

AT A REGULAR MEETING OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE 12TH DAY OF OCTOBER, 2004, AT 7:00 P.M. IN THE COUNTY GOVERNMENT CENTER BOARD ROOM, 101 MOUNTS BAY ROAD, JAMES CITY COUNTY, VIRGINIA.

A. ROLL CALL

Bruce C. Goodson, Chairman, Roberts District
Michael J. Brown, Vice Chairman, Powhatan District
John J. McGlennon, Jamestown District
M. Anderson Bradshaw, Stonehouse District
Jay T. Harrison, Sr., Berkeley District

Sanford B. Wanner, County Administrator
Leo P. Rogers, County Attorney

B. MOMENT OF SILENCE

Mr. Goodson requested the Board and citizens observe a moment of silence.

C. PLEDGE OF ALLEGIANCE

Courtney Carpenter, a second-grade student at Walsingham Academy, led the Board and citizens in the Pledge of Allegiance.

D. PUBLIC COMMENT

1. Mr. Dick Ashe, 632 Hampton Highway, Yorktown, recognized those in attendance from the Wellington subdivision that have concerns regarding their water bills and stated concern that large Wellington lots required by County Code, combined with the sandy soil conditions, erosion problems, and the sod yards, have contributed to the high water bills the residents of the Wellington subdivision received. He commented that the requirement for non-stop watering for 4-5 days followed by keeping the sod moist for a couple of additional weeks has resulted in water bills for some subdivision residents in excess of \$1,000 to \$2,000; stated concern that the third-tier rates contributed to the compounded waterbill amounts for homeowners; and requested consideration of fiscal assistance with the water bills.

2. Ms. Tina Haywood, 3936 Penzance Place, stated that the water tier rates were not disclosed to new residents of Wellington; commented that reasonable watering of yard once a week puts residents near the third tier without including the additional household water usage; stated concern that the James City Service Authority (JCSA) does not provide water service to all its customers at the same rate; stated that citizens expect reasonable rates and encouragement of conservation; suggested the use of penalty fines be utilized to penalize those who violate the watering ordinance instead of the three-tier rate structure; and inquired if those in York County and the City of Williamsburg served by the JCSA are charged at a three-tier rate.

3. Ms. Eileen Brown, 8400 Down Patrick Way, stated concern about the lack of notification and education to JCSA customers about water rates, water restrictions, and ability to apply for a 60-day permit to waive such restrictions during the establishment of a lawn; stated concern that water rates were adjusted effective July 1, 2004, for residential customers but not commercial customers and the adjusted rates were not adequately publicized to residents and new homeowners after May 2004; suggested that notification of rates, restrictions, and waivers, as well as water conservation educational materials, be provided to new residents in a welcome package; and stated that customers are entitled to notice, fair, and equitable service from the JCSA.

4. Ms. Pam Dooley, 3941 Penzance Place, stated that she has sodded her lawn and is expecting another delivery of sod which needs to be watered 45 minutes per day for five days, which is a large usage of water to establish a lawn; however, the establishment of a lawn is not an unusual activity of a new dwelling and wants to be treated fairly; stated that she usually grows a garden, but due to the water rates, it will be too costly to afford; stated that plants and greenspace are environmentally friendly; stated concern that not all JCSA customers are billed at the same water rates; and inquired how the current water rates were established and why a 30,000-gallon level is the starting point of the third tier.

5. Ms. Christine Anderson, 3960 Guildford Lane, stated that if the JCSA is charging Wellington subdivision customers approximately three times the standard water rate of other subdivision customers in the County, then the homes in Wellington will not sell.

6. Ms. Darlene Russell, 3956 Guildford Lane, stated that her 38-day water bill for a household of three, sod lawn, and **submeter** was over \$200 despite conservative water usage and rainfall during that period; stated concern that a one-time per week watering over the quarter will result in a third-tier billing and then factor in household usage results in a large water bill; and requested consideration to raise the third-tier threshold and help with existing bills.

7. Mr. Howard Smith, Sr., 101 Dogwood Drive, commented **that he** spoke before the Board last month with questions regarding the paving job of Treasure Island Road; commented that he spoke with his District representative regarding the hazardous condition of the road and the safety of school children on school buses on the road; and concerning the issues raised by the citizens at the meeting, requested the Board provide liberty and justice for all.

8. Mr. David Smith, 103 Burgundy Road, Director of Marketing and Sales for Oleta Coach Lines, stated that Oleta Coach Lines (Oleta) took its concerns to the Congressional level and spoke with members of Congress regarding the services the Williamsburg Area Transport (WAT) is providing outside its scope of responsibility; commented that a letter stating Oleta's ready, willingness, and ability to provide coach service in the County was provided to the Williamsburg Area Transport Administrator and Assistant Community Services Manager and it was ignored and WAT still continues to provide coach service to the private sector; stated that Oleta does not wish to go back to the Congressional level regarding the WAT violations caught on camera; inquired why **tax** money and buses are being used for charter services such as wedding taxi services; stated that Oleta wants to partner with the County for special events or other coach service needs; and inquired if the mistreatment of African-Americans is resurfacing in the County.

9. Mr. M. O. Smith, 617 Treasure Island Road, stated that he came before the Board when the Comprehensive Plan started in 1973 and recapped the comments he made at that time; commented on the growth of the County resulting in fewer farms in the County; and stated the local government is taking the land from the community.

10. Mr. Ed Oyer, 139 Indian Circle, commented that Route 60 East was a parking lot again; stated that more warehouse space at Wal-Mart results in more traffic congestion on Route 60 East; recommended the County loan money to **Newport** News so it can build its half of the Route 60 East

relocation bridge; requested the County fix Route 60 East; and commented that it is nice to travel outside the State where one is taxed only once for room and meals.

