

AT A REGULAR MEETING OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE 5TH DAY OF FEBRUARY, NINETEEN HUNDRED NINETY, AT 7:00 P.M. IN THE COUNTY GOVERNMENT CENTER BOARD ROOM, 101 MOUNTS BAY ROAD, JAMES CITY COUNTY, VIRGINIA.

A. ROLL CALL

Perry M. DePue, Chairman, Powhatan District
Stewart U. Taylor, Vice Chairman, Stonehouse District

Judith N. Knudson, Jamestown District
Jack D. Edwards, Berkeley District
Thomas K. Norment, Jr., Roberts District
David B. Norman, County Administrator
Frank M. Morton, III, County Attorney

Mr. DePue convened the Board at 5:15 p.m.

Mr. Morton, County Attorney, was absent.

Mr. DePue made a motion to convene into executive session pursuant to Section 2.1-344(a)(1) of the Code of Virginia to consider a personnel matter, evaluation, at 5:16 p.m.

The motion was approved by a unanimous voice vote.

Mr. DePue reconvened the Board into open session at 7:00 p.m.

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

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

R E S O L U T I O N

MEETING DATE: February 5, 1990

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

BE IT FURTHER RESOLVED that this resolution be spread on the minutes of this Board and a suitable copy be presented to Thomas D. Mahone.

- C. MINUTES - January 13, 1990 - Special Meeting
January 15, 1990 - Special Meeting
January 22, 1990 - Regular Meeting

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

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

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

- D. CONSENT CALENDAR

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

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

Mr. DePue made a motion to approve Items 1, 2 and 3 on the Consent Calendar.

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

1. Community Services Board

RESOLUTION

COMMUNITY SERVICES BOARD

WHEREAS, Chapter 10 of Title 37.1 of the Code of Virginia (1950), amended, provides for the establishment of a Community Services Board to deliver mental health, mental retardation and substance abuse services; and

WHEREAS, the Board of Supervisors of James City County with the intent of implementing provisions of Chapter 10 of Title 37.1 of the Code of Virginia, established the Colonial Services Board by resolution, duly enacted on September 30, 1970; and

WHEREAS, since that date, the number of member jurisdictions has increased and the number of appointees from each jurisdiction has changed.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, in conjunction with the City Councils of Williamsburg, and Poquoson and the Board of Supervisors of York County reaffirms its desire to implement the provisions of Chapter 10 of Title 37.1 of the Code of Virginia.

FURTHER, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby reenact the original resolution, dated September 30, 1970, to continue the Colonial Services Board, hereinafter referred to as the Board, to be composed of 14 members who shall be appointed by the Boards of Supervisors/City Councils in the following manner: four from James City County, six from York County, two from Williamsburg, and two from Poquoson.

The term of each member of the Board shall be for three years from July 1 of the year appointed, except that vacancies shall be filled for the balance of an unexpired term. No member shall be eligible to serve more than two successive terms.

The County of York is designated as fiscal agent for the Colonial Services Board in accordance with Chapter 10, 37.1-195 of the Code of Virginia.

2. Regional Juvenile Detention Facility

R E S O L U T I O N

THE CONSTRUCTION OF A REGIONAL DETENTION FACILITY PURSUANT
TO SECTION 16.1-313 OF THE CODE OF VIRGINIA AS AMENDED

WHEREAS, the County of James City does not currently have a juvenile detention facility located in the County; and

WHEREAS, the County of James City is not currently a member of a regional detention facility; and

WHEREAS, existing juvenile detention facilities are at or above capacity and many of those facilities are unable to detain juveniles ordered into custody by the James City County Juvenile and Domestic Relations District Court; and

WHEREAS, in order to secure space in a state approved detention facility, the James City County Sheriff's Department has been compelled to transport juveniles great distances to such regional detention facilities as Roanoke, Danville, Bristol and Christiansburg, Virginia; and

WHEREAS, such transportation creates a number of material problems for the efficient administration of justice; which problems include: difficulties of resource allocation associated with the sheriff's ability to transport prisoners and provide courtroom security and discharge his other State-mandated obligations; the time and expense of transporting the juveniles great distances and the constitutional ramifications of the juvenile defendant being held great distances from his defense counsel and the difficulties which arise therefrom for defense counsel to properly prepare his case for trial; and

WHEREAS, it appears said situation will continue to worsen as the population of Eastern Virginia continues to grow; and

WHEREAS, the Department of Corrections has completed a study of the needs for detention facilities in the Tidewater Region of Virginia; and the study indicates the need for such a regional facility.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of the County of James City, Virginia, that the County Administrator or his designee be authorized and direct to:

1. Meet with the other cities and counties in the region to determine the willingness of other jurisdictions in the region to participate in the construction and operation of a regional detention facility.
2. Initiate the appropriate steps to form a Regional Detention Commission as provided by Section 16.1-315 of the Code of Virginia of 1950 as amended.
3. Initiate contact with the appropriate representative to the General Assembly for the purpose of requesting specific line item funding by the State Department of Corrections for reimbursement of one-half of the cost of construction of the regional detention facility as provided by Section 16.1-313 of the 1950 Code of Virginia, as amended.

3. State Recordation Tax

R E S O L U T I O N

STATE RECORDATION TAX

WHEREAS, the Board of Supervisors of James City County has previously programmed, within its five-year capital improvement program, proceeds from its share of the State recordation taxes that it will receive in FY 1991; and

WHEREAS, the State General Assembly is considering legislation that would defer the distribution of these State revenues due to budgetary pressures.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia directs the County Administrator to contact Delegate George Grayson and Senator William Fears to urge the State to return the funds to local governments, or in the alternative to allow local governments an additional 10-cent local option recordation tax.

4. State Water Surcharge

Mr. Taylor requested clarification on the purpose of the resolution.

Response was that the resolution stated opposition to the water surcharge.

Mr. Edwards made a motion to approve the resolution.

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

R E S O L U T I O N

WATER SURCHARGE

WHEREAS, the Conservation and Natural Resources Committee is considering the recommendation of House Bill 1115 in the 1990 General Assembly to establish a Drinking Water Protection Fund to be financed through a 10 cent per 1,000 gallon surcharge on water produced by community waterworks; and

WHEREAS, the primary purpose of this fund is to provide hardship grants or low interest or no interest loans to upgrade the facilities of small waterworks and/or water systems suffering fiscal stress; and

WHEREAS, the James City Service Authority will be required to pay into this fund more than \$59,000 annually with little likelihood of benefiting from the disbursement of these grant monies; and

WHEREAS, the Commonwealth of Virginia will be subsidizing the capital investment of small and rural waterworks systems which cannot make the necessary improvements through customer generated revenues; and

WHEREAS, a local assistance program of this nature ought to be funded from general State tax revenues rather than an indirect tax on water consumption.

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

1. Expresses its opposition to the water surcharge legislation in House Bill 1115, and states such legislation is not in the best interest of the citizens of James City County served by community waterworks or the customers of the James City Service Authority because this proposed charge would increase the water bill of each Authority residential customer about 5%.
2. Opposes a surcharge on water production unless the monies generated thereby are used solely to finance State-wide objectives related to the provision of a safe and adequate supply of drinking water which would benefit all water users in the Commonwealth.
3. Directs the County Administrator make the position of the James City County on this proposed legislation known to Delegate George Grayson and Senator William Fears.

E. PUBLIC HEARINGS

3. Case Nos. Z-17-89 and SUP-46-89. Jack L. Massie Contractor, Inc.

Mr. Marvin Sowers, Jr., Director of Planning, stated that Mr. Gary Clower had applied on behalf of Jack L. Massie, Inc., to rezone approximately 34.43 acres from A-1, General Agricultural, to M-1, Limited Industrial, and 17.06 acres from A-1, to M-2, General Industrial. The property abuts the CSX railroad and extends westerly from Cokes Lane for a distance of approximately 3,500 feet, further identified as Parcels (1-1), (1-9) and (1-9B) on James City County Real Estate Tax Map No. (13-3).

Mr. Sowers stated that Mr. Clower had applied for a special use permit to construct a ready-mix concrete plant, manufacturing and storage of precast concrete products, a cement stabilized aggregate base plant and storage and distribution of stone and concrete produces on the 17.06 acres.

Mr. Sowers noted a letter from the applicant, dated January 25, 1990, requesting deferral of the case to allow time to address staff and community concerns.

Staff recommended denial for the reasons that the proposal was inconsistent with the Low Density Residential designation of the Comprehensive Plan; assurances that environmentally sensitive areas would be adequately protected have not been provided; site was adjacent to properties zoned residential and agricultural; rezoning would set precedent for other industrial requests in the area; and the drainage study should encompass the entire site.

Mr. DePue opened the public hearing.

Mr. Gary Massie, 8644 Merry Oaks Lane, Toano, stated that the project would supply revenue for the County, would be environmentally safe by State permits, would meet State water quality standards, and would be adjacent to other existing industrial sites. He asked the Board to consider deferral of the project.

1. Ms. Susan McCleary, 129 Mirror Lake Drive, voiced overwhelming opposition of the project and the impact on the quality of life of the surrounding community because of dust, noise, obtrusive lighting, industrial adjacent to residential and heavy traffic on Richmond Road. She requested the Board support denial of rezoning and special use permit.

2. Mr. Jay Everson, 130 Oslo Court, spoke in favor of the project to assure continuance of the railroad line, and industrial land use was needed to offset rising tax rates.

3. Rev. William Bassett, 150 Bush Springs Road, Toano, as a representative of concerned citizens, strongly opposed the project because of traffic and dust.

4. Mr. Ed Oyer, 139 Indian Circle, spoke in support of the project, which would be constructed by a locally known contractor and provide tax revenues for the County.

5. Mr. Brent Williams, 214 Loch Haven Drive, spoke in opposition to the project for the reasons of dust and unsightly towers.

The majority of the Board agreed to postpone the decision of rezoning and special use permit for further review and for return to the Planning Commission with significant changes. Ms. Knudson spoke in favor of denial of the applications.

Mr. DePue closed the public hearing.

Mr. Norment made a motion to indefinitely postpone Case Nos. Z-17-89 and SUP-46-89.

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

Mr. DePue declared a break for the audience to disperse at 8:05 p.m.

Mr. DePue reconvened the Board into open session at 8:10 p.m.

