

A G E N D A

JAMES CITY COUNTY BOARD OF SUPERVISORS

County Government Center Board Room

April 13, 2010

7:00 P.M.

A. CALL TO ORDER

B. ROLL CALL

C. MOMENT OF SILENCE

D. PLEDGE OF ALLEGIANCE – McKayla Brown, a fifth-grade student at Matthew Whaley Elementary School

E. PRESENTATIONS –

1. James City County Volunteer Appreciation Week – April 18-24, 2010
2. Public Safety Telecommunications Week, April 11-17, 2010

F. PUBLIC COMMENT

G. CONSENT CALENDAR

1. Minutes –
 - a. March 16, 2010, Joint Work Session
 - b. March 23, 2010, Work Session
 - c. March 23, 2010, Regular Meeting
2. Resolution of Recognition – James City County Volunteer Appreciation Week, April 18-24, 2010
Supports County's Strategic Pathway 2.i - increase volunteerism
3. Resolution of Recognition – Public Safety Telecommunications Week, April 11-17, 2010
Supports County's Strategic Pathway 5.b - maintain a well-trained and high performing workforce for normal and emergency operations
4. Appropriation of Insurance Proceeds – Police Department – \$3,429
Supports County's Strategic Pathway 1.a - evaluate service delivery costs

H. PUBLIC HEARINGS

1. Case No. Z-0003-2008/MP-0003-2008. The Candle Factory
2. Case No. SUP-0026-2009. Constance Avenue Wireless Communications Facility
3. Case No. SUP-0003-2010. Gilley Properties Two Family Dwelling
4. Conveyance of Conservation Easement to the Commonwealth of Virginia – Virginia Capital Trail
Supports County's Strategic Pathway 4.g - preserve greenspace
5. Ordinance Amendment to Chapter 16, Public Parks and Recreation Facilities

-CONTINUED-

I. PUBLIC COMMENT

J. REPORTS OF THE COUNTY ADMINISTRATOR

K. BOARD REQUESTS AND DIRECTIVES

L. CLOSED SESSION

1. Consideration of the acquisition of parcels of property for public use pursuant to Section 2.2-3711(A)(3) of the Code of Virginia

M. ADJOURNMENT to 7 p.m. on April 27, 2010

**TIME LIMIT for PUBLIC COMMENT SPEAKERS TIME LIMIT for PUBLIC HEARING
SPEAKERS**

3 minutes at each comment period

Representative of a group -- 15 minutes
Individual -- 5 minutes

*Comments must be made from the podium.
A speaker's time begins when he or she approaches the podium.*

H. PUBLIC HEARINGS

1. Case No. Z-0003-2008/MP-0003-2008. The Candle Factory
2. Case No. SUP-0026-2009. Constance Avenue Wireless Communications Facility
3. Case No. SUP-0003-2010. Gilley Properties Two Family Dwelling
4. Conveyance of Conservation Easement to the Commonwealth of Virginia – Virginia Capital Trail
Supports County's Strategic Pathway 4.g - preserve greenspace
5. Ordinance Amendment to Chapter 16, Public Parks and Recreation Facilities

AT A JOINT MEETING OF THE JAMES CITY COUNTY BOARD OF SUPERVISORS, THE WILLIAMSBURG CITY COUNCIL, AND THE WILLIAMSBURG-JAMES CITY COUNTY SCHOOL BOARD, HELD ON THE 16TH DAY OF MARCH 2010, AT 9:03 A.M. QUARTERPATH RECREATION CENTER, 202 QUARTERPATH ROAD, CITY OF WILLIAMSBURG, VIRGINIA.

A. WELCOME

City of Williamsburg Mayor Zeidler welcomed everyone and reviewed the agenda.

B. CALL TO ORDER

Mr. Kennedy called the Board of Supervisors to order at 9:03 a.m.

C. ROLL CALL

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

Sanford B. Wanner, County Administrator

Mayor Jeanne Zeidler called City Council to order at 9:03 a.m. and Mr. Jackson C. Tuttle, II, called the roll. Present from City Council were Mr. Bobby Braxton, Mr. Clyde Haulman, Ms. Judy Knudson, Mr. Paul Freiling, and Ms. Jeanne Zeidler (Mayor). Also present was Mr. Jack Tuttle, City Manager.

Mr. James Nickols called the School Board to order at 9:03 a.m. Present from the School Board were Dr. John Alewynse, Ms. Elise Emanuel, Mr. Joseph Fuentes, Mr. Jim Kelly, Ms. Denise Koch, Ms. Ruth Larson, and Mr. James Nickols (Chair.) Also present were Dr. Gary S. Mathews, Superintendent and Clerk of the Board; Ms. Janet Cerza, Deputy Clerk of the Board; Dr. Scott Burckbuchler, Assistant Superintendent for Finance/Interim Assistant Superintendent for Human Resources; staff, press, and the public.

D. DISCUSSION ITEMS

1. FY 2010-2011 Budget

Dr. Mathews reviewed the Superintendent's Proposed Budget, with the recommended amendments to the Superintendent's Proposed Budget Fiscal Year 2010/2011.

Mayor Zeidler stated she appreciated the preservation of the pupil/teacher ratios. She asked what it will mean for next year, with the 55 percent reductions coming from the Virginia Retirement System (VRS). Dr. Mathews responded that the State of Virginia "kicked the can down the road." The future will require a substantial investment in VRS - probably sooner than later.

Dr. Burckbuchler added that the State will be making structural changes in VRS, e.g., new employees will contribute toward the five percent.

Dr. Mathews confirmed that co-curricular and athletic programs will be “held harmless.” Williamsburg-James City County (W-JCC) will have to see if it can sustain classes with less than 10-12 students. Dr. Burckbuchler added that they would not eliminate, but “right size” the staff associated with programs such as high school choir.

The Local Composite Index (LCI) was discussed, as the State has frozen the LCI for the next fiscal year and 50 percent next year. This equates to \$2.3 million in LCI this year and \$1.7 million LCI next year in the second year of the biennium budget.

Mr. Freiling asked if it was the right thing to put non-instructional cuts back into the budget at this time. Dr. Mathews reviewed the central office non-personnel reductions: Tuition Assistance Policy, which reimburses teachers for college credits to advance learning; summer school (a direct service to children); the Executive Director of Human Resources (a major officer for the school division); the special education instructional aide and guidance office assistants (providing services to the children); and, the elementary teacher assistants provide an important service.

Mr. Haulman questioned if W-JCC should maintain until it has to make dramatic cuts or is there a strategy to move toward this target over several years to make it less severe. Dr. Mathews responded that in Virginia, revenues equal expenditures. If allowed, W-JCC could possibly save money to ease future cuts. Five hundred thousand dollars in operating funds is all W-JCC can maintain over a fiscal year. The school division can't put monies away to save for more onerous times to come. There are definite parameters in Virginia. Dr. Burckbuchler responded that they know VRS rates will go up; teacher allocations were proposed for restoration; and reserved positions were added to address elementary school level (these positions will be used to address future growth). This gives W-JCC the opportunity to interact and plan for positions as we are moving forward.

Dr. Burckbuchler also noted that W-JCC will have retirement savings as it moves forward. It should be a gradual transition into new economic reality. Mr. Haulman asked that with attrition and the effort to encourage people to retire now, will retirements be lower in the future years? Does this constrain W-JCC in the future?

Dr. Mathews replied that staff members have until March 31, 2010, to decide if they will retire, which will create monies in savings. W-JCC may have to decide how much the school division will be allowed to save.

Mr. Freiling asked if there was a greater surplus, can it be put into VRS? Five hundred thousand dollars in undesignated funds can be carried over. Anything else must be put into a Capital Improvements Plan (CIP) project. Dr. Burckbuchler reiterated that W-JCC will abide by the city-county agreement.

Mr. Kennedy asked about retirement savings. Dr. Burckbuchler replied that the retirement incentive program will produce savings as those hired will most likely be at the bottom of the scale.

Mr. McGlennon asked if there would be increased retirements because of these incentives, and was this year's number of retirement comparable to last year's.

Dr. Burckbuchler said that it was.

Mr. Goodson questioned adding back the Human Resources (HR) position and expressed concerns that they may or may not be able to fund this position next year. Could this position be a “shared” service with the County? Dr. Mathews said he understood the proposition to have an HR officer do both County and school business. His concern was whether or not the HR officer would reside at County government. Would this person be familiar with the nuances and needs of K-12? Other districts have not found them to be capable of handling K-12 needs.

Mr. Nickols stated that the HR officer was an important position. There are 1,300 employees in the school division to keep track of all the requirements to meet standards of the law. It’s taking care of the employees. A lawsuit could take away funds saved.

Mr. Goodson stated there may need to be additional cuts in the classroom because sharing an HR position is not being done as a shared service. The County has a very professional department. It could assign a person to the School Board and not have to pay as a top-level manager.

Mayor Zeidler clarified that the HR position would be full-time. Ms. Koch stated that the School Board took action in the past to be good stewards. While Dr. Burckbuchler is doing an excellent job, the workload and responsibilities are increasing.

Mr. Fuentes suggested that HR could temporarily use shared services with the County. He agreed with Mr. Nickols; however, if it continues to be an issue of money, they cannot go down the road without getting a handle on these issues. They could do shared services at the lower level but at the higher level they need to be accountable to the school division. It would be trying to serve two masters.

Dr. Alewynse said W-JCC is looking at new leadership, but it is not sure when it will take place or the time table. They would not want the new superintendent to come in and have limited freedom because of decisions made before they got here. Where HR is concerned, there could be a position with these responsibilities during the transitional period.

Mayor Zeidler asked if the school division had gone to a policy to establish when long-term employees retire, it is automatically picking a younger employee. Dr. Burckbuchler replied that W-JCC hires by the most viable candidate not by salary.

Mr. McGlennon asked if the VRS holiday applies for both years of the biennium. Dr. Burckbuchler clarified it was split in half for the second year. Mr. McGlennon asked if there were any other anticipated increases in the second year for local schools. Dr. Burckbuchler noted enrollment growth, staffing, health insurance, and utilities.

There was more discussion among the group on the VRS holiday.

Ms. Emanuel questioned if the School Board were to ask, could CIP funds be moved into the operating budget? Mr. Wanner responded that CIP always has operating costs with it. Many CIP projects will be bond indebted to fund. They could decide to not have a CIP. They would have to go before the Planning Commission. Mr. Tuttle stated that there are separate funds in the City of Williamsburg since it cannot spend capital funds for operations without appropriating them.

Mr. Icenhour stated that he wanted more in-depth analysis of equity of what the funding requirements are, including the assumptions made and the probabilities. He urged the need to be thinking about what they do now based upon what will happen in coming years.

Mr. Wanner stated that localities may have to pay additional fees.

Dr. Mathews announced that in the budget, Cut No. 11 eliminates a central office job. That position is Assistant Superintendent for Operations, Dr. Robert Becker. Dr. Becker was appointed last evening by the School Board of Pulaski County, Virginia, to become their superintendent.

Mayor Zeidler asked how Dr. Becker's job assignments would be shared. Dr. Mathews replied that immediate plans will be to have the Operations Department report to the superintendent with Mr. Robertson as his liaison at the Operations Department. They do not plan to fill that position immediately. He will go to Operations and meet with the managers to find out what's happening and what needs to be addressed. Mr. Wanner stated that Mr. Robertson was a shared position with the County and schools. He has a good working relationship and knowledge of the County.

Mr. Nickols noted that at the recent VSBA Legislative Conference they were told that there was going to be increased responsibility for local governing bodies to assume greater responsibilities.

Mr. Haulman asked what the schools and School Board are doing to transition to a different way of operating. Dr. Mathews stated that the budget has five-year projections; W-JCC is being frugal with each dollar as it goes forward; and the County and City of Williamsburg could allow the creation of a fiscal stabilization fund for the school division. Mr. Haulman stated that the core relationship is changing dramatically and fundamentally, and questions have to be dealt with. Dr. Mathews responded that expenditures must equal revenues.

Mr. Nickols added that a lot of issues are mandated by the Federal and State laws. Dr. Burckbuchler stated that while these services/programs are mandated, they are not fully funded.

Dr. Alewynse stated there are certain core assumptions that inform the way K-12 administrators address the task of education. Also, there are mandates. Mr. Haulman wants to know if the School Board has attempted to look at those assumptions, identify them, and try to find another way of addressing whatever the task is with particular approach to satisfy less expensive or more efficient procedures. The School Board has not had that conversation yet and the budget needs to be approved before April 1, 2010.

Mr. Fuentes stated that the end-of-the-year monies in the fund balance can be kept up to \$500,000 in undesignated funds and additional funds must be for CIP projects. Could we come up with formulas that allow W-JCC to keep an additional \$250,000?

Discussion followed regarding end-of-the-year monies. Mayor Zeidler stated that if the school division can save \$2 million, then perhaps it has too much money. Mr. Nickols stated that the bottom line is the success of children and their education. Where do we take the money from that will keep and sustain the gains we have made? Ms. Emanuel noted that they are exploring virtual summer school.

The auxiliary gym at Jamestown High School was discussed. Some felt it was an equity issue with Lafayette and Warhill High Schools. Mr. Wanner clarified that the County was going to build a community center between Lafayette and Warhill High Schools. It could be accessed and used by both as an auxiliary gym, but it has been put in "park."

Ms. Jones noted that that there seems to be a lot of evidence placed on funding. The cost per student doesn't always equate to the quality of an education. It was noted that this will be the last year of stimulus funds. Decisions will have to be made on what services can be continued. Federal stimulus monies were for enhancements over and above what is mandated. The Individual Education Plans must be met.

Mr. McGlennon stated that we need to look for new ways to do things. The State sets certain standards and schools choose to have higher standards. We have to ask what we are willing to pay. Choices need to be made by local government. Dr. Alewynse stated it would be interesting to see whether there's a measureable impact on the quality of education as a result of the budget cuts.

Mayor Zeidler stated that she supported and trusted the School Board to fund and keep in place programs that are effective for the children and eliminate those that are not through assessment and evaluation.

The Boards recessed from 10:31 a.m. to 10:40 a.m.

2. Redistricting

Mr. Nickols gave a brief summary of the redistricting process to date. Mayor Zeidler asked what has driven the changes (capacity). There was discussion on capacity issues at Rawls Byrd, J. Blaine Blayton, and Matthew Whaley Elementary Schools.

Ms. Larson asked the County to provide a list of neighborhoods that are in negotiations with the Board of Supervisors on lots they can develop and developments that could take place soon. She also explained that at Matthew Whaley, there are no pull-out areas. We have to make sure we are not over-utilizing the building.

Mr. Fuentes noted that he has done several math models that involved neighborhoods along the News Road area and around the Longhill corridor. He also noted that no one will be happy with the decisions he's made.

The School Board will approve the rezoning for the elementary and middle schools at its April 13, 2010, meeting.

Ms. Koch noted that the community wanted the School Board to establish criteria and the issue is that the three criteria conflict. The public wants to keep neighborhoods intact and multiple movements should be avoided. Ms. Emanuel added that the City of Williamsburg cannot be considered one neighborhood, which is why the Board specified separation by natural boundaries and thoroughfares.

Mr. Freiling suggested that in future redistricting, the proposed first maps should be vetted before they are released to the public. Ms. Larson responded that perhaps staff could review the proposed maps before they are brought to the Board with potential problems.

Ms. Knudson questioned the value of paying a consultant when the School Board did most of the work. School Board members responded that outside consultants give an independent opinion; the three criteria were not weighted in the first set of maps; and, redistricting is a mathematical process, but there is also a human relations aspect.

Ms. Emanuel also noted that the School Board is working on the elementary school maps and addressing ills created in the last redistricting. She is also concerned about creating a big free and/or reduced lunch population at Berkeley Middle School with the middle school maps. Increased enrollment in an expanded Academy for Life and Learning (ALL) Academy was discussed. Dr. Alewynse noted that the ALL Academy costs about 1.5 times what a conventional school does. There needed to be a conversation on the worthiness of the program vs. the cost.

Mayor Zeidler said that she was confident the School Board will create the best environment possible for teaching and learning in all schools.

Ms. Larson thanked Mayor Zeidler for her years of service on the School Board and City Council. Mr. Wanner was recognized for his years of service to the schools and County.

E. ADJOURNMENT

Mr. Freiling made a motion to adjourn the meeting. Mr. Haulman seconded the motion, which carried unanimously. The City Council adjourned at 11:27 a.m.

Mr. McGlennon made a motion to adjourn.

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

At 11:27 a.m. the Board of Supervisors adjourned until 4:00 p.m. on March 23, 2010.

Ms. Larson made a motion to adjourn the meeting. Ms. Koch seconded the motion, which carried 7:0.

The School Board adjourned at 11:27 a.m.

Sanford B. Wanner
Clerk to the Board

**AT A WORK SESSION OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY,
VIRGINIA, HELD ON THE 23RD DAY OF MARCH 2010, AT 4:00 P.M. IN THE COUNTY
GOVERNMENT CENTER BOARD ROOM, 101 MOUNTS BAY ROAD, JAMES CITY COUNTY,
VIRGINIA.**

A. ROLL CALL

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

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

B. BOARD DISCUSSIONS

1. Joint Work Session with the Planning Commission – Zoning Ordinance Update Process

Mr. Reese Peck called the Planning Commission to order. In attendance from the Planning Commission were Mr. Al Woods, Mr. Jack Fraley, Mr. Reese Peck, Mr. Rich Krapf, Mr. Joe Poole, Mr. Chris Henderson, and Mr. Mike Maddocks.

Mr. Allen Murphy, Planning Director, gave an overview of the Zoning Ordinance update methodology draft and process. He noted that after several options were presented for an update methodology process for budgeting purposes and the Board chose Option B as the best alternative. He commented that staff responded to feedback from the Planning Commission and focused on community input during the ordinance update process. He stated that in order to accommodate ordinance review during Policy Committee meetings, the timeline for the ordinance update process was extended two additional months to 20 months. Mr. Murphy commented that the draft methodology distributed to the Board and Commission for the work session meeting comprised of implementation plans over the next 24 months. He noted that additional implementation actions would take place outside of that time frame. He stated that the purpose of the methodology was to ensure that the zoning ordinance updates reflected the Comprehensive Plan, that the ordinance was organized effectively, that clear standards were incorporated, that best practices were used, and that the ordinance links to other sections of the Code. He indicated that staff had asked the Policy Committee to select a smaller number of high-priority items to move forward in advance of other items if needed. He stated the Policy Committee met on March 17, 2010, and recommended the following priorities: cumulative impact database setup, a sustainability audit, a review of all development standards, including the sign ordinance, commercial and business districts, and the new Economic Opportunity designation. Mr. Murphy stated that the goal of this stage in the process was to come up with a comprehensive list of issues to identify options for consideration, which would come before the Policy Committee, Planning Commission, and Board of Supervisors for guidance. He noted that community input would be available at this stage in the process through two public forums and a joint work session. He noted there would also be public meetings in the eight-month period of Stage One that would allow public input. He commented that Stage Two would take about nine months, during which guidance would be considered while drafting proposed ordinance language. He commented that work sessions would be held during this time frame. He concluded that the final stage consisted of adoption of

the ordinance language and estimated that to take approximately four months. He stated that the process would allow for priority items to move forward as they were completed. He noted that a summary of recommendations included in the package would be discussed by Mr. Fraley.

Ms. Tammy Rosario, Principal Planner, discussed transparency and community input strategies related to the updates. She commented that various resources would be used to incorporate citizens into the process including publications and public notice advertisements for meetings, JCCTV48 broadcasting, educational pieces on zoning topics, televising Board of Supervisors and Policy Committee meetings, and a web presence on the County website. She noted that regular communication with the public was part of the timeline and that staff would post meeting and educational materials online. She commented that the outreach program was intended to be broad-based, varied, and frequent; and everyone was encouraged to provide input at the two Planning Commission forums. She noted additional opportunities to speak during public comment periods and the possibility of guest speakers at Policy Committee meetings for more focused discussion and the availability of web forms and email postal addresses for written comments.

Mr. Jack Fraley discussed more opportunities for community input. He commented that the Planning Commission and staff were aligned on the priorities that were presented. Mr. Fraley also noted that a majority of the costs would go toward the consulting work for the cumulative impact modeling and transfer of development rights information. He also commented that the Planning Commission and staff should ensure that there is a proper understanding about Board guidance in relation to rural lands.

Mr. Goodson stated that he felt that the Board should do additional work to provide proper guidance on rural lands in relation to the transfer of development rights and the cluster ordinance. He stated that the Board members should confer to give guidance to the Policy Committee and staff on these issues. He stated that rural lands matter in relation to residential by-right uses should be deferred and revisited later in the process for more specific guidance. He commented that the Board should have additional discussion about commercial operations in rural lands.

Mr. McGlennon commented that he did not agree with removing a portion of rural lands.

Mr. Goodson clarified that he meant to give more specific guidance on these particular parts.

Mr. Icenhour expressed concern about key points from Option A that were not included in this option due to funding. He asked for information about what was going to be eliminated or deferred from an extended time period.

Discussion was held on the scope of work to be covered over the next two fiscal years and the possibility of accessing modeling and simulation software to assist staff with cumulative impact assessment. The Board and Commission discussed how to address pertinent issues that were not part of the scope. Discussion was held about wireless communication facilities and various technologies that could be used.

Discussion was held about when the process would begin. Mr. Murphy explained that the methodology would be presented to the full Planning Commission before the process could begin.

Discussion was held about how sustainability would be implemented into the ordinance updates.

Mr. Kennedy recessed the Board for a brief break at 4:53 p.m.

At 5:03 p.m. Mr. Kennedy reconvened the Board.

2. Secondary Street Acceptance Requirements

Mr. Steven Hicks, Manager, Development Management, reviewed the Virginia Department of Transportation (VDOT) Secondary Street Acceptance Requirements which took effect July 1, 2009. He reviewed the major changes including area changes, connectivity requirements, network additions, pedestrian facility requirements, and the option for third-party inspection. He reviewed the connectivity index and challenges for access and connectivity.

Discussion was held about how the exceptions for the new requirements, such as conservation easements, and investigating how some County conservation easements, including Purchase of Development Rights properties, could be arranged to qualify. Discussion was held regarding how the new requirements would affect neighborhoods and possibly cause unwanted connections in order to be part of the VDOT roadway network and maintenance. Discussion was held about the need to pave roads in order for developers to meet the requirements.

Mr. Hicks noted that there was an advisory committee which discusses implementation of the standards for specific cases.

Mr. Goodson emphasized the need for public awareness of the future interconnectivity of the streets.

Mr. Hicks stated that it would be made apparent.

Discussion was held about the possibility of roads reverting back to private roads.

Mr. Rogers commented on the difficulty in maintaining a surety from a developer until a connection road was built.

Discussion was held regarding the protections provided for the County in the subdivision ordinance and the design requirements for public streets based on VDOT standards for acceptance. Discussion was held about the possible implications or culpability for using third-party inspections due to reduced VDOT permitting staff if a road was faulty.

Discussion was held about the steps being taken to gradually devolve maintenance and construction responsibilities for secondary roads by local governments and about an education program for residents related to this program.

C. BREAK

At 5:34 p.m. the Board broke for dinner.

