

AT A REGULAR MEETING OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE 10TH DAY OF JANUARY, NINETEEN HUNDRED NINETY-SIX, AT 5:00 P.M. IN THE COUNTY GOVERNMENT CENTER BOARD ROOM, 101 MOUNTS BAY ROAD, JAMES CITY COUNTY, VIRGINIA.

A. ROLL CALL

Perry M. DePue, Chairman, Powhatan District
David L. Sisk, Vice Chairman, Roberts District

Jack D. Edwards, Berkeley District
Robert A. Magoon, Jr., Jamestown District
Stewart U. Taylor, Stonehouse District
David B. Norman, County Administrator
Frank M. Morton, III, County Attorney

B. EXECUTIVE SESSION

Mr. DePue called the meeting to order.

Mr. DePue made a motion to convene into executive session pursuant to Section 2.1-344(A)(1) of the Code of Virginia to consider personnel matters, appointments.

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

Mr. DePue reconvened the Board into open session and made a motion to approve the executive session resolution.

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

RESOLUTION

MEETING DATE: JANUARY 10, 1996

CERTIFICATION OF EXECUTIVE MEETING

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

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

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

Mr. DePue recessed the Board at 6:00 p.m. for dinner.

C. ORGANIZATIONAL MEETING

Mr. DePue reconvened the Board into open session at 7:02 p.m.

On a roll call, all members were present.

Mr. DePue asked for nominations for Chairman for 1996.

Mr. Taylor nominated Mr. Sisk as Chairman for 1996.

Mr. Edwards made a motion to elect Mr. Sisk as Chairman for 1996.

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

Mr. Sisk accepted the chairmanship and announced that Mr. Magoon had been appointed Vice Chairman for 1996.

Mr. Sisk read the appointments of Boards members to Boards and Commissions:

Williamsburg Chamber of Commerce	DePue
Community Action Agency	Edwards/Tony Conyers Sisk/John O'Hare DePue/Rev. J. Moody
Courthouse Committee	Edwards/Magoon
Hampton Roads Planning District Commission	Sisk
Williamsburg Area Medical Assistance Corp.	Magoon
Regional Issues	Sisk
School Liaison Subcommittee	Magoon/Edwards
Virginia Peninsula Economic Development Council	DePue
Historical Commission	Edwards
Library Committee	Unassigned
Drug Free Schools Advisory Committee	Unassigned
Local Emergency Preparedness	Sisk
Farmers Advisory Committee	Taylor
Joint Sanitary District No. 1 Board	Sisk/Magoon

Pamunkey River Study Committee

Unassigned

Industrial Development Authority Liaison

DePue

Community Services Coalition

DePue

Mr. Edwards made a motion to approve the appointments of Board members to Boards and Commissions.

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

Mr. DePue made a motion to approve the Organizational resolution and Board Calendar for 1996.

Mr. Morton recommended that an amendment to the Resolution include the language "Should it be necessary to cancel an advertised Board of Supervisors meeting due to weather or other conditions, the meeting shall be continued forty-eight hours to the same time and place".

Mr. Sisk made a motion to approve the amendment to the Resolution.

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

RESOLUTION

ORGANIZATIONAL MEETING OF THE BOARD OF SUPERVISORS

WHEREAS, the Board of Supervisors of James City County, Virginia, is required by State law to organize at the first meeting in January.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of James City County, Virginia, that the following rules shall apply for the year 1996.

1. Regular meetings of the Board shall be held as shown on the attached 1996 calendar, in the Board Room of the James City County Government Center. The meeting times shall be 7:00 p.m.
2. The Board shall for parliamentary purposes follow Robert's Rules of Order and more specifically those provisions which pertain to the conduct of Business in Boards, Newly Revised, 1981 at p. 404 as follows; provided, however, the Board may amend by Resolution the Rules as it deems appropriate.

Procedure in Small Boards: In a board meeting where there are not more than about a dozen members present, some of the formality that is necessary in a large assembly would hinder business. The rules governing such meetings are different from the rules that hold in assemblies, in the following respects:

Members are not required to obtain the floor before making motions or speaking, which they can do while seated.

Motions need not be seconded.

There is no limit to the number of times a member can speak to a question, and motions to close or limit debate generally should not be entertained.

Informal discussion of a subject is permitted while no motion is pending.

The Chairman can speak in discussion without rising or leaving the chair; and, subject to rule or custom within the particular board (which should be uniformly followed regardless of how many members are present), he usually can make motions and usually votes on all questions.

3. In addition, the Board agrees to the following:

A motion to rescind shall not be in order in a land use decision involving a rezoning or a special use permit. A motion to reconsider such a decision must be made at the same meeting the decision is made by the Board.

Should it be necessary to cancel an advertised Board of Supervisors meeting due to weather or other conditions, the meeting shall be continued forty-eight hours to the same time and place.

Mr. Taylor made a motion to approve the resolution for appointment of Board of Directors and Officers for James City County Transit Company by the Board of Supervisors.

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

RESOLUTION

APPOINTMENT OF BOARD OF DIRECTORS AND OFFICERS FOR

JAMES CITY COUNTY TRANSIT COMPANY BY

BOARD OF SUPERVISORS

WHEREAS, the stockholders of the James City County Transit Company (Transit Co.) have requested the Board of Supervisors to appoint the Board of Directors and the officers of the Transit Company for the year 1996.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of James City County, Virginia, that it hereby appoints as Directors of the Transit Company for the year 1996 the following individuals:

Perry M. DePue
Jack D. Edwards
Robert A. Magoon, Jr.
David L. Sisk
Stewart U. Taylor

BE IT FURTHER RESOLVED, that the Board of Supervisors appoints the following officers:

President - Jack D. Edwards

Secretary/Treasurer - Anthony Conyers, Jr.

D. MINUTES - December 18, 1995

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

Mr. Magoon made a motion to approve the minutes.

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

E. CONSENT CALENDAR

Mr. Sisk asked if a Board Member wanted to remove any item from the Consent Calendar.

Mr. Magoon asked that the Greenspings Plantation - Master Sign Plan be removed.

Mr. DePue made a motion to approve Item No. 1 on the Consent Calendar.

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

1. Dedication of Streets in Powhatan Crossing, Sections I, II, III, and IV; Peleg's Point, Sections 1, 2, and 3; and Page Landing

RESOLUTION

DEDICATION OF STREETS IN POWHATAN CROSSING, SECTIONS I, II, III, AND IV

WHEREAS, the streets described on the attached Additions Form SR-5(A), fully incorporated herein by reference, are shown on plats recorded in the Clerk's Office of the Circuit Court of James City County; and

WHEREAS, the Resident Engineer for the Virginia Department of Transportation has advised this Board the streets meet the requirements established by the Subdivision Street Requirements of the Virginia Department of Transportation; and

WHEREAS, the County and the Virginia Department of Transportation have entered into an agreement on November 1, 1993, for comprehensive stormwater detention which applies to this request for addition.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby requests the Virginia Department of Transportation to add the streets described on the attached Additions Form SR-5(A) to the secondary system of State highways, pursuant to §33.1-229, Code of Virginia, and the Department's Subdivision Street Requirements.

BE IT FURTHER RESOLVED, this Board guarantees a clear and unrestricted right-of-way, as described, and any necessary easements for cuts, fills and drainage.

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

2. Greensprings Plantation - Master Sign Plan

Mr. Michael Freda, Senior Planner, briefly outlined the Master Sign Plan for Greensprings Plantation, stating that with the exception of the sign proposed for the main entrance, the signs would be 32 square feet or less and would be set in a precast frame approximately 10 feet long and 6 feet in height.

Mr. Edwards inquired whether such large signage was appropriate due to the particulars of the development.

Mr. Freda responded that the size was appropriate for the development and not out of character. The developer had arranged a master sign plan to maintain uniformity throughout the development.

Mr. Edwards questioned whether any developer could apply for a master sign plan.

Mr. Freda assured him that this only applied in zone R-4.

Mr. Magoon expressed concern as to how big a supporting structure for the sign could be.

Mr. Bernard Farmer, Director of Code Compliance, stated that the gross sign excluded the supporting structure in the sign ordinance, since a supporting structure could be a building. There are no regulations at this time.

Mr. Magoon suggested that an ordinance to regulate sign of supporting structure should be reviewed at a later date.

Mr. DePue expressed an interest in developing procedures to regulate a supporting structure.

Mr. Magoon made a motion to approve the resolution.

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

RESOLUTION

GREENSPRING PLANTATION - MASTER SIGN PLAN

WHEREAS, the Board of Supervisors of James City County has adopted by ordinance special provisions to allow for the master planning of signs within the R-4, Residential Planned Community District; and

WHEREAS, the Planning Commission of James City County, voted unanimously to recommend approval of the Greensprings Plantation Master Sign Plan to construct signs throughout the development in the R-4, Residential Planned Community District, on property identified as Parcel No. (1-1) on James City County Real Estate Tax Map No. (46-1).

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve the Greensprings Plantation Master Sign Plan, subject to conditions listed below, to allow construction of the signs throughout the planned community.

1. For each sign, the applicant shall submit a sign foundation landscaping and lighting plan to be approved by the Director of Planning to ensure compliance with Code Section 20-68.

2. The signs and attached fences shall be placed in areas approved to be cleared in order to construct entrances into the proposed developments.

F. PUBLIC HEARINGS

1. Pre-Budget

Mr. John E. McDonald, Manager of Financial and Management Services, briefly outlined the upcoming budget schedule and invited public comment on the budget process.

Mr. Sisk opened the public hearing.

Mr. Ed Oyer, 139 Indian Circle, spoke regarding budgeting the County by projected revenue and not by anticipated expenditures.

Mr. Earl Wagner, 54 Priorslee Lane, requested that the Board consider increasing its annual contribution to the Heritage Humane Society to support increased operating costs.

Mr. Sisk closed the public hearing.

2. Case No. SUP-27-95. 1407 Jamestown Road Bed and Breakfast (Continued from December 4, 1995)

Mr. Mark Bittner, Planner, stated this case had been deferred by the Board at its January 10, 1996, meeting, to allow the applicant time to amend the covenants pertaining to this property. At this time, the covenants have not been obtained from adjacent property owners. He requested that the case be deferred until the January 23, 1996, Board of Supervisors' meeting and no later than the February 13, 1996, meeting. Staff recommended denial of the application if covenants have not been obtained by the February 13 meeting.

Mr. Edwards suggested that this case be amended for approval of the special use permit by making the approval contingent upon the covenants being approved.

The Board by consensus continued the public hearing and agreed to consider SUP-27-95 at the January 23, 1996, meeting contingent upon the covenants being approved at a future date.

3. Case No. Z-14-95. James River Commerce Center

Mr. Gary A. Pleskac, Planner, stated that Mr. Alvin Anderson had applied on behalf of Williamsburg Developments, Inc., and the Industrial Development Authority of James City County to rezone approximately 209 acres from Mixed Use District "with proffers," to M-1, Limited Business/Industrial District "with proffers".

Mr. Pleskac stated that at its December 12, 1995, meeting, the Planning Commission concurred with staff's recommendation and voted to approve the request. Staff recommended the Board of Supervisors approve this rezoning request.

Mr. Sisk opened the public hearing.

Mr. Alvin Anderson, Anderson Franck and Davis, counsel for the applicants, spoke in support of staffs recommendation and efforts to secure approval.

Mr. Sisk closed the public hearing.

Mr. Magoon made a motion to approve the resolution.

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

RESOLUTION

CASE NO. Z-14-95 JAMES RIVER COMMERCE CENTER

WHEREAS, in accordance with Section 15.1-431 of the Code of Virginia, and Section 20-15 of the James City County Zoning Ordinance, a public hearing was advertised, adjoining property owners notified, and a hearing scheduled on Zoning Case No. Z-14-95 for rezoning approximately 209 acres of land from MU, Mixed Use District, with proffers, to M-1, Limited Business/Industrial District, with proffers, further identified as a portion of Parcel No. (1-17) on James City County Real Estate Tax Map No. (59-2); and,

WHEREAS, the Planning Commission of James City County, recommended approval of Case No. Z-14-95, M-1 Portion, by a vote of 6 to 0 with one abstention.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve Zoning Case No. Z-14-95, rezoning the 209-acre parcel to M-1 with the proposed proffers.

4. Case No. SUP-29-95 Virginia Peninsula Regional Jail Communication Tower

Mr. Michael A. Freda, Senior Planner, informed the Board that the Virginia Peninsula Regional Jail Authority had applied for a special use permit to allow the expansion of a tower currently approved for 150 feet in height at the regional jail off Route 143. The tower would be a free standing self-supporting structure, located approximately 360 feet from Route 143 and Route 60, and would extend to 185 feet in height with antenna(s) extending 15 feet above the tower for a total of 200 feet.

