from grade to the top of the structure, including all church spires, belfries, cupolas, athletic field lighting, monuments, flagpoles, penthouse, electrical, plumbing, elevator, water tank or other accessory functions which are part of the structure and accessory and non accessory wireless communications facilities that utilize alternative mounting structures or are building mounted in accordance with division 6, Wireless Communications Facilities. Camouflaged wireless communications facilities may be erected to a total height of 120 feet from grade.

(b) A structure in excess of 60 feet in height but not in excess of 100 feet from grade to the top of the structure, including all church spires, belfries, cupolas, athletic field lighting, monuments, flagpoles, penthouse, electrical, plumbing, elevator, water tank, radio, television and microwave antennas, and towers or other accessory functions, and accessory and non accessory wireless communications facilities that utilize alternative mounting structures or are building mounted in accordance with division 6, Wireless Communications Facilities in excess of 60 feet in height but not in excess of ~~120 feet in grade to the top of the structure~~ *the maximum approved height of the structure to which it is mounted*, may be erected only upon the granting of a height limitation waiver by the board of supervisors.

(c) Upon application for a height limitation waiver, the payment of appropriate fees, notification of adjacent property owners and following a public hearing, the board of supervisors may grant a height limitation waiver upon finding that:

- (1) Such structure is in accordance with the uses, densities, design and traffic analysis shown on the original master plan;
- (2) Such structure will not obstruct light from adjacent property;
- (3) Such structure will not impair the enjoyment of historic attractions and areas of significant historic interest and surrounding developments;
- (4) Such structure will not impair property values in the surrounding area;
- (5) Such structure is adequately designed and served from the standpoint of safety and the county fire chief finds that the fire safety equipment to be 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; and
- (6) Such structure would not be contrary to the public health, safety or general welfare.

Division 16. Public Land District, PL

Section 24-535.9. Height limits.

Structures may be erected up to two stories and shall not exceed 35 feet in height from grade, except that:

- (1) The height limit for buildings may be increased to 60 feet, provided that the required front, rear and side yards shall be increased one foot for each foot in height above 35 feet.
- (2) Spires, belfries, cupolas, monuments, water towers, athletic field lighting, chimneys, flues,

flagpoles, home television antennas, home radio aerials, silos and other structures normally associated with and accessory to farming operations and accessory and non accessory wireless communications facilities that utilize alternative mounting structures or are building mounted in accordance with division 6, Wireless Communications Facilities, may be erected to a total height of 60 feet from grade and camouflaged wireless communications facilities may be erected to a total height of 120 feet from grade. Upon application for a height limitation waiver, the payment of appropriate fees, notification of adjacent property owners and following a public hearing, the board of supervisors may grant a height limitation waiver for these structures to exceed 60 feet in height but not to exceed 100 feet, from grade to the top of the structure, and for wireless communications facilities that utilize alternative mounting structures or are building mounted to exceed 60 feet in height but not to exceed ~~120 feet in grade to the top of the structure~~ *the maximum approved height of the structure to which it is mounted*, upon finding that:

- a. Such structure will not obstruct light to adjacent property;
- b. Such structure will not impair the enjoyment of historic attractions and areas of significant historic interest and surrounding developments;
- c. Such structure will not impair property values in the surrounding area;
- d. Such structure is adequately designed and served from the standpoint of safety, and the county fire chief finds that the fire safety equipment to be installed is adequately designed and that the building is reasonably well located in relation to fire stations and equipment, so as to offer adequate protection to life and property; and
- e. Such structure will not be contrary to the public health, safety and general welfare.

(3) No accessory building which is within 15 feet of any lot line shall be more than one story high. All accessory buildings shall be less than the main building in height; provided, however, the height of an accessory building may exceed the height of the main building if the grade of the lot is such that the elevation of the main building exceeds the elevation of the accessory building. The elevation of the main building and accessory building shall be measured from the level of the curb or the established curb grade opposite the middle of the main building. In no case shall an accessory building be more than 45 feet in height; except that silos, barns and other structures normally associated with and accessory to farming operations are controlled by subsection (2) above and may exceed the height of the main structure and may exceed 45 feet in height.

(4) Communication towers permitted by a special use permit by the board of supervisors may be in excess of 35 feet in height.

M E M O R A N D U M

DATE: December 11, 2007

TO: The Board of Supervisors

FROM: Jason Purse, Senior Planner

SUBJECT: ZO-0008-2007. Residential Cluster Master Plan Ordinance Amendment

At its August 1, 2007, meeting, the Planning Commission recommended that staff look into amending the Residential Cluster section of the Zoning Ordinance in order to evaluate the Master Plan amendment process.

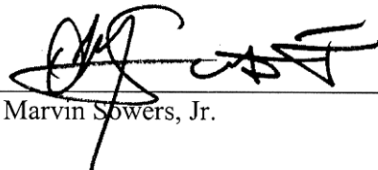
Staff, working with the Policy Committee, looked at the other sections of the ordinance that deal with Master Plans, and on the recommendation of the Committee members, staff altered the Residential Cluster ordinance language to more closely mirror other sections of the ordinance (mixed-use and PUD) which allow for development plan consistency to be reviewed by the DRC. The section that allowed for an amendment to the master plan to be approved administratively was deleted and a section was added that allows the Planning Director to approve minor changes to the development plan if it meets certain criteria. Upon approval, the Planning Director will notify the chair of the Development Review Committee of the minor consistency determination.

Staff notes that this new language is consistent with what is present in the other sections of the ordinance, except that it also allows flexibility for the Planning Director to review minor changes to the development plan. At the November 7, 2007, Planning Commission meeting, one Commissioner recommended the addition of the phrase "or classification of housing" to Section (d)(1) of the amendment. The rest of the Commission and staff concurred with the addition, and that language is represented in the ordinance provided for your consideration.

Staff recommends approval of this ordinance amendment. At its October 19, 2007, meeting, the Policy Committee voted 4-0 to recommend approval of the amended language. At its November 7, 2007, meeting, the Planning Commission recommended approval of this amendment to the Board of Supervisors by a vote of 6-0.

Jason Purse

CONCUR:



O. Marvin Sowers, Jr.

JP/tlc
ResidClust.mem

Attachments:

1. Unapproved Planning Commission Minutes from the November 7, 2007, meeting

2. Ordinance

ORDINANCE NO. _____

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 24, ZONING, OF THE CODE OF THE COUNTY OF JAMES CITY, VIRGINIA, BY AMENDING ARTICLE VI, OVERLAY DISTRICTS, DIVISION 1, RESIDENTIAL CLUSTER DEVELOPMENT, SECTION 24-554, REVIEW AND APPROVAL PROCESS.

BE IT ORDAINED by the Board of Supervisors of the County of James City, Virginia, that Chapter 24, Zoning, is hereby amended and reordained by amending Section 24-554, Review and approval process.

Chapter 24. Zoning

Article VI. Overlay Districts

Division 1. Residential Cluster Development

Section 24-554. Review and approval process.

(a) *Review required.* A master plan ~~of development~~ for a residential cluster development proposed under this article shall be filed with the planning director, who shall submit it to the planning commission and board of supervisors in instances where a special use permit is required or to the development review committee in cases where a special use permit is not required. The planning director shall recommend action on the plan to the planning commission, and to the board of supervisors in instances where a special use permit is required. The planning commission and board of supervisors, where applicable, shall approve the master plan ~~of development~~ upon finding that:

- (1) Such cluster development will preserve the environmental integrity of the site by protecting features such as wetlands, steep slopes, stream valleys, or natural vegetation; and
- (2) The cluster development will not impair the character of the area or create unacceptable adverse offsite infrastructure impacts; and
- (3) The proposed project is in accordance with the Comprehensive Plan of James City County; and
- (4) The structures within the residential cluster development are sited in a way that preserves prominent open space features which are within or adjoin the site, such as open fields or farmland, scenic vistas, sight lines to historic areas or structures, and archaeological sites.

