

**AT A REGULAR MEETING OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE 26TH 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**

Brandon Christian, a sixth-grade student at Toano Middle School, led the Board and citizens in the Pledge of Allegiance.

**D. HIGHWAY MATTERS**

Mr. Todd Halacy, Assistant Residential Engineer, stated that Route 199 **Public/Private** Initiative, Jamestown Corridor Improvements project is on schedule, and stated that the drainage watch list is being finalized in the next few weeks.

Mr. Bradshaw requested the CSX railroad crossing at the Diascund Station be reviewed as it is becoming a safety hazard.

Mr. McGlennon requested an update on the evaluation of Route 617, Treasure Island Road, for overlay.

Mr. Halacy stated that Route 617 has been added to the paving schedule and will be completed when the weather permits.

## E. PRESENTATIONS

### 1. Employee and Volunteer Outstanding Service Awards

Mr. Goodson and the other Board members presented Outstanding Service Awards to the following Outstanding **Teams**: *Five Forks Area Study Committee*: Henry Branscome, II, Jay T. Harrison, Sr., Jerre Johnson, Jon Nystrom, Tom Tingle, David Fuss, Hampton Jesse, Joe McCleary, and Kay Thorington; *Celtic Film Series*: Maureen Cummings, Jack Willis, and Dr. Robert Maccubbin; *Wellspring STRIVES to Care Day*: Reverend Tim Tate, Nancy Scott, Jenny Hindman, Gail Scullion, Nora Cho, Janis Locke, Gina Thorne, Joyce Huffman, Allison Barrett, and Cindi Eicher; *Disaster Awareness Planning Team*: Jason Baldwin, Arlana Fauntleroy, Talita Swann, Melissa Mankowski Burke, Angie Sims, and Megan White; *Ironbound Square Redevelopment Plan*: Keith Denny, Marion, Paine, and Amy Driscoll; Outstanding Individuals: *Traffic Unit Database*: Ray Ferrara and Bill Lent; *National Night Out-Stonehouse Apartments*: Brian and Jennifer Gillette, Holly Leonard, Brittany Reames, Amy Scherdin, Tiffany Cutts, Melissa Potts, and Kathy Shield; *Day of Caring*: Blu Woman, Scott Easterling, and Jeff and Mona Deeds; *Abraham Lincoln's Traveling Exhibit*: Patrick Golden; *Partnership with Purpose*: Janet Crowther and Barry Trott; and *The James City Service Authority Employee of the Year*: Dion Walsh.

### 2. Wellington Neighborhood Water Use Issue

Larry Foster, General **Manager**, made a presentation to the Board on water **use/rate** issues raised by citizens of the Wellington subdivision at the meeting of the James City County Board of Supervisors on October 12, 2004. Mr. Foster stated that eight years ago the James City Service Authority (JCSA) Board of Directors set an increasing rate system to encourage water conservation and reduce peak demands on the water system. A study by the EPA revealed that the water use rate system has accomplished what the Directors desired.

Mr. Foster provided an overview of the JCSA water use rates for residential and commercial customers, stated that the residential first-tier rate was set to assist lower-income households that typically consume less water, the second tier was set as the range for the average household, and the third tier was set to encourage conservation and reduce peaks in the water demands; the commercial rates are set at a flat rate of \$2.70 per 1,000 gallons, the residential customers are assessed fees according to the three-tier rate system, and provided an overview **of the** typical water usage of residential customers and the associated costs for that use.

Mr. Foster stated that four water meters from the Wellington subdivision were calibrated, all four were within American Water Works Standards, and all four registered accurately during the calibration; and six Wellington subdivision water meters were validated by the sub-meter readings. Mr. Foster also stated that the water meters can handle 16 to 20 gallons per minute.

Mr. Foster provided a location overview of the approximately 13 percent of JCSA residential customers that exceeded 30,000 gallons in July, August, and September of 2004. Mr. Foster commented that of the 75 Wellington subdivision homes, 37 customers exceeded 30,000 gallons during the same period, and provided an overview of water consumption of other similar subdivisions in various stages of overall development.

Mr. Foster provided an overview of the recommended irrigation guidelines of the Virginia Cooperative Extension Office and how that recommendation could negatively impact the water system should all or even 25 percent of the customers follow those guidelines.

Mr. Brown commented that in 2002, a very dry year, 25 percent of the residential customers exceeded the third-tier benchmark level and that resulted in a lot of stress on the JCSA water system.

Mr. Foster stated that the original covenants recorded for the Wellington subdivision prohibits the installation of automatic irrigation systems. Mr. Foster stated that the developer came back with a new proposal for the covenants for the installation of drip irrigation systems covering no more than 30 percent of the parcel, except within the Virginia Department of Transportation Right-of-Ways where pop-up heads would be permitted. Mr. Foster stated that staff agreed to only 30 percent irrigation of the lot size in the hopes of encouraging use of drought-resistant plants and mulch to reduce the irrigation demands in support of water conservation efforts.

Mr. Foster stated that approximately 50 percent of the currently developed Wellington subdivision lots have irrigation systems, they are all pop-up heads, and the systems appears to cover more than 30 percent of the parcel.

Mr. Foster stated that staff discovered today that the second covenant amendment permitting drip irrigation in the Wellington subdivision had not been recorded.

Mr. Harrison inquired if the original covenant is binding on Wellington because the amendment has not been recorded.

Mr. Foster stated that is correct.

Mr. Harrison stated that the original covenant does not permit irrigation and recalls that in 2000 the Board wanted to prevent outdoor watering in the Wellington and Colonial Heritage by irrigation systems using JCSA water and encouraged the subdivisions to use water retention ponds as an irrigation water supply.

Mr. Rogers stated that the County was a party to the initial covenants, the JCSA Water Conservation Coordinator brought forward an amendment to the Wellington subdivision covenants to allow permit drip irrigation and it was approved by the Board. As staff reviewed JCSA records, it was determined that the covenant amendment had not been recorded in the Clerk's Office.

Mr. Rogers stated that the Board has committed to support drip irrigation in the Wellington subdivision and needs to get the amendment to the covenants recorded so it will be effective between all the property owners.

Mr. Goodson inquired that when the citizens purchased their homes, what covenants did they know of.

Mr. Rogers stated that the recorded covenants indicate that irrigation is not allowed.

Mr. Harrison inquired how to proceed.

Mr. Foster stated that the Homeowners Association (HOA) is responsible for enforcing the covenants, and that the HOA is still in control of the developer.

Mr. Harrison requested verification that the County is a partner in that.

Mr. Rogers affirmed that the County is a party to the initial Declaration.

Mr. Foster stated that the Board referred the issue to the Water Conservation Committee. The first meeting of that Committee will be on October 27 and Wellington subdivision representatives have been invited to that meeting. The Water Conservation Committee will come back to the Board with any recommendations.

Mr. **McGlennon** inquired how the covenants could be disclosed to the homeowners yet disregarded and also encouraged by the developer to install sod and therefore need to water the sod.

Mr. Foster stated that residents of Wellington will be speaking to the Board and may be able to provide insight into the developer's role.

### C. PUBLIC COMMENT

1. Mr. Tom **Haywood**, 3936 **Penzance** Place, made a presentation to the Board, stated concern about the low benchmark for the third tier, stated that he did research and spoke with the Water Conservation Coordinator and presented his findings on the water consumption rates for residential customers per quarter, stated concern that the numbers indicate that an average family of three will consistently broach into the third-tier rate, and commented on the disadvantages of wells for irrigation.

2. Mr. Vincent **Clifton**, 8404 Attleborough Way, requested information regarding the Outdoor Water Use Ordinance exemption policy.

Mr. Foster stated that an exemption from the Outdoor Water Use restrictions is applicable to the use of water, not an exemption of water fees; it is available for the initial 60-day establishment of new lawns, and is in effect between May 1 through September 30.

3. Mr. Edmond Brown, 8400 Down Patrick Way, stated that he is a new resident and JCSA customer, that he was not made aware of rules and regulations governing service, suggested that the County use **Newport** News water if there is such a water shortage in James City County, and stated that the water utility rate unreasonable.

4. Mr. George **Safka**, 3905 Leicester South, stated concern that the covenant is limited to drip irrigation and not pop-up irrigation systems.

