

AT A REGULAR MEETING OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE 10TH DAY OF JULY, NINETEEN HUNDRED EIGHTY-NINE, AT 7:07 P.M. IN THE COUNTY GOVERNMENT CENTER BOARD ROOM, 101 MOUNTS BAY ROAD, JAMES CITY COUNTY, VIRGINIA.

A. ROLL CALL

Thomas D. Mahone, Chairman, Jamestown District
Stewart U. Taylor, Vice-Chairman, Stonehouse District

Jack D. Edwards, Berkeley District
Perry M. DePue, Powhatan District
Thomas K. Norment, Jr., Roberts District (Absent)
David B. Norman, County Administrator
Frank M. Morton, III, County Attorney

B. MINUTES - June 19, 1989

Mr. Mahone asked if there were corrections or additions to the minutes.

Mr. Mahone made a motion to approve the minutes as presented.

On a roll call, the vote was AYE: Norment, Taylor, Edwards, DePue, Mahone (5). NAY: (0).

C. PUBLIC HEARINGS

1. Case No. SUP-14-89. Ewell Hall Tract
2. Case No. PA-1-89. Ewell Hall Tract

Mr. Marvin Sowers, Director of Planning, stated that Mr. David Otey, Sr., on behalf of Bush Construction, had applied for a special use permit to allow the development of a cemetery on 19.79 acres of land zoned R-3, General Residential, located adjacent to the Williamsburg Memorial Park, further identified as Parcel (1-109) on James City County Real Estate Tax Map No. (32-2). Mr. Sowers indicated a separate public hearing must be held for the application to amend the proffers attached to a previous rezoning (Z-16-87) of this site.

Mr. Sowers stated that a letter had been received from the Virginia Department of Transportation recommending the County deny the special use permit as the analysis showed inordinately high traffic generated for local characteristics.

Staff recommended postponement of the special use permit.

Mr. Mahone opened the public hearings.

Mr. David Otey stated the applicant would be willing to work with the Highway Department on the traffic issues, and asked that the Board approve the special use permit.

Mr. Mahone closed the public hearings.

Mr. Norment arrived at 7:20 p.m.

Mr. Mahone made a motion to postpone the decision to allow discussions by staff and Highway Department.

Discussion followed regarding notification of cemetery plot owners and submittal of a petition from Ms. Anne Grigsby Gulasky opposing the relocation of the cemetery entrance.

Mr. Norment abstained due to a conflict of interest created by a prior ownership interest in property and current representation of applicant.

On a roll call, the vote was: AYE: Edwards, DePue, Mahone (3). NAY: Taylor (1). ABSTAIN: Norment (1).

3. Case No. Z-8-89. Carter Hill, Inc.

Mr. Sowers stated that Alvin P. Anderson, Esq., had applied on behalf of Carter Hill, Inc., to rezone approximately 135 acres from A-2, Limited Agricultural, to R-3, General Residential, located at 1890 Jamestown Road and further identified as Parcel (1-44) on James City County Real Estate Tax Map No. (47-3).

In accordance with staff, the Planning Commission recommended approval of the rezoning by a 7-4 vote for the reasons that the proposal was generally consistent with the Comprehensive Plan, surrounding zoning and development, and the submitted proffers provide assurances that the environmentally sensitive site would be adequately protected.

Mr. Mahone opened the public hearing.

Mr. Alvin Anderson, Esq., representative for Carter Hill, Inc., stated that proffers include a 150 foot setback around tidal and nontidal wetlands (protection of nontidal wetlands remained unchanged) and recreational facilities. Mr. Anderson further stated that the road connecting the property was upgraded to Highway Department specifications, and no structures would be built in the 100-year floodplain unless approved by the Planning Commission.

Mr. Mahone closed the public hearing.

Mr. Edwards made a motion to approve the rezoning.

On a roll call, the vote was AYE: Norment, Taylor, Edwards, DePue, Mahone (5). NAY: (0).

R E S O L U T I O NCASE NO. Z-8-89. CARTER HILL, INC.

