

AT A REGULAR MEETING OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE 2ND DAY OF JULY, NINETEEN HUNDRED NINETY, AT 7:01 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

B. MINUTES - June 18, 1990

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).

C. CONSENT CALENDAR

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

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

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

1. Litter Control Program Grant

R E S O L U T I O N

1990 LITTER CONTROL GRANT APPLICATION

WHEREAS, the James City County Board of Supervisors recognizes the existence of a litter problem within the boundaries of James City County; and

WHEREAS, the Virginia Waste Management Act provides, through the Department of Waste Management, Division of Litter Control and Recycling, for the allocation of public funds in the form of Grants for the purpose of enhancing local litter control programs; and

WHEREAS, having reviewed and considered the Regulations and the Application covering administration and use of said funds.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby endorses and supports such a program for James City County as is indicated in the attached application Form LC-G-1; authorizes the County Administrator to plan, budget, and apply for a Grant, which if approved, will be used to fund said Program; and requests the Department of Waste Management, Division of Litter Control and Recycling, to consider and approve said Application and Program, said Program being in accord with the Regulations governing use and expenditure of said funds.

2. Dedication of Streets - Shellbank Woods, Phase III, V, VI and VII

R E S O L U T I O N

DEDICATION OF STREETS IN SHELLBANK WOODS, PHASES III, V, VI AND VII

WHEREAS, the developer of Shellbank Woods, Phases III, V, VI and VII has requested the Board of Supervisors to include certain streets in the State Secondary Highway System; and

WHEREAS, the Board of Supervisors desires certain streets in Shellbank Woods, Phases III, V, VI and VII to be included in the State Secondary Highway System, provided these streets meet with the requirements of the Virginia Department of Transportation, and providing that any alterations, corrections, or other matters that might be found desirable by the Virginia Department of Transportation are made within a ninety (90) day period from the date that the Virginia Department of Transportation makes its final inspection.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of James City County, Virginia, that the Virginia Department of Transportation be, and is hereby respectfully requested, contingent on the above, to include the following streets in Shellbank Woods, Phases III, V, VI and VII, Jamestown Election District, James City County, in the State Secondary Highway System:

1. Jameswood, 50-foot right-of-way
 From: Route 1130 (Jameswood)
 To: End of cul-de-sac
 Distance: 932 feet (0.18 mile)

2. Fernwood, 50-foot right-of-way
From: Route 1131 (Maple Lane)
To: End of cul-de-sac
Distance: 549 feet (0.10 mile)
3. Greenbrier, 50-foot right-of-way
From: Jameswood
To: End of cul-de-sac
Distance: 993 feet (0.19 mile)

The rights-of-way of 50 feet, along with drainage easements, are guaranteed as evidenced by the following plats of record:

Shellbank Woods, Phase III, recorded in Plat Book 43, page 41, dated August 5, 1986; Shellbank Woods, Phase V, recorded in Plat Book 45, pages 56 and 57, dated May 28, 1987; Shellbank Woods, Phase VI, recorded in Plat Book 47, page 40, dated January 5, 1988; and Shellbank Woods, Phase VII, recorded in Plat Book 48, page 62, dated May 3, 1988.

BE IT FURTHER RESOLVED that this resolution be forwarded to the Resident Engineer of the Virginia Department of Transportation.

D. PUBLIC HEARINGS

1. Case No. SUP-31-90. Robert W. Venable (continued from 6/18/90)

Mr. O. Marvin Sowers, Jr., Director of Planning, stated that this case was postponed at the June 18, 1990, meeting to allow discussion of additional information by staff and applicant. He further stated that Mr. Robert W. Venable had applied for a special use permit to allow the placement of a manufactured home on 1.03 acres located at 9212 Diascund Road, zoned A-1, General Agricultural, further identified as Parcel No. (1-34) on James City County Real Estate Tax Map No. (2-4).

Staff recommended approval with conditions listed in the resolution.

Mr. DePue reopened the public hearing.

1. Mr. Robert W. Venable, 8675 Diascund Road, expressed appreciation to staff for working with him.

Mr. DePue 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 NCASE NO. SUP-31-90. ROBERT W. VENABLE

WHEREAS, it is understood that all conditions for the consideration of an application for a Special Use Permit have been met.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of James City County, Virginia, that a Special Use Permit be granted for the placement of a manufactured home on property owned and developed by the applicant as described below and on the attached site location map.

Applicant: Robert W. Venable
Real Estate Tax Map ID: 2-4
Parcel No.: 1-34
Address: 9212 Diascund Road
District: Stonehouse
Zoning: A-1

Conditions:

1. This permit shall be valid only for the manufactured home applied for. If the manufactured home is removed, this permit shall become void. Any replacement shall require a new permit from the Board of Supervisors. If the permit is not exercised it shall become void one year from the date of approval.
2. The manufactured home shall be skirted and meet the requirements of the Department of Housing and Urban Development Manufactured Home Construction and Safety Standards.
3. Existing vegetation shall be maintained within 20 feet of all property lines except where clearing is required for utilities and necessary entrances.
4. The number of bedrooms shall not exceed 2.
5. The existing dwelling shall be converted to a storage building. Alterations to accomplish this conversion shall be approved by the

Division of Code Compliance and completed within 30 days of placement of the manufactured home on the property.

2. Ordinance Amendment - Chapter 4-86.1, Cable Communications

Mr. Larry M. Foster, General Manager, James City Service Authority, stated that this case was continued from the June 18, 1990, meeting. He further stated that the Board had requested extending cable television services to the Stonehouse District of the County; therefore, Continental Cablevision proposed an extension of its franchise to assure a return on investment for those services.

Mr. Foster explained that the franchise ordinance established generic requirements for any applicant who provided cable television services to the County, and the franchise certificate established the terms of the award of the franchise to a specific cable grantee.

Staff recommended approval of the proposed Ordinance and Certificate Amendment.

The Board commented on the term of the franchise, costs of building a studio, and number of new households if cable services were extended.

Mr. DePue reopened the public hearing.

1. Alvin Anderson, Esq., representative for Continental Cable Television of Virginia, explained the current franchise and reasons for request of extension of the franchise term to provide service to the upper end of Stonehouse District.

2. Mr. Carl Pearson, Chairman, Cable Television Advisory Committee, spoke in favor of approval of the ordinance and encouraged consideration of a joint studio at a future date.

Mr. DePue closed the public hearing.

Mr. Taylor made a motion to approve the cable communications ordinance and franchise certificate.

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

3. Case No. ZO-8-90. Landscape Ordinance Amendments

Mr. Sowers stated that the proposed Landscape Ordinance amendment addressed: A) trees and landscaping as a major element in the urban environment (1) stronger tree preservation policy; and, (2) increased impact of planted landscaping; B) protection of conflicting land uses; C) enhancement of the environment; and, D) design flexibility.

In accordance with staff, the Planning Commission unanimously recommended approval of the Landscape Ordinance. Mr. Sowers recommended postponement of action on this case until after discussion of the Chesapeake Bay Preservation Ordinance later in this meeting.

Mr. DePue opened the public hearing.

1. Ms. Carolyn Lowe, 50 Summer East, urged support of the Landscape Ordinance for its positive effect on the environmental quality of the County.

2. Mr. Robert S. Hornsby, spoke in support of the 30-foot width landscape screen along right-of-ways.

3. Mr. Donald Burgess questioned whether mature trees would be preserved in the County.

Mr. DePue closed the public hearing.

Without objection, the Board postponed discussion of Case No. ZO-8-90 until later in the meeting.

4. Ordinance Amendment - Article III, Correction of Assessment

Mr. Leo P. Rogers, Assistant County Attorney stated that the Ordinance amendment added a five-year limitations period for correction of an assessment, which complied with a recent change to the State code.

Staff recommended approval of the ordinance amendment.

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

Mr. Edwards made a motion to approve the ordinance amendment.

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

5. Ordinance Amendment - Chapter 18, Taxation, Courthouse Fees

Mr. Leo P. Rogers, Assistant County Attorney, stated that the Ordinance amendment imposed a \$2.00 fee on each criminal and/or traffic case in the District or Circuit courts, which shall be used for construction, renovation and maintenance of court-related facilities, and expires July 1, 1991, unless extended by the General Assembly.

Staff recommended approval of the ordinance amendment.

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

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

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

E. BOARD CONSIDERATION

1. Chesapeake Bay Preservation Ordinance

Mr. John T. P. Horne, Manager, Development Management, stated that this case was postponed at the June 4, 1990, meeting to allow staff to provide additional information on options available for the appeals board for the Chesapeake Bay Preservation ordinance.

After consideration of the Development Review Committee, Board of Zoning Appeals, Planning Commission or Board of Supervisors, a New Chesapeake Bay Appeals Group, or Circuit Court, staff recommended the Wetlands Board as the appropriate body for appeals and no change in the current draft ordinance.

A lengthy discussion followed with staff and Mr. C. Scott Crafton, Regulatory Assistant Coordinator of the Chesapeake Bay Local Assistance Board in regard to State requirements and the options available to the County.

Mr. Taylor made a motion to reopen the public hearing for a limited time.

On a roll call, the vote was AYE: Norment, Taylor, DePue (3). NAY: Edwards, Knudson (2).

1. Mr. Frank Tsutras, 204 Richard Brewster, asked if consideration had been given to the economic impact on business, commercial and industrial growth and development of the County.

2. Mr. Sam Hazelwood, Toano, questioned the costs to an individual lot owner and stated the County should not exceed the State requirements.

3. Ms. Carolyn Lowe, 50 Summer East, spoke in support of the ordinance applying to the entire County to protect the water quality of the area.

4. Mr. Gene Farley, 1424 Richmond Road, questioned whether the ordinance and State Health Department regulation requirement of two drainfields would make some lots platted prior to October 1, 1989, undevelopable.

5. Ms. Jill Pope, Governmental Affairs Representative, Peninsula Housing and Builders Association, requested the Board postpone action until after the economic impact study by the Peninsula Chamber of Commerce has been prepared.

6. Ms. Patricia Jackson, Lower James River Association, urged the Board to approve the ordinance for immediate implementation.

7. Mr. Edward Chappell, 128 Waller Street, encouraged approval of the ordinance for growth control in the County.

Mr. DePue closed the public hearing.

Mr. Edwards made a motion to approve the ordinance.

On a roll call, the vote was: AYE: Edwards, Knudson (2). NAY: Norment, Taylor, DePue (3).

Ms. Knudson made a motion to postpone the case until the July 16, 1990, meeting.

Mr. Norment made a motion to postpone until the August 6, 1990, Board of Supervisors' meeting to address additional information after publication.

Ms. Knudson withdrew her motion.

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

Mr. DePue declared a break at 9:50 p.m.

Mr. DePue reconvened the Board into open session at 10:00 p.m.

Mr. DePue referenced Case No. ZO-8-90 for continuation of discussion.

Mr. Sowers stated that with the postponement of the Chesapeake Bay Preservation Ordinance, language on pages 14 and 16 referencing open space and tree preservation requirements should be deleted, and language on pages 28 and 29 should be substituted for open space requirements for commercial and industrial districts.

Mr. DePue 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. Sowers explained the Zoning Ordinance Transition 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).

R E S O L U T I O N

ZONING ORDINANCE TRANSITION

WHEREAS, the Board of Supervisors has adopted amendments to the Zoning Ordinance pertaining to landscaping and tree preservation in Case No. ZO-8-90 on July 2, 1990; and

WHEREAS, the orderly transition from the existing zoning regulations to revised regulations requires a transition period to effect the changes in law.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of James City County, Virginia, that only those site plans and subdivision plans having preliminary approval on or before July 2, 1990, shall have vested rights under the regulations in effect prior to July 2, 1990. Any person seeking plan approval after July 2, 1990, shall comply with the provisions of the Landscape Ordinance as amended on July 2, 1990, by Case No. 20-8-90.

F. PUBLIC COMMENT

1. Mr. Frank Tsutras complimented the County staff for their hard work on improving the Chesapeake Bay Preservation ordinance, and urged the Board to maintain Bruton Heights Elementary School in public ownership.

2. Mr. Ed Oyer, 139 Indian Circle, read a letter for Nancy Rodrigues and E. C. Michael Abley, co-owners of European Common Market, in opposition to the meals tax and its effect on their business.

G. REPORTS OF THE COUNTY ADMINISTRATOR

Mr. David Norman, County Administrator, recommended an executive session pursuant to Section 2.1 344(a)(1)(3)(7) of the Code of Virginia to discuss possible litigation with the County Attorney, consider public land acquisition and a personnel matter, appointments to Boards and Commissions.

H. BOARD REQUESTS AND DIRECTIVES

Mr. Taylor asked for replacement of missing/correct street name signs at Little Creek Dam Road and Forge Road.

Mr. DePue asked that a response concerning meals tax be prepared to the letter, when received, from the co-owners of the European Common Market.

Mr. DePue presented a plaque that he had received from a student from Katzelsdorf, Austria, to Mr. Norman.

Mr. DePue made a motion that the Board convene into executive session for the reasons stated above by the County Administrator.

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

Ms. Knudson made a motion to convene into executive session at 10:22 p.m.

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

Mr. DePue reconvened the Board into open session at 11:10 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: July 2, 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

WHEREAS, Section 2.1-344.1 of the Code of Virginia requires a certification by the Board that such executive meeting was conducted in conformity with Virginia law.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby certifies that, to the best of each member's knowledge; (i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the executive meeting to which this certification resolution applies; and, (ii) only such public business matters as were identified in the motion convening the executive meeting were heard, discussed or considered by the Board.

Ms. Knudson made a motion to appoint Ursula Murden to a four-year term on the Williamsburg Regional Library Board, term expiration June 30, 1994.

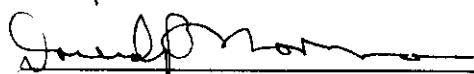
Mr. Edwards made a motion to reappoint Dwight Dansby to a three-year term on the Peninsula Alcohol Safety Action Program, term expiration July 1, 1993.

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

Mr. DePue made a motion to recess to Monday, July 9, 1990, at 5:15 p.m.

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

The Board recessed at 11:12 p.m.



David B. Norman
Clerk to the Board

(This cover page is to be used for all except Cooperative Programs.)

.....

.....

APPLICATION FOR A GRANT UNDER THE VIRGINIA WASTE MANAGEMENT ACT
(CHAPTER 14, TITLE 10.1, CODE OF VIRGINIA)

AND

GRANT AGREEMENT CONTRACT BETWEEN

CITY
THE COUNTY OF JAMES CITY COUNTY
TOWN

AND

THE DEPARTMENT OF WASTE MANAGEMENT
DIVISION OF LITTER CONTROL AND RECYCLING

Article 1. This Application for Grant funds and Grant agreement contract, hereinafter referred to as the "Application," is made and entered into by mutual agreement between:

THE LOCALITY OF JAMES CITY COUNTY

hereinafter referred to as "Applicant," and the DEPARTMENT OF WASTE MANAGEMENT, DIVISION OF LITTER CONTROL AND RECYCLING, hereinafter referred to as the "Department".

Article 2. The Applicant's address is P.O. Box JC
Williamsburg, VA 23187

Telephone Number (804) 253-6670

(This cover page is to be used for Cooperative Programs only.)

APPLICATION FOR A GRANT UNDER THE VIRGINIA WASTE MANAGEMENT ACT
(CHAPTER 14, TITLE 10.1, CODE OF VIRGINIA)
AND
GRANT AGREEMENT CONTRACT BETWEEN

THE LOCALITIES OF _____

AND

THE COORDINATING ORGANIZATION _____

AND

THE DEPARTMENT OF WASTE MANAGEMENT
DIVISION OF LITTER CONTROL AND RECYCLING

Article 1.1 The Application for Grant funds and Grant agreement contract hereinafter referred to as the "Application," is made and entered into by mutual agreement between THE LOCALITIES OF:

and THE COORDINATING ORGANIZATION _____

hereinafter referred to as "Applicant," and the Department of Waste Management, Division of Litter Control and Recycling, hereinafter referred to as the "Department."

Article 2.1 The coordinating organization's address is _____

telephone number _____

Article 3. It is understood that:

- A. All Grant funds, hereinafter referred to as "Grant," will be used in accordance with the Regulations Governing Application For and Use of Grant Funds to Localities Under the Virginia Waste Management Act (Chapter 14, Title 10.1, Code of Virginia) and Under Section 10.1- 1422, dated 1988 hereinafter referred to as "Regulations."
- B. A copy of a resolution approving this Application, made by the governing body of the Applicant, and an estimated budget for the Applicant's proposed litter Program are attached, and will become an integral part of this Application.
- C. The funds allocated to the Applicant under this Grant will be stated on the Notice of Approval, Form LCG-2.
- D. The period during which this Grant is in effect will be from July 1 through June 30 of each fiscal year, unless stated otherwise on Notice of Approval, Form LCG-2.
- E. Funds will be disbursed by August 1 of each year, or as soon as feasible thereafter.
- F. The Department reserves the right to withdraw or require a refund for all, or part, of the Grant pending satisfactory completion of the Program and all administrative requirements as stated in the Regulations and in the Application. Also, failure to commence Program activities within a reasonable period from the agreed upon starting date may result in cancellation of the Grant by the Department.
- G. Questions will be handled as stated in Section 7, paragraph g, of the Regulations.
- H. The Department and/or the State Auditor's Office reserve the right to conduct an on-site inspection and/or audit Applicant's records of the Program during and/or after its completion.

