

# AGENDA

## JAMES CITY COUNTY BOARD OF SUPERVISORS

County Government Center Board Room

August 12, 2008

7:00 P.M.

---

	<u>Page</u>
<b>A. ROLL CALL</b>	
<b>B. MOMENT OF SILENCE</b>	
<b>C. PLEDGE OF ALLEGIANCE</b> – Leslie “Scooby” Peterson, a rising eleventh-grade student at Lafayette High School	
<b>D. PRESENTATION</b> – Peninsula Alcohol Safety Action Program (ASAP) .....	1
<b>E. PUBLIC COMMENT</b>	
<b>F. CONSENT CALENDAR</b>	
1. Minutes –	
a. July 22, 2008, Work Session .....	5
b. July 22, 2008, Regular Meeting .....	9
2. Grant Award – Radiological Emergency Preparedness – \$25,000 .....	23
<i>Supports County’s Strategic Pathway 1.d - develop and promote revenue alternatives to property taxes</i>	
3. Grant Award – Williamsburg Community Health Foundation – \$1,000 .....	25
<i>Supports County’s Strategic Pathway 1.d - develop and promote revenue alternatives to property taxes</i>	
4. Installation of “Watch for Children” Signs – Indigo Park Subdivision .....	27
<i>Supports County’s Strategic Pathway 2.a - address the needs of the underserved and protect the vulnerable</i>	
5. Affirmation of Authorization to Pick-Up the Employees’ Contribution to the Virginia Retirement System (VRS) for James City County, 5514, under §414(h) of the Internal Revenue Code – James City County .....	3
<i>Supports County’s Strategic Pathway 5.b - maintain a well-trained and high performing workforce for normal and emergency operations</i>	
6. Appropriation Resolution – Stormwater Service Fee Fund Balance .....	35
7. Refinancing – Virginia Public School Authority (VPSA) – \$516,817 .....	39
<i>Supports County’s Strategic Pathway 3.d - invest in the capital project needs of the community</i>	
<b>G. PUBLIC HEARINGS</b>	
1. Readoption of Emergency Ordinance No. 170A-15 to Confirm AFD-0-86-03-2007 Gordon Creek “Warburton Tract” Withdrawal .....	43

-CONTINUED-

2. Case No. SUP-0011-2008. Williamsburg Dog (deferred from July 8, 2008) .....	55
3. Case No. SUP-0009-2008. Greenwood Christian Academy at the King's Way Church ....	135
4. Case No. SUP-0012-2008. Liberty Ridge Clubhouse and Swimming Pool .....	147
5. Case No. SUP-0007-2008/MP-0002-2008. David Nice's Contractor's Office and Shed...	213
6. Case No. Z0-0002-2008 Zoning Ordinance Amendment-SUP Use List Amendments .....	225
7. Sewer Easement Dedication – Joshua's Glen - Lots 1, 2, and 6 .....	263
8. Ordinance to Amend Chapter 3, Animal Laws of the County Code, by amending Section 3-1, Definitions; Section 3-2, Enforcement of animal laws; Section 3-7 Disposal of dead animals; Section 3-45, Impoundment generally; by Adding Article II, Dogs, Division III, Commercial Dog Breeders; to adopt by reference the State Code provisions amended by the 2008 General Assembly .....	267

## **H. BOARD CONSIDERATIONS**

1. Right-of-Way Agreement – Dominion Virginia Power – Freedom Park (deferred from July 22, 2008) .....	277
2. Historic Triangle Comprehensive Plan Coordination .....	281

## **I. PUBLIC COMMENT**

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

## **K. BOARD REQUESTS AND DIRECTIVES**

## **L. CLOSED SESSION**

1. Consultation with legal counsel and staff members pertaining to actual or probable litigation, pursuant to Section 2.2-3711(A)(7) of the Code of Virginia

## **M. ADJOURNMENT to 7 p.m. on September 9, 2008**

**MEMORANDUM**

DATE: August 12, 2008

TO: The Board of Supervisors

FROM: Sanford B. Wanner, County Administrator

SUBJECT: Background Material for Peninsula Alcohol Safety Action Program (ASAP) Presentation

---

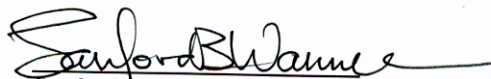
In an effort to implement one of the strategic planning goals of the Peninsula Alcohol Safety Action Program (ASAP) Policy Board, the Board's Education/Advocacy Committee felt it was important to provide educational presentations to local elected officials.

The purpose of this overview presentation is to educate each elected body served by Peninsula ASAP about the program, its services, and statistical information regarding who has been served from each locality through a PowerPoint presentation.

Most people are aware that ASAP programs serve persons convicted of driving under the influence (DUI) charges, but many are not aware that local programs are supported entirely by client fees and that the program enrollment fee as established by the State legislature has not been increased since 1985.

The presentation will highlight the services which the program provides in an effort to stimulate interest in maintaining the program. The program is a tool to help keep roads and highways safe.

The Peninsula ASAP Policy Board's ultimate goal is to create an ongoing dialogue with the locality, specifically regarding legislative matters. Through communication with each locality's staff before and during each General Assembly session, the Peninsula ASAP's Policy Board hopes to gain State legislative support to continue to enhance its programming, which offers a necessary and valuable service at no cost to the localities which it serves.

  
Sanford B. Wanner

SBW/nb  
PASAP\_mem

Attachment

# **PENINSULA ALCOHOL SAFETY ACTION PROGRAM**

## **PENINSULA ALCOHOL SAFETY ACTION PROGRAM (PENINSULA ASAP)**

- One of 24 local ASAP programs in Virginia
- Established by and operated under Virginia Code, Section 18.2-271.1 (1975)
- Regulated and certified by the Virginia Commission on VASAP
- Locally administered by the Peninsula ASAP Policy Board
- Serves the cities of Newport News, Hampton, Poquoson, Williamsburg, and the counties of James City, York, and Charles City



## SERVICES

- Probationary case monitoring for court-referred; impaired drivers, adult and youth alcohol/drug offenders, reckless drivers and habitual offenders
- Monitor out-of-state program participation, DMV referrals, and Ignition Interlock cases
- Provide state-approved substance abuse education courses
- Provide referral to licensed and certified substance abuse providers
- Provide DMV-certified driver improvement programs

## PROGRAM CHALLENGES/OPPORTUNITIES

- Peninsula ASAP is *solely supported* through client fees, which are established by the state legislative
- Enrollment fees have not been increased since 1985
- Case Managers caseloads currently exceed the recommended state standard of 300 cases by 100 – 200 cases
- Insufficient attention is given to education and prevention efforts in the schools and communities due to limited resources
- Continued cooperation with local law enforcement will help reduce highway crashes and fatalities
- Educate local officials about the program and the need to increase the Peninsula ASAP enrollment fees

**AT A WORK SESSION OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE 22ND DAY OF JULY 2008, AT 4:00 P.M. IN THE COUNTY GOVERNMENT CENTER BOARD ROOM, 101 MOUNTS BAY ROAD, JAMES CITY COUNTY, VIRGINIA.**

**A CALL TO ORDER**

**B. ROLL CALL**

Bruce C. Goodson, Chairman, Roberts District  
James G. Kennedy, Vice Chairman, Stonehouse District  
James O. Icenhour, Jr., Powhatan District  
John J. McGlennon, Jamestown District  
Mary Jones, Berkeley District

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

**C. BOARD DISCUSSIONS**

**1. Comprehensive Plan Update**

Ms. Tammy Rosario, Acting Principal Planner, gave a presentation highlighting the Comprehensive Plan Update process at its midpoint.

The Board and staff discussed the makeup of the Comprehensive Plan Steering Committee. Mr. Goodson requested the addition of an Economic Development Authority (EDA) member to the Steering Committee. Discussion was held about avenues for representation and participation by different segments of the community. Mr. Goodson, Mr. Kennedy, and Ms. Jones stated their support for a member of the EDA serving on the Steering Committee. Mr. Goodson recommended that Ms. Jones participate as the Board of Supervisors representative on the Steering Committee. Discussion was held about whether to have one member or two members of the Board of Supervisors serve on the Steering Committee and other ways to broaden and change the Committee structure. Mr. Kennedy supported broadening the membership. Mr. Goodson suggested this matter be discussed at the work session on August 12, 2008.

Mr. Fraley commented that he had received feedback that the Comprehensive Plan process was seen by some members in the community to have too much guidance rather than be a process being built based on citizen input. He also noted that Mr. McGlennon previously contacted him about having two Board members on the Steering Committee and he had no objection to that.

**2. CaseTrak Overview**

Ms. Leanne Reidenbach, Planner, gave a walkthrough of CaseTrak on the County website, which allows the community to access and track land use cases through the entire application process.

#### **D. CLOSED SESSION**

Mr. Kennedy made a motion to go into closed session pursuant to Section 2.2-3711(A)(1), to consider personnel matters, the appointment of individuals to County boards and/or commissions; and Section 2.2-3711(A)(1), to consider personnel matters, the annual performance evaluation of the County Administrator; and Section 2.2-3711(A)(7) of the Code of Virginia to consult with legal counsel and staff members pertaining to actual or probable litigation.

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

At 4:59 p.m. Mr. Goodson recessed the Board into closed session.

At 6:46 p.m. Mr. Goodson reconvened the Board.

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

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

### **RESOLUTION**

#### **CERTIFICATION OF CLOSED MEETING**

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

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

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby certifies that, to the best of each member's knowledge: i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this certification resolution applies; and ii) only such public business matters were heard, discussed, or considered by the Board as were identified in the motion, Section 2.2-3711(A)(1), to consider personnel matters, the appointment of individuals to County boards and/or commissions; and Section 2.2-3711(A)(1), to consider personnel matters, the annual performance evaluation of the County Administrator; and Section 2.2-3711(A)(7) of the Code of Virginia to consult with legal counsel and staff members pertaining to actual or probable litigation.

Mr. McGlennon made a motion to appoint Samuel Lazarus to an unexpired term on the Colonial Services Board, term to expire on June 30, 2008; Douglas Gebhardt to a four-year term and Paul W. Gerhardt to a four-year term on the EDA, terms to expire on July 31, 2012; and Lynda Byrd-Poller to a four-year term on the Williamsburg Regional Library Board of Trustees, term to expire on June 30, 2012.

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

Mr. McGlennon made a motion to award the County Administrator a four-percent pay raise effective August 1, 2008.

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

**E. RECESS**

Mr. McGlennon made a motion to recess.

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

At 6:48 p.m. Mr. Goodson recessed the Board until 7 p.m.

---

Sanford B. Wanner  
Clerk to the Board

072208bosws\_min

**AT A REGULAR MEETING OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE 22ND DAY OF JULY 2008, AT 7:00 P.M. IN THE COUNTY GOVERNMENT CENTER BOARD ROOM, 101 MOUNTS BAY ROAD, JAMES CITY COUNTY, VIRGINIA.**

**A. CALL TO ORDER**

**B. ROLL CALL**

Bruce C. Goodson, Chairman, Roberts District  
James G. Kennedy, Vice Chairman, Stonehouse District  
James O. Icenhour, Jr., Powhatan District  
John J. McGlennon, Jamestown District  
Mary Jones, Berkeley District

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

**C. PLEDGE OF ALLEGIANCE** – Mr. Ed Oyer led the Board and citizens in the Pledge of Allegiance.

**D. HIGHWAY MATTERS**

Mr. Todd Halacy, Virginia Department of Transportation (VDOT) Williamsburg Interim Residency Administrator, stated that concerns had been addressed regarding Route 60 West near the Jack L. Massie facility for drainage improvements. He stated that VDOT had noted one improvement that could be made and that it would be evaluating that area periodically after heavy rains. He stated that he had investigated the issues with the News Road and Powhatan Secondary pavement and had found areas that needed improvement. He said these improvements were scheduled to be done in the next month and gave an overview of the schedule for the third cycle of primary and secondary mowing and litter pickup. He stated that VDOT was also working on pavement repair on Route 60 East from the New Kent County line and from Andersons Corner to Route 620.

Mr. McGlennon thanked Mr. Halacy for his attention to matters in First Colony and Rolling Woods. He stated that the Rolling Woods subdivision has requested a speed study on Lake Powell Road between Marclay and Waltrip Lanes.

**E. PUBLIC COMMENT**

1. Mr. Bert Roth, 112 Winged Foot, commented on the Citizen Budget Committee's independent analysis on school division proposed spending and stated that there was a budget gap of approximately \$47 million.

2. Mr. David Jarman, 117 Landsdown, on behalf of the James City County Citizens Coalition (J4C),

commented on the J4C study on the cumulative impact of growth on the County and gave a timeline of the report. He stated that this item was submitted for the review and use by the County and that the rapid population growth was a major factor in the quality of life and health of the environment in the future. He stated key points to be considered are water supply, environmental degradation, and financial strain.

3. Mr. Robert Richardson, 2876 Lake Powell Road, commented on the ethics of the members of the Board of Supervisors and a member of the Planning Commission.

4. Mr. Ed Oyer, 139 Indian Circle, commented on continued citizen disapproval of the Hampton Roads Transportation Authority; consideration of density when approving development projects; traffic on Route 60 East; emergency ordinance adopted at the July 8, 2008, regular meeting; increasing water demands; applicant responsibility in bringing an application forward; and disapproval of rushed decision-making.

## **F. CONSENT CALENDAR**

Mr. Icenhour made a motion to adopt the items on the Consent Calendar with the amendments to the minutes.

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

1. Minutes - July 8, 2008, Regular Meeting
2. Grant Award - Department of Criminal Justice Services - Technology Improvements - \$50,000

## **RESOLUTION**

### **GRANT AWARD - DEPARTMENT OF CRIMINAL JUSTICE SERVICES –**

#### **TECHNOLOGY IMPROVEMENT - \$50,000**

WHEREAS, the Virginia Department of Criminal Justice Services (DCJS) has awarded the James City County Police Department a Criminal Justice Information Technology Improvement Grant in the amount of \$50,000 (\$37,500 DCJS; and \$12,500 Local Match); and

WHEREAS, the grant requires a local match of \$12,500, which is available in the County's Grants Match Account; and

WHEREAS, the funds will be used to purchase and install the "e-summons" feature of the existing Records Management System (RMS) to coincide with the expansion of the Mobile Data Terminal (MDT) project to streamline the process of traffic summons in a more efficient process through the Police Department and the court.

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:

DCJS – Technology Improvement	\$37,500
County Grants Match Account	<u>12,500</u>
Total	<u>\$50,000</u>

Expenditure:

DCJS – Technology Improvement	<u>\$50,000</u>
-------------------------------	-----------------

3. Grant Award - Rescue Squad Assistance Fund - \$84,400

**RESOLUTION**

GRANT AWARD - RESCUE SQUAD ASSISTANCE FUND - \$84,400

WHEREAS, the Virginia Department of Health (VDH), Office of Emergency Medical Services (OEMS) has awarded the James City County Fire Department a Rescue Squad Assistance Fund (RSAF) grant in the amount of \$84,400 (\$42,200 RSAF; and \$42,200 local match); and

WHEREAS, the grant requires a local match of \$42,200 and the funds are available in the County's Grant Match Account; and

WHEREAS, the funds will be used to purchase power-lift stretchers for the medic units, AirSim Manikin training equipment, a Defibrillator-AED/manual combination system, and five Pediatric resuscitation systems.

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:

RSAF – Medic supplies/equipment	\$42,200
James City County Grant Match Account	<u>42,200</u>
Total	<u>\$84,400</u>

Expenditure:

RSAF – Medic supplies/equipment	<u>\$84,400</u>
---------------------------------	-----------------

4. Approval of Revisions to the Joint Exercise of Powers Agreement - Colonial Community Criminal Justice Board

**RESOLUTION**

**APPROVAL OF REVISIONS TO THE JOINT EXERCISE OF POWERS AGREEMENT -**

**COLONIAL COMMUNITY CRIMINAL JUSTICE BOARD**

WHEREAS, the revisions to the Joint Exercise of Powers Agreement reflect the changes in the Code of Virginia that establish the Community Criminal Justice Boards; and

WHEREAS, the attorneys representing the Counties of Charles City, James City, New Kent, and York, and the Cities of Poquoson and Williamsburg assisted in drafting the revisions to the Joint Exercise of Powers Agreement.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby approves the revised Joint Exercise of Powers Agreement for the Colonial Community Criminal Justice Board.

5. Authorization of Execution of a Contract Between the County of James City and the Colonial Services Board for the Delivery of Mental Health, Mental Retardation, and Substance Abuse Services

**RESOLUTION**

**AUTHORIZATION OF EXECUTION OF A CONTRACT BETWEEN THE COUNTY OF JAMES**

**CITY AND THE COLONIAL SERVICES BOARD FOR THE DELIVERY OF MENTAL**

**HEALTH, MENTAL RETARDATION, AND SUBSTANCE ABUSE SERVICES**

WHEREAS, Section 37.2-501 of the Code of Virginia, 1950 as amended, requires each locality to establish, singly or in combination, a community services board for the provision of mental health, mental retardation, and substance abuse services to its residents; and

WHEREAS, pursuant to this statutory provision, the County of James City has established the regional Colonial Community Services Board in conjunction with York County and the Cities of Williamsburg and Poquoson; and

WHEREAS, Section 37.2-504(A)(2) requires local governments to review and act on the Annual Performance Contract with the Colonial Community Services Board and to make appropriate appointments to that Board; and

WHEREAS, the Board of Supervisors has reviewed the proposed Performance Contract between the County of James City and the Colonial Community Services Board, and found it to be acceptable, provided that certain expectations and conditions will also be met during the terms of the agreement.

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



22nd day of July, 2008, that the proposed FY 2009 Annual Performance Contract between the County of James City and the Colonial Community Services Board be, and it is hereby, approved; and the County Administrator is hereby authorized to execute the agreement and to take all actions necessary to assure that mental health, mental retardation, and substance abuse services are delivered to the citizens of James City County and that the conditions and expectations of the Board of Supervisors are met.

## **G. PUBLIC HEARINGS**

Mr. Goodson recognized Mr. Jack Fraley, Chairman of the Planning Commission, in attendance.

1. Case No. Z-0001-2008/MP-0001/2008/SUP-0006-2008/HW-0002-2008. St. Olaf's Catholic Church Expansion and a Resolution to Vacate 4.03 Acres of Conservation Easement (deferred from July 8, 2008)

Ms. Ellen Cook, Planner, stated that Ms. Sara Rilveria, of AES Consulting Engineers, has applied on behalf of St. Olaf Catholic Church and the Catholic Diocese of Richmond, Virginia, to expand the existing St. Olaf Catholic Church located at 104 Norge Lane (at the corner of Norge Lane and Richmond Road). The parcel is further identified as James City County Real Estate Tax Map/Parcel No. 2320100016, consisting of 9.39 acres and is zoned R-8, Rural Residential, with proffers, and designated by the Comprehensive Plan as R-8, Rural Residential. In 1994, the Board of Supervisors approved a rezoning of this property from A-1 and B-1 to R-8, Rural Residential, with proffers. In 1994, houses of worship were permitted by-right in the R-8 district. In 1999, the R-8 district was amended to make houses of worship a specially permitted use making St. Olaf a legally nonconforming use; under the zoning ordinance, nonconforming uses cannot be expanded. In 2005, a Special Use Permit (SUP) to allow for the placement of two temporary office trailers and other minor expansions and renovations up to a total of 4,000 square feet was approved by the Board of Supervisors. However, this idea was re-evaluated by the church and the trailers were not placed on the site and no other expansion or renovation work in connection with that SUP application was done.

Staff stated that the current application proposes to accomplish several things. First, to eliminate the proffers which were put in place during the 1994 rezoning. Second, to obtain an SUP which would allow for a 22,883-square-foot expansion, since this amount of square footage would not be permitted by the SUP approved in 2005. The 22,883-square-foot expansion would take place through Phases I, IA, IB, IC, and II as shown on the master plan, and is needed to accommodate the church's growing congregation. Currently, a 2,601-square-foot parish office and a 5,214-square-foot worship building are in place on the site. Third, the application attempts to obtain a height limitation waiver and finally, to vacate the existing conservation easement on the property.

Staff stated that for the amount of seating area proposed, a total of 190 parking spaces would be required by the Zoning Ordinance (one space per five seats). As outlined in the Community Impact Statement, the applicant has collected data on normal Sunday mass attendance between October 2007 and March 2008, and proposes the use of a higher ratio – one space per two seats, or a total of 300 parking spaces.

Staff found the proposal to be consistent with the surrounding zoning and development and with the proposed conditions, consistent with the Comprehensive Plan.

At its meeting on June 4, 2008, the Planning Commission recommended approval by a vote of 7-0.

Staff recommended approval of the resolutions.

Mr. Icenhour asked about the parking lot construction being phased with the construction based on the number of seats.

Ms. Cook stated that there would be two phases that would contain seating: Phase I would incorporate 600 seats in the sanctuary and lobby seating of about 200 and in Phase IC, development would trigger additional parking.

Mr. McGlennon stated that he did not have any problems with the application, but wished to reflect his concern on eliminating a conservation easement and the possibility of setting precedence on this item. He asked for elaboration on why this particular case was an exception.

Ms. Cook stated at the time the original proffers were drafted, stormwater management was viewed differently, which may be why the language did not indicate the stormwater management purpose.

Mr. McGlennon stated that he could not tell from the proffers that the conservation easement was intended for stormwater management. He asked to highlight this as an exceptional case.

Ms. Cook stated that it was not in the 1994 proffers.

Mr. McGlennon asked that it be noted that the easement was originally intended for stormwater management and not conservation purposes.

Mr. Goodson opened the Public Hearing.

1. Mr. Vernon M. Geddy, III, on behalf of the applicant, gave an overview of the various parts of the application and easement vacation. Mr. Geddy stated that the existing conservation easement was not proffered and was granted for stormwater management compliance purposes. He stated that this has never functioned as a natural open space and that the new stormwater plan incorporated LID features and upgrades.

Mr. McGlennon asked how this was reflected.

Mr. Geddy stated this was documented in the environmental points process that the parcel was received for Chesapeake Bay preservation.

Mr. Geddy stated this application was consistent with the Comprehensive Plan and surrounding areas and that the applicant agreed with the conditions requested by staff and requested approval.

Mr. Kennedy asked about potential improvements to a turn lane from Norge Lane into Church Lane.

Mr. Geddy stated no improvements were planned as they were not warranted necessary by VDOT. He stated that information would be provided to potentially adjust the signal timing.

As no one else wished to speak to this matter, Mr. Goodson closed the Public Hearing.

Mr. Kennedy made a motion to adopt the resolutions simultaneously.

Mr. Icenhour commented on revisions to the parking ordinance based on need and conserving

impervious cover. He asked about adjusting the ordinance to better assess parking needs for churches.

Mr. Fraley stated that he hoped to create a master list through the Comprehensive Plan update of all the ordinances that needed to be revised and updated. He stated that churches could be added to the developing list of items that need to be addressed.

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

## **RESOLUTION**

**CASE NO. Z-001-08/MP-001-08/SUP-0006-08/HW-002-08.**

### **ST. OLAF CATHOLIC CHURCH EXPANSION**

WHEREAS, the Catholic Diocese of Richmond owns a parcel of property located at 104 Norge Lane and further identified as Parcel No. (1-16) on James City County Real Estate Tax Map No. (23-2) (the "Property"); and

WHEREAS, the Property is currently zoned R-8, Rural Residential with Proffers, and designated Low Density Residential on the 2003 Comprehensive Plan Land Use Map; and

WHEREAS, Ms. Sara Silveria of AES Consulting Engineers has applied on behalf of St. Olaf Catholic Church to rezone the Property from R-8, Rural Residential, with Proffers, to R-8, Rural Residential (eliminating the existing Proffers); to obtain an SUP to allow for expansion of the existing St. Olaf Catholic Church; and to obtain a height limitation waiver to allow for the construction of a 90-foot-tall cross spire as part of the expansion of the Church; and

WHEREAS, the proposed expansion is shown on a master plan, entitled "St. Olaf Catholic Church" prepared by AES Consulting Engineers and date stamped July 15, 2008; and

WHEREAS, a public hearing was advertised, adjoining property owners notified and a hearing scheduled; and

WHEREAS, the Planning Commission of James City County, following its public hearing on June 4, 2008, recommended approval of cases Z-0001-08, MP-0001-08, and SUP-0006-08 by a vote of 7-0; 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; and

WHEREAS, the Board of Supervisors finds that the requirements of Section 24-354 of the James City County Zoning Ordinance have been satisfied in order to grant a height limitation waiver to allow the erection of structures in excess of 60 feet.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, after a public hearing, does hereby approve the issuance of a height limitation waiver for a structure up to 90 feet under Case No. HW-0002-2008, and also approves Case Nos. Z-0001-08/MP-0001-08/SUP-0006-2008 as described herein with the following conditions:

1. This Special Use Permit (SUP) shall be valid for operation of a house of worship and accessory uses thereto as shown on the Master Plan prepared by AES Consulting Engineers date stamped July 15, 2008. Expansion and renovation activities shall result in no more than 23,000 square feet of additional building area. No school use shall be permitted as part of this SUP.
2. Only one entrance shall be allowed onto Norge Lane, and this entrance shall line up with the entrance to the Norge Shopping Center. There shall be no entrances to the site from Richmond Road.
3. Any new exterior site lighting shall be limited to fixtures which are horizontally mounted on light poles not to exceed 25 feet in height and/or other structures and shall be recessed fixtures with no bulb, lens, or globe extending below the casing. The casing shall be opaque and shall completely surround the entire light fixture and light source in such a manner that all light will be directed downward and the light source is not visible from the side. No glare, defined as 0.1 footcandle or higher shall extend outside the Property lines. Limited lighting of the church building and the spire (no more than 20 percent of the overall facade) shall be permitted in such a manner that all light will be directed upward and the light source is not visible from the side. No glare, defined as 0.1 footcandle or higher shall extend outside the Property lines.
4. Prior to final site plan approval, the planning director shall review and approve the final architectural design of the building. Such building shall be reasonably consistent, as determined by the planning director, with the architectural elevations titled "Saint Olaf Catholic Church" submitted with this special use permit application, dated June 24, 2008, and drawn by Brawer & Hauptman Architects.
5. The owner shall be responsible for developing and enforcing water conservation standards to be submitted to and approved by the James City Service Authority prior to final development plan approval. The standards shall include, but not be limited to such water conservation measures as limitations on the installation and use of irrigation systems and irrigation wells, the use of approved landscaping materials including the use of drought resistant native and other adopted low water use landscaping materials and warm season turf where appropriate, and the use of water conserving fixtures and appliances to promote water conservation and minimize the use of public water resources.
6. Installation of parking spaces on the site may be phased in step with the building phasing so long as all spaces needed to meet Zoning Ordinance requirements for any particular phase have been installed prior to issuance of a Certificate of Occupancy for that phase.
7. For those areas on the Master Plan where the "Evergreen Screen" is indicated, a continuous evergreen buffer designed to screen the parking lot from the adjacent properties and comprised of a mixture of evergreen ornamental trees, evergreen trees that will reach the height of at least 40 feet at maturity and evergreen shrubs shall be planted which, at planting, are 125 percent of the size requirements listed in the Zoning Ordinance, and shall be generally as shown on the "St. Olaf Catholic Church Planning

Board Commission Exhibit No. 1 Landscape Buffer Intent Adjacent to Residential Properties” prepared by AES and dated June 4, 2008. A landscape plan for the entire Property (to include the “Evergreen Screen” and the Route 60 Community Character Corridor buffer area, as specifically requested by the Planning Commission, and other areas of the site as required by the Zoning Ordinance) shall be submitted for review and approval by the Development Review Committee with the initial plan of development for the Property. All landscaping on this plan shall be installed or bonded prior to the issuance of a final Certificate of Occupancy for the building expansion area shown on the initial plan of development.

8. Within six months of issuance of a Certificate of Occupancy (C.O.) for the Phase I portion of the building expansion, the owner shall be responsible for determining the maximum percent utilization (queue length/storage length) of the left turn lanes at the Richmond Road/Norge Lane intersection just prior to and just after the Sunday mass meeting, and providing this information in a report to VDOT for their approval so that VDOT can make any adjustments to the signal timings as may be necessary. If determined necessary by VDOT, additional reports shall be done within six months of C.O. for the other Phases: the need for any additional reports shall be determined prior to site plan approval of each of the Phases.
9. In implementing stormwater management improvements on the Property, the owner shall make use of low impact design measures as outlined in the Community Impact Statement date stamped July 15, 2008, and approved by the environmental director.
10. Prior to issuance of the first Certificate of Occupancy for any portion of the building expansion, a sidewalk shall be constructed along the Richmond Road frontage of the Property. The sidewalk shall extend to adjoining property lines and have handicapped accessible ramps at any driveways or street intersections.
11. If construction has not commenced on this project within 36 months from the issuance of a special use permit, the special use permit shall become void. Construction shall be defined as obtaining permits for building construction and footings and/or foundation has passed required inspections.
12. This special use permit is not severable. Invalidity of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.

## **RESOLUTION**

### **CONVEYANCE OF PROPERTY LOCATED AT 104 NORGE LANE TO THE**

#### **CATHOLIC DIOCESE OF RICHMOND**

WHEREAS, in conjunction with the construction of the St. Olaf’s Catholic Church (the “Church”) on a parcel of property located at 104 Norge Lane and designated as James City County Real Estate Parcel No. 2320100016 (the “Property”) in James City County, Virginia (the “County”), a natural open space easement totaling 4.03± acres (the “Easement”) was granted to the County by a deed recorded on February 23, 1995, in Deed Book 728, Page 182; and

WHEREAS, the Easement was granted to the County to satisfy certain environmental requirements

associated with development of the Property; and

WHEREAS, the Church desires to construct additional church-related buildings and parking upon the Property, and has submitted Application Nos. Z-0001-2008, MP-0001-2008, and SUP-0006-2008 in furtherance thereof (the "Expansion"); and

WHEREAS, the Expansion proposes new environmental protections that will provide water quality protections in excess of that which the Easement was designed to provide and which will satisfy all County environmental requirements; and

WHEREAS, the three applications associated with the Expansion were approved by the Board at its July 8, 2008, meeting, and as such the Easement no longer has any value to either the Church or the County; and

WHEREAS, the Board of Supervisors, following a public hearing, is of the opinion that it is in the public interest to grant and convey the Easement to the Church in exchange for the additional environmental benefits provided as a part of the Expansion.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, authorizes and directs the County Administrator to execute such deed and other documents as may be necessary to convey the Easement to the Church.

2. Right-of-Way Agreement - Dominion Virginia Power - Freedom Park

Mr. Darryl Cook, County Engineer, stated that Dominion Virginia Power (Dominion) has requested a right-of-way and utility easement (Easement) across a portion of James City County Freedom Park (Park) in order to improve electrical service to customers in the Jolly Pond Road area. Dominion has conducted a reliability study of the Jolly Pond Road area of its power system and determined that the reliability of its service to those citizens could be significantly improved by connecting the two radial ends of the existing power lines serving that area, thereby creating a looped power system. The requested easement is 30 feet in width parallel to the Jolly Pond Road right-of-way extending roughly from the James City County transfer station/landfill property to the site of the new combined schools. The line would connect two existing overhead line segments. County staff has reviewed and approved Dominion's proposed Easement location ensuring minimal impact on the Park amenities and Park users.

Ms. Julia Veal, Park Planner, gave an overview of the site at Freedom Park and where the proposed easement would be located.

Staff recommended approval of the resolution authorizing the County Administrator to execute the Easement documents with Dominion Virginia Power.

Mr. McGlennon asked if there were any discussions about placing these lines underground.

Mr. Cook stated that the potential for underground lines was discussed and Dominion was not willing to do this.

Mr. McGlennon stated that since trails would be in this area, there was an opportunity to preserve the natural atmosphere and increase the reliability of service by placing the lines underground. He asked if there was any way to reopen the discussion with Dominion for placing these lines underground.

Mr. Cook stated that this request could be passed on.

Mr. McGlennon stated that he would like that request communicated to Dominion.

Mr. Goodson asked if there were lines on the other side of the road.

Ms. Veal stated that there were not.

Mr. Icenhour stated that most residents further down Jolly Pond Road were served by one of the lines and that this connection would create increased reliability.

Ms. Veal stated that this was correct.

Mr. McGlennon asked if there was an immediate need to act on this or if the Board could defer to a later time after the request for underground lines could be communicated.

Mr. Cook stated that construction was scheduled to begin at the end of the current year.

Mr. Wanner stated that the Board could defer action until August 12, 2008, and have staff negotiate with Dominion on the request.

Mr. McGlennon stated that this was a great opportunity for Dominion to be good stewards of the environment and the surrounding community.

Mr. Wanner stated that the public hearing could be heard and action could be deferred to August 12, 2008.

Mr. Goodson opened the Public Hearing.

As no one wished to speak to this matter, Mr. Goodson closed the Public Hearing.

Mr. McGlennon requested that the item be deferred to August 12, 2008, with direction to staff to request that Dominion Virginia Power consider placing the connecting power lines underground.

3. Conveyance of a Water/Sewer Easement to the James City Service Authority - 2070 Jamestown Road

Mr. Leo Rogers, County Attorney, stated that regarding the County-owned property at the Jamestown Yacht Basin, commonly known as 2070 Jamestown Road and designated on the James City County Real Estate Tax Map as Parcel No. 4640100018, at its meeting on June 24, 2008, the Board approved the sale of 6.5 acres of the property to the Jamestown-Yorktown Foundation (JYF) for expansion of its facilities. He stated that the remainder of the property would remain County-owned. Mr. Rogers explained that the James City Service Authority (JCSA) required a 6,800-square-foot easement in order to provide water and sewer service to both JYF's planned expansion and any development on the remaining Yacht Basin property. He stated that in consideration of the JCSA extending water and sewer to the property at the request of the County, no cost will be assessed to the JCSA for the easement.

Staff recommended approval of the resolution.

Mr. Goodson opened the Public Hearing.

As no one wished to speak to this matter, Mr. Goodson closed the Public Hearing.

Mr. McGlennon made a motion to adopt the resolution.

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

## **RESOLUTION**

### **CONVEYANCE OF A WATER/SEWER EASEMENT TO THE**

#### **JAMES CITY SERVICE AUTHORITY (JCSA)**

WHEREAS, James City County owns certain real estate property at the Jamestown Yacht Basin commonly known as 2070 Jamestown Road and designated as Parcel No. 4640100018 on the James City County Real Estate Tax Map; and

WHEREAS, the Jamestown-Yorktown Foundation ("JYF") will purchase 6.5 acres of the Yacht Basin property in order to expand its existing facilities and to further provide for its educational, historical, and museum purposes; and

WHEREAS, the JCSA requires a water/sewer easement in order to provide service to JYF's planned expansion and the County's development of the remaining Yacht Basin Property; and

WHEREAS, after holding a public hearing the Board of Supervisors is of the opinion that it is in the public interest to convey a 6,800-square-foot water/sewer easement to the JCSA.

NOW THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the County Administrator to execute all documents necessary to convey a 6,800-square-foot water/sewer easement to the JCSA from the Jamestown Yacht Basin property.

## **H. BOARD CONSIDERATIONS**

Mr. Goodson recommended that the first item be tabled and recommended deferring the second item to August 12, 2008, based on discussions during the work session.

1. Support for the Williamsburg Regional Medical Center Certificate of Public Need (COPN)
2. 2008 Comprehensive Plan Review Steering Committee Appointment



## **I. PUBLIC COMMENT**

1. Mr. Ed Oyer, 139 Indian Circle, commented that there were 797 new private school pupil seats becoming available in the next two years, which could be increased with the St. Olaf's Catholic Church expansion.

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

Mr. Wanner stated that the meeting on August 12, 2008, was the only meeting in August and that staff has scheduled a work session meeting on the James City County Code of Ethics at 4 p.m. on that date. He stated that all the Boards and Commissions were asked to submit feedback for the Board's information to be discussed at this meeting and stated that the Board should also discuss the Comprehensive Plan Steering Committee appointments prior to action that evening. He stated that when the Board completed its business, it should recess to the specially scheduled work session on August 12, 2008, at 4 p.m. and then hold a meeting of the James City Service Authority Board of Directors.

## **K. BOARD REQUESTS AND DIRECTIVES**

Mr. Goodson stated that thank-you letters were received from Virginians for High Speed Rail and the Jamestown-Yorktown Foundation for its financial contributions to their efforts. He stated that the Board had directed the Chairman to write a letter to Anheuser-Busch and InBev to be sent to the chairman and president of the companies recognizing Anheuser-Busch's investments in James City County and express the interests of the Board in the negotiations. He stated in the letter that he recognized the exceptional stewardship of Anheuser-Busch in James City County, expressed appreciation on behalf of the Board, and offered the County's assistance in the future with the transition.

Mr. Icenhour commented on the J4C report that was distributed to the Board and on approved development in the County, and stated that the study assumes there will be no more rezonings that increase density. He stated that this was unlikely and that the potential for development within the Primary Service Area could potentially increase County population to over 200,000. He stated his agreement with the matters of water demands, traffic and congestion, and Chesapeake Bay Preservation Ordinance standards. He thanked the J4C for its efforts. He also requested the feasibility of updating the Powhatan Creek and Yarmouth Creek Watershed Management Plans to reflect current impervious cover figures for each sub watershed and stated that the update should also base the projected impervious covers at buildout on density of the comprehensive land use designation instead of by-right density of the current zoning. He asked that staff come back at the August 12, 2008, meeting to inform the Board what the requirements and timeframe needs would be to complete this.

Mr. McGlennon commented on the recent loss of Mr. Melvin Washington, who operated a service station for many years in the County. He stated that he was a man of great care and integrity and an asset to the community.

Mr. Kennedy stated that on Friday evening, he attended the dedication of the new Farmer's Market in Toano at the Volunteer Fire Station. He stated that he attended the Agricultural and Forestal District (AFD) Advisory Committee meeting and the AFD Committee has requested that the Board adopt a policy on the withdrawal of land from AFDs. He stated that he attended the Williamsburg Area Destination Marketing Committee (WADMC) meeting yesterday, discussed issues on tourism this year, and met with Mayor Zeidler and Mr. Zaremba to discuss Anheuser-Busch and InBev.

Ms. Jones stated this morning that she attended the Regional Issues Committee meeting and that York County and City of Williamsburg have passed resolutions on coordinated efforts on the regional Comprehensive Plan update. She stated that a meeting would be scheduled in September with these jurisdictions and the County.

Mr. Goodson stated that following the Work Session, a Closed Session was held during which Samuel Lazarus was appointed to an unexpired term on the Colonial Services Board, Douglas Gebhardt was reappointed and Paul Gerhardt was appointed to the Economic Development Authority, and Lynda Byrd-Poller was appointed to the Williamsburg Regional Library Board of Trustees.

Mr. Fraley stated that a cumulative impact study would be done during the Comprehensive Plan update and would do a transportation modeling report. He stated that based on Mr. Jarman's comment, he did not want citizens to misunderstand how traffic studies were done and that cumulative impact was taken into consideration over the last two and a half years. He stated that an independent consultant reviewed traffic analysis for any major project.

**L. RECESS** to 4 p.m. on August 12, 2008.

Mr. McGlennon made a motion to recess.

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

At 8:11 p.m. Mr. Goodson adjourned the Board to 4 p.m. on August 12, 2008.

---

Sanford B. Wanner  
Clerk to the Board

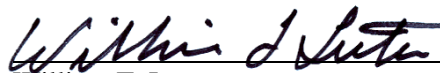
MEMORANDUM

DATE: August 12, 2008  
TO: The Board of Supervisors  
FROM: William T. Luton, Fire Chief  
SUBJECT: Grant Award - Radiological Emergency Preparedness Funds - \$25,000


---

The Virginia Department of Emergency Management (VDEM) has awarded the James City County Fire Department funds for Radiological Emergency Management and Planning in the amount of \$25,000. This award consists of pass-down funding from Dominion Nuclear Power to the Virginia Department of Emergency Management that is then passed to the localities within the 10-mile evacuation protection zone for the Surry Nuclear Power Plant. There is no requirement for local matching funds. The funds will be used for planning and response for public protective actions related to the Surry Nuclear Power Plant – Radiological Emergency Preparedness.

Staff recommends adoption of the attached resolution.

  
William T. Luton

CONCUR:

  
Sanford B. Wanner

WTL/nb  
RadPIFnd\_mem

Attachment

## **RESOLUTION**

### **GRANT AWARD - RADIOLOGICAL EMERGENCY PREPAREDNESS FUNDS - \$25,000**

WHEREAS, the Virginia Department of Emergency Management (VDEM) has awarded the James City County Fire Department funds for Radiological Emergency Management and Planning in the amount of \$25,000; and

WHEREAS, the funds will be used for planning and response for public protective actions related to the Surry Nuclear Power Plant – Radiological Emergency Preparedness.

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

**Revenue:**

Radiological Emergency Preparedness Funds	<u>\$25,000</u>
-------------------------------------------	-----------------

**Expenditure:**

VDEM 2008 Radiological/Nuclear Pass Down	<u>\$25,000</u>
------------------------------------------	-----------------

---

Bruce C. Goodson  
Chairman, Board of Supervisors

ATTEST:

---

Sanford B. Wanner  
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 12th day of August, 2008.

RadPIFnd\_res

MEMORANDUM

DATE: August 12, 2008

TO: The Board of Supervisors

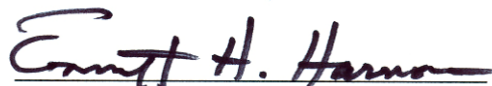
FROM: Emmett H. Harmon, Chief of Police

SUBJECT: Grant Award – Williamsburg Community Health Foundation – \$1,000

---

The Williamsburg Community Health Foundation (WCHF) has awarded the James City County Police Department a grant in the amount of \$1,000. There is no County match required. The funds are to be used toward the purchase of CPR mannequins and student/instructor manuals.

Staff recommends adoption of the attached resolution.

  
Emmett H. Harmon

CONCUR:

  
Sanford B. Wanner

EHH/nb  
WCFGntAwd\_mem

Attachment

## **RESOLUTION**

### **GRANT AWARD – WILLIAMSBURG COMMUNITY HEALTH FOUNDATION – \$1,000**

WHEREAS, the Williamsburg Community Health Foundation (WCHF) has awarded the James City County Police Department a grant in the amount of \$1,000; and

WHEREAS, the funds are to be used toward the purchase of CPR mannequins and student/instructor manuals.

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

**Revenue:**

WCHF – CPR Supplies	<u>\$1,000</u>
---------------------	----------------

**Expenditure:**

WCHF – CPR Supplies	<u>\$1,000</u>
---------------------	----------------

---

Bruce C. Goodson  
Chairman, Board of Supervisors

ATTEST:

---

Sanford B. Wanner  
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 12th day of August, 2008.

WCFGntAwd\_res

MEMORANDUM

DATE: August 12, 2008  
TO: The Board of Supervisors  
FROM: Grace A. Boone, General Services Operations Administrator  
SUBJECT: Installation of "Watch for Children" Signs – Indigo Park Subdivision

---


Effective July 1, 1997, the Code of Virginia was amended to allow counties to request the Virginia Department of Transportation (VDOT) install and maintain "Watch for Children" signs. The law requires that a Board of Supervisors resolution be submitted to VDOT authorizing it to take this action and allocating secondary road system maintenance funds for this purpose.

Residents of the Indigo Park community have requested the Board of Supervisors seek approval for two "Watch for Children" signs to be installed: one on Stanley Drive and one on Duer Road at the location shown on the attached map. The attached resolution requests VDOT install and maintain the "Watch for Children" signs located on Stanley Drive and on Duer Road.

Staff recommends adoption of the attached resolution.

  
Grace A. Boone

CONCUR:

  
John T.P. Horne

GAB/nb  
WatchSigns\_mem

Attachments

## **RESOLUTION**

### **INSTALLATION OF “WATCH FOR CHILDREN” SIGNS – INDIGO PARK SUBDIVISION**

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

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

WHEREAS, residents of the Indigo Park community have requested that “Watch for Children” signs be installed on Stanley Drive and Duer Road as illustrated on the attached map titled “Indigo Park Subdivision ‘Watch for Children Signs’.”

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

---

Bruce C. Goodson  
Chairman, Board of Supervisors

ATTEST:

---

Sanford B. Wanner  
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 12th day of August, 2008.

WatchSigns\_res



# INDIGO PARK SUBDIVISION - "WATCH FOR CHILDREN" SIGNS



This drawing is neither a legally recorded map nor a survey and is not intended to be used as such. The information displayed is a compilation of records, information, and data obtained from various sources, and James City County is not responsible for its accuracy or how current it may be. If discrepancies are found, please contact the Real Estate Assessment Division of James City County, Mapping/GIS Section.

1 inch equals 200 feet

0 0.025 0.05 Miles



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

DATE: August 12, 2008

TO: The Board of Supervisors

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

SUBJECT: Affirmation of Authorization to Pick up the Employee's Contribution to VRS for James City County, 5514 under § 414(h) of the Internal Revenue Code

---

Since 1979, the County has picked up the employee's five percent share of their Virginia Retirement System (VRS) contribution. Staff has been notified by the VRS that due to a recently revised IRS ruling, each employer must adopt a formal resolution reaffirming its "pickup" plan in order to continue allowing the member contribution to be treated on a pre-tax basis. Failure to adopt the resolution, as drafted by the IRS, would not change the requirement that the County pays the employee share but could result in reversing the favorable tax treatment of the County's member contributions. This could impose significant additional multiyear reporting and recordkeeping burdens on the County and subject the employees and the County to additional tax liabilities.

Staff recommends adoption of the attached resolution.

---

Carol M. Luckam

CONCUR:

---

John E. McDonald

CML/gb  
VRSJCC\_mem

Attachment

## **RESOLUTION**

### **AFFIRMATION OF AUTHORIZATION TO PICK-UP THE EMPLOYEE'S CONTRIBUTION**

### **TO VRS FOR JAMES CITY COUNTY, 5514 UNDER § 414(h) OF THE**

### **INTERNAL REVENUE CODE**

WHEREAS, James City County (the County) provides its employees with tax deferral pursuant to § 414(h) of the Internal Revenue Code with respect to their member contributions to the Virginia Retirement System (VRS) by picking up member contributions to VRS; and

WHEREAS, VRS keeps track of such picked up member contributions, and treats such contributions as employee contributions for all purposes of VRS; and

WHEREAS, the Internal Revenue Service in Notice 2006-43 has provided transition relief for existing pick-up arrangements provided that an authorized person takes formal action to evidence the establishment of the pick-up arrangement no later than January 1, 2009; and

WHEREAS, in order to avail itself of the protection given under Notice 2006-43, the County desires to affirm its intention to establish and maintain a pick-up arrangement through formal action by its governing body.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of James City County, Virginia, that the existing member contribution pick-up arrangement is hereby affirmed as it relates to salary reduction elections in effect prior to the date of this resolution.

BE IT FURTHER RESOLVED that effective the first pay day on or after August 12, 2008, the County shall pick up member contributions of its employees to VRS, and such contributions shall be treated as employer contributions in determining tax treatment under the Internal Revenue Code of the United States.

BE IT FURTHER RESOLVED that such contributions, although designated as member contributions, are to be made by the County in lieu of member contributions.

BE IT FURTHER RESOLVED that pick-up member contributions shall be paid from the same source of funds as used in paying the wages to affected employees.

BE IT FURTHER RESOLVED that member contributions made by the County under the pick-up arrangement shall be treated for all purposes other than income taxation, including but not limited to VRS benefits, in the same manner and to the same extent as the County directly instead of having them paid to VRS.

BE IT FURTHER RESOLVED that nothing herein shall be construed so as to permit or extend an option to VRS members to receive the pick up contributions made by the County directly instead of having them paid to VRS.

BE IT FURTHER RESOLVED that notwithstanding any contractual or other provisions, the contributions of each member of VRS who is an employee of the County shall be picked up either through a reduction in the current salary of such employee or as an offset against future salary increases of such employee or as a combination of both at the option of the employer by the County on behalf of such employee pursuant to the foregoing resolutions.

---

Bruce C. Goodson  
Chairman, Board of Supervisors

ATTEST:

---

Sanford B. Wanner  
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 12th day of August, 2008.

VRJCC\_res

**MEMORANDUM**

DATE: August 12, 2008

TO: The Board of Supervisors

FROM: Suzanne R. Mellen, Assistant Manager of Financial and Management Services  
Frances C. Geissler, Stormwater Director

SUBJECT: Appropriation Resolution - Stormwater Service Fee Fund Balance

---

With the elimination of the Stormwater Utility fee in FY 2009, the fund that accounted for all of the expenses has also been eliminated. In FY 2009 the accounting of Stormwater operations and projects is now in the General, Capital Projects and Special Projects/Grants funds. Remaining funds from the FY 2008 Stormwater Fund need to be transferred to these other funds to cover outstanding commitments, payment of credit program fees, and any residual amounts will be used for drainage improvement projects.

The attached resolution authorizes the equity transfers from the Stormwater Fund to the General, Capital Projects and Special Projects fund. The resolution also appropriates funding in the General Fund and Special Projects Fund for payment of the Stormwater encumbrances that were outstanding as of June 30, 2008.

At year-end of FY 2008, the Stormwater Fund produced a balance of approximately \$1,344,106. Of this balance, \$600,000 was incorporated as capital revenue in the FY 2009 Capital Budget and was used, in part, to fund the FY 2009 water quality capital budget, and \$244,106 is committed for outstanding operating encumbrances. The fund balance in excess of these two amounts needs to be appropriated in accordance with Section 18A-3 of the James City County Code which identifies specific uses for funds generated by the stormwater service fee. Identified uses include costs associated with administering the County's Stormwater Program and maintaining the stormwater infrastructure.

Section 18A-7 of the James City County Code established a credit program to recognize property owners for their efforts in support of the County Stormwater Program. In January 2008, the Stormwater Division published the FY 2008 Credit Manual, outlining the credit program goals and the process for securing credits. Letters were sent to all eligible property owners announcing the credit program and inviting them to a workshop held on February 26, 2008. Information was also posted on the County website. In order to ensure that all interested and eligible property owners had adequate time to apply for credits, the deadline for applications was extended to July 31, 2008. Credit applications received and/or processed after June 30, 2008, total less than \$15,000. These credits represent administrative costs for the stormwater management program.


The adopted FY 2009 Budget did not set aside specific funds for drainage maintenance within the County. This decision was not based on a lack of support for drainage-related maintenance projects, but on the reality of available funding. Appropriating the remaining fund balance for capital maintenance projects will provide funds for emergency repairs and critically needed upgrades while allowing the water-quality capital budget to be used for larger projects with broader scopes. Again, this use is consistent with the intent of the Stormwater Fund.

The attached resolution appropriates the remaining Stormwater Fund in accordance with the uses identified in Section 18A-3 of the James City County Code: up to \$15,000 for stormwater service fee credits and the remaining approximately \$485,000 for capital maintenance projects, also known as drainage improvements program.

Staff recommends approval of the attached resolution.

---

Suzanne R. Mellen



---

Frances C. Geissler

CONCUR:



---

John T.P. Horne

SRM/FCG/nb  
ResApprop\_mem

Attachment

## **RESOLUTION**

### **APPROPRIATION RESOLUTION - STORMWATER SERVICE FEE FUND BALANCE**

- WHEREAS, the Stormwater Management Fund contains an estimated FY 2008 year-end fund balance of \$1,344,106; and
- WHEREAS, Section 18A-3 of the James City County Code identifies specific uses for the Stormwater Management Fund, including costs associated with administering the County's Stormwater Program and maintaining the stormwater infrastructure; and
- WHEREAS, \$600,000 of the Stormwater fund balance needs to be transferred to the Capital Projects fund for the FY 2009 water quality projects; and
- WHEREAS, it is now necessary to transfer and appropriate the remaining Stormwater Management Fund balances to carry out the activities identified in the James City County Code.
- NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of James City County, Virginia, that \$600,000 is hereby transferred, and the remaining Stormwater funds are hereby transferred and appropriated in the General and Special Projects/Grants Fund for the activities in the amounts shown below:

#### **General Fund**

##### **Revenue:**

Fund Balance from Stormwater Utility	<u>\$244,106</u>
--------------------------------------	------------------

##### **Expenditure:**

Stormwater Division Outstanding Encumbrances	<u>\$244,106</u>
----------------------------------------------	------------------

#### **Special Projects Fund**

##### **Revenue:**

Fund Balance from Stormwater Utility	<u>\$500,000</u>
--------------------------------------	------------------

##### **Expenditures:**

FY 2008 Credit Payments	\$15,000
-------------------------	----------

Drainage Improvements Program	<u>485,000</u>
-------------------------------	----------------

Total Expenditures	<u>\$500,000</u>
--------------------	------------------

---

Bruce C. Goodson  
Chairman, Board of Supervisors

ATTEST:

---

Sanford B. Wanner  
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 12th day of  
August, 2008.

ResApprop\_res



**MEMORANDUM**

DATE: August 12, 2008

TO: The Board of Supervisors

FROM: John E. McDonald, Manager, Financial and Management Services

SUBJECT: Refinancing – Virginia Public School Authority (VPSA) \$516,817

---

The Board of Supervisors has previously appropriated \$516,817 in savings generated by a refinancing of several Virginia Public School Authority bond issues, including a 1997 bond issue that the County used for school projects. The money was appropriated for new school construction. Staff has been working through VPSA and its agents in New York to actually claim the proceeds.

The attached resolution authorizes the County Administrator to execute a Continuing Disclosure Agreement, which requires the County to provide audited financial information to several bond clearing houses and Use of Proceeds Certificate, which requires the additional proceeds be spent on school construction.

Staff recommends the adoption of the attached resolution, which is in the form required by VPSA and its bond counsel.

---

John E. McDonald

JEM/nb  
VPSA\_mem

Attachment

## **RESOLUTION**

**AUTHORIZATION OF THE EXECUTION AND DELIVERY OF A CONTINUING**

**DISCLOSURE AGREEMENT IN CONNECTION WITH THE ISSUANCE BY THE VIRGINIA**

**PUBLIC SCHOOLS AUTHORITY OF ITS SCHOOL FINANCING BONDS (1997**

**RESOLUTION) REFUNDING SERIES 2003D, A PORTION OF THE PROCEEDS OF WHICH**

**REFUNDED THE JAMES CITY COUNTY GENERAL OBLIGATION SCHOOL BONDS,**

**REFUNDING SERIES 1994A; AND AUTHORIZING ANY OTHER ACTIONS NECESSARY TO**

**ACHIEVE THE OBJECTIVES CONTEMPLATED HEREBY**

WHEREAS, the Virginia Public School Authority (the "Authority") pursuant to (i) a bond resolution adopted on May 21, 1963, as amended (the "1963 Resolution"); (ii) a bond resolution adopted on August 13, 1987, as amended and supplemented (the "1987 Resolution"); and (iii) a bond resolution adopted on October 23, 1997, as amended, restated and supplemented (the "1997 Resolution") issued bonds (respectively, the "1963 Resolution Bonds", the "1987 Resolution Bonds" and the "1997 Resolution Bonds") for the purpose of purchasing general obligation school bonds of certain cities and counties within the Commonwealth of Virginia; and

WHEREAS, the Authority used a portion of the proceeds of certain 1963 Resolution Bonds and certain 1987 Resolution Bonds to purchase certain duly authorized and issued general obligation school bonds of the James City County, Virginia (the "County") designated the James City County School Bonds, Series of 1987A, Series of 1988, Series 1990A, Series 1990B, and 1991 Series B and the James City County General Obligation School Bond, Series 1992 Series A ("Prior Local School Bonds"); and

WHEREAS, the Authority has issued under the 1987 Resolution two series of 1987 Resolution Bonds designated as "School Financing Bonds (1987 Resolution) 1991 Refunding Series C (the "Series 1991 C Bonds") and "School Financing Bonds (1987 Resolution) 1993 Refunding Series B" (the "Series 1993B Bonds"); and

WHEREAS, the Authority refunded certain 1963 Resolution Bonds and certain 1987 Resolution Bonds with a portion of the proceeds of its Series 1991C Bonds and Series 1993B Bonds and, in connection therewith, the County exchanged its Prior Local School Bonds with a duly authorized and issued general obligation school bond designated the James City County General Obligation School Bond, Refunding Series 1994A (the "Local School Bonds"); and

WHEREAS, the Authority refunded its Series 1991C Bonds and Series 1993B Bonds (“Refunded Bonds”) with a portion of the proceeds of its Virginia Public School Authority School Financing Bonds (1997 Resolution) Refunding Series 2003D (the “Refunding Bonds”) issued pursuant to the 1997 Resolution; and

WHEREAS, the Authority in refunding the Refunded Bonds has pledged the Local School Bonds for the benefit of the holders of bonds issued under its 1997 Resolution; and

WHEREAS, the Authority is required to assist the underwriters (the “Underwriters”) of the Refunding Bonds with their duty to comply with Securities and Exchange Commission (“SEC”) Rule 15c2-12 (the “Rule”); and

WHEREAS, the Authority has requested the County to execute a Continuing Disclosure Agreement in order for the Authority to assist the Underwriters in complying with the Rule; and

WHEREAS, the Board of Supervisors of the County of James City County, Virginia considers it to be advisable for the County to fulfill the request of the Authority to execute a Continuing Disclosure Agreement.

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

1. Continuing Disclosure Agreement

The Chairman of the Board of Supervisors, the County Administrator and such officer or officers as they may designate are hereby authorized to enter into a Continuing Disclosure Agreement substantially in the form attached as Appendix A hereto, containing such covenants as may be necessary in order for compliance with the provisions of the Rule, and any other documents the Authority deems necessary to comply with the SEC rules and any Internal Revenue Service rules and regulations regarding maintaining the tax-exempt status of the bonds.

2. Use of Proceeds Certificate

The Chairman of the Board of Supervisors, the County Administrator and such officer or officers as they may designate are hereby authorized to enter into a Use of Proceeds Certificate substantially in the form attached as Appendix B hereto, containing such covenants as may be necessary in order for compliance with any Internal Revenue Service rules and regulations regarding maintaining the tax-exempt status of the bonds.

3. Further Actions

The members of the Board and all officers, employees and agents of the County are hereby authorized to take such action as they or any one of them may consider necessary or desirable in connection with the execution and delivery of the Continuing Disclosure Agreement and the Use of Proceeds Certificate and maintaining the tax-exempt status of the bonds, and any such action previously taken is hereby ratified and confirmed.

4. Effective Date

This resolution shall take effect immediately.

The undersigned Clerk of the Board of Supervisors of James City County, Virginia, hereby certifies that the foregoing constitutes a true and correct extract from the minutes of a meeting of the Board of Supervisors held on the 12th day of August, 2008, and of the whole thereof so far as applicable to the matters referred to in such extract. I hereby further certify that such meeting was duly held and complied with all requirements of law.

---

Bruce C. Goodson  
Chairman, Board of Supervisors

ATTEST:

---

Sanford B. Wanner  
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 12th day of August, 2008.

