

**A G E N D A**  
**JAMES CITY COUNTY BOARD OF SUPERVISORS**  
**County Government Center Board Room**  
**October 9, 2012**  
**7:00 P.M.**

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- A. CALL TO ORDER**
- B. ROLL CALL**
- C. MOMENT OF SILENCE**
- D. PLEDGE OF ALLEGIANCE** – Justin Abbott, 9th grade student at Lafayette High School
- E. PRESENTATIONS**
  - 1. Resolution of Appreciation - Mr. John Hagee
  - 2. National 4-H Week
  - 3. National Friends of Libraries Week
  - 4. Rural Lands Study - J4C
- F. PUBLIC COMMENT**
- G. BOARD REQUESTS AND DIRECTIVES**
- H. CONSENT CALENDAR**
  - 1. Minutes –
    - a. September 25, 2012, Work Session
    - b. September 25, 2012, Regular Meeting
  - 2. Grant Award – FY 2012 Port Security Grant Program
  - 3. Resolution of Appreciation - Mr. John Hagee
- I. PUBLIC HEARINGS**
  - 1. Case No. Z-03-2012, New Town Section 12
  - 2. Case No. SUP-0012-2011, nTelos, Route 199 Wireless Communication Facility
  - 3. Ordinance Amendment to Chapter 15, Offenses - Miscellaneous, Section 15-34, Weapons
  - 4. Ordinance Amendment to Chapter 2, Administration, Section 2-3, Designation, population, and election cycle of districts
- J. BOARD CONSIDERATION**
- K. PUBLIC COMMENT**
- L. REPORTS OF THE COUNTY ADMINISTRATOR**
- M. BOARD REQUESTS AND DIRECTIVES**

**-CONTINUED-**

**N. 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. Peninsula Agency on Aging
  - b. ASAP
  - c. Historical Commission

**O. ADJOURNMENT** – to 4 p.m. on October 23, 2012

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## **PROCLAMATION**

### **NATIONAL 4-H WEEK, OCTOBER 7–13, 2012**

WHEREAS, 4-H is a community where young people learn leadership, citizenship, and life skills; and

WHEREAS, 4-H is one of the largest youth development organizations in Virginia and the largest in the nation with six million young people; and

WHEREAS, 4-H in Virginia claims 145,000 youth members and 17,000 adult volunteers, while James City County's 4-H program numbers more than 1,500 members and more than 250 volunteers who contributed nearly 10,000 hours of service to support 4-H clubs, camps, and partnerships; and

WHEREAS, 4-H, as part of the Virginia Cooperative Extension System, is a program where youth learn through opportunities that provide them hands-on experiences in 4-H's mission mandates of science, engineering, and technology; healthy living; and citizenship.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby proclaims October 7–13, 2012, as NATIONAL 4-H WEEK IN JAMES CITY COUNTY and urges the people of this community to take advantage of the opportunity to become more aware of this special program that enhances our young people's interests in their futures as part of the James City County 4-H Youth Development Program and to join us in recognizing the unique partnership between our County and our land-grant universities, Virginia Tech and Virginia State University.

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John J. McGlennon  
Chairman, Board of Supervisors

SIGNED this 9th day of October 2012.

# **PROCLAMATION**

## **NATIONAL FRIENDS OF LIBRARIES WEEK**

**OCTOBER 21–27, 2012**

WHEREAS, Friends of Williamsburg Regional Library raise money that allows Williamsburg Regional Library to achieve and maintain the margin of excellence that residents expect from the library by providing the resources for additional programming, support for children's summer reading, new collections, and special events throughout the year; and

WHEREAS, the work of the Friends highlights on an on-going basis that our library is the cornerstone of the community, providing opportunities for all to engage in the joy of life-long learning and connect with the thoughts and ideas of others from ages past to the present; and

WHEREAS, the Friends understand the critical importance of well-funded libraries and advocate to ensure that our library gets the resources it needs to provide a wide variety of services to all ages, including access to print and electronic materials, along with expert assistance in research, readers' advisory, and children's services; and

WHEREAS, the Friends' gift of their time and commitment to the library sets an example for all in how volunteerism leads to positive civic engagement and the betterment of our community.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby proclaims October 21–27, 2012 as Friends of Libraries Week in James City County, Virginia and urges everyone to join Friends of Williamsburg Regional Library and thank them for all they do to make our community a quality place in which to live and work.

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John J. McGlennon  
Chairman, Board of Supervisors

SIGNED this 9th day of October 2012.



**AT A WORK SESSION OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE 25TH DAY OF SEPTEMBER 2012, 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**

John J. McGlennon, Chairman, Roberts District  
Mary K. Jones, Vice Chairman, Berkeley District  
W. Wilford Kale, Jr., Jamestown District (Arrived at 4:02 p.m.)  
James G. Kennedy, Stonehouse District – (Absent)  
James O. Icenhour, Jr., Powhatan District

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

**C. BOARD DISCUSSIONS**

**1. Energy Use and Carbon Emissions Report**

Mr. John Horne, Director of General Services, introduced Ms. Dawn Olesky, the Environmental Coordinator for James City County and stated that Ms. Olesky's primary duty is to be the Energy Manager for the County.

Ms. Olesky gave the Board members a summary of the Energy Use and Carbon Emissions Report that was included in the Work Session Agenda Packet.

Mr. McGlennon asked for clarification on the fuel efficiency of the County's vehicles in the fleet.

Ms. Olesky stated that most of the more fuel-efficient vehicles were purchased in 2007, so the efficiencies noted on the slides do not show as drastic a change. She stated that if the Board was to compare the efficiencies between 2004 and 2007, there would be a very large increase in the efficiencies of the smaller County vehicles.

Mr. Horne stated that the fuel efficiency slide is an indication of all the vehicles in the County Fleet, and therefore, one must take into account that the majority of the County vehicles are big, heavy-duty vehicles that do not have the same fuel efficiency as smaller vehicles. He also stated that the County has not been replacing as many vehicles since the downturn in the economy. Instead, the County has been extending the life of older, less efficient vehicles.

Mr. McGlennon stated that he had noticed that there appeared to be a decrease in total miles travelled in County vehicles. He stated that he believed that was due to an initiative to use County vehicles more efficiently.

Mr. Horne stated that yes; there has been an effort to use County vehicles more efficiently by sharing vehicles and combining trips.

Ms. Jones asked how the vision of reducing carbon emissions by 80 percent by 2050 is to be achieved.

Ms. Olesky stated that with the County's sustainable building policy, all of the new County buildings are more efficient; as older vehicles are replaced with newer, more efficient vehicles as well as more options for renewable energy become available, the County will be able to meet that vision.

Mr. McGlennon noted that as traditional heating and cooling systems are replaced with geothermal heating and air, there would be a decrease in emissions as well.

Mr. Horne stated that as more of the County buildings are brought online utilizing the geothermal heating and air, and more other less efficient buildings are taken off line, the County will continue to move toward the goal.

Mr. McGlennon asked for clarification about the geothermal heating and air system in the County Administration Building, Building D.

Mr. Horne stated that it is more of a hybrid system. The building does not draw its main source of heat and air from geothermal; however, there is a small geothermal system that is utilized to dehumidify the air before it is sent into the building and thus the air conditioning system does not have to work as hard to cool the air.

Mr. Horne stated that even in the older buildings that utilize older heating and air systems, the County is looking for ways to seal the buildings, allowing more of the air to stay inside and allow the systems to not have to work as hard.

Mr. Icenhour asked if there was a way to track annual temperature variations.

Mr. Horne stated that the Energy Star system takes into account that variations in temperature.

Mr. McGlennon thanked Ms. Olesky for her presentation and for her efforts in making the County more efficient. He stated that there are opportunities for the County to set an example for other businesses in the community, especially in regard to the building envelopes and sealing their buildings for more efficient heating and cooling.

## 2. Zoning/Subdivision Ordinance Update

### a. Housekeeping Items and Subdivision Ordinance

Mr. Allen Murphy, Director of Development Management, Mr. Chris Johnson, Acting Director of Planning, Ms. Tammy Rosario, Principal Planner, Ms. Ellen Cook, Planner III, and Mr. Vaughn Poller, Housing and Community Development Administrator, joined the Board for an update on the Zoning and Subdivision Ordinance.

Ms. Rosario presented the Board members with a summary of the memorandum in the Work Session Agenda Packet.

Mr. Icenhour stated that it appeared that the changes to the Housekeeping Items were more along the lines of administrative cleanup and continuity of terminology.

Ms. Rosario stated that it was correct.

Mr. Icenhour questioned, in regard to the Subdivision Ordinance, if the ordinance not previously stated, that Family Subdivisions were zoned R-8 and A-1.

Ms. Cook stated that previously it could be applied in any district, but primarily R-8 and A-1 are used in Subdivisions. She stated that the only benefit to using it in R-1 or R-2 districts is that it does not require road frontage.

Mr. Icenhour asked if the Board had ever seen an application for the Subdivision Ordinance in an R-1 or R-2 district.

Ms. Cook stated that those applications do not require Board action and would be an administrative action.

Mr. Icenhour stated that our changes to the definitions of alternative on-site sewage disposal just restate the State's ordinances.

Ms. Cook stated that it was correct.

Mr. McGlennon stated that for clarification, the State has recently changed their ordinances in regard to alternative on-site sewage disposal systems and that the changes to our ordinances are to coincide with the State's changes.

Mr. McGlennon also asked if staff anticipates more requests for alternative on-site sewage disposal.

Ms. Cook stated that after many discussions with the Health Department, staff's understanding is that in regard to existing lots, there are more alternatives for sewage disposal that are now approved. However, in regard to the creation of new lots, the County's Subdivision Ordinance can specify which types of sewage disposal systems are allowed.

b. Housing Opportunities Resolution

Ms. Cook summarized the changes to the Housing Opportunities resolution that was included in the Work Session Agenda Packet.

Ms. Rosario stated that staff is looking for direction from the Board that the Board wants staff to go.

Mr. McGlennon stated that at the previous Board meeting, the Board was concerned with the combining of the definitions of Workforce and Affordable Housing. He stated that the concern of the Board was that by combining those definitions, it would allow a developer to focus more on the Workforce housing, which the market already provides while ignoring the Affordable housing.

Mr. Icenhour stated that he is very pleased with the revisions and that it puts the focus back where it needs to be, which is on Affordable housing.

Mr. Icenhour stated that the only concern he had was the mechanics of the "cash in lieu of" section.

Mr. Rogers stated that the "cash in lieu of" proffers would be something that the developer would have to propose, but ultimately the Board would have the ultimate decision as to whether or not to accept the proffers.

Mr. McGlennon asked the members of the Board if they were satisfied with the revisions made to the policy. Each member stated yes.

Mr. McGlennon stated that he hoped this clarified the direction from the Board that the Planning Division was looking for.

3. Legislative Agenda

Mr. Rogers presented the Board with the Legislative Agenda and gave a brief summary. He stated if there was any input or items the Board would like to add, now is the time to discuss them. He stated this is a preliminary draft and the Legislative Agenda is not scheduled to come before the Board until November.

Mr. McGlennon asked if the Board was still scheduled to meet with the Legislators in November.

Mr. Rogers stated that was correct; however Delegate Watson will not be able to make that meeting.

Ms. Jones stated that her only issue is with Item No. 2-11. She stated that the title is confusing in regard to the content. Several of the Board members weighed in on an appropriate title. The Board finally decided on Reducing Mandates and Adequately Funding State Mandates.

Mr. Kale stated that he had an issue with Item No. 2-3. He stated that he does not believe that it is a realistic idea to support a rail to connect Richmond to the Peninsula. He stated that this would involve another tunnel and is completely unrealistic. He stated that he did not believe the public would support this idea, especially before handling the issues for vehicles. He stated that he does not believe that this should be part of the Board's priorities.

Mr. McGlennon asked if this was part of any plan of Transportation Policy Organization.

Mr. Middaugh stated that he did not believe so. He stated that what has been discussed is passenger rail enhancement from the Peninsula to Richmond and on up to Washington D. C. and even further up to Boston.

Ms. Jones stated that this would be utilizing existing infrastructure.

Mr. Middaugh stated that this particular Item No. 2-3 is referring to a new passenger rail that would cut across the west and make its way up to Richmond.

Ms. Jones stated that she would like to see Transportation Funding be moved up the Agenda and take a higher priority than a proposed new passenger rail.

Mr. Kale said that CSX, in its annual report, stated that they are well underway to making revisions to its train station.

Mr. Kale stated that this would be a help to the current passenger rails. He stated that it would improve the flow and the speed of the trains going through the train station.

Mr. McGlennon stated that he felt the Board should support enhancements to existing rail systems, but should not support a new rail system going across the Peninsula.

Mr. Icenhour stated that he concurred with Ms. Jones about moving the Transportation item up in the list as a higher priority.

Mr. McGlennon stated he is not sure that the Board should list the items in terms of priority.

Mr. Rogers questioned whether or not there was any use in grouping the items together. He stated that the agenda could be organized into sections, for example, a transportation section, then a taxation section, and so forth.

Ms. Jones stated that there was a letter to the Governor and the General Assembly stressing the need for improvements to existing infrastructure and the need for funded projects to be coordinated with local areas to minimize the impact on the area. She stated that the letter was a unified voice of all the local governments in the Urban Crescent, stating the need for transportation funding allocation in the budget and that transportation funding needs to be a top priority for the State.

Mr. McGlennon stated that the only section on the Legislative Agenda that seemed to be missing anything is the legislation proposed by the County. He stated that the Board members need to think back about any cases over the last year that have come up against a barrier in State law, or an action that the Board could have taken if not for State law. Mr. McGlennon stated that it may be that there is not anything for this section for this year, but it needs to be contemplated.

Mr. Rogers stated that it has been a quiet year in this regard. He has not heard of anything from the Executive Staff, nor has there been any barrier for the Board that he has seen.

Mr. Rogers stated that the Board may wish to call out specific items from the legislative programs of the Virginia Municipal League (VML) and Virginia Association of Counties (VACo).

Mr. Middaugh stated that there may be items in those other programs that the Board will want to make note of as a way of adding emphasis, for example, transportation funding.

Mr. Rogers also noted that the Board has eliminated any mention of the Dillon Rule and it is not in the Legislative Agenda. He stated that a State-wide effort to modify the Dillon Rule would be worthwhile.

Mr. Icenhour stated that VACo was making an effort on this item as well. He stated that he believes it is worthwhile for the County to continue fighting this issue with the support of the other counties.

Mr. Kale stated the neither party is interested in making changes to the Dillon Rule, so the item is pretty much dead in the General Assembly.

Mr. Icenhour stated that the plan now is to sit down with our local legislative representatives.

Mr. Rogers stated yes and the only issue is that Delegate Watson cannot be at the last meeting in November.

Mr. Icenhour asked about rescheduling the meeting until December.

Mr. Rogers stated that it might be possible if the Board is not proposing any legislation that will have to be drafted.

Mr. Middaugh stated that York County and the City of Williamsburg want to swap Legislative Agendas with James City County so that the municipalities can take a look at the other Agendas and see if there is an item that needs emphasis and support.

Mr. McGlennon stated that if there were no other questions or discussion, he would recommend moving in to the Closed Session.

Mr. McGlennon asked Mr. Middaugh to read the Code Sections for Closed Session and requested a motion.

Mr. Kale made a motion to adjourn the Work Session and go in to Closed Session at 4:52 p.m.

On a roll call vote, the vote was: AYE: Mr. Icenhour, Mr. Kale, Ms. Jones, Mr. McGlennon (4). NAY: (0). ABSENT: Mr. Kennedy (1).

## **RESOLUTION**

### **CERTIFICATION OF CLOSED MEETING**

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

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

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

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Robert C. Middaugh  
Clerk to the Board

**AT A REGULAR MEETING OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE 25TH DAY OF SEPTEMBER 2012, 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**

John J. McGlennon, Chairman, Roberts District  
Mary K. Jones, Vice Chairman, Berkeley District  
W. Wilford Kale, Jr., Jamestown District  
James G. Kennedy, Stonehouse District - Absent  
James O. Icenhour, Jr., Powhatan District

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

**C. MOMENT OF SILENCE**

**D. PLEDGE OF ALLEGIANCE** - Katie Stanton, a middle school student at Berkeley Middle School, led the Board and citizens in the Pledge of Allegiance.

**E. PRESENTATIONS** – None

**F. PUBLIC COMMENT**

1. Mr. Randy O'Neil, 109 Sheffield Road, Williamsburg, addressed the Board concerning kindergarten through 12th grade fitness and wellness programs in Williamsburg-James City County Schools.

2. Mr. Joe Boggan, 4131 Winthrop Circle, Colonial Heritage Subdivision, Williamsburg, addressed the Board concerning the proposed Dominion Virginia Power Transmission Line.

3. Ms. Marjorie Ponziani, 4852 Bristol Circle, Williamsburg, addressed the Board concerning returning to staggered terms for the Board of Supervisors.

4. Ms. Rosanne Reddin, 2812 King Rook Court, Williamsburg, addressed the Board concerning returning to staggered terms for the Board of Supervisors.

5. Ms. Linda Riese, 511 Spring Trace, Williamsburg, addressed the Board concerning banning dog tethering in James City County.

6. Mr. Ed Oyer, 139 Indian Circle, Williamsburg, addressed the Board concerning the loss of service members in Afghanistan, property values on Indian Circle, and vacant commercial space throughout the County that could be used for the Williamsburg-James City County School Board.

#### **G. BOARD REQUESTS AND DIRECTIVES**

Mr. Icenhour stated that, in light of the actions of the Season's Trace Homeowners Association to ban dog tethering in its own neighborhood, he would like to see staff work on drafting an ordinance that could be incorporated into the County Code addressing this issue.

Mr. McGlennon stated that the County needs to contact the Virginia Department of Transportation (VDOT) about the weeds growing along Route 199 between Mounts Bay Road and Henry Street.

Mr. McGlennon noted the loss of three longtime residents of James City County. He stated that Mr. John Hagee, a longstanding member of the business community in James City County and a member of the Planning Commission, passed away and would be recognized for his contributions at the next Board Meeting. He stated that Mr. Kennedy asked him to remember Ms. Jean Taylor, a longtime resident of Williamsburg-James City County. He also noted the loss of Mr. John Lavach, a longtime resident of the County and respected teacher-scholar at the College of William and Mary.

#### **H. CONSENT CALENDAR**

Ms. Jones made a motion to approve the Consent Calendar.

On a roll call vote, the vote was: AYE: Mr. Icenhour, Mr. Kale, Ms. Jones, Mr. McGlennon (4). NAY: (0). ABSENT: Mr. Kennedy (1).

1. Minutes –
  - a. September 11, 2012, Regular Meeting
2. Grant Award – Department of Motor Vehicles (DMV) Occupant Protection – \$4,200

### **RESOLUTION**

#### **GRANT AWARD – DEPARTMENT OF MOTOR VEHICLES (DMV)**

#### **OCCUPANT PROTECTION – \$4,200**

WHEREAS, the James City County Police Department has been awarded a highway safety grant from the Virginia Department of Motor Vehicles (DMV) Highway Safety Office for \$4,200; and

WHEREAS, funds are to be used toward traffic enforcement overtime where officers will focus on the enforcement of laws related to the proper use of occupant restraints; and

WHEREAS, the grant requires only an in-kind match, which is available through the fuel and maintenance costs for police vehicles that participate in traffic enforcement duties.



NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, accepts the \$4,200 grant awarded by the Virginia DMV.

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

Revenue:

FY 13 DMV – Occupant Protection Enforcement      \$4,200

Expenditure:

FY 13 DMV – Occupant Protection Enforcement      \$4,200

3.      Grant Award – Department of Motor Vehicles (DMV) Alcohol Enforcement – \$20,785

**RESOLUTION**

GRANT AWARD – DEPARTMENT OF MOTOR VEHICLES (DMV)

ALCOHOL ENFORCEMENT – \$20,785

WHEREAS, the James City County Police Department has been awarded a highway safety grant from the Virginia Department of Motor Vehicles (DMV) Highway Safety Office for \$20,785; and

WHEREAS, funds in the amount of \$620 will be used for training and conferences, \$3,365 will be used for the purchase of a breath testing unit and a Light Detection and Ranging (LIDAR), and the balance will be used for overtime pay for traffic enforcement focusing on impaired driving; and

WHEREAS, the grant requires only an in-kind match, which is available through the fuel and maintenance costs for police vehicles that participate in traffic enforcement duties.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby accepts the \$20,785 grant awarded by the Virginia DMV.

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

Revenue:

FY 13 DMV – Alcohol Enforcement      \$20,785

Expenditure:

FY 13 DMV – Alcohol Enforcement      \$20,785

4. Grant Award – Department of Motor Vehicles (DMV) Speed Enforcement – \$14,000

**RESOLUTION**

**GRANT AWARD – DEPARTMENT OF MOTOR VEHICLES (DMV)**

**SPEED ENFORCEMENT – \$14,000**

WHEREAS, the James City County Police Department has been awarded a highway safety grant from the Virginia Department of Motor Vehicles (DMV) Highway Safety Office for \$14,000; and

WHEREAS, funds are to be used toward speed traffic enforcement overtime; and

WHEREAS, the grant requires only an in-kind match, which is available through the fuel and maintenance costs for police vehicles that participate in traffic enforcement duties.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, accepts the \$14,000 grant awarded by the Virginia DMV.