Mr. **Goodson** stated that the covenants on record do not permit any irrigation systems.

Mr. Safka inquired if the amendment to the covenants that staff is going to record limits irrigation systems to drip only and what is to be done about all the pop-ups installed.

Mr. **Goodson** stated that the covenants are a part of the deed and recommended citizens check with their realtors and closing attorneys.

Mr. Safka inquired if he will have to remove the \$3,500 pop up irrigation system.

Mr. **Goodson** recommended he check with his realtor.

Mr. Brown requested clarification on his belief that it is not the practice of the County to enforce neighborhood covenants, that responsibility resides with the Homeowners Association and citizens can approach the HOA to seek relieve in civil court matters.

Mr. Rogers stated that is the general rule, however, in Wellington the County is a property owner and also a party to the Declaration of Covenants. When the developer began to develop the property there were questions raised about the proffers and as part of its settlement the Board entered into a Declaration of Covenants with Wellington where Wellington identified how it would construct the development. The Public Use Site was conveyed to the County. As a property owner, the County has a right to enforce the covenants just like the HOA does.

Mr. McGlennon inquired in this particular case where covenants reflect preference of developer and it translates into the homeowners. The County has a significant public policy interest in this particular instance of water conservation and the Board does not want to have the HOA disregard the covenants in this instance.

Mr. McGlennon stated concern that the HOA is being operated by the developer and not by the people living there. He also stated concern that a homeowner purchases from the developer and does not have a clear understanding of the covenants that drip-irrigation is the only acceptable irrigation and it may only cover **30** percent of the lot.

Mr. Harrison stated that he shares the same concerns.

Mr. McGlennon requested that staff ensure the developer discloses and enforces the covenants, and find out if the developer is going to mitigate this situation.

Mr. Rogers stated that generally the County relies on the HOA to enforce covenants. This particular case is unique and **if the** HOA is not going to enforce the covenants, the County for the reasons stated in the Declaration, could step forward and have the ability to enforce the covenants.

**5.** Mr. Bobby Brady, 3977 Penzance Place, concurred with citizens' comments that the tiered water system needs to be addressed, stated concern that staff is not responsive to his voiced concerns and recommendations, provided an overview of his recent water bill to previous water bills, suggested that the original meter is not reading accurately as a temporary meter registered water flow at two-thirds the rate of the other meter, and requested staff reply to his letters.

Mr. Goodson inquired if Mr. Brady has a sub-meter.

Mr. Brady stated that he has the original water meter put in by the developer.

Mr. Foster stated that after calibration, if it is determined that a meter is reading accurately, it is put back into place.

Mr. Foster clarified the figures provided by the Water Conservation Coordinator to Mr. **Haywood**.

Mr. Foster apologized to Mr. Brady and stated that he would contact him and follow up on his subsequent inquiries.

**6.** Mr. Joseph Beck, **3929** Penzance Place, stated that he was informed that irrigation was not initially permitted, however, the Wellington subdivision model home had an irrigation system in it and the rest **of the** subdivision soon followed, commented that his water bill is higher than his electric bill, stated that he understands the Board's desire to conserve water, however, extreme conservation efforts such as the benchmark for the third tier is unreasonable.

**7.** Ms. **Derryn** Webster, **8436** Ashington Way, commented that when she purchased her home she was informed that irrigation systems were not permitted and she tried unsuccessfully to seed a lawn, the model unit on the corner got an irrigation system and she was told that the HOA had gotten the covenants amended and irrigation systems were permitted, however, they were not told only drip irrigation systems are acceptable; stated that she presumed approval of the type of irrigation system when a permit was obtained to install the system. Ms. Webster stated concern that her water usage jumped approximately 55 thousand gallons with the installation of the irrigation system.

8. Mr. David Smith, 103 Burgundy Road, Director of Marketing and Sales for Oleta Coach Lines, stated that he believes his organization is being discriminated against by the County; stated that a recent charter engagement was cancelled by a long-standing client because **Williamsburg** Area Transport (WAT) was able to give a substantially lower price for the same service.

Mr. Wanner read a letter dated October 15, 2004, addressed to Mr. Smith in response to his comments made on October 12, 2004, before the Board. Mr. Wanner responded that the trips in questions were provided to the College of William & Mary (“College”) in accordance to the contractual obligation with the College; responded that Williamsburg Area Transport (WAT) will not provide charter services beyond its legal responsibility; stated that contract with the College is still in place and as the organizations go through the reworking of the agreement, WAT will be sensitive to be sure WAT will not compete unfairly with a private company.

Mr. Goodson inquired if the College was using its own buses for transportation service prior to the contractual agreement with WAT.

Mr. Wanner stated that the College did use its own bus fleet and when not available they turned to the private sector to provide the service.

9. Mr. Ed Oyer, 139 Indian Circle, commented on the upcoming Bond Referendum and the decisions of other Hampton Roads jurisdictions regarding school facilities based upon the feedback of its citizens; commented on a recommendation that the school administrators work in the temporary trailers while students utilize the school facilities; and commented on a media articles regarding the quality of school education being related the involvement of the parents.

10. Mr. Ty Elliott, 8401 Tynemouth Way, requested clarification on Board actions to resolve the concerns of the JCSA residential customers in the Wellington subdivision, commented that Mr. Foster's presentation is a good start and there needs to be clarification on the background on the setting of the tier levels and rates, commented on the advantages and disadvantages of private wells for irrigation, and stated that both sides of the Wellington water issue can take steps to mitigate the situation, and requested information on what steps the Board and staff will do to mitigate the situation and what can citizens expect.

Mr. Goodson inquired what rationale the Board used in setting the tier water-usage rates.

Mr. Foster stated that the adjustments to the rates were made while maintaining a revenue-neutral adjustment focusing on the encouragement of water conservation and reducing peak demands.

Mr. Goodson inquired if an adjustment to one tier would have an impact on the rates or levels of the other tiers.

Mr. Foster stated that a certain level of revenue has to be met and adjustments to a tier would impact the other tiers.

Mr. Goodson inquired if the tiered water-usage rate system, as a part of the water conservation program for the County, was used in the application and subsequent approval for a ground water desalinization plant **permit**.

Mr. Foster stated the **permit** for the groundwater desalinization plant includes a Water Conservation Plan to encourage water conservation.

The Board and staff briefly discussed the permit for the groundwater desalinization plant and the philosophical intent for water conservation. The Board also discussed the need for a Public Hearing should

the Board wish to make an adjustment of the three-tier water system, inability to adjust rates retroactively, what would be required to adjust rates mid-year, inability to adjust rates for specific customers or group of customers.

Mr. Rogers stated that the rate structure must have a reasonable relationship to a legitimate governmental objective, which the Board has with the three-tier rate structure and cannot apply that tier-rate structure in a manner that is not uniform across the board for all property owners; a waiver of the tier structure for those that get a waiver for outdoor watering is not valid because one would invalidate the other.

Mr. **Goodson** inquired if a credit can be provided.

Mr. Rogers stated that the rate structure must be applied in a manner that is uniform across the board for all owners, unless the JCSA can find fault such as a mistake made or the water was not used.

Mr. **Goodson** inquired if JCSA has found any fault with any excessive bills.

Mr. Foster stated that an unknown leak has not been found and therefore adjustment to fees cannot be made.

Mr. **Goodson** inquired if there are any restrictions in the installation and use of private wells.

Staff stated that there are no restrictions on the installation and use of private wells for irrigation, however, there are restrictions on the installation and use of private wells when public water is available.

Mr. **McGlennon** stated that he strongly supports the County's water conservation efforts, commented that most of the County can function within the confines of those efforts. He also stated concern about the anomaly within the Wellington subdivision, and there may be an issue with the responsibility of the developer in its failure to communicate those requirements and enforcement of those covenants. He further stated that the Board is expecting response and recommendations of the Water Conservation Committee, and inquired when the Board may expect a reaction to the situation.

Mr. Foster stated that he anticipates bringing something back by the second meeting in **November**.

Mr. **McGlennon** requested staff take steps to ensure that the HOA informs new residents of the Wellington subdivision of the policies of the County and JCSA.

