

AT A REGULAR MEETING OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE 13TH DAY OF SEPTEMBER 2005, AT 7:00 P.M. IN THE COUNTY GOVERNMENT CENTER BOARD ROOM, 101 MOUNTS BAY ROAD, JAMES CITY COUNTY, VIRGINIA.

**A. ROLL CALL**

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

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

**B. MOMENT OF SILENCE**

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

**C. PLEDGE OF ALLEGIANCE**

Sarah Phillips, a fifth-grade student at D. J. Montague Elementary School, and Matthew Phillips, a second-grade student at D. J. Montague Elementary School, led the Board and citizens in the Pledge of Allegiance.

**D. PRESENTATION**

1. Exceptional Service Award—Mr. Brian Williamson

Mr. Brown presented Brian Williamson with an Exceptional Service Award for his quick response of first aid on June 9, 2005. When Mr. Bill Brown was working in Stonehouse and was struck by a six-foot shard of timber traveling at roughly 60 MPH, Mr. Williamson immediately came to his aid, providing treatment for shock and injuries until emergency services arrived. Mr. Williamson's speedy response in a time of emergency directly resulted in Mr. Brown's survival.

**E. PUBLIC COMMENT**

1. Mr. Richard Streko, 6061 Allegheny Road, referenced a referendum voted for in November for school construction; inquired how the funding to cover the shortfall will be covered; and requested an additional referendum or delay until construction costs level off.

2. Mr. John E. Hall, 117 Olde Jamestown Court, addressed the Board stating that the requirement of a plastic ID card to ride a bus was unfair to younger riders that may not have an acceptable ID card, and requested adequate heating and cooling as well as gymnasium space be offered at all three high school facilities.

3. Mr. Richard Foley, 2780 Jonas Profit Trail, stated that the current price gouging by oil companies should be investigated by the Commonwealth with the County's support for the investigation.

4. Mr. Kenneth Eastman, 2804 Ann Johnson Lane, stated that real property tax dollars are based on the County's assessments which he deemed unreasonable. Mr. Eastman requested for the Board to immediately correct the situation. He suggested that assessments be made by larger areas rather than by subdivisions.

5. Ms. Elli Williams, 3509 Mott Lane, introduced herself as the new PTA Council president and requested the Board to keep the needs of the community's youth in mind in all its deliberations. She also invited the Board to contact the PTA Council regarding any concerns.

6. Mr. Brian Oyer, 9025 Barnes Road, stated that growth has gotten out of control in the County and the Board has not monitored or controlled the growth in the community that negatively impacts the public services of the community. Mr. Oyer commented on the assessment increases in the past few years. He also stated that the appeals process for real estate assessment is inadequate in its support to the citizens.

7. Mr. Ed Oyer, 139 Indian Circle, commented on the work of the military and reserve. Mr. Oyer also stated that realtors need to justify the sale prices of homes in the Grove community. He was also concerned that the fess assessed by the County on the telephone bills has increased.

8. Ms. Betty Smith, 9347 Barnes Road, objected to an assessment increase on homes. She wanted to know where and how the assessment revenue will be allocated.

9. Ms. Margaret T. Hill, 4495 Centerville Road, stated that 60 to 70 percent assessment increases in a year are unfair to the citizens.

10. Mr. Kingston Fairclough, 4 Peale Court, stated that the assessments are where the citizens are hit the hardest. Mr. Fairclough said the tax rates can be adjusted as much as you want but the assessment increases are unnecessary. He requested equal assessments across the County and suggested that a Master Plan for the County should be developed to control and to address the assessment issues.

## **F. CONSENT CALENDAR**

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

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

1. Minutes - August 9, 2005. Regular Meeting

2. Dedication of Streets in Wexford Hills. Phases 3A and 1B

**RESOLUTION**

**DEDICATION OF STREETS IN WEXFORD HILL. PHASES 3A AND 1B**

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

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

WHEREAS, the County and the Virginia Department of Transportation entered into an agreement on July 1, 1994, for comprehensive stormwater detention which applies to this request for addition.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby requests the Virginia Department of Transportation to add the streets, described on the attached Additions Form LA-5A, into the secondary system of State highways, pursuant to 533.1-229 of the Code of Virginia, and the Department's Subdivision Street Requirements.

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

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

3. Creation of Full-Time Permanent Senior Office Assistant Position - General Services

**RESOLUTION**

**CREATION OF FULL-TIME PERMANENT SENIOR OFFICE ASSISTANT POSITION -**

**GENERAL SERVICES**

WHEREAS, General Services is requesting the elimination of two part-time permanent Custodian positions at 1,560 hours each and the establishment of a full-time permanent Senior Office Assistant to help address the growing workload of the General Services Department and to free up the time of other staff to perform non-administrative duties; and

WHEREAS, General Services has been outsourcing custodial services as positions have become vacant and by eliminating two part-time permanent custodial positions can establish a full-time permanent Senior Office Assistant position without adding to the total number of full-time equivalent (FTE) positions in the Department; and

WHEREAS, General Services currently has one part-time permanent (20 hours/week) Senior Office Assistant whose is providing administrative support to all General Services, including General Services Administration, Facilities and Grounds Maintenance, Custodial, Fleet and Equipment, Capital Projects, and Contract Administration.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby eliminates two part-time permanent Custodian position at 1,560 hours each and creates the full-time permanent position of Senior Office Assistant in General Services effective September 16,2005.

4. Creation of Executive Director Position - Williamsburg Area Transport

**RESOLUTION**

**CREATION OF EXECUTIVE DIRECTOR POSITION**

**WILLIAMSBURG AREA TRANSPORT**

WHEREAS, James City County is working with regional partners to create the Williamsburg Area Transport Authority; and

WHEREAS, funds were included in the approved FY 06 budget for the position of Executive Director.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, creates the full-time limited-term position of Executive Director of Williamsburg Area Transport, effective September 16,2005.

5. Office of Justice Programs of the Department of Justice - Justice Assistance Grant (JAG)

**RESOLUTION**

**OFFICE OF JUSTICE PROGRAMS OF THE DEPARTMENT OF JUSTICE -**

**JUSTICE ASSISTANCE GRANT (JAG)**

WHEREAS, the Office of Justice Programs of the Department of Justice -Justice Assistance Grant (JAG) has awarded the James City County Police Department a grant in the amount of \$12,643; and

WHEREAS, the grant requires no local matching funds; and

WHEREAS, the funds will be used to purchase an advanced Child ID Kit System that will allow officers to create an ID card, similar to a credit card, with the child's digital photograph and one digital fingerprint, thus enhancing the productivity and the capability of the Department's Community Services Unit (CSU) by saving man-hours and expenses involved with film and replacement blank ID kits; and

WHEREAS, the grant expires August 30,2008, thus allowing any unexpended funds as of June 30,2006, June 30,2007, and June 30,2008, to be carried forward to James City County's next fiscal year appropriately.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the following appropriation to the Special Projects/Grants Fund:

Revenue:

Police JAG Child ID Grant \$12,643

Expenditure:

Police JAG Child ID Grant \$12,643

6. Revenue Sharing Project Amendment - Watford Lane (Route 763)/Carriage Road (Route 672)

**RESOLUTION**

**REVENUE SHARING PROJECT AMENDMENT –**

**WATFORD LANE (ROUTE 763)/CARRIAGE ROAD (ROUTE 672)**

WHEREAS, the James City County Board of Supervisors is participating in the Virginia Department of Transportation (VDOT) Revenue Sharing Program for FY 2006-07; and

WHEREAS, the James City County Board of Supervisors has decided to amend one Revenue Sharing project; and

WHEREAS, VDOT requires written notification of the County's new project description,

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of James City County, Virginia, that VDOT is hereby requested to amend the FY 2006 Revenue Sharing Project list to include an amended project description as Watford Lane (Route 763)/Carriage Road (Route 672).

7. Revisions to the Family and Medical Leave, Civil Leave, and Overtime Policies of the James City County Personnel Policies and Procedures Manual

**RESOLUTION**

**REVISIONS TO THE FAMILY AND MEDICAL LEAVE, CIVIL LEAVE, AND**

**OVERTIME POLICIES OF THE JAMES CITY COUNTY**

**PERSONNEL POLICIES AND PROCEDURES MANUAL**

WHEREAS, it's the practice of the County to periodically review its personnel policies for conformance to laws and alignment with the County's values; and

WHEREAS, the Family and Medical Leave Act (FMLA) of 1993 policy description, employee requirements, and supervisor responsibility were revised to clarify provisions of the law; and

WHEREAS, the Civil Leave policy was changed to conform with changes in the law related to jury duty; and

WHEREAS, the Overtime policy was changed to clarify provisions in the Federal Labor Standards Act.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby adopts the attached revisions to Sections 5.4.D, 5.4.E.4 and 4.14 of the James City County Personnel Policies and Procedures Manual.

8. Appropriation to the Peninsula Health District - \$11,392

**RESOLUTION**

**APPROPRIATION TO THE PENINSULA HEALTH DISTRICT - \$11,392**

WHEREAS, the Peninsula Health District received an unexpected increase of \$128,543 in the State allocation for local match; and

WHEREAS, James City County's share of the match is \$11,392.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby appropriates \$11,392 from Contingency to the Peninsula Health District.

9. 400th Anniversary Commemorative Circle Williamsburg/James City County Courthouse

**RESOLUTION**

**400TH ANNIVERSARY COMMEMORATIVE CIRCLE**

**WILLIAMSBURG/JAMES CITY COUNTY COURTHOUSE**

WHEREAS, the Honorable Samuel T. Powell, III, has requested James City County and the City of Williamsburg authorize the expenditure of up to \$19,775 for design and construction documents for the development of a 400th Anniversary Commemorative Circle at the Williamsburg/James City County Courthouse; and

WHEREAS, the Board of Supervisors has authorized the assessment of a courthouse maintenance fee and in partnership with the City of Williamsburg operates a joint courthouse; and

WHEREAS, the Courthouse is in the City of Williamsburg and the City of Williamsburg services as financial agent for the Courthouse Maintenance Funds; and

WHEREAS, funds are available in the City/County Courthouse Maintenance Fund to allow for enhancements to the Courthouse.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes, subject to similar approval by the City Council of Williamsburg, the following expenditure.

Revenues:

Courthouse Maintenance Fund

Expenditure:

400th Anniversary Commemorative Circle

\$19,775

10. Resolution of Appreciation - York County

**RESOLUTION OF APPRECIATION**

**YORK COUNTY**

WHEREAS, on August 6, 2005, a devastating bolt of lightning struck the James City County Emergency Communications Center (ECC); and

WHEREAS, that bolt of lightning rendered all electronic systems in the ECC inoperable including the microwave radio dispatch communications system, the 911 telephone system, and the Computer Aided Dispatch System; and

WHEREAS, York County and James City County have had a long-standing operational plan for just such a situation that allows the two counties to swap emergency communication functions; and

WHEREAS, staff from the York County Communications Center took on the tasks of answering all County 911 calls and Dispatching all Emergency Calls until the arrival of James City County Emergency Telecommunicators; and

WHEREAS, York County hosted the functions and staff of the James City County Emergency Communications Center for the next five days, thus insuring the timely dispatch and response of Emergency Fire, Police, and EMS crews for the residents and visitors of James City County.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby extends its thankful appreciation to the citizens, Board of Supervisors, and the Emergency Communications Center staff of York County, Virginia.

11. Chesapeake Bay Preservation Ordinance Violation - Civil Charge - George Amrein

**RESOLUTION**

**CHESAPEAKE BAY PRESERVATION ORDINANCE VIOLATION -**

**CIVIL CHARGE - GEORGE AMREIN**

WHEREAS, George Amrein is the owner of a certain parcel of land, commonly known as 184 The Maine, designated as Parcel No. (02-65) on James City County Real Estate Tax Map No. (45-4) herein referred to as the ("Property"); and

WHEREAS, on or about July 8, 2005, George Amrein caused to be removed approximately 17 trees and shrubs from within the Resource Protection Area (RPA) on the Property; and

WHEREAS, George Amrein agreed to a Restoration Plan to replant eight canopy trees, eight understory trees, and 18 shrubs on the Property in order to remedy the clearing violation under the County's Chesapeake Bay Preservation Ordinance. Mr. Amrein has posted sufficient surety guaranteeing the installation of the aforementioned improvements and the restoration of the RPA on the Property; and

WHEREAS, George Amrein has agreed to pay \$1,000 to the County as a civil charge under the County's Chesapeake Bay Preservation Ordinance; and

WHEREAS, the James City County Board of Supervisors is willing to accept the civil charge in full settlement of the Chesapeake Bay Preservation Ordinance violation, in accordance with Sections 23-10 and 23-18 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 \$1,000 civil charge from George Amrein as full settlement of the Chesapeake Bay Preservation Ordinance Violation.

12. First Amendment to Amended and Restated Coaerative Service Agreement

**RESOLUTION**

**FIRST AMENDMENT TO AMENDED AND RESTATED**

**COOPERATIVE SERVICE AGREEMENT**

WHEREAS, James City County ("County") entered into an Amended and Restated Cooperative Service Agreement ("Service Agreement") on August 1, 1995 with the Virginia Peninsula Regional Jail Authority ("Jail Authority"), which provides for the financing, construction, and operation of the Jail Authority; and

WHEREAS, the First Amendment to Amended and Restated and Cooperative Service Agreement ("Amendment Agreement") modifies the Service Agreement by removing a Per Diem Charge for use of the Jail Authority and incorporating a monthly Member Jurisdiction Charge in its place; and

WHEREAS, the Board of Supervisors is of the opinion the County should execute the Amendment Agreement to incorporate the Member Jurisdiction Charge to the Service Agreement.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby authorize and direct the County Administrator, to execute the Amendment Agreement in order to incorporate the Member Jurisdiction Charge to the Service Agreement.



13. Award of Contract - Toano Convenience Center

**RESOLUTION**

**AWARD OF CONTRACT – TOANO CONVENIENCE CENTER**

WHEREAS, bids were advertised for construction of the Toano Convenience Center at 185 Industrial Boulevard, Toano; and

WHEREAS, bids were received and O.K. James Construction, Inc., was the lowest responsive and responsible bidder with a bid of \$295,143; and

WHEREAS, funds are available in the current Capital Improvements Program (CIP) budget for this project.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the County Administrator to execute a contract in the amount of \$295,143 with O.K. James Construction, Inc., for the construction of the Toano Convenience Center.

14. Agreement for Powhatan C Election Precinct

**RESOLUTION**

**AGREEMENT FOR POWHATAN C ELECTION PRECINCT**

WHEREAS, the James City County Electoral Board is required to conduct elections in the County of James City; and

WHEREAS, the Greensprings Chapel has offered to provide a polling place for the Powhatan C Precinct.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, authorizes and directs the County Administrator to execute a lease agreement between James City County and the Greensprings Chapel for the establishment of a polling place for the Powhatan C Precinct.

15. Easement, Dominion Virginia Power - Emergency Communications Center

**RESOLUTION**

**EASEMENT, DOMINION VIRGINIA POWER – EMERGENCY COMMUNICATIONS CENTER**

WHEREAS, James City County owns 4.79± acres, commonly known as the James City County Emergency Operations Center site and Fire Station 1 designated as Parcel No. (1-27) on James City County Real Estate Tax Map No. (12-3); and

WHEREAS, Dominion Virginia Power requires a 15-foot utility easement in order to provide electrical service to the Emergency Communications Center presently under construction; and

WHEREAS, the Board of Supervisors is of the opinion that it is in the public interest to convey a utility easement to Dominion Virginia Power.

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 Agreements and such other documents necessary to convey a utility easement to Dominion Virginia Power for the Emergency Communications Center.

## **G. PUBLIC HEARINGS**

### **1. Proposed Real Property Tax Rate and Budget Amendments**

Mr. John E. McDonald, Manager of Financial and Management Services, provided an overview of the Proposed Real Property Tax Rate and Budget Amendments. These proposed changes cite § 58.1-3321 of the Code of Virginia which states that any general reassessment that increases property values by more than one percent shall result in a lowering of the real property tax rate to a levy that would produce the same revenue as the locality actually collected in the prior year. Therefore, the 14.6 percent increase would merit lowering the current tax rate from 82.5 cents to 72 cents to match the prior year's revenue. The State Code allows for this rate to be increased during a public hearing that is subsequent to the budget public hearing. The resolution proposes to reduce the tax rate from 82.5 cents to 79 cents per \$100 assessed, and to amend the FY 2006 budget by appropriating \$2,313,200.00 into two parts--\$1,600,000.00 to increase funding for the new high school and \$713,200 for debt service reserve in anticipation of an issuance of debt for several school projects.

Mr. Brown opened the Public Hearing.

1. Mr. Richard Streko, 6061 Allegheny Road, requested the Board consider a tax rate reduction to \$.72/\$100 and consideration of those citizens on fixed-income and senior citizens. He also requested a subsequent referendum to address the school facility issues.

2. John E. Hall, 117 Olde Jamestowne Court, stated that senior citizens in the Hampton Roads area cannot afford increased assessments and subsequent tax bills.

3. Mr. Curtis Barbor, 20 Hill Top Court, commented that the assessment on his home increased by \$300 in just over 10 years while his retirement income has dropped by 10 percent in that same time frame. Mr. Barbor stated that inflation has increased on almost everything else and requested that the Board reduce the tax rate to at least \$.72/\$100 but would prefer \$.70/\$100 which, he stated will still provide the County adequate funding for operations. He said that County taxes are two-and-a-half times higher than his Federal Taxes and utilities, trash, rubbish, and recycling fees are additional to the taxes paid. He stated that the funds should support the public services such as fire, police, and libraries, and not as much should be appropriated for schools.

4. Ms. Kelly Osterhout, President of Williamsburg-James City Education Association, stated concern about improving the quality of public schools in the community and asked the Board to support staff recommendation on tax rates so classrooms and educational needs are addressed. The increased funds could reduce over-crowding of schools and support facility expansions/renovations.

5. Mr. Mike Ludwick, 4493 Village Park West, commented on the assessment increases and funding for the school facilities and requested the Board to support the school facilities and keep the tax rate at the level recommended by staff.

6. Mr. William Beck, 7988 Richmond Road, commented that his Real Property taxes are increasing and he and his wife are on fixed-incomes and the assessments are unjustified. Mr. Beck inquired how many citizens in the County are on fixed-incomes. He also requested the Board not conduct business in a tax-and-spend method.