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

**Revenue:**

FY 13 DMV – Speed Enforcement	<u>\$14,000</u>
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**Expenditure:**

FY 13 DMV – Speed Enforcement	<u>\$14,000</u>
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5. Grant Award – Commonwealth Attorney - Victim's Witness Grant Program – \$120,637

**RESOLUTION**

**GRANT AWARD – COMMONWEALTH ATTORNEY –**

**VICTIM'S WITNESS GRANT PROGRAM – \$120,637**

WHEREAS, the Commonwealth Attorney for the City of Williamsburg and James City County has been awarded a \$120,637 Federal grant from the Victim's Witness Grant Fund (Federal Share \$77,247; State share \$25,749; and County match \$17,641) through the State Department of Criminal Justice Services; and

WHEREAS, this grant would fund the personnel costs of two positions to provide comprehensive information and direct services to crime victims and witnesses beginning July 1, 2012, through June 30, 2013; and

WHEREAS, the grant requires a local cash or in-kind match of \$17,641, which is available in the Commonwealth Attorney's General Fund account.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the additional appropriation to the Special Projects/Grants Fund for FY 13 purposes described above:

Revenues:

Victim's Witness Department of Criminal Justice	
Services Federal Revenue (DCJS)	\$ 77,247
Victim's Witness Department of Criminal Justice	
Services State Revenue (DCJS)	25,749
James City County Matching Funds	<u>17,641</u>

Total	<u>\$120,637</u>
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Expenditure:

Victim's Witness Personnel	<u>\$120,637</u>
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6. Contract Awards – Annual Architectural Services

**RESOLUTION**

**CONTRACT AWARDS – ANNUAL ARCHITECTURAL SERVICES**

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

WHEREAS, the firms listed below were determined to be the best qualified to provide the required architectural services:

- RRMM Architects
- Guernsey Tingle Architects
- HBA Architecture Interior Design
- Hopke & Associates, Inc.
- Moseley Architects

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

7. Budget Amendment – Virginia Peninsula Regional Jail

**RESOLUTION**

**BUDGET AMENDMENT - VIRGINIA PENINSULA REGIONAL JAIL**

WHEREAS, the Board of Directors of the Virginia Peninsula Regional Jail (“Jail”) has amended the FY 2012 Jail budget and has identified a supplemental assessment of \$76,856 for the four member localities; and

WHEREAS, the Board of Supervisors has been requested to provide an additional \$26,208 to fund its share of the supplemental assessment; and

WHEREAS, a transfer from Operating Contingency is proposed to provide the additional \$26,208 to the Jail.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby approves a budget amendment for FY 2013 for the Jail and authorizes the following transfer from Operating Contingency:

**FY 2013 General Fund Expenditures**

Payment to the Virginia Peninsula	
Regional Jail	+ \$ 26,208
Operating Contingency	- \$ 26,208

**I. PUBLIC HEARINGS** – None

**J. BOARD CONSIDERATIONS**

1. Legislative Application Deferral Policy

Mr. Middaugh addressed the Board giving a summary of the memorandum in the agenda packet concerning the Legislative Application Deferral Policy.

Mr. Icenhour made a motion to approve the resolution.

On a roll call vote, the vote was: AYE: Mr. Icenhour, Mr. Kale, Ms. Jones, Mr. McGlennon (4). NAY: (0). ABSENT: Mr. Kennedy (1).

**RESOLUTION**

**LEGISLATIVE APPLICATION DEFERRAL POLICY**

WHEREAS, at its meeting on January 10, 2012, the Board of Supervisors (the “Board”) requested a legislative application deferral policy to address circumstances where an applicant requests that an application not be advertised for Board consideration following action by the Planning Commission (the “Commission”) or requests an indefinite deferral by the Board; and

WHEREAS, the Board held a work session on May 22, 2012 to review deferral procedures and criteria and suggested modifications to the draft policy.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby adopts the following policy to be used when considering requests for deferral of legislative applications:

1. Legislative applications (“applications”) that have received action from the Planning Commission (the “Commission”) shall be placed on the agenda for the first Board meeting the month following action by the Commission. An applicant may submit a written request to the County Administrator or his designee (the “Administrator”) for a one-month administrative deferral. In this circumstance, the Administrator shall determine whether to grant the deferral in accordance with the criteria expressed herein. If the administrator approves the deferral request, the application shall not be advertised and will instead be scheduled for the first Board meeting on the second month following action by the Commission.
2. All applications shall be placed on a Board agenda with an advertised public hearing, either as a request for further deferral or consideration of approval, no more than three (3) months following action by the Commission. The applicant may withdraw the application at any time.
3. An applicant may request a deferral for a period not to exceed three (3) months. In this circumstance, the application will be advertised and the Board shall determine whether to grant a deferral following a public hearing on the matter. If the Board grants a deferral, the application will be scheduled for a Board meeting requested by the applicant and approved by the Board and the applicant shall be required to pay a deferral fee to cover the costs of advertising the application. Such fee shall reimburse the County for expenses associated with deferring the application. If the Board does not grant the deferral, the Board may either approve or deny the application at that meeting.
4. An applicant may request two additional deferrals from the Board that shall, in total, be valid for no more than twelve (12) months from the date the application was placed on a Commission agenda for action. In this circumstance, the application shall be advertised and the Board shall determine whether to grant a deferral following a public hearing on the matter. If the Board grants a deferral, the application will be scheduled for a Board meeting requested by the applicant and approved by the Board and the applicant shall be required to pay a deferral fee to cover the costs of advertising the application. Such fee shall reimburse the County for expenses associated with deferring the application. If the Board does not grant the deferral, the Board may either approve or deny the application at that meeting.
5. The Administrator and/or the Board may grant a deferral as noted above for one or more of the following reasons:
  - The Commission requests substantive changes to the application, supplemental materials, proffers, or conditions that must be addressed prior to the Board hearing.
  - Substantive issues are raised by a County or external reviewing agency that must be addressed prior to the Board hearing.
  - Delays have occurred with County or external reviewing agency comments that affect the application.

- Errors in legally required advertising are discovered and must be rectified.
- Adjacent property owner concerns have been expressed that generate the need for substantive changes or additional public meetings.
- The applicant demonstrates that there are extenuating circumstances that are unique to the application that require additional time.

2. Results of Closed Session

Mr. McGlennon stated that in the Closed Session, the Board appointed Ms. Lisa Thomas, Mr. John Smith, Mr. Hunter Old, Ms. Andrea Salamy, and Mr. Tucker Edmonds to the Community Action Agency.

**RESOLUTION**

**CERTIFICATION OF CLOSED MEETING**

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

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

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

**K. PUBLIC COMMENT**

1. Mr. Ed Oyer, 139 Indian Circle, Williamsburg, addressed the Board questioning if the County had saved money by installing solar panels on Building F in the County Government Complex.

**L. REPORTS OF THE COUNTY ADMINISTRATOR**

Mr. Middaugh announced that the James City County Open House would be held on September 26, 2012, from 3 to 7 p.m., at the County Government Complex. He stated that all the County buildings would be open, staff would be available for questions, and many of the departments that are located away from the County Government Complex would be present to answer any questions.

Mr. Middaugh announced the availability of the Speaker Cards online. He stated that citizens could now sign up to speak at a Board meeting in advance by visiting the Board of Supervisors webpage on the main County website. He stated that the electronic Speaker Cards would be accepted until 4 p.m. the day of the Board meeting.

Mr. McGlennon noted that citizens were welcome to continue filling out Speaker Cards at the Board meeting as well.

**M. BOARD REQUESTS AND DIRECTIVES**

Ms. Jones stated that there will be a public meeting on October 24, 2012, at Warhill High School concerning the proposed Dominion Virginia Power Transmission Line.

Mr. Icenhour stated that he wanted to commend VDOT for its quick response to reports of large pot-holes on News Road.

**N. ADJOURNMENT**

At 7:30 p.m., Ms. Jones made a motion to adjourn the Board of Supervisors until 7 p.m. on October 9, 2012.

On a roll call vote, the vote was: AYE: Mr. Icenhour, Mr. Kale, Ms. Jones, Mr. McGlennon (4). NAY: (0). ABSENT: Mr. Kennedy (1).

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Robert C. Middaugh  
Clerk to the Board

## MEMORANDUM COVER

**Subject:** Grant Award - FY 2012 Port Security Grant Program (PSGP) - \$41,285

**Action Requested:** Shall the Board approve the resolution to accept the Port Security Grant Program (PSGP) Grant Award?

**Summary:** The James City County Police Department has been awarded Federal funds via the FY 2012 PSGP in the amount of \$41,285 (\$30,964 PSGP; \$10,321 local match) from the Department of Homeland Security. These funds will be used to purchase various equipment and personal protective wear to assist the Underwater Search and Rescue Team and Marine Patrol efforts of the Police Department.

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.:** H-2

**Date:** October 9, 2012



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

DATE: October 9, 2012

TO: The Board of Supervisors


FROM: Emmett H. Harmon, Police Chief

SUBJECT: Grant Award - FY 2012 Port Security Grant Program (PSGP) - \$41,285

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The James City County Police Department has been awarded Federal funds via the FY 2012 Port Security Grant Program (PSGP) in the amount of \$41,285 (\$30,964 PSGP; \$10,321 local match) from the Department of Homeland Security. The period for expenditures by James City County is September 1, 2012 through August 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. Purchases with PSGP funds are limited to equipment detailed in The Federal Emergency Management Agency's Authorized Equipment List and training associated with that same equipment. These funds will be used to purchase various equipment and personal protective wear to assist the Underwater Search and Rescue Team and Marine Patrol efforts of the Police Department. These needs were identified as both programs have matured, needs have changed, and technology has advanced. These funds will not take the place of budgeted expenses.

Staff recommends adoption of the attached resolution.

  
Emmett H. Harmon

EHH/gb  
GA-PortSecu2012\_mem

Attachment

## RESOLUTION

### GRANT AWARD - FY 2012 PORT SECURITY GRANT PROGRAM (PSGP) - \$41,285

WHEREAS, the James City County Police Department has been awarded an FY 12 Port Security Grant Program from the Department of Homeland Security; and

WHEREAS, the award is in the amount of \$41,285 (\$30,964 PSGP; \$10,321 local match); and

WHEREAS, the matching funds of \$10,321 are available in the County's Grant Match Account.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby accepts the \$41,285 grant awarded by the Department of Homeland Security and authorizes the following appropriation to the Special Projects/Grants Fund:

Revenues:

FY 12 PSGP	\$30,964
County's Grant Match Account	<u>10,321</u>
Total:	<u>\$41,285</u>

Expenditure:

FY 12 PSGP	<u>\$41,285</u>
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John J. McGlennon  
Chairman, Board of Supervisors

ATTEST:

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Robert C. Middaugh  
Clerk to the Board

	VOTES		
	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>
MCGLENNON	_____	_____	_____
JONES	_____	_____	_____
KENNEDY	_____	_____	_____
ICENHOUR	_____	_____	_____
KALE	_____	_____	_____

Adopted by the Board of Supervisors of James City County, Virginia, this 9th day of October, 2012.

GA-PortSecu2012\_res

## MEMORANDUM COVER

**Subject:** Resolution of Appreciation – Mr. John F. Hagee

**Action Requested:** Shall the Board adopt the Resolution of Appreciation for Mr. John F. Hagee?

**Summary:** The Board requested that staff prepare a Resolution of Appreciation to recognize the contributions of Mr. John F. Hagee.

Staff recommends approval 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.:** H-3

**Date:** October 9, 2012

**MEMORANDUM**

DATE: October 9, 2012  
TO: The Board of Supervisors  
FROM: Doug Powell, Assistant County Administrator  
SUBJECT: Resolution of Appreciation – Mr. John F. Hagee

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The Board requested that staff prepare a Resolution of Appreciation to recognize the contributions of Mr. John F. Hagee.

Staff recommends approval of the attached resolution.

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

DP/nb  
ResOfApprec\_mem

Attachment

## **RESOLUTION OF APPRECIATION**

### **MR. JOHN F. HAGEE**

WHEREAS, Mr. John F. Hagee played a critical role in advancing his profession, in shaping his community, and in serving his fellow citizens; and

WHEREAS, Mr. Hagee served as General Manager of Kingsmill Realty for more than 25 years, helping to guide the development of a complex, highly desirable residential area; and

WHEREAS, the Planning Commission of James City County benefitted from the guidance and judgment of Mr. Hagee for 15 years, from 1989 to 2004; and

WHEREAS, Mr. Hagee helped produce the 1997 Comprehensive Plan Update as Chairman of the Commission and also served as Chairman of the Development Review Committee from 2000 to 2004 and in that capacity oversaw the approval of the New Town development; and

WHEREAS, Mr. Hagee passed away September 17, 2012, after a four-year battle with cancer.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby commend the service of Mr. John F. Hagee as an example to his fellow citizens and acknowledge his important contributions to making James City County a vibrant and attractive community.

### **MR. JOHN F. HAGEE**

BE IT FURTHER RESOLVED that we extend our sincere condolences to his family and our appreciation for his legacy in the community.

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John J. McGlennon  
Chairman, Board of Supervisors

ATTEST:

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Robert C. Middaugh  
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 9th day of October, 2012.

ResOfApprec\_res

## MEMORANDUM COVER

**Subject:** Case No. Z-0003-2012/MP-0001-2012. New Town Section 12

**Action Requested:** Shall the Board approve the rezoning and master plan for New Town Section 12 and accept the voluntary proffers?

**Summary:** The Board of Supervisors deferred this application from its August 14, 2012, meeting to give the applicant the opportunity to respond to Board concerns. Since this meeting, the applicant has revised the master plan to reflect a unit cap of 247 dwelling units. This is a 22-unit decrease from the master plan reviewed on August 14. The proffers have also been amended to reflect the decrease in units including changes to cash proffer contributions, providing one less affordable unit, removing the requirement for supplemental buffer plantings, and revising specifications for security fencing between Section 12 and Section 13. In the design guidelines, the exhibits and the cross-section for the main entrance were amended to reflect the revised design.

Staff recommends approval of this revised rezoning and master plan along with acceptance of the voluntary proffers. The revised plan was not reviewed by the Planning Commission as they recommended approval of the original proposal.

**Fiscal Impact:** N/A

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

**Assistant County Administrator**

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

**County Administrator**

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

**Attachments:**

1. Resolution
2. Revised proffers dated September 19, 2012
3. Revised pages of design guidelines
4. Master plan - under separate cover

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

**Date: October 9, 2012**

**REZONING-0003-2012/MP-0001-2012. New Town Section 12**  
**Staff Report for the October 9, 2012, Board of Supervisors Public Hearing**

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

**PUBLIC HEARINGS**

Planning Commission:  
 Board of Supervisors:

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

July 11, 2012, 7:00 p.m.  
 August 14, 2012, deferred by the Board of Supervisors  
 October 9, 2012, 7:00 p.m.

**SUMMARY FACTS**

Applicant: Mr. Greg Davis, Kaufman and Canoles

Land Owner: Oxford Properties, LLC (contract purchasers)

Proposal: Rezone the property to MU, Mixed Use, with proffers and design guidelines to allow for up to 247 for-rent townhomes in accordance with the New Town master plan.

Location: 3950 WindsorMeade Way located between the WindsorMeade Retirement Community and WindsorMeade Marketplace shopping center.

Tax Map/Parcel No: 3831900005

Parcel Size: 34.2 acres

Existing Zoning: R-8, Rural Residential, with proffers

Proposed Zoning: MU, Mixed Use, with proffers

Comprehensive Plan: Mixed Use

Primary Service Area: Inside

**STAFF RECOMMENDATION**

Staff finds the revised proposal to be in accordance with the overall New Town master plan and that sufficient density is available to transfer to this property while still keeping under New Town's overall density caps. Staff also finds the proposal to be consistent with the 2009 Comprehensive Plan and Zoning Ordinance. Staff recommends the James City County Board of Supervisors approve this application and accept the voluntary proffers.

Staff Contact: Leanne Reidenbach, Planner III

Phone: 253-6685

**PLANNING COMMISSION RECOMMENDATION**

The Planning Commission recommended approval of the original rezoning and master plan application for 274 units at its July 11, 2012, meeting by a vote of 6-0 (1 abstaining). The Commission's recommendation of approval was contingent on including a proffer for enhanced landscaping along the buildings facing WindsorMeade Way and the gatehouse (shown as Buildings 28-31 on the Illustrative Plan dated March 21,

2012). The Commission also expressed concerns regarding security and hours of operation for construction work and vehicles.

**Proposed Changes Made Since the August 14 Board Meeting:**

- 1) **Density.** The applicant has reduced the maximum number of units on 12a to 247 units. This is a decrease of 22 units from the most recently proposed 269-unit plan and a decrease of 27 units from the originally proposed 274-unit plan.
- 2) **Illustrative Layout.** The four buildings closest to the WindsorMeade guardhouse (Buildings 28-31) were removed from the master plan and converted to open space in order to achieve the density reduction. Building 12, which was adjacent to the stormwater facility in the southwestern corner of the development, was also removed to increase the area for the stormwater facility. Changes were made to Buildings 21-24 and the adjacent pocket parks to increase and area for the other stormwater facility. As a result of these changes, the applicant believes that ponds may no longer require retaining walls.
- 3) **Design Guidelines.** Cross-section A-A was amended to show the revised design for the main entrance road from WindsorMeade Way. This included a shortening of the median that was originally proposed in that area. The pedestrian and other exhibits in the guidelines were also amended to reflect the proposed layout changes.
- 4) **Proffers.** In addition to the cash proffer contribution adjustments outlined below, the following proffer changes are proposed:
  - Reduced the number of affordable units provided (from 10 units to 9 units) as a result of the overall reduction in the number of dwelling units. This is still approximately the same percentage of affordable units as previously proffered (about 3.6 percent).
  - Removed the construction sequencing proffer as the buildings referenced have been removed from the plan.
  - Removed the proffer for a 50-foot natural and undisturbed buffer and supplemental landscaping adjacent to the property line closest to the guardhouse since the units in that area have been removed.
  - Amended the security fencing condition to include either installation of the fencing generally as shown on the binding master plan or an increased contribution to WindsorMeade (\$5,000 instead of the \$3,000 offered in the previous proffers) prior to issuance of any building permit.

**Proffers:** Proffers are signed and submitted in accordance with the James City County Proffer Policy. The mechanism for accepting the cash proffers will be in lump sum amounts collected prior to the issuance of building permits for that phase of the development.

<b>Cash Proffer Summary (See staff report narrative and attached proffers for further details)</b>	
<b>Use</b>	<b>Amount</b>
Water	\$983 per single-family attached dwelling unit
Recreation	\$35.24 per unit for fields \$229.70 per unit for trails (if not built on the property)
School Facilities	\$5,196.29 per unit
Library Facilities	\$61 per dwelling unit
Fire / EMS Facilities	\$71 per dwelling unit
<b>Total Amount Per Unit (2011 dollars)</b>	<b>\$6,576.23 per dwelling unit</b>
Road Improvement Contribution (lump sum)	\$19,877.30
<b>Total Amount (2011 dollars)*</b>	<b>\$1,585,020 total</b>

*\*Note: the nine proffered workforce housing units are not included in the calculation of cash proffers.*



**Density:**

With the proposal for Section 12 and the requested density transfer/conversion, staff has worked closely with the applicant and with New Town Associates to determine current and projected build-out in all sections of New Town and to revise the New Town density tables to reflect the density transfer to Section 12 so that units will not be double-counted in the future. Based on staff's calculations, there is sufficient remaining density to build an additional 38 units on Section 12a, above the Master Plan amount of 209 (247 total units), but still below the overall New Town maximums, and will leave some development potential for Section 12b.

**Design Guidelines:**

The Design Review Board (DRB) reviewed and approved the master plan, conceptual layout, and revised design guidelines for 247 units on September 14, 2012. The DRB viewed the reduction in units and revised layout as overall positives to the master plan design.

**PUBLIC IMPACTS****Engineering and Resource Protection**

The Engineering and Resource Protection Division reviewed the revised layout, location of stormwater management facilities, and preliminary calculations. The footprints of the ponds appear about the same as the previously proposed ponds with similar volumes. The overall design appears feasible and specific comments can be addressed at the development plan stage.

**Public Facilities**

This project is located within the D.J. Montague Elementary School, Hornsby Middle School, and Lafayette High School districts. As a result of the unit reduction, the project would be anticipated to add 42 total students, which is four students less than generated by the previous plan for 269 units. Enrollment at all three schools will still be under the effective capacities.

**COMPREHENSIVE PLAN**

The project is designated Mixed Use on the 2009 Comprehensive Plan Land Use Map and is in the New Town Community Character Area. As previously stated in the August 14 staff report, staff continues to find that the proposal is consistent with the Mixed Use designation and New Town Community Character Area.

**RECOMMENDATION**

Staff finds the revised proposal to be in accordance with the overall New Town master plan and that sufficient density is available to transfer to this property while still keeping under New Town's overall density caps. Staff also finds the proposal to be consistent with the 2009 Comprehensive Plan and our Zoning Ordinance. Staff recommends the James City County Board of Supervisors approve this application and accept the voluntary proffers.



Leanne Reidenbach

CONCUR:

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Allen J. Murphy, Jr.

LR/gb  
Z3-12NewTownSec12.doc

ATTACHMENTS:

1. Resolution
2. Revised proffers dated September 19, 2012
3. Revised pages of design guidelines
4. Master plan – under separate cover

## RESOLUTION

### CASE NO. Z-0003-2012/MP-0001-2012. NEW TOWN SECTION 12

WHEREAS, in accordance with § 15.2-2204 of the Code of Virginia and Section 24-15 of the James City County Zoning Ordinance, a public hearing was advertised, adjoining property owners notified, and a hearing scheduled on Zoning Case No. Z-0003-2012/MP-0001-2012, New Town Section 12 with Master Plan, for rezoning 34.2 acres from R-8, Rural Residential District, with proffers to MU, Mixed Use District, with proffers; and

WHEREAS, the Planning Commission of James City County, following its public hearing on July 11, 2012, recommended approval, by a vote of 6 to 0; and

WHEREAS, the property is located at 3950 WindsorMeade Way and can be further identified as 3831900005 on the James City County Real Estate Tax Map.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve Case No. Z-0003-2012/MP-0001-2012, New Town Section 12 and accept the voluntary proffers.

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John J. McGlennon  
Chairman, Board of Supervisors

ATTEST:

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Robert C. Middaugh  
Clerk to the Board

	VOTES		
	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>
MCGLENNON	_____	_____	_____
JONES	_____	_____	_____
KENNEDY	_____	_____	_____
ICENHOUR	_____	_____	_____
KALE	_____	_____	_____

Adopted by the Board of Supervisors of James City County, Virginia, this 9th day of October 2012.

Z03-12NewTownSec12\_res

Tax Parcel No. 3831800005

**PLANNING DIVISION**

SEP 26 2012

**RECEIVED**

## **NEW TOWN SECTION 12**

### **PROFFERS**

Prepared by/Return to:  
Kaufman & Canoles, P.C.  
4801 Courthouse Street, Suite 300  
Williamsburg, Virginia 23188

## NEW TOWN SECTION 12 PROFFERS

THESE PROFFERS ("Proffers") are made this 19<sup>th</sup> day of September, 2012, by and between **OXFORD PROPERTIES, LLC**, a Virginia limited liability company, and/or its successors and assigns (collectively the "Developer") (to be indexed as grantor), **C. C. CASEY LIMITED COMPANY**, a Virginia limited liability company ("Owner") (to be indexed as grantor), and **THE COUNTY OF JAMES CITY, VIRGINIA**, a political subdivision of the Commonwealth of Virginia ("County") (to be indexed as grantee), provides as follows:

### RECITALS

R-1. Developer is the contract purchaser of certain real property located in James City County, Virginia, being more particularly described on EXHIBIT A attached hereto and made a part hereof (the "Property").