11. Mr. Bill Rowe, 8415 **Attleborough** Way, commented that his yard cost \$8,000 to sod and had a silt fence with the sod to minimize erosion; requested the Board provide fiscal relief to those individuals who have a 60-day waiver permit to install a new yard; and commented that he is not interested in losing approximately \$12,000 of an investment in his yard because he cannot afford to continue watering it at the current James City Service Authority (JCSA) water rates.

12. Ms. Denise Aldred, 3956 Penzance Place, inquired if subdivision residents can have wells; stated that Virginia taxes, electric utilities, water utilities, and meal costs are too high; and stated **concern** that she may lose her \$4,000 investment in sodding her yard because she cannot afford to water at the current JCSA water rates.

13. Mr. Ty Elliott, 8401 Tynemouth Way, stated that the issues raised about the JCSA water rates are very important issues and are concerns of the community; requested staff look at the provisioning of putting in sod or establishing lawns in water rates; requested staff look at addressing water utility rates that will be equitable across the community; and stated that all JCSA customers should be assessed water rates at the same levels.

Mr. **Goodson** invited Mr. Larry Foster, **General Manager of the James City Service Authority**, to give a brief presentation on water rate concerns raised by the citizens.

Mr. Foster stated that the same three-tier water rates are applied to all residential JCSA customers; stated that the Board of Directors of the JCSA set the blocks and tier rates for water after going through proper notification to residents of Public Hearings regarding the changes to utility rates and Public Hearings on the budget process; commented on the typical level of water flow consumption for an average household; stated that some County residents are served by the **Newport** News Waterworks which is a separate water utility; and stated that the County's groundwater withdrawal permit has a condition requiring a water conservation program by the JCSA.

Mr. Brown requested Mr. Foster clarify to citizens where the source of water for **Newport** News Waterworks, serving those in the Roberts District, comes from and where the source of water for the JCSA customers, located within the Primary Service Area, comes from.

Mr. Foster stated that the **Newport** News Waterworks pulls its water from reservoirs to meet its customers needs and the JCSA pulls its water from a groundwater system; and stated that in 2002 the extreme water usage demands by JCSA customers put a strain on the system resulting in the outdoor water ordinance and three-tier water rate structure.

Mr. Foster stated that the outdoor water use restrictions are a good conservation method, which is implemented annually and part of the condition for the groundwater withdrawal permit process.

Mr. **Goodson** inquired about citizens putting in private wells.

Mr. Foster stated that the JCSA cannot stop individuals **from putting in** a well for irrigation purposes.

Mr. Brown inquired if Wellington subdivision residents can put in shallow wells.

Mr. Foster stated that it is a requirement for residents within the Primary Service Area to hook up to JCSA utility service for in-house water use; however, resident may install wells for **irrigation**.

Mr. Brown requested Mr. Foster address the concerns stated regarding the perception of different water rates being assessed by the JCSA for Stonehouse area customers compared to JCSA customers elsewhere in the County.

Mr. Foster stated that there is only one three-tier rate for residential customers applied and that billings are based upon water consumption and the tier rates.

Mr. **Goodson** stated that the JCSA Board of Directors usually discusses rates during its budget process and requested Mr. Foster provide citizens with the time frame and process the Board goes through in deciding the rates.

Mr. Foster stated that staff will come before the Board sometime in January with projections of the expenditure demands and revenue for the upcoming fiscal year, and will ask for authorization to advertise a Public Hearing on the proposed **utility rates**. The Board will then **hold Public Hearings** as part of its budget process and will have discussions during its Work Sessions on the rate structure. Once the Board establishes a rate based upon staff and citizen input, the public is then notified of the new rates to be effective July 1.

Mr. Foster stated that this year after the rates were established, notification was provided to the citizens that the rates had been adjusted and would be effective July 1.

Mr. Brown inquired if any taxes from James City County residents or from other sources used by the JCSA **water/sewer** utility in its operating budget.

Mr. Foster stated that revenues come from the fee charged to its customers and from connection fees, and stated that the JCSA is not profit motivated.

Mr. **McGlennon** stated that the amount of water usage by Wellington subdivision residents is unusually high and stated that he would like more **information** gathered about the consumption levels.

Mr. **McGlennon** stated that JCSA customers should understand that there are not different rates charged in the County for residential units; commented that lawns that size in other subdivisions do not have same consumption and billings; stated that sodding establishment may contribute to the consumption levels; however, those levels are not expected in the future if given prudent watering.

Mr. **McGlennon** reiterated that he would like **staff** to gather more information about the issues raised by Wellington residents; stated that the Board did address larger household sizes by raising the third-tier level to 30,000 gallons although that level may need to be adjusted again; and commented that it is not the intent of the Board to encourage private wells; and recommended these concerns be referred to the Water Conservation Committee for recommendations.

Mr. Bradshaw inquired if citizens sink wells for irrigation and would much of that water come from the same source as the JCSA water.

Mr. Foster stated that yes, it would; however, there are some shallow aquifers in the County that citizens might be able to tap into or go deeper into an aquifer that JCSA has not used extensively.

Mr. Bradshaw commented that although notification efforts were adequate to existing residents, JCSA staff should investigate methods to adequately notify new residents of its regulations and rates.

Mr. Foster stated that staff has begun to identify opportunities

Mr. Harrison requested staff review the waiver permit process period for those establishing new lawns that may need additional time in the establishment of the lawn.

Mr. Bradshaw requested staff look at any legal constraints that may exist with offering a waiver to the third tier for the establishment of new lawns for new construction, so the Board knows if it is an option.

