

AT A REGULAR MEETING OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE 9TH DAY OF MAY 2006, AT 7:00 P.M. IN THE COUNTY GOVERNMENT CENTER BOARD ROOM, 101 MOUNTS BAY ROAD, JAMES CITY COUNTY, VIRGINIA.

*Adopted 6/13/06
no amendment*

A. ROLL CALL

Bruce C. Goodson, Chairman, Roberts District
John J. McGlennon, Vice Chairman, Jamestown District
Jay T. Harrison, Sr., Berkeley District
James O. Icenhour, Jr., Powhatan District
M. Anderson Bradshaw, Stonehouse District

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

B. MOMENT OF SILENCE

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

C. PLEDGE OF ALLEGIANCE

Shatara Crutcher, an eighth-grade student at James Blair Middle School and Karl Reid, a seventh-grade student at James Blair Middle School led the Board and citizens in the Pledge of Allegiance.

D. PRESENTATIONS

1. Recognition – Environmental Single-Family Award – P.F. Summers of Virginia, LLC

Mr. Bruce Goodson presented a resolution of recognition and sign indicating the award to Seth Saunders and Mike Hart, representing P.F. Summers of Virginia, LLC for demonstrating building practices to reduce environmental impacts in James City County by going above and beyond standard practices to prevent runoff and erosion.

2. May is Bike Month

Mr. Goodson presented a resolution declaring May as Bike Month in James City County to Julie Pieretti, Jack Reitz, and Ernie Schmidt, members of Williamsburg Area Bicyclists.

Julie Pieretti, Jack Reitz, and Ernie Schmidt presented the Board members with T-Shirts and copies of a Bike Month proclamation from the Governor.

E. PUBLIC COMMENT

1. Mr. Richard Bradshaw, Commissioner of the Revenue, reminded citizens that it is time to apply for real estate tax exemptions. Mr. Bradshaw encouraged those who may qualify for this program to apply by contacting the Office of the Commissioner of the Revenue before June.

2. Mr. Ed Oyer, 139 Indian Circle, commented on Emergency Medical Services (EMS) fees; requested signs on Route 143 and Route 199 to alleviate traffic on Route 60; and commented on inconveniences at the Recreation Center.

F. CONSENT CALENDAR

Mr. Bradshaw asked to vote separately on Item Nos. 5 and 7. He disclosed his connection with the County Fair Committee.

Mr. Bradshaw made a motion to adopt the remaining items on the Consent Calendar including the amended minutes of April 25, 2006.

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

1. Minutes - April 25, 2006, Regular Meeting

2. May is Bike Month

RESOLUTION

MAY IS BIKE MONTH

WHEREAS, for more than a century, the bicycle has been an important part of the lives of most Americans; and

WHEREAS, today, millions of Americans engage in bicycling because it is a viable and environmentally-sound form of transportation, an excellent form of exercise, and provides quality family recreation; and

WHEREAS, James City County offers many bicycling opportunities for transportation, recreation, and exercise, and cyclists can enjoy the beautiful scenery, parks, area attractions, and historic sites of James City County from a unique vantage point; and

WHEREAS, Bike Month is designed to increase awareness about bicycling opportunities through organized activities such as bike-to-work days and bike rodeos for children.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby recognize May 2006 as Bike Month, and calls this observance to the attention of its citizens.

3. Budget Amendment - Building F, Mechanical Equipment Repair - \$24,900

RESOLUTION

BUDGET AMENDMENT – BUILDING F, MECHANICAL EQUIPMENT REPAIR - \$24,900

WHEREAS, the James City County General Services Department has experienced several failures of compressors for the Building F air conditioning system; and

WHEREAS, proposals have been obtained for this repair which will decrease air conditioning outages, protect the equipment, preserve the equipment warranty, and assure long-term operability of the cooling system, and

WHEREAS, the repair cost of the air conditioning system will be \$24,900, which is not funded.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby transfers \$24,900 from Operating Contingency to the Facilities Management Operating Budget.