(b) *Master plan ~~of development~~.* The master plan ~~of development~~ shall identify proposed areas and uses of open space including the nondevelopable areas. The master plan ~~of development~~ shall be prepared by a licensed surveyor, engineer, architect, landscape architect or a planner. A scale shall be used so that the entire parcel can be shown on one piece of paper no larger than 36 inches by 48 inches. It shall include:

- (1) An inset map at a scale of not less than one inch to one mile, showing the property in relation to

surrounding roads, subdivisions or landmarks.

- (2) A north arrow.
- (3) The location of existing property lines, existing above and below-ground utility easements, scenic easements, watercourses or lakes, wooded areas and existing woods which are within or adjoin the property.
- (4) The boundaries of each section, topography and approximate location of proposed streets, proposed areas and uses of open space, proposed parking areas, proposed recreation areas, proposed lots and/or buildings, and phasing of development.
- (5) Marginal data which shows the gross acreage of the site, the net developable area, the proposed facilities qualifying for density bonuses or required per the density standards, the total number of dwelling units and/or lots, the number of bonus units and/or lots, the minimum amount of open space required by section 24-551(a) and the total amount of open space.
- (6) Master water, sewer and drainage plans and schematic plans.
- (7) All required setbacks, right-of-way buffers and perimeter buffers; all preserved tree areas, preserved slopes, open space areas and proposed bicycle/pedestrian access thereto; and proposed storm water management facilities.

(c) *Status of master plan.* The approval of the master plan under this section shall not be considered an approved preliminary plat as defined in the subdivision ordinance.

~~—(d) *Amendment of master plan.* Upon application, an approved plan of development may be amended by the planning director; provided, however, that a proposed amendment does not:~~

- ~~(1) Alter a recorded plat.~~
- ~~(2) Conflict with the requirements of this article.~~
- ~~(3) Change the general character or content of an approved master plan of development.~~
- ~~(4) Impair the character of the surrounding area.~~
- ~~(5) Result in any substantial change of major external access points.~~
- ~~(6) Increase the approved number of dwelling units for any portion of the previously approved residential cluster development.~~

~~—Proposed amendments that do not meet these criteria shall be referred to the planning commission and board of supervisors, where applicable, for review and action.~~

(d) The planning director may determine certain minor changes to a development plan are consistent with the master plan. A conceptual plan may be submitted to the planning director for this purpose in a form sufficient to illustrate the proposed deviations. For the purpose of this section, minor determinations of consistency include changes that meet all of the following:

- (1) Do not significantly affect the general location or classification of housing units or buildings as shown on the master plan.*
- (2) Do not significantly alter the distribution of recreation or open space areas on the master plan.*
- (3) Do not significantly affect the road layout as shown on the master plan.*
- (4) Do not significantly alter the character of land uses or other features or conflict with any binding conditions placed on the corresponding legislatively approved case associated with the master plan.*

The planning director shall notify the chair of the development review committee when minor determinations of consistency are approved. Determinations of consistency that do not meet the criteria listed above shall follow the procedures for development plan review as outlined in section 24-554 (e) of the zoning ordinance.

(e) Development plan review. Development plans shall be submitted and reviewed in accordance with article III of this chapter or with the county's subdivision ordinance, whichever is applicable. Development plans may be submitted for review after approval of a master plan by the board of supervisors. All development plans shall be consistent with the master plan. Development plans may deviate from the master plan if the planning commission concludes, after reviewing written comments from the planning director, that the plan does not significantly alter the character of land uses or other features or conflict with any binding conditions placed on the approval of rezoning. A conceptual plan may be submitted to the planning commission for this purpose in a form sufficient to illustrate the proposed deviations. If the planning commission determines that a proposed change would significantly deviate from the approved master plan, the applicant may submit alternative proposed development plans or proceed with amendment of a master plan in accordance with section 24-13.

(e-f) Master plan review fees. Submittal of a master plan shall be accompanied by the fee charged for master plan review in accordance with section 24-7 of this chapter.

(f-g) Master plan-Agreement. Prior to final approval of the first sectional plan, an agreement shall be executed between the developer and the county which shall be binding upon the developer, his successors, assigns or heirs to the effect that the approved master plan shall govern the development of the total residential cluster development. This provision does not preclude the adjustment of the plan in accordance with section 24-553(d).

(g-h) Sectional plans-Action. Sectional plans submitted in accordance with subsection (d) shall be reviewed in accordance with and shall meet the requirements of, article III of this chapter or the county's subdivision ordinance, whichever is appropriate. However, all sectional plans submitted for moderate density cluster development shall be reviewed in accordance with and meet the requirements of article III of this chapter.

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 11th day of December,
2007.

ResidClust_ord

**UNAPPROVED MINUTES OF THE November 7, 2007 MEETING OF
THE PLANNING COMMISSION**

ZO-08-07 Zoning Ordinance Amendment – Residential Cluster Master Plan

Mr. Purse stated that the Planning Commission at its August 1st meeting recommended that staff look into amending the Residential Cluster section of the Zoning Ordinance in order to evaluate the Master Plan amendment process. He stated that staff, working with the Policy Committee, looked at the other sections of the Ordinance that deal with Master Plans, and on the recommendation of the committee members, altered the Residential Cluster language to more closely mirror other sections of the Ordinance (mixed-use and PUD) that allow for development plan consistency to be reviewed by the DRC. Staff removed the section that allowed for an amendment to the master plan to be approved administratively. Staff has also added a section that would allow the Planning Director to review minor changes to the development plan if it meets certain criteria. Mr. Purse stated that this new language is consistent with what is present in the other sections of the Ordinance, except it also allows flexibility for the Planning Director to review minor changes to the development plan. Staff recommends the Planning Commission recommend approval of this Ordinance amendment to the Board of Supervisors.

Mr. Obadal spoke about the paragraph relating to the general location of housing units or building units as shown on the master plan. He suggested that language from the Supplemental Ordinance 24-9 which makes a distinction of the location of housing and discusses the difference in the classifications of housing be added to the Ordinance.

Mr. Purse noted that staff would add “or classification” of housing units into Section 24-554 (d) (1) of the amended Ordinance language.

Mr. Krapf made a motion for approval with the added language suggested by Mr. Obadal.

Mr. Kennedy seconded the motion.

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

MEMORANDUM

DATE: December 11, 2007

TO: The Board of Supervisors

FROM: Kathryn Sipes, Planner

SUBJECT: Case No. ZO-0010-2007. Zoning Ordinance Amendment - Affordable Housing

The Zoning Ordinance currently defines “affordable housing” as “units with sales price at or below the allowable sales price for James City County as set by adjusting the 1998 Hampton Roads Regional Loan Fund Partnership sales price limit (\$90,000) as referenced in the Hampton Roads Regional Loan Fund Handbook (March 1998), by the cumulative rate of inflation as measured by the consumer price index (CPI) annual average change. The annual increase shall not exceed five percent.”

This definition was added to the ordinance in May 1999. Adjusting from 1998, the sales price limit is approximately \$115,000 in 2007 dollars. The Residential Cluster Overlay District Ordinance allows for a possible density bonus of “0.5 dwelling unit per acre...for every ten percent of the total number of dwelling units dedicated to affordable housing...” (Section 24-549). It is the opinion of staff that this density bonus could not be awarded unless the proposed housing units meet the definition of affordable housing in the ordinance.

The James City County Office of Housing and Community Development (OHCD) has calculated a figure of \$160,000 as affordable in today’s market, and this figure has been used as a guide in negotiating proffers for the provision of affordable housing in recent rezoning cases. Proffers are negotiated and voluntary, and are not necessarily bound by ordinance language. However, staff notes the disparity between the sales price required for a density bonus to be considered and the sales price accepted in proffer language, where affordable units are often exempted from other cash proffer payments, most significantly for schools.