Mr. Goodson and Mr. Foster invited citizens to provide additional information regarding their bills to the members of the Board and staff for review prior to the next meeting of the JCSA Board of Directors on October 26.

Mr. Goodson requested Mr. Foster report to the Board on any citizen input and anything that may be discovered before October 26.

Mr. McGlennon requested the Water Conservation Committee be given an opportunity to weigh in on the issue and appropriate plants in the area; commented that establishing a lawn over the entire yard may have contributed to the erosion problem in the neighborhood; and suggested that perhaps if some of the original vegetation had been left undisturbed, there would have been less erosion.

E. CONSENT CALENDAR

Mr. Goodson inquired if a Board member wished to pull an item from the Consent Calendar,

Mr. McGlennon made a motion to adopt the items on the Consent Calendar.

On a roll call vote, the vote was: AYE: Bradshaw, Harrison, Brown, McGlennon, Goodson (5).
NAY: (0).

1. Minutes

- a. September 14, 2004, Regular Meeting
- b. September 28, 2004, Work Session
- c. September 28, 2004, Regular Meeting

2. Erosion and Sediment Control Ordinance Violation - Civil Charge - Donald W. Hicks

RESOLUTION

EROSION AND SEDIMENT CONTROL ORDINANCE VIOLATION -

CIVIL CHARGE - DONALD W. HICKS

WHEREAS, on May 20, 2004, Donald W. Hicks of Lanexa, Va., violated the County's Erosion and Sediment Control Ordinance by disturbing land without a permit at 9483 Richmond Road, designated as Parcel No. (01-38) on James City County Real Estate Tax Map No. (2-4) (the "Property"); and

WHEREAS, Mr. Hicks has abated the violation at the Property; and

WHEREAS, Mr. Hicks has agreed to pay \$300 to the County as a civil charge under the County's Erosion and Sediment Control Ordinance; and

WHEREAS, the James City County Board of Supervisors is willing to accept the civil charge in full settlement of the Erosion and Sediment Control Ordinance violation, in accordance with Section 8-7(f) of the Code of the County of James City.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes and directs the County Administrator to accept the \$300 civil charge from Donald W. Hicks of Lanexa, Va., as full settlement of the Erosion and Sediment Control Ordinance violation at the Property.

3. Transportation Improvement District Properties

RESOLUTION

TRANSPORTATION IMPROVEMENT DISTRICT PROPERTIES

WHEREAS, the Board of Supervisors of James City County has funds available in the Transportation Improvement District (**TID**) account and has been asked to provide an amount not to exceed \$9,000 to contract for cleanup of downed trees and other debris on property owned by the TID.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, appropriates \$9,000 from the TID account for the purposes of cleaning up downed trees and other debris from TID-owned property and authorizes the expenditures of up to \$9,000 for that purpose.

4. Transfer of Funds - Sheriff's Office

RESOLUTION

TRANSFER OF FUNDS - SHERIFF'S OFFICE

WHEREAS, the State Compensation Board has approved the purchase of LiveScan equipment for fingerprinting at the Williamsburg-James City County Sheriff's Office.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the following transfer of funds in the General Fund:

From:

Operating Contingency \$14,800

To:

Sheriff's Office -Capital Outlay \$14,800

5. Colonial Community Criminal Justice Board. Funding of Public Safety Services and Programs

RESOLUTION

COLONIAL COMMUNITY CRIMINAL JUSTICE BOARD.

FUNDING OF PUBLIC SAFETY SERVICES AND PROGRAMS

WHEREAS, funding for public safety services and programs on the local government level has historically been a partnership between local governments and the Commonwealth of Virginia; and

WHEREAS, the level of program funding received from the Commonwealth for public safety services and programs on the local level has been significantly reduced over the past several fiscal years, particularly funds in support of court constitutional offices and regional jails; and

WHEREAS, local governments, in order to avoid placing public safety in jeopardy, have been forced to allocate local revenues to offset the reductions in revenues historically received from the Commonwealth.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby petition the Commonwealth of Virginia to restore the revenue cutbacks made during the past several years and return to the historical partnership **between** the Commonwealth and its local governments for the funding of public safety services and programs.

6. Underground Utilities Aereement - New Town

RESOLUTION

UNDERGROUND UTILITIES AGREEMENT -NEW TOWN

WHEREAS, the New Town Design Guidelines dated September 3, 1997, provide for the burying of utilities in New Town; and

WHEREAS, with the improvements to the intersection of Ironbound Road and Monticello Avenue and the expansion of Ironbound Road to four lanes, the existing overhead utilities will need to be relocated; and

WHEREAS, in the event the County decides to place the utilities underground, then the County will participate in the funding of relocating the utilities underground along the Ironbound Road right-of-way adjacent to Section 2 of New Town, and New Town Associates, L.L.C. will pay the additional costs of relocating the utilities underground along the Ironbound Road right-of-way adjacent to Section 3 of New Town; and

WHEREAS, the County is willing to coordinate the relocating of the utilities underground along both Section 2 and 3 of New Town and New Town Associates, L.L.C., is willing to reimburse the County for the actual costs ofrelocating the utilities adjacent to Section 3 of New Town.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of James City County, Virginia, that the County Administrator is hereby authorized and directed to execute the Underground Utilities Agreement with New Town Associates, L.L.C., which allocates the responsibility for relocating utilities underground along Ironbound Road adjacent to New Town Sections 2 and 3.