4. Virginia Municipal League Insurance Programs - Safety Grant Award - \$1,283

RESOLUTION

VIRGINIA MUNICIPAL LEAGUE INSURANCE PROGRAMS -

SAFETY GRANT AWARD - \$1,283

WHEREAS, Financial and Management Services has received a safety grant from the Virginia Municipal League (VML) Insurance Programs in the amount of \$1,283; and

WHEREAS, the funds are to be used for the purchase of an air sampling pump, digital camcorder, and DVD/VCR/Monitor to improve indoor air quality in County buildings and to develop and deliver safety and Police training; and

WHEREAS, the grant requires a match of \$1,283; and

WHEREAS, the matching funds are available in the County's Grants Match account; and

WHEREAS, the grant expires on December 31, 2006, therefore allowing unexpended funds to be carried over into the next fiscal year budget.

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

Revenues:

VML Insurance Programs Safety Grant	\$1,283
James City County Grants Match	<u>1,283</u>
Total	<u>\$2,566</u>

Expenditure:

VML Insurance Programs Safety Grant	<u>\$2,566</u>
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6. Appointment - 2006 County Fair Committee

RESOLUTION

APPOINTMENT - 2006 COUNTY FAIR COMMITTEE

WHEREAS, annually the Board of Supervisors appoints the James City County Fair Committee; and

WHEREAS, the 2006 County Fair will be held Friday, June 23, and Saturday, June 24.

NOW, THEREFORE, BE IT RESOLVED that the James City County Board of Supervisors does hereby appoint the attached list of volunteers to the 2006 James City County Fair Committee for the term of June 23, 2006, through June 24, 2006.

5. Endorsement of the FY 07 Strategic Management Plan

Mr. Bradshaw highlighted actions in the Strategic Management Plan, including homelessness outreach and assistance, implementation of rural lands studies Phase I regarding the development of rural cluster and by right residential development, review of adequate public facility policy for schools, creation of a James City County stormwater utility and Spanish-language social service web pages and signage.

Mr. Bradshaw made a motion to adopt the resolution.

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

RESOLUTION

ENDORSEMENT OF THE FY 07 STRATEGIC MANAGEMENT PLAN

WHEREAS, the County's Strategic Management Plan was developed collaboratively and serves as a framework for achieving the County's mission of working in partnership with all citizens to achieve a quality community; and

WHEREAS, the Strategic Management Plan charts the County's future direction by setting forth long-range Strategic Directions that describe our needs, priorities, aspirations, and outlines Pathways or key initiatives that will move us forward in the right direction; and

WHEREAS, it is important to re-affirm the County's Strategic Directions principles.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby endorses the FY 07 Strategic Management Plan.

7. Subdivision Street Width Reduction Request - Watford Lane - Ironbound Square Redevelopment

Mr. Jose Ribeiro, Planner, stated that Mr. Aaron Small of AES Consulting Engineers, on behalf of James City County Office of Housing and Community Development (OHCD), has submitted an application for reduction of street width on Watford Lane.

In addition to the reduction application, the applicant has requested waivers from four of the eight conditions: under minimum distance of 400 feet between fire hydrants; minimum setbacks from the road of 40 feet; placement of roll-top curbs; and intersection landscaping.

Staff believes this plan is not detrimental to public safety issues. Staff recommended approval of the application.

Mr. Bradshaw asked Mr. Ribeiro if the trees referenced in the resolution were newly planted or existing trees.

Mr. Small stated these would be either new trees or existing trees. Mr. Small presented the layout for the revitalization of Ironbound Square. He stated that if they were prohibited from putting trees within 80 feet of the intersections, there would be very few trees in the area. He requested that the Board accept tree conditions established by Virginia Department of Transportation (VDOT).

Mr. Bradshaw asked for confirmation that the fire hydrant line was not adequate for the area.

Mr. Small confirmed this and stated an eight-inch main was required, but there would be a six-inch water main on Watford Lane. He stated during the redevelopment, there would be a connection between the twelve-inch main in order to place a hydrant at the intersection of Watford Lane. Mr. Small stated the applicant met with the Fire Department and the plan received its approval.

Mr. Bradshaw asked if there was a later point where they could reconsider the waiver regarding the trees.

Mr. Small gave a recap of the previous rezonings in the area, including the elderly apartments which require storm drainage. Mr. Small explained that the street reconstruction would take place while putting in the required storm drain.

Mr. Bradshaw asked if landscaping would be done at this time.