7. Ms. Betty Smith, 9347 Barnes Road, requested the Board support a lower real property tax rate than \$0.72/\$100.

8. Mr. Ed Oyer, 139 Indian Circle, commented on the structure of the fence line in his community. He stated that he does not have public water/sewer service yet his assessment went up 6% higher than the neighboring home that is newer and has public utility service. He requested justification for the assessment increase on his property. Mr. Oyer commented on the increased traffic on Route 60 East. He recommended the County pay for schools or pay for recreation because the citizens of the community cannot afford to support both of these options.

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

Mr. Harrison inquired how many physical assessments were conducted.

Mr. McDonald stated that approximately 6,000 parcels were inspected for assessments. He also suggested those that feel their assessment is unfair request an assessment from real estate assessors and perhaps appeal to the Equalization Board if the assessment overestimates the value of the property.

Mr. Harrison inquired whether or not the assessments would be more level if more inspections were conducted.

Mr. Goodson inquired if the State investigates the assessments.

Mr. McDonald stated that the Code of Virginia is up for change, but until the change is made, the County must conduct assessments according to the current Code.

Mr. McGlennon stated that although the assessments were dramatic in the increase scope, it does accurately reflect the values of homes and the County has experienced a larger increase of costs than anticipated which also needs to be addressed; and while it is a difficult choice to make, the Board does have to find additional revenue while being moderate in the review.

Mr. McGlennon stated that in the spring the Board discussed that the County does have a program to assist seniors at or below an income level to be exempt from the taxes; and requested the Board review the program and see if it is effective and review it to see if the program needs to be adjusted.

Mr. McGlennon made a motion to adopt the resolution presented by staff.

Mr. Bradshaw requested Mr. McDonald provide an overview of the program.

Mr. McDonald stated that the Commissioner of Revenue funds the program for elderly that exempts, not defers, a portion of property taxes for those who meet certain income, assets, disability, or other restraints. The Commissioner of Revenue can offer assistance to those who may qualify for this program.

Mr. Bradshaw concurred with Mr. McGlennon to review the program and its qualification guidelines; and stated that he can support a moderate rate rather than one that will require a rate hike in a few years to compensate.

Mr. Brown stated that the budget was developed based upon an expected 7.8 percent increase, and he saw the land book was considerably higher. He recommended the County not collect revenue from the citizens and offered an amendment to the motion to reduce the tax rate by ~~\$.04/\$100~~.

The Board discussed the proposed amendment to reduce the collection from citizens above the budgeted collection figures.

Mr. Wanner called a vote to accept the motion to reduce the tax rate to \$0.785.

On a roll call vote, the vote was: AYE: Harrison, Goodson, Brown (3). NAY: McGlennon, Bradshaw (2).

Mr. Wanner called a vote on the tax rate of \$0.785.

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

RESOLUTION

PROPOSED REAL PROPERTY TAX RATE AND BUDGET AMENDMENTS

WHEREAS, the James City County Board of Supervisors has received the results of the County's general reassessment of real property included in the land book of July 1, 2005; and

WHEREAS, the results of that general reassessment produces an effective 14.6% increase in real property taxes for the average James City County property owner; and

WHEREAS, additional unbudgeted real property tax proceeds are the result of a larger than anticipated growth in the value of new construction; and

WHEREAS, public hearings were advertised as required by the Code of Virginia on a proposal to reduce the real property tax rate and budget amendments that impact the FY 2006 general, capital and debt service funds of the County.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, approves a real property tax rate of \$.785 per \$100 of assessed value for the fiscal year ending June 30, 2006.

BE IT FURTHER RESOLVED that the Board of Supervisors authorizes the following budget amendments for FY 2006 and appropriates these sums, as follows:

Operating Revenues		
Real Property Taxes	add	\$ 1,912,200
Operating <b>Expenditures/Transfers</b>		
Transfer to Capital Projects	add	\$ 1,600,000
Transfer to Debt Service	add	\$ 312,200
Capital Project Revenues		
Bond Proceeds	add	\$ 1,920,780
Transfer from Operating Budget	add	\$ 1,600,000

Capital Project Expenditures

Third High School	add	\$ 3,520,780
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Debt Service Revenues

Transfer from Operating Budget	add	\$ 312,200
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Debt Service Expenditures

Debt Service Reserve	add	\$ 1,012,200
Warhill/Stadium Financing	deduct	\$ ( 700,000)

2. Case No. Z-10-05/MP-07-05/SUP-17-05. Villages At White Hall (La Grange) Case No. Z-11-05/MP 08-05/SUP-18-05. Villages at White Hall ("Three Villages": Taskinas, Hickory Neck, and Rochambeau)

Mr. Bradshaw stated that he previously represented the property owner and trustee; however, he no longer represented either at the time of the meeting and could participate objectively and fairly.

Mr. Matthew J. Smolnik, Planner, stated that Mr. Vernon Geddy has submitted an application on behalf of Gayle Rauch of Rauch Development Company, LLC, to rezone 161.35 acres from A1, General Agricultural District and B-1, General Business District, to: R-2, General Residential District, Cluster Overlay, with proffers; R-5 Multifamily Residential District, Cluster Overlay, with proffers; and B-1, General Business District, with proffers. These projects have been presented in two separate zoning applications (La Grange Village and Taskinas, Rochambeau, and Hickory Neck Villages ("The Three Villages")) but the applicant views them as parts of one development. As a result, staff reviewed the two applications separately on their individual merits. An 8,000-square-foot building would also be erected near Rochambeau Drive in the proposed B-1, General Business District with proffers.

Staff found that the two cases sufficiently address technical issues addressed. Staff's recommendation hinges on qualitative but key findings called for in the Comprehensive Plan, including whether the proposal:

- ◆ Adequately helps achieve the Anderson's Comer vision of creating a traditional rural village with open land and farm fields
- ◆ Adequately protects historic structures and scenic vistas
- ◆ Provides adequate public benefits
- ◆ Seeks an appropriate density given the surrounding development and adequacy of proposed buffers

On August 1, 2005, the Planning Commission voted 6-1 to approve the applications for LaGrange, Taskinas, Hickory Neck, and Rochambeau Villages.

Staff recommends the James City County Board of Supervisors approve the rezoning, SUP, and master plan application for Taskinas, Rochambeau, and Hickory Neck Villages, accepting the voluntary proffers, and applying the SUP conditions offered.

Staff recommended deferring the rezoning, SUP, and master plan application for La Grange.

The Board and staff discussed potential uses for a buffer along Route 60 including agricultural operation or just fencing it in with a three-rail fence to give an agricultural feel to the area. Also, the Board and staff discussed the proffer permitting agricultural structures on the land.

The Board and staff discussed prohibiting wayside stands and farmer's markets by-right in this zoning. It was stated that the buffer was owned by the Homeowners Association (HOA) and the land could be leased out to someone for agricultural means, but if the area is not agriculturally developed, then it is the responsibility of the HOA to maintain the buffer.

The Board and staff discussed the selling prices for the units, the B-1 zoned parcel, and the types of by-right uses for the existing zoning.

Mr. Brown opened the Public Hearing.

1. Mr. Vernon M. Geddy, III, representing the applicant, provided an overview of the applications and proposed development, and requested the Board approve the applications.

Mr. Brown requested clarification on the LaGrange proffers and deferral request

Mr. Vernon M. Geddy, III stated that the La Grange application and proffers were acceptable to all parties since July. The focus has been on the three villages and amended proffers were submitted in consideration of the concerns voiced.

Mr. Donald Hunt, Planning Commission, stated that the Planning Commission was comfortable with the La Grange proffers as presented since July.

Mr. Leo P. Rogers stated that if the applicant wanted to offer this proffer amendment, he and the applicant could take a moment and work something out that the Board can act on.

The Board, Mr. Vernon M. Geddy, III, and Mr. Rogers discussed the proffers for the La Grange and concurred to consider language to make the two sets of proffers similar in regard to the \$100 and turf management.

Mr. Bradshaw and Aaron Small with AES Consultant Engineers discussed offsite areas and their uses. Mr. Small discussed about 60 acres flowing into the stormwater control region, including Hickory Neck Church, Stonehouse School property, and the property just north of the "Three Villages"

1. Mr. Burt Geddy, 8297 Richmond Road, stated support for the proposal and stated that the proposal is an acceptable use for the site.

2. Ms. Terry Hudgins, 111 Knollwood Drive, president of Stonehouse District Citizens' Association, stated that her organization opposed this proposed development. They requested studies of an area prior to its development. On her own behalf, she requested an adequate study performed before any development of Anderson's Comer is permitted.

3. Ms. Linda Rice, 2394 Forge Road, representing Friends of Forge Road and Toano, thanked citizens for their support. Ms. Rice also recommended the approval of a study of the Anderson's Comer area and its integration with the study of Toano prior to the approval of the proposals before the Board. She stated concern about the impact these proposals may have on public services. She commented that the Charter for New Initiatives before the Board included points which the citizens of this County have spoken on numerous times and the need to focus on regionalism.

4. Mr. Tim Trant, Kaufman and Canoles attorney, with Stonehouse of Williamsburg, LLC, stated that regional transportation improvements were required as part of its development. Mr. Trant expressed concern about proposed development and its impact on the transportation improvements required. He requested the Board consider applications in the future with transportation impacts and to develop a regional transportation plan that would have Development contribute to the transportation infrastructure.

Mr. McGlennon inquired whether or not a cash proffer existed for transportation

Mr. Trant suggested a Transportation Master Plan which would identify improvements required and which developments would have to make or contribute to such improvements.

5. Ms. Ann Dieterle, 3811-D Cast Steeplechase Way, Associate Rector of Hickory Neck Episcopal Church, spoke on behalf of the Rector of the Hickory Neck Church who was unable to attend this meeting. She stated that the Hickory Neck Church sits on 12.5 acres adjacent to site and offers support for White Hall Villages.

6. Ms. Elizabeth Krome, 2401 Richmond Road, stated that the developer has been responsive to community inputs. Ms. Krome stated that earlier in the evening many citizens spoke about the **struggles** they have in supporting the basic needs of the community through increased taxes. She requested the Board take the long-range view of the development and its impacts on the public services

7. Mr. Charlie Crawford, 7849 Church Lane, stated that this is a good proposal and the applicant has been exceptionally responsive to community input, and requested approval of the Board.

8. Mr. Kingston Fairclough, 4 Peale Court, stated that the Board of Supervisors will determine the amount of cost to be added to develop the area. He stated this development should be turned down and further study should be done about zoning variance.

9. Ms. Mary McGune Delara, 92 Sand Hill Road (off Olde Stage Road where it meets Rochambeau Drive), stated that VDOT conducted a study of traffic along Rochambeau Drive. Ms. Delara was in opposition of blocking of Old Stage Drive and an inherent creation of a hazardous traffic situation. She stated that the intersection of Old Stage and Rochambeau is safe when vehicles obey traffic laws. She requested further traffic studies to be conducted before any road changes and building permits are issued. She would like a **traffic** speed study conducted for Rochambeau Drive and Old Stage Road.

11. Mr. Jerry Jutras, 102 Plains View Road, supported the rezoning and proposed development.

12. Mr. Willard Delara, 92 Sand Hill Road, requested clarification of the by-right uses for B-1 zoning.

Mr. Smolnick clarified that convenience **centers/stores** are not permitted by-right after the rezoning to B-1 with proffers.

Mr. Rogers responded that convenience **centers/stores** are specially permitted use, not by-right.

Mr. Delara stated that he understood that a full document traffic study would be conducted after 75 percent of of the housing units are developed. Mr. Delara expressed concern about Old Stage Road and Rochambeau Drive and the traffic impacts of the development. He request speed **control/enforcement** and encouraged VDOT to review the traffic speed on Rochambeau and Croaker Road's two-lane portion.

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

Mr. Harrison inquired about the proffer that puts a cap on development and what impact that has on the other set of proffers.

Mr. Vernon Geddy explained that the proffers cap to 63 units per year for seven years with the balance being built in year seven. Mr. Geddy explained that this limit slows the process even further once the land is subdivided. This gives the County the advantage of certainty concerning development pace.

Mr. Harrison inquired about amount of fiscal impact on the number of units developed

Mr. Geddy responded that as the units developed, the fiscal impact should stay in sync,

Mr. Bradshaw inquired what options are available if the agricultural use is not implemented in the buffer and if there is an indication from the Board to direct staff to look into any particular option.

The Board discussed the proposal to have staff be innovative in ways to resolve this use.

Mr. Rogers stated that the applicant has proffered through council to offer by reference the same proffer for turf management and cash proffer and will convert the offer into a new proffer document if approved by the Board.

The Board discussed the proposal, its merits, and its impacts on the public service infrastructures and area studies.

Mr. Brown made a motion to approve the four resolutions for the rezoning and development with the amended proffers.

On a roll call vote, AYE: Goodson, Bradshaw, Brown (3). NAY: Harrison and McGlennon (2).

## **RESOLUTION**

### **CASE NO. SUP-17-05. VILLAGES OF WHITE HALL (LAGRANGE)**

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

WHEREAS, the applicant has requested to develop the following parcels at a density of 3.46 dwelling units per acre; and

WHEREAS, the property is currently zoned A-1, General Agriculture, designated Low Density Residential on the 2003 Comprehensive Plan Land Use Map; and

WHEREAS, the property can be identified as Parcel Nos. (03-01), (03-02), and (01-21) on the James City County Real Estate Tax Map No. (12-1) and Parcel No. (01-21) on the James City County Real Estate Tax Map No. (12-2); and

WHEREAS, the applicant has submitted an application to rezone the above mentioned properties; and

WHEREAS, on August 1, 2005, the Planning Commission recommended approval of the application by a vote of 6-1.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve the issuance of SUP-17-05 as described herein with the following conditions:

1. A master water and sewer plan for all Villages shall be submitted for review and approval by the JCSA prior to the submittal of any development plans for any portion of property.
2. Prior to the submittal of any development plans for any portion of the Villages of White Hall project, a land disturbing permit with surety will be issued by the Environmental Division after review and approval of an erosion control plan, to mitigate impacts from the current environmental violation located within LaGrange Village located on Tax Parcel (12-2)(1-21).



3. This SUP is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder

### **RESOLUTION**

#### **CASE NO. Z-10-05/MP-7-05. VILLAGES OF WHITEHALL (LAGRANGE)**

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 notified, and a hearing scheduled on Zoning Case No. **Z-10-05/MP-7-05**, with Master Plan, for rezoning 22.81 acres from **A-1, General Agricultural**, to **R-2, General Residential**, with proffers; and

WHEREAS, the Planning Commission of James City County, following its public hearing on August 1, 2005, recommended approval of Case No. **Z-10-05IMP-7-05**, by a vote of 6 to 1; and

WHEREAS, the properties are located at 8716,8724, and 8720 **Barhamsville Road** and 3225 Old Stage Road and further identified as Parcel Nos. (3-2), **(3-1)**, and **(1-21)** on James City County Real Estate Tax Map No. (12-1) and Parcel No. (1-21) on James City County Real Estate Tax Map No. (12-2).

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve Case No. **Z-10-05IMP-7-05** and accept the voluntary proffers.

### **RESOLUTION**

#### **CASE NO. SUP-18-05. VILLAGES OF WHITE HALL**

#### **(TASKINAS, HICKORY NECK, AND ROCHAMBEAU)**

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

WHEREAS, the applicant has requested to develop the following parcels at a density of 3.0 dwelling units per acre; and

WHEREAS, the property is currently zoned **A-I, General Agriculture**, and **B-1, General Business**, designated **Low Density Residential** on the 2003 Comprehensive Plan Land Use Map; and

WHEREAS, the property can be identified as Parcel Nos. **(01-14)**, **(01-18)**, **(01-19)**, **(01-22)**, and **(01-24)** on the James City County Real Estate Tax Map No. (12-2); and

WHEREAS, the applicant has submitted an application to rezone the above mentioned properties; and

WHEREAS, on August 1, 2005, the Planning Commission recommended approval of the application by a vote of **6-1**.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve the issuance of **SUP-18-05** as described herein with the following conditions:

1. A master water and sewer plan for all Villages shall be submitted for review and approval by the JCSA prior to the submittal of any development plans for any portion of property.
2. Prior to the submittal of any development plans for any portion of the Villages of White Hall project, a land disturbing permit with surety will be issued by the Environmental Division after review and approval of an erosion control plan, to mitigate impacts from the current environmental violation located within LaGrange Village located on Tax Parcel (12-2)(1-21).
3. This SUP is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder

## RESOLUTION

### CASE NO. Z-11-05/MP-8-05. VILLAGES OF WHITEHALL

#### (TASKINAS, HICKORY NECK. AND ROCHAMBEAU)

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 notified, and a hearing scheduled on Zoning Case No. Z-11-05/MP-8-05, with Master Plan, for rezoning 138.54 acres from A-1, General Agricultural and B-1, General Business, to R-2, General Residential, with proffers, R-5, Multifamily Residential, with proffers, and B-1, General Business, with proffers; and

WHEREAS, the Planning Commission of James City County, following its public hearing on August 1, 2005, recommended approval of Case No. Z-11-05/MP-8-05, by a vote of 6 to 1; and

WHEREAS, the properties are located at 3400, 3610, 3611, and 3505 Rochambeau Drive and 8350 Richmond Road and further identified as Parcel Nos. (1-14), (1-19), (1-18), (1-22), and (1-24) on James City County Real Estate Tax Map No. (12-2).

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve Case No. Z-11-05/MP-8-05 and accept the voluntary proffers.

### 3. Case No. SUP-22-05. Shops at Norge Crossing

Mr. Jason Purse, Planner, stated that Mr. Gregory Davis has submitted an application on behalf of Kaufman and Canoles for a commercial SUP to allow for an eight-unit, 13,000-square-foot retail center. The eight units will range in size from 1,100 to 2,500 square feet each. The property is located at 7500 Richmond Road and is zoned B-1, General Business, with proffers. It is designated as Community Commercial on the 2003 Comprehensive Plan Land Use Map and can be further identified as Parcel No. (1-71E) on James City County Real Estate Tax Map No. (23-2).