R-2. The Property is subject to the New Town Proffers (the "New Town Proffers"), dated December 9, 1997, of record in the Clerk's Office of the Circuit Court for the City of Williamsburg and County of James City, Virginia (the "Clerk's Office") as Instrument Number 980001284.

R-3. The New Town Proffers provide for development of the Property in accordance with (i) a conceptual plan of development (the "New Town Master Plan") entitled, "NEW TOWN PLAN", dated July 23, 1997, revised December 8, 1997, prepared by Cooper, Robertson & Partners and AES Consulting Engineers, and (ii) design guidelines (the "New Town Design Guidelines") entitled "NEW TOWN DESIGN GUIDELINES, JAMES CITY COUNTY, VIRGINIA", dated September 3, 1997, prepared by Cooper, Robertson & Partners. A copy of the New Town Master Plan and New Town Design Guidelines are on file with the County Planning Director.

R-4. In furtherance of the vision embodied in the New Town Master Plan and New Town Design Guidelines, Developer has applied for a rezoning of the Property from R-8, Rural Residential with proffers to MU, Mixed-Use with proffers. The rezoning of the Property to MU, with proffers, is consistent both with the land use designation for the Property on the County Comprehensive Plan and the statement of intent for the MU zoning district set forth in Section 24-514 of the County Zoning Ordinance, Section 24-1 *et seq.* of the County Code of Ordinances, in effect on the date hereof (the "Zoning Ordinance").

R-5. A community impact study ("Community Impact Study") entitled "Oxford Properties at New Town Section 12" prepared by AES Consulting Engineers, dated March 21, 2012, and revised as of July 27, 2012, has been submitted to the County Planning Director for review by the County in connection with this proposed rezoning. The Community Impact Study is on file in the office of the County Planning Director.

R-6. A fiscal impact study ("Fiscal Impact Study") entitled "New Town West Fiscal Impact Study James City County, Virginia", dated March 21, 2012, and revised as of June 19, 2012, prepared by Ted Figura Consulting has been submitted to the County Planning Director for review by the County in connection with this proposed rezoning. The Fiscal Impact Study is on file in the office of the County Planning Director.

R-7. In accordance with the requirements of paragraph 4 of the New Town Proffers, Developer has submitted to the County an updated traffic study memorandum (the "Traffic Study") entitled "New Town Section 12 (Oxford New Town West) And Monticello Avenue Corridor", dated May 24, 2012, prepared by DRW Consultants, LLC, Midlothian, Virginia, which addresses the proposed development of the Property and is on file with the County Planning Director.

R-8. Pursuant to subparagraph 2(b) of the New Town Proffers, there has been established a Design Review Board ("DRB") for development of the property subject to the New Town Proffers.

R-9. Pursuant to the New Town Proffers, the DRB is charged with the responsibility of rendering a written advisory recommendation to the County Planning Commission and to the County Board of Supervisors as to the general consistency with the New Town Master Plan and the New Town Design Guidelines of any proposed master plans and design guidelines in future rezonings of the property subject to the New Town Proffers.

R-10. Developer has submitted to the DRB, and the DRB has approved in writing, as consistent with both the New Town Master Plan and the New Town Design Guidelines, a conceptual plan of development (the "Section 12 Master Plan") entitled "OXFORD PROPERTIES AT NEW TOWN SECTION 12 JAMESTOWN DISTRICT JAMES CITY COUNTY VIRGINIA", dated March 21, 2012, and revised as of September 14, 2012, prepared by AES Consulting Engineers, and design guidelines (the "Section 12 Guidelines") entitled "Oxford Properties at New Town Section 12 Design Guidelines", revised as of September 14, 2012, prepared by AES Consulting Engineers, for the Property, copies of which Section 12 Master Plan and Section 12 Guidelines are on file with the County Planning Director.

R-11. A Phase I Archaeological Study (the "Casey Study") was conducted on the Property as detailed in that certain report entitled "A Phase I Archaeological Survey of the Casey Property, James City County, Virginia", dated July 30, 1990, prepared for the Casey Family c/o Virginia Landmark Corporation by the William and Mary Archaeological Project Center, which report has been submitted to, reviewed and approved by the County Planning Director. The Casey Study identified no areas of archaeological significance on the Property.

R-12. The County constitutes a high-growth locality as defined by Section 15.2-2298 of the Virginia Code.

R-13. The provisions of the Zoning Ordinance, Section 24-1, *et seq.*, may be deemed inadequate for protecting and enhancing orderly development of the Property. Accordingly, Developer and Owner, in furtherance of the above-described application for rezoning, desires to proffer certain conditions which are limited solely to those set forth herein in addition to the regulations provided for by the Zoning Ordinance for the protection and enhancement of the development of the Property, in accordance with the provisions of Section 15.2-2303 *et seq.* of the Code of Virginia, as amended (the "Virginia Code") and Section 24-16 of the Zoning Ordinance.

NOW, THEREFORE, for and in consideration of the approval by the Board of Supervisors of the County of the rezoning set forth above and the Section 12 Master Plan, the Section 12 Guidelines and all related documents described herein, and pursuant to Section 15.2-2303, *et seq.*, of the Virginia Code, Section 24-16 of the Zoning Ordinance and the New Town Proffers, it is agreed that all of the following conditions shall be met and satisfied in developing the Property.

PROFFERS:

1. **Application of New Town Proffers, Master Plan and Design Guidelines.**

These Proffers, the Section 12 Master Plan and the Section 12 Guidelines shall supersede, amend and restate in their entirety the New Town Proffers, the New Town Master Plan and the New Town Design Guidelines, but only as to the Property. Accordingly, this document contains the only proffers hereinafter applicable to the Property.



2. **Development Process and Land Use.**

(a) **Development.** The Property shall be developed in one or more phases generally in accordance with the Section 12 Master Plan and the Section 12 Guidelines, including, but not limited to, the land uses, densities and design set forth therein. All of such development shall be expressly subject to such changes in configuration, composition and location as required by all other governmental authorities having jurisdiction over such development.

(b) **DRB Authority, Duties and Powers.** All site plans, landscape plans, building materials, building elevation plans and other development plans for the Property shall be submitted to the DRB for review and approval in accordance with the manual entitled “NEW TOWN DESIGN PROCEDURES JAMES CITY COUNTY” as the same may be amended by the DRB from time to time, a copy of which is on file with the County Planning Director, and such other rules as may be adopted by the DRB from time to time, for general consistency with the Section 12 Master Plan and Section 12 Guidelines. Evidence of DRB approval of plans required to be submitted to the County for approval shall be provided with any submission of such plans to the County Department of Development Management. The County shall not be required to review any development plans not receiving the prior approval of the DRB. In reviewing applications, development plans and specifications, the DRB shall consider the factors set forth in the Section 12 Master Plan and/or the Section 12 Guidelines. The DRB may approve development plans that do not strictly comply with the Section 12 Master Plan and/or the Section 12 Guidelines, if circumstances, including, but not limited to, topography, natural obstructions, design/development hardship, economic conditions or aesthetic or environmental considerations, warrant approval. All structures, improvements, open space, wetlands and other

natural features on the Property shall be constructed, improved, identified for preservation, left undisturbed or modified, as applicable, substantially in accordance with the plans and specifications as finally approved by the DRB.

(c) Limitation of Liability. Review of and recommendations with respect to any application and plans by the DRB is made on the basis of aesthetic and design considerations only and the DRB shall not have any responsibility for ensuring the structural integrity or soundness of approved construction of modifications, nor for ensuring compliance with building codes or other governmental requirements, ordinances or regulations. Neither Developer, Owner, the County, the DRB nor any member of the DRB shall be liable for any injury, damages or losses arising out of the manner or quality of any construction on the Property.

3. Owners Association. The Property is governed by the New Town West Association (the "Association"), and is subject to the "DECLARATION OF PROTECTIVE COVENANTS, NEW TOWN WEST SIDE, COUNTY OF JAMES CITY, VIRGINIA JULY 23, 2004" recorded in the Clerk's Office as Instrument No. 040024399, and the articles of incorporation and the bylaws governing the Association (as any of the foregoing have been or may be hereafter supplemented, amended or modified pursuant to the terms thereof). Prior to final site plan approval for the Property, Developer shall provide evidence satisfactory to the County Attorney that either (i) the Association or (ii) an independent property owners association or sub-association has assumed the rights and obligations of such an association set forth herein.

4. **Community and Open Spaces.**

(a) The Section 12 Master Plan sets forth “TRANSITION OPEN SPACE PARK” along WindsorMeade Way, and other open and/or community spaces (collectively, the “Community Space”).

(b) A site plan or other appropriate plan as may be reasonably requested by the Planning Director for the Community Space shall be submitted to the County prior to final site plan approval for the Property. Any improvements to be located in the Community Space shall be completed or guaranteed (“Guaranteed”) in accordance with Section 15.2-2299 of the Virginia Code (or such successor provision) and the applicable provisions of the County Code of Ordinances (such performance assurances to be hereinafter referred to as a “Guarantee” or “Guarantees”) prior to final site plan approval for the Property. The form of guarantee shall be approved by the County Attorney.

(c) The configuration, composition, location and design of the Community Space is subject to the provisions of paragraph 2(b) hereof, and shall be further expressly subject to such changes in configuration, composition and location as may be required by governmental authorities, other than the County, having jurisdiction.

(d) The Community Space shall be maintained by the Association, and shall be subject to rules and regulations as may be promulgated, from time to time, by the Association.

(e) The Property shall be developed in compliance with currently applicable County open space requirements, including Section 24-520 of the Zoning Ordinance. The Community Space, or portions thereof, may be utilized to meet the open space requirements for the Property, provided such space meets the applicable definition of open space contained in the Zoning Ordinance.

5. **Streetscapes.** Streetscape improvements shall be provided and installed in accordance with the Section 12 Guidelines. 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 site plan approval process. Streetscape improvements shall be either (i) installed prior to the issuance of a certificate of occupancy for any residential or non-residential structures adjacent to such improvements, or ii) bonded in form satisfactory to the County Attorney prior to the issuance of a certificate of occupancy for any structure adjacent to such improvements.

6. **Recreation Facilities.** The Property is being developed in furtherance of a comprehensive town plan that is subject to the Section 12 Guidelines and the Section 12 Master Plan which provide for a more urban approach to the design of buildings and public spaces in order to avoid conventional suburban patterns and promote an environment conducive to walking. Implementation of such development design will provide for a network of sidewalks, alleyways and community areas. Specifically, in accordance with of the County Comprehensive Parks and Recreation Plan proffer guidelines (the “County Parks and Recreation Guidelines”), as in effect on the date hereof, recreation facilities in the form of Community Space to be established on the Property shall be provided, open to all residents of the Property, and maintained and regulated by the Association. Further, prior to issuance of final site plan approval for the Property, installation of the following shall be guaranteed in a form satisfactory to the County Attorney:

- i) a neighborhood park and pocket parks totaling no less than 0.57 acres;
- ii) a minimum of one-thousand five-hundred eighty-four (1,584) linear feet of paved multi-purpose trails, unless Developer elects prior to final site plan approval to increase the Cash Contribution Amount (as defined below) by

the sum of Fifty-Four Thousand Six-Hundred Sixty-Eight and 60/100 Dollars (\$54,668.60), which is the equivalent cash-in-lieu proffer calculated in accordance with the County Parks and Recreation Guidelines;

- iii) a minimum of one (1) outdoor activity facility area designed for activities such as community picnic shelters, barbeque grilling areas, or horseshoe pits; and
- iv) one (1) swimming pool

in accordance with the currently adopted version of the County Parks and Recreation Master Plan and as approved by the DRB and County Planning Director. Subject to approval by the County Planning Director, the Community Space may be utilized to meet the aforementioned requirements. Installation of the recreation facilities shall occur prior to the County being obligated to grant certificates of occupancy for more than seventy-five percent (75%) of the residential units ("Residential Units") to be constructed on the Property.

7. **Water Conservation.** Water conservation standards for the Property shall be developed and submitted to the James City Service Authority ("JCSA") for approval. The standards shall address such water conservation measures as limitations on 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. Design features, including the use of drought tolerant grasses and plantings, a water conservation plan, and drought management plan shall be implemented to accomplish the limitation on use of public water and groundwater. The standards shall be submitted to and reviewed by the County Attorney for general consistency with this proffer and shall be approved by JCSA prior to final site plan approval for development of the Property.

During the design phase, the Developer and designing engineer should take into consideration the design of storm water systems that can be used to collect storm water for outdoor water use for the entire development. At a minimum storm water should be used to irrigate common areas. Thus, only collected storm water may be used for irrigating common areas within the Property (the "Irrigation"). In no circumstance shall JCSA water or well water be used for Irrigation, except as otherwise provided by this proffer or approved by the General Manager of the JCSA.

8. **Nutrient Management.** During the design phase, 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 or other qualified professional shall be engaged to conduct soil tests and to develop, based upon the results of the soil tests, customized nutrient management plans ("Nutrient Management Plans") for all common areas of the Property. The Nutrient Management Plans for individual common areas shall be submitted to the County Engineering and Resource Protection Director for his review and approval prior to the issuance of a certificate of occupancy for any Residential Unit. Upon approval, the Association shall be responsible for ensuring that any nutrients applied to the common areas which are controlled by the Association be applied in accordance with the applicable Nutrient Management Plan or any updates or amendments thereto as may be approved by the County Engineering and Resource Protection Director.

9. **Cash Contribution for Community Impacts.**

(a) A cash contribution shall be made to the County to offset community impacts to areas such as schools, 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 Five-Hundred Thirty Thousand Three-Hundred Fifty-One and 44/100 Dollars (\$1,530,351.44), payable prior to the County being obligated to issue a building permit for any portion of the development on the Property. Rather than developing the Property all at once, Developer may elect to develop the property in phases or incrementally. If Developer so elects, the Cash Contribution Amount shall be payable incrementally at the time of each building permit requested for the development of the Property. Prior to the County being obligated to issue a building permit for any portion of the development on the Property, Owner shall pay any portion of the Cash Contribution Amount attributable to that portion of the development included pursuant to such building permit. The portion of the Cash Contribution Amount to be paid at the time of each such building permit shall be calculated to accurately and incrementally represent the percentage of the land use entitlements for which building permit approval is being granted as compared to the overall land use entitlements approved for the entire development. The Owner and the County shall execute a recordable agreement at the time of approval of any building permit 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 9(a) does not violate Virginia Code §15.2-2303.1:1.

(b) For purposes of Section 9, the term “building permit” shall mean a permit issued by the James City County Building Safety and Permits Division for the construction of any buildings on the Property, and shall specifically exclude any site plan approvals or land disturbing permits necessary for the development.

(c) Inflation Adjustments. The Cash Contribution Amount shall be adjusted annually beginning January 1, 2013 to reflect any increase or decrease for the preceding year in the Marshall and Swift Building Cost Index, Section 98, Comparative Cost Multipliers, Regional City Averages (the “MSI”). In the event a substantial change is made in the method of establishing MSI, then Cash Contribution Amount shall be adjusted based upon the figure that would have resulted had no change occurred in the manner of computing the MSI. In the event that the MSI is not available, a reliable government or other independent publication evaluating information heretofore used in determining the MSI (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 Cash Contribution Amount to approximate the rate of annual inflation in the County. In no event shall the Cash Contribution Amount stated in this Section be adjusted pursuant to this Section 9(c) to a sum less than the amount originally proffered.

10. Private Streets. Any and all streets on the Property may be private. Pursuant to Section 24-528 of the Zoning Ordinance, private streets within the Property shall be maintained by the Association. The party responsible for construction of a private street shall deposit into a maintenance fund to be managed by the Association an amount equal to one hundred 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 or appropriate equivalent as determined by the Planning Director. The County shall be provided evidence of the deposit of such maintenance fee amount at the time of final site plan approval by the County for the particular phase or section which includes the street to be designated as private.



11. **Enhanced Buffer From Route 199.** Within the area shown generally on the Section 12 Master Plan as “LANDSCAPED BERM” along the eastern portion of the Property, additional landscaping and/or berms shall be installed to provide a visual and sound buffer between the Property and Route 199. The plan and materials for such landscaping and/or berms shall be approved by the County Planning Director as a part of site plan approval.

12. **Natural Resources Inventory.** To the extent not previously submitted and approved, Developer shall commission a natural resource inventory for the portion of the Property to be disturbed, before each such portion is disturbed, which will map and describe unique and sensitive habitats for known threatened and/or endangered species, as well as rare species of concern (“Natural Heritage Resources”) which are listed as of the date hereof by the Virginia Department of Conservation and Recreation’s Division of Natural Heritage (“DCR/DNH”). These investigations will be conducted by personnel who are qualified to conduct such studies and be submitted to and approved by the County Planning Director prior to issuance of a preliminary site plan approval for any portion of the Property occupied by a Natural Heritage Resource. If the natural resource inventory confirms that a Natural Heritage Resource exists on a particular portion of the Property to be disturbed, a conservation management plan will be prepared, submitted, and approved by the County Planning Director, as well as other agencies responsible for the protection/conservation of the specific species inventoried, prior to issuance of any land disturbance permit for the affected portion of the Property. All inventories and conservation management plans shall meet or exceed DCR/DNH standards. All approved conservation management plans shall be incorporated into the development plan of the portion of the Property affected, to the maximum extent possible. If unavoidable impacts will occur as a result of clearing, grading or construction, an appropriate mitigation plan will be developed by

Developer and approved by the County Planning Director and the appropriate regulatory agency prior to issuance of a land disturbance permit for the portion of the Property occupied by any Natural Heritage Resource. Such an inventory shall be completed and the terms above met for any portion of the Property which is the subject of a land disturbance permit application before issuance of that permit. This proffer shall be implemented and interpreted in accordance with the County's Natural Resource Policy adopted by the County Board of Supervisors on July 27, 1999.

13. **Transportation Improvements.** Developer shall construct a right-turn lane on northbound WindsorMeade Way at the proposed entrance to the Property with 100 feet of storage and a 100 foot taper (the "Right-Turn Lane"). The Right-Turn Lane shall be constructed in accordance with Virginia Department of Transportation ("VDOT") standards. The Right-Turn Lane shall be completed or bonded in a form satisfactory to the County Attorney prior to final site plan approval for development on the Property.

14. **Affordable Housing.** For a period of twenty (20) years from the date hereof, a minimum of nine (9) of the Residential Units shall be reserved and offered for rent at rental rates qualifying as Affordable Units (as defined below).

(a) For purposes of this paragraph, the term "Affordable Unit" shall mean any Residential Unit offered at a rental rate equal to or less than the Maximum LIHTC (Low-Income Housing Tax Credit) Gross Rent Limits (Rent Calculation Factor 30% of 60%) for James City County as published by the Virginia Housing Development Authority (VHDA). The Maximum LIHTC Gross Rents published by the VHDA shall be used only to establish the applicable rental rates hereunder, and no portion of the Property shall be required to formally qualify for the VHDA's Low Income Housing Tax Credit program. Rental rates for Affordable Units shall not

be subject to any VHDA utility allowance and no VHDA review or certifications shall be required of Developer.

(b) The rental rates applicable hereunder for Affordable Units shall be adjusted annually so that any new lease entered during a calendar year shall have a rental rate equal to or less than the latest Maximum LIHTC Gross Rent Limits published by VHDA as of January 1 of the calendar year in which such lease is to be entered.

(c) In implementing this proffer, Developer may consult with and accept referrals of potential qualified renters from the James City County Office of Housing and Community Development and/or other community organizations serving families in need of affordable housing. On or before March 31<sup>st</sup> of each calendar year, the County Planning Director shall be provided a listing of all current rental rates for Affordable Units for all rentals occurring during the prior calendar year. To the extent possible, Affordable Units shall not be concentrated all in the same building or location of the Property. Any Residential Unit may be defined as an Affordable Unit at any given time, regardless of its prior classification or lack thereof.

(d) Affordable Units shall not be included in the calculation or determination of the Cash Contribution Amount payable hereunder.

15. **Pre-Construction Meeting.** Prior to final site plan approval for the development of the Property, Developer shall hold a pre-construction meeting with residents of WindsorMeade of Williamsburg to receive input from such residents with respect to construction on the Property, including topics such as construction timelines, development phasing,

construction parking and traffic, dirt on roadways, and safety issues. The County Planning Director and management of WindsorMeade of Williamsburg shall be consulted to schedule a mutually agreeable date for such meeting.

16. **Fencing.** Prior to issuance of any building permit on the Property, Developer shall either: a) install fencing on the New Town Section 13 property in the area shown generally as “PROPOSED SECURITY FENCE” on the Section 12 Master Plan with specific fencing materials to be approved by the owner of the New Town Section 13 property, or b) remit payment to the owner of the New Town Section 13 property in the amount necessary for the erection of said fencing, not to exceed Five Thousand Dollars (\$5,000.00), and provide written documentation of said payment to the County Planning Director. Any approvals required by any authority including, without limitation, the DRB, with respect to the construction, specifications, or location of said fencing to be constructed on the New Town Section 13 property shall be the responsibility of the owner of the New Town Section 13 property.

17. **Construction Restrictions.**

(a) All clearing, grading, installation of utility infrastructure, site work, exterior framing, and exterior construction activity with regard to development of the Property shall occur during the hours of 7:00 a.m. to 7:00 p.m., on Monday through Friday, and 8:00 a.m. to 7:00 p.m. on Saturday, with no such construction on Sunday. The construction hours established herein specifically shall not apply to interior construction or exterior construction activities which are not noise producing, such as painting, site clean up and the like. The construction hours established herein may be temporarily extended from time to time on a case by case basis with the prior written consent of the County Planning Director or his or her

designee, which consent shall be based on a reasonable determination that such extended hours are necessary as a result of extraordinary circumstances.

(b) All bulk deliveries of construction materials shall occur between 8:00 a.m. and 5:00 p.m., Monday through Saturday.

(c) No portion of the Property north of the entrance road and proposed clubhouse as shown generally on the Section 12 Master Plan shall be used as a construction parking or staging area.

18. **Headings.** All section headings and subheadings of these Proffers are for convenience only and shall not be read as a part of these Proffers or utilized in interpretation thereof.

19. **Delegation of Subsequent Approvals.** The County Board of Supervisors by accepting these Proffers is exercising its legislative function. While these Proffers provide for subsequent approvals by the County or by its duly authorized designees appointed by the County, such subsequent approvals by any duly authorized designee of the County shall not include the exercise of any legislative function.