F. PUBLIC HEARINGS

1. Case Nos. Z-2-04/Z-9-04. Oaktree Office Park/Airtight Self-Storage Expansion & Proffer Amendment

Mr. Christopher Johnson, **Senior Planner**, stated that Jeanette Brady applied to rezone approximately 1.4 acres from R-8, Rural Residential, to **B-1**, General Business, with proffers, and to rezone approximately 5.7 acres from **B-1**, General Business, with proffers, to **B-1**, General Business, with amended and restated proffers, to develop approximately 6,400 square feet of office space and approximately 60,000 square feet of warehouse mini-storage, adjacent to the existing **Oaktree** development, at 3292 and 3356 **Oaktree** Ironbound Road, and further identified as Parcel Nos. (1-24) and (1-26) on James City County Real Estate Tax Map No. (47-1).

Mr. Johnson stated that the applicant has supplied a revised, notarized, proffer condition to the **Oaktree** Office Park and Airtight Self-storage Proffers dated September 28, 2004. The revised condition, No. 10, now includes language referring to the recently adopted Primary Principles for Five Forks Area of James City County.

Staff found the proposed expansion consistent with surrounding zoning and development and consistent with the Comprehensive Plan. Staff also found the proposed expansion consistent with the adopted Primary Principles for Five Forks.

At its meeting on September 12, 2004, the Planning Commission recommended approval of the rezoning applications by a vote of 7 to 0.

Staff recommended approval of the proposed rezonings and acceptance of the voluntary proffers for the expansion and amended and restated proffers for the existing **Oaktree** development.

Mr. **Goodson** opened the Public Hearing.

1. Ms. Jeanette **Brady**, Applicant, was available to answer any questions from the Board.
2. Mr. Wayne **Brady**, Co-Applicant, stated that the office park and storage provides a needed service to the community.

As no one else wished to speak to this matter, Mr. **Goodson** closed the Public Hearing.

Mr. **Harrison** made a motion to adopt the resolution.

Mr. **McGlennon** inquired if there was any provision with the site expansion for stormwater management and how the runoff will be dealt with.

Mr. Johnson stated that in addition to the existing retention basin on the site, an additional basin will be placed in the southeast portion of the site.

The Board and staff briefly discussed the **runoff** path and basin locations

Mr. Harrison commended the applicant in the efforts put forth to involve and get feedback from the community regarding the proposal.

On a roll call vote, the vote was: AYE: Bradshaw, Harrison, Brown, **McGlennon, Goodson** (5). NAY: (0).

RESOLUTION

CASE NOS. 2-2-04 & Z-9-04. OAKTREE OFFICE PARK AND AIRTIGHT SELF STORAGE

EXPANSION AND PROFFER AMENDMENT

WHEREAS, in accordance with § 15.2-2204 of the Code of Virginia, and Section 24-15 of the James City County Zoning Ordinance, a Public Hearing was advertised, adjoining property owners were notified, and a hearing was scheduled on Zoning Case Nos. 2-2-04 and 2-9-04 for rezoning ±1.4 acres from R-8, Rural Residential, to **B-1**, General Business, with Proffers; and rezoning ±5.7 acres from **B-1**, General Business, with Proffers to **B-1**, General Business, with Amended and Restated Proffers; and

WHEREAS, the properties are located at 3292 and 3356 Ironbound Road and further identified as Parcel Nos. (1-24) and (1-26) on James City County Real Estate Tax Map No. (47-1).

NOW, THEREFORE, BE IT RESOLVED that the Board of **Supervisors** of James City County, Virginia, does hereby approve Case Nos. 2-2-04 and 2-9-04 and accept the voluntary proffers and amended and restated proffers.

2. Case Nos. Z-5-04/MP-5-04. New Town Sections 3 and 6 Rezoning and Master Plan and MP-8-04. New Town Sections 2 and 4 Master Plan Amendment

Ms. Karen Drake, Senior Planner, stated that Greg Davis and Tim Trant of Kaufman & Canoles applied on behalf of New Town Associates LLC, to rezone 69.2 acres in Sections 3 & 6 from R-8, Rural Residential with proffers, and MU, Mixed Use with proffers, to MU, Mixed Use with proffers, to **construct** a maximum of 470 dwelling units with an overall density cap of 4.5 dwelling units per acre and construct a maximum of 220,000 non-residential square feet at a location adjacent to Ironbound Road and located west of the intersection of Ironbound Road and Monticello Avenue and further identified as Parcel Nos. (1-50), (1-57), (24-6), and (24-1A) on James City County Real Estate Tax Map No. (38-4). Also, the New Town Sections 2 and 4 Master Plan will be amended by **transferring 150** dwelling units and 70,000 nonresidential square feet to Sections 3 and 6.

Staff found the proposal for New Town Sections 3 and 6 generally consistent with the adopted 1997 New Town Master Plan and Design Guidelines. There is no proposed change to the overall New Town permitted residential units and nonresidential square footage.

Staff found the proposed development to be compatible with surrounding zoning and development and consistent with the 2003 Comprehensive Plan recommendations; and the proposed proffers will sufficiently mitigate anticipated impacts.

At its meeting on September 13, 2004, the Planning Commission voted 5 to 2 to recommend approval of the applications.

Staff recommended approval of the applications with voluntary proffers.

The Board and staff discussed the method used to determine the cash contribution of \$45,725 towards the acquisition of school sites **and/or** school construction in connection with the development of residential units in Sections 3 and **6** of New Town, the increase in typical cost of purchasing a site and increased inflation, difficulty of finding a suitable site within New Town for a school as construction continues, lack of interest by School administrative staff to identify a school site in New Town, and monitoring of overall dwelling units approved for the New Town development.

Mr. **Goodson** opened the Public Hearing.

