

A G E N D A

JAMES CITY COUNTY BOARD OF SUPERVISORS

County Government Center Board Room

December 13, 2011

7:00 P.M.

	<u>Page</u>
A. CALL TO ORDER	
B. ROLL CALL	
C. MOMENT OF SILENCE	
D. PLEDGE OF ALLEGIANCE - Joseph Hardin, kindergarten student at D.J. Montague Elementary School	
E. RECOGNITION	
1. Chairman's Award	
F. PRESENTATIONS	
1. The Comprehensive Annual Financial Report – Leslie F. Roberts, Partner, Dixon Hughes Goodman LLP	
2. Resolution of Appreciation – Bruce Goodson	
G. PUBLIC COMMENT	
H. BOARD REQUESTS AND DIRECTIVES	
I. CONSENT CALENDAR	
1. Minutes –	
a. November 22, 2011, Work Session Meeting.....	1
b. November 22, 2011, Regular Meeting <i>As Amended</i>	7
2. Contract Awards – Annual Engineering Services.....	15
3. Port Security Grant Program – Grant Award \$23,418.....	19
4. Grant Appropriation – Clerk of the Circuit Court – \$47,176.....	23
5. Memorandum of Agreement – Joint Public Safety/Public Service Radio Communication System (800 MHz) between James City County, York County, and Gloucester County.....	27
6. Approval of Williamsburg Landing Bond Refinancing through the Mathews County Industrial Development Authority (IDA)	43
7. Resolution Providing for the Implementation of the Comprehensive Community Corrections Act, the Pretrial Services Act, and the Establishment of the Colonial Community Criminal Justice Board	57

-CONTINUED-

J. PUBLIC HEARINGS

1. Case No. AFD-10-86-1-2011. Christenson's Corner AFD – Newman Road Addition.....	63
2. Case No. Z-0001-2011. Forest Heights, Neighbors Drive, and Richmond Road Improvements (deferred from November 22, 2011)	81
3. Disposition of Property in the Forest Heights Neighborhood Improvement Project Area (deferred from November 22, 2011)	111
4. Case No. SUP-0010-2011. Wohlfarth Jolly Pond Road Family Subdivision	117
5. Case No. SUP-0008-2011. 2720 Chickahominy Road Manufactured Home	125
6. Case Nos. MP-0002-2011/Z-0003-2011. New Town Settler’s Market (Section 9) Master Plan Amendment	139
7. Case Nos. Z-0003-2008/MP-0003-2008. The Candle Factory	157
8. Amendment to the Charter of James City County Chapter 2, Powers of County Request	
9. Ordinance to Amend County Code, Chapter 2, Administration by Adding Section 2-15.3, Bonuses for County Employees.....	197

K. BOARD CONSIDERATION

1. Resolution Providing for the Authorization of a Bonus for Certain County Employees.....	201
2. Disclosure Policy	211

L. PUBLIC COMMENT

M. REPORTS OF THE COUNTY ADMINISTRATOR

N. BOARD REQUESTS AND DIRECTIVES

O. 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. Thomas Nelson Community College Local Board

P. ADJOURNMENT to 7 p.m. on December 20, 2011

AT A WORK SESSION OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE 22ND DAY OF NOVEMBER 2011, 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

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

Robert C. Middaugh, County Administrator
Leo P. Rogers, County Attorney
Larry Foster, General Manager, James City Service Authority

C. FINANCIAL TRENDS

Ms. Sue Mellen, Assistant Manager of Financial and Management Services, provided a financial update to the Board. She stated that in Fiscal Year (FY) 11, the County collected about \$4.4 million more than expected in revenue and expended about \$1.5 million less than anticipated, thereby resulting in a \$6 million surplus.

Staff anticipates that the County will collect about \$2 million more than anticipated in FY 12.

For FY 13, staff estimates a six percent decrease in residential reassessments. There is some growth that will offset the decline, but overall a \$3.5 million decrease is expected in real estate revenues. There are positive trends in other property taxes, including personal property, machinery and tools, and public service. A \$1.2 million increase is expected in these taxes. Another \$1.3 million in other revenues is expected. This results in an estimated \$163 million in revenues for FY 13, a decline of \$1 million from FY 12. Revenues are expected to increase to \$164.8 million in FY 14.

Mr. Middaugh stated that FY 13 appears to be the most challenging with a rebound in FY 14 above FY 12 levels.

Ms. Mellen stated that the FY 11 surplus could be used in FYs 13 and 14 to mitigate revenue decreases.

Mr. Foster provided a financial update for the James City Service Authority (JCSA). He noted the consent order will require significant new expenditures and that revenues are flat. He believes the impacts will be felt beginning in FY 14. He estimated a \$60-70 million impact over 20 years. He further stated connection fees have declined dramatically. He also noted that water demand declined in FY 11.

Mr. Foster said staff will begin formulating recommendations in early 2012 to address the expected gap between expenses and revenues.

Mr. Foster stated that connection fees would not be able to offset expected expenditures from the consent order and that service fees would probably need to be increased.

Mr. Kennedy asked about conversations with Anheuser Busch.

Mr. Foster said that there had not been any discussion for about a year.

Mr. Kennedy requested that staff reinitiate those conversations.

Mr. Goodson asked if staff would recommend using general fund dollars to address the consent order.

Mr. Foster replied no.

Mr. Middaugh highlighted other spending issues for the FY 13-14 budget. He noted that there were many capital needs.

Mr. Goodson asked about the Country Road.

Mr. Middaugh stated that it would be included in the budget.

Mr. Middaugh also noted that Virginia Retirement System (VRS) costs would increase \$900,000 next year and that staff was not certain of the impact of VRS on the Schools yet. He stated that Total Maximum Daily Load (TMDL) would impact future budgets, but did not have yet know what targets the County would be required to meet.

Mr. Middaugh then began a discussion on employee compensation. He stated the Board agreed to revisit this issue during budget deliberations if funds were available.

Mr. Middaugh stated that funds are available for a bonus. He is not recommending a salary increase at this time as he believes that is a discussion for the budget.

Mr. Middaugh said that there is about a \$9 million surplus at this time and recommended a \$1,000 bonus for full-time employees and \$500 for part-time employees, to be provided before the end of 2011. Total cost for this bonus would be \$568,000.

Mr. Middaugh noted that James City County is one of three localities in the region that did not address compensation in FY 11 or planned to in FY 12. He stated that employees are one of the County's most important assets.

Mr. Middaugh said employees have done more work without a noticeable impact on services. Mr. Middaugh said that the County Administrator, County Attorney, the Constitutional Officers and the Clerk of the Court's office would not be eligible under the proposal.

Mr. Kennedy believed it was premature to make the decision on a bonus before the Governor's budget is released and before the County knows the full impact of VRS on the schools or other revenues. He stated he respects employees, but that he needs more information before he could support a bonus.

Mr. Middaugh stated that the bonus is a small portion of a \$164 million budget.

Ms. Jones stated she also supported employees, but that there is too much uncertainty to provide an

employee bonus at this time. She said the County should be cautious and that it was too soon to make a decision.

Mr. Kennedy asked what the expectations of the Schools would be if the County gave a bonus to County employees.

Mr. Middaugh stated that the Schools don't have the ability under the current appropriation to award a bonus. He stated that employees of the Schools received a raise last year.

Mr. Kennedy stated that the County and Schools should be linked on employee compensation.

Mr. McGlennon stated that the County has an opportunity to recognize employees. He said this is also an opportunity to care for the organization.

Mr. Icenhour said he had some concern about the budget going forward. He said there is uncertainty, but it is not catastrophic uncertainty. He stated the bonus is a one-time expense and does not add to expenses in future budgets.

Mr. McGlennon said the Board agreed to revisit this issue and that the staff is responsible for achieving the \$1.4 million savings in expenses.

Mr. Goodson stated his recollection is that the Board agreed to revisit the issue of compensation. He stated he supported a bonus in 2008 and that a bonus is a good tool to recognize that the County spent \$1.4 million less than anticipated. He stated that barring any changes before the December 13 Board meeting, he would support a bonus.

Mr. Middaugh stated that at the December 13 Board meeting, the Board would have to approve an ordinance allowing the Board to provide a bonus and then act on the actual proposal to provide a bonus.

The Board took a break at 5:27 p.m.

The Board reconvened at 5:32 p.m.

D. 2012 LEGISLATIVE PROGRAM

Ms. Jones welcomed the County's State legislators: Senator John Miller, Delegate Brenda Pogge, and Delegate-elect Michael Watson. Ms. Amanda Johnson attended representing Senator Thomas Norment.

Mr. Rogers led the discussion of the Legislative Program. He stated that as he reviewed the Legislative Program, the County would be seeking sponsors for the legislation to be introduced on behalf of the County.

Delegate Pogge agreed to sponsor the item to include James City County among those localities which may enact agricultural and forestal districts of local significance.

Regarding the item to amend the tax revenue share in local tourism zones, Mr. Rogers asked Ms. Johnson if Senator Norment could sponsor the item.

Delegate Watson said he would sponsor the legislation if Senator Norment does not.

After discussion on the proposal to increase civil charges for individuals who violate the Chesapeake Bay Preservation Ordinances, the legislators suggested the County discuss the issue with other localities.

The legislators suggested that the increase in civil penalties for owners of property upon which trash and/or uncut grass is present be addressed as a charter change instead of a statewide law.

Mr. Icenhour stated he was comfortable with a charter amendment if one of the legislators would sponsor it.

Senator Miller said he would carry the legislation for a charter amendment.

Delegate Pogge suggested that the County revise the proposed penalty for violations subsequent to the first to be reduced from \$1,000 to \$500.

By consensus, the Board agreed to advertise a public hearing at the December 13 meeting to request that the General Assembly amend the charter with the penalty amount for the second and subsequent violations of \$500.

Delegate Pogge agreed to sponsor the item that requires the local governing body to agree to administer a Virginia Department of Transportation (VDOT) project, and therefore not allow VDOT to simply require localities to administer projects.

Delegate Pogge agreed to sponsor the item supporting legislation authorizing VDOT to enter into median maintenance agreements with localities.

Mr. Rogers passed out information on an informed ballot initiative.

Delegate Pogge agreed to file the legislation and mentioned that another legislator might introduce similar legislation. If another legislator introduces similar legislation, she would support it.

Mr. McGlennon indicated that initiative was not a priority for him.

Mr. Rogers stated that the rest of the legislative program consists of items that the County supports.

The Board agreed by consensus to remove the item on Main Street Fairness/Streamlined Sales Tax Agreement. Mr. Kennedy and Ms. Jones expressed their opposition to supporting the legislative programs of Virginia Association of Counties (VACo), Virginia Municipal League (VML), and the High Growth Coalition.

Mr. McGlennon asked about the proposed Constitutional Amendment on eminent domain.

Delegate Pogge said there is concern about the misuse of eminent domain.

Mr. McGlennon suggested that the State could pass a law instead of adopting a Constitutional Amendment.

At 6:27 p.m. the Board took a break.

Robert C. Middaugh
Clerk to the Board

112211bosws_min

AT A REGULAR MEETING OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE 22ND DAY OF NOVEMBER 2011, 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

Mary K. Jones, Chairman, Berkeley District
Bruce C. Goodson, Vice Chair, Roberts District
James G. Kennedy, Stonehouse 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 – Zach Rauchwarg, a twelfth-grade student at Jamestown High School, led the Board and citizens in the Pledge of Allegiance.

E. PUBLIC COMMENT

1. Mr. Allan Finger, 1700 Founders Hill South, Commodore of the Two Rivers Country Club, stated that the personal property tax on boats in James City County is not competitive with other localities. He proposed that the Board establish a committee to review this issue.

2. Mr. Ed Oyer, 139 Indian Circle, congratulated those elected to office and everyone who ran for office. He asked when the County would have an at-large Board member. He stated that there has been some effort to improve 101 Indian Circle, but that it is still a problem. He noted that Gloucester County built an elementary school for \$18 million.

F. BOARD REQUESTS AND DIRECTIVES

Mr. Goodson noted that he received an award on behalf of the County at the Virginia Association of Counties (VACo) conference. The award was for Outstanding Customer Service for prospective employees.

Mr. McGlennon stated that he attended the meeting of the Clean County Commission and that Whitings Funeral Home was recognized for its new building and positive impact on Route 60. He thanked the members of the Clean County Commission for their service.

Ms. Jones asked that a committee be formed to look into the personal property tax on boats. The Board agreed by consensus and asked for an update at the December 13, 2011, Board meeting.

Mr. Icenhour stated that he represented the County at the James City County Volunteer Fire Department's awards ceremony. He thanked the volunteers for their good work. He also said that he attended the opening of the "Gateway to the Modern World" exposition, a joint venture between the Jamestown-Yorktown Foundation and the Virginia Museum of Fine Arts. He also stated that he attended the ribbon cutting for the Freedom Park Interpretive Center.

G. CONSENT CALENDAR

Mr. McGlennon made a motion to approve the Consent Calendar.

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

1. Minutes – November 8, 2011, Regular Meeting
2. Colonial Community Corrections (CCC) Appropriation of Fund Balance – \$10,000

RESOLUTION

**COLONIAL COMMUNITY CORRECTIONS (CCC) APPROPRIATION OF
FUND BALANCE - \$10,000**

WHEREAS, Colonial Community Corrections (CCC) has accumulated a fund balance, as of June 30, 2011, of \$80,088; and

WHEREAS, funding will be used to fund operating costs and the unanticipated costs associated with replacing and installing a domain server.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the additional appropriation to the CCC for the purposes described above:

Revenue:

Fund Balance Revenue	<u>\$10,000</u>
----------------------	-----------------

Expenditure:

Domain Server and Installation Costs	<u>\$10,000</u>
--------------------------------------	-----------------

3. Grant Appropriation – National Fish and Wildlife Foundation Chesapeake Bay Stewardship Grant – \$75,000

RESOLUTION

GRANT APPROPRIATION – NATIONAL FISH AND WILDLIFE FOUNDATION

CHESAPEAKE BAY STEWARDSHIP GRANT – \$75,000

WHEREAS, the National Fish and Wildlife Foundation has awarded James City County a 2011 Chesapeake Bay Stewardship Grant in the amount of \$75,000.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby approves the appropriation of funds as follows:

Revenue:

2011 Chesapeake Bay Stewardship Grant	<u>\$75,000</u>
---------------------------------------	-----------------

Expenditure:

2011 Chesapeake Bay Stewardship Grant	<u>\$75,000</u>
---------------------------------------	-----------------

4. Contract Award – Buildings D and E Renovation – \$941,400

RESOLUTION

CONTRACT AWARD - BUILDINGS D AND E RENOVATION - \$941,400

WHEREAS, a Request for Qualifications to pre-qualify contractors for the Buildings D and E Renovation was publicly advertised and five firms submitted their qualifications. Five firms were determined to be qualified to submit bids for the renovation work; and

WHEREAS, four bids were submitted and David A. Nice Builders, Inc. was the lowest responsive and responsible bidder; and

WHEREAS, sufficient funds are available in the project budget for both the building renovation and the HVAC replacement.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the contract award for the Buildings D and E Renovation to David A. Nice Builders, Inc. in the amount of \$941,400.

5. Contract Award – Building D HVAC Replacement – \$506,944

RESOLUTION

CONTRACT AWARD - BUILDING D HVAC REPLACEMENT - \$506,944

WHEREAS, the James City County Department of General Services is standardizing HVAC building controls and equipment in County facilities to promote operational efficiency and safety; and

WHEREAS, the Building D HVAC controls and equipment is within the Building D project budget and will be replaced during the renovation project; and

WHEREAS, it has been determined by General Services, in consultation with the Purchasing Office, that Damuth Trane is the only source practicably available to engineer and install the HVAC controls and equipment required; and

WHEREAS, Damuth Trane submitted a proposal to perform the required services, the proposed rates have been determined to be reasonable and adequate funds are available in the Capital Improvement budget.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the contract award in the amount of \$506,944 to Damuth Trane and Trane Corporate for the Building D HVAC controls and equipment.

6. Approval of Patriots Colony Bond Refinancing through the Newport News Economic Development Authority (EDA)

RESOLUTION

APPROVAL OF PATRIOTS COLONY BOND REFINANCING THROUGH THE

NEWPORT NEWS ECONOMIC DEVELOPMENT AUTHORITY (EDA)

WHEREAS, the Economic Development Authority of the City of Newport News, Virginia, whose principal business address is 2400 Washington Avenue, 3rd Floor, Newport News, Virginia, 23607 (the "Authority"), has conducted a joint public hearing, after notice, on November 4, 2011, a date within 60 days prior to the date of the adoption of this resolution, on behalf of the Authority, James City County, and the City of Newport News on the plan of financing of Patriots Colony, Inc. (the "Patriots Colony"), whose principal business address is 6000 Patriots Colony Drive, Williamsburg, Virginia 23187, and which is an affiliate of Riverside Healthcare Association, Inc. and a not-for-profit Virginia corporation described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"), that is exempt from tax under Section 501(a) of the Code, for the issuance of the Authority's revenue refunding bonds in an amount not to exceed \$25,000,000 (the "Bonds") to assist Patriots Colony in (a) refinancing the outstanding principal balance of the \$30,500,000 Residential Care Facility Revenue Bonds (Patriots Colony Project), Series 1997 issued by the Industrial Development Authority of the County of James City, the proceeds of which financed the acquisition, construction and equipping of a 150-unit continuing care retirement facility for the residence and care of the aged, consisting of a five-story apartment building, a one-story community center and eight one-story attached

villa courtyards, located at 6000 Patriots Colony Drive, Williamsburg, Virginia, 23187 on a site consisting of approximately 90 acres of land in James City County, Virginia (the "Project") and (b) financing certain issuance costs incurred in connection with the issuance of the Bonds; and

WHEREAS, Section 147(f) of the Code provides that the governmental unit having jurisdiction over the area in which any facility financed with the proceeds of private activity bonds is located must approve the issuance of the bonds; and

WHEREAS, the Project is located in James City County, Virginia (the "County"), and the Board of Supervisors of the County (the "Board") constitutes the highest elected governmental unit of the County; and

WHEREAS, the Authority has requested the Board to ratify the public hearing and approve the issuance of the Bonds and the plan of financing to comply with Section 147(f) of the Code and Section 15.2-4906 of the Code of Virginia of 1950, as amended (the "Virginia Code"); and

WHEREAS, a copy of the Authority's resolution approving the issuance of the Bonds, subject to terms to be agreed upon, (the "Authority Resolution"), a record of the public hearing and a fiscal impact statement have been filed with the Board.

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

1. The recitals made in the first "WHEREAS" clause to this resolution are hereby adopted as part of this resolution.
2. The Board hereby ratifies the joint public hearing held on its behalf by the Authority on November 4, 2011, and the publication of notice thereof.
3. The Board hereby concurs in the Authority Resolution adopted by the Authority on November 4, 2011, a copy of which is attached hereto.
4. The Board hereby approves the issuance of the Bonds by the Authority for the benefit of Patriots Colony, to the extent required by Section 147(f) of the Code and by Section 15.2-4906 of the Virginia Code.
5. Ratification of the joint public hearing, concurrence in the Authority Resolution, and approval of the issuance of the Bonds and the plan of financing do not constitute an endorsement to a prospective purchaser of the Bonds of the creditworthiness of the Project or of Patriots Colony, and, as required by Virginia law, neither the Commonwealth of Virginia nor any political subdivision thereof, including the County and the Authority, shall be obligated to pay the Bonds or the interest thereon or other costs incident thereto except from the revenues and moneys pledged therefore by Patriots Colony and its affiliates, and neither the faith and credit nor the taxing power of the Commonwealth or any political subdivision thereof, including the County and the Authority, shall be pledged thereto.
6. The County, including its elected representatives, officers, employees and agents, shall not be liable and hereby disclaims all liability for any damage to Patriots Colony, direct or consequential, resulting from the Authority's failure to issue the Bonds for any reason.
7. This resolution shall take effect immediately upon its adoption.

7. 2012 Legislative Program

RESOLUTION

2012 LEGISLATIVE PROGRAM

WHEREAS, James City County has developed a Legislative Program for the consideration of the 2012 session of the General Assembly which outlines certain legislative policies which the Board believes ought to guide the General Assembly and proposes certain legislation that would benefit the County; and

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

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby approves the County's 2012 Legislative Program and commends it to the County's representatives in the General Assembly for action.

BE IT FURTHER RESOLVED that a copy of the County's 2012 Legislative Program be forwarded to the County's elected representatives to the General Assembly.

H. PUBLIC HEARINGS

1. Ordinance to Amend Chapter 7, Enterprise Zone, by Amending Section 7-2 and 7-8

Mr. Russ Seymour, Director of Economic Development, stated that the proposed ordinance changes the boundaries of the enterprise zone approved by the Virginia Department of Housing and Community Development in accordance with the application approved by the Board in March 2011. In addition, the proposed ordinance changed the enterprise zone administrator from the Assistant Manager of Community Services to the Director of Economic Development or his designee.

As no one wished to speak to this matter, Ms. Jones closed the Public Hearing.

Mr. Goodson made a motion to approve the ordinance.

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

2. Case No. Z-0001-2011. Forest Height, Neighbors Drive, and Richmond Road Improvements

3. Disposition of Property in the Forest Heights Neighborhood Improvement Project Area

Mr. Leo Rogers, County Attorney, stated that staff was recommending deferral of both of these items until the December 13, 2011, meeting.

Ms. Jones opened the Public Hearings for both of these items; left them open, and stated that they would be considered by the Board at the December 13, 2011, meeting.

4. Case Nos. ZO-0006-2011. Development Standards Ordinance Amendments and ZO-0014-2011. Exterior Signage

Ms. Tammy Rosario, Principal Planner, stated that staff had drafted ordinances and policies for the development standards items including sound walls, outdoor lighting, landscaping, parking, private streets, pedestrian accommodations, timbering, floodplain, and exterior signage. Ms. Rosario stated that these items were reviewed by the Board at the July 26 work session and were recommended for approval by the Planning Commission at its October 5 meeting. She stated that staff recommends deferral of the ordinance amendment on exterior signage.

As no one wished to speak to this matter, Ms. Jones closed the Public Hearing.

Mr. Icenhour made a motion to approve all of the development standards ordinance amendments except exterior signage.

Mr. Goodson asked Mr. Billy Apperson, James City County Forester for the Virginia Department of Forestry (VDoF), if the Department of Forestry is comfortable with the proposed ordinance on timbering.

Mr. Apperson stated that he felt the Planning Division did a thorough job looking at the Department of Forestry's recommendations and that he felt the proposed ordinance is the most reasonable approach at this time.

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

I. PUBLIC COMMENT

None.

J. REPORTS OF THE COUNTY ADMINISTRATOR

Mr. Middaugh stated that offices would be closed Thursday, November 24, and Friday, November 25, 2011. He also reminded the public that taxes are due December 5 and that leaf collection begins December 1.

Mr. McGlennon reminded citizens that leaf collection is scheduled based on election districts and that some residents live in different districts than last year.

K. BOARD REQUESTS AND DIRECTIVES

Mr. McGlennon expressed concern that the St. Bede Mausoleum has been deferred without a date. He asked the Board if it would be willing to ask the applicant to communicate its plan.

Mr. Rogers stated that the Board can set its agenda.

Mr. Kennedy noted that a cell tower case has been deferred for three years.

Mr. McGlennon noted that in the case of the cell tower, the Board was informed that the applicant was looking at alternative sites and options, unlike the deferral on the St. Bede Mausoleum where no reason was given for the deferral.

Mr. Icenhour stated that the Board should develop a policy on deferrals.

L. ADJOURNMENT to 4 p.m. on December 13, 2011.

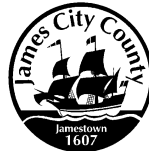
Mr. Goodson made a motion to adjourn.

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

At 7:37 p.m., Ms. Jones adjourned the Board until 4 p.m. on December 13, 2011.

Robert C. Middaugh
Clerk to the Board

112211bos_min



MEMORANDUM COVER

Subject: Contract Awards - Annual Engineering Services

Action Requested: Shall the Board approve the resolution that awards Annual Engineering Services?

Summary: A Request for Proposal (RFP) was solicited from qualified engineering firms to simplify the purchasing process and speed up work when minor design or technical engineering assistance is required by having a firm pre-selected based upon their qualifications per the requirements of the Virginia Public Procurement Act and establishing a first time "in place" contract for professional engineering services. The required engineering services were organized into major groups with Sub-Groups as listed below with the number of proposals received after each Sub-Group name. No comparative rate information is available because the County has not previously pre-qualified engineers in these categories.

Basic Engineering:

Sub-Group A - Structural Engineering (3 proposals)

Sub-Group B - Mechanical, Electrical, Plumbing Engineering (3 proposals)

Design Services for Infrastructure Projects - (12 proposals)

Interested firms responded to the RFP by describing their interest, qualifications, project approach, and experience in performing similar work. Panels of staff members representing Stormwater, Engineering and Resource Protection, Planning, Capital Projects, James City Service Authority, and Purchasing evaluated the proposals, conducted interviews, and selected the most qualified firms in each group. Rate schedules were negotiated with the selected firms. These schedules will be used to calculate the cost for individual projects performed under these annual contracts. The contracts have an initial term of one-year with four additional one year options available to the County. The RFP included cooperative procurement provisions that allow Williamsburg-James City County Schools to use the engineering firms if they so choose.

Firms selected for contract award are:

Sub-Group A - Structural Engineering - TAM Consultants

Sub-Group B - Mechanical, Electrical, Plumbing Engineering - TAM Consultants

Design Services for Infrastructure Projects - Timmons Group and Parsons Brinckerhoff

Staff recommends approval of the attached resolution awarding a contract to the firms listed above.

Fiscal Impact:

FMS Approval, if Applicable: Yes ☐ No ☐

Assistant County Administrator

Doug Powell _____

County Administrator

Robert C. Middaugh _____

Attachments:

1. Memorandum
2. Resolution

Agenda Item No.: I-2

Date: December 13, 2011

MEMORANDUM

DATE: December 13, 2011

TO: The Board of Supervisors

FROM: Linda Hodges, Senior Buyer

SUBJECT: Contract Awards – Annual Engineering Services

A Request for Proposal (RFP) was solicited from qualified engineering firms to simplify the purchasing process and speed up work when minor design or technical engineering assistance is required by having a firm pre-selected based upon their qualifications per the requirements of the Virginia Public Procurement Act and establishing a first time “in place” contract for professional engineering services. The required engineering services were organized into major groups with Sub-Groups as listed below with the number of proposals received after each Sub-Group name. No comparative rate information is available because the County has not previously pre-qualified engineers in these categories.

Basic Engineering:

- Sub-Group A - Structural Engineering (3 proposals)
- Sub-Group B - Mechanical, Electrical, Plumbing Engineering (3 proposals)
- Design Services for Infrastructure Projects - (12 proposals)

Interested firms responded to the RFP by describing their interest, qualifications, project approach, and experience in performing similar work. Panels of staff members representing Stormwater, Engineering and Resource Protection, Planning, Capital Projects, James City Service Authority, and Purchasing evaluated the proposals, conducted interviews, and selected the most qualified firms in each group. Rate schedules were negotiated with the selected firms. These schedules will be used to calculate the cost for individual projects performed under these annual contracts. The contracts have an initial term of one year with four additional one-year options available to the County. The RFP included cooperative procurement provisions that allow Williamsburg-James City County Schools to use the engineering firms if they so choose. Firms selected for contract award are listed by group.

Staff recommends approval of the attached resolution awarding a contract to the following firms:

- Sub-Group A – Structural Engineering – TAM Consultants
- Sub-Group B – Mechanical, Electrical, Plumbing Engineering – TAM Consultants
- Design Services for Infrastructure Projects – Timmons Group and Parsons Brinckerhoff

Linda Hodges

CONCUR:

John E. McDonald

LH/nb
CA_AnnEngSrv_mem

Attachment

RESOLUTION

CONTRACT AWARDS - ANNUAL ENGINEERING SERVICES

WHEREAS, a Request for Proposals (RFP) has been advertised and evaluated for annual engineering services; and

WHEREAS, the firms listed below were determined to be the best qualified to provide the required engineering services in their respective groups.

Sub-Group A – Structural Engineering – TAM Consultants

Sub-Group B – Mechanical, Electrical, Plumbing Engineering – TAM Consultants

Design Services for Infrastructure Projects – Timmons Group and Parsons Brinckerhoff

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby awards the contracts for annual engineering services to the firms listed in this resolution.

Mary K. Jones
Chairman, Board of Supervisors

ATTEST:

Robert C. Middaugh
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 13th day of December, 2011.

CA_AnnEngSrv_res



MEMORANDUM COVER

Subject: Grant Award – Port Security Grant Program (PSGP) – \$23,418

Action Requested: Shall the Board approve the resolution that accepts the Port Security Grant Program (PSGP) grant award?

Summary: The James City County Police Department has been awarded Federal funds via the FY 2011 Port Security Grant Program (PSGP) in the amount of \$23,418. The grant period for expenditures by James City County is September 1, 2011 through May 31, 2014. PSGP is a maritime transportation infrastructure security initiative within the Department of Homeland Security, and typically, the availability of this grant recurs annually. These specific grant funds will be used to train and equip two current members of the Police Department as Public Safety Divers. Upon appointment and completion of training, these officers will assume lateral duties as members of the Department's Dive Team. These appointments do not create new positions within the Department or the County.

The Department's Dive Team has been established to provide law enforcement related support to the James City County waterways and the Ferry System as it pertains to criminal investigations, and to work in collaboration with the James City County Fire Department in Search and Rescue operations.

The determination was made to apply for further funding for two additional divers through a cooperative discussion among key staff and with the endorsement of the United States Coast Guard (USCG), Sector Hampton Roads. The USCG is instrumental in the PSGP award process in that they determine what needs are relevant to the Port of Hampton Roads, which includes James City County.

The grant requires no match.

Staff recommends adoption of the attached resolution.

Fiscal Impact: N/A

FMS Approval, if Applicable: Yes ☐ No ☐

Assistant County Administrator

Doug Powell _____

County Administrator

Robert C. Middaugh _____

Attachments:

1. Memorandum
2. Resolution

Agenda Item No.: I-3

Date: December 13, 2011

M E M O R A N D U M

DATE: December 13, 2011

TO: The Board of Supervisors

FROM: Emmett H. Harmon, Chief of Police

SUBJECT: Grant Award - Port Security Grant Program (PSGP) - \$23,418

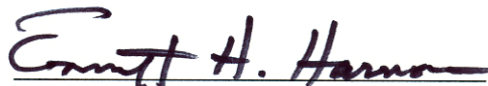
The James City County Police Department has been awarded Federal funds via the FY 2011 Port Security Grant Program (PSGP) in the amount of \$23,418. The grant period for expenditures by James City County is September 1, 2011 through May 31, 2014. PSGP is a maritime transportation infrastructure security initiative within the Department of Homeland Security, and typically, the availability of this grant recurs annually. These specific grant funds will be used to train and equip two current members of the Police Department as Public Safety Divers. Upon appointment and completion of training, these officers will assume lateral duties as members of the Department's Dive Team. These appointments do not create new positions within the Department or the County.

The Department's Dive Team has been established to provide law enforcement related support to the James City County waterways and the Ferry System as it pertains to criminal investigations, and to work in collaboration with the James City County Fire Department in Search and Rescue operations.

The determination was made to apply for further funding for two additional divers through a cooperative discussion among key staff and with the endorsement of the United States Coast Guard (USCG), Sector Hampton Roads. The USCG is instrumental in the PSGP award process in that they determine what needs are relevant to the Port of Hampton Roads, which includes James City County.

The grant requires no match.

Staff recommends adoption of the attached resolution.


Emmett H. Harmon

CONCUR:

Robert C. Middaugh

EEH/nb
GA_PortSrty_mem

Attachment

RESOLUTION

GRANT AWARD – PORT SECURITY GRANT PROGRAM (PSGP) – \$23,418

WHEREAS, the James City County Police Department has been awarded Federal funds via the FY 2011 Port Security Grant Program (PSGP) in the amount of \$23,418; and

WHEREAS, the grant period for expenditures by James City County is September 1, 2011 through May 31, 2014; and

WHEREAS, the funds will be used to train and equip two current members of the Police Department as Public Safety Divers; and

WHEREAS, appointments do not create new positions within the Department or the County; and

WHEREAS, there is no match required of this grant.

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:

PSGP – FY 11 funding	<u>\$23,418</u>
----------------------	-----------------

Expenditure:

PSGP – FY 11 funding	<u>\$23,418</u>
----------------------	-----------------

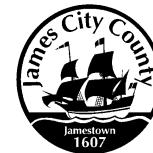
Mary K. Jones
Chairman, Board of Supervisors

ATTEST:

Robert C. Middaugh
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 13th day of December, 2011.

GA_PortSrty_res



MEMORANDUM COVER

Subject: Grant Appropriation – Clerk of the Circuit Court – \$47,176

Action Requested: Shall the Board approve the resolution that accepts the State Compensation Board's Technology Trust Fund grant award totaling \$47,176?

Summary: The Clerk of the Circuit Court has been awarded a grant from the State Compensation Board's Technology Trust Fund totaling \$47,176. This grant requires no local match. This grant will be used for the replacement of computer equipment and its maintenance, as well as converting records, such as deeds, to a digital format. The State determines the equipment replacement schedule and reimburses the County for the full cost. These funds may not supplant local operations.

Staff recommends approval of the attached resolution authorizing a budget appropriation of \$47,176 to the Special Projects/Grants fund.

Fiscal Impact: N/A

FMS Approval, if Applicable: Yes ☐ No ☐

Assistant County Administrator

Doug Powell _____

County Administrator

Robert C. Middaugh _____

Attachments:

1. Memorandum
2. Resolution

Agenda Item No.: I-4

Date: December 13, 2011

MEMORANDUM

DATE: December 13, 2011

TO: The Board of Supervisors

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

SUBJECT: Grant Appropriation – Clerk of the Circuit Court – \$47,176

The Clerk of the Circuit Court has been awarded a grant from the State Compensation Board's Technology Trust Fund totaling \$47,176. This grant requires no local match. This grant will be used for the replacement of computer equipment and its maintenance, as well as converting records to digital format. The State determines the equipment replacement schedule and reimburses the County for the full cost. These funds may not supplant local operations.

Staff recommends approval of the attached resolution authorizing a budget appropriation of \$47,176 to the Special Projects/Grants Fund.

Suzanne R. Mellen

SRM/gb
GA-CirCt_mem

Attachment

RESOLUTION

GRANT APPROPRIATION – CLERK OF THE CIRCUIT COURT – \$47,176

WHEREAS, the State Compensation Board has awarded a Technology Trust Fund grant to the Clerk of the Circuit Court totaling \$47,176; and

WHEREAS, the grant will be used for the replacement of computer equipment and records modernization; and

WHEREAS, no local match is required for this grant.

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

Revenue:

Revenue from the Commonwealth	<u>\$47,176</u>
-------------------------------	-----------------

Expenditure:

Clerk of the Circuit Court	<u>\$47,176</u>
----------------------------	-----------------

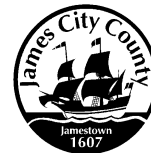
Mary K. Jones
Chairman, Board of Supervisors

ATTEST:

Robert C. Middaugh
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 13th day of December, 2011.

GA-CirCt_res



MEMORANDUM COVER

Subject: Memorandum of Agreement (MOA) – Joint Public Safety/Public Service Radio Communication System (800 megahertz (MHz)) between James City County, York County, and Gloucester County

Action Requested: Shall the Board of Supervisors adopt a resolution authorizing the County Administrator to execute the Memorandum of Agreement (MOA) for Joint Public Safety/Public Service Radio Communication System (800 MHz) between James City County, York County, and Gloucester County?

Summary: James City County shares a joint public safety/public service radio communication system called 800 megahertz (MHz) with York County. This arrangement has operated for several years without a written agreement. Recently, Gloucester County became a partner in the 800-MHz system. The attached resolution authorizes the County Administrator to execute an agreement between James City County, York County, and Gloucester County to memorialize the rights and responsibilities for each locality and to incorporate Gloucester County as a contributing member of the 800-MHz system.

Staff recommends approval of the attached resolution.

Fiscal Impact: Please state fiscal impact, if applicable.

FMS Approval, if Applicable: Yes ☐ No ☐

Assistant County Administrator

Doug Powell _____

County Administrator

Robert C. Middaugh _____

Attachments:

1. Memorandum
2. Resolution

Agenda Item No.: I-5

Date: December 13, 2011

M E M O R A N D U M

DATE: December 13, 2011

TO: The Board of Supervisors

FROM: William T. Luton, Fire Chief
Leo P. Rogers, County Attorney

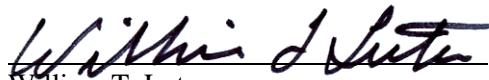
SUBJECT: Memorandum of Agreement (MOA) – Joint Public Safety/Public Service Radio Communication System (800 megahertz (MHz)) between James City County, York County, and Gloucester County

James City County currently shares a public safety/public service radio communication system (800 megahertz (MHz)) with York County, which is used for telecommunications and emergency services. The infrastructure and costs have been shared equally between the County and York County for five years with no formal written agreement in place. The system is administered by County Administration and Public Safety representatives from participating jurisdictions on a Policy Team, and York County serves as the fiscal agent.

Recently, Gloucester County became a partner in the joint radio system. In order to memorialize the rights and responsibilities for each locality, a Memorandum of Agreement (MOA) has been drafted to address fiscal responsibilities and infrastructure needs. The MOA splits the operational costs between the localities with the County to pay 40 percent, York County to pay 40 percent, and Gloucester County to pay 20 percent, beginning January 1, 2012. James City County's share in FY 12 is \$891,000. The cost is expected to increase 3-5 percent in FY 13.

Incorporating Gloucester County into the York – James City joint radio system provided a one-time opportunity to upgrade our system to the newest version available at that time. The upgrade would have cost York and James City County \$1 million; however, Gloucester's purchase provided it at no cost.

Staff recommends approval of the attached resolution authorizing the County Administrator to execute an MOA for a joint public safety/public service radio communication between James City County, York County, and Gloucester County.


William T. Luton

Leo P. Rogers

CONCUR:

Robert C. Middaugh

TL/LPR/nb
MOA_800mhz_mem

Attachment

RESOLUTION

MEMORANDUM OF AGREEMENT (MOA) – JOINT PUBLIC SAFETY/PUBLIC SERVICE

RADIO COMMUNICATION SYSTEM (800 MEGAHERTZ (MHz)) BETWEEN

JAMES CITY COUNTY, YORK COUNTY, AND GLOUCESTER COUNTY

WHEREAS, James City County has participated in a Joint Public Safety/Public Services Radio Communication System called the 800-megahertz (MHz) system, sharing 50 percent of the costs of the system with York County for over five years; and

WHEREAS, the County of Gloucester has joined the 800-MHz system; and

WHEREAS, the localities wish to split the operation costs of the 800-MHz system with the County to pay 40 percent, York County to pay 40 percent, and Gloucester County to pay 20 percent of the costs; and

WHEREAS, the operation of the 800-MHz system has not been memorialized into a formal written agreement between the localities.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the County Administrator to execute the Memorandum of Agreement (MOA) for the Joint Public Safety/Public Service Radio Communication System (800 MHz) between James City County, York County, and Gloucester County.

Mary K. Jones
Chairman, Board of Supervisors

ATTEST:

Robert C. Middaugh
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 13th day of December, 2011.

MOA_800mhz_res

MEMORANDUM OF UNDERSTANDING FOR OPERATIONS, OVERSIGHT AND MANAGEMENT OF THE JOINT PUBLIC SAFETY/PUBLIC SERVICE RADIO COMMUNICATION SYSTEM AMONG THE COUNTIES OF YORK AND JAMES CITY, VIRGINIA AND THE COUNTY OF GLOUCESTER, VIRGINIA

This Memorandum of Understanding (MOU), dated December __, 2011, is entered into by the Counties of York and James City, Virginia ("York" and "James City" respectively, collectively referred to as the "Original Members") and the County of Gloucester, Virginia ("Gloucester"), York, James City and Gloucester sometimes being collectively referred to as "the member localities" or "the members". This MOU supersedes and replaces the agreement between the Original Members dated December 12, 2007 and shall become effective on January 1, 2012.