1. Proposed Ordinance to Regulate Refuse Hauler

Mr. David Clark, Solid Waste Engineer, stated that questions regarding the cost of vehicle inspection, costs for tow hooks, backup alarms and signs for vehicles asked at the public hearing held on August 7, 1989, were addressed in the proposed ordinance. Staff supported the ordinance requirements to protect the health and safety of the County citizens and employees.

The Board discussed the number of haulers in the County; who would inspect vehicles; and where signs are located on the vehicles.

Mr. DePue opened the public hearing, and as no one wished to speak, he closed the public hearing.

Mr. Edwards made a motion to delete Section 7-17(e), cost of vehicle inspection.

Mr. DePue expressed pleasure at the results of the meeting held with haulers and commended staff on the process.

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

Mr. Edwards made a motion to approve the ordinance as amended.

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

Mr. DePue recognized retired Judge R. T. Armistead in the audience.

2. Case No. AFD-1-89. R.T. Armistead

Mr. Sowers stated that Judge Armistead had applied to create an Agricultural and Forestal District (AFD) on 312.09 acres, located between Centerville and Longhill Roads, east of Forest Glen subdivision, further identified as Parcels (1-17) (1-14) on James City County Real Estate Tax Map No. (31-2); Parcel (1-29) on Tax Map No. (32-2); and Parcel (1-01) on Tax Map No. (31-4).

The Planning Commission concurred with staff and unanimously recommended approval of the proposed AFD for a 4-year term with three restrictions as listed in the resolution.

Mr. DePue opened the public hearing, and as no one wished to speak, he closed the public hearing.

Mr. Norment made a motion to approve the resolution.

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

R E S O L U T I O NCASE NO. AFD-1-89. R. T. ARMISTEADAGRICULTURAL AND FORESTAL DISTRICT

WHEREAS, an application for the creation of an Agricultural and Forestal District has been filed with the James City County Board of Supervisors; and

WHEREAS, in accordance with Sections 15.1-1511(B), (C) and (D) of the Code of Virginia, public notices have been filed, public hearings have been advertised, and public hearings have been held on the application for an Agricultural and Forestal District; and

WHEREAS, the Agricultural and Forestal Districts Advisory Committee at its meeting on December 20, 1989, recommended approval of the application; and

WHEREAS, the Planning Commission following its public hearing on January 9, 1990, recommended approval of the application.

NOW THEREFORE BE IT ORDAINED:

1. That the R. T. Armistead Agricultural and Forestal District is hereby established for a period of four years beginning this 5th day of February, 1990, in accordance with the provisions of Title 13.1, Chapter 36, Sections 15.1-1506 through 15.1-1513, Code of Virginia (1950), as amended.

2. That the district shall include the following parcels:

(31-2)(1-17)	R. T. Armistead	84.5 ac.
(31-2)(1-14)	R. T. Armistead	54.33 ac.
(31-3)(1-29)	R. T. Armistead	132.08 ac.
(31-4)(1-01)	R. T. Armistead	41.779 ac.

provided, however, that all land within 25 feet of the rights-of-way of Longhill Road and Centerville Road shall be excluded from the district.

3. That pursuant to Title 15.1, Chapter 36, Section 15.1-1512 (D) of the Code of Virginia of 1950, as amended, the Board of Supervisors requires that no parcel in the R. T. Armistead Agricultural and Forestal District be developed to a more intensive use without prior approval of the Board of Supervisors. Specifically, the following restrictions shall apply:

- (a) The subdivision of land is to be limited to parcels of 25 acres or more, except where the Board of Supervisors authorizes smaller lots to be created for residential use by members of the owner's immediate family.
- (b) No land within the AFD may be rezoned to any residential, business or industrial zone, and no application for such a rezoning shall be filed before the AFD expires.
- (c) No special use permit shall be issued except for agricultural and forestal activities and sewer extensions consistent with the Master Sewer Plan which are not in conflict with the policies of the district. Only existing dwellings within the AFD shall connect to the above-mentioned sewer extensions.

Mr. Norment suggested that a copy of withdrawal guidelines with a cover letter be sent to each applicant when application is received for an AFD.

4. Case Nos. Z-21-89 and S-106-89. Zoning and Subdivision Ordinance Amendments - Sidewalks

Mr. Sowers stated that these cases are proposed amendments as recommended in the Comprehensive Sidewalk Plan, approved as part of the Comprehensive Plan on December 4, 1989.

In accordance with staff, the Planning Commission, by a 6-3 vote with one abstention, recommended approval of the amendments.

Mr. DePue opened the public hearing.

1. Mr. Gene Farley, 4125 S. Riverside Drive, Lanexa, spoke in opposition to a requirement of sidewalks outside the Primary Service Area.

Mr. DePue closed the public hearing.

Ms. Knudson made a motion to approve the ordinance amendments.

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

5. Case No. SUP-49-89. Nathan and Betty Walker

Mr. Sowers stated that Nathan and Betty Walker had applied for a special use permit to allow an accessory apartment within a single-family dwelling to create a living area for elderly parents on 2.03 acres at 101 Locust Place, further identified as Parcel (2-33) on James City County Real Estate Tax Map No. (13-2).

In accordance with staff, the Planning Commission unanimously recommended approval with a condition listed in the resolution.

Mr. DePue opened the public hearing, and as no one wished to speak, he closed the public hearing.

Mr. Taylor made a motion to approve the resolution.

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

R E S O L U T I O N

CASE NO. SUP-49-89. NATHAN AND BETTY WALKER

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 process; and

WHEREAS, the Planning Commission of James City County, following its public hearing unanimously recommended approval of Case No. SUP-49-89 to permit an accessory apartment in the R-6, Residential Agricultural, District on property identified as Parcel (2-33) on James City County Real Estate Tax Map No. (13-2).

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve the issuance of Special Use Permit No. SUP-49-89 as described herein with the following conditions:

1. If construction has not commenced on the project within 12 months from the date of issuance of the special use permit, it shall become void.

6. Case No. SUP-50-89. Busch Properties Golf Course No. 3

Mr. Sowers stated that Mr. Ronnie Orsborne, of Langley and McDonald, had applied on behalf of Busch Properties for a special use permit to permit an 18-hole golf course on approximately 214 acres of a 1,217.38-acre tract in M-1, Limited Industrial District, located west of Route 60 East between Busch Gardens and Magruder Avenue, further identified as part of Parcel (1-8) on James City County Real Estate Tax Map No. (51.4).

In accordance with staff, the Planning Commission recommended approval with eight conditions listed in the resolution; condition nine was added after the January 9, 1990, meeting.

Mr. DePue opened the public hearing.

Mr. Edwards suggested the addition to Condition 5 of a requirement to use effluent for irrigation purposes if such use proved to be feasible.

Mr. DePue closed the public hearing.

Mr. Norment made a motion to approve the amended resolution.

Board discussions ensued regarding inconsistency with Comprehensive Plan, removal of trees, and golf cart path in conflict with Chesapeake Bay regulations.

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

R E S O L U T I O N

CASE NO. SUP-50-89. BUSCH PROPERTIES GOLF COURSE NO. 3

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 process; and

WHEREAS, the Planning Commission of James City County, following its public hearing, unanimously recommended approval of Case No. SUP-50-89 to permit a golf course in the M-1, Limited Industrial District on property identified as Parcel (1-8) on James City County Real Estate Tax Map No. (51-4).

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve the issuance of Special Use Permit No. SUP-50-89 as described herein with the following conditions:

1. If construction has not commenced on this project within 24 months from the date of issuance the permit, it shall become void.
2. An internal entrance way shall be provided from the Kingsmill Planned Community.
3. No golf course areas shall be located within 50 feet of any residentially zoned property. Any golf course areas located within 100 feet of any residentially zoned property shall be appropriately buffered with landscaping and/or structures as determined by the Development Review Committee.
4. An operations and maintenance plan, including an integrated pest management plan shall be submitted for approval by the Director of Code Compliance or his designee as part of the site plan submittal.
5. An irrigation plan for the golf course shall be submitted for approval by the Director of Code Compliance as part of the site plan submittal. If the plan proposes the utilization of groundwater for irrigation purposes, a feasibility study

investigating the possibility of using effluent from the HRSD sewage treatment plant for irrigation shall be submitted as part of that plan. If found feasible, the effluent shall be used for irrigation purposes.

6. The golf course shall have no more than 1 new entrance on Route 60.
7. This project shall fully comply with all Chesapeake Bay Preservation Act Regulations.
8. The practice area shall not be illuminated for night use.
9. A Phase I archaeological survey shall be completed on the proposed golf course site. The study shall be submitted to and approved by the Planning Director before development plan submittal.

7. Case No. SUP-51-89. C & P Telephone Company Switching Station

Mr. Sowers stated that Mr. L. V. Harris, Jr., had applied on behalf of the C & P Telephone Company for a special use permit to allow the placement of a telephone switching station on 23.6 acres zoned A-2, Limited Agricultural, located at 3131 Ironbound Road, further identified as part of Parcel (1-58) on James City County Real Estate Tax Map No. (47-1).

In accordance with staff, the Planning Commission unanimously recommended approval with conditions listed in the resolution.

Mr. DePue opened the public hearing, and as no one wished to speak, he closed the public hearing.

Mr. Taylor made a motion to approve the resolution.

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

R E S O L U T I O N

CASE NO. SUP-51-89. C & P TELEPHONE COMPANY SWITCHING STATION

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 process; and

WHEREAS, the Planning Commission of James City County, following its public hearing, unanimously recommended approval of Case No. SUP-51-89 to permit a telephone switching station in the A-2, Limited Agricultural, District on property identified as Parcel (1-58) on James City County Real Estate Tax Map No. (47-1).

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve the issuance of Special Use Permit No. SUP-51-89 as described herein with the following conditions:

1. If construction has not commenced on this project within a period of 18 months from the date of issuance of the special use permit, it shall become void.
2. The switching station shall not exceed 300 square feet of floor area and shall not be more than 10 feet in height.
3. As part of the site plan, a landscape plan designed by a landscape architect for this site shall be reviewed and approved by the Development Review Committee. Emphasis shall be placed on buffering this use from Ironbound Road and adjacent properties.