2003DSavDist\_res

**MEMORANDUM**

DATE: August 12, 2008

TO: The Board of Supervisors

FROM: David W. German, Senior Planner

SUBJECT: Readoption of Emergency Ordinance No. 170A-15 to Confirm AFD-9-86-03-2007. Gordon Creek "Warburton Tract" Withdrawal

---

**Background:**

In July 2007, Realtec, Inc. applied for a rezoning of the property located at 3889 News Road, further identified as James City County Real Estate Tax Map No. 3730100004, to support its plans to develop this property as a Continuing Care Retirement Community (CCRC). The CCRC would be added to the Ford's Colony Master Plan as Section 37 of the overall R-4, Residential Planned Community, development. This rezoning application and associated Ford's Colony master plan amendment were identified as Case No. Z-0008-2007/MP-0006-2007. *The Village at Ford's Colony*.

In conjunction with its rezoning application, Realtec, Inc. also applied to withdraw the subject property from the Gordon Creek Agricultural and Forestal District (AFD), in accordance with the *Withdrawal of Lands from Agricultural and Forestal Districts within the Primary Service Area* policy adopted by the Board of Supervisors on September 24, 1996 (see attached). This request for withdrawal was identified as Case No. AFD-9-86-03-2007. Gordon Creek ("Warburton Tract") Withdrawal.

The AFD Advisory Committee met on May 5, 2008, to consider the request for withdrawal that had been received from Realtec Inc. After deliberation on the case, the AFD Advisory Committee voted 4-2 to recommend to the Planning Commission and Board of Supervisors that the subject property be removed from the Gordon Creek AFD.

On June 4, 2008, the Planning Commission voted 4-3 to recommend to the Board of Supervisors that the rezoning application and master plan amendment for the CCRC property be approved. On July 8, 2008, the Board of Supervisors voted 3-2 to approve the rezoning application and the master plan amendment, along with the requested withdrawal from the Gordon Creek AFD.

Prior to the Board Meeting on July 8, a procedural error related to the handling of the AFD withdrawal portion of the case was discovered. Specifically, the AFD component of the applications being considered had not been properly included in the advertisements that were published prior to the Planning Commission and Board of Supervisors meetings. While the actions of the AFD Advisory Committee were discussed in the staff reports and staff presentations for both the Planning Commission and Board of Supervisors Meetings, it was found that this inadvertent omission constituted a lack of proper notification to the public.

To remedy this situation, the Board of Supervisors enacted Emergency Ordinance No. 170A-15 to allow the rezoning application to be brought forth and acted upon by the Board on July 8, 2008. The State Code requires that a public hearing be held on the emergency ordinance within 60 days of adoption (no later than September 6, 2008) to remain valid. To meet this requirement, the Planning Commission heard the emergency ordinance at its meeting August 6, 2008. The Planning Commission considered whether to recommend withdrawal of the CCRC to the Board of Supervisors at the conclusion of its public hearing. Additionally, the Board will hear public comment on the withdrawal of the CCRC property from the AFD at its public hearing on August 12, 2008, after which the Board will consider the readoption.

**Planning Commission Recommendation:**

The Planning Commission voted 3-3 on this ordinance.

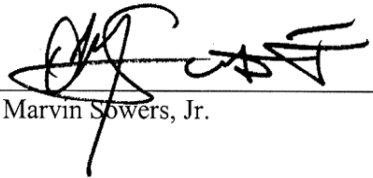
**Recommendation:**

Planning staff recommends that the Board of Supervisors approve the withdrawal of the subject parcel from the Gordon Creek AFD.

---

David W. German

CONCUR:



---

O. Marvin Sowers, Jr.

DWG/nb  
RAOrd170A-15\_mem

Attachments:

1. Minutes from August 6, 2008, Planning Commission Meeting
2. Ordinance
3. Copy of Board Policy: *Withdrawal of Lands from Agricultural and Forestal Districts within the Primary Service Area*

## **ORDINANCE NO. 170A-15**

### **AN ORDINANCE TO APPROVE THE WITHDRAWAL OF**

### **A PARCEL OF PROPERTY KNOWN AS THE WARBURTON TRACT FROM THE**

### **GORDON CREEK AGRICULTURAL AND FORESTAL DISTRICT**

- WHEREAS, Mr. Vernon M. Geddy, III has filed a request with the Board of Supervisors of James City County (the "Board of Supervisors") on behalf of Realtec, Inc. to remove the 180.7-acre "Warburton Tract" located at 3889 News Road and further identified as James City County Real Estate Tax Map No. 3730100004 (the "Property") from the Gordon Creek Agricultural and Forestal District (the "Application"); and
- WHEREAS, at its May 5, 2008, meeting, the James City County Agricultural and Forestal District (AFD) Advisory Committee recommended approval of the Application by a vote of 4 to 2; and
- WHEREAS, at its meeting on July 2, 2008, the Planning Commission of James City County (the "Planning Commission") recommended approval of the Application by a vote of 4 to 3; and
- WHEREAS, subsequent to the Planning Commission's meeting, it was discovered that the Application was not properly advertised for either the July 2, 2008, Planning Commission meeting or the July 8, 2008 Board of Supervisors meeting; and
- WHEREAS, the Application was properly re-advertised for the August 6, 2008 Planning Commission meeting and the August 12 Board of Supervisors meeting; and
- WHEREAS, at its meeting on August 6, 2008, the Planning Commission voted 3 to 3 on this ordinance; and
- WHEREAS, the Board of Supervisors finds that the withdrawal request conforms to the applicable Board of Supervisors policy regarding removal of lands from an AFD within the Primary Service Area, which policy is set forth in the resolution dated September 24, 1996 and entitled "Withdrawal of Lands from the Gordon Creek Agricultural and Forestal Districts Within the Primary Service Area."
- NOW, THEREFORE, BE IT ORDAINED by the Board of Supervisors of James City County, Virginia, that pursuant to the authority granted by Section 15.2-1427(F) of the Code of Virginia, 1950, as amended, the Board of Supervisors of James City County, Virginia hereby removes the 180.7-acre property commonly known as the Warburton Tract, located at 3889 News Road and further identified as James City County Real Estate Tax Parcel No. 3730100004 from the Gordon Creek Agricultural and Forestal District.

BE IT FURTHER ORDAINED, that the emergency ordinance adopted by the Board on July 8, 2008, is hereby readopted by the Board of Supervisors of James City County, Virginia.

---

Bruce C. Goodson  
Chairman, Board of Supervisors

ATTEST:

---

Sanford B. Wanner  
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 12th day of August, 2008.

EmergencyOrd081208\_res



UNAPPROVED MINUTES FROM THE AUGUST 6, 2008 PLANNING COMMISSION  
MEETING

Readoption of Emergency Ordinance No. 170A-15

Mr. David German reported that on July 20, 2007, Realtec, Inc. applied to rezone the property located at 3889 News Road in support of its plans to construct a Continuing Care Retirement Community (or CCRC), to be known as the Village at Ford's Colony. This application was considered by the Agricultural and Forestry District Advisory Committee on May 5, 2008, where it was recommended that the property be withdrawn from the Gordon Creek Agricultural and Forestry District (AFD), in support of the applicant's request, on a 4-2 vote.

Prior to the Board of Supervisors meeting on July 8th, it was discovered that the request to withdraw the subject property from the Gordon Creek AFD had not been properly advertised before the Planning Commission and Board of Supervisors meetings. To address this Staff oversight, the Board enacted Emergency Ordinance 170A-15 to allow for the withdrawal of the subject property from the AFD. The case has subsequently been properly re-advertised. The State Code requires that public hearings be held, and that the Emergency Ordinance be re-adopted by the Board of Supervisors within sixty days of its original adoption to remain valid.

In keeping with this requirement, the Emergency Ordinance has been brought before the Planning Commission for a public hearing this evening. The Emergency Ordinance will subsequently be taken before the Board of Supervisors for a second public hearing, and for a re-adoption vote. Mr. German stated that Staff recommends that the Planning Commission recommend approval of the withdrawal of the subject property from the Gordon Creek AFD to the Board of Supervisors, in support of the Emergency Ordinance.

Mr. Billups asked about the determination as to whether the withdrawal from the AFD is in compliance with the Comprehensive Plan.

Mr. German stated that staff makes that determination, and that Staff had found the application to be in conformance.

Mr. Obadal asked if there was a motion by which this was declared an emergency.

Mr. Kinsman answered that there was no motion to declare it an emergency. He stated that the Board of Supervisors adopted an emergency ordinance. He stated that the Emergency Ordinance is good for sixty days, by which time the Board has to re-adopt that ordinance for it to remain valid.

Mr. Obadal expressed his doubts as to whether this is within the authority of the Board of Supervisors based upon the State Code and language of the ordinance. He stated that this emergency arose because the applicant, Realtec, Inc., needed to meet a contractual obligation, and stated so publicly before the Board of Supervisors. He stated that it was at this point that the error in notification had been discovered.

Mr. German stated that the error that was found is that the general public hearing notices that were originally published for the case prior to the Planning Commission and Board of Supervisor meetings did not include a disclosure that the public hearings would include the AFD withdrawal.

Mr. Obadal stated that he felt that the action of declaring this situation an emergency was for the benefit of a private individual, and not for the benefit of the citizens of the County. Mr. Obadal referenced Sections 15.2 1102, 1200, and 1201, which he felt made clear that a municipal corporation may exercise all of the powers not expressly prohibited by the Constitution or the general laws and which are necessary and desirable to secure and promote the general welfare of the inhabitants of the County. He felt that this emergency ordinance did not meet these qualifications and does not serve a public purpose.

Mr. Kinsman stated the Board of Supervisors adopted the Emergency Ordinance which is only valid for sixty days unless it is re-adopted. He stated that the only emergency that can exist arises when there is not enough time to properly advertise a given case. He stated that this is what happened in this particular case. Mr. Kinsman stated that it was solely within the Board's purview to determine whether it would adopt the ordinance, pursuant to that section, when it finds itself without the time to properly advertise, and then send it back through the process to have it properly advertised. He stated that this is what has been done to this point.

Mr. Obadal asked about the wording of this being an emergency.

Mr. Kinsman clarified that the only emergency that can occur is that there is not enough time to properly advertise a given case, which is what happened in this instance.

Mr. Obadal asked if Mr. Kinsman could cite a case.

Mr. Kinsman stated the County has done this in past cases and could produce a list of previously adopted emergency ordinances. In each case, an emergency ordinance was adopted because there was not enough time to advertise.

Mr. Obadal stated that he felt that this would not for a public purpose.

Mr. Peck asked if the Planning Commission was operating under an emergency procedure, or if the normal publication timeline had been followed.

Mr. Kinsman stated the normal procedure of advertising had been done for this readoption.

Mr. Peck asked if the proper notices had been done, and noted that the issue of this being an emergency is an issue for the Board of Supervisors. He asked if the Planning Commission was to hear the merits of the withdrawal and that the application has been properly advertised in the proper time frames.

Mr. Kinsman answered this was correct.

Mr. Fraley asked about staff's recommendation and if the item the Planning Commission should be acting upon it to allow the withdrawal from the AFD.

Mr. Kinsman stated this is correct.

Mr. Henderson asked if the deliberations made tonight would have an effect on the rezoning and master plan application itself and also wanted to clarify that there would be no re-hearing of the rezoning application.

Mr. German stated tonight's deliberation by the Planning Commission would have no effect on the rezoning application, and that, that application would be heard again.

Mr. Fraley asked about the deliberations of the AFD Committee. He asked whether the Committee considered the withdrawal as being in compliance with the Comprehensive Plan.

Mr. German stated that staff made the recommendation to the AFD Committee that the withdrawal would be in conformance with the Comprehensive Plan.

Mr. Fraley asked about the two dissenting votes on the AFD Committee.

Mr. German answered that the two dissenting individuals felt that it was not in conformance with the Comprehensive Plan. He also stated that these individuals felt the project was too intensive for the parcel involved. Mr. German noted that at this point in their deliberations, the AFSD Committee was reviewing a larger version of the project than what was ultimately approved.

Mr. Fraley opened the public hearing.

Mr. Sheldon Franck spoke on behalf of the applicant. He stated he would answer any questions that the Commission might have.

Mr. Robert Richardson of 2786 Lake Powell spoke. He stated that he emailed his comments to the Commissioners and has put his comments on his website, [jccgov.org](http://jccgov.org). He stated that he does not feel that this is an emergency. Mr. Richardson felt that the developer, Realtec, and Mr. Henderson, want the application approved under the R-4 Zoning expansion of the Ford's Colony Master Plan. He stated he has no objections to the CCRC as designed with clustering, and with its environmental protections. He stated that this is a chance to resolve some of the issues still surrounding this case. Mr. Richardson stated that he felt the issues that still needed to be addressed were zoning, traffic, employee housing, and affordability. He felt that Mr. Henderson's involvement in this case began long before he began to serve on the Planning Commission. He felt that Mr. Henderson represents his own interests with regards to this case, and not those of the citizens of James City County. Mr. Richardson stated that his perspective is that Mr. Henderson has ethical conflicts of interest and should not have been appointed to the Planning Commission. He felt that a Commissioner should not stand to benefit from more

commercial development and more commercial real estate sales. Mr. Richardson requested Mr. Henderson to recuse himself from this vote and requested that the Planning Commissioners send this project back under R-5 Zoning. He felt that this project should be rezoned to R-5 and stand on its own merit, and not be included in the Ford's Colony Master Plan. He felt that the traffic on News Road would be severely affected. He felt that housing for the workers that will be needed for this project will increase the need for housing. Mr. Richardson stated he felt this project would not benefit the "typical" citizen of James City County.

Mr. Fraley closed the public hearing.

Mr. Henderson answered the comments made by Mr. Richardson. He felt that the comments made discredit Mr. Henderson, and not the Commission. He stated that he understands Mr. Richardson's disappointment in having his application to various boards and committees rejected by the Board of Supervisors. Mr. Henderson stated that his original application for the Planning Commission was filed over 8 years ago and was never acted upon. He stated that his disappointment is understandable, but that his reaction and continued berating of this Commission and Board of Supervisors is not. Mr. Henderson stated that he can understand Mr. Richardson's disappointment in not having his application to add a rental unit onto his residence denied. He stated that Mr. Richardson is not the first property owner who has had his plans to increase his net worth by overdeveloping his own property in a residential area to the detriment of his neighbors denied. Mr. Henderson stated that whatever Mr. Richardson may feel toward those who have rejected his applications to serve, and who have rejected his property improvement plans, does not constitute grounds for attacking him, the Planning Commission, or the Board of Supervisors. Mr. Henderson stated that he will not tolerate Mr. Richardson's continued assault on his good name and reputation. He felt that Mr. Richardson's comments are defamatory, liable, and actionable. He stated that the majority of the Commission voted to approve the CCRC application, and there is no way to know whether the outcome would have been any different had Mr. Henderson not been on the Commission. Mr. Henderson stated that he does not benefit personally from serving on the Commission; instead it costs him dearly. He also stated that the majority of information on Mr. Richardson's website was not accurate.

Mr. Henderson stated for the record that he has no intention of resigning, and that he will fulfill the responsibilities of his appointed term. He stated he takes positions based on a set of principles that include the protection of the rights of the property owner, a belief in the free enterprise system, and a commitment to limiting government intrusion in our lives. He stated that the County Attorney and the Commonwealth Attorney have confirmed that he has no conflict of interest. Mr. Henderson voted that the withdrawal of the property from the AFD is not before the Commission tonight because of him. He stated that he was assured by staff that all appropriate measures had been taken for the proper withdrawal of the CCRC land site from the AFD. Unfortunately, this was not the case. The Emergency Ordinance is now before the Commission that was passed by the Board of Supervisors to correct staff's error. Mr. Henderson stated that he agrees with the majority of the Board, and that it would be unfair to penalize any applicant for such a staff error.

Mr. Obadal stated that it was his understanding that the Commission could discuss the Emergency Ordinance.

Mr. Billups stated that the decision before the Commission is to approve or deny the withdrawal from the AFD. He felt that the AFD withdrawal does not conform to the Comprehensive Plan. He does not see any public good coming out of this process.

Mr. Poole stated his concerns about the precedent that this may set. He cannot vote in support of this.

Mr. Peck stated that this was one of the most highly publicized projects in recent history. He felt that this meeting was held to clear up a technicality, and that ample notice was provided throughout the process. He appreciated staff's extra effort in providing notice. He felt comfortable supporting the withdrawal.

Mr. Fraley stated he does not feel that this would be a precedent but has concerns with the process being flawed. He also stated that he always felt that this project should have been brought forward as a standalone project with R-5 Zoning. He would like to see master planning in this area, with form-based zoning. Mr. Fraley stated that the Planning Commission has spent eight hours in public meetings on this project; therefore, there was ample notice.

Mr. Obadal stated that a public hearing had to be held for this Emergency Ordinance within 60 days of adoption to remain valid. He felt that this is on the agenda and felt that the Commission should be able to consider it as such.

Mr. Kinsman stated that an Emergency Ordinance can be adopted without prior notice, but that no such Ordinance shall be enforced for more than 60 days unless readopted. The Board of Supervisors made the decision to adopt the Ordinance. The decision before the Commission tonight is the withdrawal of the AFD.

Mr. Obadal felt that this involves following the law.

Mr. Poole made a motion to deny the Emergency Ordinance.

Mr. Obadal seconded the motion.

In a roll call vote the motion was not approved. (3-3) AYE: Billups, Poole, Obadal; NAY: Henderson, Peck, Fraley.

Mr. Fraley made a motion to approve the Emergency Ordinance.

Mr. Peck seconded the motion.

In a roll call vote the motion was not approved. (3-3) AYE: Henderson, Peck, Fraley; NAY: Billups, Poole, Obadal.

Mr. Kinsman suggested sending this case to the Board of Supervisors with a neutral recommendation.

Mr. Fraley made a motion to send the case to the Board of Supervisors with a neutral recommendation.

Mr. Poole seconded the motion.

In a roll call vote the motion was not approved. (3-3) AYE: Billups, Peck, Poole; NAY: Henderson, Obadal, Fraley.

Mr. Kinsman indicated that the case would be sent to the Board of Supervisors with a tied 3-3 vote, with the minutes of the Planning Commission meeting attached.

## RESOLUTION

### WITHDRAWAL OF LANDS FROM AGRICULTURAL AND FORESTAL DISTRICTS

#### WITHIN THE PRIMARY SERVICE AREA

- WHEREAS, the Board of Supervisors has determined that Agricultural and Forestal Districts (AFD) are a valuable tool to help protect the agricultural and forestal lands and industry in James City County; and
- WHEREAS, premature withdrawal of land from the Districts is contrary to the intent of the Board in allowing the establishment of these Districts; and
- WHEREAS, the Board of Supervisors recognizes that lands outside the Primary Service Area are intended to remain rural and the preferred use for rural lands is agricultural and forestal use; and
- WHEREAS, the Board of Supervisors recognizes that lands inside the Primary Service Area are intended for urban development at some point in the future and, therefore, are not expected to remain in agricultural and forestal use in the long term; and
- WHEREAS, the Board of Supervisors has previously adopted a resolution for the Withdrawal From Agricultural and Forestal Districts on December 18, 1989, which still remains in force outside the Primary Service Area; and
- WHEREAS, at each renewal, the Board will review urban development trends in the County, and consider carefully whether the general public interest continues to be served by allowing land within the Primary Service Area to remain in an Agricultural and Forestal District.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby establishes the following policy relating to the withdrawal of lands from AFD inside the Primary Service Area during the terms of those Districts. This policy in no way supersedes the provisions for withdrawal by right under Sections 15.1-1511F or 15.1-1513D of the Code of Virginia.

FOR AGRICULTURAL AND FORESTAL DISTRICTS WITHIN THE PRIMARY SERVICE AREA, the Board of Supervisors will use the minimum standards listed below. These standards are different standards from the standards applied to those districts located outside the Primary Service Area (PSA). They are in recognition that lands within the PSA are intended for urban development at some point in the future and, therefore, are not expected to remain in agricultural and forestal use in the long term. Lands outside the PSA are intended to remain rural and the preferred use for rural lands is agricultural and forestal use.

1. Withdrawals will be approved no more than once per year, per AFD, per landowner. This means that an owner of multiple parcels within an AFD will be allowed only one withdrawal per year from the AFD.


2. The minimum acreage for withdrawals shall be 75 acres, either as a single parcel or in combination with more than one parcel. Individual landowners who own less than 75 acres must withdraw all of their parcel from the District. Parcels withdrawn as part of any one request need not be contiguous.
3. The new land use shall be in conformance with the Comprehensive Plan. A formal application to convert the use of the property shall accompany any request for withdrawal, such as an application for rezoning, special use permit or other development plans. The application shall include a conceptual plan acceptable to the Director of Planning. The application for withdrawal and the application to convert the use of the property shall be submitted together and processed concurrently as a single development request.

The Board shall weigh each of the above criteria in its deliberation, but may also use whatever criteria and it deems appropriate for the individual case.



David L. Sisk  
Chairman, Board of Supervisors

ATTEST:



Sanford B. Wanner  
Clerk to the Board

<u>SUPERVISOR</u>	<u>VOTE</u>
TAYLOR	NAY
MAGOON	AYE
DEPUE	AYE
EDWARDS	AYE
SISK	AYE

Adopted by the Board of Supervisors of James City County, Virginia, this 24th day of September, 1996.

WtAgrFor.res



**SPECIAL USE PERMIT-0011-2008. Williamsburg Dog  
Staff Report for the August 12, 2008, 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:

**7:00 p.m.; Building F Board Room; County Government Complex**

June 4, 2008, 7:00 p.m.

July 8, 2008, 7:00 p.m. (applicant deferral)

August 12, 2008, 7:00 p.m.

**SUMMARY FACTS**

Applicant:

Mr. and Mrs. Matthew DiBiaso, The Williamsburg Dog

Land Owner:

Mr. Henry Branscome, Jr., John Tyler Commercial Center, L.L.C.

Proposal:

To operate a dog day care center with both indoor (5,000 square feet) and outdoor (3,500 square feet) use for between 30 and 40 dogs.

Location:

3317 Venture Lane, Unit D

Tax Map/Parcel No.

4711300003

Parcel Size

3.222 acres

Existing Zoning:

B-1, General Business

Comprehensive Plan:

Mixed Use

Primary Service Area:

Inside

**STAFF RECOMMENDATION**

The Planning Commission, at its June 4, 2008 meeting, recommended denial of this application by a vote of 5-2. Staff had recommended approval with the attached conditions. Should the Board of Supervisors wish to approve this application, staff has attached a resolution with conditions.

Staff Contact:

Leanne Reidenbach, Senior Planner

Phone: 253-6685

**Proposed Changes Made Since Planning Commission Meeting**

No changes have been made since the June 4, 2008, Planning Commission meeting.

## **PROJECT DESCRIPTION**

Mr. and Mrs. Matthew DiBiaso of The Williamsburg Dog have applied for a Special Use Permit (SUP) to allow for the operation of a 8,500-square-foot (5,000 indoor, 3,500 outdoor) dog day care center for between 30 and 40 dogs in an existing building on a parcel zoned B-1, General Business. Day care activities are proposed to occur both inside and outside the existing building between the hours of 7 a.m. and 6 p.m. The building is located in the John Tyler Commercial Center at 3317 Venture Lane and the DiBiasos have proposed to lease Unit D. It can further be identified as James City County Real Estate Tax Map No. 4711300003. The site is shown by the Comprehensive Plan as Mixed Use. Recommended uses include community-scale commercial development and neighborhood commercial and office uses with moderate-density residential development as a secondary use.

Staff has received numerous e-mails from adjacent property owners, mostly from Brandon Woods, in opposition to the proposed dog day care. These e-mails are attached to the staff report for your information. Staff has additionally received a petition signed by those in favor of the project. Individuals on the petition include dog owners that use the Waller Mill Dog Park and residents of Baron Woods.

## **SURROUNDING ZONING AND DEVELOPMENT**

The parcel is zoned B-1, General Business, and designated as part of the Five Forks Mixed Use area on the 2003 Comprehensive Plan Land Use Map. The Primary Principles for the Five Forks Area also apply to this project location. The project site is located within the John Tyler Commercial Center, which is zoned B-1, General Business, and has other commercial and industrial/warehousing uses to its south and west. The existing building is currently owned by Henry Branscome, Jr. An electrical supply company is housed in Unit A of the building and currently uses Units B and C as storage areas. Unit D is used as a supply storage area by a separate contractor.

The site is bordered by the Baron Woods residential neighborhood to the northwest, which is zoned R-2, General Residential, and the Brandon Woods residential neighborhood to the northeast, which is zoned R-1, Limited Residential. The closest home in Baron Woods is approximately 100 feet away from the existing rear fence of the unit and the closest home in Brandon Woods is 380 feet away from the rear fence. All of the B-1 areas are designated Mixed Use while Brandon Woods and Baron Woods are designated Low-Density Residential on the Comprehensive Plan.

## **PUBLIC IMPACTS**

### **Environmental**

**Watershed:** Mill Creek

**Environmental Staff Conclusions:** The Environmental Division has reviewed the proposal and has expressed concerns regarding the treatment of animal waste on the property. The applicant has agreed to dispose of solid animal waste expeditiously and to use hardwood mulch in the rear-fenced exercise area to facilitate infiltration and treatment of liquid wastes. Additionally, the applicant has agreed to minimize stormwater discharge through the outdoor exercise area by berming upland boundaries of the exercise area and rerouting existing downspouts that discharge to that area. Environmental Division staff believes that these measures are sufficient to adequately treat the waste and preserve water quality.

### **Public Utilities**

The site is located inside the Primary Service Area.

**JSCA Staff Conclusions:** The JSCA has reviewed the proposal and requested that the development of water conservation guidelines be included as a condition if approved. These guidelines, however, would

only apply to the specific unit proposed to be used as the dog day care facility and may include measures such as low-flow hose nozzles if used to wash dogs or outdoor areas.

### **Traffic**

The traffic generated by the dog day care falls well short of the volume necessary to require the submission of a formal traffic study. The Institute of Transportation Engineers (ITE) does not have a specific category for dog day care or kennel facilities, so staff used the category for child day care centers as a rough estimate. ITE estimates 67.8 a.m. peak hour trips and 69 p.m. peak hour trips for a child day care center. While a child day care is similar to a dog day care in terms of pickup and drop-off of children and animals, staff feels that a dog day care is likely to generate fewer trips. The applicant has stated that a maximum of 40 dogs would be kept at the day care on a given day with three to four employees plus the two owners. If each dog is dropped off and picked up once daily, it would indicate 40 maximum trips distributed over the course of the morning, and 40 over the course of the afternoon. Also important to note is that this is a reuse proposal for an existing building.

**2007 Traffic Counts (John Tyler Highway):** From Ironbound Road to the Westray Downs Subdivision there were 12,682 trips.

**2026 Volume Projected:** From Ironbound Road to Route 199 there is the projection of 12,000 trips. This portion of John Tyler Highway is listed in the “watch” category.

**VDOT Conclusions:** VDOT has reviewed the proposal and had no objections to the building’s use as a dog day care facility.

## **COMPREHENSIVE PLAN**

### **Land Use Map**

Designation	<p><i>Five Forks Mixed Use Area (Pages 127-8):</i></p> <p>Land included in this designation is located in the immediate vicinity of John Tyler Highway (Route 5) and Ironbound Road. Suggested uses include commercial development limited primarily to community-scale and neighborhood commercial and office uses serving the residents of Five Forks. Moderate density residential development is encouraged as a secondary use. Redevelopment of existing residential and commercial uses in the immediate area is also encouraged.</p> <p><b>Staff Comment:</b> Staff believes that the dog day care proposal is generally consistent with the Mixed Use designation. The proposed business is relatively small and would be run by local residents. Additionally, the facility would be within an existing building that is currently only used as storage. In this light, the warehouse area would be reused and could serve area residents.</p>
Development Standards	<p><i>General Land Use Standard #1 - Page 134:</i> Permit new development only where such developments are compatible with the character of adjoining uses and where the impacts of such new developments can be adequately addresses. 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><i>Commercial and Industrial Land Use Standard #2-Page 136:</i> Locate proposed commercial and industrial developments adjacent to compatible uses. Where a commercial or industrial development desires a location near a sensitive area, the site should be designed so that transitional uses such as offices and/or buffers are located between conflicting uses.</p> <p><i>Commercial and Industrial Land Use Standard #2-Page 136:</i> Industrial and commercial areas should be planned and located to avoid traffic through residential and agricultural areas.</p> <p><i>Commercial and Industrial Land Use Standard #2-Page 136:</i> Mitigate objectionable aspects of commercial or industrial uses through an approach including performance standards, buffering, and special setback regulations.</p>

	<p><b>Staff Comment:</b> The dog day care is proposed to locate within an existing commercial park, which already generates a certain amount of noise and dust. The commercial park is adjacent to some residential uses, including a few houses directly adjacent to the existing building where the dog day care is proposing to locate. Since the building is existing, there are limited options to mitigating potential noise impacts. There is between a 60 and 380 foot wooded buffer already between the commercial park and the nearest residential areas, which helps screen noise and additional visual impacts. Staff believes that the addition of solid fencing and mulching in the outdoor exercise area and restrictions on the hours dogs will be kept in the facility and permitted outside will cut down on the noise impacts of adjacent properties.</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><b>Staff Comment:</b> The business is within the PSA and an existing commercial center so will not add any additional access points on to John Tyler Highway. Again, wooded buffers and solid screening will help reduce noise impacts on adjacent residential properties.</p>

### Primary Principles for the Five Forks Area of James City County

The Five Forks Principles, approved in 2004, outline several principles for the Five Forks area. A copy of the approved Principles can be found in the Commission's Administrative Policies and Procedures binder or at <http://www.jccegov.com/resources/devmgmt/planning/fiveforks/fiveforkredecvres.PDF>.

Principle	<p><i>Principle I 5:</i> Maintain a "C" level of service for traffic conditions in Five Forks by adhering to new trip generation thresholds...when approving new development.</p> <p><i>Principle II 1:</i> Maintain and improve water quality and reduce flooding risk in the Mill Creek Watershed by minimizing the amount of additional impervious cover...</p> <p><i>Principle III 2:</i> Identify and re-utilize vacant buildings and properties that are no longer utilized.</p> <p><i>Principle III 3:</i> Reduce conflicts between incompatible uses (requirements for landscaping, buffering, signage, screening, noise, odor, light, traffic, etc.).</p> <p><b>Staff Comment:</b> The initial traffic study used by Kimley-Horn and Associates to develop Principle 5 accounted for traffic generated by the existing office and warehouse use. As the estimated trip generation rates for this proposal do not exceed the trip thresholds in the principle, staff does not feel that the dog day care use would negatively impact or result in a significant increase in traffic generation in the Five Forks Area. With the reuse of an existing building, no additional impervious cover is proposed. Conditions to mitigate impacts related to animal waste, such as the redirection of stormwater runoff and addition of mulching in the rear yard, have also been suggested. Not all of the units available in the existing building are being constructively used by businesses. The addition of a dog day care is proposed to locate in one of these units.</p> <p>In order to get a better idea for the impacts of the proposed dog day care facility on adjacent uses, staff conducted a series of bark tests using a decibel meter at other dog kennel and similar facilities around the County including the Godspeed and Jolly Pond Vet Clinics, the Humane Society, and Jolin Kennels. Generally speaking, the sound inside a quiet home or office registers about 50 decibels and the sound of passing traffic on Ironbound Road was measured to be about 65 decibels from an adjacent sidewalk. At the Godspeed Animal Hospital, when approximately 13 dogs were in the outdoor area, the sound of their barks were as follows:</p> <div style="text-align: right; margin-top: 20px;"> <p>Fence- 85 decibels</p> <p>50 feet- 80 decibels</p> </div>
-----------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

	<p>100 feet- 70 decibels  150 feet- 65 decibels  200 feet- Less than 65 decibels. It was difficult to get an accurate reading due to the interference of Ironbound Road traffic.</p> <p>It is important to note with these tests that the dogs did not bark continuously, nor did they bark immediately. In fact, it took some effort to get them to bark initially and at two of the locations, they did not bark until staff was immediately next to the fence. Also, at Godspeed, the fence surrounding the outdoor area is chain-link so does not block any sound and allows the dogs to see outside disturbances. Finally, the tests were conducted across a parking lot where no trees would provide additional sound buffering. With the additions of a solid fence and mature tree buffer, staff believes the noise will be reduced further. The exercise area will also be located to the rear of the building, which will minimize the interference of cars and other customers which may cause the dogs to bark. Furthermore, the noise impacts will be limited to daytime hours.</p>
--	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

### Economic Development

Goals, strategies and actions	<p><i>Action #10 - Page 22:</i> Promote new and existing small businesses.</p> <p><b>Staff Comment:</b> Staff believes that support of the proposed dog day care fits this action as the owners are local residents.</p>
-------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

### Environment

Goals, strategies and actions	<p><i>Goal #5 - Page 65:</i> Protect the availability, quantity, and quality of all surface and groundwater resources.</p> <p><i>Strategy # 2 - Page 65:</i> Assure that new development minimizes adverse impacts on the natural and built environment.</p> <p><i>Action #5 - Page 66:</i> Encourage the use of Better Site Design, Low Impact Development, and best management practices (BMP's) to mitigate adverse environmental impacts.</p> <p><b>Staff Comment:</b> This SUP application is unique in that the business owners are leasing a small space in an already built building so most Low Impact Development (LID) and Better Site Design principles would be difficult to implement and would be costly for a small business owner. Staff has proposed alternative measures to mitigate the impacts of the use on the quality of groundwater and surface runoff. The outdoor area behind the building is currently gravel and sand, which can promote infiltration. A condition has also been included to provide a mulch layer on top of the existing surface to further promote infiltration and treatment of liquid wastes. Conditions have also been proposed which include provisions for rerouting downspouts and berming the upland boundaries of the exercise area to reduce stormwater runoff draining through the exercise area. Finally, a condition has been added and the applicant has agreed that solid animal wastes in the outdoor area will be disposed of immediately.</p>
-------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

### Transportation

Goals, strategies and actions	<p><i>Goal #2 - Page 80:</i> Ensure that the transportation system supports a land use pattern that is consistent with the Comprehensive Plan.</p> <p><i>Action #7d - Page 81:</i> Concentrating commercial development in compact commercial nodes or in mixed-use areas with their own internal road systems for direct parcel access rather than extending development and multiple access points along existing primary and secondary roads.</p>
-------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

	<p><b>Staff Comment:</b> As discussed in the Primary Principles section above, staff does not believe that the proposed dog day care would have an adverse impact on existing roadways. The use would use a shared entrance used by other operations in the surrounding building and warehouse. Also, the commercial center utilizes a shared access from John Tyler Highway, so additional access points would be required.</p>
--	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

### **Comprehensive Plan Staff Comments**

Overall, staff believes that this application, as proposed, is generally in compliance with the Comprehensive Plan and the Primary Principles for the Five Forks Area. The proposed dog day care facility is relatively small and limited in scope due to the prohibition on overnight stays. Through the field tests conducted at other kennels in the area, staff has concluded that the sound of barking dogs would be minimal and occasional at residences as far as 380 feet away (in Brandon Woods). Given the SUP Conditions attached to this project, staff feels that the adverse effects on closer adjacent residential properties (in Baron Woods) have been mitigated to the extent possible.

### **RECOMMENDATION**

The Planning Commission, at its June 4, 2008, meeting, recommended denial of this application by a vote of 5-2. Staff had recommended approval with the attached conditions. Should the Board of Supervisors wish to approve this application, staff has attached a resolution with conditions.

\_\_\_\_\_  
Leanne Reidenbach

CONCUR:

\_\_\_\_\_  
O. Marvin Sowers, Jr.

LR/nb  
WmsbgDog\_081208

### **ATTACHMENTS:**

1. Approved Planning Commission minutes from June 4, 2008
2. Resolution
3. Master Plan
4. Petition of support
5. Letters of objection from Brandon Woods homeowners
6. Petitions of objection from Brandon Woods and Baron Woods

## **RESOLUTION**

### **CASE NO. SUP-011-2008. WILLIAMSBURG DOG**

- 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. and Mrs. Matthew DiBiaso of The Williamsburg Dog have applied for an SUP to allow for operation of a dog day care center; and
- WHEREAS, the proposed use is shown on a conceptual layout, entitled “JCC SUP-0011-2008 Williamsburg Dog” drawn by the Planning Division and dated May 20, 2008; and
- WHEREAS, the property is located on land zoned B-1, General Business, and can be further identified as James City County Real Estate Tax Map No. 4711300003; and
- WHEREAS, the Planning Commission of James City County held a public hearing for consideration of this application on June 4, 2008; 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. 0011-2008 as described herein with the following conditions:

1. **Master Plan:** This SUP shall be valid for the operation of an 8,500-square-foot (not to exceed 5,000-square-foot indoor and 3,500-square-foot outdoor) dog day care center in an existing building located in Unit D of 3317 Venture Lane (the “Property”). The Property shall be developed generally as shown on the conceptual master plan entitled “SUP-0011-2008, Williamsburg Dog” and dated May 20, 2008 (the “Master Plan”), with only changes thereto that the Development Review Committee determines do not change the basic concept or character of the development.
2. **Hours of Operation:** The pickup and drop-off of animals shall not occur prior to 7 a.m. or after 6 p.m. In no case shall animals be kept on the property overnight.
3. **Noise Abatement:** The following measures shall apply to the dog day care facility in order to mitigate potential adverse impacts due to noise:
  - a. Dogs shall not be permitted in the outdoor exercise area prior to 9 a.m. or after 5 p.m.
  - b. All doors and windows within the rooms where dogs are kept shall be closed while the dog day care is in operation.
  - c. Any outdoor operations shall be screened from adjacent properties with a wall or solid fence at least six feet in height as approved by the Planning Director. The intention of the solid fence is to prevent dogs from seeing and barking at activities in adjacent areas.
4. **Water Conservation:** The applicant shall be responsible for developing and enforcing water conservation standards for the leased unit to be submitted to and

approved by the James City Service Authority (the "JCSA") prior to final development plan approval. The standards shall include, but shall not be limited to, such water conservation measures as limitations on the installation and use of irrigation systems and irrigation wells; the use of approved landscaping materials including the use of drought-resistant native and other adopted low-water-use landscaping materials and warm-season turf where appropriate; and the use of water-conserving fixtures and appliances to promote water conservation and minimize the use of public water resources. Upon site plan review, the General Manager of the JCSA may provide a written exception to developing such standards if determined to be unnecessary.

5. Treatment of Animal Waste: The area within the limits of the rear-fenced exercise area and any other outdoor areas where dogs will be permitted to exercise shall be covered with no less than three inches of hardwood mulch. Prior to final site plan approval, the applicant shall demonstrate to the satisfaction of the Environmental Division Director that the potential for stormwater to discharge through the outdoor exercise areas has been minimized to the greatest extent practicable. Methods of prevention may include, but are not limited to, rerouting existing downspouts, installation of a berm around the upland boundaries of the outdoor exercise areas and rapid disposal of solid animal wastes.
6. Parking: The applicant and property owner shall provide a letter or exhibit which demonstrates the provision of adequate on-site parking to accommodate the dog day care and any future uses anticipated to occupy the remaining units on the property. The letter or exhibit shall be approved by the Planning Director prior to final site plan approval.
7. Commencement of Construction: If any Certificate of Occupancy has not been issued on this project within 36 months from the issuance of an SUP, the SUP shall become void.
8. Severance Clause: This SUP is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.

---

Bruce C. Goodson  
Chairman, Board of Supervisors

ATTEST:

---

Sanford B. Wanner  
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 12th day of August, 2008.

WmsbgDog081208\_res



## Leanne Reidenbach

---

**From:** renee dibiaso [reneedibiaso@yahoo.com]  
**Sent:** Tuesday, August 12, 2008 8:29 AM  
**To:** Leanne Reidenbach  
**Subject:** Re: SUP-11-08, Williamsburg Dog

Good morning Leanne-

We have decided to withdraw our application. It is very frustrating that a neighborhood can be built around an Industrial Park and then that neighborhood can dictate which business can and can not go in. I can not waste any more time and money on this process that is controlled by this neighborhood.

Renee DiBiaso

----- Original Message -----

**From:** Leanne Reidenbach <LReidenbach@james-city.va.us>  
**To:** "reneedibiaso@yahoo.com" <reneedibiaso@yahoo.com>  
**Sent:** Monday, August 11, 2008 10:43:29 AM  
**Subject:** SUP-11-08, Williamsburg Dog

Good morning Matt and Renee-

I received a message from Tim Trant last Friday indicating that you intended to withdraw your SUP application. Please let me know if this is indeed the case so I can have it pulled from tomorrow's BOS agenda and forward a written letter as soon as possible formally requesting the withdrawal for County records.

Thanks very much.

**Leanne Reidenbach**  
*Senior Planner*

James City County Planning Division  
<http://www.jccplans.org>  
101 A Mounts Bay Road  
Williamsburg, VA 23187  
(757) 253-6685  
fax: (757) 253-6822

APPROVED MINUTES FROM THE JUNE 4, 2008 PLANNING COMMISSION  
MEETING

SUP-0011-2008 Williamsburg Dog

Ms. Leanne Reidenbach stated that this case is an application for a special use permit for an 8500 square foot dog day care center. She stated that the indoor area would be 5000 square feet with the outdoor area being approximately 3500 square feet. She stated the daycare would house between 30 – 40 dogs in an existing building that is zoned B-1 General Business. Ms. Reidenbach stated that the daycare would be open from 7am until 6pm indoors, and outside the building between 9am and 5pm. The property is located in the John Tyler Commercial Center at 3317 Venture Lane. The site is deemed Mixed Use by the Comprehensive Plan and is in the Five Forks area. Ms. Reidenbach stated that the property is bordered by two residential areas, Baron Woods and Brandon Woods. She stated that several petitions in support of and in opposition to have been received. Ms. Reidenbach listed several of the conditions that staff suggested to minimize the potential impacts of this use to the surrounding neighborhoods. She stated staff believed the proposal was generally consistent with the Comprehensive Plan and with the Primary Principles for the Five Forks Area. Staff recommended that the Planning Commission recommend approval to the Board of Supervisors with conditions.

Mr. Krapf asked if there was a regulation that states how many square feet of space are required per number of dogs.

Ms. Reidenbach stated she consulted with the Commissioner of Revenue's office and the County's Animal Control Division and they were not aware of any requirements of square footage.

Mr. Henderson asked about decibel studies.

Ms. Reidenbach explained that staff has a decibel meter that can be used to measure sound. She visited several kennels in the area and performed sound measures at the Godspeed Animal Hospital, which is attached to the St. Francis Pet Resort that has a daycare facility. She stated that at the fence of the outdoor play area the barking sounds measured 85 decibels. Ms. Reidenbach stated that 50 decibels is the sound level in a quiet home or office, and 65 decibels is the sound of passing traffic. She stated that at about 150 feet from the fence the barking sounds registered 65 decibels and was difficult to measure beyond the sound of passing traffic on Ironbound Road. She also noted that it was difficult to get the dogs to begin barking at first and that barking was sporadic throughout the test.

Mr. Henderson asked if staff considered placing a decibel limit as a condition at the property line or at the residential property line. He stated that the primary concern generated by the public is the level of noise coming from the facility.

Ms. Reidenbach stated that staff did not consider a decibel limit but that enforcement of a limit might be difficult. She said it would probably have to be done on a complaint basis.

Mr. Henderson asked if there were cases where sunset clauses were placed on special use permits where controversial uses exist.

Mr. Murphy answered there has been sunset clauses for some child daycare centers in the interior of residential subdivisions.

Mr. Kinsman stated that typically sunset clauses were used for temporary uses, such as borrow pits, or where uses might change on a year to year basis. He stated that there are some concerns as to whether a sunset clause is legal in general. Mr. Kinsman stated he would not recommend a sunset clause in this case.

Mr. Obadal asked about the exterior surface of the building.

Ms. Reidenbach stated it looked like a general warehouse that would be metal, but that the applicant may be able to respond more accurately.

Mr. Poole asked about other uses in the commercial park, especially outside activities.

Ms. Reidenbach stated there is some outdoor storage of equipment.

Mr. Obadal asked how far this site was from a residential area.

Ms. Reidenbach showed where it was 100 feet from a residence in Baron Woods, and 380 feet to the closed residence in Brandon Woods.

Mr. Kinsman addressed Mr. Krapf's concerns of space limitations. He stated there are some provisions in the County Code pertaining to proper care of animals that would apply here. It is very general in nature and does not address square feet.

Mr. Obadal asked if there were any environmental concerns in the area that is to be hosed down where the dogs are outside, specifically addressing runoff.

Ms. Reidenbach stated that there are conditions attached to the application that address these concerns, such as berming in addition to diverting the downspouts on the roof, and that the Environmental Division was satisfied with these measures.

Mr. Obadal asked about the runoff from the animal waste.

Mr. Thomas stated that there is a condition that the area stays maintained and that waste is scooped up so that it does not become a problem. He stated that prior to site plan approval, the applicant would have to demonstrate that the discharge in the outdoor area has been minimized to the extent that it is practical.

Mr. Peck asked if this application was approved and noise did become an issue, what recourse citizens would have.

Mr. Kinsman stated that if it was determined that one of the conditions, such as noise, was not followed, then the special use permit could be revoked, taking away permission for operation of this use.

Mr. Peck asked what the condition was on noise.

Ms. Reidenbach answered that the conditions to mitigate noise included solid fencing around the property, limitations as to when dogs are allowed in the exercise areas, and that in rooms where dogs are kept, windows and doors should remain shut to minimize noise.

Mr. Kinsman also stated that there is a tendency to stay away from setting a decibel level as a condition. He stated it would be difficult to enforce since it is a “catch it while it’s happening” type situation.

Mr. Fraley opened the public hearing.

Ms. Renee DiBiaso showed pictures of what they envision the dog daycare would be like. She stated that they did not plan to hose down the outside area and that pet waste would be disposed of properly. She stated that they have been looking for a couple of years for a place to start their business. Ms. DiBiaso stated they do reserve the right to refuse certain dogs based on temperament and sociability. She stated they would have a screening process. She stated that her husband met with the neighbors in Baron Woods and they have their support in this venture.

Mr. Matthew DiBiaso stated that staff recommended wood fencing in the entire back yard. He wanted to change to make the solid fencing just on the side facing Brandon Woods. He felt that with the entire backyard with wooden fence the sound might bounce off the wood. He proposed to use the existing chain link fence with cloth screening on the other sides.

Mr. Poole asked about the option of having the entire facility indoors.

Ms. DiBiaso stated it is rare, and they felt dogs need to be outside for part of the day.

Mr. DiBiaso stated that they do not feel that there would be a lot of barking. They felt dogs bark for a reason; possibly they are under a tense environment or need to get out. They do feel like the outdoor area is essential to their operations.

Mr. Krapf asked about the change in fencing. He asked for a condition that if there were a number of complaints about noise, that the remainder of the area has the solid wood fence installed.

The DiBiasos agreed.

Mr. Henderson asked if there were certain breeds that they would consider not acceptable for their facility.

Mr. DiBiaso stated the screening process would be done to determine if the dog has any

aggression.

Mr. Henderson asked if they would agree to not allow breeds that were known to be aggressive.

The DiBiasos agreed.

Mr. James Riley, who was representing the Brandon Woods Home Owner's Association, spoke in opposition to this application. He stated that the majority of residents in this neighborhood are retirees. He stated they are concerned with noise, insects, and environmental issues. Mr. Riley felt that property values would decrease as would the quality of life. He stated that the majority of the retirees are home the majority of the day. Mr. Riley stated that they respectfully request that the Planning Commission deny this request.

Mr. Max Burry, 3408 Avery Circle, lives in Brandon Woods. He has been a resident of Brandon Woods for eight years. He felt that this use in the area would cause a noise problem, and decrease their quality of life if approved. He asked the Planning Commission to think seriously about a use like this in the Five Forks area.

Mr. Fred White of 3504 Brentmoor, lives in Brandon Woods. He expressed his concerns over this use in the Five Forks area. He felt that this use would adversely affect their property values and gave an example of a dog facility in Newport News and the noise he has heard.

Ms. Mary Cornell, 3312 Chelsea Landing, also lives in Brandon Woods. She expressed her concerns over the number of dogs that will be at the facility. She stated her concerns over the traffic on Route 5 of people coming in and out of the daycare facility.

Ms. Pat Walsh, 3405 Avery Circle, stated she is a member of the Board of Directors for the Brandon Woods Association. She stated the board members met with the applicants. She expressed concerns that the applicants have not run a facility like this before. Ms. Walsh expressed concerns over the noise issue. She mentioned a petition in favor of this proposal from Baron Woods. She said she could not find all of the addresses of the individuals who signed the petition. Ms. Walsh stated several signatures listed on the petition were not close to this property.

Mr. Bill Presspest, of Sommerset Lane, lives in the Villages of Westminster. He mentioned the facility that was previously referred to by another citizen that was in another locality. He stated the dogs barked there because they were caged in that facility with no walking area.

Mr. Dale Weapon, 3701 Kensington, lives in Brandon Woods. He questioned what the business plan was for this proposal. He stated that there are sound absorbent materials that could probably be used for the outside fence. He expressed his concerns that the applicant did not know what breeds they would allow in their facility and what breeds would not be allowed.

Mr. Fraley closed the public hearing.

Mr. Fraley stated he visited the Pet Resort near Greensprings. He stated that when walking around the perimeter, he could hear barking approximately 300 feet away. He did express some concerns about the noise to the nearby residential areas.

Mr. Poole agreed with Mr. Fraley and further stated his concerns that he would feel more comfortable if the applicant had a history with this type of business in order to get the reactions of nearby businesses and residents to its operation. He also was concerned with the enforcement of a noise problem if the noise became an issue to nearby residents.

Mr. Krapf felt that most of the issues could be mitigated except for the noise. He looked at the permitted uses in this zoning district, which is B-1. When reviewing these uses and comparing it to this use, some were similar. Particularly, veterinary hospitals were permitted, which could have outdoor exercise areas by-right. Mr. Krapf felt that the criteria of the applicants not having previous experience in this area are not subject to discussion with regards to approving this application as they are not ordinance requirements. He felt that the screening processes are in place to screen out certain potential aggressive dogs, and stated that not all the dogs would be outside at one time. He stated that he felt there was sufficient space between this facility and the nearby residential areas.

Mr. Billups expressed concerns with the recourse available to citizens that have noise concerns. He cannot support this application unless there is some relief to citizens who might have problems with the noise.

Mr. Kinsman stated there was a condition in the application with regard to noise and the times that dogs are allowed in the outside area. He expressed his concerns about setting something up for complaints.

Mr. Peck stated that the request came up during the discussions of the Policy Committee on the B-1 ordinance changes. It was their decision to suggest making this use a special use permit so that conditions could be placed upon any applications. He also expressed concerns about what recourse citizens have concerning the noise issue.

Mr. Henderson stated all of the other issues can be addressed except the noise. He stated that there are standards where noise can be monitored through establishing decibel levels. He stated there could be a provision where the applicant could provide noise assessments.

Mr. Obadal expressed his concerns over the applicant's lack of experience in this area of business. He felt that the citizens had valid concerns over the noise of the animals.

Mr. Billups made a motion to deny this application.

Mr. Poole seconded the motion.

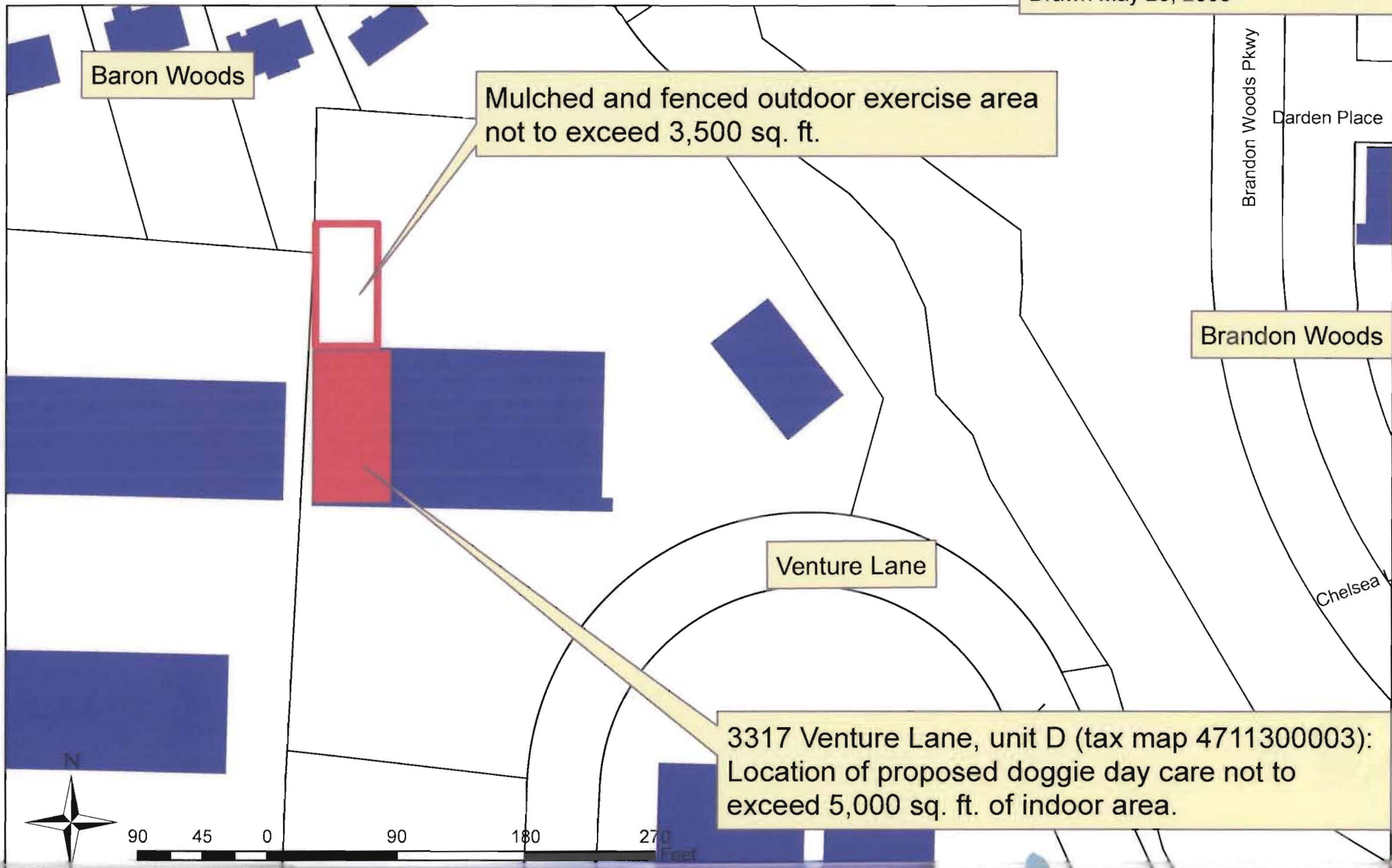
In a roll call vote the application was denied. (5-2) AYE: Peck, Poole, Billups, Obadal, Fraley; NAY: Henderson, Krapf.

# JCC SUP-0011-2008

## Williamsburg Dog



James City County Planning Division  
Drawn May 20, 2008

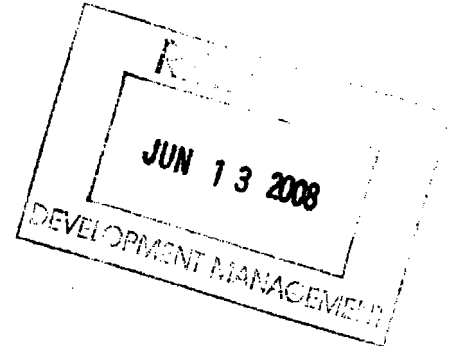


H. Maxwell & Shirley E. Burry  
3408 Avery Circle  
Williamsburg, VA 23188  
(757) 258-8603  
[a1957blackbear@verizon.net](mailto:a1957blackbear@verizon.net)

6/10/08  
RECEIVED cc: Bob  
Bill  
Leok

JUN 09 2008

Board of Supervisors



June 6, 2008

James City County Board of Supervisors  
101 Mounts Bay Road  
Williamsburg, VA 23187

Gentlemen and Ms. Jones:

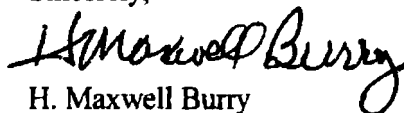
As residents and property owners in the community of Brandon Woods we are pleased that the Planning Commission last evening voted to recommend denial of the application for a dog daycare center in our neighborhood. As dog owners we support the concept of a facility where dogs may be cared for while their owners are away from home during the day. We firmly believe, however, that the center proposed for Unit D at 3317 Venture Lane in John Tyler Commercial Center would create far more negative consequences for nearby residents than convenience to a relatively small number of citizens who might use the service and economic gain for the applicant(s).

Our immediate concern is that the Board of Supervisors might reject the recommendation of the Planning Commission and issue a special use permit for the proposed facility.

We recognize that the applicants might work with Planning Staff to develop measures that would mitigate the noise of barking dogs. What troubles us, however, is the absence of a remedy if additional noise suppression remedies fail to protect us from a nuisance that could interfere with the use and enjoyment of our property and potential reduction in property values.

As planning commissioner Billups noted in discussing his objections to the permit, what relief would be available to citizens whose quality of life is affected by noise from the dog daycare center? How would complaints to the Planning Office and/or Police Department be handled? What level(s) of noise pollution would be permissible? How would those standards be established and then measured and enforced? Until these and other open issues are resolved, the special use permit should be denied.

Sincerely,

  
H. Maxwell Burry

  
Shirley E. Burry

CC: George Callis, president  
Brandon Woods Condominium Owners Association



The Williamsburg Dog Petition to be allowed to open the doggie day care in  
Five forks on Venture LN. Special use permit number SUP-0011-2008

<u>Name and address</u>	<u>Phone number</u>	<u>Comments</u>
Mr & Mrs D Isaac #3328 Lancaster Lane	229 9900	I don't mind
Tony Murray	259-0587	don't mind at all
Pat Conchy	565-2258	great idea
* Christine McKee	645-0910	We don't mind
* Richard McKee	#3332 Lancaster Lane	
* Karin Zebell	229-8213	no issues
#3383 Lancaster Lane		
* Sma Shrop	220-9134	no issues
33297 Lancaster Lane		
* Admure	564-9820	no issues
#3325 Lancaster Lane		
564-8655		no issues
Mary RITCHHOUSE		
Suzi Gisset	564-7287	Most dogs are quiet when playing together - in or out
#4229 Highlands Rd		
Penelope DeBlasio	564-0701	Dogs only bark when alarmed - come to the dog park at walk
#2231 Oak Bay Lane		
Frances T. Hankon	325-5473	don't mind
And Jon	565 0333	
Tanya Higgins	253-9521	
Bill Elliott	253-0703	In favor
#417 SURE DRIVE		
Caree Johnston	208-0426	Greatly needed in our community
David Johnston	208-0426	Good Idea
#805 Settlement Drive		
from the Wallehill dog park		
* from Baron Woods		

## Leanne Reidenbach

---

**From:** Mary Jones [maryjones@cox.net]  
**Sent:** Monday, August 04, 2008 8:00 AM  
**To:** Leanne Reidenbach  
**Subject:** FW: Concern for property in the John Tyler Commercial Center to be used as an animal day care facility

---

**From:** Mary Jane Warren [mailto:mjwarre@hotmail.com]  
**Sent:** Friday, August 01, 2008 4:31 PM  
**To:** maryjones@james-city.va.us  
**Subject:** FW: Concern for property in the John Tyler Commercial Center to be used as an animal day care facility

I have learned that property located in the John Tyler Commercial Center is being considered for use as an animal day care facility. As a resident of Brandon Woods, I have the following concerns:

1. Because of the proximity of the facility, we believe that the residents of Brandon Woods, particularly those on Brookmeade, Danbury, Bradinton and Bradford will hear the dogs barking throughout the day.
2. Having this facility being used for this purpose could have a detrimental impact on our property values.
3. There is a possibility of environmental damage from waste runoff to the area between Brandon Woods and the John Tyler Commercial Center.
4. Our belief that once approved as a day care only center, it might easily be converted to a 24 hour kennel.