Article 4. The information under this Article represents the Applicant's plan for a litter control program or project, or plan for the purchase of equipment, either or both of which will hereinafter be referred to as "Program."

- A. Description of the Program (See Attached)

- B. Implementation plan (See Attached)

- C. Program Objectives (See Attached)
-
- D. How Program accomplishment will be measured (See Attached)
-
- E. Locality or area in which the Program will be conducted James City County
-
- F. Name, title, address, and telephone of person who will be responsible for organizing and implementing the Program. (If name is not known, state intent on assignment of responsibility.) Recycling Coordinator to be hired
-
- TELEPHONE ()
- G. Date Program is to begin July 2, 1990
- H. This Program is (1) new; (2) an extension of expansion of ongoing Program; or (3) other (explain). Extension of ongoing program
-
- I. Estimated Program budget, itemized by line items, is attached.
Please list recycling activity expenses separately.
- J. Equipment purchase (complete only if applicable)
- (1) Description of equipment to be purchased N/A
-
- (2) Total costs
- (3) Amount of cost in J(2) to be paid with Grant funds
- (4) Planned use
-
- (5) Expected service life (years)
- (6) Normal length of service life (years)
- K. Should supplemental grant funds be available, an amount of \$ 1,000 could be used for additional litter control program activities during this same Grant period. A description of these activities is as follows:
- (See Attached)
-

Article 4.

- A. Description of Program: The 1990-91 grant request is for the continuation of the James City County Clean County Program goals:
1. Increase awareness by County citizens and businesses on the litter/recycling program.
 2. Clean up and improve the physical environment of James City County.
 3. Continue educational efforts on anti-littering and recycling in all County schools, both public and private.
 4. Encourage year round community clean up, recycling and beautification.
 5. Encourage more involvement by local business and industry.
- B. Implementation Plan: The program will rely heavily on volunteer citizens involvement, business and County Administrative support. Grant monies will be used for awards for litter containment efforts, educational aids, awareness programs and required materials and supplies. Use of free resources will be increased. The program will be implemented by the JCC Clean County Commission comprised of 5 members (who are appointed by the Board of Supervisors - one from each district) aided by volunteer citizens with administrative and technical support from County staff.
- C. Program Objectives: To educate children specifically targeting school children from the ages of 5-18; to increase year-round cleanup and recycling activities; to educate adults in litter prevention.
- D. How Program Accomplishment Will Be Measured: Increase in publicity and articles in media about recycling and litter efforts; quality and quantity of year-round recycling, beautification and cleanup activities; increase in level of awareness of litter problems by number of volunteers involved in programs and a visible decrease of litter.

- K. The James City County Clean County Commission wishes to expand a model recycling school program started at Berkeley Elementary in 1988, to additional schools in 1990. The goal of the program is to educate and encourage children to support services (transportation/administration) and materials (bags, recycling bins, etc.)

With the success and enthusiasm experienced with the Berkeley Elementary Recycling Center, the expansion of this program deserves serious consideration. Collection of approximately 12,000 pounds of aluminum to date, far exceeds the program's original objective of having each child bring one can per day with one ton collected by year's end. Proceeds from recycling this year will go for new science equipment.

The success of the past three years at Berkeley Elementary and support to expand this program from Reynolds Aluminum, Owens-Illinois, and the Williamsburg/James City County School System, makes the Commission anxious to begin planning, should this request be approved.

Article 5. During the performance of the Program described in this Application, the Applicant agrees to the following:

- A. The Applicant will not discriminate against any employee or applicant for employment because of race, religion, color, sex, handicap, or national origin, except where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the Applicant. The Applicant agrees to post in conspicuous places, available to employees and applicants for employment, notices, setting forth the provision of this nondiscrimination clause, including the names of all contracting agencies with which the Applicant has contracts of over ten thousand dollars.
- B. The Applicant will, in all solicitations or advertisements for employees placed by or on behalf of the Applicant, state that such Applicant is an equal opportunity employer; provided, however, that notices, advertisements, and solicitations placed in accordance with federal law, rule, or regulation shall be deemed sufficient for the purpose of meeting the requirements of federal law.

Article 6. The Applicant understands and agrees:

- A. That this Grant will be used (1) to fund litter control program activities and/or (2) to purchase equipment; either or both of which are supplemental and/or additional to programs or equipment currently budgeted or funded and/or planned or operational by the Applicant.
- B. That said funds will be spent only for and in accordance with (1) the aforesaid Regulations, (2) the Program as stated in this Application, and (3) all other terms and conditions of the Grant.
- C. That the Applicant shall be liable to the Commonwealth of Virginia, pursuant to Department Regulations for Grant funds which are not properly used or accounted for. In Cooperative Programs, each Locality shall be individually liable for its pro rata share.

Article 7. The Applicant understands that this Grant is dependent upon the availability of funds under Chapter 14, Title 10.1, Section 10.1-1422, paragraph 9. In the event that these Grant funds are diminished by administrative or legislative action, the Applicant understands that the Department will adjust said funds in accordance with such action.


Applicant

County Administrator
Title

7/5/90

Date

(In Cooperative Programs, the Coordinator shall sign for itself and on behalf of all participating localities.)

LITTER PROGRAM BUDGET 1990-91

Administration

Travel:	\$ 200
(Litter Commission Members to attend Division of Litter Workshops)	
Office Supplies	\$ 175
Postage:	\$ 100
Film:	\$ 25
(film and developing)	

Total Administration Cost	\$ <u>500</u>
---------------------------	---------------

Clean Up Program - (Litter and Recycling)

Mileage Reimbursement:	\$ 50
(Based on FY 87 usage)	
Materials:	\$ 950
(Heavy duty trash bags - 25 cases)	

* Awards:

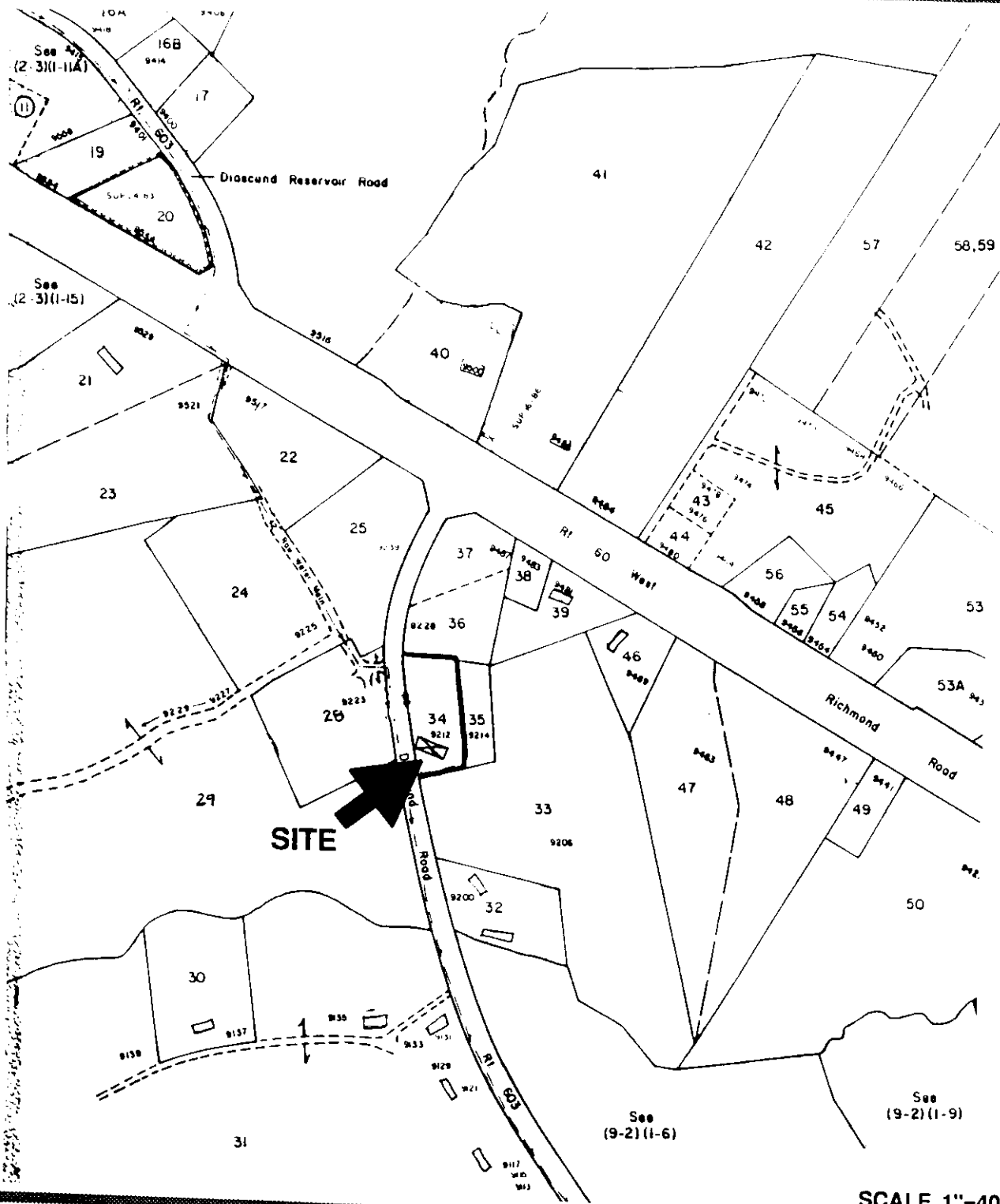
3 First Place Youth, Neighborhood, and Civic Groups for the categories of Clean Up, Recycling and Beautification.	\$ 525
---	--------

3 Second Place for groups and categories given above.	\$ 300
--	--------

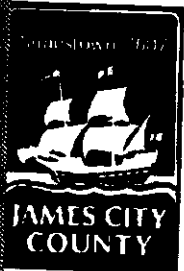
3 Third Place for Clean Up activity only.	\$ 75
---	-------

Certificates with frames - 20 X \$5	\$ 100
-------------------------------------	--------

Total Clean Up Program Cost	\$ <u>2,000</u>
-----------------------------	-----------------



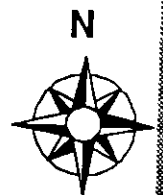
SCALE 1"=400 Feet



Case No: **SUP-31-90**
 Name : **ROBERT W. VENABLE**

Existing Manufactured Home
 Proposed Manufactured Home

PLANNING DIVISION



JUL 2 1990

ORDINANCE NO. 141A-6

BOARD OF SUPERVISORS
JAMES CITY COUNTY
VIRGINIA

AN ORDINANCE TO AMEND AND REORDAIN THE CODE OF THE COUNTY OF JAMES CITY, VIRGINIA, CHAPTER 4-86.1, CABLE COMMUNICATIONS, BY AMENDING, DELETING AND ADDING LANGUAGE TO THE PROVISIONS THEREUNDER AND BY DELETING ARTICLE IX, FRANCHISE CERTIFICATE, IN ITS ENTIRETY.

BE IT ORDAINED, by the Board of Supervisors of James City County, Virginia, that Chapter 4-86.1 of the Code of the County of James City is amended and reordained by amending, deleting, adding and reordaining language to Sections 4-86.1.1 through 4-86.1.30 and by deleting Article IX, Franchise Certificate, in its entirety, as follows:

CHAPTER 4-86.1

CABLE COMMUNICATIONS

Section 4-86.1.1. Title.

This chapter shall be known and may be cited as the James City County Cable Communications Ordinance.

Section 4-86.1.2. Intent and purposes.

It is the intent of the county to: a) promote the public health, safety and general welfare by providing for the grant of one or more franchises for the construction and operation of a cable system; b) provide for the regulation of each cable system by the county; c) provide for the payment of fees and other valuable consideration by a franchisee to the county for the privilege of using the public right-of-ways for constructing and

operating a cable system; d) promote the widespread availability of cable service to county residents wherever economically feasible; e) encourage the development of cable as a means of communication between and among the members of the public institutions; and, f) encourage the provisions of diverse information to the community over cable.

Article II. Definitions

Section 4-86.1.3. Definitions.

For the purpose of this chapter the following words and their derivations have the meanings defined below. Words not defined are given their meaning in Section 602 of the Cable Act, 47 U.S.C. §552, and, if none, their common and ordinary meaning. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is mandatory and the word "may" is permissive.

- (a) "Access channel" shall mean any channel set aside for public use, educational use or governmental use without a charge by the grantee for channel usage.
- (b) "Administrator" shall mean the Cable Communication Administrator for James City County.
- (c) "Application" shall mean a proposal to construct and operate a cable system within the county, transfer a franchise, renew a franchise or modify a franchise. An application includes the initial proposal plus all subsequent amendments or supplements to the proposal, relevant correspondence and any testimony taken in connection with the application.
- (d) "Board" shall mean the James City County Board of Supervisors.
- (e) "Cable Act" shall mean the Cable Communications Policy Act of 1984, 47 U.S.C. Section 521 et seq.
- (f) "Cable casting" shall mean programming carried on a cable system, exclusive of broadcast signals, whether originated by the cable operator or any other party.
- (g) "Cable service" shall mean the one-way transmission of video or other programming service to subscribers together with any subscriber interaction provided in connection with such service.
- (h) "Committee" shall mean the James City County Cable Communication Committee.
- (i) "Construction" shall mean the physical building or installation of a cable communications system including attaching or laying cable, the building of a head-end building or studio, or necessary towers to receive and distribute audio, video or other electrical signals.

James City County
Litter Budget - 1990-91
Page 2

Education
School Program

Seed Money: (\$20 for each participating school to use to purchase art supplies, film, and other supplies needed in classroom for activities in anti-littering program).

Awards:

Pictorial Essay

1st Place	\$ 40
2nd Place	\$ 20
3rd Place	\$ 10

Community Involvement

1st Place	\$ 40
2nd Place	\$ 20
3rd Place	\$ 10

Reprint Citizen Brochure (Recycling) \$ 352

Total School Program Cost \$ 492

Business/Industry Program

Recognition Luncheon:
(County Business - 40 x \$10) \$ 400

Total Business/Industry Program \$ 400

Total Budget \$ 3,392

*	<u>Youth Groups</u>	<u>Neighborhood Org.</u>	<u>Civic Group</u>
1st.	\$75	\$75	\$75
2nd.	\$50	\$50	\$50
3rd.	\$25	\$25	\$25
<u>Recycling</u>			
1st.	\$50	\$50	\$50
2nd.	\$25	\$25	\$25
<u>Beautification & Clean Up</u>			
1st.	\$50	\$50	\$50
2nd.	\$25	\$25	\$25

- (j) "Control of a grantee or applicant" shall mean the legal or practical ability to direct the affairs of the grantee or applicant either directly or indirectly, whether by contractual agreement or majority ownership of an economic interest.
- (k) "County" shall mean the County of James City, Virginia
- (l) "FCC" shall mean the Federal Communications Commission and any legally appointed, designated or elected agent or successor.
- (m) "Franchise" shall mean and include any authorization granted by the County in terms of franchise, right, privilege, or authority to construct, operate and maintain a system.
- (n) "Franchise certificate" shall mean the contract entered into in accordance with the provisions of this chapter between the county and a grantee that sets forth the terms and conditions under which the franchise shall be exercised. A copy of any franchise certificate that has been issued may be found in the office of the county administrator.
- (o) "Grantee" shall mean the person, firm, or corporation to whom or to which a franchise, as herein defined is granted by the board under this chapter, or any one who succeeds the person, firm, or corporation in accordance with the provisions of a franchise.
- (p) "Gross annual revenues" shall mean all revenue derived directly or indirectly by the grantee, its affiliates, subsidiaries, parent, and any person in which the grantee has a financial interest, from or in connection with the operation of a system in the county provided, however, that all revenues shall include, but not be limited to, basic subscriber service monthly fees, pay cable fees, installation, disconnection and reconnection fees, leased channel fees, rentals of converters, remotes and other equipment, studio rental, production equipment and personnel fees, fees received from programmers, fees from shopping channels, and advertising revenues; and that this shall not include any taxes on services furnished by the grantee herein imposed directly upon any subscriber or user by the state, county or other governmental unit and collected by the grantee on behalf of said governmental unit, nor shall this include subscriber deposits.
- (q) "Primary service area" shall mean the area of the county that will receive cable communications service at a fixed rate not including any line extension charges.
- (r) "Public way" shall mean the surface, the air space above the surface, and the area below the surface of any public street, highway, lane, path, alley, sidewalk, boulevard, drive or other public right-of-way, including public utility easements or right-of-ways, and any temporary or permanent fixtures or improvements located thereon now or hereafter.