Staff proposes amending the definition of affordable housing in the Zoning Ordinance to reflect more realistic market conditions. As research has revealed that the common approach of jurisdictions across the country is to use a definition of affordable housing that ties housing costs to median income, staff proposes the following language:

Affordable Housing. Units with sales prices targeted to low- and moderate-income households, as defined by the U.S. Department of Housing and Urban Development (HUD). Such sales prices shall be those endorsed annually by the board of supervisors after receiving recommendations from the James City County Office of Housing and Community Development based on the then-current HUD area-wide income limits and identified local need.

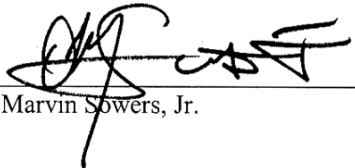
This language ties the price of affordable housing units to income without prescribing a specific formula by which that connection is made. OHCD works with various funding and lending programs on a daily basis to maximize the number of clients that can be placed in owner-occupied housing. With the detailed working knowledge OHCD has of the housing market and needs in the County, staff believes they are the most qualified to calculate the appropriate annual sales figure.

Staff has collaborated with Mr. Rick Hanson of OHCD to draft the proposed language and believes the proposed definition provides appropriate guidance relative to the intended market while also allowing for flexibility to adjust to changing market conditions. At this time, it is anticipated that the figures will be published annually in March.

At its meeting on October 19, 2007, the Policy Committee unanimously recommended approval of the proposed language. At their meeting on November 7, 2007, the Planning Commission unanimously recommended approval of the proposed language. Staff recommends approval of the zoning ordinance amendment.

Kathryn Sipes, Senior Planner

CONCUR:



O. Marvin Sowers, Jr.

KS/nb
AffordHouse.mem

Attachments:

1. Unapproved Planning Commission Minutes from the November 7, 2007, meeting
2. Ordinance

ORDINANCE NO. _____

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 24, ZONING, OF THE CODE OF THE COUNTY OF JAMES CITY, VIRGINIA, BY AMENDING ARTICLE I, IN GENERAL, SECTION 24-2, DEFINITIONS.

BE IT ORDAINED by the Board of Supervisors of the County of James City, Virginia, that Chapter 24, Zoning, is hereby amended and reordained by amending Article I, In General, Section 24-2, Definitions.

Chapter 24. Zoning

Article I. In General

Section 24-2. Definitions.

For the purposes of this chapter, the following words and phrases shall have the meaning respectively ascribed to them by this section:

~~*Affordable housing.* Units with sales price at or below the allowable sales price for James City County as set by adjusting the 1998 Hampton Roads Regional Loan Fund Partnership sales price limit (\$90,000) as referenced in the Hampton Roads Regional Loan Fund Handbook (March 1998) by the cumulative rate of inflation as measured by the consumer price index (CPI) annual average change. The annual increase shall not exceed five percent.~~

Affordable housing. Units with sales prices targeted to low- and moderate-income households, as defined by the U.S. Department of Housing and Urban Development (HUD). Such sales prices shall be those endorsed annually by the board of supervisors after receiving recommendations from the James City County Office of Housing and Community Development based on the then-current HUD area-wide income limits and identified local need.

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 11th day of December,
2007.

AffordHouse_ord

**UNAPPROVED MINUTES OF THE November 7, 2007 MEETING OF
THE PLANNING COMMISSION**

ZO-10-07 Zoning Ordinance Amendment – Affordable Housing

Ms. Kate Sipes gave staff's report requesting a revision to the definition of affordable housing as it appears in the Zoning Ordinance. The Cluster Overlay district allows for the possibility of a density bonus for developments that provide affordable units. She stated that in order to provide the incentive intended through this section of the ordinance, staff believes the definition should be revised to provide sales prices that more closely reflect recent market activity. She further stated that if approved the revised definition would not include an actual revised sales price but rather would require target sales prices to be determined by the Office of Housing each year, using any and all data available to them, and present it to the Board of Supervisors each year for endorsement. Ms. Sipes stated the Policy Committee unanimously recommended approval of the proposed language. Staff recommends the Planning Commission recommend approval of this zoning ordinance amendment to the Board of Supervisors.

Mr. Kennedy made a motion to approve the revision.

Ms. Jones seconded the motion.

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

M E M O R A N D U M

DATE: December 11, 2007

TO: The Board of Supervisors

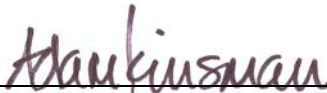
FROM: Adam R. Kinsman, Deputy County Attorney

SUBJECT: Amendment to a Conservation Easement - 2945 and 2975 Forge Road

In 1996, the County entered into an agreement to transfer its rights to purchase the 88-acre Sunnyside Farm and Branch residence along Forge Road to Elwood and Sharon Perry in exchange for a conservation easement on the Branch property owned by the Perrys. The Perrys purchased the Branch property on July 27, 2006, and recorded the conservation easement the same day. The conservation easement was revised in November 2006 to reduce the total number of permitted lots by one (from seven to six) in exchange for the ability to construct a guest cottage on the Property. After further consultation with their tax attorney, the Perrys have asked that the County approve additional changes to the conservation easement to increase the likelihood that the conservation easement will qualify for Internal Revenue Service (IRS) tax credits. The proposed changes to the easement are included in the reading file for your information.

In short, the proposed changes to the easement present no negative effect upon the existing terms of the easement and continue to further the County's goal of preserving the agricultural nature of the Forge Road corridor. The majority of the proposed changes include new recitations to demonstrate compliance with IRS and Treasury Department regulations that relate to tax credits. There are also additional restrictions on the Property which further limit expansion and location of existing dwellings, construction of roads and utilities, activities near the riparian buffer, and transfers of the easement.

Staff recommends adoption of the attached resolution to permit the County Administrator to execute the amended conservation easement on behalf of the County.



Adam R. Kinsman

ARK/gb
amendForgeRd.mem

Attachment

RESOLUTION

AMENDMENT TO A CONSERVATION EASEMENT - 2945 AND 2975 FORGE ROAD

WHEREAS, on July 26, 2006, James City County (the "County") assigned its interest to purchase 88 acres of real property located at 2945 and 2975 Forge Road, designated as Tax Parcel Nos. 1230100021 and 1230100022, to Elwood and Sharon Perry (the "Perrys") in exchange for a conservation easement on the Property; and

WHEREAS, on July 26, 2006, a conservation easement designed to protect the agricultural nature of Tax Parcel Nos. 1230100021, 1230100022, and the adjacent Perry property identified as Tax Parcel No. 1230100022A (collectively, the "Property") was recorded in the Office of the Clerk of the Circuit Court for the City of Williamsburg and the County of James City as Document No. 060018317; and

WHEREAS, on December 13, 2006, the conservation easement was amended to, among other things, reduce the number of permitted subdivisions of the Property and such amended conservation easement was recorded in the Office of the Clerk of the Circuit Court for the City of Williamsburg and the County of James City as Document No. 060030931; and

WHEREAS, the Perrys have requested that the conservation easement be further amended to increase the likelihood that such easement will comport with applicable Internal Revenue Service and Treasury Department regulations relating to tax credits; and

WHEREAS, the proposed revision to the conservation easement on the Property will continue the County's purpose of protecting the rural and agricultural nature of the Forge Road corridor and will continue to prevent inappropriate development of the Property.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby authorize and direct the County Administrator to execute the necessary documents to amend the conservation easement.

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 11th day of December, 2007.