Mr. Freda further stated the closest historic attraction was Carter's Grove Plantation and the tower would not be visible from most viewpoints within the plantation.

Staff utilized a set of guidelines adopted by the Planning Commission on February 11, 1992. The applicant had adequately demonstrated that the tower meets the guidelines set by the Planning Commission resolution and would only have minimal visual impact to the surrounding areas.

On December 12, the Planning Commission concurred with staff and unanimously recommended approval subject to conditions outlined in the resolution.

Staff recommended approval of the resolution.

Mr. Sisk questioned the cost benefits of a multi-users tower.

Mr. Sanford Wanner, Project Coordinator, Virginia Peninsula Regional Jail Authority, stated that the initial cost of building the tower would be incurred by Sprint and the lease agreement to include multiple users would generate revenue for the jail.

Mr. DePue recommended that multi-users be considered as the norm to reduce towers from being built randomly throughout the County.

Mr. Sisk opened the public hearing.

Mr. Oyer, 139 Indian Circle, requested staff to obtain confirmed support of the tower from the Naval Weapons Station.

Mr. Sisk closed the public hearing.

Mr. DePue made a motion to approve the resolution.

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

RESOLUTION

CASE NO. SUP-29-95. VIRGINIA PENINSULA REGIONAL JAIL COMMUNICATION TOWER

WHEREAS, the Board of Supervisors of James City County has adopted by ordinance specific land uses that shall be subjected to the special use permit process; and

WHEREAS, the Planning Commission of James City County, voted unanimously to recommend approval of Case No. SUP-29-95 to permit the construction of a 185-foot tall communication tower with antennas extending 15 feet above the tower at the proposed regional jail in the R-8, Rural Residential District, on property identified as Parcel No. (1-1) on James City County Real Estate Tax Map No. (60-1).

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve the issuance of SUP-29-95, subject to conditions listed below, to allow construction of the communication tower with antennas:

1. The operation of the communication tower shall not interfere with operation of the County's communication system. The applicant shall be responsible for assuring that the signal(s) for this equipment shall not interfere with the County's radio communication system. Upon notice from the County that interference is being received, the applicant shall terminate such interference immediately.
2. If construction of the tower has not begun within 24 months of the date of issuance of this permit, the permit shall become void.
3. Prior to the placement of additional equipment on the tower the applicant shall submit to the Director of Code Compliance a certification from a professional engineer, licensed by the Commonwealth of Virginia, which indicates that the tower can safely support the loads caused by the placement of additional equipment on the tower. The applicant shall secure all necessary permits prior to altering, constructing, or modifying any portion of the tower.
4. The applicant shall secure all required permits and approval from State and Federal agencies and shall submit copies to the Director of Code Compliance prior to the construction of the tower.
5. The tower shall not exceed 185 feet above grade. Antenna(s) may extend an additional 15 feet above the tower.
6. The tower shall be painted a light gray or other neutral color as approved by the Director of Planning.

7. A landscaping and screening plan shall be prepared and implemented that screens the view of the tower base, electronic cabinets, and chain link fence enclosure.
8. Safety lights on the tower shall be red beckon type lighting or such other lighting which reduces glare as approved by the Director of Planning.

5. Ordinance Amendment, Chapter 9, Licenses, Repeal and Replace Article I, Adopt Business License Ordinance and Incorporate State Guidelines

Mr. Rogers stated that the proposed ordinance incorporated the provisions of the Model Business, Professional and Occupational License (BPOL) Ordinance into the County Code; followed the same format as the Model BPOL Ordinance; was revenue neutral; and should neither increase nor decrease revenue if adopted.

Staff recommended approval of the proposed ordinance.

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

Mr. Magoon questioned how the rates compared to the previous ordinance.

Mr. Rogers stated the rates were identical, however, some were deleted but consolidated into other areas.

Mr. Magoon expressed concern that the BPOL tax was a convenience tax, that he was opposed to such a tax and recommended that there be other alternatives developed to offset additional revenue.

Mr. DePue made a motion to approve of the Ordinance.

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

G. BOARD CONSIDERATIONS

1. Busch Roller Coaster - Height Limitation Waiver

Mr. Michael Freda, Senior Planner, informed the Board that Mr. Norman Mason had applied on behalf of Busch Entertainment Corporation for a height limitation waiver for a roller coaster to be 165 feet from average grade, 220 feet above grade within a ravine.

Mr. Freda stated that the visual impact was tested by taking a balloon into the air above the roller coaster. The coaster was somewhat visible from Route 60. Kingsmill and Carter's Grove, with no visual impact.

He also stated, with respect to the concerns from the residents of Kingsmill, that Busch Entertainment Corporation had taken several steps to minimize the sound issue.

Mr. Sisk commented that he had met with residents and addressed these concerns to staff. The residents' primary concerns were sound and visual impacts, location, and property value. He opened the floor to Mr. Bill Christensen, 100 Jefferson's Hundred, a representative of the Kingsmill Community Services Association.

Mr. Christensen expressed numerous concerns for the noise created by the amusement park and the existing roller coasters near Jefferson's Hundred in Kingsmill. He requested the Board to encourage Busch Entertainment Corporation to move the construction site further from the residential areas of Kingsmill.

Mr. Edward Baron, 160 Jefferson's Hundred, also expressed concerns regarding the roller coaster's proximity to the residential area.

Mr. Norman Mason presented height comparisons to the Board and outlined reasons for the location in the ravine, which would have a positive effect on some of the issues.

Mr. Larry Giles, Vice President of Design and Engineering at Busch Entertainment Corporation, outlined efforts to reduce as much noise as possible from the new coaster and existing coasters. He assured the Board and residents of Kingsmill that with new technology the sound produced by the new coaster would be half the sound of the current Drachenfire.

Mr. Richard Sebastian, Director of Real Estate Assessment, assured the Board that property value in the Jefferson's Hundred area of Kingsmill had not diminished.

Mr. Sisk recognized that the issues have been sufficiently met with the exception of the sound issue. He requested a deferral of two weeks to allow staff, Kingsmill residents, and Busch Entertainment Corporation to evaluate the noise concerns.

Mr. DePue expressed concern that there was no ordinance to protect residents from noise of commercial uses, and believed such an ordinance should be investigated.

Without objection, the Board deferred the item until the January 23, 1996, Board of Supervisors' meeting.

Mr. Sisk declared a recess at 9:05 p.m.

Mr. Sisk reconvened the Board at 9:15 p.m.

2. Industrial Access Road Funding - James River Commerce Center

Mr. Taylor stated that the Board of Supervisors, through its Industrial Development Authority (IDA) and Colonial Williamsburg Foundation (CWF), through its Williamsburg Developments, Inc. (WDI), have jointly agreed to plan, develop, and market the 219-acre James River Commerce Center.

He further stated an industrial access road into this property would include approximately 1,600 linear feet of 22-foot wide roadway plus provision for new turn movements at Route 60, at an estimated cost of \$293,138.

Staff proposed to seek funding for the construction of the industrial access portion of this new road through the VDOT-administered program called Bonded Industrial Access Road Fund. If the County's application was approved, the County must post surety, acceptable to VDOT, for the cost of the road (covered by a separate surety agreement between the County and CWF/WDI). The County, IDA and WDI would have three years to attract qualifying industrial users along the road. If the combined qualifying capital investments of these users matched or exceeded ten times the cost of the road, the County/IDA/WDI would recoup the cost of the road or the proportional equivalent of any qualifying investment less than that.

Staff recommended adoption of the Resolution for Bonded Industrial Access Road Funding at James River Commerce Center

Mr. Magoon made a motion to approve the resolution.

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

RESOLUTION

BONDED INDUSTRIAL ACCESS ROAD FUNDING

AT JAMES RIVER COMMERCE CENTER

WHEREAS, the Industrial Development Authority of James City County, Virginia, and Williamsburg Developments, Inc., own and have agreed to cooperate in the development of property, known as James River Commerce Center, in the County of James City for the purpose of industrial development; and

WHEREAS, this property is expected to be the site of new private capital investment in land, building, and/or manufacturing equipment which will provide new substantial employment; and

WHEREAS, the subject property has no access to a public street or highway and will require the construction of a new roadway to connect with Pocahontas Trail (Route 60 East); and

WHEREAS, the County of James City hereby guarantees that the necessary right of way for this new roadway and utility relocations or adjustments, if necessary, will be provided at no cost to the Virginia Department of Transportation.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby requests that the Commonwealth Transportation Board provide Industrial Access Road funding to provide an adequate road to this property.

BE IT FURTHER RESOLVED that the Board of Supervisors of James City County, Virginia, hereby agrees to provide a letter of credit, bond or other surety, acceptable to and payable to the Virginia Department of Transportation, in the full amount of the cost of the Industrial Access Road; this surety shall be exercised by the Department of Transportation in the event that sufficient qualifying capital investment does not occur either on the subject site or other eligible sites served by the Industrial Access Road within three years of the Commonwealth Transportation Board's allocation of funds pursuant to this request.

BE IT FURTHER RESOLVED that the Board of Supervisors of James City County, Virginia, hereby agrees that the new roadway so constructed will be added to and become a part of the Secondary System of Highways.

3. **FY 1996 Operating Budget, James City County Library**

Mr. John E. McDonald, Manager of Financial and Management Services, stated that the James City County Library in Norge was ahead of schedule and under budget, but in order to open the facility, ten new positions need to be established to support the opening of the library through the use of the balance of remaining construction money.

Mr. DePue made a motion to approve the resolution.

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

RESOLUTION**JAMES CITY COUNTY LIBRARY - FY 1996 TRANSITION**

WHEREAS, the Board of Supervisors of James City County is constructing the James City County Library (JCCL) in Norge, and the Williamsburg Regional Library (WRL) will begin operating the facility in July 1996; and

WHEREAS, operating spending needs to begin in the several months before the planned opening to prepare the library, stock and catalog the books, and train new employees, at an estimated cost of \$150,000; and

WHEREAS, funds exist within the existing project capital budget to pay for these expenditures.

NOW, THEREFORE, BE IT RESOLVED THAT the Board of Supervisors of James City County, Virginia, authorizes the transfer of up to \$150,000 from the Capital Project Budget for the James City County Library to reimburse actual spending incurred to open the library; and

BE IT FURTHER RESOLVED that the transfer of funds anticipates that up to ten full-time equivalent positions may be created and filled, prior to April 1, 1996, to make the opening possible.

H. PUBLIC COMMENT

Mr. R. M. Hazelwood, Old Stage Road, Toano, spoke regarding his discontent with the procedures a citizen must follow to make land use changes to the Comprehensive Plan.

Ms. Adrienne Frank, 114 Crescent Drive, spoke regarding safety concerns on Route 60 at the intersection of Oakland Drive, and the need for both bicycle paths and sidewalks.

Mr. Ed Oyer, 139 Indian Circle, addressed the upkeep and appearance of public property and vehicles.

I. REPORTS OF THE COUNTY ADMINISTRATOR - None**J. BOARD REQUESTS AND DIRECTIVES**

Mr. Magoon commented on the lack of support from Hampton and Newport News to include the County of James City and York and the City of Williamsburg in its effort into "regionalism."

Mr. Magoon complimented the efforts of the Office of Economic Development with its assistance and awareness of program such as the Rail Access Fund for the Massie site at Cokes Lane.

Mr. DePue requested that staff review the turnaround time in Chesterfield County regarding its site plan review process for small businesses.

K. WORK SESSION**1. Drainage Management in James City County**

Mr. John T. P. Horne, Manager of Development Management, and staff discussed three issues: development review and inspection, drainage structure maintenance and repair, and stream channel and drainage channel maintenance and repair, with the Board.

Mr. Sisk made a motion to recess until Tuesday, January 23, 1996, at 5:00 p.m., for a work session on Buffer Protection with the Agricultural and Forestal District Advisory Committee.

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

The Board recessed at 10:45 p.m.