Mr. Harrison inquired what steps the County can take as a participant in the enforcement of covenants against the developer for the improper installation of irrigation systems beyond **30** percent of the lot.

Mr. Rogers stated that his comments on this matter are restricted to what the County can do. The County has enforcement powers under the covenant that runs with the land the County owns in the Wellington subdivision and can enforce the covenants against the HOA or anyone who installs the system. Mr. Rogers commented that any action against the developer would have to come from one or more of the Wellington subdivision owners.

The Board inquired if a permit is required for the installation of an irrigation system on private property and if the JCSA is made aware of installations of irrigation systems.

Staff stated that a permit is not required for the installation of an irrigation system on private property and the JCSA is not always made aware of irrigation system installations; nor is it general practice for the JCSA field staff to be aware of the specifics contained in the covenants of subdivisions.

The Board inquired if the Geographic Information System (GIS) system could be utilized by the JCSA to identify lots that have covenants with the County as a party.

Mr. Foster stated that is something that could be incorporated into the JCSA computer system.

Mr. McGlennon inquired if the future developments will have HOAs that will enforce covenants concerning water conservation and is that a good mechanism to enforce water conservation through.

Mr. Foster stated that it will be a while before such developments get to the point where staff can make that **determination**.

Mr. Bradshaw inquired if the Wellington subdivision covenants prohibit the installation of irrigation wells.

Mr. Rogers stated that the Wellington subdivision covenants do not restrict the installation of irrigation wells.

Mr. Foster stated that staff researched the news media notifications of the water-use rate system and noted that the last run was in mid-June, stated that citizens have provided good suggestions for notification to new residents of the JCSA rules and regulations, and from those suggestions, staff has developed a new account information packet that has basic information regarding the rules and regulations that will be left on the doors or mailboxes of new accounts.

Mr. McGlennon requested a reply to the citizen's comment that Newport News has an unlimited water supply, and commented that such a statement does not account for the efforts of Newport News to develop a reservoir to meet its water needs.

Mr. Foster stated that Newport News does not have an unlimited supply of potable water and they are facing an anticipated water supply shortage in 2011 or 2012.

11. Mr. Richard Costello, Water Conservation Committee Chairman, stated that a special meeting has been called for October 27 and the regular meeting of the Committee will be held on November 18. The Committee anticipates some recommendations may be presented, and stated that the question of permits for the installation of irrigation systems will be researched.

## **G. CONSENT CALENDAR**

Mr. Brown made a motion to adopt the minutes on the Consent Calendar.

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

### 1. Minutes - October 12, 2004. Regular Meeting



## H. PUBLIC HEARINGS

### 1. Case No. SO-002-04. Subdivision Ordinance Amendment: Utility Inspection Fees

Mr. **Larry M. Foster**, General Manger of the James City Service Authority, presented a change to the Subdivision Ordinance to change when utility inspection fees are collected from developers in the County to coincide with an amendment to the James City Service Authority Regulations Governing Utility Service.

Mr. Foster stated the proposed amendment allows the JCSA to issue the Certificate to Construct at a different phase of the development process rather than at the time of land-disturbing permit, as many of the development's land disturbance can commence weeks or months before the need for utility plans arise.

Mr. Foster requested the Board adopt the ordinance following a Public Hearing on the proposal.

Mr. Brown inquired if any other action is being recommended with this proposal other than to make the process easier for applicants by separating the two approval processes and changing when the Certificate to construct is issued.

Mr. Foster stated that there are no changes to the amount of the inspection fees.

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

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

Mr. Brown made a motion to adopt the ordinance,

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

### 2. Convevance of Easement - Jolly Pond Road

Mr. Rogers stated that Mr. and Mrs. Dwight Smith would like electric service to their property located near the school bus garage on Jolly Pond Road. In order to get service, a utility easement would be required across the Freedom Park property from the school bus garage along Jolly Pond Road. The Smiths have delivered a check to the County to cover the cost associated with conveying the property to be used as a utility easement to the Dominion Virginia Power.

Staff recommends the Board approve the resolution authorizing the County Administrator to execute the Deed of Easement on behalf of the County.

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

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

Mr. McGlennon 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

CONVEYANCE OF EASEMENT - JOLLY POND ROAD

WHEREAS, James City County owns 675.64 acres commonly known as 5537 **Centerville** Road and designated as Parcel No. (1-9) on James City County Real Estate Tax **Map No.** (30-1); and

WHEREAS, Dominion Virginia Power requires a 30-foot utility easement in order to provide domestic electrical service to a single-family home to be constructed on Jolly Pond Road by Dwight E. Smith and Joan B. Smith (Mr. and Mrs. Smith); and

WHEREAS, based on estimate of current market value performed by the County's Real Estate Assessment Division, Mr. and Mrs. Smith delivered to the County a check in the amount of \$2,050 as the value of the easement to be conveyed by the County to Dominion Virginia Power; and

WHEREAS, the Board of Supervisors, following a Public Hearing, is **of the** opinion that it is in the public interest to convey a utility easement to Dominion Virginia Power in exchange for the \$2,050 paid by **Mr.** and Mrs. Smith.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the County Administrator to execute the Right-of-way Agreement and such other documents necessary to convey a utility easement to Dominion Virginia Power in exchange for \$2,050 paid by Dwight E. Smith and Joan B. Smith.

3. Transportation Equity Program for the 21st Century (TEA-21). Fort Magruder Grant Application

Mr. O. Marvin Sowers, Jr., Director of Planning, stated that John V. Quarstein of the Virginia War Museum has requested the Board's endorsement of a **Transportation** Enhancement Program Grant application for the rehabilitation and interpretation of Fort **Magruder**.

Mr. Sowers recommended approval of the resolution.

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

1. Mr. John Quarstein, Virginia War Museum, stated that Fort **Magruder** is a remnant of Civil War history and plans are underway for the preservation and interpretation of the Civil War battle of Williamsburg and requested the Board's support of the application.

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

### FORT MAGRUDER GRANT APPLICATION

WHEREAS, the Virginia War Museum intends to file an application with the Virginia Department of Transportation (VDOT) for an Enhancement Grant for the rehabilitation and interpretation of Fort Magruder; and

WHEREAS, in accordance with the Commonwealth Transportation Board construction allocation procedures, it is necessary that a request by resolution be received from the local government in order for VDOT to program an Enhancement Grant project in the County of James City; and

WHEREAS, the Virginia War Museum hereby agrees to pay 20 percent of the total cost for planning and design, right-of-way, and construction of this project contingent upon entering into an acceptable reimbursement agreement with VDOT, and that, if the Virginia War Museum subsequently elects to cancel this project, the Virginia War Museum hereby agrees to reimburse VDOT for the total amount of the costs expended by the Department through the date the Department is notified of such cancellation.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, requests the Commonwealth Transportation Board establish a project for the rehabilitation and interpretation of Fort Magruder, as described in the application submitted by the Virginia War Museum.

#### I. BOARD CONSIDERATION

1. Case Nos. Z-5-04/MP-5-04. New Town Sections 3 and 6 Rezoning and Master Plan and Case No. MP-8-04. New Town Sections 2 and 4 Master Plan Amendment (deferred from October 12, 2004)

Ms. Karen Drake, Senior Planner, stated that on October 12, 2004, the Board deferred action on the application of Greg Davis and Tim Trant of Kaufman & Canoles 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 nonresidential 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-SO), (1-57), (24-6), and (24-1A)** on the 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 & 6.

Ms. Drake stated that staff has met with the applicant to review the voluntary cash school facility proffer and recommended the Board approve the applications and accept the revised voluntary proffers.

Mr. Bradshaw stated appreciation for the efforts of the staff and the applicant to address the issues raised on October 12 and recommended consideration of a cash proffer policy be reviewed for future applications.

Mr. **McGlennon** thanked the staff and the applicant for the indulgence of a deferral and echoed Mr. Bradshaw's comments concerning the consideration of a cash proffer policy, and stated concern that the application seems to have passed the adequate public facilities test yet a recent meeting of parents a focus of conversation was on the overcrowding issues at the schools.

Mr. Harrison stated concern that future cash proffers consider the facility and operating costs of doing business, stated appreciation for the vision of New Town; and stated reluctance at approving a development that is going to increase the impacts to public facilities such as the schools.