- (s) "Subscriber" shall mean any person, firm, corporation, association, joint venture or other entity legally receiving for any purpose cable service.
- (t) "System" shall mean a cable communications system consisting of antennas, cables, wires, lines, towers, wave guides, laser beams, or any other conductors, converters, equipment or facilities, designed and constructed for the purpose of producing, receiving, amplifying and distributing by audio, video and other forms of electronic or electrical signals to and from subscribers and locations within the county.
- (u) "Transfer of a franchise" shall mean any transaction in which (1) control of more than 50% of the right of control of a ownership or a grantee is acquired by a person or group of persons acting in concert, none of whom already own or control 50% or more of the right of control of the grantee, or (2) the rights held by the grantee under a franchise certificate are transferred or assigned to another person or group of persons.
- (v) "Two way capability" shall mean the two way circuit shall be capable of transmitting effectively commercial broadcast audio-video T.V. quality programming in either of two directions (both outgoing from and incoming to all points of program origination throughout the system), and further, means that the subscriber or any other location shall have the capability to choose whether to respond immediately, or by sequential delay by utilizing any type of terminal equipment whatever, by push-button code, dial code, meter, voice, video signal, or by any other means, to any type of electronic, including but not limited to audio and video, electrical or mechanically produced signal, display and-or interrogation
- (w) "User" shall mean a person or organization utilizing a system channel for purposes of production and-or transmission of material, as contrasted with receipt thereof, in a subscriber capacity.
- (x) "VDOT" shall mean the Virginia Department of Transportation.

Article III. Grant of Authority

Section 4-86.1.4. Requirements of a franchise.

- (a) No person, firm, company, corporation or association shall construct, install, maintain or operate a system within the county unless a franchise has been obtained pursuant to the provisions of this chapter, and unless such franchise is in full force and effect.
- (b) A franchise authorizes use of the public right-of-ways for installing cables, wires, lines and other facilities to operate a cable system within a specified district.

- (c) A franchise is nonexclusive, and will not expressly or implicitly preclude the issuance of other franchises to operate cable systems within the county or affect the county's right to authorize the use of public right-of-ways to other persons as it determines appropriate.
- (d) The nonexclusive franchise shall be in effect upon acceptance by signature and notarization of the franchise certificate by the grantee. A franchise certificate constitutes a contract between the grantee and the county once it is accepted by the grantee. A grantee contractually commits itself to comply with the terms, conditions and provisions of the franchise certificate and with all applicable laws, ordinances, codes, rules, regulations and orders.
- (e) A franchise conveys no property right to the grantee or right to renewal other than as may be required by law.
- (f) A grantee is subject to and shall comply with all applicable county, state and federal laws, ordinances, codes, rules, regulations and orders. A grantee is also subject to the county's police power.
- (g) A grantee or other person shall not be excused from complying with any of the terms and conditions of this chapter or a franchise certificate by any failure of the county upon one or more occasions, to require compliance or performance.

Section 4-86.1.5. Interpretation of franchise terms.

- (a) The provisions of this chapter shall apply to a franchise certificate as if fully set forth in the franchise certificate. The express terms of this chapter shall prevail over conflicting or inconsistent provisions in a franchise certificate.
- (b) The provisions of a franchise certificate shall be liberally construed in order to effectuate its purposes and objectives consistent with this chapter and the public interest.
- (c) A franchise certificate shall be governed by and construed in accordance with the laws of the state of Virginia.

Section 4-86.1.6. Franchise applications.

- (a) After receiving applications for a franchise, the board, after considering the legal, financial, technical and character qualifications of the applicants, may, by franchise certificate, grant a nonexclusive franchise creating a right to construct and operate a system within the county. A franchise may be granted to the applicant which in the board's judgment may best serve the public interest, and whose construction and financial plans

and arrangements are both feasible and adequate to fulfill the conditions set forth in this chapter and incorporated into a franchise certificate awarded to the grantee. However, no provision of this chapter shall be deemed or construed as to require the board to grant a franchise. The board may award additional licenses, franchises or certificates of public convenience as it deems appropriate, if the board finds that the public welfare will be enhanced by such awards after a public hearing at which testimony is heard concerning the economic consideration, the impact on private property rights, the impact on public convenience, the public need and potential benefit and such other factors as are relevant.

- (b) An application for a cable communications franchise shall be submitted to the board, or its designee, on a written application form furnished by the county, and in accordance with procedures and schedules to be established and published by the county. The application of the grantee shall be incorporated into the franchise certificate by reference. An application form may request facts and information the county deems appropriate. Applications shall be accompanied by a non-refundable application fee of one thousand dollars (\$1,000) payable to the order of the "County of James City" which amount shall be used by the county to offset direct expenses incurred in the franchising and evaluation procedures, including, but not limited to, staff time and consulting assistance.
- (c) A grantee receiving a franchise shall, in addition to the non-refundable application fee, pay to the county at the time the grantee files the franchise certificate an amount, not to exceed fifteen thousand dollars (\$15,000), which shall be prescribed by the board. Said payment shall be nonrefundable, shall be made to the order of the "County of James City" and shall be used to (1) offset any direct costs incurred by the county in granting the franchise not defrayed by fees forthcoming from the provisions of paragraph (b) of this section, and (2) fund the cable administration functions listed in Article IV.

Article IV. Cable Communications Administrator And Citizens Committee

Section 4-86.1.7. Cable communications administrator's power and responsibilities.

- (a) Day-to-day administration of cable television operations within the county may be assigned to a cable communications administrator. The administrator shall be designated by the county administrator and shall report directly to the county administrator. The administrator's powers and responsibilities shall include, but not be limited to, the following functions:

- (1) Preparation of the application form to be submitted by an applicant for a cable communications franchise.
- (2) Assisting in the preparation of invitations to bid for a franchise; establishing criteria for review and ranking of franchise applications; reviewing and screening applications for franchises and making selection recommendations to the board.
- (3) Monitoring the timely performance of a grantee in making application for and obtaining all certificates, permits and agreements as provided in this chapter.
- (4) Monitoring the performance of a grantee in meeting the construction timetable as provided in this chapter.
- (5) Advising and making recommendations to the board on technical, engineering and police power regulations for cable operations within the county.
- (6) Cooperating with other systems, cable communications system operators and governmental units in the development of and in the supervision of the interconnection of systems.
- (7) Reviewing all franchise records, including the financial records as indicated in Article VI, section 4-86.1.17(b), and reports as required by this chapter, as well as all franchise reports filed with the FCC, and at the county administrator's discretion, requiring the preparation and filing of information in addition to that required therein, as may reasonably be required to accomplish the purposes of this chapter.
- (8) Monitoring performance of a grantee under any other terms of the franchise certificate and this chapter and making recommendations to the board to ensure such compliance.
- (9) Making an annual report to the board which shall include: An account of franchise fees received, the total number of hours of utilization of public channels with hourly subtotals for various programming categories, and a review of any plans submitted during the year by a grantee for development of new services.
- (10) Conducting evaluations of the system at least every three (3) years, and pursuant thereto, making recommendations to the board for amendments to this chapter or to franchise certificate(s).
- (11) Receiving and investigating complaints against a grantee by any person or upon direction of the board.

(12) Seeking recovery, if necessary, of liquidated damages in accordance with this chapter.

(13) Advising a grantee of the receipt of subscriber complaints affecting the grantee's system.

Section 4-86.1.8. Cable communications committee's powers and responsibilities.

- (a) There shall be established a citizen's board entitled the James City County Cable Communications Committee. The committee shall consist of seven (7) members. Members shall be appointed and serve at the pleasure of the board for terms of four (4) years; no member shall be appointed as a member of the committee for more than two (2) consecutive terms. The terms of the first appointees shall be as follows: Three (3) of the committee members shall be for terms of two (2) years. Assignment of the individual terms of members shall be determined by lot by the board. Appointments thereafter, shall be for terms of four (4) years. The administrator shall provide staff support to the committee.
- (b) The committee shall adopt bylaws governing its procedures and actions on matters coming before it which shall include provision for selection and tenure of the committee chairman.
- (c) Responsibilities of the committee shall include, but not be limited to, the following:
 - (1) If the County constructs or causes to be constructed a studio then the committee shall adopt regulations governing the operation of the public access and educational access channels of cable television and any institutional networks that may be developed.
 - (2) Enforce its public access regulation, if and from the time the franchise certificate vests management of a Grantee's public access channel(s) in the committee.
 - (3) Appoint an advisory committee consisting of a cross-section of County citizens to assist in the development of policies and procedures relating to the public access channel.
 - (4) Review with the cable communications administrator required performance evaluations every three (3) years.
 - (5) Advise the board of objectives to be obtained in the county's system based upon its continued evaluation of a franchise and continued assessment of cable technology.
 - (6) Review the annual report to the board prepared by the Administrator.

- (7) Cooperate with the county and grantee(s) in fulfilling its responsibilities herein.

Article V. Franchise Conditions

Section 4-86.1.9. Franchise term

The term of an original franchise shall be fifteen (15) years from the date the franchise is accepted by the grantee. The term of a renewed franchise shall be no more than fifteen (15) years.

Section 4-86.1.10. Notice to grantee

The board shall not take final action at any meeting involving the review, renewal, or revocation of the grantee's franchise unless the county has given the grantee at least twenty-one (21) days written notice of such meeting. The notice shall advise the grantee of the meeting's time, place and proposed action affecting the grantee.

Section 4-86.1.11. Franchise review

It shall be the policy of the county to amend a franchise upon application of the grantee, the recommendation of the administrator, or upon the board's own motion, when necessary or advisable to enable the grantee to take advantage of advancements in the state-of-the-art which will afford it an opportunity to more effectively, efficiently, or economically serve its subscribers or the county; provided, that this section shall not be construed to require the county to make any amendment for such purpose.

Section 4-86.1.12. Franchise renewal

- (a) The board may set the time and place of a public hearing, the purpose of which shall be to review a grantee's performance during the term of its franchise, to consider the adequacy of the franchise from the standpoint of the county, the grantee, and the Federal Communications Commission Rules for cable communications, and to determine the advisability of renewing the grantee's franchise.
- (b) The board shall hear interested persons at the public hearing and shall determine whether the grantee reasonably complied with the terms and conditions imposed by this chapter and the franchise certificate.
- (c) If the board determines that the grantee has been in reasonable compliance with the terms and conditions imposed by this chapter and the franchise certificate, the board may, by ordinance, renew the grantee's franchise certificate, with any modifications it deems desirable, for a period of time not inconsistent with the provisions of this chapter. The Board may

require a grantee to pay the county, as a condition of renewal of the franchise, an amount which the board determines will compensate the county for those direct expenses above normal administrative costs incurred in connection with the renewal of the franchise.

- (d) Notwithstanding the fact that the board may determine that the grantee has been in reasonable compliance with the terms and conditions imposed by this chapter and the franchise certificate, it shall have the right not to renew the franchise. If the board does not renew the franchise, the board shall have an option, to the extent then permitted by existing law, to acquire the assets of the grantee's cable television system, or the option to permit a succeeding grantee to acquire such assets. The amount paid for such assets shall be the fair market value of the system as of the expiration date of the franchise and shall be determined by using a hypothetical assumption that the cable system is a going concern with an existing franchise which will expire ten (10) years from the aforesaid expiration date. The board's option to acquire the assets of the grantee or to permit a succeeding grantee to acquire such assets must be exercised within one (1) year from the date of expiration.

(e) Service continuity

1. If, pursuant to the terms and conditions of Section 4-86.1.12 and Section 4-86.1.12.1 of this chapter, the county exercises its right not to renew the grantee's franchise, the grantee shall, at the county's request, continue to operate the system pursuant to the terms and conditions of its franchise for a period not to exceed one year from the expiration date of the franchise. If the county chooses to have the grantee operate the system beyond the expiration date, the county shall notify the grantee no less than 90 days prior to said expiration date. Furthermore, if the county chooses to have the grantee terminate its operation prior to the first anniversary following the expiration date of the franchise, the county shall notify the grantee at least 90 days prior to the date on which service is to terminate.
2. During such period beyond the franchise expiration date as the grantee may be required to continue service, the grantee may charge for its service such rates as had been in effect during the month immediately preceding the expiration date.
3. If the grantee fails to comply with the requirements set forth above, the grantee shall be subject to such remedies provided elsewhere in this ordinance, including, but not limited to liquidated damages as established in Section 4-86.1.29(5) herein.

(f) System removal.

Upon expiration of its franchise, or upon its termination or cancellation, or at such later date as may be set by the county pursuant to paragraph (a) above, a grantee shall, if requested, at its own expense, remove its system from all streets, roads and any public and private property upon which the system had been placed. If the grantee fails to completely remove its system within 120 days following the franchise expiration date, the county may, at its option, have grantee's system removed at grantee's cost and without liability to the county for damage caused to grantee's system during such removal.

Subsections (a) - (d) above shall apply to the extent not preempted by Federal Law.

Section 4-86.1.12.1 Forfeiture and termination

In addition to all other rights and powers retained by the county under this subchapter or otherwise, the county reserves the right to forfeit and terminate a franchise and all rights and privileges of the grantee in the event of a breach of the terms and conditions, including, but not limited to the following:

- (1) Violation by grantee of any provision of the franchise or any rule, order, regulation or determination of the county made pursuant to the franchise;
- (2) Attempt by grantee to evade any material provision of the franchise or practice any fraud or deceit upon the county or its subscribers or customers;
- (3) Failure by grantee to begin or complete system construction or system extension as provided under the franchise as per Appendix of Section 4-86.1.34, Construction Schedule;
- (4) Failure by grantee to restore service after ninety-six (96) consecutive hours of interrupted service, except when approval of such interruption is obtained from the county; such approval shall not be unreasonably withheld, or
- (5) Any misrepresentation by grantee of fact in the application for or negotiation of the franchise.

A grantee shall not be responsible for any failure to meet all or any part of the terms and conditions under this chapter or its franchise certificate due to regulation, act of God, riot or other civil disturbance, and without limiting the foregoing, by any other cause, contingency or circumstance not subject to its control which prevents or hinders the Grantee from operating and maintaining a system as described herein. Grantee shall not be excused by mere economic hardship nor by misfeasance or malfeasance of its directors, officers or employees.

If, in the opinion of the county administrator, a breach has occurred, then the administrator shall make a written demand that the grantee comply with any such provision, rule, order, or determination under or pursuant to this chapter or the franchise certificate within a period of seven (7) calendar days. If the violation by the grantee continues for a period of ten (10) days following the period set forth for correcting the violation, the county administrator shall submit the matter to the board. The county administrator shall notify in writing by certified or registered letter to the grantee at least ten (10) days prior to the date of such a board meeting, a written notice of intent to request such termination and the time and place of the meeting. Public notice shall be given of the meeting and issue which the Board is to consider.

The board shall hear and consider the issue and shall hear any person interested therein, and shall determine in its discretion, whether any violation by the grantee has occurred.

All or any portion of a franchise granted under this ordinance may be terminated or suspended by the board for failure to comply with any provisions of this chapter or the franchise certificate; provided, the County shall first notify in writing by certified mail the Grantee of any failure to comply with the provisions of this ordinance or the franchise certificate. The Grantee shall have ten days after receipt of such notice to correct the violation or to appeal the proposed termination or suspension to the board in writing. The board shall afford the grantee a hearing within 30 days of the receipt of such appeal. The effective dates of the suspension or termination shall begin ten days after the notice of suspension, if not appealed, or upon written notice from the board that the appeal has been denied.

Section 4-86.1.13. Franchise fee.

In consideration of the grants contained herein, a grantee shall pay annually to the county a sum equal to three percent of the gross annual revenues. Such payment shall be made to the Treasurer (payable to James City County) not later than forty-five (45) days after the close of the grantee's fiscal year. The annual franchise fee shall be in addition to any other payment, charge, permit fee or bond owed to the county by the grantee and shall not be construed as payment in lieu of personal or real property taxes levied by the state, county or local authorities. Grantee agrees to provide a statement of the gross annual revenues within 60 days of the end of each calendar year (or grantee's fiscal year) which should be certified under oath by an officer of the grantee.

In the event that any payment is not made on or before the required date, the county shall assess a penalty of ten (10) percent of the amount due plus interest on such payments from the due date at the annual rate of eighteen (18) percent. Should legal action be required to collect such fee(s), penalties and interest, the county also shall be entitled to attorney's fees equal to twenty-five (25) percent of the total amount due.

Section 4-86.1.14. Insurance - Bonds - Indemnity.