Staff found that the proposed retail center is consistent with the Community Commercial designation for this area. With the attached conditions, staff finds the proposal to be appropriate for this Community Character Corridor. Special use permit conditions are included which provide for architectural controls and increased landscaping. Additionally, a condition is included which requires a four-foot sidewalk to be built adjacent to the parking lot access drive connecting the sidewalk in front of the proposed stores to the required sidewalk along Norge Lane.

On August 1, 2005, the Planning Commission voted 6-0 to approve the application. Kennedy abstained.

Staff recommends the James City County Board of Supervisors approve the special use permit application with conditions listed in the resolution.

Mr. Brown opened the Public Hearing.

1. Mr. Greg Davis, representing applicants Kaufman and Canoles, requested approval of application and provided an overview of the architecture proposed by the developer.

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

Mr. Harrison made a motion to approve the proposal

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

## **RESOLUTION**

### **CASE NO. SUP-22-05. SHOPS AT NORGE CROSSING**

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

WHEREAS, Mr. Gregory Davis of Kaufman and Canoles has applied for a commercial special use permit to allow for an eight-unit, 13,000-square-foot retail center; and

WHEREAS, the proposed expansion is shown on the master plan prepared by LandTech Resources, Inc., dated July 25, 2005, and entitled "Norge Center, Inc., Parcel 5"; and

WHEREAS, the property is zoned B-1, General Business, with proffers, and can be further identified as Parcel No. (1-71E) on James City County Real Estate Tax Map No. (23-2); and

WHEREAS, the Planning Commission of James City County, following its public hearing on August 1, 2004, recommended approval of this application by a vote of 6 to 0, with one abstention.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve the issuance of Special Use Permit No. 22-05 as described herein with the following conditions:

1. The site plan shall be substantially consistent with the development plan prepared by LandTech Resources entitled "Norge Center, Inc. Parcel 5" and dated July 25, 2005 (the "Master Plan"). This special use permit shall allow up to a 13,000-square-foot structure for commercial use as permitted in the B-1, General Business district, including, but not limited to, retail shops, service shops, and restaurants.

The retail center shall contain architectural features, colors, and materials that reflect the surrounding character of the Norge Community as described in the Comprehensive Plan. The architecture of the retail center shall be generally consistent with the elevations prepared by Hopke and Associates entitled "Johnston Shopping Center" and dated July 14, 2005 (the "Elevations") as determined by the Planning Director. The architectural design, color, and materials shall be approved by the Planning Director prior to final site plan approval for consistency with the Elevations and the character of the Norge Community.

An enhanced landscaping plan shall be provided for the area along Norge Lane and the area in front of the parking lot adjacent to Richmond Road. Unless reduced or waived by the Planning Director, the enhanced landscaping plan shall include a quantity of planting materials that is a minimum of 125 percent of the minimum ordinance requirements. A minimum of 50 percent of all trees and 50 percent of all shrubs shall be evergreen.

Any new exterior site lighting shall be limited to fixtures which are horizontally mounted on light poles not to exceed 30 feet in height and/or other structures and shall be recessed fixtures with no bulb, lens, or globe extending below the casing. The casing 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, defined as 0.1 footcandle or higher, shall extend outside the property lines.

5. The dumpster pad and all heating, cooling, and electrical equipment shall be screened by fencing and landscaping in a manner approved by the Planning Director prior to final site plan approval.
6. The applicant shall be responsible for developing water conservation standards to be submitted to and approved by the James City Service Authority prior to final site plan approval. The applicant shall be responsible for enforcing these standards.
7. Prior to final site plan approval, the applicant shall demonstrate to the satisfaction of the Environmental Director that the existing infiltration basin (YC023) shown on the Master Plan is in sound working order and that it is performing at or above the design level of service. Should the basin not be performing at or above the design level of service, the applicant shall perform all necessary and required improvements and upgrades to bring the basin into compliance prior to the issuance of any certificate of occupancy.
8. Prior to the issuance of any certificate of occupancy, the applicant shall install a 4-foot wide sidewalk adjacent to the internal access road as shown on the master plan. This sidewalk shall connect the internal sidewalk in front of the shops to the required sidewalk along Norge Lane.
9. If construction has not begun on the project within thirty-six months of issuance of this special use permit, this special use permit shall become void. Construction shall be defined as obtaining permits for building construction and footings and/or foundation has passed required inspections.
10. This special use permit is not severable. Invalidation of any word, phrase, clause, sentences, or paragraph shall invalidate the remainder.

Mr. Brown recessed the Board for a brief break at 10: 35 p.m.

Mr. Brown reconvened the Board at 10:40 p.m.

5. Case No. SW-23-05. TGIF Friday's

Mr. Joel Almquist, Planner, stated that Mr. Vernon Geddy, III has submitted an application on behalf of PBH, L.L.C. to construct and operate a TGI Friday's restaurant located at 5521 Richmond Road, between the intersections at Airport Road and Olde Towne Road. The property is adjacent to Bruce's Auto Body and will share a right-in right-out driveway with them. The proposed restaurant will also have a right-in right-out driveway of its own at the southern end of its frontage. The proposed restaurant will be approximately 6,500 square feet, will seat 252 guests, and will be open seven days a week for lunch and dinner. Construction will commence upon approval of the SUP and site plans and is expected to be complete in six months.

Staff found that the proposed restaurant is a complementary use to the surrounding businesses and believes that this use meets the intent of the Neighborhood Commercial Land Use of the Comprehensive Plan.

On August 1, 2005, the Planning Commission voted 7-0 to approve the application.

Staff recommends the James City County Board of Supervisors approve the application with the conditions in the resolution.

Mr. Brown requested that Mr. Almquist explain the added conditions, which Mr. Almquist replied was the permission of projecting signs which are not permitted in the Ordinance. This was requested by the Planning Commission

Mr. McGlennon questioned the proposed color scheme and its consistency with the area. The Planning Commission concluded that the colors were inconsistent and requested that they be muted.

Mr. Brown opened the Public Hearing

1. Mr. Vernon M. Geddy, III, representing the applicant, provided a brief overview of the proposal and the color scheme of the establishment, and requested approval of the application and preservation of the color scheme as presented.

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

Mr. Harrison made a motion to approve the proposal.

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

**RESOLUTION**

**CASE NO. SUP-23-05. TGI FRIDAY'S**

WHEREAS, the Board of Supervisors of James City County has adopted ordinance specific land uses that shall be subjected to a Special Use Permit (SUP) process; and

WHEREAS, Mr. Vernon Geddy has applied for a commercial special use permit for the construction of a TGI Friday's restaurant; and

WHEREAS, the land is located on a parcel zoned B-1, General Business, and can be further identified as Parcel No. (1-5A) on James City County Real Estate Tax Map No. (33-3); and

WHEREAS, the Planning Commission of James City County, following its public hearing on August 1, 2005, recommended approval of Case No. Special Use Permit 23-05 by a 7-0 vote.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve the issuance of Special Use Permit No. SUP-23-05 as described herein with the following conditions:

1. This SUP shall be valid for a restaurant no larger than 6,600 square feet and accessory uses thereto. Prior to final site plan approval, the Planning Director shall review and approve the final architectural design of the building. Such building shall be reasonably consistent, as determined by the Planning Director, with architectural elevations titled "Carlson Restaurants Worldwide, P6.2 Prototype" submitted with this special use permit and drawn by Carrell, Poole, and Yost Architecture and date-stamped "Received - Planning Department June 20, 2005.
2. If construction has not commenced on this project within 36 months from the issuance of an SUP, the SUP shall become void. Construction shall be defined as obtaining permits for building construction and footings, and foundation has passed required inspections.
3. Any new exterior site lighting shall be limited to fixtures which are horizontally mounted on light poles not to exceed 15 feet in height and/or other structures and shall be recessed fixtures with no bulb, lens, or globe extending below the casing. The casing 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, defined as 0.1 footcandle or higher shall extend outside the property lines.
4. Freestanding signage shall be limited to one monument style sign. For purposes of this condition, a "monument" style sign shall be defined as a freestanding sign with a completely enclosed base not to exceed 32 square feet in size and not to exceed eight feet in height from grade.
5. Building face signage shall be in accordance with Section 24-71 of the Zoning Ordinance. Projecting signs shall be prohibited.
6. A landscaping plan shall be approved by the Planning Director prior to final site plan approval for this project. The landscaping plan shall include enhanced landscaping within the 50-foot Community Character Corridor buffer along Richmond Road (Route 60 West) so that the required number of plants and trees equals, at a minimum, 125 percent of the landscaping otherwise required in Chapter 24, Article II, Division 4 of the James City County Code. A minimum of 50 percent of the plantings within the Community Character Corridor buffer shall be evergreen.
7. The applicant shall be responsible for developing and enforcing water conservation standards to be submitted to and approved by the James City Service Authority prior to final site plan approval. The standards may include, but shall not be limited to, such water conservation measures as limitations on the installation and use of irrigation systems, the use of approved landscaping materials including the use of drought-tolerant plants where appropriate and the use of water-conserving fixtures to promote water conservation and minimize the use of public water resources.

8. All dumpsters and heating and cooling units, whether on the ground or affixed on the rooftop, shall be screened by landscaping, fencing, or other alternative that provides similarly adequate screening, as determined and approved by the Planning Director prior to final site plan approval.
9. This special use permit is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.

6. Case No. SUP 24-05. Williamsburg Winery—Gabriel Archer Tavern

Mr. Matthew Arcieri, Senior Planner, stated that Mr. Vernon Geddy, III submitted an application on behalf of Mr. Patrick Duffeler to renew SUP-24-05 to permit the continued operation of a restaurant, Gabriel Archer Tavern, at the Williamsburg Winery. The restaurant is a specially permitted use in the R-8, Rural Residential, district in which the property is located. The restaurant operated from 1996 through January 13, 2004, without a S W . The SUP approved by the Board of Supervisors on January 13, 2004, expired on August 30, 2004. A new SUP was approved by the Board of Supervisors on August 10, 2004. That SUP required the tavern to connect to public water and pass all necessary building inspections by December 31, 2004. The applicant did not complete those requirements within the designated time and that SUP expired on December 31, 2004. Following the expiration of the most recent SUP, the applicant has worked to resolve all outstanding issues before filing for a new SUP.

Staff found that the applicant has addressed the previous SUP conditions. The proposal is also acceptable from a land use perspective. There is one proposed change from the previously approved SUP: an update of Condition No. 1 to reflect the remaining issue to be resolved.

On August 1, 2005, the Planning Commission voted 7-0 to approve the application

Staff recommended the James City County Board of Supervisors approve the application with the conditions in the resolution.

Mr. Brown opened the Public Hearing,

1. Mr. Vernon M. Geddy, III, representing the applicant, requested approval of the permit.

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

Mr. Harrison made a motion to approve the proposal.

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

**RESOLUTION**

**CASE NO. SUP-24-05. WILLIAMSBURG WINERY - GABRIEL ARCHER TAVERN**

**SUP RENEWAL**

WHEREAS, the Board of Supervisors of James City County has adopted by ordinance specific land uses that shall be subjected to a Special Use Permit (SUP) process; and

WHEREAS, restaurants are a specially permitted use in the R-8, Rural Residential, zoning district; and

WHEREAS, the Planning Commission of James City County, following its Public Hearing on August 1, 2004, recommended approval of Case No. SUP-24-05 by a 7-0 vote to permit the continued operation of the Gabriel Archer Tavern consisting of approximately 2,500 square feet, including indoor and outdoor dining areas located on the first floor of a two-story structure near the Williamsburg Winery.

WHEREAS, the property is located at 5800 Wessex Hundred Road and further identified as Parcel No. (1-10B) on James City County Real Estate Tax Map No. (48-4).

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve the issuance of Special Use Permit No. 24-05 as described herein with the following conditions:

1. Prior to October 13, 2005, the Gabriel Archer's Tavern, ("the Tavern") shall have acquired a **permanent** Certificate of Occupancy.
2. The Tavern shall have no more than 72 seats; expansion of the Tavern shall require an amendment to this SUP and an approved site plan.
3. No outdoor amplified music or loud speakers in connection with the operation of the Tavern shall be audible outside the boundaries of the property.
4. The Tavern shall only operate between 10 a.m. and 9 p.m.
5. The SUP is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.

7. Case No. AFD-7-86. Mill Creek Agricultural and Forestal District—Findlay Addition

Mr. Matthew Arcieri, Senior Planner, stated that John Findlay applied to add 73.25 acres located at 3406 North Riverside Drive, zoned A-I, General Agricultural, further identified as Parcel No. (1-8H) on the James City County Real Estate Tax Map No. (9-4), to the Mill Creek Agricultural and Forestal District (AFD).

Staff found the proposed amendment to the AFD meets the minimum area and proximity requirements for inclusion in to and AFD and is consistent with surrounding zoning and development and the Comprehensive Plan.

At its meeting on July 13, 2005, the AFD Advisory Committee recommended approval of the application by a vote of 9-0.

At its meeting on August 1, 2005, the Planning Commission recommended approval of the application by a vote of 7-0.

Staff recommended approval of the Findlay addition to the Mill Creek AFD subject to the conditions listed in the Ordinance.

Mr. Brown opened the Public Hearing.

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

Mr. Goodson made a motion to approve the Ordinance.

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



8. Case Nos. SUP-25-05/MP-10-05. Prime Outlets Master Plan Amendment

Mr. Jose Ribeiro, Planner, stated that Mr. Alvin Anderson representing Kaufman and Canoles has submitted an application on behalf of Williamsburg Outlets, L.L.C. to amend the existing special use permit and master plan to allow for a 5,600 ± square-foot expansion of Prime Outlets. The applicant also proposed adding 43 new parking spaces in place of a proposed bus parking area. With that addition, the Prime Outlets will have 1,573 parking spaces.

Staff found the proposal compatible with surrounding land uses, and the Comprehensive Plan.

On August 1, 2005, the Planning Commission voted 7-0 to approve the application.

Staff recommended the James City County Board of Supervisors approve the SUP application with the conditions in the resolution.

Mr. Bradshaw inquired about the Master Plan amendment regarding the yellow markings near Route 60, which Mr. Ribiero stated were conditions to close an entrance, create the new parking spaces, and were addressed in prior proffers.

Mr. Brown opened the Public Hearing.

1. Mr. Dustin H. DeVore, Kaufman & Canoles, representing the applicant, provided an overview of the proposal.

Mr. McGlennon requested information about changes in the conditions, which Mr. DeVore explained were made to clarify the language of the application and to be legally acceptable rather than to raise any idea that the County would be "unreasonable" toward the applicant.

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

Mr. Harrison made a motion to approve the proposal as amended

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

**RESOLUTION**

**CASE NO. SUP-25-051MP 10-05. PRIME OUTLETS MASTER PLAN AMENDMENT**

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

WHEREAS, Mr. Alvin Anderson has applied on behalf of Prime Outlets at Williamsburg, LLC, for a special use permit to allow for a 5,700±-square-foot expansion of Prime Outlets; and

WHEREAS, Mr. Alvin Anderson has also applied to amend the existing conditions of approval of James City County Case Nos. SUP-23-99 and MP-3-99; and

WHEREAS, the conditions listed below replace the conditions of approval of James City County Case No. SUP-23-99; and

WHEREAS, the proposed expansion is shown on the master plan prepared by LandMark Design Group, dated July 28, 1999, revised on August 24, 2005, and entitled "Amended Master Plan Prime Retail Outlet Expansion" the "Master Plan"; and

WHEREAS, the property is located on land zoned B-1, General Business, and can be further identified as Parcel Nos. (1-28), (1-29), (1-33C), (1-33D) and (1-33E) on James City County Real Estate Tax Map No. (33-1); and

WHEREAS, the Planning Commission of James City County, following its public hearing on August 1, 2004, recommended approval of this application by a vote of 7 to 0.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve the issuance of Special Use Permit No. 25-05 as described herein with the following conditions:

1. This special use permit shall be valid for the approximately 5,700-square-foot expansion of Prime Outlets and accessory uses thereto. The total Gross Building Area shall not exceed 367,202 square feet. Development of the site shall be generally in accordance with the above-referenced master plan, as determined by the Development Review Committee of the James City County Planning Commission. Minor changes may be **permitted** by the DRC, as long as they do not change the basic concept or character of the development. This special use permit and these conditions shall supersede the existing conditions of approval of James City County Case No. SUP-23-99 and prior SUP conditions affecting the Prime Outlets development.
2. Any new exterior site lighting shall be limited to fixtures which are horizontally mounted on light poles not to exceed 30 feet in height **and/or** other structures and shall be recessed fixtures with no bulb, lens, or globe extending below the casing. The casing 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, defined as 0.1 footcandle or higher, shall extend outside the property lines.
3. Prior to final site plan approval, the Planning Director shall review and approve the final architectural design of the **building(s)** prepared as part of the above-referenced expansion. Such building shall be reasonably consistent, as determined by the Planning Director, with the architectural elevations titled, Prime Outlets Phase VI-expansion, submitted with this special use permit application dated, July 6, 2005, and drawn by Gary S. Bowling, Guernsey Tingle Architects.
4. Prior to the issuance of any final Certificate of Occupancy for any new commercial construction on the site, adequate lighting shall be installed for all three entrances from the property onto Richmond Road as shown on the Master Plan. In addition, adequate parking lot lighting shall be installed in the new 43-space parking lot as shown on the Master Plan and titled "Re-stripe existing parking for buses to parking for 43 cars". The specific location, adequacy, and design of all lighting fixtures shall be approved by the Planning Director, which approval shall not be unreasonably withheld. No lighting fixture shall exceed a height of 30 feet.
5. A landscaping plan for the 5,700-square-foot expansion referenced herein, including foundation landscaping in accordance with James City County Code Section 24-95 shall be approved by the Planning Director or his designee prior to final site plan approval. Movable planters (the type and size of planters to be specified by the landscaping plan) along the entire store frontage of the Phase 5A Expansion, shall be approved by the Planning Director or his designee prior to final site plan approval.

