

# **A G E N D A**

## **JAMES CITY COUNTY BOARD OF SUPERVISORS**

**County Government Center Board Room**

**September 14, 2010**

**7:00 P.M.**

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**A. CALL TO ORDER**

**B. ROLL CALL**

**C. MOMENT OF SILENCE**

**D. PLEDGE OF ALLEGIANCE** - Nakeisha Johnson, a twelfth-grade student at Lafayette High School

**E. PUBLIC COMMENT**

**F. BOARD REQUESTS AND DIRECTIVES**

1. Mr. Kennedy – Discuss Specificity of Development Approvals

**G. CONSENT CALENDAR**

1. Minutes –
  - a. August 10, 2010, Work Session
  - b. August 10, 2010, Regular Meeting
2. Budget Transfer – Curbside Leaf Collection – \$29,000  
*Supports County's Strategic Pathway 3.b - ensure ongoing operational costs are funded*
3. Grant Award – Radiological Emergency Preparedness Funds - \$25,000  
*Supports County's Strategic Pathway 1.d - develop and promote revenue alternatives to property taxes*
4. Grant Award – Virginia Department of Motor Vehicles – \$34,569  
*Supports County's Strategic Pathway 1.d - develop and promote revenue alternatives to property taxes*
5. Acceptance of a Grant Amendment – Virginia Recreational Trails Fund – \$283,976  
*Supports County's Strategic Pathway 1.d - develop and promote revenue alternatives to property taxes; and 3.e - match community growth with the ability to maintain a high quality natural and man-made environment*
6. Code Violation Lien – Trash and Grass Lien – 3232 Reade's Way  
*Supports County's Strategic Pathway 2.f - enhance community appearance and 5.c - implement mechanisms to track, resolve and follow up complaints*
7. Request for Disaster Designation and Federal Assistance for James City County  
*Supports County's Strategic Pathway 1.e - foster new and existing small businesses*
8. Colonial Community Criminal Justice Board Appointment
9. Resolution Opposing the Proposed Closure of United States Joint Forces Command

**- CONTINUED -**

## **H. PUBLIC HEARINGS**

1. Case No. SUP-0028-2009. Ingram Road Pegasus Wireless Communications Facility (WCF)
2. Case No. Z-0001-2010. Fast Food Restaurant at 8953 Pocahontas Trail (Continued from August 10, 2010)
3. Ordinance to Designate Dream Catchers and the Cori Sikich Foundation as Tax Exempt  
*Supports County's Strategic Pathway 2.a - address the needs of the underserved and protect the vulnerable*
4. Ordinance to Amend Chapter 10, Garbage and Refuse, by Amending Section 10-5, Same-Recourse of County upon Failure of Owner or Occupant, and Section 10-7, Penalty  
*Supports County's Strategic Pathway 3.b - ensure ongoing operational costs are funded and 2.f - enhance community appearance*
5. Conveyance of Utility Easements to Verizon Virginia, Inc.  
*Supports County's Strategic Pathway 1.f - focus on technology and research activities that generate economic growth*

## **I. PUBLIC COMMENT**

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

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

## **L. CLOSED SESSION**

1. Consideration of a personnel matter, the appointment of individuals to County boards and/or commissions pursuant to Section 2.2-3711(A)(1) of the Code of Virginia
  - a. Board of Building Adjustments and Appeals
2. Discussion of the expansion of an existing business where no previous announcement has been made pursuant to Section 2.2-3711 (A) (5) of the Code of Virginia.

## **M. ADJOURNMENT**

**AT A WORK SESSION OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE 10TH DAY OF AUGUST 2010, AT 4:00 P.M. IN THE COUNTY GOVERNMENT CENTER BOARD ROOM, 101 MOUNTS BAY ROAD, JAMES CITY COUNTY, VIRGINIA.**

**A. CALL TO ORDER**

**B. ROLL CALL**

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

Robert C. Middaugh, County Administrator  
Leo P. Rogers, County Attorney

Mr. Peck called the Planning Commission to order and called the roll. Planning Commission members in attendance included Mr. Woods, Mr. Maddocks, Mr. Krapf, Mr. Fraley, and Mr. Peck. Mr. Poole was absent.

**C. BOARD DISCUSSIONS**

**1. Joint Work Session with the Planning Commission – Zoning and Subdivision Ordinance Update Kickoff Work Session**

Ms. Tammy Rosario, Principal Planner, reviewed the methodology for the Zoning and Subdivision Ordinance Update. She reviewed questions related to Sustainable Development Items, Wireless Communications Ordinance and Performance Standards Policy, Rural Lands, and Multiple Use Districts.

Mr. Chris Johnson, Principal Planner, reviewed questions related to Special Business Districts, Development Standards in general, Procedural Descriptions, Submittal Requirements and Administrative Items, and the Subdivision Ordinance.

Discussion was held about itemized references to Comprehensive Plan action items and studies in the ordinances. Discussion was held on ensuring clarity and specificity in the ordinances, including the use of graphics and illustrations and explaining standards.

**2. Sustainable Development**

The Board and staff discussed energy efficiency and sustainability goals. Mr. McGlennon stated he expected that the Board would be involved in the process from the beginning of the goal-setting with the consultants in order to help set specific priorities. Mr. Kennedy noted that the language should allow the ordinances to keep up with new technology and moving forward with incentives. Discussion was held on how

to manage the impacts of the ordinance changes that may limit citizen input. The Board and staff discussed voluntary versus mandatory sustainability requirements for buildings over a certain size. Discussion was held on maintenance of sustainable design components.

3. Wireless Communications Ordinance and Performance Standards Policy

Discussion was held on the expectations of wireless communications service and the possibility of expanding the policy beyond cellular phone service. The Board and staff discussed tower height requirements and distance requirements that should be adjusted. Discussion was held on alternative technology, wireless master planning, and the possible proliferation of cellular towers.

4. Residential Districts

Staff explained the difference between Euclidian Code, which defines a building by its use and Form-Based Code, which moves away from definition by use and identifies buildings through their structures. Staff explained that there was a concern that if the form-based code was meeting certain thresholds, the development could precede by-right.

Mr. Icenhour expressed concern about mixed-use areas and stressed the need for a clearer definition and specificity. Discussion was held on predictability for the community to help address this concern. The Board and Commission discussed phasing, development triggers, and ratios of residential and commercial development in mixed-use areas.

The Board discussed definitions and requirements for workforce housing and affordable housing and integrating them into the community.

At 5:31 p.m., Mr. Kennedy recessed the Board for a short break.

At 5:36 p.m., Mr. Kennedy reconvened the Board.

5. Rural Lands

Discussion was held on how to make residential and commercial use compatible with rural lands as well as benefitting property owners. The Board discussed how the utility policy was used in relation to preservation of rural lands. The Board and staff discussed other tools to preserve rural lands, such as Transfer of Development Rights (TDRs), Economic Opportunity (EO) zones, conservation easements, conservation zoning, and Purchase of Development Rights. Discussion was held on exploring options to reduce residential units in the County.

Mr. Steven Hicks, Manager of Development Management, noted that there would be a Rural Lands work session on September 28, 2010, and requested any feedback or requests of staff be provided by the Board prior to that time.

The Board and Commission discussed the possibility of TDRs and rural economic development in the County in order to protect property owner's rights.

Ms. Rosario stated that staff would incorporate the findings of the rural economic development study and would also kick off a TRD study shortly.

6. Multiple Use Districts

Ms. Rosario stated that some discussion has been held on multiple use districts, but staff was interested in opinions on EO zones.

Discussion was held about long-term expectations of the EO zone in collaboration with York County and new transportation possibilities in the area. The Board and staff discussed the composition and scale of the future development in this area.

7. Commercial Business Districts/Development Standards

Discussion was held on priorities for commercial Special Use Permits (SUPs) or modifications for development standards in relation to the Business Climate Task Force recommendations and graduated thresholds for SUPs. The Board discussed the importance of preserving community character.

The Board requested information on developments funding a sidewalk fund program in order to locate sidewalks where needed as well as a maintenance policy.

Ms. Jones requested information on the cumulative impact assessment and where this would be integrated.

Mr. Goodson requested the possibility of allowing higher lighting structures by-right in order to provide better lighting.

Ms. Rosario stated that staff was available to receive feedback and that the Planning Commission forums would take place on August 24 and September 1, 2010. She stated there was an application process for citizens to sign up for slots on the agenda to speak at these forums.

Mr. Middaugh noted that there would still be an opportunity to speak during these forums.

**D. BREAK**

At 6:26 p.m., the Board took a break.

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Robert C. Middaugh  
Clerk to the Board

**AT A REGULAR MEETING OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE 10TH DAY OF AUGUST 2010, AT 7:00 P.M. IN THE COUNTY GOVERNMENT CENTER BOARD ROOM, 101 MOUNTS BAY ROAD, JAMES CITY COUNTY, VIRGINIA.**

**A.     CALL TO ORDER**

**B.     ROLL CALL**

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

Robert C. Middaugh, County Administrator  
Leo P. Rogers, County Attorney

**C.     MOMENT OF SILENCE**

**D.     PLEDGE OF ALLEGIANCE** – Angelina Sarina, a seventh-grade student at Lois Hornsby Middle School, led the Board and citizens in the Pledge of Allegiance.

**E.     PUBLIC COMMENT**

1.    Mr. Jay Everson, 103 Branscome Boulevard, commented on pollution in the Chesapeake Bay in relation to Lake Powell.

2.    Mr. Jack Fowler, 109 Wilderness Lane, commented on necessary road repairs at Croaker Road and Rochambeau Road; and the stormwater management referendum and its impacts on pollution.

3.    Mr. David Neiman, 105 Broomfield Circle, commented on forums held for the Zoning Ordinance update, specifically the wireless communications facility policy. He commented that new technology should be supported and a Special Use Permit (SUP) process should be required for towers in residential areas.

4.    Ms. Linda Riese, 511 Spring Trace, commented on the development of Autumn West and the impacts on her neighborhood. She commented that the County should purchase the environmentally-sensitive property in the area of this development.

5.    Ms. Dorothy Piper, 501 Spring Trace, commented on the development of Autumn West and the impacts on Season's Trace. She expressed her concern for the preservation of the environmentally sensitive properties nearby. She commented on the high-density development that is proposed for the area.

6. Mr. Ed Oyer, 139 Indian Circle, commented on the sacrifice of veterans; traffic on Route 60 East; and potential flooding at the Autumn West development.

**F. CONSENT CALENDAR**

Mr. McGlennon 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 –
  - a. July 27, 2010, Work Session
  - b. July 27, 2010, Regular Meeting
2. Code Violation Lien – Trash and Grass Lien – 105 Mahogany Lane

**RESOLUTION**

**CODE VIOLATION LIEN – TRASH AND GRASS LIEN – 105 MAHOGANY LANE**

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

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

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

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

ACCOUNT: Kareem and Share Burgess  
105 Mahogany Lane  
Williamsburg, VA 23185-6023

DESCRIPTION: 105 Mahogany Lane

TAX MAP/PARCEL NOS.: (52-3)(09-0-0015)  
James City County, Virginia

FILING FEE: \$10.00

TOTAL AMOUNT DUE: \$435.00

3. Transfer of Williamsburg Area Transit Authority (WATA) Assets

**RESOLUTION**

**TRANSFER OF WILLIAMSBURG AREA TRANSIT AUTHORITY (WATA) ASSETS**

WHEREAS, the cooperative service agreement between the County and Williamsburg Area Transit Authority (WATA) dated August 28, 2008, authorized transfer of \$7,256,210 in assets; and

WHEREAS, the County has additional assets to transfer to WATA with a net value of \$270,641.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes transfer of the assets below to WATA:

<u>Asset Description</u>	<u>Vendor</u>	<u>Purchase Date</u>	<u>Net Value</u>
Furniture System (Modular Furniture)	Mega Office Furniture	7-19-1999	\$ 0
GFI Fareboxes	GFI Genfare	1-28-2002	11,361
Telephone System	Sprint	3-14-2005	4,088
Panasonic Laptop	GFI Genfare	9-30-2005	1,875
2006 Optima Bus Trolley	American Heritage	12-18-2006	214,300
Sharp MX 3500N Color Copier	Powers Business Machine	5-30-2007	4,355
2009 Ford Escape	Crossroad Motors of Virginia	4-27-2009	17,331
2009 Ford Escape	Crossroad Motors of Virginia	4-27-2009	<u>17,331</u>
Total			<u>\$270,641</u>

4. Approval of Exemption to Regulation Issued by the Virginia Department of Health, Office of Emergency Medical Services

**RESOLUTION**

**APPROVAL OF EXEMPTION TO REGULATION ISSUED BY THE VIRGINIA**

**DEPARTMENT OF HEALTH, OFFICE OF EMERGENCY MEDICAL SERVICES**

WHEREAS, Nicholas Klimenko, former program director and Instructor with the Center for Emergency Health Services (CEHS) must be accredited in order to teach Emergency Medical Technician (EMT) Intermediate and EMT Paramedic courses in the Commonwealth; and

WHEREAS, CEHS was the holder of the Program Accreditation for teaching the above-named courses; and

WHEREAS, Nicholas Klimenko has the requisite training, certifications, and knowledge for a former accredited program to teach the Intermediate and Paramedic programs; and

WHEREAS, Nicholas Klimenko has received the Office of Emergency Medical Services (OEMS) accreditation at the Intermediate level and has applied to the Committee on Accreditation of Educational Programs for the Emergency Medical Services Professions (CoAEMSP) for accreditation at the Paramedic level; and



WHEREAS, the Instructor and OEMS desire to cooperate to ensure that Emergency Medical Services (EMS) courses are allowed to continue in the best interest of the community; and

WHEREAS, Nicholas Klimenko has a desire to conduct EMS training programs which require program site accreditation without possessing CoAEMSP accreditation; and

WHEREAS, it is in the general interest of OEMS to promote the education of EMS personnel in the Commonwealth in order that they become qualified or better qualified EMS health care personnel; and

WHEREAS, to allow Nicholas Klimenko to continue to teach these courses, he must obtain an exemption from, Virginia EMS Regulations 12VAC5-31-50 while awaiting CoAEMSP Accreditation; and

WHEREAS, Section 32.1-111.9 of the *Code of Virginia* requires that an application for a variance or exemption from any regulations promulgated pursuant to this chapter shall be reviewed by the governing body of the jurisdiction in which the principal office or legal residence of the agency, entity, or provider, licensed or certified by OEMS, is located.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby approves the exemption request for Nicholas Klimenko to continue to deliver EMT-Paramedic courses through December 31, 2012, at which time Nicholas Klimenko must obtain CoAEMSP accreditation by January 1, 2013.

5. Appointment of Animal Control Officer

**RESOLUTION**

**APPOINTMENT OF ANIMAL CONTROL OFFICER**

WHEREAS, the Board of Supervisors of James City County is authorized to appoint Animal Control Officers; and

WHEREAS, the Animal Control Officers are vested with the authority to enforce the animal laws in the County pursuant to Virginia Code Sections 3.1-796.66 et seq. and James City County Code Section 3-2.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of James City County, Virginia, that Chad Majette is hereby appointed Animal Control Officer for James City County, Virginia.

At 7:23 p.m. Mr. Kennedy recessed the Board for a brief meeting of the James City Service Authority (JCSA) Board of Directors.

At 7:26 p.m. Mr. Kennedy reconvened the Board.

## **G. PUBLIC HEARINGS**

Mr. Kennedy recognized Mr. Reese Peck in attendance as a representative from the Planning Commission.

1. Case No. Z-0001-2010. Fast Food Restaurant at 8953 Pocahontas Trail (Deferral requested until September 14, 2010)

Mr. Chris Johnson, Principal Planner, stated that the applicant has requested a deferral until September 14, 2010. Staff recommended deferral.

Mr. Kennedy opened the Public Hearing.

As no one wished to speak to this matter, the Public Hearing remained open.

2. Case No. Z-0001-2009/SUP-000702010/MP-0001-2009. Colonial Heritage Deer Lake (deferred from July 13, 2010)

Mr. Johnson stated that the applicant has requested an indefinite deferral until the Board of Supervisors reviews its Rural Lands policy. Staff recommended deferral of this item.

Mr. Kennedy opened the Public Hearing.

1. Mr. John Haldeman, 1597 Founder's Hill North, on behalf of James City County Citizens Coalition (J4C), stated that the J4C thanks the Board for its prudence and opposition to this case absent discussion on the County's Rural Lands policy. Mr. Haldeman commented on larger issues such as zoning and subdivision ordinance revisions and stated that the Board was wise to forestall a decision on this application.

As no one else wished to speak to this matter, the Public Hearing remained open.

3. Case No. SUP-0014-2010. Grove Christian Outreach Center

Mr. Jose Ribeiro, Senior Planner, stated that Mr. Vernon Geddy has applied for an SUP to allow the construction of a house of worship with outreach services as an accessory use on two parcels located along Pocahontas Trail in the Grove area of James City County. The property is zoned Limited Business, LB, and designated Neighborhood Commercial by the 2009 Comprehensive Plan. A house of worship is a by-right use in the Limited Business Zoning District; however, Section 24-370(d) of the Zoning Ordinance, requires an SUP for any building that exceeds 2,750 square feet of building footprint in areas that are designated Neighborhood Commercial on the Comprehensive Plan.

Staff found the proposal consistent with the surrounding zoning and development and consistent with the Comprehensive Plan. Staff also finds this proposal consistent with the Design Standards of the Limited Business Zoning District and the County's Neighborhood Commercial Development Standards Policy.

At its meeting on July 7, 2010, the Planning Commission recommended approval of this application by a vote of 6-0.

Staff recommended approval of the resolution.

Mr. Icenhour asked about parking on the property. He stated that he thought the estimate of one space per four people was low. He asked if this should be changed.

Mr. Ribeiro stated that this use was not explicit in the ordinance, but staff believed the number of parking spaces was sufficient.

Mr. Icenhour asked if this was sufficient for the property if the function was solely as a church.

Mr. Ribeiro stated that the church requirement was one space per five seats.

Mr. Kennedy opened the Public Hearing.

1. Mr. Vernon Geddy, III, on behalf of the applicant, reviewed the history of the Grove Christian Outreach Center and Community Church and its mission and programs. He reviewed the proposed site location of the project, layout, and architectural elevations. He noted that a community meeting was held in April 2010, which met support from the community and there was unanimous Planning Commission support. He requested approval of the application.

2. Ms. Rebecca Knowles, 137 Jefferson's Hundred, Board Member of the Grove Christian Outreach Center, stated her support and requested approval of the application. She reflected on the services provided by the center and its assistance to the Grove community.

3. Ms. Deborah Jackson, 613 Scotland Street, stated that she was declared legally blind and was inspired by the people at the Grove Christian Outreach Center to help the needy as a volunteer. She requested approval of the application.

4. Mr. Ed Oyer, 139 Indian Circle, commented on the impact the center has on the community. He stated concern about adequate parking being provided and that parking should not be allowed on Route 60.

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

Mr. Goodson made a motion to adopt the resolution. He commented on his frustration that though the facility is by-right in the zoning district, since the building was over 2,750 square feet, the SUP was required. He commented on the impact of this organization on the community.

Ms. Jones thanked the individuals involved for their service.

Mr. McGlennon commented that though the process was cumbersome, it allowed the story of this project to be broadcast further.

Mr. Icenhour thanked the individuals involved for their service to the community.

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

## **RESOLUTION**

### **CASE NO. SUP-0014-2010. GROVE CHRISTIAN COMMUNITY CHURCH**

### **AND OUTREACH CENTER**

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. Vernon Geddy has applied on behalf of Grove Christian Community Church and Outreach Center for an SUP to allow for the construction of a house of worship and accessory uses in excess of 2,750 square feet on two parcels of land zoned LB, Limited Business District; and

WHEREAS, the proposed development is shown on a plan prepared by AES Consulting Engineers, dated May 26, 2010 ( the “Master Plan”) and entitled “ Master Plan for Grove Christian Outreach”; and

WHEREAS, the properties are located at 8798 and 8800 Pocahontas Trail and can be further identified as James City County Real Estate Tax Map Parcel 5910100026 and 5910100027; and

WHEREAS, the Planning Commission, following its public hearing on July 7, 2010, voted 6-0 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, does hereby approve the issuance of SUP-0014-2010 as described herein with the following conditions:

1. **Master Plan:** This SUP shall be valid for the construction of building(s) totaling approximately 5,700 square feet and associated future building expansion of approximately 2,700 square feet on the property located at 8798 and 8800 Pocahontas Trail and further identified as James City County Real Estate Parcel Nos. 5910100026 and 5910100027 (together, the “Property”). Development of the Property shall be generally in accordance with the Master Plan entitled “Master Plan for Grove Christian Outreach” prepared by AES Consulting Engineers dated May 26, 2010, and revised on June 21, 2010 (the “Master Plan”), with such minor changes as the Planning Director or his designee determines does not change the basic concept or character of the development. Development of the building area labeled in the master plan as future expansion shall comply with all requirements of the Zoning Ordinance and shall be of similar use, scale, and architectural style as the proposed 5,700 square feet building and as determined by the Planning Director. Development of the Property, including development of the future expansion, as shown on the Master Plan, shall occur in accordance with the design standards of Section 24-370 of the Zoning Ordinance and with the Neighborhood Commercial Development Standards Policy adopted by the Board of Supervisors of James City County on March 23, 1999, and as determined by the Planning Director.
2. **Land Use:** The land uses of the Property shall include a house of worship and outreach services and other permitted accessory uses as determined by the Planning Director.
3. **Boundary Line Extinguishment (BLE):** Prior to final site plan approval, a plat showing the extinguishment of the common property line between the parcels located at 8798 and 8800 Pocahontas Trail must be submitted to the Planning Director for County review and approval.
4. **Architectural Review:** Prior to final site plan approval, the Planning Director, or his designee, shall review and approve the final building elevations and architectural design for Grove Christian Outreach Center. Such building shall be reasonably consistent, as determined by the Planning Director or his designee, with the architectural elevations titled

“Grove Christian Outreach Center, Williamsburg, Virginia” submitted with this special use permit application and prepared by Guernsey Tingle Architects, date stamped April 13, 2010.