20. **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.

21. **Conflicts.** In the event that there is any conflict between these Proffers and the Zoning Ordinance, the conflict shall be resolved by the County's Zoning Administrator subject to the appeal process to the Board of Supervisors and the Courts as otherwise provided by law.

22. **Successors and Assigns.** These Proffers shall be binding upon and shall inure to the benefit of the parties hereto, and their respective heirs, successors and/or assigns.

23. **Void if Rezoning Not Approved.** In the event that any of the proposed rezoning sought by this application is not approved by the County as submitted, these Proffers shall be null and void.

**[SIGNATURES APPEAR ON THE FOLLOWING PAGES]**

[COUNTERPART SIGNATURE PAGE TO NEW TOWN SECTION 12 PROFFERS]

WITNESS the following signatures, thereunto duly authorized:

**OXFORD PROPERTIES, LLC**  
a Virginia limited liability company

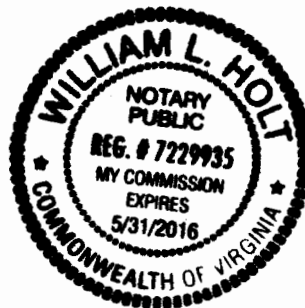
By:   
William H. Hall, Member

COMMONWEALTH OF VIRGINIA  
CITY/COUNTY OF James City, to wit:

The foregoing instrument was acknowledged before me this 24<sup>th</sup> day of September, 2012 by William H. Hall as Member of Oxford Properties, LLC, a Virginia limited liability company, on its behalf.

  
NOTARY PUBLIC

My commission expires: 5/31/2016



[COUNTERPART SIGNATURE PAGE TO NEW TOWN SECTION 12 PROFFERS]

**C. C. CASEY LIMITED COMPANY**  
a Virginia limited liability company

By: Robert T. Casey  
Robert T. Casey, Secretary

COMMONWEALTH OF VIRGINIA  
CITY/COUNTY OF Williamsburg, to wit:

The foregoing instrument was acknowledged before me this 24<sup>th</sup> day of September, 2012 by Robert T. Casey as Secretary of C. C. Casey Limited Company, a Virginia limited liability company, on its behalf.

Patricia A. Buckless  
NOTARY PUBLIC

My commission expires: October 31, 2015



Patricia A. Buckless  
NOTARY PUBLIC  
Commonwealth of Virginia  
Reg. #153460  
My Commission Expires  
October 31, 2015

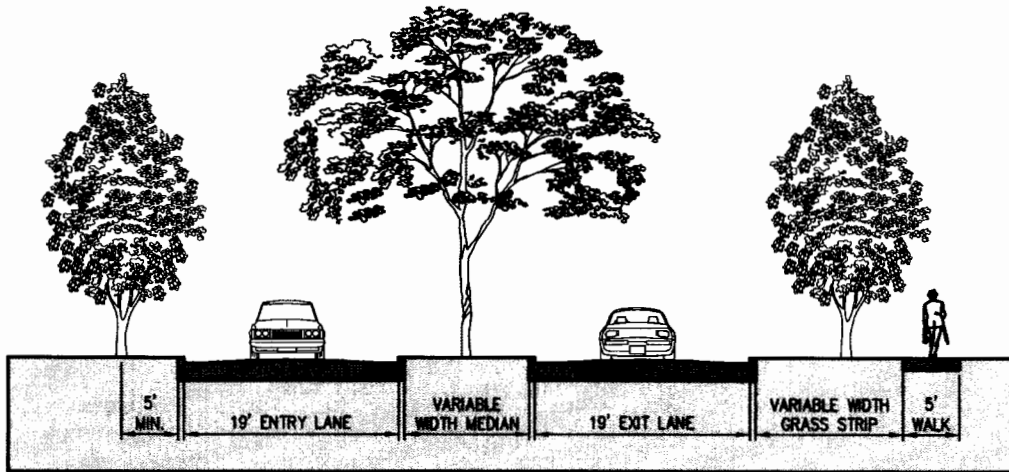


### **EXHIBIT A**

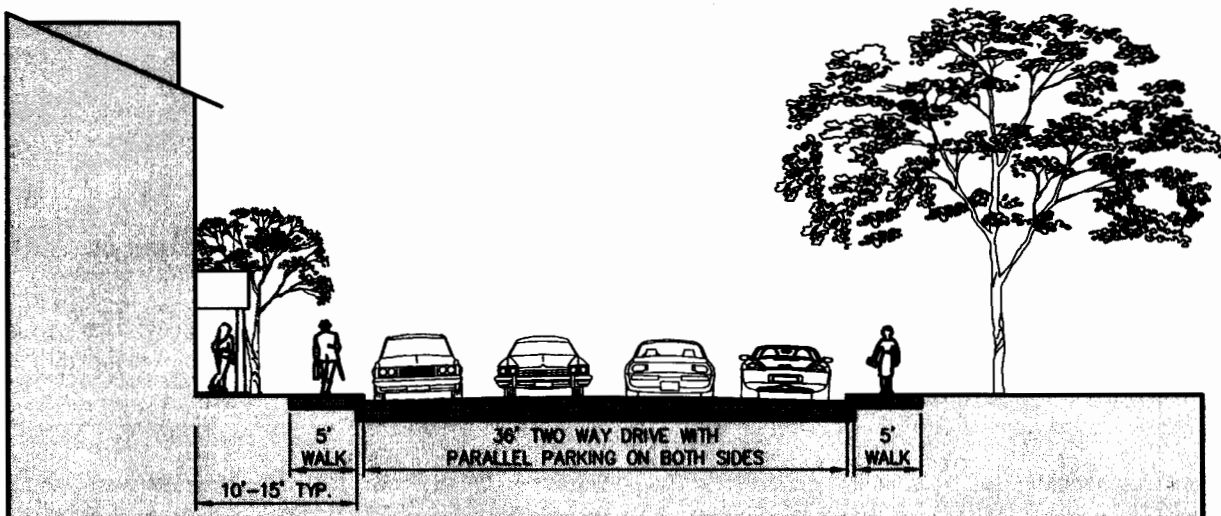
That certain piece, parcel, or tract of land located in the Jamestown Magisterial District in the County of James City, Virginia, identified as James City County Tax Parcel No. 3831800005, and which is shown as "PARCEL 5" containing 34.215 acres on that certain plat entitled "PLAT OF SUBDIVISION AND LOT LINE EXTINGUISHMENT PARCELS 1 THROUGH 5 BEING THE PROPERTY OF C. C. CASEY LIMITED COMPANY JAMESTOWN DISTRICT JAMES CITY COUNTY VIRGINIA", dated January 15, 2004, prepared by AES Consulting Engineers, a copy of which plat is recorded in the Clerk's Office of the Circuit Court of James City County as Instrument No. 040024397, and to which plat reference is hereby made for a more particular description of said real estate.

SEP 26 2012

RECEIVED



**SECTION 'A-A'**  
(SCALE: 1"=10')



**SECTION 'B-B'**

Note: A one way option for this street section is to be explored at site plan.





Rev.	Date	Description
1	5-16-12	REVISED FOR STAFF COMMENTS
2	5-25-12	REVISED FOR STAFF COMMENTS
3	8-29-12	DENSITY NOTE ADDED TO MASTER PLAN
4	7-27-12	REVISED FOR STAFF COMMENTS

3240 Old Towne Road, Suite 1  
 Williamsburg, Virginia 23186  
 Phone: (757) 223-8800  
 Fax: (757) 223-8804  
 www.apsva.com

**ABS**  
 CONSULTING ENGINEERS  
 Hampton Roads | Central Virginia | Middle Peninsula

**OXFORD PROPERTIES**  
 AT NEW TOWN SECTION 12  
 JAMESTOWN DISTRICT | JAMES CITY COUNTY | VIRGINIA

Project Contacts: GJM / JSP  
 Project Number: 9905-00  
 Scale: 1"=60' Date: 5-21-12  
 Sheet Title:  
 RENDERED  
 ILLUSTRATIVE  
 PLAN  
 Sheet Number:  
 1 of 1







## MEMORANDUM COVER

**Subject:** Case No. SUP-0012-2011. nTelos Route 199 Wireless Communications Facility (WCF)

**Action Requested:** Shall the Board approve a 172-foot tower on the east side of Route 199, north of New Town Sections 7 and 8, adjacent to Eastern State Hospital?

**Summary:** Ms. Gloria Freye has applied for a Special Use Permit to allow the construction of a 172-foot (170-foot tower with a 2-foot lighting rod) Wireless Communication Facility (WCF) to be located on the east side of Route 199, north of New Town Sections 7 and 8, adjacent to Eastern State Hospital. The proposed WCF would be a “slick stick” with no visible external antennas.

On July 11, 2012, the Planning Commission voted 4-3 to recommend denial of the application at a proposed tower height of 172 feet.

Staff recommends that the Board approve the application at 130 feet subject to 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:**

21 Attachments

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

**Date:** October 9, 2012

**SPECIAL USE PERMIT-0012-2011. nTelos Route 199 Wireless Communications Facility  
Staff Report for the October 9, 2012, Board of Supervisors Public Hearing**

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

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**PUBLIC HEARINGS**

Planning Commission:

Board of Supervisors:

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

July 11, 2012, 7:00 p.m.

September 11, 2012, 7:00 p.m. (deferred)

October 9, 2012, 7:00 p.m.

**SUMMARY FACTS**

Applicant:

Gloria Freye, McGuire Woods

Land Owner:

RCS Williamsburg Holding LLC

Proposal:

To allow the construction of a 172 foot (170-foot tower with a 2-foot lighting rod) "slick stick" Wireless Communications Facility (WCF) on the subject property.

Location:

East side of Route 199, north of New Town Sections 7 and 8, adjacent to Eastern State Hospital

Tax Map/Parcel No.:

3820100005

Parcel Size:

8.2 acres

Zoning:

R-4, Residential Planned Community

Comprehensive Plan:

Low Density Residential

Primary Service Area:

Inside

**STAFF RECOMMENDATION**

At the application height of 172 feet, the tower would be significantly higher than the adjacent tree canopy and highly visible from eastbound Route 199 adjacent to Ford's Colony and Eastern State Hospital. The proposed WCF will also be partially visible seasonally from Heritage Pointe within Ford's Colony. Accordingly, the application is not in compliance with the Comprehensive Plan and does not meet the Board of Supervisors adopted Performance Standards for Wireless Communications Facilities. A height of 130 feet provides the least amount of visual intrusion along the Community Character Corridor as well as to both existing and proposed development. Staff finds that a height of 130 feet is consistent with the Comprehensive Plan, the Performance Standards for Wireless Communications Facilities, and other recently approved WCF applications adjacent to residential development. Staff recommends that the Board approve the application at a height of 130 feet subject to the conditions listed in the attached resolution. Should the Board wish to approve the application at a height of 135 feet, staff has no objections.

Staff Contact:

Luke Vinciguerra, Planner

Phone: 253-6685

### **Changes Since the September 11, 2012, Board of Supervisors Meeting**

At the September 11 meeting, the Board requested a balloon test at heights of 130, 135, and 150 feet. On September 20 the applicant conducted an advertised balloon test at 130 and 150 feet. A balloon was not flown at 135 feet as staff and the applicant determined it to be impractical to fly a 5-foot diameter balloon five feet apart. Floating two balloons at 130 feet and 150 feet established a range, which allowed staff to adequately evaluate the visual impacts of all three proposed heights against the adopted Performance Standards and Comprehensive Plan. Staff has also updated the tower simulations to more accurately reflect the topographical conditions in New Town Section 8.

### **PLANNING COMMISSION RECOMMENDATION**

On July 11, 2012, the Planning Commission voted 4-3 to recommend denial of the application for a tower at 172 feet. Additionally, the Commission recommended the applicant furnish a computer generated image illustrating the view of the tower from the future New Town Section 8 for Board consideration.

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

In an attempt to replicate the visibility of the proposed tower from the New Town Section 8 access road, staff identified an existing residential subdivision with a similar tree canopy height and houses along the road similar to what will likely be seen when Section 8 in New Town is developed. The photo simulations roughly correspond to the two identified intersections on Attachment 8, which are approximately 750 and 1,500 feet away from the proposed tower. The photo simulations were taken on Montpelier Drive in Scott's Pond. The trees at the end of the road on Montpelier Drive are approximately 85 to 100 feet tall depending on the topography. Staff's simulation indicates that at any height (130 - 172 feet) the proposed tower would likely be visible along the proposed main road in Section 8. The applicant provided tower profiles for New Town Section 8 at heights of 130, 150, and 172 feet (Attachments 18-20) which are consistent with staff's findings.

### **PROJECT DESCRIPTION**

Ms. Gloria Freye, on behalf on nTelos, has applied for a Special Use Permit to allow the construction of a 172-foot (170-foot tower with a 2-foot lighting rod) Wireless Communication Facility (WCF) to be located on the east side of Route 199 north of New Town Sections 7 and 8, adjacent to Eastern State Hospital. Tower mounted communication facilities with a designation other than residential on a Board adopted master plan in the R-4, Residential Planned Community district require a Special Use Permit (SUP). The proposed WCF would be a "slick stick" with no visible external antennas. An illustration of the proposed tower is provided in Attachment 17. This proposal is an alternative location proposed by nTelos to provide service in the Ford's Colony/New Town vicinity after the proposed Hospice House tower application (SUP-0022-2009) was withdrawn subsequent to a Planning Commission recommendation of denial.

### **PUBLIC IMPACTS**

#### **Environmental**

**Watershed:** Powhatan Creek

**Staff Comments:** The Engineering and Resource Protection Division has no comments on the SUP application at this time. Any site development issues will be dealt with at the site plan level.

#### **Public Utilities and Transportation**

The proposed WCF would not generate additional needs for the use of public utilities or significant additional vehicular trips in the area. The Commonwealth Transportation Board issued a Limited Access Control Change (LACC) to permit access to the property off of Route 199 for the purpose of tower maintenance/construction. The request for the LACC was endorsed by the Board of Supervisors.

## **VISUAL IMPACTS**

The proposed tower site is located within a highly wooded area between undeveloped portions of Eastern State Hospital and New Town adjacent to Route 199. The property is a remnant parcel part of Fords Colony that was created by the construction of Route 199. The proposed tower is approximately 600 feet from the closest home in Ford's Colony and over 1,800 feet from existing homes in New Town.

Based on a publicly advertised balloon test on June 13 and September 20, 2012, a 150 foot (or higher) tower would be highly visible from eastbound Route 199 between Fords Colony and Eastern State Hospital. A 130-foot tower would be slightly visible above the tree canopy but likely unnoticeable to the casual observer. Regardless of height (130-172 feet), the proposed WCF would be partially visible through the trees at a few locations along Heritage Pointe within Ford's Colony. Staff notes that the balloon test took place in summer months when the deciduous trees in Fords Colony had a thick canopy. Previous balloon tests in January indicated that the tower would be more visible during the winter months along Heritage Pointe but minimally noticeable to the casual observer. Attachment 3 illustrates documented locations where staff was able to view the balloon during the height simulations. Staff was unable to see the balloon from any existing locations within New Town; however, it is likely that the proposed tower would be visible to future residential development in New Town Section 8. The adopted New Town master plan for Sections 7 and 8 illustrates a road into Section 8 that would point directly at the proposed tower site (an illustrative map is provided in Attachment 8).

At 172 feet, the proposed tower would be higher than other recent WCF applications submitted in developed areas of the County. The recently approved Ingram Road tower, which was also adjacent to a Community Character Corridor, was approved at 124 feet. Approving applications for higher towers may encourage future applicants to request higher tower heights than necessary. A tower at this location in the 130-foot range would be more consistent with other recently approved towers. Staff has found that towers that are only minimally visible above the tree line are often able to satisfy the coverage needs of wireless providers. Figure 1 in the Performance Standards is an example of a well buffered slick stick with minimal intrusion and an example of tower visibility preferred by staff.

## **COMPREHENSIVE PLAN**

The Comprehensive Plan recognizes Route 199 as a Community Character Corridor, and a gateway to the Historic Triangle. The Plan also mentions the County's desire to minimize the impacts of newly approved wireless communication facilities. The proposed height of 150 feet or higher would make the tower a noticeable feature along a portion of Route 199 as shown in Attachment 4. This would not be in compliance with the Comprehensive Plan. Staff finds a tower height of 130 feet at the proposed location more consistent with the visibly recommendations of the Comprehensive Plan.

## **PERFORMANCE STANDARDS**

The James City County Board of Supervisors adopted several performance criteria for WCFs (Attachment 6). In general, it is expected that all facilities should substantially meet the provisions of these performance standards.

These performance criteria note that tower mounted WCFs should be located and designated in a manner that minimizes their impacts to the maximum extent possible and minimizes their presence in areas where they would depart from existing and future patterns of development.

While all standards support the goals outlined in the Comprehensive Plan, some may be more critical to the County's ability to achieve these goals on a case-by-case basis. Therefore, some standards may be weighed more heavily in any recommendation or decision on an SUP and a case that meets a majority of the standards may or may not be recommended for approval. To date, towers granted an SUP have substantially met these standards, including those pertaining to visibility. Staff has compared proposed tower heights of 130, 135,

150, and 172 feet against the performance standards. A ✓ indicates that staff finds this performance standard



to be met at the proposed height. An “X” indicates this standard has not been met.

A. Co-location and Alternative Analysis

Standard A1 encourages co-location. The applicant has conducted a thorough analysis of potential co-location opportunities and has concluded a new tower at this location is the only option to meet the nTelos service goals.

✓130 feet, ✓ 135 feet, ✓150 feet, ✓172 feet

Standard A2 pertains to the demonstration of a need for the proposal and the examination of alternatives, including increases in transmission power and other options. With regards to demonstrating the necessity for the tower, the applicant submitted propagation maps showing data coverage in the vicinity as unreliable. The applicant has explored alternative locations (such as the Hospice House) but claims this site as the last viable option. Staff has reviewed the propagation maps and has found a tower at this location would provide service benefits particularly to Ford’s Colony.

✓130 feet, ✓ 135 feet, ✓150 feet, ✓172 feet

Standard A3 recommends that the site be able to contain at least two towers on site to minimize the need for additional towers elsewhere. Though it appears structurally possible to locate an additional tower on site, the intent of the standard is to identify locations where an adjacent second tower would have a negligible effect on visibility (such as the two towers behind building F in the government complex). A second WCF of any height would likely further distort the tree line on Route 199 and from the future New Town Sec 8 access road making the WCF(s) even more noticeable. This standard has not been met.

X 130feet, X 135 feet, X 150 feet, X 172 feet

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

B. Location and Design

Performance Standard B1 states that towers and tower sites should be consistent with existing and future surrounding development and the Comprehensive Plan. More specifically, towers should be compatible with the use, scale, height, size, design and character of surrounding existing and future uses. At 150 or 172 feet the proposed tower would be highly visible eastbound on Route 199 adjacent to Ford’s Colony and Eastern State Hospital as it is significantly taller than any other structure. At this height the tower would likely have significant visual impacts to future residential development, particularly in New Town Section 8. A tower height of 130 or 135 feet would blend with the existing tree line on Route 199. As the proposed New Town section 8 access road points directly at the tower site, staff finds it likely that the proposed tower at 130 or 135 feet would be noticeable in Section 8; however, a tower height of 150 or 172 feet would likely be obtrusive to future development in New Town.

X 130feet, X 135 feet, X 150 feet, X 172 feet

Performance Standard B2(a) states that towers should be located in a manner that use a camouflaged design or have minimal intrusion on to residential areas, historic and scenic resources areas or roads in such areas, or scenic resource corridors. At any of the previously discussed heights, the proposed tower would not be considered camouflaged as it is significantly visible above the tree line. The base of the tower, along with any utility structures housed at ground level, will not be visible. At any of the discussed heights, the proposed tower would have very minimal visual impacts to Heritage Pointe within Ford’s Colony. At 130 feet, the tower would have the most minimal impact on Route 199. A

tower at 150 or 172 feet would have a significant intrusion on to the Route 199 view shed and likely on the New Town Section 8 access road. It is likely a 130-foot tower would be noticeable from Section 8, but not necessarily intrusive. Staff finds the application does not meet this performance standard.

✓ 130 feet, ✓ 135 feet, X 150 feet, X 172 feet

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

✓ 130 feet, ✓ 135 feet, ✓ 150 feet, ✓ 172 feet

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

✓ 130 feet, ✓ 135 feet, ✓ 150 feet, ✓ 172 feet

C. Buffering

The Performance Standards state that towers should be placed on a site in a manner that maximizes buffering from existing trees, including a recommended 100-foot-wide wooded buffer around the base of the tower, and that the access drive should be designed in a manner that provides no off-site view of the tower base or related facilities. The tower site is situated in a heavily wooded area roughly 190 feet back from Route 199. The mature trees would screen the base of the tower and the vast majority of the trunk of any tower. Staff finds this condition to be met for a proposed tower height of 130 or 135 feet. Staff finds a tower of 150 or 172 feet would have too much exposure above the tree line and could not be considered well buffered.

✓ 130 feet, ✓ 135 feet, X 150 feet, X 172 feet

**RECOMMENDATION**

At the application height of 172 feet, the tower would be significantly higher than the adjacent tree canopy and highly visible from eastbound Route 199 adjacent to Ford's Colony and Eastern State Hospital. The proposed WCF will also be partially visible seasonally from Heritage Pointe within Ford's Colony. Accordingly, the application is not in compliance with the Comprehensive Plan and does not meet the Board of Supervisors adopted Performance Standards for Wireless Communications Facilities. A height of 130 feet provides the least amount of visual intrusion along the Community Character Corridor as well as to both existing and proposed development. Staff finds that a height of 130 feet is consistent with the Comprehensive Plan, the Performance Standards for Wireless Communications Facilities, and other recently approved WCF applications adjacent to residential development. Staff recommends that the Board approve the application at a height of 130 feet subject to the conditions listed in the attached resolution. Should the Board wish to approve the application at a height of 135 feet, staff has no objections.

On July 11, 2012, the Planning Commission voted 4-3 to recommend denial of the application at 172 feet. Additionally, the Commission recommended the applicant furnish a computer generated image illustrating the view of the tower from the future New Town Section 8 for Board consideration.

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Luke Vinciguerra

CONCUR:

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Allen J. Murphy, Jr.