WHEREAS, in accordance with Section 15.1-431 of the Code of Virginia, and Section 20-15 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-8-89 for rezoning approximately 135 acres from A-2, Limited Agricultural to R-3, General Residential on property identified as Parcel (1-44) on James City County Real Estate Tax Map No. (47-3); and

WHEREAS, the Planning Commission following its public hearing on June 13, 1989, concurred with the staff recommendation by a vote of 7-4 and recommended approval of Case No. Z-8-89, with proffers.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve Zoning Case No. Z-8-89, and further accepts the voluntary proffers.

4. Case No. Z-7-89. Governor's Land

Mr. Allen Murphy, Jr., Principal Planner, stated that Mr. Robert Emmett had applied on behalf of Governor's Land, Inc., to rezone approximately 1,444 acres from A-1, General Agricultural to R-4, Residential Planned Community, with proffers, located on the south side of John Tyler Highway approximately one mile west of Greensprings Road, and further identified as Parcel (1-66) on James City County Real Estate Tax Map No. (44-2).

Mr. Murphy explained that the proffers addressed maximum density, greenbelts, recreation facilities, archaeological significance, wetlands protection, drainage plans, a public use area, and the improvement of John Tyler Highway.

The Planning Commission by a 10-1 vote recommended approval of the application. Staff recommended denial because the application is inconsistent with the Comprehensive Plan in terms of proposed density, and it proposes a suburban type development outside the Primary Service Area.

Board comments were made regarding the need to closely adhere to the Comprehensive Plan, finding no current need for improvements to John Tyler Highway, being concerned about development outside the Primary Service Area, suggesting the acreage would make an ideal park, and discussions of the deadline for making a rezoning decision.

Mr. Mahone opened the public hearing.

Mr. Robert Emmett, on behalf of Governor's Land, Inc., respectfully disagreed with staff's statement that the application was inconsistent with the Comprehensive Plan. He referred to the A-1 ordinance which encourages careful design and low density residential, and stated that the application was the best creative design for an important piece of property.

Mr. Emmett further stated that the wetlands had been identified; a need to improve Rt. 5 would exist by mid-1990's; the Virginia Department of Transportation reviewed plans and concurred with the project; he emphasized the plan would leave 1,000 acres as open space and would underwrite significant highway improvements. Mr. Emmett respectfully requested approval of the proposed rezoning.

The Board questioned the availability of monies in future years to be applied to the road improvements, the number of displacements for existing residences, public access to the property, and impact on use of adjacent properties.

Mr. Alexander Kuras, representative for the Planning Commission, stated the Commission voted 10-1 recommending approval of the proposal for the excellent design for this beautiful property site. He further noted the Commission would also support a park for the site if monies became available.

1. Mr. John Angle, 113 Falling Creek Circle, stated citizens had concerns about development of the largest undeveloped acreage along James River in James City County.

2. Mr. Samuel L. Howard, 102 Curles Circle, asked for preservation and protection of large old trees and wildlife habitat for this and future generations.

3. Mr. Robert L. Clifford, 109 Shellbank Drive, presented questions regarding acreage suitable for houses, density of housing calculated by A-1 ordinance, development setting a precedent outside Primary Service Area, and joint impact of Greensprings and Governor's Land developments on widening of Route 5. He asked the Board to postpone action on this rezoning to insure the project meets the goals of the Comprehensive Plan.

4. Ms. Judy Knudson, 106 Dover Road, spoke in opposition to the plan stating the County has no need for the growth in housing, traffic, utilities, and County services created by this project.

5. Mr. Grant Olson, 105 Holman Road, stated the County's 1982 projections of 34,700 population in 2000 was a reality in 1989. He questioned the need for making an exception to the Comprehensive Plan, and wanted extensive citizen involvement in the updating of the Comprehensive Plan.

6. Mrs. Josephine Jones, Chairman of the Beautification Committee, Williamsburg Area Council of Garden Clubs, requested that Route 5 be retained for its natural beauty of a scenic byway.

Mr. Mahone declared a break at 9:37 p.m.