- (a) At the time of filing an application for a franchise, the applicant shall obtain, pay all premiums for, and deliver to the county written evidence of payment of premiums and originals of bid bond or bonds running to the county with good and sufficient sureties in the amount of \$50,000 and in a form acceptable to the county to protect the county from all damages or losses arising from the failure of the applicant, if selected as a grantee, to accept the franchise in conformity with this chapter and the substance of the proposal as submitted by the applicant.
- (b) Upon the granting of a franchise and within thirty (30) days following the filing of the franchise certificate and at all times during the term of the franchise, including the time for removal of facilities or management as a trustee as provided for herein, a grantee shall obtain, pay all premiums for, and deliver to the county, written evidence of payment of premiums and originals of the following:
 - (1) A general comprehensive public liability policy or policies indemnifying, defending and saving harmless the county, its officers, boards, commissions, agents or employees from any and all claims by any person whatsoever (including the costs, defenses, attorney fees and interest arising therefrom) on account of injury to or death of a person or persons occasioned by the operations of the grantee under the franchise herein granted, pursuant to this chapter or alleged to have been so caused or occurred, with a minimum liability of one million dollars (\$1,000,000) per personal injury or death of any one person and two million dollars (\$2,000,000) for personal injury or death of any two or more persons in any one occurrence.
 - (2) A property damage insurance policy or policies indemnifying, defending, and saving harmless the county, its officials, boards, commissions, officers, agents, and employees from and against all claims by any person whatsoever (including the costs, defenses, attorney fees and interest arising therefrom) for property damage occasioned by the operation of the grantee under the franchise herein granted, pursuant to this chapter, or alleged to have been so caused or occurred, with a minimum liability of five hundred thousand dollars (\$500,000) for property damage to the property of any one person and one million dollars (\$1,000,000) for property damage to the property of two or more persons in any one occurrence.
 - (3) A performance bond or bonds running to the county with good and sufficient surety approved by the county conditioned upon the faithful performance and discharge of the obligations imposed by this chapter and the franchise certificate from the date of the franchise certificate

including, but not limited to, faithful compliance with the construction timetable proposed by the grantee in its application as incorporated into the franchise certificate. The bond shall be in the amount determined necessary by the county, based upon review of the grantee and its application, and shall be set forth in the franchise certificate. The amount of the bond may be reduced by 50% when regular subscriber service is available to more than fifty (50%) of the occupied dwelling units within the primary service areas specified in the franchise certificate as certified by the cable communications administrator to the board; and may be further reduced by an additional eighty percent (80%) when regular subscriber service is available to more than ninety percent (90%) of the occupied dwelling units within the primary service areas specified in the franchise certificate as certified by the Administrator to the board. The county's right to recover under the bond shall be in addition to any other rights retained by the county under this chapter and other applicable law.

- (c) The bonds and all insurance policies called for herein shall be in a form satisfactory to the county attorney. Cancellation provisions where permitted, shall require thirty (30) days written notice of any cancellation to both the county and the grantee. The grantee shall, in the event of any such cancellation notice, obtain, pay all premiums for, and file with the county, original replacement bonds or policies within fifteen (15) days following receipt by the county or the grantee of any notice of cancellation.
- (d) The county may require in a franchise certificate coverage and amounts in excess of the above minimums where reasonably necessary in view of the grantee's greater exposure to liability. The county may, from time-to-time, require that insurance coverage be broadened or increase if it is reasonably determined by the county that such adjustments to coverage is necessary to reflect inflation or changing circumstances relative to liabilities.
- (e) A grantee shall, at its sole cost and expense, indemnify and hold harmless the county, its officials, boards, commissions, officers, agents and employees against any and all claims, suits, causes of action, proceedings, and judgments for damage arising out of the operation of the cable communications system under the franchise. These damages shall include but not be limited to penalties arising out of copyright infringements and damages arising out of any failure by a grantee to secure consents from the owners, authorized distributors of licensees of programs to be delivered by the grantee's cable communications system whether any act or omission complained of is authorized, allowed, or prohibited by the franchise. Indemnified expenses shall include, but not be limited to, all

out-of-pocket expenses, such as costs and attorney's fees, and shall also include the reasonable value of any service rendered by the county attorney or his assistants or any employees of the county.

- (f) No grantee shall permit any policy or bond to expire or approach less than thirty (30) days prior to expiration without securing and delivering to the county a substitute, renewal or replacement policy or bond in conforming with the provisions of this chapter.
- (g) The county may require bonds and insurance policies described in this section to run to the benefit of both the county and other governmental units located and-or operating within the county.

Section 4-86.1.15. Transfer of Franchise.

- (a) No transfer of ownership or control of a franchise shall take place, whether by force or voluntary sale, lease, mortgage, assignment, encumbrance, or any other form of disposition, without prior notice to and approval by the board.
- (b) No such consent shall be required for a transfer in trust, mortgage, or other instrument of hypothecation, in whole or in part, to secure an indebtedness except when such hypothecation shall exceed seventy-five percent (75%) of the fair market value of the property used by the grantee in the operation of its System. Prior consent of the board, expressed by resolution, shall be required for such transfer and said consent shall not be withheld unreasonably.
- (c) Prior approval of the board of the transfer of a franchise shall be required. By its acceptance of a Franchise certificate, a grantee specifically grants and agrees that any such transfer occurring without prior approval of the board shall constitute a violation of its franchise by the grantee.

Article VI. Subscriber Fees and Records

Section 4-86.1.16. Subscriber Fees.

- (a) If a grantee is subject to rate regulation pursuant to Federal law,
 - (1) Subscriber rates during the first four (4) years of the franchise shall be specified in the franchise certificate. The rates so specified shall not, except as otherwise provided herein, be increased without the consent of the board.

- (2) After the first four (4) years of the franchise, subscriber rates shall, subject to the provisions of this chapter, become unregulated.
 - (3) The board, at any time, may adopt an ordinance, to be effective at any time following the aforementioned four (4) year period, regulating subscriber rate
 - (4) Except as may be otherwise provided in the franchise certificate, a subscriber shall have the right to have its service disconnected without charge; such disconnection shall be made as soon as practicable and in no case later than thirty (30) days following notice to the grantee of same. No grantee shall enter into any agreement with a subscriber which imposes any charge following disconnection of service, except for; 1) reimbursement for converters not returned; and, 2) reconnection and subsequently monthly or periodic charges which shall be no greater than charges for new customers.
- (b) All charges to subscribers shall be consistent with a schedule of fees for all services offered by a grantee. Changes in the fee schedule shall not take effect until at least sixty (60) days after notification of same is delivered to the administrator.
 - (c) The grantee shall notify in writing each subscriber of all applicable fees and charges for providing cable communications service prior to executing a contract of service with such subscriber or installing any equipment to serve such subscriber. The grantee may require a deposit for materials and services according to its rate schedule.
 - (d) If the grantee fails to remedy a loss of service attributable to the system within forty-eight (48) hours after a written notice of such a failure, the grantee shall be required to rebate one-thirtieth (1-30) of the regular monthly charge to each subscriber for each twenty-four (24) hours or fraction thereof following the first forty-eight (48) hours after a loss of service except to the extent that restoration of service is prevented by strike, injunction, act of God, or other cause beyond the grantee's control. Loss of service shall be defined as the loss of audio or video service on four (4) or more channels of the cable system.

This Section shall not prevent a grantee from refusing service to any person because the grantee's prior account with that person remain due and owing.

Section 4-86.1.17. Books and records.

- (a) A grantee shall, (1) within thirty (30) days following the acceptance of a franchise, and (2) within thirty (30) days of the change of ownership of three percent (3%) or more of the outstanding stock or equivalent ownership interest of a grantee furnish the county a list, showing the names and addresses of persons owning three percent (3%) or more of the outstanding stock or equivalent ownership interest of grantee. Such a list shall include a roster of the grantee's offices and directors (or equivalent managerial personnel) and their addresses.
- (b) A grantee shall file annually with the county, no later than 90 days after the end of the grantee's fiscal year, a copy of a complete financial report applicable to the James City County Cable operation including an income statement applicable to its operations during the preceding twelve (12) month period, a balance sheet, and a statement of its properties devoted to cable system operations, by categories, giving its investment in such properties on the basis of original cost, less applicable depreciation. This report shall be certified as correct by an authorized officer of the grantee and there shall be submitted along with it such other reasonable information as the county shall request with respect to the grantee's properties and expenses related to the system within the county. The county shall have access to records of financial transactions for the purpose of verifying burden rates or other indirect costs prorated to the System. The grantee's accounting records shall include sufficient detail as may be necessary to provide the county with the information needed to make accurate determinations as to the financial condition of the System.
- (c) A grantee shall retain such books and records, in any reasonable form, for a period of not less than five (5) years. The county shall have the right to extend the retention period through the term of any renewed franchise.
- (d) An annual independently audited financial statement may be requested by the administrator to be received by the county no later than 120 days after requested. The expense of the audit shall be borne by the grantee. Such audited financial statements must be requested at least sixty (60) days prior to the end of the grantee's fiscal year.
- (e) Copies of all petitions, applications, communications and reports submitted by a grantee to the FCC, Securities and Exchange Commission or any other federal or state regulatory commission or agency having jurisdiction in respect to any matters affecting cable communications operations authorized pursuant to the franchise, shall be provided simultaneously to the county.

- (f) A grantee shall have available for public inspection maps, plats, permanent records of the location and character of all facilities constructed, including underground facilities. Such maps, plats, and permanent records shall be updated within ninety (90) days of any construction by the grantee. All record maps shall be at a scale of 1" to 200'. A grantee shall join the Miss Utility of Virginia Association. The construction, extension and modernization of plan shall be available for public inspection during normal business hours at the local business office of the grantee.

Section 4-86.1.18. Privacy protection.

- (a) No data shall be collected over a System from an individual subscriber unless the subscriber has given prior written authorization. Such authorization shall be limited to a one year period, shall be revokable at any time without penalty or cost, and shall not be a condition for deceiving cable services. Landlords may not give authorization for their tenants. The subscriber shall have the right to access information about him kept by a grantee or disseminated to others.
- (b) A grantee shall observe the rights of a subscriber to privacy of their persons. A grantee may release information concerning the number of subscribers viewing particular television channels, the number of subscribers expressing preferences by poll, or the number of subscribers purchasing any of the services contained herein, and may keep records of services by individual subscribers as are necessary for billing for such services. All other data collected, maintained or tabulated by a grantee shall not reveal individual subscriber preferences or opinions.
- (c) Interception by a third party of data and-or cablecasting transmitted through a System shall be prohibited.

Article VII. System Operations

Section 4-86.1.19. Franchise territory.

- (a) A franchise is for the territorial limits of the county. A grantee shall furnish to the county as part of its formal application for a franchise a map of suitable scale showing all highways and public buildings. The map shall indicate the Primary Service Areas to be served, and upon approval by the county, be incorporated into the franchise certificate. The map shall clearly delineate the following:

- (1) The Primary Service Areas within the franchise territory where the System will be available and the construction schedule for making such service available. Any differential rate within the Primary Service Areas shall be specified as required by Section 4-86.1.15(a).
 - (2) Areas within the franchise territory but outside the Primary Service Area where extension of the System cannot reasonably be expected to be made available due to lack of present or planned development, or other similar reasons, but which would receive service according to the grantee's line extension policy incorporated into the franchise certificate.
- (b) Extension of the system into any areas outside the Primary Service Area shall be required if any of the following conditions are met:
1. When potential subscribers can be served by extension of the System past occupied dwellings units equivalent to a density of forty (40) homes per mile or greater of cable contiguous to the activated system. Provided, where it is necessary to extend the grantee's trunk and feeder lines more than three hundred (300) feet solely to provide service to subscriber(s) not required to be served by the grantee, the direct cost for such extension in excess of three hundred (300) feet shall be paid in advance by the potential subscriber(s).
 2. In areas not meeting the conditions in Section 4-86-1.19(b)(1) above, the grantee shall provide upon the request of ten (10) or more potential subscribers desiring service, an estimate of the costs required to extend service to said subscribers. If the potential subscribers then wish service, the grantee shall extend service upon request of said potential according to the estimate. The grantee may require advance payment. The amount paid for special extension shall be non-refundable and in the event the area subsequently reaches the density required for mandatory extension, such payments shall be treated as consideration for special extension.
- (c) Within thirty (30) days of the effective date of its franchise, a grantee shall diligently pursue all efforts to obtain all necessary certificates, permits and agreements which are required to construct and operate a System in the county. Within ninety (90) days of receipt of such certificates, permits and agreements, a Grantee shall commence construction of the System. Thereafter, construction shall proceed at such rate so as to make service available to all members of the public desiring such service at the earliest possible time. The construction program shall follow the schedule set forth in the

- franchise certificate. If construction does not begin within twelve (12) months of the effective date of the franchise, the franchise certificate shall be cancelled.
- (d) A grantee shall notify the county in writing fifteen (15) days prior to the date on which construction will commence. Thereafter, a grantee shall file quarterly written reports with the county within thirty (30) days after the end of each calendar quarter, informing the county of the grantee's construction progress. Such reports shall indicate the number of miles of system and include maps setting forth areas made operational during the current quarter, and any potential delays which the grantee is aware of which could prevent the completion of the system within the required period.
 - (e) Nothing in this section shall prevent a grantee from constructing the system earlier than planned. However, any delay in the system construction beyond the times specified in the plan timetable shall require, if so requested in writing by the administrator, application to and consent by the board. The county may not unreasonably withhold consent when a grantee has shown good cause for the delay, but the county may attach reasonable conditions to insure performance. The schedule and maps shall be updated whenever substantial changes become necessary.
 - (f) A grantee shall not be responsible for any failure to meet all or any part of the construction schedule deadlines due to act of God, riot or other civil disturbance, and without limiting the foregoing, by any other cause, contingency or circumstance not subject to its control which prevents or hinders the construction of the system described herein. If construction is delayed or prevented by any of the circumstances set forth hereinabove, a grantee shall notify the County in writing within ten (10) days after the occurrence of any act or ten (10) days after the termination of any continuous act and request that the time of completion of the project be extended for a stated period. If the Board agrees, an extension shall be granted in whole or in part. Refusal of the board to agree to an extension shall be final.
 - (g) A grantee shall interconnect origination and access channels of the cable system with any or all other cable systems in the adjacent areas, upon the directive of the county. The grantee shall cooperate with any interconnection corporation, regional interconnection authority or city, county, state or federal regulatory agency which may be hereafter established for the purposes of regulating, financing, or otherwise providing for the interconnection of cable systems beyond the boundaries of the county. A grantee may be excused from interconnecting if the operator of the cable facility to be interconnected or the franchising authorities in other jurisdictions refuse to reach a reasonable agreement regarding such interconnection.

- (h) Upon the direction of the county, a grantee shall upgrade its cable communications system if necessary to meet the future cable related community needs and interests, taking into account the cost of meeting such needs and interests, the technical reliability of the existing System, the unamortized investment in the existing System, and whether the upgrade would present an unreasonable financial burden to either the Grantee or its subscribers.

Section 4-86.1.20. System Description and Service.

- (a) Applications for a franchise may include proposals for the provision of public education, local government, and leased access channels limited not only to video, but also including audio, FM, and data channels. Such proposals by a grantee may be incorporated into the franchise certificate granted and, to the extent so incorporated, shall subject the grantee to the following minimum requirements:
 - 1. Unless otherwise provided in any applicable franchise certificate or amendment thereto, a grantee shall have available a studio and equipment located within the county for use in the production and presentation of public access programs. This studio and equipment shall be operational no later than six months after the first subscribers begin receiving cablecasting. A grantee shall not enter into any contract, arrangement, or lease for use of its cablecast equipment in said studio which prevents or inhibits the use of such equipment for public access programming.
 - 2. A grantee shall have no control over the content of access cablecast programs; however, this limitation shall not prevent taking appropriate steps to insure compliance with the operating rules described herein.
 - 3. The public access channel(s) shall be made available to residents of the county on a nondiscriminatory basis, free of charge. Charges for equipment, personnel, and production of public access programming shall be reasonable and consistent with the goal of affording users a low cost means of television access. No charges shall be made for the production of live public access programs not exceeding five minutes in length, or for the replay of user supplied tapes which are in a form compatible with the Cable Communications Administrator prior to the activation of the channel(s), designed to promote the sale of commercial products or services (including advertising by or on behalf of candidates for public office); lottery information; and defamatory, obscene or indecent matter, as well as rules requiring nondiscriminatory access, and rules permitting public inspection of a complete record of the names and addresses of all persons or groups requesting access time. Such a record shall be retained for a period of two (2)

years. If the Franchise Certificate vests management of a Grantee's public access channel(s) in the committee, at the time the committee assumes such management, the Grantee shall have no further responsibility for public access operating rules.

4. The education access channel(s) shall be made available for the use of local public educational authorities and private nonprofit educational telecommunication entities free of charge. A grantee shall adopt operating rules for the education access channel(s), to be filed with the administrator prior to activation of the channel(s), designed to prohibit the presentation of: any advertising material designed to promote the sale of commercial products or services (including advertising by or on behalf of candidates for public office) lottery information and defamatory, obscene, or indecent matter, as well as a rule permitting public inspection of a complete record of the names and addresses of all persons or groups requesting access time. Such a record shall be retained for a period of two years.
 5. The local government access channel(s) shall be made available for the use of local government authorities free of charge.
 6. The leased access channel(s) shall be made available to leased users. Priority shall be given part-time users on at least one channel. A grantee shall adopt operating rules, which are consistent with Federal law, for the channel(s), to be filed with the administrator prior to activation of the channel(s), designed to prohibit the presentation of lottery information, obscene or indecent matter and shall establish rules to this effect; and other rules requiring nondiscriminatory access, sponsorship identification, specifying an appropriate rate schedule and permitting public inspection of a complete record of the names and addresses of all persons or groups requesting time. Such a record shall be retained for a period of two years.
- (b) The committee shall promulgate rules under which channel capacity dedicated to public government and educational access may be used by the grantee when it is not being used for access purposes.
 - (c) A grantee shall provide without charge one service outlet activated for regular subscriber service to each fire station, public school, police station, public library, and such buildings used for public purposes as may be designated by the county; provided, that if it is necessary to extend a grantee's trunk or feeder lines more than three hundred (300) feet solely to provide service to any such school or public building, the county shall have the option either of paying the grantee's direct costs for such extension in excess of three hundred (300)

feet, or of releasing the grantee from the obligation to provide service to such building. Furthermore, a grantee shall be permitted to recover, from any public building owner entitled to free service, the grantee's actual cost for any additional converters required and the direct cost of installing, when requested to do so, more than one outlet, or concealed inside wiring, or a service outlet requiring more than two hundred-fifty (250) feet of drop cable; provided, however, that a grantee shall not charge for the provision of regular subscriber service to the additional service outlets so installed in public schools, police stations, fire stations, public libraries, and county offices in addition to any such other facilities as are specified in the grantee's franchise certificate.