David B. Norman
Clerk to the Board

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ADDITIONS FORM SR-5(A) - Proposed Additions to the Secondary System of State Highways

Attachment to ☒ one) ☒ Board of Supervisors Resolution ☐ Surety

Dated: 00/00/88

Attachment 1 of 1

Name of Subdivision: Powhatan Crossing

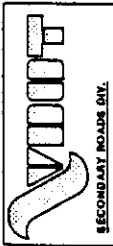
James City County

Ref. No.	Name of Street (Required Data Field)	Street Addition Termini	R-O-W Width (ft)	Miscellaneous Notes	Centerline Length (mi)
1	Powhatan Crossing	From: Route 615 (Ironbound Road) To: Foxridge Road Plat Recorded Date: 08/20/88 Plat Book: 49 Page 81	70-50	# Occupied Dwl: 30 Other Service: P. Bk 57, Pg 95, 08/02/92, P. Bk 60, Pg 52, 11/22/94 Description: Bit conc. surface, curb and gutter	0.50
2	Foxridge Road	From: Powhatan Crossing To: End of permanent cul-de-sac Plat Recorded Date: 08/20/88 Plat Book: 49 Page 81	50	# Occupied Dwl: 4 Other Service: Description: Bit conc. surface, curb and gutter	0.06
3	Hunter's Ridge	From: Powhatan Crossing To: Powhatan Crossing Plat Recorded Date: 08/20/88 Plat Book: 49 Page 81	50	# Occupied Dwl: 30 Other Service: P. Bk 55, Pg 97, 06/17/92, P. Bk 57, Pg 95, 08/02/92 Description: Bit conc. surface, curb and gutter	0.58
4	Deerlope Trail	From: Powhatan Crossing To: End of permanent cul-de-sac Plat Recorded Date: 08/20/88 Plat Book: 49 Page 81	50	# Occupied Dwl: 10 Other Service: Description: Bit conc. surface, curb and gutter	0.13
5	Indian Path	From: Hunter's Ridge To: End of permanent cul-de-sac Plat Recorded Date: 08/17/92 Plat Book: 55 Page 97	50	# Occupied Dwl: 12 Other Service: Description: Bit conc. surface, curb and gutter	0.15
6		From: To: Plat Recorded Date: Plat Book: Page		# Occupied Dwl: Other Service: Description:	
7		From: To: Plat Recorded Date: Plat Book: Page		# Occupied Dwl: Other Service: Description:	
Total Mileage					1.42

Notes: Guaranteed width of right of way exclusive of any necessary easements for cuts, fills, and drainage.

Magistral District Berkel

CERTIFICATION OF ATTACHMENT (by county clerk or surety agent) This attachment is certified a part of the document <input checked="" type="checkbox"/> above.
David B Norman, County Administrator



ADDITIONS FORM SR-5(A) - Proposed Additions to the Secondary System of State Highways

Attachment to (☒ one) ☐ Board of Supervisors Resolution ☐ Surety Dated:

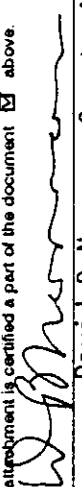
Attachment 1 of

Name of Subdivision: Peleg's Pl. & Pg. Land.

York County

Ref. No.	Name of Street (Required Data Field)	Street Addition Terminal	R-O-W Width (ft)	Miscellaneous Notes	Centerline Length (m)
1	Williamsburg Glade	From: Williamsburg Glade, 0.42 mi. SW of Route 682 To: End of permanent cut-de-sac Plat Recorded Date: 03/14/93 Plat Book: 57 Page 1 & 2	50	# Occupied Dwl: 5 Other Service: Plat Bk. 60, Pgs. 8, 9, & 10 Description: Bit. conc. surface with open roadside ditches	0.37
2	Abbott Lane	From: Williamsburg Glade To: Route 1423 (Capt. John Smith Road) Plat Recorded Date: 10/16/94 Plat Book: 60 Page 8, 9, & 10	50	# Occupied Dwl: 3 Other Service: Plat Bk. 50, Pgs. 95 to 97, 06/29/89 Description: Bit. conc. surface with open ditch and curb and gutter	0.10
3		From: To: Plat Recorded Date: Plat Book: Page		# Occupied Dwl: Other Service: Description:	
4		From: To: Plat Recorded Date: Plat Book: Page		# Occupied Dwl: Other Service: Description:	
5		From: To: Plat Recorded Date: Plat Book: Page		# Occupied Dwl: Other Service: Description:	
6		From: To: Plat Recorded Date: Plat Book: Page		# Occupied Dwl: Other Service: Description:	
7		From: To: Plat Recorded Date: Plat Book: Page		# Occupied Dwl: Other Service: Description:	
Notes: Guaranteed width of right of way exclusive of any necessary easements for cuts, fills, and drainage.					Total Mileage 0.47

Magisterial District Berkeley

CERTIFICATION OF ATTACHMENT (by county clerk or surety agent) This attachment is certified a part of the document <input checked="" type="checkbox"/> above.	
	
(Name and Title) David B. Norman, County Administrator	

JAN 10 1996

ORDINANCE NO. 16A-19

BOARD OF SUPERVISORS
JAMES CITY COUNTY
VIRGINIA

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 9, LICENSES, OF THE CODE OF THE COUNTY OF JAMES CITY, VIRGINIA, BY REPEALING AND REPLACING ARTICLE I, IN GENERAL, SECTIONS 9-1 THROUGH 9-25 WITH NEW SECTIONS 9-1 THROUGH 9-26; BY AMENDING ARTICLE II, SPECIFIC BUSINESSES AND ACTIVITIES, SECTION 9-47, CARNIVALS, CIRCUSES AND TRAINED ANIMAL SHOWS - GENERALLY; SECTION 9-67.1, MERCHANTS - RETAIL SALES; AND SECTION 9-78.1, REPAIR, PERSONAL, BUSINESS AND OTHER SERVICES; BY AMENDING AND RENUMBERING SECTION 9-58.2, MAXIMUM LICENSE TAX ON INDUSTRIAL LOAN COMPANIES; BY DELETING SECTION 9-52, CONTRACTORS AND PERSONS CONSTRUCTING FOR THEIR OWN ACCOUNT FOR SALE; SECTION 9-54, DANCE HALLS, ETC., OPEN TO PUBLIC; SECTION 9-54.1, DANCES SPONSORED BY NONPROFIT ORGANIZATIONS; SECTION 9-56, DISTRIBUTING HOUSES; SECTION 9-58.1, FINANCIAL, REAL ESTATE AND PROFESSIONAL SERVICES; SECTION 9-59, FORTUNETELLERS, CLAIRVOYANTS AND PRACTITIONERS OF PALMISTRY, PHRENOLOGY AND HANDWRITING ANALYSIS; SECTION 9-68, SAME - WHOLESALE; AND BY AMENDING ARTICLE IV, COIN-OPERATED MACHINES, DIVISION 1, SLOT MACHINES GENERALLY, BY DELETING SECTION 9-109; REGISTRATION AND BOND; AND DIVISION 2, MERCHANTS PLACING VENDING MACHINES, BY DELETING SECTION 9-113, WHEN TOBACCO RETAILER'S LICENSE REQUIRED.

BE IT ORDAINED by the Board of Supervisors of the County of James City, Virginia, that Chapter 9, Licenses, is hereby amended and reordained by repealing and replacing Sections 9-1 through 9-25 with new Sections 9-1 through 9-26; by amending Section 9-47, Carnivals, circuses and trained animal shows - generally; Section 9-67.1, Merchant - retail sales; and Section 9-78.1, Repair, personal, business and other services; by amending and renumbering Section 9-58.2, Maximum license tax on industrial loan companies; by deleting Section 9-52, Contractors and persons constructing for their own account for sale; Section 9-54, Dance halls etc., open to public; Section 9-54.1, Dances sponsored by nonprofit organizations; Section 9-56, Distributing houses; Section

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9-58.1, Financial, real estate and professional services; Section 9-59, Fortunetellers, clairvoyants and practitioners of palmistry, phrenology and handwriting analysis; Section 9-68, Same - wholesale; Section 9-109, Registration and bond; and Section 9-113, When tobacco retailer's licenses required.

Chapter 9. Licenses*

Article I. In General

Sec. 9-1. Short title.

This chapter shall be known, designated and cited as "The License Tax Ordinance of James City County, 1972."

Sec. 9-2. Overriding Conflicting Ordinances.

Except as may be otherwise provided by the laws of the Commonwealth of Virginia, and notwithstanding any other current ordinances or resolutions enacted by the County, whether or not compiled in the Code of the County, to the extent of any conflict, the following provisions shall be applicable to the levy, assessment, and collection of licenses required and taxes imposed on businesses, trades, professions and callings and upon the persons, firms and corporations engaged therein within the County.

State law references - Authority of county to levy and provide for the assessment and collection of county license taxes on businesses, etc., generally, Code of Va., Section 58.1-3700 et. seq.

Sec. 9-3. Definitions.

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

"Affiliated group" means:

(a) One or more chains of includible corporations connected through stock ownership with a common parent corporation which is an includible corporation if:

(i) Stock possessing at least eighty percent of the voting power of all classes of stock and at least eighty percent of each class of the nonvoting stock of each of the includible corporations, except the common parent corporation, is owned directly by one or more of the other includible corporations; and

(ii) The common parent corporation directly owns stock possessing at least eighty percent of the voting power of all classes of stock and at least eighty percent of each class of the nonvoting stock of at least one of the other includible corporations. As used in this definition, the term "stock" does not include nonvoting stock which is limited and preferred as to dividends. The term "includible corporation" means any corporation within the affiliated group irrespective of the state or country of its incorporation; and the term "receipts" includes gross receipts and gross income.

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(b) *Two or more corporations if five or fewer persons who are individuals, estates, or trusts own stock possessing:*

- (i) *At least eighty percent of the total combined voting power of all classes of stock entitled to vote or at least eighty percent of the total value of shares of all classes of the stock of each corporation, and*
- (ii) *More than fifty percent of the total combined voting power of all classes of stock entitled to vote or more than fifty percent of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each such person only to the extent such stock ownership is identical with respect to each such corporation.*

When one or more of the includible corporations, including the common parent corporation is a nonstock corporation, the term "stock" as used in this definition shall refer to the nonstock corporation membership or membership voting rights, as is appropriate to the context.

"Assessment" means a determination as to the proper rate of tax, the measure to which the tax rate is applied, and ultimately the amount of tax, including additional or omitted tax, that is due. An assessment shall include a written assessment made pursuant to notice by the assessing official or a self-assessment made by a taxpayer upon the filing of a return or otherwise not pursuant to notice. Assessments shall be deemed made by an assessing official when a written notice of assessment is delivered to the taxpayer by the assessing official or an employee of the assessing official, or mailed to the taxpayer at his last known address. Self-assessments shall be deemed made when a return is filed, or if no return is required, when the tax is paid. A

return filed or tax paid before the last day prescribed by this chapter for the filing or payment thereof shall be deemed to be filed or paid on the last day specified for the filing of a return or the payment of tax, as the case may be.

"Assessor" or "assessing official" means the Commissioner of the Revenue or Business License Inspector for the County.

"Base year" means the calendar year preceding the license year, except for contractors subject to the provisions of Section 58.1-3715 of the Code of Virginia.

"Business" means a course of dealing which requires the time, attention and labor of the person so engaged for the purpose of earning a livelihood or profit. It implies a continuous and regular course of dealing, rather than an irregular or isolated transaction. A person may be engaged in more than one business. The following acts shall create a rebuttable presumption that a person is engaged in a business:

- (i) advertising or otherwise holding oneself out to the public as being engaged in a particular business; or*
- (ii) filing tax returns, schedules and documents that are required only of persons engaged in a trade or business.*

"Contractor" means any person, firm or corporation:

(a) Accepting or offering to accept orders for contracts for doing any work on or in any building or structure, requiring the use of paint, stone, brick, mortar, wood, cement, structural iron or steel, sheet iron, galvanized iron, metallic piping, tin, lead, or other metal or any other building material;

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(b) *Accepting or offering to accept contracts to do any paving, curbing or other work on sidewalks, streets, alleys, or highways, or public or private property, using asphalt, brick, stone, cement, concrete, wood or any composition;*

(c) *Accepting or offering to accept an order for or contract to excavate earth, rock, or other material for foundation or any other purpose or for cutting, trimming or maintaining right-of-ways;*

(d) *Accepting or offering to accept an order or contract to construct any sewer of stone, brick, terra cotta, or other material;*

(e) *Accepting or offering to accept orders or contracts for doing any work on or in any building or premises involving the erecting , installing, altering, repairing, servicing, or maintaining electric wiring, devices or appliances permanently connected to such wiring, or the erecting, repairing or maintaining of lines for the transmission or distribution of electric light and power.*

(f) *Engaging in the business of plumbing and steam fitting.*

"Definite place of business" means an office or a location at which occurs a regular and continuous course of dealing for thirty consecutive days or more. A definite place of business for a person engaged in business may include a location leased or otherwise obtained from another person on a temporary or seasonal basis; and real property leased to another. A person's residence shall be deemed to be a definite place of business if there is no definite place of business maintained elsewhere and the person is not licensable as a peddler or itinerant merchant.

"License year" means the calendar year for which a license is issued for the privilege of engaging in business.

"Personal services" shall mean rendering for compensation any repair, personal, business or other services not specifically classified as "financial, real estate or professional service" under this Chapter, or rendered in any other business or occupation not specifically classified in this Chapter unless exempted from local license tax.