Sanford B. Wanner
Clerk to the Board

AT A REGULAR MEETING OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE 23RD DAY OF MARCH 2010, AT 7:00 P.M. IN THE COUNTY GOVERNMENT CENTER BOARD ROOM, 101 MOUNTS BAY ROAD, JAMES CITY COUNTY, VIRGINIA.

A. ROLL CALL

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

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

B. MOMENT OF SILENCE

C. PLEDGE OF ALLEGIANCE – Rhys Williams, a tenth-grade student at Lafayette High School, led the Board and citizens in the Pledge of Allegiance.

D. HIGHWAY MATTERS

Mr. Todd Halacy, Virginia Department of Transportation (VDOT) Residency Administrator, gave an update on pothole repairs in the County and noted that the goal was to have all the potholes repaired in the near future.

Mr. Goodson asked about using a permanent pothole mix for permanent concrete fixes.

Mr. Halacy stated that the permanent pothole mix was being used at this point due to warmer weather.

Mr. McGlennon thanked Mr. Halacy for attending a meeting of the Powhatan Shores Homeowners Association related to tidal flooding and discouraging traffic during high water events. He noted that potholes, gatoring, and dips were occurring between Holly and Perry Roads in the greater Kingswood area.

Mr. Halacy stated that crews were in that area repairing potholes at this time and the dip would be repaired in a week or so. He said more details would be available shortly.

Mr. McGlennon stated that in the near future the incomplete work would be addressed at Jamestown Road and Winston Drive.

Mr. Halacy stated that it was going to be scheduled once the pothole patching was completed.

Mr. Icenhour commented on cracks in the pavement near Neighbors Drive and Route 60 and requested follow-up.

Mr. Halacy stated that he would investigate this issue.

E. PUBLIC COMMENT

1. Mr. Bob Spencer, 9123 Three Bushel Drive, on behalf of the James City County Citizens Coalition (J4Cs), commented on the upcoming zoning ordinance update and requested citizen participation in the process.

2. Mr. William Halteman, 109 Randolph's Green, commented that the Historical Commission was not fulfilling its mission. He commented that the by-right cellular facility tower in Kingsmill was threatening historic artifacts on the site. He stated the historic site and property values would be affected by the cell tower construction. He commented on funds spent on the Kingsmill cellular facility issue and stated that the staff facilitated approval for the tower.

3. Mr. Ed Oyer, 139 Indian Circle, commented on the fuel and maintenance costs of County vehicles; student enrollment deficit and the school budget; overall direction of the County; and derelict property on Indian Circle.

4. Mr. Robert Richardson, 2786 Lake Powell Road, commented on public input and participation on the zoning ordinance update. He commented that Rural Lands and the cellular tower issues should be of the highest priority in the ordinance updates.

5. Ms. Jacqueline Griffin-Allmond, 1704 Treasure Island Road, Gospel Spreading Church, commented that she had contacted the Board regarding the Agricultural and Forestal District (AFD) and its ownership and that she had not yet received any response.

F. PRESENTATION – 2010 Citizen Leadership Academy (CLA) Graduation

Ms. Tressell Carter, Neighborhood Connections Director, assisted by the Board of Supervisors, presented certificates to the graduates of the 2010 Citizen Leadership Academy: Manfred Fenger, Diana Fenger, David Haggingsom, Mary Smallwood, Heather Cordasco, Amy Ritchie, Sandra Jimmison, Jackie Jones, Gwen Schatzman, Elizabeth Snyder, Crystal Boyce, Latrice Boyce, Cherry James, Constance Cook-Hudson, Alexander Frazier, Sr., Valerie Partlow, Annie Lee, Del Humphreys, and Mary Brett Wright.

G. CONSENT CALENDAR

Mr. Goodson made a motion to adopt the items on the Consent Calendar.

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

1. Minutes – March 9, 2010, Regular Meeting

- 2. Contract Award – Architectural Services for Law Enforcement Center Renovation to Fire Administration Headquarters and Training Center – \$136,600

RESOLUTION

CONTRACT AWARD – ARCHITECTURAL SERVICES FOR LAW ENFORCEMENT CENTER

RENOVATION TO FIRE ADMINISTRATION HEADQUARTERS AND

TRAINING CENTER – \$136,600

WHEREAS, a Request for Proposals (RFP) for architectural services for the renovation of the Law Enforcement Center to Fire Administration Headquarters and Training Center was publicly advertised and staff reviewed proposals from 15 firms interested in performing the work; and

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

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby awards the \$136,600 contract for architectural services to renovate the Law Enforcement Center to Fire Administration Headquarters and Training Center to Guernsey Tingle Architects.

- 3. Appropriation of Insurance Proceeds – \$33,908

RESOLUTION

APPROPRIATION OF INSURANCE PROCEEDS - \$33,908

WHEREAS, James City County is committed to protecting County assets and replacing destroyed assets in an efficient manner; and

WHEREAS, James City County Police Department Vehicle No. 062907 was destroyed in an accident on December 25, 2009; and

WHEREAS, the actual cash value including equipment, less the deductible, of Vehicle No. 062907 has been recovered from the Virginia Association of Counties (VACo) Risk Management Programs; and

WHEREAS, the insurance proceeds recovered will be used for a replacement Police vehicle and equipment.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the following appropriations of recovered funds:

Revenue:

Insurance Recovery	<u>\$33,908</u>
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Expenditure:

Police Vehicle	<u>\$33,908</u>
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H. PUBLIC HEARINGS

1. Conveyance of Real Property at 134 Neighbors Drive

Ms. Marion Paine, Office of Housing and Community Development (OHCD), requested the Board to approve a conveyance of real property at 134 Neighbors Drive to Mr. Gil G. Gilley in exchange for property at 120 Forest Heights Road. Ms. Paine explained that based on a conceptual plan for improvements to and redevelopment of the Forest Heights Road/Neighbors Drive area in conjunction with the proposed Forest Heights Neighborhood Improvement Project, the County must acquire 120 Forest Heights Road to construct a road connecting Forest Heights Road to Neighbors Drive. The property at 120 Forest Heights Road is a 0.121-acre unimproved lot owned by Mr. Gilley. Mr. Gilley was preparing plans to build a home at 120 Forest Heights Road when the OHCD asked to purchase the lot. Mr. Gilley consented to exchange this lot for the 0.112-acre unimproved lot at 134 Neighbors Drive if the exchange would not unduly delay his plans to build. The assessed values of 134 Neighbors Drive and 120 Forest Heights Road are the same.

To facilitate the exchange, the County purchased 134 Neighbors Drive in early March 2010 through OHCD and is prepared to convey the property to Mr. Gilley in exchange for 120 Forest Height Road.

Staff recommended approval of the resolution.

Mr. Kennedy opened the Public Hearing.

Mr. Kennedy noted that Mr. Reese Peck was in attendance.

As no one wished to speak to this mater, Mr. Kennedy closed the Public Hearing.

Mr. McGlennon made a motion to adopt the resolution.

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

RESOLUTION

CONVEYANCE OF REAL PROPERTY AT 134 NEIGHBORS DRIVE

WHEREAS, James City County owns certain real property identified as Parcel No. 3220500001 on the James City County Real Estate Tax Map, more commonly known as 134 Neighbors Drive (the "Property"); and

WHEREAS, the County desires to transfer ownership of the Property to Mr. Gil G. Gilley in exchange for real property owned by Mr. Gilley and identified as Parcel No. 3220400005 on the James City County Real Estate Tax Map, more commonly known as 120 Forest Heights Road; and

WHEREAS, the Board of Supervisors of James City County, following a public hearing, is of the opinion that the County should exchange properties with Mr. Gilley.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby authorize and direct the County Administrator, to execute a deed of exchange and any other documents needed to transfer to Mr. Gilley 134 Neighbors Drive and to accept title from Mr. Gilley for 120 Forest Heights Road.

2. Ordinance Amendments to Chapter 12, Licenses

Ms. Lindsey Craven, County Attorney's Office Intern, explained that the ordinance amendment addressed Chapter 12, Licenses, to make revisions to four sections of the ordinance which address fines and penalties for failure to comply with licensing requirements in order to bring the Code into compliance with the Code of Virginia. She stated the amendments would assign a penalty of a Class 3 misdemeanor rather than the fine amounts that were currently listed in the ordinance. She commented that in Section 12-13, there was a possibility of a Class 2 misdemeanor. She said the proposed revision to assign the Class 3 misdemeanor penalty could possibly increase the maximum fine from \$300 to \$500. She recommended adoption of the amendments.

Mr. Goodson asked if under current ordinance requirements, noncompliance would require payment of a fine but the penalty would not require the violator to go to court.

Ms. Craven stated that was correct. She commented that the amendments clarify the charge that would require the input of a judge or jury that is referenced in part of the ordinance.

Mr. Goodson asked if this was typical for this type of violation. He said that typically a corporation would make an application for a business license. He asked if the corporation would be held accountable for a violation or if an employee would be liable for a criminal charge.

Ms. Craven stated that she believed it would be the individual responsible for the business.

Mr. Goodson stated that he thought these fines would be assessed against a company rather than an individual.

Mr. Rogers stated that these fines were authorized by State Code for failures to file. He said the ordinance was adopted decades ago and a section to address fines was incorporated. He noted this amendment was bringing the ordinance into compliance with State Code. He stated a corporation could be liable for a criminal penalty as well as a civil penalty, and the judges have the authority to assess fines up to \$500 but no jail time was required for a Class 3 misdemeanor.

Mr. Goodson asked if there could be a fine without a misdemeanor.

Mr. Rogers stated that there could be, but that is not authorized by State Code.

Mr. Goodson stated that the language had to be brought into compliance.

Mr. McGlennon clarified that the language indicated that someone could be confined to jail for 30 days, but with these revisions that would eliminate the jail time.

Ms. Craven stated that was only part of Section 12-13 which could possibly require jail as a penalty and the State Code notes that if a fine related to the infraction was \$1,000 or less, the highest possibly punishment was a Class 3 misdemeanor, which does not include jail time.

Mr. Kennedy opened the Public Hearing.

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

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

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

I. BOARD CONSIDERATIONS

1. James City County Sustainable Building Policy

Mr. John Horne, General Services Manager, stated that the resolution before the Board would institute a policy of the Board of Supervisors through an Administrative Regulation incorporated by the County Administrator. He stated the policy was in accordance with the Cool Counties Declaration to help reduce greenhouse gas production in County facilities. He stated that this policy would only affect County public facilities. He stated that many jurisdictions in Virginia and around the country have adopted similar policies. He stated that this was not an ordinance or law, but it directs staff in construction of buildings. He stated the goal for building construction as silver-level Leadership in Energy and Environmental Design (LEED) certification, which seemed to be the industry standard for most jurisdictions. He noted that for residential structures, the program was Earthcraft Virginia, which would be used through the Office of Housing and Community Development. He noted that there was discretion granted to the County Administrator to vary from the policy for a particular project to allow flexibility. He commented that the site section of the policy was less quantitative than the LEED section, so general provisions were cited from the Comprehensive Plan and other environmental policies. He commented that based on national research, these provisions would result in two to five percent in overall cost increase for LEED certification. He commented that LEED certification components were being implemented in most well-designed buildings at this time, but there would be approximately 20 to 30 percent energy conservation over buildings that meet basic code requirements. He recommended adoption of the resolution. He commented that the Police headquarters which was under design-build construction would meet or exceed silver-level LEED certification and the Warhill Community Gymnasium was being designed to meet silver-level LEED certification.

Mr. McGlennon made a motion to adopt the resolution.

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

RESOLUTION

JAMES CITY COUNTY SUSTAINABLE BUILDING POLICY

WHEREAS, the James City County Board of Supervisors has adopted the Cool Counties Declaration by a resolution dated September 25, 2007; and

WHEREAS, that declaration states the County's intention to take actions to reduce greenhouse gas emissions from County operations and facilities; and

WHEREAS, energy use from construction and operation of buildings accounts for approximately 50 percent of greenhouse emissions in the United States; and

WHEREAS, sustainable site design can help protect County natural resources from pollution and damage; and

WHEREAS, the Board of Supervisors wishes to demonstrate to the community the County's leadership in sustainable facility design.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby adopts the James City County Sustainability Policy and instructs the County Administrator to promulgate the appropriate administrative regulations to implement this policy.

2. Forest Heights Neighborhood Improvement Project – Community Development Block Grant Application – \$1.4 Million

Mr. Rick Hanson, Office of Housing and Community Development Director, commented that the OHCD staff began an assessment of the housing and infrastructure improvement needs of a 68-acre residential area which includes properties along Forest Heights Road, Neighbors Drive, and Richmond Road between the Prime Outlets Mall and Wellesley Boulevard. This assessment was conducted in accordance with guidance from the VDHCD. A Project Management Team was established, and a public meeting was held in June to identify neighborhood assets and improvement needs, the most critical of which were narrow unpaved roads and drainage problems. A neighborhood survey was completed by 47 of 49 residents of the study area which provided household characteristics, housing repair needs, and neighborhood improvement needs information. A letter requesting a CDBG Project Planning Grant was sent to VDHCD along with the survey results, preliminary housing and infrastructure assessment reports, and a site conditions map. The VDHCD awarded a \$25,000 Project Planning Grant to the County in the fall of 2009. Project Planning Grant funds were used to hire AES Consulting Engineers to complete an inventory and analysis, including a drawing illustrating site opportunities and constraints; design alternative sketches addressing roadway design, stormwater management and drainage, utilities, utilization of vacant properties, lighting, landscaping open space, pedestrian access, and resource protection areas; review alternatives with citizens and staff; and preparation of a preliminary engineering report including cost estimates. The design alternatives focused on the Forest Heights Road and Neighbors Drive areas, as well as the adjacent site of the proposed Salvation Army facility.

After a review by the Project Management Team, County staff, neighborhood residents at a December 2009 public meeting, the Chesapeake Bay Wetlands Board, and the Planning Commission's Development Review Committee, a preferred alternative plan for development of paved roads, stormwater management and drainage facilities, preservation of open space, and property resubdivision was selected. The concept plan proposes redevelopment through a combination of boundary line adjustments, property acquisition, and resubdivision within a 37.8-acre redevelopment area. A rezoning or residential cluster Special Use Permit (SUP) will be required to permit the resubdivision which will bring many of the currently nonconforming parcels into conformance with the County's zoning ordinance.

OHCD staff inspected most of the homes in the study area to project estimates of cost of housing rehabilitation and/or replacement, consulted with Real Estate Assessments and contacted property owners to estimate property acquisition and relocation expenses, and utilized the construction cost estimates prepared by

AES Consulting Engineers to establish an estimate of the overall cost of the neighborhood improvement project for the planning study area. Based on this analysis, staff determined that implementation of this project will require property acquisition and rezoning of the 37.8-acre redevelopment area to be completed upfront but that the infrastructure construction and housing improvements could be phased based on the availability of CDBG, James City County, and other sources of funding.

The proposed first phase of the project is the Forest Heights Neighborhood Improvement Project. This project is proposed to include the housing improvement, property acquisition and boundary line adjustment, and infrastructure improvement activities listed on the attached CDBG Project Activity Summary. In this first phase, Forest Heights Road would be upgraded to meet VDOT standards and the connector road between Forest Heights Road and the existing Neighbors Drive, the turn lane from Richmond Road at the Forest Heights intersection, and the Best Management Practice (BMP) adjacent to Forest Heights Road would be constructed. The Forest Heights Neighborhood Improvement Project Budget identifies sources and uses of the CDBG, local, State, Federal, and private funds required to finance this project. The local share of \$1,094,522 indicated in the project budget and in the resolution is to be provided from the County's Community Development Fund. The Community Development Fund allocation consists of current fund balance, projected income including the proceeds of the sale of 4001 Rochambeau Drive, and the requested General Fund allocation of \$100,000 in FY 2011 and FY 2012 to the Housing Fund.

Staff recommends approval of the resolution authorizing the submission of a Community Development Block Grant application to undertake the Forest Heights Neighborhood Improvement Project.

Mr. Icenhour commented that this street was very narrow. He asked if any of the houses would need to be moved due to being too close to the roadway.

Mr. Hanson stated that two houses would need to be moved. He commented that there would be an exchange agreement with the Salvation Army to make the lots deeper and the property line boundaries would be adjusted. He commented that two homes would need to be purchased and demolished since they would be too close to the road, and one rental home and a camper would need to be relocated.

Ms. Jones asked if the property owners were aware of the impact and the possibility of relocation.

Mr. Hanson stated that this has been discussed with the property owners.

Mr. Kennedy commented on issues with Ironbound Square because property owners felt that they were not adequately informed. He asked if any of the property owners had signed off that this had been disclosed to them.

Mr. Hanson stated that there was a form that has been signed by some property owners that had an interest in this project.

Mr. Kennedy asked if condemnation was part of this project.

Mr. Hanson stated that it was not anticipated to be required in this case and that staff would work with property owners to reach an agreement.

Mr. Kennedy asked if those who would need to be relocated would have a mortgage payment or an exchange.

Mr. Hanson stated that the current law requires that the property owner would need to be made whole.

Mr. Kennedy asked at what point the matter would become binding for property owners.

Mr. Hanson stated that the funds would need to be received before the project could move forward. He stated that the Federal statutes for relocation would be followed.

Mr. Icenhour commented that this was an application for a competitive block grant. He asked about the probability of receiving the funds.

Mr. Hanson stated that he did not know, but this was a competitive project.

Mr. Icenhour commented that this would require a rezoning or an SUP. He asked Mr. Hanson to explain to the Board the preferred options since this matter would come back before the Board.

Mr. Hanson stated it was not possible to do this project in the current zoning due to nonconformance. He stated that either a rezoning or an SUP would be required, or staff would likely pursue the cluster subdivision provision.

Ms. Jones asked about the timeline of the project.

Mr. Hanson stated that he wished to work with property owners from this time until the funds became available.

Mr. Wanner asked when the office would find out if the funds were going to be granted.

Mr. Hanson stated the notification would come forward in June and the Board would need to accept the funds as well.

Ms. Jones commented that she hoped staff would make sure the community was informed and in favor of the direction of the project to avoid conflict later on in the process.

Mr. Hanson stated that staff has held positive meetings with the community and the process would continue.

Mr. Wanner asked for additional history on this project.

Mr. Hanson stated that the community expressed a need to improve the road over a decade ago, but this was not addressed earlier because there was not a unanimous agreement for voluntary right-of-way. He stated that there were many people on Forest Heights Road who have been anxious to have this project completed. He stated that the boundary line adjustments would mitigate some of the issues that would result from the road widening.

Ms. Jones stated that she agreed with the idea of a signed acknowledgement that the information has been disclosed to the citizens.

Mr. Icenhour agreed that everyone in the neighborhood should be fully informed. He stated that he attended the second public meeting and that there was good dialog. He noted that these were private, gravel roads and the neighborhood had to take care of them. He stated that it was difficult for the neighborhood to

maintain the roads, and stormwater improvements would be incorporated with this project. He stated this project would be an enhancement to the community.

Mr. Kennedy commented that in Ironbound Square, different groups of heirs for properties created some issues, so he wished to have proper documentation.

Mr. Goodson asked if properties near Prime Outlets would be moved and addressed as well.

Mr. Hanson stated that the study encompassed a larger area, but the area near Forest Heights was the focus. He stated that in the future, if a second block grant was sought, improvements could be done for the relocation of Neighbors Drive. He stated the land use application would apply to the entire 38-acre property around Neighbors Drive.

Mr. Goodson asked if residents of the study area would be given priority to houses in the new development.

Mr. Hanson stated this could be considered.

Mr. Icenhour made a motion to adopt the resolution.

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

RESOLUTION

FOREST HEIGHTS NEIGHBORHOOD IMPROVEMENT PROJECT -

COMMUNITY DEVELOPMENT BLOCK GRANT APPLICATION - \$1.4 MILLION

WHEREAS, financial assistance is available to units of local government through the Commonwealth of Virginia Community Development Block Grant (VCDBG); and

WHEREAS, two public hearings were advertised in a newspaper with general circulation in the County, notices of the public hearings were mailed to the project area residents, and the two hearings were held on January 21, 2010, and March 15, 2010, regarding this application, in compliance with VCDBG requirements; and

WHEREAS, James City County wishes to apply for \$1,400,000 in VCDBG funds to be used in undertaking a multiyear Comprehensive Community Development Project in the designated Forest Heights Neighborhood Improvement Project Area; and

WHEREAS, \$1,094,522 in local funds are allocated to the project, \$72,500 in Federal funds, and \$270,000 in private funds will be expended on this project; and

WHEREAS, the project is anticipated to benefit 56 persons, of which 45 are low- and moderate-income, by providing public roads, stormwater management, property clearance, development of a multiuse path, and a community park, and to benefit 37 low- and moderate-income persons by providing

new homeownership opportunities, and housing rehabilitation, replacement, or relocation assistance which will meet the national objective of providing benefits to persons of low- and moderate-incomes.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, pursuant to two public hearings, the County of James City, Virginia, hereby wishes to apply for \$1,400,000 of Virginia Community Development Block Grant Funds for the Forest Heights Neighborhood Improvement Project.

BE IT FURTHER RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the County Administrator to sign and submit appropriate documents, including an application with all the understandings and assurances contained therein, and to provide such additional information as may be required for the submittal of the Virginia Community Development Block Grant proposal.

J. PUBLIC COMMENT

1. Ms. India Johnson, 115 Forest Heights Road, commented that she was not in favor of the Forest Heights redevelopment project. She stated that she was subject to relocation under this project and she wished to stay in her home. She commented that not everyone in the community approves of this project.

2. Mr. Robert Richardson, 2786 Lake Powell Road, commented on sustainability in the zoning ordinance update process. He commented on water rates for the brewery and asked to pass on the bulk rate savings to the commercial development. He commented on the need to address reducing or restricting residential growth and encourage industrial growth for tax revenue diversification.

3. Mr. Ed Oyer, 139 Indian Circle, commented on the corner of Springs Road and Route 60 with a derelict building with debris inside and a merchandise stand in front of the building.

K. REPORTS OF THE COUNTY ADMINISTRATOR

Mr. Wanner stated that there was a scheduled Closed Session appointment to be made, but he recommended doing so in open session. He stated that when the Board completed its business, it should recess to 5 p.m. on April 13, 2010, for a work session for Executive Search Services. He stated the JCSA Board of Directors should hold a meeting following the meeting of the Board of Supervisors. He commented that staff was aware of the property Mr. Oyer referenced and the garage sales taking place there and would address the matter. He also addressed the Historical Commission comments from Mr. Halteman and stated that this type of archaeological work was outside the Historical Commission's scope.

L. BOARD REQUESTS AND DIRECTIVES

Mr. Goodson made a motion to reappoint Mr. John Hughes to a five-year term on the Wetlands Board and Chesapeake Bay Board, term to expire on March 31, 2015.

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

Ms. Jones commented that she was disappointed that the citizen who spoke during public comment was not in favor of the Forest Heights CDBG project. She stated that the Board and staff should make sure that citizens know what will happen with their homes before moving forward on these matters. She stated her concern that staff was not making the possibilities clear enough to residents.

Mr. Kennedy stated that he agreed with Ms. Jones and that he was still willing to move forward with the grant, but he was disappointed that citizens were unhappy with the plan.