5. **Archaeology:** A Phase I Archaeological Study for the entire site shall be submitted to the Planning Director for review and approval prior to land disturbance. A treatment plan shall be submitted and approved by the Planning Director 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 Planning Director and a treatment plan for said sites shall be submitted to, and approved by, the Planning Director 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 Planning Director prior to land disturbance within the study areas. All Phase I, Phase II, and Phase III studies shall meet the Virginia Department of Historic Resources Guidelines for Preparing Archaeological Resource Management Reports and the Secretary of the Interior’s Standards and Guidelines for Archaeological Documentation, as applicable, and shall be conducted under the supervision of a qualified archaeologist who meets the qualifications set forth in the Secretary of the Interior’s Professional Qualification Standards. All approved treatment plans shall be incorporated into the plan of development for the Property and the clearing, grading or construction activities thereon.
6. **Lighting:** All new exterior light fixtures, including building lighting, on the Property shall have recessed fixtures with no lens, bulb, or globe extending below the casing. In addition, a lighting plan shall be submitted to and approved by the Planning Director or his designee, which indicates no glare outside the property lines. All light poles shall not exceed 20 feet in height unless otherwise approved by the Planning Director prior to final site plan approval. “Glare” shall be defined as more than 0.1 foot-candle at the boundary of the Property or any direct view of the lighting source from the adjoining properties.
7. **Commencement of Construction:** Construction on this project shall commence within 36 months from the date of approval of this SUP or this permit shall be void. Construction shall be defined as the obtaining of permits for the construction of foundations and/or footings.
8. **Severance Clause:** This SUP is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.

4. Case No. SUP-0015-2010. Chanco’s Grant Greensprings Trail Amendment

Ms. Leanne Reidenbach, Senior Planner, stated that Mr. Bernard Farmer of James City County General Services has applied on behalf of Parks and Recreation for an amendment to SUP-0014-2003 to allow for the construction of an 8-foot-wide paved trail segment through a required 300-foot undisturbed buffer between the Five Forks Groundwater Treatment Facility and the Chanco’s Grant neighborhood. When the Five Forks Groundwater Treatment Facility was originally constructed, it was required to get an SUP. The original SUP (SUP-0022-2001) allowed construction of a Water Treatment Facility in the Five Forks area behind Clara Byrd Baker Elementary School and included provisions for the construction of a concentrate discharge main, water main, and six production wells. A condition was included that required the JCSA to

construct a greenway trail over a portion of the discharge main alignment. There was also a condition to provide a 300-foot undisturbed buffer along the southern property line of the facility adjacent to the Chanco's Grant neighborhood, but the condition specifically allowed for clearing necessary for construction of the greenway trail within this buffer area. This condition was initially put in place to provide a buffer between the unknown potential noise and visual impacts of the Groundwater Treatment Facility from the adjacent residential area.

Ms. Reidenbach explained that the trail is proposed to provide a connection between the Greensprings Trail network/Mainland Farm area and Clara Byrd Baker Elementary School/Five Forks area. Overall, the trail connection is approximately 1¼ miles long; however, only about 700 feet of the trail is located on the Five Forks Groundwater Treatment Facility property. This connection was identified as a priority project in the 2002 Greenways Master Plan and was reaffirmed as a top priority during public meetings regarding the 2005 bond referendum. Trail construction details are included as part of the master plan and will be eight feet in width and paved to accommodate multiple user groups and reduce required ongoing maintenance.

Staff found the proposal consistent with surrounding zoning and development and consistent with the Comprehensive Plan.

At its meeting on July 7, 2010, the Planning Commission recommended approval of the SUP application by a vote of 6-0.

Staff recommended approval of the application.

Mr. Icenhour asked about negotiations with the homeowners association to be able to cross certain land.

Mr. Bernard Farmer, Capital Projects Administrator, stated that the property immediately adjacent to the Water Treatment Facility was owned by the County. He stated that immediately south of that was a parcel acquired from an adjacent property owner and there was a parcel on the St. George's Hundred side that was acquired, and then further south there was a parcel that was donated by the developer. He stated there were a number of acquisitions that help connect the property.

Mr. Icenhour thanked the homeowners associations that cooperated to make this trail possible.

Mr. Kennedy opened the Public Hearing.

As no one wished to speak to this matter, 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**

### **CASE NO. SUP-0015-2010. CHANCO'S GRANT GREENSPRINGS TRAIL AMENDMENT**

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, water facilities (public and private), including transmission mains, are specially permitted uses in the R-8 Zoning District; and

WHEREAS, Mr. Bernie Farmer, James City County General Services, has applied for an SUP to amend the conditions of Case No. SUP-0014-2003 to allow for construction of a greenway trail at the Five Forks Groundwater Treatment Facility; and

WHEREAS, the property is located at 3123 Ironbound Road, zoned R-8, Rural Residential District, and further identified as James City County Real Estate Tax Map No. 4620100034; and

WHEREAS, the Planning Commission of James City County, following its public hearing on July 7, 2010, voted 6 to 0 to approve this application.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve the issuance of SUP-0015-2010 as described herein with the following conditions:

1. Construction: Start of Construction on the Groundwater Treatment Facility, as defined in the Zoning Ordinance, shall commence within 36 months of approval of this SUP, or the permit shall become void.
2. Compliance: Construction, operation, and maintenance of the Groundwater Treatment Facility, water transmission main, production wells, and concentrate discharge main shall comply with all local, State, and Federal requirements.
3. Permits: All permits and easements shall be acquired prior to the commencement of construction for the water transmission main and concentrate discharge main.
4. Erosion and Sediment Control: The project shall comply with all Virginia erosion and sediment control regulations as specified in the 1992 Virginia Erosion and Sediment Control Handbook as amended.
5. Development Plan: Development and land clearing of the site shall be generally in accordance with the "Preliminary Plan, Brackish Groundwater Desalinization Facility" prepared by AES Consulting Engineers, March 19, 2002, with such accessory structures and minor changes as the Development Review Committee determines does not change the basic concept or character of the development.
6. Spill Containment: Prior to the issuance of a Certificate of Occupancy, a spill containment plan which addresses the chemical handling and storage areas shall be submitted to the Environmental Director and Fire Department for their review and approval.
7. Archaeology: A Phase I Archaeological Study for the any areas to be disturbed shall be submitted to the Director of Planning for review and approval prior to land disturbance for that area. A treatment plan shall be submitted and approved by the Director of Planning for all sites in the Phase I study that are recommended for a Phase II evaluation and/or identified as eligible for inclusion on the National Register of Historic Places. If a Phase II study is undertaken, such a study shall be approved by the Director of Planning and a treatment plan for said sites shall be submitted to, and approved by, the Director of Planning for sites that are determined to be eligible for inclusion on the

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

8. Lighting: All exterior light fixtures, including building lighting, on the Property shall have recessed fixtures with no lens, bulb, or globe extending below the casing. In addition, prior to final site plan approval, a lighting plan shall be submitted to, and approved by, the Director of Planning or his designee which indicates no glare outside the property lines. "Glare" shall be defined as more than 0.1 foot-candle at the property line or any direct view of the lighting source from the adjoining residential properties.
9. Architecture: Prior to final site plan approval, architectural elevations, building materials and colors shall be submitted to the Director of Planning for review and approval for all structures on the site. The intent of this condition is to ensure that all future buildings on the site are uniform and compatible in terms of design, materials and colors, have a residential appearance, and are designed for minimal visual impact.
10. Landscaping: Any accessory structures on the site, such as storage tanks and production well structures, shall be screened with enhanced landscaping or constructed with materials and colors matching the treatment facility. Enhanced landscaping shall be defined as either 133 percent of evergreen trees required by the Zoning Ordinance or 125 percent of general planting required by the Zoning Ordinance as determined by the Director of Planning.
11. Utilities: The water main shall be located within the limits of clearing for the access driveway to the site from John Tyler Highway, the existing James City Service Authority (JCSA) easement or within the Virginia Department of Transportation (VDOT) right-of-way.
12. Route 5 Buffer: A 250-foot undisturbed wooded buffer shall be maintained along John Tyler Highway with the exception of the clearing necessary for the driveway providing access to the site and any portion of the existing JCSA utility easement along John Tyler Highway. The driveway shall be curved in such a way to minimize views of the site from John Tyler Highway to the greatest extent possible, as determined by the Director of Planning.
13. Chanco's Grant Buffer: A 300-foot undisturbed wooded buffer shall be maintained along the southern property line of the treatment facility site adjacent to the Chanco's Grant subdivision. The buffer shall remain undisturbed with the exception of breaks for pedestrian connections, utilities, pedestrian walking and hiking trails, and other uses



specifically approved by the Director of Planning. Any approved breaks shall avoid any major disturbance and clearing or impacts on any trees larger than eight inches in breast height diameter.

14. Greenway Trail: The trail shall be generally located as shown on the plan titled "Project Location Map: Powhatan Creek Trail" dated June 2010, and drawn by the Williamsburg Environmental Group, Inc. with the ability to adjust the precise alignment to avoid specimen trees. The trail shall be built generally consistent with the design details shown on the plan titled "Cross Section Detail: Powhatan Creek Trail" dated June 2010, and drawn by Williamsburg Environmental Group, Inc.
15. Community Character: The applicant shall avoid removing trees, bushes, and shrubs along the water main and concentrate discharge main corridors along Route 5, 4-H Club Road, and Jamestown Road. Trees, bushes, and shrubs damaged during construction shall be replaced with a tree, bush, or shrub of equal type as approved by the Director of Planning.
16. Dust and Siltation Control: For water main or concentrate main construction adjacent to existing development, adequate dust and siltation control measures shall be taken to prevent adverse effects on adjacent property. It is intended that the present and future results of the proposed water transmission main and concentrate discharge main do not create adverse effects on the public health, safety, comfort, convenience, or value of the surrounding property and uses thereon.
17. Access: Vehicular access to residences within the effected right-of-ways shall be maintained at all times.
18. Construction Time: All construction activity for the concentrate discharge main and the water main extension adjacent to existing residential development shall occur between the hours of 8 a.m. and 5 p.m., Monday through Friday.
19. Vehicle and Equipment Storage: Construction vehicles and equipment shall not be parked or stored along Route 5, 4-H Club Road, or Jamestown Road between the hours of 5 p.m. and 8 a.m.
20. Severability: This SUP is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.

5. Case No. SUP-0017-2010. Ward Family Subdivision

Ms. Sarah Propst, Planner, stated that Mrs. Joyce Ward has applied for an SUP to allow a family subdivision resulting in a lot of less than three acres in size for family residential use. The lot is currently owned by Mrs. Ward and is planned to be transferred to her son, Mr. Stephen Ward. Mrs. Ward has lived on this property her entire life. An existing shared gravel driveway at 8897 Barnes Road will continue to be used as the primary point of access to the lot(s) (Condition No. 2). The existing lot is approximately 10.39 acres; the proposed family subdivision would result in a new one-acre lot and a remainder parent parcel of approximately 9.39 acres.

The majority of the surrounding properties range between one and ten acres and several of the properties were created as a result of a past subdivision. All adjacent parcels are zoned A-1 and designated Rural Lands by the 2009 Comprehensive Plan and are being used for single-family residences and agricultural uses.

Staff found the proposal to be consistent with the surrounding development and Section 19-17 of the James City County Subdivision Ordinance.

Staff recommended approval of the application.

Mr. Goodson asked if there would be a permanent right-of-way in the current driveway.

Ms. Propst stated there was currently a driveway that accesses the mobile home which would be used for the new lot.

Mr. Goodson asked if the existing driveway would have a right-of-way to the new lot.

Ms. Propst stated that was correct.

Mr. Icenhour asked if the mobile home was on the proposed lot.

Ms. Propst stated that the mobile home was located behind where the new lot would be located.

Mr. Icenhour asked if a new home would be built on the new lot.

Ms. Propst stated that the intention was for the son to build a home on the new lot.

Mr. Icenhour asked about assessment of the drain field which would be done during the site plan process.

Ms. Propst stated that was correct and the health department indicated no concerns related to the drain field.

Mr. Kennedy asked about a letter received from one of the neighbors.

Ms. Propst stated that she spoke with the neighbor who said she was no longer concerned with the subdivision. She noted that the neighbor expected the subdivision to be a larger development.

Mr. Kennedy opened the Public Hearing.

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

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**

### **CASE NO. SUP-0017-2010. WARD FAMILY SUBDIVISION**

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

WHEREAS, the applicants have requested an SUP to allow for a family subdivision with a lot less than three acres in size in an A-1, General Agricultural, District, located at 8879 Barnes Road, further identified on James City County Real Estate Tax Map No. 1010100020; and

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

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve the issuance of SUP-0017-2010 as described herein with the following conditions:

1. This SUP is valid for a family subdivision for the creation of one new lot and one parent lot and shall be generally as shown on the plan titled "Barnes Road Ward Family Subdivision" and dated July 28, 2010.
  2. Only one entrance serving both lots shall be allowed onto Barnes Road.
  3. Final subdivision approval must be received from the County within 12 months from the issuance of this SUP or the permit shall become void.
  4. The SUP is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.
6. Ordinance to Amend Chapter 24, Zoning, Article I, In General, by Adding Section 24-24, Additional Requirements for Submittal; to Require Certain Applicants to Provide Evidence that all Delinquent Taxes on the Subject Property Have Been Paid

Mr. Rogers introduced Ms. Erin Waugh, an extern in the County Attorney's office. He also noted that Treasurer Ann Davis was in attendance.

Ms. Erin Waugh, Law Clerk, stated that the ordinance amendment before the Board would require applicants requesting special exceptions such as SUPs, land disturbing permits, and other permits to certify that they do not owe any outstanding taxes on the subject property. She stated that this certification can be easily obtained from the customer service window at the Treasurer's Office.

Mr. Kennedy opened the Public Hearing.

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

Mr. McGlennon made a motion to adopt the ordinance amendment. He complimented Ms. Ann Davis, current president of the Virginia Association of Treasurers. He noted that her organization has urged the State to allow local treasurers to collect delinquent State taxes.

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

## **H. BOARD CONSIDERATION**

### **1. Contract Award - Installation of Single-Mode Fiber Optic Cable**

Mr. Tom Pennington, Director of Information Resources Management, requested approval of a contract for a fiber optic network that would be installed throughout the County, which would cost roughly \$1.7 million and take 18-24 months to install. He stated that the network would support all County schools, fire stations, and County buildings which were currently networked by fiber that was leased from Cox Communications. He stated this fiber network would complement the current network. He outlined the path of the fiber optic ring. He stated the funding would come from long-standing capital improvement project which was not previously constructed. He explained the benefits of the network and background on the contractor, Cable Associates. He noted that the redundant underground fiber optic ring improves reliability and expands possible use of the network. He requested approval of the resolution.

Mr. Goodson confirmed that the new fiber optic lines would not be on the same facilities as the current lines.

Mr. Pennington stated the underground lines would be separated from the current lines. He commented that he felt that this was one of the most important projects he has done for the County and places the County in a very beneficial position for the future.

Mr. Goodson 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**

### **CONTRACT AWARD – INSTALLATION OF SINGLE-MODE FIBER OPTIC CABLE –**

#### **CABLE ASSOCIATES, INCORPORATED**

WHEREAS, a Request for Proposals (RFP) has been advertised and evaluated for construction and installation of Single-Mode Fiber Optic Cable for the James City County Metropolitan Area Network (M.A.N.); and

WHEREAS, Cable Associates, Inc. has been determined to be the most fully qualified firm and its proposals best suited the County's needs as defined in the RFP for Installation of Single-Mode Fiber Optic Cable.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, authorizes the County Administrator to execute a contract for installation of single-mode fiber optic cable with Cable Associates, Inc. in an amount not to exceed \$1,723,613.

**I. PUBLIC COMMENT**

1. Mr. Jay Everson, 109 Branscome Boulevard, commented that he was concerned about creating a special taxing district for Lake Powell and it would be set a precedent for localized problems. He stated that the Board should move to protect the environmentally sensitive land at Lake Powell.

**J. REPORTS OF THE COUNTY ADMINISTRATOR**

Mr. Middaugh commented on a fire at National Pancake House on Pocahontas Trail and noted that there were no injuries and the fire was ruled an accident. He stated that the renter and owner have been contacted to determine any assistance that may be given by the County. He reminded the public that the County offices would be closed on Monday, September 6, 2010, for the Labor Day holiday and the next meeting would be held on September 14, 2010, at 7 p.m. He stated that the new school would be opened to students on September 7, 2010. He also noted that he would be out of town to facilitate his move from Florida in the coming weeks and Mr. Powell would be acting County Administrator in his absence. He stated that when the Board completes its business, it should hold a closed session pursuant to Section 2.2-3711(A)(1) of the Code of Virginia for the consideration of a personnel matter, the appointment of individuals to County boards and/or commissions, specifically the Planning Commission, Regional Issues Committee, and Economic Development Authority and then adjourn to 7 p.m. on September 14, 2010.

**K. BOARD REQUESTS AND DIRECTIVES – None.**

**L. CLOSED SESSION**

Mr. Goodson made a motion to go into Closed Session pursuant to Section 2.2-3711(A)(1) of the Code of Virginia for the consideration of a personnel matter, the appointment of individuals to County boards and/or commissions, specifically the Planning Commission, Regional Issues Committee, and Economic Development Authority.

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

At 8:23 p.m., Mr. Kennedy recessed the Board into Closed Session.

At 8:31 p.m., Mr. Kennedy reconvened the Board.

Mr. McGlennon made a motion to adopt the Closed Session resolution.

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

**RESOLUTION**

**CERTIFICATION OF CLOSED MEETING**

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

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

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

Mr. McGlennon made a motion to appoint Mr. Steve Montgomery to a four-year term on the Economic Development Authority, term to expire on June 30, 2014.

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

Mr. Goodson made a motion to appoint Mr. Tim O'Connor to an unexpired term on the Planning Commission, term to expire on January 31, 2013.

On a roll call vote, the vote was AYE: Goodson, Jones, Kennedy (3). NAY: McGlennon, Icenhour (2).

**M. ADJOURNMENT** to 7:00 p.m. on September 14, 2010.

Mr. McGlennon made a motion to adjourn.

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

At 8:34 p.m., Mr. Kennedy adjourned the Board until 7 p.m. on September 14, 2010.

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Robert C. Middaugh  
Clerk to the Board

MEMORANDUM

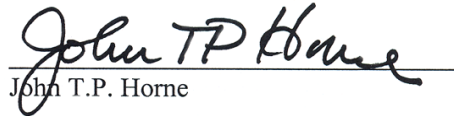
DATE: September 14, 2010  
TO: The Board of Supervisors  
FROM: John T. P. Horne, General Services Manager  
SUBJECT: Budget Transfer – Curbside Leaf Collection - \$29,000

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The adopted Fiscal Year 2011 budget did not contain funding for any curbside leaf collection program this year. This is the same situation as in Fiscal Year 2010, and that year the Board decided to transfer funds from Operating Contingency to proceed with one round of curbside collection. That collection, along with some dates for free leaf drop-off at the Jolly Pond transfer station, was quite successful and well received. The tonnage collected in the one round was almost 80 percent of the tonnage from multiple collections in previous years. Citizens have found this popular program to be very useful. It also prevents disposal of leaves in inappropriate locations such as drainage facilities and stream channels. If a curbside program is to be conducted this season, advertisements in local newspapers, notices on the County website, and information channel 48 will all be used to inform the public of program details.

Should the Board wish to proceed with a similar program this fiscal year, a transfer of \$29,000 from Operating Contingency to Refuse Disposal would be necessary.

Staff recommends approval of the attached resolution. If approved, the collection would be conducted in December.

  
John T.P. Horne

CONCUR:

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Robert C. Middaugh

JTPH/nb  
BT\_CurbLC\_mem

Attachment

## **RESOLUTION**

### **BUDGET TRANSFER – CURBSIDE LEAF COLLECTION – \$29,000**

WHEREAS, the Board of Supervisors desires to conduct a curbside leaf collection program in Fiscal Year 2011 consisting of one round of collection; and

WHEREAS, funds for the program need to be transferred from the Operating Contingency budget to the Refuse Collection budget.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby transfers funds for this program as follows:

From:

Operating Contingency	<u>\$29,000</u>
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To:

Refuse Collection	<u>\$29,000</u>
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James G. Kennedy  
Chairman, Board of Supervisors

ATTEST:

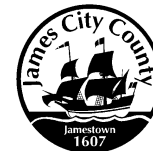
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Robert C. Middaugh  
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 14th day of September, 2010.