LV/gb  
supNtelosWCF.doc

ATTACHMENTS:

1. Resolution (approval)
2. Resolution (denial)
3. Location map
4. Balloon test photo dated September 20, 2012 simulating a 130' and 150' tower
5. Balloon test photos dated June 13, 2012 simulating a 172' tower
6. Performance Standards for Wireless Communications Facilities That Require a Special Use Permit
7. Unapproved July 11<sup>th</sup> Planning Commission minutes
8. Illustrative Map of New Town with Proposed Tower and Photo Simulation Locations
9. Staff generated 130' tower simulation at 750 feet
10. Staff generated 130' tower simulation at 1,500 feet
11. Staff generated 135' tower simulation at 750 feet
12. Staff generated 135' tower simulation at 1,500 feet
13. Staff generated 150' tower simulation at 750 feet
14. Staff generated 150' tower simulation at 1,500 feet
15. Staff generated 172' tower simulation at 750 feet
16. Staff generated 172' tower simulation at 1,500 feet
17. Conceptual site plan for a 172' WCF
18. Applicant provided 130' tower profile from New Town Section 8
19. Applicant provided 150' tower profile from New Town Section 8
20. Applicant provided 172' tower profile from New Town Section 8
21. Minutes from the September 11, 2012 Board meeting

## **RESOLUTION**

### **CASE NO. SUP-0012-2011. NTELOS, ROUTE 199 WIRELESS COMMUNICATION FACILITY**

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

WHEREAS, Ms. Gloria Freye has applied on behalf of nTelos for an SUP to allow for the construction of a wireless communications facility on a parcel of land zoned R-4, Residential Planned Community; and

WHEREAS, the property can be identified as James City County Real Estate Tax Map Parcel No. 3820100005; and

WHEREAS, the Planning Commission, following its public hearing on July 11, 2012, voted 4-3, to recommend denial of a 172' tower at this location due to its high visibility from Route 199, a Community Character Corridor; and

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

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby approves the issuance of SUP-0012-2011 as described herein with the following conditions:

1. **Term of Validity:** This SUP shall be valid for a total of one slick-stick monopole wireless communications facility at a tower height of \_\_\_\_\_ feet from natural grade in addition to a two foot tall lighting rod. No external arrays are permitted.
2. **Time Limit:** Final approval shall be obtained within two (2) years of approval of this SUP, or the permit shall become void.
3. **Structural and Safety Requirements:** Before final building approval, certification by the manufacturer, or an engineering report by a structural engineer licensed to practice in the Commonwealth of Virginia, shall be filed by the applicant indicating the tower height, design, structure, installation, and total anticipated capacity of the tower, including the total number and type of antennas which may be accommodated on the tower, demonstrating to the satisfaction of the County Building Official that all structural requirements and other safety considerations set forth in the 2000 International Building Code, or any amendment thereof, have been met.
4. **Tower Color:** The tower color shall be gray. Any alternative color used shall be approved by the Planning Director, or his designee, prior to final site plan approval.
5. **Advertisements:** No advertising material or signs shall be placed on the tower.
6. **Additional User Accommodations:** The tower shall be designed and constructed for at least three (3) users and shall be certified to that effect by an engineering report

prior to the site plan approval.

7. **Guy Wires:** The tower shall be freestanding and shall not use guy wires for support.
8. **Enclosure:** The fencing used to enclose the area shall be vinyl-coated and shall be dark green or black in color, or shall be another fencing material of similar or superior aesthetic quality as approved by the Planning Director. Any fencing shall be reviewed and approved by the Director of Planning prior to final site plan approval.
9. **Tree Buffer:** A minimum buffer of 100 feet in width of existing mature trees shall be maintained between the tower, adjacent contiguous parcels and Route 199. This buffer shall remain undisturbed except for the access drive and necessary utilities that accompany the operation of the tower.
10. **Access:** Access to the site shall be from Route 199 per the Limited Access Control Change approved by the Commonwealth Transportation Board on July 20, 2011. The access shall be designed and constructed to the commercial entrance standards in Appendix F of the Road Design Manual.
11. **Severance Clause:** This SUP is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.

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John J. McGlennon  
Chairman, Board of Supervisors

ATTEST:

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Robert C. Middaugh  
Clerk to the Board

	VOTES		
	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>
MCGLENNON	_____	_____	_____
JONES	_____	_____	_____
KENNEDY	_____	_____	_____
ICENHOUR	_____	_____	_____
KALE	_____	_____	_____

Adopted by the Board of Supervisors of James City County, Virginia, this 9th day of October, 2012.

SUP-12-11inTelos-App\_res

## RESOLUTION

### CASE NO. SUP-0012-2011. NTELOS, ROUTE 199 WIRELESS COMMUNICATION FACILITY

- WHEREAS, the Board of Supervisors of James City County has adopted by ordinance specific land uses that shall be subjected to a Special Use Permit (SUP) process; and
- WHEREAS, Ms. Gloria Freye has applied on behalf of nTelos for an SUP to allow for the construction of a wireless communications facility on a parcel of land zoned R-4, Residential Planned Community; and
- WHEREAS, the property can be identified as James City County Real Estate Tax Map Parcel No. 3820100005; and
- WHEREAS, the Planning Commission, following its public hearing on July 11, 2012, voted 4-3, to recommend denial of this application due to its high visibility from Route 199, a Community Character Corridor; and
- WHEREAS, the Comprehensive Plan acknowledges the County's desire to minimize the impacts of newly approved wireless communication facilities; and
- WHEREAS, the Board of Supervisors of James City County, Virginia, ("the Board") finds the proposed tower inconsistent with the Comprehensive Plan and Performance Standards For Wireless Communications Facilities That Require A Special Use Permit policy ("the Policy") as the proposed height would make the tower a dominant visual feature along a portion of Route 199 as evidenced by a June 13, 2012 tower simulation; and
- WHEREAS, based upon the document titled "*Partial Site Plan New Town Cell Tower Impact Study*" prepared by Hopke & Associates dated August 22, 2012, the Board finds the proposed tower inconsistent with the Impact Criteria of the Policy because the tower will be highly visible from New Town Section 8.
- NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby denies the issuance of SUP-0012-2011 and recommends the consideration of alternative sites that have less visual impacts to adjacent roadways and properties.

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John J. McGlennon  
Chairman, Board of Supervisors

ATTEST:

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Robert C. Middaugh  
Clerk to the Board

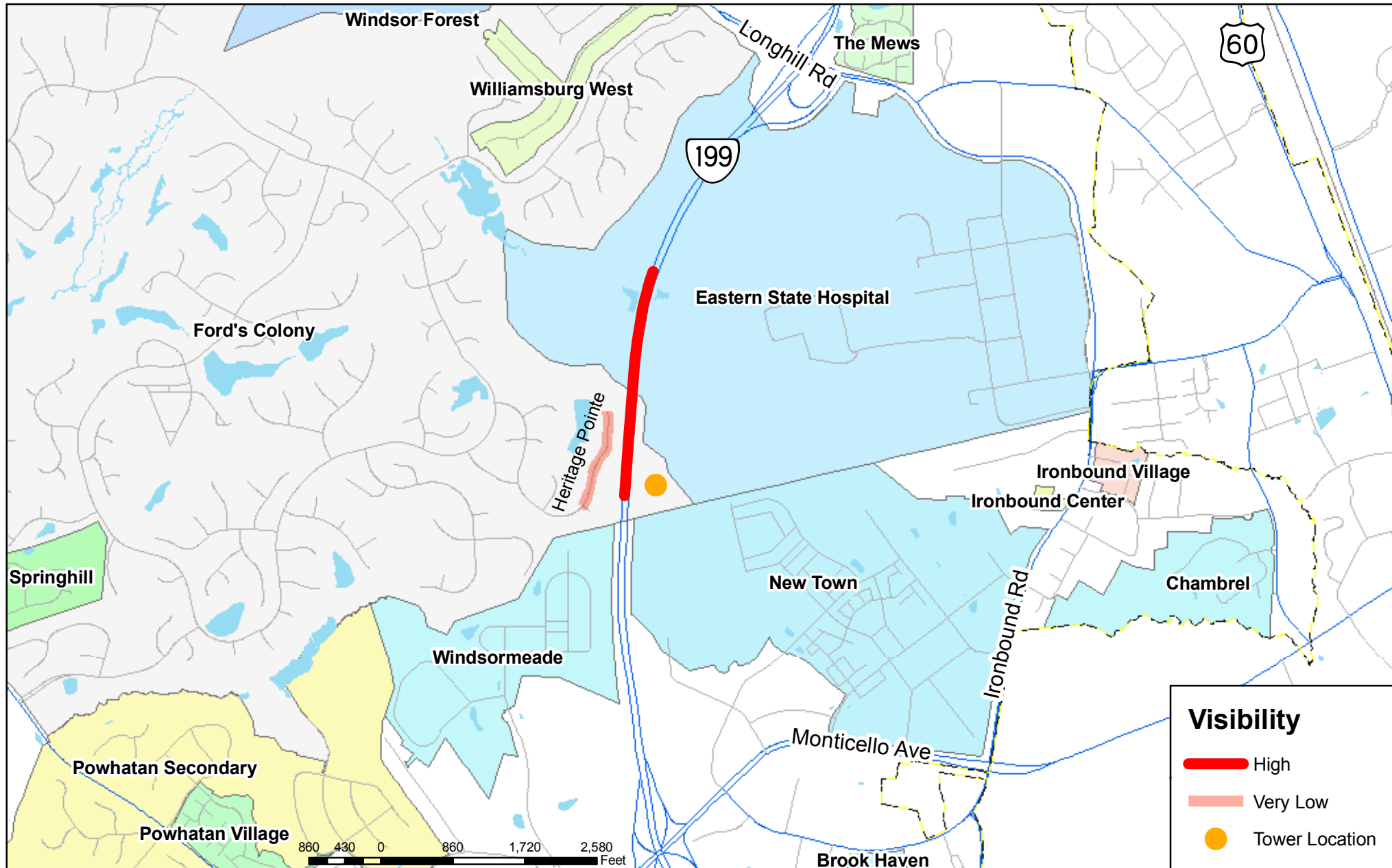
	VOTES		
	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>
MCGLENNON	_____	_____	_____
JONES	_____	_____	_____
KENNEDY	_____	_____	_____
ICENHOUR	_____	_____	_____
KALE	_____	_____	_____

Adopted by the Board of Supervisors of James City County, Virginia, this 9th day of October, 2012.

SUP-12-11nTelos-Den\_res

# SUP-0012-2011

## nTelos Route 199 WCF



Attachment 4: Balloon test photo simulating a 130' and 150' tower, eastbound Route 199





Attachment 5: Balloon test photos simulating a 172' tower, eastbound Route 199



**PERFORMANCE STANDARDS FOR WIRELESS COMMUNICATIONS FACILITIES  
THAT REQUIRE A SPECIAL USE PERMIT**

**January 10, 2012**

In order to maintain the integrity of the James City County's significant historic, natural, rural and scenic resources, to preserve its existing aesthetic quality and its landscape, to maintain its quality of life and to protect its health, safety, general welfare, and property values, wireless communications facilities (WCFs) should be located and designed in a manner that minimizes their impacts to the maximum extent possible and minimizes their presence in areas where they would depart from existing and future patterns of development. To implement these goals, the Planning Commission and the Board of Supervisors have adopted these performance standards for use in evaluating special use permit applications for WCFs. While all of the standards support these goals, some may be more critical to the County's ability to achieve these goals on a case by case basis. Therefore, some standards may be weighed more heavily in any recommendation or decision on a special use permit, and cases that meet a majority of the standards may or may not be approved. The terms used in these standards shall have the same definition as those same terms in the Zoning Ordinance. In considering an application for a special use permit, the Planning Commission and the Board of Supervisors will consider the extent to which an application meets the following performance standards:

**A. Collocation and Alternatives Analysis**

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

## B. Location and Design

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

<i>Proposed Location of WCF</i>	<i>Impact Criteria</i>
<i>a. Within a residential zone or residential designation in the Comprehensive Plan</i>	<i>Use a camouflage design, a well buffered slickstick, Multi-Antenna system, or have a minimal intrusion on to residential areas, historic and scenic resources areas or roads in such areas, or community character corridors.</i>
<i>b. Near a historic or scenic resource area or on a Community Character Corridor</i>	<i>Use a camouflaged design or slicksticks that have minimal intrusion on to residential areas, historic and scenic resources areas or on community character corridors.</i>
<i>c. Within a rural lands designation in the Comprehensive Plan</i>	<i>For areas designated rural lands in the Comprehensive Plan that are within 1,500 feet from the tower, use a well buffered monopole, a camouflaged design, or other design that has minimal intrusion on to residential areas, or community character corridors.</i>  <i>For rural lands more than 1,500 feet from the tower, no more than the upper 25% of the tower should be visible.</i>
<i>d. Within a commercial or in an industrial designation in the Comprehensive Plan</i>	<i>Use a camouflage design, well buffered monopole, or other design that has minimal intrusion on to residential areas, historic and scenic resources areas or roads in such areas, or community character corridors.</i>

*Notes for the above table:*

1. Exceptions to these criteria may be made on a case by case basis where the impact of the proposed WCF is only on the following areas: (1) An area designated residential on the Comprehensive Plan or zoning map which is not a logical extension of a residential subdivision or which is a transitional area between residential and nonresidential uses, (2) a golf course or a golf course and some combination of commercial areas, industrial areas, or utility easements, provided the tower is located on the golf course property, or (3) a scenic easement.

2. A *WCF* will meet the minimal intrusion criteria if it is not visible off site above the tree line. Such *WCF* should only be visible off-site when viewed through surrounding trees that have shed their leaves.
3. Camouflaged towers having the design of a tree should be compatible in scale and species with surrounding natural trees or trees native to Eastern Virginia.
4. *WCFs* should be less than 200 feet in height in order to avoid the need for lighting. Taller heights may be acceptable where views of the *WCF* from residential areas and public roads are very limited. At a minimum, *WCFs* 200 feet or more in height should exceed the location standards listed above.
5. Towers should be freestanding and not supported with guy wires.

### C. Buffering

1. *WCFs* should be placed on a site in a manner that takes maximum advantage of existing trees, vegetation and structures so as to screen as much of the entire *WCF* as possible from view from adjacent properties and public roads. Access drives should be designed in a manner that provides no view of the *WCFs* base or related facilities.



Figure 1: Example of a well buffered slickstick with minimal intrusion

2. Towers should be buffered from adjacent land uses and public roads as much as possible. Following buffer widths and standards should be met:
  - a. In or adjacent to residential or agricultural zoning districts, areas designated residential or rural lands on the Comprehensive Plan, historic or scenic resource areas, or community character corridors, an undisturbed, completely wooded buffer consisting of existing mature trees at least 100 feet wide should be provided around the tower.
  - b. In or adjacent to all other areas, at least a 50 foot wide vegetative buffer consisting of a mix of deciduous and evergreen trees native to Eastern Virginia should be provided.

**SUP-0012-2011 Ntelos Rt. 199 Wireless Communication Facility**

Mr. Luke Vinciguerra stated Ms. Gloria Frye, on behalf of Ntelos, has applied for special use permit to allow the construction of a 172' wireless communications facility located on the east side of Route 199, north of New Town Section 7 & 8, and adjacent to Eastern State Hospital. Due to the height of the tower, which is significantly higher than the adjacent tree canopy, the applicant is not in compliance with Wireless Communication Facility performance standards. Staff recommends denial of the application.

Mr. Drummond asked if there are different standards for camouflaged towers.

Mr. Vinciguerra stated there is a higher criteria for camouflaged towers, but that this tower is not camouflaged. He stated camouflaged towers have vigorous standards and cannot be seen by the casual observer.

Mr. Drummond asked if a camouflaged tower could be disguised as a tree.

Mr. Vinciguerra stated that was an option. He stated camouflaged towers are often by-right.

Mr. Woods asked if the case were approved, would the applicant agree with the eleven conditions.

Mr. Vinciguerra stated the applicant agrees with the conditions, but asked staff to examine the conditions that discuss collocation. He stated the applicant had better wording they would like to propose. Staff will consider that language after the meeting.

Mr. O'Connor asked how close the tower is to nearest residence in Section 8.

Mr. Vinciguerra stated the development plans for that section are not in yet. He stated there is a master plan, but there is no specific number. Theoretically, a house could be 50' away from the New Town property line. The tower is over 600' from the nearest Ford's Colony house.

Mr. O'Connor asked how far the proposed tower was from the property line.

Mr. Vinciguerra stated it was 300' from the New Town property line.

Mr. O'Connor asked if it would be 350' from the rear property line of future New Town houses.

Mr. Vinciguerra stated it could be 350' as a worst case scenario.

Mr. Maddocks asked what height would be satisfactory to staff.

Mr. Vinciguerra stated staff reviewed the application at 172'. He stated he cannot say what height would be approval by staff should a tower come in at a lower height, reviewed against the performance standards.

Mr. Maddocks asked if there was a standard.

Mr. Vinciguerra stated staff cannot say it will approve something at a certain height.

Mr. Johnson stated similar towers have been reviewed along community character corridors. He stated when the initial balloon test for this site was flown, it was 200', with later tests at 150', 172' and 130'. Staff informed the applicant that 130' would be the maximum height that staff would be willing to support at this location. The applicant then changed their application from 200' to 172'.

Mr. O'Connor asked if the applicant wanted to discuss collocation.

Mr. Vinciguerra stated the applicant will submit alternative language to staff after the meeting. He stated this language has not been discussed with the Planning Director or County Attorney.

Mr. Bledsoe asked if the section of New Town that can view the tower was approved prior to this application, and was a part of Comprehensive Plan and New Town master plan.

Mr. Vinciguerra stated it has been rezoned, but development plans showing individual homes and roads are not in yet.

Mr. Drummond asked if the visibility was only from Rt. 199.

Mr. Vinciguerra stated staff was able to see the balloon from Rt. 199 and through the trees from one road in Ford's Colony. He stated the highest visibility would be from Rt. 199.

Mr. Johnson stated the balloon was only visible while traveling eastbound on Rt. 199. He stated it will be highly visible from New Town Section 8 when the trees finally come down.

Mr. O'Connor stated he had spoken with Ms. Frye shortly after the balloon test.

Mr. Basic stated he had also spoken with Ms. Frye after the balloon test.

Mr. Drummond stated he had also spoken Ms. Frye.

Ms. Gloria Frye, representing the applicant, made her presentation. She stated Ntelos needs a tower to serve the nearby area from Longhill Road to the north, Monticello Avenue to the south, Rt. 199 to the east, and Ford's Colony to the west. The search ring is only three-quarters of a mile in diameter. Ntelos indoor service is unreliable in these areas. A 172' tower would serve most of the area but would still leave some gaps on the propagation map. Ntelos has been spent years looking for a site in this area, including a collocation site, reviewing 15 sites. The application site is outside the search ring and only achieves 70% of wanted service improvements, but it represents a reasonable compromise. The site itself will allow it to achieve County performance standards and will minimize impacts. The tower is only visible for 13 seconds eastbound on Rt. 199, from one street in Ford's Colony during the winter, and may or may not visible be from future New Town development. Because no homes or streets exist there today, there is no substantial evidence the pole would or would not be visible above the tree canopy. The 1996 Telecommunications Act requires any decision regarding wireless communications to be support by substantial evidence. Visibility depends on many factors: angle, grade, distance, and vegetation, all of which will not be known until New Town decides to develop. A slick stick tower would

not detract from Rt. 199's character. Reducing the tower height to 130' reduces the service improvements to 45% and reduces collocation opportunities.

Mr. Maddocks asked what diameter was a slick stick.

Ms. Frye stated they taper to 24" at the top. She stated standard arrays are 12' in width.

Mr. O'Connor asked if the propagation maps focused on voice or data.

Mr. Frye stated Ntelos is trying to improve in home data service. She stated the tower must be taller further from its search ring. It is difficult to find sites that service homes that homes don't see.

Mr. O'Connor asked about current New Town coverage.

Ms. Frye said it was adequate, with a site at Berkeley Middle School.

Mr. O'Connor asked about service improvements with a 150' tower.

Ms. Frye stated it would be between 50% and 60%.

Mr. Krapf asked Ms. Frye to clarify the definition of service objective, and whether that included collocations.

Ms. Frye stated the service objective is to get the signal into as many homes as possible. She stated the ability to collocate is one of the goals of the jurisdiction to reduce the number of towers. Collocation also helps defer the cost of the facilities.

Mr. Woods stated the community made it known during the 2009 Comprehensive Plan that they wanted the issue of cell towers reined in. He stated the Commission recently reviewed a tower ordinance that was both advanced technologically and respected the interests of citizens. This is inconsistent with that ordinance.

Ms. Frye stated Ntelos addressed the performance standards. She stated it comes down to a degree of visibility which is somewhat subjective. The homes that will be served will have no negative impact.

Mr. Woods stated the Rt. 199 corridor was established as sensitive.

Ms. Frye stated the County has done an excellent job keeping the corridor wooded. She stated there are other utilities visible along the corridor. This is a utility to serve the public. Ntelos will provide three times the recommended screen on its property to help keep a wood community corridor.

Ms. Bledsoe stated New Town Section 8 will be developed into a residential area at some point. She stated if the section had been built, those people would be here. There are some issues with the placement. A tower cannot be compared to a phone or water line that serves the whole community, as opposed to Ntelos customers.

Ms. Frye stated it can bring other providers in. She stated the service level the public expects is a public interest. It is a private utility to serve people with the least amount of impact.

Ms. Bledsoe asked if going down to 130' was no longer an option for Ntelos.

Ms. Frye stated the applicant never discussed going down to 130', but it did at that height service levels would be reduced to 40% and that may not be a viable business decision. A second pole would still be needed.

Mr. O'Connor asked if collocation possibilities have been exhausted.

Ms. Frye stated there are already antennae on the four nearby towers.

Mr. O'Connor asked if the Hospice House application had been withdrawn.

Ms. Frye stated yes. She stated moving that tower further away to serve more people just doesn't work.

Mr. O'Connor asked if the tower was 135', would the applicant ask for an external array.

Ms. Frye stated that at that height, external antennae would strengthen the signal somewhat. She stated it would make it easier to swap out new or improved technology.

Mr. O'Connor asked if the 135' 40% service level was with the external array.

Ms. Frye stated yes.

Mr. Krapf asked if Ntelos looked into a lower slick stick and alternate technology.

Ms. Frye stated DAS was not a suitable alternative for this service area because of the distance and the infrastructure that would be needed. She stated DAS works better in small, defined areas.

Mr. O'Connor asked if there was anywhere on the site further north and west of New Town for the tower to be located.

Ms. Frye stated the tower cannot be shifted due to wetlands and the collapse radius. She stated its location maximizes the buffer towards Eastern State and New Town. There is no evidence to support future visibility from New Town.