Mr. McGlennon stated that he agreed with Mr. Kennedy and Ms. Jones. He stated that citizens should be aware of the consequences of the projects that will affect their neighborhood. He commented that it should be recognized that disputes over property exist and he felt that the project should not be halted before every avenue was examined.

Ms. Jones stated that she wanted full clarity. She stated she did not want to assume that there were no condemnation issues when people come forward and say that is not the case.

Mr. Kennedy stated that he believed that in these sensitive areas, staff needed to be sure that the project and the consequences were clear to the property owners. He stated that staff should make sure that everything is documented and signed.

M. RECESS to 5 p.m. on April 13, 2010.

At 8:22 p.m. Mr. Kennedy recessed the Board.

Sanford B. Wanner
Clerk to the Board

MEMORANDUM

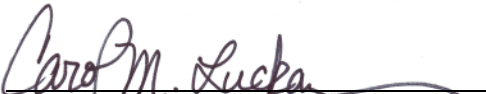
DATE: April 13, 2010
TO: The Board of Supervisors
FROM: Carol M. Luckam, Human Resource Manager
SUBJECT: Resolution of Recognition - James City County Volunteer Appreciation Week, April 18-24, 2010

As we approach National Volunteer Week, to be held April 18–24, 2010, we ask you to honor James City County’s volunteers who tirelessly share their time and talents with those in need. Your support can challenge and encourage the people you represent to commit to sustained and future volunteer service.

National Volunteer Week is about honoring and recognizing individuals who have made a difference in our communities and calling the public’s attention to all that they do to improve our communities.

During 2009, over 238 people volunteered their time and talents to the County. Together they contributed more than 63,920 hours of service which represents an added value of \$1,312,278.

Staff recommends adoption of the attached resolution, designating April 18–24, 2010, as Volunteer Appreciation Week.


Carol M. Luckam

CML/nb
VolunteerAW10_mem

Attachment

RESOLUTION

RESOLUTION OF RECOGNITION - JAMES CITY COUNTY

VOLUNTEER APPRECIATION WEEK, APRIL 18-24, 2010

- WHEREAS, April 18-24, 2010, has been designed as National Volunteer Appreciation Week; and
- WHEREAS, National Volunteer Appreciation Week is about inspiring, recognizing, and encouraging people to seek out imaginative ways to engage in their communities; and
- WHEREAS, volunteers work in partnership with James City County staff and in 2009 contributed 63,920 hours valued at \$1,312,278; and
- WHEREAS, during this week all over the nation, service projects will be performed and volunteers recognized for their commitment to service; and
- WHEREAS, the citizens of James City County are deserving of recognition for their commitment and hard work to make a real difference in the lives of their fellow citizens.
- NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby designates the week of April 18-24, 2010, as Volunteer Appreciation Week and calls its significance to all of our citizens.

James G. Kennedy
Chairman, Board of Supervisors

ATTEST:

Sanford B. Wanner
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 13th day of April, 2010.

VolunteerAW_res


MEMORANDUM


DATE: April 13, 2010
TO: The Board of Supervisors
FROM: William T. Luton, Fire Chief
Emmett H. Harmon, Chief of Police
SUBJECT: Resolution of Recognition – Public Safety Telecommunications Week, April 11–17, 2010

Across the nation in times of intense personal crisis and community-wide disasters, the first access point for those seeking all classes of emergency services and homeland security information is 9-1-1. The local and County public safety communications centers that receive these calls have emerged as the first and single point of contact for persons seeking immediate relief during an emergency.

Every year, the second week of April is set aside as National Public Safety Telecommunications Week recognizing the efforts of our Emergency Communication Officers. During this week, the James City Emergency Communications Center will be coordinating media activities and sponsoring events to recognize the services by our Emergency Communication Officers every day in our community.

Staff recommends approval of the attached resolution proclaiming the week of April 11–17, 2010, as Public Safety Telecommunications Week.


William T. Luton


Emmett H. Harmon

CONCUR:


Sanford B. Wanner

WTL/EH/nb
PubSafTelWk_mem

Attachment

RESOLUTION

RESOLUTION OF RECOGNITION –

PUBLIC SAFETY TELECOMMUNICATIONS WEEK, APRIL 11–17, 2010

WHEREAS, emergency communications is a vital public service; and

WHEREAS, when an emergency occurs, the prompt response of law enforcement officers, firefighters, and paramedics is critical to the protection of life and preservation of property; and

WHEREAS, Public Safety Communication Officers are the first critical contact our citizens have with emergency services; and

WHEREAS, the safety of our law enforcement officers, firefighters, and paramedics is dependent upon the quality and accuracy of information obtained from citizens who telephone the James City County Emergency Communications Center; and

WHEREAS, Public Safety Communication Officers of James City County have contributed to the apprehension of criminals, suppression of fires, and treatment of patients; and

WHEREAS, it is appropriate to recognize the value and the accomplishments of public safety communication officers.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby recognizes this event and proclaims the week of April 11–17, 2010, as Public Safety Telecommunications Week.

James G. Kennedy
Chairman, Board of Supervisors

ATTEST:

Sanford B. Wanner
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 13th day of April, 2010.

PubSafTelWk_res

MEMORANDUM

DATE: April 13, 2010
TO: The Board of Supervisors
FROM: Bart J. Johnson, Risk Management Director
SUBJECT: Appropriation of Insurance Proceeds - Police Department - \$3,429

On February 18, 2010, a James City County Police vehicle was involved in an automobile accident resulting in a total loss to the automobile. An insurance claim was filed against the other driver's insurance company and reimbursement was obtained in the amount of \$3,429 based on the actual cash value of the 1998 Ford Crown Victoria and equipment.

Staff recommends adoption of the attached resolution appropriating these proceeds toward the purchase of a replacement automobile.

Bart J. Johnson

CONCUR:

John E. McDonald

BJJ/nb
InsurPropApp_mem

Attachment

RESOLUTION

APPROPRIATION OF INSURANCE PROCEEDS - POLICE DEPARTMENT - \$3,429

WHEREAS, James City County is committed to protecting County assets and replacing destroyed assets in an efficient manner; and

WHEREAS, James City County Vehicle No. 062801 was destroyed in an accident on February 18, 2010; and

WHEREAS, the actual cash value of Vehicle No. 062801 has been recovered from Erie Insurance Group; and

WHEREAS, the insurance proceeds recovered will be used for a replacement Police vehicle.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the following appropriations of recovered funds:

Revenue:

Insurance Recovery	<u>\$3,429</u>
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Expenditure:

Police - Vehicle Replacement	<u>\$3,429</u>
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James G. Kennedy
Chairman, Board of Supervisors

ATTEST:

Sanford B. Wanner
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 13th day of April, 2010.

InsurPropApp_res

**REZONING-Z-0003-2008/MASTER PLAN-0003-2008. The Candle Factory
Staff Report for the April 13, 2010, 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 Building F Board Room; County Government Complex

Planning Commission: November 5, 2008, 7:00 p.m. (deferred by applicant)
December 3, 2008, 7:00 p.m. (deferred by applicant)
January 7, 2009, 7:00 p.m. (recommended approval by 4-2)
April 1, 2009, 7:00 p.m. (recommended approval by 4-3)

Board of Supervisors February 10, 2009, 7:00 p.m. (deferred by applicant)
March 10, 2009, 7:00 p.m. (remanded to Planning Commission)
April 28, 2009, 7:00 p.m. (indefinitely deferred by applicant)
April 13, 2010, 7:00 p.m.

SUMMARY FACTS

Applicant: Mr. Vernon Geddy, III, of Geddy, Harris, Franck & Hickman, L.L.P on behalf of Candle Development, LLC

Land Owner: Candle Development, LLC

Proposal: To rezone approximately 64.45 acres of land from A-1, General Agricultural District, M-1, Limited Business/Industrial District, and MU, Mixed-Use District to MU, Mixed-Use District, with proffers. The development proposed with this rezoning application will allow the construction of a maximum of 175 residential units; approximately 30,000 square feet of commercial/office space, and a 90,000-square-foot assisted living facility with capacity for 96 units.

Location: 7551, 7567, and 7559 Richmond Road

Tax Map/Parcel Nos.: 2321100001D, 2321100001E, and 2321100001A

Parcel Size: Approximately 64.45 acres

Existing Zoning: A-1, General Agricultural District; M-1, Limited Business/Industrial, District; and MU, Mixed-Use, District

Comprehensive Plan: Low Density Residential and Mixed-Use

Primary Service Area: Inside

STAFF RECOMMENDATION

Staff finds that this application is consistent with the tenets of both the Zoning Ordinance and the 2009 Comprehensive Plan and recommends that the Board of Supervisors approve this application with the attached resolution. A positive action includes approval of the private streets proposed as part of this development (refer to the master plan for location of private streets).

Candle Factory Application-Time Line

- July 11, 2007, Planning Commission meeting
This application was indefinitely deferred by the applicant in order to address outstanding issues and to further incorporate suggestions made by the Planning Commission.
- January 7, 2009, Planning Commission meeting
The Planning Commission voted 4-2, with one vacancy, to recommend approval of this application. Prior to this case moving forward to the Board of Supervisors meeting on March 10, staff was notified by the County Attorney's Office that the applicant had notified them of a procedural error that occurred when they turned in the rezoning application for this project. The signature of one of the original owners of the property, Mr. Jack Barnett, was missing from the application. Mr. Barnett is the owner of a 25-foot-wide access strip which runs north-south through the property. To ensure that there would not be a procedural problem with this rezoning application, staff was advised by the County Attorney's office that this case needed to be returned to the Planning Commission for consideration and a hearing.
- April 1, 2009, Planning Commission meeting
The Planning Commission reconsidered the rezoning of Candle Factory project and recommended approval of this application by a vote of 4 to 3. Prior to the April 2009 Board meeting, the applicant requested that this case be indefinitely deferred. As a result, the case was not considered by the Board of Supervisors at the scheduled meeting.
- February 2010
In February 2010, the applicant submitted revised materials and requested that this application be placed for consideration by the Board of Supervisors. There have been no changes to the main elements of this proposal (i.e., 175 residential units, 30,000 square foot of commercial/office, and a 90,000-square-foot assisted living facility) since it received a recommendation of approval by the Planning Commission in April 2009. Four proffered items have been revised by the applicant (refer to pages 3, 4 and 5 of this report for further discussion on revised proffers). Table No. 1.0 below highlights the major revisions made to this application between 2009 and 2010:

Table No. 1.0-Comparison between revised applications for the Candle Factory property

	2009 Application	2010 Application
Scope of Project	Rezoning application: To rezone 64.45 acres from A-1, MU, and M-1, to MU, with proffers. SUP application: Removed from application.	Rezoning application: To rezone 64.45 acres from A-1, MU, and M-1, to MU, with proffers.
Number of Residential Units	175 units (i.e., 142 single-family attached and 33 single-family detached).	Same as in the 2009 application.
Total Gross Residential Density	2.71 dwelling units per acre (excludes the 97 assisted living facility rooms)	Same as in the 2009 application.

Number of Affordable Units	19 dwelling units for sale at or below \$160,000; 19 dwelling units for sale at or below \$190,000; 20 dwelling units for sale at or below \$225,000	5 dwelling units for sale at or below \$160,000; 5 dwelling units for sale at or below \$190,000; 48 dwelling units for sale at or below \$225,000
Non-residential square footage	Rezoning application: Maximum of 30,000 square feet of commercial/office space and an approximately 90,000-square-foot assisted living facility with 96 rooms SUP application: Removed from application	Same as in the 2009 application.

Source: Rezoning Application Materials Associated with Z-0003-2008/MP-0003-2008

Proposed Changes made since April 2009 Board Deferral Request

Amendment to Existing Proffers:

Proffer No. 04-Affordable and Mixed Cost Housing The total number of price restricted residential units remains at 58, out of a total of 175 units, but the mix has changed from what has been previously proffered. Under the previously proposed proffers there were 19 units proffered at a price under \$160,000, 19 units proffered under \$190,000, and 20 units proffered under \$225,000. As revised, this proffer now reads:

“A minimum of 5 of the dwelling units shall be reserved and offered for sale at a sales price to buyer at or below \$160,000 subject to adjustment as set forth herein (“Affordable Units”). A minimum of an additional 5 of the dwelling units shall be reserved and offered for sale at a price at or below \$190,000 subject to adjustment as set forth herein. A minimum of an additional 48 of the dwelling units shall be reserved and offered for sale at a price at or below \$225,000 subject to adjustment as set forth herein.”

The change in the proffered residential mix can be translated into the following numbers:

- From 19 to 5 units proffered at \$160,000 - A reduction from 11% to 3% of units at this price level;
- From 19 to 5 units proffered at \$190,000- A reduction from 11% to 3% of units at this price level;
- From 20 to 48 units proffered at \$225,000 - An increase from 11.5% to 27.5% of units at this price level.

The 2009 Comprehensive Plan defines affordable housing as: *“Housing available at a sales price or rental amount that does not exceed 30% of the total monthly income....For purposes of targeting needed housing in the community, affordable housing is aimed at families earning between 30% and 120% of Area Median Income.”* Table 2.0 below demonstrates the relationship between the Area Median Income (AMI), its corresponding target house prices, and the price restricted units being proffered by Candle Factory.

Table 2.0 AMI and target house prices for James City County

% AMI*	4-Person Income	Target House Prices***	Candle Factory**
30%	\$20,350.00	\$61,050.00	N/A
50%	\$33,950.00	\$101,850.00	N/A
80%	\$54,300.00	\$162,900.00	5 units at \$160,000
100%	\$67,900.00	\$203,700.00	5 units at \$190,000
120%	\$81,480.00	\$244,440.00	48 units at \$225,000

Source: U.S. Department of Housing and Urban Development.*Area Medium Income is calculated for the

entire Virginia Beach-Hampton Roads MSA 2009 **proffers for Candle Factory-2010. ***Target house prices for James City County-2009.

The revised proffers favor the higher end of the targeted households (earning between 100% and 120% of AMI.) According to the Housing Needs Assessment (page 37 of the 2009 Comprehensive Plan), an analysis of the 2000 Census data shows that approximately half the County's owner households earning below 80% AMI lack affordable housing. Specifically, more than two-thirds of those earning below 50% AMI and almost half of those earning between 50% and 80% AMI lacked affordable housing in the County. Common professions associated with the income range between 75% and 80% AMI are: fire fighters, police officers, and teachers¹. Staff acknowledges that this proffer is a positive public benefit to the County. However, staff finds that, as revised, this proffer will not provide affordable housing ownership to the same extent as previously proffered.

Proffer No. 05(a) - Cash Contributions for Community Impacts. School cash proffer has been revised to comply with the current school proffer policy. As revised, this proffer now reads:

“A contribution of \$17,115.00 for each single family detached dwelling unit and of \$4,870.00 for each single family attached dwelling unit, other than Affordable Units, on the Property shall be made to the County in order to mitigate impacts on the County from the physical development and operation of the Property. The County shall use these funds for school use. ”

Staff supports the above amendment to Proffer No. 05(a) as it now meets the requirements of the approved Cash Proffer Policy for Schools adopted by the Board of Supervisors in July 2007.

Proffer No. 06 (a) - Entrances; Traffic Improvements Two additional traffic improvements have been proffered (i.e., construction of the private driveway with a five-lane road section and a through/left-turn lane). These improvements are triggered by the proposed development of CVS/food market (SUP-0002-2010) at the adjacent property located at 7521 Richmond Road. As revised, this proffer now reads:

“The existing private driveway at the Route 60/Croaker Road intersection shall be reconstructed to a public road with a four lane road section (provided, however, that the Director of Planning may require a fifth lane, if the level of development that has occurred on Tax Map Parcel No. 233110001C warrants such additional lane) at the Route 60 intersection and tapering to a two lane section. The northbound Croaker Road approach to the Croaker Road/Route 60 intersection shall include a left turn lane with 200 feet of storage, a through lane (provided, however, that the Director of Planning may require a through/left turn lane, if the level of development that has occurred on Tax Map Parcel No. 233110001C warrants such through/left turn lane) and a right turn lane.”

Staff supports the above amendment to Proffer No. 06 (a). The construction of a driveway with five lanes (i.e., a left-turn lane, a through/left-turn lane, a right-turn lane, and two receiving lanes) as opposed to four lanes (i.e., a left-turn lane, a through lane, a right-turn lane, and one receiving lane) is contingent on the development of the proposed CVS/food market on the adjacent property at the time Candle Factory starts building its mixed use development.

Proffer No. 11-Design Guidelines and Review; Sustainability Building This proffer has been revised to provide for LEED certification for the assisted living facility and the commercial/office units; single-family homes will achieve EarthCraft Homes certification. As revised, this proffer now reads:

“Owner shall prepare and submit design review guidelines to the Director of Planning for his review and approval setting forth design and architectural standards for the development of the Property generally

¹ Workforce Housing Affordability Comparisons-Example of occupations from JCC Needs Study 12-08 and internal study by VOP 2005.

consistent with the Supplemental Submittal materials submitted as a part of the rezoning application and on file with the Planning Department and the general intent of the design standards outlined in the Comprehensive Plan for the Norge Community Character Area for the approval of the Director of Planning prior to the County being obligated to grant final approval to any development plans for the Property (the "Guidelines"). Once approved, the Guidelines may not be amended without the approval of the Director of Planning. Owner shall establish a Design Review Board to review all building plans and building elevations for conformity with the Guidelines and to approve or deny such plans. Owner shall achieve LEED certification at the certified level for the assisted living and the commercial buildings shown on the Master Plan. All single family detached houses shall achieve EarthCraft House Virginia certification at the EarthCraft House Certified (Level I) level. Owner shall provide a copy of each certification to the Director of Planning. "

Staff supports the above revision to Proffer No. 11 as it specifically calls for LEED certification for the assisted living facility and commercial/office units, and EarthCraft House Virginia certification for all single-family detached dwellings. However, staff notes that the current proffer excludes all 142 single-family attached dwelling units from any type of green building certification.

PROJECT DESCRIPTION

Mr. Vernon Geddy has submitted an application on behalf of Candle Development, LLC to rezone approximately 64.45 acres from A-1, General Agricultural District (60.82 acres), M-1, Limited Business/Industrial District (3.0 acres) and MU, Mixed Use District (0.63 acres) to MU, Mixed Use District with proffers.

The area subject to the rezoning application is located on the south side of Richmond Road (Route 60), opposite the intersection of Richmond Road and Croaker Road (Route 607). This property is bounded on the south, east and west by low-density residential developments zoned A-1, General Agricultural, (i.e., Toano Woods and Oakland Estates) and R-2, General Residential (i.e., Norvalia). Adjacent properties to the north of the site and along Route 60 are zoned MU, Mixed Use (i.e., Cross Walk Community Church, formerly known as the Williamsburg Music Theater) and M-1, Limited Industrial (i.e., The Candle Factory commercial complex and the Poplar Creek office park). The Candle Factory development is located within the Norge Community Character Area and therefore subject to the recommendations set forth by the 2009 Comprehensive Plan. A driveway at the Route 60/Croaker intersection will provide vehicular access from Route 60, a Community Character Corridor, to the proposed development.

The development combines residential and non-residential components to include: 175 residential units (i.e., 142 single-family attached and 33 single-family detached units), up to 30,000 square feet of commercial and office uses, and a 90,000-square-foot assisted living facility complex with capacity for 96 individual rooms. This facility with approximately 90,000-square-foot is planned with six smaller living clusters, a community room, and a central facility. Each of the living clusters is a stand-alone building that is connected to the central facility and to each other by means of an enclosed walk. Each cluster will consist of a residential kitchen, a nursing station, a common living area, dining area and lounge. Inside each cluster the nursing stations will have one to two nurses and will provide 24-hour nursing assistance. Each cluster will accommodate 16 sleeping rooms. These rooms are designed to accommodate one to two people and will have a small sitting area and private bathroom. The central facility will have the main commercial kitchen and the primary dining hall. According to information provided by the applicant, Cross Walk Community Church will manage and operate the proposed facility.

Proffers: Are signed and submitted in accordance with the James City County Proffer Policy. Table 3.0 below identifies all cash contribution (except for \$30,000 proffered for sidewalks later discussed in this report) offered by the applicant as a means to mitigate the physical impact of the proposed development.

Table 3.0-Cash Contributions for community impacts

Housing Category	Housing Type	Total Quantity	Pricing Type	Total Quantity	CIP: Schools	CIP: Others:	Water	Sewer	Stream Restoration	Totals:
SFD ¹	Single Family Detached	33 units	Market Price \$350,000	33 units	\$ 17,115	\$1,000	\$1,239.00	\$650.00	\$ 500.00	\$676,632
SFA ²	Townhouse	142 units	At or below \$160,000	5 units	N/A	N/A	N/A	N/A	\$ 500.00	\$2,500
			At or below \$ 190,000	5 units	\$4,870	\$1,000	\$934.00	\$650.00	\$ 500.00	\$39,770
			At or below \$225,000	48 units	\$4,870	\$1,000	\$934.00	\$650.00	\$500.00	\$381,792
			Market Price	84 units	\$4,870	\$1,000	\$ 934.00	\$650.00	\$ 500.00	\$668,136
N/A	Assisted Living Units	96 units	N/A	96 units	N/A	\$250.00	\$ 467.00	\$575.00	N/A	\$124,032
Total										\$1,892.862

Source: Rezoning Application Materials Associated with-Z-0003-2008/Master Plan-0003-2008

¹SFD = Single Family Detached; ²SFA = Single Family Attached.

CONTRIBUTIONS-PUBLIC IMPACTS

Archaeology

Proffers:

- The County archaeological policy is proffered (Proffer No. 10).

Staff Comments: A Phase IA Cultural Resources Assessment developed for the property by the James River Institute for Archaeology was submitted for County review (attached to this report). The assessment suggests that “one or more sites associated with an eighteenth-or early nineteenth-century occupation may be present on the site” and that “the situation of the property at the confluence of two tributary streams suggest that there is high potential for the presence of temporary Native American campsites dating from the Archaic and Woodland periods, as well.” Given the above recommendations, staff finds that a Phase I Archaeological Study for the entire property is warranted and that Proffer No. 10 is therefore appropriate and acceptable.

Environmental

Watershed: Subwatershed 103 of the Yarmouth Creek Watershed

Proffers:

- A contribution of \$500.00 for each residential unit shall be made to the County toward stream restoration or other environmental improvements in the Yarmouth Creek watershed [Proffer No.5 (e)];
- Sustainable building practices are proffered (Proffer No. 11);

- Development of a Master Stormwater Management Plan is proffered with the use of Low Impact Development (LID) techniques to treat 30% of the impervious areas on the property [Proffer No.14 (a)]; and
- A Nutrient Management Plan program has been proffered to be implemented in the proposed development. (Proffer No. 15).

Environmental Staff Comments: This proposal will meet the County’s 10-point Stormwater Management requirements through a combination of structural BMP facilities and Natural Open Space credit. Further, in order to comply with the Special Stormwater Criteria (SSC) for the Yarmouth Creek watershed, two forebays will be provided at the major stormwater outfalls into the largest of the BMP's (Marston’s Pond) in order to address water quality. Low Impact Development (LID) facilities, such as bioretention basins, dry swales, porous pavement systems, underground infiltration BMPs, rain barrels and downspouts are included in the Master Stormwater Conceptual Plan. The Environmental Division has recommended approval of the rezoning and associated proffers for this development.