AmendForgeRd.res

MEMORANDUM

DATE: December 11, 2007

TO: The Board of Supervisors

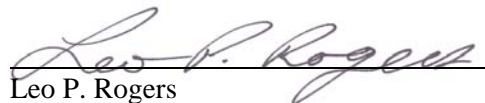
FROM: Leo P. Rogers, County Attorney

SUBJECT: Amendment to Chapter 20, Taxation, Article IV, Transient Lodging Tax, Section 20-14, Tax Levied

Attached for your consideration is a proposed ordinance to remove the January 1, 2008, expiration date for the additional \$2 per room/per night transient occupancy tax. Per the County's request in 2006, the General Assembly deleted the expiration date from the State Code.

The taxes collected will continue to be used for advertising the Historic Triangle Area as an overnight tourism destination. Both York County and the City of Williamsburg have deleted the expiration date from their ordinances.

I recommend adoption of the proposed ordinance.


Leo P. Rogers

LPR/gb
Chp20Taxation.mem

Attachment

ORDINANCE NO. _____

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 20, TAXATION, OF THE CODE OF THE COUNTY OF JAMES CITY, VIRGINIA, BY AMENDING ARTICLE IV, TRANSIENT LODGING TAX, SECTION 20-14, TAX LEVIED.

BE IT ORDAINED by the Board of Supervisors of the County of James City, Virginia, that Chapter 20, Taxation, is hereby amended and reordained by amending Article IV, Transient Lodging, Section 20-14, Tax levied.

Chapter 20. Taxation

Article IV. Transient Lodging Tax.

Section 20-14. Tax levied.

(a) There is hereby levied and imposed, in addition to all other taxes and fees of every kind now imposed by laws, on each transient a tax equivalent to five percent of the total amount paid for lodging by or for any such transient to any hotel. Such tax shall be collected from such transient at the time and in the manner provided by this article.

(b) In addition to the tax provided for in subsection (a) above, commencing July 1, 2004, ~~and continuing until January 1, 2008,~~ as provided in section 58.1-3823 C of the Virginia Code, there is hereby levied and imposed an additional transient occupancy tax of \$2.00 per room night for the occupancy of any overnight guest room rented by a transient. Such additional tax shall be collected from such transient at the time and in the manner provided by this article. The revenues collected from such additional tax

shall be designated and expended solely for advertising the Historic Triangle area and shall be distributed and expended as provided in section 58.1-3823 C of the Virginia Code.

State law reference-Code of Va., § 58.1-3819 and § 58.1-3823.

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 11th day of December, 2007.

Chp20-14_ord

M E M O R A N D U M

DATE: December 11, 2007

TO: The Board of Supervisors

FROM: Edward T. Overton, Jr., Purchase of Development Rights Program Administrator

SUBJECT: Ordinance to Amend County Code, Chapter 16A, Purchase of Development Rights Program

Over the course of its seven years of existence, the Purchase of Development Rights (PDR) program has been forced to turn away a number of outstanding opportunities to purchase easements on desirable properties due to the program's restrictions. A primary reason a desirable property is ineligible for the PDR program is because a landowner wants to preserve some limited right to later construct additional dwellings for family members. Currently, the PDR ordinance only permits one new dwelling per 100 acres. The proposed revisions will remove the restriction from the ordinance and allow the PDR Committee, along with the concurrence of the County Administrator, the Community Services Manager, and the Manager of Development Management, to develop a guidelines document to determine the conditions under which a property may be considered for the program. Ultimately, it remains the Board's decision whether to purchase the development rights on any particular parcel; however, the PDR Committee would like to share its input more often and reduce the number of properties directed to the Greenspace program.

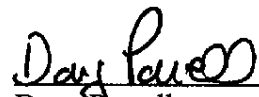
The Community Services Manager has been added to Section 16A-9 and will participate in the approval of the PDR ranking system.

The remainder of the proposed changes are primarily housekeeping in nature and are designed to bring the PDR ordinance up to date and make the program more attractive to owners of qualifying rural county lands.

The PDR Advisory Committee has reviewed the proposed changes to the PDR program and recommends approval. Staff recommends approval of the attached ordinance amendments.


Edward T. Overton, Jr.

CONCUR:


Doug Powell

ETO/tlc
PDRordamend_mem
Attachment

ORDINANCE NO. _____

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 16A, PURCHASE OF DEVELOPMENT RIGHTS PROGRAM, OF THE CODE OF THE COUNTY OF JAMES CITY, VIRGINIA, BY AMENDING SECTION 16A-4, DEFINITIONS; SECTION 16A-6, PURCHASE OF DEVELOPMENT RIGHTS COMMITTEE ESTABLISHED; POWERS AND DUTIES; SECTION 16A-9, RANKING SYSTEM; AND SECTION 16A-10, CONSERVATION EASEMENT TERMS AND CONDITIONS.

BE IT ORDAINED by the Board of Supervisors of the County of James City, Virginia, that Chapter 16A, Purchase of Development Rights Program, is hereby amended and reordained by amending Section 16A-4, Definitions; Section 16A-6, Purchase of development rights committee established; powers and duties; Section 16A-9, Ranking system; and Section 16A-10, Conservation easement terms and conditions.

Chapter 16A. Purchase of Development Rights Program

Section 16A-4. Definitions.

Purchase of development rights (PDR) guidelines. The current guidelines document as approved by the purchase of development rights committee, the county administrator, the manager of development management, and the community services manager.

Section 16A-6. Purchase of development rights committee established; powers and duties.

(b) *Powers and duties.* The PDR committee shall have the powers and duties to:

(1) Promote the program, in cooperation and under the guidance of the administrator, by providing educational materials to the public and conducting informational meetings.

(2) Review the ranking of applications recommended by the administrator, and make recommendations to the administrator and the board as to which conservation easements should be purchased.

(3) Annually review the program=s eligibility and ranking criteria and recommend to the administrator any changes needed to maintain the program=s consistency with the comprehensive plan, or to improve the administration, implementation and effectiveness of the program.

(4) A quorum shall consist of three members present and the committee shall operate on a "majority rule" basis.

(5) *Develop and annually update a purchase of development rights guideline document which shall guide the purchase of development rights committee in its review.*

Section 16A-9. Ranking system.

In order to effectuate the purposes of this chapter, parcels for which conservation easement applications have been received shall be evaluated by utilizing a ranking system. The initial ranking system and changes to the ranking system shall be approved by the county administrator, and the ~~director~~ *manager* of

development management, *and the community services manager*. The ranking system may be used to prioritize the acquisition of conservation easements.

Section 16A-10. Conservation easement terms and conditions.

Each conservation easement shall conform with the requirements of the Open-Space Land Act of 1966 (Virginia Code § 10.1-1700 et seq.) and this chapter. The deed of easement shall be in a form approved by the county attorney, and shall contain, at a minimum, the following provisions:

(a) *Restriction on new dwellings and subdivision.* ~~No new dwellings may be constructed on a parcel except as provided hereafter; the deed of easement may allow one new dwelling per 100 acres, with the dwelling location specified by plat on or before the conservation easement is established.~~ *The PDR Guidelines shall apply on matters involving dwellings and future subdivision.*

(b) *Conservation easement duration.* A conservation easement acquired under the terms of this chapter shall be perpetual.

(c) *Other restrictions.* In addition to the foregoing, the parcel shall be subject to standard restrictions contained in conservation easements pertaining to uses and activities allowed on the parcel. These standard restrictions shall be delineated in the deed of easement and shall include, but not necessarily be limited to, restrictions pertaining to: (i) accumulation of trash and junk; (ii) ~~display of billboards, signs and advertisements;~~ (iii) grading, blasting or earth removal; ~~(iv)~~ (iii) conduct of industrial or commercial activities on the parcel *that would make its use inconsistent with the intent and purposes of this ordinance*; and ~~(v)~~ (iv) monitoring of the easement.