I urge you to NOT issue a special use permit, or any other kind of permit, allowing an animal care center.

Thank You,  
Mary Jane Warren  
3420 Darden Place  
Williamsburg, VA 23188

---

Give to a good cause with every e-mail. [Join the i'm Initiative from Microsoft.](#)

---

Make every e-mail and IM count. [Join the i'm Initiative from Microsoft.](#)

---

Use video conversation to talk face-to-face with Windows Live Messenger. [Get started.](#)

---

Use video conversation to talk face-to-face with Windows Live Messenger. [Get started.](#)

---

Time for vacation? WIN what you need. [Enter Now!](#)

## Leanne Reidenbach

---

**From:** Mary Jones [maryjones@cox.net]  
**Sent:** Monday, August 04, 2008 8:00 AM  
**To:** Leanne Reidenbach  
**Subject:** FW: Case No. SUP-0011-2008, Williamsburg Dog

---

**From:** Norris Plumley [mailto:ncplumcw@verizon.net]  
**Sent:** Saturday, August 02, 2008 3:19 PM  
**To:** jjmcgl@james-city.va.us; jicenhour@james-city.va.us; maryjones@james-city.va.us; bgoodson@james-city.va.us; jkennedy@james-city.va.us  
**Cc:** George Callis  
**Subject:** RE: Case No. SUP-0011-2008, Williamsburg Dog

Dear James City Supervisors

We, as homeowners in Brandon Woods, would like to express our strong objection to the application by Williamsburg Dog for a dog day care facility at 3317 Venture Lane for the following reasons;

- 1) The proposed dog day care facility will result in a noise nuisance to our quiet community. A personal visit to the Pet Resort at Greensprings demonstrated, in a facility specifically designed for pet care, how far the sounds of dog barking can carry. With dogs inside the facility, normal dog barking could be heard from well over 100 yards away and for a dog outside, the sound carried for well over 200 yards. Furthermore, this level of barking was without the dogs being disturbed by such activities as warehouse loading and unloading operations located adjacent to the applicants proposed site. Dog barking is a normal activity, but there is nothing normal or acceptable about approving a business that will subject existing adjacent homeowners to the constant daytime din of barking. As such, it is viewed as an entirely inappropriate application for that location.
- 2) Additionally, the proposed location of the dog day care facility in such close proximity to Brandon Woods would most likely have a negative impact on our property values, a condition certainly not desirable in light of the economics of today's or future real estate markets. A local realtor expressed to the Planning Commission, at their June 4<sup>th</sup> meeting, of the possible need for disclosure of the dog day care facility to potential buyers and the obvious negative effect on property values.
- 3) The Planning Commission voted against the application at their June 4<sup>th</sup> meeting.

In summary, and in view of the above items, we respectfully request your support to deny the application for the dog day care facility and thank you for your consideration.

Sincerely,

Norris and Catherine Plumley  
3508 Brentmoor  
Williamsburg, VA 23188

757-258-0231

**Leanne Reidenbach**

---

**From:** Mary Jones [maryjones@cox.net]  
**Sent:** Monday, August 04, 2008 8:00 AM  
**To:** Leanne Reidenbach  
**Subject:** FW: PROPOSED DOGGY DAY CARE CENTER

---

**From:** DLovel1939 [mailto:dlovel1939@aol.com]  
**Sent:** Saturday, August 02, 2008 4:54 PM  
**To:** maryjones@james-city.va.us  
**Subject:** PROPOSED DOGGY DAY CARE CENTER

**Daniel D. Lovelace**  
**3400 Avery Circle**  
**Williamsburg, VA 23188**

**August 1, 2008**

**Mary K. Jones**  
**Supervisor, Berkeley District**  
**James City County Board of Supervisors**

**Dear Ms. Jones:**

**My wife and I would like to register our opposition to the approval of a "Doggy Day Care" center (DDCC) in the Five Forks area (Special Use Permit No. SUP-0011-208). We are concerned about the following potential problems that such a facility would pose for our neighborhood and the Five Forks area in general:**

**--Noise from large numbers of barking dogs. We have visited other doggy day care facilities, and note that their residents bark quite often, especially when exercising outdoors. Many of our Brandon Woods neighbors own dogs, so a "chain reaction" of barking would be likely. As a community of largely retired persons, we are at home during the day, and some residents have medical problems for which rest is essential.**

**--Pollution of the watershed from dog feces and urine-soaked mulch. An average dog produces ¾ pound of feces per day according to the EPA. The proposed Center anticipates 40 dogs, or 30 pounds per day. Over a five day week, this is 150 pounds of dog waste. The report from the Planning Staff indicates that the potential owners "agreed to dispose of solid animal waste expeditiously," however, there are no details about how this would be done.**

**Potential traffic problems on Route Five (John Tyler Highway). There is no left turn lane or "suicide lane" at either of the entrances to the complex where the dog care center will**

be located. That stretch of Route Five is already very dangerous, due to the hilly terrain and the many poorly-visible access roads leading to/from shopping centers. Although the dog facility's traffic will not produce a huge number of cars, they will arrive or leave during peak times of traffic (early morning and evening) on John Tyler Highway.

**Negative impact on the value of homes in Brandon Woods and Baron Woods.**

We have been informed by realtors that the presence of a dog care facility **MUST** be declared to any potential home buyers, and that we should expect at least a 25% reduction in the market value of our homes.

**Most important, the proposed facility does not meet the basic standards governing Special Use Permits, and it violates current planning for the Five Forks area.** According to section 24.9 of the JCC code regarding Special Use Permits, "Acceptable uses will have a limited impact on adjacent residential areas, especially in terms of...traffic, odor, noise..." A day care center for 40 dogs clearly fails to meet these standards. Page 127 of the County's current Comprehensive Plan states that Limited Commercial Development in the Five Forks area "...may continue so long as the resulting land use mix of the area is limited primarily to community-scale and neighborhood commercial and office uses." We believe that commercial operations involving large numbers of noisy, polluting animals are best located in less densely populated or rural areas of the County.

According to an article in the August 2, 2008 Virginia Gazette entitled "Making Growth More Predictable," it makes sense to identify an area for development and then consider it as a whole. With the removal of the trailer park and the redevelopment of the old motel site in Five Forks, now is a good time to think about this area's future as part of the new Comprehensive Plan. To approve a problematic Special Use Permit for a "Doggy Day Care" facility prior to the completion of the new Comprehensive Plan could prove to be a costly mistake for all concerned.

**Finally, the potential problems arising from this approval would leave the nearby residents with no recourse or methods of remediation (other than shutting down the Day Care Center).** Brandon Woods residents do not want to end up as the victims of an experiment that could cost themselves (and potentially the County of James City) big bucks to clean up.

We thank you for your consideration.

Yours truly,

**Leanne Reidenbach**

---

**From:** Mary Jones [maryjones@cox.net]  
**Sent:** Monday, August 04, 2008 8:00 AM  
**To:** Leanne Reidenbach  
**Subject:** FW:

---

**From:** royyoung [mailto:royyoung@cox.net]  
**Sent:** Sunday, August 03, 2008 1:01 PM  
**To:** jjmcgl@james-city.va.us; jicenhour@james-city.va.us; maryjones@james-city.va.us; bgoodson@james-city.va.us; jkenedy@james-city.va.us  
**Subject:**

Dear Members of the James City County Board of Supervisors:

As one of (110) homeowners in the Brandon Woods Subdivision, I want to encourage you to please accept the recommendation of the Planning Commission and vote against Application No. SUP-0011-2008.

The proposed Dog Kennel will adversely affect the property values and quality of life for both Brandon Woods and Baron Woods by creating both noise and odor.

Thanking you in advance for your support.

Roy Young  
3315 Sommersby Ct.  
Wmsbg.

## Leanne Reidenbach

---

**From:** Mary Jones [maryjones@cox.net]  
**Sent:** Monday, August 04, 2008 8:23 AM  
**To:** Leanne Reidenbach  
**Subject:** FW: SUP-0011-2008

-----Original Message-----

**From:** pat\_jak@cox.net [mailto:pat\_jak@cox.net]  
**Sent:** Friday, August 01, 2008 6:48 PM  
**To:** jjmcg@james-city.va.us; jicenhour@james-city.va.us; maryjones@james-city.va.us;  
bgoodson@james-city.va.us; jkenedy@james-city.va.us  
**Subject:** SUP-0011-2008

Dear Members of the Board of Supervisors;

Please consider this correspondence to be an appeal to all of you to strongly support the decision of the Planning Commission's 5-2 vote against approval for Williamsburg Dog to take up business within strong barking distance of two residential subdivisions that are adjacent to their proposed facility.

Know that many residents in both subdivisions surrounding Venture Lane have dogs. We expect that our dogs will indeed respond to the noise made by the dogs in the day care facility. There are also small businesses located in that same area; loud speakers used in one business and the back-up beeps on delivery and pick up trucks in another go on throughout the day; can't imagine dogs not reacting to these noises. The fire and police station is but a mile down John Tyler and it, too, makes regular runs giving off sounds that would set dogs to barking. Pick up and drop off of dogs by owners will cause dogs to reactive barking because of strangers. The applicants assured us that "dogs don't bark." (????)

Williamsburg Dog can look at other places as options for their Doggie Day Care, ones that would be appear to be more conducive to such a business, larger property in a country-like setting. We were told by the applicants that they did not investigate any other pieces of property other than the one on Venture Lane. Please note that they have options to set their business elsewhere whereas we, as homeowners, do not have that luxury particularly in this economic climate with our homes being our biggest investment.

We are also aware of the fact that there is no recourse to us as homeowners should the barking surely be an annoyance. What will the county do to insure our peaceful existence free of barking dogs?

We appreciate the time and thought you will give to this request. We will attend the August 12th meeting along with a large number of our neighbors and present further concerns at that time.

Pat and Jay Walsh  
3405 Avery Circle  
Williamsburg, VA 23188  
757.345.5572

Leanne Reidenbach

---

**From:** Mary Jones [maryjones@cox.net]  
**Sent:** Friday, August 01, 2008 9:39 AM  
**To:** Leanne Reidenbach  
**Subject:** FW: SUP-0011-2008 Dog Kennel Issue

---

**From:** Alden Davis [mailto:acdavissr@hotmail.com]  
**Sent:** Thursday, July 31, 2008 5:55 PM  
**To:** maryjones@james-city.va.us; jjmcgl@james-city.va.us; jicenjour@james-city.va.us; bgoodson@james-city.va.us; jkennedy@james-city.va.us  
**Cc:** gbcallis\_458@man.com; jmiller@1cbm.com  
**Subject:** SUP-0011-2008 Dog Kennel Issue

Board of Supervisors, I am sending this e-mail to request that all of you stand behind the vote of your Planning Commission in which they voted **AGAINST** the applicants for a Dog Kennel on Route 5 behind Trevillian Furniture Store.

The reasons for this request is as follows:

1. Noise
2. Pollution
3. Value of our homes

Thank you for standing behind your Planning Commission and voting **AGAINST** this applicants.

Sincerely, Alden C. Davis Brandon Woods



**Leanne Reidenbach**

---

**From:** Mary Jones [maryjones@cox.net]  
**Sent:** Thursday, July 31, 2008 4:31 PM  
**To:** Leanne Reidenbach  
**Subject:** FW: Doggy Day Care

---

**From:** JOHN WILLIAMS [mailto:kittenjohn@verizon.net]  
**Sent:** Thursday, July 31, 2008 4:21 PM  
**To:** maryjones@james-city.va.us  
**Cc:** bgoodson@james-city.va.us; jkenedy@james-city.va.us; jjmcgl@james-city.va.us; jcicehour@james-city.va.us  
**Subject:** Doggy Day Care

We like most of the residents of Brandon Woods thought this matter was settled with the five to two decision of the Planning Commission to not recommend the granting of SUP-0011-2008.

This decision was made after our presentation that:

1. Several Realtors have advised that this facility will adversely affect the property values of our residences.
2. The noise from the dogs would seriously affect the lives of the residents of Brandon Woods.
3. It would increase the traffic on the already heavily traveled Highway 5 (there are no left turn lanes available in either direction)
4. It could cause contamination to the aquifer supplying JCSA (there is a pumping station nearby).
5. And most importantly if (as we are certain it will) this facility does prove to be an unbearable nuisance there is no method to reverse the decision (to allow this facility to operate) without extensive (and expensive) litigation.

For the above reasons my wife and I oppose the granting of SUP-001-2008.

John & Kit Williams  
3800 Abington Park  
Brandon Woods

**Leanne Reidenbach**

---

**From:** Mary Jones [maryjones@cox.net]  
**Sent:** Thursday, July 31, 2008 4:31 PM  
**To:** Leanne Reidenbach  
**Subject:** FW: Application SUP-0011-2008

---

**From:** CharlieBch@aol.com [mailto:CharlieBch@aol.com]  
**Sent:** Thursday, July 31, 2008 1:10 PM  
**To:** maryjones@james-city.va.us  
**Cc:** jkennedy@james-city.va.us; jicenhour@james-city.va.us; jjmcgl@james-city.va.us; bgoodson@james-city.va.us; gbcallis\_458@msn.com; aingram@1cbm.com  
**Subject:** Application SUP-0011-2008

**Date:** July 31, 2008

**To:** Ms. Mary Jones – James City County Board of Supervisors

**From:** Ms. Wanda Kyle  
3615 Bradinton  
Williamsburg, Virginia 23188

**cc:** Mr. John J. McGlennon - James City County Board of Supervisors  
Mr. James O. Icenhour - James City County Board of Supervisors  
Mr. Bruce C. Goodson – Chairman, James City County Board of Supervisors  
Mr. James G. Kennedy – Vice Chairman – James City County Board of Supervisors  
Mr. George Callis – President - Brandon Woods Condominium Association BOD

**RE:** Case No. SUP-0011-2008, Williamsburg Dog

I do not have access to the internet, so I am sending this letter to you via a neighbor, but please, consider it as directly from me.

I live in the Brandon Woods subdivision and I understand, through our Board of Directors, that the above-mentioned case, rejected by the Planning Commission in May, is now being appealed to the Board of Supervisors.

I am very troubled by this proposed business and its impact on the value of my property and those of my neighbors. I feel strongly that a facility of this nature will surely have a disastrous impact on the value of a large number of homes in our community.

I am very fearful of the constant noise that will be generated by these animals. My house and several of my neighbor's houses are next to the Barron Woods subdivision, where there is a dog that sometimes barks for long periods. I cannot begin to fathom what the noise level will be from a significant number of dogs in such close proximity to our homes.

I strongly request that the Board of Supervisors support the Planning Commission recommendation and reject this proposal on August 12, 2008.

Sincerely,

Wanda Kyle

---

Get fantasy football with free live scoring. [Sign up for FanHouse Fantasy Football today.](#)

**Leanne Reidenbach**

---

**From:** Mary Jones [maryjones@cox.net]  
**Sent:** Thursday, July 31, 2008 4:31 PM  
**To:** Leanne Reidenbach  
**Subject:** FW: Application SUP-0011-2008

---

**From:** CharlieBch@aol.com [mailto:CharlieBch@aol.com]  
**Sent:** Thursday, July 31, 2008 1:03 PM  
**To:** maryjones@james-city.va.us  
**Cc:** jkenedy@james-city.va.us; jicenhour@james-city.va.us; jjmcgl@james-city.va.us; bgoodson@james-city.va.us; gbcallis\_458@msn.com; aingram@1cbm.com  
**Subject:** Application SUP-0011-2008

Date: July 31, 2008

To: Ms. Mary Jones – James City County Board of Supervisors

From: Mr. Charles Beach  
3609 Bradinton  
Williamsburg, Virginia 23188

CC: Mr. John J. McGlennon - James City County Board of Supervisors  
Mr. James O. Icenhour - James City County Board of Supervisors  
Mr. Bruce C. Goodson – Chairman, James City County Board of Supervisors  
Mr. James G. Kennedy – Vice Chairman – James City County Board of Supervisors  
Mr. George Callis – President - Brandon Woods Condominium Association BOD

RE: Case No. SUP-0011-2008, Williamsburg Dog

I live in the Brandon Woods subdivision and I understand, through our Board of Directors, that the above-mentioned case, already rejected by the Planning Commission in May, is being appealed to the Board of Supervisors.

I am troubled by this proposed business and its impact on the value of my property and those of my neighbors. I feel strongly that a facility of this nature will surely have a disastrous impact on the peace and serenity of our community not to mention the value of a large number of homes in this beautiful community.

The most troubling aspect will be the constant noise generated by these animals. Quite often, we hear dogs in the Barron Woods subdivision barking and sometimes, this can go on for long periods. I cannot fathom what the noise level will be with a significant number of dogs in such close proximity to our homes.

My wife and I have commented to visitors and neighbors on numerous occasions how quiet and peaceful this area is, and we would hate to lose that sense of peace and serenity to which we have become accustomed.

I strongly request that the Board of Supervisors support the Planning Commission recommendation and reject this proposal on August 12, 2008.

Sincerely,

Charles Beach

---

Get fantasy football with free live scoring. [Sign up for FanHouse Fantasy Football today.](#)

**Leanne Reidenbach**

---

**From:** Mary Jones [maryjones@cox.net]  
**Sent:** Thursday, July 31, 2008 4:30 PM  
**To:** Leanne Reidenbach  
**Subject:** FW: Dog Kennel

---

**From:** David Rawson [mailto:drawson4@yahoo.com]  
**Sent:** Wednesday, July 30, 2008 7:34 PM  
**To:** maryjones@james-city.va.us  
**Cc:** Bruce Goodson; James Icenhour; James Kennedy; John McGlennon  
**Subject:** Dog Kennel

Dear Ms. Jones;

**Re: SUP-0011-2008**

We understand that, despite the ruling by the Planning Commission denying authorization to open a dog kennel adjacent to Brandon Woods, the issue is now being brought before the Board of Supervisors seeking a reversal of the Planning Commission's equitable ruling.

We are homeowners in Brandon Woods (3501 Danbury Place), and as residents of just one community that will be affected by the presence of a nearby dog kennel, we urge you to deny the request to open a dog kennel and to stand behind the decision of your Planning Commission.

We believe, and have been told by realtors, that the presence of such a facility so close to our neighborhood will hurt the value of our property. In a time when property values are so volatile, this is of great concern to us, especially as our property represents a major portion of our equity and that of many other retirees living in Brandon Woods. Needless to say, such damage to our property values would also affect the County's tax valuations on our properties.

We also maintain that the noise from a nearby dog kennel will constitute a nuisance, especially since most of the Brandon Woods residents are home during the day --- and further, that once permitted, we will have no legal recourse re that nuisance. Much was made before the Planning Commission of the idea that decibels are a valid measure of what constitutes a nuisance; however, that really is not true since decibels measure volume, not pitch and its carrying quality that actually create the nuisance.

And then there's the question of pollution created by fecal and urine runoff into the adjacent stream regardless of how that material is hosed away.

As individual homeowners, and as a community, we maintain that nothing has (or can) change the negative impact of this dog kennel on our community, and we urge you to stand behind your Planning Commission's 5-to-2 decision to deny the requested dog kennel.

Thank you.

Dave and Marty Rawson  
3501 Danbury Place

**Leanne Reidenbach**

---

**From:** Mary Jones [maryjones@cox.net]  
**Sent:** Thursday, July 31, 2008 4:30 PM  
**To:** Leanne Reidenbach  
**Subject:** FW: Application SUP-0011-2008

-----Original Message-----

**From:** wkmullins@cox.net [mailto:wkmullins@cox.net]  
**Sent:** Wednesday, July 30, 2008 1:01 PM  
**To:** bgoodson@james-city.va.us; jjmcgl@james-city.va.us; jicenhour@james-city.va.us; maryjones@james-city.va.us; jkenedy@james-city.va.us  
**Subject:** Application SUP-0011-2008

Dear Mr. Goodson, Mr. McGlennon, Mr. Icenhour, Ms. Jones, and Mr. Kennedy:

I am writing concerning the application for a dog kennel in the John Tyler Commercial Center located at 3317 Venture Lane (SUP-0011-2008). This matter is on the agenda of the Board of Supervisors for the next meeting on August 12th.

This proposal was previously presented to the Planning Commission at their meeting on June 4th, and was denied by a vote of 5-2.

I am a resident of Brandon Woods, a community of 110 homes. Our neighborhood abuts the John Tyler Commercial Center. The proposed kennel is in close proximity to us.

I respectfully ask that the application be denied, for the same reasons that the Planning Commission Voted it down: the negative impact on our housing values, the unacceptable level of noise from barking dogs, and the sanitation/pollution factor.

There is no problem for such a facility in a more appropriate area, but the request to locate it here is NOT appropriate.

Please deny this application!

Sincerely,

William J. Mullins, M.D.  
3319 Sommersby Court  
Brandon Woods

## Leanne Reidenbach

---

**From:** Mary Jones [maryjones@cox.net]  
**Sent:** Thursday, July 31, 2008 4:30 PM  
**To:** Leanne Reidenbach  
**Subject:** FW: Dog Day Care Facility/SUP-0011-2008

---

**From:** JnsBa6@aol.com [mailto:JnsBa6@aol.com]  
**Sent:** Tuesday, July 29, 2008 4:02 PM  
**To:** maryjones@james-city.va.us  
**Subject:** Dog Day Care Facility/SUP-0011-2008

Dear Ms. Jones,

I contacted you a few weeks ago about my objection to the dog day care facility when the issue was before the Planning Commission. They turned down the permit, but I understand that it will on your August agenda so I want to again express my objection to the business locating off Route 5 a short distance from my community which you represent.

Therefore, I will again express my objection to granting a permit for the dog care day facility to operate about 100 yards from my neighborhood. I live in Brandon Woods and I was active in opposing the permit when it was reviewed by the Planning Commission. I continue to be opposed to allowing this facility to locate off Route 5 in the area that backs up to a residential community.

As you know, we value, as you do, the quality of life in our lovely community. Whenever possible we should strive to protect what we have worked so dearly to achieve and I believe that this business with the dogs barking, the run-off from the waste, the smells -- all of these seeable problems contaminate the community that we retired citizens have worked so hard to achieve.

Our community is made up of mostly retired folks that have put in their years of labor to enjoy a lovely community and now we are possibly subject to the problems that would be created by the dog day care facility. I attended the long meeting with the Planning Commission and heard the lengthy pleas of everyone to turn down this request from the owners. The Planning Commission heard the logic involved and in response to overwhelming objections from the citizens, they turned down the request. Please do the same when you have the chance to vote on this permit application.

If the permit is granted, there is no recourse to citizens when problems come up with the noise pollution of barking dogs, foul odors from the waste, and contamination of the water in the area. Please vote "NO" to allow this facility to locate at the site off Route 5. There should be more adequate sites available to the people who want to open this business where their business will not interfere with a well-planned lovely residential area. Such a facility might also impact our real estate prices if it were allowed and were a constant nuisance of noise and pollution.

Sincerely,

Barbara C. Jones  
3500 Brentmoor  
Williamsburg, VA 23188

---

Get fantasy football with free live scoring. Sign up for FanHouse Fantasy Football today.



## Leanne Reidenbach

---

**From:** Mary Jones [maryjones@cox.net]  
**Sent:** Thursday, July 31, 2008 4:30 PM  
**To:** Leanne Reidenbach  
**Subject:** FW: Application SUP-0011-2008 -- please vote against

---

**From:** Mcamisgroup@aol.com [mailto:Mcamisgroup@aol.com]  
**Sent:** Tuesday, July 29, 2008 2:41 PM  
**To:** jjmcgl@james-city.va.us; jicenhour@james-city.va.us; maryjones@james-city.va.us; bgoodson@james-city.va.us; jkennedy@james-city.va.us  
**Subject:** Application SUP-0011-2008 -- please vote against

Board of Supervisors,

We are residents of Brandon Woods. A proposal for a dog kennel placed in close proximity to our neighborhood was defeated by the James City County Planning Commission earlier. The proposal is now appearing before you in a few weeks. We and our neighbors are opposed to the dog kennels because we are concerned about the noise which would affect our comfort levels and eventual property values. We are also concerned about run-off and other environmental issues. Please stand behind the vote of the planning commission and vote against Application SUP-0011-2008.

Sandra and William McAmis  
3712 Keswick Place  
Williamsburg, VA 23188  
Brandon Woods  
757-220-1440

---

Get fantasy football with free live scoring. [Sign up for FanHouse Fantasy Football today.](#)

## Leanne Reidenbach

---

**From:** Mary Jones [maryjones@cox.net]  
**Sent:** Thursday, July 31, 2008 4:30 PM  
**To:** Leanne Reidenbach  
**Subject:** FW: AppSUP-0011-2008

---

**From:** ivan sheldon [mailto:lccod@verizon.net]  
**Sent:** Tuesday, July 29, 2008 2:20 PM  
**To:** bgoodson@james-city.va.us; jjmcgl@james-city.va.us; jicenhour@james-city.va.us; maryjones@james-city.va.us; jkennedy@james-city.va.us  
**Cc:** aingram@1cbm.com  
**Subject:** Fw: AppSUP-0011-2008

----- Original Message -----

**From:** ivan sheldon  
**To:** bgoodson@jamescity.va.us  
**Cc:** jicenhour@jamescity.va.us ; maryjones@jamescity.va.us ; jjmcgl@jamescity.va.us ; jkennedy@jamescity.va.us ; aingram@1cbm.com  
**Sent:** Monday, July 28, 2008 10:56 AM  
**Subject:** AppSUP-0011-2008

For your attention:

We are home owners in Brandon Woods and are writing to ask that you reject the application for a dog kennel behind the Trevillian Furniture Store on Route 5. Stand behind the vote of your Planning Commission.  
We ask you to do this to protect us from the noise and pollution that would result from this kennel if it were allowed to exist. It is too close to Brandon Woods. Such a business would also have a negative effect on the value of our home.  
We will appreciate your consideration of our request.

Dorothy and Roy Sheldon  
3704 Keswick Place

**Leanne Reidenbach**

---

**From:** Mary Jones [maryjones@cox.net]  
**Sent:** Thursday, July 31, 2008 4:29 PM  
**To:** Leanne Reidenbach  
**Subject:** FW: (no subject)

---

**From:** Lbholein1@aol.com [mailto:Lbholein1@aol.com]  
**Sent:** Tuesday, July 29, 2008 1:32 PM  
**To:** Maryjones@james-city.Va.US; JJMcgl@james-city.VA.US; Jicenhour@james-city.VA.US; bgoodson@james-city.VA.US; JKennedy@james-city.VA.US  
**Subject:** (no subject)

Dear Supervisors:

We are writing to request that approval of SUP-0011-2008 for the Dog Kennel again be denied. In addition to the noise and pollution problems this would have for our Brandon Woods Community, it would also have a negative effect on our property values.

We would hope that our Supervisors would stand by their Planning Commission and again vote to deny issuance of this special use permit.

Thank you,

Lee and Peg Barry  
3320 Chelsea Landing

---

Get fantasy football with free live scoring. [Sign up for FanHouse Fantasy Football today.](#)

**Leanne Reidenbach**

---

**From:** Mary Jones [maryjones@cox.net]  
**Sent:** Thursday, July 31, 2008 4:29 PM  
**To:** Leanne Reidenbach  
**Subject:** FW: Case No. SUP-0011-2008, Williamsburg Dog

-----Original Message-----

**From:** Jerry Roley [mailto:jroley1@cox.net]  
**Sent:** Tuesday, July 29, 2008 10:23 AM  
**To:** jjmcgl@james-city.va.us; jicenhour@james-city.va.us; maryjones@james-city.va.us;  
bgoodson@james-city.va.us; jkenney@james-city.va.us  
**Subject:** Re: Case No. SUP-0011-2008, Williamsburg Dog

This communication is intended to express my opposition to the issuance of the Special Use Permit referenced above. As a property owner in Brandon Woods I have grave concerns regarding the close proximity of the proposed facility to my community.

The establishment of an animal day care facility would very likely have a negative impact on the quality of life for residents of Brandon Woods for the following reasons:

- . Noise from barking dogs
- . Environmental damage caused by waste runoff from the facility
- . And of most concern is my belief that once approved as a day care only center, it might easily be converted to an around-the-clock kennel.

Thank you for your attention to my concern.

Respectfully,

Jerry L. Roley

## Leanne Reidenbach

---

**From:** Mary Jones [maryjones@cox.net]  
**Sent:** Thursday, July 31, 2008 4:29 PM  
**To:** Leanne Reidenbach  
**Subject:** FW: SUP-0011-2008

-----Original Message-----

**From:** Dale Wickham [mailto:dewjtw@earthlink.net]  
**Sent:** Monday, July 28, 2008 9:43 PM  
**To:** jjmcgl@james-city.va.us; jicenhour@james-city.va.us; maryjones@james-city.va.us; bgoodson@james-city.va.us; jkenedy@james-city.va.us  
**Cc:** Ann Ingram; George Callis  
**Subject:** SUP-0011-2008

I am writing in reference to the August 12th public hearing requesting the special use permit being sought by Mr. Matt DiBiaso for a dog day care in an existing building located in the John Tyler Commercial Center at 3317 Venture Lane. As you are aware the James City County Planning Commission voted against the applicants for a Dog Kennel by a vote of 5 to 2 on June 4th. I urge you to uphold their decision.

This specific site is in close proximity to a residential community named Brandon Woods consisting of about 110 homes. As a resident of the Brandon Woods community I am in opposition to issuing a "special use permit" for a dog day care center for the following reasons;

- 1) The proximity of the proposed facility to the residents of Brandon Woods, particularly those on Brookmeade, Danbury, Brandinton and Bradford.  
The residents will hear the dogs barking throughout the day. The vast majority of the residents in this community are retired and therefore they will be in their homes during the business hours of the proposed dog day care and not away at work.
- 2) This facility being used for this purpose could have a detrimental impact on the property values.
- 3) The possibility of environmental damage from waste runoff to the area between Brandon Woods and the John Tyler Commercial Center.
- 4) Once approved as a day care only center, it might easily be converted to a 24/7 kennel.

For the above reasons I am opposed to the "Special Use Permit" and I am requesting you deny it at the August 12th meeting.

Thank you.

Dale Wickham  
3701 Keswick  
Brandon Wood

## Leanne Reidenbach

---

**From:** Mary Jones [maryjones@cox.net]  
**Sent:** Thursday, July 31, 2008 4:29 PM  
**To:** Leanne Reidenbach  
**Subject:** FW: RE:case No.-oo11 ,-2008,Williamsburg Dog-2008

---

**From:** Bob & Mary Fischer [mailto:rfischer139@earthlink.net]  
**Sent:** Monday, July 28, 2008 8:16 PM  
**To:** Mary K Jones  
**Cc:** maryjones@james-city.va.us  
**Subject:** Fw: RE:case No.-oo11 ,-2008,Williamsburg Dog-2008

----- Original Message -----

**From:** Bob & Mary Fischer  
**To:** Reece Peck  
**Cc:** Reece Peck  
**Sent:** Thursday, May 29, 2008 9:52 AM  
**Subject:** RE:case No.-oo11 ,-2008,Williamsburg Dog-2008

As residents of Brandon Woods, we strongly oppose the granting of a special use permit for an animal day care center facility at the proposed site.

Reasons:

- 1) Negative impact on property values
- 2) Disturbance of the peace/quiet of the neighborhood caused by increased traffic and barking of the dogs
- 3) The possibility of noxious odors and waste run-off

We request that this proposal be disapproved

Robert and Mary Fischer

## Leanne Reidenbach

---

**From:** Mary Jones [maryjones@cox.net]  
**Sent:** Thursday, July 31, 2008 4:29 PM  
**To:** Leanne Reidenbach  
**Subject:** FW: Venture Lane Dog Day Care

---

**From:** Tom Shrout [mailto:trshrout@cox.net]  
**Sent:** Monday, July 28, 2008 8:04 PM  
**To:** jjmcgl@james-city.va.us; jicenhour@james-city.va.us; maryjones@james-city.va.us; bgoodson@james-city.va.us; jkennedy@james-city.va.us  
**Cc:** 'Anne Ingram'  
**Subject:** Venture Lane Dog Day Care

Dear Supervisors:

As residents of Brandon Woods, we write to you to express our opposition to a special use permit for Case No. SUP-0011-2008, Williamsburg Dog a dog day care facility in the John Tyler Commercial Center, 3317 Venture Lane (JCC RE Tax Map No. 4711300003) .

A facility such as this:

- exposes Brandon Woods residents to dog barking throughout the day,
- causes a detrimental impact on our property values and,
- creates the potential risk for environmental damage from animal waste runoff to the area between Brandon Woods and the John Tyler Commercial Center.
- and is the precursor to establishing an overnight kennel adjacent to residential neighborhoods.

If approved as a day care center, it's only a matter of time before it could be easily converted to a 24 hour kennel further compounding the negative impacts listed above.

Accordingly, we respectfully request that you stand behind the vote of the Planning Commission and deny approval of this facility at this location. Thank you.

Tom & Cheryl Shrout  
Brandon Woods  
3519 Hollingsworth  
Williamsburg VA 23188

## Leanne Reidenbach

---

**From:** Mary Jones [maryjones@cox.net]  
**Sent:** Thursday, July 31, 2008 4:29 PM  
**To:** Leanne Reidenbach  
**Subject:** FW: SUP-0011-2008 - Williamsburg Dog daycare facility

---

**From:** Andrew G Schiavone [mailto:ags3505@cox.net]  
**Sent:** Monday, July 28, 2008 7:31 PM  
**To:** Mary K. Jones  
**Cc:** John J. McGlennon; James O. Icenhour, Jr.; Bruce C. Goodson; James G. Kennedy  
**Subject:** SUP-0011-2008 - Williamsburg Dog daycare facility

I live in Brandon Woods, a development of 100 homes which immediately adjoins the property applying for permission to establish a daycare facility for dogs. For 15 years I personally owned and managed a fulltime pet boarding facility in Middlesex County, Virginia and was also employed by Hartfield Animal Hospital, a non-boarding veterinary hospital.

Dogs are usually brought to a daycare facility because they are perceived by their owners as needing the company of other dogs instead of spending hours at home alone and their pets have an opportunity to work off the energy which comes from being fed high quality dog food and receiving insufficient exercise at home. Most dogs love daycare. Happy, high energy dogs love to play with one another and barking is their way of expressing their pleasure. Dogs also bark when they feel insecure or threatened, both of which scenarios will occur in the daycare environment.

While I am totally in support of daycare for dogs, I question the wisdom of allowing such a facility to be located so close to a long-established residential area such as ours--or any other for that matter. After driving through the John Tyler Commercial Center, I believe (1) a daycare facility for dogs would be incompatible with existing businesses; (2) the outdoor area behind the proposed site, which is already fenced, will have runoff of fecal material onto the property immediately behind the facility; (3) this type of business will definitely have the effect of substantially lowering property values in our development; and (4) if a daytime-only boarding facility is allowed by the county on this site, it is conceivable that the facility would be allowed to offer 24/7 boarding in the future.

At the conclusion of the Planning Commission meeting (which denied this permit) two members of that Commission made comments in support of the daycare facility after the public hearing was closed that I took issue with. (1) While this property may be zoned for a veterinary-type business, a daycare facility is entirely different. Pets seen by a veterinarian come and leave with their owners unless they are ill and/or need surgery; these dogs are only allowed outside for a limited amount of time to relieve themselves and then in designated areas and always on a leash or under control of hospital staff or their owners. (2) Breed-specific limitations only look good on paper; Staffordshire terriers (pit bulls) and Rottweilers make wonderful pets just like cocker spaniels and other small dogs IF they are properly trained. Careful screening of potential clients can help protect against risk, but even that is no guarantee that someone may not get bitten in certain circumstances. And (3) My last issue came from the discussion of measuring decibels of sound emanating from a kennel: It is not only how loud the bark but the annoyance of having to listen to it off and on all day long, and the clientele would be changing from one day to the next making consistent monitoring impossible. Also, it is my understanding that we as residents of James City County would have no legal means of complaining when the barking issue comes up.

I respectfully request that a special use permit be denied for a daycare facility for dogs at John Tyler Commerical Center. Thank you for your consideration of this request.



**Leanne Reidenbach**

---

**From:** Mary Jones [maryjones@cox.net]  
**Sent:** Thursday, July 31, 2008 4:29 PM  
**To:** Leanne Reidenbach  
**Subject:** FW: SUP-0011-2008

---

**From:** Scott Blankinship [mailto:sp3416@msn.com]  
**Sent:** Monday, July 28, 2008 5:18 PM  
**To:** jjmcg@james-city.va.us; jicenhour@james-city.va.us; maryjones@james-city.va.us; bgoodson@james-city.va.us; jkennedy@james-city.va.us  
**Subject:** SUP-0011-2008

Good Afternoon,

We are writing to ask you to support the Planning Commission decision to deny the special use permit for Williamsburg Dog.

As homeowners/residents in Brandon Woods, we also want to share our thoughts with you.

The reasons we oppose the application and request your denial of the application are:

- 1) we appreciate the careful consideration you bring to SUP's; we understand slightly over 50% are approved and we do not think this request rises to that level,
- 2) the Planning Commission's decision was thoughtfully discussed and considered before they denied the applicant's request,
- 3) the applicant has no experience in this or any business and we would think some track record in complying with business and zoning practices and regulations would be needed,
- 4) their responses to the questions of compliance (of dogs, runoff, noise, etc) were "we'll do our best" which is inadequate and places an unneeded burden on our already busy police force to insure compliance,
- 5) barking dogs will create a noise nuisance to the abutting neighborhoods,
- 6) dog waste pollution and odors can not be effectively contained,
- 7) dropping/picking up dogs will stress ingress/egress on an already busy Rt. 5,
- 8) items 3-7 would, in varying degrees, lessen the quality of life, decrease the value of homes and decrease the tax revenue,
- 9) there must be a very good reason why kennels are allowed by right only in M-1 zoning.

Thank you for "listening".

Scott and Paulette Blankinship

## Leanne Reidenbach

---

**From:** Mary Jones [maryjones@cox.net]  
**Sent:** Thursday, July 31, 2008 4:28 PM  
**To:** Leanne Reidenbach  
**Subject:** FW: SUP-0011-2008

-----Original Message-----

**From:** chris janow [mailto:emsgram@yahoo.com]  
**Sent:** Monday, July 28, 2008 2:42 PM  
**To:** maryjones@james-city.va.us  
**Subject:** SUP-0011-2008

Dear Mary Jones and the Board of Supervisors for James City County,

We are resident's of Brandon Woods in James City County and would like to express to you our heartfelt opinion in reference to the case coming before you on August 12, 2008.

We are both retired, and as such are living on a fixed income, as are most of the residents of Brandon Woods. We chose this neighborhood for its quiet beauty and to live with folks in a similar stage of life. Most of the residents in our community are around during the day. The proposed dog day care facility will surely cause noise, with dogs barking the entire day, while in the outside play area. As dog owners ourselves, we are very much aware of the need to keep our dog from barking as it would interfere with our neighbors enjoyment of their home and deck. There is no way that the dog day care will be able to keep the dogs quiet, with traffic coming and going in close proximity to the facility.

In addition to the noise factor, the negative impact to our home values is of great concern. As you are aware, most folks canvass the areas close to a possible home purchase before signing a contract. We are sure that the noise from the day care facility will be a deterrent to many people considering purchasing in Brandon Woods. The value of our homes is the largest single item we own and to face a loss in value of that home would be particularly devastating at this stage of our lives.

Please consider our request that you abide by the decision made by the Planning Commission and reject the request for a dog day care facility behind the Trevillian furniture store on Route 5-which is about 100 yards from Brandon Woods homes.

We are most grateful to you for your consideration of our request.

Sincerely,

Christine Janow  
Edward Janow

<strong>Chris Janow  
</strong>3509 Hollingsworth Drive  
Williamsburg&nbsp; VA&nbsp; 23188  
(757) 345 2666

## Leanne Reidenbach

---

**From:** Mary Jones [maryjones@cox.net]  
**Sent:** Thursday, July 31, 2008 4:28 PM  
**To:** Leanne Reidenbach  
**Subject:** FW: SUP-0011-2008

---

**From:** Sandy Curran [mailto:sandy\_curran@hotmail.com]  
**Sent:** Monday, July 28, 2008 12:42 PM  
**To:** maryjones@james-city.va.us  
**Subject:** SUP-0011-2008

Dear Ms. Jones,

As the owners of 3428 Darden Place, we are writing to let you know of our strong objection to the proposed Dog Kennel, which would be located about 100 yards from Brandon Woods subdivision. We believe there would be an extremely objectionable level of noise and that the Kennel would adversely affect our property value.

Sincerely,  
Kevin and Alexandra Curran

---

Time for vacation? WIN what you need. [Enter Now!](#)

## Leanne Reidenbach

---

**From:** Mary Jones [maryjones@cox.net]  
**Sent:** Thursday, July 31, 2008 4:28 PM  
**To:** Leanne Reidenbach  
**Subject:** FW: Dog Day Care Kennel

---

**From:** Kiwillkoff@aol.com [mailto:Kiwillkoff@aol.com]  
**Sent:** Monday, July 28, 2008 11:17 AM  
**To:** jjmcgl@james-city.va.us; jicenhour@james-city.va.us; maryjones@james-city.va.us; bgoodson@james-city.va.us; jkennedy@james-city.va.us  
**Cc:** gbcallis\_458@msn.com; pat\_jak@cox.net  
**Subject:** Dog Day Care Kennel

Dear Members of The Board of Supervisors:

We are extremely concerned about the application (SUP- 0011 -2008) to establish a dog day care kennel in close proximity to residential areas and to the homes in Brandon Woods. Such a facility will seriously impact the quality of life in our community due to the constant barking of dogs being kept outside during the day in the proposed facility. Dogs unfamiliar with each other, sirens, and other distractions to the dogs in a dog day care facility located so close to our homes will cause excessive noise and barking.

There are many other reasons for our concerns for such a facility being located in the proposed area. They include a detrimental effect on property values in Brandon Woods, the possibility of environmental damage from waste run-off as well as a variety of other issues.

Brandon Woods is a community with numerous retired and elderly residents. Many residents have health issues. Since the vast majority of residents are at home during the day, they will be great impacted by the noise from such a facility and this will have a detrimental effect on the lives of these residents.

The Planning Commission has reviewed this application and by a vote of 5 to 2 has rejected the applicants' request for a special use permit needed to establish such a facility in this area. This is absolutely not the appropriate location for such a facility and we respectfully request that the Board of Supervisors follows the Planning Commission's vote and rejects the application for a special use permit.

Sincerely,  
Kenneth and Catherine Wilkoff  
3708 Keswick Place  
Williamsburg, VA 23188

---

Get fantasy football with free live scoring. [Sign up for FanHouse Fantasy Football today.](#)

## Leanne Reidenbach

---

**From:** Mary Jones [maryjones@cox.net]  
**Sent:** Thursday, July 31, 2008 4:28 PM  
**To:** Leanne Reidenbach  
**Subject:** FW: SUP-0011-2008

---

**From:** SMartini7@aol.com [mailto:SMartini7@aol.com]  
**Sent:** Monday, July 28, 2008 11:07 AM  
**To:** maryjones@james-city.va.us  
**Subject:** SUP-0011-2008

I am a property owner and resident in Brandon Woods. My property is located on Darden Place. I am aware of the Special Use Permit request to allow the use of a building located on a parcel zoned B-1, General Business, for a dog day care facility. This request was reviewed by the Planning Commission and was rejected by a vote of 5 to 2. The facility in question is within site of the back of my unit property and Brandon Woods Parkway. It borders the gas pipe line.

I am concerned that the requested use of this property will result in:

1. Added noise (from dog barking) throught out the day time hours. As many of us are retired, we are at home during the day. This will be a nuisance.
2. The facility will be used for a purpose that could have a detrimental impact on the property value of my home should I choose to sell. Also, approval of its use as a noise generating facility will potentially result in lower tax valuations for our properties and result in a loss of revenues for the County.
3. Environmental damage due to waste runoff to the natural drainage area between the John Tyler Commercial Center and Brandon Woods,
4. The possibility that this approval could result in a future expansion of use to a 24 hour boarding kennel.

I urge that you carefully consider the above before you vote on this permit.

Sincerely  
Steven Martini

---

Get fantasy football with free live scoring. [Sign up for FanHouse Fantasy Football today.](#)

Brandon Woods - 149 signatures

## Petition

James City County, Virginia  
Board of Supervisors  
Re: Case No. SUP-0011-2008

We the undersigned are of the understanding that the Board of Supervisors for James City County are considering a provision to issue a special use permit that would allow for a dog day care center to be located at 3317 Venture Lane in the John Tyler Commercial Center.

We, as registered voters in James City County and who live in close proximity to the proposed facility, are signing this petition to affirm our desire for the Board to vote against the issuance of this special use permit.

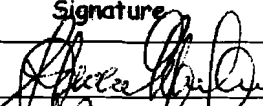
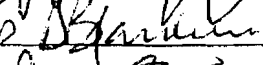


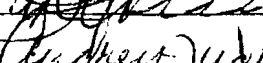
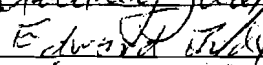
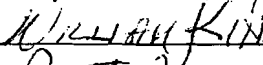
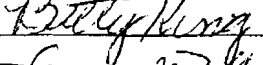
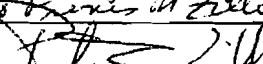

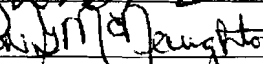
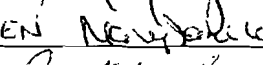
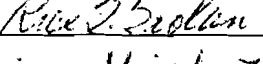
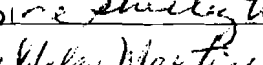
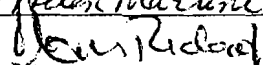




Name (please print)	Signature	Address	Date
Andrew G. Schiavone	<i>Andrew G. Schiavone</i>	3505 Hollingsworth	7/10/08
Mary Ellen Schiavone	<i>Mary Ellen Schiavone</i>	3505 Hollingsworth	7/10/08
<del>Margaret Freeman</del> <sup>Smith</sup> Margaret Smith	<i>Margaret Smith</i>	3501 Hollingsworth	7/10/08
<del>Frank Stone Smith</del> <sup>J.E. Smith</sup> J.E. Smith	<i>J.E. Smith</i>	3501 Hollingsworth	7/10/08
Christine C. Tancos	<i>Christine C. Tancos</i>	3509 Hollingsworth	7-10-08
Edine Cpet	<i>Edine Cpet</i>	3305 Heather Ct	7-10-08
Edine Cpet	<i>Edine Cpet</i>	3305 Heather Ct	7-10-08
Edward L. SANOW	<i>Edward L. SANOW</i>	3509 Hollingsworth	7/10/08
J. DECKER WHITE	<i>J. Decker White</i>	3524 Hollingsworth	7/11/08
Gloria White	<i>Gloria White</i>	3524 Hollingsworth	7/11/08
J. Hower Weissmuller	<i>J. Hower Weissmuller</i>	3520 Hollingsworth	7/11/08
Jayne Weissmuller	<i>Jayne Weissmuller</i>	3520 Hollingsworth	7/11/08
Norris Plumley	<i>Norris Plumley</i>	3508 Brentmoor	7/12/08
CATHERINE PLUMLEY	<i>Catherine Plumley</i>	3508 Brentmoor	7/12/08
Patricia Piland	<i>Patricia Piland</i>	3515 Hollingsworth	7-12-08
Bonnie Piland	<i>Bonnie Piland</i>	3515 Hollingsworth	7-12-08
John J. Regan	<i>John J. Regan</i>	3301 Heather	7-12-08
Charlotte D. Regan	<i>Charlotte D. Regan</i>	3301 Heather	7-15-08

## Petition

James City County, Virginia  
Board of Supervisors  
Re: Case No. SUP-0011-2008

We the undersigned are of the understanding that the Board of Supervisors for James City County are considering a provision to issue a special use permit that would allow for a dog day care center to be located at 3317 Venture Lane in the John Tyler Commercial Center.

We, as registered voters in James City County and who live in close proximity to the proposed facility, are signing this petition to affirm our desire for the Board to vote against the issuance of this special use permit.

Name (please print)	Signature	Address	Date
STEVEN MARTINI		3404 Darden Pl	July 12, 2008
Gloria Blankinship		5416 Darden Pl	7/12/08
JAMES H. SCHARF		3412 Darden Pl	12 July 2008
Karen Schaeffer		3412 Darden Pl	12 July 2008
JAMES M. COLEMAN		3403 Darden Pl	12 JUL 2008
Andrew Judy		3405 Darden Pl	12 July, 2008
Edward Judy		3405 Darden Pl	12 July 2008
Bill King		3400 Darden Pl	12 July 2008
Betty King		3400 Darden Pl	07-12-08
FRANCIS M. ZILKE		3423 Darden Pl	07-12-08
Peter S. Zilke		3423 Darden Pl	7/12/08
Gordon McNaulty		3427 Darden Pl	7/12/08
GAIL McNaulty		3427 Darden Pl	7-12-08
MARY JANE WARREN		3420 Darden Pl	7-12-08
RICE TROLAN		3420 Darden Pl	7-12-08
Shirley Wiltshire		3415 Darden Pl	7-12-08
Helen Martini		3404 Darden Pl	July 12, 2008
Tom Richard		3401 Darden Pl	July 12, 2008
MARMA RIDEOUT		3401 Darden Pl	July 13, 2008

## Petition

James City County, Virginia  
Board of Supervisors  
Re: Case No. SUP-0011-2008

We the undersigned are of the understanding that the Board of Supervisors for James City County are considering a provision to issue a special use permit that would allow for a dog day care center to be located at 3317 Venture Lane in the John Tyler Commercial Center.

We, as registered voters in James City County and who live in close proximity to the proposed facility, are signing this petition to affirm our desire for the Board to vote against the issuance of this special use permit.

Name (please print)	Signature	Address	Date
Vicki Siebert	Vicki Siebert	3601 Woodbury	27 July 08
George Siebert	George Siebert	3601 Woodbury	July 27 08
Wayne Keyes	Wayne Keyes	3515 Brentmoor	7/27/08
Shirley Keyes	Shirley Keyes	3515 Brentmoor	7/27/08
Bernard Grossman	Bernard Grossman	3501 Brentmoor	7/27/08
FRED WHITE	Fred White	3504 Brentmoor	7/27/08
Henry Meek	Henry Meek	3512 Brentmoor	7/27/08
ELLEN HANCOCK	Ellen Hancock	3512 BRENTMOOR	7/27/08
BARB PFISTER	B. Pfister	3520 Brentmoor	7/27/08
BOB PFISTER	Bob Pfister	3520 Brentmoor	07/27/08
Fred Metcalf	Fred Metcalf	3600 Woodbury Dr.	07/27/08
MARY METCALF	Mary Metcalf	3600 Woodbury Dr.	07/27/08
JOHN MCCURRY	John McCurry	3509 BRENTMOOR	7-28-08
JERRY ROWE	Jerry Rowe	3300 SOMMERSBY CT	7-28-08
JANET ROWE	Janet Rowe	3300 SOMMERSBY CT	7-28-08
Myrtle Weaver	Myrtle Weaver	3516 BRENTMOOR	8/1/08
Willard Weaver	Willard Weaver	3516 Brentmoor	8/1/08

JERRY  
ROWE



## Petition

James City County, Virginia  
Board of Supervisors  
Re: Case No. SUP-0011-2008

We the undersigned are of the understanding that the Board of Supervisors for James City County are considering a provision to issue a special use permit that would allow for a dog day care center to be located at 3317 Venture Lane in the John Tyler Commercial Center.

We, as registered voters in James City County and who live in close proximity to the proposed facility, are signing this petition to affirm our desire for the Board to vote against the issuance of this special use permit.

Name (please print)	Signature	Address	Date
WILLIAM MULLINS	<i>W Mullins</i>	3319 SOMMERSBY WMBG 23188	7/14/08
ROY D. YOUNG	<i>Roy D. Young</i>	3315 SOMMERSBY WMBG 23188	7-17-08
CAROLYN YOUNG	<i>Carolyn Young</i>	↓	7-17-08
JOHN P. BRODERICK	<i>John P. Broderick</i>	3316 SOMMERSBY CT WMBG, VA 23188	7/17/08
<del>Carol S. Broderick</del>	<del>Carol S. Broderick</del>	3316 Sommersby WMBG, VA 23188	7/17/08
KATHLEEN MULLINS	<i>Kathleen Mullins</i>	3319 Sommersby Ct	7/17/08
SUE MYERS	<i>Sue Myers</i>	3304 Sommersby	7/18/08
ROBERT FISCHER	<i>Robert Fischer</i>	3401 CHADSWORTH	7/18/08
MARY FISCHER	<i>Mary Fischer</i>	"	"
LYSS EGAN	<i>Lyss Egan</i>	3400 CHADSWORTH CIR	"
FAT EGAN	<i>Fat Egan</i>	"	"
JOHN MCCLIN	<i>John McClin</i>	3405 CHADSWORTH CIR	"
BERNICE TIAO	<i>Bernice Tiao</i>	3312 SOMMERSBY ST WILLIAMSBURG	7-18-08
DAVID L. MCGINNIS	<i>David L. McGinnis</i>	3405 Chadsworth Cir	7/23/08
BILLYE H. MAYES	<i>Billye H. Mayes</i>	3301 SOMMERSBY	7-18-08
ANNE HALLERMAN	<i>Anne Hallerman</i>	3405 CHADSWORTH	7-18-08
CHARLOTTE MCGINNIS	<i>Charlotte McGinnis</i>	3408 CHADSWORTH	7-24-08

## Petition

James City County, Virginia  
Board of Supervisors  
Re: Case No. SUP-0011-2008

We the undersigned are of the understanding that the Board of Supervisors for James City County are considering a provision to issue a special use permit that would allow for a dog day care center to be located at 3317 Venture Lane in the John Tyler Commercial Center.

We, as registered voters in James City County and who live in close proximity to the proposed facility, are signing this petition to affirm our desire for the Board to vote against the issuance of this special use permit.

Name (please print)	Signature	Address	Date
LEE BARRY	Lee Barry	3320 CHELSEA LANDING	7/12/08
Steve Connell	Steve Connell	3312 Chelsea Landing	7/12/08
Peg Barry	Peg Barry	3320 Chelsea	7/12/08
CONNIE FROST	Connie Frost	3316 Chelsea	7/12/08
MARLA MITCHELL	Marla Mitchell	3308 Chelsea	7-13-08
BILL MITCHELL	Bill Mitchell	3308 Chelsea	7-13-08
JERRY WYATT	Jerry Wyatt	3304 Chelsea	7/13/08
Carolyn Lawrence	Carolyn Lawrence	3300 Chelsea Rdg.	7-13-08
SID LAWRENCE	Sidney Lawrence	3300 Chelsea Rdg.	7-13-08
ROSE KARAM	Rose M. Karam	3301 Chelsea	7-17-08
MARIE SEXTON	Marie Sexton	3305 Chelsea Ldg	7-18-08
ROBERT RUSSELL	Robert Russell	3315 Chelsea	7/2
Thomas Bees	Thomas Bees	3309 Chelsea	7/30/08

## Petition

James City County, Virginia  
Board of Supervisors  
Re: Case No. SUP-0011-2008

We the undersigned are of the understanding that the Board of Supervisors for James City County are considering a provision to issue a special use permit that would allow for a dog day care center to be located at 3317 Venture Lane in the John Tyler Commercial Center.

We, as registered voters in James City County and who live in close proximity to the proposed facility, are signing this petition to affirm our desire for the Board to vote against the issuance of this special use permit.

Name (please print)	Signature	Address	Date
Thomas R. Niles II	Thomas R. Niles	3400 Ashmont	7-11-08
Judith M. Niles	Judith M. Niles	3400 Ashmont	7-11-08
Wanda Kyle	Wanda Kyle	3615 Bradinton	7-11-08
MONA WRIGHT	Mona Wright	3612 Bradinton	7-11-08
CECIL WRIGHT	Cecil Wright	3612 Bradinton	7-11-08
BARBARA TATE	Barbara Tate	3405 Ashmont	7-11-08
JAMES E. TATE	James E. Tate	3405 Ashmont	7-11-08
Reed Birney	Reed Birney	3608 Bradinton	7-11-08
Scott Birney	Scott Birney	3608 Bradinton	7-11-08
Lynette Green	Lynette J. Green	3605 Bradinton	7-12-08
WALE GREEN	Wale Green	3605 BRADINTON	7/12/08
Peggy McGann	Peggy McGann	3401 Ashmont	7/12/08
Charles Beach	Charles Beach	3609 Bradinton	7/12/08
Leslie Beach	Leslie Beach	3609 Bradinton	7/12/08
Ellen F. Frymoyer	Ellen F. Frymoyer	3601 Bradinton	7/14/08
Bill Frymoyer	William F. Frymoyer	3601 BRADINTON	7/14/08

## Petition

James City County, Virginia  
Board of Supervisors  
Re: Case No. SUP-0011-2008

We the undersigned are of the understanding that the Board of Supervisors for James City County are considering a provision to issue a special use permit that would allow for a dog day care center to be located at 3317 Venture Lane in the John Tyler Commercial Center.

We, as registered voters in James City County and who live in close proximity to the proposed facility, are signing this petition to affirm our desire for the Board to vote against the issuance of this special use permit.