8. Case No. SUP-53-89. W.H. Sparrer, Inc. (John's Used Auto Parts)

Mr. Sowers stated that Mr. Wendell B. Sparrer, of W. H. Sparrer, Inc., had applied for a special use permit to allow the expansion of an automobile junkyard on 4.3 acres in A-1, General Agricultural, located at 8952 Richmond Road, further identified as Parcel (1-8) on James City County Real Estate Tax Map No. (11-1).

In accordance with staff, the Planning Commission unanimously recommended approval with conditions listed in the resolution.

Mr. DePue opened the public hearing.

1. Mr. Wendell Sparrer, co-owner, stated issues had been addressed and asked the Board to approve the special use permit.

2. Mr. B.M. Millner, 1209 Mallicotte Lane, Newport News, representative for Mr. Hans Frank, owner of land across the highway from the junkyard, asked consideration of placing a fence 50 feet from the road for screening, disallowing replacement of a crushing machine, having the Zoning Administrator inspect annually, and limiting the special use permit to 3 years.

3. Mr. George Ford, Barnes Road, employee of Mr. W. H. Sparrer, spoke in favor of Board approval of the special use permit.

4. Mr. Chester Holley, of Chester's Wrecker Service, stated that Mr. Sparrer's junkyard provided a service to the County.

5. Mr. Rob Delaney, Jr., stated the need existed in the County for an automobile junkyard.

Mr. DePue closed the public hearing.

The Board discussed the issues raised by Mr. Millner.

Mr. Norment made a motion to approve the resolution, as recommended by staff and expressed the Board's appreciation to Mr. Millner and Mr. and Mrs. Hans Frank for their interest in improving the County.

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

R E S O L U T I O N

CASE NO. SUP-53-89. W. H. SPARRER, INC. (JOHN'S USED AUTO PARTS)

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 process; and

WHEREAS, the Planning Commission of James City County, following its public hearing, unanimously recommended approval of Case No. SUP-53-89 to permit on automobile graveyard in the A-1, General Agricultural District on property identified as Parcel 1-8 on James City County Real Estate Tax Map No. 11-1.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve the issuance of Special Use Permit No. SUP-53-89 as described herein with the following conditions:

1. Uncrushed vehicles shall not be stacked. Crushed vehicles may be stacked up to four vehicles high provided they are not visible from Richmond Road or Old Route 60 West.
2. No more than 250 total vehicles (crushed and/or uncrushed) shall be placed on the site.
3. Site plan approval by the Development Review Committee shall be required. Site plan approval must be obtained within 6 months of issuance of this permit.
4. A 12-foot high opaque fence shall be erected along the frontage of Richmond Road and the frontage of Old Route 60 West. No vehicles shall be visible from Richmond Road and Old Route 60 West. This fence shall be compatible with the surrounding environment, shall be well constructed (with details and cross sections provided on the required site plan), shall have a pattern which is continuous and consistent, shall have the top aligned parallel except where the height must be adjusted due to grade change, and shall have a base which is not more than 8 inches above the underlying grade. Additional landscaping shall be placed along the outside of the fence as approved by the Development Review Committee. Vehicles shall be set back a

minimum of 10 feet from the inside of the fence. A wire mesh fence 8 to 12 feet high shall be erected around the remainder of the property. The base of the fence shall be not more than 8 inches above the underlying grade.

5. A plan to control hazardous waste runoff shall be submitted to and approved by the Director of Code Compliance as part of the site plan before final site plan approval is granted.
6. The site shall be limited to one entrance on Richmond Road.
7. All vehicles, parts and other debris shall be removed from any of the slopes that border the stream on the site.
8. The owner shall submit an application to the Health Department for a well and a septic permit and receive approval of the application before installing any plumbing facilities.
9. Crushing of vehicles shall not take place before 10:00 a.m. or after 4:00 p.m., Monday through Saturday. No Sunday crushing shall be permitted. An enclosure shall be placed around and above the crusher motor to reduce noise. Openings in the enclosure shall be permitted for mechanical operation, ventilation and exhaust purposes as determined necessary by the Director of Code Compliance.
10. Antifreeze, petroleum, and/or petroleum-based products shall not be disposed of on site. Details of disposal methods shall be submitted to and approved by the Division of Code Compliance as part of the site plan submittal.
11. The crusher equipment shall be limited to that located on the site on December 21, 1989. Normal maintenance and repair shall be permitted. However, any additional or different crushing equipment shall be approved by the Development Review Committee before it is placed on site.
12. All conditions of this permit shall be met within 12 months of the issuance of this permit or it shall become void.

9. Bacon Street - Request for Tax Exempt Status

Mr. Frank Morton, III, County Attorney, stated that the State Code required a public hearing be held to consider certain matters before approval of the resolution. Mr. Morton further stated that if approved, the resolution would be forwarded to our State legislator for consideration during the 1990 session of the General Assembly.

Mr. DePue opened the public hearing.

1. Mr. Ed Riley, 611 Tam-O-Shanter, questioned the fee charged by Bacon Street as a nonprofit organization.

Mr. DePue closed the public hearing.

Mr. Norment made a motion to approve the resolution.

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

R E S O L U T I O N

BACON STREET/REQUEST FOR TAX EXEMPT STATUS

WHEREAS, the Drug Action Center, Inc., trading as Bacon Street, is a duly constituted nonprofit corporation whose purpose is to provide counseling, education and treatment to residents of James City County who are involved in drug and alcohol abuse; and

WHEREAS, funding for this organization is provided by Federal, State and local tax dollars; and

WHEREAS, Bacon Street is recognized as an exempt organization from Federal income tax under Section 501(c)(3) of the Internal Revenue Code; and

WHEREAS, Bacon Street acquired an office condominium in March 1989 as a permanent home for the organization at 247 McLaws Circle, Suite 100, James City County, Virginia 23185; and

WHEREAS, the Board of Supervisors prior to the adoption of this Resolution has considered the questions set out in Section 30-19.04 of the Code of Virginia, 1950, as amended; and

WHEREAS, the Board supports Bacon Street's request for tax exempt status and recommends that Bacon Street be classified as an educational and charitable organization; and

WHEREAS, the said corporation has requested that it be exempted from real property taxes as provided in Article 10, Section 6 of the Constitution of Virginia.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of James City County, Virginia, that it hereby requests the 1990 session of the General Assembly to confer tax exempt status on any property owned by Bacon Street, pursuant to Section 30-19.04 of the Code and Article 10, Section 6 of the Constitution of Virginia.

F. BOARD CONSIDERATIONS

Mr. Taylor requested that Mr. Stanley E. Ellis, Jr., be allowed to speak to the Board.

1. Mr. Stanley E. Ellis, Jr., 6033 River Road, Cypress Point, stated that the Cypress Point neighborhood had not received information regarding the widening and maintenance of the road over Cypress Point Dam. He further stated that existing trees and shrubs would be destroyed. Mr. Ellis requested that the work cease and the road remain as a dirt street.

Mr. DePue advised that staff would be in contact with Mr. Ellis for his input which would be included in a formal report prepared by staff for review by the Board.

1. Dam Agreement for the Vineyards Subdivision

Mr. Morton stated that a five-party Deed and Agreement for a proposed road crossing a dam in the Vineyards Subdivision was required because the Virginia Department of Transportation would not accept the subdivision streets into the system until an agreement provided that the developer or its successor would maintain the dam and that an alternate roadway facility for public ingress and egress was guaranteed to lots served by VDOT which are not accessible if the dam failed.

Ms. Knudson made a motion to approve the resolution and agreement.

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

R E S O L U T I O N

DAM AGREEMENT, FOR VINEYARDS SUBDIVISION

WHEREAS, a Deed and Agreement is required to address the legal requirements of the Virginia Department of Transportation to accept the maintenance responsibility for a roadway over a private dam in the Vineyards Subdivision; and

WHEREAS, the attached five-party Deed and Agreement meets the Virginia Department of Transportation requirements and protects the interests of the County.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of James City County, Virginia, that the attached Deed and Agreement for the Vineyards Subdivision is approved and the Chairman is authorized to execute the Agreement on behalf of the County.

Mr. DePue requested a formal report on Virginia Department of Transportation design standards.

6. PUBLIC COMMENT

1. Mr. Bill Bryant, 4985 Hickory Sign Post Road, requested the Board join the City of Williamsburg in deliberate study and discussion of settling the Bruton Heights issue.

2. Mr. Ed Riley, 611 Tam-O-Shanter, stated that he would return and speak at the February 26, 1990 meeting.

H. REPORTS OF THE COUNTY ADMINISTRATOR - None

I. BOARD REQUESTS AND DIRECTIVES

Mr. Edwards brought forward an additional agenda item.

1. Proposed Land Use Legislation

Mr. Morton stated that House Bills 677, 708, 721, 1121 and 1122 represented substantial restrictions on the County's ability to consider rezonings, special use permits, comprehensive downzonings and local land use matters. Staff recommended approval of the resolution.

Mr. DePue made a motion to approve the resolution.

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

RESOLUTION

HOUSE BILLS 677, 708, 721, 1121 and 1122

WHEREAS, the Board of Supervisors has in its 1990 Legislative Program taken a position urging the General Assembly to refrain from adopting legislation that would restrict land use powers of localities to establish, modify or enforce zoning classifications; and

WHEREAS, the General Assembly has before it several bills which would severely impact the ability of James City County to deal with local land use decisions.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of James City County, Virginia, that it urges the General Assembly to defeat House Bills 677, 708, 721, 1121 and 1122 for the following reasons as these bills:

1. Retroactively freeze local zoning decisions without the local governing body's or the community's knowledge that, at the time of the zoning decision the property at issue would forever be immune from any future zoning amendments.
2. Would make the local zoning ordinance a binding contract where neither the Board or the applicant realized or intended it to be such at the time of the rezoning.

3. Would preclude James City County from implementing its Comprehensive Plan revisions which are currently underway by precluding it from zoning certain property in compliance therewith in the absence of the landowner's consent.
4. Would usurp the authority of the Board to rezone property by giving the landowner veto power over local government action despite changes in circumstances that would result in a negative impact on the health, safety and welfare of James City County residents.

BE IT FURTHER RESOLVED, that the adoption of these bills without time for proper consideration and study by the General Assembly and the localities impacted has the potential to do irreparable harm to all effected localities.

Mr. DePue requested immediate consideration to a landscape ordinance.

Mr. Norment requested immediate consideration to a shopping center ordinance.