According to information provided by the applicant, 12.33 acres of the entire site are non-developable areas (e.g. wetlands, streams, steep slopes and areas subject to flooding). The remaining 52.12 acres are developable land. The Candle Factory Master Plan shows approximately 23.97 acres or 46% of the net developable area of the site as natural open space. The proposed natural open space for Candle Factory is above the 10% requirement set forth by Section 24-524 of the ordinance and will include, in addition to required RPA buffers, 3.65 acres of parkland areas and over 12 acres of additional open space outside the 100 feet RPA buffer at the perimeter of the development.

Fiscal Impact:

Proffers:

- Cash contributions of \$1,000 per dwelling unit other than affordable units on the property (total of \$170,000.00) and \$ 250.00 for each assisted living unit on the property (total of \$ 24, 000.00) shall be made to the County in order to mitigate impacts on the County from the physical development and operation of the property. The County may use these funds for any project in the County’s capital improvements plan which may include emergency services, off-site road improvements, future water needs, library uses, and public use sites.
- A Fiscal Impact Study prepared for this development by the Wessex Group, and revised on March 10, 2010, (attached to this report) was provided along with the rezoning application for County review. Below are the major assumptions and results of the net fiscal impact analysis for the Candle Factory Development identified by the study:
 - At completion in 2015, the proposed development is expected to add proximately \$59 million in real property value to James City County;
 - An average of 87 full-time employees per year is expected during the five-year construction phase of the Candle Factory Development. At build-out in 2015, 148 employees are expected to work in the office spaces and in the assisted living facility combined;
 - At build-out, the Candle Factory Development is expected to generate annually \$798,900 in revenues for James City County and create annual expenditures in the amount of \$845,500. The net fiscal impact is estimated to be negative \$46,700 at build out in 2015; and
 - In future years, the net fiscal impact is expected to improve such that in 2021, the net fiscal impact is at breakeven and increases in the years following.

Staff Comments: The Fiscal Impact Study for the Candle Factory is heavily weighted up front by construction spending. Permit fee revenue is the largest source of local revenue until the fourth year of a five year construction schedule. Permit fee revenue usually doesn’t cover the costs of the on-going oversight by Code Compliance and the Environmental Division during construction, but Code Compliance and Environmental spending is not accurately reflected in the presentation of offsetting spending thus overstating the fiscal benefits. At build-out, the projections turn negative.

Residential

There is an expectation that houses and/or townhouses marketed with prices at the lower end of the residential sales market in James City County to be a positive feature with a fiscal impact that is skewed negative. However, property taxes will not pay for school spending with housing units in the proposed price range.

Office

The Class B office space generates none of the taxes that could be expected from retail, lodging property, manufacturing or an assembly plant. From a local fiscal perspective, Class B commercial does not provide many of the taxes benefits desired for the County. This may become more evident if the office vacancy rates begin to climb and rents and assessments start to fall.

Assisted Living Facility:

Fiscally, the assisted living facility provides the greatest economic potential, but it is projected to be built in the last year of the construction schedule. It is the most tentative of the proposed improvements and if it should be discarded or rejected, the development's fiscal profile becomes significantly worse than what has been currently presented in this report.

Public Utilities

The site is inside the PSA and served by public water and sewer.

Proffers:

- For cash contribution information please refer to Table No. 03 on this report and/or Proffer No. 5 attached to this report.

Staff Comments: The James City Service Authority has reviewed the rezoning application and finds that proffers being offered will mitigate impacts to the County's public water and sewer system. The James City Service Authority has recommended approval of the rezoning and associated proffers for this project.

Public Facilities

Proffers:

A cash contribution of \$17,115.00 per each single-family detached dwelling unit and \$4,870.00 for each single-family attached dwelling unit, other than affordable units has been proffered to the County to mitigate the impacts from physical development and operation of the property [Proffer No. 5(a)]. The County may use these funds for any project in the County's capital improvement plan, the need for which is generated by the physical development and operation of the property, including, without limitation, school uses.

Staff Comments: This project is located within the Norge Elementary, Toano Middle, and Warhill High Schools districts. Under the proposed Master Plan, 175 residential units are proposed. With respect to the student generation and the current school capacities and enrollments for 2009, the following information is provided:

Student Projections:

- Single-Family Detached: 0.41 (generator) x 33 (residential type) generates **14 new students**
- Town homes: 0.16 (generator) x 142 (residential type) generates **23 new students**

A total of thirty-seven new students are projected to be generated under the assumed residential unit mix. These numbers are generated by the Department of Financial and Management Services in consultation with WJCC Public Schools based on historical attendance data gathered from other households in James City County. Table 4.0 below illustrates the expected number of students being generated by Candle Factory and overall student capacity for Norge Elementary School, Toano Middle School and Warhill High School.

Table 4.0-Student enrollment and school capacity for JCC-Williamsburg schools 2009-2010

School	Design Capacity	Effective Capacity ¹	Current 2009 Enrollment	Projected Students Generated	Enrollment+Projected Students
Norge Elementary School	760	715	592	16	608
Toano Middle School	775	822	859	9	868
Warhill High School	N/A*	1,441	1,132	12	1,144
Total	1,535	2,978	2,583	37	2,620

Source: Williamsburg-JCC Public School Official Student Enrollment Report September 2009 (revised December 2009)

¹ Effective Capacity represents the “realistic and practical number of students that the school facility can accommodate.

Effective capacities were revised in November of 2008. * There is no Design Capacity developed for Warhill High School

Based on this analysis, the 37 students projected to be produced from the new development would not cause the enrollment levels for Norge Elementary and Warhill High Schools to exceed their effective capacities. However, the proposed development does not meet the Adequate Public Facilities (APF) Policy at the Middle School Level, both on Design and Effective capacity. As it is noted that a new Middle School (Lois S. Hornsby Middle) is funded and is scheduled to open in 2010, staff believes that this proposal would still meet the APF Policy Guidelines.

Parks and Recreation

Proffers:

- Approximately 3.65 acres of parkland, including one centrally located, shared playground of at least 2,500 square feet with at least five activities;
- A minimum eight-foot-wide concrete or asphalt path along one side of the entrance road approximately 0.36 miles in length;
- Approximately .094 miles of soft surface walking trail;
- One paved multi-purpose court approximately 50 feet x 90 feet in size; and
- Two multi-purpose fields, one which will be at least 200 feet x 200 feet in size.

Staff Comments: All of the above recreational features have been proffered (Proffer No.9). Staff finds the proffered recreational amenities to be in accordance with the 2009 County Parks and Recreational Master Plan (CPRM) and to be acceptable.

Transportation

A Traffic Impact Analysis (TIA) to address the requirements set forth by VDOT’s Traffic Impact Analysis regulations commonly known as Chapter 527 was prepared for the proposed Candle Factory development and submitted as part of this rezoning application. VDOT has evaluated this TIA and found that the report conforms to the requirements of Chapter 527 with regard to the accuracy of methodologies, assumptions, and conclusions presented in the analysis. The scope of this study encompassed (1) a corridor analysis inclusive of Route 60 traffic signals at Croaker Road, Norge Lane, and Norge Elementary School; and (2) a traffic analysis which extends fifteen years in the future to the year 2021. The intersections for the traffic counts and traffic analysis used for this report are shown below:

- Richmond Road/Croaker Road-Signalized intersection;
- Richmond Road/Norge Lane-Signalized intersection;
- Richmond Road/Norge Elementary School-Signalized intersection; and
- Croaker Road/Rochambeau Drive.

Proffers:

- Reconstruction of the existing private driveway at the Route 60/Croaker Road intersection to a public road with four- or five-lane road section at the Rt. 60 intersection [Proffer No.6(a)];
- At the intersection of Route 60 and Croaker Road, a right-turn lane with 200 feet of storage and a 200 foot taper and with shoulder bike lane from east bound Route 60 into the property shall be constructed [Proffer No. 6(b)];
- At the intersection of Route 60 and Croaker Road, the eastbound left-turn lane shall be extended to have 200 feet of storage and a 200 foot taper [Proffer No. 6(c)];
- Related adjustments to the Route 60 traffic signal at Croaker Road were proffered [(Proffer No. 6(d)];
- Payment to VDOT, not to exceed \$10,000.00 of the equipment at the Norge Lane/Route 60 traffic signal necessary to allow the coordination of the signal at the Croaker Road/Route 60 intersection [Proffer No. 6(e)];
- Installation of crosswalks across Route 60, a median refuge island, signage and pedestrian signal heads at the intersection of Route 60/Croaker Road as warranted [Proffer No. 6(f)];
- Provision of pedestrian and vehicular connections between the Property and the adjacent property -Tax Parcel 2321100001C (Proffer No.7);
- Provision of a crosswalk across Croaker Road from Tax Parcel 2321100001B to Tax Parcel 2321100001C and crosswalks providing access to the two internal parks on the property (Proffer No. 20); and
- Right-of-way reservation to connect the proposed development with adjacent property located at 341 Farmville Lane (Proffer No.21).

Staff notes that the traffic forecast for Stonehouse development and proffered road improvements were incorporated into the analysis of the TIA for Candle Factory. Following are the transportation improvements (currently non-existing) assumed in the submitted TIA based on proffered conditions for Stonehouse development:

- *Widen the segment of State Route 30 from two lanes to four lanes west of Croaker Road;*
- *Add dual left turn lanes and a channelized right turn lane to the eastbound approach of Rochambeau Drive at Croaker Road;*
- *Install left turn, shared left/through lane and right turn lane on southbound Croaker Road at Route 60;*
- *Install a second left turn and a separate right turn lane On northbound Croaker Road at Rochambeau Drive; and*
- *Add a left turn lane, a right turn lane and a second through lane on westbound Rochambeau Drive at Croaker Road.*

Trip Generation:

According to the TIA (attached to this report), the proposed development, with a single entrance onto Route 60 via proposed Croaker Road Extended, has the potential to generate 3,580 daily trips: 210 a.m. peak hour (110 entering and 100 exiting the site) and 401 p.m. peak hour (183 entering and 218 exiting the site). The residential part of the development alone is expected to generate a total of 1,148 vehicular trips per day (vpd), while commercial and office areas are expected to generate 1,906 vpd and the assisted living facility is expected to generate the lowest vehicular trips per day at 526 vpd.

Intersection Level of Services:

The overall Level of Service (LOS) for the Croaker Road intersection with Route 60 is currently at level C. At the same intersection, the level of service is projected to remain at Level C in 2015 with and/or without the Candle Factory Development. Assuming all traffic improvements proffered by Stonehouse and the Candle Factory development, overall LOS C is maintained for all conditions.

Traffic Counts:

2007 Traffic Counts: On Richmond Road (Route 60) from Rochambeau Drive to Croaker Road (Route 607), there were 17,201 average daily trips. On Richmond Road from Croaker Road (Route 607) to Norge Elementary there were 21,892 average daily trips. On Croaker Road from Rochambeau Drive to Richmond Road, there were 9,275 average daily trips.

2035 Traffic Counts: On Richmond Road from Rochambeau Drive to Croaker Road 29,293 average daily trips are projected. On Richmond Road from Croaker Road to Norge Elementary 39,110 average daily trips are projected. On Croaker Road from Rochambeau Drive to Richmond Road 28,584 average daily trips are projected. The segment of Richmond Road between Croaker Road and Norge Elementary is listed on the “watch” category and the section of Croaker Road is “recommended for improvements” in the Comprehensive Plan.

VDOT Comments: VDOT concurs with the trip generation as presented by the Traffic Analysis. A supplemental material to the TIA (attached to this report) was further provided by the applicant per the request of the Virginia Department of Transportation in order to forecast future traffic conditions and road improvements without the Stonehouse development. The supplemental analysis demonstrated that without improvements in place at the Route 60/Croaker Road intersection previously proffered by Stonehouse, several movements exhibit LOS “D” or lower in the background conditions without the Candle Factory, and these deficiencies are carried into the “with Candle Factory” scenario. While not directly attributable to the proposed Candle Factory development, there will be several operational deficiencies prior to Stonehouse improvements being implemented.

Staff Comments: Staff concurs with VDOT’s findings and notes that according to the supplemental material, Overall LOS at Route 60/Croaker Road and Route 60/Norge Lane will remain at Level C, although several turning movements exhibit LOS D. Level of Service at Croaker Road/Rochambeau Drive will decline over time. Staff further notes that primary access to the development will be from the existing shared and signalized entrance at the Richmond/Croaker Road intersection. Access to the office/commercial component of the development will also be provided by extension of the existing drive from Poplar Creek Office Park. During the last Planning Commission meeting, the applicant agreed to proffer a dedicated right-turn lane to the north bound approach to the intersection of Route 60 and Croaker Road. Staff notes that the Candle Factory property located along Richmond Road is currently under a SUP request; if approved, it will allow the construction of a CVS store and food market. Staff notes that the master plans for the Candle Factory development and for CVS/food market incorporate pedestrian and vehicular interconnectivity features between parcels. Further, both developments will mostly use the existing signalized entrance to connect to and from Richmond Road. Staff has worked with VDOT and the applicants of both developments to ensure that each development will address and mitigate their own impact to the traffic/road system.

COMPREHENSIVE PLAN

Land Use Map

The 2009 Comprehensive Plan Land Use Map designates the site for the proposed Candle Factory project as Low Density Residential and Mixed Use. Table 5.0 below shows the two different land use designations on the site broken down by respective acreage, proposed use, and correspondent densities.

Table No.5.0-2009 Comprehensive Plan land use designation for the Candle Factory property

	Candle Factory Site (Total Acreage)	Mixed Use Designated Area	Low Density Residential Designated Area
Area	±64.4 Acres	±3.6 acres	±61.4 acres
Uses Proposed	Residential, non-residential, and recreational uses	Non-residential: Thirty-thousand square feet of commercial/office space	<p>Residential: 33 Single-Family Detached Units, 142 Single-Family Attached Units.</p> <p>Non-Residential: Ninety-thousand square-foot Assisted Living Facility with capacity for 96 units</p> <p>Recreational: ±3.65 acre of park land</p>
Density	±2.7 dwelling units per acre (density calculation based on 175 units/64.5 acres-total area)	N/A	±3.6 dwelling units per acre (density calculation based on 175 units/48 acres- total parcel area 64.4 acre <i>minus</i> ±13 acre-area dedicated to the assisted living facility, and <i>minus</i> 3 acre-area designated Mixed Use area)

Source: Rezoning Application Materials Associated with-Z-0003-2008/MP-0003-2008

The residential density proposed for the Candle Factory is below the maximum of 18 dwelling units per acre allowed in Mixed Use Zoning Districts (refer to Section 24-523 of the Zoning Ordinance). Staff notes that the master plan shows two residential density numbers for this project; the lowest gross density number of 2.7 dwelling units per acre, is achieved by using the total acreage of the site (175 residential units/64.4 acres). The highest density number, 3.6 dwelling units per acre is achieved by not considering the approximately 13-acre area dedicated as the location for the proposed assisted living facility (175 residential units/48.4 acres) and the 3 acre-area designated as Mixed Use. Staff finds that the use of the lowest density number for this project to be acceptable and consistent with other residential projects as it considers the entire acreage of the parcel to calculate density. Table 6.0 shows density numbers for the proposed Candle Factory development compared to nearby residential developments:

Table No.6.0- Densities for Candle Factory and nearby residential developments

	Total Number of Units*	Total Area	Density	Comp Plan Designation
Candle Factory	175	64.4 acres	2.7 du/ac	Low Density Residential
Norvalia	59	26.5 acres	2.2 du/ac	Low Density Residential
Toano Woods	75	47 acres	1.5 du/ac	Low Density Residential
Mirror Lakes	241	213 acres	1.1 du/ac	Low Density Residential
Oakland	41	102 acres	0.4 du/ac	Low Density Residential

Source: GIS. Numbers are an approximation.

*total number of existing units only. For total number of parcels: Norvalia (59), Toano Woods (76), Mirror Lakes (250), Oakland (44).

Staff notes that the 96 assisted living rooms are excluded from the Candle Factory density calculation. The 2009 Comprehensive Plan (Land use section, page 149), discusses density calculations for continuing care and retirement facilities:

“While assisted living rooms and skilled nursing beds do have an impact to the County, they do not represent the same level of impact as would a traditional dwelling unit. Assisted living rooms and skilled nursing beds have been considered to be more along the lines of an institutional land use (like a hospital) than a residential land use, and that their impacts should be accounted for differently than with a density measurement.” Staff notes that the largest public impacts from the assisted living rooms will likely come from traffic (delivery of good and services, employees traveling to and from the site). Staff finds that the set of traffic/road improvements proffered by this application mitigate the impacts of not only the residential/commercial development of the site but that of the assisted living facility as well.

Land Use

<p>Basic Description</p>	<p>Low Density Residential (Residential Designation Description, Chart 2, page 153): Located in the PSA where public services and utilities exist or are expected to be expanded to serve the sites over the next twenty years. Gross density up to one dwelling unit per acre, depending on the character and density of surrounding development, physical attributes of the property, buffers, the number of dwelling units proposed, and the degree to which the development is consistent with the Comprehensive Plan. Gross density from one unit per acre to four units per acre, if particular public benefits are provided. Examples of such public benefits include mixed-cost housing, affordable and workforce housing, enhanced environmental protection, or development that adheres to the principles of open space design. Examples of acceptable land uses within this designation include single-family homes, duplexes, cluster housing, recreation areas, schools, churches, community-oriented public facilities, very limited commercial establishments, timeshares, retirement and care facilities and communities.</p>
	<p>Staff Comment: This development proposes an overall density of 2.7 dwelling units. Residential developments with gross densities greater than one unit per acre and up to four units per acre may be considered if they offer particular public benefits to the community. Staff notes that this application is providing affordable and mixed-cost housing, protection to the environmentally sensitive character of the site, and recreational features and open space areas which meet and exceed their ordinance requirements..</p>
	<p>Mixed Use (Mixed Use Designation Descriptions-Norge, Chart 4, page 156): For lands southwest of the Croaker/Richmond Road intersection, suggested uses include commercial and office as primary uses with limited industry as a secondary use. The Croaker Road and Richmond intersection is approaching capacity; therefore any proposed development should be conditioned on maintenance of acceptable levels of service. Building scale and massing should complement the potential adjacent residential development and architecture should compliment historic structures in Norge. Development plans should include adequate transportation connections, including both road and pedestrian level facilities, between the Mixed Use and adjacent Low Density Residential areas.</p>
	<p>Staff Comment: Up to 30,000 square feet of office and commercial space is proposed within the 3 acre-area designated as Mixed-Use by the 2009 Comprehensive Plan. The overall Level of Service (LOS) for the Croaker Road intersection with Route 60 is currently at level C. At the same intersection, the level of service is projected to remain at Level C in 2015 with and/or without the Candle Factory Development. The applicant has proffered design review guidelines (Proffer No. 11) setting forth design and architectural standards for the development of the property generally consistent with the design standards outlined in the 2009 Comprehensive Plan for the Norge Community Character Area. Staff notes that this application provides both pedestrian and vehicular connectivity between non-residential uses to residential areas.</p>

Population Needs

Goals, Strategies, and Actions	<p>Action#1.2.5-Page 17: Encourage and promote additional safe and licensed adult care business, including home-based adult care, near adequate and accessible transportation routes.</p> <p>Action#1.3.4-Page 18: Promote affordable senior housing options, from independent living to Continuing Care Retirement Communities (CCRCs) and skilled care, for all.</p>
	<p>Staff Comment: Staff finds that the proposed assisted living facility is an asset for James City County by addressing housing and health care issues related to the senior citizens population of this community.</p>

Housing

Goals, strategies, and actions	<p>Action#1.1.1-Page 44: Expect energy conservation measures and green building techniques in rehabilitation projects and new residential developments by encouraging participation from builders in green certification programs such as EarthCraft, LEED ND, LEED for Homes, or the National Association of Home Builders National Green Building Program.</p> <p>Action# 1.1.2-Page 44: Promote residential development that provides a balance of unit types and price ranges, open space preservation and recreational amenities, and supports walkability and bicycle travel both internally and to nearby destinations.</p> <p>Strategy# 1.3-Page 46: Increase the availability of affordable and workforce housing, targeting households earning 30%-120% area median income as established by HUD.</p> <p>Action# 1.3.15-Page 47: Promote the full integration of affordable and workforce housing units with market rate units within residential developments and throughout the Primary Service Area.</p> <p>Staff Comment: Proffer No. 11-Design Guidelines and Review, Sustainable Building, has been amended to include EarthCraft House Virginia certification (Level I) to all 33 single-family detached dwelling units (this proffer does not propose certification for the remaining 143 single-family attached units). A mix of single-family dwelling units, attached structures containing two, four and more than four dwelling units at different price ranges is being proposed as part of this development. Further, close to 40% of the entire area of the property will be offered and maintained as open space areas. Recreational facilities including the provision of sidewalks, biking and jogging trail are also part of the recreational facilities being proffered by this development (Proffer No. 9).</p> <p>Staff notes that that this development has proffered affordable and workforce dwelling units (refer to proffer No.4) targeting household incomes between 30% and 120% of the Area Medium Income. Please refer to page 3 of the staff report for discussion on affordable and workforce housing. In order to address integration of affordable and workforce housing with market rate units, the applicant proffered not to construct all affordable units all in the same location.</p>
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Environmental

<p>State and County Quality Improvement Strategies</p>	<p>Yarmouth Creek Watershed Management Plan-Page 65: Yarmouth Creek is a predominantly forested watershed of about 12 square miles located in the lower James River Basin. The Creek drains into Chickahominy River, which discharges into the James City County River. . . .The Board of Supervisors, adopted the six goals and 14 priorities associated with the Yarmouth Creek Watershed Management Plan by resolution dated October 10, 2006.</p> <p>Staff Comment: This application will comply with the Special Stormwater Criteria (SSC) for the Yarmouth Creek watershed, by providing two forebays at the major stormwater outfalls into the largest of the BMP's (Marston’s Pond) in order to address water quality.</p>
<p>Goals, Strategies, and actions</p>	<p>Action#1.1.2-Page 76: Promote the use of Better Site Design, Low Impact Development, and effective Best Management Practices (BMPs).</p> <p>Action#1.1.3-Page 77: Through the Chesapeake Bay Preservation Ordinance, enforce Resource Protection Areas (RPAs) protecting all tidal wetlands, tidal shores, nontidal wetlands connected by surface flow and contiguous to tidal wetlands or water bodies with perennial flow, perennial streams and a 100-foot-wide buffer adjacent to an landward of other RPA components.</p> <p>Staff Comment: The required 100-foot RPA buffer and the additional twelve acres of open space located at the perimeter of the property will separate and protect environmentally sensitive areas such as the perennial streams feeding Yarmouth Creek. Low Impact Development (LID) features to treat storm water from 30% of the impervious areas on the property, such as bioretention basins, dry swales, porous pavement systems, underground infiltration BMPs, rain barrels and downspouts are included in the proffered Master Stormwater Conceptual Plan. Further, water conservation standards, which limit the installation and use of irrigation systems and irrigation wells on the property, have also been proffered.</p>