Mr. Rick Hanson, James City County OHCD, stated the landscaping will not be done at this time. But the engineer advised that the tree condition should conform with the VDOT landscaping policy.

Mr. Bradshaw asked if these decisions were based on expense.

The applicant stated that the roll-top curbing was preferable for the street and of less expense.

Mr. Bradshaw stated if there was a policy based on safety concerns, he is reluctant to vote for a waiver without questioning the policy.

Mr. Bradshaw stated this property would be a redevelopment and that may be a reason to wander from the policy, but he did not feel a safety concern should be modified for monetary reasons. He expressed concern, asked to waive two requirements - fire hydrants and setbacks, and to continue to require roll-top curbs, and tree setbacks to be considered at a later date. Mr. Bradshaw asked if the added cost would be borne by the County and inquired if it would raise the cost of the units.

Mr. Hanson responded that the cost would be at an appropriate level, but the prices of the units would not be affected by the additional cost.

Mr. Harrison agreed with Mr. Bradshaw and suggested taking concerns back to the Citizen Advisory Committee for their input on the two items.

Mr. Icenhour thanked Mr. Ribeiro for his response and stated that this policy was intended for new streets and not intended for redevelopment, but if the Board was granting waivers to a policy, it should be reviewed. Mr. Icenhour asked where on the diagram the three houses that would be effected by increased setbacks were located.

Mr. Small pointed out the proposed lots that would conflict with the setbacks.

Mr. Icenhour asked if on-street parking would be allowed.

Mr. Small stated there would be no parking on the street.

Mr. Icenhour asked about lateral length of the curb.

Mr. Small stated the lateral length was about a foot wider than traditional curbing, and the Fire Department stated that if someone were to park on the street, a fire truck would still be able to pass. Mr. Small clarified the reason the application came before the Board was because of the traffic volume of over 400 trips per day. Mr. Small explained that the application estimates 440 trips per day, based on the future redevelopment plan, which took into consideration development of the Cox site. Mr. Small said if these areas are not developed, they are below the requirement to request the reduced street width.

Mr. Icenhour asked if the fire hydrants were less than 400 feet apart.

Mr. Small stated they would be approximately 400 feet apart.

Mr. Icenhour asked if the third cul-de-sac would be serviced by the fire hydrants.

Mr. Small stated this property was close enough to be serviced.

Mr. Icenhour stated he would vote to allow three waivers, but push back the landscaping waiver.

Mr. McGlennon asked about the street width requirements of rights-of-way for the rest of the development.

Mr. Small stated the rest of the rights-of-way would not require a roll-top curb or reduced street width on any of the other streets in the development.

Mr. McGlennon stated his satisfaction and the standard curbs would encourage parking in front of homes parking more so than the roll-top curbing.

Mr. Goodson stated he supported removing the tree waiver.

Mr. Bradshaw asked to strike the words "and Number 8: Intersection trees."

Mr. Goodson stated there was a conflict of interests as the applicant was actually James City County.

Mr. McGlennon requested an "and" before Condition No. 5.

Mr. Harrison disclosed he is a non-voting member of the Citizen Advisory Committee for the revitalization of Ironbound Square.

Mr. Bradshaw made a motion to adopt the resolution as amended.

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

RESOLUTION

SUBDIVISION STREET WIDTH REDUCTION REQUEST--

WATFORD LANE-IRONBOUND SQUARE REDEVELOPMENT

WHEREAS, the required width of public streets located within subdivisions is set forth in the Virginia Department of Transportation's ("VDOT") Subdivision Street Design Guide (the "Guide"); and

WHEREAS, the Guide requires that the streets in the Ironbound Square subdivision be 36 feet in width; and

WHEREAS, in certain circumstances, the Guide allows for reductions in the required pavement width; and

WHEREAS, Mr. Aaron Small, on behalf of James City County Office of Housing and Community Development, has requested a six-foot reduction in the required pavement width from 36 feet to 30 feet, on Watford Lane, between the intersection of Carriage Road and Watford Lane to 900 feet south along Watford Lane, in order to allow proposed road improvements; and

WHEREAS, Mr. Aaron Small, on behalf of James City County Office of Housing and Community Development, has requested waivers from Item Numbers 1, additional hydrants, Number 3, minimum setbacks, and Number 5, roll-top-curbs, listed under the Reduced Street Width Policy adopted by the James City County Board of Supervisors on April 25, 2000; and

WHEREAS, VDOT has agreed to the proposed reduction; and

WHEREAS, VDOT cannot approve a request for a reduction in subdivision street pavement width without a written request by the Board of Supervisors.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby requests that VDOT approve a six-foot reduction from 36 to 30 feet, in the required street width on Watford Lane, from the intersection of Carriage Road and Watford Lane to 900 feet south along Watford Lane in Ironbound Square.