BT\_CurbLC\_res





## MEMORANDUM COVER

**Subject:** Budget Transfer-Curbside Leaf Collection - \$29,000

**Strategic Management Plan Pathway:** 3.b – ensure ongoing operational costs are funded

**Action Requested:** Approval of a \$29,000 budget transfer for a curbside leaf collection program in FY 11

**Summary:** The FY 11 budget was adopted with no funding for curbside leaf collection. The reduced program in FY 10 was very successful in collecting about 80 percent of the volume that had been collected in earlier years of multiple collection rounds. If the Board wishes to have a program this season, a budget transfer is necessary and an attached resolution would authorize the transfer from Operating Contingency to Refuse Collection. If funded, one round of curbside collection would be completed in December, along with two periods of free leaf drop off at the Jolly Pond Convenience Center.

Citizens have found this popular program to be very useful. It also prevents disposal of leaves in inappropriate locations such as drainage facilities and stream channels. If a curbside program is to be conducted this season, advertisements in local newspapers, notices on the County website, and information channel 48 will all be used to inform the public of program details.

Staff recommends approval of the resolution.

**Fiscal Impact:**

\$29,000 from Operating Contingency to Refuse Collection

**FMS Approval, if Applicable:** Yes ☐ No ☐

**Assistant County Administrator**

Doug Powell \_\_\_\_\_

**County Administrator**

Robert C. Middaugh \_\_\_\_\_

**Attachments:**

1. Memo
2. Resolution

**Agenda Item No.: G-2**

**Date: September 14, 2010**

MEMORANDUM

DATE: September 14, 2010  
TO: The Board of Supervisors  
FROM: William T. Luton, Fire Chief  
SUBJECT: Grant Award – Radiological Emergency Preparedness Funds – \$25,000

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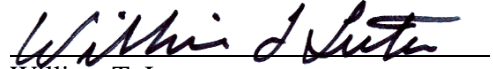
Each Virginia locality within ten miles of a nuclear power station receives funding through the Virginia Department of Emergency Management (VDEM) for Radiological Emergency Preparedness (REP).

The generator at the EOC building is very old, and repair parts are getting difficult to find. We plan to accumulate these funds with the intention of replacing the generator in the near future without using County general fund revenues.

James City County has been awarded \$25,000 of pass-down funds in FY 2011 from Dominion Power through VDEM due to the County's proximity to the Surry Nuclear Power Plant.

These funds are to be used to enhance emergency preparedness to respond to and recover from potential radiological incidents. The grant requires no match.

Staff recommends adoption of the attached resolution to appropriate funds.

  
William T. Luton

CONCUR:

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Robert C. Middaugh

WTL/nb  
GA\_REP\_mem

Attachment

## RESOLUTION

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

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

WHEREAS, the funds are to be used for planning and response for public protective actions related to the Surry Nuclear Power Plant; and

WHEREAS, the grant requires no match.

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

Revenue:

Radiological Emergency Preparedness Funds – FY 11	<u>\$25,000</u>
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Expenditure:

Radiological Emergency Preparedness Funds – FY 11	<u>\$25,000</u>
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James G. Kennedy  
Chairman, Board of Supervisors

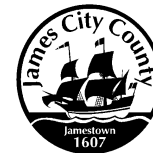
ATTEST:

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Robert C. Middaugh  
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 14th day of September, 2010.

GA\_REP\_res



## MEMORANDUM COVER

**Subject:** Grant Award - Radiological Emergency Preparedness Funds - 25,000

**Strategic Management Plan Pathway:** 1.d – Develop and promote revenue alternatives to property taxes

**Action Requested:** Recommend appropriation of funds received from Dominion Virginia Power

**Summary:** Each locality within ten miles of a nuclear power station in Virginia receives annual funding from Dominion Power through the Virginia Department of Emergency Management to assist in preparations for response to any threats related to the Nuclear Power Plant. James City County receives \$25,000 annually from this fund. The County uses the funds to make improvements to the Emergency Operations Center, radiological response equipment, and readiness drills.

The generator at the EOC building is very old, and repair parts are getting difficult to find. We plan to accumulate these funds with the intention of replacing the generator in the near future without using County general fund revenues.

Staff recommends approval of the resolution.

**Fiscal Impact:** N/A

**FMS Approval, if Applicable:** Yes ☐ No ☒

**Assistant County Administrator**

Doug Powell \_\_\_\_\_

**County Administrator**

Robert C. Middaugh \_\_\_\_\_

**Attachments:**

1. Memo
2. Resolution

**Agenda Item No.:** G-3

**Date:** September 14, 2010


MEMORANDUM

DATE: September 14, 2010  
TO: The Board of Supervisors  
FROM: Emmett H. Harmon, Chief of Police  
SUBJECT: Grant Award – Virginia Department of Motor Vehicles – \$34,569

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The James City County Police Department has been awarded a highway safety grant from the Virginia Department of Motor Vehicles for \$34,569. The funds are to be used toward traffic enforcement overtime and related training and equipment. Funds in the amount of \$450 will be used for training and conferences, \$2,500 will be used for a LIDAR laser radar for enforcement, and the balance of the funds will be used for overtime pay for traffic enforcement geared toward speeding, driving under the influence, and seatbelt use. The grant requires an in-kind match.

Staff recommends adoption of the attached resolution.

  
Emmett H. Harmon

CONCUR:

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Robert C. Middaugh

EHH/nb  
GA\_VaDMV\_mem

Attachment

## RESOLUTION

### GRANT AWARD – VIRGINIA DEPARTMENT OF MOTOR VEHICLES – \$34,569

WHEREAS, the James City County Police Department has been awarded a highway safety grant award from the Virginia Department of Motor Vehicles for \$34,569; and

WHEREAS, the grant requires an in-kind match; and

WHEREAS, the funds are to be used toward traffic enforcement overtime and related training and equipment.

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

Revenue:

DMV FY 11 – Highway Safety	<u>\$34,569</u>
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Expenditure:

DMV FY 11 – Highway Safety	<u>\$34,569</u>
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James G. Kennedy  
Chairman, Board of Supervisors

ATTEST:

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Robert C. Middaugh  
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 14th day of  
September, 2010.

GA\_VaDMV\_res



## MEMORANDUM COVER

**Subject:** Grant Award – Virginia Department of Motor Vehicles – \$34,569

**Strategic Management Plan Pathway:** 1.d - develop and promote revenue alternatives to property taxes

**Action Requested:** Adoption of the attached resolution

**Summary:** Historically, the Virginia Department of Motor Vehicles provides annual grant funding (passed-through the National Highway Traffic Safety Administration) for the purpose of increasing traffic enforcement in localities. The majority of the funds are to be used toward overtime salaries for officers conducting traffic enforcement, either through saturated patrols or traffic checkpoints. Additional funding is for traffic enforcement and safety training and enforcement equipment.

Staff recommends approval of the resolution.

**Fiscal Impact:**

The grant requires an in-kind match and not a cash match.

**FMS Approval, if Applicable:** Yes ☐ No ☐

**Assistant County Administrator**

Doug Powell \_\_\_\_\_

**County Administrator**

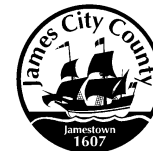
Robert C. Middaugh \_\_\_\_\_

**Attachments:**

1. Memo
2. Resolution

**Agenda Item No.:** G-4

**Date:** September 14, 2010



## MEMORANDUM COVER

**Subject:** Acceptance of a Grant Amendment - Virginia Recreational Trails Fund - \$283,976

**Strategic Management Plan Pathway:** 1.d - develop and promote revenue alternatives to property taxes; and 3.e - match community growth with the ability to maintain a high quality natural and man-made environment

**Action Requested:** Staff recommends approval of the attached resolution to accept the additional \$283,976 grant amendment for the Powhatan Creek Trail.

**Summary:** The Virginia Department of Conservation and Recreation has unexpended grant funds that have been offered to James City County Division of Parks and Recreation to add to an open grant for the Mainland Farm portion of the Powhatan Creek Trail. The funds will be used to expand the Mainland Farm portion and complete the Powhatan Creek Trail to Clara Byrd Baker Elementary School. The trail was already slated for construction in spring 2011, and bond funds combined with this grant will complete the project.

Staff recommends approval of the resolution.

**Fiscal Impact:** The County will save \$283,976 of the cost to build the bond funded Powhatan Creek Trail.

**FMS Approval, if Applicable:** Yes ☐ No ☐

**Assistant County Administrator**

Doug Powell \_\_\_\_\_

**County Administrator**

Robert C. Middaugh \_\_\_\_\_

**Attachments:**

1. Memo
2. Resolution

**Agenda Item No.: G-5**

**Date:** September 14, 2010



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

DATE: September 14, 2010

TO: The Board of Supervisors

FROM: John H. Carnifax Jr., Director of Parks and Recreation

SUBJECT: Acceptance of a Grant Amendment - Virginia Recreational Trails Fund - \$283,976

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The Virginia Department of Conservation and Recreation has allowed the James City County Division of Parks and Recreation to amend its previously awarded \$100,000 Virginia Recreational Trails Fund Grant for the construction of the Mainland Farm portion of the Powhatan Creek Trail. The grant is a Federal pass through grant with 80 percent Federal Highway Administration funds and a required 20 percent local match. The grant amendment allows for increased project costs to a minimum of \$479,969 which will result in an increased Federal award of \$283,976, with a local match of \$75,994.

The increase in the award amount is made possible by three years of under-utilized funds by other communities from the Recreation Trails Program. The Division of Parks and Recreation was chosen to receive this additional funding due to its successful past grant performance. These additional funds will be used to assist in the cost of expanding the trail to Clara Byrd Baker Elementary School, thus completing the Powhatan Creek Trail. Once complete, the entire trail will provide connectivity to 16 neighborhoods, two public schools, a commercial district, two major trail systems, two James City County parks, Jamestown Settlement, and the James River. The trail extension, for which James City County already owns all required property and easements, is slated to begin construction in spring of 2011. The funds awarded combined with available funding from the Greenways Referendum will be sufficient to complete the expanded trail with an estimated total cost of \$950,000, fulfilling the minimum project cost requirement of the grant.

The development of this recreational opportunity supports the County's goal to plan responsibly for the needs of a growing, diverse community, and the use of grant funds directly supports the goal of managing finances wisely.

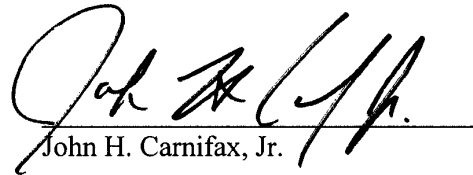
The required 20 percent match will come from available funding from the Greenways Referendum. When the project is completed, the County will receive an additional \$283,976 reimbursement from the Federal government through the Virginia Department of Conservation and Recreation within 30 days of submission. The addition of the \$283,976 in grant funds will enable originally committed project funds to be available to perform other work.

Staff recommends approval of the attached resolution to accept the additional \$283,976 grant amendment for the Powhatan Creek Trail and to appropriate the funds to the Powhatan Creek Trail Grant account in the Capital Projects fund.

Acceptance of a Grant Amendment - Virginia Recreational Trails Fund - \$283,976

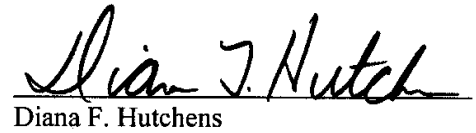
September 14, 2010

Page 2



John H. Carnifax, Jr.

CONCUR:



Diana F. Hutchens

JHC/gb  
GA\_RecTrails\_mem

Attachment

**RESOLUTION**

**ACCEPTANCE OF A GRANT AMENDMENT –**

**VIRGINIA RECREATIONAL TRAILS FUND – \$283,976**

WHEREAS, the Department of Conservation and Recreation, in cooperation with the Federal Highway Administration, has underrun matching funds available for the development of trails; and

WHEREAS, funds are needed for the construction of the multi-use Powhatan Creek Trail to connect neighborhoods, historic sites, schools, and the Virginia Capital Trail.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, accepts the \$283,976 grant amendment awarded by the Department of Conservation and Recreation in cooperation with the Federal Highway Administration to help with the construction of the Powhatan Creek Trail.

BE IT FURTHER RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the following appropriation to the Capital Projects Fund:

Revenue:

From the Federal Government	<u>\$283,976</u>
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Expenditure:

Powhatan Creek Trail Grant	<u>\$283,976</u>
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James G. Kennedy  
Chairman, Board of Supervisors

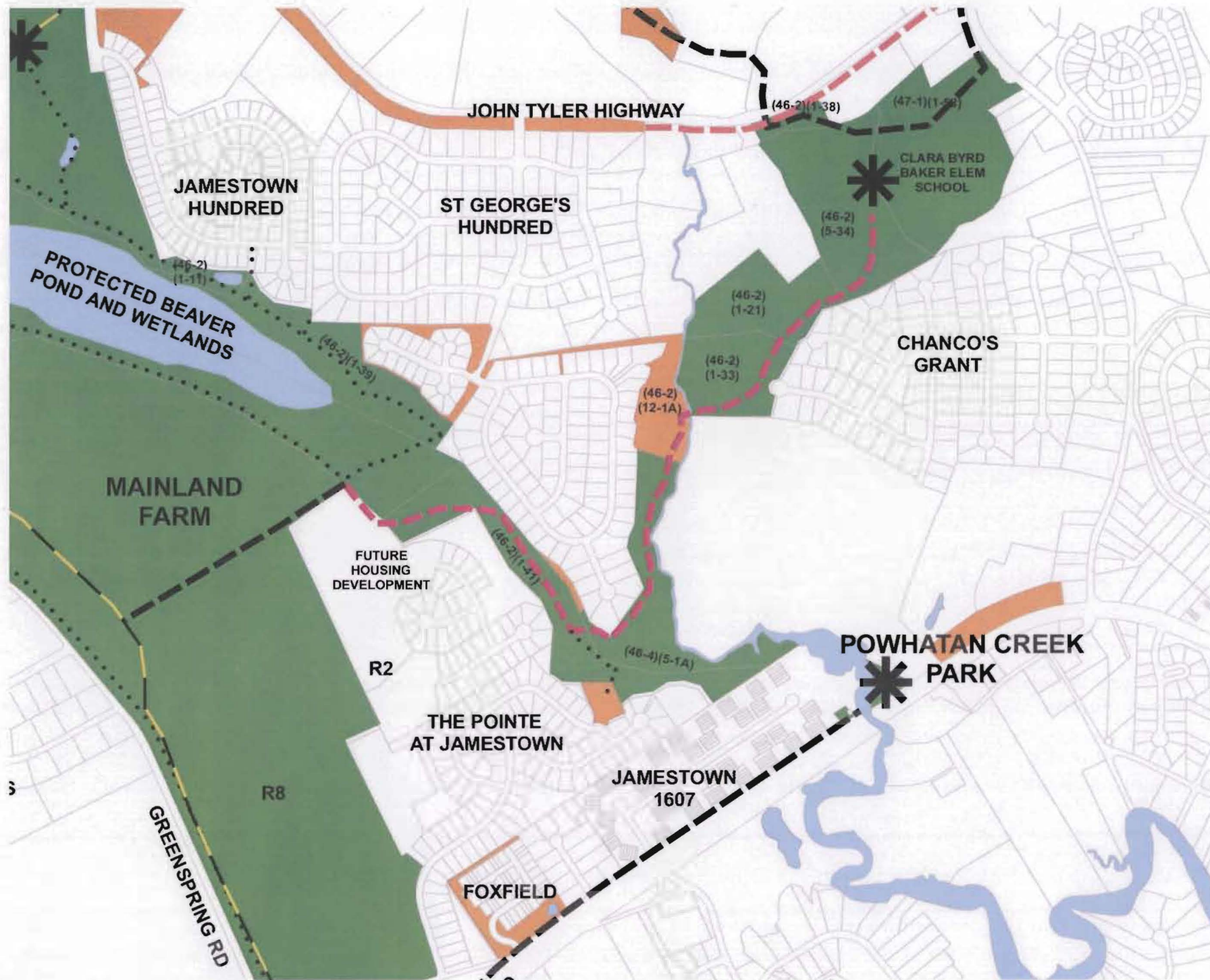
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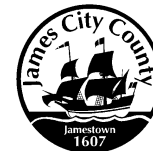
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Robert C. Middaugh  
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 14th day of September, 2010.

GA\_RecTrails\_res





## MEMORANDUM COVER

**Subject:** Code Violation Lien - Trash and Grass Lien - 3232 Reade's Way

**Strategic Management Plan Pathway:** 2.f - enhance community appearance and 5.c - implement mechanisms to track, resolve and follow up complaints

**Action Requested:** Place a lien on the property for failure to pay for grass cutting.

**Summary:** The Zoning Administrator certifies that, having received a complaint, the Code Compliance Officer inspected the property at 3232 Reade's Way. Notification of a violation for trash and/or grass was sent to the property owners. Following failure of the property owners to take corrective action, the County contracted to have the property cleaned. Owners were sent notification of payment due. They failed to pay.

Staff recommends approval of the resolution.

**Fiscal Impact:** Collect \$260.00 for cutting grass on private property

**FMS Approval, if Applicable:** Yes ☐ No ☐

**Assistant County Administrator**

Doug Powell \_\_\_\_\_

**County Administrator**

Robert C. Middaugh \_\_\_\_\_

**Attachments:**

1. Memorandum
2. Resolution

**Agenda Item No.: G-6**

**Date: September 14, 2010**

MEMORANDUM

DATE: September 14, 2010  
TO: The Board of Supervisors  
FROM: John Rogerson, Senior Zoning Officer  
SUBJECT: Code Violation Lien – Trash and Grass Lien – 3232 Reade's Way

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

Owners: Barbara A. Bullock and Janice Hillman  
3232 Reade's Way  
Williamsburg, VA 23185-2421

Description: 3232 Reade's Way

Tax Map/Parcel No.: (46-1)(07-0-0101)

Filing Fee: \$10.00

Total Amount Due: \$260.00

Staff recommends that the Board of Supervisors adopt the attached resolution to establish a lien in the amount of \$260.

---

John Rogerson

CONCUR:

  
Steven W. Hicks

JR/nb  
ReadesWay\_mem

Attachment

## **RESOLUTION**

### **CODE VIOLATION LIEN – TRASH AND GRASS LIEN – 3232 READE’S WAY**

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

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

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

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

ACCOUNT: Barbara A. Bullock and Janice Hillman  
3232 Reade’s Way  
Williamsburg, VA 23185-2421

DESCRIPTION: 3232 Reade’s Way

TAX MAP/PARCEL NOS.: (46-1)(07-0-0101)  
James City County, Virginia

FILING FEE: \$10.00

TOTAL AMOUNT DUE: \$260.00

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James G. Kennedy  
Chairman, Board of Supervisors

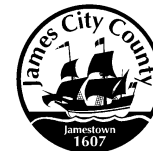
ATTEST:

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Robert C. Middaugh  
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 14th day of September, 2010.

ReadesWay\_res



## MEMORANDUM COVER

**Subject:** Request for Disaster Designation and Federal Assistance for James City County

**Strategic Management Plan Pathway:** 1.e - Foster new and existing small businesses

**Action Requested:** Approval of the attached resolution requesting the Governor's assistance in obtaining Federal disaster designation for James City County and Federal assistance from the United States Department of Agriculture.

**Summary:** Excessive heat and drought have caused significant losses to the soybean and corn crops in James City County and many other jurisdictions this summer. In order for farmers of these crops to obtain Federal assistance, the Four Rivers Farm Service Agency, a subsidiary of the United States Department of Agriculture (USDA), must determine that damage to the crops meets the threshold for a disaster declaration. The Four Rivers Farm Service Agency has made such a determination.

In order to obtain a disaster declaration, localities must send resolutions to the Governor requesting assistance in seeking a Federal disaster designation and financial assistance from the USDA.

Staff recommends approval of the resolution.

**Fiscal Impact:** None.

**FMS Approval, if Applicable:** Yes ☐ No ☐

**Assistant County Administrator**

Doug Powell \_\_\_\_\_

**County Administrator**

Robert C. Middaugh \_\_\_\_\_

**Attachments:**

1. Memo
2. Resolution

**Agenda Item No.:** G-7

**Date:** September 14, 2010



**MEMORANDUM**

DATE: September 14, 2010

TO: The Board of Supervisors

FROM: Doug Powell, Assistant County Administrator

SUBJECT: Request for Disaster Designation and Federal Assistance for James City County

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Excessive heat and drought have caused significant losses to the soybean and corn crops in James City County and many other jurisdictions this summer. In order for farmers of these crops to obtain Federal assistance, the Four Rivers Farm Service Agency, a subsidiary of the United States Department of Agriculture (USDA), must determine that damage to the crops meets the threshold for a disaster declaration. The Four Rivers Farm Service Agency has made such a determination.