Community Character Area

<p>General</p>	<p>Community Character Areas-Norge-Page 86: In contrast to Toano, Norge is more impacted by recent commercial development along Richmond Road and has not been the subject of a subarea study. While Norge continues to have a unique and very identifiable residential component located off Richmond Road, and some pedestrian-oriented storefronts, the early twentieth century “village” character of its business and residential areas long Richmond Road has been visually impacted by automobile-oriented infill development. . . . Examples of specific design standards intended to guide future development and redevelopment in Norge are:</p> <ul style="list-style-type: none"> • The architecture, scale, materials, spacing, and color of buildings should complements the historic character of the area; • Where possible, parking should be located to the rear of buildings. Parking should be screened from roadway and adjacent properties; • Pedestrian and bicycle access and circulation should be promoted through the provision of sidewalks, bike racks, benches, crosswalks, streets trees, and other design features which will help to accomplish this goal; • Mixed use development which provides residential, commercial, and office uses in close proximity are encouraged.
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	<p>Staff Comment: Staff notes that Proffer No. 11-Design Guidelines and Review ensures that design review guidelines will be submitted for the review and approval of the Planning Director setting forth design and architectural standards consistent with the general intent of the design standards outlined in the 2009 Comprehensive Plan for the Norge Community Character Area.</p>
Goals, strategies, and actions	<p>Action#1.3.7-Page 99: Expect new developments to employ site and building design techniques that reduces their visual presence and scale. Design techniques include berms, buffers, landscaping, building designs that appear as collections of smaller buildings rather than a single large building...</p> <p>Action#1.6.1-Page 101: Expect archaeological studies for the development proposals requiring legislative approval on lands identified by the James City County staff as warranting such study and require their recommendations to be implemented. In making the determination, staff will consult archaeological studies and seek the recommendation of representatives of the County Historical Commission or other qualified archaeologists if necessary.</p> <p>Staff Comment: The applicant has proffered to install streetscape improvements in accordance with the County’s Streetscape Guidelines along Croaker Road extended (refer to Proffer No. 8). Further, the applicant has proffered landscaping in the portion of the Route 60 median beginning at the Route 60/Croaker Road intersection and extending eastward 800 feet (refer to Proffer No.19). According to this proffer <i>“The landscaping shall consist of 20 street trees and least 125% of Ordnance caliber size requirements.”</i>Staff notes that the County Archeological Policy is proffered (refer to Proffer No.10).</p>

Parks and Recreation

Goals, Strategies and actions	<p>Action#1.5.1-Page 114: Continue to encourage new developments to dedicate or otherwise permanently convey open space, greenway, and conservation areas to the County or a public land trust.</p> <p>Action#1.5.2-Page 114: Encourage new developments to dedicate right-of-way and construct sidewalks, bikeways, and greenway trails for transportation and recreation purposes, and construct such facilities concurrent with road improvements and other public projects in accordance with the Sidewalk Master Plan, the Regional Bicycle Facilities Plan, and the Greenway Master Plan.</p> <p>Action#1.5.3-Page 114: Encourage new developments requiring legislative review to proffer public recreation facilities consistent with standards in the Parks and Recreation Master Plan. New developments should have neighborhood parks with trails, bikeways, playgrounds, practice fields, and open spaces.</p> <p>Staff Comment: This application proposes 12 acres of forested buffers landward of the required 100-foot RPA buffer and all other open spaces on the property (including the area within the 100-foot RPA) to be protected either by a homeowners association or by a natural open space easement (refer to Community Impact Statement, BSD/MD Principle #2, page 10). Staff notes that proffers for this application includes provisions for the construction of on-site and off-site sidewalks [Proffers No. 5(f) and No. 12], a shoulder bike lane from eastbound Route 60 into the property [Proffer No. 6(b)] and recreational facilities (Proffer No. 9) which meets and exceeds the requirements set forth by the 2009 Parks and Recreation Master Plan</p>
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Transportation

<p>General</p>	<p>Richmond Road- Page 181: Future commercial and residential development proposals along Richmond Road should concentrate in planned areas, and will require careful analysis to determine the impacts such development would have on the surrounding road network.</p> <p>Croaker Road-Page 182: The section of Croaker Road extending from Richmond Road to Rose Lane is projected to warrant road widening based on future traffic projections; however, due to the topography and the CSX Railroad bridge along this corridor, road widening would be very expensive. It is recommended, therefore, that careful land use planning, traffic coordination, and the additional of turn lanes be utilized</p> <p>Staff Comment: The proposed development is planned as a master planned community with internal private and public roads and shared access between residential and commercial uses. Staff finds that the traffic road improvements (refer to Proffer No. 6) will mitigate the negative impacts of increase in traffic flow, particularly at the intersection between Route 60 and Croaker Road.</p> <p>As part of the proposed traffic road improvements, a new right-turn lane from east bound Richmond Road into the property [Proffer No. 6(b)] and the extension of an existing left-turn lane at the intersection of Richmond and Croaker Road [Proffer No.6(c)] are planned as means to address increase traffic flow through the intersection.</p>
	<p>Action#1.1.2-Page186:Ensure that new developments do not compromise planned transportation enhancements. New development should minimize the impact on the roadway system by:</p> <ul style="list-style-type: none"> (a) Limiting driveway and other access points and providing shared entrances, side street access, and frontage roads; (b) Providing a high degree of interconnectivity within new developments, adjoining new developments, and existing developments using streets, trails, sidewalks, bikeways, and multipurpose trails; (c) Concentrating commercial development in compact nodes or in mixed use areas with internal road systems and interconnected parcel access rather than extending development with multiple access points along existing primary and secondary roads; (e) Implementing strategies that encourage shorter automobile trips and accommodate walking, bicycling, and use of public transit.

	<p>Staff Comment: This proposal will feature a single public driveway (refer to Proffer No. 6) connecting the entire development to Richmond Road. Proffer No.7-Connections to Adjacent Properties will ensure pedestrian and vehicular connectivity between this project and adjacent property at 7521 Richmond Road (potential site for a CVS/food market stores). Proffer No. 21 reserves an area shown on the master plan for possible future public road/sidewalk connection to adjacent property located at 341 Farmville Road.</p> <p>The proposed 30,000 square feet office/commercial units will be developed in a 3.0 acres area internally connected to the residential areas. As part of the pedestrian circulation plan proposed for this development, sidewalks will be installed on at least one side of each of the public streets on the property (proffer No. 12). Additionally a minimum eight-foot-wide concrete or asphalt shared use path along one side of the entrance road approximately .36 miles in length and approximately .94 miles of soft surface walking as also proposed (Proffer No. 9).</p> <p>Staff notes that Proffer No. 12 states that “<i>Sidewalks shall be installed prior to issuance of any certificated of occupancy for adjacent dwelling units.</i>” Staff has indicated to the applicant a preference for sidewalks to be installed concurrently with the construction of internal roads. Also, Proffer No. 5(f) offers a “<i>one time contribution of \$30,000 to be made to the County for off-site sidewalks.</i>” According to the County Engineer, the amount proffered after the design, installation, and traffic control costs are considered, may yield 400 to 500 linear feet of sidewalks (five-foot wide). Staff notes that 800 of linear feet were proffered to be installed by the applicant at the previous rezoning for Candle Factory. Staff finds that the above modifications to the proffers would enhance the overall proffers for the Candle Factory development.</p>
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Comprehensive Plan Comments

During the Comprehensive Plan review process, the properties behind the mixed use designated Crosswalk Community Church and the Candle Factory parcels along Richmond Road were re-designated from a mix of Low Density Residential, Limited Industrial and Mixed Use to Low Density Residential and Mixed Use. The revised Low Density Residential designation covers the current A-1 and MU zoning district areas as shown on the new 2009 Comprehensive Plan Land Use Map. Residential uses with gross density up to four units per acre (refer to land use discussion on page 12 and 13 of this report) and an assisted living facility are uses which are compatible with the Low Density Residential re-designation of the parcels. Planning staff finds this proposal consistent with the James City County 2009 Comprehensive Plan.

SETBACK REDUCTION REQUEST

As part of the Planning Commission consideration of this case, the applicant proposed a request for modifications to the setback requirements in Zoning Ordinance Section 24-527 (b) subject to the criteria outlined in Section 24-527 (c) (1). According to the applicant, the setback modification, from a required 50-foot landscape buffer to 0-feet, was being requested for the portion of the site abutting the Cross Walk Community Church Parcel to provide future connectivity between both parcels.

Further, the applicant requested reduction of the vegetative buffer to a minimum of 20 feet between the commercial/office area as shown on the master plan, and the Candle Factory Commercial Complex. This was also requested for the purpose of providing connectivity between both parcels.

Section 24-527 (c) of the ordinance states that “a reduction of the width of the setbacks may also be approved for a mixed use zoning district that is not designated Mixed Use by the Comprehensive plan upon finding that the proposed setback meets both criteria (1) and (2) listed below and at least one additional criteria (i.e., Criterion No. 3, 4, or 5).

1. Properties adjacent to the properties being considered for a reduction in setback must be compatible;
2. The proposed setback reduction has been evaluated by appropriate county, state, or federal agencies and has been found to not adversely impact the public health, safety or welfare;
3. The proposed setback is for the purpose of integrating proposed mixed use development with adjacent development;
4. The proposed setback substantially preserves, enhances, integrates and complements existing trees and topography;
5. The proposed setback is due to unusual size, topography, shape or location of the property, or other unusual conditions, excluding the proprietary interests of the developer.

Staff supported this request for a buffer modification based on the following criteria (with staff responses in italics):

1. Properties adjacent to the properties being considered for a reduction in setback must be compatible
The Cross Walk Community Church Parcel is zoned Mixed Use, the same zoning designation sought for the rezoning for Candle Factory. Further, Cross Walk Community Church will run and operate the proposed Assisted Living Facility at the Candle Factory site.
2. The proposed setback reduction has been evaluated by appropriate county, state, or federal agencies and has been found to not adversely impact the public health, safety or welfare.

The proposed setback reduction has been evaluated as part of this rezoning application and found not to adversely impact the public health, safety or welfare of citizens.

3. The proposed setback is for the purpose of integrating proposed mixed use development with adjacent development;

The reduction of the vegetative buffer along the areas mentioned above has the potential to allow for pedestrian/vehicular connectivity between the Candle Factory development and Cross Walk Community Church and Candle Factory Commercial Complex Parcels.

This setback reduction request was approved by the Planning Commission concurrently with their recommendation of approval for this project.

PRIVATE STREETS

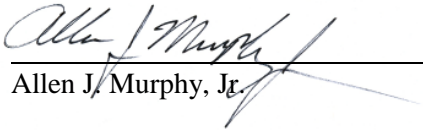
Section 24-528 (b) of the Zoning Ordinance states that: *'Private streets may be permitted upon approval of the board of supervisors and shall be coordinated with existing or planned streets of both the master plan and the county Comprehensive Plan. Private streets shown on the development plan shall meet the requirements of the Virginia Department of Transportation.'* The applicant has indicated the possibility of private streets in the some areas of the development, as shown in the master plan, and has proffered (Proffer No. 16) maintenance of the private streets through the Home Owners Association.

RECOMMENDATION

Staff finds that this application is consistent with the tenets of both the Zoning Ordinance and the 2009 Comprehensive Plan and recommends that the Board of Supervisors approve this application with the attached resolution. A positive action includes approval of the private streets proposed as part of this development (refer to the master plan for location of private streets).

Jose-Ricardo L. Ribeiro

CONCUR:


Allen J. Murphy, Jr.

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ATTACHMENTS:

1. Proffers
2. Approved Minutes from April 1, 2009, Planning Commission meeting
3. Resolution
4. Location Map
5. Community Impact Statement Binder containing:
 - a. Community Impact Statement for Candle Factory
 - b. Supplemental Materials (elevations)
 - c. Phase IA Cultural Resources Assessment
 - d. Fiscal Impact Study
 - e. Supplement to Traffic Analysis for the Candle Factory Development
 - f. Master Plan

RESOLUTION

CASE NO. Z-0003-2008/MP-0003-2008. THE CANDLE FACTORY

WHEREAS, in accordance with § 15.2-2204 of the Code of Virginia, 1950, as amended, and Section 24-15 of the James City County Zoning Ordinance, a public hearing was advertised, adjoining property owners notified, and a hearing scheduled on Zoning Case No. Z-0003-2008/MP-0003-2008; and

WHEREAS, Mr. Vernon Geddy has applied to rezone properties located at 7551, 7567, and a portion of property located at 7559 Richmond Road and further identified as James City County Real Estate Tax Map Nos. 2321100001D, 2321100001E, and 2321100001A, respectively (collectively, the “Properties”) from A-1, General Agricultural, District; M-1, Limited Business/Industrial, District; and MU, Mixed Use, District; to MU, Mixed Use with proffers, to allow the construction of a maximum of 175 residential units, approximately 30,000 square feet of commercial and office space, and a 90,000-square-foot assisted living facility; and

WHEREAS, the Properties are designated Low Density Residential and Mixed Use on the 2009 Comprehensive Plan Land Use Map; and

WHEREAS, on April 01, 2009, the Planning Commission recommended approval of the application by a vote of 4-3.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve Case No. Z-003-2008/MP-0003-2008 described herein and accept the voluntary proffers.

BE IT FURTHER RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve the request to allow private streets as shown in the Master Plan for Case No. Z-0003-2008/MP-0003-2008.

James G. Kennedy
Chairman, Board of Supervisors

ATTEST:

Sanford B. Wanner
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 13th day of April, 2010.

Z-0003-2008/MP-0003-2008

The Candle Factory



UNAPPROVED MINUTES FROM THE MARCH 3, 2010 PLANNING COMMISSION
MEETING

SUP-0003-2010 Gilley Property Two-Family Dwelling

Mr. Jason Purse stated that Mr. Greg Davis had applied for a Special Use Permit for the construction of a two-family dwelling at 248 Neck-O-Land Road. The property is zoned R-2 and designated Low Density Residential. The applicant had previously received a Special Use Permit for four nearby duplexes. A single family home on the property has been determined too expensive to renovate, and the owner is seeking to replace it with a duplex. Conditions for this case are identical to the previous SUP, except for a junk removal condition which has been fulfilled and an RPA setback (the property has no RPA). A driveway will be constructed to serve all of the duplexes. Staff finds the proposal generally consistent with neighboring properties, the Comprehensive Plan, and the Zoning designation. Staff recommends approval with conditions.

Mr. Greg Davis of Kaufman and Canoles, representing the applicant, stated that the proposal intends to develop a family farm and redevelop several dilapidated buildings in the area. The redevelopment will reduce impervious cover through a shared driveway and conform to current codes. The applicant is comfortable with all staff conditions.

Mr. Poole stated the duplex conditions are similar to other ones that have been before the Commission. He stated that duplexes serve a certain segment of the community.

Mr. Peck closed the public hearing.

Mr. Poole moved for approval with conditions.

In a roll call vote, the Commission recommended approval with conditions (7-0).

THE CANDLE FACTORY

PROFFERS

THESE PROFFERS are made this 31st day of March, 2010 by CANDLE DEVELOPMENT, LLC (together with its successors in title and assigns, the "Owner") and JOHN B. BARNETT, JR. and JUDITH BARNETT (the "Barnetts").

RECITALS

A. Owner is the owner of two tracts or parcels of land located in James City County, Virginia, with addresses of 7551 and 7567 Richmond Road, and being Tax Parcels 2321100001D and 2321100001E, containing approximately 64.356 acres (the "Candle Property"), and has contractual rights to acquire from the Barnetts a 1.764 acre portion of Tax Parcel 2321100001A (the "Barnett Property"), with the Candle Property and the Barnett Property being more particularly described on Exhibit A hereto (together, the "Property").

B. The Property is now zoned A-1, M-1 and MU. The Property is designated Low Density Residential and Mixed Use on the County's Comprehensive Plan Land Use Map.

C. The Owner has applied to rezone the Property from A-1, M-1 and MU to MU, with proffers.

D. Owner has submitted to the County a master plan entitled "Master Plan for Rezoning of Candle Factory Property for Candle Development, LLC" prepared by AES Consulting Engineers dated September 24, 2008, last revised December 15, 2008 (the "Master Plan") for the Property in accordance with the County Zoning Ordinance.

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

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

CONDITIONS

1. **Density.** (a) There shall be no more than 175 dwelling units (“dwelling units”) in Areas 1B and 1C as shown on the Master Plan. There shall be no more than 96 assisted living units (“assisted living units”) in Area 1A as shown on the Master Plan. The term “assisted living unit” shall mean a non-medical residential room in the assisted living facility in Area 1A licensed in accordance with Sections 63.2-1800 et seq. of the Virginia Code and Sections 22 VAC 40-72 et seq. of the Virginia Administrative Code where adults who are aged, infirm or disabled are provided personal and health care services and 24-hour supervision and assistance. Rooms must meet the standards set forth in 22 VAC 40-72-730 and 880. Typically rooms are occupied by one person. No more than two persons may occupy a room and only persons directly related by blood or marriage may occupy the same room.

(b) All assisted living units developed on the Property shall be occupied by persons eighteen (18) years of age or older in accordance with applicable federal and state laws and regulations, including but not limited to: the Fair Housing Act, 42 U.S.C. 3601 et seq. and the exemption therefrom provided by 42 U.S.C. 3607(b)(2)(C) regarding discrimination based on familial status; the Housing for Older Persons Act of 1995, 46 U.S.C. 3601 et seq.; the Virginia Fair Housing Law Va. Code 36-96.1 et seq.; any regulations adopted pursuant to the foregoing;

any judicial decisions arising thereunder; any exemptions and/or qualifications thereunder; and any amendments to the foregoing as now or may hereafter exist. Specific provisions of the age restriction described above and provisions for enforcement of same shall be set forth in a recorded document which shall be subject to the review and approval of the County Attorney prior to issuance of the first building permit for construction in Area 1A.

2. **Owners Association.** There shall be organized a master owner's association for the Candle Factory development (the "Association") in accordance with Virginia law in which all property owners in the development, by virtue of their property ownership, shall be members. In addition, there may be organized separate owner's associations for individual neighborhoods and for commercial uses within the Property in which all owners in the neighborhood or commercial area, by virtue of their property ownership, also shall be members. The articles of incorporation, bylaws and restrictive covenants (together, the "Governing Documents") creating and governing each Association shall be submitted to and reviewed by the County Attorney for consistency with this Proffer. The Governing Documents shall require that each Association adopt an annual maintenance budget, which shall include a reserve for maintenance of stormwater management BMPs, recreation areas, private roads and parking areas, if any, sidewalks, and all other common areas (including open spaces) under the jurisdiction of each Association and shall require that the Association (i) assess all members for the maintenance of all properties owned or maintained by the Association and (ii) file liens on members' properties for non-payment of such assessments. The Governing Documents shall grant each Association the power to file liens on members' properties for the cost of remedying violations of, or otherwise enforcing, the Governing

Documents. The Governing Documents shall authorize the Association to develop, implement and enforce a water conservation plan and nutrient management plan as provided herein.

3. **Water Conservation.** (a) The Owner shall be responsible for developing water conservation standards to be submitted to and approved by the James City Service Authority (“JCSA”) and subsequently for enforcing these standards. The standards shall address such water conservation measures as limitations on the installation and use of irrigation systems and irrigation wells, the use of drought resistant native and other adopted low water use landscaping materials and warm season turf on lots and common areas in areas with appropriate growing conditions for such turf and the use of water conserving fixtures and appliances to promote water conservation and minimize the use of public water resources. The standards shall be approved by the JCSA prior to final subdivision or site plan approval.

(b) In the design phase, Owner shall take into consideration the design of stormwater systems that can be used to collect stormwater for outdoor water use for the entire development. If the Owner desires to have outdoor watering of common areas on the Property it shall provide water for irrigation utilizing surface water collection from the surface water ponds or other rainwater collection devices and shall not use JCSA water or well water for irrigation purposes, except as provided below. This requirement prohibiting the use of well water may be waived or modified by the General Manager of JCSA if the Owner demonstrates to the JCSA General Manager that there is insufficient water for irrigation in the surface water impoundments, and the Owner may apply for a waiver for a shallow (less than 100 feet) well to supplement the surface water impoundments.

4. **Affordable and Mixed Costs Housing.** A minimum of 5 of the dwelling units shall be reserved and offered for sale at a sales price to buyer at or below \$160,000 subject to adjustment as set forth herein ("Affordable Units"). A minimum of an additional 5 of the dwelling units shall be reserved and offered for sale at a price at or below \$190,000 subject to adjustment as set forth herein. A minimum of an additional 48 of the dwelling units shall be reserved and offered for sale at a price at or below \$225,000 subject to adjustment as set forth herein. The maximum prices set forth herein shall include any adjustments as included in the Marshall and Swift Building Costs Index (the "Index") annually beginning January 1, 2011 until January 1 of the year in question. The adjustment shall be made using Section 98, Comparative Costs Multipliers, Regional City Averages of the Index of the adjusting year. Owner shall consult with and accept referrals of, and sell to, potential buyers qualified for the Affordable Housing Incentive Program ("AHIP") from the James City County Office of Housing and Community Development on a non-commission basis. At the request of the Office of Housing and Community Development, Owner shall provide downpayment assistance second deed of trust notes and second deeds of trust for the Affordable Units for the difference between the appraised value of the Affordable Unit and its net sale price to the purchaser in accordance with AHIP using the approved AHIP form of note and deed of trust. The Director of Planning shall be provided with a copy of the settlement statement for each sale of an Affordable Unit and a spreadsheet prepared by Owner showing the prices of all of the Affordable Unit that have been sold for use by the County in tracking compliance with the price restrictions applicable to the Affordable Units. Affordable Units shall not be constructed all in the same location.

5. **Cash Contributions for Community Impacts.** (a) A contribution of \$17,115.00 for each single family detached dwelling unit and of \$4,870.00 for each single family attached dwelling unit, other than Affordable Units, on the Property shall be made to the County in order to mitigate impacts on the County from the physical development and operation of the Property. The County shall use these funds for school use.

(b) A contribution of \$1,000.00 for each dwelling unit other than an Affordable Unit and of \$250.00 for each assisted living unit on the Property shall be made to the County for emergency services, off-site road improvements, future water needs, library uses, and public use sites.

(c) A contribution of \$1,239.00 for each single family detached dwelling unit, of \$934.00 for each single family attached dwelling unit and of \$467.00 for each assisted living unit, in each case other than an Affordable Unit, on the Property shall be made to the JCSA for water system improvements.

(d) A contribution of (i) \$650.00 for each single family detached dwelling unit each single family attached dwelling unit other than an Affordable Unit and (ii) \$575.00 for each assisted living unit and (iii) an amount equal to \$2.10 per gallon per day of average daily sanitary sewage flow as determined by JCSA for each non-residential building based on the use of the building(s) shall be made to the JCSA to defray the costs of the Colonial Heritage Pump Station and Sewer System Improvements or any project related to improvements to the JCSA sewer system.

(e) A contribution of \$500 for each dwelling unit shall be made to the County for off-site stream restoration or other environmental improvements in the Yarmouth Creek watershed.