Mr. Norment made a motion to adjourn.

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

The Board adjourned at 9:58 p.m.



David B. Norman
Clerk to the Board

BOARD OF SUPERVISORS
JAMES CITY COUNTY
VIRGINIA

ORDINANCE NO. 131A-3

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 7, GARBAGE AND REFUSE, OF THE CODE OF THE COUNTY OF JAMES CITY, VIRGINIA, BY CREATING ARTICLE I, IN GENERAL, BY ADDING NEW SECTIONS 7-1, 7-2; BY RENUMBERING EXISTING SECTIONS 7-1, 7-3 AND 7-4; BY REPEALING EXISTING SECTION 7-2; BY AMENDING EXISTING SECTIONS 7-1 AND 7-3; BY REPEALING AND REPLACING EXISTING SECTION 7-5; BY CREATING ARTICLE II, REFUSE REMOVERS, BY ADDING SECTIONS 7-8 THROUGH 7-15; AND BY CREATING ARTICLE III, REFUSE PERMIT, BY ADDING SECTIONS 7-16 THROUGH 7-23.

BE IT ORDAINED by the Board of Supervisors of the County of James City, Virginia, that Chapter 7, Garbage and Refuse, is hereby amended and reordained by creating Article I, In General, by adding new Section 7-1. Purpose, and Section 7-2. Definitions; by renumbering and amending Section 7-3. Prohibited disposition of wastes—Generally; by renumbering and amending Section 7-4. Maintenance of premises—Duty of owners, occupants and persons in charge; by renumbering Section 7-5. Same—Recourse of county upon failure of owner or occupant; Section 7-6. Presumptions; and Section 7-7. Penalty; by creating Article II, Refuse Removers, by adding Section 7-8. General regulations for removing and transporting refuse; Section 7-9. Requirements for refuse removal vehicle construction and equipment; Section 7-10. Identification of vehicles; Section 7-11. Periodic inspection of vehicles; Section 7-12. Transfer of refuse from one vehicle to another; Section 7-13. Where vehicles to be emptied, Section 7-14. Vehicles to be emptied completely and cleaned; and Section 7-15. Notice required prior to termination of business; by creating Article III, Refuse Permit, by adding Section 7-16. Refuse permit required, Section 7-17. Application procedure, Section 7-18. Inspection of applicant's vehicles; Section 7-19. Issuance or denial of refuse permit, Section 7-20. Assignment of permit number to vehicles, Section 7-21. Expiration; renewal, Section 7-22. Surrender upon termination of business, and Section 7-23. Suspension from use of landfill; by repealing existing Section 7-2. Same - Upon property of another person; and by repealing and replacing existing Section 7-5. Vehicles used in business of garbage and refuse disposal.

Chapter 7. Garbage and Refuse

Article I. In General.

Section 7-1. Purpose.

It is the purpose of this chapter to aid in refuse control throughout the County in order to protect public health, safety and welfare.

Section 7-2. Definitions.

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

Ashes: The residue resulting from the burning of wood, coal, coke or other combustible material.

County Administrator: The County Administrator of James City County.

Garbage: All animal and vegetable waste resulting from the handling, preparation, cooking or consumption of food.

Litter: All waste material, including, but not limited to disposable packages or containers, but not including the wastes of the primary processes of mining, logging, sawmilling, farming or manufacturing.

Manager: The General Manager of the James City Service Authority or his designee.

Refuse: All solid waste products having the character of solids rather than liquids and which are composed wholly or partially of materials such as garbage, trash, litter, residues from clean up of spills or contamination, or other discarded materials.

Refuse remover: Any person, firm or corporation or any agent or employee, thereof, engaged in removing and transporting refuse for compensation from two or more residential, commercial or industrial establishments, or any combination thereof, in the county.

Refuse vehicle: Any truck or trailer used for transporting refuse from the premises from which it is collected to the point of refuse disposal.

Section 7-3. Prohibited disposition of wastes—Generally.

It shall be unlawful for any person to dispose of any garbage, trash, litter, refuse, rubbish or other waste matter, whether liquid or solid, in any well, spring, reservoir, watercourse or body of water, or upon any street, sidewalk, or public or private grounds other than grounds designated by governmental authority for such purpose and then only in the manner provided by governmental regulations relating thereto.

Section 7-4. Maintenance of premises—Duty of owners, occupants and persons in charge.

It shall be the duty of each owner, occupant and person in charge of any real property in the county to maintain such property at all times free from any accumulation of garbage, trash, litter, refuse or other waste matter, whether liquid or solid, which might endanger the health or safety of residents of the county or otherwise constitute a nuisance; and to provide for the cutting on vacant developed or undeveloped property of grass, weeds and other foreign growth as often as may be necessary to prevent breeding and harboring places for insects, reptiles and rodents and to prevent other hazards to the health or safety of residents of the county or other nuisances.

State law reference—Authority of county to provide for removal of trash, garbage, weeds, etc., Code of Va. Section 15.1-11.

Section 7-5. Same—Recourse of county upon failure of owner or occupant.

(a) The county administrator or his designee may, and upon complaint by any responsible person that conditions exist on any real property in violation of Section 7-4 shall, investigate conditions existing on real property in the county at any time; and upon determination by the county administrator or his designee, following investigation, that the owner, occupant or persons in charge of any real property in the county stands in violation of his duty as provided in Section 7-4 and directing him to take such action as may be necessary to rectify such conditions within such time, not more than 10 days, as shall be stated in the notice.

(b) If, 10 days after the service of any such notice, the directive thereof has not been complied with, the county administrator or his designee shall proceed to have such work done as may be necessary to abate any condition which might endanger the health or safety of residents of the county and all expenses resulting therefrom shall be chargeable to and paid by the owner of such property and may be collected by the county as taxes and levies are collected; and all charges not so collected shall constitute a lien against such property. (Ord. No. 131A-1, 8-13-79)

Section 7-6. Presumptions.

When a violation of the provisions of this Chapter has been observed by any person, and the matter dumped or disposed of on the highway, right-of-way, property adjacent to such highway or right-of-way, or private property, has been ejected from a motor vehicle, the owner or operator of such motor vehicle shall be presumed to be the person ejecting such trash, garbage, refuse, litter or other unsightly matter; provided, however, that such presumption shall be rebuttable by competent evidence. (Ord. No. 131A-2, 8-8-83)

Section 7-7. Penalty.

Any person convicted of a violation of this Chapter shall be guilty of a misdemeanor and upon conviction thereof shall be punished by fine not exceeding \$1,000.00 or by confinement in jail for a period not exceeding 12 months, either or both; provided, however, that the Court may suspend the imposition of any sentence on condition that the defendant volunteer his services for such period of time as the Court may designate to remove litter from the highway. (Ord. No. 131A-2, 8-8-83)

ARTICLE II. REFUSE REMOVERS

Section 7-8. General regulations for removing and transporting refuse.

It shall be unlawful for any refuse remover to fail to comply with the following provisions:

(1) Refuse shall be removed in such a manner that it does not create a nuisance or adversely affect public health.

(2) Refuse shall be removed in such a manner and transported so that it does not spill or fall into a street, nor shall it be dumped, spilled, thrown or leaked into any street, sewer inlet or vacant lot.

(3) No known harmful material, including, but not limited to, materials which are explosive, toxic, radioactive, highly combustible by nature or burning, shall be removed for disposal, except with the written permission of the county administrator, requested in writing, with a copy thereof sent to the Manager and to the Landfill Superintendent. This provision is not applicable to materials loaded and carried at the direction of public officials, public employees or public servants executing their duties in emergencies.

Section 7-9. Requirements for refuse removal vehicle construction and equipment.

It shall be unlawful for any vehicle used by refuse removers for removing and transporting refuse to fail to meet the following requirements:

(1) The bodies of all such vehicles shall be constructed so as to prevent the refuse from spilling, leaking or being blown or hurled from the vehicle or deposited upon any street during loading or while in transit.

(2) Non-watertight vehicle bodies may be used; provided, that any liquid or semiliquid refuse transported shall be in watertight containers.

(3) The vehicle body shall be so constructed that no refuse can be carried at any place other than in the enclosed body.

(4) All vehicles, other than those which are completely enclosed, shall be equipped with a tarpaulin or other cover which shall be constructed and employed so as to prevent refuse from falling from the vehicle onto the street.

Section 7-10. Identification of vehicles.

It shall be unlawful for any refuse vehicle to fail to have permanently affixed the permit number assigned to such vehicle pursuant to Section 7-20, together with the company name and telephone number, the same to be affixed to both sides of the vehicle on the door of the cab or at the farthest point forward on the truck body, in letters and numbers not less than four inches high, except that the permit number shall be four inches high. In addition, the permit number shall be placed on the rear of the vehicle in numbers four inches high. The above identification shall be painted in a conspicuous color contrasting with that of the vehicle.

Section 7-11. Periodic inspection of vehicles.

All refuse vehicles used by refuse removers shall be made available for inspection, in addition to the inspections required by Article III of this chapter, upon request of the Manager in writing. A reasonable time shall be provided to make a vehicle available for such inspections. Failure to make a vehicle available for inspection within 24 hours of such written request shall be unlawful.

Items to be checked include, but are not to be limited to, cleanliness, watertightness (including seals) of closed bodies, tarpaulin covers (no rugs or carpets will be approved), if required, audible alarms (horn or automatic backup alarm), tires, a frame-mounted front tow hook, brake lights, and the name, phone number and permit number of the refuse remover. All items appropriate for the type of vehicle shall be installed and functioning for the vehicle to be approved. No vehicle bearing an expired or "Rejected" State of Virginia vehicle inspection sticker shall be permitted to dump at the County Landfill.

Section 7-12. Transfer of refuse from one vehicle to another.

It shall be unlawful for refuse removers to transfer refuse, other than refuse in containers, from one vehicle to another, except in case of breakdown, in which case the Manager shall be immediately notified.

Section 7-13. Where vehicles to be emptied.

It shall be unlawful for any vehicle used by a refuse remover to be emptied of refuse or any other materials, including but not limited to liquid materials, in the county on any ground or location other than a sanitary landfill or other approved disposal facility duly licensed by the county or maintained by the county. However, in a bonafide emergency, such as a fire in the truck, the refuse remover may empty the truck in a clear area so as not to endanger life or property. The refuse remover shall be responsible for cleaning up the refuse immediately upon resolving the emergency.