In order to support the mission-critical needs of our individual and collective public safety and public service personnel, and citizens' property and business interests, the Motorola Solutions, Inc ASTRO Digital P25 wide-area radio communications system created by York and James City pursuant to their agreement dated August 6, 2003 ("the system") must be maintained at the highest level of availability and integrity. York, James City and Gloucester all desire that Gloucester shall be permitted to participate in the system as a member, and to that end, the members do hereby agree to the following:

I. System Defined

1. The members agree to utilize the system in accordance with the rules and regulations of the Federal Communications Commission (FCC) and the Commonwealth of Virginia and to operate the system in a professional manner and only for official business purposes.
2. The "backbone" components of the system, which include communications towers, repeaters, communications infrastructure, antennas, system controllers, microwave equipment, equipment shelters, and system frequencies, as defined in Appendix A, are shared and jointly operated by the members to ensure adequate system operations. All licenses required by the FCC shall be held in the name of York on behalf of the members.
3. In order to ensure system integrity, all members must utilize Motorola Solutions, Inc. as the authorized service provider to the system. All sites and towers that comprise the communication system shall be maintained jointly by the members as set out herein, including without limitation

generators and fuel, grounds maintenance, ground system maintenance, tower lights, amplifiers, antennas, transmission lines, receive multi-couplers, microwave components, transmitter combiners, and radio transmitter buildings.

4. In order for the system to operate at the reliability level for which it was designed, and that the support of the system is not dependent on the technical abilities of any individual member, all members agree that the system will be maintained through a service agreement with the equipment provider as outlined in §35 of the Agreement dated August 6, 2003, between York County, Virginia, James City County, and Motorola Solutions, Inc (“the original contract”, incorporated herein by reference), and amended December 20, 2006 to incorporate Gloucester County. York and James City County have divided, and will continue to divide their maintenance service agreement costs equally. Gloucester County shall pay its maintenance service agreement share based on its acceptance of the Motorola Solutions, Inc. maintenance proposal dated November 20, 2006, with updates dated November 27, 2006.

II. Radio System Governance

1. The members shall appoint representatives to a “Policy Team” which shall exercise those duties and responsibilities set out below. The representatives of the Policy Team for York and James City shall consist of the Chief Administrative Officer, Fire Chief, Emergency Communications Chief/Director, and Chief Law Enforcement Official. Representation from Gloucester County shall be the Chief Administrative Officer and Director of Public Works. On any matter pending before the Policy Team and requiring a vote, York County and James City County shall each have four votes, and Gloucester County shall have two votes for a total of ten votes. Non-voting representatives may be added as designated by the chief administrative officers of the member localities.
 - a. The Policy Team shall be responsible for oversight of policy and fiscal issues related to the system, subject however to authorizations of necessary funds by the governing bodies of the members. Project Managers shall recommend any changes to the Policy Team.
 - b. To allow for the timely implementation of new standard operating procedures and system policies, to allow for the allocation of frequency and data bandwidths, and to provide management and oversight of the system, each member shall designate one member of the Policy Team, or other employee as appropriate, to act on behalf

of the member as that member's Project Manager. The Policy Team and Project Managers for each member locality are identified in Appendix B. Appendix B will be updated as necessary in the event the names of voting or ad hoc members change.

- c. The same ratio used to allocate votes (40% for York, 40% for James City, and 20% for Gloucester) shall be used to divide system costs not attributable to maintenance service agreements addressed in Section I.4. This division of costs shall be referred to as the "member allocation percentage." The member allocation percentage shall become effective January 1, 2012.
 - d. York shall serve as Fiscal Agent for the system. In addition, the Chief Administrative Officer for York County shall assign York County staff to act as the system manager and administrative assistant for the system, with duties as defined in Appendix C attached hereto. Such persons shall be deemed employees of York County and not of either James City or of Gloucester. The members agree that Appendix C to this MOU sets forth the portion of salaries paid by York to such staff which is attributable to their work on the system. Such costs shall be shared among the members according to the member allocation percentages.
 - e. The Chief Administrative Officer for each locality, or his or her designated proxy, shall cast the vote(s) for any members absent from his/her jurisdiction.
- 2. The members of the Policy Team may enter into contractual services with professional experts and consultants as required to protect the integrity of the system and the interests of the members.
 - 3. In no event shall members be liable to each other for any indirect, incidental, special or consequential damages including, without limitation, damages attributed to any malfunction of the system, regardless of the cause of action, arising out of or in connection with a party's performance.
 - 4. New members may be admitted to the system on such terms and conditions as unanimously agreed upon by the Chief Administrative Officers of the member localities.
 - 5. Necessary and periodic upgrades, software enhancements and emergency technologies will be funded regionally by the members' normal funding process. If Project Managers determine that major system enhancements

beyond necessary and periodic upgrades are required, Policy Team approval will be required subject to funding allocations from each member locality's governing board. The members shall individually and collaboratively seek grants to enhance the public safety communication network. Any grants must be approved by the Policy Team. Matching requirements for grants will be paid by all members according to the member allocation percentages.

6. Members will individually be responsible for maintaining adequate insurance on equipment and infrastructure owned by their respective jurisdictions.

III. Enterprise Fund

1. With the exception of maintenance service agreement costs, costs of the system will be accounted for in a separate enterprise fund by the Fiscal Agent. The annual operating budget as set by the Policy Team shall be shared by York, James City and Gloucester according to their member allocation percentage, with Gloucester's initial contributions occurring after its warranty expires January 1, 2012. Revenues collected from tenants, as defined in Appendix A, of York or James City who were on the system prior to Gloucester's membership, including City of Poquoson, City of Williamsburg, Kingsmill Security, College of William and Mary, National Park Service, Peninsula Regional Hospitals and Eastern State Hospital, shall be offset against James City's and York's contributions. Future tenants for airtime usage will be credited to the enterprise fund and available to offset the operational costs of the member localities in the member allocation percentages. At the end of each fiscal year (which shall end as of each June 30), the fund will be closed out and the unallocated balance will be left in the fund to cover anticipated future capital or maintenance costs. Any deficit shall be allocated amongst the member localities according to the member allocation percentages.
2. The enterprise fund shall be utilized for, but not limited to, covering the costs for the following equipment and services.
 - a. Repair to all fixed equipment located at the remote tower sites, as defined in Appendix A, including:
 - i. Tower climbs
 - ii. Tower lighting
 - iii. Air conditioning maintenance and repair
 - iv. General upkeep of the building and grounds

- v. Replacement of equipment not covered under Motorola Solutions, Inc. maintenance service contract, including without limitation: antennas, transmission lines, connectors, tower-top amplifiers and combiners, and microwave components.
 - b. FCC licensing and management
 - c. Damage to towers due to vandalism (other than deductibles and damage not covered by individual County insurances)
 - d. Communications gear utilized for testing and redundancy
 - e. Cost related to operation and administration of the regional radio system
- 3. All tenants must be approved unanimously by the Policy Team and all funds received from tenant agreements will be received by York as Fiscal Agent and placed in the enterprise fund to pay for ongoing costs for the system.

IV. System Policy

1. All equipment and accessories utilized for the system must be Motorola Solutions, Inc. original equipment manufacturer (OEM) products. Exceptions to the OEM requirement are only permitted if approved unanimously by the Project Managers prior to purchase and implementation. Purchasing and procurement of equipment and services for the system will be processed through York as fiscal agent.
2. All subscriber installations shall be performed by trained, certified Motorola Solutions, Inc. authorized service personnel. This requirement protects the overall system operation and integrity. Any deviation must be approved unanimously by the Project Managers. Remote Tower Site and other backbone facility access is strictly limited to authorized trained and certified personnel only. Fuel purchases for Remote Tower Site generators will be limited to the approved regional supplier.
3. Where authorized by the Policy Team, tenants may have access/use of the system. Such authorization shall include initial and ongoing costs including maintenance, as well as talk-group/channel quantities and operational parameters. Further, such access may also be predicated and/or subject to system capacity/capabilities.
4. Other non-member, non-tenant entities may be granted talk-group/channel access only upon approval by the agency head/user agency to which talk-

group/channels are assigned as initially approved by the member or tenant entities and as coordinated with the members.

V. Co-Location of other Radio Systems (Cellular Providers)

To protect the integrity and operation of the overall system, any co-location as defined in Appendix A for any Remote Tower Site must undergo a frequency intermodulation study and a stress/structural analysis. Project Managers, through unanimous action, and following review of the intermodulation study and the stress/structural analysis, must authorize any co-location request. Such approval will be subject to the approval of the co-location by the member which owns the affected tower. Funds collected by a member locality pursuant to a co-location agreement for a Remote Tower Site located within its jurisdiction will accrue solely to that locality.

VI. Termination of Membership from the Radio System

Should any member desire to terminate its participation in the system, such member shall be responsible for all costs associated with its removal from the system and for all capital and operating costs associated with the remaining members continuing to operate the system without degradation of capability through the end of the current fiscal year, subject to appropriations by the governing body of the withdrawing member. For purposes of this paragraph, a fiscal year ends on June 30 of any year. Further, all system frequencies shall remain part of the system unless otherwise authorized by the licensing authority. A member may withdraw from the system and its obligations under this MOU by providing at least one year written notice to the other members.

By signing this MOU, the parties hereto agree to improve homeland security and to improve the safety of the citizens within our localities by maintaining and improving our wide-area P25-compliant radio communications infrastructure.

This MOU shall remain in effect for four-year terms, automatically renewable and subject to appropriations by governing boards of member localities. This MOU shall be reviewed annually by the Project Managers and any amendments proposed shall be incorporated as amendments subject to unanimous approval by the Policy Team. The agreement shall be reviewed annually by the Project Managers.

Approved as to form:

County Attorney

York County

Agreed to by:

Chief Administrative Officer

York County

Approved as to form:

County Attorney

James City County

Agreed to by:

Chief Administrative Officer

James City County

Approved as to form:

County Attorney

Gloucester County

Agreed to by:

Chief Administrative Officer

Gloucester County

Glossary of Terms

MOU:	Memorandum of Understanding
FCC:	Federal Communications Commission
P25:	Project 25; The National Standard for digital radio communications

MOTOROLA SOLUTIONS, INC TRUNKED BACKBONE SYSTEM:

There are many components that make up the Backbone of a Trunked Radio System:

Co-Locations – Cellular or other communications that may lease space on towers. Each proposal for co-locations will need to be accompanied by a stress analysis and a frequency intermodulation study as to protect the integrity of the system. All proposals will be agreed upon in concept by the Project Managers and forwarded to Motorola for technical competence/engineering and review. After this review the project managers will review and authorize the locality to move forward with their individual leases.

Master Site – the location of the central core of the entire system. It consists of the following:

Central Electronics Bank, System Controllers, Control Stations, Channel Banks, Logging Recorders, 911 System, Routers & Switches, Microwave Equipment, Radio Transmitters, DC Rectifiers, Batteries, UPS's, Tx & Rx Mux, Monitors, Tower, Antennas and Transmission lines, Microwave Dishes, Surge Protection, Generator, Propane Tanks for the Generators, Ice Bridges, Alarm Systems

Microwave System – this is major backhaul system for transport of communications whether it be voice or data between the Remote Tower Sites and the Master Site. These systems are installed in all of the Remote Tower Sites and the Master Site and they consist of the following:

Microwave Equipment, Antennas and Transmission lines, Dehydrators and other devices to interface with the radio equipment

Remote Tower Sites – installed in key locations to provide the best radio coverage and overlap with other Remote Tower sites to tie the communication system together and they consist of the following:

Communications Compounds with; Radio Towers, Communications Shelters to house the communications equipment (Repeaters, Combiners, Radio Control Stations, Microwave Equipment, Paging Transmitters) Lightning Protection Systems, Alarm Systems, DC Rectifiers, Batteries, UPS's, Generators for backup power, Propane Tanks for the generators, Ice Bridges to protect the transmission lines, Antennas and Transmission lines

installed on the tower, as well as Microwave Dishes installed on the towers, Tower Lighting Systems, Grounding Systems to protect the Equipment/Shelters/Towers, Fencing to protect the entire compound.

Subscribers – Any mobile radio or portable radio operating on the system.

System Frequencies – the frequencies are imperative to making the system work and work correctly without interference issues. The frequencies are coordinated by various coordinating agencies and granted by the FCC. They must be properly engineered to ensure correct channel spacing for all of the equipment involved in the system. They are used for the prime communications system including but not limited to the joint operation with other member localities as well as the interoperability with other agencies and non-member localities. The frequencies are sometimes shared on an approved basis for joint forces operations with other agencies.

Tenants – defined as a user on the system that utilizes their own talk-group(s) to communicate. (i.e. Kingsmill PD, National Park Services, College of William & Mary etc.)

Joint Public Safety/Public Service Radio Communication System

Policy Team Members

As of the date of this Agreement

Voting Members

James “Mac” McReynolds, Chief Administrative Officer, York County

Robert C. Middaugh, Chief Administrative Officer, James City County

Brenda Garton, Chief Administrative Officer, Gloucester County

Stephen Kopczynski, Fire Chief, York County

Tal Luton¹, Fire Chief, James City County

Danny Diggs, Sheriff, York County

Emmett Harmon, Chief of Police, James City County

Garrey Curry¹, Public Works Director, Gloucester County

Terry Hall¹, Chief of Emergency Communications, York County

Julie McKercher, Director of Emergency Communications James City County,

Ad Hoc Members

Sharon Day, Chief of Budget & Financial Reporting, York County

Tom Sawyer, Purchasing Agent, York County

Vacant, Purchasing Agent, James City County

Steve Gentry, Sheriff, Gloucester County

Nickie Champion, Finance Director, Gloucester County

Bill Lindsey, Purchasing Agent, Gloucester County

¹ Project Managers

Appendix C

**Joint Public Safety/Public Service Radio Communication System
Cost Sharing Allocation for Staff Resources**

Salaries stated in this Appendix refer to the portion of the total salary paid by York County to the personnel listed below, which is to be attributed to the costs of the system and shared by the members in accordance with their member allocation percentage:

System Manager – \$50,000

Regional duties include, but are not limited to: daily management of all aspects of system; negotiating and overseeing the re-banding of all frequencies from 800MHz to 700MHz; overseeing the expansion of the regional system to incorporate the Gloucester components;

Administrative Assistant – \$25,000

Provide administrative and fiscal support to the joint regional system. This will cover both administrative and fiscal services provided by York County staff.

(i.e. – procurement, billing, accounts payable, technicians and administrative).

Any increase to the amounts specified herein shall be unanimously approved by the Chief Administrative Officers of the member localities based on a demonstration of increased costs.



MEMORANDUM COVER

Subject: Approval of Williamsburg Landing Bond Refinancing through the Mathews County Industrial Development Authority (IDA)

Action Requested: Shall the Board approve the resolution that authorizes a refinancing of bonds for Williamsburg Landing?

Summary: The Board of Supervisors has been requested to approve a refinancing of currently existing tax exempt bonds by Williamsburg Landing. The refinancing will be executed through the Industrial Development Authority (IDA) of Mathews County, which has adopted an approving resolution on November 22, 2011, in an amount not to exceed \$17,500,000. The IDA can issue \$10 million this year and \$7.5 million in 2012. The Board's approval is necessary because Williamsburg Landing is located in James City County. Section 147(f) of the Federal Tax Code provides that the governmental unit having jurisdiction over the area in which any facility financed with the proceeds of private activity bonds is located must approve the issuance of the bonds.

This bond issue will be considered by the IDA of Mathews County, instead of the James City County Economic Development Authority (EDA), to qualify the refinancing for bank qualified (BQ) interest rates. BQ interest is restricted to communities that borrow less than \$10 million in any one year. Issued by the Mathews County IDA, the bonds will have no impact on James City County's ability to consider bonds in 2012. The County's EDA was consulted and approved the diversion of the refinancing to the Mathews County IDA. The James City EDA and Mathews IDA have actually initiated a fee-sharing agreement when the bonds are issued.

Staff recommends approval of the attached resolution.

Fiscal Impact: None

FMS Approval, if Applicable: Yes ☒ No ☐

Assistant County Administrator

Doug Powell _____

County Administrator

Robert C. Middaugh _____

Attachments:

1. Memorandum
2. Resolution

Agenda Item No.: I-6

Date: December 13, 2011

MEMORANDUM

DATE: December 13, 2011

TO: The Board of Supervisors

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

SUBJECT: Approval of Williamsburg Landing Bond Refinancing through the Mathews County Industrial Development Authority (IDA)

The Board of Supervisors has been requested to approve a refinancing of currently existing tax exempt bonds by Williamsburg Landing. The refinancing will be executed through the Industrial Development Authority (IDA) of Mathews County, which has adopted an approving resolution on November 22, 2011, in an amount not to exceed \$17,500,000. The IDA can issue \$10 million this year and \$7.5 million in 2012. The Board's approval is necessary because Williamsburg Landing is located in James City County. Section 147(f) of the Federal Tax Code provides that the governmental unit having jurisdiction over the area in which any facility financed with the proceeds of private activity bonds is located must approve the issuance of the bonds.

This bond issue will be considered by the IDA of Mathews County, instead of the James City County Economic Development Authority (EDA), to qualify the refinancing for bank qualified (BQ) interest rates. BQ interest is restricted to communities that borrow less than \$10 million in any one year. Issued by the Mathews County IDA, the bonds will have no impact on James City County's ability to consider bonds in 2012. The County's EDA was consulted and approved the diversion of the refinancing to the Mathews County IDA. The James City EDA and Mathews IDA have actually initiated a fee-sharing agreement when the bonds are issued.

The County's Bond Counsel prepared the attached resolution and staff recommends that it be adopted.

John E. McDonald

JEM/nb
IDAbonds4Landing_mem

Attachment

A RESOLUTION CONCURRING WITH THE ISSUANCE BY THE
INDUSTRIAL DEVELOPMENT AUTHORITY OF MATHEWS COUNTY,
VIRGINIA, OF ITS REVENUE BONDS IN AN AMOUNT NOT TO EXCEED
\$17,500,000 FOR WILLIAMSBURG LANDING, INC.

WHEREAS, there has been described to the Economic Development Authority of James City County, Virginia (the James City County Authority), the plans of Williamsburg Landing, Inc. (the Borrower), whose principal place of business is located in the County of James City, Virginia (the County), at 5700 Williamsburg Landing Drive, Williamsburg, Virginia 23185, for the issuance by the Industrial Development Authority of Mathews County, Virginia (the Mathews Authority), of its Revenue Bonds (the Bonds) in one or more series of bonds in an amount not to exceed \$17,500,000 to assist the Borrower in (a) financing renovations to the Borrower's facilities for the residence and care of the aged located in the County at 5700 Williamsburg Landing Drive, Williamsburg, Virginia, (b) paying the cost of issuing the Bonds, and (c) at the Borrower's election, in redeeming certain outstanding bonds which financed construction of the Borrower's facilities; and

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

WHEREAS, a public hearing with respect to the Bonds as required by Section 15.2-4906 of the Code of Virginia of 1950, as amended (the Virginia Code), and the Internal Revenue Code of 1986, as amended (the Code), was held by the Mathews Authority on behalf of Mathews County and the County of James City on November 22, 2011; and

WHEREAS, the Mathews Authority after such public hearing with respect to the Bonds adopted an approving resolution (the Mathews Authority Resolution) with respect to the Bonds on November 22, 2011; and

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

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

WHEREAS, the Bonds will finance or refinance property located in the County and the members of the Board constitute the highest elected governmental officials of the County; and

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

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

1. The Board concurs with the adoption of the Mathews Authority Resolution, and approves the issuance of the Bonds by the Mathews Authority to the extent required by the Code and Sections 15.2-4905 and 15.2-4906 of the Virginia Code.

2. The concurrence with the Mathews Authority Resolution, and the approval of the issuance of the Bonds, as required by the Code and Sections 15.2-4905 and 15.2-4906 of the Virginia Code, do not constitute an endorsement to a prospective purchasers of the Bonds of the creditworthiness of the Borrower or the projects being financed and refinanced and the Bonds shall provide that no political subdivision of the Commonwealth of Virginia, including the County, shall be obligated to pay the Bonds or the interest thereon or other costs incident thereto and neither the faith or credit nor the taxing power of the Commonwealth of Virginia or any political subdivision thereof, including the County, shall be pledged thereto.
3. The County, including its elected representatives, officers, employees and agents, shall not be liable and hereby disclaims all liability for any damage to the Borrower, direct or consequential, resulting from the Mathews Authority's failure to issue the Bonds for any reason.
4. This resolution shall take effect immediately upon its adoption.

Mary K. Jones
Chairman, Board of Supervisors

ATTEST:

Robert C. Middaugh
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 13th day of December, 2011.

IDAbonds4Landing_res

CERTIFICATION

The undersigned Clerk of the Board of Supervisors of James City County, Virginia hereby certifies that the foregoing constitutes a true, correct and complete copy of a Resolution duly adopted by the Board of Supervisors of James City County, Virginia at a meeting duly called and held on the 13th day of December, 2011 and during which a quorum was present and acting throughout, by the vote set forth below, and that such Resolution has not been repealed, revoked, rescinded or amended:

<u>Board Member</u>	<u>Present/Absent</u>	<u>Vote</u>
Bruce C. Goodson	_____	_____
James O. Icenhour	_____	_____
Mary K. Jones	_____	_____
James G. Kennedy	_____	_____
John J. McGlennon	_____	_____

WITNESS, my hand and the seal of the Board of Supervisors of James City County, Virginia, this 13th day of December 2011.

Clerk, Board of Supervisors of the County of
James City, Virginia

(SEAL)

SUMMARY OF PUBLIC HEARING WITH RESPECT TO
INDUSTRIAL DEVELOPMENT REVENUE BOND FINANCINGS BY
THE INDUSTRIAL DEVELOPMENT AUTHORITY OF MATHEWS COUNTY, VIRGINIA,
FOR WILLIAMSBURG LANDING, INC.

At 7:00 p.m. on November 22, 2011, the Chairman of the Industrial Development Authority of Mathews County, Virginia (the Authority), announced the commencement of a joint public hearing of the Authority on behalf of Mathews County and the County of James City in the historic Mathews Courthouse located at 27 Court Street, Mathews, Virginia 23109, on the issuance by the Authority, on the plan of finance of Williamsburg Landing, Inc. (the Borrower) for the issuance by the Authority of its Revenue Bonds in one or more series of bonds, in an amount not to exceed \$17,500,000 to assist the Borrower in (a) financing renovations to the Borrower's facilities for the residence and care of the aged at 5700 Williamsburg Landing Drive, Williamsburg, Virginia, and (b) paying the cost of issuing the bonds.

George L. Consolvo, on behalf of the Borrower and as Bond Counsel, described to the Authority the nature of the financing plan and answered questions presented by Authority Directors.

No comments being made by anyone from the public, the public hearing was closed at 7:15 p.m.

FISCAL IMPACT STATEMENT
SUBMITTED TO THE
INDUSTRIAL DEVELOPMENT AUTHORITY OF MATHEWS COUNTY, VIRGINIA

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

Name of applicant: Williamsburg Landing, Inc.

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

- | | | |
|----|---|--------------|
| 1. | Maximum amount of financing sought | \$17,500,000 |
| 2. | Estimated taxable value of facility's real property to be constructed in the locality | N/A |
| 3. | Estimated real property tax per year using present tax rates | N/A |
| 4. | Estimated personal property tax per year using present tax rates | N/A |
| 5. | Estimated merchant's capital tax per year using present tax rates | N/A |
| 6. | a. Estimated dollar value per year of goods that will be purchased from Virginia companies within the locality | N/A |
| | b. Estimated dollar value per year of goods that will be purchased from non-Virginia companies within the locality | N/A |
| | c. Estimated dollar value per year of services that will be purchased from Virginia companies within the locality | N/A |
| | d. Estimated dollar value per year of services that will be purchased from non-Virginia companies within the locality | N/A |
| 7. | Estimated number of regular employees on year round basis | N/A |
| 8. | Average annual salary per employee | N/A |

Dated: November 22, 2011

INDUSTRIAL DEVELOPMENT AUTHORITY OF
MATHEWS COUNTY, VIRGINIA

By: Richard H. Corns
Chairman

RESOLUTION OF
INDUSTRIAL DEVELOPMENT AUTHORITY
OF MATHEWS COUNTY, VIRGINIA

WHEREAS, there has been described to the Industrial Development Authority of Mathews County, Virginia (the Authority), the plan of finance of Williamsburg Landing, Inc. (the Borrower), whose principal place of business is located in the County of James City, Virginia, at 5700 Williamsburg Landing Drive, Williamsburg, Virginia 23185, for the issuance by the Authority of its Revenue Bonds (the Bonds), in one or more series of bonds and in an aggregate principal amount not to exceed \$17,500,000 to assist the Borrower in (a) financing renovations to the Borrower's facilities for the residence and care of the aged at 5700 Williamsburg Landing Drive, Williamsburg, Virginia, (b) paying the cost of issuing the Bonds, and (c) at the Borrower's election, in redeeming certain outstanding bonds which financed construction of the Borrower's facilities; and
; and

WHEREAS, the Borrower has elected to proceed with a plan of finance and refinance pursuant to which the Bonds will be issued in two series and privately placed with and held by TowneBank, the financial institution selected by the Borrower (the Lender); and

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

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

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

WHEREAS, there have been presented to this meeting the forms of the following documents and instruments (collectively hereinafter referred to on the Authority Documents) which the Authority proposes to execute to carry out the transactions described above:

(a) Bond Purchase and Financing Agreement (the 2011 Bond Purchase Agreement), dated as of November 1, 2011, among the Authority, the Borrower and the Lender,

together with the Borrower's \$10,000,000 promissory note (the 2011 Note) payable to the Authority; and

(b) Bond Purchase and Financing Agreement (the 2012 Bond Purchase Agreement (dated as of January 1, 2012, among the Authority, the Borrower and the Lender, together with the Borrower's \$7,500,000 promissory note (the 2012 Note) payable to the Authority; and

(c) The Authority's Revenue Bond (Williamsburg Landing Project), Series 2011 (the 2011 Bond), in registered form, payable, in the principal amount of \$10,000,000 and initially bearing interest, all as set forth therein.

(d) The Authority's Revenue Bond (Williamsburg Landing Project), Series 2012 (the 2012 Bond), in registered form, payable, in the principal amount of \$7,500,000 and initially bearing interest, all as set forth therein.

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

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

2. To assist the Borrower in such plan of finance and refinance, the Authority hereby agrees to undertake the issuance of the 2011 Bond and the 2012 Bond (collectively hereinafter referred to as the Bonds).

3. Concurrently with the issuance of the 2011 Bond, the Chairman or Vice Chairman of the Authority is hereby authorized and directed to execute and to deliver the 2011 Bond Purchase Agreement to the other parties thereto.

4. Concurrently with the issuance of the 2012 Bond, the Chairman or Vice Chairman of the Authority is hereby authorized and directed to execute and to deliver the 2012 Bond Purchase Agreement to the other parties thereto.

5. The Chairman or Vice Chairman of the Authority is hereby authorized and directed to execute, the Secretary or Assistant Secretary is authorized and directed to affix and attest the seal of the Authority, and either is authorized and directed to deliver the Bonds to the Lender upon the terms provided in the Bonds and the documents securing the Bonds; provided, however, that delivery of the Bonds shall not occur until (a) the Bonds have been approved by the Board of Supervisors of Mathews County, Virginia (the Board); and (b) the Board of Supervisors of the County of James City, Virginia, by resolution concurs with the adoption of this resolution in accordance with the Act. All terms of the Bonds are by this reference thereto incorporated herein as a part of this resolution.

6. The Chairman or Vice Chairman of the Authority is hereby authorized and directed to execute and deliver to the Lender an assignment of the 2011 Note and of the rights of the

Authority under the 2011 Bond Purchase Agreement (except for the reserved rights set forth therein).

7. The Chairman or Vice Chairman of the Authority is hereby authorized and directed to execute and deliver to the Lender an assignment of the 2012 Note and of the rights of the Authority under the 2012 Bond Purchase Agreement (except for the reserved rights set forth therein).

8. The Authority Documents shall be in substantially the forms presented at this meeting which are hereby approved, with such completions, omissions, insertions and changes as may be approved by the Chairman or Vice Chairman of the Authority, his execution to constitute conclusive evidence of his approval of any such omissions, insertions and changes.

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

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

11. All costs and expenses in connection with the financing, including the Authority's administrative fees, the fees and expenses of bond counsel, counsel for the Authority, counsel for the Borrower and counsel for the Lender, shall be paid from the proceeds of the Bonds or from funds of the Borrower. If for any reason the Bonds are not issued, it is understood that all such fees and expenses shall be paid by the Borrower and that the Authority shall have no responsibility therefor. The Authority hereby agrees to share its annual administrative fee on an equal basis with the County of James City, Virginia, or its Economic Development Authority and the officers of the Authority are hereby authorized and directed to execute and deliver an appropriate agreement to acknowledge and agree to such fee sharing arrangement.

12. The Authority hereby designates the 2011 Bond a "qualified tax-exempt obligation" within the meaning of Section 265(b)(3) of the Code for calendar year 2011.

13. The Authority hereby designates the 2012 Bond a "qualified tax-exempt obligation" within the meaning of Section 265(b)(3) of the Code for calendar year 2012.

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

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

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

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

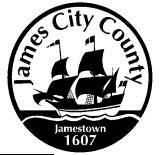
The undersigned hereby certifies that the above resolution was duly adopted by roll call vote by a majority of the directors of the Industrial Development Authority of Mathews County, Virginia, at a meeting duly called and held on November 22, 2011, and that such resolution is in full force and effect on the date hereof.

Dated: November 22 2011



Secretary, Industrial Development Authority
of Mathews County, Virginia

11318260_2.DOC



MEMORANDUM COVER

Subject: Comprehensive Community Corrections Act, the Pretrial Services Act, and the Establishment of the Colonial Community Criminal Justice Board.

Action Requested: Shall the Board approve the resolution that implements the Comprehensive Community Corrections Act, the Pretrial Services Act, and establishes the Colonial Community Criminal Justice Board?

Summary: The County has been a Participating Locality in the Colonial Community Criminal Justice Board (CCCJB), along with New Kent County, the City of Williamsburg, Charles City County, the City of Poquoson, and York County, since 1995 and serves as its administrative and fiscal agent. In order to maintain eligibility for funding from the Commonwealth, the Board needs to adopt a resolution formally implementing the Comprehensive Community Corrections Act and the Pretrial Services Act which direct the creation of the CCCJB.

The resolution also authorizes the County Administrator to enter into negotiations with the Participating Localities for a Governance Agreement which would update the existing agreement by setting forth in more detail specific administrative and fiscal responsibilities relating to Colonial Community Corrections (CCC), a local community-based probation and pretrial services agency serving the residents of the Participating Localities. The CCCJB is an advisory board to CCC.

Staff recommends approval of the attached resolution.

Fiscal Impact: None applicable.

FMS Approval, if Applicable: Yes ☐ No ☐

Assistant County Administrator

Doug Powell _____

County Administrator

Robert C. Middaugh _____

Attachments:

1. Memorandum
2. Resolution

Agenda Item No.: I-7

Date: December 13, 2011

ImplemntCCCJB_cvr

MEMORANDUM

DATE: December 13, 2011

TO: The Board of Supervisors

FROM: Lola Rodriguez Perkins, Assistant County Attorney

SUBJECT: Resolution Providing for the Implementation of the Comprehensive Community Corrections Act, the Pretrial Services Act, and the Establishment of the Colonial Community Criminal Justice Board

On July 1, 1995, pursuant to legislation enacted by the General Assembly namely, the Comprehensive Community Corrections Act (VA. CODE § 9.1-173 et seq.) and the Pretrial Services Act (VA. CODE § 19.2-152.2 et seq.), James City County (the "County"), in conjunction with the counties of Charles City, New Kent, and York, and the cities of Poquoson and Williamsburg (the "Participating Localities"), established the Colonial Community Criminal Justice Board (the "CCCJB"). The objective of CCCJB is to assist with the implementation of probation and pretrial services programs. CCCJB's membership is comprised of representatives from each participating locality and other persons as specifically delineated in state statute.

In order for the County to continue to be eligible to receive from the Commonwealth funds necessary for the continuation of community-based probation and pretrial services programs, the State Department of Criminal Justice Services now requires the County to pass a resolution documenting the implementation of a Community Criminal Justice Board pursuant to the above-referenced Acts.

The community-based probation and pretrial services programs are coordinated by Colonial Community Corrections (CCC), a cooperative regional agency, to which CCCJB is an advisory board. The Participating Localities entered into an agreement in August 1995, last revised in June 2008, for the management and administration of CCC.

The County has served as the fiscal and administrative agent for CCC since its inception and will continue to serve in this capacity. However, the agreement between Participating Localities needs to be updated to set forth more specifically the terms and conditions governing CCC, as well as the responsibilities of Participating Localities, in order to facilitate future operations and transitions in administration and fiscal responsibility. County staff has drafted a new Governance Agreement which is circulating among the Participating Localities for comment.

The revised Governance Agreement includes the following provisions:

- The Governance Agreement formalizes the agreement between the Participating Localities to establish a cooperative regional agency, Colonial Community Corrections, to provide community-based probation programs and pretrial services to be used by the courts to divert defendants and offenders from local correctional facilities.
- The Governance Agreement supersedes the Joint Exercise Powers Agreement (adopted on August 21, 1995) that was developed to originally establish the Colonial Community Criminal Justice Board (CCCJB).
- The Governance Agreement supplements Resolutions enacted by each Participating Locality relating to the establishment of the CCCJB.
- Participating localities may withdraw from the Agreement pursuant to § 9.1-179 of the Code of Virginia.
- The Agreement shall be effective upon the execution of it by the city managers and county administrators of all of the Participating localities.
- The Agreement formalizes/defines fiscal and administrative agent responsibilities.

- The Agreement formalizes the financial provisions related to CCC.

This resolution authorizes the County Administrator to complete negotiations and enter into a Governance Agreement with the Participating Localities.

Staff recommends adoption of this resolution.

Lola R. Perkins

CONCUR:

Leo P. Rogers

LRP/nb
ImplemntCCCJB_mem
Attachment

RESOLUTION PROVIDING FOR THE IMPLEMENTATION OF THE COMPREHENSIVE

COMMUNITY CORRECTIONS ACT, THE PRETRIAL SERVICES ACT, AND THE

ESTABLISHMENT OF THE COLONIAL COMMUNITY CRIMINAL JUSTICE BOARD

WHEREAS, the Virginia General Assembly has adopted legislation entitled the Comprehensive Community Corrections Act for Local Responsible Offenders, Article 9 (§ 9.1-173 et. seq.) of the *Code of Virginia*, 1950, as amended (the “CCC Act”), and the Pretrial Services Act, Article 5 (§ 19.2-152.2 et seq.) of the *Code of Virginia*, 1950, as amended (the “Pretrial Services Act” and, together with the CCC Act, the “Acts”); and

WHEREAS, §§ 9.1-174 and 19.2-152.2 of the *Code of Virginia*, 1950 as amended (the “Virginia Code”), require counties and cities approved for a jail project pursuant to § 53.1-82.1 to develop and establish services in accordance with the Acts; and

WHEREAS, §§ 9.1-178 and 19.2-152.5 of the Virginia Code require that each county and city establishing and operating local community-based probation and pretrial services establish a Community Criminal Justice Board (the “Board”), and in the case of multi-jurisdictional efforts, that each jurisdiction have an equal number of representatives or, in the alternative, mutually agree upon the number of appointments to the Board.

NOW, THEREFORE, BE IT RESOLVED that the Counties of Charles City, James City, New Kent, and York, and the Cities of Poquoson and Williamsburg (individually, a “Participating Locality” and together, the “Participating Localities”) agree to implement the services and programs required by the CCC Act and the Pretrial Services Act with the County of James City acting as the administrator and fiscal agent on behalf of the Participating Localities pursuant to § 9.1-183 of the Virginia Code.

BE IT FURTHER RESOLVED that the Colonial Community Criminal Justice Board (the “CCCJB”) is hereby established and the Participating Localities mutually agree to the following appointments to the CCCJB:

1. One representative from each Participating Locality;
2. Three Ninth Judicial Circuit judges, one of whom shall be drawn from a Juvenile and Domestic Relations Court, one of whom shall be drawn from a General District Court, and one of whom shall be drawn from a Circuit Court;
3. The Chief Magistrate of the Ninth Judicial Circuit;
4. One Commonwealth’s Attorney from one of the Participating Localities;
5. A public defender or an attorney experienced in the defense of criminal matters who is a licensed, active member of the Virginia State Bar and who regularly practices in the courts of the Participating Localities;
6. One sheriff from one of the Participating Localities. If no Sheriff is available, then the regional jail administrator responsible for the jail which serves the Participating Localities shall fill this appointment;
7. The chief law enforcement officer from one Participating Locality;

8. A Community Services Board Administrator from one Participating Locality; and
9. A representative of a local adult education program serving at least one Participating Locality.

BE IT FURTHER RESOLVED that this resolution supersedes and replaces all prior resolutions approved by the Participating Localities relating to the establishment of required services and the formation of the Colonial Community Criminal Justice Board.

BE IT FURTHER RESOLVED that this resolution is enacted in anticipation of the execution of a Governance Agreement between the Participating Localities setting forth in greater detail the administration of the Colonial Community Corrections program and the fiscal responsibilities of the Participating Localities, which Agreement the County Administrator is authorized to negotiate and execute.

Mary K. Jones
Chairman, Board of Supervisors

ATTEST:

Robert C. Middaugh
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 13th day of December, 2011.

ImplemntCCCJB_res



MEMORANDUM COVER

Subject: Case No. AFD-10-86-1-2011. Christenson's Corner AFD - Newman Road Addition

Action Requested: Shall the Board approve the ordinance that enrolls two properties located at 7664 and 7680 Newman Road into the Christenson's Corner Agricultural and Forestal District (AFD)?

Summary: Mr. Matt Abbitt has applied on behalf of Abbitt Management, LLC to enroll two properties located at 7664 and 7680 Newman Road into the Christenson's Corner AFD. The acreage of each of the parcels is 410.7 and 156.8 acres respectively (567.64 total acreage). The properties are mostly wooded, undeveloped, and located adjacent to properties already included in the Christenson's Corner AFD.

At its October 12, 2011, meeting, the AFD Advisory Committee voted 6-0 to recommend approval of this application.

At its November 2, 2011, meeting, the Planning Commission voted 6-0 to recommend approval of this application.

Staff recommends approval of the addition to the Christenson's Corner AFD with the conditions listed in the attached ordinance.

Fiscal Impact: N/A

FMS Approval, if Applicable: Yes ☐ No ☒

Assistant County Administrator

Doug Powell _____

County Administrator

Robert C. Middaugh _____

Attachments:

1. Staff Report
2. Ordinance
3. Agricultural Forestal District Location Map
4. Christenson's Corner 2010 Renewal Ordinance
5. Unapproved minutes from October 12, 2011, AFD Advisory meeting
6. Unapproved minutes from November 2, 2011, Planning Commission meeting

Agenda Item No.: J-1

Date: December 13, 2011

AGRICULTURAL AND FORESTAL DISTRICT 10-86-1-2011. Christenson's Corner AFD - Newman Road Addition
Staff Report for the December 13, 2011, Board of Supervisors Public Hearing

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

PUBLIC HEARINGS

AFD Advisory Committee
Planning Commission
Board of Supervisors

Building F Board Room; County Government Complex

October 12, 2011, 4:00 p.m.
November 2, 2011, 7:00 p.m.
December 13, 2011, 7:00 p.m.

SUMMARY FACTS

Applicant: Matt Abbitt of Abbitt Management, LLC

Land Owner: Hampton 41, LLC and Abbitt Land Co

Location: 7664 and 7680 Newman Road

Tax Map/Parcel Nos.: 2520100007 and 1630100011

Parcel Size: 410.79 acres and 156.85 acres (567.64 acres total)

Existing Zoning: A-1, General Agricultural

Comprehensive Plan: Rural Lands and Conservation Area

Surrounding AFD Land: The core of the Christenson's Corner Agricultural and Forestal District (AFD) is located directly north of the subject parcels.

STAFF RECOMMENDATION

Staff recommends that the Board of Supervisors approve the addition to the Christenson's Corner AFD with the conditions listed in the attached ordinance. At its October 12, 2011, meeting, the AFD Advisory Committee voted 6-0 to recommend approval of this application.

Staff Contact: Jose Ribeiro, Senior Planner Phone: 253-6685

Proposed Changes Made Since Planning Commission Meeting

No changes.

PROJECT DESCRIPTION

Mr. Matt Abbitt has applied on behalf of Abbitt Management, LLC to enroll two properties located at 7664 and 7680 Newman Road into the Christenson's Corner AFD. Both properties are mostly wooded and undeveloped. The AFD Advisory Committee raised a question as to whether these properties were previously part of the Christenson's Corner AFD. Staff researched the history of this district and found no reference of these parcels having been included in the AFD at any time since it was created in 1986.