Mr. O'Connor opened the public hearing.

Mr. Larry Salzman, president of New Town Associates, stated New Town was opposed to a tower of this size at this location. He stated the tower will be visible from future sections of New Town residences. A tower could be placed behind WindosrMeade Marketplace. The tower would restrict future New Town flexibility and marketability within sight of the tower.

Mr. O'Connor asked how many homes are proposed for New Town Section 8.



Mr. Salzman stated did not know. He stated with the reworking of density, he anticipates around 400 housing units in Section 7 and 8. West of the Archaeological Park and behind Settler's Market, there will be around 300 units.

Mr. O'Connor asked why placing a tower behind WindsorMeade Marketplace would be a better location.

Mr. Salzman stated is was physically further away, in view of fewer homes, and the use is more compatible with the shopping center.

Mr. O'Connor closed the public hearing.

Mr. Krapf stated that based on community feedback and the Comprehensive Plan, the Board adopted a set of guidelines that applications must meet. He stated the community character corridor low-visibility condition is not being met. The Commission must be concerned with precedent, with higher and higher towers being placed. Because it conflicts with the wireless communications and precedent, he would not support the application.

Mr. Basic stated adding an additional eyesore to Rt. 199 does not seem to be a reasonable approach. He stated the tower would be a visual terminus to Section 8. He would not support the application.

Mr. Woods stated he felt prohibited from supporting it because citizens have spoken so vividly their concerns over the subject.

Mr. O'Connor stated while not completely compatible, slick sticks are preferable to arrays. He stated consumers want more while there is less space. He could support the application due to its ability to collocate and was a slick stick. The tower may be more visible placing it near WindsorMeade.

Mr. Maddocks stated that we're a growing community that needs infrastructure. He stated a 24" slick stick was not that obtrusive. He would support the application.

Mr. Drummond asked how close were other New Town towers to Section 8.

Mr. O'Connor stated across Monticello and behind Courthouse Commons.

Mr. Johnson stated that many of the towers on the spreadsheet provided by staff predate the Wireless Communications Facilities ordinance, performance standards, and Comprehensive Plan.

Mr. Drummond asked about the community benefitting from the tower.

Mr. Johnson stated the propagation map showed an area almost exclusively west of Rt. 199, including Ford's Colony and Powhatan Secondary.

Mr. Drummond stated it may be more of a benefit for those communities.

Mr. Johnson stated the applicant's maps do not show the propagation extending east of Rt. 199 onto any portion of New Town.

Mr. Drummond stated he had mixed feelings, but one would have to have an eagle eye to notice it. He stated he would be inclined to support it.

Mr. Bledsoe stated the visibility from Rt. 199 did not concern her as much as future homes being built in New Town. She stated the tower was not in compliance with performance standards or Comprehensive Plan. She would not support it.

Mr. Rogers stated the Commission had heard from Ms. Frye that her claim was based on substantial evidence criteria of the Telecommunications Act. He stated part of that is based on a projection of what approved housing would have to see. Substantial evidence could be requested by the Commission, such as a computer projection. If the application was rejected, part of her claim would be that the Commission did not have substantial evidence. To help, the Commission should request an image of the tower showing approved housing built. The County should have a factual background behind the performance standards for any court.

Ms. Bledsoe stated she amended to her objections to include only the reference to the Comprehensive Plan.

Mr. Krapf stated it would make sense for the applicant to have a computer-generated image when it goes before the Board.

Mr. O'Connor asked if Mr. Rogers had a recommendation for whether the Commission should make a condition or ask the applicant to provide that.

Mr. Rogers stated it is entirely up to the Commission. He stated there are legal criteria if it goes to the Board and it if the Commission thinks it's important to know the projection for the tower would look like with approved housing, that may be a substantial issue for the Commission and the Board. The Commission could add a condition to its recommendation or defer the case and ask the applicant to provide it if it was going to change any votes of any Commissioners.

Mr. Krapf stated he was still relying on the Comprehensive Plan and the performance standards for his decision. He stated a computer image may be more important to the Board since they design these guidelines. He would not recommend deferral.

Mr. Woods stated the Commission could forward either recommendation to the Board along with the suggested illustration.

Mr. O'Connor asked if Ntelos would be willing to bring forward that recommendation to the Board.

Mr. Frye stated yes, but Ntelos would need additional information from both the County and New Town property owners and would need full cooperation to create the image.

Mr. O'Connor asked Mr. Salzman if that was acceptable.

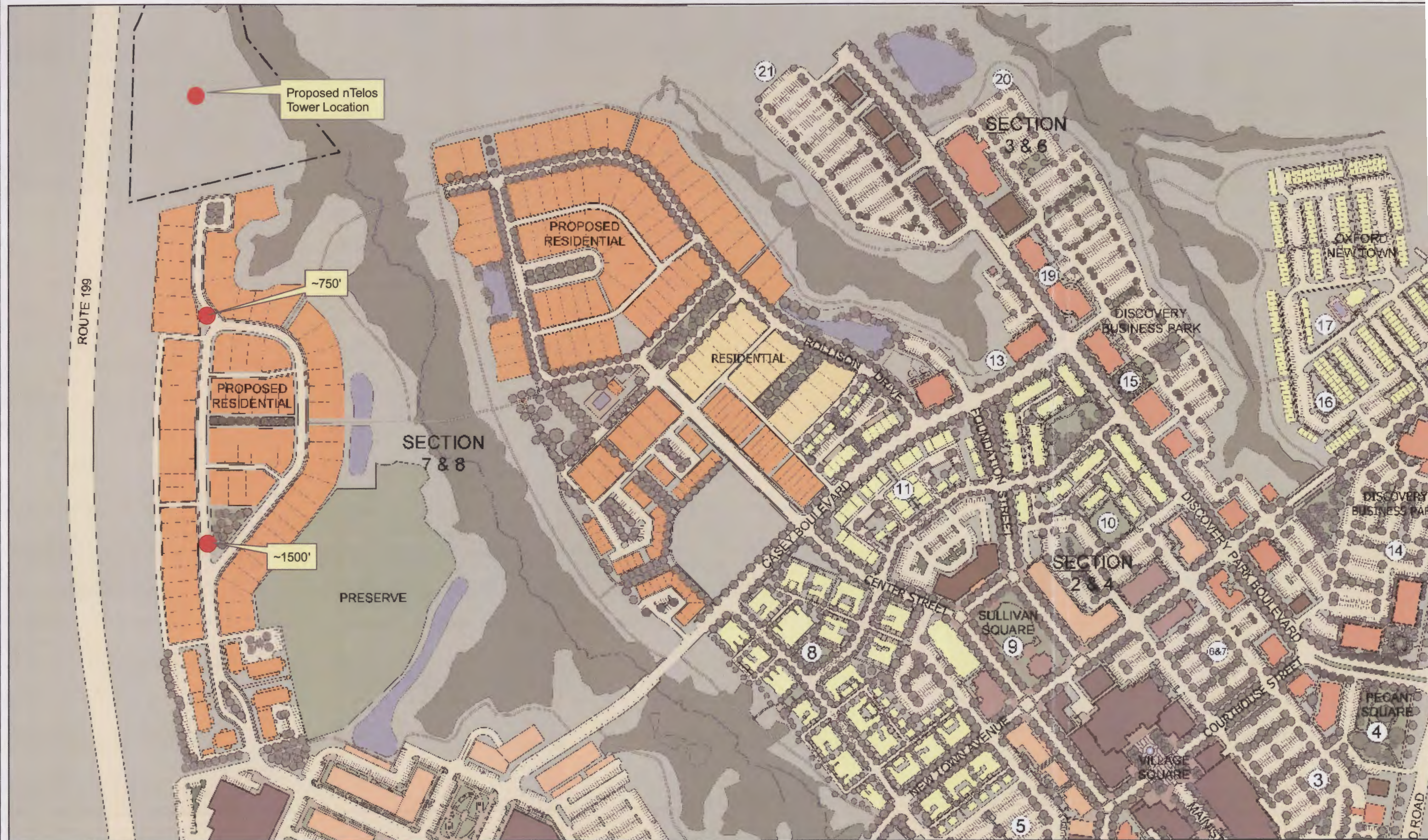
Mr. Salzman stated yes. He stated New Town has preliminary drawings it could furnish.

Mr. Krapf moved for denial of the application with the recommendation that staff provide the additional information to the Board.

In a roll call vote, the Commission recommended denial (Yes: Basic, Bledsoe, Krapf, Woods; No: Drummond, Maddocks, O'Connor).



# Illustrative Map of New Town with Proposed Tower and Photo Simulation Locations



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

1 inch = 300 feet  
0 0.05 0.1 Miles





## Staff Generated Illustrative 130' Tower Simulation at 750 Feet





## Staff Generated Illustrative 130' Tower Simulation at 1500 Feet



--- Average Tree Canopy Height 85 feet  
| 130' Monopole WCF Simulation



## Staff Generated Illustrative 135' Tower Simulation at 750 Feet



-- Average Tree Canopy Height 85 feet  
| 135' Monopole WCF Simulation



## Staff Generated Illustrative 135' Tower Simulation at 1500 Feet



--- Average Tree Canopy Height 85 feet  
| 135' Monopole WCF Simulation



## Staff Generated Illustrative 150' Tower Simulation at 750 Feet





## Staff Generated Illustrative 150' Tower Simulation at 1500 Feet



— · Average Tree Canopy Height 85 feet  
| 150' Monopole WCF Simulation



## Staff Generated Illustrative 172' Tower Simulation at 750 Feet





## Staff Generated Illustrative 172' Tower Simulation at 1500 Feet



— Average Tree Canopy Height 85 feet  
| 172' Monopole WCF Simulation



SUP-0012-2011

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Fax (804) 323-0596



**nTelos**  
Suite 206  
9011 Arboretum Parkway  
Richmond, Virginia 23236

APPROVALS

NTELOS	_____
DATE	_____
OWNER	_____
DATE	_____

SUBMITTALS

NO.	DATE	ISSUE

PROJECT NAME

**TELECOMMUNICATIONS  
FACILITY  
NTELOS SITE NR-6422  
ROUTE 199  
WILLIAMSBURG  
VA 23188**

SHEET TITLE

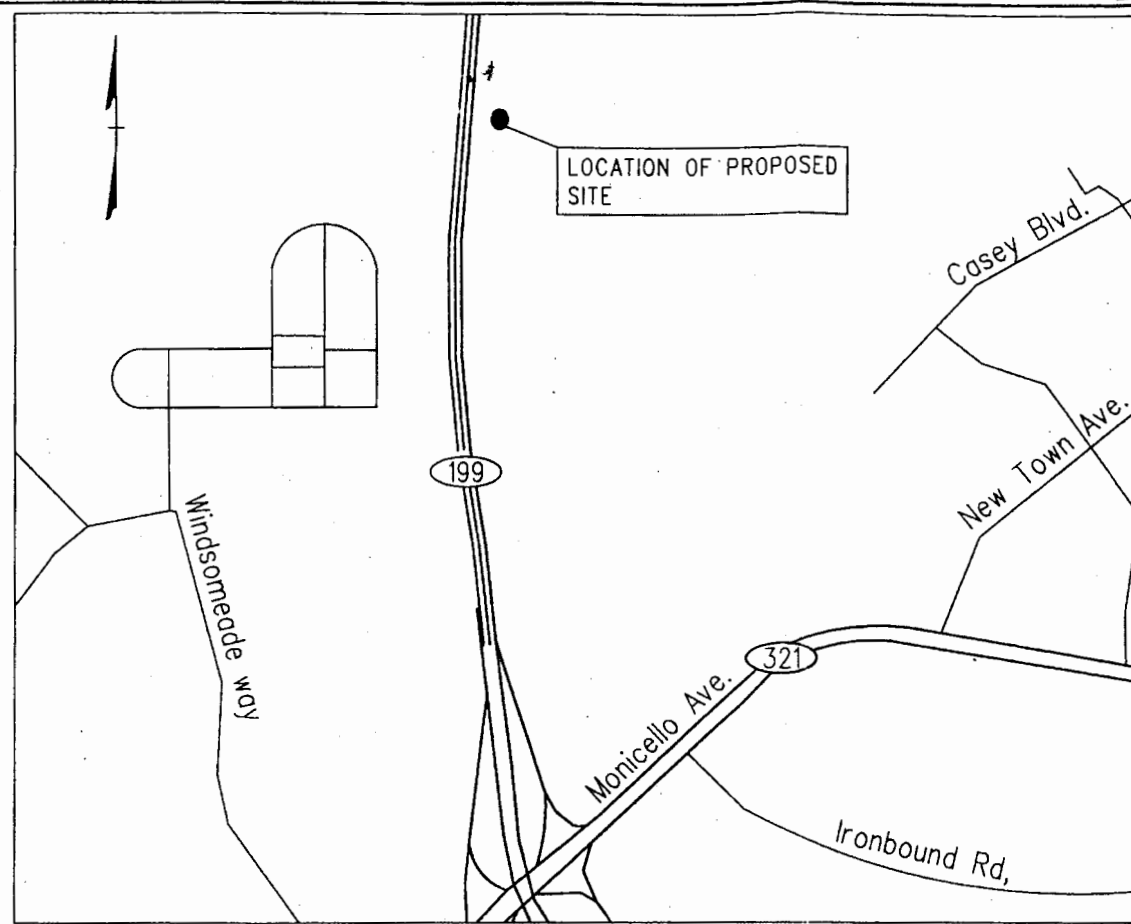
**TITLE SHEET  
AND  
GENERAL NOTES**

T-1

DATE: 3/29/12
SCALE: AS SHOWN
DESIGNED: JC
CHECKED: JC
DRAWN: COT
SHEET NO: 1 OF 3

GENERAL NOTES

- PROPERTY OWNER: RCS WILLIAMSBURG HOLDINGS, LLC  
100 MANCHESTER DR  
WILLIAMSBURG, VA 23188
- SITE ADDRESS: ROUTE 199  
WILLIAMSBURG  
VA 23188
- SITE NAME: WMBG TELECOMMUNICATIONS SITE
- NTELOS SITE NO.: NR-6422
- CONSULTING ENGINEER: JOHNSON, MIRMIRAN & THOMPSON  
9201 ARBORETUM PARKWAY  
SUITE 140  
RICHMOND, VA 23236  
(804) 323-9900
- APPLICANT: NTELOS  
9011 ARBORETUM PARKWAY, SUITE 295  
RICHMOND VA 23236  
CONTACT PERSON: ANDREW WALLACE  
(804) 247-3898
- LEASE AREA: 250'X250' (62500 SQ. FT.)
- CURRENT ZONING: R4  
GPIN: 3820100005
- THE CONTRACTOR SHALL SECURE ALL NECESSARY PERMITS FOR THIS PROJECT FROM ALL APPLICABLE GOVERNMENT AGENCIES.
- ANY PERMITS WHICH MUST BE OBTAINED SHALL BE THE CONTRACTOR'S RESPONSIBILITY AND AT HIS EXPENSE. THE CONTRACTOR SHALL BE RESPONSIBLE FOR ABIDING BY ALL CONDITIONS AND REQUIREMENTS OF THE PERMITS.
- THIS SITE COMPLIES WITH FEDERAL COMMUNICATIONS COMMISSION STANDARDS FOR NON-IONIZING ELECTROMAGNETIC EMISSIONS.
- LOCATION OF EXISTING SEWER, WATER OR GAS LINES, CONDUITS OR OTHER STRUCTURES ACROSS, UNDERNEATH, OR OTHERWISE ALONG THE LINE OF PROPOSED WORK ARE NOT NECESSARILY SHOWN ON THE PLANS, AND IF SHOWN ARE ONLY APPROXIMATELY CORRECT. CONTRACTOR SHALL VERIFY LOCATION AND ELEVATION OF ALL UNDERGROUND UTILITIES (INCLUDING TEST PITS BY HAND IF NECESSARY) IN AREAS OF CONSTRUCTION PRIOR TO STARTING WORK. CONTACT ENGINEER IMMEDIATELY IF LOCATION OR ELEVATION IS DIFFERENT FROM THAT SHOWN ON PLANS. IF THERE APPEARS TO BE A CONFLICT, OR UPON THE DISCOVERY OF ANY UTILITY NOT SHOWN ON THE PLANS, FOR ASSISTANCE CALL "MISS UTILITY" 1-800-552-7001.
- EXISTING PAVEMENT AND OTHER SURFACES DISTURBED BY THE CONTRACTOR (WHICH ARE NOT TO BE REMOVED) SHALL BE REPAIRED TO LIKE-NEW CONDITION.
- THE CONTRACTOR IS REQUIRED TO MAINTAIN ALL DITCHES, PIPES, AND OTHER DRAINAGE STRUCTURES FREE FROM OBSTRUCTION UNTIL WORK IS ACCEPTED BY THE OWNER. THE CONTRACTOR IS RESPONSIBLE FOR ANY DAMAGES CAUSED BY FAILURE TO MAINTAIN DRAINAGE STRUCTURES IN OPERABLE CONDITION.
- THE CONTRACTOR SHALL COORDINATE WITH NTELOS THE REQUIREMENTS FOR AND LIMITS OF OVERHEAD AND/OR UNDERGROUND ELECTRICAL SERVICE.
- ALL MATERIALS AND WORKMANSHIP SHALL BE WARRANTED FOR ONE (1) FULL YEAR FROM THE DATE OF ACCEPTANCE.
- THE OWNER SHALL HAVE A SET OF APPROVED PLANS AVAILABLE AT THE SITE AT ALL TIMES WHEN WORK IS BEING PERFORMED. A DESIGNATED RESPONSIBLE EMPLOYEE SHALL BE AVAILABLE FOR CONTACT BY COUNTY INSPECTORS.
- ALL WORK PRESENTED ON THESE DRAWINGS MUST BE COMPLETED BY THE CONTRACTOR UNLESS NOTED OTHERWISE. THE CONTRACTOR MUST HAVE CONSIDERABLE EXPERIENCE IN PERFORMANCE OF WORK SIMILAR TO THAT DESCRIBED HEREIN. BY ACCEPTANCE OF THIS ASSIGNMENT, THE CONTRACTOR IS ATTESTING THAT HE DOES HAVE SUFFICIENT EXPERIENCE AND ABILITY, THAT HE IS KNOWLEDGEABLE OF THE WORK TO BE PERFORMED AND THAT HE IS PROPERLY LICENSED AND PROPERLY REGISTERED TO DO THIS WORK IN THE STATE AND COUNTY IN WHICH IT IS TO BE PERFORMED.
- UNLESS SHOWN OR NOTED OTHERWISE ON THE CONTRACT DRAWINGS, OR IN THE SPECIFICATIONS, THE FOLLOWING NOTES SHALL APPLY TO THE MATERIALS LISTED HEREIN, AND TO THE PROCEDURES TO BE USED ON THIS PROJECT.
- ALL HARDWARE ASSEMBLY MANUFACTURER'S INSTRUCTIONS SHALL BE FOLLOWED EXACTLY AND SHALL SUPERCEDE ANY CONFLICTING NOTES ENCLOSED HEREIN.



- |     |                                   |   |
|-----|-----------------------------------|---|
| T-1 | TITLE SHEET AND GENERAL NOTES     | 1 |
| C-1 | SITE PLAN                         | 2 |
| C-2 | COMPOUND PLAN AND TOWER ELEVATION | 3 |