- (d) A System shall be capable of two-way communication as defined by Article II, Section 4-86.1.3 (1) on at least four (4) channels.
- (e) A grantee shall incorporate into its System the capability which will permit the county, in times of emergency, to override the audio portion of all channels simultaneously. A grantee shall designate a channel which will be used for emergency broadcasts of both audio and video. A grantee shall cooperate with the county in the use and operation of the emergency broadcasts of both audio and video. A grantee shall cooperate with the county in the use and operation of the emergency alert override system.

Section 4-86.1.21. Construction standards.

- (a) In the maintenance and operation of a System in the county and in the course of construction or additions to its facilities, a grantee shall proceed so as to cause the least possible inconvenience to the general public. Any opening or obstruction in the streets or other public place made by a grantee in the course of its operations or in the operations of its successors or assigns, shall be approved by permit by VDOT and shall be guarded and protected at all times by the placement of adequate barriers, fencings or boardings, the bounds of which during period of dusk and darkness shall be designated by warning lights of approved types.
- (b) Whenever a grantee shall take up or disturb any pavement, sidewalk or other improvement of any street, avenue, alley, highway, or other public place, the same shall be replaced and the surface restored in as good condition as before entry within forty-eight (48) hours after completion of the grantee's work. Upon failure of a grantee to make such restoration within such time, or to begin such restoration within such time, if the restoration cannot be made within such time, or upon the grantee's delay of more than twenty-four (24) hours in the continuation of a restoration begun, the County or VDOT may serve upon the grantee notice of intent to cause restoration to be made, and unless the Grantee, within twenty-four (24) hours

after receipt of such notice, begins or resume the proper restoration, the County or VDOT may cause the proper restoration to be made, including the removal of excess debris, and the reasonable expense of same, as itemized, shall be paid by the grantee upon demand by the County or VDOT.

- (c) A grantee's transmission and distribution system, poles, wires and appurtenances, and underground conduit installations, shall be located, constructed and maintained so as not to endanger or interfere with the lives of persons or interfere with any improvements or addition the county or VDOT may deem proper to make from time to time, or to unnecessarily hinder or obstruct the free use of the streets, alleys, bridges, or other public property; removal or relocation of any part of a grantee's transmission and distribution to avoid such interference shall be at the grantee's expense.
- (d) A grantee shall have the right, insofar as the county's title or rights allow it to grant said rights, to use the public ways in the county in order to construct, install and maintain any poles, conduits, cables or other facilities necessary to provide cable communications services. The rights of use granted are limited to use which does not unreasonably interfere with either the county's or the public use of said right-of-way or with the use of public utility easements.
- (e) In all locations of the county where any of the cables, wires, or other like facilities of public utilities are placed underground, a Grantee shall place its cables, wires or other like facilities underground. In cases of new construction or property development where utilities are to be placed underground, the developer or property owner shall give the grantee(s) reasonable notice of such construction or development, and of the particular date on which open trenching will be available for grantee's installation of conduit, pedestals and-or vaults, and laterals to be provided at grantee's expense. Grantee(s) shall also provide specifications as needed for trenching. Costs of trenching and easements required to bring service to the development shall be borne by the developer or property owner; except that if a grantee fails to install its conduit, pedestals and-or vaults, and laterals within five working days of the date the trenches are available, as designated in the notice given by the developer or property owner, then should the trenches be closed after the five-day period, the cost of new trenching shall be borne by that grantee.
- (f) A grantee shall have the authority to trim trees on public property at its own expense as may be necessary to protect its wires and facilities, subject to the regulation, supervision and-or direction of the county.

- (g) A grantee shall, on the request of any person holding a building moving permit or a permit to move an oversized load issued by VDOT, temporarily raise or lower its wires to permit the moving of buildings or oversized loads. The expense of such temporary removal, raising or lowering of wires shall be paid by the person requesting the same, and a grantee shall have the authority to require such payment in advance. A grantee shall be given not less than forty-eight (48) hours advance notice to arrange for such temporary wire changes.

Section 4-86.1.22. Operational Requirements and Records

- (a) A grantee shall construct, operate, and maintain the cable television system subject to full compliance with the rules and regulations, including applicable amendments, of the FCC and all other applicable Federal, State, or County laws and regulations. The System and all its parts shall be subject to inspection by the county, and the county reserves the right to review a grantee's construction plans prior to construction.
- (b) A grantee shall exercise its best effort to design, construct, operate, and maintain the system at all times so that signals carried are delivered to subscribers without material degradation in quality (within the limitations imposed by the technical state-of-the-art).

Section 4-86.1.23. Complaint procedure

- (a) The administrator is designated by the county as having primary responsibility for the continuing administration of the franchise and implementation of complaint procedures.
- (b) A grantee shall maintain an office in the county which shall be open at least during all usual business hours (9am - 5pm) having a publicly listed local telephone, and be so operated that complaints and requests for repairs or adjustments may be received on a twenty-four (24) hour basis each day of the year.
- (c) A grantee shall maintain a repair and maintenance crew capable of responding to subscriber complaints or requests for service, excepting initial installation, within 24 hours after receipt of the complaint or request. No charge shall be made to the subscriber for this repair service.
- (d) A grantee shall establish procedures for receiving, acting upon, and resolving subscriber complaints to the satisfaction of the subscriber. A grantee shall furnish a notice of such procedures to each subscriber at the time of initial subscription to the system. In the event that a customer complaint is not resolved to the mutual satisfaction of the customer or the grantee, either the customer or the grantee may request that the matter be presented to the administrator for a hearing and resolution.

- (e) A grantee shall keep a maintenance service log which shall indicate the nature of each service complaint, the date and time it was received, the disposition of said complaint, and the time and date thereof. This log shall be maintained for two years and shall be made available for periodic inspection by the county.

Section 4-86.1.24. Tests and Performance Monitoring.

When there have been complaints made or when there exists other evidence, which, in the judgment of the administrator, casts doubt on the reliability or quality of cable service, the county shall have the right and authority to compel a grantee to test, analyze and report on the performance of the system. Such report shall be delivered to the administrator no later than fourteen (14) days after the administrator formally notifies the grantee and shall include the following information: the nature of the complaints which precipitated the special tests; what system component was tested, the equipment used, and procedures employed in said testing; the results of such tests; and the method in which said complaints were resolved.

Article VIII. General Provisions

Section 4-86.1.25. Franchise validity.

A grantee shall agree, by the acceptance of the franchise, to accept the validity of the terms and conditions of this chapter and the franchise certificate in their entirety and that it will not, at any time, proceed against the county in any claim or proceeding challenging any term or provision of this chapter or the franchise certificate as unreasonable, arbitrary or void, or that the county did not have the authority to impose such term or condition.

Section 4-86.1.26. Rights Reserved to the County.

The County hereby expressly reserves the following rights:

1. To exercise its governmental powers, now or hereafter, to the full extent that such powers may be vested in or granted to the County.
2. To adopt, in addition to the provisions contained herein and in the franchise certificate and in any existing applicable ordinances, such additional regulations as it shall find necessary in the exercise of its police power.

Section 4-86.1.27. Discriminatory Practices Prohibited.

A grantee shall not, as to rates, charges, service, service facilities, rules, regulations, employment, or in any other respect, make or grant any undue preference or advantage to any party, nor subject any party to any prejudice or disadvantage. This section shall not prohibit the negotiation of rates with commercial establishments and apartment complexes having more than ten (10) units.

Section 4-86.1.28. Landlord-Tenant Relationship.

1. No landlord shall: (a) interfere with the installation of cable communications facilities upon his property or premises, except that a landlord may require:
 - i. That the installation of cable communications facilities conform to such reasonable conditions as are necessary to protect the safety, functioning and appearance of the premises, and the convenience and well-being of other tenants;
 - ii. That the cable communications company or the tenant or a combination thereof bear the entire cost of the installation, operation or removal of such facilities; and
 - iii. That the cable communications company and the tenant agree to indemnify the landlord for any damage caused by the installation, operation or removal of such facilities.
- (b) Demand or accept payment from any tenant or any cable communications company in any form, in exchange for permitting cable communication service on or within his property or premises.
- (c) Discriminate in rental charges, or otherwise, between tenants who receive cable communications service and those who do not.
2. Rental agreements and leases executed prior to the effective date of this article may be enforced notwithstanding this section.
3. No cable communications company may enter into any agreement with the owners, lessees or persons controlling or managing buildings served by a cable communications company, or do or permit any act, that would have the effect, directly or indirectly of diminishing or interfering with existing rights of any tenant or other occupant of such building to use or avail himself of master or individual antenna equipment.

Section 4-86.1.29. Liquidated damages.

Notwithstanding any other remedy provided for in this chapter, or otherwise available under law, the county shall have the power to recover monetary amounts from a grantee under certain conditions, such monetary amounts being in the nature of liquidated damages. The conditions for an amounts of such damages are listed below. By accepting a franchise, a grantee automatically agrees that the following conditions will cause damages to the county, and that the monetary amounts are established because it is difficult to ascertain the exact amount of the damages. The damages resulting to the county include, but are not limited to: (1) loss of franchise fees that would have otherwise been paid to or would have become due the county; and (2) administrative costs incurred by the county. Damages shall be invoked upon the occurrence of any or all of the following:

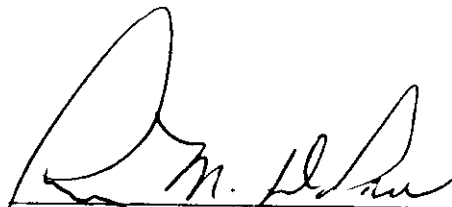
1. For failure to submit plans indicating expected dates of installation of various parts of the system - One Hundred Dollars (\$100) per day.
2. For failure to commence operations in accordance with this chapter and-or the franchise certificate - Two Hundred Dollars (\$200) per day.
3. For failure to complete construction and installation of the system within the required time limits - Three Hundred Dollars (\$300) per day.
4. For failure to supply data requested by the county in accordance with the requirements of the franchise certificate and this chapter, such data pertaining to installation, construction, customers, finances or financial reports, or rate review - Fifty Dollars (\$50) per day.
5. For failure to otherwise provide service to a subscriber in accordance with the requirements of this chapter - Ten dollars (\$10) per day per subscriber affected, but not to exceed Fifty Dollars (\$50) per subscriber per month, and further not to exceed One Thousand Dollars (\$1,000) per day in the aggregate. This amount shall be reduced by any refunds of subscriber fees made to subscribers affected by the failure, etc., to provide service.

Section 4-86.1.30. Obtaining or Attempting to Obtain Cable Communications Service Without Payment Penalty.

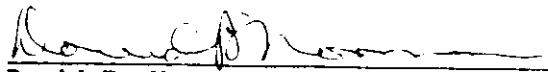
- (a) It shall be unlawful and constitute a misdemeanor for any person to obtain or attempt to obtain, for himself or for another, cable communications service by the use of any false information, or in any case where such service has been discontinued by the supplier and notice of disconnection has been given.

- (b) It shall be unlawful for any person to obtain or attempt to obtain cable communication service by the use of any scheme, device, means or method, or by a false application for service with intent to avoid payment of lawful charges therefore.
- (c) The word "notice", as used in paragraph (a) hereof, shall be notice given in writing to the person to whom the service was assigned. The sending of a notice in writing by a receipted delivery system, and the actual signing of the receipt for said notice by the addressee, shall be prima facie evidence that such notice was duly received.
- (d) Any person who violates any provisions of this section, if the value be less than one hundred dollars (\$100), shall be guilty of a Class 1 misdemeanor.

Ordinance to Amend and Reordain
Chapter 4-86.1. Cable Communications
Page 30


Perry M. DePue
Chairman, Board of Supervisors

ATTEST:


David B. Norman
Clerk to the Board

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

Adopted by the Board of Supervisors of James City County, Virginia,
this 2nd day of July, 1990.

0293U

ORDINANCE NO. 107A-12

JUL 2 1990

BOARD OF SUPERVISORS
JAMES CITY COUNTY
VIRGINIA

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 18, TAXATION, OF THE CODE OF THE COUNTY OF JAMES CITY, VIRGINIA, BY AMENDING ARTICLE I. IN GENERAL, BY ADDING SECTION 18-7.3. CORRECTION OF ASSESSMENT, BY AMENDING ARTICLE III. PERSONAL PROPERTY TAX, SECTION 18-13.2. PERSONAL PROPERTY TAX ON MOTOR VEHICLES AND TRAILERS; PRORATION THEREOF.

BE IT ORDAINED by the Board of Supervisors of the County of James City, Virginia, that Chapter 18, Taxation, is hereby amended and reordained by adding Section 18-7.3. Correction of assessment, and by amending Section 18-13.2. Personal property tax on motor vehicles and trailers; proration thereof.

Chapter 18. Taxation

Article I. In General

Section 18-7.3. Correction of assessment.

Any person, firm or corporation aggrieved by any local assessment on tangible personal property, machinery and tools, merchant's capital, local license tax or real estate may, within five years from the last day of the tax year from which such assessment is made, apply to the commissioner of the revenue for a correction thereof.

State law reference - Application to commissioner of the revenue or other local official for correction, Code of VA §58.1-3980.

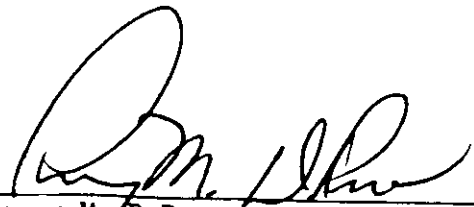
Section 18-13.2. Personal property tax on motor vehicles and trailers;
proration thereof.

(a) There shall be a personal property tax at a rate established each year by the board of supervisors on motor vehicles and trailers, (hereafter referred to in this section as "taxable property") which have a situs within the county on January first of each year and which acquire a situs within the county on or after January the second of each year. When taxable property acquires a situs within the county on or after January second, the personal property tax for that year shall be assessed to the owner prorated on a monthly basis for the portion of the tax year during which the taxable property has situs within the county. When taxable property with a situs in the county is transferred to a new owner within the county, the personal property tax shall be assessed to the new owner prorated on a monthly basis for the portion of the tax year during which the new owner owns the taxable property. For purposes of proration, a period of more than one-half of a month shall be counted as a full month and a period of less than one-half of a month shall not be counted. All taxable property shall be assessed as of January first of each year or, if it acquires situs or has its title transferred after January first, as of the first day of the month in which the taxable property acquires situs within the county or has its title transferred. The owner of taxable property acquiring situs within the county or to whom taxable property is transferred shall file a declaration of property ownership to the commissioner of the revenue within thirty (30) days of the date on which such property acquires a situs within the county or has its title transferred to such owner.

(b) When any taxable property loses its situs within the county or its title is transferred to a new owner, the taxpayer shall from that time be relieved from personal property tax on such property and receive a refund of personal property tax already paid, or a credit against personal property taxes outstanding against the taxpayer, at the option of the commissioner of the revenue, on a monthly prorated basis, upon application to the commissioner of the revenue.

(c) Any person who fails to pay personal property taxes on or before the date due shall incur a penalty of ten (10) per cent of the tax due, or ten dollars (\$10.00), whichever is greater; provided, however, that the penalty shall in no case exceed the amount of tax due. Said sum shall become part of the taxes due. Interest at the rate of eight (8) per cent per annum from the first day following the day such taxes are due shall be paid upon the principal and penalties of such taxes remaining unpaid.

(d) An exemption from this tax and any penalties arising therefrom shall be granted for any tax share or portion thereof during which the property was legally assessed by another jurisdiction and proof is presented to the commissioner of the revenue indicating that such tax on the assessed property was paid.


Perry M. DePue
Chairman, Board of Supervisors

ATTEST:


David B. Norman
Clerk to the Board

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

Adopted by the Board of Supervisors of James City County, Virginia.
this 2nd day of July, 1990.

0294U

JUL 2 1990

ORDINANCE NO. 156A-2

BOARD OF SUPERVISORS
JAMES CITY COUNTY
VIRGINIA

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 1, GENERAL PROVISIONS, OF THE CODE OF THE COUNTY OF JAMES CITY, VIRGINIA, BY ADDING SECTION 1-13. COURTHOUSE FEE.

BE IT ORDAINED by the Board of Supervisors of the County of James City, Virginia, that Chapter 1, General Provisions, is hereby amended and reordained by adding Section 1-13. Courthouse fee.

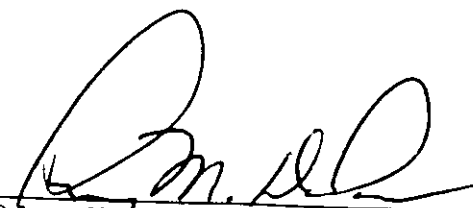
Chapter 1. General Provisions

Section 1-13. Courthouse fee.