6. Prior to submission of any commercial development plan for the 5,700-square-foot expansion referenced herein, the applicant shall submit a water and sanitary sewer master plan and hydraulic analyses for the expansion space for review and approval by the James City Service Authority.
7. Prior to the issuance of any final Certificate of Occupancy for any building addition, or new building, located on Tax Map Parcel Nos. (33-1)(1-28) or (33-1)(1-29), there shall be Applicant has installed a 35-foot-wide transitional buffer planted along the northern most property line. This area shall be has been planted and shall be maintained as reasonably determined by the Director of Planning at 133 percent of standards found in Section 24-94 of the James City County landscape ordinance (in terms of the numbers of trees and shrubs, not size), in a manner acceptable to the Director of Planning and with an emphasis on evergreen shade and understory trees. The fence already installed in this area shall be a maximum of eight feet high and shall be maintained with a vinyl coating and shall be either black or green in color. Furthermore, the fence shall be maintained with a setback from the property line at least three feet.
8. Prior to issuance of any final Certificate of Occupancy, the applicant shall complete the following: (1) internal driveways shall be designated as "One Way" traffic only, as shown on the Master Plan; and (2) the applicant shall install **signage** for the rear parking lots and service drives clearly indicating the existence of additional parking spaces for customers and employees. Prior to installation of any new **signage**, the applicant shall prepare and submit a comprehensive **signage** plan for review and approval by the Director of Planning, which approval shall not be unreasonably withheld.
9. No dumpsters shall be allowed on any portion of the service road located behind the buildings along the northern property line where the service road is 20 feet in width or less.
10. If construction has not commenced on this project within thirty-six months from the issuance of this special use permit, the special use permit shall become void. Construction shall be defined as obtaining permits for building construction and footings **and/or** foundation has passed required inspections.
11. This special use permit is not severable. Invalidation of any word, phrase, clause, sentence or paragraph shall invalidate the remainder.

9 & 10. Case No. SUP-19-05. Branscome Inc. Borrow Pit Renewal and Case No. SUP-20-05. USA Waste of Virginia Landfills. Inc. Renewal

Mr. Matthew Smolnick, Planner, stated that Mr. Vernon Geddy, III has submitted an application on behalf of Branscome, Inc. (SUP-19-05) and USA Waste of Virginia Landfills, Inc. (SUP-20-05) for continued operation of a borrow pit or surface mine for sand and clay. The two existing SUPs would expire on October 10, 2005. As part of the renewal process, the applicant had requested that the Board of Supervisors re-approve the two SUPs without any time limit.

Staff found the proposal consistent with the Comprehensive Plan Land Use Designation and compatible with surrounding properties and zoning.

On August 1, 2005, the Planning Commission voted 7-0 to approve the application.

Staff recommended the James City County Board of Supervisors approve the application with the conditions in the resolution.

Mr. Brown opened the Public Hearing.

1. Mr. Vernon M. Geddy, III, representing the applicant, provided an overview of the proposals and the benefits of the proposals. Mr. Geddy requested the Board release the condition for a time limit on the permits, as well as approval of the applications.

2. Mr. Greg Davis of Kaufman & Canoles, representing Greenmount, requested that the Board retained the five-year time limit on the permits.

3. Mr. Ed Oyer, 139 Indian Circle, adjacent to part of Newport News Water Works, requested that the Board retained the time limit in the applications.

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

Mr. Goodson made a motion to adopt both resolutions.

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

## RESOLUTION

### CASE NO. SUP-19-05. BRANSCOME, INC. BORROW PIT RENEWAL

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

WHEREAS, the applicant has requested to amend existing Special Use Permit 9-00 to allow for the continued operation of a borrow pit; and

WHEREAS, the property is currently zoned M-2, General Industrial, designated General Industry on the 2003 Comprehensive Plan Land Use Map; and

WHEREAS, the property is located approximately 1.2 miles southeast of the terminus Blow Flats Road on property more specifically identified as Parcel No. (1-2) on James City County Real Estate Tax Map No. (60-3); and

WHEREAS, on August 1, 2005, the Planning Commission recommended approval of the application by a vote of 7-0 with a five-year time limit.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve the issuance of SUP-19-05 as described herein with the following conditions:

1. An erosion and sediment control plan shall be submitted to, and approved by, the Director of the Environmental Division prior to any new land disturbance occurring on site. All approved erosion and sedimentation control measures shall be installed prior to any clearing or grading of any borrow pit cell.
2. No more than 40 acres of the site shall be disturbed at any one time.

A transitional screening buffer equal to or greater than 50 feet in width shall be provided along the perimeter of the site. The transitional screening buffer shall be established and maintained in accordance with Chapter 24, Article II, Division 4, Section 24-98(a) *Transitional Screening* of the James City County Code.

All buffer areas shall be flagged in the field prior to any new clearing so the equipment operators know the limits of their work. This flagging shall be inspected by the Environmental Division.

The hours of operation shall be limited to daylight hours, Monday through Saturday.

The special use permit shall only be valid for those areas covered by the State Bureau of Mines, Minerals and Energy Mining Permit No. 10445AB, the limits of which are identified on the map submitted with the special use permit request and titled "Progress Renewal Map-Lee/Bickford Borrow Pit Permit No. 10445AB U.S.G.S. Quadrangle: Hog Island James City County, Virginia" and dated April 2005.

No mining shall occur below an elevation of +10 feet to mean sea level in order to be considered for future economic development.

Only "inert material" shall be used as fill during the reclamation of the property. For the purposes of the special use permit, "inert material" shall be defined as "clean soil, broken concrete, broken road pavement, rocks, bricks, and broken concrete pipe." Under no condition shall fly ash, demolition debris, organic waste material, lumber, or household waste be used as fill.

Within 90 days after the date of issuance of this permit a perennial stream study ("the Study") shall be conducted and submitted to the Environmental Division. The Study shall identify any Resource Protection Area(s) ("RPA") located on the subject property. The limits of the RPAs located on the subject property, if any, shall be shown on a revised version of the map submitted with the special use permit request and titled "Progress Renewal Map-Lee/Bickford Borrow Pit Permit No. 10445AB U.S.G.S. Quadrangle: Hog Island James City County, Virginia" dated April 2005 and shall be submitted to the Environmental Division. Encroachment into the RPA will be allowed only after obtaining expressed written consent by the Environmental Director and only for the sole purpose of creating tidal wetlands.

For as long as the special use permit is valid, the property owner shall submit a report prepared by, or verified by, a licensed engineer or surveyor, documenting Items A-H below. One such report shall be submitted between January 1 and January 31 of each year:

- a. The extent and depth of the area mined over the previous calendar year.
- b. The extent and depth of the area expected to be mined over the upcoming calendar year.
- c. A certification that no unauthorized encroachment has occurred into an RPA, RPA buffer, the transitional screening buffer described above, or any Natural Open Space easement.
- d. For areas which are wooded as of the date of issuance of this permit, a delineation of any encroachment into such wooded areas.
- e. A certification as to the amount of disturbed acreage on site.
- f. A certification that all fill used after the date of issuance of this permit is "inert material," as defined above.

- g. A delineation of all areas that have been restored but not yet released under the State Mining Permit. This delineation shall show final grades for the restored area as well as any stabilization **and/or** reforestation plan, with implementation time schedule, if applicable.
  - h. A delineation of the extent of the areas covered by the State Mining Permit.
11. A CE-7 Land Use Permit shall be obtained from The Virginia Department of Transportation within 60 days after the date of issuance of this permit for continued use of the access onto State right-of-way for hauling operations.
  12. This special use permit is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.
  13. This special use permit shall be valid for a period of five years from the date of approval by the James City County Board of Supervisors.

RESOLUTION

CASE NO. SUP-20-05 USA WASTE OF VIRGINIA LANDFILLS. INC.

BORROW PIT RENEWAL

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

WHEREAS, the applicant has requested to amend existing Special Use Permit 8-00 to allow for the continued operation of a borrow pit; and

WHEREAS, the property is currently zoned M-2, General Industrial, designated General Industry on the 2003 Comprehensive Plan Land Use Map; and

WHEREAS, the property is located approximately 1.2 miles southeast of the terminus Blow Flats Road on property more specifically identified as Parcel No. (1-3) on James City County Real Estate Tax Map No. (60-3); and

WHEREAS, on August 1, 2005, the Planning Commission recommended approval of the application by a vote of 7-0 with a five-year time limit.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve the issuance of SUP-20-05 as described herein with the following conditions:

1. An erosion and sediment control plan shall be submitted to, and approved by, the Director of the Environmental Division prior to any new land disturbance occuning on site. All approved erosion and sedimentation control measures shall be installed prior to any clearing or grading of any borrow pit cell.
2. No more than 40 acres of the site shall be disturbed at any one time.

A transitional screening buffer equal to or greater than 50 feet in width shall be provided along the perimeter of the site. The transitional screening buffer shall be established and maintained in accordance with Chapter 24, Article II, Division 4, Section 24-98(a) *Transitional Screening* of the James City County Code.

All buffer areas shall be flagged in the field prior to any new clearing so the equipment operators know the limits of their work. This flagging shall be inspected by the Environmental Division.

The hours of operation shall be limited to daylight hours, Monday through Saturday.

The special use permit shall only be valid for those areas covered by the State Bureau of Mines, Minerals and Energy Mining Permit No. 10445AB, the limits of which are identified on the map submitted with the special use permit request and titled "Progress Renewal Map-Lee/Bickford Borrow Pit Permit No. 10445AB U.S.G.S. Quadrangle: Hog Island James City County, Virginia" and dated April 2005.

Areas on the USA Waste of Virginia Landfills, Inc. property may be mined to an elevation of -15 feet to mean sea level, once delineated by the Environmental Division Director with the aid of the Office of Economic Development for the purpose of creating tidal wetlands. Soil side slopes between the elevations of +2 to -2 feet to mean sea level shall be no steeper than 4:1. All other areas on the USA Waste of Virginia Landfills, Inc. property shall be mined to an elevation of +10 feet to mean sea level in order to be considered for future economic development.

8. Only "inert material" shall be used as fill during the reclamation of the property. For the purposes of the special use permit, "inert material" shall be defined as "clean soil, broken concrete, broken road pavement, rocks, bricks, and broken concrete pipe." Under no condition shall fly ash, demolition debris, organic waste material, lumber, or household waste be used as fill.
9. Within 90 days **after** the date of issuance of this permit, a perennial stream study ("the Study") shall be conducted and submitted to the Environmental Division. The Study shall identify any Resource Protection Area(s) ("RPA") located on the subject property. The limits of the RPA(s) located on the subject property, if any, shall be shown on a revised version of the map submitted with the special use permit request and titled "Progress Renewal Map-Leernickford Borrow Pit Permit No. 10445AB U.S.G.S. Quadrangle: Hog Island James City County, Virginia" dated April 2005 and shall be submitted to the Environmental Division. Encroachment into the RPA will be allowed only after obtaining expressed written consent by the Environmental Director and only for the sole purpose of creating tidal wetlands.

For as long as the special use permit is valid, the property owner shall submit a report prepared by, or verified by, a licensed engineer or surveyor, documenting items A-H below. One such report shall be submitted between January 1 and January 31 of each year.

- a. The extent and depth of the area mined over the previous calendar year.
- b. The extent and depth of the area expected to be mined over the upcoming calendar year.
- c. A certification that no unauthorized encroachment has occurred into an RPA, RPA buffer, the transitional screening buffer described above, or any Natural Open Space easement.

- d. For areas which are wooded as of the date of issuance of this permit, a delineation of any encroachment into such wooded areas.
  - e. A certification as to the amount of disturbed acreage on site.
  - f. A certification that all fill used after the date of issuance of this permit is "inert material," as defined above.
  - g. A delineation of all areas that have been restored, but not yet released under the State Mining Permit. This delineation shall show final grades for the restored area as well as any stabilization and/or reforestation plan, with implementation time schedule, if applicable.
  - h. A delineation of the extent of the areas covered by the State Mining Permit.
11. A CE-7 Land Use permit shall be obtained from The Virginia Department of Transportation within 60 days after the date of issuance of this permit for continued use of the access onto State right-of-way for hauling operations.
  12. This special use permit is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.
  13. This special use permit shall be valid for a period of five years from the date of approval by the James City County Board of Supervisors.

11. Cash Proffer Policy for Schools

Mr. John T. P. Home, Development Manager, requested the Board approve the resolution adopting a cash proffer policy for schools.

Mr. Home stated that the Board, at its Work Session on July 26, 2005, was presented the final report of the Cash Proffer Steering Committee and the developed cash proffer policy for schools reflects the recommendations of the Board and the Committee.

Mr. Brown referenced page two of the resolution, item number three and inquired why the Board should not address a particular amount for a unit that might be excused or waived from paying a mandatory proffer.

Mr. Home responded that a consensus was given which left flexible for the Board, the development community, or staff to work through.

The Board and staff briefly discussed the policy, how the policy would be implemented, and when the inflators would be applied.

Mr. Brown opened the Public Hearing.

1. Mr. Robert Duckett, PHBA Public Director, took action on tax rate earlier this evening. Mr. Duckett requested that the Board deny the proposed proffers, stating that the proffers will increase sale prices of homes and assessment of the surrounding homes. He encouraged the Board to look for other sources of revenue to cover capital costs, and recommended that the review time for proffers should be three to five years instead of every two years. He also commented on the negative impacts of the proffers on the costs of housing in the County and how this affected the local builders, developers, and potential homeowners.

2. Mr. John Wilson, 6304 Glenwilton Lane, Williamsburg Association of Realtors, concurred with Mr. Duckett's remarks and requested the Board not to adopt the cash proffer policy for schools.



3. Mr. Suders, 2505 Fair Chase Road, commented on the White Hall development that had a starting price range of approximately \$185,000 resulting from a list of proffers offered and stated that adding this on would only increase the starting price.

4. Mr. Hugo Rathcamp, 100 Elizabeth Page, stated that although he came here to speak against proffers, he has decided to support the cash proffer policy for schools to support the infrastructure for educating the youth of the community.

5. Mr. Mark Rinaldi, 10020 Sycamore Landing Road, stated that the imposition of proffer policies will create two classes of citizens in the community and requested the Board consider other methods to generate revenues.

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

Mr. Harrison spoke against the creation of a policy requiring proffers for schools and suggested that other methods can be identified to fund infrastructures for schools. He stated that continued growth in the community is the result of the Boards actions, and that he wants fiscal responsibility from his fellow members on the Board, as well as for the School Board members to be held accountable for the allocation of the funds the localities provide them.

Mr. Harrison made a motion to deny the approval of the Cash Proffer Policy for Schools.

Mr. Goodson supported proffers that were offered by the applicant for the application, but opposed a policy for proffers for schools.

Mr. Bradshaw stated that those opposing proffers did not add to the understanding of proffers and stated disappointment in the manner and methods used by those opposing proffers to mislead others into opposing them. He stated that the proposed cash proffer policy for schools was not perfect but was a good starting point.

Mr. McGlennon concurred with Mr. Bradshaw's comments and stated concern regarding the mailings distributed by the Williamsburg Association of Realtors and the misleading method of the mailing. He stated that he has requested input about the negative impacts of proffers on communities and the ones he has presented do not support the stand that proffers cause problems. He continued to say that the Board is trying to determine the true cost of the developments on the community which the offered proffers have fallen short in covering.

The Board discussed dealing effectively with the funds delivered to the Board for allocation and holding the Board of Supervisors and the School Board accountable for the allocation of the funds and generation of revenues.

Mr. Brown stated that the Board needs to look forward regarding cash proffers and schools and stated his support for the new fixed cash proffer policy.

Mr. Harrison made a motion to deny the policy.

On a roll call vote, the vote was: AYE: Harrison, Goodson (2). NAY: McGlennon, Bradshaw, Brown (3).

Mr. McGlennon made a motion to adopt the policy.

On a roll call vote, the vote was: AYE: McGlennon, Bradshaw, Brown (3). NAY: Harrison, Goodson (2).

## RESOLUTION

### CASH PROFFER POLICY FOR SCHOOLS

WHEREAS, the Virginia Commission on Local Government defines "cash proffer" as "any money voluntarily proffered in writing signed by the owner of the property subject to rezoning, submitted as a part of the rezoning application and accepted by the locality" pursuant to the authority granted in Section **15.2-2298** of the Code of Virginia, **1950** as amended; and

WHEREAS, beginning November **13,2005**, staff will use the procedures and calculation described in this Resolution to guide its recommendation to the Board of Supervisors in all residential rezoning cases. The Board of Supervisors (the "Board") will use this Resolution to guide its decision whether to accept cash proffered by applicants for a rezoning. The value of proffered land or other in-kind contributions, accepted by the County, shall be credited against the cash proffer amount for schools. In the event the value of proffered land or other in-kind contributions exceed the cash proffer amounts for schools, such excess value may be credited against cash proffers for other impacts; and

WHEREAS, any acceptance of cash proffered by an applicant shall meet a "reasonableness" or "rough proportionality" test, which requires the Board to determine in each zoning case whether the amount proffered is related both in nature and extent to the projected impact of the proposed development on public schools. State and County laws permit the Board to accept cash proffers to fund the public school needs generated by any new residential development; and

WHEREAS, a development proposal's impact on public schools will be evaluated based on the gross number of proposed dwelling units. When calculating the gross number of dwelling units, staff will not give credit for those dwelling units permitted under existing zoning and will not consider the transferring of allowable units from other properties.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of the James City County, Virginia, adopts the following methodology and policy to be used to consider impact on public schools and proffered mitigation of proposed rezoning applications:

1. The five components to be used in calculating what a new dwelling unit will cost the County in terms of providing for new or expanded public school facilities are as follows:
  - a. Demand generators - Pupil generation rates determined by identifying the actual number of public school students residing in housing units built in the last five years in the County.
  - b. Service levels - The County's estimated costs of constructing new high, middle, and elementary schools, calculated on a per-student basis, become the service levels in the calculation of the cash proffer.
  - c. Gross Cost of school facilities – The product of the expected number of students calculated as a demand generator multiplied by the per-student cost of school facilities identified as the service level.
  - d. Credits - the gross cost of school facilities is reduced by a credit, representing the portion of real property taxes paid by new residents that would be used to retire debt incurred by the County for schools.

- e. Net cost - this represents the net cost per new residential unit or the maximum cash proffer for schools. This is the Gross Cost minus the Credit.

\*The detailed methodology is contained in the Final Report of the James City County Cash Proffer Steering Committee dated July 7,2005.