1. Mr. Greg Davis of Kaufman & Canoles, Applicant, introduced other members in the audience who are representing the applicant and are available to answer questions from the Board; provided an overview of the proposal and anticipated uses of the sections such as open space and housing; provided an overview of the voluntary proffers; and requested approval of the application.

Mr. Brown inquired if provisions are included in the development addressing vehicles parked in the streets.

Mr. Davis stated that townhouses and single-family dwelling units will have attached or included garages; street parking will be expected with residential units above businesses and retail, although they can utilize the parking lots; and that street parking concerns will be given due consideration.

Mr. Brown stated concern that affordable housing is not adequately addressed in the proposal in regard to owner-occupied dwellings and subsequent resale of the dwelling units.

Mr. Davis stated that it is the intent of the client that there are affordable dwelling units in the proposal and entry-level homes to be purchased by those seeking affordable housing; however, resale at fixed prices is not addressed in the proffers as the client wants the owners to have the opportunity to participate in building equity and not interfere with basic property rights.

Mr. Brown inquired if a curb cut is planned to access Ironbound Road from Section **3**.

Mr. Davis stated that the Master Plan does identify an opportunity to access Ironbound Road.

Mr. Brown requested the applicant and client consider the traffic impacts on Ironbound Road and the potential exasperation of the traffic situation should further detailed plans develop a curb cut for Section 3 onto Ironbound Road.

Mr. **McGlennon** requested assurance from the applicant that while changes are being made to the New Town plans, that segregation of housing and retail is not going to occur.

Mr. Davis stated that the essence of the New Town Zoning Master Plan has flexibility and some areas will be designated for housing or retail; however, mixed use zoning sites in New Town afford the opportunity for housing and retail to be located together and provided a few examples of development where residential will be located in the same structure as businesses and retail.

Mr. **Goodson** inquired if the applicant figured in the net gain revenue to the County included the cost of debt service required for new school construction in the County.

Mr. Donald J. Messmer, President and Cofounder of Wessex Group, Ltd., stated that an allocation was included in the funding for debt service associated with a school facility.

Mr. Goodson inquired about the development of apartments and what type of apartment construction is being considered.

Mr. Davis stated that it is still in the early stage of development and it is too early to identify pricing and floor plans.

2. Mr. Sasha Digges, 3612 Ironbound Road, stated that the New Town developers and any developer in the County should be considering 20 percent of their dwellings for affordable housing so workers of the County can afford to live in the County, and stated that this proposal lacks vision for the future, the children, and lower-income residents of the community.

As no one else wished to speak to this matter, Mr. Goodson closed the Public Hearing.

Mr. Harrison stated concern that schools are overcrowded and by approving this application it will result in faster development of residential development which impact the schools; commented that the cash contributions toward an elementary school is inadequate given today's markets; and appreciated the philosophy in New Town allowing residents to gain equity in the homes they purchase.

Mr. Bradshaw stated concern about the cash proffers not being adequate for school capital costs; recommended the Board give staff guidance on a new benchmark for cash proffers, although the development of a policy is not expected at this time; and stated opposition to moving forward on this proposal with inadequate cash contributions for school facilities.

Mr. McGlenon requested a deferral of the application for two weeks to permit staff and the applicant to review the level of cash contribution.

The Board and staff discussed the proposed deferral, concern about adjusting benchmarks on this application and question of whether the adequacy of a voluntary cash proffer of \$240,000 is adequate to offset public impacts of the application.

Mr. John T. P. Home, Manager of Development Management, stated that staff could speak with the applicant prior to the Board's next meeting; however, development of a theory for a cash proffer policy would not be ready in two weeks.

Mr. Rogers stated there is no legal aspect restricting the Board's ability to defer the application; commented that the applicant has met with staff regarding the concerns about the proffers; and recommended the Board provide guidance on cash proffers to staff to apply to the other phases of New Town as they come forward for approval.

With consensus from the Board, Mr. Goodson deferred action on this application until October 26, 2004.

3. Offer and Conveyance of a Portion of Properties Located at 6450 Centerville Road and 5700 Warhill Trail to the State Board for Communities Colleges

Mr. Wanner stated that Thomas Nelson Community College (TNCC) has requested an adjustment to the 8.77-acre Warhill tract based upon the location of the access road to serve the Historic Triangle Campus, the third High School, and Community Sports Facility.

Staff has reviewed the requested adjustment and believes the adjustment meets the intent and purpose of the Board in retaining the original parcel noted in the resolution adopted by the Board on April 27, 2004.

Mr. Wanner recommended the Board adopt the resolution.

Mr. Goodson opened the Public Hearing.

1. Dr. Charles Taylor, President of Thomas Nelson Community College, commended the Board and staff of James City County for their commitment to higher education.

Mr. Brown thanked Dr. Taylor and the other staff members of Thomas Nelson Community College for the cooperative working environment and recommended that due to site constraints, the campus be developed in height rather than built out to satisfy facility space needs for now and in the future.

Dr. Taylor stated that he would like to come back before the Board with general plans for the development of the campus site.

1. Mr. Roosevelt Takesian, local board member representing Williamsburg on the Local College Board, thanked Mr. Wanner for his assistance, and commented that the proposed campus will be a complement to the County's community character.

As no one else wished to speak to this matter, Mr. Goodson closed the Public Hearing.

Mr. Harrison made a motion to adopt the resolution.

On a roll call vote, the vote was: AYE: Bradshaw, Harrison, Brown, McGlennon, Goodson (5). NAY: (0).