Mr. Bradshaw made a motion to adopt the resolution.

On a roll call vote, the vote was: AYE: Bradshaw, Brown, **McGlennon, Goodson** (4). NAY: Harrison (1).

## **RESOLUTION**

### **CASE NO. MP-8-04. NEW TOWN - SECTIONS 2 AND 4**

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 Case No. MP-8-04 for the rezoning of approximately 91 acres from **MU, Mixed Use**, with proffers, to **MU**, with proffers; and

WHEREAS, on September 13, 2004, the **Planning Commission** recommended approval of **this** application by a vote of 5-2; and

WHEREAS, the property to be rezoned is identified as a portion of Parcel Nos. (1-50), (24-6), and (24-1A) on James City County Real Estate Tax Map No. (38-4), more particularly shown on the plan entitled "New Town Sections 2 and 4 Master Plan," prepared by AES Consulting Engineers, and dated June 1, 2004, with a revision date of September 1, 2004.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve Case No. MP-08-04 and accepts the voluntary proffers.

## **RESOLUTION**

### **CASE NOS. Z-5-04/MP-5-04. NEW TOWN - SECTIONS 3 AND 6**

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 **Case No. 2-5-04** for the rezoning of approximately 70 acres from **R-8, Rural Residential**, with proffers, and **MU, Mixed Use**, with proffers, to **MU**, with proffers; and

WHEREAS, on September 13, 2004, the **Planning Commission** recommended approval of **this** application by a vote of 5-2; and

WHEREAS, the property to be rezoned is identified as a portion of Parcel No. (1-57) on James City County Real Estate Tax **Map No.** (38-4), more particularly shown on the plan entitled "New Town Sections 3 and 6 Master Plan," prepared by AES Consulting Engineers, and dated June 1, 2004, with a revision date of June 21, 2004.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve Case Nos. **Z-5-04/MP-5-04** and accepts the voluntary proffers.

## **J. PUBLIC COMMENT**

1. Mr. Ed Oyer, 139 Indian Circle, stated that members of his neighborhood ensure that new residents are provided a copy of the covenants because often realtors and lawyers do not inform new homeowners of the covenants.

2. Mr. David Smith, 103 Burgundy Road, Director of Marketing and Sales for Oleta Coach Lines, inquired if the buses used by the County for charter service to the College of William & Mary are Federally funded, where the buses are fueled, where the buses are garaged, and through which insurance agency the buses are covered.

Mr. Wanner stated that no Federal funds are used to support the operation of buses used as charter services according to the contractual agreement with the College of William & Mary.

The Board and staff briefly discussed the contractual agreement with the College of William & Mary, the funding sources, and transfer of bus service from a private operation through the College of William & Mary to a public service through the contractual agreement.

Mr. Goodson requested Mr. Smith provide Mr. Wanner his questions for a response.

## **K. REPORTS OF THE COUNTY ADMINISTRATOR**

Mr. Wanner recommended at the conclusion of the Board meeting, it adjourn until 7 p.m. on November 9, 2004.

Mr. Wanner recommended the Board recess briefly while the James City Service Authority Board of Directors concludes its meeting, then reconvene to go into Closed Session pursuant to Section 2.2-3711(A)(1) of the Code of Virginia for the consideration of appointments of individuals to County Boards and/or Commissions, and Section 2.2-3711(A)(3) of the Code of Virginia to consider the acquisition of property for public use.

## **L. BOARD REQUESTS AND DIRECTIVES**

Mr. Bradshaw stated that an informational meeting will be held at the Toano Middle School on October 27 at 7 p.m. regarding the upcoming Bond Referendum.

Mr. Bradshaw stated that the Norsemen celebrated its 25th anniversary in Norge this evening.

Recess 9:06 p.m.

Reconvene 9:16 p.m.

## **M. CLOSED SESSION**

Mr. Harrison made a motion to go into Closed Session pursuant to Section 2.2-3711(A)(1) of the Code of Virginia for the consideration of appointments of individuals to County Boards and/or Commissions, and Section 2.2-3711(A)(3) of the Code of Virginia to consider the acquisition of property for public use.

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

Mr. **Goodson** adjourned the Board into Closed Session at 9:15 p.m.

Mr. **Goodson** reconvened the Board into Open Session at 10:13 p.m.

Mr. Harrison made a motion to adopt the Closed Session resolution.

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

## **RESOLUTION**

### **CERTIFICATION OF CLOSED MEETING**

WHEREAS, the Board of Supervisors of James City County, Virginia, (Board) has convened a closed 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 2.2-3711 of the Code of Virginia requires a certification by the Board that such closed 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 closed meeting to which this certification resolution applies; and, (ii) only such public business matters were heard, discussed, or considered by the Board as were identified in the motions, Section 2.2-3711(A)(1), to consider personnel matters, the appointment of individuals to County boards **and/or** commissions; and Section 2.2-3711(A)(3) to consider the acquisition of parcels of property for public use.

Mr. Harrison made a motion to reappoint Richard Miller to a three-year term on the Peninsula Emergency Medical Services Council, Inc., term to expire on October 31,2007, and to appoint Page Warden to a four-year term on the Historical Commission, term to expire on August 31,2008.


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

## **N. ADJOURNMENT**

Mr. Harrison made a motion to adjourn,

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

At 10:14 p.m., Mr. **Goodson** adjourned the Board until 7 p.m. on November 9,2004.

  
Sanford B. Wanner  
Clerk to the Board

102604bs\_2.min

ADOPTED

OCT 26 2004

ORDINANCE NO. 30A-32

BOARD OF SUPERVISORS  
JAMES CITY COUNTY  
VIRGINIA

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 19, SUBDIVISIONS, OF THE CODE OF THE COUNTY OF JAMES CITY, VIRGINIA, BY AMENDING ARTICLE I, GENERAL PROVISIONS, SECTION 19-15, FEES; AND ARTICLE III, REQUIREMENTS FOR DESIGN AND MINIMUM IMPROVEMENTS, SECTION 19-62, INSPECTION OF PUBLIC WATER AND SEWER SYSTEM.

BE IT ORDAINED by the Board of Supervisors of the County of James City, Virginia, that Chapter 19, Subdivisions, is hereby amended and reordained by amending Section 19-15, Fees; and Section 19-62, Inspection of public water and sewer system.

Chapter 19. Subdivisions

Article I. General Provisions

**Sec. 19-15. Fees.**

Fees shall be charged to offset the cost of reviewing plats and plans, making inspections and other expenses incident to the administration of this chapter. The following fees shall be charged and collected as provided below:

- (1) **General plan review.** There shall be a fee for the examination of every plan reviewed by the agent or commission. For all subdivisions that do not require public improvements, the fee for a major or minor subdivision shall be \$200.00 per plan



plus \$70.00 per lot for each lot over two lots in the subdivision plat. For all subdivisions that require public improvements, the fee for a major or minor subdivision shall be \$250.00 per plan plus \$70.00 per lot for each lot over two lots in the subdivision plat. The fee for townhouse or condominium subdivisions which have undergone site plan review shall be \$50.00. The fee shall be submitted to the agent at the time of filing the plat for review. Any check shall be payable to the James City County treasurer.

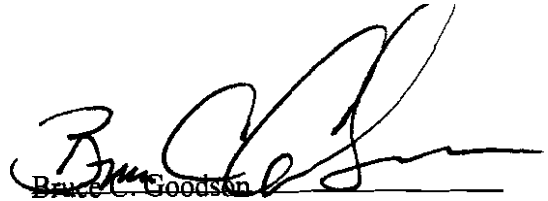
- (2) ***Inspection fee for water and sewer lines.*** There shall be a fee for the inspection by the service authority of public water and sewer system installations. Such fee shall be \$1.43 per foot for every foot of sewer main or water main constructed and shall be submitted ~~at the time of filing an application for a land disturbance permit as~~ *specified by the service authority regulations.*

### Article III. Requirements for Design and Minimum Improvements

#### **Sec. 19-62. Inspection of public water and sewer system.**

Inspection of public water or sewer system installations shall be the responsibility of the service authority. **Any** subdivider of a subdivision shall obtain a certificate to construct sewer or water lines and facilities from the ~~environmental division~~ *James City Service Authority (JCSA)* prior to either extending existing facilities or building new facilities. Certificates to construct shall not

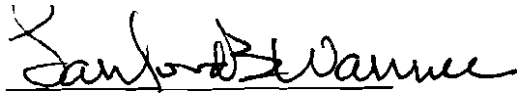
be issued until the subdivider has paid to the county JCSA inspection fees in accord with section 19-15 of this chapter. A certificate to construct shall be required prior to final approval of the subdivision plat.