2. There must be a relationship between the rezoning itself and the need for a public facility. Since public school buildings serve the entire County and new or expanded public school buildings may result in County-wide adjustments to attendance zones, rezoning requests will be analyzed on a County-wide basis to determine the impact on public school buildings.
3. The County will continue to consider any unique circumstances about a proposed development that may change the way that staff and the Board view the need for cash proffers for schools. Unique circumstances may include, but not be limited to, a demonstrable effort to meet the objectives of the County's Comprehensive Plan related to affordable housing.
4. Timing for the dedication of property or in-kind improvements should be specified in the proffer. Cash proffers, property dedications, and in-kind improvements must be used for projects identified in the County's Capital Improvement Program. Payments shall be expended in accordance with State law.
5. Adjustments in the cash proffer amount may be considered in August of odd-number years, beginning in 2007. Staff will recompute net costs based on the current methodology and recommend adjustments. Any adjustments would be effective upon adoption, but no sooner than July 1 of the fiscal year following adoption.
6. The cash proffer amount for school construction that the Board will use to guide its decisions in residential zoning applications received after November 13,2005, are:

Single-Family Detached	\$4,011
Single-Family Attached	\$ 0
Multi-Family	\$4,275

If payment is rendered on or after July 1, 2006, then payments will consist of the adopted cash proffer payment per unit plus any adjustment as included in the Marshall Swift Building Cost Index.

7. The amounts identified in this Resolution are general guides for rezoning applications. Determination of whether an amount proffered by an applicant for rezoning is sufficient to offset the impacts of the proposed development shall be made on a case-by-case basis. Proffering a set amount is in no way a requirement to obtaining a positive decision on a residential rezoning application. In addition, the acceptability of a proffered school cash proffer under this Resolution, by itself, will not result in the approval of a residential rezoning application.

## H. PUBLIC COMMENT

1. Mr. Ed Oyer, 139 Indian Circle, commented on the passing of Mr. McConnell, former Mayor of Williamsburg.

**I. REPORTS OF THE COUNTY ADMINISTRATOR**

Mr. Wanner stated that a Declaration of a Local Emergency was announced by the Governor and provided an overview of the readiness plan.

Mr. Wanner recommended that at the conclusion of the meeting, the Board adjourn to 4 p.m. on September 27,2005.

Mr. Harrison made a motion to approve the resolution declaring local emergency.

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

**RESOLUTION**

**DECLARATION OF A LOCAL EMERGENCY**

WHEREAS, the Board of Supervisors of the County of James City, Virginia, does hereby find as follows:

1. That due to the occurrence of Hurricane Ophelia, the County of James City is facing a condition of extreme peril to the lives, safety, and property of the residents of James City County,
2. That as a result of this extreme peril, the proclamation of the existence of an emergency is necessary to permit the full powers of government to deal effectively with this condition of peril; and

WHEREAS, the Director of Emergency Management declared a local emergency on September 12,2005.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of James City County, Virginia, that a local emergency now exists throughout the County of James City.

NOW, THEREFORE, BE IT FURTHER RESOLVED that during the existence of this emergency, the powers, functions, and duties of the Director of Emergency Management and the Emergency Management organization and functions of the County of James City shall be those prescribed by the laws of the Commonwealth of Virginia and the ordinances, resolutions, and approved plans of the County of James City in order to mitigate the effects of said emergency.

**J. BOARD REQUESTS AND DIRECTIVES**

Mr. Harrison raised a concern of his constituents due to narrow street designs. He recommended the individuals go to the fire and police stations. He advised to have police and fire departments see if vehicles parked on roadway pose as a problem for emergency service if needed.

Mr. Bradshaw offered his thanks to businesses in the community for relief effort for Hunicane Katrina. He also commented on the local government's ability to cut through red tape so evacuees could come here and thanked those involved.

Mr. Bradshaw asked staff to explore means to allow on-site sales of agricultural products in areas zoned R-2.

Mr. Brown asked them to review such situations in all zonings.

Mr. McGlennon stated that he attended convocation for Williamsburg/James City County Schools representing the Board and commented on their good working relationship.

## **K. 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 to consider the appointments of individuals to County boards and/or commissions, and pursuant to Section 2.2-3711(A)(3) of the Code of Virginia to consider the acquisition of a parcel/parcels of property for public use.

Mr. Brown convened the Board into Closed Session at 12:29 a.m

Mr. Brown reconvened the Board into Open Session at 1:00 a.m.

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

On a roll call vote, the vote was: AYE: Harrison, Goodson, McGlennon, Bradshaw, Brown (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 motion, 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 parcel/parcels of property for public use.

Mr. McGlennon made a motion to appoint Nancy Ellis as the alternate for Mr. Harrison on the Community Action Agency and to appoint Jacquelyn Brown to an unexpired term on the Parks and Recreation Advisory Commission which should be set to expire on April 12, 2008. He also made a motion to appoint Mark Wenger to an unexpired term on the Parks and Recreation Advisory Commission, with the term to expire on April 12, 2006; to reappoint Daniel Foley to a four-year term on the Social Services Advisory Board, with the term to expire on July 1, 2009; and to reappoint Diane Gilbert to a four-year term on the Social Services Advisory Board, with the term to expire on July 1, 2009; to appoint Jeff Barra, Richard Costello, Jim Daniels, Victoria Fahringer, Virginia Hartmann, Richard Krapf, Gary Massie, and Jack Schmidt to the Rural Lands Committee; and appointed Frederick Boelt, Gail Harding, Barry Bryant, Donnah Joyce, David Gussman, and Mr. Harding to the Toano Community Character Area Study, subject to their agreement to serve.

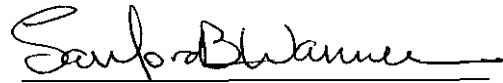
On a roll call vote, the vote was: AYE: Harrison, Goodson, McGlennon, Bradshaw, Brown (5).  
NAY: (0).

**L. ADJOURNMENT**

Mr. Harrison made a motion to adjourn.

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

At 1:02 a.m., Mr. Brown adjourned the Board to 4 p.m. on September 27, 2005.



Sanford B. Wanner  
Clerk to the Board

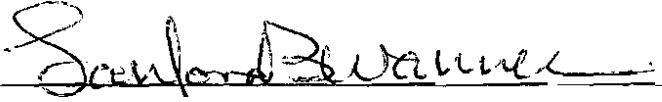
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# In the County of James City

By resolution of the governing body adopted September 13, 2005

The following Form LA-5A is hereby attached and incorporated as part of the governing body's resolution for changes in the secondary system of state highways.

A Copy Testee Signed (County Official):



## Report of Changes in the Secondary System of State Highways

Form LA-5A  
Local Assistance Division 6/2005

Project/Subdivision

**Wexford Hills Phase 3A & 1B**

Type of Change: **Addition**

The following additions to the Secondary System of State Highways, pursuant to the statutory provision or provisions cited, are hereby requested, the right of way for which, including additional easements for drainage as required, is guaranteed:

**Reason for Change:** Addition, **New** subdivision street

**Pursuant to Code of Virginia Statute:** **§33.1-229**

### Route Number and/or Street Name

#### **Wrenfield Drive, State Route Number 1672**

Description: **From:** Route 1671 (Beech Tree Lane)

**To:** Route 1673 (Richpress Drive)

A distance of: 0.32 miles.

Right of Way Record: Filed with the Land Records Office on 7/19/1993. Plat Book 57, Pg 91. and on 9/7/2001, Document #010012035, with a width of 50'-125'.

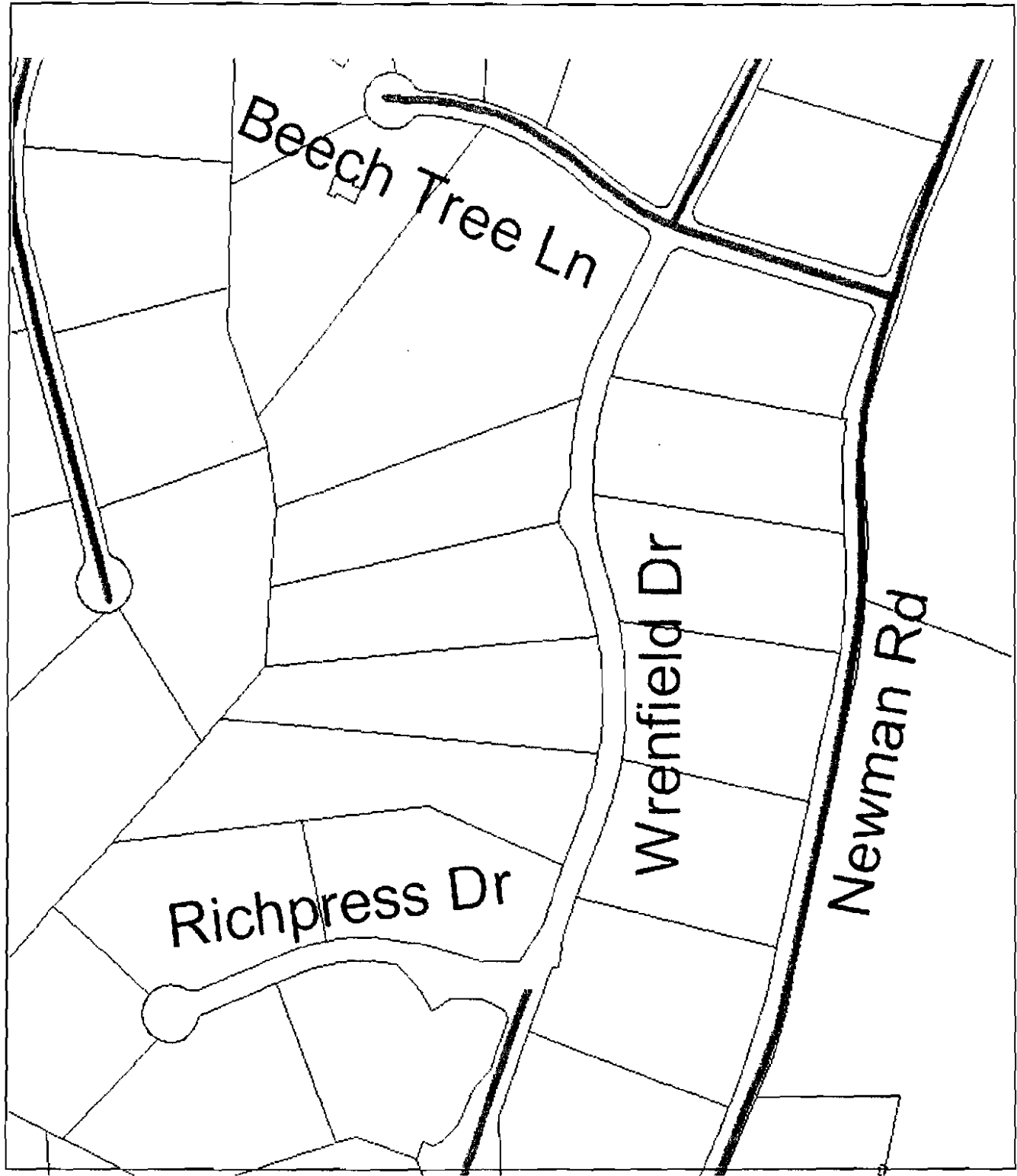
#### **Richpress Drive, State Route Number 1673**

Description: **From:** Route 1672 (Wrenfield Drive)

**To:** End of cul-de-sac

A distance of: 0.15 miles.

Right of Way Record: Filed with the Land Records Office on 9/7/2001, Document #010012035, with a width of 50'-125'



# DEDICATION OF STREETS IN WEXFORD HILLS - PHASES 3A & 1B



Streets Being  
Dedicated

400

0

400 Feet





060002874  
THE VILLAGES AT WHITEHALL

LAGRANGE VILLAGE

PROFFERS

THESE PROFFERS are made this 21 day of <sup>July</sup> ~~June~~, 2005 by ROBERT W. COWAN, individually, ROBERT W. COWAN and JUDY G. COWAN, husband and wife (together with their successors in title and assigns, the "Owners"); and RAUCH DEVELOPMENT COMPANY, LLC, a Virginia limited liability company ("Buyer").

RECITALS

A. Owners are the owners of four tracts or parcels of land located in James City County, Virginia, with addresses of 8716 Barhamsville Road, 8724 Barhamsville Road, 8720 Barhamsville Road, and 3225 Old Stage Road, Toano, Virginia, respectively, and being Tax Parcels 1210300002, 1210300001, 1210100021 and 1220100021, respectively, containing a total of approximately 22.95 acres, being more particularly described on Schedule A hereto (the "Property").

B. Buyer has contracted to purchase the Property.

C. The Property is now zoned A-1. The Property is designated Low Density Residential on the County's Comprehensive Plan Land Use Map.

D. Buyer, with the consent of the Owners, has applied to rezone the Property from A-1 to R-2, with proffers, and for a special use permit for a residential cluster with a density in excess of three units an acre.

E. Buyer has submitted to the County a master plan entitled "Master Plan, The Villages at Whitehall for Rauch Development, LLC" prepared by AES Consulting Engineers dated February 22, 2005, last revised June 24, 2005 (the "Master Plan") for the Property in accordance with the County Zoning Ordinance

F. Buyer and Owners desire to offer to the County certain conditions on the development of the Property not generally applicable to land zoned R-2.

NOW, THEREFORE, for and in consideration of the approval of the requested rezoning, and pursuant to Section 15.2-2298 of the Code of Virginia, 1950, as amended, and the County Zoning Ordinance, Owners agree that they shall meet and comply with all of the following conditions in developing the Property. If the requested rezoning is not granted by the County, these Proffers shall be null and void.

#### CONDITIONS

1. **Master Plan.** The Property shall be developed generally in accordance with the Master Plan, with only minor changes thereto that the Development Review Committee determines do not change the basic concept or character of the development. There shall be a maximum of 79 single family attached dwelling units on the Property. The Property shall be developed as a part of The Villages at Whitehall, Hickory Neck, Rochambeau and Taskinas

Villages development with a single master property owners association for all villages as provided in Condition 2.

**2. Owners Association.** There shall be organized a master owner's association for the Villages at Whitehall development (the "Association") in accordance with Virginia law in which all property owners in the development, by virtue of their property ownership, shall be members. In addition, there may be organized a separate owner's associations for LaGrange Village in which all owners in the Village, by virtue of their property ownership, also shall be members. The articles of incorporation, bylaws and restrictive covenants (together, the "Governing Documents") creating and governing each Association shall be submitted to and reviewed by the County Attorney for consistency with this Proffer. The Governing Documents shall require that each Association adopt an annual maintenance budget, which shall include a reserve for maintenance of stormwater management BMPs, recreation areas, private roads and parking areas, sidewalks, and all other common areas (including open spaces) under the jurisdiction of each Association and shall require that the Association (i) assess all members for the maintenance of all properties owned or maintained by the Association and (ii) file liens on members' properties for non-payment of such assessments. The Governing Documents shall grant each Association the power to file liens on members' properties for the cost of remedying

violations of, or otherwise enforcing, the Governing Documents. If there is more than one Association created for the Property the Associations shall enter into a costs sharing agreement allocating responsibility for maintenance and expenses for common areas described above between the Associations.

**3. Water Conservation.** (a) The Association shall be responsible for developing water conservation standards to be submitted to and approved by the James City Service Authority and subsequently for enforcing these standards. The standards shall address such water conservation measures as limitations on the installation and 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. The standards shall be approved by the James City Service Authority prior to final subdivision or site plan approval.

(b) If the Owner desires to have outdoor watering of common areas on the Property it shall provide water for irrigation utilizing surface water collection or, with the approval of the General Manager of the James City Service Authority ("JCSA"), from a shallow (less than 100 feet) well and shall not use James City Service Authority water for irrigation purposes.

**4. Cash Contributions for Community Impacts.** (a) A contribution of \$796.00 for each dwelling unit on the Property

shall be made to the James City Service Authority ("JCSA") in order to mitigate impacts on the County from the physical development and operation of the Property. The JCSA may use these funds for development of alternative water sources or any project related to improvements to the JCSA water system, the need for which is generated in whole or in part by the physical development and operation of the Property.

(b) A contribution of \$67.50 for each dwelling unit on the Property shall be made to the JCSA in order to mitigate impacts on the County from the physical development and operation of the Property. The JCSA may use these funds to defray the costs of JCSA Lift Station 9-7 or any project related to improvements to the JCSA sewer system, the need for which is generated in whole or in part by the physical development and operation of the Property.

(c) A contribution of \$750.00 for each dwelling unit on the Property shall be made to the County in order to mitigate impacts on the County from the physical development and operation of the Property. The County may use these funds for any project in the County's capital improvement plan, the need for which is generated in whole or in part by the physical development and operation of the Property, including, without limitation, for emergency services, off-site road improvements, library uses, and public use sites.

(d) A contribution of \$1,750.00 for each dwelling unit on the Property shall be made to the County in order to mitigate impacts on the County from the physical development and operation of the Property. The County may use these funds for any project in the County's capital improvement plan, the need for which is generated in whole or in part by the physical development and operation of the Property, including, without limitation, for school uses.

(e) A contribution of \$100.00 for each dwelling unit on the Property shall be made to the County in order to mitigate impacts on the County from the physical development and operation of the Property. The County may use these funds for any project in the County's capital improvement plan, the need for which is generated in whole or in part by the physical development and operation of the Property, including, without limitation, for the County's purchase of development rights program.

(f) The contributions described above shall be payable for each dwelling unit on the Property at the time of final subdivision plat or site plan approval for such unit unless the County adopts a written policy or ordinance calling for payment of cash proffers at a later date in the development process.

(g) The per unit contribution(s) paid in each year pursuant to this Section shall be adjusted annually beginning January 1, 2006 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 per unit contribution be adjusted to a sum less than the amounts set forth in paragraphs (a) through (e) of this Section. The adjustment shall be made by multiplying the per unit contribution 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 per unit contribution shall be adjusted based upon the figure that would have resulted had no change occurred in the manner of computing 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 per unit contribution to approximate the rate of annual inflation in the County.

**5. Entrances; Traffic Improvements.** (a) At the entrance from Route 30 into the Property as shown on the Master Plan, a 150 foot right turn taper and a channelized island shall be

constructed. The entrance shall be designed to accommodate a shoulder bike lane within the existing public right of way across the Route 30 frontage of the Property.