(d) *Designation of easement holders.* The county shall be the easement holder, and if designated by the board, one or more other public bodies, as defined in Virginia Code Section 10.1-1700, or one or more organizations then qualifying as an eligible donee as defined by Section 170(h)(3) of the Internal Revenue Code of 1986, as amended, shall also be an easement holder.

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 11th day of December, 2007.

Chp16A-PDR_ord

MEMORANDUM

DATE: December 11, 2007

TO: The Board of Supervisors

FROM: Michael D. Woolson, Senior Watershed Planner

SUBJECT: Chesapeake Bay Preservation Ordinance, Resource Management Area Buffers

The Chesapeake Bay Preservation Ordinance is being revised to incorporate Resource Management Area (RMA) buffers. The revisions will include buffers on the following resources: intermittent streams, non-RPA wetlands, and creek main stems in approved watershed management plan areas.

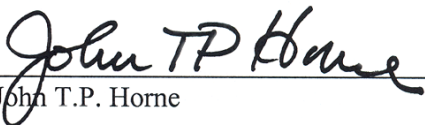
On February 26, 2002, the Board of Supervisors adopted in concept, 21 of the 24 priorities of the Powhatan Creek Watershed Management Plan, and on October 14, 2003, the Board of Supervisors adopted 13 of the 14 priorities of the Yarmouth Creek Watershed Management Plan. Further, on October 10, 2006, the Board of Supervisors formally approved by resolution the revisions to both watershed management plan and re-adopted both plans to include buffers on intermittent streams, non-RPA wetlands, and tidal and non-tidal main stems of both creeks. These additional buffers will further assist the County in achieving water quality protection from non-point source pollution.

At a work session on August 8, 2006, where the proposed revisions to both watershed management plans were presented to the Board of Supervisors, staff was directed to bring forth the proposed buffer modifications as either a new ordinance or ordinance amendment to codify the buffer requirements. At that same meeting, the Board of Supervisors adopted a policy to apply these buffers on legislative approval cases (rezonings and special use permits). After much research and discussion, staff is proposing revising Section 23-9, Performance Standards, of the Chesapeake Bay Preservation Ordinance (CBPO) to incorporate the request.

Staff recommends adoption of the attached Ordinance.

Michael D. Woolson

CONCUR:


John T.P. Horne

MDW/nb
ChBayBuffs.mem

Attachment

ORDINANCE NO. _____

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 23, CHESAPEAKE BAY PRESERVATION, OF THE CODE OF THE COUNTY OF JAMES CITY, VIRGINIA, BY AMENDING SECTION 23-9, PERFORMANCE STANDARDS.

BE IT ORDAINED by the Board of Supervisors of the County of James City, Virginia, that Chapter 23, Chesapeake Bay Preservation, is hereby amended and reordained by amending Section 23-9.

Chapter 23. Chesapeake Bay Preservation

Section 23-9. Performance standards.

(a) *Purpose and intent.* The performance standards establish the means to minimize erosion and sedimentation potential, reduce land application of nutrients and toxics, and maximize rainwater infiltration. Natural ground cover, especially woody vegetation, is most efficient in holding soil in place and preventing site erosion. Indigenous vegetation, with its adaptability to local conditions without the use of harmful fertilizers or pesticides, filters and infiltrates stormwater runoff. Keeping impervious cover to a minimum enhances rainwater infiltration and effectively reduces increases of stormwater runoff.

The purpose and intent of these requirements is also to implement the following objectives: prevent a net increase in nonpoint source pollution from new development and development on previously developed land where the runoff was treated by a water quality protection best management practice; achieve a ten percent reduction in nonpoint source pollution from development on previously developed land where the runoff was not treated by one or more water quality best management practices; and achieve a 40 percent reduction in nonpoint source pollution from agricultural and silvicultural uses.

(b) *General performance standards:*

- (1) Land disturbance shall be limited to the area necessary to provide for the proposed use or development.
 - a. In accordance with an approved plan of development, the limits of clearing and/or grading shall be clearly defined. These limits shall be clearly shown on submitted plans and physically marked on the development site in accordance with subsection (2)b. below.
 - b. Impervious cover shall not exceed 60 percent of the site unless it can be demonstrated that the project will have the same impact on water quality as the project would have if it were 60 percent impervious. Demonstration of equivalent water quality will be through compliance with guidelines developed by the manager. For projects with an approved stormwater master plan, compliance with this impervious cover provision can be demonstrated on a project basis

rather than an individual site basis. However, in no case shall impervious cover exceed the limits established in section 24-9(c)(4) of the zoning ordinance.

- c. Ingress and egress during construction shall be limited to one access point, unless otherwise approved by the manager.
- (2) Existing vegetation shall be preserved to the maximum extent practicable, consistent with the use or development permitted by an approved plan of development.
 - a. Existing trees over 12 inches in diameter at breast height shall be preserved except in impervious areas and as necessary to accommodate site grading. Upon approval by the manager, diseased trees or trees weakened by age, storm, fire or other injury may be removed; provided, that when such removal results in a 20 percent or greater reduction in existing tree canopy, a sufficient number of trees with a 1-½ inch caliper shall be planted to restore the full canopy.
 - b. Prior to clearing or grading, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline of any tree or stand of trees to be preserved unless otherwise approved on the clearing plan. Protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris or fill shall not be allowed within the area protected by the barrier.
 - (3) Land development shall minimize impervious cover to promote infiltration of stormwater into the ground consistent with the proposed use or development permitted.
 - (4) All development and redevelopment exceeding 2,500 square feet of land disturbance shall be subject to a plan of development review process conducted in accordance with section 23-10 of this chapter.
 - (5) Any land-disturbing activity exceeding 2,500 square feet, including construction of all single-family houses, and septic tanks and drainfields shall comply with the requirements of chapter 8 of this Code.
 - (6) All on-site sewage disposal systems not requiring a NPDES permit shall be pumped out at least once every five years. However, in lieu of requiring proof of septic tank pump-out every five years, owners of on-site sewage disposal systems can submit documentation every five years, certified by a sewage handler permitted by the Virginia Department of Health, that the septic system has been inspected, is functioning properly, and the tank does not need to have the effluent pumped out of it.
 - (7) A reserve sewage disposal site, with a capacity at least equal to that of the primary recorded prior to August 6, 1990, if such lot or parcel is not sufficient in capacity to accommodate a reserve sewage disposal site, as determined by the local health department. Building or construction of any impervious surface shall be prohibited on the area of all sewage disposal sites or on an on-site sewage treatment system which operates under a permit issued by the State Water Control Board until the structure is served by public sewer.
 - (8) For any development or redevelopment, stormwater runoff shall be controlled by the use of BMPs that are consistent with the water quality protection provisions (4 VAC 3-20-71 et seq.) of the Virginia Stormwater Management Regulations (4 VAC 3-20). This consistency shall be

demonstrated by compliance with the criteria and BMP facilities contained in the latest version of the James City County Guidelines for Design and Construction of Stormwater Management BMPs. In addition, increases in the quantity of stormwater runoff resulting from development or redevelopment shall be addressed by the requirements of chapter 8 of the County Code.

- a. If compliance for a development is based in whole or part on the use of existing downstream onsite or offsite structural BMPs, evidence shall be provided that facilities are currently in good working order and performing at the design levels of service. The manager may require a review of both the original design and maintenance plans to verify this provision. A new maintenance agreement may be required to ensure compliance with this chapter;
- (9) Prior to initiating grading or other on-site activities on any portion of a lot or parcel, all wetlands permits required by federal, state and county laws and regulations shall be obtained and evidence of such submitted to the manager. For those projects where no wetlands are proposed to be impacted or where the impacts do not require written authorization, documentation shall be submitted to the manager by a qualified wetlands professional attesting that the wetlands permitting process has been completed and no further documentation is necessary from the regulatory agencies.
- (10) All lands upon which agricultural activities are being conducted shall undergo a soil and water quality conservation assessment. Such assessment shall evaluate the effectiveness of existing practices pertaining to soil erosion and sediment control, nutrient management and management of pesticides, and where necessary, results in a plan that outlines additional practices needed to ensure that water quality protection is accomplished consistent with this chapter. Plans of development or water quality impact assessments are not required for activities on agricultural lands except for land disturbing activities not related to food and/or fiber production.