Surrounding Land Uses and Development

The core of the Christenson's Corner AFD is located to the north of the subject parcels. Surrounding properties remain largely rural in nature. To the south, Skimino Creek functions as the natural border between the subject properties and York County. Camp Peary is located to the east and the North Cove subdivision is located west of the subject properties immediately across Newman Road.

COMPREHENSIVE PLAN

The Comprehensive Plan designates these parcels as Rural Lands and Conservation Area. Land Use Action 6.1.1 of the 2009 Comprehensive Plan states the County shall "support both the use value assessment and Agricultural and Forestal District programs to the maximum degree allowed by the *Code of Virginia*."

Analysis

The proposed addition meets the minimum area and proximity requirements for inclusion into the Christenson's Corner AFD. Approval of this application would add an additional 567.6 acres to the existing 562.2-acre district. This addition would be subject to the following existing conditions of the Christenson's Corner AFD:

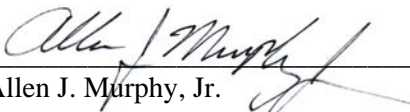
1. The subdivision of land is limited to 25 acres or more, except where the Board of Supervisors authorizes smaller lots to be created for residential use by members of the owner's immediate family, as defined in the James City County Subdivision Ordinance. Parcels of up to five acres, including necessary access roads, may be subdivided for the siting of communications towers and related equipment provided: a) the subdivision does not result in the total acreage of the District to drop below 200 acres; and b) the subdivision does not result in a remnant parcel of less than 25 acres.
2. No land outside the Primary Service Area (PSA) and within the AFD may be rezoned and no application for such rezoning shall be filed earlier than six months prior to the expiration of the District. Land within the AFD, may be withdrawn from the District in accordance with the Board of Supervisors' Policy Governing the Withdrawals of Property from AFDs, adopted September 28, 2010, as amended.
3. No Special Use Permit (SUP) shall be issued except for agricultural, forestal, or other activities and uses consistent with the State Code, Section 15.2-4301 et. seq., which are not in conflict with the policies of this District. The Board of Supervisors, at its discretion, may issue SUPs for wireless communications facilities on AFD properties which are in accordance with the County's policies and ordinances regulating such facilities.

RECOMMENDATION:

Staff recommends that the Board of Supervisors approve this addition to the Christenson's Corner AFD with the conditions listed in the attached ordinance. At its October 12, 2011, meeting, the AFD Advisory Committee voted 6-0 to recommend approval of this application. At its November 2, 2011, meeting, the Planning Commission recommended approval of the AFD addition by a vote of 6-0.

Jose Ribeiro

CONCUR:


Allen J. Murphy, Jr.

Afd-10-86-1-11.doc
JR/gb

ATTACHMENTS:

1. Ordinance
2. Christenson's Corner 2010 Renewal Ordinance
3. AFD Location Map
4. Unapproved minutes from October 12, 2011, AFD Advisory meeting
5. Unapproved minutes from November 2, 2011, Planning Commission meeting

ORDINANCE NO. _____

CASE NO. AFD-10-86-1-2011. CHRISTENSON'S CORNER AFD –

NEWMAN ROAD ADDITION

WHEREAS, a request has been filed with the Board of Supervisors of James City County, Virginia, (the “Board of Supervisors”) to add 567.64 acres of land owned by Hampton 41, LLC and Abbitt Land Co located at 7664 and 7680 Newman Road and identified as James City County Real Estate Tax Map/Parcels Nos. 2520100007, and 1630100011 to Agricultural and Forestal District (AFD) Case No. 10-86, which is generally known as the 562.2-acre “Christenson’s Corner Agricultural and Forestal District” (the “Application”); and

WHEREAS, at its October 12, 2011, meeting, the AFD Advisory Committee voted 6-0 to recommend approval of the Application; and

WHEREAS, a public hearing was advertised and held by the Planning Commission (the “Commission”) at its November 2, 2011, meeting, pursuant to Section 15.2-4314 of the Code of Virginia, 1950, as amended (the “Virginia Code”), after which the Commission voted 6-0 to recommend approval of the Application; and

WHEREAS, pursuant to Section 15.2-4214 of the Virginia Code, a public hearing was advertised and held by the Board of Supervisors.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby adds 567.64 acres owned by Hampton 41, LLC and Abbitt Land Co, as referenced herein to the 562.2 acres of the Christenson’s Corner AFD with the following conditions:

1. The subdivision of land is limited to 25 acres or more, except where the Board of Supervisors authorizes smaller lots to be created for residential use by members of the owner’s immediate family, as defined in the James City County Subdivision Ordinance. Parcels of up to five acres, including necessary access roads, may be subdivided for the siting of communications towers and related equipment provided: a) the subdivision does not result in the total acreage of the District to drop below 200 acres; and b) the subdivision does not result in a remnant parcel of less than 25 acres.
2. No land outside the Primary Service Area (PSA) and within the AFD may be rezoned and no application for such rezoning shall be filed earlier than six months prior to the expiration of the District. Land within the AFD, may be withdrawn from the District in accordance with the Board of Supervisors’ Policy Governing the Withdrawals of Property from AFDs, adopted September 28, 2010, as amended.
3. No Special Use Permit (SUP) shall be issued except for agricultural, forestal, or other activities and uses consistent with Section 15.2-4301 et. seq., which are not in conflict with the policies of this District. The Board of Supervisors, at its discretion, may issue SUPs for wireless communications facilities on AFD properties which are in accordance with the County’s policies and ordinances regulating such facilities.

Mary K. Jones
Chairman, Board of Supervisors

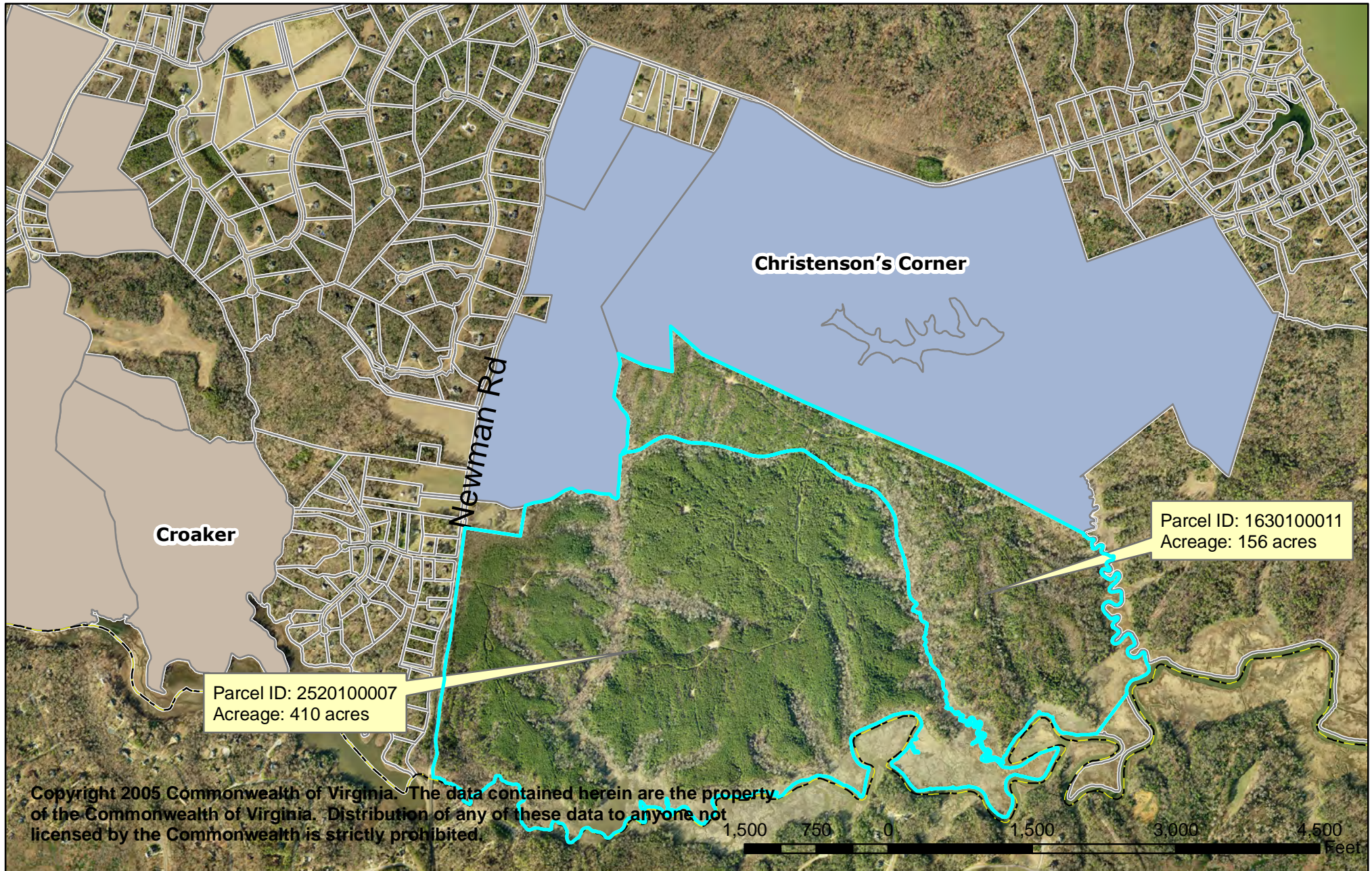
ATTEST:

Robert C. Middaugh
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 13th day of
December, 2011.

afd10-86-1-11_ord

AFD-10-86-1-2011, Christenson's Corner-Newman Road AFD Addition



ADOPTED

SEP 28 2010

ORDINANCE NO. 171A-6

**BOARD OF SUPERVISORS
JAMES CITY COUNTY
VIRGINIA**

AGRICULTURAL AND FORESTAL DISTRICT 10-86

CHRISTENSON'S CORNER 2010 RENEWAL

WHEREAS, James City County has completed a review of the Christenson's Corner Agricultural and Forestal District (AFD); and

WHEREAS, in accordance with Section 15.2-4311 of the Code of Virginia, 1950, as amended (the "Virginia Code") property owners have been notified, public meetings have been held, public hearings have been advertised, and public hearings have been held on the continuation of the Christenson's Corner AFD; and

WHEREAS, the AFD Advisory Committee, at its meeting on August 23, 2010, voted 9-0 to approve the application; and

WHEREAS, the Planning Commission, following its public hearing on September 1, 2010, concurred with the recommendation of staff and the AFD Advisory Committee and voted 7-0 to renew this district with the conditions listed below.

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

1. The Christenson's Corner AFD is hereby continued for a period of four years, one month, and three days to October 31, 2014, in accordance with the provisions of the Virginia AFD Act, Virginia Code Section 15.2-4300 et. seq.
2. The District shall include the following parcels provided, however, that all land within 25 feet of the road rights-of-way be excluded from the District to allow for possible road improvements:


<u>Owner</u>	<u>Parcel No.</u>	<u>Acres</u>
C.M. Chandler	1540100011	151.25
C.M. Chandler	1630100001	8.01
Stieffen Co, LLC and Stieffen, B. P.	1640100003	<u>402.89</u>
	Total:	<u>562.2</u>

3. Pursuant to the Virginia Code, Section 15.2-4312 and 15.2-4313, the Board of Supervisors requires that no parcel in the Christenson's Corner AFD be developed to a more intensive use without prior approval of the Board of Supervisors. Specifically, the following restrictions shall apply:
 - a. The subdivision of land is limited to 25 acres or more, except where the Board of Supervisors authorizes smaller lots to be created for residential use by members of the owner's immediate family, as defined in the James City County Subdivision Ordinance. Parcels of up to five acres, including necessary access

roads, may be subdivided for the siting of Wireless Communication Facilities (WCF), provided: a) The subdivision does not result in the total acreage of the District to drop below 200 acres; and b) the subdivision does not result in a remnant parcel of less than 25 acres.

- b. No land outside the PSA and within the AFD may be rezoned and no application for such rezoning shall be filed earlier than six months prior to the expiration of the district. Land outside the PSA, and within the AFD, may be withdrawn from the District in accordance with the Board of Supervisors' policy pertaining to Withdrawal of Lands from Agricultural and Forestal Districts Outside the Primary Service Area, adopted September 24, 1996, as amended. Land inside the PSA, and within the AFD, may be withdrawn from the District in accordance with the Board of Supervisors' policy pertaining to Withdrawal of Lands from Agricultural and Forestal Districts Within the Primary Service Area, adopted September 24, 1996, as amended.
- c. No Special Use Permit (SUP) shall be issued except for agricultural, forestal, or other activities and uses consistent with Virginia Code, Section 15.2-4301 et. seq., which are not in conflict with the policies of this District. The Board of Supervisors, at its discretion, may issue SUPs for wireless communications facilities on AFD properties which are in accordance with the County's policies and ordinances regulating such facilities.

ATTEST:


Robert C. Misdaugh
Clerk to the Board


James G. Kennedy
Chairman, Board of Supervisors

<u>SUPERVISOR</u>	<u>VOTE</u>
MCGLENNON	AYE
GOODSON	AYE
ICENHOUR	AYE
JONES	AYE
KENNEDY	AYE

Adopted by the Board of Supervisors of James City County, Virginia, this 28th day of September, 2010.

AFD10-86Christenson_res

UNAPPROVED MINUTES OF THE AGRICULTURAL AND FORESTAL
ADVISORY COMMITTEE OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD
ON THE 12th DAY OF OCTOBER, TWO THOUSAND AND ELEVEN, AT 4:00 P.M.
AT THE HUMAN SERVICES BUILDING, 5249 OLDE TOWNE ROAD,
WILLIAMSBURG, VIRGINIA.

1. Roll Call:

Members Present

Mr. Hitchens
Ms. Smith
Mr. Ford
Mr. Bradshaw
Ms. Garrett
Mr. Icenhour

Also Present

Mr. Luke Vinciguerra (Planning)
Mr. Jose Ribeiro (Planning)

Absent

Mr. Harcum
Mr. Abbott
Mr. Richardson

2. New Business:

• **AFD Addition – Christenson’s Corner Newman Road Addition**

Ms. Garrett asked if there were minutes from the previous meeting, Mr. Ribeiro responded he would look into if there were any previous meeting minutes that needed to be adopted.

Mr. Ford asked when this property was withdrawn from the AFD. Mr. Ribeiro responded he wasn’t aware of the parcel ever being in an AFD but would look into it. Mr. Ford questioned what the “LLC” was as he thought the property was owned by two brothers.

Mr. Icenhour stated these parcels may have been in AFD before the 2010 renewal. Mr. Bradshaw responded that the last AFD renewal was an “opt-out.” Properties were automatically renewed in the AFD unless the applicant requested otherwise.

Mr. Ford moved for approval.

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

Mr. Ribeiro stated the information requested will be addressed in the Planning Commission and Board reports.

Ms. Garrett asked if there was any other AFD related material that the committee would

need to address in the near future. Mr. Ribeiro responded there were no other applications being processed.

Mr. Bradshaw noted there was an effort to get approval for smaller AFDs through the General Assembly and stated this could benefit some property owners in the County. Mr. Icenhour stated that the General Assembly restricts the number of bills a delegate can sponsor each year and was the cause of the hold up.

The meeting was adjourned at 4:20 p.m.

Ms. Loretta Garrett, Chair

Handwritten signature of José Ribeiro, consisting of two circles. The first circle contains the letters 'JR' and the second circle contains the letters 'Ribeiro'.

José Ribeiro, Senior Planner

A REGULAR MEETING OF THE PLANNING COMMISSION OF THE COUNTY OF JAMES CITY, VIRGINIA, WAS HELD ON THE SECOND DAY OF NOVEMBER, TWO-THOUSAND AND ELEVEN, AT 7:00 P.M. IN THE COUNTY GOVERNMENT CENTER BOARD ROOM, 101-F MOUNTS BAY ROAD, JAMES CITY COUNTY, VIRGINIA.

1. ROLL CALL

Planning Commissioners

Present:

Jack Fraley

Joe Poole, III

Rich Krapf

Mike Maddocks

Chris Basic

Tim O'Connor (late)

Absent:

Al Woods

Staff Present:

Allen Murphy, Director of Planning/Assistant
Development Manager

Adam Kinsman, Deputy County Attorney

Jose Ribeiro, Senior Planner

Jason Purse, Senior Planner II

Mr. Jack Fraley called the meeting to order at 7:00 p.m.

2. PUBLIC COMMENT

Mr. Fraley opened the public comment period.

There being none, Mr. Fraley closed the public comment period.

3. MINUTES – OCTOBER 5, 2011

Mr. Joe Poole moved to approve the minutes.

In a unanimous voice vote, the minutes were approved (5-0; absent, Woods, O'Connor).

4. COMMITTEE AND COMMISSION REPORTS

A. DEVELOPMENT REVIEW COMMITTEE (DRC)

Mr. Poole stated that the DRC met on October 26. The DRC reviewed Case No. C-0039-2011, Freedom Park Ropes Course Master Plan. The DRC voted 4-0, to find the ropes course consistent with the master plan.

Mr. Rich Krapf moved for approval of the DRC report.

In a unanimous voice vote, the report was approved (5-0; absent, Woods, O'Connor).

B. REGIONAL ISSUES COMMITTEE/OTHER COMMISSION REPORTS

Mr. Krapf stated that the Regional Issues Committee met on October 25. He stated that the committee discussed the Historic Triangle Collaborative Vision Project. He stated that the project was undertaken by the three jurisdictions, York County, James City County (JCC) and the City of Williamsburg to coordinate comprehensive plan efforts. He stated that the expectation is that this will serve as a catalyst for community and organizational discussions that will lead to a long range vision for the Historic Triangle. He stated that there was also an update provided by the Greater Williamsburg Chamber and Tourism Alliance. He stated that a website has been established by the Chamber; it can be found at: www.christmasinwilliamsburg.com. He stated that the planning staff from each jurisdiction has been meeting to discuss land use map categories. He stated that the Hampton Roads Transit is analyzing transportation issues for the area, and regional forums are being planned for early next year as well as joint planning commission sessions.

5. PUBLIC HEARINGS

C. AFD-10-86-1-2011, Christenson's Corner AFD Addition, Newman Road

Mr. Jose Ribeiro presented the staff report stating that Mr. Matt Abbitt of Abbitt Management LLC has applied to enroll two properties located along Newman Road into the Christenson's Corner Agricultural and Forestal District (AFD).

Mr. Fraley opened the public hearing. Seeing no one, Mr. Fraley closed the public hearing.

Mr. Krapf made a motion to approve the addition to Christenson's Corner AFD subject to the existing conditions listed in the staff report.

In a roll call vote, the Commission recommended approval (6-0; absent, Woods).

6. PLANNING DIRECTOR'S REPORT

Mr. Allen Murphy stated that he was asked to update the commission on the Transfer of Development Rights (TDR's) market analysis and final recommendation made to the BOS. He stated that staff's final recommendation was to not pursue the TDR program at this time due to five key concerns. He stated that staff's greatest concern related to the high transfer ratios, which would be much greater than changing one unit for one unit. He stated that reducing or waiving proffers for future rezonings in order to make the transfer more feasible would potentially shift county funding from the private sector to the public sector. He stated that the introduction of floor-area ratios in Commercial and Industrial Ordinances where they do not currently exist was seen as problematic. He stated that there would be an imbalance between the small amount of potentially adequate receiving areas and the larger amount available in sending areas. He stated that the implementation strategy that was highly recommended would require TDR's. He stated that this is not permitted currently under state code. He stated that the BOS

wants to continue the discussion on TDR's before making a final decision. He stated that the BOS intends on having a conversation regarding rural lands following a decision on TDR's after January 2012.

7. COMMISSION DISCUSSIONS AND REQUESTS

Mr. Fraley asked staff to consider amending the Ordinance to treat mausoleums and cemeteries differently from one another. He stated that the impacts from a mausoleum are different from those of a cemetery.

Mr. Poole stated his support for such a change.

Mr. Tim O'Connor asked if there was more information regarding the statutes referenced during the last meeting.

Mr. Adam Kinsman stated that he had emailed the Planning Commissioners earlier that day. He stated that he had written a legal opinion on the state code, and that he had received a letter from St. Bede's legal counsel regarding his legal opinion on the state code..

Mr. Poole asked for an update regarding the Commercial Districts Ordinances.

Mr. Murphy stated that this will be on the November 8 BOS meeting agenda.

Mr. Poole made a recommendation to further discuss the public comment period during the organizational meeting due to take place in January or February.

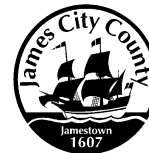
8. ADJOURNMENT

Mr. Kraft moved to adjourn.

The meeting was adjourned at 7:23 p.m.

Jack Fraley, Chairman

Allen J. Murphy, Secretary



MEMORANDUM COVER

Subject: Case No. Z-0001-2011. Forest Heights, Neighbors Drive, and Richmond Road Improvements

Action Requested: Shall the Board approve the attached resolution to rezone the Forest Heights, Neighbors Drive, and Richmond Road project area from R-2, General Residential, to MU, Mixed Use?

Summary: Within the 47.1-acre rezoning area, approximately 27.4 acres will be reconfigured through a combination of boundary line adjustments and subdivision to accommodate single-family detached residences. The Salvation Army use (approximately 19.7 acres) is also located within the rezoning area and is proposed to contain new offices, community meeting space and gym, and other accessory uses associated with the Salvation Army's mission.

The proposed project will result in many significant benefits, including bringing nonconforming parcels into conformance with the zoning ordinance; many improvements to stormwater, road, and utility infrastructure; and housing rehabilitation and construction.

Staff finds the proposal to have substantial benefits and minimum additional impacts. It is compatible with the 2009 Comprehensive Plan. Staff recommends approval of this application and acceptance of the voluntary proffers.

Fiscal Impact: N/A

FMS Approval, if Applicable: Yes ☐ No ☒

Assistant County Administrator

Doug Powell _____

County Administrator

Robert C. Middaugh _____

Attachments:

1. Memorandum of Acquisition of Property in the Forest Heights Neighborhood Improvement Project Area
2. Planning Commission Minutes
3. Location Map
4. Proffers
5. Salvation Army Building Elevation
6. Master Plan (previously provided)
7. Community Impact Statement (previously provided)
8. Resolution

Agenda Item No.: J-2

Date: December 13, 2011

**REZONING-0001-2011. Forest Heights, Neighbors Drive, and Richmond Road Improvements
Staff Report for the December 13, 2011, Board of Supervisors Public Hearing**

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

PUBLIC HEARINGS

Planning Commission:

Board of Supervisors:

Building F Board Room; County Government Complex

September 7, 2011, 7:00 p.m.

November 22, 2011, 7:00 p.m. (deferred by the Board)

December 13, 2011, 7:00 p.m.

SUMMARY FACTS

Applicant:

This rezoning was initiated by a Board of Supervisors resolution dated July 12, 2011, in accordance with Section 24-13 of the Zoning Ordinance. The project is represented by Ms. Marion Paine of the County's Office of Housing and Community Development ("OHCD").

Land Owners:

The attached resolution contains a list of property land owners (Attachment 8).

Proposal:

Rezone the properties to allow for property line adjustments that will facilitate infrastructure improvements and bring the lots into conformance with the Zoning Ordinance.

Location:

The project is located along the south side of Richmond Road between Premium Outlets and Villages at Westminster. Attachment 2 shows a location map.

Project Acreage:

47.1 acres

Existing Zoning:

R-2, General Residential

Proposed Zoning:

MU, Mixed Use

Comprehensive Plan:

Low Density Residential (majority) and Moderate Density Residential

Primary Service Area:

Inside

STAFF RECOMMENDATION

Staff finds the proposal to have substantial benefits and minimum additional impacts, and to be compatible with the 2009 Comprehensive Plan. Staff recommends approval of this application and acceptance of the voluntary proffers.

Staff Contact: Ellen Cook, Senior Planner

Phone: 253-6685

PLANNING COMMISSION RECOMMENDATION

At its September 7, 2011 meeting, the Planning Commission recommended approval of this application by a vote of 6-0.

Proposed Changes Made Since Planning Commission Meeting

Subsequent to the September 7, 2011, Planning Commission meeting, two proffers have been slightly amended. The first is the shared stormwater agreement proffer (6) which, at the advice of the County Attorney's office, was amended to remove sentences with details that can be worked out in the shared stormwater agreement itself. The second is the architectural elevations proffer (4), which was amended to include a reference to the building elevation title and date.

Proffers: Are signed and submitted in accordance with the James City County Proffer Policy (Attachment 3).

PROJECT DESCRIPTION

Within the 47.1-acre rezoning area, approximately 27.4 acres will be reconfigured through a combination of boundary line adjustments and subdivision to accommodate single-family detached residences. The reconfigured single-family residential area includes a portion of the future Salvation Army site (through land exchanges), Forest Heights Road, Neighbors Drive, and properties from 5939 Richmond Road to 6059 Richmond Road.

The Salvation Army use (approximately 19.7 acres) is also located within the rezoning area, just to the north of Forest Heights Road. The site is proposed to contain new offices, community meeting space and gym, and other accessory uses associated with the Salvation Army's mission. The Salvation Army has provided a building elevation, which is included as Attachment 4 and is also referenced in proffer 4. The Salvation Army entrance is planned to be located on Forest Heights Road.

The proposed project will result in many significant benefits. Rezoning of the area to Mixed Use provides the flexibility required to bring the many nonconforming parcels into conformance with the zoning ordinance. Infrastructure improvements that are planned include: addressing currently uncontrolled and untreated drainage and stormwater; upgraded water and sewer mains; realignment, widening and pavement of Forest Heights Road and Neighbors Drive, safety improvements to Richmond Road, addition of open space and pedestrian amenities; and provision of streetlights and street trees. The proposed project will also include rehabilitation of homes (including energy audits and energy efficiency improvements), construction of homes to provide homeownership opportunities for low- and moderate-income households, and demolition of vacant, dilapidated dwellings.

Finally, to address future development, the master plan (Attachment 5) shows areas for potential future residential development on the Salvation Army site. The road improvements currently proposed have been designed to accommodate this additional traffic, but since the details on exact number, type, size and location of the units not currently known, no approval is being sought at this time. Any additional residential units in this location would require a master plan amendment to be approved by the Board of Supervisors.

OHCD has had many meetings to solicit neighborhood input and has worked directly with property owners on proposed boundary line adjustment paperwork. Additional information about these efforts is on page 7 of the Community Impact Statement (Attachment 6). The project is expected to be completed in two phases, starting with Forest Heights Road for which a Community Development Block Grant has already been awarded, followed by Neighbors Drive, for which OHCD is currently engaged in the process that is expected to lead to awarding of the second grant in 2012 or 2013. OHCD's most recent efforts to acquire property in the rezoning area are summarized in Attachment 7.

Zoning Ordinance Consideration Items

Due to the redevelopment nature of this project, this project will need several modifications and exceptions to applicable Zoning Ordinance requirements. As part of its motion to recommend approval of this case, the Planning Commission approved the perimeter buffer reduction described below.

Perimeter Buffer Reduction.

Section 24-527 of the Zoning Ordinance requires a 50-foot buffer from existing public rights-of-way, and a 50-foot perimeter buffer in a mixed use district. The majority of the rezoning area meets these requirements. However, in three locations there are existing residences located within the buffer area and a reduction is sought in recognition of this fact. The first location is the perimeter buffer on 5939 Richmond Road at the east end of the project. The second location is the right-of-way buffer along the front of 6039, 6043, 6047, 6051, and 6059 Richmond Road, as well as the perimeter buffer along the side of 6059 Richmond Road at the west end of the project. The third location is at the rear (southern end) of the project at 170, 173, and 174 Forest Heights Road, where there are two existing platted lots and a JCSA pump station. Staff believes that the rezoning project meets the reduction criteria in the ordinance by virtue of item (c)(3), the unusual conditions of the property in that the structures and lots have been existing in their current locations for many years. Since this area is not designated Mixed Use on the Comprehensive Plan, the reduction also has to meet the criteria of not adversely impacting the public health, safety or welfare, and in being compatible with adjacent properties; staff finds that the proposal meets these criteria.

Road Frontage Exception:

Section 19-40 of the Subdivision Ordinance requires that “each lot shall abut and have access to a proposed public street to be dedicated by the subdivision plat or to an existing publically dedicated street, unless otherwise specifically provided for in this chapter.” It is likely that several lots at the end of Forest Heights Road would be accessed via a shared driveway, but that the lots themselves would not have road frontage. While the area of these lots currently fronts on the existing gravel road, the proposed alignment of the paved public Forest Heights Road would terminate earlier, to preserve the opportunity of connecting to the rear of the Salvation Army property in a manner that avoids disturbing environmentally sensitive areas. Staff is supportive of this exception; however, this item will be considered at the development plan level once final details are known so no action is requested at this time.

PUBLIC IMPACTS

Archaeology

A Phase IA cultural resources assessment of the rezoning area was conducted in the fall of 2010. The assessment concluded that the houses do not appear to be potentially eligible for the National Register of Historic Places and recommended no further architectural survey work. The Phase IA includes a description of areas of high archaeological probability and recommends these areas for Phase I archaeological testing.

Proffer:

- Proffer #5. Preparation of Phase I Archeology study(ies) for a portion of the site identified in the Phase IA study.

Engineering and Resource Protection

Stormwater drainage for the area along Forest Heights Road and Neighbors Drive will be collected by a new storm sewer system installed in the roadways. Additional swales along lot lines will also be provided to minimize or eliminate cross-lot drainage issues currently observed. Stormwater will be transported through the storm sewer system to one of two Best Management Practices (BMPs). Low Impact Development (LID) techniques will also be incorporated into the design since Special Stormwater Criteria applies to this site.

Watershed: Powhatan Creek

Proffer:

- Proffer #6. A Shared Maintenance Agreement will be developed to provide for routine and non-routine maintenance of the stormwater basin at 6001 Richmond Road.

Engineering and Resource Protection Staff Comments: Staff has reviewed the Community Impact Statement and Master Plan and concurs with the approach presented, while providing information that will need to be addressed at the development plan design stage.

Public Utilities

Most of the rezoning area is already served by public water and sewer. As part of the project, the water mains will be upgraded, and better circulation will be achieved by creating a loop in the distribution system between Forest Heights Road and Neighbors Drive.

Proffer:

- Proffer #7. Water conservation standards will be reviewed and approved by the JCSA.
- Proffer #1. EarthCraft, or equivalent, water conservation measures shall apply to County-owned lots and to rehabilitations on County property.

Staff Comments: Staff has reviewed the Community Impact Statement and Master Plan and concurs with the approach presented, while providing information that will need to be considered at the development plan design stage.

Transportation

Trip generation for this project is below the threshold for preparation of a full traffic study. The summary study included in the Community Impact Statement projects average daily trips of approximately 1,270-1,586 including those from the Salvation Army facility and possible future residential development at the end of Forest Heights Road. This equates to worst case peak hour traffic of 110-138 vehicles per hour entering the rezoning area during the PM peak of Richmond Road.

2007 County Traffic Counts: On Richmond Road from Route 646, Lightfoot Road, to Olde Towne Road there were 24,646 trips.

2035 Daily Traffic Volume Projected (from 2009 Comprehensive Plan): On Richmond Road between Route 199 and the City of Williamsburg Line, 45,325 average annual daily trips (AADT) are projected – this is in the category of warranting improvement (from 4 to 6 lanes). However, Richmond Road is discussed more specifically in later Comprehensive Plan text, where it states that widening should be avoided.

Road Improvements: Proposed improvements to be made to Richmond Road include a 200-foot-long turn lane and 200-foot-long taper for westbound Richmond Road traffic entering Forest Heights Road, a right-turn taper for eastbound Richmond Road traffic entering Forest Heights Road, and elimination of the existing median crossover approximately 300 feet south of Neighbors Drive to correct a safety hazard. To prevent incorrect and unsafe turns in and out of Neighbors Drive, a concrete “pork chop” directional island will be installed. Finally, both Forest Heights Road and Neighbors Drive are planned for realignment, widening and paving. The final alignment for Neighbors Drive will be determined during the course of OHCD’s second planning grant. These improvements are shown on the master plan.

VDOT Comments: VDOT concurred with the improvements to Richmond Road and Forest Heights Road, and noted that the proposed project improves access management along this section of Richmond Road. The final alignment of Neighbors Drive will need to meet applicable VDOT regulations; OHCD anticipates consultation with VDOT will occur during the planning process. VDOT’s comment letter provides additional information that will need to be addressed at the development plan design stage.

Fiscal

The Fiscal Impact Analysis found that the project initially creates a positive fiscal impact by investing in infrastructure and housing improvements to increase taxable value of the properties in the project area. However, as for nearly all residential projects, new housing on the remaining vacant lots will push the expected fiscal impact from positive to negative. The Fiscal Impact Analysis is included as Appendix A in the Community Impact Study.

Housing

As noted above, the proposed project will include rehabilitation of homes (including energy audits and energy efficiency improvements), construction of homes to provide homeownership opportunities for low- and moderate-income households, and demolition of vacant dilapidated dwellings.

Proffers:

- Proffer 2. A minimum of six housing units will be made available to low- and moderate-income households, either through Habitat for Humanity or through County programs.

Public Facilities

This project is located within the Norge Elementary School, Toano Middle School and Warhill High School districts. Under the proposed Master Plan, the same overall number of lots is maintained. It is expected that houses will be built on the vacant lots once the infrastructure improvements are made, generating a total of approximately ten additional school children. Per the adequate public school facilities test adopted by the Board of Supervisors, all special use permit or rezoning applications should meet the test for adequate public school facilities. The test adopted by the Board uses the design capacity of a school, while the Williamsburg - James City County schools recognize the effective capacity as the means of determining student capacities. As shown in the table below, all three schools are projected to have sufficient capacity.

School	Design Capacity	Effective Capacity	Enrollment (2010)	Projected Students Generated	Enrollment + Projected Students
Norge	760	695	517	Approx. 5	522
Toano	775	822	678	Approx. 2	680
Warhill	*	1,441	1,149	Approx. 3	1,152

* The WJCC School System no longer lists or uses design capacity in its documents.

Parks and Recreation

The existing Forest Heights Road and Neighbors Drive do not have any pedestrian accommodations or recreation areas. The acreage of the passive open space park on Forest Heights Road, and the length of the multi-use trail along Richmond Road, meets the Parks and Recreation Master Plan guidance. Salvation Army representatives have indicated that additional recreation opportunities will be available on the Salvation Army site, once the facility is constructed. Sidewalks will be provided along one side of both improved Forest Heights and Neighbors Drive.

COMPREHENSIVE PLAN

The majority of the project area is designated Low Density Residential (LDR) in the James City County 2009 Comprehensive Plan, with some area at the front of the western-most lots on Richmond Road designated Moderate Density Residential. LDR recommended uses include schools, churches, community-oriented facilities, very limited commercial establishments, and single-family homes. The Comprehensive Plan also recommends projects be located inside the Primary Service Area, provide affordable and workforce housing, and minimize impact on major roads by limiting access points.

The proposed project is located within the Primary Service Area, and consists of uses and densities that are in accordance with the recommendations of the Comprehensive Plan. Furthermore, the project will minimize impacts on major roads by limiting the access point to Salvation Army to Forest Heights Road. Staff finds the proposed development to be consistent with the 2009 Comprehensive Plan.

RECOMMENDATION

Staff finds the proposal to have substantial benefits and minimum additional impacts, and to be generally compatible with the 2009 Comprehensive Plan. Staff recommends approval of this application and acceptance of the voluntary proffers.


Ellen Cook

CONCUR:

Allen J. Murphy, Jr.

EC/gb
Z-1-11improve2.doc

ATTACHMENTS:

1. Planning Commission Minutes
2. Location map
3. Proffers
4. Salvation Army building elevation, prepared by Guernsey Tingle Architects
5. Master plan (previously provided with the November 22, 2011, Board packet)
6. Community Impact Statement (previously provided with the November 22, 2011, Board packet)
7. Memorandum of Acquisition of Property in the Forest Heights Neighborhood Improvement Project Area
8. Resolution

MEMORANDUM

DATE: December 13, 2011

TO: The Board of Supervisors

FROM: A. Vaughn Poller, Housing and Community Development Administrator

SUBJECT: Acquisition of Property in the Forest Heights Neighborhood Improvement Project Area

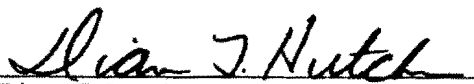
To complete the Forest Heights Neighborhood Improvement Project as illustrated in the Concept Plan, the County needed to purchase 11 parcels and obtain Boundary Line Adjustment Agreements for 25 parcels. Eight of the 11 parcels to be purchased have closed and are now owned by the County. The remaining three parcels are under contract to be sold to the County.

Twenty-three of the parcels are subject to signed Option Agreements for boundary line exchanges. One remaining parcel belongs to the Salvation Army, which provided the County Attorney's office with a written agreement to exchange properties contingent on receiving an appraisal. The appraisal was provided to the Salvation Army, and we are waiting for the signed agreement to be delivered. The final parcel was subject to a signed Option Agreement; however, the lender subsequently foreclosed on the property. We are in touch with the foreclosing lender and have made a firm offer to purchase the property for its appraised value. The foreclosure is still being processed by the lender, and the lender's agent is not yet able to sell the property. The agent has assured us that he will review our offer as soon as he is authorized.

A list of the property addresses and their status is attached as Exhibit A.


A. Vaughn Poller

CONCUR:


Diana F. Hutchens

AVP/gb
FH-AcqOfProp_mem

Attachment

EXHIBIT A

Status of the Property Purchases and Boundary Line Exchange Agreements in the Forest Heights Neighborhood Improvement Project Area

PROPERTY PURCHASES

100 Forest Heights Road	Closed
101 Forest Heights Road	Closed
113 Forest Heights Road	Under Contract
116 Forest Heights Road	Under Contract
119 Forest Heights Road	Closed
120 Forest Heights Road	Under Contract
161 Forest Heights Road	Closed
127 Neighbors Drive	Closed
130 Neighbors Drive	Closed
131 Neighbors Drive	Closed
6001 Richmond Road	Closed

PROPERTIES REQUIRING BOUNDARY LINE EXCHANGES

6015 Richmond Road	Waiting for final Agreement from Salvation Army
112 Forest Heights Road	Agreement Signed
115 Forest Heights Road	Agreement Signed
124 Forest Heights Road	Agreement Signed
125 Forest Heights Road	Agreement Signed
127 Forest Heights Road	Agreement Signed
128 Forest Heights Road	Agreement Signed
129 Forest Heights Road	Agreement Signed
132 Forest Heights Road	Agreement Signed
133 Forest Heights Road	Agreement Signed
136 Forest Heights Road	Agreement Signed
137 Forest Heights Road	Agreement Signed
138 Forest Heights Road	Agreement Signed
141 Forest Heights Road	Agreement Signed
142 Forest Heights Road	Agreement Signed
145 Forest Heights Road	Agreement Signed
146 Forest Heights Road	Agreement Signed by Owner after which the property was sold at foreclosure. We are waiting for the REO agent for the foreclosing bank to be given authority to sell the property, at which time he will consider our offer to purchase.
149 Forest Heights Road	Agreement Signed
153 Forest Heights Road	Agreement Signed

PROPERTIES REQUIRING BOUNDARY LINE EXCHANGES - Continued

154 Forest Heights Road	Agreement Signed
158 Forest Heights Road	Agreement Signed
165 Forest Heights Road	Agreement Signed
166 Forest Heights Road	Agreement Signed
169 Forest Heights Road	Agreement Signed
162 Forest Heights Road	Agreement Signed

ExhibitA_FH-AcqOfProp.doc

APPROVED MINUTES OF THE
SEPTEMBER 7, 2011 PLANNING COMMISSION MEETING

Z-0001-2011, FOREST HEIGHTS ROAD, NEIGHBORS DRIVE AND RICHMOND ROAD IMPROVEMENTS

Ms. Ellen Cook stated the rezoning is a neighborhood improvement project coordinated by the Housing and Community Development staff. She stated 27.5 acres will be reconfigured using subdivisions and boundary line adjustments and will contain single family detached homes. The project also includes the site of a future Salvation Army building. The rezoning to Mixed Use gives the County enough flexibility to bring all of the parcels into Zoning Ordinance conformity. Infrastructure improvements will include stormwater facilities, improved water and sewer mains, improvement and realignment of Forest Heights Road, new pedestrian accommodations, streetlights, street trees, and open space. Dilapidated homes will be improved or demolished. Staff requests a buffer waiver to accommodate three residences within the perimeter buffer. Staff recommends approval of the rezoning and the setback waiver.

Mr. Basic asked staff to elaborate on the Salvation Army building footprint not being shown on the master plan.