Mr. Mahone reconvened the Board at 9:57 p.m.

7. Mr. George Wright, 148 Cooley, presented the Board with a petition, in opposition to the project, signed by 282 citizens.

8. Mr. Robert Bush, 5021 Hickory Sign Post, spoke about preserving the alignment and characteristic of this historical route.

9. Mr. Joe Watson, 4913 John Tyler Highway, voiced concern of the displacement of 6-7 families by the proposed widening of Route 5 and noted a scheduled public hearing on proposed design of Route 199 for July 26, 1989. He spoke in favor of Route 199 cloverleaf design for safety factors on Route 5.

10. Ms. Jane Carroll, 2894 John Tyler Highway, stated traffic does not warrant a widening of Route 5, and voiced concern about overloaded trucks which use the route to avoid weigh stations.

11. Mrs. W.P. Batchelder, 5020 John Tyler Highway, asked how the project would affect her as an interested, taxpaying citizen from this section of James City County.

12. Mr. Gary McQuillen, 117 Sabre Drive, requested that the public be informed of the complete Comprehensive Plan before the Board made a decision, and voiced concern for loss of the beauty of the roadway and the area's way of life if this project was approved.

13. Mr. Jay Everson, 130 Oslo Court, spoke in favor of the development as a good project.

14. Mr. Robert Jones, 2983 John Tyler Highway, spoke in opposition to the project for the reasons of escalation of widening Route 5, and setting a precedent in rezoning from A-1 to R-4.

Mr. Mahone closed the public hearing.

Mr. DePue made a motion to indefinitely postpone the case to consider the highway issues.

The Board agreed that the quality of the plan was excellent, and expressed a need to protect the greenbelt, restrict the truck traffic and impose a weight limitation on John Tyler Highway; commented on the impact of the development on the community for future generations; stated the development would not benefit low or moderate income citizens; suggested considering whether the development and widening of Route 5 are needed at this time; and stated the postponement would allow time to study the issues before making a decision.

On a roll call, the vote was: AYE: Norment, Edwards, DePue, Mahone (4). NAY: Taylor (1).

E. CONSENT CALENDAR

Mr. Mahone asked if any Board member wished to remove any item from the Consent Calendar.

Mr. Mahone asked that Item No. 1 be removed.

Mr. DePue asked that Item No. 4 be removed.

Mr. Mahone made a motion to approve Items 2, 3, and 5 on the Consent Calendar.

On a roll call, the vote was AYE: Norment, Taylor, Edwards, DePue, Mahone (5). NAY: (0).

2. Livestock Claim - George A. Richardson

R E S O L U T I O N

LIVESTOCK CLAIM

WHEREAS, the claim of Mr. George A. Richardson has been investigated and found to be valid; and

WHEREAS, the value of the goat destroyed has been estimated to be as follows:

1 NUBIAN GOAT = \$47.50

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors hereby reimburses Mr. George A. Richardson \$47.50 for the goat destroyed.

3. SHARE Homeless Intervention Program

R E S O L U T I O N

AUTHORIZATION TO SUBMIT AN APPLICATION TO ADMINISTER A

SHARE-HOMELESS INTERVENTION PROGRAM

WHEREAS, the Commonwealth of Virginia, Department of Housing and Community Development has issued a notice of funding availability and has requested applications under the SHARE - Homeless Intervention Program; and

WHEREAS, assistance is needed to effectively and adequately address the housing needs of homeless persons and to prevent homelessness in James City County area; and

WHEREAS, SHARE - Homeless Intervention Program Application for a grant under this program has been prepared; and

WHEREAS, David B. Norman, County Administrator can act on behalf of James City County and will sign all necessary documents required to complete the grant transaction.

NOW, THEREFORE, BE IT RESOLVED THAT the Board of Supervisors of James City County, Virginia, hereby authorizes David B. Norman, County Administrator to apply for and accept the grant and enter into a

Grant Agreement with the Department of Housing and Community Development and perform any and all responsibilities in relation to such Agreement.