(f) A one-time contribution of \$30,000.00 shall be made to the County for off-site sidewalks. The County shall not be obligated to issue certificates of occupancy for more than 87 residential dwelling units on the Property until this contribution has been paid.

(g) The contributions described in paragraphs (a) through (e) above shall be payable for each dwelling unit on the Property at the time of final subdivision plat or final site plan approval for such unit unless the County adopts a written policy or ordinance calling for payment of cash proffers at a later date in the development process. In the event dwelling units, such as townhouse units, require both a site plan and subdivision plat, the contributions described above in paragraphs (a) through (e) shall be payable for each such dwelling unit shall be paid at the time of final subdivision plat approval.

(h) The contribution(s) paid in each year pursuant to this Section and Section 6(e) shall be adjusted annually beginning January 1, 2011 to reflect any increase or decrease for the preceding year in the Index. In no event shall the per unit contribution be adjusted to a sum less than the amounts set forth in paragraphs (a) through (e) of this Section and Section 6(c). The adjustment shall be made using Section 98, Comparative Costs Multipliers, Regional City Averages of the Index. In the event that the Index is not available, a reliable government or other independent publication evaluating information heretofore used in determining the Index (approved in advance by the County Manager of Financial Management Services) shall be relied upon in establishing an inflationary factor for purposes of increasing the per unit contribution to approximate the rate of annual inflation in the County.

6. Entrances; Traffic Improvements. (a) The existing private driveway at the Route 60/Croaker Road intersection shall be reconstructed to a public road with a four lane road

section (provided, however, that the Director of Planning may require a fifth lane, if the level of development that has occurred on Tax Map Parcel No. 2331100001C warrants such additional lane) at the Route 60 intersection and tapering to a two lane section. The northbound Croaker Road approach to the Croaker Road/Route 60 intersection shall include a left turn lane with 200 feet of storage, a through lane (provided, however, that the Director of Planning may require a through/left turn lane, if the level of development that has occurred on Tax Map Parcel No. 2331100001C warrants such through/left turn lane) and a right turn lane.

(b) At the intersection of Route 60 and Croaker Road, a right turn lane with 200 feet of storage and a 200 foot taper and with shoulder bike lane from east bound Route 60 into the Property shall be constructed.

(c) At the intersection of Route 60 and Croaker Road, the eastbound left turn lane shall be extended to have 200 feet of storage and a 200 foot taper.

(d) The improvements proffered hereby shall be constructed in accordance with Virginia Department of Transportation (“VDOT”) standards and shall include any related traffic signal improvements or replacement, including signal coordination equipment, at that intersection. The improvements listed in paragraphs (a) through (c) shall be completed or their completion bonded in form satisfactory to the County Attorney prior to final subdivision plat or site plan approval for development on the Property.

(e) Within 180 days after the County issuing building permits for more than 135 of the residential units on the Property, Owner shall pay to VDOT the costs, not to exceed \$10,000.00, of the equipment at the Norge Lane/Route 60 traffic signal necessary to allow the coordination of that signal and the signal at the Croaker Road/Route 60 intersection.

(f) Subject to the prior approval of VDOT and when sidewalk has been constructed on the north side of Route 60 at the Croaker Road/Route 60 intersection to receive pedestrians, Owner shall install or pay the costs of installation of crosswalks across Route 60, a median refuge island, signage and pedestrian signal heads at the intersection (“Pedestrian Improvements”). The County shall not be obligated to issue building permits for more than 100 residential units on the Property until either (i) the Pedestrian Improvements have been installed, or (ii) Owner shall have paid the costs of such improvements to the County or posted a bond in form satisfactory to the County Attorney for the installation of such Pedestrian Improvements.

7. Connections to Adjacent Properties. Owner shall provide pedestrian and vehicular connections between the Property and the adjacent property (Tax Parcel 2321100001C) generally as shown on the Master Plan, with the plans, location and materials for such connections subject to review and approval by the Director of Planning and with such connections to be shown on the development plans for the Property. The connections shall be either (i) installed or (ii) bonded in form satisfactory to the County Attorney prior to the issuance of final site plan approval for the phase of the development in which such connection is located.

8. Streetscape Guidelines. The Owner shall provide and install streetscape improvements in accordance with the applicable provisions of the County’s Streetscape Guidelines policy or, with the permission of VDOT, the plantings (meeting County standards for plant size and spacing) may be installed in the adjacent VDOT right-of-way. The streetscape improvements shall be shown on development plans for that portion of the Property and submitted to the Director of Planning for approval during the subdivision or site plan approval process. Street trees shall be located no farther than 10 feet from the edge of pavement, subject

to VDOT approval. Streetscape improvements shall be either (i) installed within six months of the issuance of a certificate of occupancy for any residential or non-residential units adjacent structures or (ii) bonded in form satisfactory to the County Attorney prior to the issuance of a certificate of occupancy for any residential or non-residential units in adjacent structures.

9. Recreation. (a) The following recreational facilities shall be provided: approximately 3.65 acres of parkland; one centrally located, shared playground at least 2,500 square feet in area with at least five activities either in composite structures or separate apparatus; one picnic shelter of at least 625 square feet; a minimum eight foot wide, concrete or asphalt shared use path along one side of the entrance road approximately .36 miles in length and an additional approximately .94 miles of soft surface walking trails generally as shown on the Master Plan; one paved multi-purpose court approximately 50' x 90' in size; and two multi-purpose fields, one of which will be at least 200' x 200' in size. The exact locations and design of the facilities proffered hereby and the equipment to be provided at such facilities shall be shown on development plans for the Property and approved by the Director of Planning. Recreational facilities shall be constructed at the time of the construction of the phase of the development in which they are located or immediately adjacent to as shown on the development plans for the Property.

(b) There shall be provided on the Property other recreational facilities, if necessary, such that the overall recreational facilities on the Property meet the standards set forth in the County's Parks and Recreation Master Plan as determined by the Director of Planning

10. Archaeology. If required by the Director of Planning, a Phase I Archaeological Study for the entire Property shall be submitted to the Director of Planning for review and

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

11. Design Guidelines and Review; Sustainable Building. Owner shall prepare and submit design review guidelines to the Director of Planning for his review and approval setting forth design and architectural standards for the development of the Property generally consistent with the Supplemental Submittal materials submitted as a part of the rezoning application and on

file with the Planning Department and the general intent of the design standards outlined in Comprehensive Plan for the Norge Community Character Area for the approval of the Director of Planning prior to the County being obligated to grant final approval to any development plans for the Property (the “Guidelines”). Once approved, the Guidelines may not be amended without the approval of the Director of Planning. Owner shall establish a Design Review Board to review all building plans and building elevations for conformity with the Guidelines and to approve or deny such plans. Owner shall achieve LEED certification at the certified level for the assisted living and the commercial buildings shown on the Master Plan. All single family detached houses shall achieve EarthCraft House Virginia certification at the EarthCraft House Certified (Level I) level. Owner shall provide a copy of each certification to the Director of Planning.

12. **Sidewalks.** There shall be sidewalks installed on at least one side of each of the public streets on the Property, which sidewalks may be installed in phases as residential units are constructed. Sidewalks shall be installed prior to issuance of any certificates of occupancy for adjacent dwelling units. The Planning Director shall review and approve sidewalk design.

13. **Curb and Gutter.** Streets (but not the private alleys) within the Property shall be constructed with curb and gutter provided, however, that this requirement may be waived or modified by the Director of Planning along those segments of street, including entrance roads, where structures are not planned.

14. **Master Stormwater Management Plan.** (a) Owner shall submit to the County a master stormwater management plan for the Property consistent with the Conceptual Stormwater Management Plan prepared by AES Consulting Engineers dated September 24, 2008

("Stormwater Plan") and included in the Master Plan set submitted herewith and on file with the County, including facilities and measures necessary to meet the County's 10 point stormwater management system requirements and the special stormwater criteria applicable in the Yarmouth Creek watershed ("SSC") and, in addition, including additional LID measures to treat stormwater from 30% of the impervious areas on the Property, which additional LID measures are over and above those necessary to meet the 10 point and SSC requirements. Prior to the County granting final approval of any subdivision or site plan, Owner shall submit to the Environmental Division a geotechnical report from a duly licensed engineer confirming the embankment of Marston's Pond is structurally sound or indentifying any repairs needed to make the embankment structurally sound. Any necessary repairs shall be incorporated into the development plans for the Property. The master stormwater plan shall be approved by the Environmental Director or his designee prior to the submission of any development plans for the Property. The master stormwater management plan may be revised and/or updated during the development of the Property based on on-site conditions discovered in the field with the prior approval of the Environmental Division. The approved master stormwater management plan, as revised and/or updated, shall be implemented in all development plans for the Property.

15. **Nutrient Management Plan**. The Association shall be responsible for contacting an agent of the Virginia Cooperative Extension Office ("VCEO") or, if a VCEO agent is unavailable, a soil scientist licensed in the Commonwealth of Virginia, an agent of the Soil and Water Conservation District or other qualified professional to conduct soil tests and to develop, based upon the results of the soil tests, customized nutrient management plans (the "Plans") for all common areas within the Property and each individual single family lot shown on each

subdivision plat of the Property. The Plans shall be submitted to the County's Environmental Director for his review and approval prior to the issuance of the building permits for more than 25% of the units shown on the subdivision plat. Upon approval, the Owner so long as it controls the Association and thereafter the Association shall be responsible for ensuring that any nutrients applied to common areas which are controlled by the Association be applied in strict accordance with the Plan. The Owner shall provide a copy of the individual Plan for each lot to the initial purchaser thereof. Within 12 months after issuance of the Certificate of Occupancy for the final dwelling unit on the Property and every three years thereafter, a turf management information seminar shall be conducted on the site. The seminar shall be designed to acquaint residents with the tools, methods, and procedures necessary to maintain healthy turf and landscape plants. The County shall be provided evidence of the seminars taking place by submitting to the Planning Director a seminar agenda and or minutes no later than 10 days after each seminar.

16. Private Streets. All private streets, if any, and alleys on the Property shall be maintained by the Association. The party responsible for construction of a private street shall deposit into a maintenance reserve fund to be managed by the association responsible for maintenance of that private street an amount equal to one hundred and fifty percent (150%) of the amount of the maintenance fee that would be required for a similar public street as established by VDOT - Subdivision Street Requirements. The County shall be provided evidence of the deposit of such maintenance fee prior to final site plan or subdivision plat approval by the County for the particular phase or section which includes the relevant private street.

17. **Development Phasing**. The County shall not be obligated to grant final subdivision plat or site plan approval for more than the number of lots/dwelling units on a cumulative basis set forth beside each anniversary of the date of the final approval of the applied for rezoning by the Board of Supervisors:

<u>Anniversary of Rezoning</u>	<u>Maximum Number of Lots/Units</u>
1	55
2	115
3 and thereafter	175

18. **Water and Sanitary Sewer Master Plan**. Owner shall submit to the JCSA for its review and approval a master water and sanitary sewer plan for the Property prior to the submission of any development or subdivision plans for the Property.

19. **Route 60 Median Landscaping**. Subject to VDOT approval, Owner shall install landscaping as provided herein in the portion of the Route 60 median beginning at the Route 60/Croaker Road intersection and extending eastward 800 feet. The landscaping shall consist of 20 street trees at least 125% of Ordinance caliper size requirements. A landscape plan for the median shall be submitted to the Director of Planning with the initial site plan for development on the Property for his review and approval for consistency with this proffer and the County's Streetscape policy. The median shall be planted or the planting bonded in a form satisfactory to the County Attorney prior to the County being obligated to issue building permits for buildings located on the Property.

20. **Crosswalks**. Subject to VDOT approval, Owner shall provide a crosswalk across Croaker Road from Tax Parcel 2321100001B to Tax Parcel 2321100001C and crosswalks providing access to the two internal parks on the Property both in the locations generally as

shown on the Master Plan at the time the final layer of pavement is placed on the segment of Croaker Road where the crosswalks are located.

21. Right of Way Reservation. Owner shall reserve the area shown on the Master Plan as “Corridor to Adjacent Property Reserved for Possible Future Road/Pedestrian Connection” for the possible future public road/sidewalk connection to the adjacent property. Owner shall have no responsibility to construct a connecting road/sidewalk in this area and shall not be obligated to permit the owners of the adjacent parcel to construct a road/sidewalk in such area unless and until Owner and the owner of the adjacent parcel have entered into an agreement addressing compensation for the Owner and/or the Association for the right of way, permitting, construction easements and obligations, such as appropriate replanting of disturbed areas, and addressing responsibility for the costs of any required road or traffic signal improvements on Owner’s property warranted by the additional traffic from the adjacent parcel.

22. Master Plan. The Property shall be developed generally as shown on the Master Plan. Development plans may deviate from the Master Plan as provided in Section 24-518 of the Zoning Ordinance.

23. Phased Clearing. The Property shall be developed in phases in accordance with the approved site plan or plans for the development. Owner shall only clear the area necessary for the construction and operation of the phase then under development. Such necessary clearing includes, without limitation, clearing for roads, sidewalks, trails, building sites, recreational facilities and areas, utility connections, earthwork and grading, soil stockpiles and stormwater management. The limits of clearing for each phase shall be subject to the approval of the Environmental Director or his designee.

WITNESS the following signatures.

CANDLE DEVELOPMENT, LLC

By: [Signature]
Manager

John B. Barnett, Jr.
John B. Barnett, Jr.

Judith Barnett
Judith Barnett

STATE OF VIRGINIA AT LARGE

CITY/COUNTY OF Williamsburg, to-wit:

The foregoing instrument was acknowledged this 5th day of April, 2010, by Peter V. Henderson, as Manager of Candle Development, LLC on behalf of the company.

[Signature]
NOTARY PUBLIC

My commission expires: 12/31/2014.
Registration No.: 183270.

STATE OF VIRGINIA AT LARGE

CITY/COUNTY OF Williamsburg, to-wit:

The foregoing instrument was acknowledged this 6th day of April, 2010, John B. Barnett, Jr. and Judith Barnett, husband and wife.

[Signature]
NOTARY PUBLIC

My commission expires: 12/31/2014.
Registration No.: 183270.

Exhibit A
Property Description

Parcel D1

All that certain piece, parcel or lot of land situate in James City County, Virginia, set out and described as Parcel D1 as shown on a certain plat entitled "PLAT OF SUBDIVISION ON THE PROPERTY OWNED BY JOHN B. BARNETT JR., POWHATAN DISTRICT, JAMES CITY COUNTY, VIRGINIA" dated April 6, 2006 and made by AES Consulting Engineers of Williamsburg, Virginia, recorded in the Clerk's Office of the Circuit Court for the City of Williamsburg and County of James City, Virginia as Instrument No.

and

Parcel E

All that certain piece, parcel or lot of land situate in James City County, Virginia, set out and described as Parcel E as shown on a certain plat entitled "PLAT OF SUBDIVISION & PROPERTY LINE EXTINGUISHMENT BETWEEN THE PROPERTIES OWNED BY JOHN B. BARNETT JR., CHICKASAW, L.L.C. AND BARNETT DEVELOPMENT COMPANY, INC., POWHATAN DISTRICT, JAMES CITY COUNTY, VIRGINIA" dated April 4, 2006 and made by AES Consulting Engineers of Williamsburg, Virginia, recorded in the Clerk's Office of the Circuit Court for the City of Williamsburg and County of James City, Virginia as Instrument No. 060013607.

And

Portion of Parcel A

PROPERTY DESCRIPTION
A PORTION OF PARCEL "A"
TAX MAP PARCEL #(23-2)(11-1A)
CONTAINING A TOTAL OF 1.764 ACRES±

ALL THAT CERTAIN PORTION OF PARCEL "A", TAX MAP PARCEL #(23-2)(11-1A), SITUATE, LYING AND BEING IN THE POWHATAN DISTRICT OF THE COUNTY OF JAMES CITY, VIRGINIA, CONTAINING A TOTAL OF 76,820 SQUARE FEET± OR 1.764± ACRES MORE OR LESS AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE SOUTHERLY RIGHT-OF-WAY LINE OF RICHMOND ROAD, U. S. ROUTE #60; A CORNER OF PARCEL "B", NOW OR FORMERLY OWNED BY CROSSWALK COMMUNITY CHURCH, INC., TAX MAP PARCEL #(23-2)(11-1B); THENCE IN A EASTERLY DIRECTION AND ALONG THE SOUTHERLY RIGHT-OF-WAY LINE OF RICHMOND ROAD, U. S. ROUTE #60,

S70°01'07"E, 573.20' TO A POINT; THENCE ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 2824.79' AND AN ARC LENGTH OF 14.83' TO A POINT; THIS BEING THE TRUE POINT OF BEGINNING (P.O.B.) AND THE NORTHWESTERN CORNER OF PARCEL "A" OF THE PROPERTY DESCRIBED HEREON.

THENCE FROM SAID TRUE POINT OF BEGINNING, SAID POINT BEING ALONG THE SOUTHERLY RIGHT-OF-WAY LINE OF RICHMOND ROAD, U. S. ROUTE #60, A CORNER TO PARCEL "A" OF THE PROPERTY DESCRIBED HEREON AND PARCEL "E" OF THE LANDS NOW OR FORMERLY OWNED BY CANDLE DEVELOPMENT, LLC; THENCE CONTINUING ALONG THE RIGHT-OF-WAY LINE OF RICHMOND ROAD, U. S. ROUTE #60, ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 2824.79' AND AN ARC LENGTH OF 25.14' TO A POINT; A CORNER TO PARCEL "A" OF THE PROPERTY DESCRIBED HEREON AND PARCEL "D" OF THE LANDS NOW OR FORMERLY OWNED BY CANDLE DEVELOPMENT, LLC; THENCE LEAVING SAID CORNER AND RIGHT-OF-WAY LINE OF RICHMOND ROAD, U. S. ROUTE #60, S26° 33'06"W, 399.43' TO A POINT; THENCE ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 583.96' AND AN ARC LENGTH OF 71.64' TO A POINT; THENCE S19° 31'22"W, 247.60' TO A POINT, THENCE S36° 52'20"W, 2358.01' TO A POINT; THENCE N51° 43'03"E, 25.01' TO A POINT; THENCE N36° 52'20"E, 2353.58' TO A POINT; THENCE N19° 31'22"E, 243.78' TO A POINT; THENCE ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 608.96' AND AN ARC LENGTH OF 74.71' TO A POINT; THENCE N26° 33'06"E, 396.79' TO THE AFORESAID TRUE POINT OF BEGINNING;

THAT PORTION OF PARCEL "A" AND THE PROPERTY DESCRIBED HEREON IS MORE PARTICULARLY SHOWN ON THAT CERTAIN PLAT ENTITLED, "PLAT OF SUBDIVISION & PROPERTY LINE EXTINGUISHMENT BETWEEN THE PROPERTIES OF JOHN B. BARNETT, JR., CHICKASAW, L.L.C. AND BARNETT DEVELOPMENT COMPANY, INC.", DATED APRIL 4, 2006, REVISED MAY 5, 2006 AND DULY RECORDED AT THE CLERK'S OFFICE OF THE CIRCUIT COURT OF THE COUNTY OF JAMES CITY, VIRGINIA AS INSTRUMENT #060013607.

APPROVED MINUTES FROM THE APRIL 1, 2009 PLANNING COMMISSION MEETING

Mr. Ribeiro stated that on January 7, 2009 the Planning Commission voted 4-2, with one vacancy, to recommend approval of this application. However, staff was notified by the County Attorney's Office that the applicant had notified them of a procedural error that occurred when the applicant turned in the rezoning application for this project. The signature of one of the original owners of the property, Mr. Jack Barnett, was missing from the application. Mr. Barnett is the owner of a 25-foot-wide access strip which runs north-south through the property. Mr. Ribeiro stated that to ensure that there would be no further procedural issues, staff was advised by the County's Attorney's Office that the case needed to return to the Planning Commission prior to moving forward. At the March 10th meeting, the Board of Supervisors opened and closed the public hearing on the Candle Factory case and referred the case back to the Planning Commission for consideration.

Mr. Ribeiro stated this proposal has not changed much since its recommendation by the Planning Commission on January 07, 2009. The pertinent modification pertains to a new proffer, Proffer No. 21-Right of Way Reservation. This proffer was designed by the applicant to address comments made by the commission regarding connectivity with adjacent parcels. As highlighted in the staff report, staff finds that the proffer as written makes such connectivity difficult. As presented during January 09, 2009, staff finds this proposal not acceptable, and recommends that the Planning Commission recommend denial.

Ms. Kratter noted the overall negative impact on the economy if the proposed assisted living facility is not built. She also noted the report done by the Wessex Group, which proposed that there would be certain benefits to the County during the construction phase. Staff remarked that this may have been overstated. The Code Compliance and Environmental spending were not included with the figures. Ms. Kratter asked if staff knew what the diminution of the positive would be during that time period.

Mr. Ribeiro answered that he did not know. He stated he believed that building permits would be consistent with some of the positive aspects of this application. He did not know the exact numbers.

Mr. Henderson asked about the alignment of the twenty five foot access strip, does it provide for its relocation based upon an approved master plan. He stated that the road alignment shown as the proffered master plan differs from the twenty five access strip that is reserved. He stated that without the property owner's compliance and agreement on the relocation, the proffered master plan would in essence be invalid.

Mr. Ribeiro deferred the question to the applicant.

Mr. Krapf opened the public hearing.

Mr. Vernon Geddy spoke on behalf of the applicant. He stated that the application presented is basically the same presented a few months ago. Mr. Geddy stated there is a contractual arrangement with Mr. Barnett, the owner of the twenty five foot road access strip.

He stated that as the public road is constructed, Mr. Barnett will release the easement. Mr. Geddy stated that the first phase for development, if approved, would be the townhouse section. It would be located on the left from the entrance road. Mr. Geddy stated that the applicant intends to begin construction immediately. He stated that it would also be the applicant's intentions to clear what is necessary to begin construction. He stated that the entire site would not be cleared but just the area necessary for construction. This would include the footprints of the buildings, roads, and utility connections that would be necessary.

Ms. Kratter asked what this developer could do, that other developers have not been able to do in the County. She was referring to the fact that land has been cleared in the County, but no construction has taken place.

Mr. Geddy answered that many developers have halted building due to financing and a number of other factors. He does not necessarily feel it is because a product would not sell in this market. He stated that the applicant has done research as to what will sell in this area, and they are willing to commit their capital in order to begin the project.

Ms. Kratter asked for clarification as to what phases would be cleared and when.

Mr. Geddy stated that the site plan would illustrate the exact limits of clearing for a particular phase, but it has not been prepared for this project yet. He did show the vegetation currently on site and the limits of clearing that are proposed. He pointed out the area where work would begin associated with that clearing and then construction.

Ms. Kratter asked how many units are in the initial area.

Mr. Geddy answered he was not sure if exact numbers have been determined yet.

Ms. Kratter stated that it is the assisted living portion of the project that makes this a positive benefit to the County from a monetary standpoint. She stated that it was her interpretation of the plan that the assisted living would be developed later, and her suggestion would be to have the assisted living portion developed first.

Mr. Geddy stated he could not commit to that section being one of the first to be developed. Currently, the plan is to have the assisted living section be part of the Crosswalk Community Church. He stated that it was in the plan to have the Church build this section, own and operate it.