Bruce C. Goodson

Chairman, Board of Supervisors

ATTEST:



Sanford B. Wanner  
Clerk to the Board

<u>SUPERVISOR</u>	<u>VOTE</u>
BRADSHAW	AYE
HARRISON	AYE
BROWN	AYE
MCGLENNON	AYE
GOODSON	AYE

Adopted by the Board of Supervisors of James City County, Virginia, this 26th day of October, 2004

040027471

NEW TOWN - SECTIONS 3 and 6 - PROFFERS

THESE PROFFERS are made as of this 25th day of October, 2004, by **NEW TOWN ASSOCIATES, LLC**, a Virginia limited liability company (together with its successors and assigns, "Owner") (index as a "grantor"), and the **COUNTY OF JAMES CITY, VIRGINIA**, a political subdivision of the Commonwealth of Virginia (the "County") (index as the "grantee").

RECITALS

R-1. Owner is the owner of certain real property located in James City County, Virginia, being more particularly described on EXHIBIT A attached hereto and made a part hereof (the "Property"). Owner is also the owner of certain real property, including the property, located in James City County, Virginia, being more particularly described on EXHIBIT B attached hereto and made a part hereof (the "New Town Property").

R-2. The Property is subject to the New Town Proffers (the "New Town Proffers"), dated December 9, 1997, of record in the Clerk's Office of the Circuit Court for the City of Williamsburg and County of James City, Virginia (the "Clerk's Office") as Instrument Number 980001284.

R-3. The New Town Proffers provide for development of the Property in accordance with (i) a conceptual plan of development (the "New Town Master Plan") entitled, "NEW TOWN PLAN", dated July 23, 1997, revised December 8, 1997, prepared by Cooper, Robertson & Partners and AES Consulting Engineers, and (ii) design guidelines (the "New Town Design Guidelines") entitled "NEW TOWN DESIGN GUIDELINES, JAMES CITY COUNTY,

Prepared by:  
**Kaufman & Canoles, P.C.**  
4801 Courthouse St., Suite 300  
Williamsburg, VA 23188

VIRGINIA", dated September 3, 1997, prepared by Cooper, Robertson & Partners. A copy of the New Town Master Plan and New Town Design Guidelines are on file with the County Planning Director.

R-4. In furtherance of the vision embodied in the New Town Master Plan and New Town Design Guidelines, Owner has applied for a rezoning of the Property from R-8, Rural Residential with proffers to MU, Mixed-Use with proffers. The rezoning of the Property to MU, with proffers, is consistent both with the land use designation for the Property on the County Comprehensive Plan and the statement of intent for the MU zoning district set forth in Section 24-514 of the County Zoning Ordinance, Section 24-1 *et seq.* of the County Code of Ordinances, in effect on the date hereof (the "Zoning Ordinance").

R-5. Owner has submitted an update to the Community Impact Statement entitled "Community Impact Statement for the Casey Newtown", dated March 21, 1997, previously filed with the County Planning Director which satisfies the requirements of Section 24-515(c) of the Zoning Ordinance and the New Town Proffers, which update to the Community Impact Statement includes, without limitation, an updated Fiscal Impact Study which has been reviewed and accepted by the County in connection with the rezoning request referenced above. The update to the Community Impact Statement, as well as the original Community Impact Statement, are on file with the County Planning Director.

R-6. In accordance with the requirements of paragraph 4 of the New Town Proffers, Owner has submitted to the County an updated traffic study (the "Traffic Study") entitled "TRAFFIC STUDY FOR SECTIONS 3 & 6 OF NEW TOWN, JAMES CITY COUNTY, VIRGINIA", dated June 2004, prepared by DRW Consultants, Inc., Midlothian, Virginia, which is on file with the County Planning Director.

R-7. Pursuant to subparagraph 2(b) of the New Town Proffers, there has been established a Design Review Board ("DRB") for development of the property subject to the New Town Proffers.

R-8. Pursuant to the New Town Proffers, the DRB is charged with the responsibility of rendering a written advisory recommendation to the County Planning Commission and to the County Board of Supervisors as to the general consistency with the New Town Master Plan and the New Town Design Guidelines of any proposed master plans and design guidelines in future rezonings of the property subject to the New Town Proffers.

R-9. Owner has previously submitted to the DRB, and the DRB has previously approved in writing, as consistent with both the New Town Master Plan and the New Town Design Guidelines, a conceptual plan of development (the "Sections 3 and 6 Master Plan") entitled "**NEW** TOWN SECTIONS 3 & 6 MASTER PLAN BERKELEY DISTRICT JAMES CITY COUNTY, VIRGINIA", dated June 1, 2004, revised June 21, 2004, prepared by AES Consulting Engineers, and design guidelines (the "Sections 3 and 6 Guidelines") entitled "New Town Discovery Park Sections 3 & 6 Design Guidelines", dated September 2, 2004, prepared by Cooper Robertson & Partners, for the Property, copies of which Sections 3 and 6 Master Plan and Sections 3 and 6 Guidelines are on file with the County Planning Director.

R-10. A Phase I Archaeological Study (the "Casey Study") was conducted on the Property as detailed in that certain report entitled "A Phase I Archaeological Survey of the Casey Property, James City County, Virginia", dated July 30, 1990, prepared for the Casey Family c/o Virginia Landmark Corporation by the William and Mary Archaeological Project Center, which report has been submitted to, reviewed and approved by the County Planning Director. The Casey Study identified only one (1) area of archaeological significance on the Property, Site

44JC617, and recommended such site for Phase II evaluation. Subsequent to the Casey Study, Owner commissioned a second Phase I Archaeological Study (the "Associates Study") of, *inter alia*, Site 44JC617 as detailed in that certain report entitled "Phase I Archaeological Investigations of Sites 44JC617, 44JC618, 44JC619, and 44JC620 on the New Town Tract James City County, Virginia", dated January, 2004, prepared by Alain C. Outlaw, Principal Investigator, Timothy Morgan, Ph.D., and Mary Clemons, which report has been submitted to, reviewed and approved by the County Planning Director. The Associates Study determined that Site 44JC617 is an isolated finds area and recommended no further treatment of the site.

R-11. A small whorled pogonia survey was conducted on the Property revealing that no small whorled pogonia plants exist on the Property. The report generated from that survey is entitled "SEARCHES FOR THE SMALL WHORLED POGONLA, ISOTRIA MEDEOLOIDES, ON THE CASEY TRACT, CHISEL RUN WATERSHED, WILLIAMSBURG/JAMES CITY COUNTY, VIRGINIA SPRING/SUMMER 1996" (the "1996 Report"), prepared by Dr. Donna M. E. Ware of the College of William & Mary for Williamsburg Environmental Group, Inc. The results of the 1996 Report are illustrated on sheet 6, entitled "Master Stormwater Plan", of the New Town Master Plan. A copy of the 1996 Report is on file with the County Planning Director.

R-12. The provisions of the Zoning Ordinance may be deemed inadequate for protecting and enhancing orderly development of the Property. Accordingly, Owner, in furtherance of its application for rezoning, desires to proffer certain conditions which are limited solely to those set forth herein in addition to the regulations provided for by the Zoning Ordinance for the protection and enhancement of the development of the Property, in accordance with the

provisions of Section 15.2-2296 *et seq.* of the Code of Virginia (1950), as amended (the "Virginia Code") and Section 24-16 of the Zoning Ordinance.

. The County constitutes a high-growth locality as defined by Section 15.2-2298 of the Virginia Code.