Name (please print)	Signature	Address	Date
KENNETH I. WILKOFF	<i>Kenneth I. Wilkoff</i>	3708 KESWICK PLACE WILLIAMSBURG, VA 23188	7/10/08
CATHERINE L. WILKOFF	<i>Catherine L. Wilkoff</i>	3708 KESWICK PLACE WILLIAMSBURG, VA 23188	7/10/08
Marian Reilly	MARIAN REILLY	3504 ABINGTON PARK WILLIAMSBURG VA 23188	7/10/08
JAMES P. REILLY	<i>James P. Reilly</i>	3504 ABINGTON PARK WILLIAMSBURG VA 23188	7/10/08
STEO. CALLS	<i>Steo. Calls</i>	3705 KESWICK WILLIAMSBURG	7.10.08
DALE WICKHAM	<i>Dale Wickham</i>	3701 KESWICK WILLIAMSBURG	7/10/08
JOANNE WICKHAM	<i>Joanne Wickham</i>	3701 KESWICK WILLIAMSBURG	7/10/08
CHARLES A. BASS	<i>Charles A. Bass</i>	3709 KESWICK WILLIAMSBURG	7/10/08
FRANCES A. BASS	<i>Frances A. Bass</i>	3709 KESWICK WILLIAMSBURG	7/10/08
WILLIAM B. DICKERSON	<i>William B. Dickerson</i>	3508 Abington Park Williamsburg, VA 23188	7/11/08
Laurel Dickerson	<i>Laurel Dickerson</i>	3508 Abington Park Williamsburg VA 23188	7/11/08
PATRICIA HANSON	<i>Patricia Hanson</i>	3805 Abington Park Williamsburg VA	7/11/08
LARRY R. COOKE	<i>Larry R. Cooke</i>	3801 Abington Park Williamsburg, VA 23188	7/11/08
BARBARA CALLS	<i>Barbara Calls</i>	3705 KESWICK PL. WILLIAMSBURG, VA 23188	7/11/08

# Petition

**James City County, Virginia  
Board of Supervisors  
Re: Case No. SUP-0011-2008**

We the undersigned are of the understanding that the Board of Supervisors for James City County are considering a provision to issue a special use permit that would allow for a dog day care center to be located at 3317 Venture Lane in the John Tyler Commercial Center.

We, as registered voters in James City County and who live in close proximity to the proposed facility, are signing this petition to affirm our desire for the Board to vote against the issuance of this special use permit.

[illegible]

# Petition

James City County, Virginia  
Board of Supervisors  
Re: Case No. SUP-0011-2008

We the undersigned are of the understanding that the Board of Supervisors for James City County are considering a provision to issue a special use permit that would allow for a dog day care center to be located at 3317 Venture Lane in the John Tyler Commercial Center.

We, as registered voters in James City County and who live in close proximity to the proposed facility, are signing this petition to affirm our desire for the Board to vote against the issuance of this special use permit.

[illegible]

# Petition

James City County, Virginia

## Board of Supervisors

**Re: Case No. SUP-0011-2008**

We the undersigned are of the understanding that the Board of Supervisors for James City County are considering a provision to issue a special use permit that would allow for a dog day care center to be located at 3317 Venture Lane in the John Tyler Commercial Center.

We, as registered voters in James City County and who live in close proximity to the proposed facility, are signing this petition to affirm our desire for the Board to vote against the issuance of this special use permit.

[illegible]

## Petition

**James City County, Virginia  
Board of Supervisors  
Re: Case No. SUP-0011-2008**

We the undersigned are of the understanding that the Board of Supervisors for James City County are considering a provision to issue a special use permit that would allow for a dog day care center to be located at 3317 Venture Lane in the John Tyler Commercial Center.

We, as registered voters in James City County and who live in close proximity to the proposed facility, are signing this petition to affirm our desire for the Board to vote against the issuance of this special use permit.

[illegible]



# Petition

**James City County, Virginia  
Board of Supervisors  
Re: Case No. SUP-0011-2008**

We the undersigned are of the understanding that the Board of Supervisors for James City County are considering a provision to issue a special use permit that would allow for a dog day care center to be located at 3317 Venture Lane in the John Tyler Commercial Center.

We, as registered voters in James City County and who live in close proximity to the proposed facility, are signing this petition to affirm our desire for the Board to vote against the issuance of this special use permit.

[illegible]

# Petition

**James City County, Virginia  
Board of Supervisors  
Re: Case No. SUP-0011-2008**

We the undersigned are of the understanding that the Board of Supervisors for James City County are considering a provision to issue a special use permit that would allow for a dog day care center to be located at 3317 Venture Lane in the John Tyler Commercial Center.

We, as registered voters in James City County and who live in close proximity to the proposed facility, are signing this petition to affirm our desire for the Board to vote against the issuance of this special use permit.

[illegible]

rcvd 8/15/08

*Brian Woods*  
20 signatures

**To: James City County Board of Supervisors**

**RE: Case # SUP-0011-2008 Williamsburg Dog**

I am of the understanding that the Board of Supervisors for James City County is considering a provision to issue a special use permit that would allow for a dog day care center to be located at 3317 Venture Lane in the John Tyler Commercial Center.

As a registered voter and/or resident of James City County who lives in close proximity to the proposed facility, please note that my signature below affirms my desire for the Board to vote **AGAINST** the issuance of this special use permit. I am most concerned for the quality of life that will be disturbed by up to 40 barking dogs as well as for the property value of homes in my community.

Name: JOHN W. DASPIT

Signature: *John W. Daspit* (Printed)

Address: 4505 WIMBLETON Way, WILLIAMSBURG VA

23188

**To: James City County Board of Supervisors**

**RE: Case # SUP-0011-2008 Williamsburg Dog**

I am of the understanding that the Board of Supervisors for James City County is considering a provision to issue a special use permit that would allow for a dog day care center to be located at 3317 Venture Lane in the John Tyler Commercial Center.

As a registered voter and/or resident of James City County who lives in close proximity to the proposed facility, please note that my signature below affirms my desire for the Board to vote **AGAINST** the issuance of this special use permit. I am most concerned for the quality of life that will be disturbed by up to 40 barking dogs as well as for the property value of homes in my community.

Name: John A. Hewell, II

Signature: (Printed) John A. Hewell, II

Address: 3341 Lancaster Lane  
Williamsburg, VA. 23188

**To: James City County Board of Supervisors**

**RE: Case # SUP-0011-2008 Williamsburg Dog**

I am of the understanding that the Board of Supervisors for James City County is considering a provision to issue a special use permit that would allow for a dog day care center to be located at 3317 Venture Lane in the John Tyler Commercial Center.

As a registered voter and/or resident of James City County who lives in close proximity to the proposed facility, please note that my signature below affirms my desire for the Board to vote **AGAINST** the issuance of this special use permit. I am most concerned for the quality of life that will be disturbed by up to 40 barking dogs as well as for the property value of homes in my community.

Name: DENNISE M. LEWELLYN

Signature: Dennise M. Lewellyn (Printed)

Address: 3341 LANCASTER LANE 23188  
WILLIAMSBURG, VA.

**To: James City County Board of Supervisors**

**RE: Case # SUP-0011-2008 Williamsburg Dog**

I am of the understanding that the Board of Supervisors for James City County is considering a provision to issue a special use permit that would allow for a dog day care center to be located at 3317 Venture Lane in the John Tyler Commercial Center.

As a registered voter and/or resident of James City County who lives in close proximity to the proposed facility, please note that my signature below affirms my desire for the Board to vote **AGAINST** the issuance of this special use permit. I am most concerned for the quality of life that will be disturbed by up to 40 barking dogs as well as for the property value of homes in my community.

Name: Allen F. Nasaka  
(Printed)

Signature: Allen F. Nasaka

Address: 3340 LANCASTER LANE Wmsbrg, VA 23188

**To: James City County Board of Supervisors**

**RE: Case # SUP-0011-2008 Williamsburg Dog**

I am of the understanding that the Board of Supervisors for James City County is considering a provision to issue a special use permit that would allow for a dog day care center to be located at 3317 Venture Lane in the John Tyler Commercial Center.

As a registered voter and/or resident of James City County who lives in close proximity to the proposed facility, please note that my signature below affirms my desire for the Board to vote **AGAINST** the issuance of this special use permit. I am most concerned for the quality of life that will be disturbed by up to 40 barking dogs as well as for the property value of homes in my community.

Name: Sherry W. NOSAKA

Signature: Sherry W. NOSAKA (Printed)

Address: 3340 Lancaster Lane  
Williamsburg, Va.

23188

To: James City County Board of Supervisors

RE: Case # SUP-0011-2008 Williamsburg Dog

I am of the understanding that the Board of Supervisors for James City County is considering a provision to issue a special use permit that would allow for a dog day care center to be located at 3317 Venture Lane in the John Tyler Commercial Center.

As a registered voter and/or resident of James City County who lives in close proximity to the proposed facility, please note that my signature below affirms my desire for the Board to vote **AGAINST** the issuance of this special use permit. I am most concerned for the quality of life that will be disturbed by up to **40 barking dogs** as well as for the property value of homes in my community.

Name: Anita Parker

Signature: Anita Parker (Printed)

Address: 4540 Wimbledon Way Dr  
Williamsburg, VA 23188



**To: James City County Board of Supervisors**

**RE: Case # SUP-0011-2008 Williamsburg Dog**

I am of the understanding that the Board of Supervisors for James City County is considering a provision to issue a special use permit that would allow for a dog day care center to be located at 3317 Venture Lane in the John Tyler Commercial Center.

As a registered voter and ~~for~~ resident of James City County who lives in close proximity to the proposed facility, please note that my signature below affirms my desire for the Board to vote **AGAINST** the issuance of this special use permit. I am most concerned for the quality of life that will be disturbed by up to 40 barking dogs as well as for the property value of homes in my community.

Name: IRENE W. HANSON

(Printed)

Signature: Irene W. Hanson

Address: 3316 Lancaster Lane Baron Woods VA 23188

We bought our retirement home in Baron Woods eleven years ago, and it has always been a pleasant peaceful neighborhood. The commercial establishments in the John Tyler area have also been good quiet neighbors thus far. The nights are particularly quiet, and the last thing we need are lots of barking dogs at night. Please refuse this special use permit.

To: James City County Board of Supervisors

RE: Case # SUP-0011-2008 Williamsburg Dog

I am of the understanding that the Board of Supervisors for James City County is considering a provision to issue a special use permit that would allow for a dog day care center to be located at 3317 Venture Lane in the John Tyler Commercial Center.

As a registered voter and/or resident of James City County who lives in close proximity to the proposed facility, please note that my signature below affirms my desire for the Board to vote **AGAINST** the issuance of this special use permit. I am most concerned for the quality of life that will be disturbed by up to 40 barking dogs as well as for the property value of homes in my community.

Name: ARTHUR S. HANSON

(Printed)

Signature: Arthur S. Hanson

Address: 3316 Lancaster Lane, Williamsburg, VA 23188

To: James City County Board of Supervisors

RE: Case # SUP-0011-2008 Williamsburg Dog

I am of the understanding that the Board of Supervisors for James City County is considering a provision to issue a special use permit that would allow for a dog day care center to be located at 3317 Venture Lane in the John Tyler Commercial Center.

As a registered voter and/or resident of James City County who lives in close proximity to the proposed facility, please note that my signature below affirms my desire for the Board to vote **AGAINST** the issuance of this special use permit. I am most concerned for the quality of life that will be disturbed by up to 40 barking dogs as well as for the property value of homes in my community.

Name: Marie D. Hearing  
Marie D. Hearing  
(Printed)

Signature: \_\_\_\_\_

Address: 3308 Oxmoor Court  
Williamsburg, VA 23188

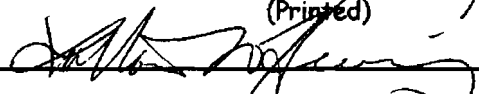
To: James City County Board of Supervisors

RE: Case # SUP-0011-2008 Williamsburg Dog

I am of the understanding that the Board of Supervisors for James City County is considering a provision to issue a special use permit that would allow for a dog day care center to be located at 3317 Venture Lane in the John Tyler Commercial Center.

As a registered voter and/or resident of James City County who lives in close proximity to the proposed facility, please note that my signature below affirms my desire for the Board to vote **AGAINST** the issuance of this special use permit. I am most concerned for the quality of life that will be disturbed by up to 40 barking dogs as well as for the property value of homes in my community.

Name: Lamont W. Herring  
(Printed)

Signature: 

Address: 3308 Oxmoor Court

To: James City County Board of Supervisors

RE: Case # SUP-0011-2008 Williamsburg Dog

I am of the understanding that the Board of Supervisors for James City County is considering a provision to issue a special use permit that would allow for a dog day care center to be located at 3317 Venture Lane in the John Tyler Commercial Center.

As a registered voter and/or resident of James City County who lives in close proximity to the proposed facility, please note that my signature below affirms my desire for the Board to vote **AGAINST** the issuance of this special use permit. I am most concerned for the quality of life that will be disturbed by up to 40 barking dogs as well as for the property value of homes in my community.

Name: LUTHER HANSON

Signature:  (Printed)

Address: 3308 LANCASTER LANE  
WILLIAMSBURG, VA.  
23188

**To: James City County Board of Supervisors**

**RE: Case # SUP-0011-2008 Williamsburg Dog**

I am of the understanding that the Board of Supervisors for James City County is considering a provision to issue a special use permit that would allow for a dog day care center to be located at 3317 Venture Lane in the John Tyler Commercial Center.

As a registered voter and/or resident of James City County who lives in close proximity to the proposed facility, please note that my signature below affirms my desire for the Board to vote **AGAINST** the issuance of this special use permit. I am most concerned for the quality of life that will be disturbed by up to 40 barking dogs as well as for the property value of homes in my community.

Name: Carol C. Hanson

Signature: Carol C. Hanson (Printed)

Address: 3308 Lancaster Lane  
Williamsburg, VA 23188

**To: James City County Board of Supervisors**

**RE: Case # SUP-0011-2008 Williamsburg Dog**

I am of the understanding that the Board of Supervisors for James City County is considering a provision to issue a special use permit that would allow for a dog day care center to be located at 3317 Venture Lane in the John Tyler Commercial Center.

As a registered voter and/or resident of James City County who lives in close proximity to the proposed facility, please note that my signature below affirms my desire for the Board to vote **AGAINST** the issuance of this special use permit. I am most concerned for the quality of life that will be disturbed by up to 40 barking dogs as well as for the property value of homes in my community.

Name: Sara Shoop

Signature:  (Printed)

Address: 3329 Lancaster Lane, Williamsburg, VA 23188


**To: James City County Board of Supervisors**

**RE: Case # SUP-0011-2008 Williamsburg Dog**

I am of the understanding that the Board of Supervisors for James City County is considering a provision to issue a special use permit that would allow for a dog day care center to be located at 3317 Venture Lane in the John Tyler Commercial Center.

As a registered voter and/or resident of James City County who lives in close proximity to the proposed facility, please note that my signature below affirms my desire for the Board to vote **AGAINST** the issuance of this special use permit. I am most concerned for the quality of life that will be disturbed by up to 40 barking dogs as well as for the property value of homes in my community.

Name: Robert Shoop  
(Printed)

Signature: 

Address: 3329 Lancaster Lane, Williamsburg, VA 23188



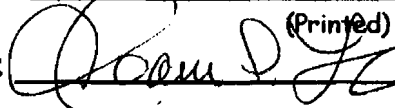
**To: James City County Board of Supervisors**

**RE: Case # SUP-0011-2008 Williamsburg Dog**

I am of the understanding that the Board of Supervisors for James City County is considering a provision to issue a special use permit that would allow for a dog day care center to be located at 3317 Venture Lane in the John Tyler Commercial Center.

As a registered voter and/or resident of James City County who lives in close proximity to the proposed facility, please note that my signature below affirms my desire for the Board to vote **AGAINST** the issuance of this special use permit. I am most concerned for the quality of life that will be disturbed by up to 40 barking dogs as well as for the property value of homes in my community.

Name: James Fletcher

Signature:  (Printed)

Address: 4537 Wimbledon Way  
Williamsburg, VA 23188


**To: James City County Board of Supervisors**

**RE: Case # SUP-0011-2008 Williamsburg Dog**

I am of the understanding that the Board of Supervisors for James City County is considering a provision to issue a special use permit that would allow for a dog day care center to be located at 3317 Venture Lane in the John Tyler Commercial Center.

As a registered voter and/or resident of James City County who lives in close proximity to the proposed facility, please note that my signature below affirms my desire for the Board to vote **AGAINST** the issuance of this special use permit. I am most concerned for the quality of life that will be disturbed by up to 40 barking dogs as well as for the property value of homes in my community.

Name: Adam Fletcher

Signature:  (Printed)

Address: 4537 Wimbledon Way

**To: James City County Board of Supervisors**

**RE: Case # SUP-0011-2008 Williamsburg Dog**

I am of the understanding that the Board of Supervisors for James City County is considering a provision to issue a special use permit that would allow for a dog day care center to be located at 3317 Venture Lane in the John Tyler Commercial Center.

As a registered voter and/or resident of James City County who lives in close proximity to the proposed facility, please note that my signature below affirms my desire for the Board to vote **AGAINST** the issuance of this special use permit. I am most concerned for the quality of life that will be disturbed by up to 40 barking dogs as well as for the property value of homes in my community.

Name: MARY SHERIDAN

Signature:   
(Printed)

Address: 4508 WIMBLEDON WAY WILLIAMSBURG

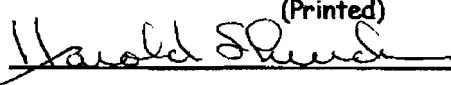
**To: James City County Board of Supervisors**

**RE: Case # SUP-0011-2008 Williamsburg Dog**

I am of the understanding that the Board of Supervisors for James City County is considering a provision to issue a special use permit that would allow for a dog day care center to be located at 3317 Venture Lane in the John Tyler Commercial Center.

As a registered voter and/or resident of James City County who lives in close proximity to the proposed facility, please note that my signature below affirms my desire for the Board to vote **AGAINST** the issuance of this special use permit. I am most concerned for the quality of life that will be disturbed by up to 40 barking dogs as well as for the property value of homes in my community.

Name: HAROLD SHERIDAN

Signature:   
(Printed)

Address: 4508 WIMBLEDON WAY WILLIAMSBURG

**To: James City County Board of Supervisors**

**RE: Case # SUP-0011-2008 Williamsburg Dog**

I am of the understanding that the Board of Supervisors for James City County is considering a provision to issue a special use permit that would allow for a dog day care center to be located at 3317 Venture Lane in the John Tyler Commercial Center.

As a registered voter and/or resident of James City County who lives in close proximity to the proposed facility, please note that my signature below affirms my desire for the Board to vote **AGAINST** the issuance of this special use permit. I am most concerned for the quality of life that will be disturbed by up to 40 barking dogs as well as for the property value of homes in my community.

Name: RUSSELL GEORGE LAWRENCE

(Printed)

Signature: 

Address: 3320 LANCASTER LN

**To: James City County Board of Supervisors**

**RE: Case # SUP-0011-2008 Williamsburg Dog**

I am of the understanding that the Board of Supervisors for James City County is considering a provision to issue a special use permit that would allow for a dog day care center to be located at 3317 Venture Lane in the John Tyler Commercial Center.

As a registered voter and/or resident of James City County who lives in close proximity to the proposed facility, please note that my signature below affirms my desire for the Board to vote **AGAINST** the issuance of this special use permit. I am most concerned for the quality of life that will be disturbed by up to 40 barking dogs as well as for the property value of homes in my community.

Name: Kimberly J. Lawrence

(Printed)

Signature: Kimberly J. Lawrence

Address: 3320 Lancaster Lane

**SPECIAL USE PERMIT-0009-2008. Greenwood Christian Academy at the King's Way Church**

**Staff Report for the August 12, 2008, 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**

June 4, 2008, 7:00 p.m., (deferral)

July 2, 2008, 7:00 p.m.

Board of Supervisors:

August 12, 2008, 7:00 p.m.

**SUMMARY FACTS**

Applicant:

Mr. Chris Basic, AES Consulting Engineers

Land Owner:

King's Way Church

Proposal:

To allow for the construction of a school building to house a maximum of 300 students.

Location:

5100 John Tyler Highway

Tax Map/Parcel Nos.:

4720100057

Parcel Size:

4.56 acres

Zoning:

R-1, Limited Residential

Comprehensive Plan:

Low Density Residential

Primary Service Area:

Inside

**STAFF RECOMMENDATION**

Staff believes that this proposal is consistent with the Comprehensive Plan Land Use Map designation. Staff also believes that the proposed conditions will sufficiently mitigate the impacts created by the proposed development. Since Greenwood Christian Academy is currently operating from the church building on-site, staff believes that increasing the enrollment and moving the children to a new building will only have a minimal additional impact on the area. 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 July 2, 2008, the Planning Commission voted 5-2 to recommend denial of this application.

**Proposed Changes Made Since Planning Commission Meeting**

None

## **PROJECT DESCRIPTION**

Mr. Chris Basic of AES, on behalf of the King's Way Church, has applied for a Special Use Permit (SUP) to allow for the expansion of the existing Greenwood Academy at the King's Way Church. The application seeks to increase the number of students attending the school by 100 (for a total of 300), as well as constructing a new building to house the school. The parcel is 4.56 acres and is zoned R-1, Limited Residential. The property is located at 5100 John Tyler Highway.

Greenwood Christian Academy is currently operating under an approved SUP (SUP-30-01). This SUP allows for the school to operate in the King's Way Church and serve 200 children. Given the space constraints of the school, and the need to expand the grade range of children, this application was submitted for a new building specifically for the school, as well as an increase in the total number of children enrolled to 300.

The proposed building will have an 8,000-square-foot building footprint and have three stories. The total building square footage will be 24,000 square feet. The height of the building will be approximately 33 feet.

### **Environmental**

**Watershed:** Mill Creek Watershed

**Staff Comments:** Environmental staff has reviewed the application and concurs with the Master Plan and proposed conditions. Environmental Division staff has requested a condition be placed on this application that binds specific language about impervious cover calculations at the site plan stage. This language includes specific calculations for how impervious cover data is determined based on the value of pervious pavement as determined by the Environmental Division. Staff concurs with this request and this language is represented in Condition No. 9.

### **Public Utilities**

This application will be served by public water and sewer.

**Staff Comments:** James City Service Authority (JCSA) staff has reviewed the application and concurs with the Master Plan and proposed conditions. A condition has been placed on this application that requires the applicant submit water conservation standards for the new building to be reviewed and approved by the JCSA prior to final site plan approval. JCSA has also requested a condition that requires calculations be provided showing the adequacy of the existing water meter on-site prior to final site plan approval.

### **Transportation**

The applicant anticipates 146 AM peak hour trips in and out of the site, as well as 139 PM peak hour trips in and out of the site. The applicant also notes that right-and left-turn lanes are warranted on John Tyler Highway at the King's Way Church driveway for existing traffic. With the traffic improvements the applicant will be constructing as a part of this application, the site intersection will actually function at a higher level of service (A) than it does currently (C).

**2006 Traffic Counts (John Tyler Highway):** From Ironbound Road to Stanley Drive, there were 11,000 trips.

**2026 Volume Projected:** John Tyler Highway: from Route Ironbound to Route 199, there is anticipation of 12,000 trips, and it is listed in the "Watch" category.

**Road Improvements:** As a part of this project, the applicant will construct a right-turn lane into the King's Way Church site. A two-way left-turn lane will also be striped to serve both the church and Carolina Boulevard on John Tyler Highway as well.



**VDOT Comments:** The Virginia Department of Transportation (VDOT) staff has reviewed the application and concurs with the traffic study and with the proposed right-turn lane and two-way left-turn lane included, concurs with the recommended improvements provided by the applicant.

**Staff Comments:** Staff believes that with the proposed intersection improvements, traffic will actually function better than it does under the current conditions.

## **COMPREHENSIVE PLAN**

### **Land Use Map**

Designation	<p><i>Low-Density Residential (Pages 120 and 121):</i> Suggested land uses include single-family homes, duplexes, cluster housing, recreation areas, schools, churches, community-oriented public facilities, and very limited commercial establishments.</p> <p>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.</p> <p><b>Staff Comment:</b> Staff notes that Greenwood Christian Academy currently operates from this site. The school and the church are both uses referenced in the suggested land use description of low-density residential. Staff also notes that the site is located along a collector or arterial road as described as well.</p> <p>The site is located directly adjacent to a residential subdivision. Because of the proximity to these residences, staff believes that mitigating the impact to these areas is paramount to the application. Staff does not believe that there will be additional traffic or lighting impacts to the neighbors, as those impacts will mainly be located along the front of the property adjacent to John Tyler Highway, but does believe noise could have an impact. Given the limited nature of the time, additional children will be using the facilities (during school hours), and because the school already operates on this site, staff believes that the enhanced landscaping condition placed on the application will help mitigate this issue.</p>
General Land Use Standards	<p><i>Standard # 1 (page 134):</i> Permit new development only where such developments are compatible with the character of adjoining uses and where the impacts of such new developments can be adequately addressed. 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><b>Staff Comment:</b> Currently, there is a house constructed near the rear of the property that serves as an office for the church. This building will be torn down and the school building will be constructed in front of that location.</p> <p>The school building will be approximately 35 feet from the side property line and approximately 150 feet from the rear property line. The building will be constructed to a height of 33 feet and three stories with one of the stories on a slope, serving as a basement. The building will be a full three stories adjacent to the western property line adjacent to an undeveloped parcel along John Tyler Highway (5090 John Tyler Highway). Staff acknowledges that this building size is larger than other residential structures in the area. Staff also notes that this building is comparable in size to the existing church building on-site, but because of the topography and the steeple atop the church, it appears larger than the proposed building.</p> <p>Staff believes that by placing the building closer to John Tyler Highway as proposed on the Master Plan and away from the adjacent residential areas (further than the existing house structure), the scale of the proposed building will be diminished. Staff also believes that by using the existing topography to have one-story of the building be a “basement,” the proposed building should have the appearance of a regular two-story building more similar to the surrounding structures. Given the size of the existing church building and the existing and proposed landscaping around the site, the new school building will be partially screened from John Tyler Highway and will not have a</p>

	significant negative impact on the community.
Goals, strategies and actions	<i>Strategy #2-Page 138:</i> Ensure development is compatible in scale, size, and location to surrounding existing and planned development. Protect uses of different intensities through buffers, access control and other methods.
	<b>Staff Comment:</b> Through SUP Conditions # 1, 3, 4, 5 and 7, staff believes the use will be compatible with the size and scale of surrounding development and any impacts created by the proposal will be mitigated by: the limitations imposed by the Master Plan; lighting restrictions; signage restrictions; enhanced landscaping; and architectural review.

### **Community Character**

General	<i>John Tyler Highway (Route 5) Community Character Corridor (CCC)-Pages 83-84:</i> The predominant visual character of the suburban CCC should be the built environmental and natural landscaping, with parking and other auto-related areas clearly 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.
	<b>Staff Comment:</b> The site currently has on-site screening from John Tyler Highway because of the church located on the property. Additional screening will also be provided along the front parking area to further screen the site and the new school building from the CCC.
Goals, strategies and actions	<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.
	<b>Staff Comment:</b> Staff believes that the additional screening, along with the existing landscaping on-site, will promote the natural views of the area and enhance the experience of residents and visitors.

### **Transportation**

General	<i>John Tyler Highway (Route 5) page 78:</i> Monticello Avenue has supplemented capacity in the Route 5 corridor. However, even with its addition, Route 5 is projected to be near capacity in some sections, and will not have any significant excess capacity. Minor intersection and pavement improvements should be consistent with the Route's Scenic Byway designation. Additional residential or commercial development along this corridor beyond that currently planned is strongly discouraged.
	<b>Staff Comment:</b> The right-turn lane should only require minimal additional paving, and most of the left-turn lane improvements should only require lane striping changes. Staff believes that these minor improvements are consistent with the Route's Scenic Byway designation, but will more importantly improve the function of an intersection to a level of service better than what currently exists.
Goals, strategies and actions	<i>Action #6-Page 81:</i> Assure that private land developments adequately provide transportation improvements which are necessary to serve such developments, or that these developments do not occur in advance of necessary improvements or compromise the ability to provide such facilities.
	<b>Staff Comment:</b> Staff believes that the traffic improvements proposed by this application will not only mitigate impacts caused by the proposed increase in school children, but also will alleviate some of the traffic problems that currently exist at the church intersection.

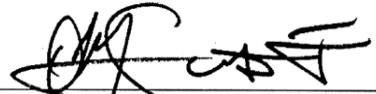
### **RECOMMENDATION**

Staff believes that this proposal is consistent with the Comprehensive Plan Land Use Map designation. Staff also believes that the proposed conditions will sufficiently mitigate the impacts created by the proposed development. Since Greenwood Christian Academy is currently operating from the church building on-site, staff believes that increasing the enrollment and moving the children to a new building will have only a minimal additional impact on the area. Based on this information, staff recommends that the Board of Supervisors approve this application with the attached resolution. At its July 2, 2008, meeting, the Planning Commission voted 5-2 to recommend denial of this application.

---

Jason Purse

CONCUR:



---

O. Marvin Sowers, Jr.

JP/nb  
SUP0009-2008

ATTACHMENTS:

1. Resolution
2. Unapproved minutes from the July 2, 2008, Planning Commission meeting
3. Location Map
4. Master Plan
5. Community Impact Statement
6. Traffic Study
7. Architectural Elevations of "Beatty Building"
8. Photo simulation from John Tyler Highway

## **RESOLUTION**

### **CASE NO. SUP-0009-2008. GREENWOOD CHRISTIAN ACADEMY EXPANSION AT**

#### **KING'S WAY CHURCH**

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. Chris Basic has applied on behalf of King's Way Church for an SUP to allow for the expansion of the Greenwood Christian Academy to a total of 300 enrolled children, as well as construction on a new building to house the school on approximately 4.56 acres of land on parcels zoned R-1, Limited Residential; and

WHEREAS, the conditions for this application replace the originally approved SUP conditions (SUP-0030-2001) for this parcel; and

WHEREAS, the proposed site is shown on a conceptual layout, entitled "Master Plan for Greenwood Academy Expansion at King's Way Church" dated April 23, 2008; and

WHEREAS, the property is located at 5100 John Tyler Highway, and can be further identified on James City County Real Estate Tax Map/Parcel No. 4720100057; and

WHEREAS, the Planning Commission of James City County, following its public hearing on July 2, 2008, recommended denial of this application by a vote of 5-2.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve the issuance of SUP No. 0009-2008 as described herein with the following conditions:

1. This SUP shall be valid for the operation of Greenwood Christian Academy and accessory uses thereto as shown on the Master Plan titled "Master Plan for Greenwood Academy Expansion at King's Way Church" dated April 23, 2008, (the "Master Plan"). Development of the site shall be generally in accordance with the Master Plan as determined by the Planning Director. Minor changes may be permitted by the Development Review Committee (DRC), as long as they do not change the basic concept or character of the development.
2. The SUP shall be valid for the operation of the school within the three-story building, as shown and identified on the Master Plan as "proposed three-story". The school shall be limited to a maximum enrollment capacity of 300 children. This condition shall not be interpreted to mean that other areas onsite cannot be used as accessory to the three-story building for school activities; provided however, that the maximum enrollment does not exceed 300 children.

3. Should new exterior site or building lighting be installed for the operation of the school, such fixtures shall have recessed fixtures with no bulb, lens, or globe extending below the casing. The casing shall be opaque and shall completely surround the entire light fixture and light source in such a manner that all light will be directed downward and the light source is not visible from any side. Fixtures, which are horizontally mounted on poles, shall not exceed 15 feet in height. No glare defined as 0.1 footcandle or higher, shall extend outside the property lines.
4. Any new exterior signage advertising the day care and/or school shall be combined with existing signage for the church and shall be in accordance with Article II, Division 3, of the James City County Zoning Ordinance.
5. An enhanced landscape plan shall provide a minimum of 50 percent evergreen plantings within the rear setback buffer. Enhanced landscaping shall be defined as 125 percent of the size of the Zoning Ordinance landscape requirements. The plan shall also provide landscaping to complete the existing shrub hedge between John Tyler Highway and the existing church parking lot, and shall be approved by the Planning Director or his designee prior to final site plan approval.
6. The applicant shall be responsible for developing and enforcing water conservation standards to be submitted to and approved by the James City Service Authority (JCSA) prior to final development plan approval. The standards shall include, but shall not be limited to such water conservation measures as limitations on the installation and use of irrigation systems and irrigation wells, the use of approved landscaping materials including the use of drought resistant native and other adopted low water use landscaping materials and warm season turf where appropriate, and the use of water conserving fixtures and appliances to promote water conservation and minimize the use of public water resources.
7. Calculations showing the adequacy of the water meter and any required upgrades shall be submitted to and approved by JCSA prior to final site plan approval.
8. Prior to final site plan approval, the Planning Director shall review and approve the final building materials and colors for consistency with renderings entitled, "Beatty Education Building for King's Way Ministries of Williamsburg", and dated May 16, 2008.
9. The proposed credit matrix for managed pervious pavement systems shall adhere to information provided on the cover sheet of the Master Plan, as approved by the Environmental Director.
10. All road improvements recommended in the traffic impact analysis prepared by DRW Consultants titled "Traffic Analysis for Greenwood Christian Academy Expansion" and dated April 20, 2008, and required by the Virginia Department of Transportation (VDOT) shall be installed or bonded by the developer prior to issuance of a certificate of occupancy for any structure on the site. These improvements shall include, at a minimum, a right-turn lane on John Tyler Highway at the King's Way Church driveway, as well as a two-way left-turn lane on John Tyler Highway to serve both the church and Carolina Boulevard.

11. If construction has not commenced on this project within 36 months from the issuance of an SUP, the SUP shall become void. Construction shall be defined as obtaining permits for building construction and footings and/or foundation has passed required inspections.
12. This SUP is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.

---

Bruce C. Goodson  
Chairman, Board of Supervisors

ATTEST:

---

Sanford B. Wanner  
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 12th day of August, 2008.

SUP0009\_2008\_res

UNAPPROVED MINUTES FROM THE JULY 2, 2008 PLANNING COMMISSION  
MEETING

SUP-0009-2008 Kingsway Church Greenwood Christian Academy Expansion

Mr. Jason Purse stated this application is to allow for the expansion of the existing Greenwood Academy at the King's Way Church. This application seeks to increase the number of students attending the school by 100 (for a total of 300), as well as constructing a new building to house the school. The property is located at 5100 John Tyler Highway and is zoned R-1, Limited Residential. Mr. Purse stated that VDOT has reviewed the application and concurs with the traffic study and with the proposed right turn lane and two-way left turn land included, and concurs with the recommended improvements provided by the applicant. He stated the parcel is designated Low Density Residential on the 2003 Comprehensive Plan Land Use Map. Mr. Purse stated that staff believed that this proposal is consistent with the Comprehensive Plan and that the proposed conditions will sufficiently mitigate the impacts created by the development. Staff recommended that the Planning Commission recommend approval to the Board of Supervisors with the attached Special Use Permit conditions.

Mr. Obadal asked when leaving the school, is there a traffic light when crossing to the other side of the road.

Mr. Purse answered currently there is a taper that leads into the site and that there is no signal.

Mr. Obadal asked if there were any safety issues concerning crossing the road without a traffic light.

Mr. Purse stated that given the traffic situation currently at the site, the applicants proposed improvements will actually increase the function of the intersection.

Mr. Obadal asked if there were any plans to have a left turn lane into the site.

Mr. Purse stated that the area will be re-striped and to create a left turn lane to serve the church site, as well as having an additional left turn lane onto Carolina Boulevard. This was a suggestion made by the Virginia Department of Transportation in their review of the application.

Mr. Sowers added that the improvements to the pavement markings that are part of this application will help the traffic situation in that area.

Mr. Obadal expressed concerns if individuals would have to pull up and stop before making the left turn, and that there may be a backup waiting for these individuals to turn.

Mr. Sowers stated that that is the situation out in that area now due to lack of a left turn land, , and that the markings should guide drivers as to where they need to be to make the turns and get turning traffic out of the through lane.

Mr. Chris Johnson, from Kaufman and Canoles, spoke on behalf of the church. He thanked Planning and the Environmental staff for their work on the application.

Mr. Fraley asked Mr. Johnson to comment on the traffic improvements and the impacts from this expansion.

Mr. Johnson stated that the dual left turn lanes would be 200 feet long. This would get drivers out of the flow of traffic. There is also a 150 foot right turn taper which will be extended to be a full 200 foot right turn lane.

Mr. Benjamin Conner, 103 Leon Drive, spoke on behalf of himself and his neighbors. He stated that he and his neighbors vehemently oppose this project. He stated that the adjacent neighbors to the site all oppose this application. He cited reasons such as noise, and that the area was already noisy. He stated that while they do support neighborhood children, these children in this school are not children who live in the neighborhood. Mr. Conner stated he and his neighbors had concerns as to whether the traffic improvements proposed would remedy the situation there currently. He also stated that the site is already small for the current use, so adding more school children would elevate the situation. He expressed concerns about future growth of the school beyond this application. Mr. Conner cited Providence Classical School which has more space, a blacktop, and a substantial field, and they have fewer students. Mr. Conner stated that Kingsway Church and School have been good neighbors. He also stated that the Church is not malicious, but that they feel it is not conscientious toward the adjacent property owners.

Mr. Henderson asked Mr. Conner to identify on the map the property owners that were present, which Mr. Conner did.

Mr. L.R. Iverson, 111 Leon Drive, spoke on this case. He stated that he felt the property was not large enough for the proposed use. He also expressed concerns about the traffic situation and the increased amount due to more students.

Mr. Fraley closed the public hearing.

Mr. Obadal made a motion to approve the application. He felt that the school is important to the Community. He understood the neighbor's concerns but felt that the additional 100 children would not make that great of an impact. Mr. Obadal stated he felt the traffic concerns were addressed and the improvements will accommodate the new population entering the church and the school.

Mr. Billups seconded the motion.

Mr. Poole stated he saw merit in the co-location of educational facilities and houses of worship in the County. He did feel that given the zoning of R-1 and the parcel size, that he felt that he could not support this application. He stated that when reviewing public facilities, mitigating off-site impacts are a priority. Mr. Poole stated he was not sure that the off-site impacts can be appreciably mitigated and expressed his concerns over the increased traffic. He



felt that with regards to traffic and the nearby police and fire departments, that there was a lot of traffic in a short span of road. Mr. Poole stated he cannot support this application at this time.

Mr. Henderson asked about emergency access and the requirements for access.

Mr. Purse stated that the police and fire department did not have any issues with this application.

Mr. Krapf stated that R-1 states that low density residential areas should have the characteristics of a quiet neighborhood. He further stated the Comprehensive Plan states that low density residential areas are an appropriate use of this site which would include churches and schools. He identified the positive components, such as the traffic improvements, pervious cover, and low intensity utility usage. Mr. Krapf did state he also feels that the existing zoning calls for a low density residential, and that the size of the building is significantly larger than those in the surrounding neighborhood. He cannot support this application at this time.

Mr. Peck expressed the same concerns as Mr. Poole and Mr. Krapf. He had concerns with the size of the parcel with the use requested.

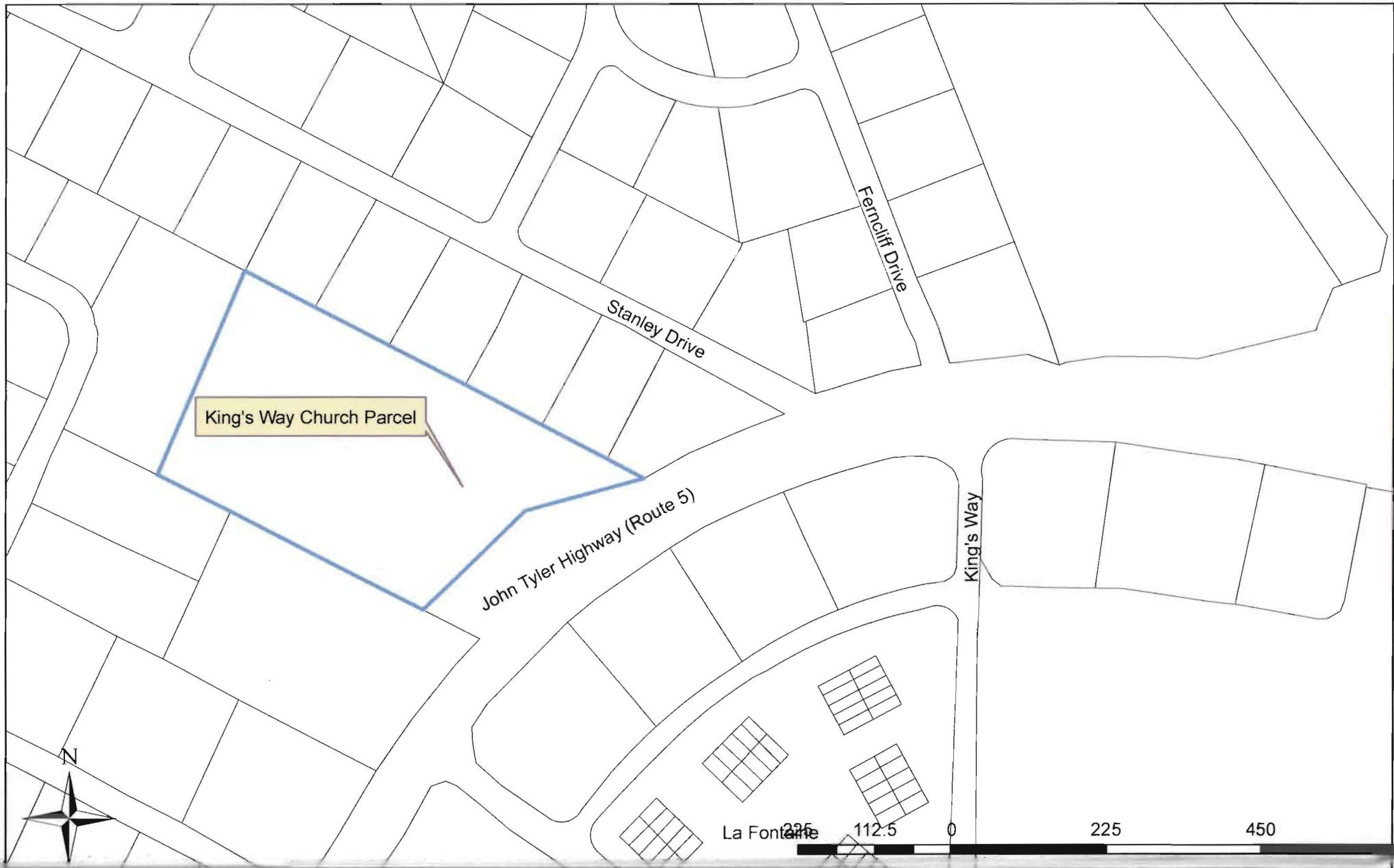
Mr. Billups stated the only concern he had was the size of the school compared to the size of the parcel. He believed that by increasing the number of children to 300 will create some problems. He applauds the effort of having a K-12 curriculum. Mr. Billups also expressed his concerns over the traffic and the citizens' concerns about noise.

Mr. Fraley stated that in this case the zoning and the Comprehensive Plan designation are different. He also stated that in most cases he has an opinion on a particular case before the presentation but keeps an open mind for comments by Commissioners and the public. He stated he was not sure if the landscaping proposed would mitigate the noise concerns. Mr. Fraley stated it might be beneficial to search for another location for the school to expand. He stated the Church does fine work but with the comments that have been made tonight, he will not be able to support this application.

In a roll call vote the motion was denied. (2-5) AYE: Henderson, Obadal; NAY: Poole, Billups, Krapf, Peck, Fraley.

# SUP-0009-2008

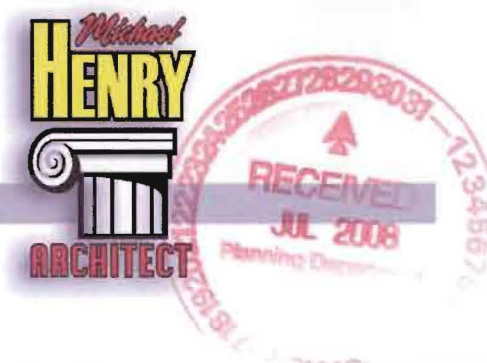
## Greenwood Christian Academy







# King's Way Ministries







RECEIVED  
JUL 20  
Planning Dept



**SPECIAL USE PERMIT-0012-2008. Liberty Ridge Clubhouse and Swimming Pool  
Staff Report for the August 12, 2008, 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**

July 2, 2008, 7:00 p.m.  
August 12, 2008, 7:00 p.m.

**SUMMARY FACTS**

Applicant: Dean G. Vincent of James City County, LLC

Land Owner: James City County, LLC

Proposal: To build a clubhouse and a swimming pool facility to be located within the proposed Liberty Ridge Subdivision.

Location: 5365 Centerville Road

Tax Map/Parcel: 3030100002

Parcel Size: 3.03 acres

Existing Zoning: A-1, General Agricultural

Comprehensive Plan: Rural Lands

Primary Service Area: Outside

**STAFF RECOMMENDATION**

Staff finds the proposed addition consistent with the surrounding zoning and development and consistent with the Comprehensive Plan. Staff recommends that the James City County Board of Supervisors approve the special use permit (SUP) application with the attached resolution.

Staff Contact: Jose-Ricardo Linhares Ribeiro Phone: 253-6685

**PLANNING COMMISSION RECOMMENDATION**

On July 2, 2008, the Planning Commission voted 7-0 to recommend approval of this application.

**Proposed Changes Made at the Planning Commission Meeting:**

SUP Condition No. 1 - Master Plan: At the request of the applicant and with the concurrence of the Planning Commission at the July 2, 2008, meeting, the term “*and bound by*” was deleted from the second sentence of the paragraph “Development and use of the Property shall be generally in accordance with *and bound by* the Conceptual Plan” in order to provide more flexibility to the applicant. As amended this entire condition now reads:

“This Special Use Permit (the “SUP”) shall be valid for the construction of a clubhouse and a swimming pool facility (together with a clubhouse, the Facilities) on the property located at 5365 Centerville Road and also identified as James City County Tax Parcel No. 3030100002 (the Property). Development and use of the Property shall be generally in accordance with the Conceptual Plan entitled “Liberty Lodge Conceptual Plan” prepared by Basham & Lucas Design Group, Inc. with such minor changes as the Development Review Committee determine does not change the basic concept or character of the development.”

Staff supports the above amendment to SUP Condition No. 1. The applicant has indicated the possibility of changes to the current proposal such as modifications to the square footage of the clubhouse and/or swimming pool, changes in the location of recreational features within the parcel, etc. In order to provide the design flexibility requested by the applicant, staff, and the Planning Commission agreed to remove the term “and bound by” from SUP Condition No. 1 but notes that the Development Review Committee would review any changes to the site plan associated with this project if such changes were deemed to modify the basic concept and/or character of this development.

SUP Condition No. 3 - Exterior Lighting: At the request of the applicant and with the concurrence of the Planning Commission at the July 2, 2008, meeting, the definition of the term “glare” was modified. The standard language used for the lighting conditions is: “Glare shall be defined as more than 0.1 foot-candle at the property line or any direct view of the lighting source from the adjoining properties.” With the modification requested by the applicant, this amended condition now reads: “*Glare shall be defined as more than 0.1 foot-candle at the property line of the adjoining residential lots.*” According to the applicant, the change in the definition of the term “glare” allows for certain flexibility in designing the location of the lighting fixtures at the parking lot area for the proposed recreational facility. Staff also supports this request and further notes that the proposed recreational facility will be located on an internal parcel to the subdivision, and therefore resulting in minimal lighting impacts to adjoining areas and roads which are adjacent to the entire subdivision.

Staff notes that per the request of the Planning Commission, the following was added as a SUP Condition:

SUP Condition No. 4 - Low Impact Development Measures: “Where practical, as determined by the Environmental Director, LID measures and/or techniques will be incorporated into the site plan for this project.”

Staff concurs with the above-referenced condition as an addition to the SUP conditions for SUP-0012-2008. Staff further notes that, during the Planning Commission meeting on July 2, 2008, the applicant indicated that the total square footage of the clubhouse will be increased from 1,450 square feet to 2,110 square feet.

#### **Proposed Changes Made after Planning Commission Consideration:**

The following elements of this project have been modified by the applicant:

- Parking space numbers have increased from 16 to 28 spaces;
- The swimming-pool square footage has increased from 2,000 square feet to approximately 2,400 square feet;
- The clubhouse square footage has increased from 860 square feet to approximately 1,450 square feet;
- The 3,625 square foot of aggregate paths have been eliminated from the plan; and
- The total amount of impervious area has increased from 27,094 to 28,722 square feet.

Staff notes that the biggest change to this proposal since the July 2, 2008, Planning Commission meeting pertains to the increase in the number of vehicular parking spaces for this project. During the Planning Commission meeting a number of Commissioners expressed concern with the number of on-street parking spaces being provided (i.e. 16 parking spaces) and requested that the applicant considered additional opportunities for on-street parking at the site. As a result, the applicant has increased the number of parking spaces from 16 spaces to 28. Staff concurs with the modification in the number of parking spaces for this project.

**PROJECT DESCRIPTION**

Mr. Dean Vincent, on behalf of James City County, LLC, has applied for an SUP to allow the construction of a clubhouse and a swimming pool facility to be located on a 3.03 acre parcel inside the proposed Liberty Ridge Subdivision.

According to Section 24-213 of the Zoning Ordinance, community recreational facilities, public or private, such as clubhouses and swimming pools are a specially permitted use in the A-1 zoning district if such facilities are not part of a subdivision approved under a SUP request. Liberty Ridge is a by-right 535-acre residential development located south and east of Freedom Park, east of the main branch of Colby Swamp, north of Jolly Pond Road, and west of Centerville Road. The proposed subdivision will consist of 138 single-family-three acre lots, 13 acres of common open space areas distributed throughout the subdivision, an independent water facility which will serve the needs of the residents, and the proposed recreational facility. The construction plans for Liberty Ridge has recently received final approval and the first plat showing 28 lots is currently under County review.

*The Clubhouse and Swimming Pool Facility*

According to the revised conceptual plan submitted by the applicant, the proposed recreational facility will include: a one-story, 2,110-square-foot clubhouse (i.e. 1,450 square feet of ground floor and 660 square feet of basement.), a 2,400-square-foot swimming pool, a pool deck of approximately 6,200 square feet, and a grill patio measuring 700 square feet. The proposed recreational facility will also offer amenities such as a playground, a smaller pool with a waterfall, paved sidewalk allowing for pedestrian access, and a parking area for 28 vehicular parking spaces (with two handicapped parking spaces). According to information provided by the applicant, the proposed recreational facility will be deeded to the Homeowners Association of Liberty Ridge Subdivision within one year of the project's completion (please refer to Attachment No. 3 - Homeowners Association Agreement attached to this report). Staff further notes that the amount of impervious coverage proposed for the 3.03 acre parcel is, according to the revised information provided by the applicant, 28,722 square feet or 0.66 acres. The remaining 2.37 acres is proposed as pervious areas.

The proposed recreational facility will be located on an internal lot fronting two streets (Liberty Ridge Parkway and Arbor Place) and entirely within the building setback for Lot No. 51 (this number corresponds to the lot within the subdivision where the recreational facility will be built) with an associated landscape buffer of approximately 30 feet. The applicant has indicated that the clubhouse will function as a social gathering place for residents. The swimming pool will be open to residents from Memorial Day to Labor Day with the following hours of operation: 10:00 a.m. - 8:00 p.m. (Monday through Friday) and 11:00 a.m. - 7:00 p.m. on Sundays. According to revised information submitted by the applicant, the maximum capacity for the proposed swimming pool and clubhouse is 73 residents.

**PUBLIC IMPACTS****Archaeological**

Two separate Phase I Cultural Resources Surveys have been conducted throughout the entire 535-acre property, one on 110 acres in the northern section of the property in 2006, and a second on 425 acres in the southern section of the property in 2007. Originally, only the 110-acre northern portion of the project area fell under the jurisdiction of the United States Army Corps of Engineers (COE) and therefore was subject to Section 106 of the National Historic Preservation Act (NHPA) of 1996. Subsequently, James City County and the Virginia Department of Historic Resources (VDHR) expressed concerns to the COE that the entire property had a high potential to contain significant cultural resources, particularly due to the fact that several nineteenth-century historic maps depict a settlements of emancipated Africans living in the vicinity of the property.

The owners of the property, James City County, LLC, voluntarily entered into a programmatic agreement with James City County, the VDHR, and the COE to conduct additional cultural resources studies in the entire 535 acres, including any necessary Phase II studies and Phase III excavations. As mandated by the programmatic agreements, Phase II archaeological significance evaluations were performed at four sites, all of which were deemed eligible for listing on the National Register of Historic Places. The VDHR reviewed and approved the recommendations in both Phase I reports and the Phase II study.

**Staff Comments:** Staff concurs with the Phase I and Phase II archaeological studies performed by the James River Institute for Archaeology and notes that the clubhouse and swimming pool parcel have not been identified as having archaeological significance.

### **Public Utilities**

The site (Lot No. 51) is located outside the Primary Service Area (PSA) and will be served by independent water and individual sewer systems. The James City County Service Authority (JCSA) staff has reviewed the SUP application and issued comments which will be addressed at the site plan review stage.

**Staff Comments:** Staff concurs with the JCSA findings. Staff further notes that the proposed recreational facility will conform to the existing and approved water conservation standards agreement executed with the JCSA for the entire subdivision (please refer to SUP Condition No. 2.)

### **Virginia Department of Public Health**

The Virginia Department of Public Health notes that while original soil work has been submitted and approved for residential use on all lots within the subdivision, this conceptual plan shows a change of land use, from residential to recreational, on Lot No. 51, and therefore will require additional sampling, and a modified plan for sewage disposal from the engineer.

**Staff Comments:** Staff concurs with the Virginia Department of Public Health comments as this lot was not identified as a lot for a clubhouse and a swimming pool during the construction plans review process.

### **Transportation**

The numbers below reflect the traffic counts for the adjoining roads to Liberty Ridge.

**2007 Traffic Counts:** From Longhill Road (Route 612) to News Road (Route 613): 6,441 average daily trips.

**2026 Volume Projected:** From Brick Bat Road to Longhill Road, projected 13,000 average daily trips. This segment Centerville Road is under the “watch” category listed in the 2003 Comprehensive Plan.

**VDOT Comments:** The Virginia Department of Transportation (VDOT) has completed the review for this SUP application and has no objection to the overall concept plan for this proposal. Minor comments have been issued which will be addressed at the site plan review stage.

**Staff Comments:** Staff concurs with VDOT findings and notes that a Traffic Impact Analyses for this proposal was not requested by VDOT given that the majority of the traffic generated by the proposed clubhouse and swimming pool will be internal to the subdivision. Staff further notes that the proposed recreational facility will provide a total of 28 vehicular parking spaces and an 18 foot wide drive aisle with 60 degree angle parking. According to information provided by the applicant, the number of parking spaces for the proposed clubhouse at Liberty Ridge was based on similar recreational facilities in other residential development built by James City County, LLC, and the number of lots, size of the pool, square footage of the clubhouse and the percentage of property owners that normally frequent this type of facility.

As examples of number of parking spaces associated with recreational facilities (i.e. at least one clubhouse and one swimming pool), the applicant cited the following built by James City County, LLC:



- Eagle Harbor, Isle of Wight, VA  
950 residential single-family units  
Clubhouse and an 8,000-square-foot swimming pool  
46 vehicular parking spaces
- Founder's Point, Isle of Wight, VA  
319 residential single-family units  
Clubhouse and a 4,000-square-foot swimming pool  
28 vehicular parking spaces
- Lakeside Pool at River Front, Suffolk, VA  
372 residential single-family units  
Clubhouse and a 3,000-square-foot swimming pool  
26 vehicular parking spaces

In addition to the above information submitted by the applicant, staff compared elements of the proposed recreational facility at Liberty Ridge (i.e. square footage of the pool and clubhouse, parcel size, number of parking spaces provided, etc.) with a clubhouse and swimming pool located at the Wellington subdivision in James City County to evaluate the number of vehicular parking spaces proposed at Liberty Ridge's clubhouse. At Wellington, the size of the clubhouse and swimming pool are, respectively, 2,540 square feet and 4,000 square feet. The total amount of vehicular parking spaces provided is 38. At Liberty Ridge, the size of the clubhouse and swimming pool are, respectively, 2,110 square feet and 2,400 square feet. The total amount of vehicular parking spaces provided is 28. Staff further notes that both are single-family residential developments and that Liberty Ridge proposes approximately 138 residential units whereas Wellington has over 300 residential units. The applicant has further indicated that, upon VDOT approval, overflow parking will be on-street/shoulder parking along the frontage of the Clubhouse parcel at Liberty Ridge Parkway and Arbor Place streets.

#### **Environmental:**

**Watershed:** Gordon Creek Watershed

**Environmental Comments:** The Environmental Division has reviewed and offers not objections to this SUP request. However, the Environmental Division has recommended the use of Low Impact Development (LID) measures and techniques on the site.

**Staff Comments:** Staff notes that the use of LID measures and techniques is secured through the SUP Condition No. 4 - LID Measures.

### **COMPREHENSIVE PLAN**

#### **Land Use Map**

Designation	<p><b>Rural Lands (Page 119):</b> Rural Lands are areas containing farms, forests and scattered houses, exclusively outside of the Primary Service Area, where a lower level of public service delivery exists or where utilities and urban services do not exist and are not planned for in the future. Appropriate primary uses include agricultural and forestall activities, together with certain recreational, public or semi-public and institutional uses that require a spacious site and are compatible with the rural surroundings. Rural residential uses associated with legitimate agricultural and forestall activities are appropriate when they are at a very low density and pattern and no more than one dwelling unit per three acres in a conventional subdivision pattern.</p> <p><b>Staff Comment:</b> Staff finds that the proposed clubhouse and swimming pool facility, as an accessory use to the proposed residential development, to be consistent with the Comprehensive Plan recommendation. Staff further notes that this proposal is associated with a by-right development, located on an internal lot to the subdivision and therefore resulting in minimum off site impacts.</p>
-------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

**Environmental**

Goals, Strategies, and Actions	<b>Action No. 5 (Page 66):</b> “Encourage the use of Better Site Design, Low Impact Development, and the best management practices (BMPs) to mitigate adverse environmental impacts...”
	<b>Staff Comment:</b> According to SUP Condition No.4, LID techniques and measures will be incorporated during the site plan review process for this project.

**Staff Comments:** Staff finds that the proposed clubhouse and swimming pool facility are minor additions to a by-right residential development and that on and off site impacts to traffic and to the environment will be minimal.

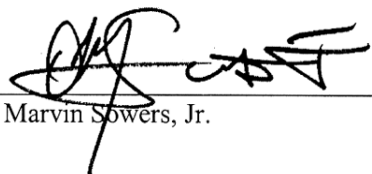
**RECOMMENDATION:**

Staff finds the proposed addition consistent with surrounding zoning and development and generally consistent with the Comprehensive Plan. Staff recommends that the James City County Board of Supervisors approve the SUP application with the revised Master Plan and with the conditions listed in the attached resolution.