Ms. Kratter stated that it could potentially be an economic deficit for the County if that section is not built. She was inquiring as to what the applicant can do to mitigate this. Ms. Kratter made the point that the assisted living portion is a significant part of the application. If it changes, many aspects of the development would be affected, such as density. Ms. Kratter expressed concern should this section never be built. She understands that the applicant takes a risk, but she would like to do something to mitigate the risk for the County.

Mr. Geddy was not aware of anything that the applicant could do in this regard.

Ms. Kratter asked if there was any consideration given to increasing the school proffers since it was calculated using old standards, especially given the current economic conditions.

Mr. Geddy stated that the applicant has complied with the Board of Supervisor's adopted policies with regards to cash proffers. He envisions discussions taking place during the Board of Supervisor's meeting.

Ms. Kratter asked about the Homeowner's Association's (HOA) responsibility for the recreational areas and trails. She asked if there was a cost estimate associated with this.

Mr. Geddy stated that the numbers have been calculated, he was just unsure what they were.

Ms. Kratter expressed her concern given that this would be a small HOA it may be difficult for them to maintain the recreational areas and trails. She wanted to protect the County in that they would not be responsible for items that the HOA may not be able to maintain.

Mr. Geddy stated that the applicant was aware of the importance of balance. He stated the applicant has done extensive research on these types of projects, and has one similar in progress at West Point.

Ms. Kratter stated that the Commission is being asked to approve this application without knowing this study has been verified and deemed accurate.

Mr. Geddy stated the Homeowner's Association Act requires that a capital reserves study is done every five years in order to ensure sufficient funds area maintained to be able to provide maintenance for their facilities.

Ms. Kratter pointed out that yes it is a Homeowner's Association issue, but it becomes a community issue if it turns out the maintenance cannot be performed. She asked about responsibility of maintenance, whereas if other sections are not built on a continual basis, will the maintenance of infrastructure that is already in place, fall on those in sections already built.

Mr. Geddy stated that all the main streets are public and would fall under VDOT's responsibility. He stated homeowners would be responsible for their property and their parking areas, etc.

Ms. Kratter expressed her concerns that in other areas of the County, the developer has turned areas over to the HOA's and even lent money to the HOA to handle maintenance until buildout, and then there is not buildout. She is concerned with a small HOA being responsible for a very large expense.

Mr. Fraley asked if the applicant was willing to proffer the phased clearing and the purposes that the clearing would be done.

Mr. Geddy stated yes they would be willing to proffer this.

Mr. Henderson expressed his concern about the language concerning the right of way reservation. He stated the practicality of getting a permit to construct the road, would involve a court issue with the Resource Protected Area (RPA). He asked if the applicant would be securing a permit as a part of its development activities.

Mr. Geddy answered no, he did not believe so.

Mr. Rich Costello, of AES Consulting Engineers, stated that some permits would be required for the utilities. Permits from the Army Corp of Engineers may not be necessary. He sees a potential problem in obtaining these permits in that they have time limits.

Mr. Henderson stated that unless there was an agreement with the adjoining property owner to pursue it simultaneously, and to construct the access as part of the development of the site. He asked if that is how the applicant would approach this.

Mr. Costello stated that only a certain number of units will be allowed per year.

Mr. Geddy stated that at this point the adjacent property is zoned A-1, and the applicant has attempted to design the connection at the narrowest point of the ravine. He was unsure of proposed anything further without knowing what would be developed on the adjacent property.

Mr. Henderson expressed his concern about this situation creating a right of way that may be relocated by an issue with the Army Corp of Engineers.

Mr. Geddy felt that this was the best the applicant could do at this time without the knowledge of the adjacent property.

Mr. Henderson asked if the easement language provide some flexibility, and the ability to cross the property owner's property would be noted.

Mr. Geddy stated yes.

Mr. Henderson did not want to create a circumstance where something is dedicated, but ultimately cannot be built.

Mr. Billups asked if the applicant was willing to abide by the conditions in the staff report, even though staff recommended denial.

Mr. Geddy stated that the basis of the denial was due to interpretation of the Comprehensive Plan, and not specific items that may have been suggested, that the applicant was not willing to do.

Mr. Billups asked about the interconnectivity standards, the road construction and VDOT's involvement.

Mr. Geddy stated this plan will meet VDOT and the County's approval.

Mr. Billups asked about the timeline for the affordable housing units and the assisted living units. He asked if there was any flexibility in the timeline that these sections were due to be constructed.

Mr. Geddy answered that it is possible.

Ms. Kratter expressed her concerns that this plan was being viewed in isolation without knowing the cumulative impact of what is planned for the future, and the nature of those plans. She is concerned of the number of affordable homes and workforce housing that are approved and yet to be built, given that the market has slowed and prices are decreasing. She stated it was difficult to determine the real public benefit without an ability to accurately assess the need, especially since it appears that the project will not provide favorable benefits to the County during difficult economic times.

Mr. Geddy stated that the initial construction phase of the project is all favorable.

Ms. Kratter asked about the construction dollars generated in the initial phases, although it will dependent on how much of the materials and labor will utilize County resources.

Mr. Geddy answered that the owner, the site contractor, and the builder are based in the County.

Ms. Barbara Pfeiffer, of 103 Links of Leith, questioned the number of units that are built in the different phases. She expressed her concerns of clearing the land, either in phases, or clear all in anticipation of building. She stated staff recommended denial of the application due to nonconformance with the Comprehensive Plan. Ms. Pfeiffer then questioned the need for a Comprehensive Plan if it were not followed.

Mr. Krapf closed the public hearing.

Mr. Murphy wanted to clarify the comment of funding for private streets. He stated there is a proffer provision that provides for seed money for all private streets, provided by the applicant.

Mr. Henderson mentioned that there is a land use application before the Steering Committee to change the land use designation. This change, if approved, would make the proposed development in compliance with the Comprehensive Plan. He stated that this change was brought forward by staff.

Mr. Poole mentioned that the revision to the Comprehensive Plan is not yet in place, and expressed his concerns about making a decision based on the fact that it may change in the future. He expressed his appreciation for the architectural designs and the applicant's interest in phased clearing. He did not, however, like the idea of leapfrogging, of what he considered high

density residential from Williamsburg, to Lightfoot, to Norge, to Toano, etc. Mr. Poole felt that this proposal continues this type of transformation of A-1 property into multi-family. He felt that the County should not continue to incrementally add residential units in addition to what has already been approved.

Ms. Kratter added her concern about the character of the County. She wanted to compliment the applicant on a very thoughtful plan that has some great environmental sensitivity. She stated overall, she did not feel that this was something that the County can risk from a financial standpoint.

Mr. Fraley mentioned that staff has allowed for work to be done in assessing cumulative impacts in the work management program. He stated some work has been done concerning this already. He stated the traffic study did and has included cumulative impacts over the last few years. Mr. Fraley stated that on principle he stands opposed to new residential development in the County. He feels that there is a large inventory of homes currently existing. He feels that in this case there are other considerations. Mr. Fraley stated that according to citizen input during the Comprehensive Plan update, citizens rated the availability of affordable housing was rated excellent or good by 23% of the respondents. It also showed the variety of housing options was rated excellent or good by 35% of respondents. Mr. Fraley stated these responses represent two of the three least positive ratings provided by the citizens. He stated the Va Tech survey showed the same questions decreasing in percentages as to being excellent or good from the last survey conducted for the last Comprehensive Plan. He stated that the Citizen Participation Team determined housing as a topic of concern among the citizens that participated. Mr. Fraley stated the respondents wanted to see more mixed cost housing, and more workforce and affordable housing, and have these types of housing integrated throughout the community. He stated he felt the benefits of the project were mixed cost housing, inclusion of affordable and workforce housing, unusual environmental protections, and adherence to the principles of open space design. These are all mentioned as public benefits in the current Comprehensive Plan. Mr. Fraley stated that these benefits will cost the County money. He felt the commercial component of the project has potential to make the project a positive benefit.

Mr. Krapf agreed many of the comments from his fellow Commissioners. He stated the Comprehensive Plan is a guideline to go by. He is very much against residential development until it is determined what is already planned, but felt in this case the positive benefits outweigh those concerns, such as the environmental protections, the quality of design, the low density, and the affordable and workforce housing proposed.

Mr. Billups expressed his concerns of approving an application that staff has recommended denial. He would like to see the completion of the Comprehensive Plan update done before more residential developments are approved. He does not believe this application provides a public benefit to the County.

Mr. Poole moved to deny the application.

Ms. Kratter seconded the motion.

In a roll call vote the motion failed. (3-4) AYE: Poole, Kratter, Billups; NAY: Fraley, Henderson, Peck, Krapf.

Mr. Henderson moved to approve the application.

Mr. Fraley seconded the motion.

In a roll call vote the motion was approved. (4-3) AYE: Fraley, Henderson, Peck, Krapf; NAY: Poole, Kratter, Billups.

SPECIAL USE PERMIT-0026-2009. Constance Avenue Wireless Communications Facility Staff Report for the April 13, 2010, 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

March 3, 2010, 7:00 p.m.

April 13, 2010, 7:00 p.m. (applicant deferral)

June 8, 2010

SUMMARY FACTS

Applicant:

Ms. Lisa Murphy of LeClairRyan

Land Owner:

Bryan and Barbara Burris

Proposal:

To allow for the construction of a 114-foot-tall (110-foot tower with a four-foot lightning rod) "slick stick" Wireless Communication Facility (WCF) on the subject property. WCFs are specially permitted uses in the R-8, Rural Residential zoning district.

Location:

115 Constance Avenue

Tax Map Parcel No.:

4732500002

Parcel Size:

26.83 acres

Zoning:

R-8, Rural Residential

Comprehensive Plan:

Low Density Residential

Primary Service Area:

Inside

STAFF RECOMMENDATION

The applicant has requested deferral of this case in order to resolve outstanding contractual issues with the property owner. Staff concurs with the deferral request and recommends that the Board defer this case until the June 8, 2010 meeting.

Staff Contact:

Sarah Propst, Planner

Phone: 253-6685

PROJECT DESCRIPTION

Ms. Lisa Murphy has applied for an SUP to allow for the construction of a 114-foot (110 feet tall with a four-foot lightning rod) WCF on the subject property. The site is a 26.83-acre parcel and is zoned R8, Rural Residential. Three WCFs are currently located within a three mile radius of the proposed tower but do not provide adequate coverage along the Colonial Parkway or the surrounding residential areas to the north and east.

PUBLIC IMPACTS

Environmental

- **Watershed:** The proposed WCF is in Mill Creek, the majority of the driveway is in Powhatan Creek.
- **Staff Comments:** The Environmental Division has no comments on the SUP application at this time. Any site development issues will be dealt with at the site plan level.

Public Utilities and Transportation

The proposed WCF would not generate additional needs for the use of public utilities or significant additional vehicular trips in the area.

Visual Impacts

Based on a publicly advertised balloon test that took place on February 3, 2010, the applicant has provided photo simulations of the proposed tower location from several different vantage points around the vicinity of the site. Simulation photos have been provided for your reference.

The proposed tower would be located within a stand of mature trees. The trees surrounding the site are in the 80- to 90-foot range and a 200-foot scenic easement buffers the tower site from the Colonial Parkway. The proposed tower is more than 500 feet from the Colonial Parkway and over 400 feet from the closest residence on the adjacent property. The tree cover between the tower site and the Colonial Parkway makes the proposed tower barely visible from a limited section of the Colonial Parkway.

The proposed tower has limited visibility along Constance Avenue from Neck-O-Land Road to just before Discovery Lane. The tower will not be visible from any other vantage point within the Powhatan Shores subdivision. The tower has limited visibility from several points along Neck-O-Land Road between Captain John Smith Road and 628 Neck-O-Land Road. Though there is limited visibility, as described it does not appear intrusive.

Wetlands on the property preclude development along the western side of the property and the applicant has proposed a 100-foot tree preservation buffer on all sides of the facility. The applicant has also offered to install a board on board fence to enclose the facility and plant additional trees to screen the fence.

Federal Aviation Administration (FAA) requirements

Per Federal requirements, all structures greater than 200 feet above ground level (AGL) must be marked and/or lighted. Owners/developers of all structures greater than 200 feet AGL are required to provide notice to the Federal Aviation Administration (FAA), which will then conduct an aeronautical study for the specific project. Structure marking may consist of alternating bands of orange and white paint (for daytime visibility) and red obstruction lights (for night visibility). As an alternative to this combination, the FAA may allow a dual lighting system featuring red lighting at night and medium intensity white strobe lighting during the day. Because this structure would be less than 200 feet, a marking system would not be required by the FAA.

COMPREHENSIVE PLAN

Land Use Map

Designation	<p>Low Density Residential: Land uses in this designation are single-family homes, duplexes, accessory units, cluster housing, and recreational areas. This land designation is located within the Primary Service Area (PSA) where public services exist or are expected.</p> <p>Staff Comment: The owner of the property intends to build a residence on this parcel. The inclusion of a WCF on the site will be a secondary use. The limited development associated with the WCF will not have an adverse impact on the surrounding residential neighborhoods and fits in with the goals of the Comprehensive Plan.</p>
Development Standards	<p><i>General Land Use Standard No. 4:</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>iv. Provide adequate screening and buffering to protect the character of nearby residential areas.</p> <p>Staff Comment: The proposed tower location has limited visibility to some of the surrounding residences along Neck-O-Land Road and Constance Avenue but is not intrusive. The mature trees adequately buffer the tower from the majority of Powhatan Shores.</p>
Goals, Strategies, and Actions	<p><i>Strategy 1.1.1:</i> Craft regulations and policies such that development is compatible in size, scale, and location to surrounding existing and planned development. Protect uses of different intensities through buffers, access controls, and other methods.</p> <p>Staff Comment: The 50-foot by 50-foot facility site will be buffered on all sides by a 100-foot tree preservation buffer; this buffer will help to ensure that no additional trees will be cleared in the general area of the tower. Additionally, a 200-foot scenic easement exists between the tower site and the Colonial Parkway. The existing forest surrounding the site will prevent views of the tower from most vantage points and will limit the view of the tower from all locations.</p>

Community Character

General	<p><i>Wireless Communications Facilities-Page 94:</i> In 1998, the increasing need for new WCFs prompted the County to establish Performance Standards for WCFs and add a new Division in the Zoning Ordinance to address them. The decision to regulate WCFs stemmed from the intent of the County to:</p> <ul style="list-style-type: none"> - Protect health, safety, and general welfare of the community - Preserve the aesthetic quality of the community and its landscape - Protect property values - Protect the historic, scenic, rural, and natural character of the community - Minimize the presence of structures that depart from existing and future patterns of development, especially in terms of scale, height, site design, character, and lighting. - Provide for adequate public safety communications - Allow the providers of WCFs to implement their facilities in a manner that will fulfill these purposes, encourage their co-location, and allow them to fulfill their Federal Communications Commission (FCC) licenses.
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	<p>Staff Comment: Co-location options are encouraged in order to mitigate impacts created by clustered, single-use towers. This WCF will only provide co-location opportunities for one other server, to accommodate a total of two wireless carriers. The applicant is not providing two additional spaces, which is most favorable, because the height of the tower has been lowered and a third carrier would be located within the trees. The tower will have a limited visual impact along a portion of Constance Avenue and part of Neck-O-Land Road. It is well camouflaged from the Colonial Parkway by the surrounding trees and will provide wireless service in an area that is currently underserved.</p>
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This application, as proposed, is in compliance with the 2009 Comprehensive Plan. While the tower will have a visual impact on the surrounding area, the impact is minimized by the location and the design of the tower. Given the existing tree buffer between the surrounding residential areas and the Colonial Parkway, staff concurs that the applicant has selected an appropriate location for this tower, to provide wireless service to an underserved area.

PERFORMANCE STANDARDS

On May 26, 1998, the James City County Board of Supervisors adopted several performance criteria for WCFs (see Attachment No. 1).

Section 24-124 of the Zoning Ordinance states that “In considering an application for an SUP for a WCF, the planning director shall prepare a report identifying the extent to which the application takes into account the ‘Performance Standards for Wireless Communications Facilities.’ In general, it is expected that all facilities should substantially meet the provisions of these performance standards.”

These performance criteria note that tower mounted WCFs should be located and designed in a manner that minimizes their impacts to the maximum extent possible and minimizes their presence in areas where they would depart from existing and future patterns of development. While all standards support the goals outlined in the Comprehensive Plan, some may be more critical to the County’s ability to achieve these goals on a case-by-case basis. Therefore, some standards may be weighed more heavily in any recommendation or decision on an SUP and a case that meets a majority of the standards may or may not be recommended for approval. To date, towers granted the required SUP have substantially met these standards, including those pertaining to visibility.

A. Co-location and Alternative Analysis

Standard A1 encourages co-location. This tower will be designed to accommodate two service providers. While providing for three servers would be preferable, due to lowering the height of the tower from the more typical 120 feet to 110 feet, a third carrier would have an antenna within the tree line.

Standard A2 pertains to the demonstration of a need for the proposal and the examination of alternatives, including increases in transmission power and other options. With regards to demonstrating the necessity for the tower, the applicant submitted propagation maps showing coverage of the area as unreliable. Alternative locations have been adequately explored and a new 114-foot tower is the most viable option.

Standard A3 recommends that the site be able to contain at least two towers on-site to minimize the need for additional towers elsewhere. The applicant is proposing a tower which can accommodate two servers. Locating a second tower on the site would make the WCF more noticeable from the Colonial Parkway.

Standard A4 regarding allowance of future service providers to co-locate on the tower extension is addressed at the site plan stage through requirements in Section 24-128(3) of the Zoning Ordinance.

B. Location and Design

Performance Standard B1(1) states that towers and tower sites should be consistent with existing and future surrounding development and the Comprehensive Plan. More specifically, towers should be compatible with the use, scale, height, size, design and character of surrounding existing and future uses. The proposed tower is appropriate because the tower will be located within an existing stand of mature trees, a tree preservation buffer of 100 feet will be maintained on all sides of the 50-by 50-foot facility. The tower will be shielded from the Colonial Parkway by an additional 200-foot scenic easement.

Performance Standard B1(2) states that towers should be located in a manner to protect the character of scenic resource corridors, historic and scenic resource areas, and viewsheds. The proposed tower

will be partially visible from several locations: along a portion of Constance Avenue, along a section of Neck-O-Land Road, the very beginning of Captain John Smith Road, and barely visible along a short stretch of the Colonial Parkway. This location was selected with the input from the National Park Service to ensure a minimal visual disruption to travelers along the Colonial Parkway.

Performance Standard B2 states that for areas designated within a historic or scenic resource area or within a scenic resource, the design should be camouflaged or has minimal intrusion on residential areas, historic and scenic resource or roads in such areas, or scenic resource corridors. The upper part of this tower will be visible through the trees from the Colonial Parkway, a Community Character Corridor. Because of the existing tree buffer, the impact of the tower will be minimal.

Performance Standard B3 states that towers should be less than 200 feet to avoid lighting. This application meets this standard.

Performance Standard B4 states that towers should be freestanding and not supported by guy wires. This application meets this standard.

C. Buffering

The Performance Standards state that towers should be placed on a site in a manner that maximizes buffering from existing trees, including a recommended 100-foot-wide wooded buffer around the base of the tower and that the access drive should be designed in a manner that provides no off-site view of the tower base or related facilities.

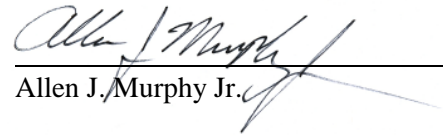
The proposed location of the tower is within a 100-foot tree preservation buffer on all sides of the facility, this has been included as Condition No. 9 for this SUP. The existing tree stand does not camouflage the tower fully, as a portion of the top of the tower is visible along the tree line. Staff believes that the applicant has chosen the most appropriate location for the placement of a tower on this site. The mature tree stands help to mitigate the tower's visual impact from the Colonial Parkway and from Constance Avenue.

RECOMMENDATION

Staff concurs with the applicant's request for deferral in order to resolve outstanding contractual issues with the property owner. Staff recommends the Board of Supervisors defer this case until the June 8, 2010 meeting.

Sarah Propst

CONCUR:


Allen J. Murphy Jr.

SP/nb
SUP26_10ConstAve.doc

Attachment:
1. Resolution

RESOLUTION

CASE NO. SUP-0026-2009. CONSTANCE AVENUE

WIRELESS COMMUNICATIONS FACILITY

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, Ms. Lisa Murphy has applied on behalf of LeClairRyan for an SUP to allow for the construction of a wireless communications facility on a parcel of land zoned R-8, Rural Residential; and

WHEREAS, the proposed development is shown on a plan prepared by GPD Associates, with a final revision date of February 3, 2010 (the "Master Plan"), listed as Site No. NF430C; and

WHEREAS, the property is located at 115 Constance Avenue and can be further identified as James City County Real Estate Tax Map Parcel No. 4732500002; and

WHEREAS, the Planning Commission, following its public hearing on March 3, 2010, 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 2009 Comprehensive Plan Use Map designation for this site.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby approves the issuance of SUP-0026-2009 as described herein with the following conditions:

1. **Terms of Validity:** This SUP shall be valid for a total of one wireless communications facility at a total height of 114 feet above existing grade, including all appurtenances, on the property as depicted on the plans entitled, "AT&T, Site Name: Back River Lane, Site No.: NF430C, Site Address: 115 Constance Avenue, Williamsburg, VA 23185", prepared by GPD Associates, last revised on February 3, 2010.
2. **Time Limit:** A final Certificate of Occupancy (CO) shall be obtained from the James City County Codes Compliance Division within two years of approval of this SUP, or the permit shall become void.
3. **Structural and Safety Requirements:** Within 30 days of the issuance of a final CO by the County Codes Compliance Division, certification by the manufacturer, or an engineering report by a structural engineer licensed to practice in the Commonwealth of Virginia, shall be filed by the applicant indicating the tower height, design, structure, installation and total anticipated capacity of the tower,

including the total number and type of antennas which may be accommodated on the tower, demonstrating to the satisfaction of the County Building Official that all structural requirements and other safety considerations set forth in the 2000 International Building Code, or any amendment thereof, have been met.

4. **Tower Color:** The tower shall be a gray galvanized finish unless approved otherwise by Director of Planning, or his designee, prior to final site plan approval.
5. **Advertisements:** No advertising material or signs shall be placed on the tower.
6. **Additional User Accommodations:** The tower shall be designed and constructed for at least two users and shall be certified to that effect by an engineering report prior to the site plan approval.
7. **Guy Wires:** The tower shall be freestanding and shall not use guy wires for support.
8. **Enclosure:** The fencing used to enclose the area shall be a board on board wood fence or shall be another fencing material of similar or superior aesthetic quality as approved by the Planning Director. Any fencing shall be reviewed and approved by the Director of Planning prior to final site plan approval.
9. **Tree Buffer:** A minimum buffer of 100 feet in width of existing mature trees shall be maintained on all sides of the tower facility as shown on Sheet C-1. This buffer shall remain undisturbed except for the access drive, required landscaping and necessary utilities for the tower as depicted on Sheet C-1 of the plans entitled, "AT&T, Site Name: Back River Lane, Site No.: NF430C, Site Address: 115 Constance Avenue, Williamsburg, VA 23185", prepared by GPD Associates, last revised on February 3, 2010.
10. **Severance Clause:** This SUP is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.