"Purchases" shall mean all goods, wares and merchandise received or offered for sale at each definite place of business of every wholesaler or wholesale merchant, and shall not be construed to exclude any goods, wares or merchandise otherwise coming within the meaning of such word, including such goods, wares and merchandise manufactured by a wholesaler or wholesale merchant and sold or offered for sale as merchandise.

"Real estate services" shall mean rendering a service for compensation as lessor, buyer, seller, agent or broker and providing a real estate service, unless the service is otherwise specifically provided for in this Chapter.

"Retailer" or "Retail Merchant" shall mean any person or merchant who sells goods, wares and merchandise for use or consumption by the purchaser or for any purpose other than resale by the purchaser, but does not include sales at wholesale to institutional, commercial and industrial users.

"Wholesaler" or "Wholesale Merchant" shall mean any person or merchant who sells wares and merchandise for resale by the purchaser, including sales when the goods, wares and merchandise will be

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incorporated into goods and services for sale, and also includes sales to institutional, commercial and industrial users which because of the quantity, price, or other terms indicate that they are consistent with sales at wholesale.

Sec. 9-4. Adoptions of guidelines.

Except as otherwise modified by this chapter, there is hereby adopted by reference as if fully set forth herein the Guidelines for Business, Professional and Occupational License Tax Imposed by City, County and Town Ordinances, issued by the Commonwealth of Virginia Department of Taxation dated July 1, 1995.

Sec. 9-5. License requirement.

(a) Every person engaging in the County in any business, trade, profession, occupation or calling (collectively hereinafter "a business") as defined in this Chapter, unless otherwise exempted by law, shall apply for a license for each such business if (i) in the case of professional services, such person either maintains a definite office in the county, or if such person does not maintain a definite office in the Commonwealth of Virginia but does maintain an abode in the County, which abode for the purposes of this Chapter shall be deemed a definite place of business; or (ii) in the case of any other business, such person has a definite place of business or maintains an office in the County; or (iii) such person is engaged as a peddler or itinerant merchant, carnival or circus as specified in Sections 58.1-3717, 3718, or 3728, respectively of the Code of Virginia, or is a contractor subject to Section 58.1-3715 of the Code of Virginia, or is a public service corporation subject to Section 58.1-3731 of the Code of Virginia. A separate license shall be required for each definite place of business.

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(b) *A person engaged in two or more businesses or professions carried on at the same place of business may elect to obtain one license for all such businesses and professions if all of the following criteria are satisfied: (i) each business or profession is licensable at the location and has satisfied any requirements imposed by state law or other provisions of the County code; (ii) all of the businesses or professions are subject to the same tax rate, or, if subject to different tax rates, the licensee agrees to be taxed on all businesses and professions at the highest rate; and (iii) the taxpayer agrees to supply such information as the assessor may require concerning the nature of the several businesses and their gross receipts.*

(c) *Each person subject to a license tax shall obtain a license within 10 days of beginning business, if he was not licensable in the County on or before January 1, of the license year. The application shall be on forms prescribed by the assessing official. The initial application and any renewal shall be submitted prior to February of each year.*

(d) *The tax shall be paid with the application in the case of any license not based on gross receipts or purchases. If, the tax is measured by the gross receipts or purchases of the business, the tax shall be paid on or before March 1.*

(e) *The assessing official may grant an extension of time, not to exceed 90 days, in which to file an application for a license, for good cause. The extension may be conditioned upon the timely payment of a reasonable estimate of the appropriate tax, subject to adjustment to the correct tax at the end of the extension together with interest from the due date until the date paid and, if the estimate submitted with the extension is found to be unreasonable under the circumstances, a penalty of ten percent of the portion paid after the due date.*

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(f) *A penalty of ten percent of the tax or \$10.00, whichever is greater, may be imposed upon the failure to file an application or the failure to pay the tax by the appropriate due date. Only the late filing penalty shall be imposed by the assessing official if both the application and payment are late; however both penalties may be assessed if the assessing official determines that the taxpayer has a history of noncompliance. In the case of an assessment of additional tax made by the assessing official, if the application and, if applicable, the return were made in good faith and the understatement of the tax was not due to any fraud, reckless or intentional disregard of the law by the taxpayer, there shall be no late payment penalty assessed with the additional tax. If any assessment of tax by the assessing official is not paid within thirty days the treasurer may impose a ten percent late payment penalty. The penalties shall not be imposed, or if imposed, shall be abated by the official who assessed them, if the failure to file or pay was not the fault of the taxpayer. In order to demonstrate lack of fault, the taxpayer must show that he acted responsibly and that the failure was due to events beyond his control.*

(g) *For the purpose of this section the following words and phrases shall have the meanings respectively ascribed to them:*

"Acted responsibly" means that: (i) the taxpayer exercised the level of reasonable care that a prudent person would exercise under the circumstances in determining the filing obligations for the business and (ii) the taxpayer undertook significant steps to avoid or mitigate the failure, such as requesting appropriate extensions, attempting to prevent a foreseeable impediment, acting to remove an impediment once it occurred, and promptly rectifying a failure once the impediment was removed or the failure discovered.

"Events beyond the taxpayer's control" include, but are not limited to, the unavailability of records due to fire or other casualty; the unavoidable absence (e.g., due to death or serious illness) of the person with the sole responsibility for tax compliance; or the taxpayer's reasonable reliance in good faith upon erroneous written information from the assessing official, who was aware of the relevant facts relating to the taxpayer's business when he provided the erroneous information.

(h) Interest shall be charged on the late payment of the tax from the due date until the date paid without regard to fault or other reason for the late payment. Whenever an assessment of additional or omitted tax by the assessing official is found to be erroneous, all interest and penalty charged and collected on the amount of the assessment found to be erroneous shall be refunded.

Sec. 9-6. Exemptions.

No license tax shall be assessed or charged to any person prosecuting any business or businesses in which the aggregate gross receipts are \$4,000.00 or less in any license tax year; provided, however, all such persons shall provide the commissioner of the revenue, on a form provided by him, all information otherwise required to apply for a license. This exemption shall apply only to those businesses upon which taxes are imposed based upon gross receipts and shall specifically not apply to businesses upon which taxes are imposed by sections 9-28, 9-47, 9-99, 9-106, 9-120.1 or 9.131.

Sec. 9-7. Duty of applicant to ascertain zoning.

It shall be the duty of every person applying for a business license to ascertain whether the location for the conducting of such business, trade or occupation is properly zoned and has all necessary use permits

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before making application for such business license as may be required. The commissioner of the revenue, in any case where he suspects the location is not properly zoned for the type of business, trade or occupation proposed by the applicant, shall refuse to issue such business license until a certificate is issued by the zoning administrator, stating that the location is properly zoned and the necessary use permits, if any, have been granted. The issuance of a business license by the commissioner shall not be deemed to be approval by the county or otherwise to be in compliance with the zoning ordinance or any other local law or regulation.

Sec. 9-8. Penalty for not making application.

Any person doing business, carrying on any trade or calling, or practicing any profession within the county, and any person who shall open an office for a place of business, or who shall by use of signs or otherwise advertise any trade, business or profession within the county, shall make application to the commissioner of the revenue for the license due under this chapter, as provided in section 9-5, and any person failing to make such application shall be subject to a fine of not less than \$25.00 nor more than \$300.00 as the judge or jury may determine.

Sec. 9-9. Penalties for nonpayment of license tax.

(a) *Any person conducting any business, occupation or profession, or doing other things for which a license tax is required under this chapter, without applying for and obtaining such license as set forth in section 9-5, or who shall fail to obtain any tag, certificate or sign required under this chapter, shall be subject to a fine of not less than \$25.00 nor more than \$300.00, and each day of default shall constitute a separate offense. Such conviction shall not relieve any such person from the payment of any license tax imposed by this chapter.*

(b) *In addition to the above fine, if any license tax imposed by this chapter is not paid within the time prescribed in section 9-5, there shall be added to such license tax a penalty of ten percent or \$10.00 whichever shall be the greater; provided, however, that the penalty shall in no case exceed the amount of tax due. In addition thereto, interest in the amount of 8 percent per annum shall commence 30 days following the date on which such tax is due.*

(c) *In the case of a false or fraudulent application where willful intent exists, a penalty of fifty percent of the amount of the proper tax shall be assessed.*

Sec. 9-10. License tax on beginners.

For the purpose of ascertaining the tax to be paid by any person beginning a new business, employment or profession, and whose license tax shall be based on gross receipts, gross sales, gross purchases, gross commissions, gross contracts or orders, the licensee shall estimate the basis for measuring the license tax between the date of issuance of the license and the thirty-first of December following.

Sec. 9-11. Estimates.

Every underestimate under the preceding section shall be subject to correction by the commissioner of the revenue, whose duty it shall be to assess such licensee with such additional taxes as may be found to be due after the close of the license year on the basis of gross receipts, gross sales, gross purchases, gross commissions, or gross contracts or orders. In case of overestimate, the commissioner of the revenue shall order a refund in the amount of the overpaid tax, upon application of licensee.

Sec. 9-12. Keeping of records; penalty for failure to keep records.

Every person liable for a license tax under this chapter which is based on actual or probable purchases or sales, actual or probable commissions, gross receipts from a business or profession, contracts or orders accepted or graded in any other way shall, where such tax is based on actual or probable purchases or sales, keep all invoices and a record of all purchases and from whom made, a record of all commissions, gross receipts, and contracts or orders accepted, from whom received and with whom made, and the report of such purchases, sales, commissions, receipts, contracts or orders accepted, required to be made for the computation of such license tax, shall be taken from such invoices and records and general books of account.

All such invoices, records and general books of account shall be opened to inspection and examination on the premises of the business, employment or profession by the commissioner of the revenue, license inspector, or any assistant license inspector.

Any person who shall fail or refuse to keep such invoices or records as above provided shall be subject to a fine of not less than \$25.00 nor more than \$300.00 in addition to the license tax imposed.

Sec. 9-13. Penalty for failing to file statement required and for making false statement.

If any person subject to the payment of a license tax required under this chapter should fail or refuse to file the statement or statements required by this chapter, or who should make any false statement in the affidavit required by this chapter, shall, upon conviction thereof, be fined not less than \$50.00 dollars nor more than \$300.00 or confined in jail not more than thirty days, or both, in the discretion of the court or jury.

Sec. 9-14. Production of records and penalty for failure to produce.

Should an officer of the county, charged in any manner with the duty of assessing or collecting license taxes, have reason to believe, in any case, that the amount of actual or probable purchases or sales, or actual or probable commissions, or the gross or net receipts from any business or profession, or any other matters that may be pertinent to the assessment of such license tax, have been incorrectly reported or returned, he shall make a report thereof to the commissioner of the revenue, whereupon, in any case in which the commissioner of the revenue shall deem it advisable, the commissioner of the revenue shall investigate and ascertain whether such person has made a correct return, and to that end, the commissioner of the revenue is hereby authorized and empowered to summon such person before him and require the production of any and all of his records, books and papers likely to throw any light upon the matter under investigation, and shall also be authorized and empowered to make, or cause to be made, such other and further reasonable investigations, examinations and audits of the records, books and papers of such person as he shall deem proper, and in order to accurately determine the proper return to be made by such person.

If it shall appear that such purchases, sales, commissions, receipts or other matters pertinent to such assessment have been incorrectly reported or returned, the commissioner of the revenue shall assess such person with the proper county license tax.

And if it shall appear to the commissioner of the revenue that such purchases, sales, commissions, receipts or other matters pertinent to such assessment have been willfully incorrectly reported or returned, such person shall be assessed, in addition to such increased license tax assessed, a penalty of fifty percent of such increased assessment. Any incorrect report of return shall be deemed prima facie willful.

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Any person who shall fail to appear before the commissioner of the revenue and produce such records, books and papers, when duly summoned, or who shall refuse to permit the commissioner of the revenue to make or cause to be made such other and further investigation and audit of such books and papers, shall, upon conviction thereof, be fined not more than \$300.00.

Sec. 9-15. Assessment of additional license taxes.

Whenever an officer of the county charged in any manner with the duty of assessing or collecting license taxes shall find that any person should be assessed with any additional license tax or taxes, pursuant to the provisions of this chapter, it shall be his duty to report the matter, together with the amount thereof, to the commissioner of the revenue who, if the commissioner agrees with the finding, shall thereupon assess such person with such additional license tax or taxes, and shall also transmit a copy of such additional assessment to the county treasurer.

In the event the additional license tax or taxes so assessed shall not have been paid within 30 days after such assessment, the county treasurer shall proceed to collect such tax or taxes in the same manner and with the same authority as all other taxes are collected and a penalty of five percent shall be added.

Sec. 9-16. Display of license; penalty for violation.