Ms. Cook stated the master plan layout shows the general location of future uses. She stated the Salvation Army building will not exceed 30,000 square feet, its entrance will front Forest Heights Road, and staff has a copy of building elevations. Although the Salvation Army has not yet presented a site plan, staff is comfortable with the master plan as presented.

Mr. Al Woods asked if the impetus for the proposal was community or agency driven.

Ms. Cook stated Ms. Marion Paine with Housing and Community Development could better answer that question.

Ms. Marion Paine stated the Forest Heights community tried to have its own roads with the "Dirt Streets" program about 10 years ago, but it was not possible at the time. She stated that while Housing staff was looking for neighborhoods to improve, it met with Forest Heights' residents to see if the community still wanted road improvements. Housing staff has been working closely with the neighborhood since. The impetus for the project is coming from both community and agency.

Mr. Woods asked whether there was a groundswell of interest from the neighborhood.

Ms. Paine stated the residents had come to the County ten years ago with their proposal. She stated when the County asked them if they were still interested, they said yes.

Mr. Woods asked about the timetables attached to the block grant.

Ms. Paine stated funding expires in January 2013.

Mr. Woods asked if the County could not fund the project without the grant.

Ms. Paine stated that was true.

Mr. Woods asked about the scope of the funding.

Mr. Fraley asked if every involved property owner had agreed to the proposal. He asked, if so, does the County have documentation of those agreements.

Ms. Paine stated she had signed agreements from all but four property owners. The County is building houses for two of the four, and expects to work out agreements with them before the Board acts on the rezoning. They are reluctant to agree to sell their houses until they know what the County is building for them. Both of those owners support the project. One of the four lives out of state, and was difficult to contact, but the County now expects to have her agreement soon. The final owner has expressed interest, and the County is negotiating a dollar amount for her property.

Mr. Fraley stated the Board had wanted agreements with the final four property owners before bringing the proposal to them.

Ms. Paine stated that was correct. She stated staff does not intend to take the proposal before the Board before reaching agreements with all of the property owners.

Mr. Fraley asked about the intent to preserve open space through the formation of a homeowners' association.

Ms. Paine stated existing homeowners cannot be forced to join an association to maintain common areas. The newly built homes will be part of an association, and existing owners will be encouraged to join. The County has agreed to shared maintenance of the stormwater pond with the Salvation Army. Existing homeowners will gain use of the common areas if they join the HOA.

Mr. Fraley asked about the balance of new and existing homeowners.

Ms. Paine stated there would only be seven or eight new homeowners. She stated there are 53 existing properties.

Mr. Fraley asked if the seven or eight new homeowners would be be saddled with maintaining the common area if no existing homeowners join the HOA.

Ms. Paine stated the maintained common area is relatively small, including a park along Forest Heights Road and possibly a Neighbors Drive pocket park.

Mr. O'Connor asked if staff had an idea of how many people intended to join the HOA.

Ms. Paine stated she did not.

Mr. Vaughn Poller stated his office spoke with the County Attorney regarding this issue. He stated staff is focused on the infrastructure benefits made possible by the proposal. The pond drainage improvements will decrease Chesapeake Bay impacts. The Salvation Army's maintenance agreement with the County will balance costs.

Mr. Woods asked if the Salvation Army would work with the community to ensure the open space areas are maintained.

Ms. Paine stated the Salvation Army will make its new recreation center available to on-site residents. She stated the Salvation Army will be responsible for shared maintenance of the pond, but not the small park.

Ms. Paine began her presentation, stating that the Virginia Department of Housing and Community Development awarded a \$25,000 community block planning grant in 2009 to fund an area study. She stated staff developed a feasibility study and a conceptual plan based on door to door surveys, community meetings, public hearings, and home inspections within the neighborhood. The proposal allows bus and emergency vehicle access, improves traffic safety on Richmond Road, improves stormwater facilities, adds sidewalks, trails, and provides home improvements and energy retrofits. Eleven of the 64 parcels are County-owned. Boundary lines adjustments will be used to provide additional room to expand the right of way needed to bring the road up to Virginia Department of Transportation (VDOT) standards. Most of the existing dirt road lots are nonconforming and would need variances for boundary line adjustments. Rezoning to Mixed Use allows greater flexibility for the residential lots, homes, and the Salvation Army. No residents have objected to the proposal.

Mr. Fraley asked what materials would be used in the multi-use trail.

Ms. Paine stated the plan calls for 8' wide asphalt trails.

Mr. Fraley asked if the variances associated with the project would need to go to the Board of Zoning Appeals.

Mr. Adam Kinsman stated variances would not be required in a Mixed Use district.

Mr. Fraley opened the public hearing.

Mr. Gary Moore, 158 Forest Heights Road, stated the neighborhood needs the improvement. He stated that at a house fire in the neighborhood a man died since fire trucks could not get down the dirt roads or use neighborhood fire hydrants due to low pressure. Ambulances and school buses cannot enter the neighborhood either. The road washes out during storms and the neighbors repair it themselves. The neighborhood is willing to maintain the new park area. Most people in the neighborhood are ready to enjoy many of the benefits other people in the County already have.

Ms. Shirley Baker, 116 Forest Heights Road, stated she had endured the neighborhood's condition for 50 years. She stated the community wants better conditions. One of the neighborhood's children had been killed along Richmond Road about 30 years ago. She asked for the same improvements other communities have.

Mr. Allen Billups, 153 Forest Heights, stated the County had stopped maintaining the roads a few years after he moved into the neighborhood, about 18 years ago. He stated he had injured his back while working to maintain the road. The road is dark, dangerous, and the community needs it improved. The project was started ten years ago, and should be completed now with help from the Salvation Army and the County.

Ms. Connie Hudson, speaking for her mother who lives at 6043 Richmond Road, stated she supports the project. She stated the project would improve area conditions, should would welcome the Salvation Army, and it would beautify Route 60 for all of the guests coming into the area. She thanked the County for finding the funding.

Mr. Fraley closed the public hearing.

Mr. Mike Maddocks stated this was a great project with the potential to improve the lives of residents.

Mr. Maddocks moved to recommend approval of the rezoning and to allow perimeter buffer reductions.

Mr. Joe Poole stated he supports the project. He stated the DRC saw the project several months ago and was excited about the proposal. Road improvements are crucial. The partnership between the County, neighborhood, the Salvation Army, and state is a win-win.

Mr. O'Connor stated he had spoken with Mr. Bill Cain with Engineering and Resource Protection, who stated the project would improve water quality downstream and have a significant positive environmental impact.

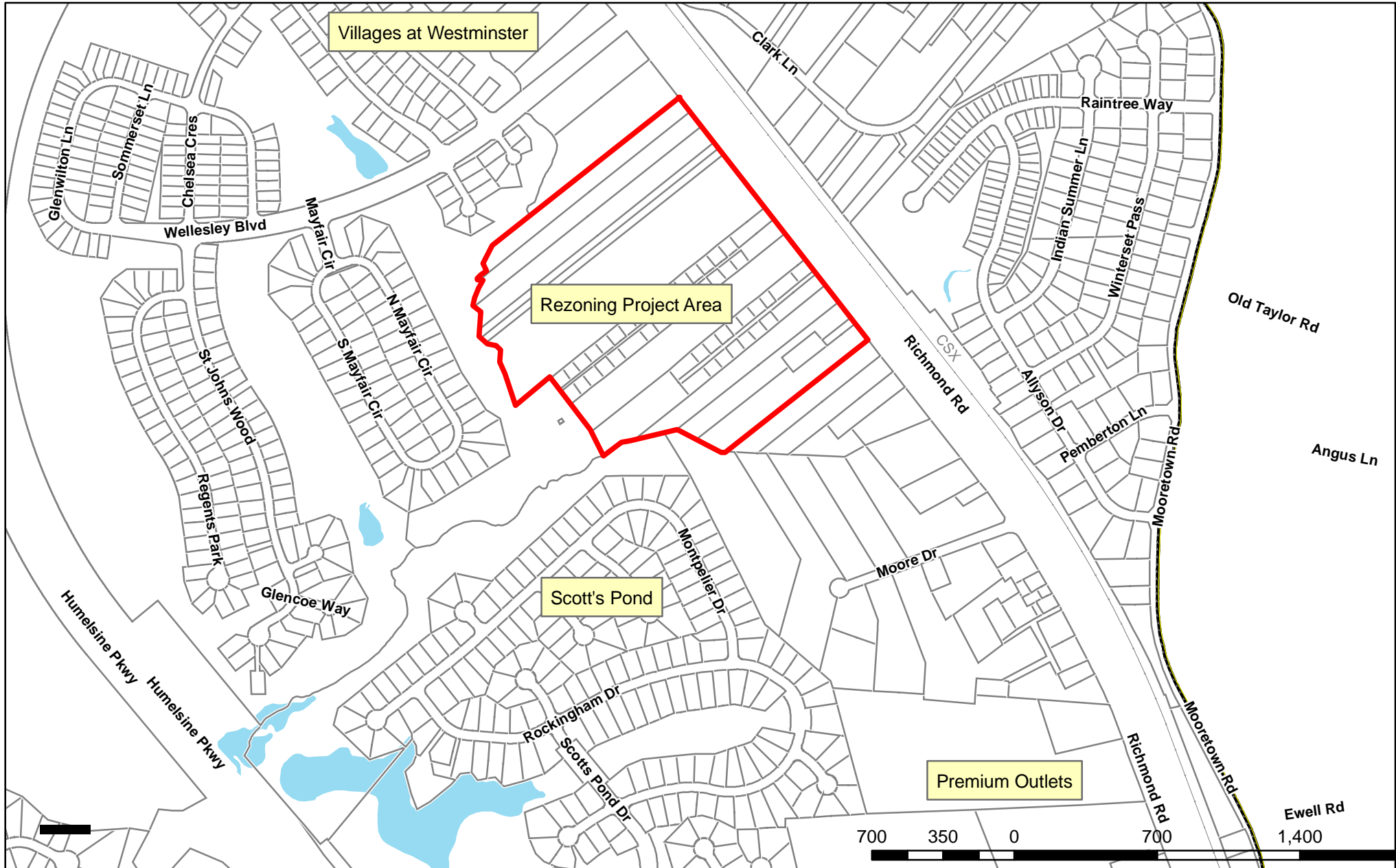
Mr. Woods stated he was disappointed to realize that despite the community's emphasis on the Comprehensive Plan and on citizens' quality of life, many Forest Heights residents do not have access to that quality of life. He stated he endorses the project.

Mr. Basic stated he supports the plan. He stated that although he would have liked to see the Salvation Army building footprint on the master plan, he is confident staff will take care of it.

Mr. Fraley stated the project is a great case of the County, the private sector, and citizens working together.

In a roll call vote, the Commission recommended approval of the rezoning and the setback waivers (6-0: Absent: Krapf).

JCC-Z-0001-2011 Forest Heights, Neighbor's Drive, Richmond Road Improvements



PROFFERS

THESE PROFFERS are made this 20th day of October 2011 by the COUNTY OF JAMES CITY, a political subdivision of the Commonwealth of Virginia (together with its successors and assigns, the "County"), and THE SALVATION ARMY, (together with its successors and assigns, the "Salvation Army" and together with the County, the "Owners").

A GEORGIA CORP.

RECITALS

- A. The County is the owner of eleven (11) certain parcels of land located in James City County, Virginia, described on the attached Exhibit A (the "County Property").
- B. The Salvation Army is the owner of one (1) certain parcel of land located in James City County, Virginia, described on the attached Exhibit B (the "Salvation Army Property").
- C. The County has applied to rezone the County Property on the attached Exhibit A from R-2, General Residential District to MU, Mixed Use District, with proffers.
- D. By resolution dated July 12, 2011, the County's Board of Supervisors initiated rezoning of the Salvation Army Property and an additional fifty-two (52) certain parcels, as described on the attached Exhibit C, from R-2 to MU, with proffers.
- E. The County has submitted a master plan entitled "Master Plan for Rezoning for Forest Heights Road/Neighbors Drive/Richmond Road Areas," prepared by AES Consulting Engineers dated 4/1/11 (the "Master Plan") in accordance with the County Zoning Ordinance.

NOW, THEREFORE, in consideration of the approval of the requested rezoning and pursuant to Section 15.2-2303 of the *Code of Virginia*, 1950, as amended, and the County Zoning Ordinance, the County and the Salvation Army agree that they shall meet and comply with the applicable following conditions. If the requested rezoning is not granted by the Board of Supervisors, these Proffers shall be null and void.

PROFFERS

PART A. The following proffers shall apply to the County Property only:

1. Water Conservation/Sustainable Building. For all County-owned and/or developed parcels, water conservation measures will be implemented to reduce the water usage in the home and to heat that water more efficiently. Such water conservation measures shall apply to

Prepared by and return to:
Marion Paine, Esq.
James City County H&CD
P.O. Box 8784
Williamsburg, VA 23187-8784

County-owned lots and to rehabilitations on County Property and include: conducting water leakage tests to ensure there are no bulk water leaks inside of the structure, replacement of old toilets and old showerheads in pre-existing bathrooms with new fixtures that meet the National Energy Policy Act standards for low flow, installation of high efficiency water heaters that meet Energy Star standards, and insulation of the first few feet of hot and cold water lines to reduce conductive losses and wasted water. Proof of EarthCraft Single Family Renovation certification, or equivalent documentation, shall be provided to the Planning Director within one month of issuance of a Certificate of Occupancy, or such other time as is agreed to in writing in advance by the Planning Director.

2. Affordable and Workforce Housing. A minimum of four (4) parcels shall be sold to Peninsula Habitat for Humanity ("Habitat") on which Habitat will construct dwellings for low and moderate income households who qualify for Habitat's homeownership program. In addition, a minimum of two (2) dwelling units shall be reserved and offered to a buyer at or below the Virginia Housing Development Authority income limits. The Planning Director shall be provided with a copy of the settlement statement for the sale of each of the six (6) units.
3. Owners Association. The County shall establish an owners' association (the "Association") in accordance with Virginia law, which all current property owners on Forest Heights Road and Neighbors Drive may voluntarily join, and all purchasers of County-owned and developed lots shall be required to join. The articles of incorporation, bylaws and restrictive covenants (together, the "Governing Documents") creating and governing the Association shall be submitted to and approved by the County Attorney prior to issuance of any building permit for a County-owned or developed lot. The Governing Documents shall require that the Association adopt an annual maintenance budget, which shall include a reserve for maintenance of dedicated open space and common areas.

PART B. The following proffer shall apply to the Salvation Army Property only:

4. Salvation Army Building Elevation. The Salvation Army shall submit the final architectural design of the Salvation Army building for the Planning Director's review and approval prior to any final development plan approval. Such review shall ensure that the design, materials and colors of the building are reasonably consistent with the architectural elevations prepared by Guernsey Tingle Architects, titled "Salvation Army Corps Facility," date stamped September 7, 2011, and submitted as a part of the rezoning application.

PART C. The following proffers shall apply to both the County Property and the Salvation Army Property:

5. Archaeology. Phase 1 Archaeological Study(ies) for the area recommended for Phase I archaeological testing as shown in Figure 5 of the Phase 1A Cultural Resources Assessment shall be submitted to the Planning Director for review and approval. 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 I 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 or sites that are determined to be eligible for inclusion on the National Register of Historic Places and/or those sites that require a Phase III study. If in the Phase III study, a site is determined eligible for nomination to the National Register of Historic Places and said site is to be preserved in place, the treatment plan shall include nomination of the site to the National Register of Historic Places. If a Phase III study is undertaken for said sites, such studies shall be approved by the Director of Planning prior to land disturbance within the study areas. All Phase I, Phase II, and Phase III studies shall meet the Virginia Department of Historic Resources' Guidelines for Preparing Archaeological Resource Management Reports and the Secretary of the Interior's Standards and Guidelines for Archaeological Documentation, as applicable, and shall be conducted under the supervision of a qualified archaeologist who meets the qualifications set forth in the Secretary of the Interior's Professional Qualification Standards. All approved treatment plans shall be incorporated into the plan of development for the Property and the clearing, grading, or construction activities thereon.

6. Shared maintenance agreement for the stormwater facilities. Owners agree to develop and execute a Shared Maintenance Agreement (the "Agreement") prior to issuance of any building permit on the Salvation Army Property. The Agreement shall provide for routine and non-routine maintenance of the stormwater basin to be located on the Property currently known as 6001 Richmond Road.
7. Water Conservation. Owners shall be responsible for developing and implementing water conservation standards which shall be submitted to and approved by the James City Service Authority prior to any final development plan approval(s). The standards shall address such water conservation measures as prohibitions on the installation and use of irrigation systems and irrigation wells, the use of approved landscaping materials and the use of water conserving fixtures and appliances to promote water conservation and minimize the use of public water resources.

WITNESS the following signatures:

THE COUNTY OF JAMES CITY, VIRGINIA

BY: 
Robert C. Middaugh, County Administrator

COMMONWEALTH OF VIRGINIA

County of James City, to-wit:

The foregoing Proffers were acknowledged before me this 23rd day of November, 2011 by Robert C. Middaugh



Mary Frances Rieger
Notary Public

My Commission expires: October 31, 2013

Registration No. 150638

MARY FRANCES RIEGER
Notary Public
Commonwealth of Virginia
150638
My Commission Expires 10/31/2013

THE SALVATION ARMY A GEORGIA CORP.

BY: [Signature]
Its: JOHN R. JONES, TREASURER

STATE OF Georgia

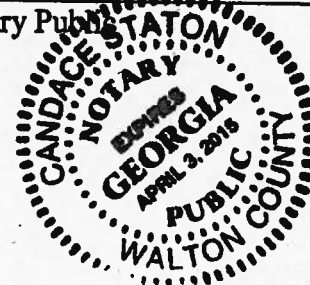
City/County of DeKalb, to wit:

The foregoing Proffers were acknowledged before me this 20 day of October, 2011, by JOHN R. JONES, TREASURER.

[Signature]
Notary Public

My Commission expires: 4/3/15

Registration No. _____





RESOLUTION

CASE NO. Z-0001-2011. FOREST HEIGHTS, NEIGHBORS DRIVE,

AND RICHMOND ROAD IMPROVEMENTS

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 public hearing scheduled on Zoning Case Z-0001-2011, with Master Plan, for rezoning approximately 47.1 acres from R-2, General Residential, to MU, Mixed Use, with proffers applicable to the properties owned by the County and the Salvation Army; and

WHEREAS, the properties are located at the following James City County Real Estate Tax Map Nos. and addresses:

Tax Map ID	Address	Property Owner
3220100083	101 FOREST HEIGHTS RD	JAMES CITY COUNTY
3220100084	100 FOREST HEIGHTS RD	JAMES CITY COUNTY
3220100085A	174 FOREST HEIGHTS RD	JAMES CITY SERVICE
3220400001	112 FOREST HEIGHTS RD	STATEWIDE, INC
3220400002	113 FOREST HEIGHTS RD	MEEKINS, ELAINE
3220400003	115 FOREST HEIGHTS RD	JOHNSON, INDIA
3220400004	116 FOREST HEIGHTS RD	BAKER-GEORGE, SHIRLEY L
3220400005	120 FOREST HEIGHTS RD	GILLEY, GIL G
3220400006	119 FOREST HEIGHTS RD	JAMES CITY COUNTY
3220400007	125 FOREST HEIGHTS RD	ASHLOCK, LEROY
3220400008	124 FOREST HEIGHTS RD	TAYLOR, HAZEL & MORRIS E
3220400009	128 FOREST HEIGHTS RD	BROWN, PERNELL NELSON &
3220400010	127 FOREST HEIGHTS RD	JAMES CITY COUNTY
3220400011	129 FOREST HEIGHTS RD	STILL, AMY
3220400012	132 FOREST HEIGHTS RD	JOHNSON, EDITH MAE
3220400013	136 FOREST HEIGHTS RD	STONE, JOHN SAMUEL
3220400014	133 FOREST HEIGHTS RD	STILL, AMY
3220400015	137 FOREST HEIGHTS RD	ANDERSON, DORRIS
3220400016	138 FOREST HEIGHTS RD	HOUSING PARTNERSHIPS FUNDING GROUP
3220400017	142 FOREST HEIGHTS RD	MATCHETT, MICHAEL S & AMBER R
3220400018	141 FOREST HEIGHTS RD	BARTLETT, BETTY J
3220400019	145 FOREST HEIGHTS RD	BARTLETT, BETTY J
3220400020	146 FOREST HEIGHTS RD	VANDERBILT MORTGAGE

3220400022	149 FOREST HEIGHTS RD	BILLUPS, ALLEN J &
3220400023	153 FOREST HEIGHTS RD	BILLUPS, ALLEN &
3220400024	154 FOREST HEIGHTS RD	BILLUPS, ALLEN &
3220400025	158 FOREST HEIGHTS RD	MOORE, GARY C & GERALINE M
3220400026	161 FOREST HEIGHTS RD	JAMES CITY COUNTY
3220400027	165 FOREST HEIGHTS RD	ROBINS, JOHN T & ROBINS, JASON S
3220400028	162 FOREST HEIGHTS RD	MOORE, GARY C & GERALINE M
3220400029	166 FOREST HEIGHTS RD	ROBINS, JOHN T & ROBINS, JASON S
3220400030	169 FOREST HEIGHTS RD	ROBINS, JOHN T & ROBINS, JASON S
3220400031	173 FOREST HEIGHTS RD	GUTIERREZ, RUBEN ARROYO TRUSTEE
3220400032	170 FOREST HEIGHTS RD	VILLAGES AT WESTMINSTER HOMEOWNERS AS
3220100086	138 NEIGHBORS DRIVE	G GILLEY INVESTMENTS LLC
3220100087	139 NEIGHBORS DRIVE	MARTIN, EDWARD E
3220100088	104 NEIGHBORS DRIVE	BRABHAM, DENNIS J III & CHRISTINA
3220100090	101 NEIGHBORS DRIVE	WALLACE, LETTIE BELL EST
3220100116	140 NEIGHBORS DRIVE	WALLACE, LEVI JR & WALLACE LEVI Z II
3220500001	134 NEIGHBORS DRIVE	JAMES CITY COUNTY
3220500002	130 NEIGHBORS DRIVE	JAMES CITY COUNTY
3220500003	126 NEIGHBORS DRIVE	PRIOR, JANIE M
3220500004	122 NEIGHBORS DRIVE	DE LEON, VICTOR A & JACQUELINE B
3220500005	118 NEIGHBORS DRIVE	KNOX-GIVENS, YULONDA D & ROBINSON, R
3220500006	116 NEIGHBORS DRIVE	SMITH, JEFFREY D & LYND A
3220500007	135 NEIGHBORS DRIVE	G GILLEY INVESTMENTS LLC
3220500008	131 NEIGHBORS DRIVE	JAMES CITY COUNTY
3220500009	127 NEIGHBORS DRIVE	JAMES CITY COUNTY
3220500010	123 NEIGHBORS DRIVE	PEOPLES, KRISTOPHER T & KATHARINE L
3220500011	119 NEIGHBORS DRIVE	O'SHEA, KEVIN F II & LISA A
3220500012	115 NEIGHBORS DRIVE	WALLACE, LETTIE BELL EST
3220100076	6059 RICHMOND ROAD	MAGERAS, ANGELO TRUSTEE & MAGERAS, N
3220100077	6051 RICHMOND ROAD	BAKER, RUSSELL & MARY LIFE ESTATE
3220100078	6047 RICHMOND ROAD	TAYLOR, STANFORD &
3220100079	6043 RICHMOND ROAD	ROBINSON, EUNICE
3220100080	6039 RICHMOND ROAD	GRAY, MEL & SHANISE KOTINA
3220100081	6015 RICHMOND ROAD	SALVATION ARMY (THE)
3220100085	6001 RICHMOND ROAD	JAMES CITY COUNTY
3220100089	5981 RICHMOND ROAD	HERTZLER, DAVID L
3220100089	5981 RICHMOND ROAD	HERTZLER, DAVID L
3220100091	5941 RICHMOND ROAD	JAMES CITY COUNTY
3220100092	5943 RICHMOND ROAD	SMITH, ELSIE M

3220100093	5941 RICHMOND ROAD	SMITH, MARTHA LEE MAURICE
3220100094	5947 RICHMOND ROAD	SMITH, MARTHA LEE M
3220100095	5939 RICHMOND ROAD	TAYLOR, ELSIE LIFE RIGHT

WHEREAS, the Planning Commission of James City County, following its public hearing on September 7, 2011, recommended approval by a vote of 6-0; and

WHEREAS, the Board of Supervisors of James City County, Virginia, finds this use to be consistent with the 2009 Comprehensive Plan Land Use Map designation for this site.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, after a public hearing, does hereby approve Case No. Z-0001-2011 and accept the voluntary proffers.

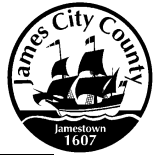
Mary K. Jones
Chairman, Board of Supervisors

ATTEST:

Robert C. Middaugh
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 13th day of December, 2011.

Z-1-11improve_res2



MEMORANDUM COVER

Subject: Disposition of Property in the Forest Heights Neighborhood Improvement Project Area

Action Requested: Shall the Board approve the resolution that authorizes the disposition or sale of County-owned lots in the Forest Heights Neighborhood Improvement Project area?

Summary: The Office of Housing and Community Development has purchased property in furtherance of the Forest Heights Neighborhood Improvement Project. Portions of the properties will be developed and sold as single-family residential building lots. The properties will be sold in accordance with a Lot Sales Plan to be approved as a part of this resolution.

Staff recommends approval of the Lot Sales Plan and the resolution authorizing the County Administrator to sign the documents necessary to sell the lots.

Fiscal Impact: Sales of the lots will produce income for the Housing Development Fund in the amount of approximately \$300,000.

FMS Approval, if Applicable: Yes ☐ No ☐

Assistant County Administrator

Doug Powell _____

County Administrator

Robert C. Middaugh _____

Attachments:

1. Memorandum
2. Resolution
3. Area GIS Map
4. County-Owned Properties

Agenda Item No.: J-3

Date: December 13, 2011

M E M O R A N D U M

DATE: December 13, 2011

TO: The Board of Supervisors

FROM: A. Vaughn Poller, Housing and Community Development Administrator

SUBJECT: Disposition of Property in the Forest Heights Neighborhood Improvement Project Area

The attached resolution authorizes the sale or other disposition of County-owned property located in the Forest Heights Neighborhood Improvement Project Area. The County purchased the 11 parcels (including six building lots) listed on the attached Exhibit A (the "Property") pursuant to the Board of Supervisors resolution dated December 14, 2010, which authorized the acquisition of real property necessary to complete the Forest Heights Road and Neighbors Drive Concept Plan ("Concept Plan").

A portion of the Property will be used for road and other infrastructure, and a portion will be developed as single-family lots (the "Lots") substantially as shown on the Concept Plan. The Lots will be disposed of in accordance with the Forest Heights Neighborhood Improvement Project Lot Sales Plan (the "Sales Plan") attached as Exhibit B.

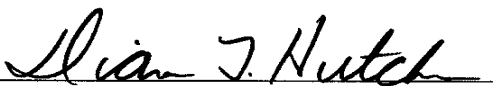
In accordance with the proffers for the Forest Heights, Neighbors Drive, and Richmond Road Improvements Rezoning, Case No. Z-0001-2011, the Sales Plan provides that a minimum of four lots shall be sold to Habitat for Humanity Peninsula and Greater Williamsburg for construction of dwellings for low- and moderate-income households who qualify for Habitat's homeownership program and two additional lots shall be reserved for dwelling units to be sold to buyers at or below the Virginia Housing Development Authority income limits.

The sales prices for the Lots may range between \$35,000 and \$42,500. The specific price shall be set depending on the desirability of the lot, cost to develop the lot and market factors. The County paid between \$28,400 and \$37,000 for the individual lots purchased in the Project Area which are similar in size to the Lots which will be sold pursuant to the Lot Sales Plan.

The net proceeds of all lot sales will provide much needed funds to address the County's affordable housing needs. Staff recommends approval of the attached resolution which authorizes the sale or disposition of all or a portion of the 11 listed properties.

A. Vaughn Poller

CONCUR:


Diana F. Hutchens

AVP/nb
FH-DispOfProp_mem

Attachments

RESOLUTION

DISPOSITION OF PROPERTY IN THE FOREST HEIGHTS NEIGHBORHOOD

IMPROVEMENT PROJECT AREA

WHEREAS, on December 14, 2010, the Board of Supervisors of James City County, Virginia, authorized the Community Development Block Grant for the Forest Heights Neighborhood Improvement Project ("Project") and the acquisition of real property necessary to complete the Forest Heights Road and Neighbors Drive Concept Plan ("Concept Plan"); and

WHEREAS, pursuant to the above-described resolution, the County has purchased the properties known as James City County Tax Map Parcel Nos. 3220100083, 3220100084, 3220400006, 3220400010, 3220400026, 3220500001, 3220500002, 3220500008, 3220500009, 3220100085, and 3220100093 (the "Property"); and

WHEREAS, the Concept Plan includes development of residential lots to be used for single-family dwellings on the property; and

WHEREAS, the Board of Supervisors has considered and approved the Forest Heights Neighborhood Improvement Project Lot Sales Plan (the "Sales Plan"); and

WHEREAS, the Board of Supervisors held a public hearing on December 13, 2011, to receive public comment on the sale of all or portions of the property.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the County Administrator to sign on behalf of the County, any sale contract, development agreement, deed, and all other documents consistent with the Sales Plan to enable the County to develop and convey, in whole or in part, ownership of the property in the Forest Heights Neighborhood Improvement Project area.

Mary K. Jones
Chairman, Board of Supervisors

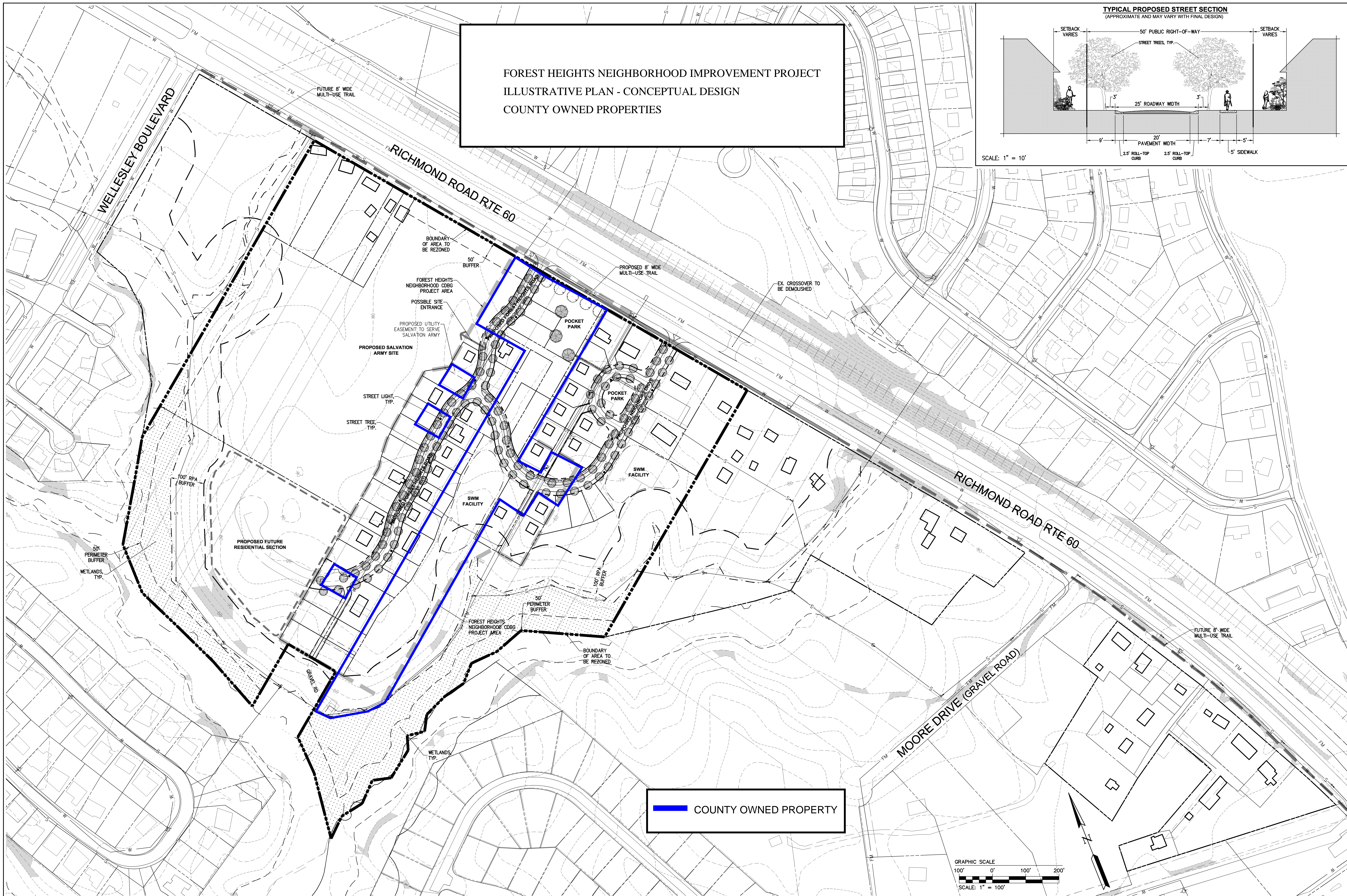
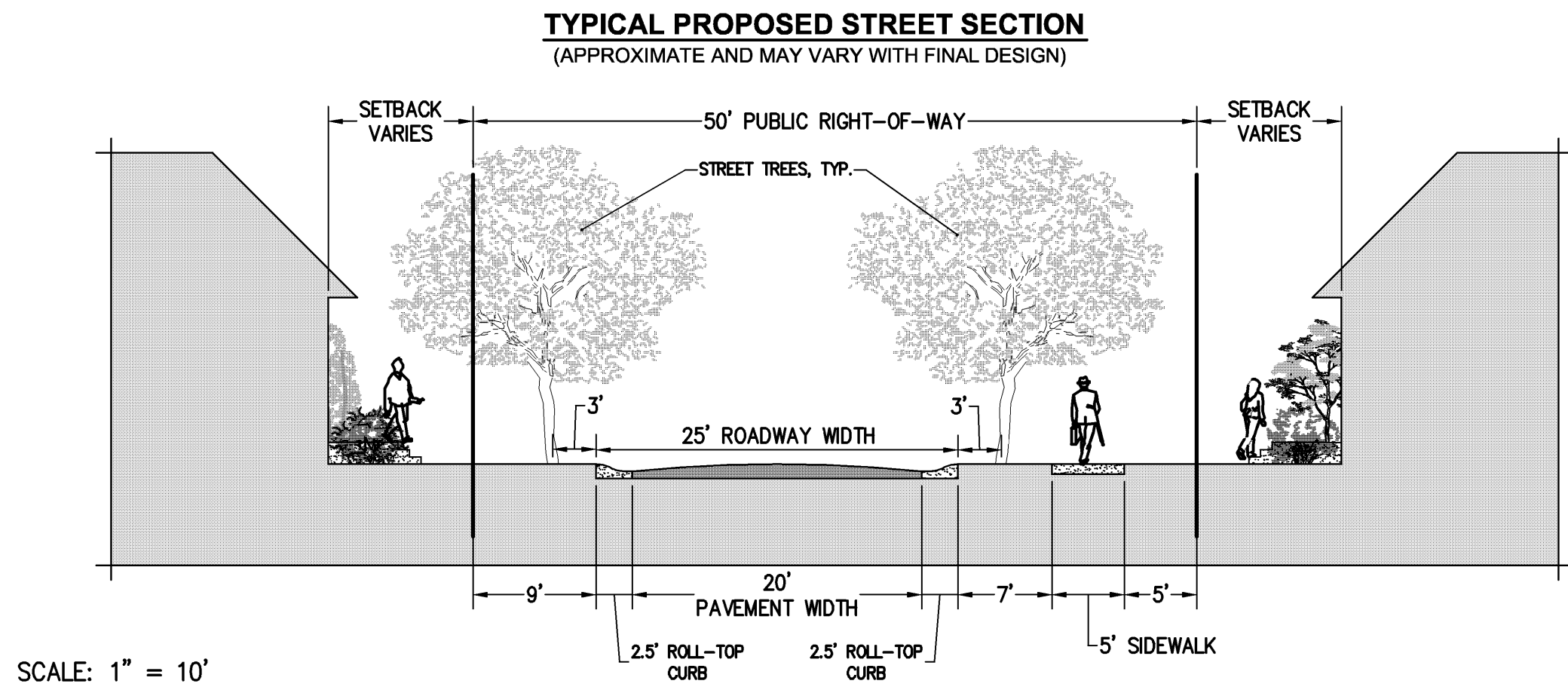
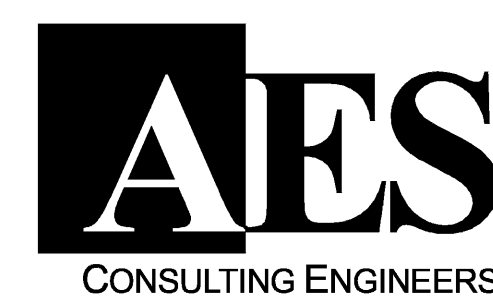
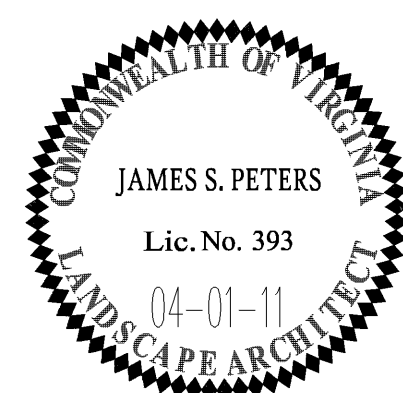
ATTEST:

Robert C. Middaugh
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 13th day of December, 2011.

FH-DispOfProp_res

FOREST HEIGHTS NEIGHBORHOOD IMPROVEMENT PROJECT
ILLUSTRATIVE PLAN - CONCEPTUAL DESIGN
COUNTY OWNED PROPERTIES

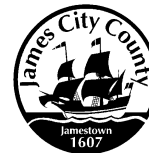
[illegible]

5248 Olde Towne Road, Suite 1
Williamsburg, Virginia 23188
Phone: (757) 253-0040
Fax: (757) 220-8994
www.aesva.com

Hampton Roads | Central Virginia | Middle Peninsula

ILLUSTRATIVE PLAN
FOREST HEIGHTS ROAD / NEIGHBORS DRIVE /
RICHMOND ROAD AREAS
MASTER PLAN FOR REZONING

Project Contacts: ABS/JSP/GRR	
Project Number: W010119-E-03	
Scale: 1:100_XREF	Date: 04-01-11
Sheet Number 4	



MEMORANDUM COVER

Subject: Case No. SUP-0010-2011. Wohlfarth Jolly Pond Road Family Subdivision

Action Requested: Shall the Board approve this Special Use Permit (SUP) for a family subdivision resulting in a lot less than three acres in size?

Summary: Mr. Ed Carr 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 Mr. Robert and Mrs. Murray Wohlfarth and is planned to be transferred to their daughter, Ms. Heidi Wohlfarth. The existing lot is seven acres; the proposed family subdivision would result in a new 1.80-acre lot and a remainder parent parcel of 5.20 acres. The majority of the surrounding properties range between one and five acres and several of the properties were created as a result of past family subdivisions.

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

Staff recommends approval of this SUP with the conditions listed in the attached 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. Preliminary Plat
3. Location Map
4. Family Subdivision Affidavit

Agenda Item No.: J-4

Date: December 13, 2011

**SPECIAL USE PERMIT-0010-2011. Wohlfarth Jolly Pond Road Family Subdivision
Staff Report for the December 13, 2011, Board of Supervisors Public Hearing**

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

PUBLIC HEARINGS

Board of Supervisors:

Building F Board Room; County Government Complex

December 13, 2011, 7:00 p.m.

SUMMARY FACTS

Applicant:

Mr. Ed Carr

Land Owner:

Mr. Robert and Mrs. Murray Wohlfarth

Proposal:

Family subdivision resulting in a lot less than three acres in size.

Location:

2711 Jolly Pond Road

Tax Map/Parcel No.:

3520100015C

Parcel Size:

Parent Lot: Seven acres
Proposed Lot: 1.80 acre
Remaining Parent Lot: 5.20 acres

Zoning:

A-1, General Agricultural

Comprehensive Plan:

Rural Lands

Primary Service Area:

Outside

STAFF RECOMMENDATION

Staff finds the proposal to be consistent with the surrounding development and Section 19-17 of the James City County Subdivision Ordinance. Staff recommends the Board of Supervisors approve this Special Use Permit (SUP) with the conditions listed in the attached resolution.