Section 7-14. Vehicles to be emptied completely and cleaned.

Each vehicle used for refuse removal or transportation shall be completely emptied each time it is dumped and thoroughly cleaned twice a week when in use. Failure to comply with this requirement shall be unlawful.

Section 7-15. Notice required prior to termination of business.

It shall be unlawful for a refuse remover to fail to notify, in writing, the Manager and each customer, at least thirty days prior to the date of the remover's termination and discontinuance of his business. In addition, it shall be unlawful for a refuse remover to fail to notify an individual customer at least thirty days prior to discontinuance of service to that customer.

ARTICLE III. REFUSE PERMIT

Section 7-16. Refuse permit required.

It shall be unlawful for a refuse remover to remove or transport refuse in the county, unless he has a current refuse permit issued pursuant to the provisions of this chapter.

Section 7-17. Application procedure.

(a) Application for a refuse permit required by this article shall be filed with the Manager. Such application shall state the full name, address and telephone number of the applicant, the business name, address and telephone number, if different from the applicant, and shall state, generally, the area(s) within the county that the applicant serves, or proposes to serve, and the frequency of proposed collections. Also included shall be a list of all vehicles to be used in the refuse remover's collection of county refuse. This list shall include make, model, year, serial and license plate numbers for each vehicle.

(b) No refuse permit shall be issued until the applicant therefor, in addition to all other requirements set forth, shall file with the Manager evidence of satisfactory automobile liability insurance policy covering all operations of such applicant pertaining to such business and all vehicles to be operated in the conduct thereof, as a minimum, in the amount required by the Department of Motor Vehicles, Commonwealth of Virginia. The policy may be written to allow no more than the first \$100.00 of liability for damage to property to be deductible. The policy shall provide for written notification to the Manager by the insured and the insurance carrier, of any cancellation of said policy not less than twenty days prior to the effective date of cancellation. If the applicant's insurance is cancelled, the applicant shall obtain a new policy prior to the effective date of the cancellation or the refuse permit shall be revoked. The county shall be provided with a certificate of insurance from the insurance carrier at the time application for permit is made.

(c) Each applicant for a refuse permit shall be required to furnish to the Manager and to all customers, prior to commencement of collection, a statement of service. The statement of service shall include the following:

- (1) Name of company, address and phone number;
- (2) Notice of company rules and regulations concerning collection; (such rules and regulations shall be consistent with the provisions of this Chapter);
- (3) Notice of company policy concerning collection of refuse on legal holidays, snow days or during other extreme weather conditions.

(d) Each applicant for a refuse permit shall include with the application a copy of a current business license for said refuse removal business.

Section 7-18. Inspection of applicant's vehicles.

The applicant for a refuse permit under this division shall have all vehicles used or to be used for refuse removal or transportation inspected at a reasonable time and place to be designated by the Manager. In the event of an emergency requiring the immediate replacement of a vehicle, the refuse permit holder shall notify the Manager of such replacement and have the replacement vehicle inspected by the Manager within five days after it is placed in use. All items listed in Section 7-11 of this chapter shall be checked during this inspection.

Section 7-19. Issuance or denial of refuse permit.

The Manager shall issue a refuse permit required by this article, upon satisfactory finding that the applicant has complied with all applicable sections of this article. The refuse permit shall be issued or denied within thirty days of the receipt of the application. A denial shall be accompanied by the reasons for the denial. Three months from the date of denial, the application shall expire. Within that period of time, the Manager shall issue a permit upon finding that the applicant has come into compliance with the provisions of this article and the items noted in the denial.

Section 7-20. Assignment of permit number to vehicles.

Upon the issuance of a permit under this division, the Manager shall assign all vehicles a permit number, which shall be affixed to the vehicle, as provided in Section 7-10.

Section 7-21. Expiration; renewal.

All permits issued under this chapter shall expire on the thirtieth of June following the date of issue. All vehicles shall be inspected annually and permits renewed between May first and June thirtieth of each year.

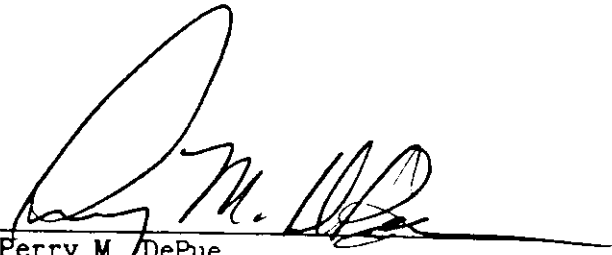
Section 7-22. Surrender upon termination of business.

On the date a refuse remover discontinues business, he shall surrender to the Manager the permit issued to him under this division. Failure to surrender the permit shall be unlawful.

Section 7-23. Suspension from use of Landfill.


Any refuse remover violating any section of this chapter shall, in addition to any criminal penalties, be subject to suspension from use of the county landfill for a period of time to be determined by the Manager. Such suspension shall be in writing and shall detail the cited violation, or violations. Any refuse remover so suspended shall have ten days from the receipt of the notice of suspension to appeal the action to the County Administrator in writing. The County Administrator shall afford the refuse remover a hearing within seven days of the receipt of such appeal. The effective dates of the suspension shall begin ten days after the notice of suspension, if not appealed, or upon notice from the County Administrator that an appeal has been denied.

0258U



Perry M. DePue
Chairman, Board of Supervisors

ATTEST:



David B. Norman
Clerk to the Board

<u>SUPERVISOR</u>	<u>VOTE</u>
NORMENT	AYE
TAYLOR	NAY
EDWARDS	AYE
KNUDSON	AYE
DEPUE	AYE

Adopted by the Board of Supervisors of James City County, Virginia,
this 5th day of February, 1990.

0258U

FEB 5 1990

ORDINANCE NO. 31A-118

BOARD OF SUPERVISORS
JAMES CITY COUNTY
VIRGINIA

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 20, ZONING, OF THE CODE OF THE COUNTY OF JAMES CITY, VIRGINIA, BY AMENDING ARTICLE II. SITE PLAN, SECTION 20-39. SAME-SUBMITTAL CONTENTS; ARTICLE IV, DISTRICTS, DIVISION 1. GENERALLY, BY ADDING SECTION 20-103. SIDEWALKS; BY AMENDING DIVISION 7. RESIDENTIAL PLANNED COMMUNITY DISTRICT, R-4, SECTION 20-213. DOCUMENTS REQUIRED FOR SUBMISSION; AND DIVISION 8. MULTIFAMILY RESIDENTIAL DISTRICT, R-5, SECTION 20-251. REQUIREMENTS FOR IMPROVEMENTS AND DESIGN.

BE IT ORDAINED by the Board of Supervisors of the County of James City, Virginia, that Chapter 20, Zoning, is hereby amended and reordained by amending Section 20-39. Same-submittal contents; by adding Section 20-103. Sidewalks; by amending Section 20-213. Documents required for submission; and Section 20-251. Requirements for improvements and design.

Chapter 20.

Article II. Site Plan

Section 20-39. Same—Submittal Contents.

The site plan shall as a minimum contain:

- (a) Title of project.
- (b) Name of engineer, architect, landscape architect, planner and-or licensed surveyor.

- (c) Location of site by an insert map at a scale no less than one inch equals 2,000 feet.
- (d) Indication of the scale, north arrow, zoning, parcel number and such information as the names and numbers of adjacent roads, streams, and bodies of water, railroads and subdivisions, or other landmarks sufficient to clearly identify the location of the property.
- (e) Boundary survey of site.
- (f) All existing and proposed streets and easements, their names, numbers, and width; existing and proposed utilities, watercourses and their names and owners.
- (g) Location, type and size of all entrances to the site.
- (h) Existing topography and proposed finished contours.
- (i) A landscape plan showing woodline before site preparation with species and average diameter of trees indicated with location and diameter of single trees in open areas, areas to be screened, fenced, walled and-or landscaped, with approximate arrangements, plant types and sizes, and size and type of trees to be removed having a minimum diameter breast height of 12 inches.
- (j) Provisions for off-street parking, loading spaces and pedestrian walkways; including existing and proposed sidewalks; calculations indicating the number of parking spaces required and the number provided.
- (k) Number of floors, floor area, height and location of each building.
- (l) For a multifamily residential development, the number, size and type of dwelling units; location, type, and percentage of total acreage of recreation facilities.
- (m) Detailed utility layout including water and sanitary sewer plan with profiles; location of electrical transmission lines, gas pipelines, streetlights, and fire hydrants; and showing the locations of garbage and trash disposal facilities.
- (n) Provisions for the adequate control of storm water drainage and erosion and sedimentation, indicating all proposed temporary and permanent control measures.
- (o) Computations notation to include the total site area, and the amount and percentage of the site covered by open space and buildings, or dwelling units for multifamily residential developments.

- (p) Bylaws of Homeowner Association where applicable.
- (q) Notification of adjacent property owners. It shall be the responsibility of the applicant for site plan approval to notify all adjoining property owners, advising them of the submission of plans to the County and that plans are on file and available for review in the County Department of Planning and Development. No site plan shall be reviewed until the applicant presents evidence to the satisfaction of the Planning Director, or his designee, that all property owners contiguous to and sharing a common property line with said applicants or whose property lies directly across from the proposed development, have been notified in writing prior to the time the site plan is reviewed. Evidence that such notice was sent by mail to the last known address of such owner as shown on the current real estate tax assessment books shall be deemed adequate compliance.

If the administrator determines that one or more of the above submittal requirements is not applicable to the proposed project the administrator may waive those requirements.

The submittal of a site plan with insufficient information shall result in the return of the plans to the applicant without review; such deficiencies shall be noted in written form.

Article IV. Districts Division 1. Generally

Section 20-103. Sidewalks.

Sidewalks shall be required for all projects requiring site plan review and residential developments in accordance with the following:

1. Sidewalks shall be built to VDOT standards and located within VDOT right-of-ways when they are to be publicly maintained. If sidewalks are to be privately maintained, they shall be built to standards acceptable to the County Engineer or the Planning Commission.
2. Sidewalk plans providing for internal pedestrian access between parking areas, buildings and public areas as well as access to abutting property shall be provided for multi-family residential development and for nonresidential development sites.
3. Sidewalks shall be provided along all existing public roads abutting property to be developed where such sidewalks are identified in the Transportation Element of the Comprehensive Plan.
4. Sidewalks shall be provided for one block commencing at the entrance(s) on at least one side of all entrance roads serving residential developments which shall or would be expected to serve more than five hundred vehicles per day based on the application of the Institute of Transportation Engineers traffic generation rates to a projected density assigned to

undeveloped land remaining within a proposed subdivision. Sidewalks shall be provided on one side of all roads which shall serve or would be expected to serve more than one thousand vehicles per day based on the method listed above.