5. Industrial Development Bonds - Service Metal Fabricators, Inc.

R E S O L U T I O N

PENINSULA PORTS AUTHORITY OF VIRGINIA

ISSUANCE OF REVENUE BONDS

WHEREAS, the Peninsula Ports Authority of Virginia ("Authority"), has considered the application of Service Metal Fabricators, Inc. ("Company"), requesting the issuance of the Authority's revenue bonds in an amount not to exceed \$2,200,000 ("Bonds") to assist in the financing of the Company's acquisition, construction and equipping of a facility for the manufacture of metal parts to be used in the production of cabinets and internal parts for electronic manufacturers consisting of approximately 40,000 square feet ("Project") to be located at 360 McLaws Circle, in the County of James City, Virginia, and has held a public hearing thereon on June 21, 1989; and

WHEREAS, Section 147(f) of the Internal Revenue Code of 1986, as amended ("Code"), provides that the governmental unit having jurisdiction over the issuer of private activity bonds and over the area in which any facility financed with the proceeds of private activity bonds is located must approve the issuance of the bonds; and

WHEREAS, the Authority issues its bonds on behalf of the County of James City, Virginia ("County"); the Project is to be located in the County and the Board of Supervisors of the County of James City, Virginia ("Board"), constitutes the highest elected governmental unit of the County; and

WHEREAS, the Authority has recommended that the Board approve the issuance of the Bonds; and

WHEREAS, a copy of the Authority's resolution approving the issuance of the Bonds, subject to the terms to be agreed upon, a certificate of the public hearing and a Fiscal Impact Statement have been filed with the Board.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA:

1. The Board approves the issuance of the Bonds by the Authority for the benefit of the Company, as required by Section 147(f) of the Code, to permit the Authority to assist in the financing of the Project.

- 2. The approval of the issuance of the Bonds does not constitute an endorsement to a prospective purchaser of the Bonds of the creditworthiness of the Project or the Company.
- 3. Pursuant to the limitations contained in Temporary Income Tax Regulations Section 5f.103-2(f)(1), this resolution shall remain in effect for a period of one year from the date of its adoption.
- 4. This resolution shall take effect immediately upon its adoption.

1. Clerical Assistant - Commonwealth's Attorney

Discussion regarding the funding of the full-time position and justification of the need for additional clerical help due to increased workload ensued.

Mr. Norment made a motion to approve the resolution.

On a roll call, the vote was: AYE: Norment, Taylor, Edwards, DePue (4). NAY: Mahone (1).

R E S O L U T I O N

BUDGET AMENDMENT - COMMONWEALTH'S ATTORNEY

WHEREAS, the Board of Supervisors of James City County Virginia, based upon the staff's recommendation, previously approved a part-time clerical assistant for the office of the Commonwealth's Attorney; and

WHEREAS, unanticipated State funds and a reevaluation of the workload have prompted a request that the position be designated a full-time position; and

WHEREAS, no additional County or City funds are needed to implement this change.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors hereby amends the FY 1990 budget to authorize a full-time clerical assistant in the Office of the Commonwealth's Attorney, instead of the part-time position previously approved, and amends the FY 1990 budget, as follows:

Revenues:

Compensation Board - Commonwealth's Attorney +\$3,500

Expenditures:

Office of the Commonwealth's Attorney +\$3,500

4. Virginia Department of Transportation Construction Budget - Second Road Improvements - FY 90

Mr. DePue disagreed with the Virginia Department of Transportation's allocation to Jolly Pond Road rather than fully funding Centerville Road and asked for an explanation.

Mr. Norment made a motion to postpone the item to receive further information on the funding.

On a roll call, the vote was AYE: Norment, Taylor, Edwards, DePue, Mahone (5). NAY: (0).

E. PUBLIC COMMENT

1. Mr. Robert Solomon, 5011 Riverview, presented a petition opposing the withdrawal of acreage from the Agricultural and Forestal District and the development of the Virginia French Winery. He questioned the impact on public services and effects of vehicle traffic along the secondary roads in the area.