---

Jose-Ricardo Linhares Ribeiro

CONCUR:



---

O. Marvin Sowers, Jr.

JR/nb  
SUP0012-2008

**ATTACHMENTS:**

1. Location Map
2. Conceptual Plan (non-binding)
3. Homeowners Association Agreement
4. Artistic rendering of the proposed clubhouse at Liberty Ridge (non-binding)
5. Unapproved Minutes from the July 2, 2008, Planning Commission meeting
6. Resolution

## **RESOLUTION**

### **CASE NO. SUP-0012-2008. LIBERTY RIDGE CLUBHOUSE AND SWIMMING POOL**

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. Dean G. Vincent has applied on behalf of James City County, LLC for an SUP to allow the construction of a clubhouse and a swimming pool on the site; and

WHEREAS, the proposed development is shown on a plan prepared by Basham & Lucas Design Group, Inc. (the "Master Plan") and entitled "Liberty Lodge Conceptual Site Plan"; and

WHEREAS, the property is located within the proposed Liberty Ridge subdivision at 5365 Centerville Road on land zoned A-1, General Agricultural District, and can be further identified as Parcel No. (1-2), on James City County Real Estate Tax Map No. (30-3); and

WHEREAS, the Planning Commission, following its public hearing on July 2, 2008, voted 7-0 to recommend approval of this application; and

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

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve the issuance of SUP-0012-2008 as described herein with the following conditions:

1. **Master Plan**: This SUP shall be valid for the construction of a clubhouse and a swimming pool facility (together with the clubhouse, the "Facilities") on the property located at 5365 Centerville Road and also identified as James City County Tax Parcel No. 3030100002 (the "Property"). Development and use of the Property shall be generally in accordance with the Conceptual Plan entitled "Liberty Lodge Conceptual Plan" prepared by Basham & Lucas Design Group, Inc. with such minor changes as the Development Review Committee determines does not change the basic concept or character of the development.
2. **Water Conservation**: The facilities shall conform to the existing water conservation standards approved by the James City County Service Authority for this development on February 27, 2008.
3. **Exterior Lighting**: All new exterior light fixtures, including building lighting, for the Facilities shall have recessed fixtures with no lens, bulb, or globe extending below the casing, except for ornamental or decorative lighting. In addition, a lighting plan shall be submitted to and approved by the Planning Director or his designee, which indicates no glare outside the property lines. All light poles shall not exceed 20 feet in height unless otherwise approved by the Planning Director prior to final site plan approval. "Glare" shall be defined as more than 0.1 foot-candle at the property line adjoining residential lots.

4. Low Impact Development (LID) Measures: Where practical, as determined by the Environmental Director, LID measures and/or techniques will be incorporated into the site plan for this project.
5. Dumpsters: All dumpsters and heating and cooling units visible from any public street or adjoining property shall be screened with landscaping or fencing approved by the Planning Director or his designee prior to final site plan approval for the Facilities.
6. Severance Clause: This SUP is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.
7. Commencement of Construction: If construction has not commenced on the Facilities within 36 months from the issuance of this SUP, the SUP shall become void. Construction shall be defined as obtaining permits for building construction.

---

Bruce C. Goodson  
Chairman, Board of Supervisors

ATTEST:

---

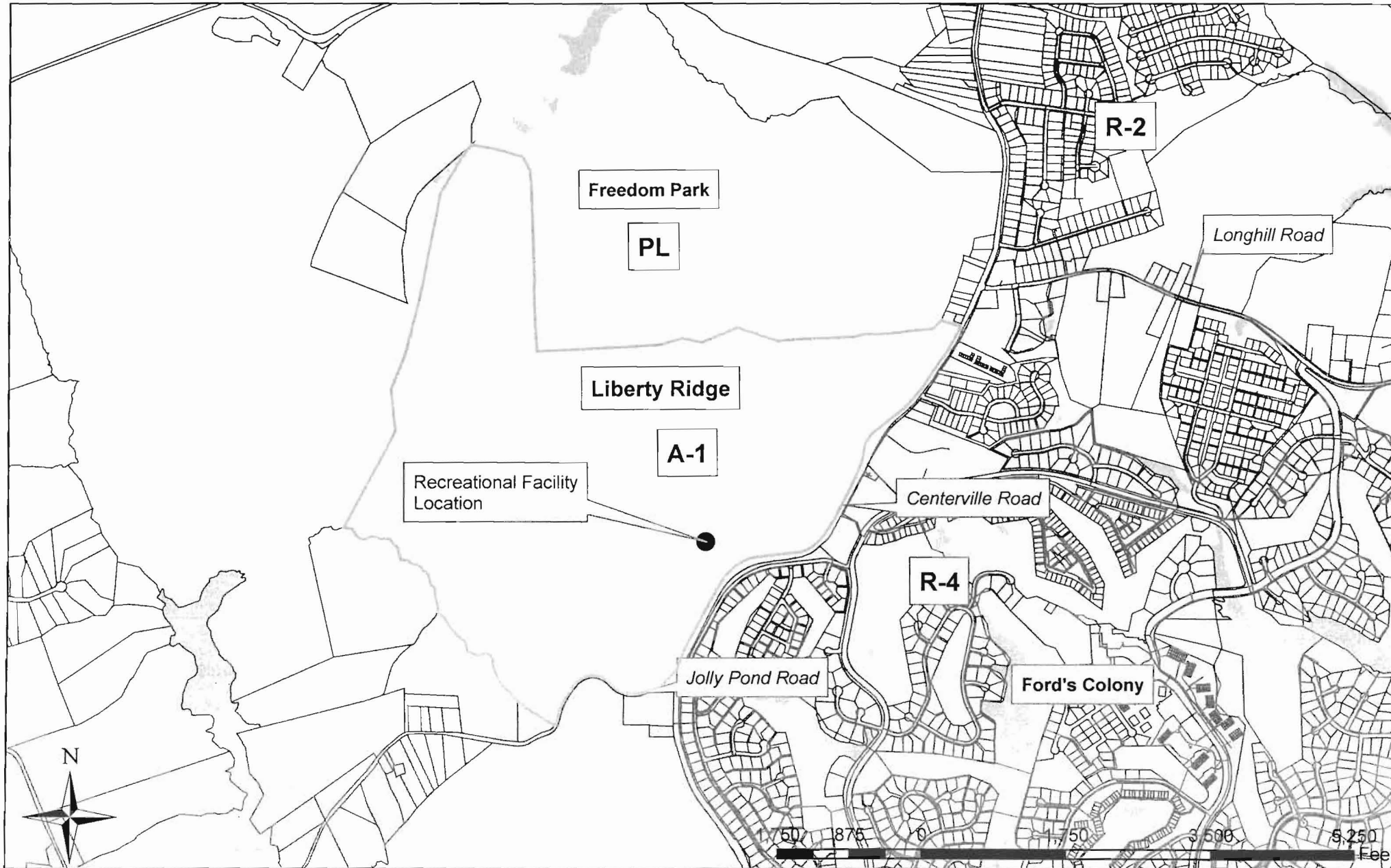
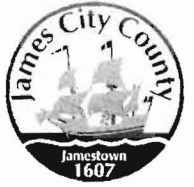
Sanford B. Wanner  
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 12th day of August, 2008.

SUP0012-2008\_res

**JCC-SUP-0012-2008**

# Clubhouse and swimming pool at Liberty Ridge



**ARTICLES OF INCORPORATION OF  
LIBERTY RIDGE HOMEOWNERS' ASSOCIATION, INC.**

The undersigned hereby forms a non-stock corporation under the provisions of Chapter 10 of Title 13.1 of the Code ("Act"), and to that end adopts the following Articles of Incorporation for such corporation.

**ARTICLE I: NAME**

The name of the corporation is Liberty Ridge Homeowners' Association, Inc.

**ARTICLE II: PURPOSES**

The sole purposes and powers of the corporation are:

(a) To manage, maintain, and care for the Common Open Space and Common Open Space Improvements in the development known as Liberty Ridge, located in James City County, Virginia, and to assess, collect and disburse Assessments and all other charges due the corporation from its Members, as hereinafter provided.

(b) To acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, sell, lease, transfer, mortgage, encumber, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the corporation.

(c) To do any and all things and acts that the corporation, from time to time, in its discretion, may deem to be for the benefit of the Common Open Space and Common Open Space Improvements and the Members, or advisable, proper or convenient for the promotion of the peace, health, comfort, safety or general welfare of such Members, and to conduct any and all business that a corporation organized under the Act by law may now or hereafter conduct and have or exercise all powers rights and privileges that are not required to be specifically set forth in these Articles.

Notwithstanding any other provisions of these Articles, the corporation shall not carry on any activities not permitted to be carried on by a homeowners association exempt from federal income tax under Section 501 of the Internal Revenue Code of 1986 or the corresponding provision of any future Internal Revenue law.

**ARTICLE III: MEMBERS AND VOTING**

Subject to the provisions of the final two (2) sentences of this Article III, until the first to occur of (i) the date upon which the Declarant no longer is an Owner, or (ii) the date upon which the Declarant records an instrument in the Clerk's Office terminating the Type "B" Membership, there shall be the following two (2) classes of membership in the corporation:

TYPE "A": Type "A" Members shall be all Owners or Tenants of Owners to whom such Owners have assigned their rights as Type "A" Members other than Declarant, provided that at such time as the Type "B" Membership no longer exists, Declarant shall be deemed to be a Type "A" Member with respect to Lots owned by it, if any.

TYPE "B": The Type "B" Member shall be the Declarant.

Thereafter, there shall be only one (1) class of membership in the corporation, to wit, the Type "A" membership. Each Type "A" Member shall be entitled to one (1) vote for each Lot which he, she or it owns. The Members shall vote as classes on all matters submitted to the membership for a vote.

When a Lot is owned of record in any manner in the name of two (2) or more Persons, or if two (2) or more Persons have the same fiduciary relationship respecting a Lot, then, unless the instrument or order appointing them or creating the tenancy otherwise directs and it or a copy thereof is filed with the Secretary of the corporation, their acts with respect to voting shall have the following effect:

- (1) if only one (1) votes his, her or its act shall bind all;
- (2) if more than one (1) vote the act of the majority so voting shall bind all;
- (3) if more than one (1) vote, but the vote is evenly split on any particular matter, each fraction shall be entitled to its proportionate share of the vote or votes; and
- (4) if the instrument or order filed with the Secretary of the corporation shows that any such tenancy is held in unequal interest, a majority or even split under subparagraphs (2) and (3) immediately above shall be a majority or even split in interest in the Lot to which the vote is attributable.

The principles of this Article shall apply, insofar as possible, to execution of proxies, waivers, consents or objections, and for the purpose of ascertaining the presence of a quorum.

The voting rights of any Owner attributable to a Lot actually leased to a Tenant may be assigned by such Owner to his, her or its Tenant.

The Members of the corporation shall have the right to vote for the election and removal of directors (to the extent set forth below) and upon such other matters with respect to which a vote of Members is required under the Declaration, these Articles or under the provisions of the Act.

Except as set forth below, where specifically approved by the Board of Directors, the Members may approve or reject actions proposed to be taken by the Association by referendum. At any time that the Type "A" Members have the ability to elect a majority of the Board of Directors, the Members may require a referendum on any action of the Board of Directors by presenting to the Secretary of the Board of Directors within thirty (30) days of the taking of such action or ratification by the Board of Directors of its intent to take such action a petition signed by not less than fifty percent (50%) of the Type "A" Members. Notwithstanding the foregoing, these Articles may only be amended with the approval of more than two-thirds (2/3rds) of the Type "A" Members present in person or by proxy at a duly called meeting and, so long as there is a Type "B" Member, the approval of the Type "B" Member.

Notwithstanding anything contained hereto to the contrary, corporate action required or permitted by the Act to be taken at a meeting of the Members may be taken without a meeting and without prior notice if the corporate action is taken by all Members entitled to vote on the corporate action, in which case no corporate action by the Board of Directors shall be required. Such action required may also be taken without a meeting and without prior notice, if the corporate action is taken by Members who would be entitled to vote at a meeting of Members having voting power to cast not fewer than the minimum number (or numbers, in the case of voting by voting groups) of votes that would be necessary to authorize or take the corporate action at a meeting at which all Members entitled to vote thereon were present and voted.

#### **ARTICLE IV: MANAGEMENT OF CORPORATION**

The affairs of the corporation shall be managed by a Board of Directors having no fewer than three (3) and no more than five (5) members. The initial Board of Directors shall have three (3) members, and those persons identified as such in Article V below shall serve as such initial Board until the first annual meeting of the Members to be held in 2009. The Board of Directors may change the number of Directors to five (5), but the vacancies occurring by reason of such increase shall only be filled by vote of the Type "A" Members of the corporation and/or designation by the Class "B" Member, as the case may be.

Subject to the provisions of the succeeding paragraph, commencing at the time of the first annual meeting of the Members to be held in 2009 and thereafter for so long as there is a Type "B" Member, there shall be two (2) classes of Directors. The Class "A" Directors shall serve for two-year terms, and the Class B Directors shall serve for one-year terms. At such time as there no longer is a Type "B" Member, all Directors shall be Class "A" Directors. Directors shall be elected or designated, as the case may be, at the annual meeting of the Members. Class "A" Directors shall



be elected by Type "A" Members, and Class "B" Directors shall be designated by the Type "B" Member. So long as there is a Class "B" Member, a majority of the Directors shall be Class "B" Directors.

At the first annual meeting of the Members at which more than one (1) Class "A" Director is to be elected by the Type "A" Members, the Director who is elected with the lowest number of votes of all Directors who are elected shall be elected for a one-year term, while the remaining Directors who are elected shall be elected for two-year terms. Thereafter, all Class "A" Directors shall be elected for two-year terms.

A Class "A" Director may be removed from office, with or without cause, by the Type "A" Members at a meeting of the Members of the corporation expressly called for such purpose, provided the notice of such meeting shall state that the purpose, or one of the purposes, of the meeting is removal of the Director. A Class "B" Director may be removed from office, with or without cause, at the election of the Type "B" Member. If a Class "A" Director is removed from office, resigns, becomes disabled or dies, a successor Director shall be elected by the Type "A" Members. If a Class "B" Director is removed from office, resigns, becomes disabled or dies, a successor Director shall be designated by the Type "B" Member.

No representative of the Type "B" Member serving as a Director shall be required to disqualify him or herself upon any vote upon any management contract, lease, or other matter between the Type "B" Member and the Association under circumstances by virtue of which the Type "B" Member may have a pecuniary or other interest. No such actual or apparent conflict of interest shall be a cause of partial or total invalidity of the matter voted upon whether or not the vote of any representative of the Type "B" Member was necessary for the adoption, ratification, or execution of the same.

#### **ARTICLE V: INITIAL BOARD OF DIRECTORS**

The names and addresses of those persons who are to constitute the initial Board of Directors are [Note please verify addresses.]:

<u>NAME</u>	<u>ADDRESS</u>
Branch P. Lawson	106 Water Pointe Lane Smithfield, Virginia 23430
Mark A. Edwards	104 Spinaker Run Lane Smithfield, Virginia 23430
Aaron C. Millikin	20591 Creekside Drive

Smithfield, Virginia 23430

#### **ARTICLE VI: REGISTERED OFFICE AND AGENT**

The address of the initial registered office of the corporation is 10304 Pebblebrook Place, Richmond, Virginia 23238. The name of the initial registered agent is Thomas E. Carr & Associates, P.C., which is a Virginia stock corporation, whose business address is 10304 Pebblebrook Place, Richmond, Virginia, 23238, which is located in Henrico County.

#### **ARTICLE VII: LOANS; DEEDS OF TRUST**

The Board of Directors shall have the power and authority to enter into deeds of trust encumbering the property of the corporation and to pledge the revenues of the corporation as security for loans made to the corporation which loans shall be used by the corporation in performing its authorized functions; provided that any such deed of trust is with the prior consent of more than two-thirds (2/3rds) of the Type "A" Members voting in person or by proxy at a duly called meeting at which a quorum is present and, so long as there is a Type "B" Member, of the Type "B" Member, and further provided that in the event of a default upon any such deed of trust by the corporation, the noteholder's rights shall be limited to the right, after taking possession of the property burdened thereby, to charge reasonable admission and other fees, and, if necessary, to open enjoyment of such property to a wider public, until the note held is satisfied, whereupon possession of the property shall be restored to the corporation. Notwithstanding anything in the Declaration to the contrary, without the express written consent of the Declarant, the corporation shall not be allowed to reduce the level of the Annual Assessment at any time there are outstanding any amounts due the Declarant as repayment of any loans made by the Declarant to the corporation.

#### **ARTICLE VIII: MERGER; CONSOLIDATION; SALE OF ASSETS; DISPOSITION OF ASSETS IN DISSOLUTION**

The corporation may participate in such a merger, consolidation disposition of assets or be dissolved by the affirmative vote of more than two-thirds (2/3rds) of the Type "A" Members voting in person or by proxy at a duly called meeting at which a quorum is present, and, so long as there is a Type "B" Member, of the Type "B" Member. Prior to dissolution of the corporation, the assets of the corporation shall be offered for dedication to James City County, Virginia. If such dedication is refused, such assets shall be granted, conveyed and assigned to any nonprofit corporation, association, trust or other organization to be devoted to purposes similar to those contemplated by the Declaration. In the event of such a dissolution and transfer, the assets shall continue to be used and maintained for the purposes set out herein.

#### **ARTICLE IX: INDEMNIFICATION; LIABILITY**

The corporation shall have all of the powers of indemnification set forth in Article 9 of the Act as in effect on the date hereof or as hereafter modified or amended, provided that whenever pursuant to such Article (i) a determination that indemnification is permissible is to be made, (ii) indemnification is to be authorized, and/or (iii) an evaluation as to the reasonableness of expenses against which an individual is to be indemnified is to be made, in any such case by a vote of the Members, the vote required shall be the affirmative vote of more than two-thirds (2/3rds) of the Type "A" Members voting in person or by proxy at a duly called meeting at which a quorum is present, and, so long as there is a Type "B" Member, of the Type "B" Member, provided membership interests owned or voted under the control of Directors who are at the time parties to the proceeding in question may not be voted on the determination, authorization, or evaluation, as the case may be.

Other than in the event of willful misconduct or a knowing violation of the criminal law, in any proceeding against an officer or director of the corporation who receives compensation from the Association for his or her services, the damages assessed arising out of a single transaction, occurrence or course of conduct shall not exceed the amount of compensation received during the 12 months immediately preceding the act or omission for which liability was imposed. An officer or director without compensation for his services shall not be liable for damages in any such proceeding.

#### **ARTICLE X: DEFINITIONS; CONFLICTS**

All capitalized terms used in these Articles and not defined herein shall have the meaning given to them in the Declaration of Covenants, Conditions and Restrictions of JCC, L.L.C., a Virginia limited liability company, and the corporation, which will be recorded in the Clerk's Office following incorporation of the corporation. In the event of a conflict between these Articles and the foregoing Declaration, these Articles shall govern.

Dated: \_\_\_\_\_, 2008

\_\_\_\_\_  
Joyce B. Taylor  
Incorporator

## **BYLAWS**

### **LIBERTY RIDGE HOMEOWNERS' ASSOCIATION, INC.**

1. Office. The office of the ASSOCIATION shall be located at such place as the BOARD may determine from time to time.

2. Fiscal Year. The first fiscal year of the ASSOCIATION shall be from the date of its incorporation until December 31, 2008. Thereafter, the fiscal year of the ASSOCIATION shall be the calendar year.

3. Seal. The seal of the ASSOCIATION shall have inscribed thereon the name of the ASSOCIATION. The seal may be used by causing it, or a facsimile thereof, to be impressed, affixed, or otherwise reproduced upon any instrument or document executed in the name of the ASSOCIATION.

4. Definitions. Unless the context otherwise requires, all capitalized terms used in these BYLAWS shall have the definitions given to them in the ARTICLES or in the DECLARATION.

5. Annual Meeting. The annual meeting of the MEMBERS for the election of Directors and transaction of such other business as may come before the meeting shall be held in the month of March of each year commencing March, 2009.

6. Special Meetings. Special meetings of the MEMBERS may be requested at any time by written notice to the Secretary by a majority of the BOARD, TYPE "A" MEMBERS having at least twenty-five percent (25%) of the votes which may be cast by all of the TYPE "A" MEMBERS, the TYPE "B" MEMBER, or the President.

7. Place of Meetings. All meetings shall be held at the office of the ASSOCIATION or at such other location as is determined by the BOARD and, unless another time is fixed in the notice of meeting, at 7:30 p.m.

8. Quorum; Action by the MEMBERS. The presence in person or by proxy at a meeting of 10% of the TYPE "A" MEMBERS, and, while there is a TYPE "B" MEMBER, the TYPE "B" MEMBER, shall constitute a quorum. If a quorum is not present, the BOARD may call another meeting or meetings subject to the giving of proper notice, and the required quorum at such subsequent meeting or meetings shall be one-half of the number of TYPE "A" MEMBERS required in order for there to have been a quorum at the preceding meeting, and, while there is a TYPE "B" MEMBER, the TYPE "B" MEMBER. After a quorum has been established at a meeting, the subsequent withdrawal of TYPE "A" MEMBERS or proxies, so as to reduce the number of TYPE "A" MEMBERS present in person or proxy and entitled to vote at the meeting below the number required for a quorum, shall not affect the validity of any action taken at the

meeting or any adjournment thereof, whether such action is taken before or after such withdrawal.

9. Organization. At each meeting of the MEMBERS the President, or, in the absence of the President, the Vice-President (if any), or, in the absence of the President and Vice President (if any), any PERSON chosen by the BOARD shall preside as chairman. The Secretary, or in his or her absence or inability to act, any PERSON appointed by the chairman of the meeting shall act as secretary of the meeting.

10. MEMBER Register. The Secretary of the ASSOCIATION shall maintain a register in the ASSOCIATION office of the names and addresses of the MEMBERS. It shall be the obligation of each MEMBER to advise the Secretary of any change of address of such MEMBER or change of ownership of any LOT owned in whole or in part by such MEMBER. The ASSOCIATION shall not be responsible for reflecting any change of address and/or ownership for purpose of notification until notified of any such change in writing. If any LOT is owned by more than one (1) PERSON, the OWNERS shall advise the Secretary of the name and address of the PERSON to whom notice shall be directed, notice to whom shall be deemed to be sufficient notice to such OWNERS. In the absence of any such designation, notice may be sent to any one of such OWNERS, which notice shall be deemed to be sufficient notice to such OWNERS. Notice to an OWNER that is an entity shall be sent to the address provided by such entity to the Secretary, or, in the absence of any such address, to the address to which real estate tax assessment notices and bills are sent to such OWNER as reflected in the Tax Assessor's Office in the COUNTY..

11. Directors. The following provisions shall apply to Directors of the ASSOCIATION and meetings of the BOARD:

- a. All Directors shall be of legal age, but need not be MEMBERS.
- b. While there is a TYPE "B" MEMBER, meetings of the BOARD may be held at such place within the Commonwealth of Virginia as the BOARD may from time to time determine or as shall be specified in the notice or waiver of notice of such meeting. Thereafter, such meetings shall be held at a location in James City County, Virginia.
- c. The BOARD shall meet for the purpose of organization, the election of Officers and the transaction of other business as soon as practicable after each annual meeting of the MEMBERS. Notice of such meeting need not be given if such meeting is to occur on the same day and at the same place where the annual meeting is to be held. If all of the Directors are not present after the annual meeting of the MEMBERS, or if the Directors determine not to have the organizational meeting on the same day as the annual meeting of the MEMBERS, such organizational meetings shall be held as soon as

practicable thereafter, at a time and place which shall be specified in a notice given as hereinafter provided.

- d. While there is a TYPE "B" MEMBER, regular meetings of the BOARD need not be held. Thereafter, such meetings shall be held at such time and place as the BOARD may from time to time determine, provided such meetings shall be held not less than twice each fiscal year. Notice of regular meetings of the BOARD need not be given, except as otherwise required by statute or these BYLAWS.
- e. While there is a TYPE "B" MEMBER, special meetings of the BOARD may be called solely by such MEMBER. Thereafter, such meetings may be called by any member of the BOARD or the President.
- f. The President or, in his or her absence, a Director designated by those Directors present, shall preside at meetings of the BOARD.
- g. A Director may resign at any time by giving written notice of his or her resignation to the President or the Secretary. Any such resignation shall take effect at the time specified therein or, if the time when such resignation is to become effective is not specified therein, then immediately upon its receipt. Acceptance of such resignation shall not be necessary to make it effective.
- h. Directors designated by the TYPE "B" MEMBER shall not be entitled to any compensation. Directors elected by the TYPE "A" MEMBERS shall not be entitled to any compensation unless the TYPE "A" MEMBERS elect to pay them compensation and, while there is a TYPE "B" MEMBER, the TYPE "B" MEMBER consents to such compensation, and the TYPE "A" MEMBERS set and, while there is a TYPE "B" MEMBER, the TYPE "B" MEMBER approves the amount of such compensation, at any meeting of the MEMBERS.

12. Officers. The following provisions shall apply to Officers of the ASSOCIATION:

- a. The President shall be the chief executive officer of the ASSOCIATION. He or she shall have all of the powers and duties usually vested in the office of president of an association comparable to the ASSOCIATION.
- b. The Vice-President (if any) shall, in the absence or disability of the President, exercise the powers and perform the duties of the President. He or she shall also assist the President generally and exercise such other powers and perform such other duties as shall be prescribed by the BOARD.

- c. The Secretary shall keep the minutes of all proceedings of the BOARD and the MEMBERS. He or she shall attend to the giving and serving of all notices to the MEMBERS and Directors and other notices required by law. He or she shall have custody of the seal of the ASSOCIATION and affix the same to instruments requiring a seal when duly executed. He or she shall keep the records of the ASSOCIATION, except those of the Treasurer (if any), and shall perform all other duties incident to the office of secretary of an association and as may be required by the BOARD or the President. Until such time as the BOARD elects a Treasurer, the SECRETARY shall also serve as and perform the functions of the TREASURER.
- d. The Treasurer shall have custody of all property of the ASSOCIATION, including funds, securities, and evidences of indebtedness. He or she shall keep books of account for the ASSOCIATION in accordance with good accounting practices, which, together with substantiating papers, shall be made available to the BOARD for examination at reasonable times. He or she shall submit a Treasurer's report to the BOARD at reasonable intervals and shall perform all other duties incident to the office of treasurer.
- e. The Officers shall not be entitled to compensation unless the BOARD specifically votes to compensate them. However, neither this provision, nor the provision that Directors elected by the TYPE "A" MEMBERS will not be compensated unless otherwise determined pursuant to Subsection 11(h) above, shall preclude the BOARD from employing a Director or an Officer as an employee of the ASSOCIATION, contracting with a Director or Officer for the management of the COMMON OPEN SPACE AND/OR COMMON OPEN SPACE IMPROVEMENTS, or engaging a Director or Officer to provide other services to the ASSOCIATION, and in any such event compensating such Director or Officer in a reasonable manner.

13. Budget. Prior to each fiscal year commencing with fiscal 2009, the BOARD shall adopt a budget for such fiscal year, which shall include the estimated funds required to defray the cost of carrying out the ASSOCIATIONS'S responsibilities, including maintaining replacement, improvement, and maintenance reserves. Commencing with fiscal 2010, if the budget for any fiscal year is not adopted before the beginning of the fiscal year, the existing budget shall remain in effect until the budget for the fiscal year is adopted. Once adopted, the budget may be amended or revised by the BOARD in its discretion. All budgets and amendments and revisions thereof shall be made available for inspection by the TYPE "A" MEMBERS and NOTEHOLDERS upon reasonable request. Notwithstanding the foregoing, the adoption of a budget shall not be a condition precedent to the effectiveness of any ASSESSMENTS, and nothing contained herein shall be construed as restricting the right of the BOARD, at any time in its sole discretion, to levy additional ASSESSMENTS.

14. Amendments. These BYLAWS may be amended by the BOARD from time.

15. Parliamentary Rules. Commencing at such time as all Directors are elected by the TYPE "A" MEMBERS, Roberts' Rules of Order (latest edition) shall govern the conduct of ASSOCIATION meetings when in conflict with the ARTICLES or these BYLAWS.

16. Order of Precedence. In the event of any conflict between the ARTICLES, BYLAWS, RULES AND REGULATIONS and/or the DECLARATION, the order of precedence of such instruments shall be the ARTICLES, DECLARATION, the BYLAWS, and the RULES AND REGULATIONS.

17. Applicability of the ACT. Except to the extent duly modified herein, in the ARTICLES, or in the DECLARATION, the provisions of the Virginia Property Owners' Association Act, Chapter 26, Title 55 of the CODE as in effect on the date hereof or hereafter modified or amended shall apply to governance of the affairs of the ASSOCIATION.

\* \* \* \* \*

The foregoing BYLAWS of Liberty Ridge Homeowners' Association, Inc. were adopted by the Incorporator on \_\_\_\_\_, 2008.



This instrument prepared by Thomas E. Carr & Associates, P.C., 10304 Pebblebrook Place, Richmond, Virginia 23238.

Tax Map Parcels: \_\_\_\_\_

## **DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS**

### **LIBERTY RIDGE**

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS, made as of this \_\_\_\_ day of \_\_\_\_\_, 2008 by **JCC, L.L.C.**, a Virginia limited liability company ("Declarant" and a "Grantor" and "Grantee" for indexing purposes), **LIBERTY RIDGE HOMEOWNERS ASSOCIATION, INC.**, a Virginia non-stock corporation ("Association" and a "Grantor" and "Grantee" for indexing purposes), and **BB&T-VA COLLATERAL SERVICE CORPORATION**, a Virginia corporation ("Trustee" and a "Grantor" for indexing purposes) provides:

### **WITNESSETH:**

WHEREAS, Declarant is the owner of the real property located in James City County, Virginia and described in **EXHIBIT "A"** attached hereto and by this reference made a part hereof and desires to create thereon a residential community to be known as "Liberty Ridge";

WHEREAS, Declarant wishes to declare certain covenants, restrictions and affirmative obligations affecting such property;

WHEREAS, Liberty Ridge Homeowners' Association, Inc. has been incorporated under the laws of the Commonwealth of Virginia to exercise the functions that are hereinafter more fully set forth; and

WHEREAS, Declarant entered into that certain Credit Deed of Trust dated September \_\_, 2004, recorded September \_\_, 200 in the Clerk's Office, Circuit Court, James City County, Virginia, in Deed Book \_\_, at Page \_\_ (such Deed of Trust, as subsequently modified or amended, the "Deed of Trust"), pursuant to which Declarant granted a lien on the aforementioned property to Trustee for the benefit of the Branch Banking and Trust Company of Virginia, to secure certain obligations of Declarant more particularly described therein, and Trustee, at the direction of such Bank, wishes to join herein to subordinate the lien of the Deed of Trust to the provisions of this Declaration;

NOW, THEREFORE, Declarant declares that the property described on **EXHIBIT "A"** attached hereto and by this reference made a part hereof is and shall be held, transferred, sold, conveyed, given, donated, leased, occupied and used subject to the covenants, restrictions, affirmative obligations, conditions, easements, charges, assessments and liens hereinafter set forth.

## ARTICLE I: DEFINITIONS

When used in this Declaration the following words and terms shall have the following meanings:

(a) "Additional Property" means (i) the property described on EXHIBIT "B", and (ii) any property contiguous or adjacent to any portion of the Property.

(b) "Articles" means the Articles of Incorporation of the Association, as amended from time to time.

(c) "Assessments" means Quarterly Assessments and Special Assessments.

(d) "Association" means the Liberty Ridge Homeowners Association, Inc., a Virginia non-stock corporation, its successors and assigns.

(e) "Authority" means the James City Service Authority.

(f) "Board" means the Board of Directors of the Association.

(g) "Burdened Property" means the property described on EXHIBIT "A" and any Additional Property hereafter subjected to the provisions of this Declaration by Declarant pursuant to the provisions of Article II, Section 2.

(h) "Bylaws" means the Bylaws for the Association adopted by the Board, as modified or amended from time to time.

(i) "Clerk's Office" means the office of the Clerk of the Circuit Court of the County.

(j) "Common Open Space" means those tracts of land (including any Common Open Space Improvements thereupon) that are designated as "common open space", "conservation areas or easements" or "common area" in any conveyance by Declarant to the Association or on any subdivision plat recorded in the Clerk's Office, are otherwise intended by Declarant to be conveyed to the Association for the use and enjoyment of its Members, or are burdened by easements for the benefit of Declarant and/or the Association.

(k) "Common Open Space Improvements" means those Improvements constructed upon the Common Open Space.

(l) "Conservation Easement" means the conservation easement that may be granted by Declarant with respect to all or a portion of the property described on Exhibit "C".

(m) "County" means James City County, Virginia.

(n) "Declarant" means JCC, L.L.C., a Virginia limited liability company, and its successors and any Person to whom or which it has expressly assigned its rights or delegated its duties hereunder (whether in whole or in part) pursuant to an instrument recorded in the Clerk's Office or to which such rights and duties have been deemed to have been assigned and delegated pursuant to this Declaration.

(o) "Declaration" means this instrument.

(p) "DRB" means the design review board appointed by the Board pursuant to this Declaration, or, if the Board does not appoint such a board, the Board.

(q) "Eligible Noteholder" means a Noteholder which has given the Association written notice of its status as such, accompanied by an identification of the Lot or Lots encumbered by the deed of trust or deeds of trust of record for its benefit.

(r) "Improvement" means any improvement duly approved pursuant to this Declaration.

(s) "Interested Party" means a Type "A" Member, Tenant, immediate family member, guest, invitee, licensee or agent of such Member or Tenant, or domestic partner, parent and/or grandchild residing with such Member or Tenant and, for so long as there is a Type "B" Member, employees and agents of the Type "B" Member.

(t) "Liberty Ridge" means the community by that name Declarant intends to develop upon the Burdened Property.

(u) "Lot" means any portion of the Burdened Property shown on a subdivision plat recorded in the Clerk's Office on which is constructed or is intended to be constructed a single family home.

(v) "Master Plan" means the drawing that represents the conceptual plan for the future development of Liberty Ridge, as it may be amended from time to time.

(w) "Members" means the Type "A" Members and Type "B" Member, if any, collectively.

(x) "Noteholder" means any institutional holder of a note secured by a deed of trust encumbering a portion of the Burdened Property as security for the performance of an obligation.

(y) "Owner" means (i) the record owner(s) of fee simple title to any Lot, (ii) for so long as it owns any portion of the Burdened Property or Additional Property upon which it anticipates that lots will be shown on an instrument to be recorded in the Clerk's Office, Declarant, and (iii) where the context so requires, the Association with respect to the Common Open Space, but does not mean or refer to any Person having an interest in a Lot solely by virtue of a contract or a trustee or Noteholder, its successors or assigns, unless it has acquired fee simple title pursuant to foreclosure or a proceeding or deed in lieu of foreclosure.

(z) "Person" means any individual or form of legal entity recognized under the laws of the Commonwealth of Virginia.

(aa) "Quarterly Assessment" means the quarterly assessments levied by the Board pursuant to Article VIII, Section 3.

(bb) "Recognized Holiday" means any day upon which commercial banks in the County are not open for business (other than via automatic teller machines or any other form of conducting business without direct customer-to-natural person interaction).

(cc) "Reserve Fund" means the fund created pursuant to this Declaration.

(dd) "Rules and Regulations" means the rules and regulations adopted from time to time by the Board, if any.

(ee) "Special Assessment" means a special assessment levied pursuant to this Declaration.

(ff) "Tenant" means the lessee of a Lot and the Improvements thereupon.

(gg) "Type "A" Member" means an Owner other than Declarant, provided that at such time as the Type "B" Membership no longer exists, Declarant shall be deemed to be a Type "A" Member with respect to Lots owned by it, if any.

(hh) "Type "B" Member" means Declarant.

(ii) "Water Conservation Agreement" means the agreement titled Water Conservation Requirements Liberty Ridge, James City County, dated February 27, 2008, between Declarant and the Authority.

## **ARTICLE II: BURDENED PROPERTY; RESERVED EASEMENTS; SUBDIVISION**

Section 1. Burdened Property. The Burdened Property shall be held, transferred, sold, conveyed, given, donated, leased, occupied, and used subject to this Declaration.

Section 2. Additional Property. For so long as it is an Owner, Declarant may in its sole and absolute discretion (but shall not be obligated to) subject all or any portion of the Additional Property to the provisions hereof by recording a supplemental declaration in the Clerk's Office describing the portion of the Additional Property involved, with such modifications hereto to be applicable to such Additional Property as Declarant may in its sole and absolute discretion deem appropriate, provided no such modification shall materially adversely affect use and enjoyment of the Burdened Property as a residential community.

Section 3. Withdrawal of Property. For so long as it is an Owner, Declarant may in its sole and absolute discretion (but shall not be obligated to) withdraw all or any portion of of the

Burdened Property that has not yet been subjected to subdivision by recordation of a subdivision plat in the Clerk's Office from the provisions of this Declaration, provided no such withdrawal shall materially adversely affect use and enjoyment of the balance of the Burdened Property as a residential community.

Section 4. Utilities Easement. Declarant reserves a non-exclusive perpetual, alienable easement on, over and under the Burdened Property to erect, maintain, and use or to permit third parties to erect, maintain, and use electric, community antenna television, cable television, telephone and other utility poles, wires, cables, and conduits, streetlights, drainage ways, sewers and water mains, and all related equipment for the provision of electric, telephone, gas, sewer, water, drainage, television, internet or other public conveniences or utilities to the Property; provided, however, that without the consent of the Owner thereof, no such utility easement shall be applicable to any portion of any Lot or the Common Open Space that may (a) have been used prior to the installation of such utilities on such portion of the Lot or Common Open Space for construction of Improvements, or (b) be designated as the site for a single family detached home, accessory building or other structure on a site plan that has been approved by the DRB. The foregoing easement includes the right to cut any trees, bushes, or shrubbery, make any grading of the soil, or to take any other similar action necessary to provide utility services and to maintain reasonable standards of appearance. With respect to Lots, Declarant will use its reasonable efforts to locate utility services along two (2) boundary lines thereof and not more than \_\_\_\_\_ ( \_\_\_\_\_) feet from any such boundary line.

Section 5. Subdivision. Except as set forth below, no Lot shall be subdivided or its boundary lines changed without the prior written consent of Declarant. Declarant may replat any Lot owned by it and take such other steps as may in its sole discretion be necessary to make such replatted Lot suitable and fit as a building site. In addition, two (2) or more contiguous Lots may be combined by an Owner into one (1) larger Lot, and, in such event, only the exterior boundary lines of the resulting larger Lot shall be considered in the interpretation of this Declaration.

Section 7. Forms of Single-Family Housing Permitted. Declarant may improve or permit improvement of the Burdened Property with any form of single-family housing unit permitted by the zoning, subdivision and other ordinances of the County applicable thereto, impose or permit the imposition of a condominium regime or other form of common interest community regime upon any portion of the Burdened Property, and, via a supplemental declaration hereto, make such modifications herein as may in Declarant's sole and absolute discretion be necessary or desirable with respect to any portion of the Burdened Property then owned by Declarant [or, if not then owned by Declarant, entered into by the owner(s) thereof], without the jointure or consent of any Owner or third party, provided no such modification shall materially adversely affect use and enjoyment of the Burdened Property as a forested residential community.

### **ARTICLE III: OPEN SPACE**

Section 1. Easement of Enjoyment. Subject to the provisions of this Declaration, the Rules and Regulations, and any fees or charges established by the Association, every Interested Party shall

have a perpetual, nonexclusive easement of enjoyment in and to the Common Open Space, including but not limited to the right to use such Common Open Space Improvements as may exist from time to time. Other than with respect to Interested Parties who are employees and agents of the Type "B" Member, such easement shall not be personal, but shall run with the land. Except as set forth below, and subject to matters of record prior to recordation of this Declaration in the Clerk's Office, the granting of the foregoing easement in no way grants to anyone other than the Interested Parties the right to enter the Common Open Space without the prior written permission of the Board, and the rights granted an Interested Party who is a Type "A" Member shall terminate as to such Member and all those, if any, claiming by, through or under such Member at such time as such Member no longer is an Owner. As determined in the sole and absolute discretion of the Board, third parties may have access to and enjoyment of the Common Open Space subject to Rules and Regulations and user fees established by the Board.

Section 2. Extent of Easement. The easement of enjoyment created pursuant to Section 1 above is subject to the following rights of the Association:

- (a) those contained elsewhere herein;
- (b) to take such steps as are reasonably necessary to protect the Common Open Space against foreclosure;
- (c) to grant easements to any public or private utility or pursuant to the provisions of Article X, Section 8; and
- (d) to give or sell all or any part of the Common Open Space, including leasehold interests in Common Open Space Improvements, to any public agency, authority, service district or utility or any private concern, in which event such easement shall terminate unless expressly assumed by such agency, authority, district, utility or concern.

Section 3. Certain Rights of Declarant. Notwithstanding anything contained in this Article to the contrary, for so long as there is a Type "B" Member, such Member and its express assigns shall be entitled to use and enjoy the Common Open Space (including all Common Open Space Improvements and all personal property related thereto) for sales and marketing functions in connection with marketing Lots for sale to third parties. Without limiting the generality of the foregoing, for so long as there is a Type "B" Member, such Member and any builder to whom it assigns such rights in whole or in part may maintain a sales office, a management office in Liberty Ridge on a Lot, within any Common Open Space Improvement, whether or not conveyed to the Association, or on any portion of the Burdened Property not yet subdivided into Lots and may maintain one (1) or more model homes on Lots within Liberty Ridge. Such office or offices may be of a size determined by Declarant and may be located or relocated from time to time by Declarant, in either case in its sole and absolute discretion.

Section 4. Damage or Destruction of Common Open Space by Interested Party. If any portion of the Common Open Space or any Common Open Space Improvement is damaged or destroyed by an Interested Party, the Association or Declarant shall repair such damage to the

extent practicable in a good and workmanlike manner and in substantial conformance with the original plans and specifications of the Common Open Space or Common Open Space Improvement involved, or as such Common Open Space or Common Open Space Improvement may have been theretofore modified or altered by the Association, in the discretion of the Association or Declarant. In the case of such damage or destruction caused by an Owner that is a Type "A" Member or an Interested Party that is or is claiming through an Owner that is a Type "A" Member, the cost of such repairs shall be a Special Assessment against the Lot of such Member and a personal obligation of such Member. In the case of such damage or destruction caused by an Interested Party that is an employee or agent of the Type "B" Member, such cost shall be reimbursed by the Type "B" Member.

Section 5. Right to Convey. Subject to the right to reserve such easements as Declarant in its sole discretion deems necessary or desirably, Declarant reserves the right to dedicate, transfer, sell, convey, lease or give to the Association any portion of the Common Open Space or any Common Open Space Improvement, subject to the provisions of this Article and all other restrictions or limitations that Declarant shall elect to impose. The Association shall not be required to join in any instrument of conveyance. As an appurtenance to any such dedication, transfer, sale, conveyance, lease or gift, the Association shall have all of the powers, immunities, and privileges reserved unto Declarant in this Article with respect to the property involved as well as all of Declarant's obligations with respect thereto, provided, however, that so long as Declarant is an Owner, Declarant, in addition to and jointly with the Association, shall retain all rights reserved unto it in this Article.

Section 6. Improvements. Subject to the approval of the DRB, the Common Open Space may be improved with facilities for social, recreational and community buildings, public and private clubs, playground areas and other recreational facilities, indoor and outdoor recreational establishments. The procedures for consideration of any proposed improvements to the Common Open Space shall be analogous to those for consideration of proposed improvements to Lots contained in Article IV. The Common Open Space Improvements planned by Declarant include, but are not limited to, a clubhouse, pool, playground, babbling brook, various "outdoor living" components, and a trail system. Portions of the trail system are expected to cross portions of Lots pursuant to easements reserved by Declarant from time to time.

Section 7. Declarant's Right of Access. For so long as it is an Owner, Declarant reserves the right to enter upon the Common Open Space to construct, landscape, maintain, operate, repair and replace any Common Open Space Improvements located or to be located thereupon or for any other purpose it believes to be necessary in its sole discretion. Without limiting the generality of the foregoing, if the Association fails to fulfill any of its obligations with respect to the Common Open Space and Common Open Space Improvements imposed upon it by this Declaration, and does not cure such failure (other than in the event of an emergency, in which case no such notice shall be required) within thirty (30) days after receipt of notice thereof from Declarant, Declarant shall be entitled to exercise such right of access to remedy such failure and to recover all of its out-of-pocket costs reasonably incurred in connection with remedying such failure from the Association, which costs shall be paid by the Association to Declarant within thirty (30) days following demand.

Section 8. Use; Compliance with Easements. The Common Open Space and Common Open Space Improvements shall be used only for the furnishing of the services and facilities for which the same are reasonably suited and which are incident to the use and occupancy of the Lots. Other than as set forth in this Declaration, no Interested Party shall make any private, exclusive or proprietary use of the Common Open Space, the Common Open Space Improvements, or any portion thereof without the prior written approval of the Board, which shall only have the authority to approve such use on a temporary basis.

Section 9. Obstructions. No Person shall obstruct access to or egress from or impede the rightful use of the Common Open Space or any Common Open Space Improvement. Other than with respect to personal property ordinarily used in connection with permitted uses of the Common Open Space and Common Open Space Improvements, no Person shall place or cause or permit anything to be placed on or in the Common Open Space or any Common Open Space Improvement or alter, construct or remove anything from the Common Open Space or any Common Open Space Improvement without the approval of the Board.

Section 10. Vehicles. Except in connection with construction activities, no trucks, trailers, campers, recreational vehicles, or other large vehicles, including grounds maintenance equipment, may be parked on any portion of the Common Open Space unless expressly permitted by the Board and then only in such parking areas and for such time periods as may be designated for such purpose. All vehicles must be parked so as not to impede traffic or damage vegetation. No junk, derelict or inoperative vehicle or vehicle on which current registration plates and current inspection stickers are not displayed shall be kept upon any portion of the Common Open Space. Vehicle repairs and storage of vehicles are not permitted on the Common Open Space other than to the extent expressly approved by the Board. No motor vehicles, including, but not limited to, trail bikes, motorcycles, dune buggies, golf carts, snowmobiles and scooters, but excluding such vehicles as are authorized by the Board in order to maintain, repair, or improve the Common Open Space, shall be driven upon any portion of the Common Open Space other than paved access driveways and parking lots. No vehicle parked on any portion of the Common Open Space may be used for habitation purposes.

Section 11. Pets. Pets shall not be permitted upon the Common Open Space or any Common Open Space Improvement unless accompanied by someone who controls the pet and unless carried or leashed. Pet droppings shall be removed by the person in control of the pet. Pets shall not be curbed on lawns, shrubbery, flowers or trees.

Section 12. Subordination of Easements. No Owner may subordinate any easement granted or reserved herein to any encumbrance upon such Owner's Lot.

Section 13. Not a Bailee. Declarant, the Board, the Association, and the other Members shall not be considered bailees of any personal property placed or stored on the Common Open Space (including personal property within vehicles parked on the Common Open Space), and shall not be responsible for the security of such personal property or for any loss or damage thereto,



whether or not due to negligence, except to the extent covered by insurance in excess of any applicable deductible.

#### **ARTICLE IV: ARCHITECTURAL CONTROL**

Section 1. Architectural Standards, Etceteras. The Board may appoint a design review board or serve as such itself, at its sole election. If the Board appoints such a board, it may thereafter disband and reconstitute it from time to time. The DRB may establish and may amend from time to time architectural standards, construction specifications, sign regulations, mailbox and post lamp regulations, landscape guidelines, environmental rules and regulations, and other standards and guidelines that shall apply uniformly to and be binding on all Owners.

Section 2. Architectural Control. The DRB shall have the right to control all architectural aspects of any proposed improvements and construction schedules for construction of any proposed improvements.

Section 3. Actions by DRB. The DRB may base approval or disapproval of any matter upon any ground, including but not limited to aesthetic considerations, adequacy of site dimensions, storm drainage considerations, conformity and harmony of external design with neighboring Lots and Improvements, relation of the topography, grade and finished ground elevation of the Lot proposed to be improved relative to those of neighboring portions of the Property, proper facing of the main elevation with respect to nearby streets, compliance or non-compliance of the plans and specifications with then-existing design criteria and standards, which in its sole and uncontrolled discretion shall seem sufficient and, except as set forth below, shall not be binding upon it unless in writing. Without limiting the generality of the foregoing, the DRB shall not be obligated to approve proposed improvements on the grounds that the layout, design and other aspects of such improvements are the same or substantially the same as the layout, design and other aspects of Improvements previously approved at the request of any other Owner.

Section 4. Approval to be Obtained. No single family home, accessory building, fence, other structure or improvement shall be erected or placed, nor, without the prior written approval of the DRB, shall a building permit for any such home, building, fence, other structure or improvement be applied for on any Lot unless and until final plans and specifications therefore, including exterior elevations, site plans, landscaping plans and parking plans, a schedule of exterior colors and finish materials and such other plans as the DRB may dictate, have been approved by the DRB. The plans and specifications to be submitted shall comply with any design criteria and standards promulgated pursuant to this Declaration, describe in detail the proposed improvements, and, with dates certain, set forth a construction schedule for construction and completion thereof. Duplicate copies of all plans shall be submitted. One copy of each plan submitted shall become the sole property of the DRB. If the DRB deems such plans and specifications insufficient, it may require the submission of additional and/or more detailed plans and specifications.

Section 5. Approval Time Frame. The DRB shall approve or disapprove any proposed improvements within forty-five (45) days after receipt of all required plans, specifications and other materials in proper form, accompanied by payment of any amounts due in connection therewith pursuant to this Article, by written notice to the submitting Owner. If the DRB fails to take action with respect to any proposed improvements within such period, and the submitting Owner gives the DRB and, for so long as Declarant is an Owner, Declarant written notice of such failure, the DRB shall be deemed to have approved such proposed improvements if it DRB fails to take action with respect thereto within thirty (30) days after receipt of such notice. Any conditional approval of proposed improvements by the DRB shall be deemed disapproval until such time as the Owner requesting such approval satisfies all conditions to approval to the satisfaction of the DRB. If the DRB approves, or is deemed to have approved, any proposed improvements, the submitting Owner may undertake construction of such Improvements in substantial conformance with the plans, specifications and other materials submitted and approved or deemed to have been approved, subject to the obligation to comply with conditions to approval, if any, set forth by the DRB.

Section 6. Consultation with Architects, Etceteras; Administrative Fee. The DRB may engage or consult with architects, engineers, planners, surveyors, attorneys and others in the performance of its responsibilities under this Article. Any Owner seeking the approval of the DRB pursuant hereto agrees to pay all fees thus incurred and further agrees to pay an administrative fee to the DRB in such amount as the DRB may from time to time reasonably establish. The payment of all such fees is a condition to the approval of any proposed improvements, and the commencement of review of any proposal may be conditioned upon the payment of the DRB's estimate of such fees. Administrative fees established, levied and collected by the DRB shall be in amounts reasonably calculated to defray the costs of carrying out the responsibilities of the DRB related to consideration of proposed improvements, including, in the case of the ARB at such time as it is responsible for the functions of the DRB, reasonable compensation for its members other than those appointed by and associated with Declarant. Subject to retention of a reasonable reserve for working capital purposes, any resulting surplus funds held by the DRB at the end of a given calendar year shall be disbursed by it to the Association.

Section 7. Period Approval Effective; Completion of Exterior of Improvements; Occupancy. Approval of plans and specifications by the DRB shall be valid for a period of one (1) year from the date given or deemed to have been given. If within such period, in the opinion of the DRB, substantial commencement of construction of the Improvements has not begun, or, such construction, having begun, has not been diligently prosecuted, all related approvals shall be deemed to have expired and no construction shall thereafter continue or commence without a written renewal of such approvals. The exterior of each single family home and permitted accessory building on a Lot must be completed within one (1) year after substantial commencement of construction of same except where such completion is impossible or would result in great hardship to the Owner or builder due to strikes, fires, inability to obtain required materials, national emergency or natural calamities. No such home or accessory building may be occupied, whether temporarily or permanently, until such exterior is so completed and a temporary or permanent certificate of occupancy therefore has been issued by the County. Provided the Board has given

such Owner notice of such Owner's failure to so complete such exterior, and such Owner has failed to complete or cause to be completed such exterior within thirty (30) days thereafter, or, if such exterior cannot be completed within such thirty (30) day period, such Owner has failed within such period to commence and diligently prosecute those actions necessary to complete such exterior, the Board shall be entitled to take any action necessary to complete such exterior or, if in the Board's opinion it is appropriate to do so, to demolish or cause to be demolished any uncompleted Improvements and restore or have the Lot restored to its condition prior to the commencement of construction, without liability to the Owner of the Lot.

Section 8. Alterations to Completed Improvements. No alteration in the exterior appearance of any completed Improvement, including but not limited to elevations, site plan, landscaping plan, parking plan and color or finish, shall be made without prior written approval by the DRB. All such alterations shall be completed strictly in accordance with the approved plans therefore. The provisions of this Article applying to proposed improvements shall apply with respect to proposed alterations to completed Improvements with the same force and effect as with respect to proposed improvements.

Section 9. Approved Architects, Contractors, Etceteras. The DRB may promulgate schedules of approved architects, general contractors, landscape designers and other professionals. To the extent the DRB exercises such right, and provided that for each category of professional for which the DRB promulgates such a schedule at least four (4) professionals are identified, none of whom are affiliated with or under the control of any member of the DRB or employer of such member, all Owners shall select professionals from such lists to perform services in connection with design and construction of their proposed improvements. Notwithstanding the foregoing, for good cause shown the DRB may waive the foregoing requirements in whole or in part at the request of an Owner.

Section 10. Planning Meeting. At the request of an Owner, and on not less than fifteen (15) days' prior notice, the DRB will have a member meet with the Owner and his or her associated professionals, or any of them, on the Owner's Lot prior to the Owner's submission of plans and specifications to the DRB for consideration to explore and attempt to resolve potential design and construction issues and provide guidance as to the type and location of any structures to be built on the Owner's Lot.

Section 11. Provisions Relating to Construction Period Practices.

The following provisions govern when construction of Improvements (including approved alterations) and deliveries of building materials related thereto may take place, the responsibilities of Owners and their general contractors in connection therewith, and utilization of portable toilet facilities during construction:

(a) no work or deliveries may take place on a Sunday or a Recognized Holiday;

(b) no noise audible from other portions of the Property may emanate from any Lot upon which construction of Improvements is underway other than on the days and during the hours

during which construction may take place set forth in the architectural guidelines or Rules and Regulations;

(c) each general contractor shall provide and require the use of dumpster and potable toilet facilities during any period of construction;

(d) an Owner shall be responsible for compliance with the provisions of this Section by his, her or its general contractor and all subcontractors and other parties engaged by such general contractor; and

(e) if, in Declarant's sole and absolute judgment, repeated violations of the provisions of this Section occur at a Lot upon which construction is underway, Declarant may require that construction (and deliveries related thereto) cease until such evidence as may be required by Declarant under the circumstances has been provided that appropriate steps have been taken to assure that further violations will not occur once construction (and deliveries related thereto) is permitted to recommence.

Declarant may waive the above provisions on a case-by-case basis for due cause shown or modify such provisions from time to time in its sole discretion by provisions set forth in the Rules and Regulations.

## **ARTICLE V: PROVISIONS REGARDING IMPROVEMENTS**

Section 1. Minimum Size Requirements. Plans required shall be approved only if the proposed single family home will have the required minimum square footage of enclosed finished dwelling space (excluding garages, terraces, decks, open porches, screened porches, attached utility or storage areas, and similar areas), if any, specified in the sales contract and/or stipulated in each deed and/or in the architectural guidelines promulgated by the DRB.

Section 2. Location of Improvements. Improvements shall be located and staggered so that the maximum view, privacy, sunlight, and breeze will be available to each single family home and so that each such home will be located with due regard to the topography of the affected Lot, taking into consideration the location of large trees and other aesthetic and environmental considerations.

Section 3. Topographical Changes. Except as expressly set forth in this Declaration, topographic and vegetation characteristics of a Lot (including forest cover) shall not be altered by excavation, grading, removal, reduction, addition, clearing, cutting, pruning, seeding, planting, transplanting, or any other means without the prior approval of the DRB. Topographical changes and changes in the vegetation characteristics of a Lot pursuant to a landscaping plan approved by the DRB shall be deemed to have been approved for purposes of this Section 3.

Section 4. Removal of Trees, Etceteras. Except in accordance with guidelines, if any, promulgated by Declarant, no sound trees exceeding four (4) inches in diameter measured forty-eight (48) inches above the ground shall be removed from any Lot without the prior approval of the DRB unless necessary to construct Improvements. No live trees with a diameter in excess of six (6)

inches measured forty-eight (48) inches above ground may be removed without the approval of the DRB. To the maximum extent reasonably possible, existing trees and vegetation shall be retained.

Section 5. Permitted Structures. No structure shall be erected, altered, placed or permitted to remain on a Lot other than one (1) single family home and one (1) small accessory building (that may include a detached private garage). Such accessory building may not be constructed prior to construction of the single family home. No mobile home, trailer, tent, barn or other similar outbuilding or structure shall be placed either temporarily or permanently on any Lot at any time other than a shelter, temporary structure or trailer used by a contractor during construction of Improvements, the design and color of which have been approved by the DRB. Any such shelter, structure or trailer shall be removed upon completion of construction of the related Improvements and no such shelter, structure or trailer shall be used for habitation.

Section 6. Screening of Facilities; Trash Receptacles. Each Owner shall provide one or more screened areas to serve as service yards and areas in which garbage receptacles, electric and gas meters, air conditioning equipment, and other unsightly objects may be placed or stored in order to conceal them from view from streets, Lots or adjacent portions of the Property. All fuel tanks shall be located underground at locations approved by the DRB prior to construction. All trash shall be kept in sanitary and animal proof containers.

Section 7. Exterior Clotheslines; Deck and Porch Railings. No exterior clotheslines, wooden or metal racks, or other apparatus suited or intended to be used for air-drying of wet garments may be erected by any Owner that is visible from any portion of the Property other than such Owner's Lot. Deck and porch railings shall not be used for the purpose of drying linens or garments of any kind by any Owner.

Section 8. Signage. No sign shall be erected or maintained on any Lot until the proposed sign size, color, content and location shall have been approved by the DRB. No alteration in the appearance of any sign shall be made without like approval by the DRB. In lieu of approving individual signs, the DRB may establish guidelines governing signs, and in such event shall be deemed to have approved of any sign erected or maintained on any Lot that is in compliance with such guidelines.

Section 9. Mailboxes and Post Lamps. No mailbox, post lamp or combination thereof shall be erected or maintained on any Lot until the proposed design, color, and location have been approved by the DRB. No alteration in the appearance of any mailbox, post lamp or combination thereof shall be made without like approval by the DRB.

Section 10. Antennas. Except as provided below or otherwise provided by law, no antenna, radio receiver, radio sender, or similar device shall be attached to the exterior portion of any building or structure or otherwise installed on any Lot. Declarant may install or approve the installation of equipment necessary for a master antenna system, community antenna television, mobile radio system, or other similar system. To the extent permitted by applicable law, the DRB shall have the right to approve the size, location and screening of any satellite receiver dish on a Lot or the Common Open Space.

Section 11. Flags. No Owner may display or permit to be displayed any flag on any Lot or on the Common Open Space other than in accordance with the Rules and Regulations relating to such display.

Section 12. Lighting. No exterior lighting shall be directed outside the boundaries of any Lot.