NOW, THEREFORE, for and in consideration of the approval by the Board of Supervisors of the County of the rezoning set forth above and the Sections 3 and 6 Master Plan, the Sections 3 and 6 Guidelines and all related documents described herein, and pursuant to Section 15.2-2296, *et seq.*, of the Virginia Code, Section 24-16 of the Zoning Ordinance and the New Town Proffers, Owner agrees that all of the following conditions shall be met and satisfied in developing the Property.

PROFFERS:

1. Application of New Town Proffers. Master Plan and Design Guidelines. These Proffers, the Sections 3 and 6 Master Plan and the Sections 3 and 6 Design Guidelines shall supercede, amend and restate in their entirety the New Town Proffers, the New Town Master Plan and the New Town Design Guidelines, but only as to the Property. Accordingly, this document contains the only proffers hereinafter applicable to the Property.

2. New Town Owner's Association.

(a) A supplemental declaration ("Supplemental Declaration") shall be executed and recorded in the Clerk's Office to submit all or a portion of the Property to the New Town Master Association, a Virginia non-stock corporation (the "Commercial Association"), and to the Master Declaration of Covenants, Easements and Restrictions for New Town, dated June 22, 1998, recorded in the Clerk's Office as Instrument Number 980013868 (including the articles

of incorporation and the bylaws governing the Association, as any of the foregoing have been or may be hereafter supplemented, amended or modified pursuant to the terms thereof).

(b) For any of the Property not submitted by Supplemental Declaration to the Commercial Association, a separate association (the "Residential Association") shall be formed. In addition to the Commercial Association and the Residential Association, one or more separate owners or condominium associations may be organized for portions of the Property (each individually a "Separate Association") as subordinate associations of the Commercial Association and/or Residential Association and supplemental restrictive covenants may be imposed on the corresponding portions of the Property.

(c) The Residential Association and the Commercial Association shall develop shared facilities agreements ("Shared Facilities Agreements") between the associations as necessary to fairly and reasonably apportion fiscal responsibility for the operation and maintenance of common elements, recreation facilities, stormwater management facilities, roadways, or other facilities benefiting or serving the members of both associations. The apportionment of such fiscal responsibility shall be based upon such factors as impervious surface area, building square footage, numbers of "Residential Units" (hereinafter defined) within a particular association, number of members, land area of the membership, intensity of use of such shared facilities by the membership of each association and/or such other factors agreed to between the associations.

(d) Any Supplemental Declaration and any articles of incorporation, bylaws and declaration associated with the Residential Association or a Separate Association for the Property (collectively, the "Governing Documents") and the Shared Facilities Agreements, if any, shall be submitted to and reviewed by the County Attorney for general consistency with this



proffer. The Governing Documents shall (i) require that the applicable association adopt an annual maintenance budget and assess all of its members for the maintenance of the properties owned or maintained by such association, (ii) grant such association the power to, and require that such association, file liens on its member's properties for non-payment of such assessments and for the cost to remedy violations of, or otherwise enforce, the Governing Documents, (iii) provide that the DRB shall serve as a design review board for each association formed with respect to the Property, and (iv) provide for the implementation and enforcement of the water conservation standards proffered herein.

3. Development Process and Land Use.

(a) Development. The Property shall be developed in one or more phases generally in accordance with the Sections 3 and 6 Master Plan and the Sections 3 and 6 Design Guidelines, including, but not limited to, the land uses, densities and design set forth therein. All of such development shall be expressly subject to such changes in configuration, composition and location as required by all other governmental authorities having jurisdiction over such development.

(b) DRB Authority, Duties and Powers. All site plans, exterior architectural plans, building materials, building elevation plans and other development plans for the Property shall be submitted to the DRB for review and approval in accordance with the manual entitled "NEW TOWN DESIGN PROCEDURES JAMES CITY COUNTY" as the same may be amended by the DRB from time to time, a copy of which is on file with the County Planning Director, and such other rules as may be adopted by the DRB from time to time, for general consistency with the Sections 3 and 6 Master Plan and Sections 3 and 6 Guidelines. Evidence of DRB approval of plans required to be submitted to the County for approval shall be provided

with any submission of such plans to the County Department of Development Management. The County shall not be required to review any development plans not receiving the prior approval of the DRB. In reviewing applications, development plans and specifications, the DRB shall consider the factors set forth in the Sections 3 and 6 Master Plan and/or the Sections 3 and 6 Guidelines. The DRB shall advise of either (i) the DRB's recommendation of approval of the submission, or (ii) the areas or features of the submission which are deemed by the DRB to be materially inconsistent with the applicable Sections 3 and 6 Guidelines and/or the Sections 3 and 6 Master Plan and the reasons for such finding and suggestions for curing the inconsistencies. The DRB may approve development plans that do not strictly comply with the Sections 3 and 6 Master Plan and/or the Sections 3 and 6 Guidelines, if circumstances, including, but not limited to, topography, natural obstructions, design/development hardship, economic conditions or aesthetic or environmental considerations, warrant approval. All structures, improvements, open space, wetlands and other natural features on the Property shall be constructed, improved, identified for preservation, left undisturbed or modified, as applicable, substantially in accordance with the plans and specifications as finally approved by the DRB.

(c) Limitation of Liability. Review of and recommendations with respect to any application and plans by the DRB is made on the basis of aesthetic and design considerations only and the DRB shall not have any responsibility for ensuring the structural integrity or soundness of approved construction of modifications, nor for ensuring compliance with building codes or other governmental requirements, ordinances or regulations. Neither Owner, the County, the DRB nor any member of the DRB shall be liable for any injury, damages or losses arising out of the manner or quality of any construction on the Property.

4. Transportation Improvements. Owner shall construct/install the following entrance and road improvements ("Transportation Improvements") to Virginia Department of Transportation ("VDOT") standards and specifications for the Watford Lane (as designated in the Traffic Study) intersection with Ironbound Road:

- (a) A northbound left turn lane on Ironbound Road at Watford Lane;
- (b) A southbound right turn lane on Ironbound Road at Watford Lane;
- (c) A minimum of two lanes approaching Ironbound Road and two lanes departing Ironbound Road on Watford Lane in New Town Section 3; and
- (d) A traffic signal which shall include: i) signal coordination equipment at the request of VDOT, and ii) traffic signal preemption equipment acceptable to the County Fire Chief.

The Transportation Improvements shall be completed or guaranteed ("Guaranteed") in accordance with Section 15.2-2299 of the Virginia Code (or such successor provision) and the applicable provisions of the County Code of Ordinances (such performance assurances to be hereinafter referred to as a "Guarantee" or "Guarantees") prior to final site plan or subdivision plan approval for residential and/or non-residential construction on the Property exceeding 400,000 square feet unless earlier warranted and/or deemed needed by VDOT. The deadline established by the preceding sentence may be extended by the County Planning Director based upon such objective criteria as, *inter alia*, the rate of residential development of the New Town Property and/or traffic generated by development of the New Town Property and surrounding properties.

5. Mix of Housing Types. A minimum of six (6) "Residential Units" constructed on the Property shall be initially offered for sale for a period of nine (9) continuous months (if not

earlier sold pursuant to such offer) after the issuance of a building permit for such "Residential Units" at a price at or below One Hundred Nine Thousand Thirty-Four Dollars (\$109,034), subject to adjustment as set forth herein, and a minimum of ten (10) "Residential Units" constructed on the Property shall be initially offered for sale for a period of nine (9) continuous months **after** the issuance of a building permit for such "Residential Units" at prices between One Hundred Nine Thousand Thirty-Four Dollars (\$109,034) and One Hundred Forty-Five Thousand Eight Hundred Ninety-Eight Dollars (\$145,898), subject to adjustment as set forth herein. The County Planning Director shall be provided with a copy of the listing agreement and sales literature for each "Residential Unit" offered for sale at a price at or below the adjusted price set forth above, and with respect to the sale of such "Residential Units", consultation shall be made with, and referrals of qualified buyers shall be accepted from, the County Department of Housing and Community Development. With the approval of the County Planning Director, Owner may satisfy the requirements of this proffer by encumbering, in a manner satisfactory to the County Attorney, other property within the New Town Property with the obligation to construct and offer for sale the "Residential Units" with the above-proffered pricing upon the same terms and conditions. Such encumbrance on other New Town Property may be changed with the prior written approval of the County Planning Director.