Staff Contact:

Jason Purse, Senior Planner

Phone: 253-6689

PROJECT DESCRIPTION

Mr. Ed Carr 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 Mr. Robert and Mrs. Murray Wohlfarth and is planned to be transferred to their daughter, Ms. Heidi Wohlfarth. An existing shared 50-foot ingress/egress easement and gravel driveway will continue to be used as the primary point of access to the lot(s). The existing lot is seven acres; the proposed family subdivision would result in a new 1.80-acre lot and a remainder parent parcel of 5.20 acres.

The majority of the surrounding properties range between one and five acres and several of the properties were created as a result of past family subdivisions. 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.

The property is located in the A-1, General Agricultural, District. The minimum lot size in A-1 for single-family detached units is three acres. Section 24-214 of the Zoning Ordinance allows for a minimum lot size of less than three acres, but more than one acre, if the creation of said lot is for use by a member of the owner's immediate family (children 18 years of age or older or parents of an owner) and an SUP is issued. The Zoning Ordinance requires the Board of Supervisors to review and approve this type of application. The application submitted is for an SUP only; should the Board approve the SUP, the applicant will need to submit a subdivision plat for further administrative review and comment.

PUBLIC UTILITIES

Public water and sewer are not available to the site. The proposed new 1.80-acre lot will be served by a private septic system and well. The Health Department has reviewed the proposed locations, but requires additional soil documentation to determine soil suitability. Staff has no record of soil deficiencies in this area for septic fields. Should the Board approve this SUP, the Health Department will review soils information and final well and septic locations as part of subdivision plan review.

COMPREHENSIVE PLAN

The site is located outside the Primary Service Area (PSA) and is designated as Rural Lands on the 2009 Comprehensive Plan Land Use Map. Recommended primary uses in the Rural Lands include agricultural and forestal activities and public or semi-public institutions that require a spacious site. Recommended residential uses include single-family developments at a low-density and small-scale rural clusters. Such developments should be compatible with the natural and rural character of the area and be in accordance with the Rural Lands Development Standards provided in the Comprehensive Plan.

Staff Comments: The creation of the additional lot is not in conflict with the rural character of the area, is compatible with surrounding lot sizes and land uses, and is compatible with other existing family subdivisions approved by the Board of Supervisors. The proposed family subdivision does not represent a large-scale residential development and will not negatively impact any agricultural or forestal uses.

RECOMMENDATION

Staff finds the proposal to be consistent with the surrounding zoning and development and with the 2009 Comprehensive Plan. Staff recommends approval of this SUP with the conditions listed in the attached resolution.


Jason Purse

CONCUR:

Allen J. Murphy, Jr.

JP/nb
Sup10-2011JollyPR.doc

Attachments:

1. Resolution
2. Preliminary Plat (under separate cover)
3. Location Map
4. Family Subdivision Affidavit

RESOLUTION

CASE NO. SUP-0010-2011. WOHLFARTH JOLLY POND ROAD 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 2711 Jolly Pond Road, further identified as on James City County Real Estate Tax Map Parcel No. 3520100015C; 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 No. 0010-2011 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 drawn by Angle and Distance Land Surveying Inc, titled "(proposed) Family Subdivision of the Property standing in the name of Murray S. Wohlfarth," and dated November 7, 2011.
2. Only one entrance serving both lots shall be allowed onto Jolly Pond 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.

Mary K. Jones
Chairman, Board of Supervisors

ATTEST:

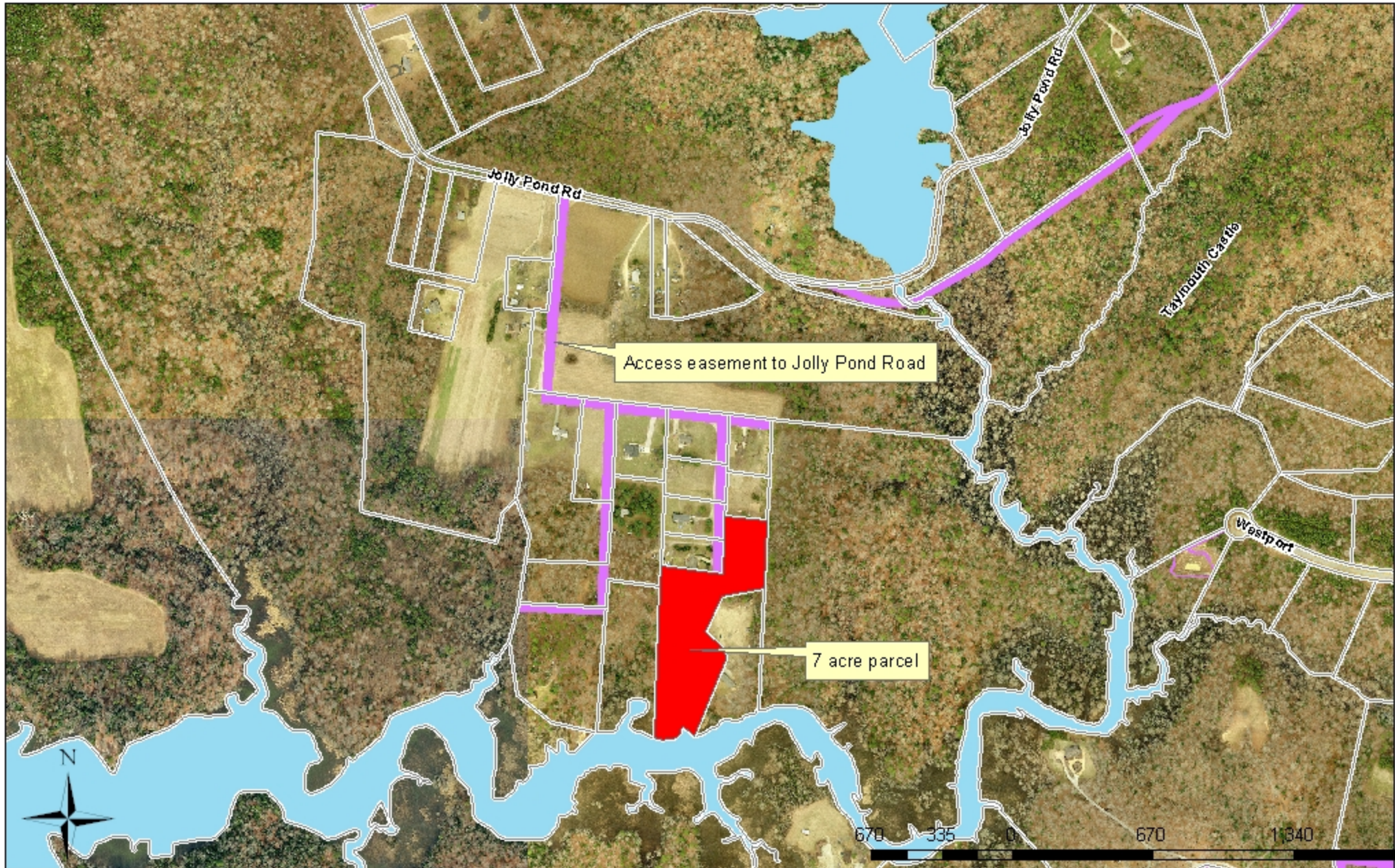
Robert C. Middaugh
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 13th day of December, 2011.

Sup10-2011JollyPR_res

SUP-0010-2011

Wohlfarth Family Subdivision



FAMILY SUBDIVISION AFFIDAVIT

Nov 28, 2011

I/we, Murray S. Wohlfarth, own a parcel of property consisting of 7 acres and located at 2711 Billy Pond Road and further identified as James City County Real Estate Tax Map No. 35201000156 (the "Property"). I/we hereby request that James City County, Virginia, approve a family subdivision of the Property into a total of 2 parcel(s), in the specific location and sizes as shown on a plat entitled "Family Subdivision of the property standing in the name Murray S. Wohlfarth", made by Angle & Distance Land Surveying, and dated 11-7-11 (the "Family Subdivision Plat").

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

Heidi Lee Wohlfarth, who is my/our daughter, and is not made for the purpose of circumventing any of the provisions of the Code of the County of James City, Virginia. It is my/our intention that the deed(s) of transfer will be drawn and duly recorded as soon as reasonably possible subsequent to the approval of the Family Subdivision Plat.

Murray S. Wohlfarth
Owner

Owner

COMMONWEALTH OF VIRGINIA,

~~CITY/COUNTY~~ of James City, to-wit:

The foregoing Affidavit was acknowledged before me this 28th day of November, 2011, by Murray S. Wohlfarth.

My Commission expires: 12/31/2012

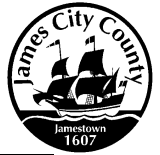
Beth Klapper
Notary Public

Beth Klapper
Notary Public No.: 7182762
Commonwealth of Virginia
My Commission Expires:
12/31/2012

Notary No. 7182762

Prepared by and return to:

Name: Heidi Wohlfarth
Address: 2711 Billy Pond Road
Williamsburg VA 23188
Telephone: 757-829-2365



MEMORANDUM COVER

Subject: Case No. SUP-0008-2011. 2720 Chickahominy Road Manufactured Home

Action Requested: Shall the Board approve this Special Use Permit (SUP) for the placement of a manufactured home at 2720 Chickahominy Road?

Summary: Ms. Sandra Kimrey has applied for an SUP to allow for the placement of a manufactured home at 2720 Chickahominy Road. Manufactured homes not located within the Primary Service Area (PSA) in the R-8, Rural Residential District, require an SUP. An existing manufactured home (located in 1982) is located near the middle of the property and will be removed and replaced as a part of this application. The proposed double-wide manufactured home would be roughly 28 feet by 44 feet.

Staff finds the proposal, with the attached conditions, meets the administrative guidelines and the manufactured home special regulations in the zoning ordinance and is consistent with the Rural Lands Land Use designation.

Staff recommends approval of this application with the attached resolution.

Fiscal Impact: N/A

FMS Approval, if Applicable: Yes ☐ No ☐

Assistant County Administrator

Doug Powell _____

County Administrator

Robert C. Middaugh _____

Attachments:

1. Staff Report
2. Resolution
3. Location Map
4. Example Model Home
5. Plat

Agenda Item No.: J-5

Date: December 13, 2011

SPECIAL USE PERMIT-0008-2011. 2720 Chickahominy Road Manufactured Home Staff Report for the December 13, 2011, Board of Supervisors Public Hearing

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

PUBLIC HEARINGS

Planning Commission:

Board of Supervisors:

Building F Board Room; County Government Complex

November 2, 2011, 7:00 p.m.

December 13, 2011, 7:00 p.m.

SUMMARY FACTS

Applicant:

Ms. Sandra Kimrey

Land Owner:

Dean and Donna Johnson

Proposal:

To allow the placement of a manufactured home.

Location:

2720 Chickahominy Road

Tax Map/Parcel No.:

2140100022

Parcel Size:

.84 acres

Existing Zoning:

R-8, Rural Residential

Comprehensive Plan:

Rural Lands

Primary Service Area:

Outside

STAFF RECOMMENDATION

Staff finds the proposal, with the attached conditions, meets the administrative guidelines and the manufactured home special regulations in the zoning ordinance and is consistent with the Rural Lands Land Use designation. Staff recommends the Board of Supervisors approve this application with the attached resolution.

Staff Contact:

Jason Purse, Senior Planner

Phone: 253-6689

PLANNING COMMISSION RECOMMENDATION

On November 2, 2011, the Planning Commission voted 6-0 to recommend approval of this application.

Proposed Changes Made Since Planning Commission Meeting

None.

PROJECT DESCRIPTION

Ms. Sandra Kimrey has applied for a Special Use Permit (SUP) to allow for the placement of a manufactured home at 2720 Chickahominy Road. Manufactured homes not located within the Primary Service Area (PSA) in the R-8, Rural Residential District, require an SUP. An existing manufactured home (located in 1982) is located near the middle of the property and will be removed and replaced as a part of this application. The proposed double-wide manufactured home would be roughly 28 feet by 44 feet and similar to the Oakwood VN28 model manufactured home (see attachments for more detail).

There are three existing manufactured homes within 1,000 feet of the property on both sides of Chickahominy Road.

PUBLIC IMPACTS

Environmental

Watershed: Yarmouth Creek

Staff Comments: The Environmental Division has no comments on the SUP application at this time.

Public Utilities and Transportation

The property has access to and is currently served by public water.

Zoning Ordinance Special Regulations for Manufactured Homes

The Zoning Ordinance requires the following criteria to be met for manufactured homes with an SUP (staff comments in *italics*):

1. An application and vegetative screening plan shall be submitted to the administrator.

The applicant has provided a plat showing the proposed location of the manufactured home and the existing tree line. As the proposed manufactured home location does not interfere with the existing tree line, staff finds the provided documentation adequate to screen the manufactured home.

2. No manufactured homes shall be placed within 300 feet of any of the following interstate highways, principal or minor arterial streets, or major collector streets: I-64, Richmond Road, John Tyler Highway, Route 30, Croaker Road, Centerville Road, and Greensprings Road.

The proposed manufactured home exceeds 300 feet from the aforementioned roads.

COMPREHENSIVE PLAN

Staff finds this application, as proposed, to be consistent with the Rural Lands Development Standards recommended in the Comprehensive Plan. Recommended uses in Rural Lands include single-family homes, agricultural and forestal activities, and small-scale rural clusters. The Rural Lands standards recommend locating structures outside sensitive areas, maintaining existing topography, and encouraging screening of developments to maintain the rural character of an area. Manufactured homes are not specifically mentioned in Rural Lands; however, the use is not in conflict with any Rural Lands development standards. No additional clearing is proposed on-site as a part of this application, so no additional impacts to the rural character of the area are expected.

Manufactured Home Placement Guidelines Policy

In 1989 the Manufactured Home Placement Guidelines were created as minimum standards for administrative review by staff (staff comments in *italics*):

Access: From a public health and safety standpoint, manufactured homes should be located on a public road which is part of the VDOT system or on a private road built to an acceptable standard.

The property abuts a public road. Access will be provided by an existing driveway.

Landscaping/Buffering: Section 20-10 of the Zoning Ordinance requires that a vegetative screening plan be submitted by the SUP applicant. Staff has a standard landscaping plan which we require with lots that are entirely open. If a lot is wooded, staff has been recommending that a minimum 20 foot strip be left undisturbed adjoining property lines. A larger strip has been recommended with larger properties.

The subject property has a planting strip along the front and side of the property, with a clearing in the middle where the manufactured home is to be placed (where the existing home is currently placed). Some bushes may need to be removed along the driveway to allow the home to be placed on the property, but sufficient vegetation will be preserved along the roadway. Given the current tree density, staff finds that the home would be well screened from the road and adjacent properties.

Adjacent Uses: It has been the staff practice over the past several years to recommend approval of manufactured homes in areas where manufactured homes already exist. It has not been staff practice to recommend the placement of manufactured homes in areas where there are no other manufactured homes nearby or where they are near established single family residential subdivisions. According to manufactured home placement guidelines, which have been used historically, manufactured homes should be permitted where two other existing, appropriately located manufactured homes are within 2,000 feet of property measured along all abutting rights-of-way.

Staff has identified three manufactured homes within 1,000 feet of the property.

Utilities: It has been the staff practice to require a “permit to install a septic system and well” from the Health Department with the application for an SUP or evidence from the Health Department that an existing system is acceptable. The Division of Code Compliance does not release electrical service until the system is installed and an operational permit is obtained from the Health Department.

The applicant has provided soil information, approved by the Health Department, for a functioning septic system. The property is able to connect to public water.

Topography and Soils: Adequate soils and topography should be available for locating a manufactured home on a given site.

The topography and soils are acceptable for the placement of a manufactured home.

RECOMMENDATION

Staff finds the proposal, with the attached conditions, meets the administrative guidelines and the manufactured home special regulations in the zoning ordinance and is consistent with the Rural Lands Land Use designation.

Staff recommends the Board of Supervisors approve this application with the attached resolution.

On November 2, 2011, the Planning Commission voted 6-0 to recommend approval of this application.



CONCUR:

Allen J. Murphy, Jr.

JP/nb
Sup08-2011_2710ChickRd.doc

Attachments:

1. Resolution
2. Location Map
3. Example Model Home
4. Plat

RESOLUTION

CASE NO. SUP-0008-2011. 2720 CHICKAHOMINY ROAD MANUFACTURED HOME

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

WHEREAS, Ms. Sandra Kimrey has applied for an SUP to allow a manufactured home outside the Primary Service Area (PSA); and

WHEREAS, the proposed home shall be similar to the Oakwood brand VN28 series model manufactured home; and

WHEREAS, the property is located at 2720 Chickahominy Road on land zoned R-8, Rural Residential, and can be further identified as James City County Real Estate Tax Map/Parcel No. 2140100022; and

WHEREAS, the Planning Commission of James City County, following its public hearing on November 2, 2011, recommended approval of this application by a vote of 6-0; and

WHEREAS, the Board of Supervisors of James City County, Virginia, finds this use to be consistent with the 2009 Comprehensive Plan Land Use Map designation for this site.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, after a public hearing, does hereby approve the issuance of SUP No. 0008-2011 as described herein with the following conditions:

1. This permit shall be valid for a double-wide manufactured home Oakwood brand, series VN28 model (the "Manufactured Home"), as depicted on "Exterior Elevation Option 1," prepared by CMH Manufacturing and dated August 2, 2011, or a similar unit as determined by the Director of Planning.
2. The existing manufactured home shall be removed and a Certificate of Occupancy for the new Manufactured Home must be obtained within 24 months from the date of approval of this SUP or the permit shall become void.
3. The Manufactured Home shall meet the requirements of the Department of Housing and Urban Development Manufactured Home Construction and Safety Standards.
4. The Manufactured Home shall be placed so as to comply with all current setback and yard requirements in the R-8, Rural Residential Zoning District.
5. A single connection is permitted to the adjacent water main on Chickahominy Road with no larger than a ¾-inch water meter. Any lots created by a subdivision of the parent parcel will not be permitted to connect unless the PSA is extended to incorporate the parent parcel.

6. This SUP is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.

Mary K. Jones
Chairman, Board of Supervisors

ATTEST:

Robert C. Middaugh
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 13th day of December, 2011.

sup08-2011_2720ChickRd_res

SUP-0008-2011

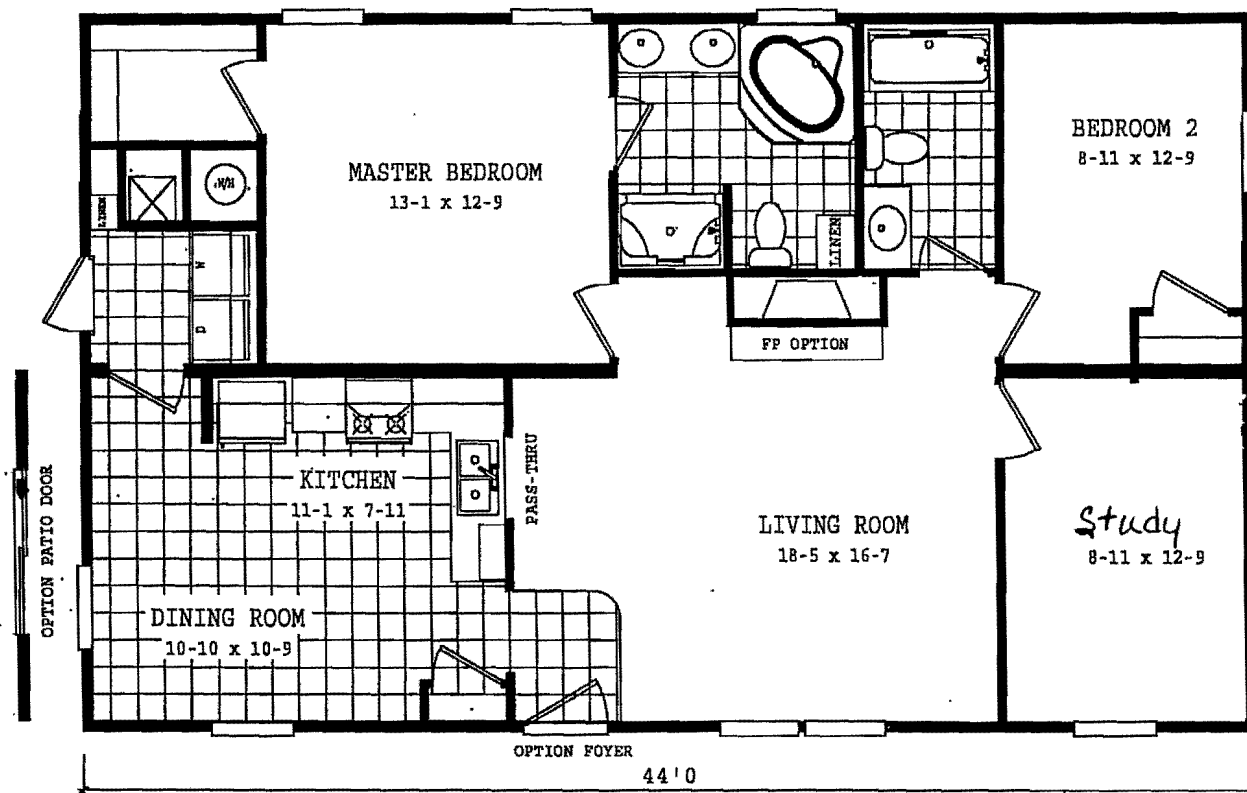
2720 Chickahominy Road



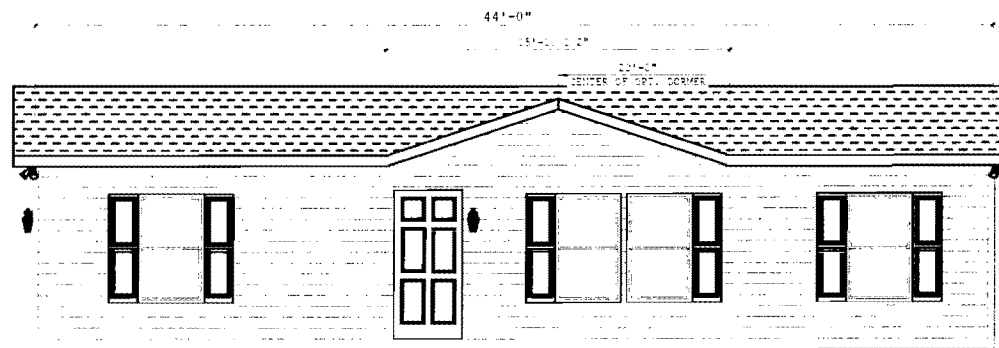
DAISY

REV
SEP 2011

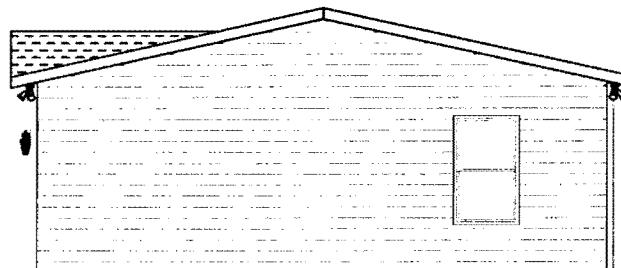
44x28 — 1172 SQ. FT.— 2 BEDROOM—2 BATH



SEE JED



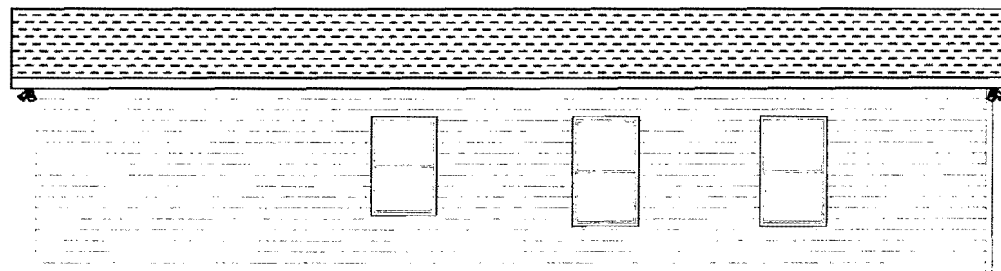
FRONT ELEVATION



RIGHT SIDE ELEVATION

FRONT	REVISED	REVISIONS	BY DATE	GENERAL NOTES	DRAWING TITLE	MODEL NAME	SCALE
OAKWOOD	VN28				EXTERIOR ELEVATION FRONT & RIGHT SIDE	2308	1172
CMH MANUFACTURING, INC.						PLANT: 957 DESCRIPTION: 28X44 DRAWN BY: GDB DATE: 07/17/2006	MODEL NO.: 2308 DATE PRINTED: 08/02/2011 SHEET NO: 20-1

1/2" = 1'-0"
 JED
 1/2" = 1'-0"



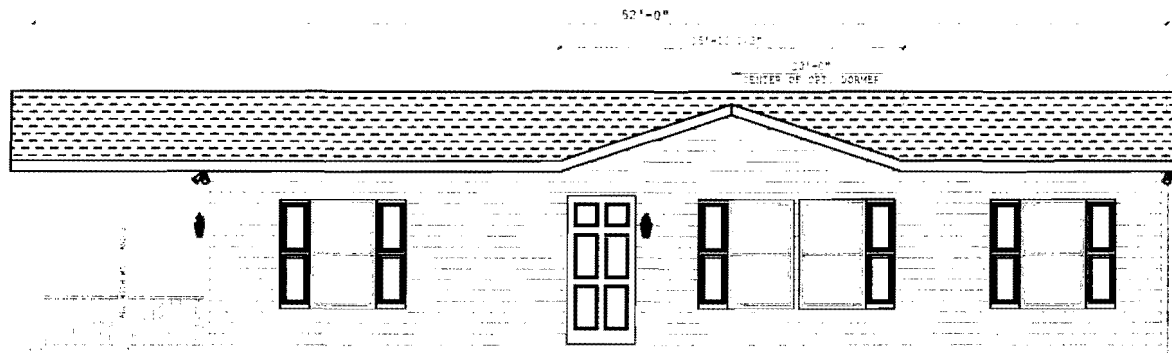
BACK ELEVATION



STEPS & RAILS
 5'-0" WIDE

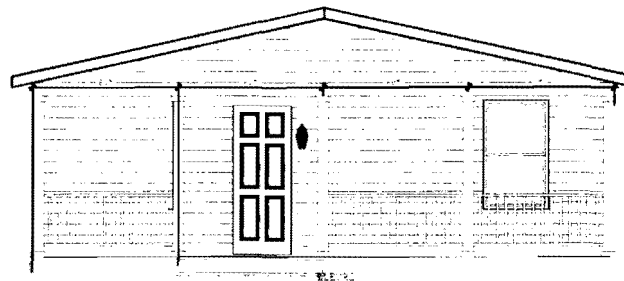
LEFT SIDE ELEVATION

BRAND	SERIES	DESCRIPTION	BY	DATE	GENERAL NOTES	DRAWING TITLE	DETAIL NAME	SCALE
OAKWOOD	VN28					EXTERIOR ELEVATION BACK & LEFT SIDE	2308	1172
CMH MANUFACTURING, INC.							PLANT	DESCRIPTION
							957	28X44
							DATE	2308
							DATE	DATE
							GDB	07/17/2006
							DATE	08/02/2011
							SHEET NO	20-2



FRONT ELEVATION

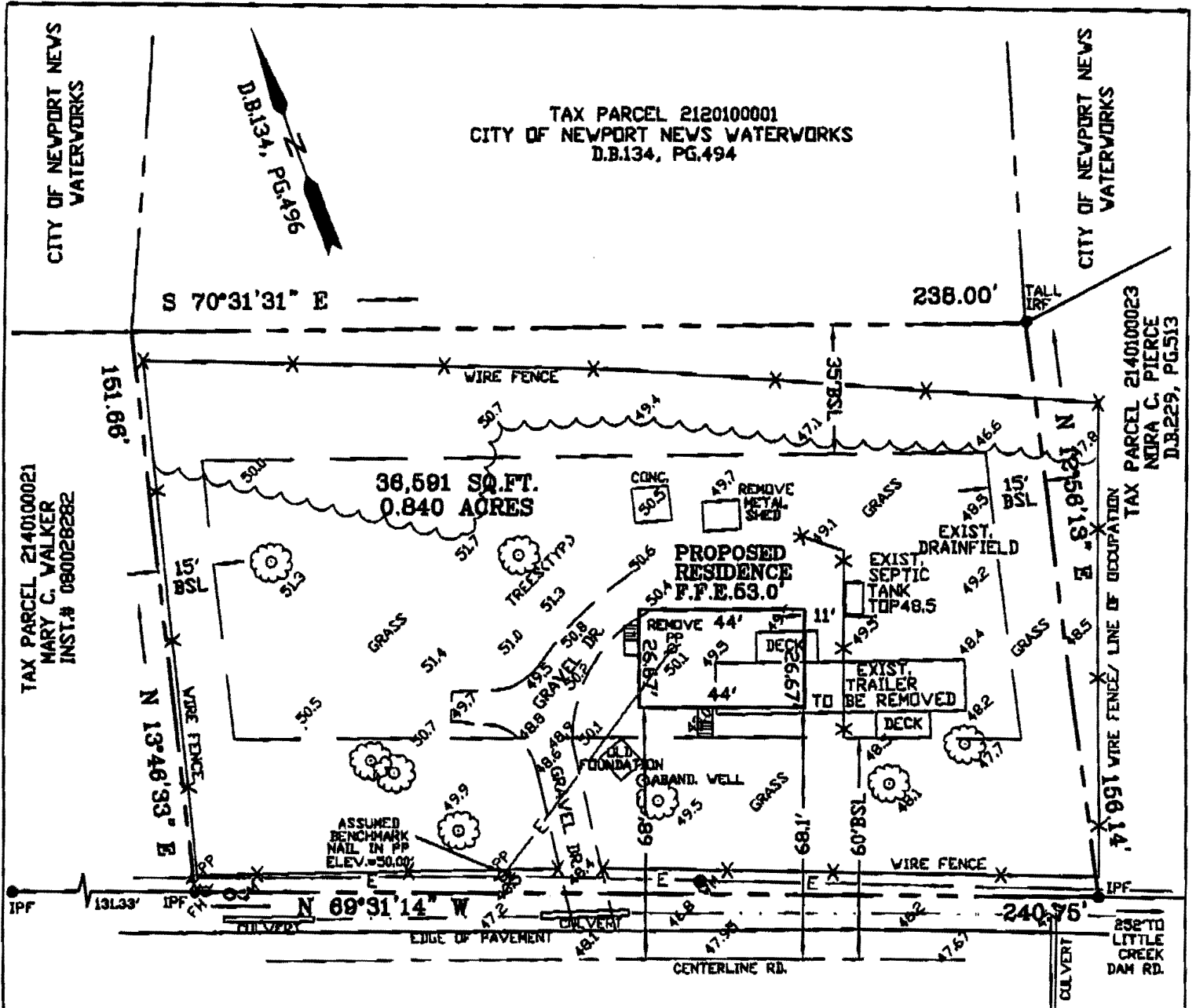
OPTIONAL PORCH



LEFT SIDE ELEVATION

PLANT	OAKWOOD	SERIES	VN28	REVISION	BY	DATE	GENERAL NOTES	DRAWING TITLE	MODEL NAME	2308	S. FT.	11'2"
CMH MANUFACTURING, INC.								EXTERIOR ELEVATION OPTION 1	PLANT	2308	MODEL NO.	2308
									957	28X44		
									DATE	07/17/2006	DATE PRINTED	08/02/2011
									GDB		SHEET NO	20-3

Sup. 0008. 2011



- 51.0 = EXISTING GRADES
50.0 = PROPOSED GRADES

CHICKAHOMINY RD. 40' R/W, STATE ROUTE 631

CE = CONSTRUCTION ENTRANCE
SF = SILT FENCE
PS = PERMANENT SEEDING

ALL EROSION CONTROL SHALL BE IN ACCORDANCE WITH THE VIRGINIA EROSION AND SEDIMENT CONTROL HANDBOOK, LATEST EDITION.

NOTES:

- TAX PARCEL: 2140100022
- ZONING: R8
- PUBLIC WATER
- EXIST. SEPTIC PER PERMIT
- ASSUMED BENCHMARK SHOWN
- CENTERLINE OF FENCE SHOWN
- FLOOD INSURANCE RATE MAP ZONE: X
- PANEL NO. 0105C
- COMMUNITY NO. 610201
- PANEL DATE: 9-28-07
- INDEX DATE: 9-28-07
- REF: D.B.444, PG.470
- D.B.134, PG.494
- INST.# 080028282
- TAX PARCEL: 2140100022

RANDALL R. PARKER
LIC.NO. 002376
7-2-11

SEP 2011

2720 CHICKAHOMINY RD.
DEAN L. JOHNSON, PROPERTY

LOT DEVELOPMENT PLAN

PARCEL OF LAND CONTAINING
36,591 SQ.FT.
0.840 ACRES
KNOW AS, 2720 CHICKAHOMINY RD.
JAMES CITY COUNTY, VIRGINIA

PARKER SURVEYING, INC.
101 DAWSON CRESCENT
SEAFORD, VIRGINIA 23696
PHONE: 757-833-7768

JOB #:	DRAWN:	F.B.-PG:	TO:	SCALE:	DATE:
11-180	RRP	36-61	OAKWOOD	1" = 40'	9-2-11



MEMORANDUM COVER

Subject: Case Nos. Z-0003-2011/MP-0002-2011. New Town Settler's Market (Section 9) Master Plan Amendment

Action Requested: Shall the Board of Supervisors approve the New Town Settler's Market (Section 9) Master Plan Amendment and accept the voluntary proffers?

Summary: Mr. James Peters has applied to amend the master plan, proffers, and design guidelines for Case Nos. Z-0016-2005/MP-0015-2005. New Town Section 9 to reduce the maximum permitted residential density, separate the residential and commercial uses, and change the layout of the residential area of Section 9. The property is located at 4509 and 4520 Casey Blvd, is zoned MU, Mixed Use, and is designated Mixed Use on the Comprehensive Plan. The proposed master plan would allow up to 120 for-sale residential units and 350,000 square feet of commercial space. The rezoning application is necessary to amend the proffers to reference the revised design guidelines and master plan.

Staff finds reduced impacts from the originally approved master plan to be compatible with the Zoning Ordinance and the 2009 Comprehensive Plan and recommends that the Board of Supervisors approve this application and accept the voluntary proffers.

Fiscal Impact: The Fiscal Impact Analysis (FIA) found that the project initially creates a positive fiscal impact. However, as for nearly all residential projects, the fiscal impact moves from the positive to negative in the longer term as new households generate increased need for County services. It is also important to note that this FIA only examines the residential component of Section 9 as that is what is being amended. The proposed commercial development in Section 9 will serve to offset the negative fiscal impacts of the new residential units.

FMS Approval, if Applicable: Yes ☒ No ☐

Assistant County Administrator

Doug Powell _____

County Administrator

Robert C. Middaugh _____

Attachments:

1. Memorandum
2. Resolution
3. Location Map
4. Approved minutes of the October 5, 2011, Planning Commission meeting
5. Proffers
6. Master Plan (under separate cover)
7. Community Impact Statement (under separate cover)
8. Conceptual Layout for Commercial Development (under separate cover)

Agenda Item No.: J-6

Date: December 13, 2011

REZONING-0003-2011/MASTER PLAN-0002-2011. New Town Settler's Market (Section 9) Master Plan and Proffer Amendment
Staff Report for the December 13, 2011, Board of Supervisors Public Hearing

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

PUBLIC HEARINGS

Planning Commission:

Board of Supervisors:

Building F Board Room; County Government Complex

October 5, 2011, 7:00 p.m.

November 8, 2011 (Deferred at applicant's request)

December 13, 2011, 7:00 p.m.

SUMMARY FACTS

Applicant:

Mr. James Peters, AES Consulting Engineers

Land Owner:

FCP Settler's Market, L.L.C.

Proposal:

Amendment to existing Section 9 master plan to reduce the number of residential units from between 215-279 to 120, amend design guidelines, remove mixed use buildings, and revise the layout of the residential area.

Location:

4509 and 4520 Casey Boulevard

Tax Map/Parcel Nos.:

3843300001C and 3843300002B

Parcel Size:

9.3 acres

Existing Zoning:

MU, Mixed Use, with amended proffers

Comprehensive Plan:

Mixed Use

Primary Service Area:

Inside

STAFF RECOMMENDATION

Staff finds reduced impacts from the originally approved master plan to be compatible with the Zoning Ordinance and the 2009 Comprehensive Plan and recommends that the Board of Supervisors approve this application and accept the voluntary proffers.

Staff Contact:

Leanne Reidenbach

Phone: 253-6685

PLANNING COMMISSION RECOMMENDATION

The Planning Commission unanimously recommended approval of these applications at its October 5, 2011, meeting.

Proposed Changes Made Since Planning Commission Meeting

Since the October Planning Commission meeting, the applicant has added proffer #2 to clarify that the residential units will be incorporated into the existing New Town Residential Association rather than

requiring them to join the New Town Commercial Association as is currently required by the original Settler's Market proffers. This change is primarily of an administrative nature and does not impact the character of the development.

Proffers: Are signed and submitted in accordance with the James City County Proffer Policy. Aside from the master plan and design guideline references, all other proffers tied to the original rezoning (Z-0016-2005/MP-0015-2005) will remain in effect for the revised application. Staff has made a comparison between the cash contributions proffered by the original rezoning and current proffer guidelines to mitigate 2011 impacts for the FCP Plan. Overall, the proffer guidelines suggest contributions that are \$457,253 higher than the original plan. This amount includes a credit for \$337,041, which is what the previous developer has already contributed to mitigate impacts of Section 9. The increase is due to changes to the proffer guidelines for Parks and Recreation and schools and adjusted cash contributions for library, fire/EMS, water, and transportation improvements. Staff notes that suggested cash contributions are general guides and that determination of whether a proffered amount is sufficient to offset the impacts of a proposed development shall be made on a case-by-case basis at the Board's discretion. In this case, as mentioned, the impacts are reduced based on the originally approved plans.

New Town Design Review Board:

The New Town Design Review Board (DRB) reviewed and approved the final proposal for the binding and illustrative master plans and the revised design guidelines at its meeting on September 15, 2011.

PROJECT DESCRIPTION

Mr. James Peters has applied to amend the master plan, proffers, and design guidelines for New Town Section 9 to reduce the maximum permitted residential density, separate the residential and commercial uses, and change the layout of the residential area of Section 9. The proposed master plan would allow up to 120 for-sale residential units and 350,000 square feet of commercial space. The rezoning application is necessary to amend the proffers to reference the revised design guidelines and master plan.

Project History

In 2006, AIG Baker received approval from the Board of Supervisors for a master planned mixed use community in Section 9 of New Town (also known as Settler's Market). This master plan permitted development of between 215 and 278 dwelling units of varying types and between 401,945 and 426,342 square feet of commercial space. In September 2007, the Planning Division approved a site plan for this area allowing 334,600 commercial square feet and 204 residential units (note that this excludes the 67,736 commercial square feet approved for the Wal-Mart parcel).

FCP Settler's Market L.L.C. purchased the property within the last year and submitted a conceptual plan for changes to the commercial portion of Section 9 (areas south of Settler's Market Boulevard and west of Casey Boulevard excluding the parcel at the corner of Monticello and Route 199). The plan reduced proposed commercial square footage of this area by about 100,000 square feet from the originally proposed 426,000 square feet on the approved master plan. The Development Review Committee (DRC) found the plan consistent with the original master plan. This conceptual layout is found in Attachment No. 7. Amendments proposed for the residential section differed from the approved master plan so a public hearing is required.

Zoning Ordinance Consideration Items

On October 5, 2011, the Planning Commission approved a modification to the Mixed Use District setback requirements to allow buildings fronting on Casey Boulevard, Settler's Market Boulevard, or the Yield Street to be closer than 50 feet from the right-of-way so long as the proposed buildings meet the frontage requirements on the master plan and the design guidelines.

PUBLIC IMPACTS

Archaeology

A Phase I and Phase II archaeological assessments were previously conducted on the entire parcel in conjunction with Case No. SP-0074-2006. The reports indicated that no further work was necessary.

Engineering and Resource Protection

The majority of the stormwater infrastructure was installed by the previous developer. The current owner is gathering information regarding the as-built conditions of the systems.

Watershed: Powhatan Creek

Engineering and Resource Protection Staff Comments: Staff has reviewed the Community Impact Statement and Master Plan and concurs with the current proposal, while providing information that will need to be addressed at the development plan design stage.