F. REPORTS OF THE COUNTY ADMINISTRATOR

Mr. David Norman, County Administrator, requested an executive session pursuant to Section 2.1-344(a)(7) of the Code of Virginia, 1950, as amended, for discussion with legal and staff members on a specific legal matter.

Mr. Norment made a motion to convene into executive session at 11:28 p.m.

On a roll call, the vote was AYE: Norment, Taylor, Edwards, DePue, Mahone (5). NAY: (0).

Mr. Mahone reconvened the Board into open session at 11:36 p.m.

Mr. Norment made a motion to approve the executive session resolution.

On a roll call, the vote was AYE: Norment, Taylor, Edwards, DePue, Mahone (5). NAY: (0).

MOTION BY: Mr. Norment

R E S O L U T I O N

MEETING DATE: July 10, 1989

CERTIFICATION OF EXECUTIVE MEETING

WHEREAS, the Board of Supervisors of James City County, Virginia, (Board) has convened an executive 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 2.1-344.1 of the Code of Virginia requires a certification by the Board that such executive 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 executive meeting to which this certification resolution applies; and, (ii) only such public business matters as were identified in the motion convening the executive meeting were heard, discussed or considered by the Board.

Mr. DePue made a motion to adjourn.

On a roll call, the vote was AYE: Norment, Taylor, Edwards, DePue, Mahone (5). NAY: (0).

The Board adjourned at 11:37 p.m.



David B. Norman
Clerk to the Board

254
6400

PROFFER AGREEMENT

Whereas, Carter Hill, Inc., a Virginia Corporation ("the Owner"), owns certain real property in James City County, Virginia, more particularly described as follows:

All that certain lot, piece or parcels of land, situate, lying and being in Jamestown District, James City County, Virginia, and designated "Parcel A - Ollie Rosseau" and containing 88.52 acres, more or less, as shown on that certain plat entitled "PLAT SHOWING LAND ACQUISITION OF THE CARTER HILL, INC., LYING IN JAMESTOWN DIST., JAMES CITY CO., VA.", dated March 24, 1970, a copy of which plat is recorded in James City County Plat Book 27, Page 58.

Being the same property conveyed to Carter Hill, Incorporated by Deed dated May 14, 1970, recorded in James City County Deed Book 126, Page 544.

All that certain lot, piece or parcel of land, situate, lying and being in Jamestown District, James City County, Virginia, containing 1.21 acres set out and shown as "PARCEL E" on that certain plat entitled "PLAT SHOWING LAND ACQUISITION OF THE CARTER HILL, INC., LYING IN JAMESTOWN DDIST., JAMES CITY CO., VA.", dated March 24, 1970, made by L.V. Woodson & Associates, recorded in James City County Plat Book 27, Page 58, to which plat reference is here made for a more accurate description of the premises herein conveyed.

Being the same property conveyed to Carter Hill, Incorporated by Deed dated April 20, 1970, recorded in James City County Deed Book 127, Page 176, et seq.

All that certain piece or parcel of land, situate, lying and being in Jamestown Magisterial District, James City County, Virginia, containing approximately 9.76 acres, more or less, being more particularly shown on a map or plat entitled "PLAT SHOWING LAND ACQUISITION OF CARTER HILL, INC., LYING IN JAMESTOWN DIST., JAMES CITY CO., VA.", dated March 24, 1970 and made by L.V. Woodson & Associates, Engineers & Surveyors, Williamsburg, Virginia, which said map or plat is recorded in the Clerk's Office of the Circuit Court of the City of Williamsburg and James City County, Virginia, in Plat Book 27, Page 58, to which specific reference is here made.

Being the same property conveyed to Carter Hill, Inc. by Deed dated May 5, 1970, recorded in James City County Deed Book 127, Page 181, et seq.

All those certain lots, pieces or parcels of land, situate,

lying and being in Jamestown District, James City County, Virginia, containing a total of 34.97 acres, and shown and designated as "PARCEL C" as shown on that certain plat entitled "PLAT SHOWING LAND ACQUISITION OF CARTER HILL, INC., LYING IN JAMESTOWN DIST., JAMES CITY CO., VA", dated March 24, 1970 and made by L.V. Woodson & Associates, Engineers & Surveyors, and to which reference is here made for a more particular description of the property therein conveyed, which said plat is recorded in the Clerk's Office in Plat Book 27, Page 58.