(a) A fee of \$2.00 shall be assessed and imposed as part of the costs incident to each criminal and or traffic case in the district or circuit courts. This fee shall be in addition to all other fees prescribed by law.

(b) The clerk of the court shall remit fees collected under this section to the Treasurer of the County. The Treasurer shall hold such funds in a separate account subject to disbursement by the Board of Supervisors for the construction, renovation or maintenance of the courthouse, jail or court-related facilities and to defray increases in the cost of heating, cooling, electricity and ordinary maintenance.

State law reference - Virginia Code Section 14.1-133.2


Perry M. DePue
Chairman, Board of Supervisors

ATTEST:


David B. Norman
Clerk to the Board

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

Adopted by the Board of Supervisors of James City County, Virginia,
this 2nd day of July, 1990.

0297U

ORDINANCE NO. 31A-123

JUL 2 1990

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 I. IN GENERAL, SECTION 20-2. DEFINITIONS; SECTION 20-7. CERTIFICATE OF OCCUPANCY; SECTION 20-12. MINIMUM OFF-STREET PARKING; SECTION 20-14. MAINTENANCE OF LANDSCAPING AND SCREENING; ARTICLE II. SITE PLAN, SECTION 20-39. SAME-SUBMITTAL CONTENTS; BY DELETING SECTION 20-42. TRANSITIONAL SCREENING REQUIREMENTS; BY AMENDING ARTICLE IV. DISTRICTS, DIVISION I, GENERALLY, SECTION 20-89. SPECIAL REQUIREMENTS FOR ESTABLISHMENTS SELLING OR DISPENSING VEHICULAR FUELS; SECTION 20-91. OUTDOOR OPERATIONS AND STORAGE; DIVISION 8. MULTI-FAMILY RESIDENTIAL DISTRICT, R-5, SECTION 20-246. SETBACK REQUIREMENTS; SECTION 20-248. YARD REGULATIONS; SECTION 20-251. REQUIREMENTS FOR IMPROVEMENTS AND DESIGN; DIVISION 10. MANUFACTURED HOME SUBDIVISION DISTRICT, R-7, BY DELETING SECTION 20-295. PERIMETER LANDSCAPE REGULATIONS; BY AMENDING DIVISION 11. LIMITED BUSINESS DISTRICT, LB, SECTION 20-311. YARD REGULATIONS; SECTION 20-312. SPECIAL PROVISIONS FOR THE ADJUSTMENT OF YARD AND OPEN SPACE REQUIREMENTS; BY DELETING SECTION 20-313. OPEN SPACE REGULATIONS; BY AMENDING DIVISION 12. GENERAL BUSINESS DISTRICT, B-1, SECTION 20-333. YARD REGULATIONS; SECTION 20-334. SPECIAL PROVISIONS FOR THE WAIVER OF YARD REQUIREMENTS; BY DELETING SECTION 20-335. OPEN SPACE REGULATIONS; BY AMENDING DIVISION 13. LIMITED INDUSTRIAL DISTRICT, M-1, SECTION 20-355. SIDE AND REAR YARDS; BY DELETING SECTION 20-356. PERIMETER LANDSCAPE REGULATIONS; BY AMENDING SECTION 20-357. SPECIAL PROVISIONS FOR THE WAIVER OF AREA, LOT WIDTH, YARD AND YARD SETBACK REQUIREMENTS; DIVISION 14. GENERAL INDUSTRIAL DISTRICT, M-2, SECTION 20-380. SIDE OR REAR YARDS; BY DELETING SECTION 20-381. PERIMETER LANDSCAPE

REGULATIONS; BY AMENDING SECTION 20-382. SPECIAL PROVISIONS FOR THE WAIVER OF AREA, LOT WIDTH, YARD AND SETBACK REQUIREMENTS; ARTICLE VIII. PLANNED UNIT DEVELOPMENT DISTRICTS, SECTION 20-482. REQUIREMENTS FOR IMPROVEMENTS AND DESIGN; SECTION 20-483. SETBACK, SIDE AND REAR YARD REQUIREMENTS; AND SECTION 20-486. SETBACK REQUIREMENTS FOR INDUSTRIAL USE.

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 20-2. Definitions; Section 20-7. Certificate of occupancy; Section 20-12. Minimum off-street parking; Section 20-14. Landscaping and tree preservation requirements, Section 20-39. Same-submittal contents; by deleting Section 20-42. Transitional screening requirements; by amending Section 20-89. Special requirements for establishments selling or dispensing vehicular fuels; Section 20-91. Outdoor operations and storage; Section 20-246. Setback requirements; Section 20-248. Yard regulations; Section 20-251. Requirements for improvements and design; by deleting Section 20-295. Perimeter landscape regulations; by amending Section 20-311. Yard regulations; Section 20-312. Special provisions for the adjustment of yard requirements by deleting Section 20-313. Open space regulations; by amending Section 20-333. Yard regulations; Section 20-334. Special provisions for the waiver of yard requirements; by deleting Section 20-335. Open space regulations; by amending Section 20-355. Side and rear yards; by deleting 20-356. Perimeter landscape regulations; by amending Section 20-357. Special provisions for the waiver of area, lot width, yard and yard setback requirements; Section 20-380. Side or rear yards; by deleting Section 20-381. Perimeter landscape regulations; by amending Section 20-382. Special

provisions for the waiver of area, lot width, yard and setback requirements; Section 20-482. Requirements for improvements and design; Section 20-483. Setback, side and rear yard requirements; and Section 20-486. Setback requirements for industrial use.

ARTICLE I. IN GENERAL*

Section 20-2. Definitions.

For the purposes of this Chapter the following words and phrases shall have the meanings respectively ascribed to them by this Section:

Caliper. The diameter of a tree trunk measured six (6) inches above ground level for nursery stock.

Diameter Breast Height. The diameter of a tree trunk measured four and five tenths (4.5) feet from the ground.

Landscape Open Space, Area or Strip. An area containing living plant materials, including trees, flowers, shrubs or grass. Landscape areas may include pedestrian walks, ornamental objects, decorative planting, lawns, and wooded areas, but at least fifty (50%) percent of the area must be vegetated. Landscape open space, areas or strips shall not include any building, parking surface, or structure except as stated above, or any wet detention pond or infiltration trench.

Open Space. Space suitable for recreation, gardens or landscaping which may include areas left in their natural state, trails, ponds, stream banks, recreation areas, areas of excessive slopes, low-lying areas and marshes and landscape areas required by this Chapter. Such space must be free of automobile traffic and parking, and be readily accessible to all those for whom it is required.

Shrubs. For the landscaping requirements of this Chapter, a shrub shall be defined as a low growing woody plant having several permanent stems which is, at planting, 18 inches if evergreen or 22 inches if deciduous.

Tree. For the landscaping requirements of this Chapter, a tree shall be defined as: (a) a deciduous shade tree having a minimum caliper of 1-1/2 inches at planting, or (b) an evergreen tree at least eight (8) feet in height, and a minimum caliper of 1-1/4 inches if single stemmed at planting, or eight (8) feet in height if multi-stemmed at planting. The term tree shall not include ornamental trees as defined below.

Tree, mature. Any deciduous or evergreen tree with a minimum diameter breast height of twelve (12) inches which is free of disease and significant damage.

Tree, ornamental. For the landscaping requirements of this Chapter, an ornamental tree shall be defined as a deciduous or evergreen tree which, if single stemmed is eight (8) feet in height and has a minimum caliper of 1-1/4 inches, at planting, or if multi-stemmed has a height of eight (8) feet at planting.

Tree, specimen. Any tree with a minimum diameter breast height of 24 inches which is free of disease and significant damage or which is notable by virtue of its outstanding size and quality for its particular species.

Section 20-7. Certificate of occupancy.

Land may be used or occupied and buildings structurally altered or erected may be used or changed in use only after a Certificate of Occupancy has been issued by the Zoning Administrator. Such a certificate shall state that the building or the proposed use, or the use of the land, complies with the provisions of this Chapter. A similar certificate shall be issued for the purpose of maintaining, renewing, changing, or extending a nonconforming use. The certificate shall be issued within ten (10) days after the erection or structural alteration of such building or part has conformed with the provisions of this Chapter and all applicable codes and ordinances. Upon the request of the holder of a permit the Zoning Administrator may issue a temporary Certificate of Occupancy for a building or structure, or part thereof, before the entire work covered by the permit shall have been completed, provided such portion or portions may be occupied safely prior to full completion of the building or structure without endangering life or public welfare.

The Zoning Administrator shall not issue a temporary 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, or the completion of required landscape areas and plantings shown on the approved site plan or other approved plan by providing either a letter of credit, certified check, cash escrow or cash payment approved by the county attorney.

Section 20-12. Minimum off-street parking.

There shall be provided at the time of erection of any main building or at the time any main building is enlarged, minimum off-street parking with adequate landscaping as required in Section 20-14 and provision for entrance and exit by standard sized automobiles, as follows:

B. Design.

Parking areas shall be arranged for functional efficiency and convenience and shall be designed to be amenable to surrounding property. Parking areas accessory or otherwise, containing ten (10) or more parking spaces, shall comply with the following:

1. The parking lot shall be constructed so that spaces are grouped into bays. At the end of each bay, a landscape island of at least nine (9) feet in width and fifteen (15) feet in length shall be built to separate the bays from each other or from traffic lanes. When the parking bays contain double rows of parking spaces, the landscape island shall be increased to nine (9) feet in width and thirty (30) feet in length. A parking bay may not be constructed to a length of more than two hundred feet without constructing a landscape island. The Administrator may approve islands which vary from nine by fifteen (9 x 15) foot or nine by thirty (9 x 30) foot rectangles in order to provide desirable geometric design features such as rounded corners and angles to facilitate maneuvering of automobile traffic. However, in no case shall the total area of an island be decreased as a result of such design change.
2. All landscape areas contiguous to parking bays shall be protected from intrusion by vehicles by curbs or bumpers. Parking areas shall not be located within five (5) feet of any building. Driveways shall not be located within five (5) feet of any building except where vehicular access is necessary.
3. Adequate lighting shall be provided if the uses which are served by the parking lot will be in operation at night. The lighting in parking lots shall be directed so as not to produce objectionable glare on adjacent property or streets, and no lighting fixture shall exceed a height of thirty (30) feet.
4. The design of the parking lot shall meet the minimum geometric standards presented in the following table:

MINIMUM OFF-STREET PARKING AREA DIMENSIONS

<u>Angle of Parking (degrees)</u>	<u>Direction of Traffic</u>	<u>Dimension of Stall (feet)</u>	<u>Width of Aisle (feet)*</u>
Parallel	One-way	8 x 22	12
45	One-way	9 x 18	12
60	One-way	9 x 18	18
90	Two-way	9 x 18	23

* Minimum width of traffic aisles in parking lots for two-way traffic shall be twenty-four (24) feet.

The minimum aisle dimension of any parking lot designed to accommodate at least five hundred (500) vehicles and intended for long-term parking may be reduced by four (4) feet provided: the lot is designed and marked for one-way traffic; the parking spaces form an angle of eighty (80)

degrees to ninety (90) degrees with the aisle; each vehicle is individually guided to a parking space by an attendant; and the safety and effective operation of the lot has been clearly demonstrated.

For the purpose of this section, the phrase "long-term parking" shall mean parking the duration of which is on the average six (6) hours or more.

5. Parking areas, driveways and entrances shall be surfaced with gravel, stone, asphalt or concrete, and shall be maintained in good repair. Adequate drainage shall be provided for the removal of stormwater and a drainage plan shall be submitted with the site plan and approved by the Director of Code Compliance.
6. The location, size, and number of entrances from parking areas onto public or private roads shall be shown on the site plan. Upon finding that on-site traffic circulation, off-site traffic flow, or public safety would be improved, the Planning Commission may require the location, number or size of entrances to be limited or increased.

C. Special Provisions for Bus Parking. If provided, bus parking areas shall be arranged for functional efficiency and convenience and shall be designed to be amenable to surrounding property. Bus parking areas, accessory or otherwise, are exempted from the requirements of paragraph (B) "Design," but shall comply with the requirements of paragraph (A) "General Provisions," and with the following:

1. Site plans, in accordance with Article II of this chapter, shall be submitted for all new off-street parking areas for buses or for any additions to existing off-street parking areas for buses.
2. Parking areas to be used for bus parking shall be used for bus parking only. Signs shall be erected within the parking lot indicating those areas designated for bus parking only.
3. For perpendicular or angled parking, the minimum size of a bus parking space shall be twelve (12) feet wide and forty (40) feet long. For parallel bus parking spaces, the minimum size shall be twelve (12) feet wide by fifty (50) feet long. The width of aisles within bus parking lots shall be determined by the turning radii necessary to safely maneuver into and out of the parking spaces; however, shall in no case be less than twenty-four (24) feet wide.

4. Bus parking areas shall be surfaced with gravel, stone, asphalt or concrete and shall be maintained in good repair. Adequate drainage shall be provided for the removal of stormwater and a drainage plan shall be submitted with the site plan and approved by the county engineer.
 5. Adequate lighting shall be provided if the uses which are served by the bus parking area will be in operation at night. The lighting shall be directed so as not to produce objectionable glare on adjacent property or streets, and no lighting fixture shall exceed a height of thirty (30) feet.
- D. Minimum off-street parking requirements.
2. Commercial uses: Commercial and institutional uses shall be divided into various categories according to the parking demand which they generate, as follows:
 - (g) Planned shopping centers, with four (4) or more stores using a common parking lot, shall provide parking spaces according to the following schedule:

<u>Total Retail Floor Area in Square Feet</u>	<u>Number of Spaces per 1,000 Square Feet</u>
1 - 100,000	4
100,001 - 300,000	5
Over 300,000	5.5

Where a theater is proposed in conjunction with any shopping center which contains at least sixty thousand (60,000) square feet of retail floor area, the number of parking spaces required for the theater may be reduced by twenty-five (25) percent of what would have been required under (b) above.

Section 20-14. Landscaping and tree preservation requirements

A. Statement of intent

The purpose of this Section is to promote the public health, safety and welfare by providing for the preservation, installation and maintenance of trees and plant materials which will:

1. Ensure development which is consistent with the goals of the Comprehensive Plan related to natural resources, environmental and land use standards, Greenbelt Roads, and aesthetics;

2. Retain the historic and natural character of James City County by reducing the visual impact of signs, parking lots, buildings and structures and protecting, preserving and enhancing its natural physical wooded character with emphasis on preserving the existing tree canopy and other indigenous vegetation and providing such canopy and vegetation where it does not exist;
3. Minimize the environmental and land use impacts of developments associated with noise, glare, dust, and movement; changes in appearance, character and value of neighboring properties; and effects on air and water quality, stormwater runoff, groundwater recharge and soil erosion by preserving existing tree canopies and indigenous vegetation and restoring such canopies and vegetation and providing other landscape features;
4. Promote traffic safety by controlling views and visually defining circulation patterns; and
5. Provide more comfortable exterior spaces and conserve energy by preserving and providing tree canopies and other landscape features which provide shade and windbreaks.

B. Administration

1. Landscape plan: when required

A landscape plan is required for any site plan or residential plan for development subject to paragraph C.2.d. (5 & 6) and shall be submitted at the time of application for plan approval. The landscape plan shall be prepared and approved in accordance with Article II, Site Plan.

2. Plan requirements and determinations

Where requirements of this Section are based on zoning or planning designations, such designations shall be determined by the County Zoning District Map, Comprehensive Plan and Six-Year Secondary Road Plan, and the official planning and zoning documents of the adjoining jurisdiction if applicable. Required landscape areas shall exclude any planned future right-of-way as designated on the Comprehensive Plan, Six-Year Primary or Secondary Road Plan, Peninsula Area Transportation Plan, or any road plan adopted by the Board of Supervisors.

3. Installation of required landscaping, performance guarantee

Where a landscape plan is required, landscaping shall be installed and existing trees shall be preserved in conformance with the approved landscape plan. A Certificate of Occupancy shall not be issued until all

landscaping has been installed in accordance with the approved landscape plan unless the installation of any incompletd landscaping is guaranteed as provided in Section 20-7.

4. Maintenance of landscaping

The owner, or his agent, shall be responsible for the maintenance, repair and replacement of all landscaping materials, fences and barriers as may be required by the provisions of this Section. All plant materials, including existing trees preserved to meet the requirements of this Section, shall be tended and maintained in a healthy growing condition, replaced when necessary, and kept free of refuse and debris. Fences and walls shall be maintained in good repair. Replacement material shall conform to the original intent of the approved landscape plan and any replacement planting shall meet the minimum requirements of this Section.