**TELECOMMUNICATIONS FACILITY  
NTELOS SITE NR-6422**

**GPIN: 3820100005  
JAMESTOWN DISTRICT  
ROUTE 199  
WILLIAMSBURG VA 23188**

PLANNING DIVISION

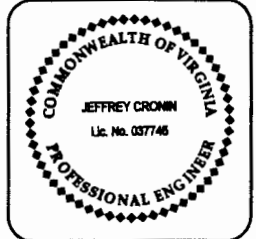
MAY 15 2012

RECEIVED

- IT IS THE CONTRACTOR'S SOLE RESPONSIBILITY TO DETERMINE ERECTION PROCEDURE AND SEQUENCE TO INSURE THE SAFETY OF THE STRUCTURE AND ITS COMPONENT PARTS DURING ERECTION AND/OR FIELD MODIFICATIONS. THIS INCLUDES, BUT IS NOT LIMITED TO, THE ADDITION OF WHATEVER TEMPORARY BRACING, GUYS OR TIE DOWNS THAT MAY BE NECESSARY. SUCH MATERIAL SHALL BE REMOVED AND SHALL REMAIN THE PROPERTY OF THE CONTRACTOR AFTER THE COMPLETION OF THE PROJECT.
- ALL DIMENSIONS, ELEVATIONS, AND EXISTING CONDITIONS SHOWN ON THE DRAWINGS SHALL BE FIELD VERIFIED BY THE CONTRACTOR PRIOR TO BEGINNING ANY MATERIALS ORDERING, FABRICATION OR CONSTRUCTION WORK ON THIS PROJECT. ANY DISCREPANCIES SHALL BE IMMEDIATELY BROUGHT TO THE ATTENTION OF THE OWNER AND THE OWNERS ENGINEER. THE DISCREPANCIES MUST BE RESOLVED BEFORE THE CONTRACTOR IS TO PROCEED WITH THE WORK. THE CONTRACT DOCUMENTS DO NOT INDICATE THE METHOD OF CONSTRUCTION. THE CONTRACTOR SHALL SUPERVISE AND DIRECT THE WORK AND SHALL BE SOLELY RESPONSIBLE FOR ALL CONSTRUCTION MEANS, METHODS, TECHNIQUES, SEQUENCES, AND PROCEDURES. OBSERVATION VISITS TO THE SITE BY THE OWNER AND/OR THE ENGINEER SHALL NOT INCLUDE INSPECTION OF THE PROTECTIVE MEASURES OR THE CONSTRUCTION PROCEDURES.
- ALL MATERIALS AND EQUIPMENT FURNISHED SHALL BE NEW AND OF GOOD WORKING QUALITY, FREE FROM FAULTS AND DEFECTS AND IN CONFORMANCE WITH THE CONTRACT DOCUMENTS. ANY AND ALL SUBSTITUTIONS MUST BE PROPERLY APPROVED AND AUTHORIZED IN WRITING BY THE OWNER AND THE ENGINEER PRIOR TO INSTALLATION. THE CONTRACTOR SHALL FURNISH SATISFACTORY EVIDENCE AS TO THE KIND AND QUALITY OF THE MATERIALS AND EQUIPMENT BEING SUBSTITUTED.
- THE CONTRACTOR SHALL BE RESPONSIBLE FOR MAINTAINING, AND SUPERVISING ALL SAFETY PRECAUTIONS AND PROGRAMS IN CONNECTION WITH THE WORK. THE CONTRACTOR IS RESPONSIBLE FOR INSURING THAT THIS PROJECT AND RELATED WORK COMPLIES WITH ALL APPLICABLE LOCAL, STATE, AND FEDERAL SAFETY CODES AND REGULATIONS GOVERNING THIS WORK.
- ALL WORK SHALL BE COMPLETED IN ACCORDANCE WITH THE LATEST EDITION OF THE LOCAL BUILDING CODE.
- ACCESS TO THE PROPOSED WORK SITE MAY BE RESTRICTED. THE CONTRACTOR SHALL COORDINATE INTENDED CONSTRUCTION ACTIVITY, INCLUDING WORK SCHEDULE AND MATERIALS ACCESS, WITH THE PROPERTY OWNER FOR APPROVAL.
- ALL WORK SHALL BE ACCOMPLISHED IN ACCORDANCE WITH ALL LOCAL, STATE AND FEDERAL CODES OR ORDINANCES. THE MOST STRINGENT CODE WILL APPLY IN THE CASE OF DISCREPANCIES OR DIFFERENCES IN THE CODE REQUIREMENTS.
- ANY DAMAGE TO ADJACENT PROPERTIES WILL BE CORRECTED AT THE CONTRACTORS EXPENSE.
- CONTRACTOR SHALL VERIFY LOCATION OF ALL EXISTING UTILITIES WITHIN CONSTRUCTION LIMITS PRIOR TO CONSTRUCTION.
- RECORD DRAWINGS: MAINTAIN A RECORD OF ALL CHANGES, SUBSTITUTIONS BETWEEN WORK AS SPECIFIED AND INSTALLED. RECORD CHANGES ON A CLEAN SET OF CONTRACT DRAWINGS WHICH SHALL BE TURNED OVER TO THE CONSTRUCTION MANAGER UPON COMPLETION OF PROJECT.
- COORDINATE THE CONSTRUCTION STAGING AREA WITH THE PROPERTY OWNER AND THE PROPERTY MANAGER WELL IN ADVANCE OF THE CONSTRUCTION START DATE.
- CONTRACTOR IS TO FIELD VERIFY ALL EXISTING CONDITIONS AND PLAN DIMENSIONS, AND NOTIFY THE ARCHITECT AND ENGINEER IMMEDIATELY OF ANY DISCREPANCIES.
- THE CONTRACTOR SHALL REMOVE ALL TRASH AND DEBRIS FROM THE WORK SITE ON A DAILY BASIS.
- PROPOSED ANTENNAS AND ASSOCIATED GROUND EQUIPMENT WILL BE OF A NEUTRAL, NON-REFLECTIVE COLOR CONSISTENT WITH THE WIRELESS COMMUNICATIONS FACILITY (WCF) AND NATURAL SURROUNDINGS, AND THE WCF WILL CARRY NO LOGOS.
- ALL UTILITIES BETWEEN THE EQUIPMENT STRUCTURES AND TOWERS WILL BE PLACED BENEATH THE SURFACE OF THE GROUND.
- THE PROPOSED CO-LOCATION SHALL NOT INCLUDE FACILITIES FOR BROADCASTING OR RECEIVING COMMERCIAL OR PUBLIC RADIO OR TELEVISION PROGRAMMING; OR FACILITIES FOR TRANSMITTING OR RECEIVING SIGNALS BY GOVERNMENTAL AGENCIES OR AMATEUR RADIO, CITIZENS BAND, OR SIMILAR USES.

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 Fax (804) 323-0596

SEAL



**nTelos**  
 Suite 296  
 9011 Arboretum Parkway  
 Richmond, Virginia 23236

APPROVALS

NTELOS \_\_\_\_\_  
 DATE \_\_\_\_\_  
 OWNER \_\_\_\_\_  
 DATE \_\_\_\_\_

SUBMITTALS

NO.	DATE	ISSUE

PROJECT NAME

TELECOMMUNICATIONS  
 FACILITY  
 NTELOS SITE NR-6422  
 ROUTE 199  
 WILLIAMSBURG  
 VA 23188

SHEET TITLE

SITE PLAN  
 CI

DATE: 3/29/12

SCALE: AS SHOWN

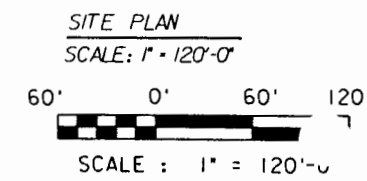
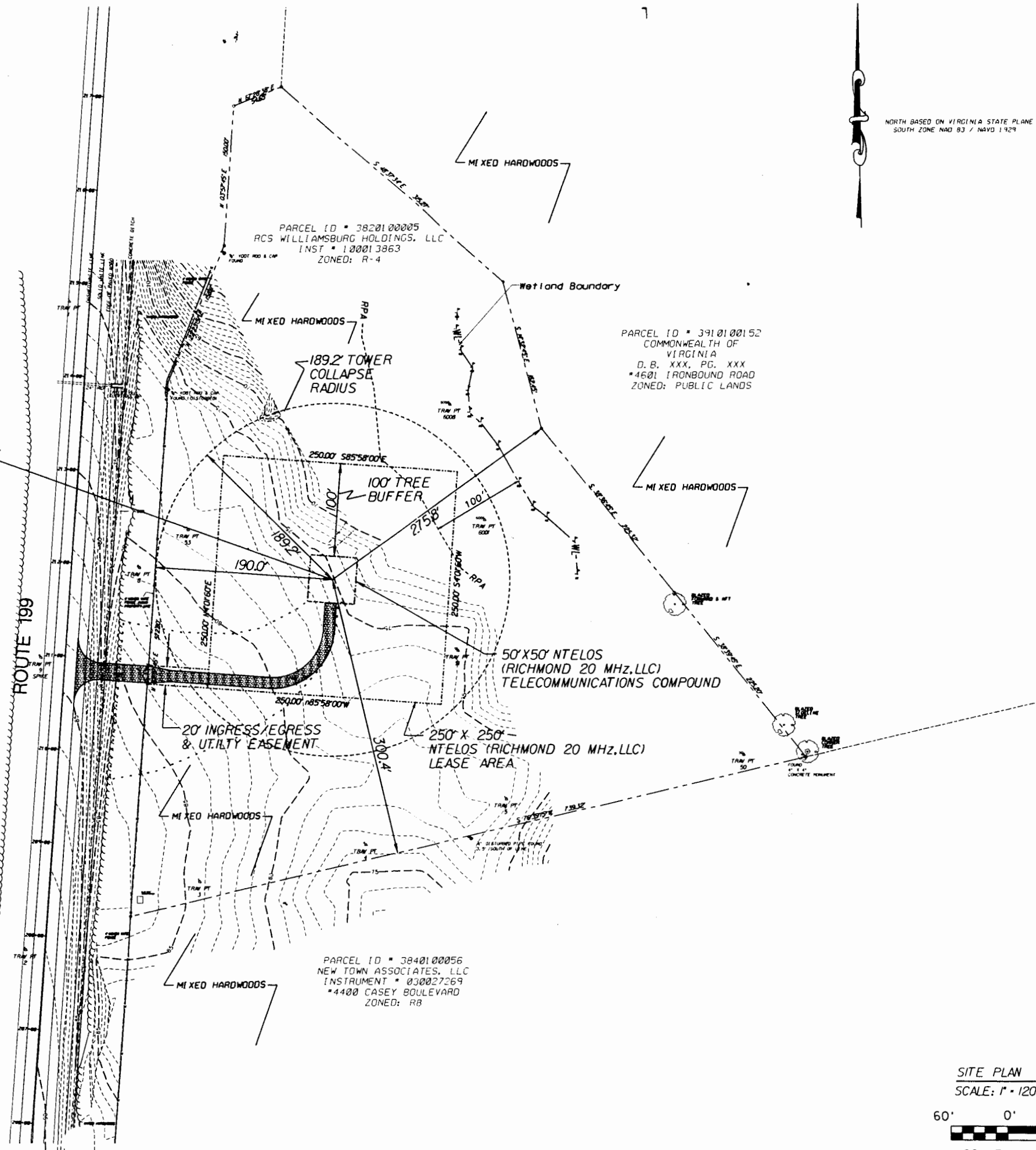
DESIGNED: JC

CHECKED: JC

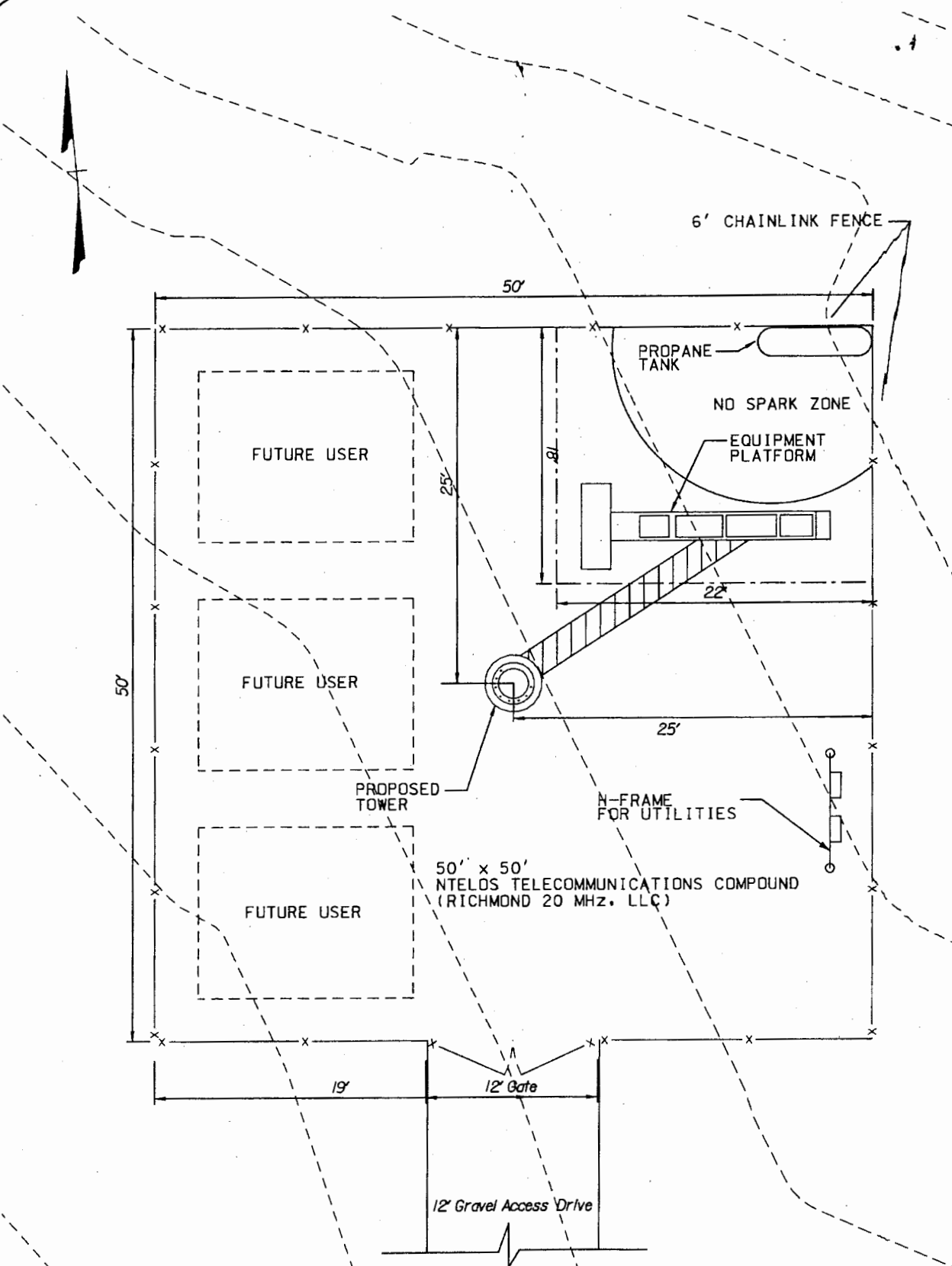
DRAWN: COT

SHEET NO:  
 2 OF 3

NORTH BASED ON VIRGINIA STATE PLANE  
 SOUTH ZONE NAD 83 / NAD 83



- GENERAL NOTES
1. THIS PLAN DOES NOT REPRESENT A TITLE SURVEY.
  2. THIS PLAN HAS BEEN PREPARED WITHOUT THE BENEFIT OF A REPORT OF TITLE.
  3. HORIZONTAL AND VERTICAL DATUM BASED ON INFORMATION PROVIDED BY NTELOS.
  4. THIS PLAN IS NOT FOR RECORDATION OR CONVEYANCE.

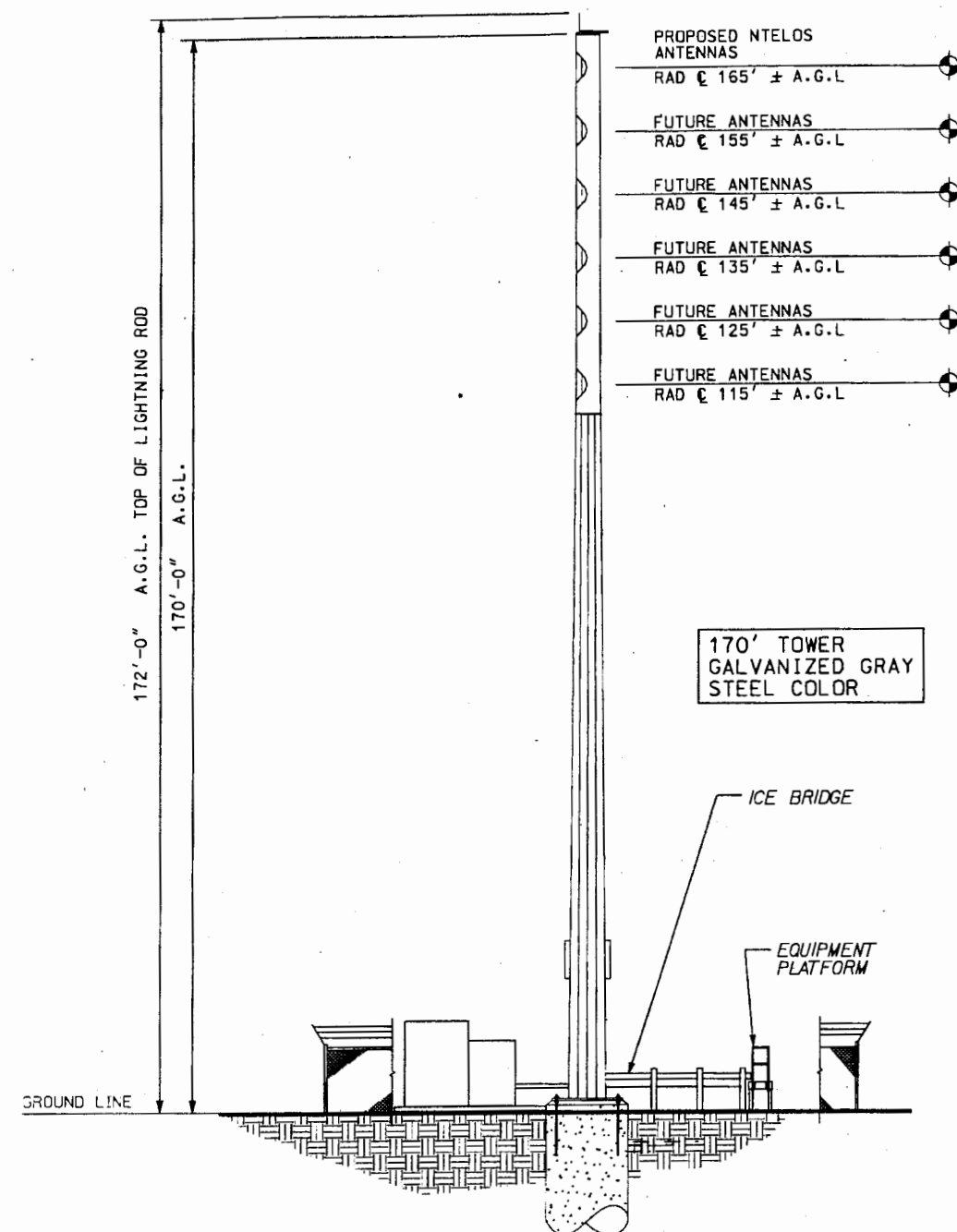


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4. THIS PLAN IS NOT FOR RECORDATION OR CONVEYANCE.

COMPOUND PLAN  
SCALE: 1" = 10'-0"

SCALE: 1" = 10'-0"



NOTE:  
THE STRUCTURE SHOWN IS SCHEMATIC IN NATURE. ONLY THE CONTRACTOR SHALL COORDINATE WITH THE CM FOR ANTENNA MOUNTS AND COAXIAL CABLE SUPPORT MEANS.

ELEVATION VIEW  
SCALE: NOT TO SCALE

## SITE SPECIFIC INSTRUCTIONS:

1. CONTRACTOR SHALL VISIT THE SITE BEFORE BIDDING ON THE WORK CONTAINED IN THE PACKAGE.
2. FOR ADDITIONAL INFORMATION REFER TO THE GENERAL NOTES ON SHEET 1.
3. CONTRACTOR SHALL VERIFY THE LOCATION OF ALL KNOWN AND/OR SUSPECTED UTILITIES BURIED UNDERGROUND PRIOR TO EXCAVATING IN THE VICINITY. CONTRACTOR SHALL EXERCISE CARE DURING EXCAVATION, SO AS TO AVOID DAMAGE TO EXISTING UTILITIES OR UNDERGROUND FACILITIES.
4. CONTRACTOR SHALL FIELD VERIFY DIMENSIONS AND LOCATION OF TOWER AND NEW EQUIPMENT, AND INFORM NTELOS'S REPRESENTATIVE OF ANY CONFLICTS OR DISCREPANCIES BEFORE PROCEEDING WITH CONSTRUCTION.

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SEAL



**nTelos**  
Suite 206  
9011 Arboretum Parkway  
Richmond, Virginia 23236

## APPROVALS

NTELOS \_\_\_\_\_  
DATE \_\_\_\_\_  
OWNER \_\_\_\_\_  
DATE \_\_\_\_\_

## SUBMITTALS

NO.	DATE	ISSUE

## PROJECT NAME

TELECOMMUNICATIONS  
FACILITY  
NTELOS SITE NR-6422  
ROUTE 199  
WILLIAMSBURG  
VA 23188

## SHEET TITLE

COMPOUND PLAN  
AND  
TOWER ELEVATION  
C2

DATE: 3/29/12

SCALE: AS SHOWN

DESIGNED: JC

CHECKED: JC

DRAWN: COT

SHEET NO:  
3 OF 3



# AREA OF VISUAL IMPACT ALONG ROAD





# AREA OF VISUAL IMPACT ALONG ROAD





# AREA OF VISUAL IMPACT ALONG ROAD



**AT A REGULAR MEETING OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE 11TH DAY OF SEPTEMBER 2012, AT 7:00 P.M. IN THE COUNTY GOVERNMENT CENTER BOARD ROOM, 101 MOUNTS BAY ROAD, JAMES CITY COUNTY, VIRGINIA.**

2. Case No. SUP 0012-2011. nTelos, Route 199 Wireless Communication Facility

Mr. Luke Vinciguerra, Planner, stated that Ms. Gloria Frye, on behalf of nTelos, has applied for a Special Use Permit (SUP) to allow the construction of a 172-foot-tall wireless communication facility (WCF) to be located on the east side of Route 199 north of New Town Sections 7 and 8, adjacent to Eastern State Hospital. Tower mounted communication facilities with a designation other than residential on a Board adopted master plan in the R-4, district require an SUP. The proposed WCF would be a “slick stick” with no visible external antennas.

Mr. Vinciguerra stated that based on a publicly advertised balloon test the proposed tower would be highly visible from eastbound Route 199 between Ford’s Colony and Eastern State Hospital. Additionally, the proposed WCF would be partially visible through the trees at a few locations along Heritage Pointe within Ford’s Colony. Staff was unable to see the balloon from any existing locations within New Town; however, it is likely that the proposed tower would be visible to future residential developments in New Town, particularly from the main entrance road in Section 8.

Mr. Vinciguerra stated that at 172 feet, the proposed tower is higher than other recent WCF applications submitted in developed areas of the County. The recently approved Ingram Road tower, which was also adjacent to a CCC was approved at 124 feet. Approving applications for higher towers may encourage future applicants to request higher tower heights than necessary. Staff has found that towers that are only minimally visible above the tree line are often able to satisfy the coverage needs of wireless providers.

Mr. Vinciguerra stated that due to the proposed height of the tower, which is significantly higher than the adjacent tree canopy, the application is not in compliance with the adopted Performance Standards for Wireless Communications Facilities. On July 11, 2012, the Planning Commission voted 4-3 to recommend denial of the application and to furnish a computer generated image illustrating the view of the tower from the future New Town Section 8. Staff recommends the Board deny the application. Should the Board application of the application, staff suggests such approval be contingent upon the conditions listed in the resolution in the staff report.

Mr. McGlennon opened the Public Hearing.

1. Ms. Gloria Frye, the attorney representing the applicant, nTelos, addressed the Board. She stated that the applicant originally applied for an SUP for a tower of 194 feet to increase performance, but has revised the application for a tower of 174 feet. She stated that the applicant made this compromise because they believed at that height there was minimal impact on existing homes, minimal impact on New Town, and minimal visibility from Route 199. She stated that the applicant now sees that there is the potential for impact on the development of New Town Section 8 and the applicant is willing to amend the application to a lower height to reduce that visibility. She stated that she is going to go through the case with willingness to compromise in mind. She stated that nTelos needs a new tower in this area to offer better coverage to subscribers within the search ring that she posted for the Board and the public. She stated that the need for this new facility was established back in 2005 and is necessary to provide indoor reception for subscribers in

the area. She stated that there is no other tower or structure within the search ring that nTelos could co-locate on, thus the need for a new facility. Ms. Frye stated that nTelos feels that the current site is the best suited to meet the goals of the County and meet the needs of the applicant. She stated that the applicant has gone above and beyond in their search for a site that could meet as many of the County goals and standards as possible.