(11) For any development or redevelopment, certain RMA's shall be protected as follows:

- a. *Intermittent streams and non-RPA wetlands shall have a 50-foot buffer. The 50-foot buffer shall begin from the edge of the resource.*
- b. *In addition to the RPA buffer, a 175-foot buffer shall be imposed along creek mainstems with a watershed management plan which has been approved by the Board of Supervisors. The 175-foot buffer shall begin at the edge of the RPA buffer. The 175-foot buffer may be reduced to a minimum of 75 feet in the event the topographical divide is less than 175 feet from the RPA buffer. For the purposes of this section, topographical divide shall mean the high point in terrain, topography or elevation, otherwise known as a ridge line, by which a drainage area is defined, delineated or where there exists an origin of sheet flow.*

There shall be no encroachments into the 175-foot buffer except for the following:

1. *Stormwater management facilities;*
2. *Passive recreational facilities, such as boardwalks, trails, and pathways; and*
3. *Public utilities, railroads, public roads and related facilities, provided said utilities, railroads, public roads and related facilities meet the conditions and requirements as set forth in sections 23-13(a)(1) and 23-13(a)(2) of this chapter.*

c. A 25-foot buffer shall begin at the edge of the 175-foot buffer. The following items shall be prohibited from the 25-foot buffer, unless determined otherwise by the manager:

- 1. Septic tanks;*
- 2. Primary or reserve septic fields; and*
- 3. Impervious cover.*

This section shall not apply to the following:

- 1. Lots or parcels created pursuant to and in accordance with section 19-17 of the county code.*
- 2. Single family residences, and/or manufactured homes on a permanent foundation, on a lot or parcel recorded prior to January 1, 2008.*

This ordinance shall be effective as of January 1, 2008.

John J. McGlennon
Chairman, Board of Supervisors

ATTEST:

Sanford B. Wanner
Clerk to the Board

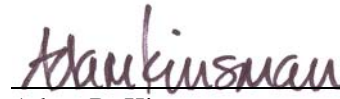
Adopted by the Board of Supervisors of James City County, Virginia, this 11th day of December, 2007.

Sec23-9_ord

MEMORANDUM

DATE: December 11, 2007
TO: The Board of Supervisors
FROM: Adam R. Kinsman, Deputy County Attorney
SUBJECT: Sale of County-owned Property at 3100 John Tyler Highway

A public hearing was advertised to consider adoption of an ordinance to authorize the sale of a six-acre parcel of property owned by the County located at 3100 John Tyler Highway. Since then, the potential purchaser has decided to also consider other options; accordingly, following tonight's public hearing, I recommend that the Board take no action on this matter.


Adam R. Kinsman

ARK/tlc
PropSale_mem

REZONING 0009-2007. Michelle Point Proffer Amendment.

Staff Report for the December 11, 2007, Board of Supervisors Public Hearing

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

PUBLIC HEARINGS

Planning Commission:

Building F Board Room; County Government Complex

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. (deferred)

December 11, 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 finds this proposal to be inconsistent with comparable cases. 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.

Changes Since the November Board of Supervisors Meeting

Information provided by the applicant to members of the Board on November 9 was provided, at the Board's request, to staff on November 16 after the case was deferred at the November 13 Board of Supervisor's meeting. Staff finds the following points relevant to the issue before the Board:

In addition to this request, 17 other proffer amendments have been requested since 1999. Two of these were withdrawn. The 15 remaining requests represent a variety of matters, including revising permitted uses and/or commercial square footage, road improvements and/or alignment, site access, and recreation facilities. Only one request, Z-0014-2004, proposed a direct amendment to the original financial commitments of the developer. This request, Pocahontas Square Proffer Amendment, was approved prior to the cash proffer policy for schools being adopted; information on the Pocahontas Square Proffer Amendment case has been included in previous staff reports for the current request.

The proposed proffer amendment would increase the sales price of affordable units (townhouses) by approximately \$13,900 per unit and would increase the sales price of restricted units (single-family detached) by approximately \$15,400 per unit. The applicant identifies new transportation fees and increased James City Service Authority (JCSA) fixture fees as new expenses coming out of the proposed increase. New Transportation Bill fees are identified as between \$668-\$1,656 per unit in different parts of the report. Staff cannot confirm the correct figure; staff understands the grantor fees are under negotiation at this time. An additional \$4,400 (approximately) is identified by the applicant as additional expenses related to the proposed amended proffers. Staff notes these expenses are not incurred unless the proposed amended proffer language is approved.

The applicant also provided updated Fiscal Impact information, which indicates a net fiscal impact in 2007 dollars of negative \$431,718. The net fiscal impact at the time of the original rezoning was identified as negative \$410,900. James City County's Financial and Management Services office has indicated the net fiscal impact would be a larger negative number than what was presented by the applicant.

Staff acknowledges the benefits of the proposed amendments over the current zoning, including energy efficient dwelling units built using green building practices. Additionally, the 15-year soft second mortgages protect the affordability of the units over time and the increased sales prices may allow the developer to provide affordable units at the beginning of the process rather than making those units available several years from now. Also, the James City County Office of Housing and Community Development (OHCD) has stated that based on other developments that have been approved, they project fewer affordable homes will be available in 2008 in the proposed price range (\$120,000 - \$135,000) than were available in 2007 and that approving the amendment request would result in making more homes available in 2008 in the \$120,000 - \$135,000 price range, while reducing affordable homes available at \$110,000 and under. OHCD also stated that denying the amendment request would preserve affordable housing available at \$110,000 and under, but potentially delay the availability of those housing units. However, as stated in staff's report for the November 13, 2007, Board meeting, a concern is consideration of this application in isolation of the County's school cash proffer policy. The cash contribution for Michelle Point, proposed for \$1,953 per market rate unit and zero for affordable or restricted units, is significantly less than cash contributions approved in recent cases and is inconsistent with comparable cases in that regard (please see Exhibit A).

Exhibit A.

Project Name	Case Number	Cash/Market Rate Unit	Cash/Restricted Unit	Cash/Affordable Unit	Soft seconds proffered
New Town Sections 2 & 4	Z-03-01	none	none	none	none
Pocahontas Square	Z-03-03	none	none	none	none
Michelle Point	Z-13-03	\$1,500	none	none	none
Lightfoot Mixed Use	Z-06-04	\$2,217.50	\$2,217.50	\$2,217.50	none
Pocahontas Square Proffer Amendment	Z-14-04	\$5,000	\$1,700	0	15 years on affordable/ none on restricted
Jennings Way*	Z-19-05	\$6,100	\$1,700	0	15 years on affordable/ none on restricted
Chestnut Grove*	Z-02-07	\$2,000	\$1,000	0	15 years on affordable/ 5 on restricted
Michelle Point Proffer Amendment	Z-09-07	\$1,953	0	0	15 years on both affordable and restricted

*Approval date is after the County's school cash proffer policy became effective.

Additionally, staff hesitates to establish the precedent of increasing the sales prices of affordable units subsequent to the initial project approval. Were this to become common practice, staff believes it would become a burden to both participants and administrators of housing programs. It is staff's position that this request presents an opportunity for the Board of Supervisors to reconsider the revised financial package for the case and decide whether the amended package continues to provide acceptable public benefits.