RESOLUTION

OFFER AND CONVEYANCE OF A PORTION OF PROPERTIES LOCATED AT

6450 CENTERVILLE ROAD AND 5700 WARHILL TRAIL TO THE

STATE BOARD FOR COMMUNITY COLLEGES

WHEREAS, James City County currently owns a certain parcel containing approximately 67.7 acres located at 6450 Centerville Road in the Powhatan District designated as Tax Parcel No. 3210100013, and currently owns a certain parcel containing approximately 521.7 acres located at 5700 Warhill Trail in the Powhatan District designated as Tax Parcel No. 3210100012; and

WHEREAS, the State Board for Community Colleges, on behalf of Thomas Nelson Community College, has indicated a desire to acquire a portion of the properties located at 6450 Centerville Road and 5700 Warhill Trail, for the purpose of constructing the new Historic Triangle Campus; and

WHEREAS, James City County desires to convey to the State Board for Community Colleges a portion of the aforementioned properties, said portion consisting of approximately 73.46 acres and further described in accordance with that certain plat made by AES Consulting Engineers dated September 22, 2004, entitled "Plat Showing Boundary Line Adjustment and Boundary

Line Extinguishment Between Parcel 1 And Parcel 2, Warhill Tract And Subdivision Of Parcel 3 & Parcel 4 Warhill Tract," said parcel to be conveyed labeled as "Adjusted Parcel 2" and hereafter referred to as the "Campus Parcel;" and

WHEREAS, the Board of Supervisors, following a public hearing, is of the opinion that the County should offer to convey the Campus Parcel by Deed of Gift to the State Board for Community Colleges, with actual conveyance subject to acceptance of the offer by the State Board for Community Colleges with approval by the Governor, and subject to the Board of Supervisors' approval of a Dedication Agreement between James City County and the State Board for Community Colleges.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby authorize and direct Sanford B. Wanner, County Administrator, to offer to convey by Deed of Gift the aforementioned Campus Parcel to the State Board for Community Colleges to be utilized for the purpose of constructing the new Historic Triangle Campus.

BE IT FURTHER RESOLVED that the Board of Supervisors does hereby authorize and direct Sanford B. Wanner, County Administrator, to execute a deed and any other documents required to convey by Deed of Gift the Campus Parcel to the State Board for Community Colleges on behalf of Thomas Nelson Community College, such conveyance being subject to acceptance of the offer to convey by the State Board for Community Colleges with the approval by the Governor, and subject to the Board of Supervisors of James City County approval of a Dedication Agreement between James City County and the State Board for Community Colleges.

G. PUBLIC COMMENT

1. Mr. Tom Haywood, 3936 Penzance Place, stated that Wellington is not a unique subdivision yet earlier the Board members expressed surprise at the high bill rates presented by the citizens and stated that if a three-tiered rate structure applies to the other JCSA residential customers, then perhaps something else is going on in the Wellington subdivision that needs to be investigated.

Mr. Haywood stated concern that JCSA residential customers are assessed water rates differently than JCSA commercial customers; commented that the Wellington subdivision was built on farmland which lacked natural vegetation to prevent erosion in the new development; stated concern that the next water utility bills will arrive near the December holiday season and may pose an additional hardship if the bills are similar to the ones just received; and requested the Board investigate the situation in Wellington and review the third-tier benchmark.

2. Mr. David Smith, Oleta Coach Lines, requested the Board find out the reasoning behind the Williamsburg Area Transport's decisions to provide transportation services to the private sector when local, private sector charter transportation service is ready and available to provide that service.

Mr. Goodson directed Mr. Wanner to follow up on Mr. Smith's request.

Mr. Wanner requested Mr. Smith provide details and other information regarding his concern so he could properly follow up.

3. Mr. Edmond Brown, 8400 Down Patrick Way, stated that he recently retired to Virginia and chose James City County; requested the meters in the Wellington subdivision be checked and assistance is

provided in investigating the unusual situation in the subdivision; and stated that had he been fully informed about the utility rates in the County, he would have chosen to retire elsewhere in the Commonwealth.

4. Ms. Tina **Haywood**, 3936 Penzance Place, requested information from the Board on why it can consider all this new construction if the County is experiencing water shortages; stated that she hopes the County is looking at new areas to get water; and requested the Board consider limiting new construction.

Mr. **Goodson** stated that a new groundwater treatment facility is being developed for the County.

5. Mr. **Joseph Beck**, 3929 Penzance Place, spoke on behalf of those using hoses to water lawns; requested if citizens can expect to be contacted soon regarding their concerns, if a reply to the concerns will be given soon, and when that contact can be expected; and stated that the second-level tier benchmark is too low and should be reviewed.

Mr. **Goodson** stated that everyone's concerns brought before the Board and staff will be responded to, and that the first-tier rate was reduced to reward those households that conserve water.

6. Ms. Eileen Brown, 8400 Down Patrick Way, stated that perhaps the meters are a bad batch and inquired how the meters are tested or calibrated.

Mr. Foster explained how the meters are checked, that the meters are the standard industry used model, that submeters **confirm** the meter readings, and stated that meters can be calibrated.

Mr. Brown commented that he placed a service call because he felt his water pressure in the house was off and a technician came to check the pressure, and inquired what expertise the technicians have.

Mr. Foster stated that staff routinely check meters and pressure levels, and commented that technicians are qualified to perform such services and that meters can be pulled and sent off for calibration.

Mr. **McGlennon** requested that if a representative from Wellington is willing to have their meter calibrated and if the JCSA could send it out at **JCSA's** expense to have it calibrated.

Mr. **McGlennon** stated that he anticipates staff will have some information available at the JCSA Board of Directors meeting to be held on October 26, and requested that the matter be referred to the Water Conservation Committee for recommendations.