Being the same property conveyed to Carter Hill, Incorporated by Deed dated April 22, 1970, recorded in James City County Deed Book 128, Page 11.

Whereas, the Owner has applied for a rezoning of the above described property ("the Property") from the Limited Agricultural District, A-2 (the Existing Zoning) to the General Residential District, R-3, of the James City County Code, ("the Proposed Zoning"); and

Whereas, James City County, Virginia ("the County") may be unwilling to rezone the Property, because the Proposed Zoning regulations may be deemed inadequate for the orderly development of the Property, because competing and incompatible uses may conflict; and

Whereas, more flexible and adaptable zoning methods are deemed advisable to permit the use of the Property; and

Whereas, the Owner is desirous of offering certain conditions for the protection of the community that are not applicable to land similarly zoned in addition to the regulations provided for in the Proposed Zoning regulations.

NOW, THEREFORE, THIS AGREEMENT WITNESSETH, that for and in consideration of the County rezoning the Property from the Existing Zoning to the Proposed Zoning and pursuant to Section 15.1-491.1 of the Code of Virginia, 1950, as amended, and Section 20-18 of the Zoning

Ordinance of James City County, Virginia, the Owner agrees that in addition to the regulations provided in the Proposed Zoning, it shall meet and comply with all of the following conditions in the development of the Property:

USES

The use of the Property shall be limited to:

- a. One hundred fourteen (114) single-family detached dwellings.
- b. Community recreation facilities including parks, playgrounds, clubhouses, boating facilities, swimming pools, ball fields, tennis courts and other similar recreation facilities.
- c. Off-street parking as required.
- d. Accessory buildings or structures.

SUBDIVISION PLAN

1. The Subdivision Plan shall provide for the following improvements to be constructed at the Owner's expense:

a. Realignment of the existing entrance to the Property from Virginia State Route 31 (Jamestown Road) such that the realigned entrance is approximately at a right angle with Virginia State Route 31 and directly across from London Company Way.

b. A left turn lane from Virginia State Route 31 to the Property with a minimum of one hundred feet (100') storage area and a one hundred foot (100') taper, twelve feet (12') wide.

c. A right turn taper from Virginia State Route 31 to the Property, one hundred fifty feet (150') in length, twelve feet (12') in width.

2. The Subdivision Plan shall provide for a single entrance to

the Property along Virginia State Route 31.

3. The Subdivision Plan shall provide a one hundred fifty foot (150') landscape buffer adjacent to and parallel with the right of way line of Virginia State Route 31, within which the Owner shall have an evergreen landscape buffer, fifty feet (50') in width, utilizing existing, transplanted or new evergreen trees, as needed, to effect a permanent evergreen landscape screen between the Property and Virginia State Route 31, which landscaping plan shall be approved by the Development Review Committee of the County Planning Commission.

4. The Subdivision Plan shall provide a buffer area on that portion of the Property designated on the Subdivision Plan as being below elevation 3.5 feet, around all tidal wetlands, perennial streams and non tidal wetlands currently protected by Federal rules and regulations. The buffer shall also include all slopes exceeding twenty-five percent (25%) gradient and in no case shall be less than fifty feet (50') wide as measured from the limit of said wetlands and/or the normal water level of perennial streams respectively. All of the buffer area shall be shown on a topographic map of the Property prepared pursuant to a field survey. The buffer area shall be preserved in its natural state, except that roads and utilities interconnecting the easterly and westerly portions and the northerly and southerly portions of the Property, footpaths, related structures, shoreline erosion control projects and water dependent facilities shall be permitted. In that portion of the Property below elevation 3.5 feet, footpaths and related structures and water dependent facilities shall be constructed on open piles as necessary, to minimize the impact on tidal flows. The