The Farm Service Agency has found that 50 percent of the soybean crop was lost this summer with a value estimated at \$279,224. They further found that 75 percent of the corn crop was lost with an estimated value of \$457,496.

In order to obtain a disaster declaration, localities must send resolutions to the Governor requesting assistance in obtaining a Federal disaster designation and financial assistance from the USDA. The Governor will then petition the USDA for the disaster declaration. If the USDA does declare a disaster for James City County, farmers will then need to apply to USDA for financial assistance. No local funds are required to assist impacted farmers.

Dan Nortman, Extension Agent for York County, has taken the lead on this issue and will be in attendance at the Board meeting.

Staff recommends approval of the attached resolution.

  
\_\_\_\_\_  
Doug Powell

DP/nb  
DisDesign\_mem

Attachment

## **RESOLUTION**

### **REQUEST FOR DISASTER DESIGNATION AND FEDERAL ASSISTANCE FOR**

#### **JAMES CITY COUNTY**

WHEREAS, drought conditions in the County of James City have adversely affected farmers and their production yields; and

WHEREAS, during critical periods of the growing season of 2010, certain areas of the County of James City received considerably less than normal rainfall while experiencing higher than normal temperatures; and

WHEREAS, the loss of production for James City farmers due to these adverse conditions has been reported by the Farm Service Agency, the Natural Resources Conservation Service, and Virginia Cooperative Extension to be at a minimum of 50 percent to soybeans (1,837 acres planted, value of loss estimated at \$279,224) and a minimum of 75 percent to corn (1,378 acres planted, value of loss estimated at \$457,496); and

WHEREAS, James City County farmers need State and Federal assistance in responding to their losses.

NOW, THEREFORE, BE IT RESOLVED, that the Board of Supervisors of James City County, Virginia, hereby instructs the County Administrator to submit to the Governor of Virginia a certified copy of this resolution and request assistance in obtaining Federal disaster designation for James City County and Federal assistance from the United States Department of Agriculture for James City County farmers who have experienced agricultural damages and losses due to excessive heat and drought.

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James G. Kennedy  
Chairman, Board of Supervisors

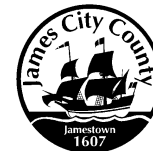
ATTEST:

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Robert C. Middaugh  
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 14th day of September, 2010.

DisDesign\_res



## MEMORANDUM COVER

**Subject:** Colonial Community Criminal Justice Board Appointment

**Strategic Management Plan Pathway:** N/A

**Action Requested:** Staff recommends approval of the attached resolution reappointing Police Chief Emmett Harmon to the Colonial Community Criminal Justice Board.

**Summary:** Chief Emmett Harmon's term on the Colonial Community Criminal Justice Board expired on August 31, 2010. The attached resolution would reappoint Chief Harmon to a three-year term set to expire on August 31, 2013.

Staff recommends approval of the resolution.

**Fiscal Impact:** N/A

**FMS Approval, if Applicable:** Yes ☐ No ☐

**Assistant County Administrator**

Doug Powell \_\_\_\_\_

**County Administrator**

Robert C. Middaugh \_\_\_\_\_

**Attachments:**

1. Memo
2. Resolution

**Agenda Item No.:** G-8

**Date:** September 14, 2010

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

DATE: September 14, 2010  
TO: The Board of Supervisors  
FROM: Doug Powell, Assistant County Administrator  
SUBJECT: Colonial Community Criminal Justice Board Appointment

---

Police Chief Emmett Harmon's term on the Colonial Community Criminal Justice Board (CCJB) expired on August 31, 2010. Chief Harmon has agreed to continue his service.

I recommend approval of the attached resolution reappointing Chief Harmon to a three-year term on the CCJB set to expire on August 31, 2013.

  
\_\_\_\_\_  
Doug Powell

DP/nb  
CCCJBrdA\_mem

Attachment

## **RESOLUTION**

### **COLONIAL COMMUNITY CRIMINAL JUSTICE BOARD (CCCJB) APPOINTMENT**

WHEREAS, Police Chief Emmett Harmon's term on the Colonial Community Criminal Justice Board (CCCJB) expired on August 31, 2010; and

WHEREAS, Chief Harmon has agreed to reappointment to the CCCJB.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby reappoints Chief Emmett Harmon to a full three-year term on the CCCJB, set to expire on August 31, 2013.

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James G. Kennedy  
Chairman, Board of Supervisors

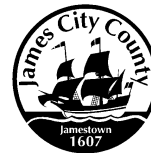
ATTEST:

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Robert C. Middaugh  
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 14th day of September, 2010.

CCCJBrdA\_res



## MEMORANDUM COVER

**Subject:** Resolution Protesting the Proposed Closure of United States Joint Forces Command

**Strategic Management Plan Pathway:** 1.c - diversify tax revenue, tax base and employment options

**Action Requested:** Staff recommends approval of the resolution

**Summary:** United States Joint Forces Command (JFCOM) is one of five major Department of Defense commands that are headquartered in Hampton Roads. Its mission is to train forces from all military branches to serve together effectively and serves as a think tank for the Joints Chiefs of Staff. JFCOM has been recommended for closure.

The closure of JFCOM would have a significant negative impact on the regional economy. It employs 5,650 people directly and another estimated 5,150 through direct and indirect effects.

The attached resolution expresses the County's opposition to the closure of JFCOM.

**Fiscal Impact:** None

**FMS Approval, if Applicable:** Yes ☐ No ☐

**Assistant County Administrator**

Doug Powell \_\_\_\_\_

**County Administrator**

Robert C. Middaugh \_\_\_\_\_

**Attachments:**

1. Memo
2. Resolution

**Agenda Item No.:** G-9

**Date:** September 14, 2010

**MEMORANDUM**

DATE: September 14, 2010

TO: The Board of Supervisors

FROM: Doug Powell, Assistant County Administrator

SUBJECT: Resolution Protesting the Proposed Closure of United States Joint Forces Command

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The United States Joint Forces Command (JFCOM) is one of five major Department of Defense commands that are headquartered in Hampton Roads. At present, JFCOM's headquarters is located in Norfolk, where it oversees more than 1.16 million men and women with the goal of ensuring that all branches of the military work together to achieve strategic goals. JFCOM trains forces from all military branches to serve together effectively, ensuring equipment interoperability as well as developing the ability for the U.S. military to cooperate with allied military commands. Additionally, JFCOM serves as a think-tank for the Joint Chiefs of Staff.

In August, the Defense Business Board provided a list of recommendations to the Secretary of Defense, including the recommendation to close JFCOM. JFCOM plays an extremely important role in the regional economy. According to the Hampton Roads District Planning Commission, there are significant personnel and assets in Hampton Roads currently dedicated to JFCOM, including:

- 5,650 military, civilian, and contract employees
- An estimated 5,150 additional jobs generated through both direct and indirect effects
- Over 1 million square feet of building and construction leasing
- Over \$900 million contributed to the region's gross regional product and over \$500 million in contracts awarded on an annual basis.

There are concerns that the recommendation to close JFCOM has not been made in accordance with Base Realignment and Closure (BRAC) legislation that requires sufficient time and opportunity for Congress to review such proposals.

Staff recommends approval of the attached resolution protesting the proposed closure of JFCOM.

  
Doug Powell

CONCUR:

---

Robert C. Middaugh

DP/gb  
JFCOM\_mem

Attachment

## **RESOLUTION**

### **RESOLUTION PROTESTING THE PROPOSED CLOSURE OF**

#### **UNITED STATES JOINT FORCES COMMAND**

- WHEREAS, the mission of the United States Joint Forces Command (JFCOM) is to provide ready capable joint forces to support the development and integration of joint, interagency, and multi-national capabilities to meet the present and future operational needs of the military, as well as to anticipate and prepare for the future demands of the National Defense Strategy; and
- WHEREAS, JFCOM directly employs 5,650 people with an estimated 5,150 additional jobs generated in the Hampton Roads region through both direct and indirect effects; and
- WHEREAS, the Defense Business Board, a Pentagon Advisory Board, presented a report making many recommendations including the elimination of JFCOM; and
- WHEREAS, the Defense Business Board Report also stated a need to do more in-depth study which has not been done on the JFCOM issue; and
- WHEREAS, Secretary of Defense Gates on August 9, 2010, officially recommended that JFCOM be closed; and
- WHEREAS, the closure of JFCOM would have an immediate and continuing severe detrimental effect on the military's ability to jointly address threats to national security and would greatly weaken the effectiveness and efficiency of the individual uniformed services to function as one cohesive and joint military force to counter, among other things, worldwide terrorism; and
- WHEREAS, the proposed closure of JFCOM is not being done in accordance with Federal Law, particularly Title 10 of the U.S. Code, § 2687 which was established to ensure that Congress has sufficient time and opportunity to review the DOD proposal that resulted in the closure realignment of significant military facilities which JFCOM surely is; and
- WHEREAS, James City County is united with the Hampton Roads region in this effort to maintain JFCOM and the preparedness of our military.
- NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby protests the proposed closure of JFCOM and requests that the Congressional Delegation and State Government urgently do all things necessary to maintain the current level of JFCOM activities.



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James G. Kennedy  
Chairman, Board of Supervisors

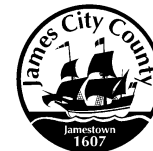
ATTEST:

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Robert C. Middaugh  
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 14th day of  
September, 2010.

JFCOM\_res



## MEMORANDUM COVER

**Subject:** Case No. SUP-0028-2009. Ingram Road Pegasus Wireless Communications Facility (WCF)

**Strategic Management Plan Pathway:** N/A

**Action Requested:** Staff recommends approval of the application in accordance with the attached resolution

**Summary:** Mr. Steven Romine submitted an application for a Special Use Permit to allow the construction of a 124-foot wireless communication facility at 108 Ingram Road between an existing building and John Tyler Industrial Park. The proposed WCF would be a “slick stick” with no visible external antennas.

The Planning Commission reviewed the original proposal at the February 3 and April 7, 2010, meetings and recommended denial of the application by a vote of 5-2. Since the original review, the applicant has amended the application moving the proposed tower from the front of the property to the east side of the second building adjacent to John Tyler Industrial Park. The Board remanded the application to the Commission for reconsideration at its meeting on June 22, 2010.

At their August 4, 2010 meeting, the Planning Commission recommended approval of the application by a vote of 5-0.

The applicant has requested that Condition No. 9 be amended to reduce the required tree buffer along Ingram Road/John Tyler Highway from 100 feet to 50 feet. Staff and the Planning Commission find a 100-foot buffer preferred as it is more consistent with the adopted performance standards, but a 50-foot buffer would not affect staff’s recommendation.

**Fiscal Impact:** N/A

**FMS Approval, if Applicable:** Yes ☐ No ☐

**Assistant County Administrator**

Doug Powell \_\_\_\_\_

**County Administrator**

Robert C. Middaugh \_\_\_\_\_

**Attachments:**

1. Resolution
2. Illustration of Proposed Tower
3. Location Map and Balloon Test Results
4. Binder Application
5. Photos from the July 8, 2010, Balloon Test
6. Performance Standards for WCFs Policy
7. Unapproved Planning Commission Minutes

**Agenda Item No.: H-1**

**Date: September 14, 2010**

**SPECIAL USE PERMIT-0028-2009. Ingram Road Pegasus Wireless Communications Facility  
Staff Report for the September 14, 2010, Board of Supervisors Public Hearing**

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

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**PUBLIC HEARINGS**

Planning Commission:

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

February 3, 2010, 7:00 p.m. (deferred)

April 7, 2010, 7:00 p.m. (denial vote)

August 4, 2010, 7:00 p.m. (approval vote)

Board of Supervisors:

May 11, 2010, 7:00 p.m. (deferred)

May 25, 2010, 7:00 p.m. (deferred)

June 22, 2010, 7:00 p.m. (remanded to PC)

September 14, 2010, 7:00 p.m.

**SUMMARY FACTS**

Applicant:

Mr. Stephen Romine, LeClairRyan

Land Owner:

Ingram Road, LLC

Proposal:

To allow the construction of a 124-foot (120-foot tower with four-foot lighting rod) "slick stick" Wireless Communications Facility (WCF) on the subject property.

Location:

108 Ingram Road

Tax Map/Parcel No.:

4710100007

Parcel Size:

6.98 acres

Existing Zoning:

B-1, General Business

Comprehensive Plan:

Mixed Use

Primary Service Area:

Inside

**STAFF RECOMMENDATION**

Staff finds the proposal, with the conditions listed in the attached resolution, to be consistent with surrounding land uses, the Land Use policies of the Comprehensive Plan, the Comprehensive Plan Land Use Map Designation, and the Wireless Communications Performance Standards policy. Staff recommends approval of the application in accordance with the attached resolution.

Staff Contact:

Luke Vinciguerra, Planner

Phone: 253-6783

**PLANNING COMMISSION RECOMMENDATION**

At its August 4, 2010, meeting, the Planning Commission recommended approval of the application by a vote of 5-0.

## **Proposed Changes Made by the Planning Commission**

The Planning Commission did not recommend any changes to the proposal or to the recommended conditions. During the Commission meeting, the applicant stated his opposition to Special Use Permit (SUP) Condition No. 9 which would require a 100-foot buffer of existing mature trees to be maintained at the front of the property abutting Ingram Road/John Tyler Highway. The applicant requested that the condition be amended to require a 50-foot buffer that would allow the property owner more room to build an additional building on the property at a future date. An additional building located in the area of the existing wooded buffer along Ingram Road/John Tyler Highway (Case No. SP-62-88) was approved in 1990, but was never constructed. Approval of that site plan has expired and any future building would have to meet current ordinance requirements and any SUP conditions in effect for the property. Though staff finds 100 feet preferable because it would be more consistent with the Performance Standards, a 50-foot buffer would not change staff's recommendation.

## **HISTORY**

The Planning Commission reviewed the original proposal at the February 3 and April 7, 2010, meetings and recommended denial of the application by a vote of 5-2. Since the original review, the applicant has amended the application, moving the proposed tower from the front of the property to the east side of the second building adjacent to John Tyler Commercial Park. The Board remanded the application to the Commission for reconsideration at its meeting on June 22, 2010. A new balloon test was performed and the Planning Commission recommended approval of the revised application. This staff report is an analysis of the new location.

## **PROJECT DESCRIPTION**

Mr. Stephen Romine has applied for an SUP to allow the construction of a 124-foot wireless communication facility at 108 Ingram Road between an existing building and John Tyler Commercial Park (exact location best viewed on page A-0 of the site plan). Tower-mounted communication facilities higher than 60 feet in the B-1, General Business, district require an SUP. The proposed WCF would be a "slick stick" with no visible external antennas. An illustration of the proposed tower is provided at the end of the report (Attachment 2).

## **PUBLIC IMPACTS**

### **Environmental**

**Watershed:** Mill 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 new WCF would not generate additional needs for the use of public utilities or significant additional vehicular trips in the area.

## **VISUAL IMPACTS**

The proposed tower site is located adjacent to the second of the three buildings in the existing commercial/office park on Ingram Road. The site is adjacent to the John Tyler Commercial Park. There is a thin line of mature trees between the proposed location and the neighboring business park. Additionally, there is a wooded buffer on the south side of the property adjacent to Route 5 and a high density of mature trees adjacent to Baron Woods. The existing buildings and mature trees in the area help screen the proposed tower from most locations. The proposed tower is approximately 430 feet from the closest home in Baron Woods, 800 feet from Brandon Woods, and 1,500 feet from Graylin Woods.

Based on a publicly advertised balloon test on July 8, 2010, staff finds the proposed tower would be briefly visible at the Ironbound Road/Route 5 intersection during an eastbound approach (Location No. 5) and at the entrance of John Tyler Commercial Park heading westbound (Location No. 7).

The tower would also be briefly visible from a portion of Governors Green Shopping Center (Location No. 6). The proposed tower would be visible at the entrance of Airtight Storage (Location No. 4). The proposed tower would have limited visibility from the entrance of Clara Byrd Baker Elementary School, the entrance of Powhatan Crossing (Location No. 1), the terminus of Lancaster Lane in Baron Woods (Location No. 2), and Bradington in Brandon Woods (Location No. 3). Staff defines ‘limited visibility’ as a purposeful attempt that would need to be made to locate the proposed tower.

## COMPREHENSIVE PLAN

### Community Character

Development Standards, Goals, Strategies, and Actions	<i>Five Forks</i> (Page 89) Five Forks is generally understood to encompass the area that lies within three-quarters of a mile of the intersection of John Tyler Highway and Ironbound Road (During the 2008 Comprehensive Plan update, Five Forks became a Community Character Area (CCA).
	The Primary Principles for the Five Forks area referenced in the Comprehensive Plan states: “Building architecture, scale, materials, spacing, height, and color should respect the architectural context of existing structures such as the historic schoolhouse and veterinary clinic and maintain the village character of Five Forks. New buildings should attempt to emulate distinguishing architectural elements of existing structures such as windows, roof lines, and cornices.”
	<i>Action No. 1.2.1.</i> “... Encourage developers to apply the design guidelines developed for Toano and Five Forks to projects within these areas...”
	<b>Staff Comment:</b> Though the proposal is dissimilar to any historic element of the CCA and does not emulate distinguishing architectural elements of the surrounding area, it is well enough hidden to not be a noticeable visual anomaly.
	<i>Suburban Community Character Corridor Recommendation</i> (Page 84): The predominant visual character of the suburban Community Character Corridor (CCC) should be the built environmental and natural landscaping, with parking and other auto-related areas clearly a secondary component of the streetscape.
	<b>Staff Comment:</b> Staff finds the proposal consistent with the policy statement as the tower would only be briefly viewable while traveling on Route 5 and likely unnoticeable from Ironbound Road.
	<i>Action No. 1.1.1</i> - Expect that development along CCCs protect the natural views of the area, promotes the historic, rural or unique character of the area, maintains greenbelt network, and establishes entrance corridors that enhance the experience of residents and visitors.
	<i>Action No. 1.2.2</i> - Expect that development along CCCs protect the natural views of the area, promotes the historic, rural or unique character of the area, maintains greenbelt network, and establishes entrance corridors that enhance the experience of residents and visitors.
	<b>Staff Comment:</b> Staff finds this proposal consistent with Action Nos. 1.1.1 and 1.2.2 as the quality of the historic view shed would not be compromised as the tower is well hidden from most locations.

### Comprehensive Plan

Given the proposed height of the tower, the on-site topography, and the adequate tree cover, staff finds this application, as proposed, is in compliance with the Comprehensive Plan.

## **PERFORMANCE STANDARDS**

On May 26, 1998, the James City County Board of Supervisors adopted several performance criteria for WCFs (Attachment No. 7). 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 designated 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 an SUP have substantially met these standards, including those pertaining to visibility.

### **A. Co-location and Alternative Analysis**

Standard A1 encourages co-location. The applicant has provided documentation in the written narrative of the application that discusses failed collocation attempts and offers justification for the proposed location.

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. The applicant has explored alternative locations but claims this site 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. Though it appears structurally possible to locate an additional tower on-site, positioning a second tower could be challenging because of the 400 foot residential setback requirement while maintaining an adequate distance from Route 5 and Ingram Road.

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 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. Though the tower is significantly higher than any structure in the area, the topography, mature tree cover, and surrounding buildings effectively screen the tower from most locations. Staff finds this condition to be met.

Performance Standard B2(a) states that towers should be located in a manner that uses a camouflaged design or has minimal intrusion on to residential areas, historic and scenic resources areas, roads in such areas, or scenic resource corridors. The proposed tower would be barely visible in Baron Woods, Brandon Woods, and Powhatan Crossing. The proposed tower would be briefly visible on Route 5 at the Ironbound Road intersection (eastbound) or at the entrance to John Tyler Commercial Park (westbound). The tower would likely be unnoticeable at other locations shown on Attachment No. 6, unless intentionally looking for the tower. Given the limited visibility, staff has found this condition to be met.

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.

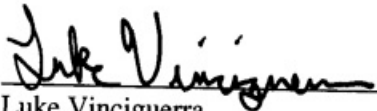
C. Buffering

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.

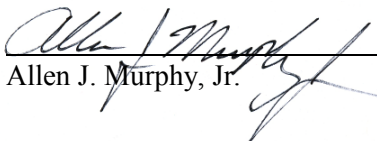
The proposed tower is adjacent to a thin line of mature trees and situated within a conglomerate of commercial buildings. The front of the parcel has a 200-foot wooded buffer. Adjacent to the commercial area are heavily wooded residential areas. The base of the tower and any accessory structures would not be visible. Though the tower does not have a 100-foot wooded buffer around the base, the combination of topography, mature trees on other properties, and commercial buildings in the area have the same effect as a wooded buffer around the base. Staff finds this condition to be met.

**RECOMMENDATION**

Staff finds the proposal, with the conditions listed in the attached resolution, to be consistent with surrounding land uses, the Land Use policies of the Comprehensive Plan, the Comprehensive Plan Land Use Map designation, and the Wireless Communications Performance Standards policy. At its August 4, 2010, meeting, the Planning Commission recommended approval of the application by a 5-0 vote. Staff recommends approval of the application in accordance with the attached resolution.

  
Luke Vinciguerra

CONCUR:

  
Allen J. Murphy, Jr.