Mr. Wanner stated that in **19** years this is the first case where one subdivision is having a difficulty and that staff will investigate how it began and how the requirement for heavy sodding came about.

Mr. Brown stated that landscapers install the sod to establish a new lawn and then direct homeowners to water heavily; however, historically this has not resulted in water usage and bills as high as these and should be investigated further.

Mr. **Goodson** inquired if it is reasonable to request staff to come back with a report in two weeks.

Mr. Foster stated that the Water Conservation Committee would not be able to convene and give a report before the Board's next meeting; however, staff will investigate the matter and report back.

Mr. Brown requested staff look at the Wellington subdivision bills and see what percentage of the customers have unusually high bills; what percentage do not have high bills; and if agreeable to a Wellington resident, have their meter calibrated at the expense of the James City **Service** Authority.

Mr. Goodson requested other similarly staged neighborhoods be investigated to determine their water rates while lawns were being established with sod.

The Board and staff thanked the citizens for coming out and sharing their information and assured the citizens that the Board and staff will respond to their concerns and Mr. Foster will be available to get additional information they wish to share.

Mr. Bradshaw stated that citizens may contact the Virginia Cooperative Extension Office in Toano for information on proper irrigation.

Mr. David Smith, Oleta Coach Lines, provided additional information to the Board and Mr. Wanner regarding the recent bus services provided by Williamsburg Area Transport for private functions.

H. REPORTS OF THE COUNTY ADMINISTRATOR

Mr. Wanner stated that the Peninsula Alliance for Economic Development has requested the Board approve, in concept, a proposed merger of the Peninsula Alliance for Economic Development and the Hampton Roads Economic Development Alliance and requested the Board authorize the County Administrator to send a letter indicating the Board's support in concept of the proposed merger.

Mr. Harrison requested Mr. Nystrom make a presentation to the Board regarding the proposed merger.

With consensus from the Board, Mr. **Goodson** directed Mr. Wanner to send a letter indicating the Board's support in concept of the proposed merger.

Mr. Wanner recommended at the conclusion of the Board's meeting, it adjourn to 4 p.m. on October 26 when the legislative package from last year, the results of the package, and items proposed for this year's package will be presented unless legislative representatives are not available for that date in which case a special meeting will be set up prior to the Board's meeting on November 9 for review.

Mr. Wanner recommended that the Board take action on **two** reappointments to the Historical Commission and defer action on the third seat.

Mr. McGlennon made a motion to reappoint John **Labanish** and Janis **MacQuestion** to a four-year term on the Historical Commission, terms to expire August 31, 2008.

On a roll call vote, the vote was: AYE: Bradshaw, Harrison, Brown, McGlennon, **Goodson** (5). NAY: (0).

I. BOARD REQUESTS AND DIRECTIVES

Mr. Bradshaw thanked the Press and editorial staff for recent articles regarding the Third High School **Bond** Referendum.

Mr. Bradshaw invited the Board and citizens to Chickahominy Day to be held on October 16, 2004.

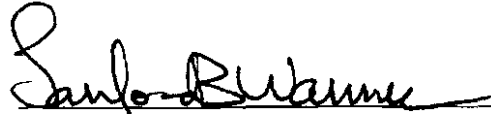
Mr. McGlennon thanked Henderson Company and members of Habitat for Humanity for the construction of the **81st** Peninsula Habitat Home in this community that was recently turned over to the new owner.

J. ADJOURNMENT

Mr. Brown made a motion to adjourn.

On a roll call vote, the vote was: AYE: Bradshaw, **Harrison**, Brown, **McGlennon**, **Goodson** (5).
NAY: (0).

At 10:02 p.m. Mr. **Goodson** adjourned the Board until 4 p.m. on October 26, 2004.


Sanford B. Wanner
Clerk to the Board

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OAKTREE OFFICE PARK AND
AIRTIGHT SELF STORAGE
PROFFERS

These proffers are made as of this 28 day of September 2004, by JEANETTE BRADY DESCENDENTS TRUST, Jeanette Brady Trustee.(Together with their successors and assigns, the "Owner").

RECITALS

- A. Owner is the owner of certain real property (the "Property") Exhibit "A" in James City County, Virginia containing approximately 1.5 acres and being more Particularly described as 3292 Ironbound Road, tax parcel (47-1)(1-0-0024) hereto and made a part thereof.
- B. The Property is now zoned R-8 and is designated Mixed Use on the James City County Comprehensive Plan Land Use Map. Owner has applied for a rezoning of the Property to B-1, General Business, with Proffers. Owner has submitted to the County a conceptual plan entitled "Oaktree Office Park and Airtight Self Storage" prepared by Mitchell-Wilson Associates, Inc. dated 4-12-04 (the "Conceptual Plan").
- C. Owner agrees to offer to the County certain conditions on the development of the Property not generally applicable to land zoned B-1. Therefore, and in consideration of the approval by The Board of Supervisors of the rezoning, and pursuant to Section 15.2-2296, et sec of the Code of Virginia, 1950, as amended, and Section 24-16, of the Zoning Ordinance. Owner agrees that in developing the Property, all of the following conditions shall be met and satisfied. If the requested rezoning is not granted by the County, these Proffers shall be null and void

CONDITIONS

- 1. Conceptual Plan. The property shall be developed generally in accordance with the Conceptual Plan, which such minor changes as the Development Review Committee determines does not change the basic concept or character of the development.
- 2. Community Character Corridor Landscape Area Buffers. (a) The Owner shall designate a landscape buffer of 50 feet in width along the Property's Route 615 frontage. The landscape buffer shall be landscaped liberally as shown on the Conceptual Plan.
- 3. Architectural. The office buildings and the mini-storage building on the Property shall be developed in a **harmonious** and uniform manner with an architectural design and color scheme approved by the Director of Planning . Owner shall design the office building and the mini-storage on

the Property in a manner compatible with the architectural style of the existing office development located at 3356 Ironbound Road and further identified Tax Parcel(47-1)(01-0-0026). With each site plan for office development or mini-storage building within the Property, the Owner shall submit architectural plans, including architectural, elevations, proposed building materials and colors, to the Director of Planning for his review and approval for consistency with the intent of this Proffer. The intent of this Proffer is to insure the office building and the mini-storage building constructed on the Property are of high quality and are compatible with (but not necessarily of the same design), as the surrounding development and to minimize the visual impact from Route 615 of the min-storage buildings, to the greatest extent possible.