(b) The turn taper and island proffered hereby shall be constructed in accordance with Virginia Department of Transportation standards and shall be completed or their completion bonded in form satisfactory to the County Attorney prior to the issuance of the first building permit for the Property.

c. The Owner shall submit an updated traffic impact study to the Director of Planning and VDOT for their review and approval prior to the time of the issuance of building permits for 75% of the total number of dwelling units permitted on the Property under the Master Plan, unless the Director of Planning and VDOT waive such requirement. The updated traffic study shall include actual traffic counts from the developed portions of the Property and utilize ITE trip generation figures for undeveloped portions of the Property and shall account for all other traffic utilizing the entrance road into the Property and shall determine whether a full right turn lane at the main entrance to the Property is warranted. If the approved updated study determines such a turn lane is warranted, the County shall not be obligated to issue any further building permits for further development on the Property until such turn lane has been installed or its installation commenced and surety for its completion in form



acceptable to the County Attorney has been posted with the County.

**6. Route 30 Community Character Buffer.** There shall be a 150 foot buffer along the Route 30 frontage of the Property generally as shown on the Master Plan. The buffer shall be exclusive of any lots or units and shall be undisturbed, except landscaping and berms installed pursuant to a landscaping plan approved by the Director of Planning, for the entrance, turn lanes/tapers as shown generally on the Master Plan, the trails, sidewalks and bike lanes as shown generally on the Master Plan, and with the approval of the Development Review Committee, for utilities, lighting, entrance features and signs. Dead, diseased and dying trees or shrubbery, invasive or poisonous plants, windfalls and deadfalls may be removed from the buffer area

**7. Perimeter Buffer.** In the areas of the perimeter buffer and in the open space immediately adjacent thereto indicated on the Master Plan (excluding the 150 foot buffer proffered in Condition 6) and around the stormwater BMP pond shown on the Master Plan, the area shall be planted as set forth herein to provide a visual screen between the Rochambeau Drive and Route 30 and the Village through a reforestation plan. This plan may include some earth moving and berming and shall include a seeding and planting plan as recommended by the State of Virginia's Department of Forestry and approved by the Director of Planning.

The planting mix shall include at least two types of evergreen trees and a variety of deciduous trees including Oak, Maple and Gum as well as native understory trees including Redbud and Dogwood. The planting shall achieve an effective visual screen (6'-8' height of plantings and berming) within six years from time of installation. In addition to the planted open space and perimeter buffer and the properties to the south, a 20 foot wide by 300 foot long strip located south of the line of street trees shall be planted in accordance with landscape ordinance requirements, with an emphasis on evergreen trees and shrubs to further screen the Village from direct view from Route 30. The planted area shall be left undisturbed to reforest with the exception of a more groomed landscape at the Village entrance. The area shall be planted or the planting bonded prior to the County being obligated to issue certificates of occupancy for dwelling units in LaGrange Village.

**8. Mixed Costs Housing Units.** (a) At least 26 residential dwelling units on the Property shall be reserved and offered for sale at a price of \$185,000.00, subject to adjustment as provided below. The maximum price set forth herein shall be adjusted annually as of January 1 of each year by increasing such prices by the cumulative rate of inflation as measured by the Consumer Price Index - Urban, U.S. City Average annual average change for the period from January 1, 2005 until January 1 of the

year in question. The annual increase shall not exceed five percent (5%). The Director of Planning shall be provided with a copy of the settlement statement for each sale at a price at or below the maximum prices set forth above. Owner shall consult with and accept referrals of, and sell to, potential qualified buyers from the James City County Office of Housing and Community Development.

**9. Pedestrian Connections to Adjacent Properties.** Owner shall provide pedestrian connections between the Property and the adjacent properties generally as shown on the Master Plan, with the plans, location and materials for such connections subject to review and approval by the Director of Planning and with such connections to be shown on the development plans for the Property. The connections shall be either (i) installed or (ii) bonded in form satisfactory to the County Attorney prior to the issuance of any certificates of occupancy for any buildings on the Property.

**10. Streetscape Guidelines.** The Owner shall provide and install streetscape improvements in accordance with the applicable provisions of the County's Streetscape Guidelines policy. The streetscape improvements shall be shown on development plans for that portion of the Property and submitted to the Director of Planning for approval during the site plan approval process. Streetscape improvements shall be either (i)

installed within six months of the issuance of a certificate of occupancy for any residential units in adjacent structures or (ii) bonded in form satisfactory to the County Attorney prior to the issuance of a certificate of occupancy for any residential units in adjacent structures.

11. Archaeology. A Phase I Archaeological Study for the entire Property shall be submitted to the Director of Planning for review and approval prior to land disturbance. A treatment plan shall be submitted and approved by the Director of Planning for all sites in the Phase I study that are recommended for a Phase II evaluation and/or identified as eligible for inclusion on the National Register of Historic Places. If a Phase II study is undertaken, such a study shall be approved by the Director of Planning and a treatment plan for said sites shall be submitted to, and approved by, the Director of Planning for sites that are determined to be eligible for inclusion on the National Register of Historic Places and/or those sites that require a Phase III study. If in the Phase III study, a site is determined eligible for nomination to the National Register of Historic Places and said site is to be preserved in place, the treatment plan shall include nomination of the site to the National Register of Historic Places. If a Phase III study is undertaken for said sites, such studies shall be approved by the Director of Planning prior to land disturbance within the study areas. All Phase I,

Phase II, and Phase III studies shall meet the Virginia Department of Historic Resources' Guidelines for Preparing Archaeological Resource Management Reports and the Secretary of the Interior's Standards and Guidelines for Archaeological Documentation, as applicable, and shall be conducted under the supervision of a qualified archaeologist who meets the qualifications set forth in the Secretary of the Interior's Professional Qualification Standards. All approved treatment plans shall be incorporated into the plan of development for the Property and the clearing, grading or construction activities thereon.

**12. Design Guidelines and Review.** Owner shall prepare and submit design review guidelines to the County setting forth design and architectural standards for the development of the Property attempting to capture the architectural character of the Toano area and generally consistent with the architectural styles embodied in "Villages at Whitehall, Supplemental Community Information" prepared by AES Consulting Engineers submitted as a part of the rezoning application and incorporating appropriate and suitable sustainable building practices as recommended in the Sustainable Building Sourcebook of the City of Austin for the approval of the Development Review Committee prior to the County being obligated to grant final approval to any development plans for the Property (the "Guidelines"). Once approved, the

Guidelines may not be amended without the approval of the Development Review Committee. Owner shall establish a Design Review Board to review all building plans and building elevations for conformity with the Guidelines and to approve or deny such plans.

**13. Sidewalks.** There shall be sidewalks installed on both sides of each of the public streets, if any, on the Property and may be installed in phases as residential units are constructed. Sidewalks shall be installed prior to issuance of certificates of occupancy for adjacent dwelling units.

**14. Curb and Gutter.** Streets within the Property shall be constructed with curb and gutter provided, however, that this requirement may be waived or modified along those segments of street, including entrance roads, where structures are not planned.

**15. Master Stormwater Management Plan.** Owner shall submit to the County a master stormwater management plan as a part of the initial site or development plan submittal for the Property, including the stormwater management BMP pond, and where appropriate and feasible, low impact design techniques and, if not already remedied, providing for a remedy approved by the Environmental Division and the U.S. Army Corps of Engineers for the existing wetlands violation on Tax Parcel 1210100021 within the Property as detailed in the letter from the U.S. Army Corps

of Engineers dated April 22, 2005, for review and approval by the Environmental Division. The master stormwater management plan may be revised and/or updated during the development of the Property with the prior approval of the Environmental Division. The County shall not be obligated to approve any final development plans for development on the Property until the master stormwater management plan has been approved. The approved master stormwater management plan, as revised and/or updated, shall be implemented in all development plans for the Property.

16. **Private Streets.** All private streets on the Property shall conform to VDOT construction standards. Private streets shall be maintained by the Association or a neighborhood association. The party responsible for construction of a private street shall deposit into a maintenance reserve fund to be managed by the association responsible for maintenance of that private street an amount equal to one hundred and 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 at the time of final site plan or subdivision plat approval by the County for the particular phase or section which includes the relevant private street.

17. **Reserved Right of Way.** Owner shall reserve the area 50 feet in width shown on the Master Plan as "Future Connections to Adjacent Property" for a possible future road connection to the adjacent parcels to the south and west of the Property. Owner shall have no responsibility to construct a connecting road in this area and shall not be obligated to permit the owners of the adjacent parcels to construct a road in such area unless and until Owner and the owner of the adjacent parcels have entered into an agreement providing for the equitable sharing of the cost of maintenance of such road and the main entrance road into the Property, agreed upon a restriction limiting the use by the adjacent parcel of such roads to cars and light duty trucks and obligating the owner of the adjacent parcel to pay for any required road or traffic signal improvements warranted by the additional traffic from the adjacent parcels.

18. **Recreation.** (a) The following recreational facilities shall be provided: (i) approximately 2.99 acres of parkland; (ii) one playground (tot lot), with four to six activities; (iii) one paved tetherball court and (iv) approximately 1,800 feet of trails/paths. The exact locations of the facilities proffered hereby and the equipment to be provided at such facilities shall be subject to the approval of the Development Review Committee

(c) There shall be provided on the Property other recreational facilities, if necessary, such that the overall



recreational facilities on the Property meet the standards set forth in the County's Recreation Master Plan or in lieu of such additional facilities Owner shall make cash contributions to the County in amount determined pursuant to the County's Recreation Master Plan (with the amount of such cash contributions being determined by escalating the amounts set forth in the Recreation Master Plan from 1993 dollars to dollars for the year the contributions are made using the formula in Section 4(e)) or some combination thereof. All cash contributions proffered by this Condition 18 shall be used by the County for recreation capital improvements. The exact locations of the facilities proffered hereby and the equipment to be provided at such facilities shall be subject to the approval of the Development Review Committee.

19. **Route 30 Median Landscaping.** Owner, subject to the approval of VDOT, shall install landscaping in the Route 30 median along the Route 30 frontage to LaGrange Village. This landscaping shall be designed to compliment the adjacent buffer landscaping and shall include trees, shrubs and groundcovers in accordance with a plan submitted to and approved by the Director of Planning. The median will be planted or the planting bonded prior to the County being obligated to issue certificates of occupancy for dwelling units in LaGrange Village.

20. **Turf Manasement Plan.** The Association shall be responsible for developing and implementing a turf management

plan ("Turf Management Plan") for the maintenance of lawns and landscaping on the Property in an effort to limit nutrient runoff into Ware Creek and its tributaries from the Property. The Turf Management Plan shall include measures necessary to manage yearly nutrient application rates to turf such that the application of nitrogen does not exceed 75 pounds per year per acre.' The Turf Management Plan shall be prepared by a landscape architect licensed to practice in Virginia and submitted for review to the County Environmental Division for conformity with this proffer. The Nutrient Management Plan shall include terms permitting enforcement by either the Owners Association or the County. The Turf Management Plan shall be approved by the Environmental Division prior to final subdivision or site plan approval.

WITNESS the following signatures.

R. W. Cowan

Robert W. Cowan

Judy G. Cowan

Judy G. Cowan

STATE OF VIRGINIA AT LARGE

CITY/COUNTY OF JAMES CITY, to-wit:  
COUNTY

The foregoing instrument was acknowledged this &  
day of July, 2005, by Robert, J. Cowan.

Van M. DeLoe, III  
NOTARY PUBLIC

My commission expires: 12/31/09

STATE OF VIRGINIA AT LARGE

CITY/COUNTY OF JAMES CITY, to-wit:

The foregoing instrument was acknowledged this  
day of July, 2005, by Judy G. Cowan

Van M. DeLoe, III  
NOTARY PUBLIC

My commission expires: 12/31/09

Rauch Development Company, LLC

By:

Title:

Gayle M Rauch  
MANAGING MEMBER

STATE OF VIRGINIA AT LARGE

CITY/COUNTY OF Williamsburg, to-wit:

The foregoing instrument was acknowledged this 22nd day of July, 2005, by Gayle M Rauch, as managing member of Rauch Development Company, LLC on behalf of the company.

Vernon M Geddy III  
NOTARY PUBLIC

My commission expires: 12/31/09

Prepared by:  
Vernon M. Geddy, III, Esquire  
Geddy, Harris, Franck & Hickman, LLP  
1177 Jamestown Road  
Williamsburg, VA 23185  
(757) 220-6500

## SCHEDULE A

### **COWAN Properties:**

#### **TRACT I:**

Tax Map **121 03 00 002** aka **8716** Barhamsville Road (Deed to Robert W. **Cowan** Sr. only)

All that certain lot, piece or parcel of land situate, lying and being in Stonehouse District, James City County, Virginia, known and designated as Lot B as more particularly set up, shown and described on that certain plat entitled, "PLAT OF WHITEHALL - SECTION I, LOTS A & B, STONEHOUSE DISTRICT, JAMES CITY COUNTY, VA," dated May 30 1978, made by Small Engineering, Inc., which said plat is recorded in James City County Deed Book 185, page 669 on July 11, 1978.

It being the same property conveyed to Robert W. Cowan, Sr. by Deed dated July 14, 1981, from William T. Stone and Sara C. Stone, his wife, and recorded in the Clerk's Office of the Circuit Court for the City of Williamsburg and James City County, Virginia, in Deed Book 215, page 231.

#### **TRACT II:**

Tax Map **121 03 00 001** aka **8724** Barhamsville Road

All that certain lot, piece or parcel of land lying, being, and situated in the Stonehouse District, James City County, Virginia known and designated as Lot "A" as set out and shown on that certain plat of survey entitled, "PLAT OF WHITEHALL - SECTION ONE, LOTS A & B, STONEHOUSE DISTRICT, JAMES CITY COUNTY, VIRGINIA," dated May 30, 1978, made by Small Engineering, Inc., which plat is recorded in the Clerk's Office of the Circuit Court for the City of Williamsburg and James City County, Virginia, in Deed Book 185, page 669.

It being the same property conveyed unto R.W. Cowan and Judy G. Cowan, husband and wife, from Jimmy G. Bass, et ux, dated June 15, 1987, and recorded in the aforesaid Clerk's Office in Deed Book 350, page 354.

#### **TRACT III:**

Tax Map **121 01 00 021** aka **8720** Barhamsville Road

All those certain lots, pieces or parcels of land situate in Stonehouse District, James City County, Virginia, shown and designated on that certain plat of survey entitled, "A Plat Showing Division of a Trust of Land, Owned by Mrs. L.J. Haley, situated on State Highway No. 168 Near Toano, James City County, Virginia," made by L.V. Nolan and dated March 1953, a copy of said plat being recorded in James City County Plat Book 14, page 45, and on which plat said property is more particularly shown and described as follows:

PARCEL ONE: Lot No. 9, containing 9/10 of an acre by survey, but being conveyed in gross and not by the acre, and being bounded on the north by Lot No. 8, on the west by a small portion of land located between Lot No. 9 and the new highway to Toano, on the south by Lot No. 10 (Parcel Two herein) and on the east by other land herein conveyed as Parcel Three.

PARCEL TWO: Lot No. 10, containing 83/100 of an acre by survey but being conveyed in gross and not by the acre, and being bounded on the north by Lot No. 9 (Parcel One herein), on the west by a small portion of land located between Lot No. 10 and the new highway to Toano and on the south and the east by the center line of an old road.

PARCEL THREE: All the remaining property shown on said plat which is not designated by lot number, which remaining property is shown on said plat to be 5 3/4 acres in area, but being conveyed in gross and not by the acre, including that shown as an "Outlet" to State Route No. 168 and being bounded on the north by State Route No. 168 and Lots 1-8, both inclusive and on the west by Lot No. 9 (Parcel One herein) and on the south and east by the center line of an old road.

EXCEPTING FROM THE LAND DESCRIBED IN SAID DEED, A CERTAIN TRIANGULAR PARCEL ADJOINING THE AFORESAID "OUTLET" ON THE EAST SIDE THEREOF, WHICH PROPERTY HAS BEEN CONVEYED TO JERALD R. LAPHAM AND CLAIRE L. LAPHAM, AND FURTHER EXCEPTION THEREFROM 0.99 ACRE OF LAND HERETOFORE CONVEYED TO THE COMMONWEALTH OF VIRGINIA FOR HIGHWAY CONSTRUCTION PURPOSES BY DEED OF RECORD IN THE CLERK'S OFFICE OF JAMES CITY COUNTY, VIRGINIA.

AND FURTHER EXCEPTING THEREFROM LOTS A AND B SET UP, SHOWN, AND DESCRIBED ON THAT CERTAIN PLAT ENTITLED, PLAT OF WHITEHALL - SECTION I, LOTS A & B, STONEHOUSE DISTRICT, JAMES CITY COUNTY, VA.," DATED MAY 30, 1978 MADE BY SMALL ENGINEERING, INC., WHICH SAID PLAT IS RECORDED IN JAMES CITY COUNTY DEED BOOK 185, PAGE 669, ON JULY 11, 1978.

It being the same property conveyed unto Cowan, et ux from Nicole, Ltd., et al dated February 12, 1979, and recorded in the Clerk's Office of the Circuit Court for the City of Williamsburg and James City County, Virginia, in Deed Book 191, page 749.

**TRACT IV:**  
**Tax Map 122 01 00 021 aka 3225 Old Stage Road**

All that certain parcel of land in the Stonehouse District of James City County, Virginia, shown and described as "PARCEL A, 726,427 SF+/-, 16.68 AC+/-" on a plat of survey entitled, "PLAT OF BOUNDARY LINE AGREEMENT, PARCEL A, 16.68 +/- ACRES FOR CONVEYANCE TO: ROBERT W. SR. & JUDY G. COWAN, JAMES CITY COUNTY, VIRGINIA," which plat is dated October 15, 1997, revised January 22, 1998, was made by Charles Reid Scheckler, Certified Land Surveyor, and a copy of which said plat is attached to that certain Deed dated

January 26, 1998, and recorded in the Clerk's Office of the Circuit Court for the City of Williamsburg and James City County, Virginia, as Instrument No. 980002028, page 340.

It being the same property conveyed to Cowan, et ux, by Deed dated January 26, 1998 from Geddy, et al, and recorded in the Clerk's Office of the Circuit Court for the City of Williamsburg and James City County, Virginia, as Instrument No. 980002028, page 340.