Upon a favorable recommendation of the Development Review Committee, the Planning Commission may modify the requirements listed in Item 4 above provided that equivalent pedestrian facilities have been provided which adequately provide for pedestrian access within the development and to abutting property.

Division 7. Residential Planned Community District, R-4.

Section 20-213. Documents Required for Submission.

- (a) Generally. The applicant shall submit the following documents to the Planning Director for submission to the Planning Commission:

- (1) Application for rezoning.
- (2) Master Plan, 21 copies.
- (3) Community Impact Statement, ten copies.

The purpose of the Master Plan and Community Impact Statement is to set an overall population and development ceiling for the Planned Community, to determine off-site impacts of the development, and to identify the general arrangement of land uses within it.

- (b) Master Plan. The Master Plan shall be prepared by a licensed surveyor, engineer, architect, landscape architect or planner. A scale may be used so that the entire parcel can be shown on one piece of paper no larger than 30 by 40 inches. It shall include:

- (1) An insert map at a scale of not less than one inch to one mile, showing the property in relation to surrounding roads, subdivisions or major landmarks.
- (2) A north arrow.
- (3) The location of existing property lines, watercourses or lakes, wooded areas and existing roads which are within or adjoin the property.
- (4) The approximate boundaries of each section, land use or density, a general circulation plan with an indication of whether streets are to be public or private, and the approximate location of recreation areas, sidewalks and other pedestrian access ways, common open space areas,

public facilities and areas proposed for dedication to public use within the project. Each residential section of the Master Plan shall be designated according to the following categories:

<u>Area Designation</u>	<u>Dwelling Type</u>
A	Single family
B	Two-family, multi-family structures containing three or four dwelling units, or townhouses
C	Multi-family structures less than three stories and containing more than four dwelling units
D	Multi-family structures of three or more stories and containing more than four dwelling units

The above designation shall be the highest and densest use to which such land may be put without amending the Master Plan. However, where the Planning Commission finds the project does not vary the basic concept or character of the planned community and where it does not exceed the maximum density permitted under Section 20-223, the Planning Commission may approve Final Plans for projects with lower densities or a lower category of uses than those shown on the Master Plan without amending the Master Plan. Common open space shall be located so as to enhance the living environment of the residential planned community. Generally this shall mean that the common open space shall be distributed throughout the community and not aggregated in large areas that provide little or no benefit to the individual uses or the community at large.

- (5) As marginal data it shall contain a table which shows, for each section or area of different uses, the use, approximate phasing, approximate number of dwelling units and density for residential areas, square feet of floor space for commercial areas, and their acreage.
- (6) Schematic plans which shall indicate the phasing of development and master water, sewer and drainage plans.
- (7) A statement on the guarantees and assurances to be provided for the maintenance of common open space, recreation areas, sidewalks, parking, private streets, and other privately-owned but common facilities serving the project.

(c) Community Impact Statement. The Community Impact Statement shall describe the probable effects of the proposed development upon the community. At a minimum, it shall address the following topics:

- (1) Adequacy of existing public facilities and services to serve the development. Analysis shall be made of sewer, water, schools, fire stations and other major locally financed facilities.
- (2) Additional on-site and off-site public facilities or services which would be required as a result of the development.
- (3) Traffic to be generated by the development, the capacity of surrounding roads, specific road improvements necessary.
- (4) Fiscal impact of the proposed development, such as estimated tax revenues to be generated versus the cost of public improvements to be financed by the County or the State.
- (5) Impact of construction and permanent changes in land use upon surrounding property, such as aesthetics, vegetation, stormwater drainage, noise and air or water pollution.
- (6) Employment opportunities to be generated by the development.

Division 8. Multi-family District, R-5

Section 20-251. Requirements for improvements and design.

- (a) Sewer and water. All dwelling units within the Multi-Family Residential District, R-5, shall be served by publicly-owned and operated sewer and water systems.
- (b) Open Space. At least 35% of the gross area of the site shall be retained in open space as defined in Section 20-2.
- (c) Recreation. A playground area or areas with playground equipment shall be provided by the developer. Such areas shall be centrally located and total at least one-half acre for every 50 dwelling units; provided, that the total shall not exceed 10% of the gross area of the site. For multi-family projects with less than 50 dwelling units, the recreation areas shall total 10% of the gross acreage of the site. The developer shall provide and install playground equipment specified on the site plan prior to the issuance of any Certificates of Occupancy. Recreation areas and facilities may be deeded to a residents' association.
- (d) Utility lines. All utility lines, including electrical, telephone, and cable television, shall be placed below ground.

- (e) Parking. Off-street parking facilities shall be provided in accordance with Section 20-12 of this Chapter.
- (f) Bicycle storage racks. Bicycle storage and parking racks shall be provided with a capacity of 0.5 space for each dwelling unit in townhouse, apartment, and condominium developments.
- (g) Streets. All streets shall meet the design and construction requirements of the State Department of Highways and Transportation, or the requirements of the County Subdivision Regulations, whichever is greater. All streets shall be consistent with the major thoroughfare plan of the County Comprehensive Plan. The traffic generated by a Multi-Family Residential District, R-5, shall not exceed the capacity of adjoining thoroughfares. The daily traffic shall be determined by multiplying the number of proposed dwelling units by seven (7) vehicle trips per day and compared to the existing traffic and road capacity as determined by the Highway Engineer. The construction of private streets shall be guaranteed by appropriate surety, letter of credit, cash escrow or other form of guarantee approved by the County Attorney and Director of Code Compliance.
- (h) Fire hydrants. Fire hydrants shall be at locations and of types approved by the Director of Code Compliance and County Fire Chief. No structure within the project shall be further than 400 feet from a hydrant.
- (i) Trash collection. If containers are provided, they shall be conveniently located to serve all dwelling units. The sites for such containers shall be attractively screened by natural vegetation, landscaping or fences.
- (j) Streetlights. Streetlights shall be provided, as required by Section 20-12(B)(5) of this Chapter and the County Subdivision Ordinance. All streetlights shall be specified on the site plan, generally at intersections and in parking lots and other public areas. The light shall be directed so as not to produce objectionable glare on adjacent property or into residences within the development. No lighting fixture on pedestrian or bicycle paths, or parking lots shall exceed a height of 15 feet.
- (k) Site plan. A site plan for the project must be approved in accordance with Article II of this Chapter.
- (l) Building height. A building may exceed 35 feet in height only upon the granting of a height limitation exemption by the Board of Supervisors. Upon application, the Board of Supervisors may grant a height limitation exception upon finding that:
 - (1) Such building will not obstruct light from adjacent property;

- (e) Parking. Off-street parking facilities shall be provided in accordance with Section 20-12 of this Chapter.
- (f) Bicycle storage racks. Bicycle storage and parking racks shall be provided with a capacity of 0.5 space for each dwelling unit in townhouse, apartment, and condominium developments.
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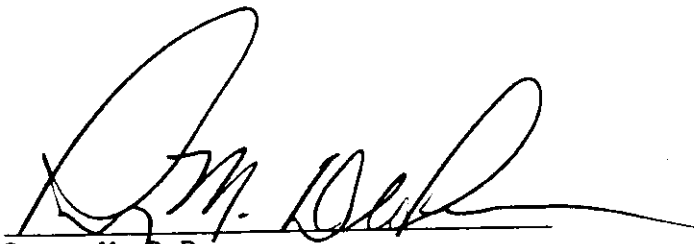
- (2) Such building will not impair the enjoyment of historic attractions and areas of significant historic interest;
 - (3) Such building will not impair property values in the surrounding area;
 - (4) Such building is adequately designed and served from the standpoint of safety, and the County Fire Chief certifies that the fire safety equipment to be installed is adequately designed and that the building is reasonably well located in relation to fire stations and equipment, so as to offer adequate protection to life and property; and
 - (5) Such building would not be contrary to the public health, safety and general welfare.
- (m) Maximum number of units and facade variety. A maximum of ten townhouse units shall be included in one structure. The facade of townhouses within a group shall be changed by variation in the depth of front yards, building materials and-or design, so that no more than two abutting units shall be of like appearance.
 - (n) Private yards. Each two-family dwelling unit and each townhouse unit shall open directly into a private yard of a minimum of 200 square feet.
 - (o) Minimum distances. The distance between two main structures on a single lot shall be a minimum of the height of the taller structure. Accessory structures shall be a minimum of 10 feet from any other structure.
 - (p) Drainage Facilities. Adequate facilities for the control of storm water, erosion and sedimentation shall be provided in accordance with the Virginia Erosion and Sediment Control Handbook and the Virginia Department of Highways and Transportation Drainage Manual.
 - (q) Natural features and amenities. Existing features which would enhance the residential environment or the County as a whole such as trees, watercourses, historic spots and similar features shall be preserved wherever possible.
 - (r) Guarantee for improvements. The Zoning Administrator shall not issue a temporary Certificate of Occupancy or Certificate of Occupancy until the applicant has guaranteed the completion of public improvements, including but not limited to public roads, public water and public sewer facilities, shown on the approved site plan by providing either a letter of credit, certified check, cash escrow, cash payment, or other surety, approved by the County Attorney.
 - (s) Maintenance of common open space, recreation facilities, etc. The maintenance of common open space, recreation facilities, sidewalks, parking, private streets and other privately-owned

but common facilities serving the project shall be guaranteed by the developer, project owner or a properly established homeowners' association. (Ord. No. 31A-88, Section 20-80.13, 4-8-85; Ord. No. 31A-89, 9-9-85; Ord. No. 31A-91, 12-2-85)

0598A

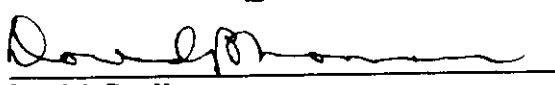
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0598A



Perry M. DePue
Chairman, Board of Supervisors

ATTEST:



David B. Norman
Clerk to the Board

<u>SUPERVISOR</u>	<u>VOTE</u>
NORMENT	AYE
TAYLOR	NAY
EDWARDS	AYE
KNUDSON	AYE
DEPUE	AYE

Adopted by the Board of Supervisors of James City County, Virginia,
this 5th day of February, 1990.