5. Modification, substitution, transfer

The Commission or Planning Director may modify, permit substitutions for any requirement of this Section, or permit transfer of required landscaping on a site upon finding that: 1) such requirement would not promote the intent of this Section; 2) the proposed site and landscape plan will satisfy the intent of this Section and its landscape area requirements to at least an equivalent degree as compared to a plan that strictly complies with the minimum requirements of this Section; 3) the proposed site and landscape plan will not reduce the total amount of landscape area or will not reduce the overall landscape effects of the requirements of this Section as compared to a plan that strictly complies with the minimum requirements of this Section; 4) such modification, substitution, or transfer shall have no additional adverse impact on adjacent properties or public areas; and 5) the proposed site and landscape plan, as compared to a plan that strictly complies with the minimum requirements of this Section, shall have no additional detrimental impacts on the orderly development or character of the area, adjacent properties, the environment, sound engineering or planning practice, Comprehensive Plan, or on achievement of the purposes of this Section. Requests for modifications, substitutions or transfers may be granted in the following cases:

- a. The proposed landscape plan, by substitution of technique, design, or materials of comparable quality, but differing from those required by this Section, will achieve results which clearly satisfy the overall purposes of this Section in a manner clearly equal to or exceeding the desired effects of the requirements of this Section;

- b. The proposed landscape plan substantially preserves, enhances, integrates and complements existing trees and topography;
- c. Where, because of unusual size, topography, shape or location of the property, or other unusual conditions, excluding the proprietary interests of the developer, strict application of the requirements of this Section would result in significant degradation of the site or adjacent properties;
- d. The proposed landscape design or materials involve a readily discernible theme, historic or otherwise, or complements an architectural style or design;
- e. Where it is necessary to allow the subdivision of property on which commercial or industrial units will be for sale, for sale in condominium, or for lease, and such units are constructed as part of a multi-unit structure in which the units share common walls or are part of a multiple-structure development, and the entire development has been planned and designed as a cohesive, coordinated unit under a single master plan; or
- f. Where transfers of required landscape areas to other areas on a site are necessary to satisfy other purposes of this Section, including transfers to increase screening or preserve existing trees provided such transfers do not reduce overall landscape requirements for a development.

Requests for modifications, substitutions or transfers shall be filed in writing with the Planning Director, and shall identify the specific requirement of this Section and the reasons and justifications for such request together with the proposed alternative. Depending upon whether the landscape plan is subject to commission or administrative review, the commission or Planning Director shall approve, deny, conditionally approve or defer action on such request and shall include a written statement certifying the above findings. The commission or Planning Director may require the applicant to provide plans, documentation or other materials to substantiate these findings.

In the case of approvals or conditional approvals, this statement shall include a finding as to the public purpose served by such recommendation, particularly in regard to the purposes of this Section. The Planning Director shall notify the applicant in writing as to the reasons for such action within 30 days of submittal of administrative plans meeting all applicable submittal criteria or within five working days of such decision by the commission.

C. General requirements for all uses requiring a landscape plan

1. Standards for tree protection and impervious cover

Existing mature and specimen trees shall be integrated into the overall plan of development and shall be preserved so as to promote the intent of this Section. The commission or Planning Director, depending upon the applicable review process, may require that certain mature trees or specimen trees be preserved upon determination that they contribute significantly to the character of the County and that preservation is necessary to satisfy the intent of this Section. The purpose of this paragraph is to protect such trees and other amenities which could otherwise be lost due to careless site design or construction. All trees to be preserved shall be protected in accordance with the standards of this Section.

a. Tree protection

(1) All trees to be preserved shall be protected before, during and after the development process in accordance with specifications contained in the Virginia Erosion and Sediment Control Handbook. The applicant shall include a conservation checklist for review and approval by the Director of Code Compliance which shall ensure that the specified trees will be protected in accordance with these specifications.

(2) Trees or groups of trees to be preserved shall be clearly marked in the field. All specimen trees shall be clearly marked. Groups of trees shall be preserved rather than single trees. Trees and groups of trees to be preserved shall be enclosed by a substantial, temporary fence or barrier located and maintained outside the drip line before commencement of clearing or grading. The fence or barrier shall remain throughout construction and any subsequent grading or excavation unless otherwise approved on a clearing and grading plan. In no case shall materials, debris, fill, vehicles or equipment be stored within this enclosure, nor shall the topsoil layer be disturbed except in accordance with tree protection standards approved as part of the conservation checklist. The developer shall be responsible for ensuring these areas are protected in accordance with this Section. Where

changes from the existing natural grade level are necessary, permanent protective structures such as tree walls or wells shall be properly installed in accordance with the Virginia Erosion and Sediment Control Handbook.

b. Tree removal

Outside impervious areas, diseased trees, or trees weakened by age, storm, fire or other injury may be removed provided trees are replanted in accordance with paragraph C.2.a. Selective hand clearing and intermittent thinning may be permitted outside impervious areas by the Director of Code Compliance for necessary visibility, maintenance, and lawn management.

2. Site landscaping and tree protection requirements

- a. General landscape area standards. Existing trees shall be retained to the maximum extent possible in all landscape areas. Such trees may be removed to accommodate necessary utilities or drainage structures, or where necessary to abate demonstrable public health or safety hazards. All required landscape areas, other than landscape areas adjacent to buildings and within parking lots, as required below in paragraph C.2.b. and C.2.e., shall contain a number of trees equal to at least one tree and three shrubs per four hundred (400) square feet of total landscape area provided. At least thirty five (35) percent of these trees shall have a minimum caliper of 2-1-2 inches. Fifteen (15) to twenty five (25) percent of the required trees shall be ornamental trees. At least twenty five (25) percent of the total required trees and twenty five (25) percent of the required shrubs shall be evergreen. All required plantings shall conform with the most recent edition of American Standard for Nursery Stock published by the American Association of Nurserymen and shall be planted in accordance with the most recent edition of Guidelines for Planting Landscape Trees and Planting and Care of Trees and Shrubs published by the Virginia Cooperative Extension Service. Required planting materials shall be of a species that promotes the intent of this Section and that is compatible with the proposed planting environment. Transplanting for the purpose of achieving a larger size tree may be approved provided it is done in accordance with accepted horticultural and silvicultural practices.

Each mature existing tree may be counted toward meeting the required minimum number of trees, with one viable mature tree substituting for two planted trees and one viable specimen tree substituting for three planted trees. However, no credit shall be given for any mature tree or specimen tree which is not protected in full compliance with the tree protection standards above in paragraph C.1. In such cases, planted trees shall be provided as required above. Planted trees and shrubs shall be reasonably distributed throughout the site singly or in groups, with an appropriate mix of planting types and species which achieves the purposes of this Section. Required landscape areas shall be designed so as to not create vehicular and pedestrian hazards.

- b. Landscape areas adjacent to buildings. A landscape area which is a minimum of ten (10) feet wide shall be provided adjacent to buildings. Up to one half of this area may be transferred elsewhere on the site. This area shall contain a number of trees and shrubs equal to at least one ornamental tree or five (5) shrubs per two hundred (200) square feet of planting area provided.
- c. Landscape area along right-of-way. A landscape area having an average width of thirty (30) feet shall be provided adjacent to any existing or planned public road right-of-way. Such landscape areas may be reduced to an average width of twenty (20) feet or ten (10) percent of the average lot depth, whichever is greater, on lots with less than sixty five thousand (65,000) square feet which were recorded or legally in existence prior to July 3, 1990. Any required landscape area along a right-of-way shall have a minimum width of fifteen (15) feet. All landscape areas along a right-of-way shall contain a minimum amount of square footage which shall be determined by multiplying the applicable average width requirement above times the length of the right-of-way frontage. In no case shall any portion of any landscape area located more than forty five (45) feet from the right-of-way be counted toward meeting the requirements of this paragraph. All landscape areas along right-of-ways shall be continuous along the road right-of-way frontage except where driveway, utility or other breaks are necessary, and shall be designed in a manner that achieves the intent of this Section. All existing viable trees or specimen trees shall be preserved within this landscape area and protected in accordance with the above tree protection standards in paragraph C.1. Such landscape area shall be supplemented where necessary with planted trees and shrubs to achieve the minimum number of trees and shrubs specified in paragraph C.2.a. above.

d. Screening

- (1) Transitional screening. Transitional screening between conflicting land uses and districts shall be provided as required in this paragraph and in paragraph D. Such screening areas shall be left in their undisturbed natural state and supplemented where necessary in accordance with paragraph C.2.a. and with additional plantings to provide an effective visual screen. Such areas shall be continuous except where driveways, utilities, and other breaks are necessary. All breaks shall cross transitional screening areas at right angles. Where such breaks are necessary, different design requirements may be imposed to achieve an equivalent screening effect. Transitional screening areas shall not contain accessory structures, storage, parking or loading.
- (2) Additional Transitional Screening Requirements. If the Commission determines that noise, dust and debris, glare or other objectionable impacts created by a proposed development will have a detrimental effect on adjoining properties which will not be adequately addressed by transitional screening required by this Section, the Commission may increase minimum transitional screening requirements or setbacks and may require landscaping or architectural barriers which provide a visual screen between a proposed development and adjoining properties.
- (3) Objectionable features. Objectionable features shall be visually screened by landscaping or architectural barriers from or by adjacent residential districts, agricultural districts which are designated for residential use on the Comprehensive Plan, and public streets. Objectionable feature may include, but are not limited to the following: refuse areas, storage yards, loading areas, and detention ponds.
- (4) Historic landmarks and buildings. The commission may require screening of any use, or portion thereof, upon a determination that the use would otherwise have a negative visual impact on property listed on the Virginia Historical Landmarks Register.
- (5) Multiple frontage lots. Lots with multiple frontages shall have screening provided between the rear of the principle use or building and the public right-of-way.

- (6) Residential developments not subject to Article II, site plans. Major subdivisions of residential developments as defined in Chapter 17, shall conform with screening requirements for multiple frontage lots. Such developments shall also provide transitional screening along any property line which is adjacent to or across a peripheral public street from any multi-family commercial, or industrial zoning district. The amount of transitional screening shall be based on the zoning district adjacent to or across a peripheral public street from the proposed residential development. Such residential developments shall provide transitional screening in accordance with the requirements for the multi-family, commercial or industrial district contained in paragraph D.

e. Off-Street parking lot landscaping.

Parking areas, accessory or otherwise, containing ten or more parking spaces shall contain landscaping and landscape areas in accordance with all of the following:

- (1) Preservation of trees. Parking lots shall be designed and constructed so that existing viable trees are preserved in a manner which will meet the intent and satisfy the requirements in this Section to the maximum extent possible. Where such existing trees do not fully satisfy these requirements, additional trees shall be planted in an amount which meets or exceeds the stated minimum requirements. The requirements in this paragraph shall be in addition to other requirements stated in this Section.
- (2) Landscape area. Total landscape area within the parking lot, exclusive of any perimeter landscape areas or any landscape areas around the building, shall not be less than ten (10) percent of the surface area of the parking lot, including drives and circulation areas. On lots or parcel shaving less than 65,000 square feet which were recorded or legally in existence prior to July 3, 1990, total landscape area within the parking lot shall not be less than seven and five tenths (7.5) percent of the surface area of the parking lot including drives and circulation areas.
- (3) Planting requirements. Landscape areas within a parking lot shall contain a minimum of one tree and two shrubs for each five (5) parking spaces in the parking lot. On lots or parcels having

less than 65,000 square feet which were recorded or legally in existence prior to July 3, 1990, landscape areas within the parking lot shall contain a minimum of one (1) tree and two (2) shrubs for each ten (10) parking spaces in the parking lot. At least fifty (50) percent of the required trees shall be deciduous shade trees with a 2-1-2 inch minimum caliper, and at least twenty five (25) percent of the required shrubs shall be evergreen. As provided above, each mature existing tree or specimen tree may be counted toward meeting the required minimum number of trees, with one viable mature tree substituting for two planted trees and one viable specimen tree substituting for three planted trees. No credit shall be given for any mature or specimen tree which is not protected in full compliance with the tree protection standards in paragraph C.1. above. Required trees shall be reasonably distributed throughout the parking lot in a manner that promotes the intent of this Section, and shall be spaced no more than seventy five (75) feet apart throughout the parking lot. In addition to the above tree and shrub requirements, all parking lots shall be visually screened from public road right-of-ways by evergreen plantings or berms. Such berms shall have a maximum side slope ratio of three horizontal feet to one vertical (3:1) foot, and a level crown with a minimum width of three (3) feet for maintenance and planting purposes. Any berm shall be designed and constructed to ensure that proper erosion prevention and control practices have been utilized.

- (4) Special requirements for bus parking lots. Bus parking areas shall contain landscape areas in accordance with the above requirements except that plantings shall be provided as follows: a) one tree and two shrubs shall be provided for each two bus parking spaces, with at least fifty (50) percent of the required trees consisting of deciduous shade trees with a 2-1-2 inch minimum caliper; and b) in addition to the foregoing tree and shrub requirements, bus parking areas shall be visually screened from all public road right-of-ways by evergreen landscaping or berms to the maximum extent possible. Any berms shall meet the requirements of paragraph 3 above.

D. Landscape requirements by zoning district

All uses and developments requiring a site plan and landscape plan in accordance with Article II, Site Plan, and this Section shall comply with the above requirements and those which follow. Where no landscape requirements are provided for a specific zoning district, the landscape plan shall be prepared in accordance with the requirements for the district which is deemed by the Planning Director, to be the most similar to the character of the proposed use, situation and surrounding conditions. In making this determination, the following shall be considered: the characteristics of the proposed use and surrounding area, existing Zoning and Comprehensive Plan designations, and use regulations of this Chapter. At a minimum, required setbacks and yards shall be provided as landscape areas which meet the requirements of this Section.

1. R-5, Multi-family residential district

- a. Setbacks. Setbacks from existing or planned peripheral public street right-of-ways shall contain a landscape area having an average width of thirty (30) feet in accordance with paragraph C.2.c. above. The balance of the setback and setbacks from internal streets shall contain existing trees and plantings in conformance with paragraphs C.2.a. above. This requirement shall not apply to single-family dwellings.
- b. Yards. All required yards shall contain existing trees and plantings in conformance with paragraphs C.2.a. above. This requirement shall not apply to single-family dwellings.
- c. Transitional screening. For developments with two hundred (200) or less units, a transitional screening area in accordance with paragraph C.2.d., with a minimum width of thirty (30) feet shall be provided within the first thirty (30) feet of yard area or setback from any property line when adjacent to or across a peripheral public street from any residential district other than R-5 or any agricultural district designated for low density residential or rural residential on the Comprehensive Plan. For larger developments, such transitional screening area shall be a minimum of thirty five (35) feet in width.

2. R-7, manufactured home subdivision and manufactured home park

- a. Perimeter landscape area. A perimeter landscape area at least 30 feet in width shall be provided around the entire site in addition to all other yard requirements in manufactured home subdivisions and parks. Such landscape area shall be provided in accordance with paragraphs C.2.a., and above C.2.c.

3 LB, Limited Business District; B-1, General Business District; M-1, Limited Industrial District; M-2, General Industrial District

a. Side and rear landscape area. A landscape area adjoining all side and rear property lines shall be provided which is at least 15 feet in width. Along the rear property lines, such landscape area may be reduced to a minimum of 10 feet in width or 5 percent of the average lot depth, whichever is greater, on lots with less than 65,000 square feet which were recorded or legally in existence prior to July 3, 1990. Such landscape area shall be landscaped in accordance with paragraph C.2.a. above. Such area may be broken by necessary driveways or utilities perpendicular to the property line.

b. Transitional Screening. Landscape areas along property lines of properties zoned LB, B-1, M-1 and M-2 shall be increased to the following widths when adjacent to or across a public street from a residential district or agricultural district if designated residential on the Comprehensive Plan:

LB District:	30 Feet
B-1 District:	35 Feet
M-1 District:	35 Feet
M-2 District:	50 Feet

Such landscape areas shall be exclusive of any planned future right-of-way and shall be left in an undisturbed natural state and supplemented with additional plantings to create a visual screen in accordance with paragraph C.2.d. above.

c. Minimum Landscape Open Space. At a minimum, the following percentages of the total lot area for properties in LB, B-1, M-1 and M-2 districts shall be maintained as landscape open space:

LB Districts:	35% of total lot area
B-1 Districts:	30% of total lot area
M-1 District:	30% of total lot area
M-2 District:	25% of total lot area

4. PUD, Planned Unit Development District

- a. Setbacks. Setbacks from existing or planned peripheral public street right-of-ways shall contain a landscape area having an average width of thirty (30) feet in accordance with paragraph C.2.c. above. The balance of that setback and setbacks from internal streets shall contain existing trees and plantings in conformance with paragraph C.2.a. above. Landscape requirements along internal streets shall not apply to single-family dwellings. Requirements of this paragraph shall not apply to active recreation playing areas designated on the Master Plan and approved in accordance with Article VIII.
- b. Yards. All yards shall contain existing trees and plantings in conformance with paragraph C.2.a. above. This requirement shall not apply to single-family dwellings or active recreation playing areas designated on the Master Plan and approved in accordance with Article VIII.
- c. Transitional screening.
 - (1) Residential. Where a multi-family or townhouse structure in a PUD district is located adjacent to or across a peripheral public street from an R-1, R-2, R-3, R-6 or R-7 residential district or agricultural district if designated low density residential or rural residential on the Comprehensive Plan, a thirty five (35) foot wide transitional screening area in accordance with paragraph C.2.d. above shall be provided within the first 35 feet of yard area or setback from any property line adjoining such district.
 - (2) Commercial, industrial, public or institutional uses. Where a commercial, industrial, public or institutional use in a PUD district is located adjacent to or across a peripheral public street from any residential district or agricultural district if designated for residential use on the Comprehensive Plan, transitional screening shall be provided in accordance with requirements for LB, B-1, M-1 or M-2 districts as required in paragraph D.3.b. above. The applicable transitional screening requirements shall be determined by the Planning Director in accordance with paragraph D above.