LV/nb

SUP28\_2009WCF4-Rem2.doc

**ATTACHMENTS:**

1. Resolution
2. Illustration of Proposed Tower
3. Location Map and Balloon Test Results
4. Binder Application
5. Photos from the July 8, 2010, Balloon Test
6. Performance Standards for WCFs Policy
7. Unapproved Planning Commission Minutes

## **RESOLUTION**

### **SPECIAL USE PERMIT-0028-2009. INGRAM ROAD**

### **PEGASUS 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, Mr. Stephen Romine has applied on behalf of Pegasus Tower for an SUP to allow for the construction of a wireless communications facility on a parcel of land zoned B-1, General Business; and

WHEREAS, the proposed development is shown on a plan prepared by BC Architects Engineers, PLC, dated July 7, 2010, (the "Master Plan"), with the Site No. listed as NF496; and

WHEREAS, the property is located at 108 Ingram Road and can be further identified as James City County Real Estate Tax Map/Parcel No. 4710100007; and

WHEREAS, the Planning Commission, following its public hearing on August 4, 2010, voted 5-0 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, does hereby approve the issuance of SUP-0028-2009 as described herein with the following conditions:

1. **Term of Validity:** This SUP shall be valid for a total of one wireless communications facility at a total height of 124 feet including all appurtenances on the property as depicted on Sheet A-2 of the Special Use Permit application site plan titled "*Pegasustower A New 120' Stealth Pole in a New Tower Compound*" prepared by Christopher D. Morin, dated July 7, 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 color shall be gray. Any alternative color used shall be approved by the Planning Director, 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 three 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 vinyl-coated and shall be dark green or black in color, 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 Planning Director prior to final site plan approval.
9. Tree Buffer: A minimum buffer of 100 feet in width of existing mature trees shall be maintained at the front of the property abutting Ingram Road/John Tyler Highway.
10. Severance Clause: This SUP is not severable. Invalidity of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.

---

James G. Kennedy  
Chairman, Board of Supervisors

ATTEST:

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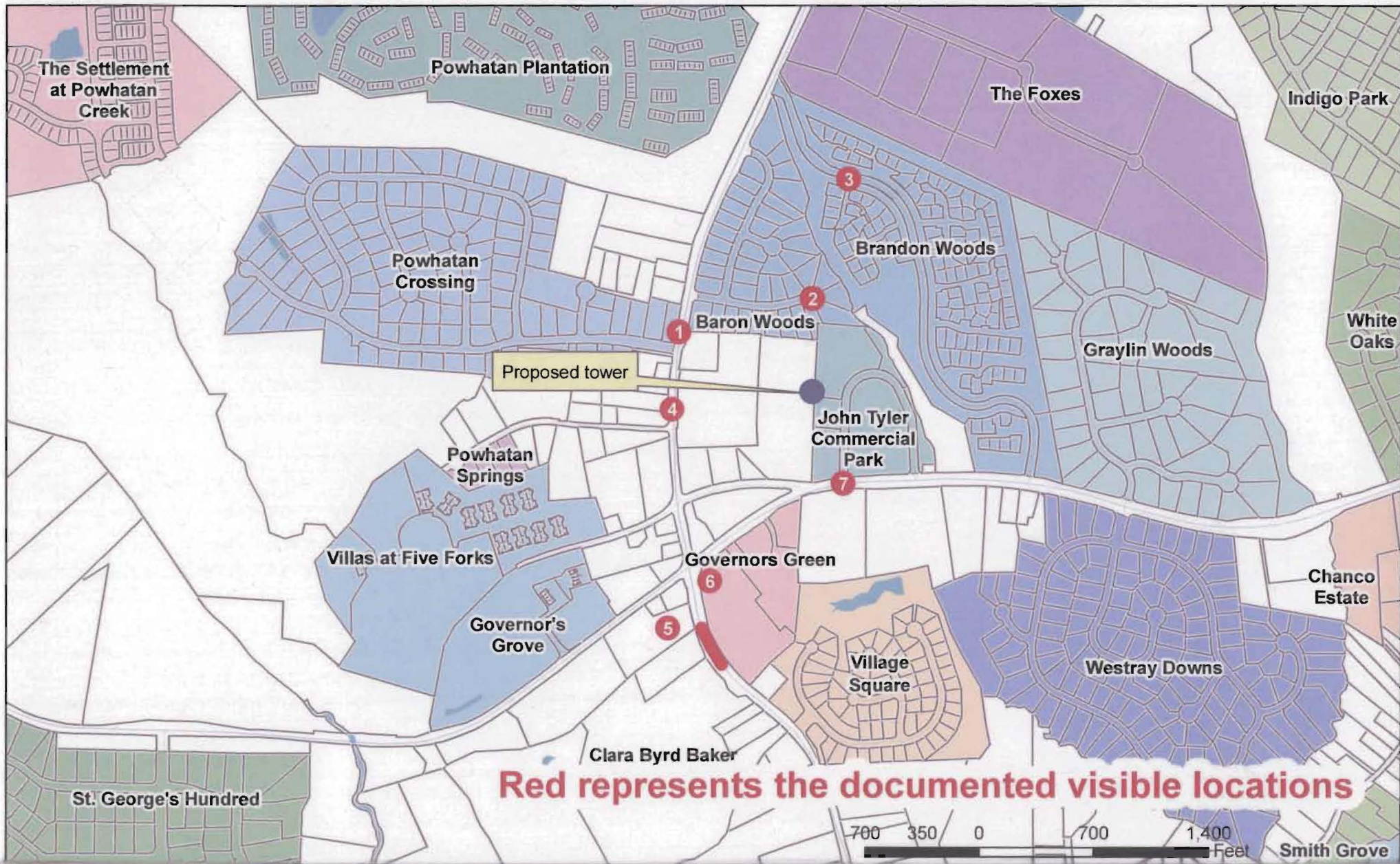
Robert C. Middaugh  
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 14th day of September, 2010.

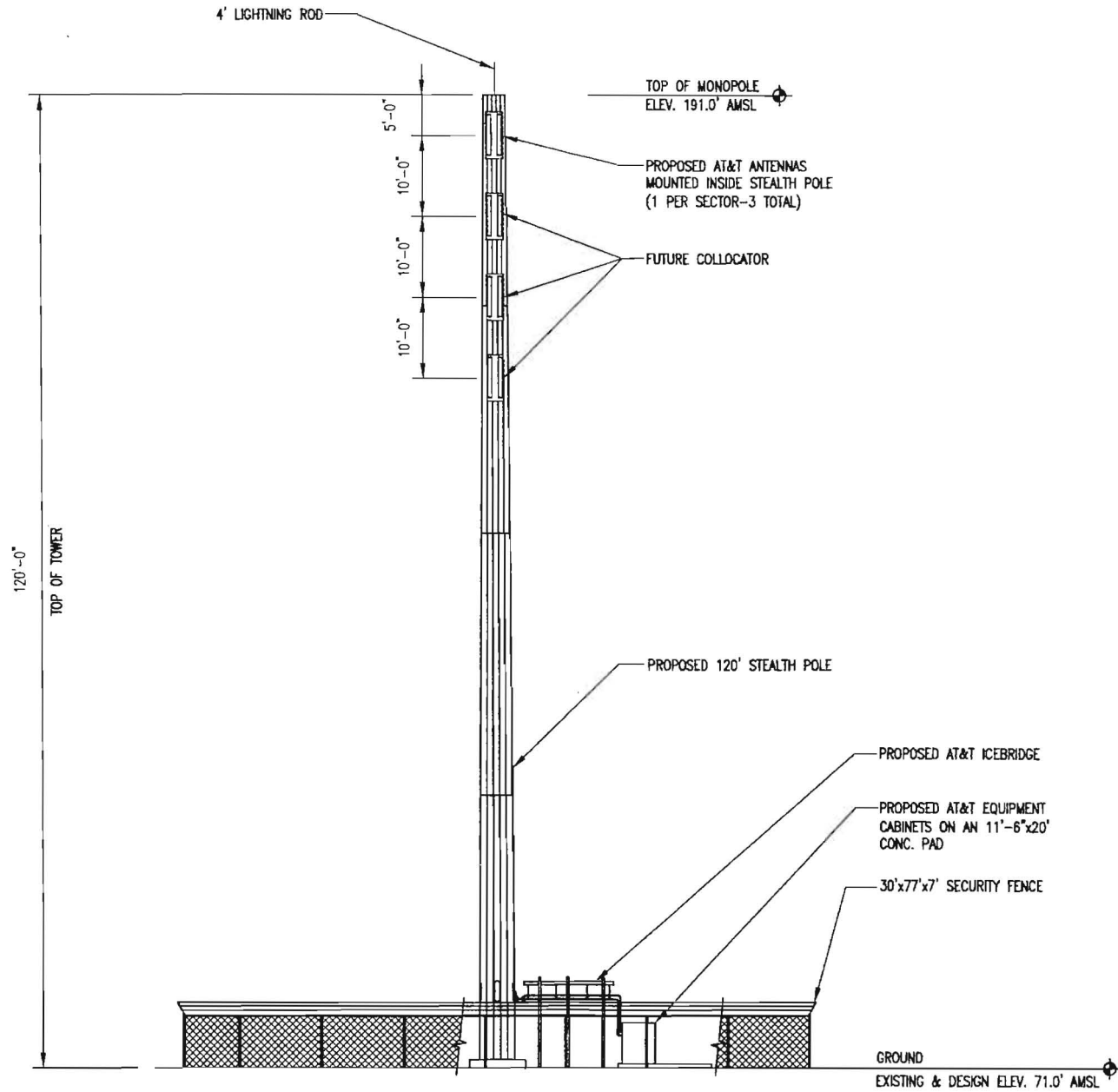
SUP28\_2009WCF4\_res

**SUP-0028-2009**

# Ingram Road Pegasus Wireless Communication Facility



02-11-10 CHRIS MORIN 09:49:14 Y:/Drawings - 2009/Pegasus/Ingram - VAJC01/ZONING 02-11-10/A2.dwg



1"=20'

TOWER ELEVATION



**PEGASUSTOWER**  
PEGASUS TOWER CO. LTD  
138 STEELSBURG HWY  
CEDAR BLUFF, VA 24069  
TEL: (276) 964-7416  
FAX: (276) 963-2587

THESE DRAWINGS AND/OR THE ACCOMPANYING SPECIFICATION AS INSTRUMENTS OF SERVICE, ARE THE EXCLUSIVE PROPERTY OF PEGASUS TOWER CO. LTD AND THEIR USE AND PUBLICATION SHALL BE RESTRICTED TO THE ORIGINAL SITE FOR WHICH THEY ARE PREPARED. REUSE, REPRODUCTION OR PUBLICATION BY ANY METHOD, IN WHOLE OR IN PART, IS PROHIBITED EXCEPT BY WRITTEN PERMISSION FROM PEGASUS TOWER CO. LTD. TITLE TO THESE PLANS AND/OR SPECIFICATIONS SHALL REMAIN WITH PEGASUS TOWER CO. LTD WITHOUT PREJUDICE AND VISUAL CONTACT WITH THEM SHALL CONSTITUTE PRIMA FACIE EVIDENCE OF ACCEPTANCE OF THESE RESTRICTIONS.

**BC**

architects  
engineers

5659 COLUMBIA PIKE, SUITE 101  
FALLS CHURCH, VA 22041-2888  
TEL: (703) 671-6000  
FAX: (703) 671-6300

SHEET REVISION

NO.	DESCRIPTION	BY	DATE
1	TOWER CHG	AGT	02-11-10
2			
3			
4			
5			
6			

SITE NUMBER:

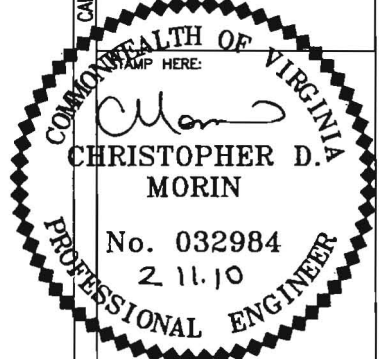
**VAJC01**

SITE NAME:

**INGRAM**

SITE ADDRESS:

108 INGRAM RD  
WILLIAMSBURG, VA 23188



DRAWN BY:	AGT
CHECKED BY:	CDM
DATE DRAWN:	12-22-09
SUBMISSION:	ZONING

SHEET TITLE:

**TOWER ELEVATION**

SHEET NUMBER: **A-2** REV. # **1**





**Location 1:** Entrance of Powhatan Crossing



**Location 2:** Lancaster Ln in Baron Woods



**Location 3:** Bradinton in Brandon Woods



**Location 4:** Entrance of Airtight Storage



**Location 5:** 7-11 parking lot



**Figure 6:** Five Forks shopping center





**Location 7:** Entrance of Venture Ln Business park

**PERFORMANCE STANDARDS FOR WIRELESS COMMUNICATIONS FACILITIES  
MAY 26,1998**

In order to maintain the integrity of James City County's significant historic, natural, rural and scenic resources, to preserve its existing aesthetic quality and its landscape, to maintain its quality of life and to protect its health, safety, general welfare, and property values, tower mounted wireless communications facilities (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. To implement these goals, the Planning Commission and the Board of Supervisors have adopted these performance standards for use in evaluating special use permit applications. While all of the standards support these goals, 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 a special use permit, and cases that meet a majority of the standards may or may not be approved. The terms used in these standards shall have the same definition as those same terms in the Zoning Ordinance. In considering an application for a special use permit, the Planning Commission and the Board of Supervisors will consider the extent to which an application meets the following performance standards:

**A. Collocation and Alternatives Analysis**

1. Applicants should provide verifiable evidence that they have cooperated with others in co-locating additional antenna on both existing and proposed structures and replacing existing towers with ones with greater co-location capabilities. It should be demonstrated by verifiable evidence that such co-locations or existing tower replacements are not feasible, and that proposed new sites contribute to the goal of minimizing new tower sites.
2. Applicants should demonstrate the following:
  - a. That all existing towers, and alternative mounting structures and buildings more than 60 feet tall within a three-mile radius of the proposed site for a new WCF cannot provide adequate service coverage or antenna mounting opportunity.
  - b. That adequate service coverage cannot be provided through an increase in transmission power, replacement of an existing WCF within a three mile radius of the site of the proposed WCF, or through the use of a camouflaged WCF, alternative mounting structure, or a building mounted WCF, or a system that uses lower antenna heights than proposed.
  - c. The radii of these study areas may be reduced where the intended coverage of the proposed WCF is less than three miles.
3. Towers should be sited in a manner that allows placement of additional WCF facilities. A minimum of two tower locations, each meeting all of the requirements of the Zoning Ordinance and these standards, should be provided at all newly approved tower sites.
4. All newly permitted towers should be capable of accommodating enough antennas for at least three service providers or two service providers and one government agency. Exceptions may be made where shorter heights are used to achieve minimal intrusion of the tower as described in Section B.2. below.

**B. Location and Design**

1. Towers and tower sites should be consistent with existing and future surrounding development and the Comprehensive Plan. While the Comprehensive Plan should be



consulted to determine all applicable land use principles, goals, objectives, strategies, development standards, and other policies, certain policies in the Plan will frequently apply. Some of these include the following: (1) Towers should be compatible with the use, scale, height, size, design and character of surrounding existing and future uses, and such uses that are generally located in the land use designation in which the tower would be located; and (2) towers should be located and designed in a manner that protects the character of the County's scenic resource corridors and historic and scenic resource areas and their view sheds.

2. Towers should be located and designed consistent with the following criteria:

Proposed Location of Tower	Impact Criteria
a. Within a residential zone or residential designation in the Comprehensive Plan	Use a camouflaged design or have minimal intrusion on to residential areas, historic and scenic resources areas or roads in such areas, or scenic resource corridors.
b. Within a historic or scenic resource area or within a scenic resource corridor	Use a camouflaged design or have minimal intrusion on to residential areas, historic and scenic resources areas or roads in such areas, or scenic resource corridors.
c. Within a rural lands designation in the Comprehensive Plan	For areas designated rural lands in the Comprehensive Plan that are within 1,500 feet from the tower, use a camouflaged design or have minimal intrusion on to residential areas, historic and scenic resources areas or roads in such areas, or scenic resource corridors.  For rural lands more than 1,500 feet from the tower, no more than the upper 25% of the tower should be visible.
d. Within a commercial or in an industrial designation in the Comprehensive Plan	Use a camouflaged design or have minimal intrusion on to residential areas, historic and scenic resources areas or roads in such areas, or scenic resource corridors.
<p><i>Notes for the above table:</i></p> <ol style="list-style-type: none"> <li><i>Exceptions to these criteria may be made on a case by case basis where the impact of the proposed tower is only on the following areas: (1) An area designated residential on the Comprehensive Plan or zoning map which is not a logical extension of a residential subdivision or which is a transitional area between residential and nonresidential uses, (2) a golf course or a golf course and some combination of commercial areas, industrial areas, or utility easements, provided the tower is located on the golf course property, or (3) a scenic easement.</i></li> <li><i>A tower will meet the minimal intrusion criteria if it is not visible off site above the tree line. Such tower should only be visible off-site when viewed through surrounding trees that have shed their leaves.</i></li> <li><i>Camouflaged towers having the design of a tree should be compatible in scale and species with surrounding natural trees or trees native to Eastern Virginia.</i></li> </ol>	

3. Towers should be less than 200 feet in height in order to avoid the need for lighting. Taller heights may be acceptable where views of the tower from residential areas and public roads are very limited. At a minimum, towers 200 feet or more in height should exceed the location standards listed above.

4. Towers should be freestanding and not supported with guy wires.

### C. Buffering

1. Towers should be placed on a site in a manner that takes maximum advantage of existing trees, vegetation and structures so as to screen as much of the entire WCF as possible from view from adjacent properties and public roads. Access drives should be designed in a manner that provides no view of the tower base or related facilities.
2. Towers should be buffered from adjacent land uses and public roads as much as possible. The following buffer widths and standards should be met:
  - a. In or adjacent to residential or agricultural zoning districts, areas designated residential or rural lands on the Comprehensive Plan, historic or scenic resource areas, or scenic resource corridors, an undisturbed, completely wooded buffer consisting of existing mature trees at least 100 feet wide should be provided around the WCF.
  - b. In or adjacent to all other areas, at least a 50 foot wide vegetative buffer consisting of a mix of deciduous and evergreen trees native to Eastern Virginia should be provided.

UNNAPPROVED MINUTES FROM THE AUGUST 4,2010 PLANNING COMMISSION  
MEETING

SUP-0028-2008 – Ingram Road Tower

Mr. Luke Vinciguerra stated that Mr. Stephen Romine has applied for a special use permit for a wireless tower at 108 Ingram Road. The parcel is zoned B-1, General Business, and designated Mixed Use on the Comprehensive Plan. The proposed tower will be a 'slick stick' with no visible antennas. Originally denied by the Commission in April, the Board then remanded the case back to the Commission after the proposal was amended to move the tower from the front of the property to the western property line beside John Tyler Commercial Park. Staff found the tower would be briefly visible at the eastbound intersection of Ironbound and John Tyler Highway and from the westbound entrance of John Tyler Commercial Park. There would be limited visibility of the tower from Governor's Green Shopping Center, Airtight Self Storage, Clara Byrd Baker Elementary School, the entrance of Powhatan Crossing, the terminus of Lancaster Lane in Baron Woods, and Bradington in Baron Woods. Staff finds the new location considerably less visible and finds the proposal consistent with surrounding land uses, the Comprehensive Plan, and the Wireless Communications performance standards policy. Staff recommends approval of the application. The tower will have co-location opportunities.

Mr. Dan Quarles, representing the applicant, Pegasus Tower, stated the application has been redesigned to reflect previous concerns of the Commission and staff. He stated the tower has been moved three times further from John Tyler Highway than the original location. The slick stick will have an AT&T antenna on top, along with slots for future co-location. Where the tower is visible at all, views are very limited. AT&T is seeking to improve coverage along the Ironbound Road corridor. AT&T investigated various nearby sites before deciding on 108 Ingram Road. The applicant stated the SUP conditions were acceptable, but asked for reconsideration of Condition #9. Condition #9 requires a 100' maintained buffer along the front of the property. The tower is already approximately 400' from the front property line. The property owner also has an approved site plan for a future building and the required buffer would impede that construction. There is little utility provided by the second 50' of buffering.

Mr. Vinciguerra stated the approved site plan for the site was from 1988 and had expired. A new site plan would be required for any new construction. Staff recommends keeping Condition #9 at 100' to maintain wireless performance standards and the recommended John Tyler Highway Community Character Corridor buffers.

Mr. Murphy stated staff was comfortable enough the tower relocation that the second 50 foot buffer was not critical. He stated that although a full 100' buffer is preferable, staff would still recommend approval with a 50' buffer.

Mr. Peck opened the public hearing.

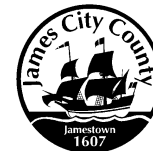
Mr. Robert Richardson, 2786 Lake Powell Road, stated that from looking at AT&T coverage area graphics, it appeared additional local cell towers would be needed to provide full coverage. He stated he missed the balloon test advertisement and asked that any future legal

advertising be sent on the listserv.

Mr. Peck closed the public hearing.