**6. Community Spaces.** The Sections 3 and 6 Master Plan and the Sections 3 and 6 Guidelines set forth a "Northern Focal Open Space" ("Northern Community Space"). The site plan for the Northern Community Space shall be submitted to the County prior to final approval of the site plan for that portion of New Town Avenue located on Sections 3 and 6. The Northern Community Space shall be completed or Guaranteed on or before the earlier of: i) such date as the road way striping for that portion of New Town Avenue located on Sections 3 and 6 is

completed, and ii) such date that any widening of the portion of Ironbound Road adjacent to the Property has been completed. Other open space areas ("Neighborhood Community Spaces") shall be constructed on the Property as generally depicted on the Sections 3 and 6 Master Plan. Each Neighborhood Community Space shall be completed or Guaranteed prior to the issuance of certificates of occupancy for the first building(s) adjacent to such Neighborhood Community Space. The configuration, composition, location and design of the Northern Community Space and the Neighborhood Community Spaces (collectively, the "Community Spaces") is subject to the provisions of paragraph 3@) hereof, and shall be further expressly subject to such changes in configuration, composition and location as required by governmental authorities, other than the County, having jurisdiction. The Community Spaces shall be maintained by the Commercial Association, the Residential Association and/or a Separate Association, and shall be subject to rules and regulations as may be promulgated, from time to time, by the responsible association; provided, however, no permanent barriers shall be erected or maintained to prohibit pedestrian access to the Community Spaces and the Community Spaces shall be open to the owners of the Property, their respective mortgagees, and tenants and occupants of buildings constructed on the Property and, *inter alia*, the subtenants, licensees, concessionaires, business invitees, employees and customers of all such persons.

7. Open Spaces. The Property shall be developed in compliance with applicable County open space requirements, including Section 24-524 of the Zoning Ordinance. With the approval of the County Planning Director, the applicable open space requirements in developing the Property may be met by specifically designating open space on other property within the New Town Property as and when the Property is developed if such open space requirements applicable to the Property cannot reasonably be met by identifying open space located on the

Property. Such designation of open space on the New Town Property may be changed with the prior written approval of the County Planning Director. Owner may utilize the Community Spaces or portions thereof to meet the open space requirements for the Property, provided such space meets the applicable definition of open space contained in the Zoning Ordinance.

8. Ironbound Road Right-of-Way. At such time as VDOT is prepared to improve Ironbound Road, there shall be conveyed, free of charge to the County or VDOT, in a single conveyance, an additional variable width portion of the Property lying adjacent to, and along, Ironbound Road as is necessary for the upgrade of Ironbound Road to a variable width four lane road with medians and bikeways generally as described in the Sections 3 and 6 Guidelines, which area conveyed shall be limited to, but not necessarily include all of, that portion of the Property along the easterly property line of Section 3 of the Property adjacent to Ironbound Road thereby providing additional right-of-way for Ironbound Road of a variable width up to a maximum additional area conveyed of 72 feet in width which additional width is measured from the existing western right-of-way line of Ironbound Road as shown on the applicable VDOT roadway plans on the date of conveyance.

9. Streetscapes. All site plans and subdivision plans for development within the Property shall include: (i) pedestrian connections on the Property, or the portion thereof so developed, along main roads adjoining the Property; (ii) streetscape plans for streets within the subject portion of the Property; and (iii) streetscape plans for those portions of the Property adjacent to Ironbound Road, all of which pedestrian connections and streetscapes shall be consistent with the Sections 3 and 6 Guidelines applicable to the Property. The approved streetscape plans, including, where required by the DRB pursuant to the Sections 3 and 6 Design Guidelines, street trees, the town wall or fence, sidewalks, walking trails, crosswalks, street

lighting, street furniture, and bike Lanes, and any other miscellaneous improvements required by the Sections 3 and 6 Design Guidelines and approved by the DRB, shall be implemented incrementally when development on adjoining portions of the Property is completed.

10. Bus/Transit Facilities. At least two (2) bus pull-off areas with bus stop shelters shall be constructed on the Property at locations along the proposed Discovery Boulevard and/or New Town Avenue within Sections 3 and 6 of the Property or, at the request of Owner, at such reasonable alternative locations as are approved by the County Planning Director. Design of any pull-offs and shelters shall be approved in advance by the DRB. The pull-offs and shelters shall be installed at the direction of the Planning Director, but in no event before the adjacent roadways are constructed.

11. Recreation Facilities. The Property is being developed in furtherance of a comprehensive town plan that is subject to the Sections 3 and 6 Guidelines and the Sections 3 and 6 Master Plan which provide for a more urban approach to the design of buildings and public spaces in order to avoid conventional suburban patterns and promote an environment conducive to walking. Implementation of such development design will provide for a network of sidewalks, alleyways and community areas. Specifically, in furtherance of the County Comprehensive Parks and Recreation Plan proffer guidelines (the "County Recreation Guidelines"), as in effect on the date hereof, recreation facilities in the form of the community spaces to be established on the Property shall be provided, open to all residents of the development, and maintained and regulated by the Commercial Association, the Residential Association and/or a Separate Association. Further, prior to final site plan or subdivision plan approval for more than one hundred (100) "Residential Units" on the Property, Owner shall install or Guarantee: (i) one (1) playground; (ii) one (1) urban park area; and (iii) a system of

pedestrian/jogging paths as shown on the Sections 3 and 6 Master Plan, all in accordance with the currently adopted version of the County Parks and Recreation Master Plan and as approved by the DRB and County Planning Director. Subject to review by the County Planning Director, Owner may utilize the Community Spaces to meet the aforementioned requirement to construct an urban park area.

12. Water Conservation. The owner(s) of the Property, the Residential Association, the Commercial Association and/or Separate Association(s) shall be responsible for developing and enforcing, as to the Property, water conservation standards to be submitted to and approved by James City Service Authority ("JCSA"). The standards shall address such water conservation measures as limitations on use of 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. Design features, including the use of drought tolerant grasses and plantings, a water conservation plan, and drought management plan shall be implemented to accomplish the limitation on use of public water and groundwater. The standards shall be submitted to and reviewed by the County Attorney for general consistency with this proffer and shall be approved by JCSA prior to final approval of the first site plan or subdivision plan for development of the Property or any portion thereof.

13. Contribution for Public Facilities.

(a) Water. A contribution shall be made to the County in the amount of Seven Hundred Eighty Dollars (\$780), for each individual residential dwelling unit (individually, a "Residential Unit", and collectively, the "Residential Units") developed on the Property (the "Per Unit Water Contribution"). The County shall make these monies available for development



of water supply alternatives, the need for which is deemed by the County to be generated by the development of the Property.

(b) Recreation. A playground contribution shall be made to the County in the amount of Sixty-Seven Dollars (\$67), for each Residential Unit developed on the Property in excess of two hundred ninety-four (294) Residential Units (the "Per Unit Playground Contribution"). A courts/softball field contribution shall be made to the County in the amount of Seventy-Four Dollars (\$74), for each Residential Unit developed on the Property (the "Per Unit Courts/Softball Field Contribution"). The County shall make these monies available for development of recreational facilities, the need for which is deemed by the County to be generated by the development of the Property.

(c) School Facilities. A contribution shall be made to the County in the amount of Five Hundred Eighteen Dollars (\$518) per Residential Unit for the initial one hundred fifty-five (155) Residential Units developed on the Property (the "Per Unit School Contribution"). The County shall make these monies available for acquisition of school sites and/or construction of school facilities, the need for which is deemed by the County to be generated by the development of the Property.

(d) Library Facilities. A contribution shall be made to the County in the amount of Sixty Dollars (\$60.00) for each Residential Unit developed on the Property (the "Per Unit Library Contribution"). The County shall make these monies available for the development of library space, the need for which is deemed by the County to be generated by the development of New Town.

(e) Fire/EMS Facilities. A contribution shall be made to the County in the amount of Seventy Dollars (\$70.00) for each Residential Unit developed on the Property (the

"Per Unit Fire/EMS Contribution"). The calculation of such contributions is premised upon a need for a total financial contribution for the entire New Town development of Seventy Thousand Dollars (\$70,000.00) (in 2004 dollars), said need being deemed by the County to be generated by the anticipated development of New Town. Such contribution is deemed by the County to satisfy the entire need for fire and rescue equipment and facilities generated by New Town. The County shall make these monies available for the acquisition of fire and rescue facilities and equipment, the need for which is deemed by the County to be generated by the development of New Town.