VIRGINIA: CITY OF WILLIAMSBURG & COUNTY OF JAMES CITY  
This document was admitted to record on 8 26 08  
at 2:40 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  
\$ \_\_\_\_\_ \$ \_\_\_\_\_ \$ \_\_\_\_\_  
TESTE: BETSY B. WOOLRIDGE, CLERK  
BY: Betsy B. Woolridge Clerk

060 001939

THE VILLAGES AT WHITEHALL

HICKORY NECK, ROCHAMBEAU AND TASKINAS VILLAGES

PROFFERS

THESE PROFFERS are made this 1st day of September, 2005 by HAZELWOOD-WAVERLY, L.L.C., a Virginia limited liability company ("HW"); R. M. HAZELWOOD, JR., TRUSTEE OF THE NETTIE A. HAZELWOOD REVOCABLE TRUST DATED MAY 4, 2003 ("Hazelwood"); DAVID JOHNSON and CINDY JOHNSON, husband and wife ("Johnsons") (together with their successors in title and assigns, the "Owners"); and RAUCH DEVELOPMENT COMPANY, LLC, a Virginia limited liability company ("Buyer").

RECITALS

A. HW is the owner of a tract or parcel of land located in James City County, Virginia, with an address of 3400 Rochambeau Drive, Toano, Virginia, and being Tax Parcel 1220100014, containing approximately 83.07 acres, being more particularly described on Schedule A hereto (the "HW Property").

B. Hazelwood is the owner of two tracts or parcels of land located in James City County, Virginia, with addresses of 3610 Rochambeau Drive and 3611 Rochambeau Drive, Toano, Virginia, respectively, and being Tax Parcels 1220100024 and 1220100022, respectively, containing a total of approximately 19.99 acres,



being more particularly described on Schedule A hereto (the "Hazelwood Property").

C. Johnsons are the owners of two tracts or parcels of land located in James City County, Virginia, with an address of 3850 Richmond Road, Toano, Virginia, and being Tax Parcel 1220100018, containing approximately 4.69 acres, and with an address of 3505 Rochambeau Drive, Toano, Virginia, and being Tax Parcel 1220100019, containing approximately 23.20 acres, both being more particularly described on Schedule A hereto (the "Johnson Property").

D. The HW Property, the Hazelwood Property, and the Johnson Property are sometimes herein collectively referred to as the "Property."

E. Buyer has contracted to purchase the Property.

F. The Johnson Property is now zoned A-1. The HW Property and the Hazelwood Property is now zoned B-1. All of the Property is designated Low Density Residential on the County's Comprehensive Plan Land Use Map.

G. Buyer, with the consent of the Owners, has applied to rezone a portion of the Property from A-1 and B-1 to R-2, with proffers, and a portion of the Property from A-1 and B-1 to R-5, with proffers, a portion of the Property from B-1 and to B-1,

with proffers, and for a special use permit for a residential cluster with a density in excess of three units an acre.

H. Buyer has submitted to the County a master plan entitled "Master Plan, The Villages at Whitehall for Rauch Development, LLC" prepared by AES Consulting Engineers dated February 22, 2005, last revised June 24, 2005 (the "Master Plan") for the Property in accordance with the County Zoning Ordinance

I. Buyer and Owners desire to offer to the County certain conditions on the development of the Property not generally applicable to land zoned R-2 and R-5.

NOW, THEREFORE, for and in consideration of the approval of the requested rezoning, and pursuant to Section 15.2-2298 of the Code of Virginia, 1950, as amended, and the County Zoning Ordinance, Owner agrees that it shall meet and comply with all of the following conditions in developing the Property. If the requested rezoning is not granted by the County, these Proffers shall be null and void.

#### CONDITIONS

1. **Master Plan.** The Property shall be developed generally in accordance with the Master Plan, with only minor changes thereto that the Development Review Committee determines do not change the basic concept or character of the development.

There shall be a maximum of 415 single family attached and detached dwelling units on the Property. The Property shall be developed in conjunction with The Villages at Whitehall, LaGrange Village, development with a single master property owners association for all villages as provided in Condition 2.

2. **Owners Association.** There shall be organized a master owner's association for the Villages at Whitehall development (the "Association") in accordance with Virginia law in which all property owners in the development, by virtue of their property ownership, shall be members. In addition, there may be organized separate owner's associations for individual Villages or neighborhoods within Villages in which all owners in the Village or neighborhood, by virtue of their property ownership, also shall be members. The articles of incorporation, bylaws and restrictive covenants (together, the "Governing Documents") creating and governing each Association shall be submitted to and reviewed by the County Attorney for consistency with this Proffer. The Governing Documents shall require that each Association adopt an annual maintenance budget, which shall include a reserve for maintenance of stormwater management BMPs, recreation areas, private roads and parking areas, sidewalks, and all other common areas (including open spaces) under the jurisdiction of each Association and shall require that the

Association (i) assess all members for the maintenance of all properties owned or maintained by the Association and (ii) file liens on members' properties for non-payment of such assessments. The Governing Documents shall grant each Association the power to file liens on members' properties for the cost of remedying violations of, or otherwise enforcing, the Governing Documents. If there is more than one Association created for the Property the Associations shall enter into a costs sharing agreement allocating responsibility for maintenance and expenses for common areas described above between the Associations. The Governing Documents shall authorize the Association to develop, implement and enforce a turf management plan as provided herein.

3. **Water Conservation.** (a) The Association shall be responsible for developing water conservation standards to be submitted to and approved by the James City Service Authority and subsequently for enforcing these standards. The standards shall address such water conservation measures as limitations on the installation and 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.

The standards shall be approved by the James City Service Authority prior to final subdivision or site plan approval.

(b) If the Owner desires to have outdoor watering of common areas on the Property it shall provide water for irrigation utilizing surface water collection from the two surface water ponds that are shown on the Master Plan and shall not use James City Service Authority ("JCSA") water or well water for irrigation purposes, except as provided below. This requirement prohibiting the use of well water may be waived or modified by the General Manager of JCSA if the Owner demonstrates to the JCSA General Manager that there is insufficient water for irrigation in the surface water impoundments, and the Owner may apply for a waiver for a shallow (less than 100 feet) well to supplement the surface water impoundments.

**4. Cash Contributions for Community Impacts.** (a) A contribution of \$1,061.00 for each detached dwelling unit on the Property and of \$796.00 for each attached dwelling unit on the Property shall be made to the James City Service Authority ("JCSA") in order to mitigate impacts on the County from the physical development and operation of the Property. The JCSA may use these funds for development of alternative water sources or any project related to improvements to the JCSA water system,

the need for which is generated in whole or in part by the physical development and operation of the Property.

(b) A contribution of \$36.00 for each single family detached dwelling unit and a contribution of \$30.00 for each single family attached dwelling unit on the Property served by JCSA Lift Station 9-5 shall be made to the JCSA in order to mitigate impacts on the County from the physical development and operation of the Property. A contribution of \$81.00 for each single family detached dwelling unit and a contribution of \$67.50 for each single family attached dwelling unit on the Property served by JCSA Lift Station 9-7 shall be made to the JCSA in order to mitigate impacts on the County from the physical development and operation of the Property. The JCSA may use these funds to defray the costs of JCSA Lift Stations 9-7 and 9-5 or any project related to improvements to the JCSA sewer system, the need for which is generated in whole or in part by the physical development and operation of the Property.

(c) A contribution of \$1,275.00 for each detached dwelling unit on the Property and of \$775.00 for each attached dwelling unit on the Property shall be made to the County in order to mitigate impacts on the County from the physical development and operation of the Property. The County may use these funds for any project in the County's capital improvement plan, the need

for which is generated in whole or in part by the physical development and operation of the Property, including, without limitation, for emergency services, off-site sidewalk and road improvements, library uses, and public use sites.

(d) A contribution of \$3,750.00 for each detached dwelling unit on the Property and of \$1,875.00 for each attached dwelling unit on the Property shall be made to the County in order to mitigate impacts on the County from the physical development and operation of the Property. The County may use these funds for any project in the County's capital improvement plan, the need for which is generated in whole or in part by the physical development and operation of the Property, including, without limitation, for school uses.

(e) A contribution of \$100.00 for each dwelling unit on the Property shall be made to the County in order to mitigate impacts on the County from the physical development and operation of the Property. The County may use these funds for any project in the County's capital improvement plan, the need for which is generated in whole or in part by the physical development and operation of the Property, including, without limitation, for the County's purchase of development rights program.

(f) The contributions described above shall be payable for each dwelling unit on the Property at the time of final subdivision plat or site plan approval for such unit unless the County adopts a written policy or ordinance calling for payment of cash proffers at a later date in the development process.

(f) The per unit contribution(s) paid in each year pursuant to this Section shall be adjusted annually beginning January 1, 2006 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 per unit contribution be adjusted to a sum less than the amounts set forth in paragraphs (a) through (e) of this Section. The adjustment shall be made by multiplying the per unit contribution 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 per unit contribution shall be adjusted based upon the figure that would have resulted had no change occurred in the manner of computing 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 per unit contribution to approximate the rate of annual inflation in the County.

**5. Entrances; Traffic Improvements.** (a) At the entrance from Route 60 into Area 3 of the Property as shown on the Master Plan, a north bound 150 foot right turn taper and a south bound 200 foot left turn lane and 200 foot left turn taper shall be constructed.

(b) At the western entrance from Rochambeau Road into Area 3 and Area 1 of the Property as shown on the Master Plan, an east bound 150 foot right turn taper a west bound 200 foot left turn lane and 200 foot left turn taper, a west bound 150 foot right turn taper and an east bound 200 foot left turn lane and 200 foot left turn taper shall be constructed.

(c) At the eastern entrance from Rochambeau Road into Area 3 of the Property as shown on the Master Plan, a east bound 150 foot right turn taper and a west bound 200 foot left turn lane and 200 foot left turn taper shall be constructed.

(d) At the entrance from Rochambeau Road into the B-1 parcel of the Property as shown on the Master Plan, a west bound 150 foot right turn taper shall be constructed.

(e) The turn lanes and tapers proffered hereby shall be constructed in accordance with Virginia Department of Transportation ["VDOT") standards and shall be completed or their completion bonded in form satisfactory to the County Attorney prior to the issuance of any building permits for the Master Plan Area served thereby.

(f) Prior to the issuance of building permits for buildings in Taskinas or Rochambeau Villages and subject to the approval thereof by VDOT, Owner shall reconfigure the intersection of Rochambeau Road and Old Stage Road to the configuration shown on the Master Plan or bond, in form satisfactory to the County Attorney, such reconfiguration.

(g) The Owner shall submit an updated traffic impact study to the Director of Planning and VDOT for their review and approval prior to the time of the issuance of building permits for more than 75% of the total number of dwelling units permitted on the Property under the Master Plan, unless the Director of Planning and VDOT waive such requirement. The updated traffic study shall include actual traffic counts from the developed portions of the Property and utilize ITE trip

generation figures for undeveloped portions of the Property and shall account for all other traffic utilizing the entrance roads into the Property and shall determine whether full right turn lanes at the entrances to the Property are warranted. If the approved updated study determines such turn lanes are warranted, the County shall not be obligated to issue any further building permits for further development on the Property until such turn lanes have been installed or surety for their completion in form acceptable to the County Attorney have been posted with the County.

(g) Owner shall submit with each preliminary development plan which includes collector roads planned to potentially serve off-site properties to the Director of Planning and VDOT for their review and approval, a study confirming that the road as designed meets VDOT design and construction standards and guidelines for the projected traffic using the road. Such roads shall be constructed in accordance with the approved study.

**6. Route 60 Community Character Buffer.** (a) There shall be a variable width buffer along the Route 60 frontage of the Property to provide screening between the Village of Hickory Neck and Route 60 and an appropriate foreground to historic Hickory Neck Church. Owner shall submit a plan for this buffer for review and approval by the Development Review Committee.

This landscape plan may include a landscaped farm pond also serving as a stormwater BMP as shown on the Master Plan and shall contain trees, shrubs, groundcovers and/or grasses, provide for the planting and harvesting of agricultural crops or other agricultural operations, fencing and berming to retain and/or create a sense of open farmland or pasture while screening the Village from the direct view of vehicles traveling on Route 60. The buffer shall be graded to create a gentle slope from Route 60 to a low landscaped berm located behind the lots adjacent to the buffer. The combination of the berm and landscaping shall, when the landscaping has reached maturity, screen the adjacent houses from the direct view of vehicles traveling on Route 60. The buffer provided shall measure a minimum of 300 feet deep. The buffer shall be exclusive of any lots or units. Agricultural activities such as planting and harvesting crops and grazing livestock shall be permitted in the buffer. The entrances, turn lanes/tapers and stormwater management facilities as shown generally on the Master Plan, the trails, sidewalks and bike lanes as shown generally on the Master Plan, utilities, lighting, entrance features and signs may be located in the buffer with the approval of the Development Review Committee. Dead, diseased and dying trees or shrubbery, and invasive or poisonous plants may be removed from

the buffer area. If a stormwater BMP pond is located within the buffer area, it shall be designed and constructed in accordance with a plan submitted to and approved by the Director of Planning to resemble a farm pond, using techniques such as less steep slopes, landscaping typical to a farm pond and berms. The buffer shall be planted in accordance with the approved buffer landscape plan or the planting bonded prior to the County being obligated to issue certificates of occupancy for dwelling units in Hickory Neck Village.

(b) All billboards now located within the buffer shall be removed before the County is obligated to issue certificates of occupancy for dwelling units on the Property.

**7. Route 60 Median Landscaping.** Owner, subject to the approval of VDOT, shall install landscaping in the Route 60 median along the Route 60 frontage to Hickory Neck Village. This landscaping shall be designed to compliment the Hickory Neck Village Community Character Corridor buffer landscaping and shall include trees, shrubs and groundcovers in accordance with a plan submitted to and approved by the Director of Planning. The median shall be planted or the planting bonded prior to the County being obligated to issue certificates of occupancy for dwelling units in Hickory Neck Village.

8. Rochambeau Road Buffers. (a) Along the Rochambeau Road frontage of Rochambeau Village, the 75 foot buffer shall be planted as set forth herein to provide a visual screen between the road and the Village through a reforestation plan. This plan may include some earth moving and berming and shall include a seeding and planting plan as recommended by the State of Virginia's Department of Forestry and approved by the Director of Planning. The planting mix shall include at least two types of evergreen trees and a variety of deciduous trees including Oak, Maple and Gum as well as native understory trees including Redbud and Dogwood. The buffer shall achieve an effective visual screen (6'-8' height of plantings and berming) within six years from time of installation. The buffer shall be left undisturbed to reforest with the exception of a more groomed landscape at the Village entrances. The buffer shall be planted or the planting bonded prior to the County being obligated to issue certificates of occupancy for dwelling units in Rochambeau Village.

(b) Along the Rochambeau Drive frontage to Hickory Neck Village, landscaping shall be provided within the 75' buffer to enhance the look of a forested edge to that Village in accordance with a landscaping plan approved by the Director of Planning. The buffer shall be planted or the planting bonded

prior to the County being obligated to issue certificates of occupancy for dwelling units located within 500 feet of Rochambeau Drive in Hickory Neck Village.

(c) Along the Rochambeau Drive and School Lane frontages to Taskinas Village, landscaping shall be provided within the 75' buffer to enhance the look of a forested edge to that Village in accordance with a landscaping plan approved by the Director of Planning. In any areas where the backs of dwelling units face Rochambeau Road or School Lane a combination of berms and/or landscaping shall, when the landscaping has reached maturity, screen the adjacent units from the direct view of vehicles traveling on Rochambeau Road or School Lane. The buffer shall be planted or the planting bonded prior to the County being obligated to issue certificates of occupancy for dwelling units located in Taskinas Village.

**9. Pedestrian Connections to Adjacent Properties.** Owner shall provide pedestrian connections between the Property and the adjacent properties generally as shown on the Master Plan, with the plans, location and materials for such connections subject to review and approval by the Director of Planning and with such connections to be shown on the development plans for the Property. The connections shall be either (i) installed or (ii) bonded in form satisfactory to the County Attorney prior to

the issuance of any certificates of occupancy for any buildings in the Village containing such connections.

**10. Streetscape Guidelines.** The Owner shall provide and install streetscape improvements in accordance with the applicable provisions of the County's Streetscape Guidelines policy. The streetscape improvements shall be shown on development plans for that portion of the Property and submitted to the Director of Planning for approval during the site plan approval process. Streetscape improvements shall be either (i) installed within six months of the issuance of a certificate of occupancy for any residential units in adjacent structures or (ii) bonded in form satisfactory to the County Attorney prior to the issuance of a certificate of occupancy for any residential units in adjacent structures.

**11. Recreation.** (a)' Owner shall preserve the Waverly Farm farmhouse pursuant to a preservation plan approved by the Director of Planning and may utilize it as a clubhouse/community facility. Owner reserves the right to relocate the farmhouse to a different location on the Property with the prior approval of the Development Review Committee.

(b) The following recreational facilities shall be provided: (i) approximately 12.48 acres of parkland, including 8.03 acres shown as recreation area on the Master Plan; (ii) two



play areas (tot lots) with playground equipment for four to six activities; (iii) two to four tennis and/or multi-use courts; (iv) approximately 2.03 miles of trails/paths; (v) a 25 meter swimming pool with pool house. The exact locations of the facilities proffered hereby and the equipment to be provided at such facilities shall be subject to the approval of the Development Review Committee. All recreational facilities shall be open to owners in LaGrange Village.

(c) There shall be provided on the Property other recreational facilities, if necessary, such that the overall recreational facilities on the Property meet the standards set forth in the County's Recreation Master Plan as determined by the Director of Planning or in lieu of such additional facilities Owner shall make cash contributions to the County in an amount determined pursuant to the County's Recreation Master Plan (with the amount of such cash contributions being determined by escalating the amounts set forth in the Recreation Master Plan from 1993 dollars to dollars for the year the contributions are made using the formula in Section 4(e)) or some combination thereof. All cash contributions proffered by this Proffer 18 shall be used by the County for recreation capital improvements. The exact locations of the facilities proffered hereby and the equipment to be provided at such

facilities shall be subject to the approval of the Development Review Committee.