Public Utilities

This project area is served by public water and sewer. Much of the water and sewer infrastructure was installed by the original owner and there are existing water conservation guidelines in place for this section of New Town.

James City Service Authority Staff Comments: Staff has reviewed the Community Impact Statement and Master Plan and concurs with the current proposal, while providing information that will need to be considered at the development plan design stage.

Transportation

The applicant submitted a revised traffic study demonstrating reduced trip generation between the original Section 9 plan (“AIG Plan”) and the revised reduced intensity plan (“FCP Plan”) due to the decrease in density and intensity of the project.

2007 County Traffic Counts: On Monticello Avenue from Ironbound Road to Route 199 there were 19,466 trips.

2035 Daily Traffic Volume Projected (from 2009 Comprehensive Plan): On Monticello Avenue between Ironbound Road and Route 199, 32,202 average annual daily trips (AADT) are projected – this is in the category of warranting improvement (from four to six lanes).

Road Improvements: No road improvements are proposed in conjunction with the FCP Plan. The Virginia Department of Transportation (VDOT) currently has fully funded improvements to Monticello Avenue from the Route 199 intersection to the News Road intersection to help improve the level of service (LOS) of the corridor. This has been referred to as the West Monticello Plan in past legislative cases. This project has been surveyed and design started October 2011. Estimated construction of these improvements will begin in winter 2013.

Proffers: The previous developer proffered and constructed several improvements during the initial development of the AIG Plan including traffic signals, pedestrian crossings, turn lanes at the Monticello Avenue/Casey Boulevard intersection, and a contribution of \$68,800 for off-site road improvements in the Monticello Avenue corridor (implementation of the West Monticello Plan). These proffers are not proposed to change; however, the estimated cost for the West Monticello Plan has increased from \$860,000 in 2006 to \$3.1 million in 2011. While the proportion of trips contributed to the News Road intersection has decreased with the FCP Plan, there is a difference of approximately \$96,200 between what AIG has already contributed and the amount that a new proposal could contribute to mitigate its traffic impacts. Again, there are no additional funds necessary for VDOT’s current design of the West Monticello Plan improvements.

VDOT Comments: VDOT concurred that since the intensity of the development is proposed to be reduced, no additional road improvements would be warranted. VDOT noted that the proposed reduction will result in a minimal change in the anticipated impacts outlined in the traffic impact study submitted by Courthouse Commons in 2010. Despite signal retiming and identified improvements by Courthouse

Commons and with the West Monticello Plan, VDOT noted that Monticello Avenue would still experience a reduction in intersection levels of service at News Road and Monticello Marketplace.

Staff Comments: The original New Town proffers included the commitment to maintaining an overall LOS C (with flexibility for an LOS D for select turning movements) at seven specific intersections. As each section of New Town has gone through rezoning, specific Traffic Impact Analyses (TIAs) have been prepared to demonstrate that this standard is met. The last Traffic Impact Analysis (TIA) in New Town was for Sections 7 and 8 and the AIG Plan for Section 9, which demonstrated that these LOS criteria would be met. The LOS deficiency noted at the Monticello Avenue/News Road intersection was planned to be mitigated through the West Monticello Plan improvements that were discussed above.

Overall there were minimal changes in traffic impact between the AIG Plan and the FCP Plan that were the result of the revised development proposal. Most changes can be attributed to the reduction in the scope of the West Monticello Plan, different 2010 existing conditions, and traffic contributed by Courthouse Commons.

Fiscal

The Fiscal Impact Analysis (FIA) found that the project initially creates a positive fiscal impact. However, as for nearly all residential projects, the fiscal impact moves from positive to negative in the longer term as new households generate increased need for County services. It is also important to note that this FIA only examines the residential component of Section 9 as that is what is being amended. Additionally, the proposed commercial development in Section 9 will serve to offset the negative fiscal impacts of the new residential units.

Housing

One of the benefits of previous New Town projects and this development has been the inclusion of mixed cost and affordable housing units. The AIG Plan included a proffer for three percent of constructed residential units to be offered at a price at or below \$154,000. FCP has indicated that this proffer will still be fulfilled under the revised proposal.

Public Facilities

This project is located within the Rawls Byrd Elementary School, Berkeley Middle School and Lafayette High School districts. Using the current student generation rate, the approved AIG Plan would have been expected to generate 33 school children. The FCP Plan is expected to generate 19 school children. Per the Adequate Public Schools Facilities Test, all rezonings should meet this test.

School	Design Capacity*	Effective Capacity#	Enrollment (2010)	Projected Students Generated by Proposal	Enrollment + Projected Students
Rawls Byrd	638	500	467	8	475
Berkeley	725	884	886	4	890
Lafayette	1,250	1,314	1,108	7	1,115

** Design capacity is no longer used by WJCC Schools as a measure of determining available classroom space. Instead, effective capacity is used.*

The Effective Capacity represents the "realistic and practical" number of students that the school facility can house as calculated by Moseley Architects in December 2004. Effective capacities were revised in 2010.

The elementary and high schools have sufficient capacity to accommodate the new development, but Berkeley Middle School is already over capacity. The FY 12 Capital Improvement Plan (CIP) includes funding for converting James Blair back to a middle school in FY 17. Since the reopening of James Blair is anticipated more than three years from the date of this application, the proposal does not meet the Adequate Public Schools Facilities Test at the middle school level. Since the FCP Plan reduces the

number of students added to the middle school by four, the FCP Plan would reduce the need for added capacity and is an overall positive change in terms of adequate school facilities.

Parks and Recreation

The applicant has indicated that Settler's Market residents would be incorporated into the existing New Town Homeowners Association (HOA) and would have access to recreation amenities provided in Sections 2-8.

COMPREHENSIVE PLAN

The site is designated Mixed Use on the 2009 Comprehensive Plan Land Use Map. Recommended uses for the New Town Mixed Use area include principal uses of commercial, office, and limited industrial with some residential as a secondary use. The development in this area should be governed by a detailed master plan which provides guidelines for street, building, open space design, and construction. The Plan also supports provision of full integration of affordable units within residential developments and supports expectations that developments maintain the levels of service of adjacent roadways and provide internal connectivity between commercial, residential, and office uses to encourage alternative routes.

Section 9 is proposed to be developed as a mixture of commercial and residential uses and is currently guided by a master plan. With this amendment, the commercial and residential units would be separated by Settler's Market Boulevard, but would both still be components of the project. The applicant has submitted design guidelines (see Attachment No. 6) that address architecture, materials, scale, pedestrian accommodations, and streetscapes. Staff finds the proposed development to be consistent with the 2009 Comprehensive Plan. Under the existing proffers, this project would also further the provision of affordable housing units in the County. Finally, the reduction of residential units proposed by this amendment (and reduction of commercial square footage proposed administratively) and anticipation of the West Monticello Plan help lessen the impacts that the FCP Plan has on the surrounding transportation network when compared to projected impacts of the AIG Plan.

RECOMMENDATION

Staff finds reduced impacts from the originally approved master plan to be compatible with the Zoning Ordinance and the 2009 Comprehensive Plan and recommends the Board of Supervisors approve this application and accept the voluntary proffers.

Leanne Reidenbach

CONCUR:

Allen J. Murphy, Jr.

LR/gb
z3-11mp2-11Market.doc

ATTACHMENTS:

1. Resolution
2. Location Map
3. Approved minutes of the October 5, 2011, Planning Commission meeting
4. Proffers
5. Master Plan (under separate cover)
6. Community Impact Statement (under separate cover)
7. Conceptual Layout for Commercial Development (under separate cover)

RESOLUTION

CASE NOS. Z-0003-2011/MP-0002-2011. NEW TOWN SETTLER'S MARKET (SECTION 9)

MASTER PLAN AMENDMENT

WHEREAS, in accordance with §15.2-2204 of the Code of Virginia and Section 24-13 of the James City County Zoning Ordinance, a public hearing was advertised, adjacent property owners notified, and a hearing scheduled for Case Nos. MP-0002-2011/Z-0003-2011 for amending the master plan and proffers for approximately 9.3 acres from MU, Mixed Use, with proffers, to MU, Mixed Use with amended proffers; and

WHEREAS, the site can be further identified as Parcels (33-1C) and (33-2B) on James City County Real Estate Tax Map No. (38-4); and

WHEREAS, the New Town Design Review Board, following its meeting on September 15, 2011, approved the binding master plan and design guidelines; and

WHEREAS, the Planning Commission of James City County, following its public hearing on October 5, 2011, recommended approval of Case Nos. MP-0002-2011/Z-0003-2011, by a vote of 7 to 0.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, after a public hearing, does hereby approve Case Nos. MP-0002-2011/Z-0003-2011 as described herein and accept the amended proffers.

Mary K. Jones
Chairman, Board of Supervisors

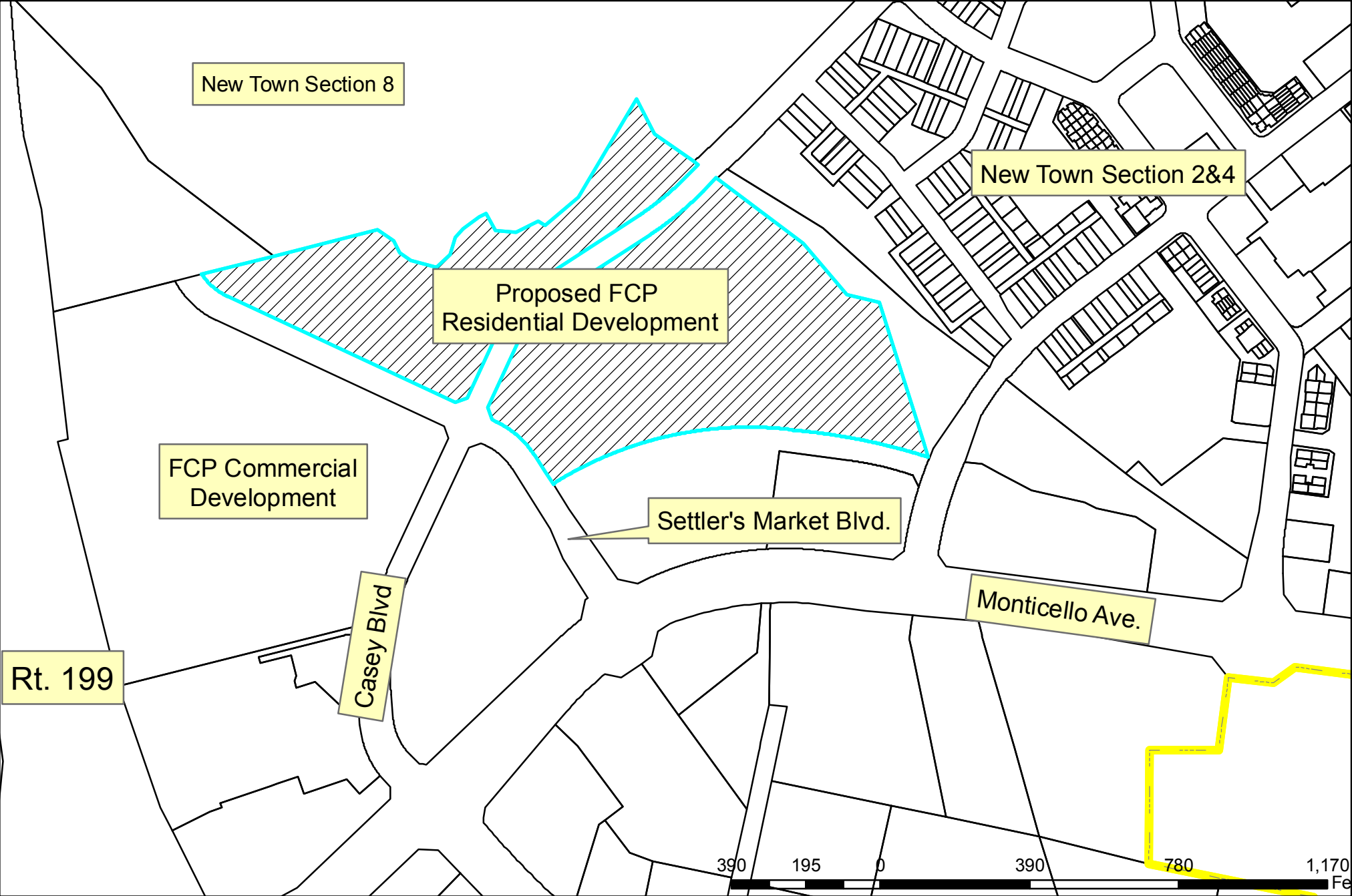
ATTEST:

Robert C. Middaugh
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 13th day of December, 2011.

z3-11mp2-11Market_res

MP-0002-2011/Z-0003-2011 New Town Settler's Market (Section 9) Master Plan Amendment



APPROVED MINUTES OF THE OCTOBER 5, 2011
PLANNING COMMISSION MEETING

A. MP-0002-2011/Z-0003-2011, New Town Settler's Market (Section. 9)
Master Plan Amendment

Ms. Leanne Reidenbach stated Mr. James Peters of AES has applied on behalf of FCP Settler's Market L.L.C. to amend the master plan and proffers for the residential portion of New Town Section 9 Settler's Market. The property is 9.3 acres along Casey Boulevard, zoned Mixed Use, and designated Mixed Use on the Comprehensive Plan. The amendment would reduce the number of residential units from between 215-278 to 120, remove mixed use buildings, modify design guidelines, and revise the residential layout. The proffer amendment change was required to amend references to the design guidelines and the master plan. The applicant also requests a waiver for mixed use internal street setbacks. The New Town Design Review Board (DRB) recommends approval. Staff recommends approval of the amendments and allowing reduced setbacks for buildings fronting Casey Boulevard, Settler's Market Boulevard, and Yield Street.

Mr. Vernon Geddy III, representing the applicant, FCP Settler's Market, stated they acquired the project in 2011 and applied to amend the master plan. He stated they submitted a conceptual plan which was determined by the Planning Director to be consistent with the New Town master plan for the commercial areas. The owner decided that the approved multi-story mixed use building condominiums were not feasible. FCP proposes reducing density to properly scale the development. The amended plan includes 120 townhome-style units comparable to other units in New Town. Units will front the street or open space. Alleys and sidewalks will increase walkability. The only changes to the proffers will be references to the New Town master plan and design guidelines: all other proffers remain. The proposal reduces impact on public facilities, including roads and schools. The project will allow for the completion of the Settler's Market area in a manner benefitting the New Town area, the County, and residents.

Mr. Fraley stated many citizens were concerned with empty commercial space. He stated he was pleased the plan reduced residential and commercial space. He asked if Mr. Geddy was hearing any interest in the commercial part of the application.

Mr. Geddy stated there was substantial interest on the commercial part. He stated announcements will be forthcoming when a critical mass of leases has been signed.

Mr. Poole stated those concerned with commercial overdevelopment hope Settler's Market tenants were not simply moving from other shopping centers in the County.

Mr. Woods commended the applicant on the presentation of materials.

Mr. Chris Basic stated that given past experience with the rear elevations of buildings along Main Street, he was concerned about the side of the commercial building along Settler's Market Boulevard that faced the residential portion of the development.

Ms. Reidenbach stated the New Town DRB desired the two commercial buildings to have

four-sided architecture. The DRB and staff will emphasize that aspect when they receive elevation drawings.

Mr. Geddy stated that was correct. He stated his client was working on ideas for those elevations.

Mr. Fraley opened the public hearing. Hearing none, Mr. Fraley closed the public hearing.

Mr. Krapf stated he was pleased with the plan's improved design and reduction of dwelling units, while retaining the affordable housing component. He stated he would support the proposal.

Mr. Woods stated the plan was vastly improved. He stated he was prepared to support the proposal.

Mr. Poole moved to recommend approval of the amendments and setback waiver.

Mr. Fraley stated he was pleased with the developer, but hoped the commercial tenants would not be moving in from other parts of the County. He stated he would support the proposal.

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

Tax Parcels: 3843300001C and 3843300002B

Prepared by and return to:
Vernon M. Geddy, III, Esquire
Geddy, Harris, Franck & Hickman, L.L.P.
1177 Jamestown Road, Williamsburg, VA 23185

**FIRST AMENDMENT TO NEW TOWN - SECTION 9 -
SETTLER'S MARKET AT NEW TOWN - PROFFERS**

This First Amendment to New Town – Section 9 – Settler's Market at New Town – Proffers is made this 15th day of September, 2011 by FCP SETTLER'S MARKET II, LLC, a Virginia limited liability company ("Owner"), to be indexed as "Grantor," and the COUNTY OF JAMES CITY, VIRGINIA (the "County"), to be indexed as Grantee.

RECITALS

R-1. Owner is the owner of certain real property in James City County, Virginia, being more particularly described on Exhibit A attached hereto and made a part hereof (the "FCP II Property"). The FCP II Property is a part of Section 9 of New Town and is subject to (i) New Town – Section 9 – Settler's Market at New Town – Proffers dated March 17, 2006 and recorded in the Clerk's Office of the Circuit Court for the City of Williamsburg and County of James City as Instrument No. 060017870 (the "Existing Proffers"); (ii) a master plan entitled "Settler's Market at New Town, Master Plan" dated December 22, 2005 (the "Existing Master Plan"); and (iii) design guidelines entitled "Settler's Market at New Town, Design Guidelines" dated December 5, 2005 (the "Existing Design Guidelines").

R-2. Owner has applied to the County to amend the Existing Master Plan and Existing Design Guidelines as they apply to the FCP II Property only and, in connection therewith, desires to amend the Existing Proffers.

R-3. Owner has submitted to the County (i) an amended master plan of the FCP II

Property entitled “New Town, A Portion of Section 9, Master Plan Amendment” made by AES Consulting Engineers dated June 22, 2011 and revised August 31, 2011 (the “FCP II Master Plan”) and (ii) an amendment to the Existing Design Guidelines applicable to the FCP II Property entitled “Settler’s Market at New Town, Design Guidelines Amendment” prepared by AES Consulting Engineers and Hopke & Associates, Inc. dated June 22, 2011, revised September 2, 2011 (the “FCP II Guidelines”).

A M E N D M E N T T O P R O F F E R S

1. With respect to the FCP II Property only, the defined terms “Section 9 Master Plan” and “Section 9 Guidelines” used in the Existing Proffers shall mean and refer to the FCP II Master Plan and FCP II Guidelines, respectively. With respect to all other portions of Section 9, the meaning of those defined terms in the Existing Proffers shall remain unchanged.

2. In addition to the options set forth in Proffer 2 of the Existing Proffers, Owner shall have the option to submit the FCP II Property to the New Town Residential Association, Inc., a Virginia non-stock corporation (the “Residential Association”), and the Amended and Restated Master Declaration of Protective Covenants and Restrictions, New Town (Residential), dated June 27, 2005, recorded in the Clerk's Office as document no. 050014430, the Articles of Incorporation and the Bylaws governing the Residential Association, as any of the foregoing have been or may be hereafter supplemented, amended or modified pursuant to the terms thereof, with it being specifically intended that the FCP II Property shall be maintained as a stand-alone development by the owner thereof and the FCP II Property shall not be subject to all of the covenants, restrictions, terms and conditions set forth in the declarations governing New Town.

3. Except as specifically amended hereby, the Existing Proffers remain unchanged and in effect.

WITNESS the following signature.

FCP SETTLER'S MARKET II, LLC

By: FCP Settler's Market Member, LLC,
its Class A Member and General Manager

By: FCP Fund I Trust, its Sole Member

By: _____

STATE OF VIRGINIA

CITY OF WILLIAMSBURG, to-wit:

The foregoing instrument was acknowledged before me this ____ day of _____,
2011, by _____, as _____ of FCP Fund I Trust, sole
member of FCP Settler's Market Member, LLC, Class A Member and Manager of FCP Settler's
Market II, LLC, on behalf of the company.

_____(SEAL)
Notary Public

My Commission expires:_____

Registration No. _____

EXHIBIT "A"

FCP II Property Legal Description

Parcel C

All of that certain real property situated in James City County, Commonwealth of Virginia, described as Parcel C, as shown on the plat made by Ronald W. Eads, L.S., dated July 10, 2007, last revised January 28, 2008, entitled "PLAT OF SUBDIVISION, BOUNDARY LINE ADJUSTMENT, AND PROPERTY LINE EXTINGUISHMENT OF THE PROPERTIES OWNED BY AK) BAKER WILLIAMSBURG, L.L.C. AND SETTLERS MARKET DEVELOPERS, LLC, NEW TOWN SECTION 9, 'SETTLER'S MARKET AT NEWTOWN", as attached to Affidavit of Plat recorded March 27, 2008, among the Clerk's Office of the Circuit Court of James City County, Virginia, as Instrument No. 080008540, LESS and EXCEPT those portions of the above described parcel contained within proposed Casey Boulevard and Settlers Market Boulevard, and shown on said plat as dedicated, or to be dedicated, to public use.

IT BEING a portion of the same property conveyed to FCP Settler's Market II, LLC from Union Bank, N.A. by Deed dated January 31, 2011 and recorded in the Clerk's Office of the Circuit Court of James City County, Virginia as Instrument Number 110003643.

Parcel 2B

That certain parcel or lot of land located in James City County, Virginia shown and set out as "Parcel #2B (508,959 S.F.±; 11.684 AC.±)" on the plat entitled "Plat of Subdivision, Parcel 2A, New Town, Section 9, "Settler's Market at New Town," Property of FCP Settler's Market, LLC. (FCP I)," consisting of Sheets 1 through 3, made by AES Consulting Engineers and dated April 20, 2011, which plat is recorded in the Clerk's Office of the Circuit Court of the City of Williamsburg and County of James City as Instrument No. 110011912.

Together with all and singular the buildings and improvements thereon, the rights and privileges, tenements, hereditaments, easements and appurtenances unto the land belonging or in anywise appertaining.

Subject, however, to all easements, conditions, and restrictions of record affecting said property.

This is a portion of the same property conveyed unto FCP Settler's Market II, LLC by Deed dated June 22, 2011 from FCP Settler's Market, LLC and recorded in the Clerk's Office of the Circuit Court of the City of Williamsburg and County of James City as Instrument Number 110013932.



MEMORANDUM COVER

Subject: Case Nos. Z-0003-2008/MP-0003-2008. The Candle Factory

Action Requested: Shall the Board approve the resolution that allows the construction of a mixed-use development consisting of 175 residential dwelling units, 30,000 square feet of commercial/office space, and a 90,000-square-foot assisted living facility?

Summary: Mr. Timothy Trant has applied on behalf of Kaufman & Canoles, P.C. to rezone approximately 64.45 acres of land from A-1, General Agricultural District; M-1, Limited Business/Industrial District; and MU, Mixed-Use district; to MU, Mixed-Use District, with proffers. The properties subject to the proposed rezoning are located at 7551, 7567, and 7559 Richmond Road. The development proposed with this rezoning application will allow the construction of a maximum of 175 residential units, approximately 30,000 square feet of commercial/office space, and a 90,000-square-foot assisted living facility with capacity for 96 units.

On April 1, 2009, the Planning Commission (PC) recommended approval of this application by a vote of 4-3.

This case has been deferred since the PC recommendation, until this meeting. Given the Board's recent concerns with deferrals, this may prompt discussion among the Board.

Staff can recommend approval of this rezoning application based on its land use considerations and the acceptance of the voluntary proffers, however, the proffer change could be improved upon.

Fiscal Impact: Attached to Community Impact Statement Binder

FMS Approval, if Applicable: Yes ☐ No ☒

Assistant County Administrator

Doug Powell _____

County Administrator

Robert C. Middaugh _____

Attachments:

1. Staff Report
2. Resolution
3. Community Impact Statement
4. Location Map
5. Proffers
6. Master Plan

Agenda Item No.: J-7

Date: December 13, 2011

**REZONING-Z-0003-2008/MASTER PLAN-0003-2008. The Candle Factory
Staff Report for the December 13, 2011, Board of Supervisors Public Hearing**

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

PUBLIC HEARINGS

Planning Commission:

Building F Board Room; County Government Complex

November 5, 2008, 7:00 p.m. (deferred by applicant)

December 3, 2008, 7:00 p.m. (deferred by applicant)

January 7, 2009, 7:00 p.m. (recommended approval by 4-2)

April 1, 2009, 7:00 p.m. (recommended approval by 4-3)

Board of Supervisors:

February 10, 2009, 7:00 p.m. (deferred by applicant)

March 10, 2009, 7:00 p.m. (remanded to Planning Commission)

April 28, 2009, 7:00 p.m. (indefinitely deferred by applicant)

April 13, 2010, 7:00 p.m. (deferred by the Board of Supervisors)

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

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

December 13, 2011, 7:00 p.m.

SUMMARY FACTS

Applicant:

Mr. Timothy O. Trant, II, of Kaufman & Canoles, P.C., on behalf of Candle Factory, LLC

Land Owner:

Candle Development, LLC

Proposal:

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

Location:

7551, 7567, and 7559 Richmond Road

Tax Map/Parcel Nos.:

2321100001D, 2321100001E, and 2321100001A

Parcel Size:

Approximately 64.45 acres

Existing Zoning:

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

Comprehensive Plan:

Low Density Residential and Mixed-Use

Primary Service Area:

Inside

STAFF RECOMMENDATION

Staff finds that this application is consistent with the tenets of both the Zoning Ordinance and the 2009 Comprehensive Plan. Staff recommends approval of this application and acceptance of the voluntary proffers.

A positive action includes approval of the private streets proposed as part of this development (refer to the master plan for location of private streets).

Staff Contact: Jose-Ricardo L. Ribeiro, Senior Planner

Phone: 253-6685

Proposed Changes Made Since the May 25, 2010, Board of Supervisor's Meeting

The only change made to this application since the applicant requested indefinite deferral in May 2010 is a revision to Proffer No. 21 - Phasing of Assisted Living Facility:

“The County shall not be obligated to issue building permits for more than 125 residential units on the Property until construction of the assisted living units in Area 1A of the Master Plan has commenced and footings and/or foundations for a building have been installed and inspected.”

The applicant has amended the language of this proffer to read:

“The County shall not be obligated to issue building permits for more than 87 dwelling units on the Property until a temporary or permanent certificate of occupancy has been issued by the County for the assisted living facility located in Area 1A of the Master Plan.”

The amended language does not guarantee the construction and/or operation of an assisted living facility; it establishes a linkage between the build-out of the proposed facility and construction of a restricted number of residential dwelling units (i.e. 87 units).

Candle Factory Application-Time Line

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

assisted living facility) since it received a recommendation of approval by the Planning Commission in April 2009. Four proffered items have been revised by the applicant (e.g., affordable and mixed cost housing, cash contributions for community impacts, traffic improvements, and design guidelines and review).

- April 13, 2010 - Board of Supervisors Meeting
The Board of Supervisors deferred consideration of the rezoning of Candle Factory to the May 11, 2009, meeting in order for it to be considered concurrently with the James City County SUP Case No. 0002-2010, CVS and Food Lion stores.
- May 11, 2010 - Board of Supervisors Meeting
The applicant requested deferral of this application until the next Board meeting on May 25, 2010, in order to allow the applicant time to create a proffer addressing the timing of the construction of the assisted living facility.
- May 25, 2010 - Board of Supervisors Meeting
This application was indefinitely deferred by the applicant in order to address issues related with the timing and viability of the Continuing Care Retirement Community (CCRC) element of the project.

PROJECT DESCRIPTION

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

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

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

Proffers: Are signed and submitted in accordance with the James City County Proffer Policy. Table 1.0 below identifies all cash contribution (except for \$30,000 proffered for sidewalks and up to \$10,000 proffered for traffic signal coordination) offered by the applicant as a means to mitigate the physical impact of the proposed development.

Table 1.0-Cash Contributions for community impacts

Housing Category	Housing Type	Total Quantity	Pricing Type	Total Quantity	CIP: Schools	CIP: Others:	Water	Sewer	Stream Restoration	Totals:
SFD¹	Single Family Detached	33 units	Market Price \$350,000	33 units	\$ 17,748	\$1,000	\$1,258	\$673	\$ 500	\$698,915
SFA²	Townhouse	142 units	At or below \$160,000	5 units	N/A	N/A	N/A	N/A	\$ 500	\$2,500
			At or below \$ 190,000	5 units	\$5,050	\$1,000	\$949	\$673	\$ 500	\$40,860
			At or below \$225,000	48 units	\$5,050	\$1,000	\$949	\$673	\$500	\$392,256
			Market Price	84 units	\$5,050	\$1,000	\$ 949	\$673	\$ 500	\$686,448
N/A	Assisted Living Units	96 units	N/A	96 units	N/A	\$250	\$ 475	\$597	N/A	\$126,912
<p>Source: Rezoning Application Materials Associated with-Z-0003-2008/Master Plan-0003-2008 ¹SFD = Single Family Detached; ²SFA = Single Family Attached.</p>										\$1,947,891
Total										

CONTRIBUTIONS-PUBLIC IMPACTS

Archaeology

Proffers:

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

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

Environmental

Watershed: Subwatershed 103 of the Yarmouth Creek Watershed

Proffers:

- A contribution of \$500 for each residential unit shall be made to the County toward stream restoration or other environmental improvements in the Yarmouth Creek watershed [Proffer No. 5 (e)];
- Sustainable building practices are proffered (Proffer No. 11);
- Development of a Master Stormwater Management Plan is proffered with the use of Low Impact Development (LID) techniques to treat 30% of the impervious areas on the property [Proffer No. 14 (a)]; and
- A Nutrient Management Plan program has been proffered to be implemented in the proposed development. (Proffer No. 15).

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

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

Fiscal Impact:

Proffers:

- Cash contributions of \$1,000 per dwelling unit other than affordable units on the property (total of \$170,000) and \$ 250 for each assisted living unit on the property (total of \$ 24, 000) shall be made to the County in order to mitigate impacts on the County from the physical development and operation of the property. The County may use these funds for any project in the County's capital improvements plan which may include emergency services, off-site road improvements, future water needs, library uses, and public use sites.
- A Fiscal Impact Study prepared for this development by the Wessex Group, and revised on March 10, 2010, (refer to Community Impact Statement binder) was provided along with the rezoning application for County review. Below are the major assumptions and results of the net fiscal impact analysis for the Candle Factory Development identified by the study:
 - At completion in 2015, the proposed development is expected to add proximately \$59 million in real property value to James City County;
 - An average of 87 full-time employees per year is expected during the five-year construction phase of the Candle Factory Development. At build-out in 2015, 148 employees are expected to work in the office spaces and in the assisted living facility combined;
 - At build-out, the Candle Factory Development is expected to generate annually \$798,900 in revenues for James City County and create annual expenditures in the amount of \$845,500. The net fiscal impact is estimated to be negative \$46,700 at build out in 2015; and
 - In future years, the net fiscal impact is expected to improve such that in 2021, the net fiscal impact is at breakeven and increases in the years following.

Staff Comments: The Fiscal Impact Study for the Candle Factory is heavily weighted up front by construction spending. Permit fee revenue is the largest source of local revenue until the fourth year of a five-year construction schedule. Permit fee revenue usually doesn't cover the costs of the on-going oversight by Building Safety and Permits and the Engineering and Resource Protection Divisions during construction, but these divisions spending are not accurately reflected in the presentation of offsetting spending thus overstating the fiscal benefits. At build-out, the projections turn negative.

Residential

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

Office

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

Assisted Living Facility:

Fiscally, the assisted living facility provides the greatest economic potential for this project. Revised Proffer No. 21 establishes a linkage between the build-out of the proposed assisted living facility with a restricted number of residential dwelling units.

Public Utilities

The site is inside the Primary Service Area (PSA) and served by public water and sewer.

Proffers:

- For cash contribution information please refer to Table No. 1 on this report and/or Proffer No. 5 attached to this report.

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

Public Facilities

Proffers:

A cash contribution of \$17,748.26 per each single-family detached dwelling unit and \$5,050.19 for each single-family attached dwelling unit, other than affordable units has been proffered to the County to mitigate the impacts from physical development and operation of the property [Proffer No. 5(a)]. The County may use these funds for any project in the County's capital improvement plan, the need for which is generated by the physical development and operation of the property, including, without limitation, school uses.

Staff Comments: This project is located within the Norge Elementary, Toano Middle, and Warhill High Schools districts. Under the proposed Master Plan, 175 residential units are proposed. With respect to the student generation and the current school capacities and enrollments for 2011-2012, the following information is provided:

Student Projections:

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

A total of 37 new students are projected to be generated under the assumed residential unit mix. These numbers are generated by the Department of Financial and Management Services in consultation with Williamsburg-James City County (WJCC) Public Schools based on historical attendance data gathered from other households in James City County. Table 2.0 illustrates the expected number of students being generated by Candle Factory and overall student capacity for Norge Elementary, Toano Middle, and Warhill High Schools.

Table 2.0-Student enrollment and school capacity for JCC-Williamsburg schools 2011-2012

School	Design Capacity	Effective Capacity ¹	Enrollment (2011)	Projected Students Generated	Enrollment+Projected Students
Norge Elementary School	760	695	535	Approx. 16	551
Toano Middle School	775	822	705	Approx. 9	714
Warhill High School	N/A*	1,441	1,136	Approx. 12	1,148

Source: Williamsburg-JCC Public School Official Student Enrollment Report November 2011-2012

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

* There is no Design Capacity developed for Warhill High School

Based on this analysis, the 37 students projected to be produced from the new development would not cause the enrollment levels for Norge Elementary, Toano Middle and Warhill High Schools to exceed their effective capacities.

Affordable and Mixed Cost Housing:

Proffers: According to Proffer No. 4 - “A minimum of 5 of the dwelling units shall be reserved and offered for sale at a sales price to buyer at or below \$160,000 subject to adjustment as set forth herein (“Affordable Units”). A minimum of an additional 5 of the dwelling units shall be reserved and offered for sale at a price at or below \$190,000 subject to adjustment as set forth herein. A minimum of an additional 48 of the dwelling units shall be reserved and offered for sale at a price at or below \$225,000 subject to adjustment as set forth herein.”

The 2009 Comprehensive Plan defines affordable housing as: “Housing available at a sales price or rental amount that does not exceed 30% of the total monthly income.... For purposes of targeting needed housing in the community, affordable housing is aimed at families earning between 30% and 120% of Area Median Income.” Table 3.0 below demonstrates the relationship between the Area Median Income (AMI), its corresponding target house prices, and the price restricted units being proffered by Candle Factory.

Table 3.0 AMI and target house prices for James City County

% AMI*	4-Person Income	Target House Prices***	Candle Factory**
30%	\$20,450	\$61,400	N/A
50%	\$34,100	\$102,300	N/A
80%	\$54,550	\$163,650	5 units at \$160,000
100%	\$68,200	\$204,600	5 units at \$190,000
120%	\$81,840	\$245,520	48 units at \$225,000

Source: U.S. Department of Housing and Urban Development.*Area Medium Income is calculated for the entire Virginia Beach-Hampton Roads MSA 2010 **proffers for Candle Factory-2011. ***Target house prices for James City County-2010.

These proffers favor the higher end of the targeted households (earning between 100% and 120% of AMI.) According to the Housing Needs Assessment (page 37 of the 2009 Comprehensive Plan), an analysis of the 2000 Census data shows that approximately half the County’s owner households earning below 80% AMI lack affordable housing. Specifically, more than two-thirds of those earning below 50% AMI and almost half of those earning between 50% and 80% AMI lacked affordable housing in the County. Common professions

associated with the income range between 75% and 80% AMI are: fire fighters, police officers, and teachers¹. Staff acknowledges that this proffer is a positive public benefit to the County. However, these proffers do not address the needs of affordable housing to the targeted households earning below 80% AMI.

Parks and Recreation

Proffers:

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

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

Transportation

A Traffic Impact Analysis (TIA) to address the requirements set forth by the Virginia Department of Transportation (VDOT)'s Traffic Impact Analysis regulations commonly known as Chapter 527 was prepared for the proposed Candle Factory development and submitted as part of this rezoning application. VDOT has evaluated this TIA and found that the report conforms to the requirements of Chapter 527 with regard to the accuracy of methodologies, assumptions, and conclusions presented in the analysis. The scope of this study encompassed 1) a corridor analysis inclusive of Route 60 traffic signals at Croaker Road, Norge Lane, and Norge Elementary School; and 2) a traffic analysis which extends to the year 2015. The intersections for the traffic counts and traffic analysis used for this report are shown below:

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

Proffers:

- Reconstruction of the existing private driveway at the Route 60/Croaker Road intersection to a public road with four- or five-lane road section at the Route 60 intersection [Proffer No. 6(a)];
- At the intersection of Route 60 and Croaker Road, a right-turn lane with 200 feet of storage and a 200 foot taper and with shoulder bike lane from east bound Route 60 into the property shall be constructed [Proffer No. 6(b)];
- At the intersection of Route 60 and Croaker Road, the eastbound left-turn lane shall be extended to have 200 feet of storage and a 200 foot taper [Proffer No. 6(c)];
- Related adjustments to the Route 60 traffic signal at Croaker Road were proffered [(Proffer No. 6(d)];
- Payment to VDOT, not to exceed \$10,000 of the equipment at the Norge Lane/Route 60 traffic signal necessary to allow the coordination of the signal at the Croaker Road/Route 60 intersection [Proffer No. 6(e)];
- Installation of crosswalks across Route 60, a median refuge island, signage and pedestrian signal heads at the intersection of Route 60/Croaker Road as warranted [Proffer No. 6(f)];
- Provision of pedestrian and vehicular connections between the Property and the adjacent property - Tax Parcel No. 2321100001C (Proffer No. 7);
- Provision of a crosswalk across Croaker Road from Tax Parcel No. 2321100001B to Tax Parcel No. 2321100001C and crosswalks providing access to the two internal parks on the property (Proffer No. 20); and

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

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

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

Trip Generation:

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

Intersection Level of Services:

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

Traffic Counts:

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

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

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

Staff Comments: Staff concurs with VDOT’s findings and notes that according to the supplemental material, Overall LOS at Route 60/Croaker Road and Route 60/Norge Lane will remain at Level C,

although several turning movements exhibit LOS D. Level of Service at Croaker Road/Rochambeau Drive will decline over time. Staff further notes that primary access to the development will be from the existing shared and signalized entrance at the Richmond/Croaker Road intersection. Access to the office/commercial component of the development will also be provided by extension of the existing drive from Poplar Creek Office Park. During the last Planning Commission meeting, the applicant agreed to proffer a dedicated right-turn lane to the north bound approach to the intersection of Route 60 and Croaker Road. Staff notes that the Candle Factory property located along Richmond Road has an approved Special Use Permit (SUP) which allowed the construction of a CVS store and a Food Lion supermarket. Staff notes that the master plans for the Candle Factory development and for CVS/Food Lion incorporate pedestrian and vehicular interconnectivity features between parcels. Further, both developments will mostly use the existing signalized entrance to connect to and from Richmond Road. Staff has worked with VDOT and the applicants of both developments to ensure that each development will address and mitigate their own impact to the traffic/road system.

COMPREHENSIVE PLAN

Land Use Map

The 2009 Comprehensive Plan Land Use Map designates the site for the proposed Candle Factory project as Low Density Residential and Mixed Use. Table 4.0 below shows the two different land use designations on the site broken down by respective acreage, proposed use, and correspondent densities.

Table No. 4.0-2009 Comprehensive Plan land use designation for the Candle Factory property

	Candle Factory Site (Total Acreage)	Mixed Use Designated Area	Low Density Residential Designated Area
Area	±64.4 Acres	±3.6 acres	±61.4 acres
Uses Proposed	Residential, non-residential, and recreational uses	Non-residential: Thirty-thousand square feet of commercial/office space	Residential: 33 Single-Family Detached Units, 142 Single-Family Attached Units. Non-Residential: 90,000-square-foot Assisted Living Facility with capacity for 96 units Recreational: ±3.65 acre of park land
Density	±2.7 dwelling units per acre (density calculation based on 175 units/64.5 acres-total area)	N/A	±3.6 dwelling units per acre (density calculation based on 175 units/48 acres- total parcel area 64.4 acre <i>minus</i> ±13 acre-area dedicated to the assisted living facility, and <i>minus</i> three-acre area designated Mixed Use area)

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

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

calculate density. Table 5.0 shows density numbers for the proposed Candle Factory development compared to nearby residential developments:

Table No. 5.0- Densities for Candle Factory and nearby residential developments

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

Source: GIS. Numbers are an approximation.

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

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

“While assisted living rooms and skilled nursing beds do have an impact to the County, they do not represent the same level of impact as would a traditional dwelling unit. Assisted living rooms and skilled nursing beds have been considered to be more along the lines of an institutional land use (like a hospital) than a residential land use, and that their impacts should be accounted for differently than with a density measurement.”