Every person required to pay a license tax or obtain any tag or sign under the provisions of this chapter shall keep the license tag or sign in a prominent place; and, whenever required to do so, shall exhibit it to any member of the sheriff's department or to the license inspector. Any person violating the provisions of this section, or any person failing to properly display license tag or grower's sign required under this

chapter to be displayed in a particular way, shall, upon conviction, be fined not to exceed \$25.00 and each day of such violation shall constitute a separate offense.

Sec. 9-17. Situs of Gross Receipts.

(a) General rule. Whenever the tax imposed by this Chapter is measured by gross receipts, the gross receipts included in the taxable measure shall be only those gross receipts attributed to the exercise of a licensable privilege at a definite place of business within the County. In the case of activities conducted outside of a definite place of business, such as during a visit to a customer location, the gross receipts shall be attributed to the definite place of business from which such activities are initiated, directed, or controlled. The situs of gross receipts for different classifications of business shall be attributed to one or more definite places of business or offices as follows:

(1) The gross receipts of a contractor shall be attributed to the definite place of business at which his services are performed, or if his services are not performed at any definite place of business, then the definite place of business from which his services are directed or controlled, unless the contractor is subject to the provisions of Section 58.1-3715 of the Code of Virginia.

(2) The gross receipts of a retailer or wholesaler shall be attributed to the definite place of business at which sales solicitation activities occur, or if sales solicitation activities do not occur at any definite place of business, then the definite place of business from which sales solicitation activities are directed or controlled.

(3) *The gross receipts of a business renting tangible personal property shall be attributed to the definite place of business from which the tangible personal property is rented or, if the property is not rented from any definite place of business, then the definite place of business at which the rental of such property is managed.*

(4) *The gross receipts from the performance of personal services shall be attributed to the definite place of business at which the services are performed or, if not performed at any definite place of business, then the definite place of business from which the services are directed or controlled.*

(b) *Apportionment. If the licensee has more than one definite place of business and it is impractical or impossible to determine to which definite place of business gross receipts should be attributed under the general rule and the affected jurisdictions are unable to reach an apportionment agreement, the gross receipts of the business shall be apportioned between the definite places of businesses as provided in Section 58.1-3709 of the Code of Virginia. Gross receipts shall not be apportioned to a definite place of business unless some activities under the applicable general rule occurred at, or were controlled from, such definite place of business. Gross receipts attributable to a definite place of business in another jurisdiction shall not be attributed to the County in the event the other jurisdiction does not impose a tax on the gross receipts attributable to the definite place of business in such other jurisdiction.*

(c) *Agreements. The assessor may enter into agreements with any other political subdivision of Virginia concerning the manner in which gross receipts shall be apportioned among definite places of business. However, the sum of the gross receipts apportioned by the agreement shall not exceed the total gross receipts attributable to all of the definite places of business affected by the agreement. In the event the assessing official is notified or becomes aware that its method of attributing gross receipts is fundamentally*

inconsistent with the method of one or more political subdivisions in which the taxpayer is licensed to engage in business and that the difference has, or is likely to, result in taxes on more than 100 percent of its gross receipts from all locations in the affected jurisdictions, the assessor shall make a good faith effort to reach an apportionment agreement with the other political subdivisions involved.

Sec. 9-18. Limitations, extensions, appeals and rulings.

The enforcement of the provisions of this Chapter including limitations with respect thereto, the correction of any assessment hereunder and any appeal by the County of a correction made by its assessing official or by any person assessed with taxes hereunder and aggrieved by such assessment shall be pursuant to Chapter 39, Title 58.1 of the Code of Virginia; provided, however:

(a) *Any person assessed with a licensing tax under this Chapter as the result of an audit may within the period provided in Section 58.1-3980 of the Code of Virginia, apply to the assessing official for a correction of the assessment. The application must be filed in good faith and sufficiently identify the taxpayer, audit period, remedy sought, each alleged error in the assessment, the grounds upon which the taxpayer relies, and any other facts relevant to the taxpayer's contention. The assessor may hold a conference with the taxpayer if requested by the taxpayer, or require submission of additional information and documents, further audit, or other evidence deemed necessary for a proper and equitable determination of the applications. The assessment shall be deemed prima facie correct. The assessor shall undertake a full review of the taxpayer's claims and issue a determination to the taxpayer setting forth its position. Every assessment pursuant to an audit shall be accompanied by a written explanation of the taxpayer's right to seek correction and the specific procedure to be followed in the jurisdiction (e.g., the name and address to which an application should be directed).*

(b) *Provided an application is made within 90 days of an assessment, collection activity shall be suspended until 30 days after the final determination is issued by the assessor, unless the assessor determines that collection would be jeopardized by delay or that the taxpayer has not responded to a request for relevant information after a reasonable time. Interest shall accrue in accordance with the provisions of Section 9-5(h), but no further penalty shall be imposed while collection action is suspended. The term "jeopardized by delay" includes a finding that the application is frivolous, or that a taxpayer desires (i) to depart quickly from the locality, (ii) to remove his property therefrom, (iii) to conceal himself or his property therein, or (iv) to do any other act tending to prejudice, or to render wholly or partially ineffectual, proceedings to collect the tax for the period in question.*

(c) *Any taxpayer may request a written ruling regarding the application of the tax to a specific situation from the assessor. Any person requesting such a ruling must provide all the relevant facts for the situation and may present a rationale for the basis of an interpretation of the law most favorable to the taxpayer. Any misrepresentation or change in the applicable law or the factual situation as presented in the ruling request shall invalidate any such ruling issued. A written ruling may be revoked or amended prospectively if (i) there is a change in the law, a court decision, or (ii) the assessor notifies the taxpayer of a change in the policy or interpretation upon which the ruling was based. However, any person who acts on a written ruling which later becomes invalid shall be deemed to have acted in good faith during the period in which such ruling was in effect.*

Sec. 9-19. Recordkeeping and audits.

Every person who is assessable with a license tax shall keep sufficient records to enable the assessor to verify the correctness of the tax paid for the license years assessable and to enable the assessor to ascertain what is the correct amount of tax that was assessable for each of those years. All such records, books of accounts and other information shall be open to inspection and examination by the assessor in order to allow the assessor to establish whether a particular receipt is directly attributable to the taxable privilege exercised within the County. The assessor shall provide the taxpayer with the option to conduct the audit in the taxpayer's local business office, if the records are maintained there. In the event the records are maintained outside the County, copies of the appropriate books and records shall be sent to the assessor's office upon demand.

Sec. 9-20. Exclusions and deductions from "gross receipts."

(a) General Rule. Gross receipts for license tax purposes shall not include any amount not derived from the exercise of the licensed privilege to engage in a business or profession in the ordinary course of business or profession.

(b) The following items shall be excluded from gross receipts:

(1) Amounts received and paid to the United States, the Commonwealth or any county, city or town for the Virginia retail sales or use tax, for any local sales tax or any local excise tax on cigarettes, or for any federal or state excise taxes on motor fuels.

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- (2) *Any amount representing the liquidation of a debt or conversion of another asset to the extent that the amount is attributable to a transaction previously taxed (e.g., the factoring of accounts receivable created by sales which have been included in taxable receipts even though the creation of such debt and factoring are a regular part of its business).*
- (3) *Any amount representing returns and allowances granted by the business to its customer.*
- (4) *Receipts which are the proceeds of a loan transaction in which the licensee is the obligor.*
- (5) *Receipts representing the return of principal of a loan transaction in which the licensee is the creditor, or the return of principal or basis upon the sale of a capital asset.*
- (6) *Rebates and discounts taken or received on account of purchases by the licensee. A rebate or other incentive offered to induce the recipient to purchase certain goods or services from a person other than the offeror, and which the recipient assigns to the licensee in consideration of the sale of goods and services shall not be considered a rebate or discount to the licensee, but shall be included in the licensee's gross receipts together with any handling or other fees related to the incentives.*
- (7) *Withdrawals from inventory for which no consideration is received and the occasional sale or exchange of assets other than inventory, whether or not a gain or loss is recognized for federal income tax purposes.*

(8) *Investment income not directly related to the privilege exercised by a licensable business not classified as rendering financial services. This exclusion shall apply to interest on bank accounts of the business, and to interest, dividends and other income derived from the investment of its own funds in securities and other types of investments unrelated to the licensed privilege. This exclusion shall not apply to interest, late fees and similar income attributable to an installment sale or other transaction that occurred in the regular course of business.*

Sec. 9-21. Rates of license taxes.

Except as may be specifically otherwise provided by this chapter or other law, the annual license tax imposed hereunder shall be \$30.00 or the rate set forth below for the class of enterprise listed, whichever is greater.

(1) *For contractors and persons constructing for their own account for sale, 16 cents per \$100 of gross receipts;*

(2) *For retailers, 20 cents per \$100 of gross receipts;*

(3) *For financial, real estate and professional services, 58 cents per \$100 of gross receipts;*

(4) *For repair, personal and business services and all other businesses and occupations not specifically listed or exempted in this ordinance or otherwise by law, 36 cents per \$100 of gross receipts;*

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- (5) *For wholesalers, 5 cents per \$100 of purchases (see Section 58.1-3716 of the Code of Virginia for limitations);*
- (6) *For carnivals, circuses and speedways, \$100 for each performance held in this jurisdiction (see Section 58.1-3728 of the Code of Virginia for limitations);*
- (7) *For fortune tellers, clairvoyants and practitioners of palmistry, \$1,000 per year;*
- (8) *For massage clinic or therapist, 36 cents per \$100 of gross receipts;*
- (9) *For itinerant merchants or peddlers, \$500 per year (see limitation in Section 58.1-3717 of the Code of Virginia);*
- (10) *For dealers in precious metals, 20 cents per \$100 of gross receipts;*
- (11) *For permanent coliseums, arenas or auditoriums having a maximum capacity in excess of 10,000 persons, open to the public, \$1,000 per year [see limitation in Section 58.1-3729 of the Code of Virginia];*
- (12) *For savings and loan associations, \$50.00 per year.*

Any person engaging in such business without the required license shall be guilty of a Class 3 Misdemeanor. This license shall not be proratable or transferrable.

Sec. 9-22. Rules of construction and collection of license taxes.

As to all questions in regard to the duty and conduct of officers of the county in collecting and enforcing the taxes herein imposed, and in regard to questions of construction and for definitions of terms used in this chapter, and the rules and regulations applicable to putting the same in operation, reference is hereby made to Title 58.1, Code of Virginia, for the assessment, levy and collection of taxes for the current year, or to so much thereof as is applicable to this chapter and is not inconsistent with it and the general ordinances of the county and other parties affected by this chapter, and for fixing their powers, rights, duties and obligations the provisions of said laws, so far as applicable, are hereby adopted, without being specifically herein quoted.

Sec. 9-23. Interrogatories of applicant for license; penalty.

As one of the means of ascertaining the amount of any license tax, the commissioner of the revenue or any duly sworn deputy may take the sworn statement of such applicant or licensee and use such other evidence as he may properly and reasonably procure. Such interrogatories shall be answered under oath. Any applicant refusing to answer such interrogatories under oath shall be subject to a fine of not less than \$25.00 nor more than \$100.00.

Sec. 9-24. Subjects not mentioned in Chapter.

Nothing contained in this chapter shall be construed to repeal any tax imposed by any other chapter of this Code or by any other ordinance of James City County upon motor vehicles, person, property, admissions, charges for utility services, or any subject not herein mentioned unless otherwise specified.

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Sec. 9-25. Nonconflict with federal and state law.

Nothing contained in this chapter shall be construed as imposing any license tax on any business, occupation or professional employment, or on any part thereof, on which the county is prohibited to impose by federal or state law.

Sec. 9-26. Duty of commissioner of the revenue.

It shall be the duty of the commissioner of the revenue to require all parties prosecuting any business, employment or profession for which a license is provided herein to procure such license and pay the tax therefor; and should there be any license tax not paid it shall be his duty to report any and all delinquents to the county treasurer, who shall report them to the commonwealth attorney for prosecution, as provided in this chapter.

Article II. Specific Businesses and Activities

Sec. 9-47. Carnivals, circuses and trained animal shows-Generally.

(a) *Carnivals.* Every person who, in this county, exhibits performances in a carnival, as defined in Section 58.1-3728 of the Code of Virginia, shall pay a license tax of ~~one thousand dollars (\$1,000.00)~~ for each week or part thereof that such carnival exhibits in the county *\$100.00 per day or for each performance held in the county, whichever is greater.*

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(b) *Circuses.* Every person who exhibits performances of a circus or circuses and menagerie or wild west show in this county shall pay a license tax of ~~one hundred dollars (\$100.00) per day that such circus exhibits per day or for each performance held in the county, whichever is greater.~~

(c) ~~*Trained animal shows-Local.* Every person, firm or corporation that is in the business of exhibiting performances of trained animal shows in this county and that has a permanent place of business within the county shall pay a license tax of two hundred dollars (\$200.00) per year that such trained animal shows exhibit in the county.~~

(d) ~~*Same-Nontocal.* Every person, firm or corporation that is in the business of exhibiting performances of trained animal shows a permanent place of business within the county shall pay a of fifty dollars (\$50.00) per day that such trained animal in the county.~~

(e c). *Bond.* Each person, firm or corporation that exhibits performances described in this section without maintaining a permanent place of business within the county shall, before beginning operation in this county, post a surety bond in the amount of ~~one thousand dollars (\$1,000.00)~~, which bond shall assure faithful compliance by the licensee with all of the laws of the county to revenue and regulation.