4. Landscaping. Enhanced landscaping (as defined below) shall be provided within the 50 foot landscape buffer along Route 615 and in the area between the office development and the mini-storage development on the Property as shown on the Conceptual Plan. The enhanced landscaping shall be shown on the site plan for development within this portion of the Property and shall be subject to the approval of the Director of Planning. As used herein "enhanced landscaping" means landscaping that exceeds the numerical requirements of the Landscaping Ordinance by at least 25%, with credit given for the preservation of existing trees in accordance with the Landscaping Ordinance.
5. Sidewalk. A five foot wide sidewalk shall be installed across the Route 615 frontage of the property.
6. Lighting. All exterior site lighting on the Property shall have recessed fixtures with no lens bulb, or globe extending below the casing. The covers shall be opaque and shall completely surround the entire light fixture and light source in such a manner that all light will be directed downward and the light source is not visible from the side. No glare, as defined as 0.1 foot candle or higher, shall extend outside the Property line.
7. Severability. Each condition, or portion thereof, is severable. The invalidity of any particular Condition, or portion thereof, shall not affect the validity of the remaining conditions, or portions thereof.
8. Definitions. All terms used herein and defined in the County Zoning Ordinance shall have the meaning set forth therein unless otherwise specifically defined herein.
9. Water Conservation. Water conservation standards shall be submitted to and approved by the James City Service Authority and Owner and/or the Association shall be responsible for enforcing these standards. The standards shall address such water conservation measure as limitations on the installation and use of irrigation systems and irrigation systems and irrigation wells, the use of approved landscaping materials and the use of water conserving fixtures and appliances to promote water conservation and minimize the use of public water resources. The standards shall be approved by the James City Service Authority prior to final site plan or subdivision approval.

10. Intersection Improvements. A cash contribution of \$15,700.00 as determined by the formula developed by Kimley-Horn and Associates, Inc. as a part of the Five Forks Area Study, shall be made to the County prior to final site plan approval in order to mitigate traffic impacts resulting, in part, from the physical development and operation of the Property. The County shall use these funds towards the construction of intersection improvements to the Ironbound Road/John Tyler Highway intersection as detailed in section 1.1 of the Primary Principles for Five Forks Area of James City County, adopted by the Board of Supervisors on September 28, 2004.

Witness the following signature and seal:
Jeanette Brady Descendants Trust (Jeanette Brady Trustee)

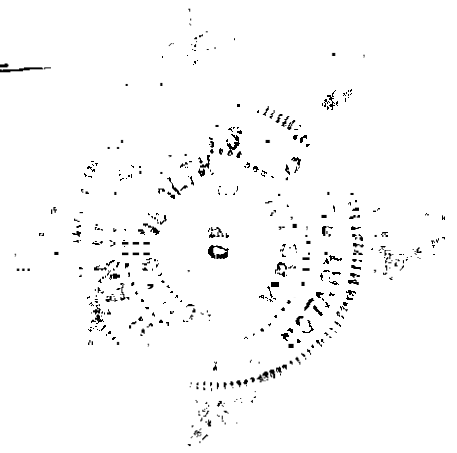
Jeanette Brady Trustee

State of Virginia
City/County of *James City* to wit:

The foregoing instrument was acknowledged before me this
11th Day of *Oct*, 2004, by *Jeanette Brady*

J. Anne Ribst

Notary Public



My commission expires:

My Commission Expires September 30, 2005

Prepared by:

Jeanette Brady
2501 Manion Drive
Williamsburg, VA 23185
757-220-9660

EXHIBIT "A"
Legal Description

Tax Map No. (47-1) (1-0-0024)

All that certain piece or parcel of land with buildings and improvements thereon, situate in **Jamestown** District, James City County, Virginia, on the southeasterly side of Iron Bound Road, containing one and one-half (1- %) acres, more or less, situate near five forks, bounded and described as follows:

Beginning at a pine stump on the southeasterly side of Iron Bound Road, which stump marks the dividing line between the property hereby conveyed and that of William Armistead; thence, along the southeasterly side of said road in a southwesterly direction the distance of 125 feet to a stob; thence in a southeasterly direction between parallel lines the distance of 500 feet to the lands of Williams Armistead to two point; one of which in on the dividing line of William Armistead marked by a white oak and the other by an iron stob.

VIRGINIA: CITY OF WILLIAMSBURG & COUNTY OF JAMES CITY
This document was admitted to record on 27 Oct. 04
at 11:06 AM/PM. The taxes imposed by Virginia Code
Section 58.1-801, 58.1-802 & 58.1-814 have been paid.

STATE TAX	LOCAL TAX	ADDITIONAL TAX
\$ <u> </u>	\$ <u> </u>	\$ <u> </u>

TESTE: BETSY B. WOOLRIDGE, CLERK
BY: Betsy B. Woolridge Clerk