The largest public impacts from the assisted living rooms will likely come from traffic (delivery of goods and services, employees traveling to and from the site). Staff finds that the set of traffic/road improvements proffered by this application mitigate the impacts of not only the residential/commercial development of the site but that of the assisted living facility as well.

During the 2009 Comprehensive Plan review process, the properties behind the mixed use designated Cross walk Community Church and the Candle Factory parcels along Richmond Road were re-designated from a mix of Low Density Residential, Limited Industrial and Mixed Use to Low Density Residential and Mixed Use. The revised Low Density Residential designation covers the current A-1 and MU zoning district areas as shown on the new 2009 Comprehensive Plan Land Use Map. Residential uses with gross density up to four units per acre and an assisted living facility are uses which are compatible with the Low Density Residential re-designation of the parcels.

For Mixed Use areas southwest of the Croaker/Richmond Road intersection, suggested uses include commercial and office as primary uses with limited industry as a secondary use. Candle Factory proposes a mix of 30,000 square foot of commercial and office spaces. Planning staff finds this proposal consistent with the James City County 2009 Comprehensive Plan.

SETBACK REDUCTION REQUEST

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

Further, the applicant requested reduction of the vegetative buffer to a minimum of 20 feet between the

commercial/office area as shown on the master plan, and the Candle Factory Commercial Complex. This was also requested for the purpose of providing connectivity between both parcels.

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

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

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

1. Properties adjacent to the properties being considered for a reduction in setback must be compatible.

The Cross Walk Community Church Parcel is zoned Mixed Use, the same zoning designation sought for the rezoning for Candle Factory. Further, Cross Walk Community Church will run and operate the proposed Assisted Living Facility at the Candle Factory site.

2. The proposed setback reduction has been evaluated by appropriate county, State, or Federal agencies and has been found to not adversely impact the public health, safety or welfare.

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

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

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

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

PRIVATE STREETS

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

RECOMMENDATION

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

Jose-Ricardo L. Ribeiro

CONCUR:

Allen J. Murphy, Jr.

JRLR/gb
Z3-08mp3-08CanFac.doc

ATTACHMENTS:

1. Resolution
2. Revised Proffers dated November 4, 2011
3. Master Plan
4. Community Impact Statement Binder
5. Location Map

RESOLUTION

CASE NOS. Z-0003-2008/MP-0003-2008. THE CANDLE FACTORY

WHEREAS, in accordance with § 15.2-2204 of the Code of Virginia, 1950, as amended, and Section 24-15 of the James City County Zoning Ordinance, a public hearing was advertised, adjoining property owners notified, and a hearing scheduled on Zoning Case Nos. Z-0003-2008/MP-0003-2008; and

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

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

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

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

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

Mary K. Jones
Chairman, Board of Supervisors

ATTEST:

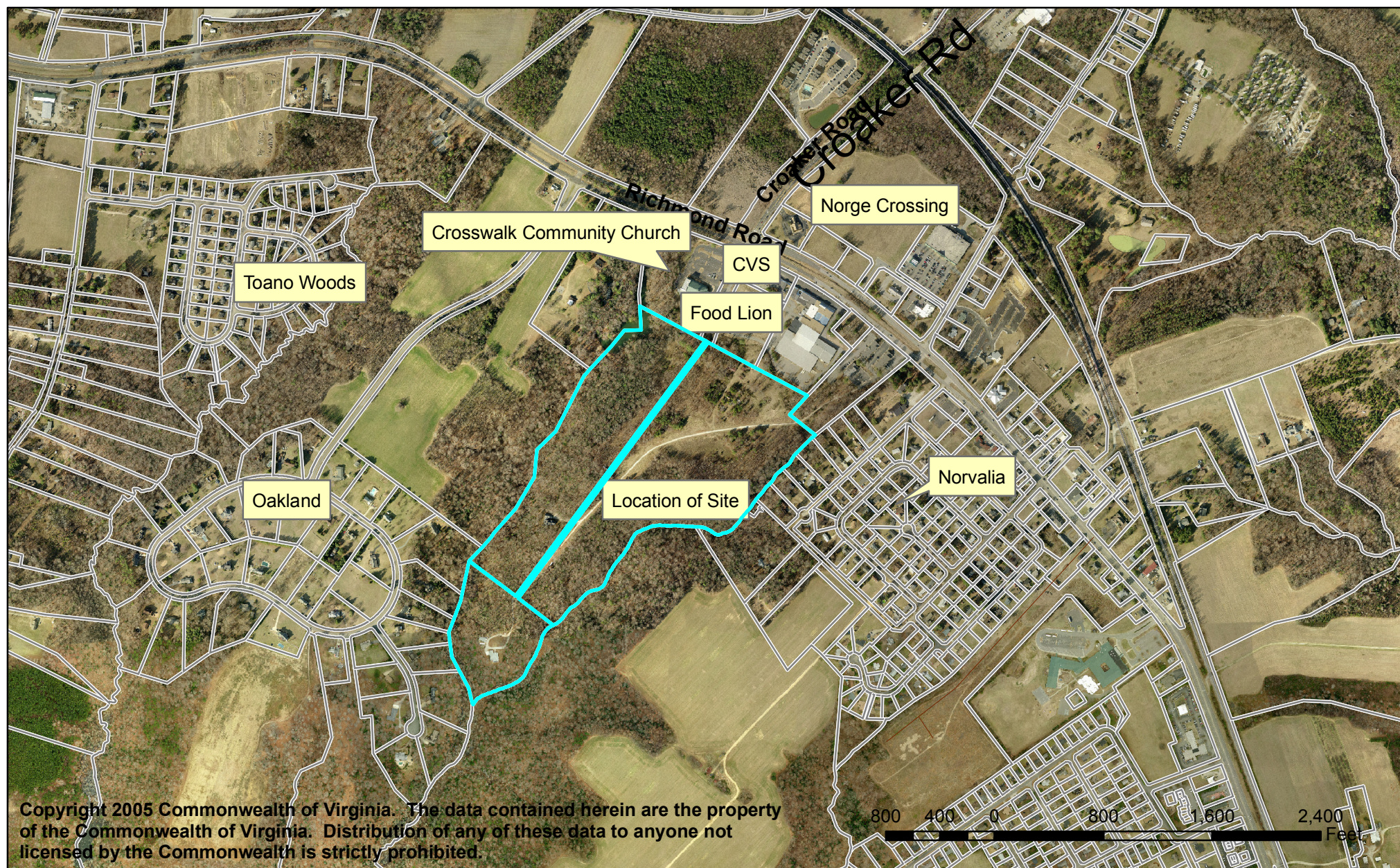
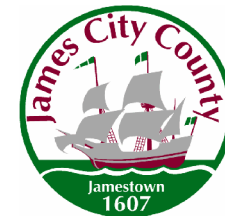
Robert C. Middaugh
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 13th day of December, 2011.

Z3-08mp3-08CanFac_res

Z-0003-2008/MP-0003-2008

Candle Factory



THE CANDLE FACTORY

PROFFERS

THESE PROFFERS are made this 4th day of November, 2011 by CANDLE DEVELOPMENT, LLC (together with its successors in title and assigns, the "Owner") and JOHN B. BARNETT, JR. and JUDITH BARNETT, individually and as Trustees of the John B. Barnett Jr. and Judith L. Barnett Living Trust dated June 2, 2011 (the "Barnetts").

RECITALS

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

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

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

D. Owner has submitted to the County a master plan entitled "Master Plan for Rezoning of Candle Factory Property for Candle Development, LLC" prepared by AES Consulting Engineers dated September 24, 2008, last revised March 5, 2010 (the "Master Plan") for the Property in accordance with the County Zoning Ordinance.

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

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

CONDITIONS

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

(b) All assisted living units developed on the Property shall be occupied by persons eighteen (18) years of age or older in accordance with applicable federal and state laws and regulations, including but not limited to: the Fair Housing Act, 42 U.S.C. 3601 et seq. and the exemption therefrom provided by 42 U.S.C. 3607(b)(2)(C) regarding discrimination based on

familial status; the Housing for Older Persons Act of 1995, 46 U.S.C. 3601 et seq.; the Virginia Fair Housing Law Va. Code 36-96.1 et seq.; any regulations adopted pursuant to the foregoing; any judicial decisions arising thereunder; any exemptions and/or qualifications thereunder; and any amendments to the foregoing as now or may hereafter exist. Specific provisions of the age restriction described above and provisions for enforcement of same shall be set forth in a recorded document which shall be subject to the review and approval of the County Attorney prior to issuance of the first building permit for construction in Area 1A.

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

grant each Association the power to file liens on members' properties for the cost of remedying violations of, or otherwise enforcing, the Governing Documents. The Governing Documents shall authorize the Association to develop, implement and enforce a water conservation plan and nutrient management plan as provided herein.

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

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

Owner may apply for a waiver for a shallow (less than 100 feet) well to supplement the surface water impoundments.

4. **Affordable and Mixed Costs Housing.** A minimum of 5 of the dwelling units shall be reserved and offered for sale at a sales price to buyer at or below \$160,000 subject to adjustment as set forth herein ("Affordable Units"). A minimum of an additional 5 of the dwelling units shall be reserved and offered for sale at a price at or below \$190,000 subject to adjustment as set forth herein. A minimum of an additional 48 of the dwelling units shall be reserved and offered for sale at a price at or below \$225,000 subject to adjustment as set forth herein. The maximum prices set forth herein shall include any adjustments as included in the Marshall and Swift Building Costs Index (the "Index") annually beginning January 1, 2012 until January 1 of the year in question. The adjustment shall be made using Section 98, Comparative Costs Multipliers, Regional City Averages of the Index of the adjusting year. Owner shall consult with and accept referrals of, and sell to, potential buyers qualified for the Affordable Housing Incentive Program ("AHIP") from the James City County Office of Housing and Community Development on a non-commission basis. At the request of the Office of Housing and Community Development, Owner shall provide downpayment assistance second deed of trust notes and second deeds of trust for the Affordable Units for the difference between the appraised value of the Affordable Unit and its net sale price to the purchaser in accordance with AHIP using the approved AHIP form of note and deed of trust. The Director of Planning shall be provided with a copy of the settlement statement for each sale of an Affordable Unit and a spreadsheet prepared by Owner showing the prices of all of the Affordable Unit that have been sold for use by the County in tracking compliance with the price restrictions applicable to the

Affordable Units. These documents shall be provided on or before January 30th of each year for all sales closing during the prior calendar year until all the Affordable Units have been sold. Affordable Units shall not be constructed all in the same location.

5. Cash Contributions for Community Impacts.

(a) Owner shall make a cash contribution to the County to offset community impacts to areas such as schools, stream restoration, traffic improvements, emergency and library services, and sewer and water facilities, based on the specific size, density, and scale of the development as approved and to the extent developed in connection herewith (the "Cash Contribution Amount"). Assuming full build out of the development as proposed herein, the Cash Contribution Amount shall be a lump sum amount of One Million Nine-Hundred Forty-Seven Thousand Nine-Hundred Seventeen and 61/100 Dollars (\$1,947,917.61). Rather than developing the Property all at once, the developer may elect to submit subdivision plats or site plans for portions of the development on the Property. If the developer so elects, the Cash Contribution Amount shall be payable incrementally at the time of each final site plan or subdivision plat approval requested in connection with the residential or assisted living facility components of this development. At the time of any final site plan or subdivision plat approval for any portion of the residential or assisted living components of this project, Owner shall pay any portion of the Cash Contribution Amount attributable to that portion of the development included on a final site plan or subdivision plat. The portion of the Cash Contribution Amount to be paid at each such approval shall be calculated to accurately and incrementally represent the percentage of the residential or assisted living facility land use entitlements for which final site plan or subdivision plat approval is being granted as compared to the overall land use

entitlements approved for the residential and assisted living facility components of this development. The Owner and the County shall execute a recordable agreement at the time of approval of any subdivision plat or site plan to reflect the partial payment arrangement with respect to the Cash Contribution Amount.

It is the Owner's specific intention and agreement that this Section 5(a) does not violate Virginia Code §15.2-2303.1:1, and Owner hereby waives any rights it may have to challenge this method of payment of the Cash Contribution Amount as being in conflict with such statute. Notwithstanding any provision to the contrary contained herein, if any portion of this Section 5(a) shall be adjudged by any court of competent jurisdiction to be invalid or unenforceable for any reason, the rezoning in connection herewith shall be deemed null and void and the zoning of the Property shall revert to that applicable to the Property immediately prior to the subject rezoning, unless Owner agrees to pay any outstanding portion of the Cash Contribution Amount to the County on the same terms stated herein notwithstanding such ruling of invalidity of this Section 5(a).

(b) A contribution of an amount equal to \$2.17 per gallon of average daily sanitary sewage flow as determined by JCSA for each non-residential building based on the use of the building(s) shall be made to the JCSA to defray the costs of the Colonial Heritage Pump Station and Sewer System Improvements or any project related to improvements to the JCSA sewer system. Such contribution shall be payable at the time of final site plan approval for each non-residential building on the Property.

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

(d) The contribution(s) paid in each year pursuant to this Section and Section 6(e) shall be adjusted annually beginning January 1, 2012 to reflect any increase or decrease for the preceding year in the Index. In no event shall the amounts stated in this Section be adjusted pursuant to this Section 5(d) to a sum less than the amounts set forth in paragraphs (a) through (c) of this Section and Section 6(e). The adjustment shall be made using Section 98, Comparative Costs Multipliers, Regional City Averages of the Index. In the event that the Index is not available, a reliable government or other independent publication evaluating information heretofore used in determining the Index (approved in advance by the County Manager of Financial Management Services) shall be relied upon in establishing an inflationary factor for purposes of increasing the contributions to approximate the rate of annual inflation in the County.

6. Entrances; Traffic Improvements. (a) The existing private driveway at the Route 60/Croaker Road intersection shall be reconstructed to a public road with a four lane road section (provided, however, that the Director of Planning may require a fifth lane, if the level of development that has occurred on Tax Map Parcel No. 2331100001C warrants such additional lane) at the Route 60 intersection and tapering to a two lane section. The northbound Croaker Road approach to the Croaker Road/Route 60 intersection shall include a left turn lane with 200 feet of storage, a through lane (provided, however, that the Director of Planning may require a

through/left turn lane, if the level of development that has occurred on Tax Map Parcel No. 2331100001C warrants such through/left turn lane) and a right turn lane.

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

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

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

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

(f) Subject to the prior approval of VDOT and when sidewalk has been constructed on the north side of Route 60 at the Croaker Road/Route 60 intersection to receive pedestrians, Owner shall install or pay the costs of installation of crosswalks across Route 60, a median refuge island, signage and pedestrian signal heads at the intersection ("Pedestrian Improvements"). The County shall not be obligated to issue building permits for more than 100

residential units on the Property until either (i) the Pedestrian Improvements have been installed, or (ii) Owner shall have paid the costs of such improvements to the County or posted a bond in form satisfactory to the County Attorney for the installation of such Pedestrian Improvements.

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

8. **Streetscape Guidelines.** The Owner shall provide and install streetscape improvements in accordance with the applicable provisions of the County's Streetscape Guidelines policy or, with the permission of VDOT, the plantings (meeting County standards for plant size and spacing) may be installed in the adjacent VDOT right-of-way. The streetscape improvements shall be shown on development plans for that portion of the Property and submitted to the Director of Planning for approval during the subdivision or site plan approval process. Street trees shall be located no farther than 10 feet from the edge of pavement, subject to VDOT approval. Streetscape improvements shall be either (i) installed within six months of the issuance of a certificate of occupancy for any residential or non-residential units adjacent structures or (ii) bonded in form satisfactory to the County Attorney prior to the issuance of a certificate of occupancy for any residential or non-residential units in adjacent structures.

9. Recreation. (a) The following recreational facilities shall be provided:

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

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

10. Archaeology. If required by the Director of Planning, a Phase I Archaeological Study for the entire Property shall be submitted to the Director of Planning for review and approval prior to land disturbance. A treatment plan shall be submitted and approved by the Director of Planning for all sites in the Phase I study that are recommended for a Phase II evaluation and/or identified as eligible for inclusion on the National Register of Historic Places. If a Phase II study is undertaken, such a study shall be approved by the Director of Planning and

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

11. Design Guidelines and Review; Sustainable Building. Owner shall prepare and submit design review guidelines to the Director of Planning for his review and approval setting forth design and architectural standards for the development of the Property generally consistent with the Supplemental Submittal materials submitted as a part of the rezoning application and on file with the Planning Department and the general intent of the design standards outlined in the Comprehensive Plan for the Norge Community Character Area for the approval of the Director of Planning prior to the County being obligated to grant final approval to any development plans for the Property (the "Guidelines"). Once approved, the Guidelines may not be amended without

the approval of the Director of Planning. Owner shall establish a Design Review Board to review all building plans and building elevations for conformity with the Guidelines and to approve or deny such plans. Owner shall achieve LEED certification at the certified level for the assisted living and the commercial buildings shown on the Master Plan. All single family detached houses shall achieve EarthCraft House Virginia certification at the EarthCraft House Certified (Level I) level. Owner shall provide a copy of each certification to the Director of Planning within one year of the issuance of a certificate of occupancy for such building or dwelling.

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

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

14. Master Stormwater Management Plan. (a) Owner shall submit to the County a master stormwater management plan for the Property consistent with the Conceptual Stormwater Management Plan prepared by AES Consulting Engineers dated September 24, 2008 ("Stormwater Plan") and included in the Master Plan set submitted herewith and on file with the County, including facilities and measures necessary to meet the County's 10 point stormwater management system requirements and the special stormwater criteria applicable in the Yarmouth

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

15. Nutrient Management Plan. The Association shall be responsible for contacting an agent of the Virginia Cooperative Extension Office ("VCEO") or, if a VCEO agent is unavailable, a soil scientist licensed in the Commonwealth of Virginia, an agent of the Soil and Water Conservation District or other qualified professional to conduct soil tests and to develop, based upon the results of the soil tests, customized nutrient management plans (the "Plans") for all common areas within the Property and each individual single family lot shown on each subdivision plat of the Property. The Plans shall be submitted to the County's Environmental Director for his review and approval prior to the issuance of the building permits for more than 25% of the units shown on the subdivision plat. Upon approval, the Owner so long as it controls

the Association and thereafter the Association shall be responsible for ensuring that any nutrients applied to common areas which are controlled by the Association be applied in strict accordance with the Plan. The Owner shall provide a copy of the individual Plan for each lot to the initial purchaser thereof. Within 12 months after issuance of the Certificate of Occupancy for the final dwelling unit on the Property and every three years thereafter, a turf management information seminar shall be conducted on the site. The seminar shall be designed to acquaint residents with the tools, methods, and procedures necessary to maintain healthy turf and landscape plants. The County shall be provided evidence of the seminars taking place by submitting to the Planning Director a seminar agenda and or minutes no later than 10 days after each seminar.

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

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

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

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

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

20. Crosswalks. Subject to VDOT approval, Owner shall provide a crosswalk across Croaker Road from Tax Parcel 2321100001B to Tax Parcel 2321100001C and crosswalks providing access to the two internal parks on the Property both in the locations generally as shown on the Master Plan at the time the final layer of pavement is placed on the segment of Croaker Road where the crosswalks are located.

21. Phasing of Residential Development Based on Assisted Living Facility. The County shall not be obligated to issue building permits for more than 87 dwelling units on the Property until a temporary or permanent certificate of occupancy has been issued by the County

for the assisted living facility located in Area 1A of the Master Plan.

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

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

24. Severability. In the event that any clause, sentence, paragraph, section or subsection of these proffers shall be adjudged by any court of competent jurisdiction to be invalid or unenforceable for any reason, including a declaration that it is contrary to the Constitution of the Commonwealth of Virginia or of the United States, or if the application thereof to any owner of any portion of the Property or to any government agency is held invalid, such judgment or holding shall be confined in its operation to the clause, sentence, paragraph, section or subsection hereof, or the specific application thereof directly involved in the controversy in which the judgment or holding shall have been rendered or made, and shall not in any way affect the validity of any other clause, sentence, paragraph, section or provision hereof.

WITNESS the following signatures.

CANDLE DEVELOPMENT, LLC

By: _____
Pete Henderson

John B. Barnett, Jr.

John B. Barnett, Jr., Trustee

Judith Barnett

Judith Barnett, Trustee

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

The foregoing instrument was acknowledged this 6th day of December, 2011, by
Pete Henderson on behalf of Candle Development, LLC.

NOTARY PUBLIC

My commission expires: _____.
Registration No.: _____.

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

The foregoing instrument was acknowledged this 6th day of December, 2011,
John B. Barnett, Jr. and Judith Barnett, individually and as trustees of the John B. Barnett, Jr. and
Judith L. Barnett Living Trust dated June 2, 2011.

NOTARY PUBLIC

My commission expires: _____.
Registration No.: _____.

Exhibit A
Property Description

Parcel D1

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

and

Parcel E

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

And

Portion of Parcel A

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

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

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

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

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

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



MEMORANDUM COVER

Subject: Ordinance to Amend Chapter 2, Administration, by Adding Section 2-15.3, Bonuses for County Employees

Action Requested: Shall the Board approve the ordinance to provide bonuses to County employees?

Summary: The proposed ordinance amendment establishes the authority for the County Administrator to provide bonuses to County employees by utilizing the power granted to local governments by the Virginia Code. The ordinance language states that an award of a bonus would be (i) at the sole discretion of the Board and (ii) subject to appropriation. Specific details such as eligibility, amount, etc. would be determined on a case-by-case basis and addressed by a Board resolution at the time a particular bonus is considered.

Staff recommends approval of the attached ordinance and resolution.

Fiscal Impact:

FMS Approval, if Applicable: Yes ☒ No ☐

Assistant County Administrator

Doug Powell _____

County Administrator

Robert C. Middaugh _____

Attachments:

1. Memorandum
2. Ordinance

Agenda Item No.: J-9

Date: December 13, 2011

MEMORANDUM

DATE: December 13, 2011

TO: The Board of Supervisors

FROM: Robert C. Middaugh, County Administrator

SUBJECT: Ordinance to Amend Chapter 2, Administration, by Adding Section 2-15.3, Bonuses for County Employees

Virginia Code § 15.2-1508 grants a locality the authority to provide bonuses to its employees through enactment of an ordinance. The proposed ordinance amendment would add a new section, 2-15.3, to Chapter 2 of the County Code, titled *Bonuses for county employees*, to authorize the County Administrator to provide bonuses to eligible county employees. The award of a bonus would be (i) at the sole discretion of the Board and (ii) subject to appropriation.

The purpose of the ordinance is to provide the Board with the authority and flexibility to permit a bonus for employees whenever the Board deems such a bonus is warranted. The details of a specific bonus, (i.e., eligibility, amount, etc.), would be determined on a case-by-case basis. Action of the Board in the form of a resolution at the time a bonus is to be provided would still be necessary in order to authorize the County Administrator to distribute a particular bonus and allocate funds.

Staff recommends adoption of this ordinance.

Robert C. Middaugh

RCM/nb
EmpBonus_mem

Attachment

ORDINANCE NO. _____

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 2, ADMINISTRATION, OF THE CODE OF THE COUNTY OF JAMES CITY, VIRGINIA, BY AMENDING ARTICLE IV, OFFICERS AND EMPLOYEES, DIVISION 1, GENERALLY, BY ADDING SECTION 2-15.3, BONUSES FOR COUNTY EMPLOYEES.

BE IT ORDAINED by the Board of Supervisors of the County of James City, Virginia, that Chapter 2, Administration, is hereby amended and reordained by adding Section 2-15.3, Bonuses for county employees.

Chapter 2. Administration

Article IV. Officers and Employees

Division 1. Generally.

Section 2-15.3. Bonuses for county employees.

The board of supervisors, at its sole discretion and subject to appropriation, may authorize the county administrator to provide monetary bonuses to employees of the county through the adoption of a resolution.

State law reference - Bonuses for employees of local governments, Code of Va., § 15.2-1508.

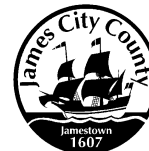
Mary K. Jones
Chairman, Board of Supervisors

ATTEST:

Robert C. Middaugh
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 13th day of December, 2011.

Chp2EmpBon_ord



MEMORANDUM COVER

Subject: Resolution Providing for the Authorization of a Bonus for Certain County Employees

Action Requested: Shall the Board approve the resolution to provide bonuses to County employees?

Summary: Resolution A before the Board for its consideration would authorize the award of a one-time bonus in the amount of \$1,000 for full-time employees and \$500 for part-time employees for certain eligible County employees who would normally have been eligible for performance increases, that is they are employed by the County and have completed their initial introductory period as of December 1, 2011, and have attained a minimum rating of "Meets Expectations" on their Fiscal Year 2012 performance evaluation. The bonus will have no impact on employees' base pay. The funds for the bonuses, approximately \$568,000 inclusive of tax liabilities, are proposed to come from cost savings achieved by the County in FY 2011.

Resolution B before the Board for its consideration would authorize the award of the bonus described above and would add 6 individuals who do not fall into the criteria above, but who supervise employees who are eligible for the bonus. This will cost an additional \$6,000.

Staff recommends approval of Resolution B.

Fiscal Impact:

General Fund:

Fund Balance: \$573,964
Personnel Contingency: \$573,964

Social Services Fund:

Fund Balance: \$52,669
Administration: \$52,669

Community Development Fund:

Fund Balance: \$11,305
Personnel: \$11,305

Colonial Community Corrections Fund:

Fund Balance: \$14,535
Administration: \$14,535

FMS Approval, if Applicable: Yes ☒ No ☐

Assistant County Administrator

Doug Powell _____

County Administrator

Robert C. Middaugh _____

Attachments:

1. Memorandum
2. Resolution A
3. Resolution B
4. Eligibility Worksheet

Agenda Item No.: K-1

Date: December 13, 2011

MEMORANDUM

DATE: December 13, 2011

TO: The Board of Supervisors

FROM: Robert C. Middaugh, County Administrator

SUBJECT: Resolution Providing for the Authorization of a Bonus for Certain County Employees

As discussed at the November 22, 2011, Board work session, I am bringing forward a resolution authorizing the County Administrator to provide to certain County employees a one-time bonus for this calendar year in the amount of \$1,000 for full-time and \$500 for part-time employees who would normally have been eligible for a performance increase were it to be offered. This will be the first additional salary that employees have received since October 1, 2008. I do not make this recommendation lightly.

During the FY 2012 budget process, the Board discussed the importance of employee compensation and that when the results of the FY 2011 budget were known, assuming adequate resources, the topic would be revisited. As was demonstrated at the work session, the County has been able in FY 2011 to accumulate approximately \$6 million in both additional revenues and underspending. My recommendation is based in part on the availability of funds to pay for the bonus from underspending in the FY 2011 budget, which resulted in a savings of about \$1.5 million. Much of this, as was mentioned at the work session, can be attributed to good stewardship of County funds by employees.

During the time that the employees have been without a salary adjustment, it was also demonstrated at the work session that the cost of food, gasoline, health insurance, and many other living expenses had increased. This has been difficult for many of our employees, as it has been for many of our citizens. The average salary of a County employee is under \$50,000 and 71 percent of our full-time employees earn less than \$50,000. Eighty-four percent earn less than \$60,000. Many double as both citizens and employees, with 63 percent living in zip codes assigned to Williamsburg, Lanexa, Norge, or Toano.

Also, during the time that our employees have been without a salary adjustment, many others in both the public and private sectors have received bonuses, base pay adjustments, or both—particularly in FY 2011 and/or FY 2012. Published surveys of private sector firms show actual pay increases in 2011 of about three percent and projected base pay budget increases for 2012 of about three percent. A survey of 21 public employers in the area showed that all but two had given some type of salary adjustment or bonus in FYs 2011 and/or 2012.

Finally, our employees have been partners with us in continuing to provide critical services to our community while reducing the number of positions and cutting costs. They have helped us to weather this economic downturn with commitment to those we serve. With demonstrated resources available from underspending of what was budgeted in FY 2011, a one-time bonus is a way to share some of that savings with our employees.

A lump-sum bonus not added to base pay is a conservative method to recognize employees who normally would have been eligible for performance increases. It uses some of the one-time savings, generated in part by employees, to provide a meaningful, one-time salary payment. It is designed to have the largest impact on the lowest-paid employees. The \$1,000 will be a larger percent of the salary of the 71 percent of our full-time employees who earn less than \$50,000 per year than of the salary of those earning more than \$50,000 per year.

One of the Board's and my key organizational responsibilities is to serve as the County government's employer. This is a very significant leadership role in which we are charged with the responsibility to provide the appropriate work environment and the appropriate pay and benefits to attract, retain, and reward a quality workforce. As a government's primary purpose is to provide services to its citizens, employees are truly our most important resource in achieving our mission, making the employer responsibility all the more significant. It is our job to take care of our important human assets if we are to continue to be, as our mission states, a first-class government by maintaining a well-trained, professional, and ethical staff continually striving to make James City County the best community to live, work, and visit.

The proposed amount of the bonus is \$1,000 for full-time employees and \$500 for part-time employees. This bonus will have no impact on employees' base pay. The bonus is subject to taxes. The cost of providing this one-time bonus is approximately \$516,000 which, as discussed during the November 22 work session, amounts to a total amount of \$568,000 inclusive of tax liabilities. The funds can be allocated from the \$1.5 million cost savings achieved by the County in FY 2011.

Those employees who, in accordance with our policies, would have been eligible to receive a performance increase are those I am proposing be eligible for the bonus. This includes individuals who: (i) are employed by the County on December 1, 2011; (ii) have completed their initial introductory period by December 1, 2011; (iii) attained a minimum rating of "*Meets Expectations*" on their FY 2012 performance evaluation; and (iv) are employed in full-time/part-time *Regular* or *Limited Term* County positions or full-time/part-time *Other* positions with the Commonwealth Attorney, Sheriff, or Colonial Community Corrections. The attached eligibility worksheet provides more specific information regarding eligibility.

In addition to the employee bonus, I am recommending that the County Attorney and the four (4) Constitutional Officers - Commissioner of the Revenue, Commonwealth Attorney, Sheriff, and Treasurer—and General Registrar, who have signed agreements with the County to follow certain personnel policies, also be granted a bonus by the Board. Each of these individual's employees will receive the bonus, so it is equitable to also grant one to them. The final amount authorized by the Board should be increased by \$6,000 to accommodate this recommendation. Two resolutions are attached for Board consideration, Resolution A is employees only and Resolution B includes the six persons indicated herein. Resolution B is recommended.

Robert C. Middaugh

RCM/nb
CerEmpBonus_mem

Attachment

RESOLUTION

RESOLUTION PROVIDING FOR THE AUTHORIZATION OF A BONUS FOR

CERTAIN COUNTY EMPLOYEES

WHEREAS, the Board of Supervisors recognizes that employees of the County are a critical resource in the provision of services to the community; and

WHEREAS, no adjustments in employee compensation have been made since October 2008 and the County is one of only three, out of 21, localities and public sector entities surveyed in the area that have not adjusted employee compensation in either 2011 or 2012; and

WHEREAS, financial savings in FY 2011 of \$1.5 million would provide sufficient funding for a one-time bonus in a flat dollar amount; and

WHEREAS, a one-time bonus in this calendar year will demonstrate the Board's appreciation for the work, dedication, and contributions of its employees to the community.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors authorizes the County Administrator to distribute a one-time bonus this calendar year, which will have no impact on base pay, to certain County employees who would normally have been eligible for performance increases, which means they (i) are employed by the County on December 1, 2011; (ii) have completed their initial introductory period by December 1, 2011; (iii) have attained a minimum rating of "*Meets Expectations*" on their FY 2012 performance evaluation; and (iv) are employed in full-time/part-time *Regular* or *Limited Term* County positions or full-time/part-time *Other* positions with the Commonwealth Attorney, Sheriff, or Colonial Community Corrections.

BE IT FURTHER RESOLVED that the one-time bonus will be in the amount of \$1,000 for full-time employees and \$500 for part-time employees.

BE IT FURTHER RESOLVED that the Board authorizes the following appropriation:

General Fund:

Fund Balance:	\$567,964
Personnel Contingency:	\$567,964

Social Services Fund:

Fund Balance	\$52,669
Administration	\$52,669

Community Development Fund:

Fund Balance	\$11,305
Personnel	\$11,305

Colonial Community Corrections Fund:

Fund Balance	\$14,535
Administration	\$14,535

Mary K. Jones
Chairman, Board of Supervisors

ATTEST:

Robert C. Middaugh
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 13th day of December, 2011.

CerEmpBonus_resA

RESOLUTION

RESOLUTION PROVIDING FOR THE AUTHORIZATION OF A BONUS FOR

CERTAIN COUNTY EMPLOYEES

WHEREAS, the Board of Supervisors recognizes that employees of the County are a critical resource in the provision of services to the community; and

WHEREAS, no adjustments in employee compensation have been made since October 2008 and the County is one of only three, out of 21, localities and public sector entities surveyed in the area that have not adjusted employee compensation in either 2011 or 2012; and

WHEREAS, financial savings in FY 2011 of \$1.5 million would provide sufficient funding for a one-time bonus in a flat dollar amount; and

WHEREAS, a one-time bonus in this calendar year will demonstrate the Board's appreciation for the work, dedication, and contributions of its employees to the community.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors authorizes the County Administrator to distribute a one-time bonus this calendar year, which will have no impact on base pay, to certain County employees who would normally have been eligible for performance increases, which means they (i) are employed by the County on December 1, 2011; (ii) have completed their initial introductory period by December 1, 2011; (iii) have attained a minimum rating of "*Meets Expectations*" on their FY 2012 performance evaluation; and (iv) are employed in full-time/part-time *Regular* or *Limited Term* County positions or full-time/part-time *Other* positions with the Commonwealth Attorney, Sheriff, or Colonial Community Corrections.

BE IT FURTHER RESOLVED that the Board of Supervisors authorizes the County Administrator to distribute the one-time bonus this calendar year, which will have no impact on base pay, to the County Attorney, General Registrar, Commissioner of the Revenue, Commonwealth Attorney, Sheriff and Treasurer, all of whom supervise employees who are eligible to receive the bonus.

BE IT FURTHER RESOLVED that the one-time bonus will be in the amount of \$1,000 for full-time employees and \$500 for part-time employees.

BE IT FURTHER RESOLVED that the Board authorizes the following appropriation:

General Fund:

Fund Balance:	\$573,964
Personnel Contingency:	\$573,964

Social Services Fund:

Fund Balance	\$52,669
Administration	\$52,669

Community Development Fund:

Fund Balance	\$11,305
Personnel	\$11,305

Colonial Community Corrections Fund:

Fund Balance	\$14,535
Administration	\$14,535

Mary K. Jones
Chairman, Board of Supervisors

ATTEST:

Robert C. Middaugh
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 13th day of December, 2011.

CerEmpBonus_resB

Eligibility for the Proposed Bonus FY 2012

Employees who would have been eligible for a performance increase ARE eligible for the bonus

This includes employees who:

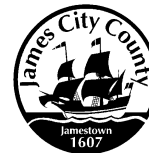
- Are employed by the County and have completed their initial introductory period by December 1, 2011, AND
- Attained a minimum rating of “Meets Expectations” on their FY 2012 performance evaluation, AND
- Are in a Full-time or Part-time Regular or Limited Term position (includes most James City Service Authority, Williamsburg Regional Library, Commissioner of the Revenue, and Treasurer positions)
- Are in the following Full-time or Part-time Other positions:
 - Employees of the Commonwealth Attorney including the Victim Assistance staff
 - Employees of the Sheriff
 - Employees of Colonial Community Corrections

Employees who would NOT have been eligible for a performance increase include:

- Those in Temporary or On Call positions
- Those still in their initial introductory period as of December 1, 2011
- Those no longer employed by the County effective December 1, 2011
- Those rated by their supervisors as “Below Expectations” on their FY 2012 performance evaluation
- Those who are in the following Full-time or Part-time Other positions:
 - Constitutional Officers
 - General Registrar
 - Employees of the Clerk of the Circuit Court’s Office
 - Williamsburg Regional Library Director (unless his Board authorizes it)
 - Olde Towne Medical Center staff and Director (unless their Board authorizes it)
 - WATA employees (unless their Board authorizes it)
 - County Administrator (unless the Board of Supervisors authorizes it)
 - County Attorney (unless the Board of Supervisors authorizes it)
 - Employees of the Virginia Peninsula Regional Jail
 - Employees of the Merrimac Center

12/1/2011

CerEmpBonus_att



MEMORANDUM COVER

Subject: Disclosure Policy

Action Requested: Shall the Board adopt the Disclosure Policy?

Summary: This Policy has been requested as a Discussion Item by Mr. Kennedy.

The Board will note that the Policy states a goal of transparency and details certain conditions which would attach to future Board conversations with applicants for legislative approval. The Policy is limited to legislative approvals for which a public hearing as required and requires Board members to disclose external conversations with applicants either in writing before the meeting, or verbally at the meeting a legislative approval is considered.

The Board, if it so desires, can make the Policy more or less expansive and inclusive than the draft. As background, the current Planning Commission Disclosure Policy and a number of disclosure policies utilized in the City of Miami Beach, Florida, are attached.

By the motion of the Board, the policy on disclosures can be enacted with or without modifications.

Assistant County Administrator

Doug Powell _____

County Administrator

Robert C. Middaugh _____

Attachments:

1. Memorandum
2. Disclosure Policy
3. Planning Commission Guidelines for Outside Communications with Applicants
4. Division 1. – Generally
5. Division 2. – Officers, Employees and Agency Members
6. Division 4. – Procurement
7. Division 5. – Campaign Finance Reform

Agenda Item No.: K-2

Date: December 13, 2011

MEMORANDUM

DATE: December 13, 2011

TO: The Board of Supervisors

FROM: Robert C. Middaugh, County Administrator

SUBJECT: Disclosure Policy

Attached, please find a draft of a Disclosure Policy ("Policy") that would pertain to the Board of Supervisors for matters involving legislative approval. The attached Policy is modeled after the policy currently in effect for the Planning Commission members.

This Policy has been requested as a Discussion Item by Mr. Kennedy.

The Board will note that the Policy states a goal of transparency and details certain conditions which would attach to future Board conversations with applicants for legislative approval. The Policy is limited to legislative approvals for which a public hearing as required and requires Board members to disclose external conversations with applicants either in writing before the meeting, or verbally at the meeting a Legislative approval is considered.

The Board, if it so desires, can make the Policy more or less expansive and inclusive than the draft. As background, the current Planning Commission Disclosure Policy and a number of disclosure policies utilized in the City of Miami Beach, Florida, are attached.

By motion of the Board, the policy on disclosures can be enacted with or without modifications.

Robert C. Middaugh

RCM/nb
DisclosurePol_mem

Attachments

RESOLUTION

BOARD OF SUPERVISORS GUIDELINES FOR OUTSIDE COMMUNICATIONS

WITH APPLICANTS REQUESTING LEGISLATIVE APPROVALS

WHEREAS, it is the policy of the Board of Supervisors ("Board") to encourage transparency in its consideration of legislative approvals before the Board; and

WHEREAS, it is the Board's intention to increase public confidence in the deliberative process through enactment of a disclosure policy; and

WHEREAS, the Board wishes to establish the following guidelines pertaining to communications with applicants for legislative approvals:

1. Members of the Board ("Supervisors") are permitted to meet with applicants outside of a public hearing required of all legislative approvals by the Board pursuant to the conditions below;
2. Applicants are defined as all individuals representing an applicant, directly participating in the preparation of or having a material financial stake in the application that is the subject of the public hearing;
3. Supervisors may contact County Administration prior to such meetings to gather facts about the application;
4. Staff may attend meetings with an applicant and Supervisor if requested by the Supervisor and approved by the County Administrator or his designee;
5. The purpose of such meetings is limited to fact finding and clarification for all parties;
6. Supervisors shall not make a commitment of their voting intent nor direct applicants on the substance of their proposals;
7. Supervisors shall disclose all meetings by reporting in written form with copy to all Board members in advance of the meeting or verbally at the Board meeting where the case is scheduled for public hearing; and
8. This policy is intended to be self-enforcing by the respective members of the Board.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby approves the guidelines for outside communication with applicants requesting legislative approval.

Mary K. Jones
Chairman, Board of Supervisors

ATTEST:

Robert C. Middaugh
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 13th day of
December, 2011.

Transparency_res

Planning Commission Guidelines for Outside Communications with Applicants

Planning Commissioners are permitted to meet with applicants outside of a public hearing pursuant to the below. Applicants are defined as all individuals directly participating in the preparation of or having a material financial stake in the application that is the subject of the meeting.