0598A

FEB 5 1990

ORDINANCE NO. 30A-17

BOARD OF SUPERVISORS
JAMES CITY COUNTY
VIRGINIA

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 17, SUBDIVISIONS, OF THE CODE OF THE COUNTY OF JAMES CITY, VIRGINIA, BY AMENDING ARTICLE II. PROCEDURES AND DOCUMENTS TO BE FILED. SECTION 17-27. PRELIMINARY PLAN - SUBMITTAL REQUIREMENTS; AND ARTICLE III. REQUIREMENTS FOR DESIGN AND MINIMUM IMPROVEMENTS BY ADDING SECTION 17-51. SIDEWALKS.

BE IT ORDAINED by the Board of Supervisors of the County of James City, Virginia, that Chapter 17, Subdivisions is hereby amended and reordained by amending Section 17-27. Preliminary Plan - submittal requirements; and by adding Section 17-51. Sidewalks.

Chapter 17.

Article II. Procedures and Documents to be filed.

Section 17-27. Preliminary Plan - Submittal Requirements.

The preliminary plan for a minor or major subdivision shall be on a blue-line or black-line print. The scale shall be one hundred feet to the inch except in cases where the agent approves an alternate scale. If more than one sheet is used, sheets shall be numbered in sequence and an index shall be provided. The preliminary plan for a minor or major subdivision shall include the following information:

- (a) The name of the subdivision, owner, subdivider, and surveyor or engineer, the date of drawing, number of sheets, north arrow and scale. If true north is used, the method of determination shall be shown.

- (b) The location of the proposed subdivision on an inset map at a scale of not less than one inch equals two thousand feet showing adjoining roads, their names and numbers, subdivisions and other landmarks.
- (c) A boundary survey, or existing survey of record, providing a closure with an accuracy of not less than one in twenty-five hundred, total acreage, acreage of subdivided area, existing buildings, names of owners and existing property lines within the boundaries of the tract and for adjacent properties thereto, proposed monuments, lots, lot numbers, lot areas, blocks, building setback and yard lines.
- (d) All existing, platted and proposed streets, including their names, numbers, and widths; existing and proposed utility or other easements, existing and proposed sidewalks, public areas, parking spaces, culverts, drains, watercourses, lakes, their names and other pertinent data.
- (e) A drainage plan showing the proposed drainage system including all open ditches, closed storm drain pipes and stormwater management facilities proposed to convey the subdivision drainage to an adequate channel. The plan shall include sizes of all pipes and ditches, types of pipes and ditch linings, drainage easements and construction details of any stormwater management facilities. Drainage calculations shall be submitted with a drainage area map to verify the design of the drainage system including the adequacy of the channel receiving drainage from the proposed subdivision.

For multiphased subdivisions, a drainage area map shall be provided with drainage calculations for all phases of the subdivision to determine the adequacy of receiving channels. If receiving channels are not adequate, the map shall include the location of proposed stormwater management facilities.
- (f) An Erosion Control Plan showing the location, type, and details of proposed erosion and sediment control devices to be used during and after construction. The plan shall meet all requirements of the Erosion and Sedimentation Control Ordinance and shall be provided at a scale of one hundred feet to the inch except in cases where the Director of Code Compliance approves an alternate scale. The plan shall show existing and proposed contours at intervals of no more than five feet.
- (g) Cross sections showing the proposed street construction, depth and type of base, type of surface, compaction, shoulders, curbs and gutters, sidewalks, side ditches and other features of the proposed streets.
- (h) Street profiles showing the proposed grades for the streets and drainage facilities, including elevations of existing and proposed ground surface at all street intersections and at

points of major grade change along the center line of streets, together with proposed connecting grade lines therewith.

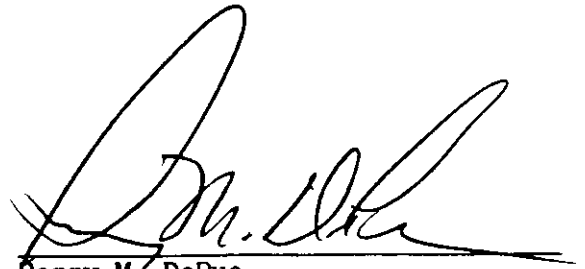
- (i) Size and location of existing sanitary sewer and water facilities, location and method of proposed connections to existing sewer and water facilities, size and location of proposed sewer and water facilities showing location of proposed water meters, gate valves, fire hydrants, fittings, manholes, sewer laterals and clean-outs, grinder pump locations, profile views of water and sewer mains with manhole rim and invert elevations and percent of slope, sewage pump station location, design and details, and water well facility location, design, and details.

ARTICLE III. Requirements for Design and Minimum Improvements.

Section 17-51. Sidewalks.

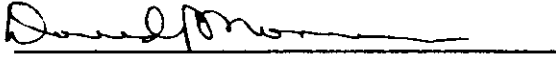
Sidewalks shall be required for all major subdivisions in accordance with Section 20-103 of the zoning ordinance.

Ordinance to Amend and Reordain
Chapter 17. Subdivisions
Page 4



Perry M. DePue
Chairman, Board of Supervisors

ATTEST:



David B. Norman
Clerk to the Board

<u>SUPERVISOR</u>	<u>VOTE</u>
NORMENT	AYE
TAYLOR	NAY
EDWARDS	AYE
KNUDSON	AYE
DEPUE	AYE

Adopted by the Board of Supervisors of James City County, Virginia,
this 5th day of February, 1990.

5209a

ESTABLISHING THE R. T. ARMISTEAD
AGRICULTURAL AND FORESTAL DISTRICT

(AFD-1-89)

FEB 5 1990

BOARD OF SUPERVISORS
JAMES CITY COUNTY—
VIRGINIA

WHEREAS, an application for the creation of an Agricultural and Forestal District has been filed with the James City County Board of Supervisors; and

WHEREAS, in accordance with Sections 15.1-1511(B), (C) and (D) of the Code of Virginia, public notices have been filed, public hearings have been advertised, and public hearings have been held on the application for an Agricultural and Forestal District; and

WHEREAS, the Agricultural and Forestal Districts Advisory Committee at its meeting on December 20, 1989, recommended approval of the application; and

WHEREAS, the Planning Commission following its public hearing on January 9, 1990, recommended approval of the application.

NOW THEREFORE BE IT ORDAINED:

1. That the R. T. Armistead Agricultural and Forestal District is hereby established for a period of four years beginning this 5th day of February, 1990, in accordance with the provisions of Title 13.1, Chapter 36, Sections 15.1-1506 through 15.1-1513, Code of Virginia (1950), as amended.

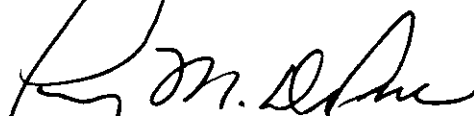
2. That the district shall include the following parcels:

(31-2)(1-17)	R. T. Armistead	84.5 ac.
(31-2)(1-14)	R. T. Armistead	54.33 ac.
(31-3)(1-29)	R. T. Armistead	132.08 ac.
(31-4)(1-01)	R. T. Armistead	41.779 ac.

provided, however, that all land within 25 feet of the rights-of-way of Longhill Road and Centerville Road shall be excluded from the district.

3. That pursuant to Title 15.1, Chapter 36, Section 15.1-1512 (D) of the Code of Virginia of 1950, as amended, the Board of Supervisors requires that no parcel in the R. T. Armistead Agricultural and Forestal District be developed to a more intensive use without prior approval of the Board of Supervisors. Specifically, the following restrictions shall apply:

- (a) The subdivision of land is to be limited to parcels of 25 acres or more, except where the Board of Supervisors authorizes smaller lots to be created for residential use by members of the owner's immediate family.
- (b) No land within the AFD may be rezoned to any residential, business or industrial zone, and no application for such a rezoning shall be filed before the AFD expires.
- (c) No special use permit shall be issued except for agricultural and forestal activities and sewer extensions consistent with the Master Sewer Plan which are not in conflict with the policies of the district. Only existing dwellings within the AFD shall connect to the above-mentioned sewer extensions.



Perry M. DePue
Chairman, Board of Supervisors

ATTEST:



David B. Norman
Clerk to the Board

SUPERVISOR	VOTE
NORMENT	AYE
TAYLOR	AYE
EDWARDS	AYE
KNUDSON	AYE
DEPUE	AYE

Adopted by the Board of Supervisors of James City County, Virginia,
this 5th day of February, 1990.

1304w

THIS DEED AND AGREEMENT, made this 18th day of January, 1990, by and between Wessex Hundred Development, Inc., a Virginia corporation, party of the first part (herein "Developer"); Virginia Department of Transportation, party of the second part; the County of James City, Virginia, a body politic, party of the third part (herein "County"); and The Vineyards Homeowners Association, Inc., a Virginia corporation, party of the fourth part (herein "Homeowners Association"); and Williamsburg Farms, Inc., a Virginia corporation, party of the fifth part (herein "WFI").

WHEREAS, Developer is the developer of certain real property called The Vineyards at Jockey's Neck, James City County, Virginia, which property is shown on certain plats recorded and to be recorded in the Clerk's Office of James City County; and

WHEREAS, said plats show certain areas dedicated as streets and roadways; and

WHEREAS, Developer is recording simultaneously with the recordation of this instrument the recorded plat which is for Section 1, The Vineyards; and

WHEREAS, in accordance with Section 15.1-478 of the Code of Virginia, the recordation of the above-described plat operates to transfer, in fee simple, to the County of James City, Virginia, the portion of those premises platted which are dedicated as streets and roadways, but the Developer with the concurrence of the County, has reserved a certain area of land over which Jockey's Neck Trail is constructed, which crosses the dam for Lake Ajacan, as shown on the plat for Section 1, The Vineyards; and

WHEREAS, the County of James City has approved Section 1 of the Vineyards pursuant to Article 7, Chapter 11, of Title 15.1 of the Code of Virginia, and the James City County Subdivision Ordinance as evidenced by the County's approval of the above-described plat of subdivision; and

WHEREAS, the Developer is desirous of reaching certain agreements with the parties of the second and third parts regarding the portion of Jockey's Neck Trail

shown as the shaded area on that certain plat described below and recorded contemporaneously herewith, so that Developer can grant an easement across said area to the Virginia Department of Transportation and so that the Developer and Homeowners Association can also assume the responsibilities and obligations of the terms of this Agreement; and

WHEREAS, the Developer and the parties of the second, third, fourth and fifth parts are desirous of memorializing their agreement for an easement across certain property titled in the name of the party of the fourth part for use in the event any maintenance, repair, or replacement of the dam described herein requires an alternate roadway facility for public ingress and egress to and from The Vineyards subdivision.