5. Special requirements for certain uses

- a. Commercial, Industrial or Public Uses Exceeding 20,000 square feet. Where such uses exceed twenty thousand (20,000) square feet in gross floor area, the landscape area adjoining all side and rear property lines shall be increased to at least twenty (20) feet in width, in addition to meeting other requirements of this Section. Such area shall be landscaped in accordance with paragraphs C.1. and C.2.a. above and may contain necessary driveways or utilities which are perpendicular to the property line.

ARTICLE II. SITE PLAN

Section 20-39. Same--Submittal Contents.

The site plan shall as a minimum contain:

- (i) A landscape plan showing wood line 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 twelve (12) inches.

ARTICLE IV. DISTRICTS.

DIVISION 1. GENERALLY.

Section 20-89. Special requirements for establishments selling or dispensing vehicular fuels.

The following special requirements shall apply to automobile service stations, truck stops, truck terminals and other establishments selling or dispensing motor vehicle fuels in any District in which they are located:

- (1) Minimum lot area shall be 20,000 square feet.
- (2) Minimum lot width at the setback line shall be 200 feet or 150 feet where self-service gasoline pumps are subordinate to general retail uses and no repair is conducted.
- (3) No fuel service island or pump canopy shall be located within 15 feet of any adjoining road right-of-way or property line.

- (4) The width of curb openings shall not exceed 35 feet. Where two or more curb openings are proposed, they shall be no closer than 25 feet apart; except that where required for the safe maneuvering of trucks, the curb openings may be increased to a width of 60 feet, and curb openings shall be no closer than 75 feet apart.
- (5) Curb openings shall be no closer than ten feet from an adjoining property line and no closer than 25 feet from a street intersection. Curb openings for truck terminals and truck stops shall be no closer than 25 feet from an adjoining property line.
- (6) Two off-street parking spaces shall be provided for each service bay plus a total of three spaces for employee parking.
- (7) If dumpsters are provided, they shall be screened from adjacent properties by vegetation, landscaping, or fences. Dumpsters shall be placed on concrete pads with a drainage system as required by the Health Department.

Section 20-91. Outdoor operations and storage.

Any commercial or industrial operation or storage, conducted in whole or in part out-of-doors shall:

- (a) Set back a minimum of 35 feet from the right-of-way of any street identified on a functional classification with a right-of-way 50 feet or greater in width and 60 feet from the center line of any street identified on a functional classification with a right-of-way less than 50 feet in width, except that the outdoor display of plant materials shall be set back ten feet from any road right-of-way 50 feet or greater in width and 35 feet from the center line of any road right-of-way less than 50 feet in width; and
- (b) Be well drained with adequate provisions to control storm drainage and erosion; and
- (c) Where the ground cover would be routinely disturbed because of the nature of the activity to be conducted or because of vehicular traffic, the area shall be maintained in an all weather surface; and
- (d) Be screened from adjacent property by landscaping and fencing, except the outdoor displays for sale of vehicles, equipment, machinery and plant materials are exempt from the screening requirements where such screening would interfere with the visibility of the items for sale from a public road; and
- (e) Be limited to uses and items to be stored which do not create noise, odor, dust, or other objectionable effects. The effects of an activity shall be measured at the nearest property line.

DIVISION 8. MULTI-FAMILY RESIDENTIAL DISTRICT, R-5.

Section 20-246. Setback requirements.

- (a) All single family dwellings and their accessory structures shall be located at least 35 feet from the right-of-way of any peripheral street which abuts or borders the site and which has a right-of-way 50 feet or greater in width. If the street right-of-way is less than 50 feet wide, such buildings and structures shall be located a minimum of 60 feet from the center line of the street.
- (b) All other structures shall be located a minimum of 50 feet from the right-of-way of any peripheral street which abuts or borders the site and has a right-of-way width of 50 feet or more. In the event such street has a right-of-way width which is less than 50 feet, such structures shall be located a minimum of 75 feet from the center line of the street. An additional 25 foot setback from peripheral roads identified on a functional classification shall be required for any structure which exceeds one story.
- (c) All structures shall be located a minimum of 25 feet from any street which is internal to the project. Exceptions may be given for service drives, driveways, parking areas, alleys and cul-de-sac roads.
- (d) Off-street parking shall not be permitted within required setbacks, except that parking spaces for single family and two-family dwellings may be located within the required setback.

Section 20-248. Yard regulations.

- (a) For developments containing two hundred (200) or less dwelling units, all structures shall be located a minimum of thirty five (35) feet from any property line which adjoins property in a multi-family residential district, a business district, an industrial district, an agricultural district which is designated for multi-family, commercial, or industrial use on the Comprehensive Plan; or public property. For developments containing more than two hundred (200) dwelling units, all structures shall be located a minimum of fifty (50) feet from any property line which adjoins property in a multi-family residential district; a business district, an industrial district, an agricultural district which is designated for multi-family, commercial, or industrial use on the Comprehensive Plan; or public property.

- (b) For developments containing two hundred (200) or less dwelling units, all structures shall be located a minimum of fifty (50) feet from any property line which adjoins property which is in a residential district other than the R-5, or in an agricultural district designated for low density residential or rural residential on the Comprehensive Plan. For developments containing more than two hundred (200) dwelling units, all structures shall be located a minimum of seventy five (75) feet from any property line which adjoins property which is in a residential district other than the R-5, or in an agricultural district designated for low density residential or rural residential on the Comprehensive Plan. The minimum yard requirement shall be increased by twenty five (25) feet for any structures which exceed one story.
- (c) Off-street parking shall be excluded from the first forty (40) feet of yard nearest the property line.
- (d) Single family and two-family dwellings.

The minimum side yard for each single family dwelling or two family dwelling shall be five feet. The minimum rear yard shall be 20 feet. The minimum side and rear yards for structures accessory to single family or two-family dwellings shall be five feet for structures one story or less, and ten feet for structures exceeding one story.

The side and rear yards for any structure in excess of 35 feet shall be increased by one foot for each one foot in height in excess of 35 feet.

Section 20-251. Requirements for improvements and design.

- (b) Open Space. At least thirty five percent (35) of the gross area of the site shall be retained in open space as defined in Section 20-2.
- (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 to the maximum extent possible.

DIVISION 11. LIMITED BUSINESS DISTRICT, LB.

Section 20-311. Yard regulations.

- (a) The minimum side yard shall be 20 feet for each main structure. The minimum rear yard shall be 20 feet.
- (b) All accessory structures shall be located at least ten feet from any side lot line.

- (c) The minimum side yard shall be increased to thirty-five (35) feet if the side yard adjoins property in a residential district, or an agricultural district that is designated for residential use on the Comprehensive Plan and the minimum rear yard shall be increased to 35 feet if the rear yard adjoins property in a residential district or an agricultural district that is designated for residential use on the Comprehensive Plan. The minimum side and rear yards for any section of a structure in excess of thirty five (35) feet in height shall be increased one foot for each two (2) feet of height in excess of 35 feet.

Section 20-312. Special provisions for the adjustment of yard requirements.

To allow the subdivision of commercial property on which commercial units for sale, for sale in condominium, or for lease are constructed as part of a multi-unit structure in which the units share common walls or as part of a multiple-structure commercial development, and the entire development has been planned and designed as a comprehensive coordinated unit under a single master plan; the Planning Commission may grant, at its discretion, a waiver from any part of Section 20-311 upon finding:

- (a) The overall complex or structure, if considered as a single unit, meets all of the requirements of Section 20-311; and
- (b) Adequate parking is provided as per the requirements of this Chapter, and where determined necessary by the commission, adequate easements or other agreements are recorded to guarantee access and maintenance of the parking areas and other common areas; and
- (c) Adequate provisions are made to assure compliance with Article VIII of this Chapter, and where determined necessary by the commission, adequate easements or agreements are recorded to allow grouping of signs on one standard, placement of signs in common areas or other appropriate arrangements made necessary because of the reduced yard area of the individual units; and
- (d) The complex or structure is adequately designed and serviced from the standpoint of safety, and the county fire chief certifies that the fire safety equipment to be installed is adequately designed and the county building official certifies the complex is designed to conform to the BOCA Code, so as to offer adequate protection to life and property.

DIVISION 12. GENERAL BUSINESS DISTRICT, B-1.

Section 20-333. Yard regulations.

- (a) Buildings shall be located twenty (20) feet or more from side or rear property lines, except that the minimum side yard shall be fifty (50) feet if the side yard adjoins property in a

residential district, or an agricultural district that is designated for residential use on the Comprehensive Plan, and the minimum rear yard shall be fifty (50) feet if the rear yard adjoins property in a residential district or an agricultural district that is designated for residential use on the Comprehensive Plan. The minimum side and rear yards shall be increased an additional one foot for each one foot of building height in excess of thirty-five (35) feet.

- (b) All accessory structures shall be located at least ten feet from any side or rear lot line.

Section 20-334. Special provisions for the waiver of yard requirements.

To allow the subdivision of commercial property on which commercial units for sale, for sale in condominium, or for lease are constructed as part of a multi-unit structure in which the units share common walls or as part of a multiple-structure commercial development, and the entire development has been planned and designed as a cohesive, coordinated unit under a single master plan, the planning commission may grant, at its discretion, a waiver from any part of Section 20-333 upon finding:

- (a) The overall complex or structure, if considered as a single unit, meets all of the requirements of Section 20-333;
- (b) Adequate parking is provided as per the requirements of this Chapter, and where determined necessary by the commission, adequate easements or other agreements are recorded to guarantee access and maintenance of the parking areas and other common areas;
- (c) Adequate provisions are made to assure compliance with Article VIII of this Chapter, and, where determined necessary by the commission, adequate easements or agreements are recorded to allow grouping of signs on one standard, placement of signs in common areas or other appropriate arrangements made necessary because of the reduced yard area of the individual units; and
- (d) The complex or structure is adequately designed and serviced from the standpoint of safety, and that the county fire chief certifies that the fire safety equipment to be installed is adequately designed and the county building official certifies the complex is designed to conform to the BOCA Code, so as to offer adequate protection to life and property.

DIVISION 13. LIMITED INDUSTRIAL DISTRICT, M-1.

Section 20-355. Side and rear yards.

- (a) Structures shall be located twenty (20) feet or more from side or rear property lines. The side and rear yards for any section of a structure in excess of thirty-five (35) feet in height shall be increased one foot for each two (2) feet of height in excess of thirty-five (35) feet.
- (b) The minimum side yard shall be increased to seventy-five (75) feet if the side yard adjoins property in a residential district, or an agricultural district that is designated for residential use on the Comprehensive Plan and the minimum rear yard shall be increased to seventy-five (75) feet if the rear yard adjoins property in a residential district or an agricultural district that is designated for residential use on the Comprehensive Plan. The minimum side and rear yards for any section of a structure in excess of thirty-five (35) feet in height shall be increased one foot for each two feet (2) of height in excess of thirty-five (35) feet.
- (c) Accessory structures may be located within the required side or rear yards upon approval of the Planning Commission; provided, however, that no structure shall be located within ten (10) feet of any property line.

Section 20-357. Special provisions for the waiver of area, lot width, yard and yard setback requirements.

To allow the subdivision of industrial property on which industrial units for sale, for sale in condominium, or for lease are constructed as part of a multi-unit structure in which the units share common walls, or as part of a multiple-structure commercial development and the entire development has been planned and designed as cohesive, coordinated unit under a single master plan, the planning commission may grant, at its discretion, a waiver from any part of Section 20-352 upon finding:

- (a) The overall complex or structure, if considered as a single unit, meets all of the requirements of Section 20-352;
- (b) Adequate parking is provided as per the requirements of this Chapter, and, where determined necessary by the commission, adequate easements or other agreements are recorded to guarantee access and maintenance of the parking areas and other common areas;

- (c) Adequate provisions are made to assure compliance with the requirements of this Chapter with regards to signs, and, where determined necessary by the commission, adequate easements or agreements are recorded to allow grouping of signs on one standard, placement of signs in common areas or other appropriate arrangements made necessary because of the reduced frontage or yard area of the individual units; and
- (d) The complex or structure is adequately designed and serviced from the standpoint of safety, and that the county fire chief certifies that the fire safety equipment to be installed is adequately designed and the county building official certifies the complex is designed to conform to the BOCA Code, so as to offer adequate protection to life and property.

DIVISION 14. GENERAL INDUSTRIAL DISTRICT, M-2.

Section 20-380. Side or rear yards.

- (a) Structures shall be located twenty (20) feet or more from side or rear property lines. The side and rear yards for any section of a structure in excess of thirty-five (35) feet in height shall be increased one foot for each three (3) feet of height in excess of thirty-five (35) feet.
- (b) The minimum side yard shall be increased to seventy-five (75) feet if the side yard adjoins property in a residential district, or an agricultural district that is designated for residential use on the Comprehensive Plan and the minimum rear yard shall be increased to seventy-five (75) feet if the rear yard adjoins property in a residential district or an agricultural district that is designated for residential use on the Comprehensive Plan. The minimum side and rear yards for any section of a structure in excess of thirty-five (35) feet in height shall be increased one foot for each two (2) feet of height in excess of thirty-five (35) feet.
- (c) Accessory structures may be located within the required side or rear yards upon approval of the Planning Commission; provided, however, that no structure shall be located within 10 feet of any property line.

Section 20-382. Special provisions for the waiver of area, lot width, yard and setback requirements.

To allow the subdivision of industrial property on which industrial units for sale, for sale in condominium, or for lease are constructed as part of a multi-unit structure in which the units share common walls, or as part of a multiple-structure commercial development and the entire development has

been planned and designed as a cohesive, coordinated unit under a single master plan, the Planning Commission may grant, at its discretion, a waiver from any part of Section 20-377 through 20-380 upon finding:

- (a) The overall complex or structure, if considered as a single unit, meets all of the requirements of Sections 20-377 through 20-380; and
- (b) Adequate parking is provided as per the requirements of this Chapter, and, where determined necessary by the commission, adequate easements or other agreements are recorded to guarantee access and maintenance of the parking areas and other common areas;
- (c) Adequate provisions are made to assure compliance with the requirements of this Chapter with regards to signs, and, where determined necessary by the commission, adequate easements or agreements are recorded to allow grouping of signs on one standard, placement of signs in common areas or other appropriate arrangements made necessary because of the reduced frontage or yard area of the individual units; and
- (d) The complex or structure is adequately designed and serviced from the standpoint of safety, and that the county fire chief certifies that the fire safety equipment to be installed is adequately designed and the county building official certifies the complex is designed to conform to the BOCA Code, so as to offer adequate protection to life and property.

ARTICLE VIII. PLANNED UNIT DEVELOPMENT DISTRICTS.

Section 20-482. Requirements for improvements and design.

- (h) Natural features and amenities. Existing features which would add value to the residential development or to the County as a whole, such as trees, watercourses, historical sites and similar irreplaceable assets, shall be preserved to the maximum extent possible.

Section 20-483. Setback, side and rear yard requirements.

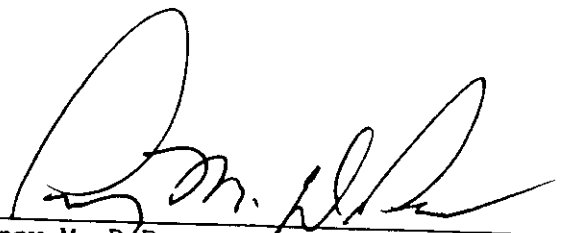
- (a) Residential. For residential uses a minimum landscape setback of fifty (50) feet shall be maintained from all property lines adjoining a different zoning district and or the right-of-way of any existing or planned public roads which abut the site. Where multi-family or townhouse structures in a PUD-R District adjoin an existing R-1, R-2, R-3, R-6 or R-7 District, or an A-1 or A-2 District that is designated for low density residential or rural residential on the Comprehensive Plan the minimum setback shall be seventy-five (75) feet.

- (b) Commercial. For commercial uses a minimum landscape setback of 75 feet shall be maintained from all property lines adjoining a different zoning district and or the right-of-way of any existing or planned public roads which abut the site.
- (c) Industrial, public, or institutional uses. For industrial, public, or institutional uses a minimum landscaped setback of one hundred (100) feet shall be maintained from all property lines adjoining a different zoning district and or the right-of-way of any existing or planned public roads which abut the site. Where industrial structures adjoin an existing residentially zoned District or an A-1 District that is designated for low density residential or rural residential on the Comprehensive Plan, the minimum landscaped setback shall be increased to one hundred twenty-five (125) feet.
- (d) Internal setbacks. Except for setbacks required on the perimeter of the District and except for industrial structures, there shall be no minimum lot size nor minimum front, side, or rear yard requirements for any lot within a Planned Unit Development District other than as specified in approved final plans.
- (e) Parking restrictions in setbacks. Landscape setbacks shall not be used for streets or for parking except for entrances which may penetrate the setback.

Section 20-486. Setback requirements for industrial use.

A minimum landscape setback of fifty (50) feet shall be required from streets which are internal to the site for any industrial structure.

Ordinance to Amend and Reordain
Chapter 20. Zoning
Page 30


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 2nd day of July, 1990.