**12. Archaeology.** A Phase I Archaeological Study for the entire Property shall be submitted to the Director of Planning for review and approval prior to land disturbance. A treatment plan shall be submitted and approved by the Director of Planning for all sites in the Phase I study that are recommended for a Phase II evaluation and/or identified as eligible for inclusion on the National Register of Historic Places. If a Phase II study is undertaken, such a study shall be approved by the Director of Planning and a treatment plan for said sites shall be submitted to, and approved by, the Director of Planning for sites that are determined to be eligible for inclusion on the National Register of Historic Places and/or those sites that require a Phase III study. If in the Phase III study, a site is determined eligible for nomination to the National Register of Historic Places and said site is to be preserved in place, the treatment plan shall include nomination of the site to the National Register of Historic Places. If a Phase III study is undertaken for said sites, such studies shall be approved by the Director of Planning prior to land disturbance within the study areas. All Phase I, Phase II, and Phase III studies shall meet the Virginia Department of Historic Resources' Guidelines for

Preparing Archaeological Resource Management Reports and the Secretary of the Interior's Standards and Guidelines for Archaeological Documentation, as applicable, and shall be conducted under the supervision of a qualified archaeologist who meets the qualifications set forth in the Secretary of the Interior's Professional Qualification Standards. All approved treatment plans shall be incorporated into the plan of development for the Property and the clearing, grading or construction activities thereon.

**13. Design Guidelines and Review.** Owner shall prepare and submit design review guidelines to the Development Review Committee setting forth design and architectural standards for the development of the Property attempting to capture the architectural character of the Toano area and generally consistent with the architectural styles embodied in "Villages at Whitehall, Supplemental Community Information" prepared by AES Consulting Engineers submitted as a part of the rezoning application and incorporating appropriate and suitable sustainable building practices as recommended in the Sustainable Building Sourcebook of the City of Austin for the approval of the Development Review Committee prior to the County being obligated to grant final approval to any development plans for the Property (the "Guidelines"). The Guidelines shall

specifically address appropriate architectural treatments for the rear elevation of any dwelling units facing Rochambeau Road or School Lane in Taskinas Village. Once approved, the Guidelines may not be amended without the approval of the Development Review Committee. Owner shall establish a Design Review Board to review all building plans and building elevations for conformity with the Guidelines and to approve or deny such plans.

14. Hickory Neck Church. Owner shall design the stormwater BMPs and system on the Property to serve the proposed expansion of Hickory Neck Church and shall grant the Church the necessary easements to drain into such system. Owner shall preserve and enhance the existing hedgerow located along the common property line between the Property and Hickory Neck Church in the vicinity of the road connection to the Hickory Neck Church site as shown on the Master Plan and/or plant a hedgerow extending along the property line generally as shown on the Master Plan, all in accordance with a plan approved by the Development Review Committee. The hedgerow shall be planted in accordance with the approved landscape plan or the planting bonded prior to the County being obligated to issue certificates of occupancy for dwelling units in Hickory Neck Village.

15. Stonehouse Elementary School/Williamsburg Christian Academy/Faith Fellowship Assembly of God. Owner shall design the stormwater BMPs and system on the Property to serve the Stonehouse Elementary School and any potential expansion thereof and Faith Fellowship Assembly of God and shall grant the School and the Church the necessary easements to drain into such system. Owner shall extend gravity sewer to the Property from Lift Station 9-5 with a size approved by JCSA to serve Stonehouse Elementary School, Williamsburg Christian Academy and Faith Fellowship Assembly of God and shall grant the School and the Church the necessary easements to utilize such sewer line. Owner shall extend the pedestrian access from the pedestrian system on the Property to the Faith Fellowship Assembly of God.

16. Sidewalks. There shall be sidewalks installed on both sides of each of the public streets on the Property, which sidewalks may be installed in phases as residential units are constructed. Sidewalks shall be installed prior to issuance of certificates of occupancy for adjacent dwelling units. Owner shall either (i) install sidewalks along the Route 60 and Rochambeau Road frontage of the Property or (ii) in lieu thereof, construct a hard surface multi-use trail with a design approved by the Director of Planning along such road frontages with connections to the internal trail system on the Property or

(iii) in lieu thereof, make a payment to the County for sidewalk improvements included in the County's capital improvements plan in an amount acceptable to the Director of Planning based on the estimated costs of construction of the sidewalks.

17. **Commercial Uses.** In the portion of the Property rezoned to B-1, with proffers, the following uses, otherwise permitted by right, shall not be permitted:

automobile service stations;  
hotels, motels, tourist homes and convention centers;  
indoor sports facilities  
indoor theaters  
radio and television stations and accessory antenna or towers or tower mounted wireless communication facilities, which are 60 feet or less in height;  
fast food restaurants; and  
wholesale and warehousing.

18. **Curb and Gutter.** Streets (but not the private alleys) within the Property shall be constructed with curb and gutter provided, however, that this requirement may be waived or modified along those segments of street, including entrance roads, where structures are not planned

19. **Master Stormwater Management Plan.** Owner shall submit to the County a master stormwater management plan as a part of the initial site or development plan submittal for the Property, including the stormwater management BMP ponds, and where appropriate and feasible, low impact design techniques for

review and approval by the Environmental Division. The master stormwater management plan may be revised and/or updated during the development of the Property with the prior approval of the Environmental Division. The County shall not be obligated to approve any final development plans for development on the Property until the master stormwater management plan has been approved. The approved master stormwater management plan, as revised and/or updated, shall be implemented in all development plans for the Property.

20. **Turf Management Plan.** The Association shall be responsible for developing and implementing a turf management plan ("Turf Management Plan") for the maintenance of lawns and landscaping on the Property in an effort to limit nutrient runoff into Ware Creek and its tributaries from the Property. The Turf Management Plan shall include measures necessary to manage yearly nutrient application rates to turf such that the application of nitrogen does not exceed 75 pounds per year per acre. The Turf Management Plan shall be prepared by a landscape architect licensed to practice in Virginia and submitted for review to the County Environmental Division for conformity with this proffer. The Nutrient Management Plan shall include terms permitting enforcement by either the Owners Association or the County. The Turf Management Plan shall be

approved by the Environmental Division prior to final subdivision or site plan approval.

21. **Development Phasing.** The County shall not be obligated to grant final subdivision plat or site plan approval for more than the number of lots/units on a cumulative basis set forth beside each anniversary of the date of the final approval of the applied for rezoning by the Board of Supervisors:

<u>Anniversary of Rezoning</u>	<u>Maximum Number of Lots/Units</u>
1	63
2	126
3	189
4	252
5	315
6	378
7 and thereafter	415

22. **Private Streets.** All private streets on the Property shall conform to VDOT construction standards. Private streets shall be maintained by the Association or a neighborhood association. The party responsible for construction of a private street shall deposit into a maintenance reserve fund to be managed by the association responsible for maintenance of that private street an amount equal to one hundred and 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 at the time of



final site plan or subdivision plat approval by the County for the particular phase or section which includes the relevant private street.

23. **Reserved Right of Way.** Owner shall reserve the area 50 feet in width shown on the Master Plan as "Future Connections to Adjacent Property" for a possible future road connections to the adjacent parcels to the south and west of the Property. Owner shall have no responsibility to construct a connecting road in this area and shall not be obligated to permit the owners of the adjacent parcels to construct a road in such area unless and until Owner and the owner of the adjacent parcels have entered into an agreement providing for the equitable sharing of the cost of maintenance of such road and the main entrance road into the Property, agreed upon a restriction limiting the use by the adjacent parcel of such roads to cars and light duty trucks and obligating the owner of the adjacent parcel to pay for any required road or traffic signal improvements warranted by the additional traffic from the adjacent parcels.

WITNESS the following signatures.

Hazelwood-Waverly, L.L.C.

By: R.M. Hazelwood, Jr.  
Manager

R.M. Hazelwood, Jr. Trustee  
R. M. Hazelwood, Jr, Trustee

STATE OF VIRGINIA AT LARGE  
CITY/COUNTY OF Williamsburg, to-wit:

The foregoing instrument was acknowledged this 2nd  
day of September, 2005, by R.M. Hazelwood, Jr., as Manager  
of Hazelwood-Waverly, L.L.C. on behalf of the company.

Van M. Sedberry III  
NOTARY PUBLIC

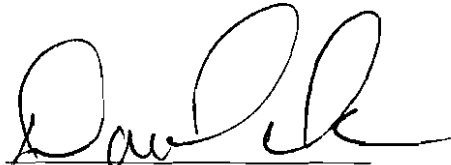
My commission expires: 12/31/09.

STATE OF VIRGINIA AT LARGE  
CITY/COUNTY OF Williamsburg, to-wit:

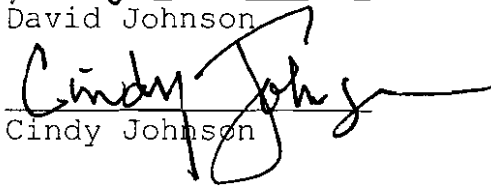
The foregoing instrument was acknowledged this 2nd  
day of September, 2005, by R. M. Hazelwood, Jr., as  
Trustee of the Nettie A. Hazelwood Revocable Trust dated May 4,  
2003.

Van M. Sedberry III  
NOTARY PUBLIC

My commission expires: 12/31/09



David Johnson



Cindy Johnson

STATE OF VIRGINIA AT LARGE  
CITY/COUNTY OF Williamsburg, to-wit:

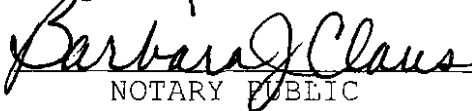
The foregoing instrument was acknowledged this 6  
day of September, 2005, by David Johnson.

  
NOTARY PUBLIC

My commission expires: 1/31/07.

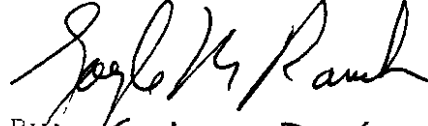
STATE OF VIRGINIA AT LARGE  
CITY/COUNTY OF Williamsburg, to-wit:

The foregoing instrument was acknowledged this 6  
day of September, 2005, by Cindy Johnson.

  
NOTARY PUBLIC

My commission expires: 1/31/07.

Rauch Development Company,



By: Gayle M Rauch  
Title: Manager

STATE OF VIRGINIA AT LARGE

CITY/COUNTY OF Williamsburg, to-wit:

The foregoing instrument was acknowledged this 2nd  
day of September, 2005, by Gayle M. Rauch, as Manager  
of Rauch Development Company, LLC on behalf of the company.

NOTARY PUBLIC

My commission expires: 12/31/09

Prepared by:  
Vernon M. Geddy, III, Esquire  
Geddy, Harris, Franck & Hickman, LLP  
1177 Jamestown Road  
Williamsburg, VA 23185  
(757) 220-6500

## SCHEDULE A

### **HAZELWOOD Properties:**

#### **Tax Map 12-2 01-0-0014 aka 3400 Rochambeau Drive**

All that certain tract or parcel of land in Stonehouse Magisterial District, James City County, Virginia, containing 83.07 acres, more or less, being all of the rest, residue and remainder of a certain tract or parcel of land known as "Waverly" acquired by R.M. Hazelwood by deed from Robert Hugh Naynes and Nolie Allen Haynes dated November 1, 1960, recorded in the Clerk's Office of James City County, Virginia, November 1, 1960, in Deed Book 77, page 167.

It being a part of the land conveyed to R.M. Hazelwood, Jr. by (1) Will of R.M. Hazelwood, recorded in James City County Will Book 10, page/ 499; (2) Deed of Gift from Mable W. Hazelwood, recorded in James City County Deed Book 165, page 249; and (3) Deed from Elizabeth H. Fowler, et ux. recorded in James City County Deed Book 324, page 95.

#### **Tax Map 12-2 01-0-0024 aka 3610 Rochambeau Drive**

All that certain piece or parcel of land in the Stonehouse District of James City County, Virginia, estimated to contain 5.7 acres, more or less, being part of the tract of land formerly known as "Tankards," being triangular in shape and bounded on the south by Rochambeau Drive, on the northeast by Old Stage Road and on the west by a ravine separating it from a tract of land known as Waverly.

It being a part of the land conveyed to R. M. Hazelwood, Jr., Trustee of the Nettie A. Hazelwood Revocable Trust, dated May 5, 2003, recorded in James City County as Instrument No. 050000791.

#### **Tax Map 12-2 01-0-0022 aka 3611 Rochambeau Drive**

All that certain parcel of land in the Stonehouse District of James City County, Virginia, containing 14.20 acres, more or less, shown and designated as PARCEL 1A on a Plat of Survey entitled, "SUBDIVISION OF PARCEL 1A, PROPERTY OF R.M. HAZELWOOD (PLAT BOOK 70, PAGE 34), STONEHOUSE DISTRICT, JAMES CITY COUNTY, VIRGINIA," which plat was made by Landmark Design Group, dated May 20, 2002, a copy of which said plat is recorded in the Clerk's Office of the Circuit Court for the City of Williamsburg and James City County, Virginia, in Plat Book 86, page 62, to which reference is here made.

It being a part of the land conveyed to R. M. Hazelwood, Jr., Trustee of the Nettie A. Hazelwood Revocable Trust, dated May 5, 2003, recorded in James City County as Instrument No. 050000791.

**JOHNSON/ARGO Properties:**

**3850 Richmond Road, Tax Map 1220100018:**

Parcel 1. All that piece or parcel of land in James City County, Virginia, being a portion of the "Waverly" tract on which the dwelling house is situated, containing 4.694 acres, more or less, as set out and shown on a plat entitled. "PLAT OF SURVEY A PARCEL CONTAINING 4.694 ACRES +/- OWNED BY DAVID AND CINDY JOHNSON AND A PARCEL CONTAINING 22.235 ACRES +/- OWNED BY ARGO, L.L.C., STONEHOUSE DISTRICT, JAMES CITY COUNTY, VIRGINIA," dated January 20,2003, and made by AES Consulting Engineers of Williamsburg, Virginia, a copy of which plat is recorded in the Clerk's Office of the Circuit Court of the City of Williamsburg and James City County, Virginia, as Instrument No. 050021664.

Together with an easement of right-of-way for access to and from this property to Highway Route 60 along the road or lane as now used, the approximate location of said road or lane is shown on the plat above referred to, said right to be in common with the right of the owner of the "Waverly" tract to use the same.

**3505 Rochambeau Drive, Tax Map 1220100019:**

Parcel 2. All that certain piece or parcel of land together with all the improvements thereon, situate, lying and being in James City County, Virginia, containing 22.235 acres, more or less, as set out and shown on a plat entitled, "PLAT OF SURVEY A PARCEL CONTAINING 4.694 ACRES +/- OWNED BY DAVID AND CINDY JOHNSON AND A PARCEL CONTAINING 22.235 ACRES +/- OWNED BY ARGO, L.L.C., STONEHOUSE DISTRICT, JAMES CITY COUNTY, VIRGINIA," dated January 20,2003, and made by AES Consulting Engineers of Williamsburg, Virginia, a copy of which plat is recorded in the Clerk's Office of the Circuit Court for the City of Williamsburg and James City County, Virginia, as Instrument No. 050021664.

VIRGINIA: CITY OF WILLIAMSBURG & COUNTY OF JAMES CITY  
This document was admitted to record on 26 Jan 06  
at 11:53 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

\_\_\_\_\_  
\$ \_\_\_\_\_ \$ \_\_\_\_\_ \$ \_\_\_\_\_

TESTE: BETSY B. WOOLRIDGE, CLERK

BY: Betsy B. Woolridge Clerk

SEP 13 2005

ORDINANCE NO. 169A-11

BOARD OF SUPERVISORS  
JAMES CITY COUNTY  
VIRGINIA

MILL CREEK AGRICULTURAL AND FORESTAL DISTRICT -

FINDLAY ADDITION (AFD-7-86)

WHEREAS, an Agricultural and Forestal District (AFD) has been established in the Mill Creek area; and

WHEREAS, in accordance with Section 15.2-4311 of the Code of Virginia, property owners have been notified, public notices have been filed, public hearings have been advertised, and public hearings have been held on the continuation of the Mill Creek AFD; and

WHEREAS, the AFD Advisory Committee at its meeting of July 18, 2005, unanimously recommended approval of the application; and

WHEREAS, the Planning Commission following its Public Hearing on August 1, 2005, unanimously recommended approval of the application.

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

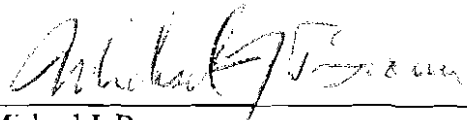
1. The Mill Creek AFD is hereby amended by the addition of the following parcel:

John Gregory and  
Marie Antoinette Findlay (9-4)(1-8H) 73.25 acres

provided, however, that all land within 25 feet of the road right-of-way of North Riverside Drive (Route 715) shall be excluded from the district.


2. Pursuant to the Virginia Code, Sections 15.2-4312 and 15.2-4313, as amended, the Board of Supervisors requires that no parcel in the Mill Creek AFD be developed to a more intensive use without prior approval of the Board of Supervisors. Specifically, the following restrictions shall apply:
  - a. The subdivision of land is limited to 25 acres or more, except where the Board of Supervisors authorizes smaller lots to be created for residential use by members of the owner's immediate family. Parcels of up to five acres, including necessary access roads, may be subdivided for the siting of communications towers and related equipment, provided, a) The subdivision does not result in the total acreage of the District to drop below 200 acres; and b) The subdivision does not result in a remnant parcel of less than 25 acres.

- b. No land outside the PSA and within the AFD may be rezoned and no application for such rezoning shall be filed earlier than six months prior to the expiration of the district. Land inside the PSA and within the AFD may be withdrawn from the District in accordance with the Board of Supervisors' policy pertaining to Withdrawal of Lands from Agricultural and Forestal Districts Within the Primary Service Area, adopted September 24, 1996.
- c. No special use permit shall be issued except for agricultural, forestal, or other activities and uses consistent with the State Code Section 15.2-4301 et. seq., which are not in conflict with the policies of this District. The Board of Supervisors, at its discretion, may issue special use permits for wireless communications facilities on AFD properties, which are in accordance with the County's policies and ordinances regulating such facilities.



**Michael J. Brown**  
Chairman, Board of Supervisors

ATTEST:



**Sanford B. Wanner**  
Clerk to the Board

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

Adopted by the Board of Supervisors of James City County, Virginia, this 13th day of September, 2005.

AFD-7-86.res