BE IT FURTHER RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby grant to James City County Office of Housing and Community Development waivers from Item Numbers 1, additional hydrants, Number 3, minimum setbacks, and Number 5, roll-top-curbs, listed under the Reduced Street Width Policy adopted by the James City County Board of Supervisors on April 25, 2000.

BE IT FURTHER RESOLVED that the County will require off-street parking in Watford Lane-Ironbound Square in conformance with Section 24 VAC-30-91-110 of the VDOT *Subdivision Street Requirements*.

G. PUBLIC HEARINGS

1. Case No. AFD-9-86-3. Gordon Creek Withdrawal (continued from April 25, 2006)
2. Case No. SUP-5-06. Williamsburg-James City County 8th Elementary School (continued from April 25, 2006)
3. Case No. SUP-14-06. 4001 Brick Bat Road – 8th Elementary School Utility Extension

Mr. Jason Purse, Planner, stated that Mr. Sanford B. Wanner has applied on behalf of James City County to withdraw approximately 44 acres from the Gordon Creek Agricultural and Forestal District for the construction of an elementary school, applied for a Special Use Permit (SUP) to build an elementary school and to construct approximately 880 linear feet of a gravity sewer line and 1,474 linear feet of a waterline from existing services located in Greensprings West at 4001 Brick Bat Road, further identified as Parcel No. (1-1) on James City County Real Estate Tax Map No. (36-3). The property is currently zoned A-1, General Agricultural, and is currently a part of the Gordon Creek Agricultural and Forestal District.

Staff found the proposed withdrawal and SUP for the construction of an elementary school consistent with the Comprehensive Plan. Furthermore, staff finds this application meets all of the criteria for the withdrawal of lands from Agricultural and Forestal Districts (AFD) outside the Primary Service Area (PSA). As a site currently zoned A-1, with the approval of an SUP to allow for a public school, the site would be in conformance and consistent with zoning for the General Agricultural District. Since the school site has an opening date of fall 2007, the applicant cannot wait for the renewal period for this AFD in August. In March 2006 AFD Advisory Committee voted 7-1 to deny the application for withdrawal.

Staff also finds that while extending utilities beyond the PSA boundaries is normally contrary to the Comprehensive Plan, the Public Facilities section stresses that the location of new public facilities should be closest to the greatest number of people served and located so that accessibility is maximized with minimal neighborhood effects. A public school is needed in this area of the County in order to meet current demand generated by residential development. The James City County Board of Supervisors reviewed a number of sites in and outside the PSA and chose this site as best meeting all of the criteria for construction of the 8th elementary school. A condition has been added to this application that limits connections to the service from this site, thus prohibiting further encroachment of utilities outside the PSA.

At its meeting on April 3, 2006, the Planning Commission voted to approve the application by a vote of 5-2.

Staff recommended that the Board approve the resolution.

Mr. Goodson opened the Public Hearing.

1. Mr. Henry Howell, on behalf of Letitia Hanson Trust, owner of 50 percent interest in the subject parcel and on behalf of Travis Armistead trust, stated that the County did not have a proper Certificate of Take and therefore did not have ownership of the property due to improper notification and negotiations with the property owners.

Mr. Rogers stated the County is working with the property owners. Title under A Certificate of Take is defeasible and the issues raised by Mr. Howell were discussed in a teleconference which included Sandy Cherry. Mr. Rogers stated the County attempted to work some of these issues out but was unable to before the meeting. He stated the County had an appraisal and draft survey, and was working with other owners of the property and their attorneys. Mr. Rogers further stated the County has title and a court could rule against the County but there would need to be a decision of a judge if the County had done anything wrong.