Section 13. Pools; Other Recreational Play Structures. No above-ground swimming pool shall be erected or maintained on any Lot, provided this restriction is not intended to prevent the occasional use of small portable wading pools for small children. No in-ground swimming pool shall be erected or maintained on any other Lot unless approved by the DRB and enclosed by a fence. Except as set forth below, all recreational and play structures, including but not limited to swimming pools, spas, play forts and swing sets, shall be located at the rear or side of residences or on the inside portion of corner Lots. Basketball backboards and goals may only be installed in accordance with architectural guidelines promulgated by the DRB and/or the Rules and Regulations. No platform, playhouse or structure of a similar kind or nature shall be constructed on any Lot in front of the front building line of the residence located thereupon or related thereto. Portable basketball goals are prohibited. Small, colored, plastic play items shall be stored when not in use. The base of all play forts, swing sets and similar apparatus shall be dark wood only. No portion of any play structure shall be more than twelve (12) feet in height and no such structure shall cover more than one hundred twenty (120) square feet in area.

Section 14. Wells; Septic Systems. No well shall be installed on any Lot. Septic systems installed on Lots shall be within approved drainfield areas. All septic system designs must be approved by the DRB..

Section 15. Access Ramps. Any Owner may construct an access ramp if an occupant of a residence has a medical necessity or disability that requires a ramp for egress and ingress provided (i) the ramp is as unobtrusive as possible, designed to blend in aesthetically as practicable, and reasonably sized to fit the intended use; and (ii) plans for the ramp are submitted in advance to the DRB, which may make reasonable requests to modify the design to achieve architectural consistency with surrounding structures and surfaces. The Owner must submit to the DRB an affidavit from a physician attesting to the medical necessity or disability of the Owner or Interested Party requiring the access ramp. The certificate of disability must include, but need not be limited to (i) a statement of the disability of the Owner or Interested Party, as the case may be; (ii) the certifying physician's name and address; (iii) a statement of the anticipated duration of the disability described; (iv) the signature of the certifying physician; and (v) the signature of the Owner or Interested Party or of such person's guardian. At such time, if any, as there no longer is an occupant with a medical necessity or disability requiring a ramp for egress and ingress, any such ramp shall be removed.

Section 16. Utilities. All utilities serving Improvements shall be placed underground except to the extent, if at all, required to be placed upon the surface of the ground by the utility company responsible therefore.

Section 17. Air Conditioning Units. No window or through the exterior wall air conditioning units shall be installed as part of the Improvements on any Lot in any location visible from any other Lot, any portion of the Open Space, or any street.

Section 18. Additional Requirements. The following additional provisions shall apply to all Lots:

- (a) No more than 10,000 square feet of area on each Lot may be irrigated turf.
- (b) Primary plantings shall be drought tolerant, low water use plants, and, wherever appropriate, shall be non-invasive in nature, and, if the DRB elects to promulgate an approved planting list, shall consist of plants contained on such list.
- (c) Trees located in turf areas and all landscape beds shall be mulched with a minimum of two (2) to three (3) inches of shredded bark, shredded leaves, pine nuggets, or pine straw, which mulch shall be maintained and replenished at least annually.
- (d) Preexisting vegetation shall not be irrigated.

Section 19. Irrigation Disclosures. Pursuant to the Water Conservation Agreement, the following provisions relating to irrigation facilities within Liberty Ridge apply:

- (a) No preexisting vegetation may be irrigated.
- (b) No irrigation wells are permitted on individual Lots.
- (c) Irrigation systems shall not be manually operated by Interested Parties.
- (d) Irrigation systems shall be programmed to deliver not more than the equivalent of one inch of water per week, subject to reduction to the extent rain occurs during a given week.
- (e) Irrigation for odd numbered Lots and even numbered Lots shall occur on alternating days during the week and a maximum of three (3) days each week, with no irrigation occurring on Monday.
- (f) No irrigation shall occur between the hours of 9:00 a.m. and 5:00 p.m. local prevailing time.
- (g) Odd numbered Lots and even numbered Lots shall each be divided into four (4) sectors, with irrigation limited to four (4) hours per week per section, three (3) days per week, so that no more than one-eighth ( $1/8^{\text{th}}$ ) of the Lots have irrigation systems operating at the same time.

(h) The turf irrigation system on each Lot shall be divided into four (4) zones, each comprising no more than 2,500 square feet, so that only one (1) zone per Lot with no more than 7.26 gallons per minute of flow is being irrigated at any one time.

(i) Irrigation shall occur only between May 1<sup>st</sup> and September 30<sup>th</sup> of a given year.

(j) Irrigation systems for landscape beds and turf areas on Lots shall be a Techline drip irrigation system manufactured by Netafim USA or an alternative system approved by the James City Service Authority. Irrigation systems using pop-up rotating sprinkler heads will not be approved.

(k) Irrigation systems for Lots and Common Open Space shall utilize an Intelli-Sense Series Controller or an alternative controller approved by the James City Service Authority.

(l) The Board may adopt or modify Rules and Regulations from time to time in order to conform the provisions of this Section 19 to generally applicable water conservation rules adopted by the Authority or County.

Notwithstanding anything in this Declaration to the contrary, the provisions of this Section 19 may be amended solely by the DRB. No amendment will become effective unless and until it is approved by the Authority. If the provisions of this Section 19 are amended, the Association will send notice of the amendment(s) made to each Owner within ten (10) days after such amendment(s) are adopted and approved.

## **ARTICLE VI: GENERAL USE RESTRICTIONS**

Section 1. Use of Lots and Improvements. Subject to the provisions of Article III, Section 4 and except as otherwise set forth below, and notwithstanding any less-restrictive provisions in the County's zoning ordinances in effect from time to time, all Lots shall be used solely for single family residential purposes, recreational purposes incidental thereto, and customary accessory uses. All laws, orders, rules, regulations or requirements of any governmental agency having jurisdiction with respect to a Lot shall be complied with, by and at the sole expense of the Owner thereof.

Section 2. Home Occupations. Subject to the limitations set forth below, Improvements on Lots may be used for home occupations by if (i) such occupations are clearly incidental and secondary to the use of the Improvements for dwelling purposes; (ii) such occupations are conducted solely by residents of the dwellings; (iii) such occupations are conducted entirely within the dwellings; (iv) not more than twenty-five percent (25%) of the first floor area of a dwelling is unused throughout the dwelling for any such occupation; (v) such occupations do not require any external alterations to dwellings or the use of outdoor storage of machinery or equipment that creates noise, oror, smoke, dust or glare or is dangerous or otherwise detrimental to persons residing in the dwellings or on adjacent property; (vi) no articles are displayed or otherwise offered for sale upon the Lots involved; (vii) no equipment or process is used that may disrupt neighboring dwellings;; (viii) no external evidence of such use occurs; (ix) residents



wishing to undertake such occupations deliver Applications for Home Occupations duly approved by the County; and (x) traffic is not generated in greater volumes than would normally be expected in a residential neighborhood and any need for parking generated by the conduct of such occupation is met off-street, provided that the following home occupations are prohibited:

- (a) foster care homes for the care of more than two (2) foster children;
- (b) bed and breakfast establishments;
- (c) major and minor auto or machinery repair or paint shops, including welding;
- (d) carpentry, upholstery, and cabinet making;
- (e) beauty shops and barber shops;
- (f) private schools with organized classes other than limited individual tutoring;
- (g) electric machinery or appliance repair;
- (h) day care centers for the care of more than six (6) unrelated children;
- (i) medical or dental offices or clinics;
- (j) psychological or psychiatric counseling offices;
- (j) direct consumer sales, retail or wholesale, of any good or commodity on the premises;
- (l) landscape/yard maintenance services;
- (m) adult day care centers, rest care or assisted living homes;
- (n) retreat facilities;
- (o) contractors' warehouses, sheds and offices;
- (p) family care homes or group homes serving physically handicapped, mentally ill, mentally retarded or other developmentally disabled persons;
- (q) flea markets, whether temporary or seasonal;
- (r) gift shops and antique shops; and
- (s) rental of rooms.

The provisions of this Section 2 are not intended to prohibit social activities that may be associated with a commercial enterprise otherwise not permitted to be conducted on a Lot to occur on such Lot, subject to the Rules and Regulations promulgated in relation thereto, if any. In the event of any dispute arising with regard to compliance with the provisions of this Section 2, the decision of the Board with respect thereto shall be binding.

Section 3. Leasing; Timeshares. No Improvements shall be used or occupied for transient or hotel purposes, including but not limited to being subjected to or used for any cooperative, licensing, timesharing or other arrangement that would entail weekly, monthly or any other revolving or periodic occupancy by two (2) or more multiple Owners, cooperators, licensees or timesharing participants, or, without the Board's approval, leased for an initial period of less than twelve (12) months. No portion of a Lot shall be leased for any period unless the entire Lot is being leased for such period to the same Tenant. No Owner shall lease a Lot other than on a written form of lease that (i) requires the lessee to comply with this Declaration and the Rules and Regulations; (ii) provides that failure to comply therewith constitutes a default under the lease; (iii) permits the Board or Declarant to terminate said lease in the event of an Owner's failure to do so upon the occurrence of such a default, which default, if susceptible of a cure, is not cured within thirty (30) days after notice thereof from the Owner, the Board, or Declarant, as the case may be; and (iv) prohibits assignment or subletting.

Section 4. Garage, Estate or Yard Sales. "Garage sales", "estate sales" or "yard sales" shall be permitted only for disposal of the private property and personal effects of individual Owners and Interested Parties and then only on an isolated basis reasonably related to the intended sale of a residence, termination or expiration of an Interested Party's lease or death of an Interested Party residing in Liberty Ridge and with the prior approval of the Board. The Association may, but need not, organize such sales on a periodic basis within Liberty Ridge.

Section 5. Nuisances. No nuisance shall be permitted to exist on any Lot. Noxious, destructive, or offensive activity or any activity constituting an unreasonable source of annoyance shall not be conducted on any Lot, the Common Open Space, or any part thereof. Each Owner shall refrain and cause others to refrain from any act or use of any such area that could reasonably cause embarrassment, discomfort, or annoyance to any Person lawfully on the Property.

Section 6. Hazardous Uses; Waste. Nothing shall be done or kept on any Lot that increases the rate of insurance applicable for permitted uses for the Common Open Space or any part thereof without the prior written consent of the Board, including, without limitation, any activities that are unsafe or hazardous with respect to any person or property. No Person shall permit anything to be done or kept on any Lot that might result in the cancellation of any insurance on the Common Open Space or any part thereof. No vehicle of any size that transports inflammatory or explosive cargo may be kept or driven on the Burdened Property at any time other than commercial fuel trucks making deliveries to Owners in the ordinary course of business.

Section 7. Emissions. There shall be no emissions of dust, sweepings, dirt, cinders, odors, gases or other substances into the atmosphere (except for normal residential chimney

emissions, emissions from outdoor grills and similar equipment and emissions resulting from normal construction practices) or discharges of liquid, solid wastes or other environmental contaminants into the ground or any body of water, if such any emission, production, storage or discharge may adversely affect the use or intended use of any portion of the Property or may adversely affect the health, safety or comfort of any Person.

Section 8. Noise. No Person shall cause any unreasonably loud noise [except for duly operating security devices, which shall be designed or programmed not to emit alarms, whether of a steady or periodic nature, for a continuous period in excess of five (5) minutes] anywhere on a Lot or the Common Open Space, nor shall any Person permit or engage in any activity, practice or behavior for the purpose of causing annoyance, discomfort or disturbance to any Person lawfully present on any portion of the Property. Without limiting the generality of the foregoing, other than as may be permitted by the Rules and Regulations, from 12:00 midnight until 7:00 a.m. local prevailing time of each day, no noise, including without limitation, talking, singing, playing of musical instruments and/or operation of television, radio, recordings or computers, shall be audible from any residence or portion of the Lot related thereto other than the residence or Lot from which it originates.

Section 9. Hunting and Trapping; Firearms. Hunting, trapping and the discharge of firearms, including, without limitation, "B-B" guns or pellet guns, are prohibited anywhere on the Property.

Section 10. Vehicles. No vehicles shall be parked on any street other than in connection with construction activities or on a temporary basis (which shall not include overnight parking). Except in connection with construction activities and with respect to trucks or vans not over three (3) tons in weight and used as a principal means of transportation to work and sport utility vehicles, no trucks, trailers, campers, recreational vehicles or other large vehicles, including grounds maintenance equipment, may be parked on any portion of a Lot visible from the Common Open Space, any street or any other Lot, unless expressly permitted by the Board and then only in such parking areas and for such time periods (if any) as may be designated for such purpose. Parking of all such vehicles and related equipment, other than on a temporary and non-recurring basis, shall be in garages or screened enclosures approved by the DRB or in areas designated in the Rules and Regulations. All vehicles must be parked so as not to impede traffic or damage vegetation. No junk, derelict or inoperative vehicle or vehicle on which current registration plates and current inspection stickers are not displayed shall be kept upon any portion of a Lot visible from the Common Open Space, any street or another Lot. Vehicle repairs and storage of vehicles are not permitted on any Lot, except in accordance with the Rules and Regulations; provided, however, that noncommercial repair of vehicles within enclosed structures is permitted.

Section 12. Animals. Except as set forth below, the maintenance, keeping, boarding or raising of animals, livestock, poultry or reptiles of any kind, regardless of number, is prohibited on any Lot. The keeping of guide animals and orderly domestic pets (e.g., dogs, cats or caged birds) is permitted; provided, however, that such pets are not kept or maintained for commercial purposes or for breeding and that any such pet causing or creating a nuisance or unreasonable

disturbance or noise shall be permanently removed from the Lot within ten (10) days after notice from the Board. Any Interested Party who keeps or maintains or permits to be kept or maintained any pet upon any portion of the Burdened Property agrees to indemnify and hold the Association, each other Interested Party and Declarant free and harmless from any loss, claim or liability of any kind or character whatever (including reasonable attorneys' fees and costs) arising by reason of keeping or maintaining such pet within the Burdened Property. All pets shall be registered and inoculated as required by law.

Without limiting the generality of the foregoing, the following provisions apply to the keeping of pets on Lots:

(a) no more than one (1) household pet per bedroom may be kept or maintained within any dwelling or on any Lot;

(b) no household pet in excess of \_\_\_\_\_ ( ) pounds may be kept or maintained in any dwelling or on any Lot;

(c) Other than to the extent, if at all, required to be permitted pursuant to guidelines promulgated under the Americans With Disabilities Act, the following breeds of dog are will not permitted to be kept or maintained on any Lot: Rottweiler, Doberman, Pit Bull, Akita, German Shepard, Boxer, Mastiff, and/or any other pet breed the Board may deem as a potential safety hazard to Persons lawfully on the Property.

Section 13. Wetlands and Resource Protection Areas. Portions of many Lots are defined as jurisdictional wetlands by the U.S. Army Corps of Enginners and Resource Protection Areas pursuant to the Chesapeake Bay Preservation Act. With respect to each affected Lot, the limits of such wetlands and Areas are delineated on the subdivision plat pursuant to which the Lot was created. Interested Parties with respect to such Lots are required to comply with all Federal, state and local statutes, ordinances, rules and regulations relating to the preservation and protection of such areas. Further information concerning restrictions governing wetlands areas may be obtained from the U.S. Army Corps of Engineers (Norfolk District), Fort Norfolk, 803 Front Street, Norfolk, Virginia 23510-1096. Further information concerning restrictions governing Resource Protection Areas may be obtained from the County.

Section 14. Indemnification. By acceptance of the deed to a Lot, each Owner agrees to indemnify and hold harmless Declarant, its members, its and their successors and assigns from and against, and waives any right to assert, claims of any kind or nature whatsoever arising out of or in connection with the failure of such Owner or of any party claiming by, through or under such Owner to comply with all Federal, state and local statutes, ordinances, rules and regulations relating to the preservation and protection of jurisdictional wetlands and/or areas designated as Resource Protection Areas under the Chesapeake Bay Act as in effect in the Commonwealth of Virginia and local implementing ordinances related thereto promulgated from time to time by the County and charges related thereto, including but not limited to attorneys' fees and expenses, provided the foregoing indemnification obligation is personal to each Owner, shall only be effective with respect to claims arising solely as a result of any act or omission by or on behalf of

such Owner or any party claiming by, through or under such Owner occurring during the period of time that such Owner is owner of the Lot with respect to which a claim arises and shall not be enforceable against the holder or holders of any obligation secured by a deed of trust encumbering all or any portion of the Lot solely as a consequence of such party's or any such party's status as a secured party.

## **ARTICLE VII: MAINTENANCE**

Section 1. Upkeep. Every Owner shall take or cause to be taken such actions as may be necessary to assure that all Improvements and the grounds on such Owner's Lot are kept free of unclean, unsightly, unkempt, unhealthy, or unsafe conditions at all times, including during construction of Improvements. Without limiting the generality of the foregoing, each Owner shall mow, fertilize and treat grassed areas for pests and weeds and trim and prune shrubbery, trees and other landscaping on a Lot regularly and properly so as to maintain the appearance of the Lot in a manner in keeping with the standards set forth in the architectural guidelines and/or Rules and Regulations, and each Owner shall require his, her or its general contractor to provide and require the use of dumpster and potable toilet facilities during any period of construction of Improvements on a Lot, unless such requirement has been waived by the Board. All repairs and replacements shall be substantially similar to the original construction and installation and shall be of comparable quality, but may be made with contemporary materials, provided any material change in the exterior materials used shall be subject to the approval of the DRB. Provided that Board has given an Owner of a Lot notice of action or actions required to assure compliance with the foregoing requirements, and the Owner has failed to take such action or actions within seven (7) days after such notice, the Board shall have the right to cause the action or actions required to be performed and, notwithstanding the foregoing, may do so without notice to the Owner whenever, in it's sole and absolute judgment, emergency circumstances dictate that it do so, or whenever, after having given such notice to such Owner in a prior instance, it has then caused the action or actions required to be performed.

Section 2. Erosion Control. Every Owner shall take such actions as may be necessary to maintain effective erosion control on his, her or its Lot. Provided that the Board has given an Owner notice of action required to establish and maintain effective erosion control on such Lot, and the Owner has failed to take such action within three (3) days after such notice, the Board shall have the right to cause the action required to be performed and, notwithstanding the foregoing, may do so without notice to the Owner whenever, in it's sole and absolute judgment, emergency circumstances dictate that it do so, or whenever, after having given such notice to such Owner in a prior instance, it has then caused such action or actions to be performed.

Section 3. Control of Vegetation. Subject to the requirements of Article V, Subsection 18(d), every Owner shall take such actions as may be necessary to remove underbrush, weeds or other unsightly growth from his, her or its Lot that detract from the overall beauty, setting and safety of the Property. Provided the Board has given notice to an Owner of the presence of underbrush, weeds or other unsightly growth that in it's opinion detracts from the overall beauty, setting and safety of the Property, and the Owner has failed within seven (7) days after such notice

to correct such condition, the Board may cause may cause such underbrush, weeds, or other unsightly growth to be mown, removed, cleared, cut or pruned. Notwithstanding the foregoing, no such notice shall be required whenever the Board, after having given such notice to such Owner in a prior instance, has then entered upon the Owner's Lot as a result of the Owner's failure to correct such condition and caused same to be corrected.

Section 4. Garbage Pickup. Curbside pickup of recyclable materials shall be permitted subject to the Rules and Regulations. Curbside garbage pickup shall not be permitted unless it is required by the County or approved by the Board. The Board may enter into a "master" garbage pickup contract applicable to all Lots, in which event all Owners of such Lots shall be bound by the provisions thereof. With respect to curbside pickup, no containers shall be left at curbside earlier than 7:00 p.m. in the evening preceding the day upon which pickup is scheduled to occur or permitted to remain at curbside later than 7:00 p.m. on such day.

Section 5. Reconstruction and Repair. If all or any part of the Improvements on a Lot are damaged or destroyed by fire or other casualty, the Owner shall either (i) arrange for and supervise the prompt repair and restoration thereof, or (ii) clear away the debris and restore the Lot to an acceptable condition, which condition, in the event of destruction of any such Improvements on a Lot, shall be compatible with the condition of other unimproved Lots, if any, or otherwise acceptable to the Board in its sole discretion. Unless the DRB agrees to the contrary, any such work must be commenced within six (6) months after the casualty and substantially completed within twelve (12) months after having commenced.

## **ARTICLE VIII: ASSESSMENTS**

Section 1. Covenant to Pay Assessments. Each Owner covenants to pay Assessments pursuant to this Article. Co-Owners of a Lot shall be jointly and severally liable for Assessments and all costs of collection thereof, if any, incurred by the Association pursuant to the provisions hereof.

Section 2. Purposes of Assessments. Quarterly Assessments shall be used to improve, maintain, repair, replace, enhance, enlarge, and operate the Common Open Space and Common Open Space Improvements and to provide services that the Association is authorized to provide. Special Assessments shall be used exclusively for the purposes set forth in this Article.

Section 3. Quarterly Assessments. Except as set forth below, the initial Quarterly Assessment for each Lot shall be \_\_\_\_\_ and No/100 Dollars (\$\_\_\_\_.00) plus, if the Association enters into a "master" contract for garbage collection, such Lot's prorata share of the cost from time to time of garbage collection for Liberty Ridge. Quarterly Assessments shall commence being due with respect to each Lot the first day of the first month following the month in which the initial sale of such Lot by Declarant to a third party occurs.

Section 4. Changes in Quarterly Assessment. From and after January 1, 2010, the Quarterly Assessment may be increased each fiscal year in the amount deemed necessary by the

Board in order to fund the Association's obligations pursuant to the annual budget duly adopted by the Board for such year, provided the aggregate Quarterly Assessments in any year may not be so increased by more than the greater of (i) ten percent (10.0%) over the amount thereof in the preceding year or (ii) the year-to-year increase, if any, in the Consumer Price Index All Urban Consumers (1982-84=100) without the approval of the Members. For so long as any advances by Declarant to the Association remain unpaid, the Quarterly Assessment for a fiscal year shall not be reduced below the amount thereof for the preceding fiscal year without Declarant's consent, which consent Declarant shall not be obligated to give. Thereafter, the Quarterly Assessment for a fiscal year may be reduced below the amount thereof for the preceding fiscal year at the discretion of the Board, provided the Quarterly Assessment shall not be reduced to a level lower than that reasonably required pursuant to the budget duly adopted by the Board for the fiscal year in question. If the Board determines that the Quarterly Assessment established for a given fiscal year will be insufficient to fund the obligations of the Association intended to be funded thereby, the Board may levy a Special Assessment in the amount reasonably necessary to satisfy any such insufficiency.

Section 5. Billing Dates for Quarterly Assessments. The Board shall bill Owners for Quarterly Assessments on a calendar quarterly basis in advance. Except as set forth below, payment shall be due within thirty (30) days of the date of the bill rendered. If the Board elects to utilize a third party billing service, such service shall set the date on which Assessment bills shall be due and payable, subject to the approval of the Board.

Section 6. Special Assessments. The Board may levy Special Assessments as necessary for construction, reconstruction, repair or replacement of, or additions to, Common Open Space Improvements and for any personal property related thereto located upon the Common Open Space, to repay any loan obligation of the Association, for any purpose that in its sole discretion is in the best interests of Liberty Ridge, or pursuant to the provisions of this Article. Any amount duly payable as a Special Assessment from one (1) or more, but less than all, of the Owners shall be deemed to be a Special Assessment duly levied by the Board.

Section 7. Late Fee; Acceleration. If any Assessment or other charge or amount owed to the Association is not paid when due, the Association shall be entitled to levy a late fee in the amount of Fifty and No/100 Dollars (\$50.00). The Board shall have the right to change the amount of the foregoing late fee in its discretion from time to time. In addition, if any Assessment is being collected in installments, upon failure to pay any installment when due, the Association may accelerate the due date of the remaining installments due, if any.

Section 8. Capitalization of Association. Except as set forth below, each Owner other than Declarant and an Owner to whom a Lot is conveyed prior to construction of Improvements thereupon shall make a contribution to the capital of the Association equal to the greater of (i) \_\_\_\_\_ and No/100 Dollars (\$ \_\_\_\_\_.00) or (ii) \_\_\_\_\_ percent (\_\_\_\_%) of the amount of the then-current Quarterly Assessment. Such contribution shall be paid to the Association within thirty (30) days after conveyance of the Lot with respect to which such contribution is due to such Owner. If two (2) or more Persons become Owners of a given Lot simultaneously, only one (1) such contribution shall be required. No such contribution shall be required in connection with any conveyance of a Lot that is not a voluntary conveyance for

valuable consideration by the Owner(s) thereof to an unrelated Person or from any existing Owner. At such time as the aggregate amount of such contributions is sufficient to repay to Declarant any amounts advanced by it to the Association, if any, pursuant to Section 12 below and maintain the Association's working capital at a level at least equal to \_\_\_\_ ( ) months' expenses pursuant to the approved budget in effect at the time, the Board in its sole discretion may elect to (w) reduce the amount required to be contributed pursuant to this Section, (x) suspend the obligation to contribute pursuant to this Section, (y) terminate the obligation to contribute pursuant to this Section, and/or (z) to the extent contributions continue to be made pursuant to this Section, transfer such contributions to the reserve fund established pursuant to Section 9 below. Thereafter, in any such event, the Board in its sole discretion may rescind any such action taken by it.

Section 9. Reserve Fund. The Association shall establish a reserve fund with a portion of the proceeds of Quarterly Assessments to be held in an interest bearing account or investments as a reserve for major rehabilitation or repairs of Common Open Space Improvements, emergency and other repairs required to such Improvements as a result of storm, fire, natural disaster, or other casualty loss, the initial costs of any new services to be performed by the Association and/or any purpose for which Special Assessments may be levied pursuant to Section 6 above.

Section 10. Certificates Relating to Assessments. At the request of an Owner, the Association shall furnish or shall cause any billing service engaged by it to furnish a certificate signed by an officer of the Association or of such billing service setting forth the payment status of any Assessments for which such Owner is responsible. In the absence of fraud or manifest error, such certificate shall be conclusive evidence against all but the Owner of the information set forth therein.

Section 11. Association Lien Rights; No Election of Remedies. The Association shall have a lien against each Lot to secure the payment of Assessments and all late fees and other charges, if any, due in connection therewith. The Association's lien rights shall be perfected and exercised in the manner set forth in the Code. The priority of the Association's lien for Assessments shall be as set forth in the Code. A suit at law for collection of any delinquent Assessment may be maintained by the Association without waiving the Association's lien rights. Proceeding by foreclosure to attempt to collect delinquent Assessments shall not be deemed an election precluding the institution of suit at law for collection of the same. All Owners waive pleading the theory of "election of remedies" in any such proceedings.

Section 12. Surplus. Subject to the provisions of Section 9 above, and except as limited below, any amount accumulated by the Association in excess of the amount necessary to fund the actual costs for which it is responsible shall, at the discretion of the Board, (i) be placed in the reserve fund established pursuant to Section 9 above, (ii) be credited against the next Quarterly Assessments due from the Owners in equal shares until exhausted, or (iii) be distributed to the Owners in equal shares, in which event the shares attributable to Owners who or which are delinquent in payment of any Assessment obligations shall first be applied to cure such delinquency, with the balance thereafter remaining, if any, then being distributed to such Owners.



Section 13. Deficits. Declarant may (but shall not be obligated to) advance funds to the Association required to fund operating deficits, if any, incurred, with the right to have such advances repaid out of capital contributions made by Owners pursuant to Section 8 above. Declarant shall be reimbursed by the Association for the amounts, if any, so advanced from time to time with interest at the rate of ten percent (10%) per annum from the date of any such advance until the date of repayment thereof.

## **ARTICLE IX: ASSOCIATION MEMBERS; VOTING; GOVERNANCE**

Section 1. Members and Membership. All Owners other than Declarant shall automatically become Type "A" Members upon taking title to a Lot. Declarant shall automatically become a Type "A" Member with respect to Lots owned by it at the time that the Type "B" Membership terminates.

Section 2. Voting. Voting rights and procedures shall be governed by the Articles and Bylaws.

Section 3. Governance. Governance of the Association shall follow the procedures set forth in the Articles and Bylaws.

## **ARTICLE X: ASSOCIATION DUTIES**

Section 1. Ownership of Properties. The Association may own and shall maintain the Common Open Space, all Common Open Space Improvements and personal property related thereto for any purpose not inconsistent with this Declaration.

Section 2. Minimum List of Functions and Services. Unless Declarant shall consent to the contrary in writing, so long as Declarant is an Owner, the Association, acting through the Board, shall:

(a) Establish, levy and collect Assessments.

(b) Manage, control and maintain the Common Open Space and Common Open Space Improvements.

(c) Maintain all "best management practices" facilities and related pipes and outfalls not located within the dedicated rights-of-way of streets, all street signs and stop signs within such rights-of-way, and the 8' asphalt trail along the entire frontage of the Property on Centerville Road within the right-of-way thereof.

(d) Should Declarant appoint the Association its agent or otherwise assign its rights to the Association for such purposes, or should such rights be deemed to have been assigned to the

Association pursuant, administer and enforce this Declaration and other covenants and restrictions of record, if any, and assume responsibility for any obligations that are incident thereto.

(e) Provide appropriate liability and hazard insurance coverage for Common Open Space Improvements and activities on the Common Open Space.

(f) Endeavor to provide appropriate Director's and Officers' Legal Liability Insurance for the directors and officers of the Association.

(g) Keep complete books and records of all its acts and corporate affairs, which shall be open to inspection by appointment during normal business hours by any Owner or Noteholder.

(h) Within ninety (90) days after the close of each fiscal year of the Association, have prepared and executed by an officer under oath a balance sheet for the Association as of the close of such fiscal year and a statement of income and expense for such fiscal year. Such financial statements thereafter shall be provided to any Type "A" Member or Noteholder making a request therefore in writing within thirty (30) days after receipt of such request. In the absence of fraud or manifest error, in executing an oath with regard to such balance sheet and statement of income and expense, the officer doing so shall be entitled to rely upon the representation by the accountant, accounting firm, or management Declarant preparing such materials as to the accuracy thereof.

(i) Commencing with fiscal 2009, at least thirty (30) days prior to the first day of each fiscal year, prepare or cause to be prepared and make available to all Type "A" Members a budget outlining anticipated receipts and expenses for the following fiscal year.

(j) Provide regular cleanup of all trails throughout the Burdened Property, including, but not limited to, mowing grass, landscape maintenance and pickup and disposal of trash on such areas.

(k) Maintain all directional signs, trail signs, and neighborhood and other area signs throughout the Burdened Property, including, but not limited to, painting, repair work and replacement as needed.

(l) Obtain and maintain a blanket fidelity bond or employee dishonesty insurance policy insuring the association against losses resulting from theft or dishonesty committed by the officers, directors, or persons employed by the association, or committed by any managing agent or employees of the managing agent. Such bond or insurance policy shall provide coverage in an amount equal to the lesser of \$1 million or the amount of the reserve balances of the association plus one-fourth of the aggregate annual assessment income of such association. The minimum coverage amount shall be \$10,000.

(m) Establish a reasonable, effective, and free method for Owners to communicate among themselves and with the Board regarding any matter concerning the association.

Section 3. Borrowing Authority. The Board may enter into deeds of trust encumbering the property of the Association and pledge the revenues of the Association as security for loans made to the Association which loans shall be used by the Association in performing its authorized functions; provided that any such deed of trust is approved by the Members, and further provided that in the event of a default upon any such deed of trust by the Association, the noteholder's rights shall be limited to the right, after taking possession of the property burdened thereby, to charge reasonable admission and other fees, and, if necessary, to open enjoyment of such property to a wider public, until the note held is satisfied, whereupon possession of the property shall be restored to the Association.

Section 4. Failure to Timely Adopt Budget. The Board's failure to adopt or delay in adopting a budget for any fiscal year when required shall not constitute a waiver or release in any manner of an Owner's obligation to pay Assessments. In the absence of any such budget, each Owner shall continue to pay Quarterly Assessments at the rate in effect for the fiscal year immediately preceding the fiscal year to which such budget, if prepared and adopted, would have appertained until notified of any change in the amount thereof. If a budget for a fiscal year is adopted during such fiscal year that includes an increase in the amount of the Quarterly Assessment, with the result that Owners have underpaid Quarterly Assessments, the amount of such increase shall be paid by prorating such amount over the remaining number of installment payments due. If a budget for a fiscal year is adopted during such fiscal year includes a decrease in the amount of the Quarterly Assessment, with the result that Owners have overpaid Quarterly Assessments, the amount of such overpayment shall be credited against the remaining amount due from Owners during the balance of such fiscal year, or, in the event the amount of such overpayment exceeds such remaining amount, against the amount due from Owners during the succeeding fiscal year.

Section 5. Insurance. All insurance policies upon the Common Open Space shall be purchased by the Association for the benefit of the Association, the Owners and Noteholders. Certificates of mortgagee endorsement shall be issued upon request. All Common Open Space Improvements and all personal property related thereto shall be insured in an amount equal to one hundred percent (100%) of insurable replacement value as determined annually by the Board with the assistance of the insurance company or agency providing coverage. Such coverage shall provide protection against loss or damage by fire and other hazards covered by a standard extended coverage endorsement, and such other risks as from time to time shall be customarily covered with respect to comparable improvements and property. All policies shall contain clauses providing for waiver of subrogation. Public liability insurance shall be secured with limits of liability of no less than One Million Dollars (\$1,000,000) per occurrence and an endorsement to cover liability of the Owners as a group to a single Owner. All insurance policies shall provide that all proceeds thereof shall be payable to the Association as insurance trustee under this Declaration. The sole duty of the Association as insurance trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes stated herein.

Section 6. Reconstruction and Repair. If all or any part of the Common Open Space Improvements are damaged or destroyed by fire or other casualty, the Board shall either (i) arrange for and supervise the prompt repair and restoration thereof subject to the availability of insurance

proceeds or reserve funds and/or duly levied Special Assessments, or (ii) clear away the debris and restore the affected area to an acceptable condition.

Section 7. Failure to Obtain Insurance. Declarant and the Board shall not be liable for failure to obtain the insurance coverage required by this Declaration or for any loss or damage resulting from such failure if (i) such failure is due to the unavailability of such coverage from a reputable insurance company, (ii) such coverage is available only at demonstrably unreasonable cost, or (iii) the associated insurance advisors advise that such coverage is unnecessary.

Section 8. Elimination of Encroachments, Etceteras. For so long as Declarant is an Owner, at the request of Declarant, the Association shall grant such easements and enter into such deeds of conveyance as may in Declarant's discretion be necessary in order to eliminate such encroachments, gaps, gores, overlaps, unintended side or rear setback violations, and other boundary line problems that may arise affecting the boundary line between any portion of the Common Open Space and any Lot or other portion of the Property.

## **ARTICLE XI: GENERAL PROVISIONS**

Section 1. Duration. This Declaration shall run with the land for an initial term of thirty (30) years from the date of recordation in the Clerk's Office. Upon the expiration of said period, this Declaration (unless duly terminated) shall be automatically extended for successive terms of ten (10) years.

Section 2. Termination of Declaration; Effect of Termination. This Declaration may be terminated at the end of the then-current term by the affirmative vote of three-fourths (3/4ths) of the votes cast by the Type "A" Members present in person or by proxy at a duly called meeting at which a quorum is present held during the final year of such term or by unanimous consent of the Members in lieu of such a meeting. All easements reserved or granted herein shall survive termination of this Declaration.

Section 3. Amendments Generally. Other than as expressly set forth herein or in the Code or in the Articles, all proposed amendments to this Declaration shall be submitted to a vote of the Members at a duly called meeting at which a quorum is present. If submitted to a vote at such a duly called meeting, any such amendment shall be deemed approved if two-thirds (2/3rds) of the Type "A" Members present at such meeting in person or by proxy vote in favor thereof and, while there is a Type "B" Member, such amendment has been approved by the Type "B" Member. Any amendment that materially adversely affects the rights of Noteholders shall be subject to the consent of Eligible Noteholders, and shall be deemed to have been approved by them if approved by a majority of them in writing, provided any Eligible Noteholders not withholding such consent within thirty (30) days after the date of notice to Eligible Noteholders seeking such consent shall be deemed to have granted such consent. Eligible Noteholders shall each have one (1) vote for each Lot encumbered by the lien of a deed of trust for their benefit. An action to challenge the validity of an amendment may not be brought more than one (1) year after the amendment is effective.

Section 4. Company's Unilateral Right to Amend. For so long as it is the Type "B" member, Declarant may unilaterally amend this Declaration to correct scrivener's errors, clarify ambiguities, satisfy any requirements of the County related to Liberty Ridge, satisfy the requirements of any guarantor of institutional loans to Owners, including but not limited to FNMA and the Veterans' Administration, and/or satisfy any requirements applicable to Liberty Ridge pursuant to the Interstate Land Sales Act or any comparable state, Federal or local ordinance, law, or rule.

Section 5. Notice of Termination or Amendment. If this Declaration is terminated or amended, a certificate of termination or an addendum to this Declaration, as the case may be, shall be recorded in the Clerk's Office by the Type "B" Member, if any, and, otherwise, by the Association.

Section 6. Additional Restrictive Covenants. Declarant may add additional restrictive covenants affecting any portion of the Burdened Property owned by it or limit the application of these covenants thereto.

Section 7. Remedy for Monetary Breach. If an Owner defaults in any monetary obligation imposed by or pursuant to this Declaration, the Board may initiate and prosecute legal action to recover the amount due, plus all costs of collection, including attorneys' fees and interest at the rate of twelve percent (12%) per annum from the due date or dates until paid, and exercise all lien rights then appertaining to it against the Owner and his, her or its Lot. In the event of such a default and the failure of the Board to so proceed within thirty (30) days after notice from any Owner of a demand that it do so, such Owner shall independently have such right to proceed, with any sums due that are recovered and/or money damages that are awarded being for the account of the Association, provided that in such event, if attorney's fees and costs are recovered, they shall be applied first to reimburse such Owner for his, her or its attorney's fees and costs reasonably incurred.

Section 8. Remedy for Non-Monetary Breach. If an Interested Party breaches any non-monetary obligation imposed by or pursuant to this Declaration, including but not limited to the obligation to get the approval of the DRB or Board before taken certain actions pursuant hereto, the Board shall have the right to cause such actions to be taken as are necessary in it's sole and absolute discretion to remedy the same at the expense of Owner thereof. If the nature of such breach is such, in the opinion of the Board, as to require immediate corrective action, the Board may cause such corrective action to be taken after written notice to such Owner and such Owner's failure to take satisfactory immediate corrective action; in any other event, except as otherwise expressly set forth herein, the Board shall have such right if, within thirty (30) days' after notice of such violation or breach, it shall not have been corrected. In the event of a threatened breach by an Interested Party in performance of any non-monetary obligation imposed by or pursuant to this Declaration, the Board shall be entitled to bring an action against such Party for injunctive and other relief provided it first gives such Party ten (10) days' notice of its intention to do so unless, in it's opinion, the nature of the threatened breach is such as to require immediate legal action. If the Board fails to exercise the rights granted in this Section 8 upon a breach by an Interested Party in performance of any non-monetary obligation imposed by or pursuant to this Declaration within thirty (30) days after receipt

of notice from an Owner of a demand that it do so, such Owner shall be entitled to exercise such rights.

Section 9. Certain Rights of Association. In the event of a breach of the provisions of this Declarant by an Owner, the Board may: 55-513.B.

(a) suspend the voting rights of the Owner until such breach has been cured or waived;

(b) if such breach consists of Assessments being more than sixty (60) days past due, suspend such Owner's right and that of all Interested Parties claiming by, through or under him, her or it to use facilities or services provided directly through the Association,, to the extent that access to such Owner's Lot is not precluded and provided that such suspension shall not endanger the health, safety, or property of any Owner, Tenant or occupant;

(c) if such breach is non-monetary in nature, assess charges against such Owner, the amount of which shall not be limited to the expense or damage to the Association caused by the breach, but shall not exceed more than Fifty and No/100 Dollars (\$50.00) for a single breach or more than Ten and No/100 Dollars (\$10.00) per day for any breach of a continuing nature, which charge shall be treated as a Special Assessment against such Owner and his, her or its Lot, provided the charges in connection with a breach of a continuing nature shall not be assessed for a period exceeding ninety (90) days.

The foregoing rights shall be subject to the notice and hearing provisions set forth in Section 55-513.B. of the Property Owners' Association Act. If an Owner a lawsuit is filed challenging any charges levied pursuant to Subsection (c) above, no additional charges shall accrue after the date of filing. If the court rules in favor of the Association, it shall be entitled to collect such charges from the date the action was filed as well as all other charges assessed pursuant to this section against the lot owner prior to the action and its attorneys' fees and costs.

For purposes hereof, an Owner is responsible for violations of this Declaration by an Interested Party claiming by, through or under him, her or it.

Section 10. Venue; Waiver of Trial By Jury; Service of Process. Every Owner agrees that any suit or proceeding brought pursuant to the provisions of this Declaration may be brought in the General District Court or the Circuit Court of the County or any court that in the future may be the successor to either or both of such Courts, waives the right to trial by jury and consents to a trial without a jury. Should suit be instituted against an Owner not at the time residing in the Commonwealth of Virginia or upon whom or which service cannot be accomplished in any other reasonable fashion, each such Owner hereby irrevocably appoints the Secretary of the State of the Commonwealth of Virginia as his, her or its agent for the acceptance of service of process.

Section 11. Costs of Corrective Action; Lien. Whenever any corrective action is taken pursuant to this Declaration, the costs thereof shall be a personal obligation of the Owner or Owners of the Lot affected or in connection with which the action was taken at the time such costs are incurred. The costs shall be billed at the completion of such corrective action, and all bills shall be

due and payable thirty (30) days from the date of mailing of same. If the costs are not paid when due, the party initiating corrective action may sue for a judgment. The costs of corrective action and all other amounts such party is entitled to recover shall constitute a Special Assessment against and lien on the Lot affected, which lien shall run with the land and shall bear interest at the rate of twelve percent (12%) per annum from the date incurred until paid.

Section 11. Failure No Waiver. The failure by the Board, the Owners, the Association, and/or Declarant to enforce any right, reservation, restriction or condition contained in this Declaration in any one or more instance, regardless of how long such failure shall continue, shall not constitute a waiver of or a bar to the right to enforce such right, reservation, restriction or condition in any other instance or to enforce any other right, reservation, restriction or condition contained herein.

Section 12. Assignment. By written instrument recorded in the Clerk's Office, Declarant may assign to the Association or any other third party in whole or in part, revocably or irrevocably, all of its rights and obligations in this Declaration, subject to any conditions, limitations, or restrictions that Declarant may elect to impose. Following any such assignment, the Association or such third party shall assume all of Declarant's obligations which are incident thereto (if any), and Declarant shall have no further obligation or liability with respect thereto. So long as Declarant is an Owner, no such assignment shall limit the rights of easement and other rights of entry reserved unto Declarant in this Declaration. If (or to the extent that) Declarant has not already done so prior to the time it is no longer an Owner, Declarant shall be deemed to have assigned all of its remaining rights and obligations in this Declaration to the Association as its agent at such time. If Declarant has not assigned all of its rights and obligations in this Declaration to the Association prior to the time that it is no longer an Owner, the Association may confirm as a matter of record that all of such rights and obligations are deemed to have been assigned to it by recording a certificate by a duly licensed attorney engaged in the general practice of real estate law in the County, stating that based upon a title examination of the records maintained in the Clerk's Office, Declarant is no longer an Owner.

Section 13. Appointment of Association as Agent. Declarant may appoint the Association as its agent to administer and enforce this Declaration. Such appointment may be temporary or permanent, and shall be subject to any conditions, limitations, or restrictions that Declarant may elect to impose. Upon any such appointment, the Association shall assume any obligations that are incident thereto.

Section 14. Notices. Any notice required or permitted to be sent under the provisions of this Declaration shall be given by personal delivery, U.S. first-class, postage-prepaid mail, or Fedex or comparable guaranteed overnight delivery service and shall be effective upon receipt, provided failure or refusal to accept delivery shall constitute receipt. Notices given to Owners shall be given at the Owners' last known addresses, as reflected on the records of the Association, or at such other address or addresses as the Owners or any of them shall have designated by notice given to the Secretary of the Association. Notice to one (1) of two (2) or more joint Owners shall constitute notice to all such joint Owners, and notice to the Owner of a Lot shall constitute notice to any Interested Party claiming by, through or under such Owner. It shall be the obligation of every Type

“A” Member to immediately notify the Secretary of the Association in writing of any change of address for notice purposes. Any Person who becomes a Type “A” Member following the first day in the calendar month in which said notice is delivered or mailed shall be deemed to have been given notice if notice was given to its, his or her predecessor in title. Notice to Declarant shall be given at 14700 Village Square Place, Midlothian, Virginia 23112, with a copy concurrently given to Declarant’s Registered Agent in the Commonwealth of Virginia at the address designated for Declarant’s Registered Office on the records of the State Corporation Commission of the Commonwealth of Virginia. For so long as Declarant is the Type “B” Member, notice to Declarant shall be deemed to be notice to the Association. Thereafter, notice to the Association shall be given to its Registered Agent in the Commonwealth of Virginia at the address designated for the Association’s Registered Office on the records of such Commission.

Section 15. Severability. Should any Article, Section, Subsection, sentence, clause, phrase or term of this Declaration be declared to be void, invalid, illegal, or unenforceable for any reason by the adjudication of any court or other tribunal having jurisdiction over the parties hereto and the subject matter hereof, such adjudication shall in no way effect the other provisions hereof, which are hereby declared to be severable and which shall remain in full force and effect.

Section 16. Interpretation. For so long as Declarant is an Owner, Declarant shall have the right to determine all questions arising in connection with this Declaration and to construe and interpret its provisions, and its determination, construction, or interpretation shall be final and binding. Thereafter, the Board shall have such right.

Section 17. Authorized Action. All actions which the Association is allowed to take under this Declaration shall be authorized actions if approved by the Board in the manner provided for in the Bylaws, unless the terms of this Declaration provide otherwise.

Section 18. Other Agreements. In the event of any conflict between the provisions thereof, the order of precedence of this Declaration, the Articles, the Bylaws, and the Rules and Regulations shall be the Articles, this Declaration, the Bylaws and the Rules and Regulations.

Section 19. Limited Liability. In connection with all reviews, acceptances, inspections, permissions, determinations, consents or required approvals by or from Declarant, the DRB and/or the Association contemplated under this Declaration, including by the Board in the capacity of DRB, Declarant, the DRB and/or the Association shall not be liable to an Owner or to any other Person on account of any claim, liability, damage, or expense suffered or incurred by or threatened against an Owner or such other Person and arising out of or in any way relating to the subject matter of any such reviews, acceptances, inspections, permissions, consents or required approvals, whether given, granted or withheld. Without limiting the generality of the foregoing, the approval by the DRB of any proposed improvements or any alterations, and/or any requirement by the DRB that the proposed improvements or alterations be modified, shall not constitute a warranty or representation by the DRB of the adequacy, technical sufficiency or safety of the proposed improvements or alterations, as the same may be modified, and the DRB shall have no liability whatsoever for the failure of the proposed improvements or alterations to comply with applicable building codes, laws and ordinances, sound engineering, architectural or construction practices,



or for the negligence of any party involved in construction of such improvements or alterations once approved. In addition, in no event shall the DRB have any liability whatsoever to an Owner or any other party for any costs or damages (consequential or otherwise) that may be incurred or suffered on account of the DRB's approval, disapproval or conditional approval of any proposed improvements or alterations against any such Owner or any other party. Any Owner, contractor or other party asserting a claim against the DRB in contravention of the provisions of this Section shall reimburse such the DRB for all costs and expenses, including reasonable attorneys' fees and court costs, incurred by it or them in connection therewith. Such costs and expenses shall be a Special Assessment upon the Lot owned by the Owner asserting a claim or, in the event of a claim asserted by a contractor or third party, upon the Lot owned by the Owner engaging such contractor or third party, in order to secure payment thereof. No entry by or at the direction of the Declarant or the Board upon the Burdened Property or any portion thereof pursuant to this Declaration shall be deemed a trespass. No reservation of rights by Declarant in this Declaration shall be construed to impose on Declarant a burden of affirmative action of any kind or nature whatsoever.

Section 20. Exceptions. The Board may issue variances exempting a particular Lot or portion of the Common Open Space from any of the provisions of this Declaration, provided no such variance shall materially adversely affect an adjoining Owner's use or enjoyment of his Lot or the use and enjoyment of such Lot by any Interested Party claiming by, through or under such Owner, the use and enjoyment of the Common Open Space, or development of Liberty Ridge in a manner intended by this Declaration.

Section 21. Management and Contract Rights of Association. The Board may delegate management of its affairs to a professional manager, provided any management agreement is terminable for cause or upon reasonable notice, and for a term no longer than three (3) years, renewable by consent of the Association and the manager.

Section 22. Rights of Eligible Noteholders. Any Eligible Noteholder shall be entitled, upon written request therefore, to receive written notice of (a) all meetings of the Association, (b) any condemnation or casualty loss that affects either a material portion of the Lot or portion of the Common Open Space securing its deed or trust, (c) any delinquency in the payment of any Assessment levied against such Lot, (d) a lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association, and (e) any proposed action that requires the consent of a specified percentage of Noteholders. In addition, such Noteholder shall be entitled to attend any meeting of the Association and to be furnished upon written request with a copy of any insurance policies maintained by the Association pursuant to this Declaration.

Section 23. Master Plan. The existence of the Master Plan used by Declarant in developing and/or selling portions of the Property shall not be deemed to constitute a representation by Declarant that Liberty Ridge will be developed as depicted on such Plan. Such Plan may be modified or amended from time to time in the sole and absolute discretion of Declarant.

Section 24. Use of Name "Liberty Ridge". No Owner shall use or cause or permit the use of the words "Liberty Ridge" or any variation thereof in connection with any retail, commercial or

professional activity (however or wherever conducted or undertaken and expressly including any such activity occurring in whole or in part in Internet commerce) or use or cause or permit the use of the words "Liberty Ridge" or any variation thereof in the name of an Internet website, whether for personal use or otherwise, without the prior consent of Declarant, which consent Declarant may grant or withhold in its sole and absolute discretion. For so long as Declarant is an Owner, the provisions of this Section may not be amended without the consent of Declarant, which consent Declarant shall not be obligated to give.

Section 25. References. All references to Articles, Sections and Subsections herein are references to the articles, sections and subsections contained in this Declaration unless otherwise expressly noted to the contrary.

WITNESS the following signatures pursuant to due authority.

[Signature pages follow.]

[Signature page to Liberty Ridge Declaration of Covenants,  
Conditions and Restrictions.]

**ASSOCIATION**

LIBERTY RIDGE HOMEOWNERS  
ASSOCIATION, INC., a Virginia non-stock  
corporation

By: \_\_\_\_\_  
Branch P. Lawson  
President

**DECLARANT**

JCC, L.L.C., a Virginia limited liability company, by  
JCC MANAGEMENT CORPORATION, a Virginia  
corporation, its Manager

\_\_\_\_\_  
Branch P. Lawson  
President

COMMONWEALTH OF VIRGINIA

CITY/COUNTY OF \_\_\_\_\_, to-wit:

The foregoing instrument was acknowledged before me \_\_\_\_\_, 2008, in my jurisdiction aforesaid, by Branch P. Lawson, as President of Liberty Ridge Homeowners Association, Inc., a Virginia non-stock corporation, on behalf of such corporation, and as President of JCC Management Corporation, a Virginia corporation, on behalf of such corporation in its capacity as Manager of Liberty Ridge, L.L.C., a Virginia limited liability company. Mr. Lawson is personally known to me.

My commission expires:    /    /  
Registration number:

Notary Public

[SEAL]

[Signature page to Liberty Ridge Declaration of Covenants,  
Conditions and Restrictions.]

**TRUSTEE**

BB&T-VA COLLATERAL SERVICE  
CORPORATION, a Virginia corporation

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

COMMONWEALTH OF VIRGINIA

CITY/COUNTY OF \_\_\_\_\_, to-wit:

The foregoing instrument was acknowledged before me \_\_\_\_\_, 2008, in my jurisdiction aforesaid, by \_\_\_\_\_ of BB&T-Va Collateral Service Corporation, a Virginia corporation, on behalf of such corporation. Mr. \_\_\_\_\_ is personally known to me.

My commission expires:    /    /  
Registration number:

\_\_\_\_\_  
Notary Public

[SEAL]

The undersigned executes this instrument to consent to execution hereof by the Trustee named herein.

Branch Banking and Trust Company

By: \_\_\_\_\_

Name:

Title:





# Liberty Ridge

Residents' Lodge Conceptual Elevation





UNAPPROVED MINUTES FROM THE JULY 2, 2008 PLANNING COMMISSION  
MEETING

SUP-0012-2008 Liberty Ridge Clubhouse and Pool Facility

Mr. Jose Ribeiro stated that Mr. Dean Vincent on behalf of JCC, LLC. has applied for a special use permit to allow the construction of clubhouse and a swimming pool on a 3.03 acre parcel inside the proposed Liberty Ridge Subdivision. He stated Liberty Ridge is zoned A-1 and it is designated as rural lands according to the 2003 Comprehensive Plan. All agencies have reviewed and expressed no objection to this application. Staff finds that the proposed recreational use is an acceptable accessory use to a residential development. Staff also finds it to be consistent with the Comprehensive Plan. Mr. Ribeiro stated staff recommends the Planning Commission recommend approval to the Board of Supervisors.

Mr. Dean Vincent spoke as a representative of East West Partners of Virginia, which is involved with this project. He spoke about the projects that this company has been involved in. He stated that the DRC asked the applicant to set aside two parcels for open space. At that time it had not yet been determined where the clubhouse would be located. He stated that at this time the location has been established, and that they are willing to give up one lot for open space. Mr. Vincent stated that this is in addition to the two lots agreed upon. He stated that the plan before the Commission has 1000 square feet on the main floor and 600 feet below. Mr. Vincent stated they are looking at increasing that to 1500 feet on the first floor. He spoke about the parking and how they took effort as to not overbuild for parking. He stated that their goal is to preserve trees and to minimize clearing. Mr. Vincent asked for some flexibility with regards to their conceptual plan. They are still in the process of determining what will be at the site through focus groups. He spoke concerning the lighting condition, being the lots are three acre lots. Mr. Vincent stated they are proponents of dark sky initiatives, and trying to minimize clearing, but there is a need for security also.

Mr. Krapf asked about the note on the master plan. He asked that the note concerning LID measures be a binding condition to the special use permit.

Mr. Vincent stated he would agree to make it a binding condition.

Mr. Krapf asked about the flexibility requested from Mr. Vincent concerning lighting.

Mr. Fraley stated that he would ask Mr. Vincent if the conditions to the special use permit are agreeable.

Mr. Vincent stated that he would accept the conditions but had some concerns with the wording of "bound by" found in SUP Condition No. 1 on the Master Plan.

Mr. Fraley stated that in the past development has not always proceeded in the manner that was presented to the Planning Commission. He stated that the Commission has been advised to incorporate concerns with stronger wording to make sure that what is built is what was on the plans.



Mr. Sowers stated that since this project is internal to a neighborhood, staff would have no objections to deleting the wording "bound by" from SUP Condition No. 1.

The Planning Commission had no objections.

Mr. Fraley asked about Mr. Vincent's concerns about the lighting.

Mr. Vincent stated he had concerns with the 0.1 foot candle at the property line. He stated that they would want some spill over from the parking area to the right of way. He suggested .01 foot candles for adjoining adjacent lots.

Mr. Sowers stated that this is a valid point especially for the larger lots in the neighborhood. He stated staff will need to work with the applicant on a lighting plan, particularly in the entrance area of the clubhouse and areas along the street where residents may park.

Mr. Obadal cited Section 24-58 of the Zoning Ordinance which states for recreational facilities, the applicant shall justify the parking spaces provided and the rationale should cite commonly adopted national park and recreational standards. He stated the Ordinance also states the applicant should provide information on peak parking demands. Mr. Obadal questioned how many people they anticipated at the pool and clubhouse and what kind of meetings might be held there.

Mr. Vincent answered that he was aware of the section of the Ordinance. He stated that the proposed clubhouse facility is for internal use for the residents of Liberty Ridge. He stated that most of the studies that he was aware of are not as specific when it comes to an internal clubhouse in a community that prohibits external membership. He answered as far as meetings held the clubhouse would be rented out to owners within the development.

Mr. Obadal asked if the homeowner's association would use the clubhouse for meetings.

Mr. Vincent stated that it was not the intent to build the facility to house the entire association's membership.

Mr. Obadal asked if they would be willing to consider using pervious concrete for the project.

Mr. Vincent answered that once the project is approved, it is their goal is to work within the topography. Their goal is to save trees, possibly use pervious concrete around the pool, and possibly use that material for the parking lot as well.

Mr. Obadal asked if the applicant was willing to include language with specific LID measures, such as including pervious concrete where feasible.

Mr. Vincent stated he is willing to work with the request, but wanted to be cautious about

agreeing to something that might not be able to be done once the project is started. He wanted to avoid coming back to the Commission with a revised plan. He would request that if any conflicts were present between him and staff that he would have some recourse for another party to decide.

Mr. Obadal stated he would like pervious concrete used where feasible and for the Planning Director and the applicant to have some discretion as to what it feasible and what might not be.

Mr. Fraley stated that it would be up for discussion as to whether the Planning Commission would leave the discretion of what LID measures will be used up to the applicant.

Mr. Fraley closed the public hearing.

Mr. Fraley spoke on the history of Liberty Ridge. He stated Mr. Vincent went above and beyond what was required in regard to buffers, density, and recreational amenities.

Mr. Henderson stated his only concern with the application was with the parking. He cited his experience in Ford's Colony where the amenity is used on a regular and high level. He stated because the Liberty Ridge Development has three acre lots, most residents would be driving to the facility. His suggestion was be to plan for maximum use with regard to parking rather than minimal use.

Mr. Poole commended the applicant on a quality design and appreciated the applicant's flexibility and staff's flexibility in adjusting conditions for Condition #1 and Condition regarding the master plan and lighting. He supports this application.

Mr. Billups asked if collecting the groundwater from the facility has been taken into consideration.

Mr. Vincent stated the application provides for collecting stormwater onsite to reuse for irrigation.

Mr. Billups asked about runoff and if there were any other properties that might be affected by runoff.

Mr. Vincent answered that immediately adjacent to this is a BMP that will address the runoff. He stated the goal was to design the project so that as much of the stormwater as possible is diverted back into the ground.

It was agreed upon by all of the Planning Commissioners to leave the wording of the master plan not as is which states LID measures will be used whenever feasible without being specific regarding pervious concrete.

Mr. Henderson made a motion to approve the Special Use Permit with revised wording to Condition #1 and #3 as discussed by the Commission.

Mr. Krapf seconded the motion.

In a roll call vote the motion was approved. (7-0) AYE: Poole, Henderson, Billups, Krapf, Peck, Obadal, Fraley.

**SPECIAL USE PERMIT-0007-2008/MP-0002-2008. David Nice's Contractor's Office and Shed Staff Report for the August 12, 2008, 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**

May 7, 2008, (staff deferral)

June 4, 2008, (staff deferral)

July 2, 2008, 7:00 p.m.

Board of Supervisors:

August 12, 2008, 7:00 p.m.