1. Commissioners may find it helpful to contact Planning Division staff prior to such meetings to gather facts about the application; the staff may attend such meetings if requested by the Commissioner and approved by the Planning Director or designee.
2. The purpose of such meetings is limited to fact finding and clarification for all parties.
3. Commissioners shall not make a commitment of their voting intent.
4. Commissioners shall disclose all meetings by reporting them verbally at the Planning Commission meeting where the case is scheduled for public hearing.

Reese Peck
Chair

Adopted by the Planning Commission of James City County, Virginia, this 7th day of April, 2010 by a vote of 7-0.

Miami Beach, Florida, Code of Ordinances >> Subpart B - LAND DEVELOPMENT REGULATIONS >> Chapter 118 - ADMINISTRATION AND REVIEW PROCEDURES >> ARTICLE II. - BOARDS >> DIVISION 1. - GENERALLY >>

DIVISION 1. - GENERALLY

Sec. 118-31. - Disclosure requirement.

Sec. 118-32. - Application requirement for land use boards.

Secs. 118-33—118-50. - Reserved.

Sec. 118-31. - Disclosure requirement.

Each person or entity requesting approval, relief or other action from the planning board, design review board, historic preservation board (including the joint design review board/historic preservation board), or the board of adjustment shall disclose, at the commencement (or continuance) of the public hearing(s), any consideration provided or committed, directly or on its behalf, for an agreement to support or withhold objection to the requested approval, relief or action, excluding from this requirement consideration for legal or design professional services rendered or to be rendered. The disclosure shall; (i) be in writing, (ii) indicate to whom the consideration has been provided or committed, (iii) generally describe the nature of the consideration, and (iv) be read into the record by the requesting person or entity prior to submission to the secretary/clerk of the respective board. Upon determination by the applicable board that the foregoing disclosure requirement was not timely satisfied by the person or entity requesting approval, relief or other action as provided above, then (i) the application or order, as applicable, shall immediately be deemed null and void without further force or effect, and (ii) no application from said person or entity for the subject property shall be reviewed or considered by the applicable board(s) until expiration of a period of one year after the nullification of the application or order. It shall be unlawful to employ any device, scheme or artifice to circumvent the disclosure requirements of this section and such circumvention shall be deemed a violation of the disclosure requirements of this section.

(Ord. No. 98-3161, § 1, 12-16-98)

Sec. 118-32. - Application requirement for land use boards.

No person shall be appointed to the planning board, design review board, historic preservation board, or the board of adjustment unless he or she has filed an application with the city clerk on the form prescribed, not less than ten days before the date of appointment. The city commission may waive this requirement by a 5/7ths vote, provided such waiver shall only be granted one time per board, per meeting, provided further that any applicant granted such a waiver files his or her application prior to being sworn in as a member of these boards.

(Ord. No. 2009-3630, § 1, 3-18-09)

Secs. 118-33—118-50. - Reserved.

Miami Beach, Florida, Code of Ordinances >> Subpart A - GENERAL ORDINANCES >> Chapter 2 - ADMINISTRATION >> ARTICLE VII. - STANDARDS OF CONDUCT >> DIVISION 2. - OFFICERS, EMPLOYEES AND AGENCY MEMBERS >>

DIVISION 2. - OFFICERS, EMPLOYEES AND AGENCY MEMBERS [38]

Sec. 2-446. - Declaration of policy.

Sec. 2-447. - Penalties for violation of division.

Sec. 2-448. - Restriction on employment and appointment of city commission relatives.

Sec. 2-449. - Acceptance of gifts, favors, services.

Sec. 2-450. - Disclosure of interest in/relationship with business entity.

Sec. 2-451. - Use of position to secure special privileges.

Sec. 2-452. - Disclosure of confidential information.

Sec. 2-453. - Outside employment.

Sec. 2-454. - Transacting business with business entities in which employee or officer has interest; restrictions on personal investments.

Sec. 2-455. - Procedure by officer or employee when in doubt as to applicability of division.

Sec. 2-456. - Division not to prevent officer or employee from accepting other employment.

Sec. 2-457. - Voidability of prohibited transactions; procedure upon reports of violations.

Sec. 2-458. - Supplemental abstention and disclosure requirements.

Sec. 2-459. - Certain appearances prohibited.

Sec. 2-460. - Certain relationships by city commission members prohibited.

Sec. 2-461. - Reserved.

Sec. 2-462. - Prohibiting members of city commission from having certain post-service contracts with city.

Secs. 2-463—2-480. - Reserved.

Sec. 2-446. - Declaration of policy.

It is the policy of the city commission that no officer or employee of the city, or any of its agencies or subdivisions, and no member of the city commission, shall have any interest, financial or otherwise, direct or indirect, or engage in any business transaction, or professional activity, or incur any obligation of any nature that is in substantial conflict with the proper discharge of his duties in the public interest. To implement such policy and strengthen the faith and confidence of the people of the city in their government, there is enacted a code of ethics, setting forth standards of conduct to be observed by all city officers and employees in the performance of their official duties. It is the intent of the city commission that this code shall serve not only as a guide for official conduct of public servants in this city, but also as a basis for discipline of those who violate the provisions of this article.

(Code 1964, § 2-43)

Sec. 2-447. - Penalties for violation of division.

Violation of any provision of this division shall constitute grounds for dismissal from employment, or removal from office, or other penalty as provided by law.

(Code 1964, § 2-47.2)

Sec. 2-448. - Restriction on employment and appointment of city commission relatives.

- (a) No relative of any member of the city commission may be appointed, employed, promoted or advanced in or to a position in the city if the city commission exercises jurisdiction or control over the appointment, employment, promotion or advancement.
- (b) Relative means an individual who is related to any member of the city commission as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother or half sister.

(Ord. No. 94-2912, 3-16-94)

Sec. 2-449. - Acceptance of gifts, favors, services.

No officer or employee of the city shall accept any gift, favor or service that might reasonably tend improperly to influence him in the discharge of his official duties.

(Code 1964, § 2-44(1))

Sec. 2-450. - Disclosure of interest in/relationship with business entity.

- (a) (1) If a public officer or employee of the city directly or indirectly (via participation in any type of business entity) has or holds any employment or contractual relationship with any other business entity which the officer or employee knows or with the exercise of reasonable care should know, is doing business with the city, and which relationship is otherwise permissible under state and county ethics law, he/she shall file a sworn statement with the city clerk disclosing, (consistent with relevant privilege exemptions) the specific nature of employment and interest in such business entity as well as commencement date of the subject employment or contractual relationship and (if applicable) term of such relationship. The city clerk shall publish logs on a quarterly basis reflecting the disclosure forms referenced herein.
- (2) If a member of the city commission establishes a business relationship with any person or business entity within 12 months after a city commission vote, which vote the city commission member knows directly benefits that person or business entity, the subject member of the city commission shall disclose any such business relationship in writing to the city clerk within 15 days after the business relationship is established.

(b) Definitions.

Business entity means any corporation, partnership, limited partnership, proprietorship, firm, enterprise, franchise, association, self-employed individual, or trust, whether fictitiously named or not.

Business relationship, for purposes of subsection (a)(2) above, shall mean that a member of the city commission has a relationship with a person or business entity wherein:

- (1) The person/business entity is a customer of the member of the city commission (or of his/her employer) and transacts more than \$10,000.00 of the business of the member of the city commission (or of his/her employer) in the 12-month period immediately after the subject vote; or
- (2) The member of the city commission (or his/her employer) is a customer of the person/business entity and transacts more than \$10,000.00 of the business of the person/business entity in the 12-month period immediately after the subject vote.
- (3) The \$10,000.00 threshold referenced hereinabove shall be adjusted annually to reflect increases in the Consumer Price Index.

Contractual relationship shall exclude situations in which a person's shareholder interest in a publicly traded company is less than five percent.

- (c) Regardless of the requirements of subsection (a) hereinabove, the validity of any action or determination of the city commission or city personnel, board or committee shall not be affected by the failure of any person to comply with said disclosure provisions.

(Code 1964, § 2-44(2); Ord. No. 2000-3272, § 1, 9-27-00; Ord. No. 2009-3659, § 1, 10-14-09)

Sec. 2-451. - Use of position to secure special privileges.

- (a) No officer or employee of the city shall use or attempt to use his official position to secure special privileges or exemptions for himself or others, except as may be otherwise provided by law.
- (b) No officer or employee of the city shall use or attempt to use his official position to solicit potential clients or customers (including city officers, employees or any other city personnel) for the officer or employee's private business.

(Code 1964, § 2-44(3); Ord. No. 2008-3607, § 1, 6-25-08)

Sec. 2-452. - Disclosure of confidential information.

- (a) No officer or employee of the city shall accept employment or engage in any business or professional activity that he might reasonably expect would require or induce him to disclose confidential information acquired by him, by reason of his official position.
- (b) No officer or employee of the city shall disclose confidential information gained by reason of his official position, nor shall he otherwise use such information for his personal gain or benefit.

(Code 1964, § 2-44(4), (5))

Sec. 2-453. - Outside employment.

- (a) No officer or employee of the city shall accept other employment that might impair his independence of judgment in the performance of his public duties.
- (b) No officer or employee of the city shall receive any compensation for his services from any source other than the city of which he is an employee, except as otherwise provided by law.
- (c) No person holding the office of municipal judge of the city shall accept any professional employment, or appear as an attorney in any cause, matter or proceeding, in the county court, in and for the county, when he knows or may be reasonably expected to know that a police officer or other officer or employee of the city will be a party or witness in such cause, matter or proceeding in such county court.

(Code 1964, § 2-44(6)—(8))

Sec. 2-454. - Transacting business with business entities in which employee or officer has interest; restrictions on personal investments.

- (a) No officer or employee of the city shall transact any business in his official capacity with any business entity of which he is an officer, director, agent or member, or in which he owns a controlling interest.
- (b) No officer or employee of the city shall have personal investments in any enterprise that will create a substantial conflict between his private interests and the public interest.

(Code 1964, § 2-45)

Sec. 2-455. - Procedure by officer or employee when in doubt as to applicability of division.

When any officer or employee of the city is in doubt as to the application of this division as to himself, he may submit to the attorney general a full written statement of the facts and questions he has. The attorney general may then render an opinion to such person, and shall publish these opinions without use of the name of the person advised unless such person requests the use of his name.

(Code 1964, § 2-47)

Sec. 2-456. - Division not to prevent officer or employee from accepting other employment.

It is not the intent of this division, nor shall it be construed, to prevent any officer or employee of the city from accepting other employment or following any pursuit that does not interfere with the full and faithful discharge by such officer or employee of his duties to the city.

(Code 1964, § 2-47.1)

Sec. 2-457. - Voidability of prohibited transactions; procedure upon reports of violations.

- (a) *Void and voidable transactions.* Any contract, agreement or business engagement entered into in violation of this division shall render the transaction void where so provided in the Charter; otherwise, the same shall be voidable. Willful violations of this division shall constitute a malfeasance in office, whether elected or appointed, and shall effect forfeiture of such office or position pursuant to the method set forth in this division.
- (b) *Charges and hearings.*
 - (1) Any classified employee of the city accused of a violation of the provisions of this division shall be removed as such employee by his appointing officer if, after investigation by such appointing officer, such accusation appears to be true. Written charges shall be preferred against such employee, as provided for by the personnel rules of the city.
 - (2) In the event of an alleged violation of this article by an officer or official or appointed member of commission or agency or employee other than a classified employee, full written specifications of the alleged violation shall be sworn to by the person making such charges, and duly submitted to the city commission. The city commission shall determine if there exists a prima facie and bona fide alleged violation of this division by a majority vote of the city commission; except that, if the alleged violation touches or concerns a member of the city commission, such member shall be disqualified from participating in such determination, and the vote required shall be five-sixths of the remaining members of the city commission.
 - (3) If such charges appear to constitute a violation of this division by such vote of the city commission, the written specifications constituting such alleged violation shall be served upon the person so charged, and the city commission shall set a public hearing not less than 15 days thereafter for a determination of the validity of such charges. If, upon competent evidence presented to the city commission at such hearing,

the charges are substantiated, and it appears that this division has been violated, the city commission, by a majority vote of all its members, except where the person charged is a member of the city commission, in which case the vote required shall be five-sixths of the remaining members of the city commission, shall remove the person charged from his office and responsibilities as an officer, official or member of a board, commission or agency of the city.

(Code 1964, § 2-47.3)

Sec. 2-458. - Supplemental abstention and disclosure requirements.

In addition to those conflict of interest abstention and disclosure requirements currently required by state and/or county law, the following requirements shall also apply to public officers:

(a) *Conflicting relationships.*

- (1) A public officer with a conflict of interest on a particular matter is prohibited from participating in that matter. "Participation" means any attempt to influence the decision by oral or written communication, whether made by the officer or at the officer's direction.
- (2) Written disclosures of conflict of interest shall contain the full nature of the conflict at issue, including, but not limited to, names of individuals whose relationship with the officer results in the subject conflict, and all material facts relevant to the conflict issue. The written memorandum disclosing conflict of interest shall be stated into the record before any discussion begins on the subject agenda item. This written disclosure memorandum must be filed regardless of whether the officer possessing the conflict was in attendance or not during consideration of the subject item.

(b) *Other relationships requiring disclosure.* In those instances involving neither a legal conflict or declared appearance of conflict, each public officer shall further disclose by written disclosure and public announcement the existence of any family and/or business relationship of which the public officer is aware, with any person or business entity who is directly benefited by the subject vote of the agency on which the public officer serves. This written disclosure memorandum must be filed regardless of whether the subject public officer was in attendance or not during consideration of the subject item.

(c) *[Duration of requirements.]* The disclosure requirements set forth in subsections (a)(2) and (b) above shall have continuing applicability for a period of up to 18 months after the subject relationship has ended.

(d) *Definitions.* As used in this section, the following definitions shall apply:

Agency shall mean any board, commission, committee or authority of the city, whether advisory, ad hoc or standing in nature.

Business relationship (for purposes of subsection (b) above) shall mean the situation in which a public officer has a relationship with a person or business entity wherein:

- (1) The person/business entity is a customer of the public officer (or of his/her employer) and transacts more than \$10,000.00 of the business of the public officer (or of his/her employer) in the 12-month period immediately preceding the subject vote; or
- (2) The public officer is a customer of the person/business entity and transacts more than \$10,000.00 of the business of the person/business entity in the 12-month period immediately preceding the subject vote.
- (3) The \$10,000.00 threshold referenced hereinabove shall be adjusted annually to reflect increases in the Consumer Price Index.

Family shall mean the spouse, domestic partner, parents, stepparents, in-laws, children, and stepchildren of the public officer.

Public officer includes any person presently serving who has been elected or appointed to hold office in any agency.

(Ord. No. 97-3105, § 1, 12-17-97; Ord. No. 2009-3658, § 1, 10-14-09)

Sec. 2-459. - Certain appearances prohibited.

(a) No member of a city board, agency or committee or a member of any board, agency or committee created hereafter which is designated as a board, agency or committee subject to the purview of this section shall:

- (1) Either directly or through an associate, appear, represent or act on behalf of a third person before the city commission or any city agency with respect to any agency action sought by the third person.
- (2) Either directly or through an associate be engaged as a lobbyist for and on behalf of a third person with respect to any official action by any public officer sought by such third person.

(b) *Definitions.* As used in this section, the following definitions shall apply:

Agency means any board, commission, committee or authority of the city, whether advisory, ad hoc or standing in nature.

Associate means any person or entity engaged in or carrying on a business enterprise with a city agency member

as a partner, joint venturer, or co-corporate shareholder where the shares of such corporation are not listed on any national or regional stock exchange or co-owner of property. Associate shall further include a business affiliation with a city agency member where an "employee" or "of counsel" relationship exists.

Lobbyist means all persons, firms, or corporations employed or retained, whether paid or not, by a principal who seeks to encourage the passage, defeat, or modification(s) of any of the following: (1) ordinance, resolution, action or decision of any commissioner; (2) any action, decision, or recommendation of any city board or committee; or (3) any action, decision or recommendation of the city manager, deputy city manager, assistant city managers, all department heads, all division heads, city attorney, chief deputy city attorney, deputy city attorneys, and/or all assistant city attorneys (except when such personnel are acting in connection with administrative hearings) during the time period of the entire decision-making process on such action, decision or recommendation which foreseeably will be heard or reviewed by the city commission or a city agency. "Lobbyist," as defined above, specifically includes the principal, as described above, as well as any agent, attorney, officer or employee of a principal, regardless of whether such lobbying activities fall within the normal scope of employment of such agent, attorney, officer or employee.

- (1) For purposes of this section, and with limited applicability to those agencies that are not standing in nature, "lobbyist" shall exclude any person who only appears as a representative of a not for profit corporation or entity (such as a charitable organization, a neighborhood or homeowner association, a local chamber of commerce or a trade association or trade union) without special compensation or reimbursement for the appearance, whether direct, indirect or contingent, to express support of or opposition to any item.
- (2) For purposes of this section, and with limited applicability to those agencies that are standing in nature:
 - a. Lobbying by a board, agency or committee member shall be permitted when such person is affiliated with a not for profit corporation or entity (such as a charitable organization, a neighborhood or homeowner association, a local chamber of commerce or a trade association or trade union) in a capacity other than as a managerial employee and appears as a representative of that particular not for profit corporation or entity without special compensation or reimbursement for the appearance, whether direct, indirect or contingent, to express support of or opposition to any item.
 - b. Lobbying by the associate of a board, agency or committee member shall be permitted:
 - (i) When a board, agency or committee member is affiliated with a not for profit corporation or entity in a capacity other than as a managerial employee, and the subject associate is appearing as a representative of that particular not for profit corporation or entity without special compensation or reimbursement for the appearance, whether direct, indirect or contingent, to express support of or opposition to any item.
 - (ii) When a board, agency or committee member is a managerial employee of a not for profit corporation or entity, and the subject associate is appearing as a representative of that particular not for profit corporation or entity without special compensation or reimbursement for the appearance, whether direct, indirect or contingent, to express support of or opposition to any item and is affiliated with said not for profit corporation or entity in a capacity other than as a managerial employee.
 - c. The term "managerial employee" shall mean any employee of a nonprofit corporation or entity who has supervision and operational responsibilities/control of all or some departments of said entity.

Public officer means any person elected or appointed to hold office in the city, as a member of an agency which shall include an advisory body.

(Ord. No. 97-3105, § 1, 12-17-97; Ord. No. 2007-3561, § 1, 6-6-07; Ord. No. 2009-3634, § 1, 4-22-09)

Sec. 2-460. - Certain relationships by city commission members prohibited.

No member of the city commission shall either directly or indirectly appear, represent, contract with or act on behalf of a party (other than a non-profit entity where the commission member is not compensated), with respect to any issue concerning that party coming before the city commission.

(Ord. No. 2002-3352, § 1, 3-20-02)

Editor's note—

Ord. No. 2002-3352, § 1, adopted March 20, 2002, enacted provisions intended for use as § 2-461. To preserve the style of this Code, and at the discretion of the editor, said provisions have been redesignated as § 2-460

Sec. 2-461. - Reserved.

Sec. 2-462. - Prohibiting members of city commission from having certain post-service contracts with city.

- (a) For a period of two years after leaving city service, no member of the city commission shall be eligible to serve as employee, independent contractor, or agent for the city, or otherwise enter into any contract (other than for voluntary, noncompensated services) with the city on any matter.
 - (b) The provisions of this section shall apply to all individuals elected or appointed/re-elected or reappointed to serve on the city commission subsequent to the effective date of this section.
 - (c) The requirements of this section may be waived by a five-sevenths vote of the city commission upon a finding by the city commission that the public interest would be served by such waiver.
- (Ord. No. 2009-3660, § 1, 10-14-09)

Secs. 2-463—2-480. - Reserved.

FOOTNOTE(S):

(38) **Editor's note—** Per request of the city, the title of Div. 2 was changed to include the term "agency members." ([Back](#))

(38) **Cross reference—** Officers and employees generally, § 2-191 et seq. ([Back](#))

Miami Beach, Florida, Code of Ordinances >> Subpart A - GENERAL ORDINANCES >> Chapter 2 - ADMINISTRATION >> ARTICLE VII. - STANDARDS OF CONDUCT >> DIVISION 4. - PROCUREMENT >>

DIVISION 4. - PROCUREMENT

Sec. 2-486. - Cone of silence.

Sec. 2-486. - Cone of silence.

(a) *Contracts for the provision of goods, services, and construction projects.*

(1) *Definition.* "Cone of silence" is hereby defined to mean a prohibition on:

- a. Any communication regarding a particular request for proposal ("RFP"), request for qualifications ("RFQ"), or bid between a potential vendor, service provider, bidder, lobbyist, or consultant and the city's administrative staff including, but not limited to, the city manager and his or her staff;
- b. Any communication regarding a particular RFP, RFQ or bid between the mayor, city commissioners, or their respective staffs, and any member of the city's administrative staff including, but not limited to, the city manager and his or her staff;
- c. Any communication regarding a particular RFP, RFQ or bid between a potential vendor, service provider, bidder, lobbyist, or consultant and any member of a city evaluation and/or selection committee therefore; and
- d. Any communication regarding a particular RFP, RFQ or bid between the mayor, city commissioners, or their respective staffs, and a member of a city evaluation and/or selection committee therefore.
- e. Any communication regarding a particular RFP, RFQ or bid between the mayor, city commissioners, or their respective staffs and a potential vendor, service provider, bidder, lobbyist, or consultant.

(2) *Procedure.*

- a. The cone of silence shall be imposed upon each RFP, RFQ or bid after the advertisement of said RFP, RFQ or bid. At the time of imposition of the cone of silence, the city manager or his or her designee shall provide for public notice of the cone of silence. The city manager shall include in any public solicitation for goods and services a statement disclosing the requirements of this division.
- b. The cone of silence shall terminate:
 1. At the time the city manager makes his or her written recommendation as to selection of a particular RFP, RFQ or bid to the city commission, and said RFP, RFQ or bid is awarded; provided, however, that following the manager making his or her written recommendation, the cone of silence shall be lifted as relates to communications between the mayor and members of the commission and the city manager; providing further if the city commission refers the manager's recommendation back to the city manager for further review, the cone of silence shall continue until such time as the manager makes a subsequent written recommendation, and the particular RFP, RFQ or bid is awarded; or
 2. In the event of contracts for less than \$25,000.00, when the city manager executes the contract.

(3) *Exceptions.* The cone of silence shall not apply to:

- a. Competitive processes for the award of CDBG, HOME, SHIP and Surtax Funds administered by the city office of community development; and
- b. Communications with the city attorney and his or her staff.
- c. Oral communications at pre-bid conferences;
- d. Oral presentations before evaluation and/or selection committees;
- e. Contract discussions during any duly noticed public meeting;
- f. Public presentations made to the city commissioners during any duly noticed public meeting;
- g.

Contract negotiations with city staff following the award of an RFP, RFQ or bid by the city commission; or

- h. Communications in writing at any time with any city employee, official or member of the city commission, unless specifically prohibited by the applicable RFP, RFQ or bid documents;
 - i. City commission meeting agenda review meetings between the city manager and the mayor and individual city commissioners where such matters are scheduled for consideration at the next commission meeting.
 - j. Communications regarding a particular RFP, RFQ, or bid between the procurement director, or his/her administrative staff responsible for administering the procurement process for such RFP, RFQ or bid and a member of the evaluation/selection committee therefore, provided the communication is limited strictly to matters of process or procedure already contained in the corresponding solicitation document;
 - k. Duly noticed site visits to determine the competency of bidders regarding a particular bid during the time period between the opening of bids and the time the city manager makes his or her written recommendation;
 - l. Any emergency procurement of goods or services;
 - m. Communications regarding a particular RFP, RFQ or bid between any person, and the procurement director, or his/her administrative staff responsible for administering the procurement process for such RFP, RFQ or bid, provided the communication is limited strictly to matters of process or procedure already contained in the corresponding solicitation document.
 - n. The bidder, proposer, vendor, service provider, lobbyist, or consultant shall file a copy of any written communications with the city clerk. The city clerk shall make copies available to any person upon request.
- (b) *Violations/penalties and procedures.* A violation of this section by a particular bidder, proposer, vendor, service provider, lobbyist, or consultant shall subject said bidder, proposer, vendor, service provider, lobbyist, or consultant to the same procedures set forth in Division 5, entitled "Debarment of Contractors from City Work" shall render any RFP award, RFQ award or bid award to said bidder, proposer, vendor, service provider, bidder, lobbyist, or consultant voidable; and said bidder, proposer, vendor, service provider, lobbyist, or consultant shall not be considered for any RFP, RFQ or bid for a contract for the provision of goods or services for a period of one year. Any person who violates a provision of this division shall be prohibited from serving on a city evaluation and/or selection committee. In addition to any other penalty provided by law, violation of any provision of this division by a city employee shall subject said employee to disciplinary action up to and including dismissal. Additionally, any person who has personal knowledge of a violation of this division shall report such violation to the city attorney's office or state attorney's office, and/or may file a complaint with the county ethics commission.
- (c) The requirements of Section 2-11.1(t) of the Code of Miami-Dade County, Florida, relating to the county's cone of silence ordinance, as same may be amended from time to time shall not apply to the city.

(Ord. No. 99-3164, § 1, 1-6-99; Ord. No. 2001-3295, § 1, 3-14-01; Ord. No. 2002-3377, § 1, 7-31-02; Ord. No. 2002-3378, § 1, 7-31-02)

Editor's note—

Ord. No. 2002-3378, § 1, adopted July 31, 2002, amended § 2-486 in its entirety. Because Ord. No. 2002-3378 did not specifically repeal subsection (d), the renumbering of subsection (d) as subsection (c) is at the discretion of the editor.

Miami Beach, Florida, Code of Ordinances >> Subpart A - GENERAL ORDINANCES >> Chapter 2 - ADMINISTRATION >> ARTICLE VII. - STANDARDS OF CONDUCT >> DIVISION 5. - CAMPAIGN FINANCE REFORM >>

DIVISION 5. - CAMPAIGN FINANCE REFORM

Sec. 2-487. - Prohibited campaign contributions by vendors.

Sec. 2-488. - Prohibited campaign contributions by lobbyists on procurement issues.

Sec. 2-489. - Prohibited campaign contributions by real estate developers.

Sec. 2-490. - Prohibited campaign contributions by lobbyists on real estate development issues.

Secs. 2-491—2-510. - Reserved.

Sec. 2-487. - Prohibited campaign contributions by vendors.

A. General.

- (1) (a) No vendor shall give a campaign contribution directly or indirectly to a candidate, or to the campaign committee of a candidate, for the offices of mayor or commissioner. Commencing on the effective date of this ordinance, all proposed city contracts, purchase orders, standing orders, direct payments, as well as requests for proposals (RFP), requests for qualifications (RFQ), requests for letters of interest (RFLI), or bids issued by the city, shall incorporate this section so as to notify potential vendors of the proscription embodied herein.

(b) No candidate or campaign committee of a candidate for the offices of mayor or commissioner, shall deposit into such candidate's campaign account any campaign contribution directly or indirectly from a vendor. Candidates (or those acting on their behalf) shall ensure compliance with this code section by confirming with the procurement division's city records (including City of Miami Beach website) to verify the vendor status of any potential donor.
- (2) A fine of up to \$500.00 shall be imposed on every person who violates this section. Each act of giving or depositing a contribution in violation of this section shall constitute a separate violation. All contributions deposited by a candidate in violation of this section shall be forfeited to the city's general revenue fund.
- (3) (a) Disqualification from serving as vendor.

 1. A person or entity other than a vendor who directly or indirectly makes a contribution to a candidate who is elected to the office of mayor or commissioner shall be disqualified for a period of 12 months following the swearing in of the subject elected official from serving as a vendor with the city.
 2. i. A vendor who directly or indirectly makes a contribution to a candidate who is elected to the office of mayor or commissioner shall be disqualified from serving as a vendor with the city for a period of 12 months from a final finding of violation, or from action on a waiver request by the Miami Beach City Commission (per subsection B herein below) in the event a waiver of said violation is sought.
 - ii. In the event such waiver request for a particular transaction is granted, the affected vendor shall nonetheless be disqualified from serving as a vendor with the city as to all other vendor projects for the stated 12-month period. In the event such waiver request is denied for a particular transaction, the 12-month disqualification period shall apply to both the particular transaction which was the subject of the waiver request, as well as all other vendor projects during that 12-month period.

(b) Definition. For purposes of this section, the term "disqualified" shall be defined to include:

 1. Termination of a donor/vendor's existing contract with the city, subject to the waiver provisions of subsections B(1)(d) and B(2) herein; and
 2. Disqualification of a donor's response to solicitation requests for prospective vendor contracts with the city, subject to the waiver provisions of subsections B(1)(a), (b) and (c) herein.
- (4) As used in this section:

(a) 1. A "vendor" is a person and/or entity who has been selected by the city as the successful contractor on a present or pending solicitation for goods, equipment or services, or has been approved by the city on a present or pending award for goods, equipment or services prior to

or upon execution of a contract, purchase order, standing order, direct payment or purchasing card payment. The term "vendor" shall not include those persons and/or entities who provide goods, equipment or services not exceeding \$10,000.00 in a City of Miami Beach fiscal year wherein city commission action is not required.

2. "Vendor" shall include natural persons and/or entities who hold a controlling financial interest in a vendor entity. The term "controlling financial interest" shall mean the ownership, directly or indirectly, of ten percent or more of the outstanding capital stock in any corporation or a direct or indirect interest of ten percent or more in a firm. The term "firm" shall mean a corporation, partnership, business trust or any legal entity other than a natural person.
 3. For purposes of this section, "vendor" status shall terminate upon completion of the agreement for the provision of goods, equipment or services.
- (b) For purposes of this section, the term "services" shall mean the rendering by a vendor through competitive bidding or otherwise, of labor, professional and/or consulting services to the city.
 - (c) The term contribution shall have the meaning ascribed to such term in F.S. ch. 106, as amended and supplemented (copies available in city clerks office).
- B. Waiver of prohibition.**
- (1) *Conditions for waiver.* The requirements of this section may be waived by a five-sevenths vote for a particular transaction by city commission vote after public hearing upon finding that:
 - (a) The goods, equipment or services to be involved in the proposed transaction are unique and the city cannot avail itself of such goods, equipment or services without entering into a transaction which would violate this section but for waiver of its requirements; or
 - (b) The business entity involved in the proposed transaction is the sole source of supply as determined by the city's procurement director in accordance with procedures established in subsection 2-367(c) of this Code; or
 - (c) An emergency contract (as authorized by the city manager pursuant to section 2-396 of this Code) must be made in order to protect the health, safety or welfare of the citizens of the city, as determined by a five-sevenths vote of the city commission; or
 - (d) A contract for the provision of goods, equipment or services exists which, if terminated by the city, would be adverse to the best economic interests of the city.
 - (2) *Conditions for limited waiver.* Notwithstanding the denial by the city commission of a waiver request regarding an existing contract per subsection B(1)(d) above, upon a five-sevenths vote of the city commission at a public hearing, a limited waiver may be granted on an existing contract upon a finding that in order to protect the health, safety and welfare of the citizens of the city, continuation of said contract for a limited period of time (not to exceed six months) is necessary in order for the city to obtain a replacement vendor.
 - (3) *Full disclosure.* Any grant of waiver by the city commission must be supported with a full disclosure of the subject campaign contribution.
- C. Applicability.** This section shall be applicable only to prospective transactions, and the city commission may in no case ratify a transaction entered into in violation of this section.
- (Ord. No. 2000-3244, § 1, 5-10-00; Ord. No. 2003-3389, § 1, 1-8-03; Ord. No. 2004-3446, § 1, 5-26-04; Ord. No. 2005-3486, § 1, 6-8-05; Ord. No. 2006-3544, § 1, 12-6-06)

Sec. 2-488. - Prohibited campaign contributions by lobbyists on procurement issues.

- (1) No lobbyist on a present or pending solicitation for goods, equipment or services or on a present or pending award for goods, equipment or services prior to or upon execution of a contract, purchase order, standing order, direct payment, or purchasing card payment shall solicit for or give a campaign contribution directly or indirectly to a candidate, or to the campaign committee of a candidate, for the offices of mayor or commissioner. The term "lobbyist" shall not include those individuals who lobby on behalf of persons and/or entities in connection with their provision of goods, equipments or services not exceeding \$10,000.00 in a City of Miami Beach fiscal year wherein city commission action is not required.
 - (a) Commencing on the effective date of this ordinance, all proposed city contracts, purchase orders, standing orders, direct payments, as well as requests for proposals (RFP), requests for qualifications (RFQ), requests for letters of interest (RFLI), or bids issued by the city, shall incorporate this section so as to notify lobbyists of the proscription embodied herein.
 - (b) No candidate, or campaign committee of a candidate for the offices of mayor or commissioner, shall deposit into such candidate's campaign account any campaign contribution directly or indirectly from a lobbyist subject to the provisions of this ordinance. Candidates (or those acting on their behalf) shall ensure compliance with this code section by confirming with the city clerk's records to verify the lobbyist status of any potential donor.
- (2) (a) A person other than a lobbyist on a procurement issue as set forth in subsection (1) above, who directly or indirectly solicits for or makes a contribution to a candidate who is elected to the office of mayor or

commissioner shall be disqualified for a period of 12 months following the swearing in of the subject elected official from lobbying the city commission in connection with a present or pending bid for goods, equipment or services or on a present or pending award for goods, equipment or services.

- (b) A lobbyist on a procurement issue as set forth in subsection (1) above, who directly or indirectly makes a contribution to a candidate who is elected to the office of mayor or commissioner shall be disqualified from lobbying the city commission in connection with a present or pending bid for goods, equipment or services or on a present or pending award for goods, equipment or services for a period of 12 months from a final finding of violation.
- (3) A fine of up to \$500.00 shall be imposed on every person who violates this section. Each act of soliciting, giving or depositing a contribution in violation of this section shall constitute a separate violation. All contributions received by a candidate in violation of this section shall be forfeited to the city's general revenue fund.
- (4) The term "contribution" shall have the meaning ascribed to such term in F.S. ch. 106, as amended and supplemented.

(Ord. No. 2003-3393, § 1, 2-5-03; Ord. No. 2005-3486, § 2, 6-8-05; Ord. No. 2006-3544, § 2, 12-6-06)

Sec. 2-489. - Prohibited campaign contributions by real estate developers.

A. General.

- (1) (a) No real estate developer shall give a campaign contribution directly or indirectly to a candidate, or to the campaign committee of a candidate, for the offices of mayor or commissioner. Commencing on the February 15, 2003, all applications for development agreements and for changes in zoning map designation as well as future land use map changes shall incorporate this section so as to notify potential real estate developers of the proscription embodied herein.
- (b) No candidate, or campaign committee of a candidate for the offices of mayor or commissioner, shall deposit into such candidate's campaign account any campaign contribution directly or indirectly from a real estate developer. Candidates (or those acting on their behalf) shall ensure compliance with this code section by confirming with the city planning department's records (including city of Miami Beach website) to verify the real estate developer status of any potential donor.
- (2) A fine of up to \$500.00 shall be imposed on every person who violates this section. Each act of giving or depositing a contribution in violation of this section shall constitute a separate violation. All contributions deposited by a candidate in violation of this section shall be forfeited to the city's general revenue fund.
- (3) (a) A person or entity other than a real estate developer who directly or indirectly makes a contribution to a candidate who is elected to the office of mayor or commissioner shall be disqualified for a period of 12 months following the swearing in of the subject elected official from becoming a real estate developer.
- (b) 1. A real estate developer who directly or indirectly makes a contribution to a candidate who is elected to the office of mayor or commissioner shall be disqualified from becoming a real estate developer for a period of 12 months from a final finding of violation, or from action on a waiver request by the Miami Beach City Commission in the event a waiver of said violation is sought.
- 2. In the event such waiver request for a particular real estate project and/or land use application is granted, the affected real estate developer shall nonetheless be disqualified from serving as a real estate developer with the city as to all other relevant real estate projects and/or applications for land use relief referred to in subsection A(4)(a)(1) below for the stated 12-month period. In the event such waiver request is denied for a particular real estate project and/or land use application, the 12-month disqualification period for the affected real estate developer shall apply to both the particular real estate project and/or land use application which was the subject of the waiver request, as well as all other relevant real estate projects and/or applications for land use relief referred to in subsection A(4)(a)(1) below during that 12-month period.
- (c) A real estate developer shall not make a contribution within 12 months after termination of its status as a real estate developer.
- (4) As used in this section:
 - (a) 1. A "real estate developer" is a person and/or entity who has a pending application for a development agreement with the city or who is currently negotiating with the city for a development agreement, or, who has a present or pending application with the city for a change of zoning map designation or a change to the city's future land use map.
 - 2. "Real estate developer" shall include natural persons and/or entities who hold a controlling financial interest in a real estate developer entity. The term "controlling financial interest" shall mean the ownership, directly or indirectly, of ten percent or more of the outstanding capital stock in any corporation or a direct or indirect interest of ten percent or more in a firm. The term "firm" shall mean a corporation, partnership, business trust or any legal entity other

than a natural person.

3. For purposes of this section, "real estate developer" status shall terminate upon the final approval or disapproval by the city commission of the requested development agreement, and/or upon final approval or disapproval of the subject application for the land use relief, referred to in subsection (4)(a)1. above.
 - (b) The term "development agreement" shall have the meaning ascribed to such term in F.S. ch. 163, as amended and supplemented. For purposes of this section, the term "development agreement" shall include any amendments, extensions, modifications or clarifications thereto.
 - (c) The term contribution shall have the meaning ascribed to such term in F.S. ch. 106, as amended and supplemented.
- B. *Conditions for waiver of prohibition.* The requirements of this section may be waived by a five-sevenths vote for a particular real estate project and/or land use application by city commission vote after public hearing upon finding that such waiver would be in the best interest of the city.
Any grant of waiver by the city commission must be supported with a full disclosure of the subject campaign contribution.
- C. *Applicability.* This section shall be applicable only to prospective real estate projects and/or applications for land use relief, and the city commission may in no case ratify a development agreement and/or application for land use relief entered into in violation of this section.

(Ord. No. 2003-3394, § 1, 2-5-03; Ord. No. 2005-3486, § 3, 6-8-05)

Sec. 2-490. - Prohibited campaign contributions by lobbyists on real estate development issues.

- (1) No lobbyist on a pending application for a development agreement with the city, or application for change of zoning map designation or change to the city's future land use map shall solicit for or give a campaign contribution directly or indirectly to a candidate, or to the campaign committee of a candidate, for the offices of mayor or commissioner.
 - (a) Commencing on the effective date of this ordinance, all applications for development agreements and for changes in zoning map designation or future land use map changes, shall incorporate this section so as to notify affected lobbyists of the proscription embodied herein.
 - (b) No candidate, or campaign committee of a candidate for the offices of mayor or commissioner, shall deposit into such candidate's campaign account any campaign contribution directly or indirectly from a lobbyist subject to the provisions of this section. Candidates (or those acting on their behalf) shall ensure compliance with this code section by confirming with the city clerk's and planning department's records to verify the lobbyist status of any potential donor.
- (2)
 - (a) A person other than a lobbyist on a real estate development issue as set forth in subsection (1) above, who directly or indirectly solicits for or makes a contribution to a candidate who is elected to the office of mayor or commissioner shall be disqualified for a period of 12 months following the swearing in of the subject elected official from lobbying the city commission in connection with a present development agreement, in connection with a development agreement that is currently being negotiated, or in connection with a present or pending application with the city for a change of zoning map designation or a change to the city's future land use map.
 - (b) A lobbyist on a real estate development issue as set forth in subsection (1) above, who directly or indirectly makes a contribution to a candidate who is elected to the office of mayor or commissioner shall be disqualified from lobbying the city commission in connection with a present development agreement, in connection with a development agreement that is currently being negotiated, or in connection with a present or pending application with the city for a change of zoning map designation or a change to the city's future land use map for a period of 12 months from a final finding of violation.
- (3) A fine of up to \$500.00 shall be imposed on every person who violates this section. Each act of soliciting, giving or depositing a contribution in violation of this section shall constitute a separate violation. All contributions received by a candidate in violation of this section shall be forfeited to the city's general revenue fund.
- (4) The term "contribution" shall have the meaning ascribed to such term in F.S. ch. 106, as amended and supplemented.
- (5) The term "development agreement" shall have the meaning ascribed to such term in F.S. ch 163, as amended and supplemented.
- (6) The term "lobbyist" as used herein shall exclude any person who only appears as a representative of a nonprofit corporation or entity, without special compensation or reimbursement for the appearance, whether direct or indirect, to express his/her support of or opposition to the subject item.

(Ord. No. 2003-3395, § 1, 3-5-03; Ord. No. 2005-3486, § 4, 6-8-05)

Secs. 2-491—2-510. - Reserved.