Mr. Fraley moved for approval as recommended in the staff report.

In a unanimous voice vote, the Commission recommended approval. (5-0; Absent: Poole).



## MEMORANDUM COVER

**Subject:** Case No. Z-0001-2010. Fast Food Restaurant at 8953 Pocahontas Trail

**Strategic Management Plan Pathway:** N/A

**Action Requested:** Staff recommends the Board of Supervisors approve the attached resolution and accept the voluntary proffers

**Summary:** Mr. John Rogers has applied to rezone a one-acre parcel located at 8953 Pocahontas Trail from M-2, General Industrial, to B-1, General Business, with proffers. The application proposes redevelopment of the existing property to include a 1,680-square-foot drive-through barbeque restaurant. The property formerly operated as the Spray King Truck Wash and the existing structure on-site will be demolished. The site is identified as Mixed-Use on the 2009 Comprehensive Plan Land Use Map.

On July 7, 2010, the Planning Commission recommended approval of this application by a vote of 6-0. Following the meeting, staff received a letter from a representative of Ball Metal expressing concerns with the proposed use. Following receipt of the letter, staff arranged a meeting between the applicant and representatives from Ball Metal to discuss their concerns. The applicant subsequently provided specifications for cooking and ventilation equipment proposed for use in the restaurant as well as an insurance policy, on which Ball would be named as additionally insured. Staff is not aware of any resolution of the stated concerns and the applicant has requested that staff proceed without further delay. Staff is continuing to work with both parties to resolve the issue. Staff will let the Board know if there are any further developments before the Board meeting.

Staff recommends approval of the resolution.

**Fiscal Impact:** N/A

**FMS Approval, if Applicable:** Yes ☐ No ☐

**Assistant County Administrator**

Doug Powell \_\_\_\_\_

**County Administrator**

Robert C. Middaugh \_\_\_\_\_

**Attachments:**

1. Resolution
2. Proffers
3. Location Map with Zoning Overlay
4. Letter from Ball Metal
5. Approved Minutes of the July 7, 2010, Planning Commission Meeting
6. Architectural Elevation (non-binding)
7. Conceptual Plan (binding)

**Agenda Item No.: H-2**

**Date:** September 14, 2010

**REZONING-0001-2010. Fast Food Restaurant at 8953 Pocahontas Trail**  
**Staff Report for the September 14, 2010, Board of Supervisors Public Hearing**

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

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**PUBLIC HEARINGS**

Planning Commission:  
Board of Supervisors

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

July 7, 2010, 7:00 p.m.  
August 10, 2010, 7:00 p.m. (applicant deferral)  
September 14, 2010, 7:00 p.m.

**SUMMARY FACTS**

Applicant:	John Rogers, III
Land Owner:	John Rogers, III
Proposal:	Redevelop the former Spray King Truck Wash property into a drive-through fast-food restaurant
Location:	8953 Pocahontas Trail
Tax Map/Parcel No.:	(59-2) (1-19)
Parcel Size:	1 acre
Existing Zoning:	M-2, General Industrial
Proposed Zoning:	B-1, General Business, with proffers
Comprehensive Plan:	Mixed-Use
Primary Service Area:	Inside

**STAFF RECOMMENDATION**

Staff finds this application to be a positive redevelopment project for this site, and with the Master Plan and proffers, is in conformance with the goals of the Comprehensive Plan. Considering the design limitations of the parcel shape and size, staff finds that the applicant is providing a design that maximizes the development potential of the site. The project proposes landscaping which is a significant aesthetic improvement over existing site conditions. Staff recommends the Board of Supervisors approve the attached resolution and accept the voluntary proffers.

Staff Contact: Sarah Propst Phone: 253-6685

## **PLANNING COMMISSION RECOMMENDATION**

On July 7, 2010, the Planning Commission approved the landscape modification request and recommended approval of this rezoning request by a vote of 6-0.

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

Following the Planning Commission approval on July 7, 2010, staff received a letter (attached) dated July 13, 2010, from a representative of Ball Metal Beverage Container, an adjacent property owner. That afternoon, staff arranged a meeting between the applicant and the adjacent property owner to discuss Ball Metal's concerns regarding the proposed development. The following day, Mr. Rogers provided Ball Metal's counsel with an insurance policy, on which Ball would be named as additionally insured, and specification for an air filtration system and provided oven specifications upon a later request. At the time of this writing, staff is not aware that any resolution has been reached by the counsel of the two parties.

Proffers have been clarified since the Planning Commission meeting. Condition No. 1 has been changed to reflect a clarification suggested by the Planning Commission to now read "The property shall be used only for the following purposes *in accordance with the requirements set forth in the James City County Code:...*" The addition is italicized. Proffer Nos. 5 and 6 are new and have been added in response to concerns raised by Ball Metal.

**Proffers:** The proffers were signed and submitted in accordance with the James City County Proffer Policy.

### **PROJECT DESCRIPTION**

Mr. John Rogers has applied to rezone a one-acre parcel located at 8953 Pocahontas Trail from M-2, General Industrial, to B-1, General Business, with proffers. The application proposes redevelopment of the existing property to include a 1,680-square-foot drive-through barbeque restaurant. The property formerly operated as a truck wash facility and the existing structure on-site will be demolished. The site is identified as Mixed-Use on the 2009 Comprehensive Plan Land Use Map.

The proposed development provides 21 parking spaces and one handicap parking space. There are no parking requirements for a drive-through and carryout restaurant with no indoor seating, but the applicant has surveyed similar uses to determine average parking needs. Queen Anne Dairy, on Route 143, provides five parking spaces and the Short Stop Deli, on Route 143, provides 13 parking spaces. Newer establishments without indoor seating areas include a Dairy Queen with 25 parking spaces and a Rally's with 14 parking spaces. The conceptual plan designates the 12 spaces at the rear of the site as employee parking, but the applicant has been made aware that use of these spaces cannot be restricted exclusively to employees.

### **PROFFERS**

The applicant has proffered to restrict the uses which will be allowed on this site in order to ensure intensity of development and traffic remains consistent with the proposed use (Proffer No. 1).

The building location will be approximately as shown on the conceptual plan with a revision date of June 16, 2010 (Proffer No. 2). The building exterior will be brown brick, white siding, and a red roof (Proffer No. 3) and the sign will be a ground mounted monument sign (Proffer No. 4).

### **PUBLIC IMPACTS**

#### **Archaeology**

**Staff Comment:** The property is a previously disturbed site and is not located within an area identified as a highly sensitive area in the James City County archaeological assessment "Preserving Our Hidden

Heritage: An Archaeological Assessment of James City County, Virginia.” As such, an archaeological study will not be required.

### **Environmental**

**Watershed:** Skiffes Creek

**Staff Comments:** This site is considered a redevelopment site; therefore, reduction of impervious cover by 10 percent on this site will satisfy stormwater management regulations. The conceptual plan indicates a 14 percent reduction in impervious cover from the existing conditions to the proposed development. Low Impact Development (LID) features are encouraged, but not required, as part of this development in order to further decrease runoff from the largely impervious site. The Environmental Division recommends approval of this rezoning request as submitted.

### **Public Utilities**

**Staff Comment:** The site is located within the Primary Service Area (PSA) and will be served by public water and sewer. Water will be provided by Newport News Waterworks. James City Service Authority (JCSA) staff has provided the applicant with preliminary comments to consider during the site plan process.

### **Transportation**

**2007 Traffic Counts:** 9,226 vehicle trips per day on Pocahontas Trail (Route 60) from the Newport News City Line to the Grove Interchange.

**2026 Volume Projections:** 21,186 vehicle trips per day on Pocahontas Trail (Route 60) from the Newport News City Line to the Grove Interchange-“Watch” Category in the 2009 Comprehensive Plan.

**VDOT Comments:** According to the Virginia Department of Transportation (VDOT) comments the proposed entrance location does not meet minimum spacing requirements in accordance with VDOT’s *Road Design Manual*; however, it is eligible for a design exception. Additional road improvements such as turn-lane improvements or tapers are not warranted. A request for a design exception will be submitted during the site plan review in order to allow a full access entrance.

The applicant does not want to have a limited access entrance and will need to apply for two waivers for the desired entrance to be a full access entrance, as shown on the master plan. One of the two existing entrances will need to be closed. The conceptual plan shows the northern site entrance will be closed upon redevelopment of the site. VDOT has indicated preliminary support for granting the waivers.

## **COMPREHENSIVE PLAN**

### **Land Use Map**

General	<p><i>Mixed Use-James River Commerce Center Area- Page 156:</i> This area is located on the southwest side of Pocahontas Trail (Route 60) adjacent to James River Elementary School. Principle suggested land uses are limited industrial and office development. Public facilities are suggested as clearly secondary uses. The timing and intensity of development in this area are also conditioned on sufficient buffering and screening of adjacent residential development, if necessary.</p> <p><b>Staff Comment:</b> The proposed restaurant is not consistent with this designation, but would provide a service to the industrial park as well as the nearby residential development. The geometries of this parcel present some practical challenges for uses more consistent with the Comprehensive Plan designation.</p>
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### **Economic Development**

Goals, Strategies, and Actions	<i>Goal No.1.5.1-Page 30: Encourage the rehabilitation of abandoned and/or underutilized facilities by promoting them to new businesses.</i>
	<b>Staff Comment:</b> The redevelopment of this site will contribute to the economic vitality of the County through the provision of services and employment.

### **Environment**

Goals, strategies and actions	<i>Action No. 1.1.2-Page 77: Promote the use of Better Site Design, Low Impact Development, and effective Best Management Practices (BMP's).</i>
	<b>Staff Comment:</b> The proposed development will be an improvement over the current design due to a decrease in impervious cover. According to the binding conceptual plan, there will be a 14 percent reduction in impervious cover from the current conditions.

**Staff Comment:** Staff finds that the proposed fast food restaurant is consistent with some recommendations set forth by the Comprehensive Plan, and notes that the rezoning of this property is also consistent with several nearby properties which are currently zoned B-1. Staff finds that the small scale of this proposal, the positive redevelopment of the site, and the proffers associated with this request will mitigate traffic and environmental impacts.

### **Request for Landscape Modification:**

Two modifications were approved by the Planning Commission on July 7, 2010. A modification was granted to Section 24-95 which requires a minimum of ten feet of landscaped area adjacent to a building. This plant material will be transferred to the front and side buffers. A modification was granted to Section 24-99 (c)(1) which requires 15-foot side and rear buffers. The provision of a 15-foot buffer on this narrow and unusual shaped parcel would interfere with traffic flow and operations.

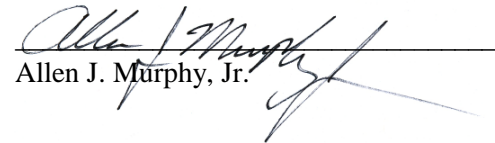
### **RECOMMENDATION**

On July 7, 2010, the Planning Commission recommended approval of this application by a vote of 6-0. Staff finds the proposal to be consistent with the surrounding zoning and development and consistent with the Comprehensive Plan. Further, the voluntary proffers associated with this case will mitigate impacts on adjacent properties and along Pocahontas Trail. Staff recommends the Board of Supervisors approve this application with the conditions listed in the attached resolution and accept the voluntary proffers.

---

Sarah Propst

CONCUR:



---

Allen J. Murphy, Jr.

SP/nb  
ZO-01-2010\_2.doc

ATTACHMENTS:

1. Resolution
2. Proffers
3. Letter from Ball Metal
4. Approved Minutes from the July 7, 2010, Planning Commission Meeting
5. Location Map with Zoning Overlay
6. Architectural Elevation (non-binding)
7. Conceptual Plan (binding)

## **RESOLUTION**

### **CASE NO. Z-0001-2010. FAST FOOD RESTAURANT AT 8953 POCAHONTAS TRAIL**

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-0001-2010; and

WHEREAS, Mr. John Rogers has applied to rezone his property located at 8953 Pocahontas Trail and further identified as James City County Real Estate Tax Map No. 5920100019 (the "Property") from M-2, General Industrial, to B-1, General Business, with proffers to redevelop the former Spray King Truck Wash property into a drive-through fast food restaurant; and

WHEREAS, the Property is designated Mixed Use on the 2009 Comprehensive Plan Land Use Map; and

WHEREAS, on July 7, 2010, the Planning Commission of James City County recommended approval of the application by a vote of 5-0.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve Case No. Z-0001-2010 as described herein and accept the voluntary proffers.

---

James G. Kennedy  
Chairman, Board of Supervisors

ATTEST:

---

Robert C. Middaugh  
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 14th day of September, 2010.

ZO-01-2010\_2\_res

# Z-01-2010, Fast Food Restaurant at 8953 Pocahontas Trail



8953 Pocahontas Trail

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.  
Aerial Imagery Copyright 2005 James City County.

1 inch = 241 feet

0 0.035 0.07 Miles



Return to:  
Adam R. Kinsman  
Deputy County Attorney  
James City County  
P.O. Box 8784  
Williamsburg, VA 23187-8784

Tax Map No. 5920100019

### **PROFFERS**

THESE PROFFERS are made as of this 2nd day of September, 2010 by John A. Rogers, II (together with his successors and assigns, the "Owner").

### **RECITALS**


1. The Owner is the owner of certain real property located in James City County (the "County") at 8953 Pocahontas Trail and more particularly described as James City County Real Estate Tax Map No. 5920100019 (the "Property").
2. The Property is zoned M-2, General Industrial.
3. The Owner has applied for a rezoning of the Property from M-2, General Industrial to B-1, General Business with proffers.
4. The Owner desires to offer the County certain conditions on the development of the Property not generally applicable to land zoned B-1, General Business.

NOW THEREFORE, for and in consideration of the approval of the requested zoning and pursuant to section 15.2-2303 of the *Code of Virginia*, 1950, as amended, and the James City County Code, the 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 become null and void.

## **CONDITIONS**

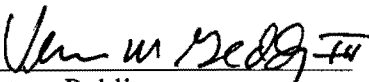
1. The property shall be used only for the following purposes in accordance with the requirements set forth in the James City County Code: restaurant, fast food restaurant, tea room and tavern; veterinary hospital; banks and other similar financial institutions; medical clinics or offices; convenience store; tire, transmission, glass, body and fender and other automotive repair and service; vehicle rentals; and vehicle and trailer sales and services.
2. The building will be approximately 1,700 square feet, and will be located as shown on the plan by Land Tech dated June 2010.
3. The building exterior shall be brick and siding in a general color palette of brown brick, white siding and a red roof.
4. The existing pole mounted sign will be replaced with a ground mounted monument sign of thirty-two square feet or less.
5. If a restaurant, fast food restaurant or tea room and tavern is operated on the property, smoke shall not be utilized in the cooking process in any such use.
6. If a restaurant, fast food restaurant or tea room and tavern is operated on the property, the building shall be equipped with an Aprilaire Series 2600 (or comparable model from another manufacturer) air cleaner/filtration system.

WITNESS THE FOLLOWING SIGNATURE:

  
John A. Rogers, II

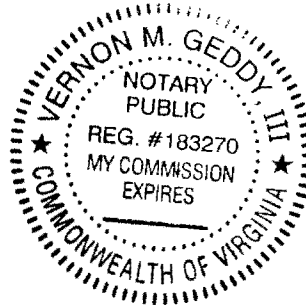
COMMONWEALTH OF VIRGINIA,  
CITY/COUNTY of WILLIAMSBURG, to wit:

The foregoing instrument was acknowledged this 2nd day of September, 2010 by John A. Rogers, II.

  
Notary Public

Notary No. 183270

My Commission Expires: 12/31/2014





**Ball Corporation**

10 Longs Peak Drive, Broomfield, CO (303) 469-5511 Fax (303) 460-5149  
Reply to: P.O. Box 5000, Broomfield, CO 80038-5000

July 13, 2010

Mr. Allen J. Murphy, Jr.  
Planning Director  
James City County  
101-A Mounts Bay Road  
Williamsburg, VA 23185

RE: John Rogers Application  
Rezoning – Highway 60

Dear Mr. Murphy:

Please enter my comments as part of the public record and Ball's concerns related to this new development and rezoning recommended for approval Wednesday, July 7, 2010, by the Planning Commission.

Ball Metal Beverage Container's plant in Williamsburg, VA manufactures aluminum beverage cans. These cans are internally sprayed with a food grade coating/liner that creates a barrier between the aluminum can and the beverage packaged in the containers. The internal spray coating/liner is very sensitive to and absorbs odors. These beverage cans are deemed food containers under the United States Food, Drug & Cosmetic Act ("Act") and are, thus, subject to rigid quality standards. The plant stores up to 180 million cans in its onsite warehouse adjacent to Mr. Rogers' proposed development.

The coating/liner sprayed in the cans absorbs odors particularly from smoke or other cooking omissions. As an example, back in 1985 the plant had to scrap 60 million cans at a loss of \$7 million dollars as a result of a small welding fire. Smoke odor contaminated the coating/liner of the cans.

As a Food Grade manufacturer, Ball is concerned that the proposed use that would be allowed by this rezoning will impact the air quality around Ball's plant and possibly contaminate Ball's finished goods inventory of beverage cans stored at the plant's above-described warehouse. If the applicant goes through with his plan to have a BBQ restaurant within 100 feet of the Williamsburg plant's fence line, any odor and smoke produced from the BBQ operations will in all likelihood permeate Ball's finished goods inventory stored in the plant warehouse.

Thus, these beverage containers would become contaminated for use as beverage packaging containers and adulterated under the Act. As stated above, Ball's inventory, if contaminated with smoke or other odors would impact millions of our beverage cans.



As part of Ball's continuing effort to support our customer demands, Ball strives to maintain a "Food Grade" environment. This proposed BBQ restaurant could diminish that environment.

The Ball Metal Beverage Container's plant is a community asset and Ball is concerned that the use granted by this Special Use Permit will impact its normal business operations. In most communities, manufacturing is the economic engine that drives sustainability, provides good wages, is a key part of the tax base and supports many local charities. That is why it is so important to work together to properly plan and involve the Ball team to ensure the proposed use fits with the existing businesses.

As the process moves forward, we ask that you please be cognizant of Ball's concerns, and we respectfully request that the Board of Supervisors vote to disallow this rezoning and proposed BBQ restaurant adjacent to Ball's property.

Dennis Lutz, Ball's Plant Representative, has expressed our concerns to several County representatives and they are planning an on site meeting as soon as it can be set up with all the appropriate interested parties.

Thank you for your consideration. We look forward to working with you to address our concerns. If you have any questions, please call Dennis Lutz at 757-888-1642 or me at 303-460-2525. Dennis is leading the local effort in Williamsburg.

Sincerely,



Thomas L. Silvers  
Director, Corporate Real Estate

cc: D. Lutz  
M. Orton  
P. Looney  
Kaufman & Canoles, P.C.

MINUTES APPROVED, FROM THE JULY 7, 2010 PLANNING COMMISSION MEETING

Z-0001-2010 Fast Food Restaurant at 8953 Pocahontas Trail

Ms. Sarah Propst stated that Mr. John Rogers has applied to rezone a 1 acre parcel located at 8953 Pocahontas Trail from M-2, General Industrial, to B-1, General Business, with proffers, for the development of a fast food restaurant. The property is the site of the former Spray King Truck Wash. The parcel is designated Mixed Use as part of the James River Commerce Center. Limited industry and office uses are recommended in the Comprehensive Plan. While the proposed restaurant use is not compatible with the designation, it will provide a service lacking in the area.

Ms. Propst stated that prior to submitting this application for a rezoning. Mr. Rogers came before the DRC to receive comments and direction. Some of the suggestions received at those meetings have been incorporated into this plan. She stated the applicant is requesting two landscape modifications. This request has been reviewed by staff and approval of this landscape modification is recommended.

Ms. Propst displayed a preliminary architectural rendering of the building that is proposed. Additionally the size of the building, materials, and colors are being proffered. Staff finds that the proposed fast food restaurant is consistent with some recommendations set forth by the Comprehensive Plan, and notes that the rezoning of this property is also consistent with several nearby properties which are currently zoned B-1. Staff finds that the small scale of this proposal, the positive redevelopment of the site, and the proffers associated with this request will mitigate impacts. Staff recommends that the Planning Commission approve the landscape modification request and recommend approval of this application with the conditions included in the staff report.

Mr. Fraley had a question concerning condition #1 where it lists other uses that may be permitted. He stated that some individuals may have some concerns with these uses being by-right. He was asking for clarification being that the application was for a fast food restaurant.

Ms. Propst answered that this application is for a fast food restaurant but that the applicant wishes to have other options available for the future. There are several uses listed that would be by-right if the property was rezoned to B-1. Some uses listed would require a special use permit. She stated the applicant is willing to clarify this condition before the case is heard by the Board of Supervisors.

Mr. Poole stated that he would feel more comfortable if it were clearly stated that a special use permit is required for certain uses listed in condition #1.

Mr. Adam Kinsman stated that if the Zoning Ordinance requires a special use permit for a particular use, that a proffer cannot change that.

Mr. Fraley expressed his concern if the property was sold and a use was permitted that was originally not approved.

Mr. Allen Murphy added that uses that are most intensive would still require a special use

permit. These proffers are a little unusual, but the applicant is a small business owner who is working through the County Business Facilitator.