Ms. Frye stated that when looking at the Comprehensive Plan, Route 199 is designated as a CCC and as such is subject to restrictions on development. The proposed site of the tower is 140 feet back from Route 199, providing almost three times the required amount of buffer. She also stated that the slick-stick tower, while visible, will not detract from the view of the woods. She stated that in comparison to the transmission lines located along Route 199, the slick stick tower is much less visible and more highly buffered, as can be seen from the simulation photos. On the photo simulation of the tower at 150 feet the slick stick is barely visible. She stated that cell towers must extend above the tree canopy in order to send and receive signal and to have a cell tower not extend above the canopy of the trees is an impossible standard. Ms. Frye stated that the Comprehensive Plan is a guide, not a requirement, and this proposed site exceeds the buffering stated in the Comprehensive Plan.

Ms. Frye stated that the other tool the County uses when looking at cell towers is the Performance Standards. They are to be weighed on a case-by-case basis. She stated that the co-location and Alternative Analysis Standard has been provided and accepted by staff. The Location and Design Standard states that a cell tower in a residential area should be a "slick stick" and be well buffered and be a minimal intrusion on residential areas. Ms. Frye stated that there are five towers that residents of New Town see on a daily basis at the entrance of New Town. She stated that it is difficult to conclude that one more tower would have that big of an impact on the view that New Town residents already see.

Ms. Frye stated that in the interest of compromise and at the pleasure of the Board, nTelos is willing to accept a resolution at a height of 150 feet. This compromise would address the staff concerns over visual impacts on the future development of New Town Section 8 while allowing nTelos to increase its service coverage.

2. Dr. Melissa Patrylo, 4303 Lydias Drive, Williamsburg, stated that as a former resident of Miami-Dade, Florida, she has seen the negative effects of cell towers going up. She stated that an increase in the number of cell towers had a direct correlation to a drop in test scores for high school students and property values decreased which lead to an increase in crime. She stated that she does not believe that this is what the founders of New Town had in mind when they developed New Town. She stated that New Town is an educated, vibrant community that demands high retail, high-quality schools, and that putting in a cell tower near New Town is a bad idea.

3. Ms. Kelly Mihalcoe, 4433 Lydias Drive, Williamsburg, addressed the Board stating that she is an nTelos subscriber and is against putting the tower in the back acreage of New Town. She expressed concern about the way that citizens were treated at a meeting held with Mr. Kale and Mr. Icenhour.

4. Mr. Larry Salzman, 1501 Harborough Road, Richmond, addressed the Board as the representative of the New Town Associates, LLC. He stated that the New Town Associates believe that this tower does not meet the standards of the Comprehensive Plan, does not meet the Performance Standards for Wireless Communication Facilities, and it affects New Town without benefiting New Town. He stated that this application can be denied by the Board without being in conflict with the Wireless Communications Act. He stated that New Town Associates believes that this tower should be located closer to the segment of the population that this tower is intended to serve. He stated that if this application is to be considered, then no modeling has been done at 135 feet or 150 feet, both heights that have been discussed as possibilities.

Mr. Salzman stated that neither the residents of New Town nor staff had been notified of the possible

reductions in height. He suggested, at the very least, that the application be deferred to allow for modeling to be done at these proposed heights. He also stated that perhaps another balloon test should also be done since changes in development of New Town have occurred. Mr. Salzman stated that the Standard of co-location has not been met. He stated that Mr. Granger, who owns the 400-foot radio tower in the area, would be interested in having nTelos co-locate on the radio tower. However, the applicant has stated that that location would not work, but has not provided any verifiable evidence as to why. He stated that when New Town Sections 7 and 8 are developed that this tower will be able to be seen by hundreds of homes and would be a negative impact. Mr. Salzman also stated that he wanted to clarify a rumor concerning New Town Associates desire to purchase the property that is the proposed site of the tower. He stated that New Town Associates would like to purchase the property, but that they would turn over that property to the developer of the adjacent property at no profit to New Town Associates. He stated that he believes that piece of property fits the character of New Town and would be an added addition to New Town, but not because of making a profit. He concluded by saying that the Board should support the recommendation of staff and the Planning Commission and deny the application or defer it until staff can assess the impact at the different proposed heights.

5. Mr. Phil Chapman, 4335 Casey Boulevard, Williamsburg, addressed the Board stating that normally he is opposed to the "not in my backyard" attitude, however in this instance he supports it since no one in New Town will benefit from the tower. He stated that the Board should deny the application because it does not meet the standards of the Comprehensive Plan, it does not meet the Performance Standards, and does not meet the objectives of the County Code. He stated that in a letter from Mr. Granger, the owner of the Williamsburg Radio Tower, he stated that there is space available for co-location and that Sprint and AT&T are already co-locating there. Mr. Chapman encouraged the Board to verify those statements with Mr. Granger before accepting the applicant's word that co-location on the radio tower is not feasible.

6. Mr. Gregory Davis, 4801 Courthouse Street, Williamsburg, addressed the Board as the representative of Kaufman and Canoles. He stated that his law firm is representing the partnership which is developing Sections 7 and 8 of New Town. He stated that the visual impact of the application cannot be based on the lay of the land today. He stated when Sections 7 and 8 are completed, more than 400 homes will be negatively impacted by the proposed tower. He stated that Sections 7 and 8 are the single-family homes sections of New Town and these sections have been zoned and planned for this type of construction. He stated that the application does not meet the Performance Standard for minimal intrusion. The proposed application will be very intrusive and have a large visual impact on the development in Sections 7 and 8.

7. Mr. Robert Keith, 4600 Town Creek Drive, Williamsburg, addressed the Board on behalf of the future residents of New Town Sections 7 and 8, and urged the Board to deny this application on behalf of the future residents that will be most greatly impacted.

8. Mr. Drew Mulhare, 124 Henry Tyler Drive, Williamsburg, addressed the Board as the Managing Member of the Landowner. He stated that in 2010 he applied for limited access off Route 199 and the Board approved the application knowing that the property was being looked at as a site for a cell tower. He asked the Board to be consistent and approve the application for the cell tower. He stated that there are several cell towers around New Town and those cell towers have not affected New Town's development. He stated that a lot of money has been invested in this project, based off the Board's approval in 2010 and he asked the Board to approve the application.

Mr. Kennedy stated that he had questions for Mr. Salzman. He asked if the New Town Commercial Association Board had taken a vote against the cell tower.

Mr. Salzman stated yes, there had been a vote in opposition to the cell tower.

Mr. Kennedy asked how many times Mr. Salzman had approached Mr. Mulhare in regards to

purchasing the piece of property for New Town and whether or not that was before or after the knowledge of the proposed cell tower.

Mr. Salzman stated that he approached Mr. Mulhare at least once, maybe twice, and once was with the knowledge of the cell tower. Mr. Salzman stated that the desire of New Town Associates is to bring this piece of property into New Town and have it eventually developed. Mr. Salzman stated that he is willing to facilitate the acquisition of this property at no profit for the New Town Associates.

Mr. Kale asked Mr. Salzman if the property was purchased by New Town Associates, would they then request more residential units for the property. Mr. Salzman stated that he cannot say what would be built on the land. He proposes this purchase as a solution for New Town and as the best natural use of this piece of property. Any development on this property would have to be zoned and then approved by the Design Review Board, so at this time, he cannot state what would be built there.

Mr. Kennedy asked Ms. Frye how we got to this piece of property.

Ms. Frye replied that the original plan was the Hospice House property, but after balloon tests there was a large impact on existing homes. She stated that this brought them back to the current property in the application. She stated that the limited access granted by the Board in 2010 allowed this piece of property to be chosen as the site. She also stated that with the Board's resolution, the Commonwealth Transportation Board approved the limited access off Route 199 for the purpose of constructing and servicing a cell tower.

Mr. Kennedy asked Ms. Frye if she had been in touch with Mr. Granger.

She stated yes. Ms. Frye stated that the engineers have stated that the radio tower will not meet the service objectives and therefore is not a viable site location. She stated that she can assure the Board that the company would not be spending all of this time and money, if co-locating on the radio tower was a viable option.

Ms. Jones asked Ms. Frye where the customers that nTelos is trying to service with this tower are located geographically. Ms. Jones asked if the customers were only in Ford's Colony and Powhatan Secondary.

Ms. Frye stated that was correct. Ms. Frye also stated that future customers in New Town Sections 7 and 8 will also benefit from the coverage, as well as citizens travelling up and down Route 199.

Mr. Kale asked Ms. Frye to clarify an earlier statement that the tower would allow customers to receive service inside their homes that currently do not have service.

Ms. Frye directed the question to Mr. Mark Cornell, Site Acquisition Manager for nTelos. He stated that when nTelos' network was developed, it was originally a car network, one designed to be used out of doors and in vehicles. Over the last five years, trends have drastically changed in cell phone usage. The predominant cell phone sold is a Smartphone and people have an expectation of being able to use their

Smartphone in their homes. He stated that it is more difficult to provide service inside of buildings and homes, than it is outside. He stated it is necessary for the towers to be located closer to the homes in order to provide the service inside the home.

As no one else had any more questions for the speakers, Mr. McGlennon closed the Public Hearing.

Mr. McGlennon stated that he had some questions for staff. He asked Mr. Chris Johnson, Acting Director of Planning, how difficult it would be to model and hold simulations of the different heights proposed.

Mr. Johnson stated that it would not be difficult to do, it would just require a small measure of time to prepare and bring back before the Board.

Mr. McGlennon asked for clarification on the location of the tower during the staff simulations. He asked if the simulation was done to the tree line or the proposed tower location.

Mr. Johnson stated that the simulations done by staff were done to the tower location, not to the property line.

Mr. Kale asked Mr. Johnson if having the tower at a lower height would resolve some of staff's concerns that lead to their recommendation of denial.

Mr. Johnson stated that while having the tower at a lower height will obviously lessen the visual impact, without having a balloon test done at the new height, staff has no visual representation to base their recommendation on.

Mr. Kale asked about the other issues in regards to the Comprehensive Plan and the Performance Standards.

Mr. Johnson stated that Route 199 is still a CCC and that will not change. He stated that lowering the tower will obviously mitigate some of the impact, but again, without having a balloon test done and a visual representation at the new height proposed, staff cannot make a recommendation.

Mr. Icenhour noted that several comments mentioned being blind-sided by a new proposed height. He stated that in the Planning Commission minutes included in the Board Packet, there was considerable discussion in regards to various heights of the tower. Mr. Icenhour noted that staff states in those minutes that 130 feet is the maximum height that they would support at this location. Mr. Icenhour asked if this was correct.

Mr. Johnson stated that yes there was discussion and un-advertised balloon tests done at various heights and staff stated that they could not support a tower above 130 feet.

Mr. Icenhour stated that balloon tests do nothing to measure the visual impact on the proposed development of Sections 7 and 8 because they are still covered with trees. The only way to simulate the impact is with the line of sight simulations. He asked if this was correct.

Mr. Johnson stated that yes it was correct.

Mr. Icenhour stated that the height of the tower and the visual intrusion is a balancing act. The Board has a responsibility to balance the right to use property and minimize the impact on the neighbors. He stated that the Board cannot tell the property owner that they cannot use their property just because the neighbors do not approve. There has to be some type of balance. He stated that there has to be some height that would



allow the tower to work and function properly and minimize the visual intrusion. That does not mean that the tower would not be seen, but means that the visual impact would be minimized. He stated that his concern is that staff and everyone involved focus on a compromise, but realize that the visual intrusion cannot be completely eliminated. He asked Mr. Johnson if that is clear and something that staff can do.

Mr. Johnson replied yes. He stated that staff is not unreasonable and understands that the towers are going to be visible. Mr. Johnson stated that the compromise heights thrown out tonight have just not been modeled or simulated to see their visual impacts on the CCC and the proposed development in New Town.

Mr. Kennedy stated that he has always been concerned about the CCC component. He stated that the tree line along Route 199 was removed when building Warhill High School. He stated that the lights from Warhill High School are the longest running line of sight that he sees on his evening commute. He stated that the irony of this situation is that almost everyone uses a cell phone and everyone wants their cell phone to work, but no one wants to see the cell towers that make the cell phone work.

Ms. Jones stated that the purpose of the Public Hearing is to get the input of the public, hear from the applicant, and from staff. She stated that it is important to publicly advertise a balloon test if there is going to be a change in the proposed height of the tower. Hence the public can see the impact of the new height and be able to communicate their input to the Board and to staff.

Mr. Kennedy stated that he is not opposed to waiting another two weeks or a month to give the public and the applicant time to meet, to try and work out a compromise, and to do some renderings of any changes in height to the tower.

Mr. Icenhour stated that looking at the list of proposed locations for this tower many of those locations were marked off because the property owner was unwilling to lease their property. He stated that the public needs to understand that while there may be many potential locations, it is a business transaction and there must be a buyer and a seller. The Board cannot tell a property owner that they have to lease their property to a cell provider for a tower. Mr. Icenhour asked Mr. Johnson what the staff's role was in helping nTelos go through the other locations.

Mr. Johnson stated that staff was not directly involved in those locations, but that staff trusts that nTelos has done their due diligence in researching alternative locations. He stated that Mr. Cornell could probably better answer the question.

Mr. Cornell stated that the process was started by identifying gaps in coverage. Then they began looking at other preexisting structures in the area that could meet the need of the gap in coverage. If there is no available structure to meet the need they begin to look a potential property where they might be able to erect a structure. The property has to meet certain criteria to even be considered, including having a willing property owner that is willing to have their property used long-term. He stated that nTelos has done its due diligence in searching for alternative sites and this application is before the Board now because it is the last site that can meet the objectives and provide service to fill in the gap of coverage.

Mr. Kale made a motion to consider amending the resolution in regards to the height listed from 172 feet to 150 feet.

Ms. Jones stated that she would not be able to support that motion. In moving forward, she stated that if there is going to be a change in height, then a publicly advertised balloon test needs to be done. She stated that she would support a deferral.



Mr. Icenhour stated that he believes 150 feet would be a reasonable compromise and would support amending the resolution.

Mr. McGlennon stated that he does not believe he could support the height at 150 feet, but would need to see the evidence of the balloon test and the modeling at that height.

Mr. Kennedy stated that he would consider 150 feet.

Mr. Icenhour stated that in regards to Ms. Jones' comments, that he does not believe that another balloon test would be accurate. He stated that the area in Sections 7 and 8 that will be most affected still have trees now, but those trees will be gone once development begins. He stated that computer simulations of line of sight would probably be more accurate.

Ms. Jones stated that doing the computer simulations and a balloon test would be very thorough.

Mr. Icenhour asked staff what would be involved for staff to put together computer simulations and a balloon test at the heights of 150 feet and 130 feet.

Mr. Johnson stated that staff would request a one-month deferral to properly advertise a balloon test and to allow the applicant to generate propagation maps. After those are completed staff can properly prepare a report back to the Board.

Mr. Icenhour asked Ms. Frye if the applicant would like to go through with the deferral and put together the documentation and the balloon test at the heights of 130 feet and 150 feet.

Ms. Frye stated yes they would at both heights.

Mr. Kale withdrew his current motion and made a new motion to defer the application to the October 9, 2012, Board meeting.

Mr. Icenhour stated that when staff and the applicant come back he wants to see a balloon test, propagation maps, and line of sight renderings for 150, 135, and 130 feet.

Mr. Kale stated that he would want staff to notify the residents of New Town as to the time and date of the balloon test.

As there was no more discussion on the motion, Mr. Middaugh called the roll.

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

Mr. McGlennon stated that before moving on from this case, he wanted to point out that he has concerns over the implication made that the Board should turn down this case so that another party might purchase the land.

## MEMORANDUM COVER

**Subject:** Ordinance Amendment to Chapter 15, Offenses - Miscellaneous, Section 15-34, Weapons-Firearms not to be carried, or in vehicle, when loaded; enforcement provisions.

**Action Requested:** Shall the Board of Supervisors approve an ordinance amendment that will change the regulation of loaded firearms being carried for the purpose of hunting?

**Summary:** During the 2007 Legislative Session of the General Assembly, Virginia Code § 15.2-1209.1 was amended to reflect the applicability of State Code in relation to loaded weapons being carried on public highways for the purpose of hunting. The attached ordinance amendment reflects that change in the County Code.

Adoption of the attached ordinance is recommended.

**Fiscal Impact:** N/A

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

**Assistant County Administrator**

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

**County Administrator**

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

**Attachments:**

1. Memorandum
2. Ordinance

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

**Date:** October 9, 2012

**MEMORANDUM**

DATE: October 9, 2012

TO: The Board of Supervisors

FROM: Adam R. Kinsman, Deputy County Attorney

SUBJECT: Ordinance Amendment to Chapter 15, Offenses - Miscellaneous, Section 15-34, Weapons-Firearms not to be carried, or in vehicle, when loaded; enforcement provisions.

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During its 2007 session, the General Assembly amended the Virginia Code section by which the County derives its authority to regulate the carrying of loaded firearms on public highways. Prior to 2007, the locality could prohibit certain persons from carrying a loaded firearm on any part of a public highway when the person was not authorized to hunt on the private property on both sides of the highway. The 2007 changes clarify that the prohibition only affects the carrying of loaded firearms when the individual is carrying such firearm for the purpose of hunting.

Attached for your consideration is an ordinance amending Section 15-34 of the County Code to bring it into compliance with the State Code.

I recommend adoption of the attached ordinance.

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Adam R. Kinsman

CONCUR:

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Leo P. Rogers

ARK/gb  
AmdChp15Offenses\_mem

Attachment

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

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 15, OFFENSES - MISCELLANEOUS, OF THE CODE OF THE COUNTY OF JAMES CITY, VIRGINIA, BY AMENDING SECTION 15-34, WEAPONS-FIREARMS NOT TO BE CARRIED, OR IN VEHICLE, WHEN LOADED; ENFORCEMENT PROVISIONS.

BE IT ORDAINED by the Board of Supervisors of the County of James City, Virginia, that Chapter 15, Offenses - Miscellaneous, is hereby amended and reordained by amending Section 15-34, Weapons-Firearms not to be carried, or in vehicle, when loaded; enforcement provisions.

Chapter 15. Offenses – Miscellaneous

**Sec. 15-34. Weapons-Firearms not to be carried, or in vehicle, when loaded; enforcement provisions.**

(a) It shall be unlawful for any person to carry or have in his possession, *for the purpose of hunting*, while on any part of a public highway within the county a loaded firearm when such person is not authorized to hunt on the private property on both sides of the highway along which he is standing or walking. The provisions of this subsection shall not apply to persons carrying loaded firearms in moving vehicles, *or for purposes other than hunting*, nor to persons acting at the time in defense of persons or property.

(b) It shall be unlawful for any person to transport, possess or carry a loaded shotgun or loaded rifle in any vehicle on any public street, road or highway within the county. Conservation police officers, sheriffs and all other law enforcement officers shall enforce the provisions of this subsection.

The provisions of this subsection shall not apply to duly authorized law enforcement officers or military personnel in the performance of their lawful duties, nor to any person who reasonably believes that a loaded rifle or shotgun is necessary for his personal safety in the course of his employment or business.

(c) Any violation of this section shall be punishable by a fine of not more than \$100.00.

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John J. McGlennon  
Chairman, Board of Supervisors

ATTEST:

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Robert C. Middaugh  
Clerk to the Board

	VOTES		
	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>
MCGLENNON	_____	_____	_____
JONES	_____	_____	_____
KENNEDY	_____	_____	_____
ICENHOUR	_____	_____	_____
KALE	_____	_____	_____

Adopted by the Board of Supervisors of James City County, Virginia, this 9th day of October, 2012.

AmdChp15Offenses\_ord

## MEMORANDUM COVER

**Subject:** Ordinance Amendment to Chapter 2, Administration, Section 2-3, Designation, population, and election cycle of districts

**Action Requested:** Shall the Board of Supervisors approve an ordinance amendment that will change the election cycle for districts from quadrennial terms to staggered terms?

**Summary:** Members of the Board of Supervisors have requested an ordinance amendment to Chapter 2, Administration, Section 2-3, Designation, population, and election cycle of districts that will change the election cycle for districts from quadrennial terms to staggered terms.

This amendment was requested by members of the Board.

**Fiscal Impact:** N/A

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

**Assistant County Administrator**

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

**County Administrator**

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

**Attachments:**

1. Memorandum
2. Ordinance

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

**Date:** October 9, 2012

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

DATE: October 9, 2012

TO: The Board of Supervisors

FROM: Leo P. Rogers, County Attorney

SUBJECT: Ordinance Amendment to Chapter 2, Administration, Section 2-3, Designation, population, and election cycle of districts

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Attached for your consideration is an ordinance amending County Code Chapter 2, Administration, Section 2-3, Designation, population, and election cycle of districts. This ordinance amendment changes the election cycle for districts from quadrennial terms to staggered terms.

This amendment was requested by members of the Board.

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Leo P. Rogers

LPR/nb  
StaggeredTrm\_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 II, MAGISTERIAL DISTRICT, ELECTION DISTRICTS AND ELECTION PRECINCTS, BY AMENDING SECTION 2-3, DESIGNATION, POPULATION, AND ELECTION CYCLE OF DISTRICTS.

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 amending Section 2-3, Designation, population and election cycle of districts.

**Chapter 2. Administration**

**Article II. Magisterial District, Election Districts, and Election Precincts**

**Sec. 2-3. Designation, population, and election cycle of districts.**

- (a) The election districts with populations set forth are as follows:

	<u>Population</u>
01 Election district, Berkeley .....	13,285
02 Election district, Jamestown .....	13,536
03 Election district, Powhatan .....	13,302
04 Election district, Stonehouse .....	13,147
05 Election district, Roberts .....	13,739

- (b) ~~Quadrennial election cycle~~ *Staggered term election cycle by district:*

01 Election district, Berkeley, shall hold an election in 2015 and every four years thereafter;  
02 Election district, Jamestown, shall hold an election in 2013 ~~for a two-year term and a subsequent election shall be held in 2015, followed by an election~~ every four years thereafter;



03 Election district, Powhatan, shall hold an election in 2013 ~~for a two-year term and a subsequent election shall be held in 2015, followed by an election~~ every four years thereafter;

04 Election district, Stonehouse, shall hold an election in 2015 and every four years thereafter;

05 Election district, Roberts, shall hold an election in 2015 and every four years thereafter.

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John J. McGlennon  
Chairman, Board of Supervisors

ATTEST:

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Robert C. Middaugh  
Clerk to the Board

	VOTES		
	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>
MCGLENNON	_____	_____	_____
JONES	_____	_____	_____
KENNEDY	_____	_____	_____
ICENHOUR	_____	_____	_____
KALE	_____	_____	_____

Adopted by the Board of Supervisors of James City County, Virginia, this 9th day of October,  
2012.

StaggeredTrm\_ord