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 on 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 11 of the townhouse units will be offered for sale at a price at or below \$99,300, and 11 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.
- Proposed Proffer 18 commits the applicant to incorporating "green" building practices and materials in each unit.
- Proposed Proffer 19 commits the applicant to providing homes that meet or exceed the Energy Star Certification for energy efficiency.

Staff Comments: Proposed Proffers 18 and 19 were added after the Planning Commission meeting and were included in the proposal before the Board on November 13; 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 off-site 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 11 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. Additionally, the proposed language includes 15-year soft second mortgages (added after the Planning Commission meeting), as well as requiring the townhouse units to be available for sale prior to the closing on the first single-family unit.

Table 1.

Dwelling unit type	Current proffer	Current proffer with CPI adjustment	Current proffer with M-S adjustment
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.

Project Name	Case Number	Affordable Housing Proffered	Affordable units proffered	Approval Date
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	2/10/04
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	6/12/07

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.

At the request of the Planning Commission the applicant agreed to include 15-year soft second mortgages, and the current proposal includes that provision. The current proposal also 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 after the Planning Commission meeting). This language was added by the applicant to provide affordable units earlier.

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 adequately 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	1250	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 (SUP) 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 an SUP 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.

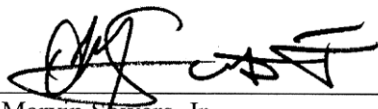
The housing section of the Comprehensive Plan supports increased density in developments that provide affordable housing (Action #5, page 107).

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 finds this proposal to be inconsistent with comparable cases. Staff recommends denial of the proposed proffer amendments.

Kathryn Sipes, Senior Planner

CONCUR:



O. Marvin Sowers, Jr.

KS/nb

Z-09-2007_2

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.

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 11th day of December, 2007.

Z_09_2007_2.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 6th 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.

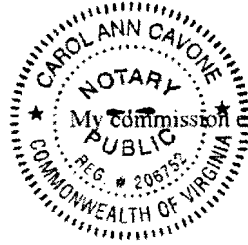
WITNESS the following signature.

MICHELLE POINT, LLC

By: Michael B. Lukan
Title: Managing Member

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

The foregoing instrument was acknowledged this 6th day of
November, 2007, by Michael B. Lukan, as Managing Member
of MICHELLE POINT, LLC on behalf of the LLC.



Carol Ann Cavone
NOTARY PUBLIC

MEMORANDUM

DATE: December 11, 2007

TO: The Board of Supervisors

FROM: Steven W. Hicks, General Services Manager

SUBJECT: James City County Devolution Negotiations – Secondary Roads Study (Route Nos. 600 and above)

Overview

Last year, James City County participated in the Virginia Department of Transportation's (VDOT) Secondary Roads Study led by the VDOT Local Assistance Division (LAD). The purpose of the study was to provide counties with a framework that identified necessary information, analyze options available, and to provide assistance with making the decision, as to whether to assume responsibilities of the secondary system of state highways.

At the January 27, 2007, Board of Supervisors' (BOS) retreat, presented was the study that provided an action plan to assist with implementation, if such responsibilities are assumed by a county, based on the language of the "*devolution statute*" (Section 33.1-84.1 of the Code of Virginia). The devolution statute allows the Board of Supervisors to determine if the county wants to assume all or a portion of several functions on the secondary system. VDOT has determined that a county's responsibilities for the assumption of the secondary system, falls into four general categories listed below. These four categories were studied to provide general background information on the devolution scenarios and an analysis of the cost and institutional implications for James City County under different devolution scenarios. As a result, you will find as part of this memorandum a report on the *Analysis of Secondary Road Devolution Options for James City County*, completed March 2007.


- 1) **Maintenance only** – includes, but is not limited to, pothole repair, pavement overlays, snow removal, sidewalk replacement, ditching, mowing, litter control, traffic control, as well as, sign and signal maintenance.
- 2) **Construction only** – includes planning, road design, right-of-way acquisition (including eminent domain), and construction.
- 3) **Maintenance and construction only** – all of the above.
- 4) **All functions including operations** – assumes operational responsibility which includes reviewing traffic impact studies (land development), site plan reviews, speed studies, issuing land use permits, new subdivision street review, inspection and acceptance, new signage, signal studies, new lighting, and new pavement markings. This option is equivalent to withdrawal from the state system of state highways, similar to those in Henrico and Arlington Counties.

During the BOS retreat, the Board provided guidance in evaluating *Maintenance and Construction* scenarios only. By resuming responsibilities for maintenance and construction, James City County will have no responsibility for operations of the secondary systems (unless otherwise negotiated with VDOT) and ownership of the system (right-of-ways) will remain with VDOT and require VDOT coordination.

At the October 23, 2007, BOS Work Session, a detailed review of this scenario was discussed; and at the November 27, 2007, BOS meeting, staff recommended deferring Board action and offering the public the opportunity to comment regarding Devolution. As a result of public comments, staff recommends negotiating cost associated with Devolution to assist with making the decision as to whether to resume responsibilities of the secondary system of state highways. This “next step” (negotiation) does not obligate the BOS to resume responsibilities of the secondary roads system; however, it is needed to determine the true cost and risk of resuming responsibilities prior to the BOS authorizing the County Administrator to develop a devolution agreement and Memorandum of Understanding with VDOT. After negotiations, staff will discuss the specifics of the negotiations and will seek guidance on whether to proceed with the Devolution process for **Step 4** and **Step 5**.

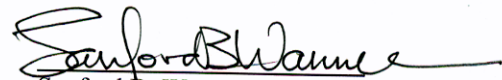
Recommendation

Staff recommends that the Board of Supervisors adopt the attached resolution (**Step 3**) authorizing the County Administrator to negotiate cost associated with resuming responsibility for construction and maintenance functions on the secondary system of highways.



Steven W. Hicks

CONCUR:



Sanford B. Wanner

SWH/nb
SecRdsStdy600up.mem

Attachments

RESOLUTION

RESOLUTION OF INTENT AND TO RESUME RESPONSIBILITY FOR THE SECONDARY

SYSTEM OF HIGHWAYS

WHEREAS, Section 33.1-84.1 of the Code of Virginia permits a county to resume responsibility for any or all maintenance, construction, and operations functions of the secondary system of highways within its boundaries; and

WHEREAS, Section 33.1-84.1 of the Code of Virginia also requires that the County Board of Supervisors formally express the County's intent to resume the desired responsibility by resolution; and

WHEREAS, the Virginia Department of Transportation has published a *Guide to County Assumption of Secondary Roads* which describes the options available to counties and outlines the steps in the devolution or resumption process; and

WHEREAS, the Board of Supervisors of James City County, Virginia, requests that the Virginia Department of Transportation (VDOT) accept this resolution as indicative of its support and intent to resume responsibility for construction and maintenance functions on the secondary system of highways within James City County commencing with maintenance and construction functions on July 1, 2009.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the County Administrator to negotiate with VDOT to resume responsibility for construction and maintenance functions on the secondary system of highways within James City County.

BE IT FURTHER RESOLVED that James City County requests VDOT to initiate the transition period and implementation plan for the resumption of these referenced responsibilities.

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 11th day of December, 2007.

SecRdsStdy600up2.res

MEMORANDUM

DATE: December 11, 2007

TO: The Board of Supervisors

FROM: Steven W. Hicks, General Services Manager

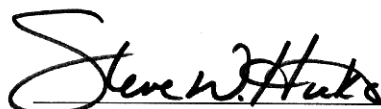
SUBJECT: Route 60 Relocation – 1) Memorandum of Agreement between James City County and Newport News, 2) Amend the Route 60 Project Administrative Agreement to Administer the Project for the City of Newport News

On September 29, 2006, the County/State Administration Agreement was executed to locally administer the Route 60 Relocation Project (Rt. 60 Project) financed by the Federal Highway Administrator (FHWA) and the Virginia Department of Transportation (VDOT). The Rt. 60 Project, located in the Roberts District and the Lee Hall area of James City County and Newport News, has been a top priority of James City County for more than ten years.