**SUMMARY FACTS**

Applicant:

Mr. Archer Marston of AES Consulting Engineers on behalf of David A. Nice

Land Owner:

David A. Nice Builders, Inc.

Proposal:

To allow for a contractor's office and shed with associated storage and maintenance yard. Contractors' warehouses, sheds and offices are specially permitted uses in the A-1, General Agricultural, zoning district.

Location:

4700 Fenton Mill Road (Route 602)

Tax Map/Parcel No.:

1430100042

Parcel Size:

79.68 acres

Zoning:

Predominantly A-1, General Agricultural, with a small area of M-1, Limited Business/Industrial

Comprehensive Plan:

Predominantly Rural Lands with a small area of Mixed Use

Primary Service Area:

Predominantly outside with a small area inside

**STAFF RECOMMENDATION**

Staff believes that this proposal is not consistent with the Comprehensive Plan Land Use Map designation for the subject parcel. However, staff believes that the proposed conditions will sufficiently mitigate the impacts created by the proposed development. Based on this analysis, staff recommends that the Board of Supervisors approve this application with the Special Use Permit (SUP) conditions listed at the end of this staff report.

Staff Contact:

David W. German

Phone: 253-6685

**PLANNING COMMISSION RECOMMENDATION**

On July 2, 2008, the Planning Commission voted 7-0 to recommend approval of this application to the Board of Supervisors.

**Proposed Changes Made Since Planning Commission Meeting**

None.

**PROJECT DESCRIPTION**

---

SUP-0007-2008/MP-0002-2008. David Nice's Contractor's Office and Shed

Mr. Archer Marston of AES Consulting Engineers has applied on behalf of his client, Mr. David A. Nice, for an SUP to allow for the construction and operation of a contractor's office, storage shed, and associated storage and maintenance yard to be located at 4700 Fenton Mill Road. The subject property is zoned A-1 (Rural Residential), and is designated Rural Lands on the James City County 2003 Comprehensive Plan Map. There is a small area of the parcel, which is 79.68 acres in size, that is zoned M-1, Limited Business, and designated Mixed-Use on the Comprehensive Plan map, in the extreme northern tip of the parcel, but the proposed use will not be located in this area.

The applicant proposes a subdivision of this property to create a ten-acre lot from the larger whole. If granted, the SUP and the conditions attached thereto would govern the proposed use on the ten-acre lot and not affect the remaining 69.68-acre parcel. The entire operation proposed for this SUP would be located on and contained within the ten-acre lot, a description of which follows.

Roughly three-quarters of the ten-acre lot is heavily wooded and slopes down and away from Fenton Mill Road. This slope is generally gentle, but steeper slopes may be found along the northeastern and eastern boundaries of the lot. A small perennial stream with associated wetlands and Resource Protection Area (RPA) area is located along the eastern boundary of the ten-acre lot and crosses the lot again further to the northeast.

The remaining quarter of the proposed ten-acre lot (located closest to Fenton Mill Road) was cleared and graded under a Land Disturbing Permit issued by the Environmental Division in May 2004. This permit was renewed yearly with the most recent renewal being granted in April 2007. In June 2007, it was discovered that the clearing and grading limits specified by the Land Disturbing Permit had been exceeded. The landowner, Mr. Nice, was instructed by the Environmental Division to discontinue any further clearing operations and to stabilize the land that had already been cleared (which is approximately 2.45 acres at present). As the scope of Mr. Nice's operation had exceeded the specified limits of the Land Disturbing Permit and because Mr. Nice indicated that he wished to use the site as a contractor's shop and storage facility, the Environmental Division advised him that the Land Disturbing Permit would not be renewed until such time as an approved SUP was in place for the property. Mr. Nice applied for the required SUP in March 2008, and the Land Disturbing Permit expired in May 2008. The SUP, if granted, will allow for the use of the site as outlined in this staff report, while also addressing the needed stormwater management, erosion and sediment control, RPA, and other environmental impact mitigation measures required for the site.

The project proposes to further clear approximately 0.26 acres in addition to the 2.45 acres already cleared for a total of 2.71 acres cleared out of the ten-acre site. This would leave approximately 7.29 acres in their current natural, undisturbed state. In the 3.13-acre disturbed area, the applicant proposes to locate a 6,000-square-foot office and shop building, a 4,000-square-foot, three-sided shed for storage of materials, a paved entrance and parking area, a 100-foot by 20-foot concrete apron (abutting the office/shop building), and an area reserved for a primary and reserve septic drain field. Gravel would be spread over the balance of the disturbed area except where mulch, landscaping, and/or other slope stabilization measures would be required around the perimeter of the site. The site would be used as a contractor's office and for the storage and maintenance of vehicles and equipment. Additionally, construction materials and fill materials (earth, mulch, gravel, etc.) may be kept on the site. The applicant has described that excavators, various types of tractors, and bulldozers would be kept on the site, in addition to work trucks and the personal vehicles of workers who come to the site to pick up one of the company vehicles to take it to a job site. The applicant has agreed to the condition that no more than 40 vehicles will be located on the site at any given time.

No manufacturing or construction would take place on-site, but two full-time mechanics would work at the site, repairing equipment and vehicles. Undisturbed buffer areas have been shown on the Master Plan to help mitigate any adverse noise or visual effects on adjacent properties, and on the Fenton Mill Road right-of-way.

## **Environmental**

**Watershed:** York River Watershed

**Staff Comments:** The Environmental Division staff has reviewed the application and concurs with the layout proposed on the Master Plan at this time. The Environmental Division notes that a formal site plan, in conjunction with the Master Plan, will ensure that proper buffers, erosion and sediment control measures, and stormwater management features are utilized on the site.

## **Public Utilities**

This site is served by private well and septic systems, and should not affect the public utilities of James City County.

**Staff Comments:** The Health Department will evaluate the proposed private well and septic drain fields at the site plan stage of development.

## **Transportation**

**Road Improvements:** This project proposes fewer than 100 vehicle trips per day and does not require a traffic study or specific road improvements beyond the construction of a commercial entrance for the site.

**VDOT Comments:** VDOT staff has reviewed the application and has no objection to the proposed project. VDOT will have further comment at the site plan stage of development, at which time the driveway connection to Fenton Mill Road will be reviewed in detail.

**Staff Comments:** Staff believes the proposal will have minimal traffic impacts, due to the low number of trips-per-day that this use will potentially generate. Most of the traffic coming to and leaving the site will be at off-peak hours (at the very early part of the morning rush hour, and before and after the evening rush hour).

The recommended conditions 9, 10, and 11 limit the traffic impact of the development by helping establish when trips to and from the site will be made (hours of operation) and by directly limiting the number of vehicles parked on the site, and the number of vehicle trips made to and from the site.

## **COMPREHENSIVE PLAN**

### **Land Use Map**

Designation	<i>Rural Lands (Pages 119 and 120):</i> Primary uses include agricultural and forestal activities, together with certain recreational, public or semi-public and institutional uses that require a spacious site and are compatible with the natural and rural surroundings. Retail and other commercial uses serving Rural Lands are encouraged to be located at planned commercial locations on major thoroughfares inside the PSA. A few of the smaller direct agricultural or forestal-supported uses, home-based occupations and certain uses which require very low intensity settings relative to the site in which it will be located may be considered on the basis of a case-by-case review, provided such uses are compatible with the natural and rural character of the area and in accordance with the Development Standards of the Comprehensive Plan.
	<b>Staff Comment:</b> This project does not constitute a primary agricultural use as referenced in the Comprehensive Plan, so is therefore not consistent with the land use description. However, with the proper conditions applied to the project, staff believes the use will not be disruptive to the area's rural character and will be more compatible with the surrounding residential dwellings. The concentration of most of the trips to and from the site in the early morning and late afternoon will also help mitigate noise, vibration, and traffic impacts for the balance of each day. Staff is working to preserve the rural character of the area by limiting the use to ten acres out of the 79.68-acre site, requiring the buffers shown in the Master Plan and imposing a landscaping condition on this SUP.
Rural Land Use Standards	<i>Standard # 1 (page 135):</i> Preserve the natural, wooded, and rural character of the County. Particular attention should be given to ...encouraging enhanced landscaping to screen developments, minimizing the number of street and driveway intersections along the main road and utilizing lighting only where necessary and in a manner that eliminates glare and brightness.
	<b>Staff Comment:</b> The site and structures that will be necessary for the proposed operation would be accessed by a single entrance. The natural lay of the land (including the nearby wetlands and associated RPA areas) greatly limit the potential for further development and expansion of the project beyond what is shown on the Master Plan, and any such further expansion would require a Master Plan revision. This will help preserve the remaining open, forested areas on the proposed ten-acre parcel, which helps preserve the natural wooded and rural character of the area. Conditions #2

	(Lighting), and #7 (Landscape Plan), in conjunction with the layout and buffers shown on the Master Plan, will help to ensure the use is properly screened and buffered and that light spillage and glare is minimized on adjacent properties and road right-of-ways. The property owner has further expressed that it is his intention not only to comply with the Junk Removal condition (Condition #6), but to create a tidy and attractive environment on his site that will not detract from the surrounding area.
Goals, strategies and actions	<i>Strategy #2 (Page 138):</i> Ensure development is compatible in scale, size, and location to surrounding existing and planned development. Protect uses of different intensities through buffers, access control and other methods.
	<b>Staff Comment:</b> Through SUP conditions # 1, 2, 6, 7, 9, 10, and 11, staff believes the use will be compatible with surrounding development and that any impacts created by the proposal will be mitigated by the limitations imposed by the Master Plan, buffers and landscaping requirements, lighting restrictions, limitation on hours of operation, limitations on the parking of vehicles, and limitations on vehicle-trips-per-day to and from the site.

## **RECOMMENDATION**

Staff believes that this proposal is not consistent with the Comprehensive Plan Land Use Map designation for the subject parcel. However, staff believes that the proposed conditions will sufficiently mitigate the impacts created by the proposed development. Based on this analysis, staff recommends that the Board of Supervisors approve this application with the SUP conditions listed below:

1. **Master Plan and Use:** This SUP shall be valid for the operation of a contractors' offices/shop, storage shed, and gravel work yard and storage area ("the Project") to be located at 4700 Fenton Mill Road, further identified as James City County Real Estate Tax Map No. 1430100042 (the "Property"). Development of the site shall be generally in accordance with, and as depicted on, the binding Master Plan drawing, entitled "Master Plan for Special Use Permit for David A. Nice Builders, Inc. Site Division Contractor's Office at 4700 Fenton Mill Road," prepared by AES Consulting Engineers, and dated March 26, 2008, (further identified by the County as Master Plan MP-0002-2008 and hereafter referred to as "the Master Plan") as determined by the Planning Director of James City County ("Planning Director"). Minor changes may be permitted by the Planning Director, as long as they do not change the basic concept or character of the development.
2. **Lighting:** Any exterior lighting installed on the Property shall be composed 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. Light spillage, defined as light intensity measured at 0.1-foot-candle or higher extending beyond any property line, shall be prohibited.
3. **Site Plan Approval:** Final site plan approval for the Project shall be obtained within 18 months of issuance of this SUP, or the SUP shall become void.
4. **Subdivision of Land:** The ten-acre parcel of land intended to support this Project, as depicted on the Master Plan, shall be legally subdivided from the parent parcel within 18 months of issuance of this SUP, or the SUP shall become void. Once the subdivision is completed, the SUP conditions attached to this Project shall run with the ten-acre parcel of land, rather than with the parent parcel.
5. **Certificate of Occupancy:** A Permanent Certificate of Occupancy for the Project shall be obtained 36 months of issuance of this SUP, or the SUP shall become void.
6. **Junk Removal:** The applicant shall remove all junk from the Property prior to final site plan approval. "Junk" shall mean old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber, wood, lumber, concrete or construction debris, pallets, tires, waste, junked, dismantled, or wrecked automobiles, inoperable equipment, construction vehicles or tractors, or parts thereof, iron, steel, and other old scrap ferrous or nonferrous material. This junk shall be properly disposed of in a State-approved facility. Junk shall not include construction materials which are new or otherwise suitable for future use being

stored on the property, or vehicles/equipment which are actively under repair. The James City County Zoning Administrator (“Zoning Administrator”) shall verify, in writing, that all junk has been properly removed from the property. No new junk, (as defined by this condition), may be brought to or stored on the site.

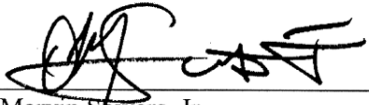
7. **Landscape Plan:** A landscape plan, subject to the review and approval of the Planning Director or his/her designee, shall be submitted for the Property (in accordance with “Article II. Special Regulations Division 4. Landscaping” of the Zoning Ordinance), except that the owner shall provide enhanced landscaping such that the required size and quantity of shrubs and trees located in the 75-foot buffers and berms along Fenton Mill Road equals, at a minimum, 125 percent of the requirements and such that at least 60 percent of the shrubs and trees are evergreens.
8. **Natural Heritage Review:** The natural heritage resources (flora) of the Property are currently under review by the Commonwealth of Virginia Department of Conservation and Recreation (VDCR). The applicant shall comply with all recommendations from, and findings of, the VDCR, as might be applicable to the Property.
9. **Hours of Operation:** The hours of operation for the Project, including the loading or unloading of, or maintenance of, vehicles or equipment, shall be limited to 6:00 a.m. to 8:00 p.m., Monday through Friday, and 7:00 a.m. to 5:00 p.m. on Saturday.
10. **Parking of Vehicles:** No more than 40 vehicles (including construction vehicles such as a backhoe or bulldozer) may be parked on the Property at any given time. For purposes of this condition, a vehicle loaded on a trailer shall count as one vehicle. For purposes of this condition, a vehicle loaded on a trailer and *actively* being towed to or from the Property by a second vehicle shall count as one vehicle. Interpretations of the counting of vehicles on the Property shall be at the sole discretion of the Zoning Administrator. Requests to amend this parking restriction shall be submitted to the Development Review Committee of the Planning Commission (“DRC”) in writing for consideration to approve or deny the request.
11. **Vehicle Trips per Day:** No more than 80 vehicle trips per day shall be permitted at the Property, regardless of purpose, point of origin, or destination except governmental or emergency vehicles. For purposes of this condition, a trip is defined as any vehicle coming to or leaving the Property. For purposes of this condition, a vehicle loaded on a trailer and *actively* being towed to or from the Property by a second vehicle shall count as one vehicle trip. Interpretations of the counting of vehicle trips to and from the Property shall be at the sole discretion of the Zoning Administrator. Requests to amend this vehicle trips-per-day restriction shall be submitted to the DRC for consideration to approve or deny the request.
12. **Severance Clause:** This SUP is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.



---

David W. German

CONCUR:



---

O. Marvin Sowers, Jr.

DWG/gb  
sup0007-08mp0002-08.doc

ATTACHMENTS:

1. Unapproved Minutes from the July 2, 2008, Planning Commission Public Hearing
2. Board of Supervisors Resolution
3. Location Map
4. Binding Master Plan (under separate cover)

## RESOLUTION

CASE NO. SUP-0007-2008/MP-0002-2008. DAVID NICE'S

### CONTRACTOR'S OFFICE AND SHED

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. Archer Marston of AES Consulting Engineers, on behalf of David A. Nice, has applied for a Special Use Permit (SUP) to allow for a contractor's office and shed, with associated storage and maintenance yard, on approximately 10.00 acres of land subdivided from a 79.68-acre parcel zoned A-1, General Agricultural; and

WHEREAS, the proposed site is shown on a binding Master Plan, entitled "Master Plan for Special Use Permit for David A. Nice Builders, Inc. Site Division Contractor's Office," identified as MP-0002-2008, and dated March 26, 2008, with revisions on June 23, 2008; and

WHEREAS, the subject property may be identified as a ten-acre portion of James City County Real Estate Tax Map Parcel No. 1430100042; and

WHEREAS, the Planning Commission of James City County, following its public hearing on July 2, 2008, recommended approval of this application by a vote of 7-0.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve the issuance of Special Use Permit SUP-0007-2008, and associated binding Master Plan MP-0002-2008, as described herein with the following conditions:

1. **Master Plan and Use:** This SUP shall be valid for the operation of a contractors' offices/shop, storage shed, and gravel work yard and storage area ("the Project") to be located at 4700 Fenton Mill Road, further identified as James City County Real Estate Tax Map No. 1430100042 (the "Property"). Development of the site shall be generally in accordance with, and as depicted on, the binding Master Plan drawing, entitled "Master Plan for Special Use Permit for David A. Nice Builders, Inc. Site Division Contractor's Office at 4700 Fenton Mill Road," prepared by AES Consulting Engineers, and dated March 26, 2008, (further identified by the County as Master Plan MP-0002-2008 and hereafter referred to as "the Master Plan") as determined by the Planning Director of James City County ("Planning Director"). Minor changes may be permitted by the Planning Director, as long as they do not change the basic concept or character of the development.
2. **Lighting:** Any exterior lighting installed on the Property shall be composed 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. Light spillage, defined as

light intensity measured at 0.1-foot-candle or higher extending beyond any property line, shall be prohibited.

3. **Site Plan Approval:** Final site plan approval for the Project shall be obtained within 18 months of issuance of this SUP, or the SUP shall become void.
4. **Subdivision of Land:** The ten-acre parcel of land intended to support this Project, as depicted on the Master Plan, shall be legally subdivided from the parent parcel within 18 months of issuance of this SUP, or the SUP shall become void. Once the subdivision is completed, the SUP conditions attached to this Project shall run with the ten-acre parcel of land, rather than with the parent parcel.
5. **Certificate of Occupancy:** A Permanent Certificate of Occupancy for the Project shall be obtained 36 months of issuance of this SUP, or the SUP shall become void.
6. **Junk Removal:** The applicant shall remove all junk from the Property prior to final site plan approval. "Junk" shall mean old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber, wood, lumber, concrete or construction debris, pallets, tires, waste, junked, dismantled, or wrecked automobiles, inoperable equipment, construction vehicles or tractors, or parts thereof, iron, steel, and other old scrap ferrous or nonferrous material. This junk shall be properly disposed of in a State-approved facility. Junk shall not include construction materials which are new or otherwise suitable for future use being stored on the property, or vehicles/equipment which are actively under repair. The James City County Zoning Administrator ("Zoning Administrator") shall verify, in writing, that all junk has been properly removed from the property. No new junk, (as defined by this condition), may be brought to or stored on the site.
7. **Landscape Plan:** A landscape plan, subject to the review and approval of the Planning Director or his/her designee, shall be submitted for the Property (in accordance with "Article II. Special Regulations Division 4. Landscaping" of the Zoning Ordinance), except that the owner shall provide enhanced landscaping such that the required size and quantity of shrubs and trees located in the 75-foot buffers and berms along Fenton Mill Road equals, at a minimum, 125 percent of the requirements and such that at least 60 percent of the shrubs and trees are evergreens.
8. **Natural Heritage Review:** The natural heritage resources (flora) of the Property are currently under review by the Commonwealth of Virginia Department of Conservation and Recreation (VDCR). The applicant shall comply with all recommendations from, and findings of, the VDCR, as might be applicable to the Property.
9. **Hours of Operation:** The hours of operation for the Project, including the loading or unloading of, or maintenance of, vehicles or equipment, shall be limited to 6:00 a.m. to 8:00 p.m., Monday through Friday, and 7:00 a.m. to 5:00 p.m. on Saturday.
10. **Parking of Vehicles:** No more than 40 vehicles (including construction vehicles such as a backhoe or bulldozer) may be parked on the Property at any given time. For purposes of this condition, a vehicle loaded on a trailer shall count as one vehicle. For purposes of this condition, a vehicle loaded on a trailer and *actively* being towed to or from the Property by a second vehicle shall count as one vehicle.

Interpretations of the counting of vehicles on the Property shall be at the sole discretion of the Zoning Administrator. Requests to amend this parking restriction shall be submitted to the Development Review Committee of the Planning Commission ("DRC") in writing for consideration to approve or deny the request.

11. **Vehicle Trips per Day:** No more than 80 vehicle trips per day shall be permitted at the Property, regardless of purpose, point of origin, or destination except governmental or emergency vehicles. For purposes of this condition, a trip is defined as any vehicle coming to or leaving the Property. For purposes of this condition, a vehicle loaded on a trailer and *actively* being towed to or from the Property by a second vehicle shall count as one vehicle trip. Interpretations of the counting of vehicle trips to and from the Property shall be at the sole discretion of the Zoning Administrator. Requests to amend this vehicle trips-per-day restriction shall be submitted to the DRC for consideration to approve or deny the request.
12. **Severance Clause:** This SUP is not severable. Invalidity of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.

---

Bruce C. Goodson  
Chairman, Board of Supervisors

ATTEST:

---

Sanford B. Wanner  
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 12th day of August, 2008.

sup0007-08mp0002-08\_res

UNAPPROVED MINUTES FROM THE JULY 2, 2008 PLANNING COMMISSION  
MEETING

SUP-0007-2008 David Nice Contractor's Office and Shed

Mr. Jason Purse stated that this application is for a Special Use Permit to allow for a contractor's office, workshop, and storage shed on an A-1 property outside of the PSA. The property is located at 4700 Fenton Mill Road, and is approximately 80 acres in size. The site is designated Rural Lands in the Comprehensive Plan, which generally calls for agricultural and forestall related uses, and specifies that commercial undertakings should be of a very low intensity. He stated that the project, if approved, will consist of a 6,000 square foot office/workshop building, a 4,000 square foot three sided storage shed, and a parking area. Mr. German stated that staff finds the proposal to be generally inconsistent with the Comprehensive Plan, as it features a somewhat intensive land use that is incompatible with those found in the surrounding area. However, the project proposes extensive buffers and landscaping to help to mitigate audio and visual impacts on neighboring properties and uses. Mr. German stated staff recommends that the Planning Commission recommend approval of this application to the Board of Supervisors with the conditions outlined in the staff report.

Mr. Billups asked what was the amount of land that was disturbed since it was mentioned that it exceeded the limits of the grading permit.

Mr. Purse stated the grading permit was for 12,500 square feet. He stated that 2.4 acres were cleared.

Mr. Fraley opened the public hearing.

Mr. Tim Trant, who was representing the applicant, spoke on the history of the business. He stated that Mr. David Nice is a life resident of the area and started this business here and has several employees. He spoke about his influence and reputation in the area. Mr. Trant stated that in rural developments that these types of facilities (contractor's offices and sheds) exist. He felt that this use is more appropriate due to the location, adjacent uses to the property, and location within a mixed use district. He also felt that this use will be more compatible with the surrounding area than a residential use, for example. Mr. Trant stated that the applicant endorses all of the conditions proposed. He did however, want to make note that these conditions are unique to this facility in that what is proposed is exactly what will be built.

Mr. Henderson asked if this would be the primary location for the business.

Mr. Trant answered that the primary location is in Croaker proper. The location in this application would be primarily used for the development aspect of his business, the site work part of the business, and the storage of those types of equipment that are used in this aspect of his business.

Mr. Doug Gephardt spoke on behalf of the Economic Development Authority. He stated that David Nice Builder has been a significant contributor to the local economy for over thirty

years and employs over 175 people. He spoke on the growth of this business and felt that it was a vital part of the County and should be nurtured whenever possible. Mr. Gephardt stated that even though the zoning was A-1, this application proposed a low intensity use, and is limited to a small section of the parcel. He stated that facilitating the proposed expansion is consistent with the Business Climate Task Force stated goal of retaining valued existing businesses.

Mr. Bill Apperson, of 4900 Fenton Mill Road, spoke. He stated that his family owned a tree farm on the adjacent property. He spoke of his relationship with Mr. Nice and his contributions to the County. He stated that he felt that Mr. Nice would abide by all of the conditions in the proposal and encouraged the Planning Commission to recommend approval.

Mr. Fraley closed the public hearing.

Mr. Krapf stated he felt that this business is the type that the Business Climate Task Force is trying to encourage expanding in the County. He believes the location is appropriate for this type of business. He also felt that the berming that will be done screens it from Fenton Mill Road but also screens it from the traffic on Interstate 64. Mr. Krapf supports this application.

Mr. Henderson made a motion to approve the application.

Mr. Krapf seconded the motion.

Mr. Poole commented that the history of the applicant in the area is very admirable, and the conditions provide for many enhancements of the property. He supports the application.

Mr. Billups stated he felt that this use was appropriate for the area.

Mr. Obadal stated he visited the site and he too felt this was an appropriate use. He also supports this application.

Mr. Fraley stated he also visited the site and visited Mr. Nice. He stated he felt the landscaping plan is very attractive. He stated that Mr. Nice has agreed to all conditions set forth by Planning.

Mr. Henderson asked if conditions can be applied to part of a parcel or would the conditions apply to the parcel in its entirety.

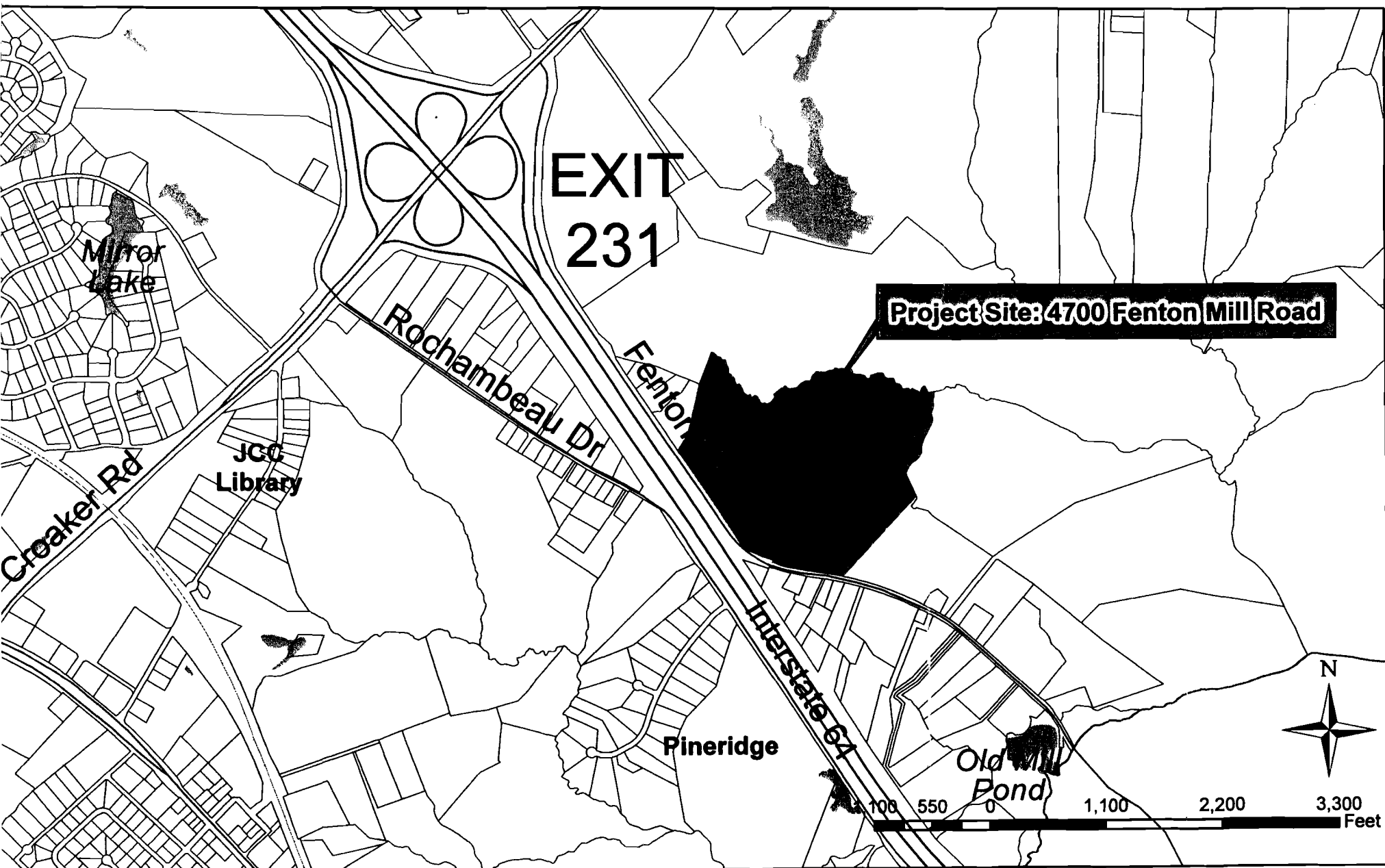
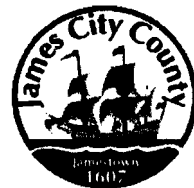
Mr. Kinsman stated that the application was specific as to location so that the conditions could be applied to a portion of the parcel.

Mr. Sowers stated that there is a condition in the application to subdivide the parcel and once subdivided the conditions will only apply to that portion of the property.

In a roll call vote the motion was approved. (7-0) AYE: Poole, Henderson, Billups, Krapf, Peck, Obadal, Fraley.

**JCC-SUP-0007-2008 / MP-0002-2008**

# **David Nice's Contractor's Office and Shed**



**MEMORANDUM**

DATE: August 12, 2008

TO: The Board of Supervisors

FROM: Jason Purse, Senior Planner

SUBJECT: Case No. ZO-0002-2008. Chapter 24 Zoning Ordinance Amendment Special Use Permit (SUP) Use List Amendments

---

Staff has investigated possible ordinance amendments to certain specially permitted uses in various zoning districts. Looking at the uses that are currently allowed by-right, staff has compiled a list of Specially Permitted Uses (SUPs) that have similar impacts in those zoning districts. Staff feels that moving those uses from SUPs to permitted uses will not have additional adverse effects on similarly zoned properties across the county. In accordance with the Business Climate Task Force report, staff looked at the LB, B-1, M-1, M-2, RT, PUD, and MU sections of the ordinance at this time.

As a part of this review, the Office of Economic Development reviewed the ordinance and provided recommendations, and staff took that information into consideration as well. Staff also consulted the York County Zoning Ordinance and incorporated some “new” uses into this amendment.

Staff has provided multiple documents below for your review. You will find the following attachments to help you review the material:

- A list of all processed SUPs since 2002 (including most of the ones that were denied or withdrawn) broken down by zoning district.

As can be seen in the list of SUPs since 2002, a majority of SUPs have been for specially permitted uses in the A-1 and R-8 zoning districts. A good number have also been for “public land” projects, including a large percentage of “classroom trailers.” There are a few SUPs for the B-1 district, but most of those were triggered by the “commercial SUP” section (Section 24-11) of the ordinance.

- A list of parcels, both developed and undeveloped, in the County broken down by zoning district (to show how it is a relatively small amount of land being affected by SUPs being changed to permitted uses in the various districts),
- Staff’s list of recommendations based on the above information is also included in this memo.

**Recommended Amendments:**

Staff recommends the following uses be added as permitted uses.

**LB-**

Catering and meal preparation 5,000 square feet or less. (new)

Contractor’s offices with storage of materials and equipment limited to a fully enclosed building.

Lumber and building supply (with storage limited to a fully enclosed building).

Mailing and facsimile transmission reception. (new)



Plumbing and electrical supply (with storage limited to a fully enclosed building).

Restaurant (excluding fast-food restaurants), tea rooms, and taverns with 100 seats or less.

Retail food stores 5,000 square feet or less.

Tourist homes.

#### **B-1-**

Farmer's market.

Limousine services (with maintenance limited to a fully enclosed building).

Micro-breweries.

Research, development and design facilities or laboratories.

Security service office.

#### **M-1-**

Commercial marinas, docks, piers, yacht clubs, boat basins and servicing areas for same; if fuel is sold, then in accordance with section 24-38.

Manufacture of cans and other metal products from previously processed metals.

Manufacture of glass and glass products.

#### **M-2-**

Electrical generation facilities (public or private), steam generation facilities, electrical substations with a capacity of 5,000-kilovolt amperes or more and electrical transmission lines capable of transmitting 69 kilovolts or more.

Staff recommends the following use be changed to an SUP:

#### **B-1-Moving to SUP list**

Automobile service stations; if fuel is sold, then in accordance with section 24-38.

#### **Future Ordinance Amendments**

At a later date, after staff receives input on this issue during the Comprehensive Plan update process, a more in-depth study may be undertaken to evaluate larger changes to the ordinance. This project will investigate possibly adding requirements to the ordinance (such as typical SUP conditions) that might make it feasible to allow even more flexibility to the legislative process, as well as investigating possible changes to the commercial SUP requirements in Section 24-11. This second phase will most likely require more involvement from the Policy Committee, Planning Commission, and the Board of Supervisors throughout the process. However, staff wishes to keep these two processes separate in order to expedite these initial changes and be able to enact them more quickly.

**Recommendations:**

Staff recommends that the Board of Supervisors approve the above ordinance amendments.

At its May 22, 2008, meeting, the Planning Commission's Policy Committee voted 5-0 to recommend approval of all of the proposed amendments.

At its July 2, 2008, meeting, the Planning Commission made recommendations on each of the specific districts, rather than vote on all of the amendments at once.

The Commission voted to recommend approval of the M-2, General Industrial District, amendments by a vote of 7-0.

They also voted 6-1 to recommend approval of the M-1, Limited Business/Industrial District, amendments.

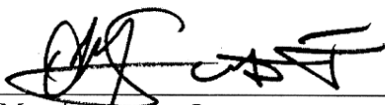
The Commission voted to recommend approval of moving automobile service station to an SUP in the B-1, General Business District, by a vote of 7-0.

However, the Commission voted to recommend denial of the changes to the LB, Limited Business, and B-1, General Business, changes and further recommended that no action be taken on those districts until after the Comprehensive Plan update process is completed, by a vote of 6-1.

---

Jason Purse

CONCUR:



---

O. Marvin Sowers, Jr.

JP/gb  
ZO0002-08\_mem

**Attachments:**

1. Ordinance
2. Unapproved minutes from the July 2, 2008, Planning Commission meeting
3. List of SUPs processed since 2002
4. Parcel statistic information

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 9, LIMITED BUSINESS DISTRICT, LB, SECTION 24-368, PERMITTED USES; AND SECTION 24-369, USES PERMITTED BY SPECIAL USE PERMIT ONLY; DIVISION 10, GENERAL BUSINESS DISTRICT, B-1, SECTION 24-390, PERMITTED USES; AND SECTION 24-391, USES PERMITTED BY SPECIAL USE PERMIT ONLY; DIVISION 11, LIMITED BUSINESS/INDUSTRIAL DISTRICT, M-1, SECTION 24-411, PERMITTED USES; AND SECTION 24-412, USES PERMITTED BY SPECIAL USE PERMIT ONLY; DIVISION 12, GENERAL INDUSTRIAL DISTRICT, M-2, SECTION 24-436, PERMITTED USES; AND SECTION 24-437, USES PERMITTED BY SPECIAL USE PERMIT ONLY.

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 V, Districts, Division 9, Limited Business District, LB, Section 24-368, Permitted uses; and Section 24-369, Uses permitted by special use permit only; Division 10, General business District, B-1, Section 24-390, Permitted uses; and Section 24-391, Uses permitted by special use permit only; Division 11, Limited Business/Industrial District, M-1, Section 24-411, Permitted uses; and Section 24-412, Uses permitted by special use permit only; Division 12, General Industrial District, M-2, Section 24-436, Permitted uses; and Section 24-437, Uses permitted by special use permit only.

ARTICLE V. DISTRICTS

DIVISION 9. LIMITED BUSINESS DISTRICT, LB

**Sec. 24-368. Permitted uses.**

Reference Section 24-11 for special use permit requirements for certain commercial uses and exemptions.

In the Limited Business District, LB, buildings or structures to be erected or land to be used shall be for one or more of the following:

Adult day care centers.

An apartment or living quarters for a guard, caretaker, proprietor or the person employed on the premises, which is clearly secondary to the commercial use of the property.

Bakeries and fish markets.

Banks and other similar financial institutions.

Barber and beauty shops.

Business, governmental and professional offices.

*Catering and meal preparation 5,000 sq. ft. or less.*

Child day care centers.

~~Contractor's offices without the storage of construction equipment or building materials.~~

*Contractor's offices (with storage of materials and equipment limited to a fully enclosed building).*

Drug stores.

Dry cleaners and laundries.

Feed, seed and farm supply stores.

Fire Stations.

Funeral Homes.

Health clubs, exercise clubs, fitness centers.

Houses of worship.

Libraries.

Lodges, civic clubs, fraternal organizations and service clubs.

*Lumber and building supply (with storage limited to a fully enclosed building).*

*Mailing and facsimile transmission reception.*

Medical clinics or offices.

New and/or rebuilt automotive parts sales (with storage limited to a fully enclosed building).

Off-street parking as required by this section 24-53.

Office supply stores, secretarial and duplicating services.

Photography studios and sales, artist and sculptor studios, art and crafts and handicraft shops, antique shops, reproduction and gift shops.

*Plumbing and electrical supply (with storage limited to a fully enclosed building).*

Retail and service stores, including the following stores: books, candy, carpet, coin, department, dressmaking, florist, furniture, furrier, garden supply, greeting card, gunsmith (excluding shooting ranges), hardware, home appliance sales and service, ice cream, jewelry sales and service, locksmith, music and records, paint, pet, picture framing, plant supply, shoe, sporting goods, stamp, tailor, tobacco and pipes, toys, travel bureau, upholstery, wearing apparel and yard goods.

*Retail food stores 5,000 square feet or less.*

*Restaurant (excluding fast food restaurants), tea rooms, and taverns with 100 seats or less.*

Schools.

Timbering in accordance with section 24-43.

*Tourist homes.*

Veterinary hospitals (with all activities limited to a fully enclosed building).

Wireless communications facilities that utilize alternative mounting structures, or are building mounted, or are camouflaged, and comply with division 6, Wireless Communications Facilities.

**Sec. 24-369. Uses permitted by special use permit only.**

In the Limited Business District, LB, buildings or structures to be erected or land to be used for one or more of the following uses shall be permitted only after the issuance of a special use permit by the board of supervisors:

Automobile service stations, in areas not designated Neighborhood Commercial or Low-Density Residential on the Comprehensive Plan; if fuel is sold, then in accordance with section 24-38.

~~Contractor's offices with storage of materials and equipment limited to a fully enclosed building.~~

Convenience stores without the sale of fuel.

Electrical substations (public or private), with a capacity of 5,000 kilovolt amperes or more and electrical transmission lines capable of transmitting 69 kilovolts or more.

Flea markets, in areas not designated Neighborhood Commercial or Low-Density Residential on the Comprehensive Plan.

~~Lumber and building supply (with storage limited to a fully enclosed building).~~

Marinas, docks, piers, yacht clubs, boat basins and servicing, repair and sale facilities for the same; if fuel is sold, then in accordance with section 24-38.

~~Plumbing and electrical supply (with storage limited to a fully enclosed building).~~

Publicly owned solid waste container sites.

Railroad facilities including tracks, bridges and stations. However, spur lines which are to serve and are accessory to existing or proposed development adjacent to existing railroad right-of-ways and track and safety improvements in existing railroad right-of-ways are permitted generally and shall not require a special use permit.

Restaurants (excluding fast food restaurants), tea rooms and taverns *over 100 seats.*

Retail food stores *over 5,000 square feet.*

Telephone exchanges and telephone switching stations.

Transmission pipelines (public or private), including pumping stations and accessory storage, for natural gas, propane gas, petroleum products, chemicals, slurry coal and any other gases, liquids or solids. However, extensions for private connections to existing pipelines, which are intended to serve an individual residential or commercial customer and which are accessory to existing or proposed development, are permitted generally and shall not require a special use permit.

Water facilities (public or private), and sewer facilities (public), including, but not limited to, treatment plants, pumping stations, storage facilities and transmission mains, wells and associated equipment such as pumps to be owned and operated by political jurisdictions. However, the following are permitted generally and shall not require a special use permit:

- (a) Private connections to existing mains that are intended to serve an individual customer and are accessory to existing or proposed development, with no additional connections to be made to the line;
- (b) Distribution lines and local facilities within a development, including pump stations.

#### DIVISION 10. GENERAL BUSINESS DISTRICT, B-1

##### **Sec. 24-390. Permitted uses.**

Reference Section 24-11 for special use permit requirements for certain commercial uses and exemptions.

In the General Business District, B-1, structures to be erected or land to be used, shall be for one or more of the following uses:

Adult day care centers.

An apartment or living quarters for a guard, caretaker, proprietor or the person employed on the premises which is clearly secondary to the commercial use of the property.

~~Automobile service stations; if fuel is sold, then in accordance with section 24-38.~~

Banks and other similar financial institutions.

Barber and beauty shops.

Business, governmental and professional offices.

Contractor's offices with storage of materials and equipment limited to a fully enclosed building.

Child day care centers.

Drug stores.

Dry cleaners and laundries.

*Farmer's market.*

Feed, seed and farm supply stores.

Fire stations.

Funeral homes.

Health clubs, exercise clubs, fitness centers.

Hotels, motels, tourist homes and convention centers.

Houses of worship.

Indoor sport facilities (excluding shooting ranges).

Indoor theaters.

Libraries.

*Limousine services (with maintenance limited to a fully enclosed building).*

Lodges, civic clubs, fraternal organizations and service clubs.

Lumber and building supply (with storage limited to a fully enclosed building or fully screened from view with a structural barrier approved by the development review committee, located within the building setback area with a maximum height of 12 feet).

Machinery sales and service (with storage and repair limited to a fully enclosed building).

Marinas, docks, piers, yacht clubs, boat basins, and servicing, repair and sale facilities for the same; if fuel is sold, then in accordance with section 24-38.

Marine or waterfront businesses to include the receipt, storage and transshipment of waterborne commerce or seafood receiving, packing or distribution.

Medical clinics or offices.

*Micro-breweries.*

Museums.

New and/or rebuilt automotive parts sales (with storage limited to a fully enclosed building).

Off-street parking as required by section 24-53.

Parking lots and garages.

Photography, artist and sculptor studios.

Plumbing and electrical supply (with storage limited to a fully enclosed building).

Post offices.

Printing and publishing.

Public billiard parlors, arcades, pool rooms, bowling alleys, dance halls and other indoor centers of amusement.

Public meeting halls.

Radio and television stations and accessory antenna or towers and tower mounted wireless communication facilities, which are 60 feet or less in height.

*Research, development and design facilities or laboratories.*

Restaurants, fast food restaurants, tea rooms and taverns.

Retail and service stores, including the following stores: antiques, arts and crafts, books, candy, carpet, coin, department, dressmaking, duplicating services, florist, furniture, furrier, garden supply, gift, greeting card, gunsmith (excluding shooting ranges), handicrafts, hardware, home appliance sales and service, ice cream, jewelry sales and service, locksmith, music and records, office supply, paint, pet, photography, picture framing, plant supply, secretarial services, shoe, sporting goods, stamp, tailor, tobacco and pipes, toys, travel bureau, upholstery, wearing apparel, and yard goods.

Retail food stores, bakeries and fish markets.

Schools.

*Security service offices.*

Telephone exchanges and telephone switching stations gap.

Timbering in accordance with section 24-43.

Veterinary hospitals.

Wholesale and warehousing (with storage limited to a fully enclosed building).

Wireless communications facilities that utilize alternative mounting structures, or are building mounted, or are camouflaged, and comply with division 6, Wireless Communications Facilities.

**Sec. 24-391. Uses permitted by special use permit only.**



In the B-1, General Business District, buildings to be erected or the land to be used for one or more of the following or similar uses shall be permitted only after the issuance of a special use permit by the board of supervisors:

Antennas and towers in excess of 60 feet in height.

*Automobile service stations; if fuel is sold, then in accordance with section 24-38.*

Campgrounds.

Convenience stores; if fuel is sold, then in accordance with section 24-38.

Electrical generation facilities (public or private), electrical substations with a capacity of 5,000 kilovolt amperes or more and electrical transmission lines capable of transmitting 69 kilovolts or more.

Flea markets.

Heliports and helistops, as an accessory use.

Hospitals.

~~Limousine service.~~

~~Micro breweries.~~

Nonemergency medical transport.

Nursing homes.

Outdoor centers of amusement.

Outdoor sport facilities.

Processing, assembly and manufacture of light industrial products or components, with all storage, processing, assembly and manufacture conducted indoors and under cover, with no dust, noise, odor or other objectionable effect.

Publicly owned solid waste container sites.

Railroad facilities including tracks, bridges and, stations. However, spur lines which are to serve and are accessory to existing or proposed development adjacent to existing railroad right-of-ways and track and safety improvements in existing railroad right-of-ways, are permitted generally and shall not require a special use permit.

~~Research, development and design facilities or laboratories.~~

Taxi service.

Theme parks of ten acres or more.

Tire, transmission, glass, body and fender and other automotive repair and service (with storage and major repair limited to a fully enclosed building).

Tower mounted wireless communications facilities in accordance with division 6, Wireless Communications Facilities, in excess of 60 feet in height.

Transmission pipelines (public or private), including pumping stations and accessory storage, for natural gas, propane gas, petroleum products, chemicals, slurry coal and any other gases, liquids or solids. However, extensions for private connections to existing pipelines, which are intended to serve an individual customer and which are accessory to existing or proposed development, are permitted generally and shall not require a special use permit.

Vehicle rentals.

Vehicle and trailer sales and services (with major repair limited to a fully enclosed building).

Waste disposal facilities.

Water facilities (public or private), and sewer facilities (public), including, but not limited to, treatment plants, pumping stations, storage facilities and transmission mains, wells and associated equipment such as pumps to be owned and operated by political jurisdictions. However, the following are permitted generally and shall not require a special use permit:

- (a) Private connections to existing mains that are intended to serve an individual customer and that are accessory to existing or proposed development, with no additional connections to be made to the line; and
- (b) Distribution lines and local facilities within a development, including pump stations.

Water impoundments, new or expansion of, 50 acres or more or with dam heights of 25 feet or more.

## DIVISION 11. LIMITED BUSINESS/INDUSTRIAL DISTRICT, M-1

### **Sec. 24-411. Permitted uses.**

Reference section 24-11 for special use permit requirements for certain commercial uses and exemptions.

In the Limited Business/Industrial District, M-1, buildings to be erected or land to be used shall be for one or more of the following or similar uses:

Accessory uses as defined in section 24-2.

Adult day care centers.

An apartment or living quarters for a guard, caretaker, proprietor, or other person employed on the premises which is clearly secondary to the business or industrial use of the property.

Antennas and towers, self-supported, (not attached to buildings) and tower mounted wireless communications facilities which are 60 feet or less in height.

Automobile sales and service with major repair limited to a fully enclosed building.

Automobile service stations; if fuel is sold, then in accordance with section 24-38.

Banks and other similar financial institutions.

Barber and beauty shops.

Business, professional and governmental offices.

Child day care centers.

*Commercial marinas, docks, piers, yacht clubs, boat basins and servicing areas for same; if fuel is sold, then in accordance with section 24-38.*

Contractor offices, equipment storage yards, shops and warehouses with storage limited to a fully enclosed building or screened with landscaping and fencing from adjacent property.

Courier services.

Data processing centers.

Drugstores.

Dry cleaners and laundries.

Farmer's markets.

Feed, seed and farm supply stores.

Fire stations.

Funeral homes.

Health clubs, exercise clubs, and fitness centers.

Heavy equipment sales and service, with major repair limited to a fully enclosed building or screened with landscaping and fencing from adjacent property.

Hotels, motels or convention centers with accessory retail sales, barber shops and beauty shops located within the hotel, motel or convention center for the principal benefit of the resident guest.

Houses of worship.

Indoor sport facilities.

Industrial dry cleaner and laundry.

Industrial and technical training schools.

Janitorial service establishments.

Kennels.

Laser technology production.

Lumber and building supply stores with storage limited to a fully enclosed building or screened with landscaping and fencing from adjacent property.

Machinery sales and service with major repair limited to a fully enclosed building.

Manufacture and assembly of musical instruments, toys, novelties, and rubber and metal stamps.

Manufacture and bottling of soft drinks and wine.

Manufacture and processing of textiles and textile products.

Manufacture and storage of ice, including dry ice.

Manufacture, assembly, or fabrication of sheet metal products.

Manufacture, compounding, assembly or treatment of products made from previously prepared paper, plastic, metal, textiles, tobacco, wood, paint, fiber glass, glass, rubber, leather, cellophane, canvas, felt, fur, horn, wax, hair, yarn, and stone.

Manufacture, compounding, processing or packaging of cosmetic, toiletry and pharmaceutical products.

*Manufacture of cans and other metal products from previously processed metals.*

Manufacture of carpets and carpet yarns.

Manufacture of furniture.

*Manufacture of glass and glass products.*

Manufacture of pottery and ceramic products using kilns fired only by gas or electricity.

Manufacture or assembly of appliances, tools, firearms, hardware products and heating, cooling or ventilating equipment.

Manufacture or assembly of electronic instruments, electronic devices or electronic components.

Manufacture or assembly of medical, drafting, metering, marine, photographic and mechanical instruments.

Manufactured home or mobile home sales.

Marine or waterfront businesses to include receipt, storage and transshipment of waterborne commerce, or seafood receiving, packing and distribution.

Medical clinics and offices.

Micro-breweries.

Nonemergency medical transport.

Nurseries.

Off-street parking as required by section 24-53.

Plumbing and electrical supply stores with storage limited to a fully enclosed building or screened with landscaping and fencing from adjacent property.

Post offices.

Printing, lithographing, engraving, photocopying, blueprinting and publishing establishments.

Private streets within "qualifying industrial parks" in accordance with section 24-55.

Publicly owned solid waste container sites.

Radio and television stations and accessory antenna or towers, self-supported, (not attached to buildings) which are 60 feet or less in height.

Research, development and design facilities or laboratories.

Restaurants, tearooms and taverns.

Retail and service stores, including the following stores: books, cabinet, candy, carpet, coin, department, dressmaking, florist, furniture, furrier, garden supply, greeting card, gunsmith (excluding shooting ranges), hardware, home appliance sales and service, ice cream, jewelry sales and service, locksmith, music and records, paint, pet, picture framing, plant supply, shoe, sporting goods, stamp, tailor, tobacco and pipes, toys, travel bureau, upholstery, wearing apparel, and yard goods.

Retail food stores, bakeries and fish markets.

Security service offices.

Telephone exchanges and telephone switching stations.

Timbering in accordance with section 24-43.

Tire, transmission, glass, body and fender and other automotive product sales and service with major repair limited to a fully enclosed building and vehicle storage screened from adjacent property by landscaping and fencing.

Vehicle and trailer sales and service with major repair limited to a fully enclosed building.

Vehicle rentals.

Veterinary hospitals.

Warehouse, storage and distribution centers with storage limited to a fully enclosed building or screened with landscaping and fencing from adjacent property,

Water impoundments, new or expansion of, less than 50 acres and with dam heights of less than 25 feet.

Water well drilling establishments.

Welding and machine shops with storage limited to a fully enclosed building or screened with landscaping and fencing from adjacent property.

Wireless communications facilities that utilize alternative mounting structures, or are building mounted, or are camouflaged, and comply with division 6, Wireless Communications Facilities.

**Sec. 24-412. Uses permitted by special use permit only.**

In the Limited Business/Industrial District, M-1, buildings to be erected or land to be used for one or more of the following or similar uses shall be permitted only after the issuance of a special use permit by the board of supervisors:

Antennas and towers (not attached to buildings) in excess of 60 feet in height.

~~Commercial marinas, docks, piers, yacht clubs, boat basins and servicing areas for same; if fuel is sold, then in accordance with section 24-38.~~

Convenience stores; if fuel is sold, then in accordance with section 24-38.

Electrical generation facilities (public or private), steam generation facilities, electrical substations with a capacity of 5,000 kilovolt amperes or more and electrical transmission lines capable of transmitting 69 kilovolts or more.

Heliports, helistops and accessory uses.

Hospitals.

~~Manufacture of cans and other metal products from previously processed metals.~~

~~Manufacture of glass and glass products.~~

Manufacture, compounding, processing or packaging of food and food products, but not the slaughter of animals.

Outdoor sports facilities with water and sewer facilities for golf courses as approved by the board of supervisors.

Petroleum storage.

Propane storage, distribution and sale.

Railroad facilities including tracks, bridges, switching yards and stations. However, spur lines which are to serve and are accessory to existing or proposed development adjacent to existing railroad right-of-

ways and track and safety improvements in existing railroad right-of-ways are permitted generally and shall not require a special use permit.

Resource recovery facilities.

Shooting ranges, indoor.

Solid waste transfer stations.

Theme parks of ten acres or more.

Tower mounted wireless communication facilities in accordance with division 6, Wireless Communications Facilities, in excess of 60 feet in height.

Transmission pipelines (public or private), including pumping stations and accessory storage, for natural gas, propane gas, petroleum products, chemicals, slurry coal and any other gases, liquids or solids. However, extensions or private connections to existing pipelines, which are intended to serve an individual customer and which are accessory to existing or proposed development, are permitted generally and shall not require a special use permit.

Truck stops; if fuel is sold, then in accordance with section 24-38.

Truck terminals; if fuel is sold, then in accordance with section 24-38.

Water facilities (public or private), and sewer facilities (public), including, but not limited to, treatment plants, pumping stations, storage facilities and transmission mains, wells and associated equipment, such as pumps to be owned and operated by political jurisdictions. However, the following are permitted generally and shall not require a special use permit:

Private connections to existing mains that are intended to serve an individual customer and that are accessory to existing or proposed development, with no additional connections to be made to the line; and

- (a) Distribution lines and local facilities within a development, including pump stations.
- (b) Water impoundments, new or expansion of, 50 acres or more or with dam heights of 25 feet or more.

## DIVISION 12. GENERAL INDUSTRIAL DISTRICT, M-2

### **Sec. 24-436. Permitted uses.**

In the General Industrial District, M-2, buildings to be erected or land to be used shall be for one or more of the following or similar uses:

Accessory uses as defined in section 24-2.

An apartment or living quarters for a guard, caretaker, proprietor, or other person employed on the premises which is clearly secondary to the industrial use of the property.

Antennas and towers, self-supported (not attached to buildings), and tower mounted wireless communications facilities which are 60 feet or less in height.

Automobile service stations; if fuel is sold, then in accordance with section 24-38.

Banks and other similar financial institutions as an accessory use to other permitted uses.

Boiler shops.

Breweries and other necessary associated activities.

Business, professional and governmental offices.

Child day care centers as an accessory use to other permitted uses.

Contractor offices, equipment storage yards, shops and warehouses.

Drop-forge industries, manufacturing, forgings with a power hammer.

*Electrical generation facilities (public or private), steam generation facilities, electrical substations with a capacity of 5,000 kilovolt amperes or more and electrical transmission lines capable of transmitting 69 kilovolts or more.*

Fire stations.

Health clubs, exercise clubs, and fitness centers as an accessory use to other permitted uses.

Heavy equipment sales and service, with major repair limited to a fully enclosed building or screened with landscaping and fencing from adjacent property.

Industrial and technical training schools.

Janitorial service establishments.

Laser technology production.

Manufacture and assembly of musical instruments, toys, novelties and rubber and metal stamps.

Manufacture and bottling of soft drinks and wine.

Manufacture and processing of acrylic and other synthetic fibers.

Manufacture and processing of textiles and textile products.

Manufacture and sale of manufactured homes, mobile homes, modular homes and industrialized housing units.

Manufacture and sale of wood products.

Manufacture and storage of ice, including dry ice.



Manufacture, assembly or fabrication of sheet metal products.

Manufacture, compounding, assembly or treatment of products made from previously prepared paper, plastic, metal, textiles, tobacco, wood, paint, fiber glass, glass, rubber, wax, leather, cellophane, canvas, felt, fur, horn, hair, yarn, and stone.

Manufacture, compounding, processing or packaging of cosmetic, toiletry and pharmaceutical products.

Manufacture, compounding, processing or packaging of food and food products, but not the slaughter of animals.

Manufacture of batteries.

Manufacture of boats, marine equipment and boat trailers.

Manufacture of cans and other metal products from previously processed metals.

Manufacture of carpets and carpet yarns.

Manufacture of furniture.

Manufacture of glass and glass products.

Manufacture of pottery and ceramic products, using kilns fired only by gas or electricity.

Manufacture or assembly of aircraft and aircraft parts.

Manufacture or assembly of appliances, tools, firearms, hardware products and heating, cooling or ventilating equipment.

Manufacture or assembly of automobiles, trucks, machinery or equipment.

Manufacture or assembly of electronic instruments, electronic devices or electronic components.

Manufacture or assembly of medical, drafting, metering, marine, photographic and mechanical instruments.

Marine or waterfront businesses to include the receipt, storage and transshipment of waterborne commerce, or seafood receiving, packing or distribution.

Metal foundry and heavy weight casting.

Off-street parking as required by section 24-53.

Post offices.

Printing and publishing establishments.

Private streets within "qualifying industrial parks" in accordance with section 24-55.

Propane storage, distribution, and sale.

Publicly owned solid waste container sites.

Radio and television stations and accessory antenna or towers, self-supported (not attached to buildings), which are 60 feet or less in height.

Research, development and design facilities or laboratories.

Restaurants as an accessory use to other permitted uses.

Retail sales of products related to the main use, provided floor area for retail sales comprises less than 25 percent of the first floor area of the main use.

Security service offices.

Structural iron and steel fabrication.

Telephone exchanges and telephone switching stations.

Timbering in accordance with section 24-43.

Warehouse, storage and distribution centers.

Water impoundments, new or expansion of, less than 50 acres and with dam heights of less than 25 feet.

Water well drilling establishments.

Welding and machine shops including punch presses and drop hammers.

Wireless communications facilities that utilize alternative mounting structures, or are building mounted, or are camouflaged, and comply with division 6, Wireless Communications Facilities.

**Sec. 24-437. Uses permitted by special use permit only.**

In the General Industrial District, M-2, buildings to be erected or land to be used for one or more of the following or similar uses shall be permitted only after the issuance of a special use permit by the board of supervisors:

Antennas and towers (not attached to buildings) in excess of 60 feet in height.

Asphalt mixing plants.

Automobile graveyards and scrap metal storage yards.

Child day care centers.

Crushed stone, sand, gravel, or mineral mining; storage and distribution of same.

~~Electrical generation facilities (public or private), steam generation facilities, electrical substations with a capacity of 5,000 kilovolt amperes or more and electrical transmission lines capable of transmitting 69 kilovolts or more.~~

Heliports, helistops and accessory uses.

Manufacture and compounding of chemicals.

Manufacture of cement, lime, gypsum, bricks and non-previously prepared stone products (i.e., stone and rock used for general erosion control and road construction).

Petroleum refining.

Petroleum storage.

Railroad facilities including tracks, bridges, switching yards, and stations. However, spur lines which are to serve and are accessory to existing or proposed development adjacent to existing railroad right-of-ways and track and safety improvements in existing railroad right-of-ways are permitted generally and shall not require a special use permit.

Ready mix concrete production.

Resource recovery facilities.

Solid waste transfer stations.

Tower mounted wireless communication facilities in accordance with division 6, Wireless Communications Facilities, in excess of 60 feet in height.

Transmission pipelines (public or private), including pumping stations and accessory storage, for natural gas, propane gas, petroleum products, chemicals, slurry coal and any other gases, liquids or solids. However, extensions or private connections to existing pipelines, which are intended to serve an individual customer and which are accessory to existing or proposed development, are permitted generally and shall not require a special use permit.