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~~Sec. 9-52. Contractors and persons constructing for their own account for sale.~~

(1) ~~The license tax imposed upon a person engaged in contracting and persons constructing for their own account for sale is thirty dollars (\$30.00) or sixteen cents (\$0.16) per one hundred dollars (\$100.00) of gross receipts, whichever is greater.*~~

(2) ~~Contractor. A "contractor," for purposes of this classification, is any person who accepts or offers to accept:~~

(a) ~~Orders or contracts for doing any work on or in any building or structure, requiring the use of paint, stone, brick, mortar, wood, cement, structural iron or steel, sheet iron, galvanized iron, metallic piping, tin, lead, or other metal or any other building material;~~

~~*State law reference Section 58.1-3715 of the Code of Virginia provides: "When a contractor has paid any local license tax required by the county, city or town in which his principal office and any branch office or offices may be located, no further license or license tax shall be required by any other county, city or town for conducting any such business within the confines of this Commonwealth. However, when the amount of business done by any such contractor in any other county, city or town exceeds the sum of \$25,000 in any year, such other county, city or town may require of such contractor a local license, and the amount of business done in such other county, city or town in which a license tax is paid may be deducted by the contractor from the gross revenue reported to the county, city or town in which the principal office or any branch office of the contractor is located."~~

- (b) ~~Contracts to do any paving, curbing or other work on sidewalks, streets, alleys or highways, on public or private property, using asphalt, brick, stone, cement, concrete, wood or any composition;~~
- (c) ~~An order for or contract to excavate earth, rock or other material for foundation or any other purpose, or for cutting, trimming or maintaining rights-of-way;~~
- (d) ~~An order or contract to construct any sewer of stone, brick, terracotta or other material;~~
- (e) ~~Orders or contracts for doing any work on or in any building or premises involving the erecting, installing, altering, repairing, servicing or maintaining of electric wiring erecting, installing, repairing or maintaining of line transmission or distribution of electric light and other utility services;~~
- (f) ~~An order or contract to remodel, repair, wreck or demolish a building;~~
- (g) ~~An order or contract to bore or dig a well;~~
- (h) ~~An order or contract to install, maintain or repair air conditioning apparatus or equipment;~~
- (3) ~~Contracting generally includes, but is not limited to, persons engaged in the following occupations, businesses or trades:~~

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Air conditioning;
~~Brick contracting and other masonry;~~
Building;
Cementing;
Dredging;
Electrical contracting;
Elevator installation;
~~Erecting signs which are assessed as realty;~~
Floor scraping or finishing;
Foundations;
House moving;
Paint and paper decorating;
Plastering;
Plumbing, heating, steamfitting;
Refrigeration;
~~Road, street, bridge, sidewalk or curb and gutter construction;~~
Roofing and tinning;
~~Sewer drilling and well digging;~~
Sign painting;
Structural metal work;
~~Tile, glass, flooring and floor covering installation;~~
~~Wrecking, moving or excavating;~~

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(4) ~~A person is not a contractor if he is engaged in the business of selling and installing air conditioning units that are placed in windows or other openings with frames and require no ducts. The installation of a unit in the wall of the building is person engaged in the business of selling and erecting or erecting tombstones is not a contractor, but is engaged in either retail or wholesale sales.~~

(5) ~~Any person engaged in the business of selling and erecting or erecting tombstones is not a contractor, but is engaged in either retail or wholesale sales.~~

(6) ~~Any person engaged in the business of wrecking or demolishing a building and who then sells the materials obtained is engaged in retail or wholesale sales as to the sale of the materials.~~

(7) ~~Soliciting business for a contractor is not contracting but is a business service.~~

(8) ~~Every contractor, whether a general contractor or a subcontractor, is a contractor for purposes of local license taxation. The imposition of a license tax on the gross receipts of a general contractor and also a subcontractor is not double taxation. Each is engaged in business in his own right and licensable accordingly.~~

(9) ~~A person who merely sells a prefabricated building or structure is not a contractor, but if the person or a subcontractor for that person erects the building or structure, then the seller is a contractor.~~

(10) ~~Any person who sells floor coverings and furnishes and installs the floor covering under a contract with a general contractor (whether the covering be carpet, linoleum, tile or other covering) is a contractor. If floor coverings are sold at retail and installed as part of or incidental to the sale, then the transaction is not contracting but a retail sale.~~

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(11) ~~If the installation of an appliance requires the running of electrical, water or gas lines or service outlets, or the performance of any other function previously defined as contracting, then the installation is contracting.~~

(12) ~~The mere hauling of sand, gravel and dirt is not contracting but is a business service.~~

(13) ~~Whether a person is a contractor or employed as a laborer depends on the facts in each case. The elements to be considered in making the distinction include, but are not limited to, the method sation, who supplies the materials and primarily who has of control.~~

(14) ~~Persons constructing for their own account for sale shall be included in the contracting category for the purpose of calculating business license tax and this category shall include active builders.~~

~~Sec. 9-54. Dance halls, etc., open to public.~~

~~Every person engaged in the operation of a dance hall or any commercial hall open to the general public where dancing is permitted, to which an admission fee is charged or for which compensation is in any manner received, either directly or indirectly, by cover charge or otherwise, shall pay a license tax of thirty dollars (\$30.00) or thirty-six cents (\$0.36) per one hundred dollars (\$100.00) of gross receipts, whichever is the greater amount.~~

~~No license shall be issued hereunder unless and until there is presented to the commissioner of the revenue a permit issued pursuant to Chapter 4A, Dance Halls, from the county administrator permitting or authorizing the operation of this business.~~

~~Sec. 9-54.1. Dances sponsored by nonprofit organizations:~~

~~No license tax shall be assessed or charged for any activity set forth in Section 9-54; provided, that such dance is sponsored, supervised and controlled by a nonprofit organization, and provided further, that such organization shall first obtain a license for the privilege of doing business in the county.~~

~~No license shall be issued under this section until the county administrator has first made or caused to be made an investigation of the organization involved and the nature of the sponsorship, supervision and control of the show or amusement and the county administrator is satisfied that:~~

~~(a) The organization is in fact a bona fide nonprofit organization not authorized to distribute its income to its members by charter, constitution or bylaws.~~

~~(b) The show is under the direct sponsorship, supervision and control of the nonprofit organization.~~

~~(c) If any person, firm or corporation connected with, pertaining to or in any manner involved with the activity involved herein receives compensation of any nature for services rendered, such compensation must be paid directly by the nonprofit organization or an affiliate organization of which it is a member.~~

~~(d) No arrangement exists for sharing the profits, net income or gross receipts from such show with any person, firm or corporation; provided however, such profits may be shared with either or both of the following:~~

~~(1) An affiliated organization of which the nonprofit organization is a member;~~

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- (2) ~~A property owner providing property upon which such show will be conducted.~~

~~Sec. 9-56: Distributing houses:~~

~~For every distributing house or place in this county, other than place of manufacture, operated by any person engaged in the business of a merchant for the purpose of distributing goods, wares and merchandise among his retail stores, or who purchases or orders for his retail stores goods, wares or merchandise to be shipped or delivered directly to these stores, a separate license shall be required and the goods, wares and merchandise distributed, purchased or ordered through such distributing houses or places, shall be regarded as purchases for the purpose of measuring the license tax. The tax shall be the same as the license tax imposed on a wholesale merchant in this chapter.~~

~~Sec. 9-58.1: Financial, real estate and professional services:~~

(1) ~~The maximum rate for local license taxes imposed on a person engaged in a financial, real estate or professional service is thirty dollars (\$30.00) or fifty-eight cents (\$0.58) per one hundred dollars (\$100.00) of gross receipts, whichever is greater.~~

(2) ~~Financial service. Any person rendering a service for compensation in the form of a credit agency, an investment company, a broker or dealer in securities and commodities or a security or commodity exchange is providing a financial service, unless such service is specifically provided for under another section of this Code.~~

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(a) ~~Those engaged in rendering financial services include, but are not limited to, the following:~~

~~Buying installment receivables;~~

~~Charrel mortgage financing;~~

~~Consumer financing;~~

~~Credit care services;~~

~~Credit unions*;~~

~~Factors;~~

~~Financing accounts receivable;~~

~~Industrial loan companies;~~

~~Installment financing;~~

~~Inventory financing;~~

~~Loan or mortgage brokers;~~

~~Loan or mortgage companies;~~

~~Safety deposit box companies;~~

~~Security and commodity brokers and services; Stockbroker;~~

~~Working capital financing;~~

~~*Note-Federal credit unions are not subject to state or local license taxation under the Federal Credit Union Act,
12 USC Section 1768.~~

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(b) ~~Any person other than a national bank or bank or trust company organized under the laws of this state, or duly licensed and practicing attorney at law, that engages in the business of buying or selling for others, on commission or for other compensation, shares in any corporation, bonds, notes or other evidence of debt is a stockbroker. The fact that orders are taken subject to approval by a main office does not relieve the broker from local license taxation.~~

~~Also, an insurance company engaged in selling mutual funds is a broker as to that portion of its business.~~

(3) ~~Real estate service. Any person rendering a service for compensation as lessor, buyer, seller, agent or broker is providing a real estate service, unless the service is specifically provided for under another section.~~

(a) ~~Those rendering real estate services include, but are not limited to, the following;~~

~~Appraisers of real estate;~~

~~Escrow agents, real estate;~~

~~Fiduciaries, real estate;~~

~~Lessors of real property;~~

~~Real estate agents, brokers and managers;~~

~~Real estate selling agents;~~

~~Rental agents for real estate.~~

(4) ~~Professional service. A person is engaged in providing a professional service if engaged in rendering any service specifically enumerated below or engaged in any occupation or vocation in which a professed knowledge of some department of science or learning, gained by a prolonged course of specialized instruction and study is used by its practical application to the affairs of others, either advising, guiding, or teaching them, and in serving, this interests or welfare in the practice of an art or science founded on it. The word profession implies attainments in professional knowledge as distinguished from mere skill, and the application of knowledge to uses for others as a vocation.~~

(a) ~~Those engaged in rendering a professional service include, but are not limited to, the following;~~

~~Architects;~~

~~Attorneys-at-law;~~

~~Certified public accounts;~~

~~Dentists;~~

~~Engineers;~~

~~Land surveyors;~~

~~Pharmacists;~~

~~Practitioners of the healing arts (as defined in Section 54-273(2)*;~~

~~Surgeons;~~

~~Veterinarians.~~

~~*State law reference-The "healing arts" means the art or science or group of arts or sciences dealing with the prevention and cure of or alleviation of human ailments, diseases or infirmities, and has the same meaning as "medicine" when the latter term is used in its comprehensive sense. Code of Va., 54-273(2).~~

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- (b) ~~The performing of services dealing with the conduct of business itself, including the promotion of sales or services of such business and consulting services, do not constitute the practice of a profession, even though the services involve the application of a specialized knowledge.~~
- (c) (1) ~~Certification as a professional by itself is not sufficient to establish liability for local license taxation. Also, the fact that a professional is compensated by means of a salary is not sufficient by itself to relieve that professional from local license tax liability.~~
- (2) ~~Gross receipts for purposes of local license taxation as a professional include only those gross receipts obtained from the practice of that profession as a business, whether it be on a full- or part-time basis, in corporate, partnership, sole proprietorship or association form.~~

Sec. 9-58.2: Maximum license tax on industrial loan companies.

~~Notwithstanding the provisions of Section 9-58.1(2) of this chapter, a~~Any license tax levied by the county on an industrial loan company shall be no greater than ~~five hundred dollars (\$500.00).~~

~~Sec. 9-59. Fortunetellers, clairvoyants and practitioners of palmistry, phrenology and handwriting analysis:~~

- (a) ~~Any and every person who, for compensation, shall pretend to tell fortunes or assume to act as a clairvoyant or to practice palmistry, phrenology or handwriting analysis shall pay a license tax of one thousand~~

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~~dollars (\$1,000.00) per annum. Any person engaging in such business without the required license shall be guilty of a Class 3 Misdemeanor.~~

(b) ~~This license shall not be proratable or transferable.~~

~~State law references-Authority of county to require license, penalty for doing business without a license,
Code of Va. § 58.1-3726.~~

Sec. 9-67.1. Merchants-Retail sales.