Mr. Kinsman stated that he felt that the intent was to make the application more presentable. It is recognized that zoning does go with the property. Mr. Kinsman is sure that he can work with the applicant on this condition if the Commission desires.

Mr. Peck opened the public hearing.

Mr. Rogers spoke and stated that he would answer any Commission questions.

Mr. Poole stated that he appreciated his willingness to come before the DRC and the willingness to incorporate some of the concerns and suggestions of the DRC into his designs.

Mr. Rogers stated that this was a need in the area where it will be located.

There being no further comments, the public hearing was closed.

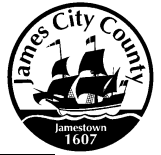
Mr. Krapf commended the applicant on his flexibility and felt that this use will serve a need in the community. He felt that this was an excellent use of a redevelopment of an existing site and it reduces impervious cover on the site.

Mr. Fraley moved for approval of this application. He is confident that Mr. Kinsman can work with the applicant to clarify condition #1.

Mr. Poole suggested adding the phrase "the property should be used only for the following purposes and in accordance with the uses outlined in the B-1 Zoning District." He supports the application and thinks it is a good redevelopment of an existing site where infrastructure is located.

In a roll call vote the motion was approved. (6-0)





## MEMORANDUM COVER

**Subject:** Ordinance to Designate Dream Catchers and the Cori Sikich Foundation as Tax Exempt

**Strategic Management Plan Pathway:** 2.a - address the needs of the underserved and protect the vulnerable

**Action Requested:** Approval of a tax exemption for Dream Catchers and the Cori Sikich Foundation

**Summary:** After a public hearing the Board will consider whether or not to grant property tax exemptions (real and personal) to Dream Catchers. The organization is a registered nonprofit working with children and adults using a 22.15 acre parcel of property at 10120 Fire Tower Road. The organization meets all the requirements set out in the Code of Virginia for tax exemptions.

Staff recommends adoption of the ordinance.

**Fiscal Impact:**

Approximately \$9,200 a year in taxes currently collected.

**FMS Approval, if Applicable:** Yes ☒ No ☐

FMS is submitting the application with a recommendation to approve

**Assistant County Administrator**

Doug Powell \_\_\_\_\_

**County Administrator**

Robert C. Middaugh \_\_\_\_\_

**Attachments:**

1. Memo
2. Ordinance
3. Dream Catchers Informational materials
4. Code of Virginia § 58-1.3651

**Agenda Item No.: H-3**

**Date: September 14, 2010**

MEMORANDUM

DATE: September 14, 2010

TO: The Board of Supervisors

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

SUBJECT: Ordinance to Designate Dream Catchers and the Cori Sikich Foundation as Tax Exempt

---

Attached for your consideration is a proposed ordinance to exempt Dream Catchers and David W. Otey, Jr., as Trustee of the Cori Sikich Foundation from real and personal property taxes in James City County.

Mr. Otey owns a parcel of real property as trustee of The Cori Sikich Foundation (the Foundation). Property vested in the Foundation can be used exclusively for the benefit of Dream Catchers, a Virginia non-stock corporation with 501(c)(3) tax exempt status. The real property owned consists of Parcel No. 0420100012 which is 22.15 acres, zoned A-1, at 10120 Fire Tower Road, as is used as a therapeutic riding center for people with special needs. Approximately 70 students are served each week, Monday through Saturday, 12 months a year. The focus is primarily on mentally and physically handicapped children, but adults, including military veterans, are also served. A complete description of services is attached.

Section 58.1-3651 of the Code of Virginia allows local governing bodies to adopt an ordinance, following a public hearing, granting exemptions from real and personal property as long as certain specific issues are considered by the local governing body. The issues required to be considered include the following:

1. Whether the organization is exempt from taxation pursuant to § 501(c) of the Internal Revenue Code of 1954.

*Information provided by the applicant indicates that both Dream Catchers and the Cori Sikich Foundation are exempt from taxes under 501(c)(3) of the Federal tax code.*

2. Whether a current annual alcoholic beverage license for serving alcoholic beverages has been issued by the Virginia Alcoholic Beverage Control Board to such organization, for use on such property.

*None.*

3. Whether any director, officer, or employee of the organization is paid compensation in excess of a reasonable allowance for salaries or other compensation for personal services which such director, officer, or employee actually renders.

*Audited financial statements and the Federal Form 990, required of organizations exempt from Federal income tax, were submitted, as were payroll records. The trustee is uncompensated, as are 12 of the 13 directors. The only member of the Board of Directors receiving compensation is the Executive Director. A review by County staff indicated that compensation for the Executive Director and other employees was reasonable.*

4. Whether any part of the net earnings of such organization inures to the benefit of any individual, and whether any significant portion of the service provided by such organization is generated by funds received from donations, contributions, or local, State or Federal grants. As used in this subsection, donations shall include the providing of personal services or the contribution of in-kind or other material services.

*Revenues include those from fundraisers, grants from community organizations, and individuals, including those from outside Virginia and revenues from riding lessons. Additional revenues are generated from the sale of merchandise and apparel. There are no current grants from local, State or Federal governments and none of the net earnings inure to the benefit of any individual. Volunteers perform service in both direct operations and in support of the program.*

5. Whether the organization provides services for the common good of the public.

*The focus of the services is for people who are either physically or mentally handicapped although there are some medical conditions that may disqualify an individual from participating. Residency is not a factor when services are provided.*

6. Whether a substantial part of the activities of the organization involves carrying on propaganda, or otherwise attempting to influence legislation and whether the organization participates in, or intervenes in, any political campaign on behalf of any candidate for public office.

*Applicants have indicated that individuals associated with the organizations may be active advocates for people with disabilities and may lobby to attempt to influence legislation. Neither the Foundation nor Dream Catchers, as organizations, participate in any substantial way.*

7. The revenue impact to the locality and its taxpayers of exempting the property.

*The real property owned consists of Parcel No. 0420100012 which is 22.15 acres, zoned A-1, at 10120 Fire Tower Road. The value of the property consists of land (\$199,400) and improvements (\$901,100) and the annual real property tax revenue is \$8,473.85. Personal property taxes, on an annual basis, are \$734.*

8. Any other criteria, facts, and circumstances that the governing body deems pertinent to the adoption of such ordinance.

*The applicants have submitted all requested documentation and it is the opinion of staff that all criteria for exemption set forth in the State Code have been met.*

Staff recommends adoption of the attached ordinance, which would backdate the exemption to July 1, 2010.

---

John E. McDonald

JEM/nb

TaxExempt\_mem

Attachment

**ORDINANCE NO. \_\_\_\_\_**

**DREAM CATCHERS, THE CORI SIKICH FOUNDATION AND DAVID W. OTEY, JR., AS  
TRUSTEE OF THE CORI SIKICH FOUNDATION EXEMPTION FROM COUNTY REAL AND  
PERSONAL PROPERTY TAXES**

WHEREAS, pursuant to Subsection 6(a)(6) of Article X of the Constitution of Virginia and Section 58.1-3651 of the Code of Virginia, 1950, as amended, the Board of Supervisors is authorized to exempt, by classification or designation, real and/or personal property from taxation; and

WHEREAS, following a public hearing where citizens had an opportunity to be heard, the Board of Supervisors makes the following findings concerning Dream Catchers, The Cori Sikich Foundation (the "Foundation") and David W. Otey, Jr., as Trustee of the Foundation:

1. Dream Catchers and the Foundation are tax exempt organizations under Section 501 (c) of the Internal Revenue Code of 1954; and
2. Neither Dream Catchers nor the Foundation have a license from the Virginia Alcoholic Beverage Control Board to serve or sell alcoholic beverages; and
3. No director, officer, or employee of either Dream Catchers or the Foundation is paid an unreasonable compensation in relation to the services provided; and
4. No net earnings of Dream Catchers or the Foundation inure to the benefit of any individual and both receive a significant portion of their funds from donations and contributions. Dream Catchers and the Foundation provide charitable and benevolent services for the common good of the residents of James City County and for the benefit of non-residents as well; and
5. Dream Catchers and the Foundation do not engage in propaganda, nor, in any substantial way, attempt to influence legislation, or participate in, or intervene in, any political campaign on behalf of any candidate for public office; and
6. David W. Otey, Jr., as trustee of The Cori Sikich Foundation, owns real property at 10120 Fire Tower Road, with land and improvements assessed for FY 2011 at \$1,100,500 (annual real property taxes of \$8,474), and leases this property to Dream Catchers. Personal property taxes are \$734 on an annual basis.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of James City County, Virginia, that Dream Catchers, The Cori Sikich Foundation, and David W. Otey, Jr., in his role as Trustee of The Cori Sikich Foundation shall be exempt from real and personal property taxation for all real and personal property used to perform their charitable and benevolent service to the community.



BE IT FURTHER RESOLVED by the Board of Supervisors of James City County, Virginia, that the tax exemptions granted shall be effective as of July 1, 2010, and shall remain in effect unless terminated by the Board of Supervisors or the charitable and benevolent use of such real or personal property changes.

---

James G. Kennedy  
Chairman, Board of Supervisors

ATTEST:

---

Robert C. Middaugh  
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 14th day of September, 2010.

TaxExempt\_res



## **Who We Are and What We Do**

### **The Mission**

The Mission of Dream Catchers at the Cori Sikich Therapeutic Riding Center is to provide therapeutic riding and other horse-related activities to people with special needs in a caring and safe environment.

### **The Organization**

Dream Catchers at the Cori Sikich Therapeutic Riding Center is a 501(c)3 nonprofit corporation that was established in 1993 as part of Cumberland Hospital for Children and Adolescents. The organization now resides on 22 acres of land held in trust by the Cori Sikich Foundation. Dream Catchers is governed by a volunteer Board of Directors and has a staff of twenty. We are certified as a Premier Center by NARHA, the national professional organization that sets standards for the therapeutic riding industry. Of the approximately 800 centers in the nation, about 250 have achieved this elite status.

Dream Catchers does not discriminate based on gender, religion, national origin, race, age, immigration status, or sexual orientation. This applies to students, participants, volunteers, staff, and applicants for employment.

### **The Facility**

The Dream Catchers facility consists of a professionally built 20-stall barn that contains offices for the Operations and Facilities Manager, the Volunteer, and Student Services Coordinators the Instructors, the volunteers, a feed room, a tack room, as well as a handicapped accessible restroom. The other buildings of the facility include a large indoor arena, outdoor arena, covered round-pen, storage building, and an administration building. There are trails around the facility including a special Sensory Trail.

### **Overview of Services**

Therapeutic Riding is the process of teaching people with special needs the knowledge and skills necessary to ride and handle a horse safely. The ability of any individual to

learn riding skills is dependent on a combination of physical, cognitive, and emotional capacities. Each lesson is individualized to meet the needs of the student.

We provide therapeutic riding services to children and adults. In June 2010, we will begin our Horses for Heroes Program. This program provides therapeutic riding to wounded warriors.

### **Benefits of Therapeutic Riding in General**

While therapeutic riding is a new area of scientific research, the benefits have long been reported anecdotally. “The therapeutic value of horseback riding goes back centuries although the origin of organized therapeutic riding is relatively recent. The achievements of Liz Hartel of Denmark are generally regarded as the impetus for the formation of therapeutic riding centers in Europe. Polio impaired Hartel’s mobility but not her spirit. In 1952, she won the silver medal for Grand Prix Dressage at the Helsinki Olympics. Medical and equine professionals took notice and soon centers for therapeutic riding sprang up in Europe.” (From the National Association of Riding for the Handicapped website [www.narha.org](http://www.narha.org) ).

### **Benefits to Body Movement that are Research Based**

Researchers have reported in the rehabilitative literature the benefits of therapeutic riding for people with Cerebral Palsy. They found, as reported in the systematic review of the literature by Dr. Sterba in 2007, that: “...the rhythmic movement of a walking horse produced normalized pelvic movement in the rider closely resembling pelvic movement during ambulation in individuals without disability; ... improved co-contraction, joint stability, ... posture and equilibrium responses.” (Therapeutic Riding & Cerebral Palsy: by John A. Sterba MD, PhD.) Riding strengthens muscles needed to maintain balance.

### **Benefits to Thinking and Learning are Anecdotal**

The ability to focus, follow directions, problem solve, and learn new skills are anecdotally reported to show improvement in people with conditions such as: Attention Deficit Hyperactivity Disorder, Down Syndrome, Cognitive Impairment, and Autism.

### **Benefits to Communication so far are Anecdotal**

To date sixteen non-verbal students have begun to speak through their association with Dream Catchers. A number of these students are autistic. The first word for several students has been the name of their horse! Other students, the oldest one being sixteen years, have verbalized for the first time on the back of a horse. For students who do not have the capacity for speech, advances in the use of sign language has been noted by teachers, speech pathologists, and parents. This phenomenon is currently the focus of a research investigation at Dream Catchers involving essentially non-verbal children with Autism and the impact of therapeutic riding on the frequency of speech.

### **Benefits in Emotional Health are Adjunctive**

A review of the world medical literature databases report on the positive effects of therapeutic riding. Therapeutic riding is not a replacement for appropriate mental health care. However, its role is emerging in support of, and contributing to that care.

Anecdotally, the physical, occupational, and speech therapists that occasionally come to see their clients ride at Dream Catchers report that their clients accomplish tasks during a riding session that they have not been able to accomplish in traditional therapy.

### **Populations Served**

Dream Catchers uses The Center for the Improvement of Child Caring definition for “people with special needs”... “any individual with unique, out-of-the-ordinary concerns created by a medical, physical, mental, or developmental condition or disability.” We provide therapeutic riding services to children and adults. In June 2010, we will begin our Horses for Heroes Program. This program provides therapeutic riding to wounded warriors.

### **Populations Not Served**

The goal of Dream Catchers is to provide effective and safe horse-related activities, and to “do no harm”. Horse-related activities hold inherent risks, and for some individuals the risk of harm outweighs the potential benefit.

A medical form, signed by a physician assuring that horse-related activities are not contra-indicated is required for each applicant. However, there are several situations and conditions that would put the applicant at an unacceptable level of risk. Dream Catchers reserves the right to refuse services to potential students if the risk of participation is deemed to be unacceptable. The severity of the condition is a variable that is considered when assessing a potential participant for services.

Services are not provided in the following conditions:

1. The movement or activity will cause a decrease in the participant’s function, increase the participant’s pain, or aggravate a medical condition
2. Down Syndrome with Atlantoaxial instability as determined by X-ray
3. Inadequate head/neck stability for the activity
4. Coccygeal Arthrosis advanced to the degree that riding causes pain,
5. Severe Osteoporosis
6. Osteogenesis Imperfecta (aka Brittle Bone Disease)
7. Scoliosis to the degree that the spine cannot accommodate the movement of the horse
8. Spinal Fusion that does not allow sufficient mobility above and below the fixated point to accommodate the movement of the horse
9. Spinal braces requiring a rigid chin support attached to the brace for head and neck stability
10. Chiari II Malformation without MRI confirming that it is safe to participate
11. Rider weight in excess of 250 pounds *\*this may be reduced depending on program horses*
12. Severe hemophilia
13. Uncontrolled Hypertension
14. Skin Breakdown - open skin areas on weight-bearing surface(s)

15. Students who pose an unacceptable level of risk to other students, volunteers, horses, guests, or staff due to their behaviors towards themselves or others
16. Individuals who have been accused or convicted of a sexual offense or any offense against a child
17. Students who do not willingly participate
18. Students who are under the influence of alcohol or street drugs
19. Children who have not yet reached their second birthday

### **Special Condition to the age limit**

Children of any age who have a terminal illness and have a wish involving horses are warmly encouraged to come. Please contact the Executive Director. Dream Catchers, its staff and equine partners, will try to make the wish come true.

### **Assessment Process**

Each potential participant is assessed prior to being accepted. The first portion of the assessment is a review of the required forms to insure that there are no physical conditions present to such a degree that participation is contraindicated, that the individual does not represent an imminent danger to self or others, and that all of the waivers and releases are signed, including a willingness to receive medical treatment in an emergency.

An assessment by at least one Instructor who is certified by NARHA is conducted. This includes mounting the applicant onto a horse, providing that doing so is not contraindicated. The applicant is assessed for sufficient balance to be mounted while the horse is moving, the need for adaptive devices, and the ability of the staff and volunteers to provide therapeutic riding services safely.

The goals of the applicant are discussed with the applicant when possible and supplemented with information from the caregiver. If the services provided by Dream Catchers can be provided safely and there is a reasonable expectation of benefit, then services are scheduled and financial commitments are made. Each participant is assessed on an ongoing basis, and services may be interrupted or terminated if services become contraindicated. A credit is maintained if the participant is expected to return for services. Services that cannot be provided due to the development of a contraindication are refunded.

### **Documentation of Progress**

Progress toward the individualized goals specified in the Individual Therapeutic Riding Plan is documented in specific and measurable terms. A summary of progress for each student is created at the end of each session (the group of lessons in a block, averaging between six and thirteen weeks). Progress reports are sent to the student and/or the student's caregiver. A release to referral sources must be in place for a referral source to receive a Progress Report.

### **Organizational Budget**

Dream Catchers' operating budget is just over \$600,000 annually. We operate on a fiscal year from July 1 through June 30. One-half of our income comes through donations. This includes special event income (such as Bridles and Bow Ties, our annual dinner and auction). Our program fees generate about 27% of the income, approximately \$131,000 annually. We receive no federal or state funding. Grants have primarily been used to provide therapeutic riding to classrooms of special education students in Williamsburg, James City, and York Counties. When we have funds available, we provide scholarships and partial scholarships based on the Free and Reduced Lunch Program income levels.

Self identified groups, such as self-contained classes, groups of students in special education recreation programs, youth involved with the juvenile justice system who live in group homes or who are detained or groups of students who are at risk for involvement the mental health system or justice system can participate as a group. Each group comes to Dream Catchers for two hours one time per week for between eight and twelve weeks. The cost for these groups averages \$100 per person per week.

A new program, called Horses for Heroes provides therapeutic riding for military personnel, active duty, veterans, and retired. The first group of soldiers is from Fort Eustis. This first group has received private funds to ride for ten weeks. We hope to be able to sustain this program with additional donations and through some grant funding.

### **Organizational Capacity**

Currently we are serving over 100 students each week. We serve students in both a group and an individual format, depending on the needs of the student. Dream Catchers has a fifteen-member board of directors and fifteen current members on a non-voting Advisory Board. We are also recruiting for a "Junior Board." Our hope is to attract young professionals who would like to become involved with us as committee members and to assist with fund raising within their networks.

Our database currently has more than 2,500 individuals. We keep this database updated regularly. This is the mechanism that we use to send e-mails and our e-news letter to our friends. We also have over 250 individuals who volunteer with Dream Catchers. Our volunteers provide safety to students in lessons, help with special events, or work in the office.

Please contact Nancy Paschall, Executive Director by phone (757) 566-1775 if you have any questions and visit our website: [www.dreamcatcherswilliamsburg.org](http://www.dreamcatcherswilliamsburg.org) to see photos and videos and to get student and volunteer application forms.

TaxExempt\_att2

§ 58.1-3651. Property exempt from taxation by classification or designation by ordinance adopted by local governing body on or after January 1, 2003.

- A. Pursuant to subsection 6 (a) (6) of Article X of the Constitution of Virginia, on and after January 1, 2003, any county, city, or town may by designation or classification exempt from real or personal property taxes, or both, by ordinance adopted by the local governing body, the real or personal property, or both, owned by a nonprofit organization that uses such property for religious, charitable, patriotic, historical, benevolent, cultural, or public park and playground purposes. The ordinance shall state the specific use on which the exemption is based, and continuance of the exemption shall be contingent on the continued use of the property in accordance with the purpose for which the organization is classified or designated. No exemption shall be provided to any organization that has any rule, regulation, policy, or practice that unlawfully discriminates on the basis of religious conviction, race, color, sex, or national origin.
- B. Any ordinance exempting property by designation pursuant to subsection A shall be adopted only after holding a public hearing with respect thereto, at which citizens shall have an opportunity to be heard. The local governing body shall publish notice of the hearing once in a newspaper of general circulation in the county, city, or town where the real property is located. The notice shall include the assessed value of the real and tangible personal property for which an exemption is requested as well as the property taxes assessed against such property. The public hearing shall not be held until at least five days after the notice is published in the newspaper. The local governing body shall collect the cost of publication from the organization requesting the property tax exemption. Before adopting any such ordinance the governing body shall consider the following questions:
  1. Whether the organization is exempt from taxation pursuant to § 501(c) of the Internal Revenue Code of 1954;
  2. Whether a current annual alcoholic beverage license for serving alcoholic beverages has been issued by the Virginia Alcoholic Beverage Control Board to such organization, for use on such property;
  3. Whether any director, officer, or employee of the organization is paid compensation in excess of a reasonable allowance for salaries or other compensation for personal services which such director, officer, or employee actually renders;
  4. Whether any part of the net earnings of such organization inures to the benefit of any individual, and whether any significant portion of the service provided by such organization is generated by funds received from donations, contributions, or local, state or federal grants. As used in this subsection, donations shall include the providing of personal services or the contribution of in-kind or other material services;
  5. Whether the organization provides services for the common good of the public;

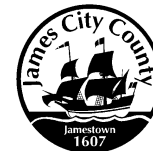
§ 58.1-3651. Property exempt from taxation by classification or designation by ordinance adopted by local governing body on or after January 1, 2003. (continued)

  6. Whether a substantial part of the activities of the organization involves carrying on propaganda, or otherwise attempting to influence legislation and whether the organization participates in, or intervenes in, any political campaign on behalf of any candidate for public office;
  7. The revenue impact to the locality and its taxpayers of exempting the property; and

8. Any other criteria, facts and circumstances that the governing body deems pertinent to the adoption of such ordinance.
- C. Any ordinance exempting property by classification pursuant to subsection A shall be adopted only after holding a public hearing with respect thereto, at which citizens shall have an opportunity to be heard. The local governing body shall publish notice of the hearing once in a newspaper of general circulation in the county, city, or town. The public hearing shall not be held until at least five days after the notice is published in the newspaper.
- D. Exemptions of property from taxation under this article shall be strictly construed in accordance with Article X, Section 6 (f) of the Constitution of Virginia.