Truck stops; if fuel is sold, then in accordance with section 24-38.

Truck terminals; if fuel is sold, then in accordance with section 24-38.

Water facilities (public or private), and sewer facilities (public), including, but not limited to, treatment plants, pumping stations storage facilities and transmission mains, wells and associated equipment such as pumps to be owned and operated by political jurisdictions. However, the following are permitted generally and shall not require a special use permit:

- (a) Private connections to existing mains that are intended to serve an individual customer and that are accessory to existing or proposed development, with no additional connections to be made to the line; and
- (b) Distribution lines and local facilities within a development, including pump stations.

Water impoundments, new or expansion of, 50 acres or more or with dam heights of 25 feet or more.

Wood preserving operations.

---

Bruce C. Goodson  
Chairman, Board of Supervisors

ATTEST:

---

Sanford B. Wanner  
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 12th day of August, 2008.

ZO0002-08\_ord

UNAPPROVED MINUTES FROM THE JULY 2, 2008 PLANNING COMMISSION  
MEETING

ZO-0002-2008 Special Use Permit Use List Amendments

Mr. Purse stated that in accordance with the Business Climate Task Force report, staff has begun investigating possible ordinance amendments to certain specially permitted uses in various zoning districts. Staff compiled a list of specially-permitted uses (SUPs) that have similar impacts in these districts. Staff felt that moving those uses from SUPs to permitted uses will not have additional adverse effects on similarly zoned properties across the County. Mr. Purse stated that staff worked with the office of Economic Development as well as the Environmental Division in determining the suitability of these amendments. Staff recommended that the Planning Commission recommend approval of these amendments to the Board of Supervisors. He also stated that the Policy Committee voted 5-0 to recommend approval of the amendments as well.

Mr. Fraley opened the public hearing.

There being no comments, Mr. Fraley closed the public hearing.

Mr. Fraley suggested that each district be examined individually.

Mr. Fraley suggested starting with the M-1 and M-2 Districts.

Mr. Sowers mentioned that the Planning Commission had a work session on this topic earlier in the day.

Mr. Fraley stated that at this work session there was an update given on the recommendations of the Business Climate Task Force. The changes proposed with this application came out of the Task Force's recommendations.

Mr. Fraley initiated a discussion on the M-1 District.

Mr. Poole stated that he supported lifting the SUP requirements in the M-1 and M-2 Districts as proposed by staff. He stated that as a community, they recognize the placement, the benefits, and the activities associated with those uses in these zoning districts.

Mr. Krapf also stated he supported the changes to the M-1 and M-2 Districts. He stated the key for him was the impact on nearby residential developments. Uses in M-1 and M-2 are not compatible with residential developments but there is no concern in relation to that. In his opinion these are very segregated areas that are designated for this type of use and making these revisions would make the process become more efficient.

Mr. Henderson asked if there was a map that displayed the areas that are currently zoned M-1 and M-2 for those viewing the meeting.

Mr. Purse stated he did not have a zoning map that could be displayed but there was one that was made available during the work session that was held earlier.

Mr. Henderson asked Mr. Purse to characterize in general those areas in order of magnitude of what is being discussed.

Mr. Purse stated that the majority of the M-2 Zoning District is in the southern portion of the County. There are two industrial parks in this area as well as the Brewery. There are also some M-1 areas in this portion of the County. He stated there are some industrial parks in the northern end of the County, such as Hankins Industrial Park, which is zoned M-2. He stated there is also some M-1 zoned property in the Lightfoot area around the Pottery.

Mr. Billups stated he would recommend this move forward to the Board of Supervisors.

Mr. Obadal expressed his concerns about abandoning individual choices with respect to the uses listed in the report. He thought it was important to determine in each case whether the use meets the requirements of 24-410 of the Zoning Ordinance. He gave an example of having a child care center next to something involving the manufacture of cans and metal products if these changes are approved. He is hesitant to abandon the legislative role in the special use permit process. Mr. Obadal believes that the public can make a judgment through the electoral process.

Mr. Peck asked Mr. Purse to give some examples of uses that currently exist in the M-1 and M-2 Districts.

Mr. Purse stated that some uses are manufacture, compounding, assembly, treatment of products made from previously prepared paper, plastic, metal, textiles, tobacco, wood, paint, fiberglass, glass, rubber, leather, cellophane, canvas, etc. He stated that manufacturing of, and or assembly of sheet metal products, and a number of other uses similar to these are currently permitted.

Mr. Peck asked if these uses currently have to go through the legislative process.

Mr. Purse stated no.

Mr. Obadal stated he did not want to add to the problem.

Mr. Fraley stated that these uses are not compatible with residential development for the purposes of the Ordinances. He stated there is not an impact on residential development in these districts. These areas are not adjacent to residential areas so he does not foresee a manufacturing plant being placed next to a residential development on purpose. Mr. Fraley stated these zoning districts are primarily in industrial areas and in industrial parks. He is supportive of the changes for M-1 and M-2 Districts.

Mr. Billups stated that there are some residential areas surrounding these business districts. In most cases, the residential development preceded the business use. He stated he believes there may be a possibility in these areas where a business will be near a residential

development.

Mr. Purse stated that in the Landscape Ordinance there is a requirement of transitional screening between different zoning districts. Such requirements are a greater width of landscape area, along with a greater percentage of open space to be dedicated to landscaping.

Mr. Obadal discussed the uses that often go along a marina, such as boat rentals and restaurants. He stated this could affect the residential property that is close to this area. He has concerns with the uses in marinas and with the use involving the manufacture of metals and cans. Mr. Obadal expressed his concerns with the noise levels that might be generated by these uses.

Mr. Fraley wanted to begin with M-2 District.

Mr. Peck made a motion to approve the changes to the M-2 District.

Mr. Krapf seconded the motion.

Mr. Obadal asked if there was any noise that is emitted from electrical generation facilities.

Mr. Purse stated that the size capacity that is associated with this use is one that would only be necessary in an industrial park. He stated residential uses would not require anything of this size. He stated there are transitional screenings between the zoning districts.

Mr. Sowers stated that the only business that has required an electrical generation system special use permit has been the Brewery. It was a unique situation where a special use permit had to be obtained with conditions attached to this permit.

In a roll call vote the motion was approved. (7-0) AYE: Poole, Henderson, Billups, Krapf, Peck, Obadal, Fraley.

Mr. Fraley then wanted to address the M-1 District.

Mr. Obadal asked for a map of what property is zoned M-1, M-2, LB, and B-1 property in the County.

Mr. Sowers stated that he does not believe there is any property that is zoned M-1 along any body of water that could accommodate a marina. In order to establish one, it would require a rezoning application.

Mr. Purse agreed.

Mr. Krapf made a motion to approve the changes to the M-1 District.

Mr. Peck seconded the motion.

Mr. Obadal made a motion to amend the original motion made by Mr. Krapf to eliminate the manufacture of cans and other metal products, and commercial docks and marinas.

Mr. Billups seconded Mr. Obadal's motion.

In a roll call vote the motion to amend failed. (1-6) AYE: Obadal; NAY: Poole, Henderson, Billups, Krapf, Peck, Fraley.

Mr. Sowers clarified that the motion on the floor now is Mr. Krapf's original motion to approve the M-1 amendments as presented.

In a roll call vote the motion was approved. (6-1) AYE: Poole, Henderson, Billups, Krapf, Peck, Fraley; NAY: Obadal.

Mr. Fraley initiated the discussion on the B-1 District.

Mr. Poole stated he is not comfortable with lifting special use permit conditions in this District until the Comprehensive Plan update is complete. He would be open to revisit it after the Comprehensive Plan process is completed.

Mr. Krapf agreed with Mr. Poole. He gave a recent example of a B-1 use, the Honda Expansion application. He stated that the property is zoned B-1, but the case was withdrawn primarily because of the opposition of the residents adjacent to the business. Mr. Krapf stated for example if these changes to B-1 were approved, a microbrewery could be established by-right adjacent to a residential area. He felt this would be better addressed during the Comprehensive Plan process. This would give an opportunity for citizens in residential areas that are most closely affected to have a discussion as to what impact the use could have to their property. He cannot support these changes.

Mr. Purse noted that automobile service stations are currently listed as a permitted use but under the special use permit commercial requirements service stations do require a special use permit. This change is more of an administrative change to clarify for business owners. He stated staff would like to consider this change separate from the others.

Mr. Sowers suggested taking a separate vote on the automobile service stations.

Mr. Henderson stated that this change would make it more restrictive than what is currently in the Ordinance.

Mr. Peck stated that a lot of discussion has gone into these changes that are proposed tonight. They were also recommended by the Business Climate Task Force and discussed by the Policy Committee. He can understand some of the issues. He believes that there is a public responsibility since a lot of time and public debate has gone into this over the last two years. Mr. Peck stated there is a public perception, and the Board of Supervisors has validated it, as to the system needing to be improved. He has concerns about delaying the changes proposed. If this is to be delayed, he would like to request that the public be made aware how it will be addressed



and the time frame that this will occur.

Mr. Henderson stated he supports the initiative in its entirety. He viewed this as a simple, noncontroversial first step in making our Ordinance more uniform with regard to the business districts.

Mr. Fraley agreed with comments from the Commissioners. He stated that the Policy Committee recommended these changes 5-0. He appreciated the comments from his colleagues and it has made him take more time to consider these changes in a more deliberate manner. Mr. Fraley stated that LB and B-1 District are different from the industrial districts in that they do impact residential developments. He believes that surrounding residents should be involved in these two districts since these cases will directly impact them and their property. He believes that these changes would be better addressed through the Comprehensive Plan process. Mr. Fraley stated it would be his expectation that after adoption of the Comprehensive Plan, that citizen committees would be formed to review Ordinances and make recommendations for changes, and asked Mr. Sowers for comments.

Mr. Sowers stated staff will bring forward this as a work program proposal since the Division's work program is driven by the Board of Supervisors with input from the Planning Commission.

Mr. Peck made a motion to adopt the B-1 change regarding automobile service stations only.

Mr. Poole seconded the motion.

In a roll call vote the motion was approved. (7-0) AYE: Poole, Henderson, Billups, Krapf, Peck, Obadal, Fraley.

Mr. Billups made a motion to not recommend the remaining changes proposed to the B-1 District until after the Comprehensive Plan update process.

Mr. Obadal seconded the motion.

In a roll call vote the motion was approved. (6-1) AYE: Poole, Billups, Krapf, Peck, Obadal, Fraley; NAY: Henderson.

Mr. Billups made a motion to not recommend the changes proposed to the LB District until after the Comprehensive Plan update process.

Mr. Poole seconded the motion.

Mr. Poole stated that he was not attempting to be anti-business. He had concerns particularly in limited business, where there are some parcels very close to some residential areas. He believes in these circumstances a special use permit process is important in mitigating effects on residential areas. Mr. Poole mentioned that residents have expressed concerns about

maintaining the quality of life in this community.

Mr. Billups stated the issue is public participation in the process. This is why he would rather address these issues after the Comprehensive Plan update.

Mr. Peck stated that while he does support the process, the public is not aware of the uses that are currently allowed in these districts. He does not want the perception to be that a special use permit is going to be required for most uses.

Mr. Krapf stated that rather than moving this forward, more time is needed to hear from residents that might be affected by these changes.

Mr. Obadal agreed.

In a roll call vote the motion was approved. (6-1) AYE: Poole, Billups, Krapf, Peck, Obadal, Fraley; NAY: Henderson.

<u>Zoning District</u>	<u>Case Name</u>	<u>Reason Why SUP Needed</u>
<u>LB</u>		
SUP-0028-2005	New Dawn Assisted Living	Skilled nursing facility in R-8/LB
<u>B-1</u>		
SUP-0033-2007	Williamsburg Auto Group	auto sales and service in B-1/expansion
SUP-0032-2007	Basketville/Fleet Brothers	Vehicle and Trailer Sales in B-1 and commercial (8,000 sq. ft. building)
SUP-0026-2007	Williamsburg Dodge Trailer Sales	Vehicle and Trailer Sales in B-1
SUP-0032-2006	Prime Outlets Expansion	Commercial SUP for 5,000 sq. ft. addition
SUP-0030-2006	Jamestown Rd Service Station LLC	expanding a non-conforming use
SUP-0023-2006	Volunteer Fire Dept. Flea Market	Flea Market in B-1
SUP-0021-2006	Pleasant Hill Station	Commercial Special Use Permit (traffic and automobile service)
SUP-0020-2006	Whythe-Will Commercial Expansion	Commercial SUP (less than 85% warehouse)
SUP-0018-2006	Stuckey's Redevelopment	redevelop fuel and restaurant facility in B-1, also commercial for traffic
SUP-0004-2006	Prime Retail Expansion	Commercial for 81,000 sq. ft. expansion in B-1
SUP-0025-2005	Prime Outlets SUP Amend.	Commercial SUP for 5700 foot expansion in B-1
SUP-0023-2005	TGI Fridays	commercial SUP for traffic generation, restaurant is by-right in B-1
SUP-0022-2005	Shops at Norge Crossing, LLC	Commercial SUP (building over 10,000)
SUP-0036-2004	Farm Fresh Gas Pumps	commercial permit for gasoline service; 4 gas pumps in B-1 by-right
SUP-0025-2004	Bay Lands Federal Credit Union at Norge	commercial for trip generation, bank by-right in B-1
SUP-0024-2004	Basketville of Williamsburg	Commercial SUP for 7,500 ft expansion of retail space in B-1
SUP-0017-2004	JCC Communicatios Tower - Forge Road	SUP amendment; increase tower height from 140' to 160'
SUP-0009-2004	Chesapeake Bank, Stonehouse - Amend.	Expiration date amendment
SUP-0030-2003	Chesapeake Bank at Lightfoot	Commercial SUP for traffic; by-right bank in B-1
SUP-0024-2003	Communications Tower Forge Road	140' tower in B-1 district
SUP-0020-2002	Nationwide Transmission Auto Sales	Car sales from existing parking lot in B-1 district
SUP-0016-2002	Williamsburg Honda SUP Amend.	Trailer sales in B-1 (previously only vehicle)
SUP-0004-2002	J.W. Crossing Shopping Center Expansion	amendment to commercial sup to add 17,000 sq. ft. to ewell shopping (B-1)

### M-1

SUP-0025-2007	Colonial Penniman Waterline Extension	Utility extension (renewal) (split zoned with M-2)
SUP-0036-2006	Williamsburg Pottery Factory	Commercial SUP for building size and traffic
SUP-0002-2006	Busch Gardens- New France expansion (Griff	7500 foot station and queing building, commercial SUP
SUP-0032-2004	Williamsburg Place	hospital expansion in M-1
SUP-0037-2006	The Candle Factory	Traffic generation, commercial
SUP-0032-2004	Diamond Healthcare, Williamsburg Place	hospital expansion in M-1
SUP-0028-2003	Communications Tower Industrial Blvd.	Communications tower in M-1 district
SUP-0022-2003	Busch Gardens -DarKastle - Oktoberfest Expa	Commercial SUP for building size in M-1 district
SUP-0003-2002	Trustwood Properties Waterline Extension	Utility Extension (M-1 and M-2)

### M-2

SUP-0019-2005	Branscome Inc. Borrow Pit Renewal	Borrow pit renewal
SUP-0020-2005	USA Waste of Virginia Landfills, Inc Renewal	Borrow pit renewal
SUP-0020-2005	USA Waste of Virginia Landfills, Inc Renewal	Continued use of borrow pit in M-2
SUP-0019-2005	Branscome Inc. Borrow Pit Renewal	Amendment of existing SUP for operation of borrow pit in M-2
SUP-0027-2003	Communications Tower Industrial Blvd.	380' communications tower in M-2
SUP-0002-2003	Hankins Industrial Park, Ready Mix Concrete	concrete SUP required in M-2
SUP-0025-2002	Ready Mixed Concrete Expansion	Existing SUP extension, concrete SUP in M-2

### MU

SUP-0007-2005	New Town, Langley Federal Credit Union	Commercial SUP (building over 10,000 or traffic)
---------------	----------------------------------------	--------------------------------------------------

### PUD-C

SUP-0002-2005	JCSA Water Storage Facility, Stonehouse	165 foot water storage unit in PUD-C
---------------	-----------------------------------------	--------------------------------------

A-1

SUP-0034-2007	Hill Family Subdivision	Family Subdivision
SUP-0031-2007	Jolly Pond Utility Extension	Utility Extension
SUP-0029-2007	Freedom Park MP Amend.	master plan amendment
SUP-0028-2007	Ray Minor - One-Acre Family Subdivision	Family Subdivision in A-1
SUP-0027-2007	Freedom Park Amendment	master plan amendment
SUP-0021-2007	Contractor's Warehouse	Contractor's warehouse in A-1
SUP-0018-2007	Batemen Subdivision	Family Subdivision in A-1
SUP-0014-2007	Andersons Corner Animal Care	Animal hospitals in A-1
SUP-0013-2007	Denley Brown Contractors Warehouse	Contractor's Warehouse in A-1
SUP-0012-2007	Verizon Cell Brick Bat Rd	cell tower
SUP-0003-2007	Newago Family Subdivision	Family Subdivision in A-1
SUP-0035-2006	Kenneth Brook's Contractors Warehouse	Contractor's warehouse in A-1
SUP-0033-2006	Johnny Timbers Tree Service	Contractor's warehouse in A-1
SUP-0029-2006	8th Elementary School Amendment	School in A-1
SUP-0028-2006	VFW 8046 Home	3600 sq. ft. meeting facility in A-1
SUP-0027-2006	Treleaven Warehouse & Nursery	retail sale of plant material in A-1
SUP-0026-2006	Mildred Wiley Family Subdivision	family subdivision in A-1
SUP-0024-2006	Coleman Family Subdivision	Family subdivision
SUP-0022-2006	Hill Pleasant Farm	Cell Tower
SUP-0017-2006	8391 Richmond Rd. Veterinary Hospital	6,000 sq. ft. vet hospital in A-1
SUP-0015-2006	Mann Service Station Conversion	Contractor's warehouse in A-1
SUP-0016-2006	Hogan Homestead Children's Nursery	child daycare center in A-1 for 12 children
SUP-0001-2006	4338/4346 Centerville Rd. Tower Relocation	communications tower in A-1 district
SUP-0033-2005	Chickahominy Riverfront Park	public recreation facilities in A-1
SUP-0029-2005	Sulenski/Ripley Family Subdivision	Family Subdivision in A-1
SUP-0016-2005	Treleaven Warehouse & Nursery	Construction of contractor's warehouse in A-1
SUP-0005-2005	Bradley Family Subdivision	Family subdivision
SUP-0033-2004	John Hogge Family Subdivision	Family subdivision in A-1
SUP-0030-2004	JCSA Riverview Plantation H2O System Imprc	Utility Extension
SUP-0028-2004	Avery Family Subdivision	Family subdivision in A-1
SUP-0026-2004	Gross Family Subdivision	Family subdivision in A-1
SUP-0021-2004	U.S. Home, BSA Property - Rural Cluster	50-lot rural cluster development
SUP-0020-2004	AJC Woodworks - SUP Amend.	Manufacture wood products in A-1

SUP-0012-2004	Hogan Homestead Day Care SUP Renewal	Extend SUP for child care center
SUP-0026-2003	Communications Tower Jolly Pond Road	380' communications tower
SUP-0023-2003	Nice Office Building Expansion	Office expansion in A-1 district
SUP-0021-2003	Milanville Kennel	Construct and operate kennel in A-1 district
SUP-0015-2003	Custom Culinary Connections - Barnes Road	Construct and operate catering kitchen, A-1 district
SUP-0011-2003	AJC Woodworks	Woodworking shop in A-1 district
SUP-0010-2003	Leighton- Hermann Family Subdivision	4-lot Family subdivision in A-1 district
SUP-0004-2003	Hankins Farms Water & Sewer Extension	Utility Extension
SUP-0022-2002	Schmidt Landscaping	Warehouse, office, nursery and storage facilities in A-1 district
SUP-0010-2002	Voice Stream Tower - Exit 231 of Interstate 6	199' tower located next to existing tower (A-1)
SUP-0001-2002	Voice Stream Wireless - Chesapeake Forest P	20' Extension to approved SUP-12-97 (A-1)

#### R-8

SUP-0001A-2007	A-Stat Restoration	Business, government, professional offices in R-8
SUP-0017-2007	Wireless Tower Longhill Rd.	Cell Tower
SUP-0019-2006	Mason Park	residential cluster in R-8
SUP-0013-2006	Unicorn Cottage	child daycare center in R-8
SUP-0003-2006	Zion Baptist Church Expansion	6000 sq. ft. expansion in R-8 district
SUP-0030-2005	St. Olaf Catholic Church	Expand and renovate facilities in R-8
SUP-0026-2005	Williamsburg Landing Parking Addition	facilities for care of the aged in R-8
SUP-0027-2005	Chickahominy Baptist Church Expansion	5800 foot expansion of church in R-8
SUP-0024-2005	Gabriel Archer Tavern	Restaurant in R-8 district
SUP-0004-2005	Christian Life Center Tower	160 foot wireless communications tower in R-8
SUP-0003-2005	JCSA Water Storage Facility, Warhill	165 foot water storage unit in R-8
SUP-0029-2004	JCSA Cardinal Acres Duplex	Build duplex unit in R-8
SUP-0027-2004	Williamsburg Community Chapel Expansion	House of Worship expansion
SUP-0019-2004	Williamsburg Winery, Gabriel Archer Tavern	Restaurant in R-8 district
SUP-0016-2004	Williamsburg Jamestown Airport SUP Amend	Amended existing SUP to amend master plan
SUP-0013-2004	Williamsburg Farms Country Inn	Construct and operate 36-room hotel, R-8 district
SUP-0001-2004	STAT Services Inc.	Office building in R-8 district
SUP-0025-2003	Communications Tower Merrimac Trail	280' communications tower in R-8 (jail)
SUP-0020-2003	Jamestown Hundred MP Amend.	alteration of MP (R-8)
SUP-0019-2003	Christian Life Center	R-8 Church expansion
SUP-0016-2003	Williamsburg Winery - Gabriel Archer Tavern	Restaurarant in R-8 district

SUP-0014-2003	JCSA Concentrate Discharge Main	Water Main (r-8 and LB)
SUP-0013-2003	Old Elk Capitol Lodge	Amend existing SUP to allow 2400 sq. ft. vertical expansion in R-8 district
SUP-0003-2003	JCSA Rt. 5 Water Main Extension Amend.	Utility Extension
SUP-0021-2002	Jamestown Island Expansion	Expansion of existing offices in R-8 district
SUP-0019-2002	JCSA Water Treatment Facility Concentrate	Water treatment facility in R-8
SUP-0015-2002	Jamestown 4H Center Preschool	Lease of Lodge for Preschool in R-8
SUP-0013-2002	Manufactured Home - Fiorello	Non-permanent structure in R-8
SUP-0002-2002	Manufactured Home - Walker	Non-permanent structure (r-8)
SUP-0001-2005	Alice's Wonderland Playhouse	R-8 daycare

#### R-1

SUP-0002-2007	Accessory Apartment	accessory apartment
SUP-0017-2002	Accessory Apartment - Gatehouse Farms	Accessory apartment in R-1

#### R-2

SUP-0022-2007	Monticello @ Powhatan Ph. 3	residential cluster
SUP-0019-2007	King of Glory Lutheran Church	expansion of a church in a residential district
SUP-0015-2007	Precious Moments Playhouse SUP Renewal	Daycare in residential district
SUP-0025-2006	Centerville Salvage Yard Property	Increased density in R-2
SUP-0032-2005	Jennings Way	single family development density > 1 unit/acre in R-2
SUP-0021-2005	Olde Towne Timeshares Amend.	Amend previous SUP allowing for 365 timeshare units in R-2
SUP-0018-2005	The Villages at Whitehall(Task.,H.Neck,Rocha	Proposed rezoning of A-1 to R-2
SUP-0017-2005	The Villages at Whitehall (LaGrange)	Proposed rezoning of A-1 to R-2
SUP-0006-2005	Centerville Road Subdivision (Windmill Mead	cluster in R-2, with rezoning from A-1
SUP-0037-2004	115 Winston Drive Duplex	2-family dwelling in R-2
SUP-0034-2004	The Villas at Five Forks	Construct multifamily residential units in R-2
SUP-0018-2004	Precious Moments Day Care, SUP Renewal	amendment to daycare SUP
SUP-0010-2004	Indigo Terrace Day Care	Request to extend daycare hours
SUP-0018-2003	Olde Towne Timeshares	Amendment for R-2 Cluster
SUP-0012-2003	Accessory Apartment - Turlington Road	Install accessory apartment in R-2 district
SUP-0001-2003	Williamsburg Plantation, Sec. 10	Construction of two eight-unit dwellings on 1.72 acres in R-2 district
SUP-0018-2002	Wellspring Adult Day Care	Adult Daycare Center in R-2 district
SUP-0014-2002	Pochantas Tr. - Infant & Toddler Family Dayc	Daycare in R-2
SUP-0012-2002	Mt. Gilead Playground and Temp. Trailers	Non-permanent structure in R-2

SUP-0011-2002	Kristiansand Sewer Extension	Utility Extension (r-2)
SUP-0023-2002	Mt. Gilead Duplexes	R-2 duplexes
SUP-0020-2007	Powhatan Terrace	residential cluster (r-2)
SUP-0031-2004	Monticello at Powhatan North	R-2 Cluster

#### R-5

SUP-0002-2004	JCSA Gravity Sewer Extension	Utility Extension
SUP-0029-2003	Michelle Point	R-5 Cluster

#### PL

SUP-0001-2008	Stonehouse Elementary School	Classroom trailers
SUP-0030-2007	4th Middle and 9th Elementary School	schools in public land
SUP-0024-2007	4th Middle & 9th Elementary School	schools in public land
SUP-0023-2007	Trailers at ESH	Classroom trailers
SUP-0006-2007	Lafayette HS Trailer	Classroom trailers
SUP-0007-2007	Jamestown H.S. Trailer	Classroom trailers
SUP-0008-2007	DJ Montague Elementary Trailer	Classroom trailers
SUP-0009-2007	Clara Byrd Baker Elementary Trailer	Classroom trailers
SUP-0010-2007	Rawls Byrd Elementary Trailer	Classroom trailers
SUP-0011-2007	Stonehouse Elementary Trailer	Classroom trailers
SUP-0034-2006	Bus Loop Rawls Byrd E.S.	Master Plan amendment for school in residential district
SUP-0031-2006	Toano M.S. Bus Entrance	Master Plan amendment for school in
SUP-0014-2006	8th Elementary School Utility Extension	Utility Extension
SUP-0012-2006	Clara Byrd Baker E.S. - Temp. Classroom Trail	Classroom trailers
SUP-0011-2006	D.J. Montague E.S. - Temp. Classroom Trailer	Classroom trailers
SUP-0010-2006	Toano M.S. - Temp. Classroom Trailers	Classroom trailers
SUP-0009-2006	Stonehouse E.S. - Temp. Classroom Trailers	Classroom trailers
SUP-0008-2006	Jamestown H.S. - Temp. Classroom Trailers	Classroom trailers
SUP-0007-2006	Lafayette H.S. - Temp. Classroom Trailers	Classroom trailers
SUP-0006-2006	Rawls Byrd E.S. - Temp. Classroom Trailers	Classroom trailers
SUP-0005-2006	Eighth E.S.	School in A-1
SUP-0031-2005	Norge Elementary School Cafeteria Addition	2,000 sq. ft. expansion in R-2
SUP-0008-2005	Lafayette H.S. - Temp. Classroom Trailer	Classroom trailers
SUP-0009-2005	Jamestown H.S. - Temp. Classroom Trailer	Classroom trailers



SUP-0010-2005	Toano M.S. - Temp. Classroom Trailer	Classroom trailers
SUP-0011-2005	Clara Byrd Baker E.S. - Temp. Classroom Trail	Classroom trailers
SUP-0012-2005	D.J. Montague E.S. - Temp. Classroom Trailer	Classroom trailers
SUP-0013-2005	Stonehouse E.S. - Temp. Classroom Trailers	Classroom trailers
SUP-0014-2005	Norge E.S. - Temp. Classroom Trailers	Classroom trailers
SUP-0015-2005	Rawls Byrd E.S. - Temp. Classroom Trailers	Classroom trailers
SUP-0015-2004	Lafayette H.S. Temp Trailers (CDR)	Classroom trailers
SUP-0011-2004	Freedom Park Master Plan	
SUP-0003-2004	Lafayette H.S. Temp Trailers	Classroom trailers
SUP-0004-2004	Jamestown H.S. Temp Trailers	Classroom trailers
SUP-0005-2004	Toano M.S. Temp. Trailers	Classroom trailers
SUP-0006-2004	Clara Byrd Baker E.S. Temp. Trailers	Classroom trailers
SUP-0007-2004	D.J. Montague E.S. Temp. Trailers	Classroom trailers
SUP-0008-2004	Stonehouse E.S. Temp. Trailers	Classroom trailers
SUP-0017-2003	Warhill Sports Complex Master Plan Amend.	District Park in R-8 district
SUP-0009-2003	York River Competition Park	
SUP-0005-2003	Jamestown H.S. Temp Trailers	Classroom trailers
SUP-0006-2003	Lafayette H.S. Temp Trailers	Classroom trailers
SUP-0007-2003	Clara Byrd Baker E.S. Temp. Trailers	Classroom trailers
SUP-0008-2003	Stonehouse E.S. Temp. Trailers	Classroom trailers
SUP-0005-2002	Lafayette H.S. Temp Trailers	Classroom trailers
SUP-0006-2002	Jamestown H.S. Temp Trailers	Classroom trailers
SUP-0007-2002	Toano M.S. Temp. Trailers	Classroom trailers
SUP-0008-2002	Clara Byrd Baker E.S. Temp. Trailers	Classroom trailers
SUP-0009-2002	D.J. Montague E.S. Temp. Trailers	Classroom trailers

**Total number of parcels and sum of all acres in JCC (as of Feb. 2008)**

	A1	B1	LB	PUD-C	MU	M1	M2	PUD-I	R1	R2	R4	R5	R6	R8	PUD-R
Parcels	3,264	429	103	36	1,448	387	96	4	4,845	7,297	8,624	952	122	1,121	1,693
Acreage	37,686.42	1,477.58	162.30	951.22	1,254.35	1,637.86	2,842.34	1.15	4,470.36	4,260.60	8,086.95	698.29	272.44	12,002.31	5,062.88
	# Parcels	Acres													
Agriculture	3,264	10.69%	37,686.42	40.42%											
Residential	24,654	80.71%	34,853.84	37.38%											
Mixed Use	1,448	4.74%	1,254.35	1.35%											
Commercial	568	1.86%	2,591.10	2.78%											
Manufacturing	487	1.59%	4,481.35	4.81%											
Public Land	125	0.41%	12,371.73	13.27%											
	30,546		93,238.80	95095 acres = 148.5 m2											

**Total number of undeveloped\* parcels and sum of acres of those parcels (as of Feb. 2008)**

	A1	B1	LB	PUD-C	MU	M1	M2	PUD-I	R1	R2	R4	R5	R6	R8	PUD-R	
Undeveloped Parcels	1,228	142	26	29	553	77	47	3	401	753	1,473	76	13	254	495	
Undeveloped Acres	24,454.74	840.52	48.56	825.28	562.31	542.68	1,282.38	0.93	1,466.54	1,791.42	3,014.96	203.72	32.48	4,846.87	3,968.62	
	# of Parcels	Acres														
Agriculture	1,228	22.05%	24,454.74	55.73%												
Residential	3,465	62.21%	15,324.60	34.92%												
Mixed Use	553	9.93%	562.31	1.28%												
Commercial	197	3.54%	1,714.36	3.91%												
Manufacturing	127	2.28%	1,825.99	4.16%												
	5,570	43,882.00														

\*Undeveloped defined as properties with improvement values less than \$20,000

**MEMORANDUM**

DATE: August 12, 2008

TO: The Board of Supervisors

FROM: Larry M. Foster, General Manager, James City Service Authority


SUBJECT: Sewer Easement Dedication - Joshua's Glen - Lots 1, 2, and 6

---

During construction a sewer line accidentally encroached on three parcels owned by James City County in Joshua's Glen Development. This meeting has been advertised as a public hearing on dedicating to the James City Service Authority (JCSA) the areas of the parcels where the sewer line has encroached.

The dedication of the easement will not impact the value or development potential of the parcels. From a historical perspective the three parcels were paid for by the JCSA as part of the Ware Creek Reservoir project.

After conducting a public hearing, it is recommended that the Board approve the attached resolution authorizing the County Administrator to sign the appropriate documents necessary to dedicate the easement.

  
Larry M. Foster

LMF/gb  
JoshuasGlen081208\_mem

Attachment

## **RESOLUTION**

### **SEWER EASEMENT DEDICATION - JOSHUA'S GLEN - Lots 1, 2, AND 6**

WHEREAS, during construction a James City Service Authority (JCSA) sewer line was accidentally installed on three parcels in the Joshua's Glen development owned by James City County and identified as follows:

Lot 1 Joshua's Glen - Tax Map (13-3) (2-1)

Lot 2 Joshua's Glen - Tax Map (13-3) (2-2)

Lot 6 Joshua's Glen - Tax Map (13-2) (2-1)

WHEREAS, the dedication of the easement for the sewer line will not impact the value or development potential of the parcels.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, after conducting a public hearing on the easement dedication, authorizes the County Administrator to sign the appropriate documents dedicating the easement on the three parcels to the JCSA.

---

Bruce C. Goodson  
Chairman, Board of Supervisors

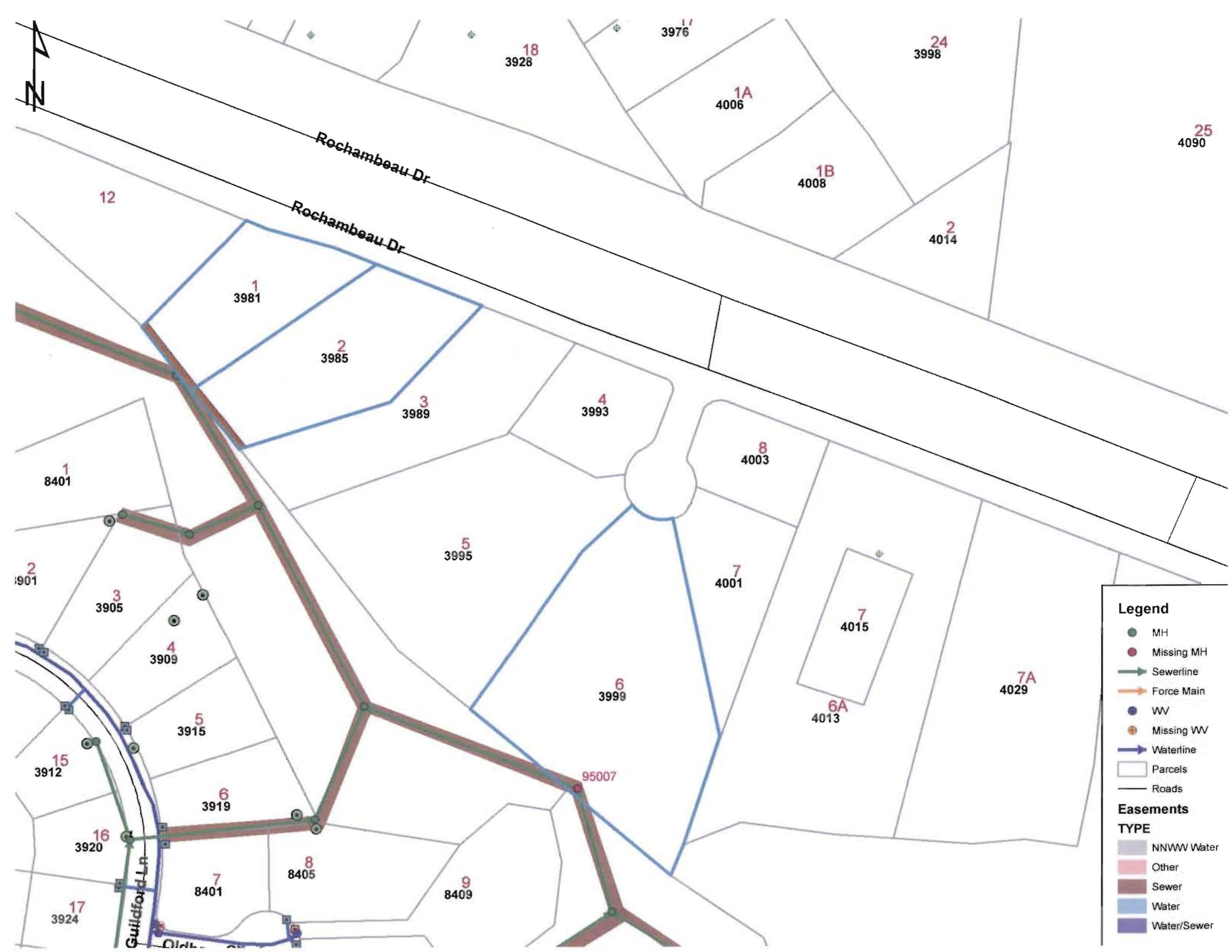
ATTEST:

---

Sanford B. Wanner  
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 12th day of August, 2008.

JoshuasGlen081208\_res



**MEMORANDUM**

DATE: August 12, 2008  
TO: The Board of Supervisors  
FROM: Naomh M. Stewart, Law Intern  
SUBJECT: Amendments to County Animal Laws

---

During its 2008 session, the General Assembly adopted changes to the State animal control laws. Consequently, several ordinance amendments are necessary to bring the County Code into conformity with the changes to the Virginia Code.

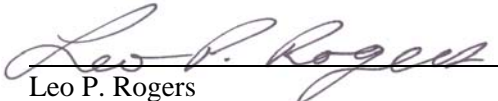
The first amendment amends the definition of “adequate water.” Instead of providing water to animals at least once every 12 hours, the amended definition requires the provision of water at intervals appropriate for weather and temperature. The second amendment allows a person to request that a County Animal Control Officer bury or cremate that person’s dead animal or fowl, for which service the County may be reimbursed. The final amendment provides the court with additional authority to control animals that have been involved in dog fighting operations.

Staff recommends approval of the attached ordinance amendments.

---

Naomh M. Stewart

CONCUR:

  
Leo P. Rogers

NMS/nb  
AnimalLaws\_mem

Attachment

## ORDINANCE NO.

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 3, ANIMAL CONTROL, OF THE CODE OF JAMES CITY COUNTY, VIRGINIA, BY AMENDING ARTICLE I, IN GENERAL, SECTION 3-1, DEFINITIONS, SECTION 3-7, DISPOSAL OF DEAD ANIMALS; ARTICLE III, IMPOUNDMENT, SECTION 3-45, IMPOUNDMENT GENERALLY.

Be it ordained by the Board of Supervisors of James City County, Virginia, that Chapter 3, Animal Control, is hereby amended and reordained by amending Article I, In General, Section 3-1, Definitions, Section 3-7, Disposal of Dead Animals; Article III, Impoundment, Section 3-45, Impoundment Generally.

### Chapter 3. Animal Control

#### ARTICLE I. IN GENERAL

##### **Sec. 3-1. Definitions.**

For the purposes of this chapter, the following words shall have the meaning given herein.

*Adequate water.* Provision of and access to clean, fresh, potable water of a drinkable temperature which is provided in a suitable manner, in sufficient volume and at suitable intervals, ~~but at least once every 12 hours~~ *appropriate for weather and temperature*, to maintain normal hydration for the age, species, condition, size and type of each animal, except as prescribed by a veterinarian or as dictated by naturally occurring states of hibernation or fasting normal for the species; and is provided in clean, durable receptacles which are accessible to each animal and are placed so as to minimize contamination

of the water by excrement and pests or an alternative source of hydration consistent with generally accepted husbandry practices.

**State law reference**-Similar provisions, Code of Va., § 3.1-796.66.

### **Sec. 3-7. Disposal of Dead Animals**

(b) *Other animals.* When the owner of any animal or grown fowl other than a companion animal which has died knows of such death, such owner shall forthwith have its body cremated or buried, ~~and, if he~~ *or request such service from an officer or other person designated for the purpose. If the owner* fails to do so, any judge of a general district court, after notice to the owner if he can be ascertained, shall cause any such dead animal or fowl to be cremated or buried by an officer or other person designated for the purpose. Such officer or other person shall be entitled to recover of the owner of every such animal ~~so~~ *or fowl that is* cremated or buried the actual cost of the cremation or burial, ~~not to exceed \$75.00, and of the owner of every such fowl so cremated or buried the actual cost of the cremation or burial, not to exceed \$5.00,~~ *and a reasonable fee* to be recovered in the same manner as officers' fees are recovered, free from all exemptions in favor of such owner. Nothing in this subsection shall be deemed to require the burial or cremation of the whole or portions of any animal or fowl which is to be used for food or in any commercial manner.

**State law references**-Disposal of dead companion animals, Code of Va., § 3.1-796.121; burial or cremation of animals or fowl which have died, Code of Va., § 18.2-510.



### ARTICLE III. IMPOUNDMENT

#### **Sec. 3-45. Impoundment generally.**

(a) Any humane investigator, law-enforcement officer, or animal control officer, may lawfully seize and impound any animal that has been abandoned, has been cruelly treated, or is suffering from an apparent violation of this chapter that has rendered the animal in such a condition as to constitute a direct and immediate threat to its life, safety, or health. Before seizing or impounding any agricultural animal, such humane investigator, law-enforcement officer, or animal control officer shall contact the State Veterinarian or a State Veterinarian's representative, who shall recommend to such person the most appropriate action for the disposition of the agricultural animal, provided, however, that the seizure or impoundment of an equine resulting from a violation of subdivision (a) (iii) or subdivision (b) (ii) of section 3-9 may be undertaken only by the State Veterinarian or State Veterinarian's representative who has received training in the examination and detection of sore horses equivalent to that required by 9 C.F.R. Part 11.7 and that is approved by the State Veterinarian. The humane investigator, law-enforcement officer, or animal control officer shall notify the owner of the agricultural animal and the local attorney for the Commonwealth of the recommendation. The humane investigator, law-enforcement officer or animal control officer may impound the agricultural animal on the land where the agricultural animal is located if:

- (1) The owner or tenant of the land where the agricultural animal is located gives written permission;
- (2) A general district court so orders; or

(3) The owner or tenant of the land where the agricultural animal is located cannot be immediately located, and it is in the best interest of the agricultural animal to be impounded on the land where it is located until the written permission of the owner or tenant of the land can be obtained.

If there is a direct and immediate threat to an agricultural animal, the humane investigator, law-enforcement officer, or animal control officer may seize the animal, in which case the humane investigator, law-enforcement officer, or animal control officer shall file within five business days on a form approved by the State Veterinarian a report on the condition of the animal at the time of the seizure, the disposition of the animal, and any other information required by the State Veterinarian.

Upon seizing or impounding an animal, the humane investigator, law-enforcement officer or animal control officer shall petition the general district court in the city or county wherein the animal is seized for a hearing. The hearing shall be not more than ten business days from the date of the seizure of the animal. The hearing shall be to determine whether the animal has been abandoned, has been cruelly treated, or has not been provided adequate care or is unfit for use within the county and shall petition any general district court in the county for a hearing which shall be in the nature of a criminal proceeding. The hearing shall be set not more than ten days from the date of the seizure of the animal to determine whether the owner, if known, is able to adequately provide for the animal and is a fit person to own the animal. The humane investigator, or animal control officer, shall cause to be served upon the owner, if known and residing within the county, written notice at least five days prior to the hearing of the time and place of the hearing. If the owner is known but residing out of the county, written notice by any method of service of process as provided by the Code of Virginia shall be given. If the owner is not known, the humane investigator shall cause to be published in a newspaper of general circulation in the county notice of the hearing at least one time prior to the hearing and shall further cause notice of the hearing to be posted at

least five days prior to the hearing at the place provided for public notices at the courthouse wherein such hearing shall be held.

(b) The humane investigator, law-enforcement officer, or animal control officer shall cause to be served upon the person with a right of property in the animal or the custodian of the animal notice of the hearing. If such person or the custodian is known and residing within the jurisdiction wherein the animal is seized, written notice shall be given at least five days prior to the hearing of the time and place of the hearing. If such person or the custodian is known but residing out of the jurisdiction where such animal is seized, written notice by any method or service of process as is provided by the Code of Virginia shall be given. If such person or the custodian is not known, the humane investigator, law-enforcement officer, or animal control officer shall cause to be published in a newspaper of general circulation in the jurisdiction wherein such animal is seized notice of the hearing at least one time prior to the hearing and shall further cause notice of the hearing to be posted at least five days prior to the hearing at the place provided for public notices at the city hall or courthouse wherein such hearing shall be held.

(c) The procedure for appeal and trial shall be the same as provided by law for misdemeanors; if requested by either party on appeal to the circuit court, trial by jury shall be as provided in Article 4 of Chapter 15 of Title 19.2 of the Code of Virginia, and the commonwealth shall be required to prove its case beyond a reasonable doubt.

(d) The humane investigator, law enforcement officer, or animal control officer, shall provide for such animal until the court has concluded the hearing. The owner of any animal held pursuant to this section for more than 30 days shall post a bond in surety with the county for the amount of the cost of boarding the animal for a period of nine months. Such bond shall not prevent the animal's custodian from disposing of such animal at the end of the nine month period covered by the bond unless the person

claiming an interest posts an additional bond in surety with the county to secure payment of the costs of caring for the animal for an additional nine months and does so prior to the expiration of the previous nine month period. At the conclusion of the case, the bond shall be forfeited to the county unless there is a finding that the owner is able to adequately provide for the animal and is a fit person to own the animal. If the animal is returned to the owner or other individual despite a violation of this section, the person posting the bond will be entitled to a return of the bond less the incurred expenses of boarding, medical care and impounding the animal.

If the court determines that the animal has been neither abandoned, cruelly treated, nor deprived of adequate care, the animal shall be returned to the owner. If the court determines that the animal has been abandoned, cruelly treated, ~~or~~ deprived of adequate care *as defined in section 3-1, or raised as a dog that has been, is, or is intended to be used in dogfighting in violation of §3.1-796.124 of the Code of Virginia,* then the court shall order that the animal be: (i) sold by the county; (ii) humanely destroyed, or disposed of by sale or gift to a federal agency, state-supported institution, agency of the commonwealth, agency of another state, or a licensed federal dealer having its principal place of business located within the commonwealth; (iii) delivered to any local humane society or shelter, or to any person who is a resident of the county or city where the animal is seized or an adjacent county or city in the commonwealth and who will pay the required license fee, if any, on such animal; or (iv) delivered to the person with a right of property in the animal as provided in subsection.

(e) In no case shall the owner be allowed to purchase, adopt, or otherwise obtain the animal if the court determines that the animal has been abandoned, cruelly treated, or deprived of adequate care; however, the court shall direct that the animal be delivered to the person with a right of property in the animal, upon his request, if the court finds that the abandonment, cruel treatment, or deprivation of adequate care is not attributable to the actions or inactions of such person.

(f) The court shall order the owner of any animal determined to have been abandoned, cruelly treated, or deprived of adequate care to pay all reasonable expenses incurred in caring and providing for such animal from the time the animal is seized until such time that the animal is disposed of in accordance with the provisions of this section, to the provider of such care.

(g) The court may prohibit the possession or ownership of other companion animals by the owner of any companion animal found to have been abandoned, cruelly treated, or deprived of adequate care. In making a determination to prohibit the possession or ownership of companion animals, the court may take into consideration the owner's past record of convictions under this chapter or other laws prohibiting cruelty to animals or pertaining to the care or treatment of animals and the owner's mental and physical condition.

(h) If the court finds that an agricultural animal has been abandoned or cruelly treated, the court may prohibit the possession or ownership of any other agricultural animal by the owner of the agricultural animal if the owner has exhibited a pattern of abandoning or cruelly treating agricultural animals as evidenced by previous convictions. In making a determination to prohibit the possession or ownership of agricultural animals, the court may take into consideration the owner's mental and physical condition.

(i) Any person who is prohibited from owning or possessing animals pursuant to subsection (g) or (h) may petition the court to repeal the prohibition after two years have elapsed from the date of entry of the court's order. The court may, in its discretion, repeal the prohibition if the person can prove to the satisfaction of the court that the cause for the prohibition has ceased to exist.

(j) When a sale occurs, the proceeds shall first be applied to the costs of the sale then next to the unreimbursed expenses for the care and provision of the animal, and the remaining proceeds, if any, shall be paid over to the owner of the animal. If the owner of the animal cannot be found, the proceeds remaining shall be paid into the Literary Fund of the state treasury.

(k) Nothing in this section shall be construed to prohibit the humane destruction of a critically injured or ill animal for humane purposes by the impounding humane investigator, law-enforcement officer, animal control officer, or licensed veterinarian.

**State law reference**-Similar provisions, Code of Va., 3.1-796.115.

---

Bruce C. Goodson  
Chairman, Board of Supervisors

ATTEST:

---

Sanford B. Wanner  
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 12th day of August, 2008.

AnimalLaws\_ord

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

DATE: August 12, 2008

TO: The Board of Supervisors

FROM: Needham S. Cheely, III, Director of Parks and Recreation  
Darryl E. Cook, County Engineer

SUBJECT: Right-of-Way Agreement - Dominion Virginia Power – Freedom Park

---

Dominion Virginia Power (Dominion) has requested a right-of-way and utility easement (Easement) across a portion of James City County Freedom Park (Park) in order to improve electrical service to customers in the Jolly Pond Road area. Dominion has conducted a reliability study of the Jolly Pond Road area of its power system and determined that the reliability of its service to those citizens could be significantly improved by connecting the two radial ends of the existing power lines serving that area, thereby creating a looped power system. The requested Easement is 30 feet in width directly adjacent to the Jolly Pond Road right-of-way extending roughly from the James City County transfer station/landfill property to the site of the new combined schools. The line will connect two existing overhead line segments.

The Board considered Dominion's request at the July 22, 2008, Board meeting. Following a public hearing, the Board deferred action on the request pending further discussion with Dominion regarding placement of the new electric lines underground.

County staff has reviewed and approved Dominion's proposed Easement location ensuring minimal impact on the Park amenities and Park users. Staff recommends approval of the attached resolution authorizing the County Administrator to execute the Easement documents with Dominion.

  
Needham S. Cheely, III

CONCUR:

  
Darryl E. Cook

NSC/gb  
DVPRightWay2\_mem

Attachment

## **RESOLUTION**

### **RIGHT-OF-WAY AGREEMENT - DOMINION VIRGINIA POWER -**

#### **FREEDOM PARK**

WHEREAS, James City County (County) owns 675.64 acres located at 5537 Centerville Road, commonly known as Freedom Park (Park) and designated as Parcel No. 0100009 on James City County Real Estate Tax Map No. (30-1); and

WHEREAS, Dominion Virginia Power (Dominion) requires a right-of-way and utility easement of 30 feet in width across a portion of the Park in order to improve reliability to its customers on Jolly Pond Road by creating a looped system as part of Dominion's service reliability study; and

WHEREAS, the Board of Supervisors, following a public hearing, is of the opinion that it is in the public interest to convey a right-of-way and utility easement to Dominion.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the County Administrator to execute the right-of-way agreement and other such documents necessary to convey the utility easement to Dominion for improved reliability of electrical service to citizens on Jolly Pond Road.

---

Bruce C. Goodson  
Chairman, Board of Supervisors

ATTEST:

---

Sanford B. Wanner  
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 12th day of August, 2008.

DVPRightWay2\_res



**MEMORANDUM**

DATE: August 12, 2008

TO: The Board of Supervisors

FROM: William C. Porter, Jr., Acting Development Manager

SUBJECT: Historic Triangle Comprehensive Plan Coordination

---

On September 11, 2006, the James City County Planning Commission unanimously endorsed recommendations of the Regional Issues Committee (RIC) regarding the coordination of Comprehensive Plan updates for the jurisdictions of James City County, York County, and the City of Williamsburg. As outlined in a memorandum dated August 23, 2006, the RIC recommended all three jurisdictions update their plans beginning in 2010, with joint forums to be held beginning in the summer of 2008 as part of James City County's anticipated 2008 Comprehensive Plan Update. On October 24, 2006, the James City County Board of Supervisors adopted a resolution endorsing the recommendations of the RIC. The RIC's recommendations were also endorsed by York County's Planning Commission and Board of Supervisors, and by the City of Williamsburg's Planning Commission and City Council.

Attached is a memorandum from the Assistant County Administrator of York County, the Planning Director of the City of Williamsburg, and me, recommending a revised process for the coordination of the Comprehensive Plans for the three jurisdictions. The revised process would move the date of the coordinated Comprehensive Plan Update from 2010 to 2012. It is worth noting the revised schedule has preliminary tasks beginning in the summer of 2010, based on discussions among staff members of the three jurisdictions regarding meaningful coordinated efforts.

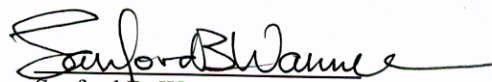
Per the revised schedule, the City of Williamsburg would delay its cycle by one year, York County would delay its cycle by two years, and James City County would accelerate its cycle by two years.

At its meeting on July 2, 2008, the James City County Planning Commission supported the revised coordinated schedule. The York County Board of Supervisors approved the revised schedule for the coordinated Comprehensive Plan Update on July 15, 2008. The Williamsburg City Council approved the revised schedule on July 10, 2008. Staff recommends approval of the attached resolution.

---

William C. Porter, Jr.

CONCUR:

  
Sanford B. Wanner

WCP/nb  
HTCompPCo\_mem

Attachments:

1. Joint Memorandum
2. Resolution

## **RESOLUTION**

### **HISTORIC TRIANGLE COMPREHENSIVE PLAN COORDINATION**

WHEREAS, the Code of Virginia requires that all jurisdictions prepare and adopt a Comprehensive Plan addressing physical development within its jurisdictional limits for the purpose of guiding and accomplishing coordinated, adjusted, and harmonious development that will, in accordance with present and probable future needs and resources, best promote the health, safety, morals, order, convenience, prosperity, and general welfare of their inhabitants; and

WHEREAS, in the interest of promoting closer coordination and communication concerning Comprehensive Plan issues that cross jurisdictional boundaries, the Regional Issues Committee, and the Planning Commissions recommended, and the governing bodies endorsed by resolution in 2006, a process under which James City County, York County and the City of Williamsburg would adjust their five-year review cycles so that each begins its next review and update in 2010 and then every five years thereafter; and

WHEREAS, staffs of the three jurisdictions recommend revising the proposed update schedule to begin the next review and update in 2012, so as to allow incorporation of data from the 2010 U.S. Census and then beginning every five years thereafter.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of James City County, Virginia, that the following proposed schedule for the coordinated update of the James City County, York County, and the City of Williamsburg Comprehensive Plans be supported, endorsed, and approved as the framework for the update:

- Summer 2010 – staffs of the three jurisdictions identify opportunities for jointly conducted baseline studies and analyses of such things as population, economy, housing and transportation, as well as for a consistent format for the three plans.
- Fall 2010 – staffs of the three jurisdictions identify budget requests for any proposed jointly conducted baseline studies and analyses for consideration in the FY 2012 budget deliberations.
- Fall 2011 – discussion forum with planning commissioners from all three jurisdictions to identify consensus regional issues to be addressed.
- Winter 2012 – two public forums to allow comments on the regional issues previously identified to be held in the Williamsburg/James City County area and in Yorktown.
- Spring 2012 – discussion forum with planning commissioners from all three jurisdictions to review items discussed at the two public forums and to identify areas for coordinated efforts during the update process.

---

Bruce C. Goodson  
Chairman, Board of Supervisors

ATTEST:

---

Sanford B. Wanner  
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 12th day of  
August, 2008.

HTCompPCo\_res

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

TO: The Board of Supervisors  
Williamsburg City Council  
York County Board of Supervisors

FROM: William C. Porter, Jr., Assistant County Administrator  
Reed T. Nester, Williamsburg Planning Director  
J. Mark Carter, York County Assistant County Administrator

SUBJECT: Comprehensive Plan Coordination

---

For many years the comprehensive planning update cycles in each of our jurisdictions have been undertaken at different times, and there has been a perception in the community that this has hampered overall coordination between the three jurisdictions. During the preparation of the Comprehensive Plan, each jurisdiction typically has communication between the staff about areas of common interest, but this has been at the staff level and could benefit from a more formal coordination structure. The Regional Issues Committee, at its July 25, 2006, meeting, recommended that the three jurisdictions develop a coordinated Comprehensive Plan update process, to begin in 2010. This recommendation was endorsed by the three Planning Commissions and adopted by the three governing bodies in 2006.

### **Comprehensive Plan Update Coordination**

In December 2005, York County completed their most recent Comprehensive Plan update. The City of Williamsburg adopted its Comprehensive Plan in October 2006. James City County is currently updating its 2003 Comprehensive Plan, which should be completed in summer 2009. The respective five-year independent update cycles would begin in 2010, 2011, and 2014. In order to accomplish the Regional Issues Committee recommendation of a coordinated update beginning in 2010, York County would remain on a 2010 cycle, Williamsburg would need to accelerate its cycle by one year, and James City County would need to accelerate its cycle by four years (one more year than was envisioned when the Regional Issues Committee made its original recommendation).

The staffs of the three jurisdictions have reviewed the Regional Issues Committee's original recommendation, the status of the three Comprehensive Plans, and the availability of data from the 2010 U.S. Census, and feel that a better time for beginning a coordinated update process is in 2012. With this schedule change, York County would need to delay its cycle by two years, Williamsburg would need to delay its cycle by one year, and James City County would need to accelerate its cycle by two years.

### **Comprehensive Plan Update Schedule**

The recommended revised schedule, beginning in 2012, incorporates the RIC's recommendation of a three meeting cycle of discussion forums among the planning commissions, with the middle one being a public forum that would be advertised and open to the general public for comments.

In addition to these discussions, we recommend following the RIC recommendation that the staff of the three jurisdictions attempt to coordinate a data collection for base-line studies, so as to more fully integrate the base-line study content of each comprehensive plan. Examples of this could be in the population, economy,

transportation, and housing. In addition, staff should work together to see if a consistent format can be developed for the three plans.

The specific schedule is detailed below:

- July-August 2010 – staffs of the three jurisdictions meet to explore opportunities for jointly conducted baseline studies and analyses of such things as population, economy, housing and transportation.
- November 2010 – staffs of the three jurisdictions forward budget requests for any jointly conducted baseline studies and analyses to the governing bodies for consideration for the FY12 budget.
- September-October 2011 – discussion forum, with planning commissioners from all three jurisdictions, to identify consensus regional issues to be addressed.
- January-February 2012 – two public forums to allow comments on the regional issues previously identified, to be held both in the Williamsburg area and in Yorktown.
- April-May 2012 – discussion forum, with planning commissioners from all three jurisdictions, to review items discussed at the two public forums and to identify areas for coordinated efforts during the update process.

It should be noted that none of the above suggestions are intended to supercede the authority of the respective planning commissions or governing bodies to make the final land use and policy decisions within their jurisdictional boundaries.