(1) ~~The maximum rate for a local license tax imposed on a person engaged in retail sales is thirty dollars (\$30.00) or twenty cents (\$0.20) per one hundred dollars (\$100.00) of gross receipts, whichever is greater.~~

(2) ~~Definitions:~~

(a) ~~Retail sale.~~ The sale of goods, wares and merchandise for any purpose other than resale, but not including sales at wholesale to institutional, commercial and industrial users.

(b) ~~Retail merchant.~~ Any person who makes retail sales.

(c) ~~Peddler.~~ Any person who carries from place to place any goods, wares or merchandise and offers to sell or a and delivers at the same time is a peddler. Any person who does not keep a regular place of business, whether it be a house or a vacant lot or elsewhere, with regular business hours, but at that place offers to sell goods, wares and merchandise, is a peddler. Any

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~~person who keeps a regular place of business, with regular business hours at the same place, who other than at that regular place of business, personally or through agents offers for sale or sells and; at the time of such offering for sale, delivers goods, wares and merchandise is a peddler.~~

~~(d) *Itinerant merchant.* See section 9-99.~~

~~(3) When a merchant conducts both a wholesale and a retail business, the merchant is subject to the retail license tax on the retail portion of the business and subject to the wholesale license tax on the wholesale portion of business. However, the locality may permit but not require the merchant to pay the license tax as a retailer on both the retail and wholesale portions of the business.~~

~~(4) Any person engaged in repair service who sells parts in addition to or as part of the repair service, is engaged in retail or wholesale sales as to the sales of the repair parts.~~

~~(5) Banks and savings and loan associations that sell promotional items are engaged in retail sales as to the sales of the promotional items and are not exempt from local license taxation as to those sales.~~

~~(6) In the sale of blank checks, a bank is not engaged in retail sales as to the sales of blank checks if the customer places an order for the checks directly with the printer and authorizes the bank to collect for the printer by charging his account, and the bank is not obligated to pay for the checks except insofar as it honors the customer's authorization. If, however, the customer places his order with the bank, and the bank contracts with the printer and is liable to the printer, whether or not the bank actually collects from the customer, then the bank is engaged in retail sales.~~

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~~(7) Any hotel, motel, boarding house or lodging house which also furnishes or sells food or merchandise for compensation is engaged in retail sales as to the sales of the good or merchandise.~~

(8 1) A person is not subject to a local license tax if his business in this state is limited solely to the solicitation of orders by catalogs mailed from outside this state to mail-order buyers in this state and who fills orders from outside this state. However, if the catalogs are distributed by a Virginia resident by mail or in person or if the person engaged in the mail-order business has a definite place of business in this state at which mail orders are received or filled, the mail order business shall be treated the same as any other retail or wholesale business for purposes of local license taxes.

(9 2) Any person who merely fills prescriptions for or fits corrective lenses and eyeglass frames is a retail merchant. However, any practitioner who examines eyes is engaged in rendering a professional service.

~~(10) Any practitioner of a profession who sells goods, wares or merchandise in connection with the practice of the profession shall be engaged in making retail sales depending on the nature of the products sold and the service performed. Examples in this area are as follows:~~

~~(a) A medical doctor who engages in the sale of drugs or other goods, wares or merchandise as well as the practice of medicine is a merchant as to those sales. However, a medical doctor is not a merchant as to the drugs used in giving an immunization to a patient.~~

~~(b) A chiropodist who sells shoes in connection with his practice is a retail merchant as to such sales.~~

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(†† 3) A job printer is a manufacturer and is engaged in either retail or wholesale sales as to the sales of the items printed.

(12) ~~The sales price alone is not determinative of whether the sale is at retail or wholesale. The fact that a person sells goods, wares or merchandise at wholesale prices, at cost or at less than cost does not prevent the person from being classified as a retail merchant if the sales fall within the definition of a retail sale.~~

(13) ~~Any person who purchases rough stone already cut and who then polishes, glazes and cuts lettering in the stone is not a manufacturer and is engaged in either retail or wholesale sales.~~

(14) ~~Any person who sells goods at retail through a commission merchant, may be held liable for a local license tax as to such sales based on commissions and not gross receipts.~~

~~Sec. 9-68. Same-Wholesale:~~

~~Every person engaged in the selling of goods, wares and merchandise, to others for resale only, or, who sells to institutional, commercial or industrial users in wholesale quantities and at wholesale prices, shall be deemed a wholesale merchant and shall pay an annual license tax of thirty dollars (\$30.00) or five cents (\$0.05) per one hundred dollars (\$100.00) whichever is the greater amount.~~

~~The word "purchases,,," as used in this section, shall be construed to include all goods, wares and merchandise received for sale at each definite place of business of every wholesale merchant. The word so used shall not be construed to exempt any goods, wares and merchandise otherwise coming within the meaning of the word. All goods, wares and merchandise manufactured by any wholesale merchant and sold or offered for sale~~

~~in this county as merchandise shall be considered as purchases within the meaning of this section. But this section shall not be construed as applying to manufacturers who offer for sale at the place of manufacture, goods, wares and merchandise manufactured by them.~~

Sec. 9-78.1. Repair, personal, business and other services.

(1) The maximum rate for a local license tax imposed upon a person engaged in a repair, personal or business service or any other business or occupation not specifically listed or excepted from Code of Virginia, Section 58.1-3703 is ~~thirty dollars (\$30.00) or thirty-six cents (\$0.36) per one hundred dollars (\$100.00)~~ of gross receipts, whichever is greater.

(2) Repair service. The repairing, renovating, cleaning or servicing of some article or item of personal property for compensation is a repair service, unless the service is specifically provided for under another section.

(3) Personal service. Any service rendered for compensation either upon or for persons, animals or personal effects is a personal service, unless the service is specifically provided for under another section.

(4) Business service. Any service rendered for compensation to any business, trade, occupation or governmental agency is a business service, unless the service is specifically provided for under another section.

(5) ~~Those rendering a repair, personal or business service or other service as provided for under another section, but are not limited to, the following:~~

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~~Advertising agencies;~~

~~Airports;~~

~~Ambulance services;~~

~~Amusements and recreation services (all types);~~

~~Animal hospitals, grooming services, kennels or stables;~~

~~Auctioneers and common criers;~~

~~Automobile driving schools;~~

~~Barbershops, beauty parlors, and hairdressing establishments, schools and services;~~

~~Bid or building presorting service;~~

~~Billiard or pool establishments or parlors;~~

~~Blacksmith or wheelwright;~~

~~Bondsman;~~

~~Booking agents or concert managers;~~

~~Bottle exchangers;~~

~~Bowling alleys;~~

~~Brokers and commission merchants other than real estate or financial brokers;~~

~~Business research and consulting services;~~

~~Chartered clubs;~~

~~Child care attendants or schools;~~

~~Collection agents or agencies;~~

~~Commercial photography, art and graphics;~~

~~Commercial sports;~~

~~Dance halls, studios and schools;~~

~~Data processing, computer and systems development services;~~

~~Developing or enlarging photographs;~~

~~Detective agency and protective services;~~

~~Drafting services;~~

~~Engraving;~~

~~Erecting, installing, removing or storing awnings;~~

~~Extermination services;~~

~~Freight traffic bureaus;~~

~~Fumigating or disinfecting;~~

~~Funeral services and crematories;~~

~~Golf courses, driving ranges and miniature golf courses;~~

~~Hauling of sand, gravel or dirt;~~

~~Hotels, motels, tourist courts, boarding and rooming houses and trailer parks and campsites;~~

~~House cleaning services;~~

~~Information bureaus;~~

~~Instructors, tutors, schools and studios of music, ceramics, art, sewing, sports and the like;~~

~~Interior decorating;~~

~~Janitorial services;~~

~~Laundry cleaning and garment services including laundries, dry cleaners, linen supply, diaper service,~~
~~coin-operated laundries and carpet and upholstery cleaning;~~

~~Mailing, messenger and correspondent services;~~

~~Marinas and boat landings;~~

~~Movie theaters and drive-in theaters;~~

~~Nickel plating, chromizing and electroplating;~~

~~Nurses and physician registries;~~

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~~Nursing and personal care facilities including nursing homes, convalescent homes, homes for the retarded, old age homes and rest homes;~~

~~Packing, crating, shipping, hauling or moving goods or chattels or others;~~

~~Parcel delivery services;~~

~~Parking lots, public garages and valet parking;~~

~~Pawnbrokers;~~

~~Personnel services, labor agents and employment bureaus;~~

~~Photographers and photographic services;~~

~~Piano tuning;~~

~~Picture framing and gilding;~~

~~Porter services;~~

~~Press clipping services;~~

~~Private hospitals;~~

~~Promotional agents or agencies;~~

~~Public relations services;~~

~~Realty multiple listing services;~~

~~Renting or leasing any items of tangible personal property;~~

~~Reproduction services;~~

~~Secretarial services;~~

~~Septic tank cleaning;~~

~~Shoe repair, shoe shine and hat repair shops;~~

~~Sign painting;~~

~~Storage-All types;~~

~~Swimming pool maintenance and management;~~

~~Fabulation services;~~
~~Taxidermist;~~
~~Telephone answering services;~~
~~Theaters;~~
~~Theatrical performers, bands and orchestras;~~
~~Towing services;~~
~~Transportation services including buses and taxis;~~
~~Travel bureaus;~~
~~Tire surgeons, trimmers and removal services;~~
~~Turkish, Roman or other like baths or parlors;~~
~~Wake-up services;~~
~~Washing, cleaning or polishing automobiles~~

(6 5) Any person buying or selling any kind of goods, wares or merchandise for another on commission is a commission merchant and is engaged in a business service.

(7 6) Photographers who have no place of business in Virginia may be subject to local license taxation so long as the tax is not in excess of the tax imposed on photographers by the state.

(8 7) Sign painting is a service unless the sign is painted on the side of a building or any other structure assessed as realty, in which case the sign painting is contracting.

(9 8) An amusement is a type of entertainment or show for which compensation is received and that is not specifically provided for under another section of these guidelines.

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Article IV. Coin-Operated Machines

Division 1. Slot Machines Generally

~~Sec. 9-109. Registration and bond.~~

~~Every person, before engaging in the business of a coin machine operator in this county, shall register with the commissioner of revenue and deposit with him a bond, payable to James City County to ensure the keeping of accurate records, the filing of reports in such form and at such times as may be prescribed by the commissioner of revenue, and the proper payment to the treasurer of the county of the taxes imposed by this division. The form of such bond shall be determined by the commissioner of the revenue and the surety thereon shall be approved by him. the amount of the bond shall be five hundred dollars (\$500.00):~~

~~Division 2. Merchants Placing Vending Machines~~

~~Sec. 9-113. When tobacco retailer's license required.~~

~~The use of cigarette vending machines on premises which are not already covered by a tobacco retailer's license shall require of the person operating or prosecuting the business on the premises on which the vending machine is placed to take out a tobacco retailer's license for that location.~~

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David L. Sisk
Board of Supervisors

ATTEST:



David B. Norman
Clerk to the Board

<u>SUPERVISOR</u>	<u>VOTE</u>
SISK	AYE
MAGOON	NAY
DEPUE	AYE
EDWARDS	AYE
TAYLOR	AYE

Adopted by the Board of Supervisors of James City County, Virginia, this 10th day of January, 1996.

newchpt9.ord

JAMES RIVER COMMERCE CENTER
AMENDED PROFFER AGREEMENT

005070

This Agreement made this 6th day of December, 1995, by and between Williamsburg Developments, Inc. a Virginia Corporation, and the Industrial Development Authority of James City County, Virginia, a political entity of the Commonwealth of Virginia ("the Owners") and the County of James City, Virginia, a political subdivision of the Commonwealth of Virginia ("the County").

Whereas, each of the Owners owns a separate tract of land situated in James City County, Virginia, the combination of which tracts is known as the James River Commerce Center, containing 208.14 acres, more or less, and lying adjacent to and on the southerly side of U.S. Route 60 East, Pocahontas Trail, more particularly described on Exhibits A, and B attached, but less and except the property described on Exhibit C (collectively "the Property"); and

Whereas, the Owners have applied for a rezoning of the Property from the Mixed Use District ("the Existing Zoning") to the Limited Business/Industrial District, M-1 ("the Proposed Zoning"); and

Whereas, the provisions of the County's Zoning Ordinance may be deemed inadequate for the orderly development of the Property; and

Whereas, the Owners are desirous of offering certain conditions for the protection of the community that are not generally applicable to land similarly zoned in addition to the regulations provided for in the Proposed Zoning regulations for protection and enhancement of the community and to provide for the high quality and orderly development of the Property.