TaxExempt\_att





## MEMORANDUM COVER

**Subject:** Ordinance to Amend Chapter 10, Garbage and Refuse, by Amending Section 10-5, Same-Recourse of County upon Failure of Owner or Occupant; and Section 10-7, Penalty.

**Strategic Management Plan Pathway:** 3.b - ensure ongoing operational costs are funded and  
2.f - enhance community appearance

**Action Requested:** Adoption of the ordinance

**Summary:** Chapter 10 of the James City County Code requires property owners to remove trash, garbage, and litter from their properties and owners of vacant property to cut the grass, weeds, or foreign growth on their property whenever required by the County. If the property owner fails to remedy the violation, the County may have the trash, grass, weeds, etc. removed and charge the costs to the owner of the property. Unpaid charges are considered a lien against the property.

It is suggested that Section 10-5 be amended in this ordinance to authorize the County Administrator to record any documents necessary to give notice of the lien against the property instead of having the Board of Supervisors consider each lien on a case-by-case basis.

It is further suggested that Section 10-7 be amended in accordance with State Code to allow the County to impose civil penalties in lieu of criminal sanctions for violations of the Chapter. The County has been successful in enforcing other code violations by imposing similar civil penalties.

Staff recommends adoption of the ordinance.

### Fiscal Impact:

Cost savings by not taking each lien to the Board of Supervisors as an agenda item; nominal increase in revenue from civil penalties.

**FMS Approval, if Applicable:** Yes ☐ No ☐

### Assistant County Administrator

Doug Powell \_\_\_\_\_

### County Administrator

Robert C. Middaugh \_\_\_\_\_

### Attachments:

1. Memo
2. Ordinance

**Agenda Item No.:** H-4

**Date:** September 14, 2010

**MEMORANDUM**

DATE: September 14, 2010

TO: The Board of Supervisors

FROM: Leo P. Rogers, County Attorney

SUBJECT: Ordinance to Amend Chapter 10, Garbage and Refuse, by Amending Section 10-5, Same-Recourse of County upon Failure of Owner or Occupant; and Section 10-7, Penalty

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Attached for your consideration is an ordinance amending Chapter 10, Garbage and Refuse, Section 10-5, Same-Recourse of County upon Failure of Owner or Occupant, and Section 10-7, Penalty.

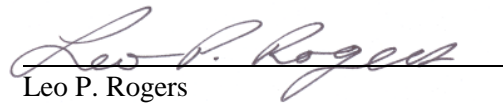
In accordance with Virginia Code Section 15.2-901, the County has adopted an ordinance requiring property owners to remove trash, garbage, and refuse from their property and owners of vacant property to cut the grass, weeds, and foreign growth on their property when it becomes a matter of health or safety for residents of the County. If the owner fails to remedy a violation, the County may have trash, grass, weeds, etc. removed by its agents or employees. Costs are chargeable to the owner of the property and unpaid charges constitute a lien against the property.

Currently, trash and grass liens are considered by the Board of Supervisors on a case-by-case basis. James City County Code Section 10-5 is being suggested for amendment in the attached ordinance to authorize the County Administrator or his designee to record the necessary documents among the real estate records to give notice of the lien. This is strictly optional on the part of the Board of Supervisors. This procedural change would free some time on regular Board agendas. If the Board prefers to have these items brought for Board attention, simply delete this change from the proposed ordinance.

The General Assembly passed legislation authorizing localities to adopt an ordinance providing civil penalties for trash and grass violations. Virginia Code Section 15.2-901(C) authorizes a \$50 civil penalty for a first violation and continued violations arising from the same operative facts. Subsequent violations arising from different operative facts could be subject to a \$200 civil penalty for each day where the violation exists. In no event can a civil penalty exceed \$3,000 for the same operative facts. Civil penalties are imposed in lieu of a criminal sanction. However, State Code authorizes localities to impose a criminal sanction, a Class 3 misdemeanor, for three violations within a 24-month period. A Class 3 misdemeanor carries a fine of up to \$500.

James City County Code Section 10-7 has been amended in the attached ordinance to reflect the penalties described above. The County has been successful in using civil penalties rather than criminal sanctions to achieve compliance for other code violations.

I recommend adoption of the attached ordinance.

  
Leo P. Rogers

LPR/nb  
Ch10Revisions\_mem

Attachment

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 10, GARBAGE AND REFUSE, OF THE CODE OF THE COUNTY OF JAMES CITY, VIRGINIA, BY AMENDING ARTICLE I, IN GENERAL, SECTION 10-5, SAME-RECOURSE OF COUNTY UPON FAILURE OF OWNER OR OCCUPANT; AND SECTION 10-7, PENALTY.

BE IT ORDAINED by the Board of Supervisors of the County of James City, Virginia, that Chapter 10, Garbage and Refuse, is hereby amended and reordained by amending Article I, In General, Section 10-5, Recourse of county upon failure to maintain by owner or occupant; and Section 10-7, Penalty.

#### Chapter 10. Garbage and Refuse

##### Article I. In General

##### **Sec. 10-5. ~~Same-Recourse of county upon failure of~~ *to maintain by* owner or occupant.**

(a) The county administrator or his designee, and upon complaint by any responsible person that conditions exist on any real property in violation of section 10-4, shall investigate conditions existing on real property in the county at any time, and upon determination by the county administrator or his designee, following investigation, that the owner, occupant or persons in charge of any real property in the county stands in violation of his duty as provided in section 10-4 and directing him to take such action as may be necessary to rectify such conditions within such time, not more than ten days, as shall be stated in the notice.

(b) If ten days after the service of any such notice the directive thereof has not been complied with, the county administrator or his designee shall proceed to have such work done as may be necessary to abate any condition which might endanger the health or safety of residents of the county and all expenses resulting therefrom shall be chargeable to and paid by the owner of such property and ~~may~~ *shall* be collected by the county as taxes and levies are collected, and all charges not so collected shall constitute a

lien against such property. *In addition, the county administrator or his designee may record such documents among the real estate records of the county as may be necessary to give notice of such lien.*

**Sec. 10-7. Penalty.**

Any person convicted of a violation of this chapter shall be ~~guilty of a misdemeanor and upon conviction thereof shall be punished by fine not exceeding one \$1,000.00, or by confinement in jail for a period not exceeding 12 months, either or both; provided, however, that the court may suspend the imposition of any sentence on condition that the defendant volunteer his services for such period of time as the court may designate to remove litter from the highway.~~ *subject to a civil penalty, not to exceed \$50 for the first violation, or violations arising from the same set of operative facts. The civil penalty for subsequent violations not arising from the same set of operative facts within 12 months of the first violation shall not exceed \$200. Each business day during which the same violation is found to have existed shall constitute a separate offense. In no event shall a series of specified violations arising from the same set of operative facts result in civil penalties that exceed a total of \$3,000 in a 12-month period. Civil penalties shall be in lieu of criminal penalties and shall preclude prosecution of such violation as a misdemeanor. In the event three civil penalties have previously been imposed on the same defendant for the same or similar violation, not arising from the same set of operative facts, within a 24-month period, such violations shall be a Class 3 misdemeanor. The classification of such subsequent violations as criminal offenses shall preclude the imposition of civil penalties for the same violation. For the purposes of this section, a business day shall constitute Monday through Friday of each week, except for holidays as shown on the calendar adopted by the board of supervisors each year.*

**State law reference** - *Authority of county to provide for removal or disposal of trash, cutting of grass and weeds; penalty, Code of Va. § 15.2-901.*

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James G. Kennedy  
Chairman, Board of Supervisors

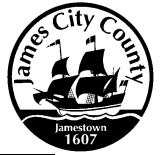
ATTEST:

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Robert C. Middaugh  
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 14th day of September,  
2010.

Ch10\_Revisions\_ord



## MEMORANDUM COVER

**Subject:** Conveyance of Utility Easements to Verizon Virginia, Inc.

**Strategic Management Plan Pathway:** 1.f - focus on technology and research activities that generate economic growth

**Action Requested:** Approval of the attached resolution authorizing the County Administrator to execute the appropriate documents to convey the utility easements to Verizon Virginia, Inc. for no monetary consideration.

**Summary:** Conveyance of utility easements to Verizon will result in improved cellular service and provides the County with exclusive use of a two-inch cabling innerduct.

Staff recommends approval of the resolution.

**Fiscal Impact:**

The cabling innerduct to be provided to the County is valued at more than \$1,600 in current dollars.

**FMS Approval, if Applicable:** Yes ☐ No ☐

**Assistant County Administrator**

Doug Powell \_\_\_\_\_

**County Administrator**

Robert C. Middaugh \_\_\_\_\_

**Attachments:**

1. Memo
2. Resolution
3. Map
4. Plat of proposed Easement

**Agenda Item No.: H-5**

**Date: September 14, 2010**

MEMORANDUM

DATE: September 14, 2010

TO: The Board of Supervisors

FROM: Marie E. Hopkins, Telecommunications Network Specialist  
Leo P. Rogers, County Attorney

SUBJECT: Conveyance of Utility Easements to Verizon Virginia, Inc.

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Attached for your consideration is a resolution authorizing the County Administrator to convey two utility easements to Verizon Virginia, Inc. ("Verizon") across property at the Government Center. The easements consist of a 10-foot utility easement totaling 8,852 sq. ft. over an existing conduit which runs from the front of Building C to the Verizon Litespan room in the back of Building F and a 10-foot utility easement totaling 3,229 sq. ft. which will extend from the back of Building F to the existing cell towers adjacent to the Building F parking lot. (Map attached.)

Currently, VerizonWireless signals are weak to non-existent at the Government Center. Approval of the easements will allow Verizon to place facilities to the existing cell towers and would ultimately result in improved cellular service for citizens in a three-mile radius (diagram attached) and for staff at the Government Center. In 2009, Verizon Wireless purchased Alltel which owns the tower at the Government Center. Unfortunately, the Alltel tower is not compatible with the VerizonWireless network. By using the easements, VerizonWireless can add the tower to its network.


In addition to the benefit of better cell phone service, the County will gain a two-inch innerduct at the Government Center exclusively for its use. The innerduct is a flexible plastic pipe for a future fiber optic cable included within a large hard shell conduit. This path has been part of County plans to improve the County's fiber ring and this partnership will avoid the innerduct installation cost (estimated at \$6 per foot in today's dollars). There is also a maintenance advantage for the County, as Verizon has an inherent interest in maintaining its facility; the County innerduct is adjacent and will therefore benefit.

Staff recommends approval of the attached resolution authorizing the County Administrator to execute the appropriate documents to convey the utility easements to Verizon Virginia, Inc. for no monetary consideration.

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Marie E. Hopkins

CONCUR:

  
Leo P. Rogers

MH/gb  
VerizonEasemt\_mem

Attachments

## **RESOLUTION**

### **CONVEYANCE OF UTILITY EASEMENTS TO VERIZON VIRGINIA, INC.**

WHEREAS, James City County owns property commonly known as 101 Mounts Bay Road and further identified on the James City County Real Estate Tax Map as Parcel No. 5010100009 (the "Property"); and

WHEREAS, Verizon Virginia, Inc. ("Verizon") has requested that the County convey two utility easements across the Property consisting of a 10-foot utility easement over an existing conduit totaling 8,852 sq. ft. and a 10-foot utility easement totaling 3,229 sq. ft. to place Verizon facilities to the cellular towers already located on the Property; and

WHEREAS, Verizon has agreed to install a two-inch innerduct exclusively for County use within the easement extending from Building F to the cellular tower sites which will benefit the County's future telecommunication needs; and

WHEREAS, after holding a public hearing, the Board of Supervisors is of the opinion that it is in the best interests of the County and its citizens to convey the easements necessary for Verizon to install the facilities to provide improved wireless service for the areas served by the cellular towers located on the Property.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes and directs the County Administrator to execute the appropriate documents to convey the easements to Verizon Virginia, Inc.

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James G. Kennedy  
Chairman, Board of Supervisors

ATTEST:

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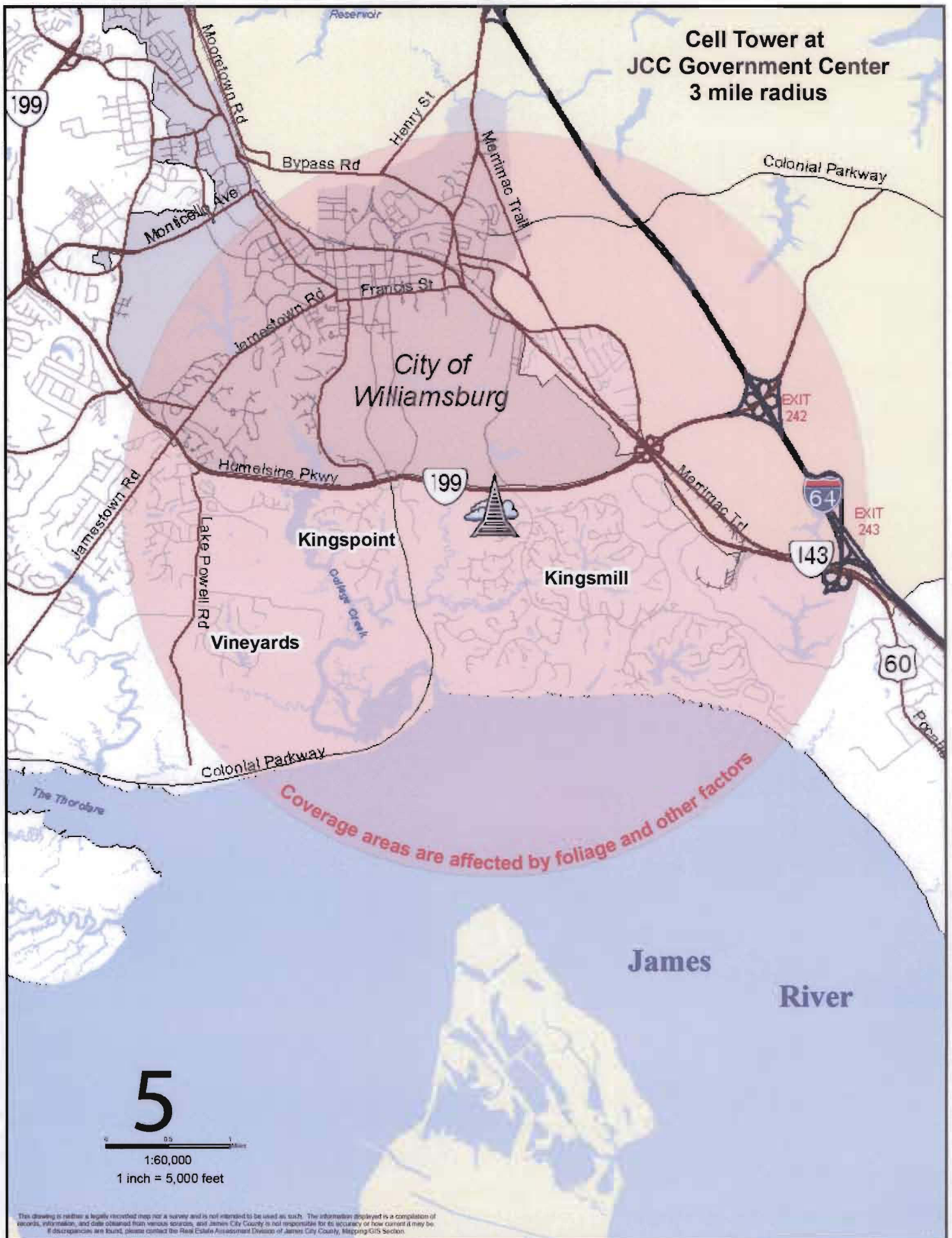
Robert C. Middaugh  
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 14th day of September, 2010.

VerizonEasemt\_res

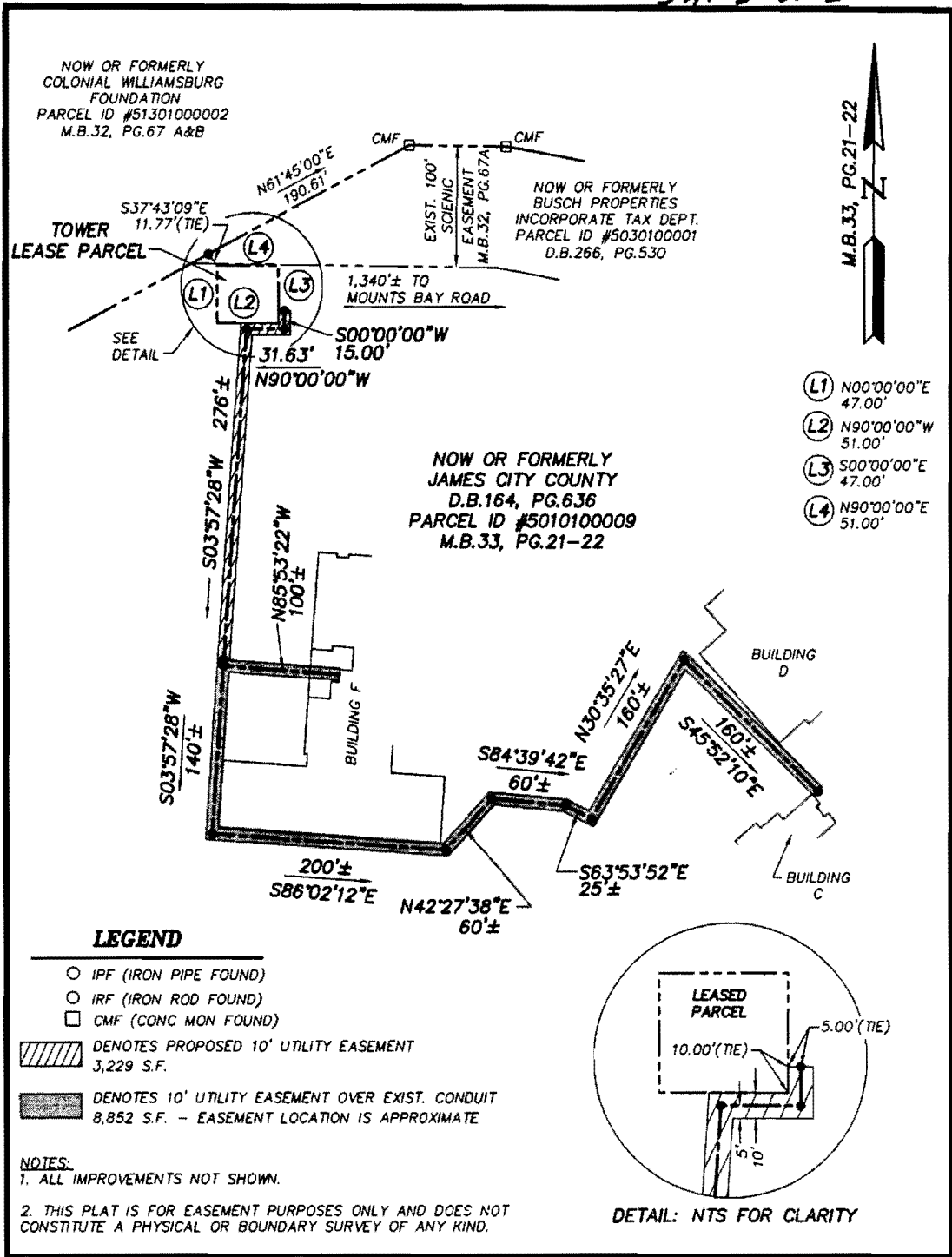


**Cell Tower at  
JCC Government Center  
3 mile radius**



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.

54.3 of 3



	References:	<b>PLAT OF PROPOSED 10' UTILITY EASEMENT &amp; 10' UTILITY EASEMENT OVER EXISTING CONDUIT FROM: JAMES CITY COUNTY TO: VERIZON, INC.</b>	
	Notes:	Date: 6/29/10    Scale: 1"=100'    Job No.: 10-056 <b>MICHAEL SURVEYING &amp; MAPPING, P.C.</b> 735 THIMBLE SHOALS BOULEVARD, SUITE 130 NEWPORT NEWS, VIRGINIA 23606 TEL 757.873.1762 FAX 757.873.1772	