James G. Kennedy
Chairman, Board of Supervisors

ATTEST:

Sanford B. Wanner
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 13th day of April, 2010.

**SPECIAL USE PERMIT-0003-2010. Gilley Properties Two-Family Dwelling
Staff Report for the April 13, 2010, 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

March 3, 2010, 7:00 p.m.
April 13, 2010, 7:00 p.m.

SUMMARY FACTS

Applicant: Mr. Gregory Davis of Kaufman and Canoles PC, on behalf of Gilley Properties, LLC

Land Owner: Gilley Properties, LLC

Proposal: To allow for the construction of a duplex on the subject property. Two-family dwellings are specially permitted uses in the R-2, General Residential, zoning district.

Location: 248 Neck-O-Land Road

Tax Map Parcel No.: 4740100040C

Parcel Size: 4.74 acres

Zoning: R-2, General Residential

Comprehensive Plan: Low Density Residential, with a small area of Conservation Area

Primary Service Area: Inside

STAFF RECOMMENDATION

Staff finds that this proposal is consistent with the Comprehensive Plan Land Use Map designation for the subject parcel. Staff believes that with the proposed Special Use Permit (SUP) conditions, the project will result in increased public benefit and will complement the existing SUP that allowed for four other duplex units. Staff recommends that the Board of Supervisors approve this application with the attached resolution.

Staff Contact: Jason Purse, Senior Planner Phone: 253-6685

PLANNING COMMISSION RECOMMENDATION

On March 3, 2010, the Planning Commission voted 7-0 to recommend approval of this application with the attached conditions.

Proposed Changes Made Since Planning Commission Meeting

None.

PROJECT DESCRIPTION

Mr. Gregory Davis of Kaufman and Canoles PC, has applied, on behalf of Gilley Properties, LLC, for an SUP to allow for the construction of a two-family dwelling on the property located at 248 Neck-O-Land Road. The subject property is zoned R-2, General Residential, and is designated Low Density Residential on the James City County 2003 Comprehensive Plan Map. The owner is seeking to replace an existing single-family residential structure with a newly constructed duplex. In the R-2 zoning district, duplexes may only be constructed with an approved SUP.

The owner/developer previously applied for, and received approval of, an SUP (SUP-0020-2008) that allowed three new duplexes to be constructed and subdivided onto five total lots, with the remaining lots containing an existing single-family residence and an existing duplex. The owner hoped to renovate the existing single-family residence, but given the existing condition of the building and the extensive amount of work that would be required, the renovation is no longer practical. The conditions for this new SUP mirror the previous case, except for the removal of previous Condition No. 3, "Junk Removal," because the "junk" has already been removed from the site and Condition No. 4, "RPA Building Setback", because there is no Resource Protection Area (RPA) on this site.

A shared driveway would be constructed that would serve the five lots being created and all of the dwelling units (both existing and new) on the parcel.

PUBLIC IMPACTS

Environmental

Watershed: Mill Creek 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 owner/developer has agreed to install rain barrels for each of the residential units (new and existing) on the parcel and has also agreed to add and observe a 25-foot building setback line from the RPA boundary on the property.

Public Utilities

The subject parcel lies within the Primary Service Area (PSA) of James City County.

All parcels created (or existing) with this proposal would be served by public water and public sewer facilities provided by the James City Service Authority (JCSA).

Staff Comments: JCSA has reviewed the application and has no objection to the proposal. The owner/developer will be responsible for creating and enforcing water conservation standards, which will be subject to JCSA's approval.

Housing

The owner/developer has indicated that the duplex will be rental units and that each unit will be two-bedrooms with 1½ bathrooms.

Staff Comments: The owner/developer has indicated an intention to rent each of the individual duplex units for approximately \$900 per month. Duplex rental properties in James City County are typically being marketed for \$750 to \$1,200 per month, with luxury models commanding even higher amounts. Mr. Rick Hanson of the James City County Office of Housing and Community Development offered that affordable two-bedroom rentals of this housing type would typically be in the \$800 to \$900 range. While no guarantee of affordability was made by the owner/developer, staff believes that this proposal will help diversify the housing stock of the County and that it may offer a lower-cost alternative to renters seeking a place to live.

Transportation

Traffic Generation and Road Improvements: The proposed project did not trigger a requirement for a traffic study, nor did it require specific road improvements, beyond the construction of a paved entrance for the proposed shared driveway.

VDOT Comments: Virginia Department of Transportation (VDOT) staff has reviewed the application and has no objection to the proposed project.

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. Utilizing a shared driveway for the five lots of the proposal will minimize the number of entry points (and corresponding traffic movements) on Neck-O-Land Road.

COMPREHENSIVE PLAN

(Note: Page References are made to the James City County 2009 Comprehensive Plan.)

Land Use Map

Designation	<p>Low Density Residential (Page 153): Low density areas are Located in the PSA where public services and utilities exist or are expected to be expanded to serve the sites over the next 20 years with recommended densities from one unit per acre up to four units per acre, if particular public benefits are provided. Examples of such public benefits include mixed-cost housing, affordable and workforce housing, enhanced environmental protection, or development that adheres to the principles of open space design. Recommended uses include single-family homes, duplexes, accessory units, cluster housing, and recreation areas.</p> <p>Staff Comments: The proposed duplex development is compatible with other properties in the immediate area, both in terms of land use and density. Nearby residential properties typically range in density from 0.5 units per acre to 2.5 units per acre. The density of the original application was 1.9 dwelling units per acre. The new proposal would increase the overall density to 2.1 dwelling units per acre. The surrounding area features a mix of single-family detached homes and duplexes on lots of various sizes. There are formal subdivisions that feature smaller lots (such as neighboring Gatehouse Farms), as well as larger acreage lots with minimal development on them. The entire surrounding area is designated as Low Density Residential (which matches the subject site), and features a mixture of R-1 Limited Residential, R-2, General Residential, and R-8, Rural Residential zoning.</p>
Residential Development Standards	<p>4. Use and Character Compatibility “a” (Page 153): 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>Staff Comments: Staff finds the proposed use to be compatible with neighboring uses in both use and intensity of development. The proposal is not likely to generate undue noise, vibration, smoke, dust, or odor and will not block light from reaching adjacent properties or uses. The proposal would generate a negligible traffic impact and is located inside the PSA where public utilities and services would be available to serve it.</p>
Goals, Strategies and Actions	<p>Strategy 1.1 (Page 163): Promote the use of land in a manner harmonious with other land use and the environment.</p> <p>Strategy 1.4 (Page 164): Direct growth into designated growth areas in an efficient and low-impact manner.</p> <p>Action 1.4.5 (Page 165): Promote infill, redevelopment, revitalization, and rehabilitation within the PSA.</p> <p>Staff Comments: The application proposes to put growth into the PSA where it may be more efficiently served by public utilities and services. It combines sprawl-reducing duplex density with larger lots</p>

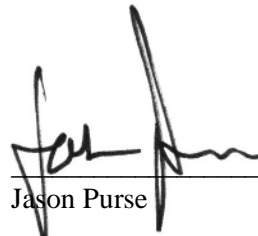
that allow for outside recreation and activity. As noted previously, the proposal would be compatible and harmonious both in terms of use and intensity with the surrounding area. By cleaning up the property and razing the existing dilapidated structures, this application represents a positive and beneficial infill project for James City County that would result in a better use of the subject property.
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RECOMMENDATION

Staff finds that this proposal is consistent with the Comprehensive Plan Land Use Map designation for the subject parcel. Staff believes that with the proposed SUP conditions, the project will result in increased public benefit and will complement the existing SUP that allowed for four other duplex units. Staff recommends that the Board of Supervisors approve this application with attached resolution and the SUP conditions listed below:

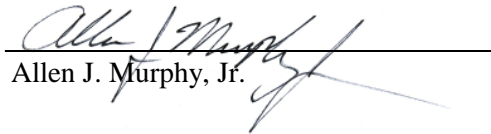
1. This SUP shall be valid for the construction of one duplex dwelling structure (“the Project”) as shown on the Master Plan titled “Master Plan for Gilley Duplex on Lot 3-E of Neck-O-Land Road Subdivision” dated December 14, 2009 (the “Master Plan”). The duplex shall be located at 248 Neck-O-Land Road, further identified as James City County Real Estate Tax Map No. 4740100040C (“Property”). Development of the site shall be generally in accordance with the Master Plan as determined by the Director of Planning. 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. This includes the removal of existing structures and removal of nonessential gravel, as shown on the Master Plan.
2. Construction shall commence on the Project within 36 months from the date of approval of this SUP by the Board of Supervisors, or the SUP shall become void. For purposes of this SUP condition, “construction” shall be defined as the owner/developer having obtained building permits for, and passed inspection of, footings and/or foundation for the proposed duplex.
3. The owner/developer shall provide and install rain barrels for all residences on the parcel prior to issuance of a certificate of occupancy for the duplex.
4. The owner/developer shall install a single shared driveway to be used to provide access to the five lots (Lots 3-A, 3-B, 3-C, 3-D, and 3-E), as well the existing duplex on Lot 4. This shared driveway shall be paved, constructed to a minimum standard of three inches of asphalt over six inches of compacted No. 21 A or B stone and no less than 12 feet in width, to be verified and approved by the Director of the Environmental Division. The owner/developer shall prepare and record documents in a form approved by the County Attorney that set forth: 1) the provisions made for the permanent care and maintenance of the shared driveway and its associated easement, including bonds where required by the County, and 2) the method of assessing each individual property for its share of the cost of adequately administering, maintaining, and replacing such shared driveway in the event the lots of the subdivision ever come under separate ownership. The driveway shall be located as generally depicted on the Master Plan, as determined by the Director of Planning and subject to the approval of VDOT.
5. The owner/developer shall be responsible for developing and enforcing water conservation standards, which shall be submitted to and approved by the JCSA prior to the issuance of a building permit for the duplex. 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 and 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. The SUP is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.



Jason Purse

CONCUR:



Allen J. Murphy, Jr.

JP/nb
SUP03_10Gilley.doc

Attachments:

1. Unapproved minutes from the March 3, 2010, Planning Commission meeting
2. Resolution
3. Location Map
4. Master Plan (under separate cover)

RESOLUTION

CASE NO. SUP-0003-2010. GILLEY PROPERTIES TWO-FAMILY DWELLING

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. Greg Davis, on behalf of Gilley Properties, LLC, has applied for an SUP to allow for the construction of a two-family dwelling; and

WHEREAS, the proposed two-family dwelling is shown on a preliminary site plan, titled "Master Plan for Gilley Duplex on Lot 3-E of Neck-O-Land Road Subdivision" dated December 14, 2009; and

WHEREAS, the property is located at 248 Neck-O-Land Road on land zoned R-2, General Residential, and can be further identified as James City County Real Estate Tax Map/Parcel No. 4740100040C; and

WHEREAS, the Planning Commission of James City County, following its public hearing on March 3, 2010, recommended approval of this application 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 2009 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. 0003-2010 as described herein with the following conditions:

1. This SUP shall be valid for the construction of one duplex dwelling structure (the "Project") as shown on the Master Plan titled "Master Plan for Gilley Duplex on Lot 3-E of Neck-O-Land Road Subdivision" dated December 14, 2009 (the "Master Plan"). The duplex shall be located at 248 Neck-O-Land Road, further identified as James City County Real Estate Tax Map No. 4740100040C (the "Property"). Development of the Property shall be generally in accordance with the Master Plan as determined by the Director of Planning. Minor changes may be permitted by the Development Review Committee (the "DRC"), as long as they do not change the basic concept or character of the development. This includes the removal of existing structures and removal of nonessential gravel, as shown on the Master Plan.
2. Construction shall commence on the Project within 36 months from the date of approval of this SUP by the Board of Supervisors, or the SUP shall become void. For purposes of this SUP condition, "construction" shall be defined as the owner/developer having obtained building permits for, and passed inspection of, footings and/or foundation for the proposed duplex.

3. The owner/developer shall provide and install rain barrels for all residences on the Property prior to issuance of a certificate of occupancy for the duplex.
4. The owner/developer shall install a single shared driveway to be used to provide access to the five lots (Lots 3-A, 3-B, 3-C, 3-D, and 3-E), as well the existing duplex on Lot 4. This shared driveway shall be paved, constructed to a minimum standard of three inches of asphalt over six inches of compacted No. 21 A or B stone and no less than 12 feet in width, to be verified and approved by the Director of the Environmental Division. The owner/developer shall prepare and record documents in a form approved by the County Attorney that set forth: 1) the provisions made for the permanent care and maintenance of the shared driveway and its associated easement, including bonds where required by the County, and 2) the method of assessing each individual property for its share of the cost of adequately administering, maintaining, and replacing such shared driveway in the event the lots of the subdivision ever come under separate ownership. The driveway shall be located as generally depicted on the Master Plan, as determined by the Director of Planning and subject to the approval of the Virginia Department of Transportation (VDOT).
5. The owner/developer shall be responsible for developing and enforcing water conservation standards, which shall be submitted to and approved by the James City Service Authority (JSCA) prior to the issuance of a building permit for the duplex. 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, and 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. The SUP is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.

James G. Kennedy
Chairman, Board of Supervisors

ATTEST:

Sanford B. Wanner
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 13th day of April, 2010.

SUP03_10Gilley_res

SUP-0003-2010

Gilley property two-family dwelling



MEMORANDUM

DATE: April 13, 2010
TO: The Board of Supervisors
FROM: Leo P. Rogers, County Attorney
SUBJECT: Conveyance of Conservation Easement to the Commonwealth of Virginia - Virginia Capital Trail

Attached for your consideration is a resolution authorizing the County Administrator to convey 0.381 acres (16,586.3177 sq. ft.) within the County's conservation easement along Route 5, John Tyler Highway, to the Commonwealth of Virginia for the Virginia Capital Trail (the "Trail"). The conservation easement is 100 feet wide and extends 3,717.85 feet, with a total area of 370,000± sq. ft. The County's acquisition cost was \$0.1062 per sq. ft.

The 20-foot Trail right-of-way meanders onto the County's conservation easement. Only a small portion of the Trail's easement is located on the conservation easement. The Virginia Department of Transportation (VDOT) has calculated that portion of the Trail located on the conservation easement to be 16,586.3177 sq. ft. The pro-rated value of the Trail area located on the conservation easement based on its acquisition price is \$1,761.47.

The 0.381-acre portion of the Trail right-of-way to be conveyed is located on 2201 and 2349 John Tyler Highway, and designated as Parcel No. (1-1A) on Tax Map No. (44-1) and as Parcel No. (1-4) on Tax Map No. (44-1). Attached is an area map showing the easement and the approximate location of the Trail.

VDOT agrees to assume all liability for the operation, use, and maintenance of the trail pursuant to Virginia Code § 29.1-509 which authorizes it to do so under agreements with the Commonwealth for recreational uses.

Staff recommends approval of the attached resolution authorizing the County Administrator to sign the appropriate documents to convey the County's property rights in the conservation easement to the Commonwealth of Virginia for the Trail right-of-way.


Leo P. Rogers

LPR/gb
TrailEasemt_mem

Attachments

RESOLUTION

CONVEYANCE OF CONSERVATION EASEMENT TO THE

COMMONWEALTH OF VIRGINIA - VIRGINIA CAPITAL TRAIL

WHEREAS, James City County owns a 100-foot conservation easement along Route 5, John Tyler Highway; and

WHEREAS, the Virginia Department of Transportation (“VDOT”) has constructed a portion of the Virginia Capital Trail (the “Trail”) on the County’s conservation easement; and

WHEREAS, VDOT requires 0.381 acres or 16,586.3177 sq. ft. of right-of-way in the conservation area commonly known as 2201 and 2349 John Tyler Highway and designated as Parcel No. (1-1A) on Tax Map No. (44-1) and as Parcel No. (1-4) on Tax Map No. (44-1), respectively; and

WHEREAS, VDOT will pay the County the sum of \$1,761.47 for the 0.381 acres of easement in the Trail right-of-way; and

WHEREAS, VDOT agrees to assume all liability for the operation, use, and maintenance of the Trail pursuant to Va. Code § 29.1-509; and

WHEREAS, after holding a public hearing, the Board of Supervisors agrees to convey its property interests in the conservation easement that is needed for the Trail right-of-way.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the County Administrator to execute the appropriate documents to convey to the State the necessary property rights over the County’s easement for the Trail right-of-way.

James G. Kennedy
Chairman, Board of Supervisors

ATTEST:

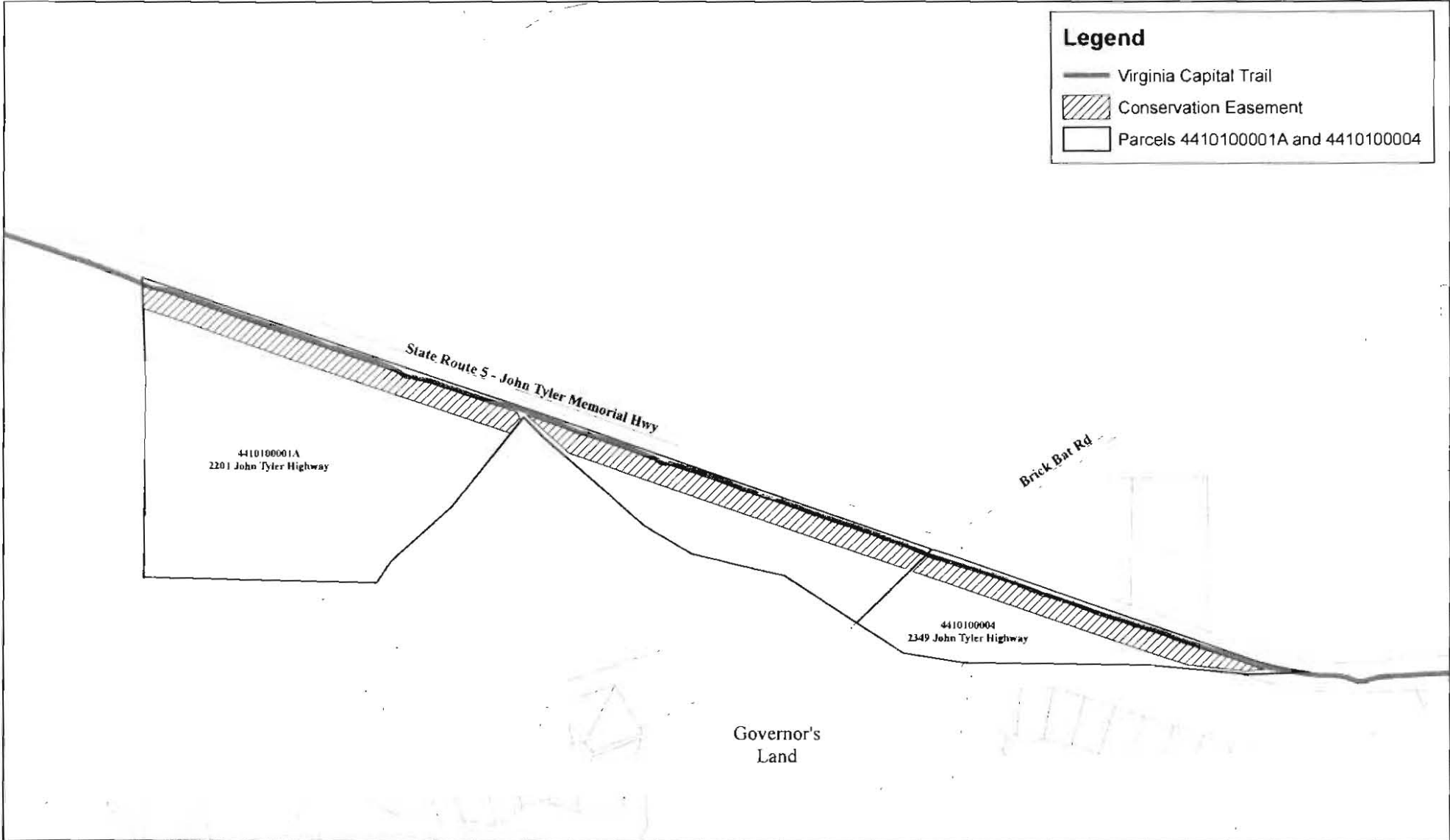
Sanford B. Wanner
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 13th day of April 2010.

Conveyance of Conservation Easement to the Commonwealth of Virginia

Legend

- Virginia Capital Trail
- ▨ Conservation Easement
- Parcels 4410100001A and 4410100004



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 = 400 feet
0 0.05 0.1 Miles



M E M O R A N D U M

DATE: April 13, 2010

TO: The Board of Supervisors

FROM: Lindsey Craven, County Attorney Intern
Angela M. King, Assistant County Attorney

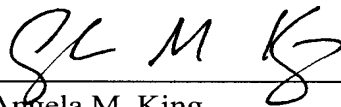
SUBJECT: Ordinance Amendment to Chapter 16, Public Parks and Recreation Facilities

James City County Code Section 16-14, *Hours of operation*, allows the director of Parks and Recreation to establish hours of operation for the County's public parks and recreation facilities. Section 16-24, *Violations of chapter*, specifies that violators of Chapter 16 "shall be guilty of a Class 4 misdemeanor, unless otherwise specifically provided." However, Section 16-14 does not specifically prohibit any behavior on the part of individuals. Because of this, the Parks and Recreation Division is not able to pursue violators of Section 16-14 under Section 16-24. Instead, the Parks and Recreation Division is left only with the option of charging violators with trespassing. Under Virginia Code Section 18.2-119, trespass is a Class 1 misdemeanor, which carries a possible fine of \$2,500, up to one year in jail, or both. In comparison, under Virginia Code Section 18.2-11, a Class 4 misdemeanor carries a possible fine of not more than \$250.

Because the punishment for trespassing exceeds the punishment for other violations of Chapter 16, the Parks and Recreation Division is hesitant to pursue trespass. By adding the appropriate language, Section 16-14 would specifically forbid anyone from the use of public parks and recreation facilities during prohibited hours. Any violation of the provision would then be punishable under Section 16-24.

Staff recommends adoption of the attached ordinance.

Lindsey Craven



Angela M. King

CONCUR:



Leo P. Rogers

LC/AMK/nb
AmendCh16_mem

Attachment

ORDINANCE NO. _____

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 16, PUBLIC PARKS AND RECREATION FACILITIES, OF THE COUNTY OF JAMES CITY, VIRGINIA, BY AMENDING SECTION 16-14, HOURS OF OPERATION.

BE IT ORDAINED by the Board of Supervisors of the County of James City, Virginia, that Chapter 16, Public Parks and Recreation Facilities, is hereby amended and reordained by amending Section 16-14, Hours of operation.

Chapter 16. Public Parks and Recreation Facilities

Sec. 16-14. Hours of operation.

The director shall establish hours of operation for public parks and recreational facilities; the hours may prohibit use of certain facilities at certain times. *No person shall make use of public parks and recreation facilities during prohibited hours.*

James G. Kennedy
Chairman, Board of Supervisors

ATTEST:

Sanford B. Wanner
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 13th day of April, 2010.

AmendCh16_ord