NOW, THEREFORE, THIS DEED AND AGREEMENT

WITNESSETH:

That for and in consideration of the acceptance by the Developer and the Homeowners Association of the terms of the Agreement contained herein and of the Developer's dedicating the shaded area on that certain plat described below, and recorded contemporaneously herewith, as an easement to the Virginia Department of Transportation; and also in consideration of the County's agreement that the roadway over said shaded area shall be maintained as part of the Commonwealth's secondary road system (herein "the roadway"); and further, that for and in consideration of the acceptance by the Virginia Department of Transportation of responsibility for maintenance of the hereinafter described roadway easement which obligation shall not commence until all road improvements are completed in accordance with the approved subdivision plans, the Developer, in turn, hereby grants unto the Virginia Department of Transportation the perpetual right, privilege, and easement in and to the same following described property, to-wit:

All that certain area shown and designated on page 4 of that certain subdivision plat entitled "CROSSHATCHED AREA OF EASEMENT RESERVED FOR ROADWAY PURPOSES IN AGREEMENT BY OWNER, V.D.O.T., AND HOMEOWNERS ASSOC. AREA = 0.64 ACRES INCLUDED IN TOTAL R/W." made by Langley and McDonald dated June 16, 1989 which plat is made a part hereof and is recorded contemporaneously herewith.

FURTHER WITNESSETH:

That for and in consideration of certain agreements by and between the Developer and the Homeowners Association and the party of the fifth part, the party of the fifth part hereby dedicates and grants to the Homeowners Association a perpetual right, privilege, and easement in and to the following described property shown on that certain plat described therein for use as an alternate roadway facility for public ingress and egress to and from The Vineyards subdivision in the event The Virginia Department of Transportation determines that such public ingress and egress is required for maintenance, repair, or replacement of the dam described herein, said easement (herein "emergency access easement") being shown on that certain plat described below and recorded contemporaneously herewith, to-wit:

All that certain area shown and designated on that certain plat entitled "PLAT OF 50' ACCESS EASEMENT FOR WESSEX HUNDRED DEVELOPMENT, INC., JAMES CITY COUNTY, VIRGINIA" made by Langley and McDonald dated September 28, 1989 which plat is made a part hereof and is recorded contemporaneously herewith.

FURTHER WITNESSETH:

That for and in consideration of those matters recited above, the parties hereto agree as follows:

1. All parties hereto agree that the Virginia Department of Transportation will have all rights necessary to maintain the base, surface, shoulders, and guard rails of said roadway crossing of dam, but that approval of the expenditure of State funds for such purposes shall in no way constitute approval for expenditure of State funds to maintain the dam over which said roadway passes. The Virginia Department of Transportation assumes no obligation for any maintenance, repair, or replacement of the dam across which said roadway is constructed. Further, entry into

this Agreement by the Virginia Department of Transportation shall not be construed to create in the Developer or the Homeowners Association any contractual right to a degree, standard, or term of maintenance any greater than that allowed them as citizens by law or by the Virginia Department of Transportation policy adopted pursuant to law, either as it now exists or as it may be altered or amended in the future.

2. Developer, the Homeowners Association and their successors covenant and agree that they will be responsible for any maintenance, repair, or replacement of said dam, and agree to indemnify and hold harmless both the Virginia Department of Transportation and the County as to any maintenance, repair, or replacement of said dam. Developer's liability pursuant to this Agreement shall cease (a) one year following the date the Virginia Department of Transportation accepts the roadway into the highway system, or (b) upon conveyance of all Common Areas in The Vineyards to the Homeowners Association, whichever shall last occur. Thereafter, all liability pursuant to this agreement shall be the sole responsibility of the Homeowners Association. The provisions of this paragraph are binding on the successors and assigns of said Homeowners Association.

3. The Virginia Department of Transportation agrees that Developer, the Homeowners Association and their successors, shall have such access to the aforesaid roadway as is reasonably necessary for the purpose of maintaining, repairing, or replacing said dam, with the understanding that the work is to be performed to the satisfaction of the Virginia Department of Transportation, so as to minimize any interference with the flow of traffic or with the Virginia Department of Transportation's right to maintain the surface, base, shoulders, and guard rails of said road.

4. Developer and the Homeowners Association further agree that the Virginia Department of Transportation shall have such access to the dam and surrounding

areas as is reasonably necessary for the purpose of maintaining the surface, base, shoulders, and guard rails.

5. Developer, the Homeowners Association and their successors agree to save harmless the Virginia Department of Transportation and the County from any and all liability for injury, damage, or any expense whatever that results from the construction or failure to properly maintain, repair, or replace said dam.

6. In the event that said dam is washed out or destroyed by any cause or is, in the opinion of the Commissioner of the Virginia Department of Transportation, so neglected or poorly maintained or repaired in such manner as to make ordinary and regular travel on said roadway unsafe, or the maintenance and repair of the surface, base, shoulders, and guard rails or said roadway impractical, the Virginia Department of Transportation may discontinue maintenance on the roadway over the dam to the extent the parties hereto have the right to authorize or permit such discontinuance from the time of, and on the sole basis of, the Commissioner's or the Virginia Department of Transportation's determination that such condition exists.

7. It is agreed that drainage of water from the roadway crossing the shaded area of the aforesaid plat to the lake and other areas not herein dedicated is an element of maintaining the surface, base, shoulders, and guard rails of said roadway.

8. Developer, the Homeowners Association and their successors covenant and agree that they will be responsible for any maintenance, repair, or replacement of said emergency access easement to meet Virginia Department of Transportation standards, and agree to indemnify and hold harmless both the Virginia Department of Transportation and the County as to any such maintenance, repair, or replacement of said emergency access easement. The said emergency access easement, including but not limited to, the "50' Public Ingress/Egress Easement" shown on the plat described herein extending from State Route 617 to the emergency access easement shall be constructed and maintained to meet Virginia Department of Trans-

portation standards. Developer, the Homeowners Association and their successors agree to save harmless the Virginia Department of Transportation and the County from any and all liability for injury, damage, or any expense whatever that results from the construction or failure to properly maintain, repair, or replace said emergency access easement. Developer's liability pursuant to this paragraph shall cease upon conveyance of all common areas in the Vineyards to the Homeowners Association. Thereafter, all liability pursuant to this agreement shall be the sole responsibility of the Homeowners Association. The provisions of this paragraph are binding on the successors and assigns of said Homeowners Association.

9. The County joins in this Deed and Agreement to indicate its agreement that the roadway over the shaded area, as shown on the aforesaid plat, shall be maintained as part of the Commonwealth's secondary road system and that the emergency access easement, as shown on the aforesaid plat, shall be accepted as an alternate roadway facility for public ingress and egress to and from The Vineyards as determined necessary by the Virginia Department of Transportation.

10. The Virginia Department of Transportation's obligations defined in this Agreement shall not commence until all road improvements are completed in accordance with the approved subdivision plans and the roads have been accepted into the State secondary system.

WITNESS the following signatures and seals:

WESSEX HUNDRED DEVELOPMENT, INC., a
Virginia corporation

By: Robert Emmett III
Robert Emmett III, President

OFFICE OF ATTORNEY GENERAL

[Signature]
Date: 2/27/90

VIRGINIA DEPARTMENT OF
TRANSPORTATION

By: [Signature]
Title: Deputy Commissioner

THE VINEYARDS HOMEOWNERS
ASSOCIATION, INC., a Virginia corporation

By: Robert Emmett III
Robert Emmett III, President

COUNTY OF JAMES CITY

By: [Signature]
Title: Chairman, Board of Supervisors

WILLIAMSBURG FARMS, INC., a Virginia
Corporation

By: Margaret A. Duffel
President

STATE OF VIRGINIA

CITY/COUNTY OF WILLIAMSBURG, to-wit:

On this 18th day of JANUARY, 198⁹⁰9, the foregoing instrument was
acknowledged before me by Robert Emmett III, President of Wessex Hundred Devel-
opment, Inc., a Virginia corporation, on behalf of said corporation.

A. Elizabeth Cheney
NOTARY PUBLIC

My commission expires: JULY 7, 1990

STATE OF VIRGINIA

CITY/COUNTY OF Richmond, to-wit:

On this 5th day of March, 198⁹⁰9, the foregoing instrument was
acknowledged before me by Oscar K. Mabry on behalf
of said Virginia Department of Transportation.

Margaret A. Redford
NOTARY PUBLIC

My commission expires: June 18, 1991

STATE OF VIRGINIA

CITY/COUNTY OF WILLIAMSBURG to-wit:

On this 18th day of JANUARY 1989⁹⁰, the foregoing instrument was acknowledged before me by Robert Emmett III, President of The Vineyards Home-owners Association, Inc., a Virginia corporation, on behalf of said corporation.

A. Elizabeth Cheney
NOTARY PUBLIC

My commission expires: JULY 7, 1990

STATE OF VIRGINIA

~~CITY~~/COUNTY OF James County to-wit:

On this 5th day of February 1989⁹⁰, the foregoing instrument was acknowledged before me by Gary M. DePue, Chairman Board of Supervisors of James City County.

Mari Lou Smith
NOTARY PUBLIC

My commission expires: Feb. 8, 1993

STATE OF VIRGINIA

CITY/COUNTY OF WILLIAMSBURG to-wit:

On this 18th day of JANUARY 1989⁹⁰, the foregoing instrument was acknowledged before me by MARGARET A. DUFFELER President of Williamsburg Farms, Inc., a Virginia corporation, on behalf of said corporation.

A. Elizabeth Cheney
NOTARY PUBLIC

My commission expires: JULY 7, 1990