Since administering the Project, a single proposal, pursuant to the Public-Private Transportation Act of 1995 (PPTA) to design-build the Rt. 60 Project, has been received from Skiffe's Creek Transportation Group, LLC. The County is reviewing the proposal which includes an option to have James City County administer the design, right-of-way, and construction of the project for Newport News, which includes a bridge crossing at Skiffe's Creek and roadway features in Newport News. An administration agreement (attached) has been drafted for the purpose of having the County administer the Newport News project financed by the FHWA and VDOT. At the November 27, 2007, Newport News Council meeting, Newport News Council authorized the City Manager to execute the Memorandum of Agreement (MOA) to allow James City County to administer the Newport News project.

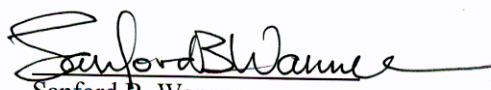
In addition, to administer the Rt. 60 Project for Newport News, the existing County/State Administration Agreement executed on September 29, 2006, will need to be amended to include the Newport News project.

Therefore, staff is recommending the Board of Supervisors authorize the County to execute the MOA to administer the Newport News project and authorize the County Administrator to execute the Rt. 60 East Project Administration Agreement (County/State) upon execution of the MOA.



Steven W. Hicks

CONCUR:



Sanford B. Wanner

SWH/nb
Rt60Reloc2.mem

Attachments

MEMORANDUM

DATE: December 11, 2007

TO: The Board of Supervisors

FROM: Michael D. Woolson, Senior Watershed Planner

SUBJECT: Chesapeake Bay Preservation Ordinance Transition – Amendments and Grandfathering/
Vesting Rules

Attached is a proposed resolution establishing grandfathering/vesting rules for the revised Chesapeake Bay Preservation Ordinance (Ordinance). The resolution determines the applicability of the Ordinance to certain development plans. The general rule is that the new Ordinance amendments are applicable unless a project's features are grandfathered or vested. A project is considered to be vested if a landowner has obtained a significant affirmative governmental act, such as a preliminary plan approval; relies in good faith on the act; and incurs extensive obligations or significant expenses in diligent pursuit of the project.

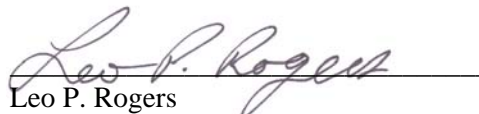
A project is grandfathered under the prior Ordinance if the project has received final or preliminary approval, has been submitted for review prior to the effective date of the Ordinance, or has an approved rezoning which specifies uses, densities, square footage, or other features which could not otherwise be developed under the Ordinance. If a project is grandfathered or vested, the project's features may proceed but the new law must be implemented to the greatest extent possible where grandfathering or vested rights do not specifically preempt such laws. The grandfathering and vesting rules mirror those presented and approved by the Board of Supervisors on November 25, 2003, for State-mandated Chesapeake Bay Preservation Ordinance revisions which became effective January 1, 2004.

Staff recommends adoption of the attached ordinance.

Michael D. Woolson

CONCUR:


John T.P. Horne


Leo P. Rogers

MDW/nb
ChesBayOrd.mem

Attachment

RESOLUTION

CHESAPEAKE BAY PRESERVATION ORDINANCE TRANSITION -

AMENDMENTS AND GRANDFATHER/VESTING RULES

WHEREAS, the Board of Supervisors is considering amendments to Section 23-9, Performance Standards of Chapter 23, Chesapeake Bay Preservation, of the Code of the County of James City, Virginia, which would establish buffers to protect certain Resource Management Areas ("RMA"); and

WHEREAS, the orderly transition from the existing Chesapeake Bay Ordinance to the revised Ordinance requires transition rules to affect the changes in law.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby adopts the grandfathering/vesting rules for the revised Chesapeake Bay Preservation Ordinance, which has an effective date of January 1, 2008, as set forth below:

All site and subdivision plans (conceptual or preliminary) must comply with the revised Ordinance unless the plans fall under one or more of the following criteria:

1. *Final Site and Subdivision Plans.* Approved final plans that are still valid in accordance with Chapters 19 and 24 of the County Code will not be subject to the revised Ordinance. However, revisions to such approved plans that impact protected RMAs (protected RMAs as set forth in Section 23-9(b)(11) of the County Code) will have to comply with the provisions of the revised Ordinance.
2. *Preliminary Site and Subdivision Plans.* Approved preliminary plans that are still valid in accordance with Chapters 19 and 24 of the County Code will not be subject to the revised Ordinance. However, revisions to such approved plans that impact protected RMAs (protected RMAs as set forth in Section 23-9(b)(11) of the County Code) will have to comply with the provisions of the revised Ordinance.
3. *Site and Subdivision Plans in the Review Process.* Plans already in the development review process and those accepted for review prior to the effective date of the Ordinance will not be subject to the revised Ordinance. However, "accepted" shall mean that the plan contains all the information required in the Zoning and Subdivision Ordinance at the time of submission. Any plan determined to be deficient will need to be resubmitted, and if submitted after the effective date, it will have to comply with the revised Ordinance. However, revisions to such plans after submission that impact protected RMAs (protected RMAs as set forth in Section 23-9(b)(11) of the County Code) will have to comply with the provisions of the exception process set forth in Section 23-14(e) of the County Code.

4. Conceptual Plans. Conceptual plans approved prior to the effective date of the Ordinance will not be grandfathered nor will they grandfather any subsequent site or subdivision plans.
5. Rezoning and Special Use Permits (SUPs). Approved rezoning and SUPs will have to comply with the provisions of the revised Ordinance unless the property cannot legally be developed to the proffered density, use, or square footage because of the new rules, or there is a specific feature (such as a house or other structure; a road, storm drain, or some other facility) shown on the proffered zoning plan that is located within the buffers protecting RMAs; in which case the landowner may develop to the proffered density, use, or square footage minimizing any intrusions into the buffers protecting RMAs, to the extent possible. The specific feature must be built consistent with all other applicable zoning and subdivision requirements. Once the specific feature is developed as shown on the proffered zoning plan, the provisions of the Ordinance buffers protecting RMAs shall apply in full to any future development.

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 11th day of December, 2007.

ChesBayOrd.res

RESOLUTION

AMEND ROUTE 60 EAST PROJECT ADMINISTRATION AGREEMENT TO ADMINISTER

THE PROJECT FOR THE CITY OF NEWPORT NEWS (0060-047-V11, UPC 13496)

WHEREAS, in accordance with the Code of Virginia to provide localities the opportunity to administer projects financed by the Virginia Department of Transportation (VDOT) and in accordance with the Guide for Local Administration of VDOT; and

WHEREAS, the Board of Supervisors of James City County, Virginia, executed the Project Administration Agreement for Project (006-047-V11) on September 29, 2006, and has expressed its desire to administer the work of the Route 60 Newport News Project (006-121-V14) and the proposed bridge crossing at Skiffe's Creek Project (0060-965-007), located in the Roberts District within James City County beginning at Blow Flats Road and ending at Route 105, Fort Eustis Boulevard; and

WHEREAS, the Board of Supervisors of James City County, Virginia, has expressed its desire to go into an administration agreement with Newport News to administer the Newport News Project.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the County Administrator to execute the Memorandum of Agreement to administer the Newport News Project and to execute the amended Route 60 Project Administration Agreement.

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 11th day of December, 2007.

Rt60Reloc2.res