Owner shall leave intact, repair, replace or restore as necessary, the natural erosion retarding vegetative cover within the buffer to protect or stabilize the buffer but the Owner may perform general woodlot management and selectively remove dead trees and prune the overstory of existing trees to create sight lines in said area. In no case shall such action result in the removal of tree stumps, root mat or understory vegetation. The location of all of said activities shall be subject to the approval of the Development Review Committee of the County Planning Commission. The use of herbicides and pesticides shall be prohibited in all of areas of the buffer. "Water-dependent facility" means a facility that cannot exist outside of the buffer and must be located on the shoreline by reason of the intrinsic nature of its operation.

5. The Subdivision Plan shall provide land and structures for a community swimming pool or a community recreation building or other similar recreation facilities such as a tennis court. The location of the recreation facilities and the timetable for the construction of the same shall be approved by the Development Review Committee of the County Planning Commission.

6. The Subdivision Plan shall not permit any structure to be erected on the Property within the one hundred (100) year flood plain area, except as may be permitted by the James City County Planning Commission.

7. Prior to the submittal of the preliminary Subdivision Plan, the Owner, at its expense, shall cause to be prepared a Phase I Archaeological Study of the Property according to the guidelines

provided by the Virginia Historic Landmarks Commission. Upon approval by the County of the Archaeological Study of the Property, the Owner, if necessary, shall follow generally accepted cultural resource management and preservation practices of permitting the recovery of archaeological data through testing, excavation and analysis of site findings before beginning construction on the affected portion of the Property. A Phase I study shall include reconnaissance, systematic surface collection and shovel test pits every 90-150 feet.

8. Before final approval of the Subdivision Plan the Owner, subject to the provisions of condition numbered nine (9) hereof, shall be required to furnish a surety bond, letter of credit, cash escrow, or other form of guarantee, for completion of any public improvements specified therein or otherwise herein required.

9. Nothing herein shall prevent the Owner from processing the Subdivision Plan in stages or sections as permitted by the Proposed Zoning.

MAINTENANCE

1. The Owner shall provide guarantees and assurances acceptable to the County Attorney that a Homeowners' Association ("the Association") has been legally established with authority to impose, raise and collect assessments against the Owners of lots according to law. The Association shall have a lien on every lot within the Property for unpaid assessments levied against that lot. All assessments shall be used for the maintenance of that portion of the Property outside of individual lots, including, but not limited to, the maintenance of open space, recreation areas, private roads, if any,

parking lots, etc.

2. The Association shall contract with a private refuse collector to collect and dispose of all garbage and refuse from the Property until such time as the County provides a public refuse collection service.

ROADS/PARKING

The Owner shall construct all roads and parking areas within the Property utilizing the materials meeting the specifications of the Virginia Department of Transportation (VDOT) and the County, thereby providing an all weather hard surface. Certifications in accordance with VDOT and County requirements shall be provided to VDOT and the County that all such construction meets the foregoing standards. Any deterioration of the pavement that results in base course or sub-grade exposure shall be promptly repaired. By rezoning the Property, the County is making no agreement, express or implied, that it will grant any application for a waiver to allow roads and parking areas within the Property to be privately owned and maintained.

MISCELLANEOUS

All terms of this Agreement shall have the same meaning as set forth in Section 20-2 of the Code of the County.

CARTER HILL, INC.

By: _____

James D. Carter, Inc.
president

STATE OF VIRGINIA

COUNTY OF JAMES CITY, to-wit:

The foregoing instrument was acknowledged before me this 29th day of June, 1989, by James D. Carter, III, President, on behalf of Carter Hill, Inc.

Quinn H. Day
NOTARY PUBLIC

My commission expires: 12/7/92

VIRGINIA: City of Williamsburg and County of James City, to Wit:

In the Clerk's office of the Circuit Court of the City of Williamsburg and County of James City the 13th day of July, 1989. This Proffer Agreement was presented with certificate annexed and admitted to record at 3:19 o'clock

Test: Melene S. Ward, Clerk
by Melene S. Ward
Deputy Clerk