NOW, THEREFORE, this Agreement witnesseth that for and in consideration of the County rezoning the Property from the Existing Zoning to the Proposed Zoning and pursuant

to Section 15.1-491.1 et. seq. of the Code of Virginia, 1950, as amended, and Section 20-16 of the Zoning Ordinance of the County, the Owners agree that in addition to the regulations provided in the Proposed Zoning, they and each of them will meet and comply with all of the following conditions in the development of the Property. In the event the requested rezoning is not granted by the County, these proffers shall thereupon become null and void.

1. **Limitations on Use.** Without the amendment of this agreement (as to uses otherwise generally permitted by the County's Zoning Ordinance) or the issuance of the applicable special use permit (as to uses only specially permitted by the County's Zoning Ordinance) the Property shall only be used for one or more of the following generally permitted uses provided, however, that the combination of floor area of (1) business, professional and governmental offices and (2) research and development offices which is not accessory to other permitted uses shall be limited to a total of 264,000 square feet.

Accessory uses as defined in Section 20-2 of the County's Zoning Ordinance.

Apartment or living quarters for a guard, caretaker or other person employed on the premises which is clearly secondary to the business or industrial use of the property.

Banks and other similar financial institutions.

Barber and beauty shops.

Book stores.

Business, professional, and governmental offices.

Contractor offices, equipment storage yards, shops and warehouses with storage (limited to a fully enclosed building) or screened with landscaping and fencing from adjacent property.

Courier services.

Data processing centers.

Employment services or agencies.

Fire stations.

Heavy equipment sales and service, with major repair (limited to a fully enclosed building) or screened with landscaping and fencing from adjacent property.

Indoor sports facilities, health clubs, exercise clubs and fitness centers.

Industrial and technical training schools.

Janitorial service establishments.

Laser technology production.

Lumber and building supply wholesale stores with storage (limited to a fully enclosed building) or screened with landscaping and fencing from adjacent property.

Machinery sales and service with major repair (limited to a fully enclosed building).

Manufacture and assembly of musical instruments, toys, novelties, and rubber and metal stamps.

Manufacture and bottling of soft drinks and wine.

Manufacture and processing of textiles and textile products.

Manufacture, compounding, assembly or treatment of products made from previously prepared paper, plastic, metal, textiles, tobacco, wood, paint, fiber glass, glass, rubber, leather, cellophane, canvas, felt, fur, horn, wax, hair and yarn.

Manufacture, compounding, processing or packaging of cosmetic, toiletry, and pharmaceutical products.

Manufacture of carpets and carpet yarns.

Manufacture of pottery and ceramic products using kilns fired only by gas or electricity.

Manufacture or assembly of appliances, tools, firearms, hardware products, and heating, cooling or ventilating equipment.

Manufacture or assembly of electronic instruments, electronic devices or electronic components.

Manufacture or assembly of medical, drafting, metering, marine, photographic and mechanical instruments.

Marine or waterfront businesses to include receipt, storage and transshipment of waterborne commerce, or seafood receiving, packing and distribution.

Nonemergency medical transport.

Nurseries (wholesale only).

Off-street parking as required by Section 20-53 of the County's Zoning Ordinance.

Plant, garden supply, hardware and paint wholesale stores.

Plumbing and electrical supply wholesale stores with storage (limited to a fully enclosed building) or screened with landscaping and fencing from adjacent property.

Post offices.

Printing, lithographing, engraving, photocopying, blueprinting and publishing establishments.

Radio and television stations, and accessory antenna or towers, self-supported (not attached to buildings) which are sixty feet or less in height.

Research, development, and design facilities.

Restaurants, tea rooms and taverns.

Security service offices.

Telephone exchanges and telephone switching stations.

Travel bureaus.

Warehouse, storage, and distribution centers with storage (limited to a fully enclosed building) or screened with landscaping and fencing from adjacent property.

Welding and machine shops with storage (limited to a fully enclosed building) or screened with landscaping and fencing from adjacent property.

2. **Initial Road Improvements.** Access to the Property shall be limited to one entrance on U.S. Route 60 opposite Tarleton Bivouac. Additional commercial entrances to the Property fronting on U.S. Route 60 shall be allowed but only with the prior review and approval of both the County's Director of Planning and the Virginia Department of Transportation ("VDOT"). Prior to issuance of any Certificate of Occupancy on the Property, the Owners shall install the following road improvements:

The installation of: (1) the main entrance to the Property from U.S. Route 60 the right of way for which main entrance shall be approximately 300 feet in depth tapering back to a two lane right of way and which main entrance shall incorporate a three lane roadway (one entering and two exiting) with right of way of sufficient width to accommodate a third exiting lane; (2) a right turn lane on the eastbound U.S. Route 60 approach; (3) a left turn lane on the eastbound U.S. Route 60 approach; (4) a left turn lane on the westbound U.S. Route 60 approach; and (5) separate left and right turn lanes exiting the Property.

3. **Traffic Light Improvements.** Upon meeting applicable VDOT warrants, the Owners shall signalize, in a manner acceptable to VDOT, the intersection of the entrance roadway to the Property with U.S. Route 60.
4. **Subsequent Road Improvements.** Except as hereinafter provided, development on the Property shall be limited to no more than 708,000 square feet of interior building area until the following road improvements are in place.
 - a. Widening of U.S. Route 60 from the existing two lane facility to a four lane divided (urban minor) arterial roadway along the entire frontage of the Property from the James River Elementary School property to the Ball metal property; and
 - b. Installation of a second northbound left turn lane onto U.S. Route 60 within the main entrance to the Property.

Notwithstanding the above limitation, the Owners may conduct a traffic analysis either (1) when VDOT includes for construction in its Six Year Plan alternate U.S. Route 60 East as generally shown on the County's Comprehensive Plan or (2) when development on the Property reaches or exceeds 300,000 square feet of interior building area. The Owners shall submit the traffic analysis to the Director of Planning for approval. If the approved results of that analysis indicate that additional development above 708,000 square feet of interior building area can be accommodated with only the initial road improvements specified in paragraph 2 above, the Director of Planning may allow such additional development prior to the installation of the improvements specified in subparagraphs a and b above.

5. **Setback from U.S. Route 60 East.** No building (or parking lot) shall be located within 140 feet of the centerline of the right-of-way of U.S. Route 60 East, existing at the time of approval of the rezoning of the Property.
6. **Owner's Association** The Owners shall provide documentation acceptable to the County Attorney demonstrating that an owners' association has been legally established with authority to impose, raise and collect assessments against the owners of lots according to law. The association shall have the ability to place a lien on any lot within the Property for unpaid assessments levied against that lot.
7. **Limitations on Land Disturbing Activities.** No land disturbing activities with the exception of stormwater facilities or other utilities approved by the Development Review Committee, and archaeological research, shall take place in any area shown as "Undevelopable Land" on the plats entitled "Subdivision of Property of Colonial Williamsburg Foundation, Being Part of the Locust Grove Tract, Situated in the Roberts District, James City County, Virginia", dated 8/7/91, recorded in James City County Plat Book 55, Page 43 and "Subdivision of Property of Colonial Williamsburg Foundation, Being Part of the Conveyance to Williamsburg Developments, Inc. Situated in the Roberts District, James City County, Virginia" dated April 27, 1992 recorded in James City County Plat Book 56, Pages 32-33.
8. **Conflict with Declaration of Covenants and Restrictions.** If any one or more of these proffers or any portion thereof be in conflict with any one or more of the conditions contained in the Declaration of Covenants and Restrictions recorded

in James City County Deed Book 545, Page 361, et. seq., the Supplemental Declaration thereto recorded in James City County Deed Book 583, Page 676, et. seq. or any amendment to either or both of said declarations, the more restrictive provision(s) shall govern.

9. **Contract Not Amended.** Nothing in this Agreement shall be deemed to change any provision of the Agreement dated December 1, 1991 between the City of Williamsburg, Virginia, the County of James City, Virginia, The Colonial Williamsburg Foundation and Williamsburg Developments, Inc. and the limitations on the financial responsibilities of the parties thereto.
10. **No Relationship Created.** Neither Williamsburg Developments, Inc. nor the Industrial Development Authority of James City County, Virginia by the execution and delivery of this Proffer Agreement intend to create a joint venture, partnership, agency or other legal combination of their respective entities.
11. **Binding Upon Successors.** The obligations created by this Agreement shall be binding upon each of the successors in title to each of Williamsburg Developments, Inc. and the Industrial Development Authority of James City County, Virginia.
12. **Headings.** All section and subsection headings of this Agreement are for convenience only and are not part of these proffers.
13. **Prior Proffers Void.** Upon the approval of the requested rezoning, all prior proffers on the Property in favor of the County shall become null and void.
14. **Severability.** If any clause, sentence, paragraph, section or subsection of these proffers shall be adjudged by any Court of competent jurisdiction to be invalid

for any reason, including, but not limited to, a declaration that it is contrary to the Constitution of the Commonwealth of Virginia or of the United States of America , or if the application thereof to the Owner or to any government agency or circumstance is held invalid, such judgment or holding shall be confined in its operation to the clause, sentence, paragraph, section or subsection hereof or the specific application thereof, directly involved in the controversy in which the judgment or holding shall have been rendered or made, and shall not in any way affect the validity of any other clause, sentence, paragraph, section, or subsection hereof, or affect the validity or application thereof to the Owner or to any other government agency, person or circumstance.

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BOOK 0783 PAGE 0449

WILLIAMSBURG DEVELOPMENTS, INC.

By: Victoria Gussman
Victoria Gussman, Vice President

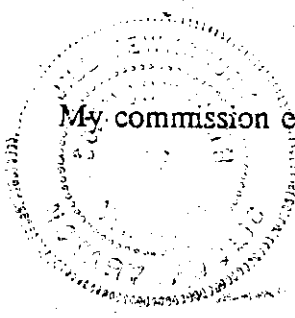
STATE OF VIRGINIA

CITY/COUNTY OF Williamsburg to-wit:

The foregoing document was acknowledged before me this 31 day of December, 1995
by Victoria Gussman, Vice President, of and acting on behalf of Williamsburg Developments,
Inc.

John G. Gussman
NOTARY PUBLIC

My commission expires: Oct 31, 1996



INDUSTRIAL DEVELOPMENT AUTHORITY
OF JAMES CITY COUNTY, VIRGINIA

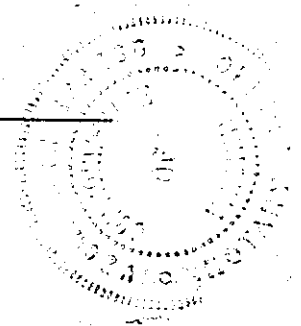
By: Jon A. Nystrom
Jon A. Nystrom, Chairman

STATE OF VIRGINIA

CITY/COUNTY OF James City, to-wit:

The foregoing document was acknowledged before me this 15th day of December, 1995
by Jon A. Nystrom, Chairman, of and acting on behalf of the Industrial Development Authority
of James City County, Virginia.

Wicki Ann Sprigg
NOTARY PUBLIC



My commission expires: March 31, 1996

EXHIBIT "A"

All that certain lot, piece or parcel of land, with improvements thereon and appurtenances thereunto belonging, lying and being in Roberts District, James City County, Virginia, as shown on a plat of survey prepared by Langley and McDonald, P.C., a professional corporation, Engineers-Planners-Surveyors, dated 08/07/91 entitled "SUBDIVISION OF PROPERTY OF COLONIAL WILLIAMSBURG FOUNDATION, BEING PART OF THE LOCUST GROVE TRACT, SITUATED IN THE ROBERTS DISTRICT, JAMES CITY COUNTY, VIRGINIA", on which plat the property hereby conveyed is more particularly described as "PARCEL 2, TOTAL AREA = 61.2113 ACRES, NET DEVELOPABLE AREA - 45.0000 ACRES, UNDEVELOPABLE AREA = 16.2113 ACRES" together with "ADDITIONAL AREA REQUIRED FOR SUBDIVISION APPROVAL = 3.1387 ACRES" which plat is recorded in Plat Book 55, Page 43.

EXHIBIT "B"

All that certain lot, piece or parcel of land, containing 154.8946 acres, with improvements thereon, and appurtenances thereunto belonging, lying and being in James City County, Virginia, as shown on a plat of survey prepared by Langley and McDonald, P.C., dated April 27, 1992, entitled "Subdivision of Property of Colonial Williamsburg Foundation Being Part of The Locust Grove Tract to be conveyed to Williamsburg Developments, Inc. situated in the Roberts District, James City County, Virginia", which plat is recorded in Plat Book 56, Pages 32 and 733.



William E. Sawyer - Attorney
Lawrence Sawyer - (Sawyer) Sawyer

M-2 ZONING PLAN

Teste: Helene S. Ward, Clerk
by Helene S. Ward
Deputy Clerk

14-14