(f) The Per Unit Water Contribution, Per Unit Playground Contribution, Per Unit Courts/Softball Field Contribution, Per Unit School Contribution, Per Unit Library Contribution, and Per Unit Fire/EMS Contribution (collectively, the "Per Unit Contributions") shall be payable for each of the Residential Units to be developed within the Property at the time of final site plan or subdivision plan approval for the particular Residential Unit or grouping of Residential Units or at such other time as may be approved by the County Planning Director.

(g) Notwithstanding any other provision of these Proffers, none of the Per Unit Contributions shall be assessed for any Residential Unit with proffered pricing at or below One Hundred Nine Thousand Thirty-Four Dollars (\$109,034) as such amount may be adjusted in accordance with paragraph 17 of these Proffers.

14. Private Streets. Any and all streets within Sections 3 and 6 of the Property may be private. Pursuant to Section 24-528 of the Zoning Ordinance, private streets within the Property shall be maintained by the Residential Association, Commercial Association and/or a Separate Association, as applicable. The party responsible for construction of a private street shall deposit into a maintenance fund to be managed by the applicable Commercial Association,

Residential Association, or Separate Association responsible for maintenance of such private street an amount equal to one hundred fifty percent (150%) of the amount of the maintenance fee that would be required for a similar public street as established by VDOT – Subdivision Street Requirements. The County shall be provided evidence of the deposit of such maintenance fee amount at the time of final site plan or subdivision plat approval by the County for the particular phase or section which includes the street to be designated as private.

15. Prohibition of Restrictions on Vehicular Access. Notwithstanding anything in the Sections 3 and 6 Master Plan, the Sections 3 and 6 Guidelines and/or these Proffers to the contrary, no private streets installed pursuant to the provisions of paragraph 14 above for the purpose of providing access from Ironbound Road to the Property or adjacent properties now owned by Owner shall have erected thereon at Ironbound Road any permanent fence, gate or other structure to prohibit or restrict (except for curbs, landscaping features and other forms of traffic control measures, including, without limitation, one way streets, truck traffic limitations and traffic signals) public vehicular access from Ironbound Road to the Property and/or adjacent properties now owned by Owner.

16. Building Setback from Wetland and Other Areas. The Sections 3 and 6 Master Plan identifies a "Var. Width RPA Buffer" and a "Variable Width Non-RPA Buffer" (collectively, the "Buffer") on the Property. No building shall be constructed on the Property within fifteen (15) feet of the Buffer.

#### MISCELLANEOUS PROVISIONS

17. Consumer Price Index Adjustment. All cash contributions and pricing contained in these Proffers (collectively, the "Proffered Amounts"), to include but not be limited to housing

sales prices and Per Unit Contributions, shall be adjusted annually beginning January 1, 2005 to reflect any increase or decrease for the preceding year in the Consumer Price Index, U.S. City Average, All Urban Consumers (CPI-U) All Items (1982-84 = 100) (the "CPI") prepared and reported monthly by the U.S. Bureau of Labor Statistics of the United States Department of Labor. In no event shall the Proffered Amounts be adjusted to a sum less than the amount initially established by these Proffers. The adjustment shall be made by multiplying the Proffered Amounts for the preceding year by a fraction, the numerator of which shall be the CPI as of December 1 in the year preceding the calendar year most currently expired, and the denominator of which shall be the CPI as of December 1 in the preceding year. In the event a substantial change is made in the method of establishing the CPI, then the Proffered Amounts shall be adjusted based upon the figure that would have resulted had no change occurred in the manner of computing the CPI. In the event that the CPI is not available, a reliable government or other independent publication evaluating information heretofore used in determining the CPI (approved in advance by the County Manager of Financial Management Services) shall be relied upon in establishing an inflationary factor for purposes of increasing the Proffered Amounts to approximate the rate of annual inflation in the County.

18. Disposition of Proffered Property and Payments. In the event payment of cash and dedication of real property are proffered pursuant to these Proffers and any of such property and cash payments are not used by the County or, with respect to real property, the Commonwealth of Virginia, for the purposes designated within twenty (20) years from the date of receipt by the County, the amounts and property not used shall be used at the discretion of the Board of Supervisors of the County for any other project in the County capital improvement

plan, the need for which is deemed by the County to be generated by the development of the Property.

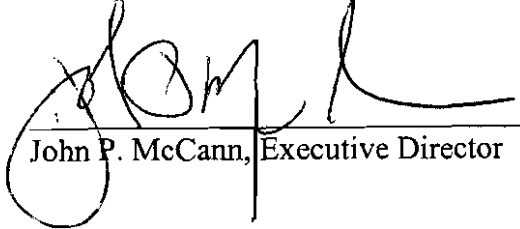
19. Successors and Assigns. This Proffer Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective heirs, successors and/or assigns. Any obligation(s) of Owner hereunder shall be binding upon and enforceable against any subsequent owner or owners of the Property or any portion thereof.

20. Severability. In the event that any clause, sentence, paragraph, subparagraph, section or subsection of these Proffers shall be judged by any court of competent jurisdiction to be invalid or unenforceable for any reason, including a declaration that it is contrary to the Constitution of the Commonwealth of Virginia or of the United States, or if the application thereof to any owner of any portion of the Property or to any government agency is held invalid, such judgment or holding shall be confined in its operation to the clause, sentence, paragraph, subparagraph, 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, subparagraph, section or provision hereof.

21. Headings. All paragraph and subparagraph headings of the Proffers herein are for convenience only and are not a part of these Proffers.

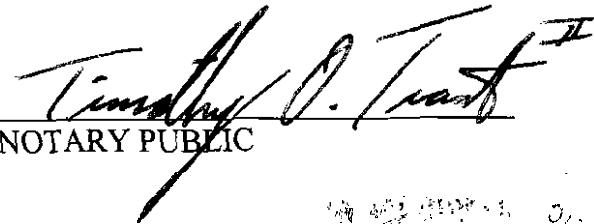
WITNESS the following signature, thereunto duly authorized:

NEW TOWN ASSOCIATES, LLC

By:   
John P. McCann, Executive Director

COMMONWEALTH OF VIRGINIA  
~~CITY~~/COUNTY OF James City, to wit:

The foregoing instrument was acknowledged before me this 25th day of October, 2004 by John P. McCann as Executive Director of New Town Associates, LLC, a Virginia limited liability company, on its behalf.

  
NOTARY PUBLIC

My commission expires: 2/28/2005

#6056453 v9



**EXHIBIT A**

All those certain pieces, parcels, or tracts of land shown as "Section 3" and "Section 6" on that certain plan entitled "NEW TOWN SECTIONS 3 & 6 MASTER PLAN BERKELEY DISTRICT JAMES CITY COUNTY, VIRGINIA", dated April 26, 2004, prepared by AES Consulting Engineers, a copy of which is on file with the County Planning Director.

**EXHIBIT B**

All those certain lots, pieces or parcels of land owned by New Town Associates, LLC as of the date of execution of these Proffers lying and situate in Sections 2, 3, 4, 6, 7, 8, and 9 of the "New Town" development area in the Berkeley District, James City County, Virginia, as the same are shown on that certain plat entitled "Master Plan" dated July 23, 1997, revised December 2, 1997, prepared by AES Consulting Engineers and Cooper, Robertson & Partners, a copy of which is on file with the James City County Planning Director as a part of case number Z-04-97.

VIRGINIA: CITY OF WILLIAMSBURG & COUNTY OF JAMES CITY  
This document was admitted to record on 28 Oct-04  
at 3:25 AM/PM, ME taxes imposed by Virginia Code  
Section 58.1-801, 58.1-802 & 58.1-814 have been paid.  
STATE TAX LOCAL TAX ADDITIONAL TAX  
\$ \_\_\_\_\_ \$ \_\_\_\_\_ \$ \_\_\_\_\_  
TESTE: BETSY B. WOOLRIDGE, CLERK  
BY: Betsy B. Woolridge Clerk