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

Mr. Goodson asked Mr. Rogers if the action would be nullified if the item was approved and the Certificate of Take was invalidated.

Mr. Rogers stated the Certificate of Take would become invalid and the County would have to redo the take, rehear the cases, and then move forward with building the school.

Mr. Goodson asked if there was a time limit to this process.

Mr. Rogers stated there would not be a time limit.

Mr. Harrison asked if there was enough time to work out issues if action was deferred to the next meeting.

Mr. Rogers stated that the item was deferred at the last meeting in attempt to work out the issues, but a deferral would delay the school schedule.

Mr. Wanner stated a deferral was not in the County's or school's best interest.

Mr. McGlennon asked for clarification that no one has asserted the County did not have the authority to take this land for a public purpose to build an elementary school.

Mr. Rogers stated this was correct.

Mr. Bradshaw asked if any irrevocable damage would be inflicted on the property owner if action were taken.

Mr. Rogers stated this was a worst-case scenario but the County would be required to pay for any damages to the property should the take be declared invalid.

Mr. Bradshaw stated the AFD Advisory Committee had not voted in favor of this, but they have a different mandate - to preserve and protect, not consider other public needs or priorities the Board would consider. He stated his appreciation to the AFD Advisory Committee members for valuing their own particular focus, but stated this would be in the best interest of the citizens. Mr. Bradshaw thanked Mr. Armistead for his stewardship of the land.

Mr. Bradshaw made a motion to adopt the resolutions and ordinance.

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

ORDINANCE NO. _____

AFD-9-86-3. GORDON CREEK WITHDRAWAL

WHEREAS, a request has been filed with the Board of Supervisors of James City County, Virginia (the "Board of Supervisors") to withdraw 44 acres of land owned by James City County located along Brick Bat Road and identified as a portion of Parcel No. (1-1) on James City County Real Estate Tax Map No. (36-3) from Agricultural and Forestal District (AFD) 9-86-3, which is generally known as the 3,276-acre "Gordon Creek Agricultural and Forestal District" (the "Application"); and

WHEREAS, at its March 16, 2006, meeting, the AFD Advisory Committee voted 7-1 to recommend denial of the Application; and

WHEREAS, a public hearing was advertised and held by the Planning Commission (the "Commission") at its April 3, 2006, meeting, pursuant to Section 15.2-4314 of the Code of Virginia, 1950, as amended (the "Virginia Code"), after which the Commission voted 5-2 to recommend approval of the Application; and

WHEREAS, pursuant to Section 15.2-4214 of the Virginia Code, a public hearing was advertised and held by the Board of Supervisors; and

WHEREAS, the Board of Supervisors finds that the withdrawal request meets the criteria set forth in the Board of Supervisors' Withdrawal Policy for Agricultural and Forestal District Parcels Outside the Primary Service Area, dated September 24, 1996.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby removes 44 acres owned by James City County, as referenced herein from the 3,276 acres of the Gordon Creek Agricultural and Forestal District.

RESOLUTION

CASE NO. SUP-5-06. WILLIAMSBURG-JAMES CITY COUNTY 8TH ELEMENTARY SCHOOL

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, Mr. Sanford Wanner has applied on behalf of James City County for an SUP to allow for an elementary school on approximately 44 acres of land on a parcel zoned A-1, General Agricultural; and

WHEREAS, the proposed school site is shown on a conceptual layout prepared by Timmons Group, entitled "New Elementary School" and dated March 7, 2006; and

WHEREAS, the property is located on land zoned A-1, General Agricultural, and can be further identified as a portion of James City County Real Estate Tax Map/Parcel No. (36-3)(1-1); and

WHEREAS, the Planning Commission of James City County, following its public hearing on April 3, 2006, recommended approval of this application by a vote of 7-0; and

WHEREAS, the Board of Supervisors of James City County, Virginia, finds this use to be consistent with the 2003 Comprehensive Plan Land Use Map designation for this site.

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. 5-06 as described herein with the following conditions:

1. The Property shall be developed generally as shown on the Master Plan entitled "New Elementary School" and dated March 7, 2006 (the "Master Plan"), with only changes thereto that the Director of Planning determines do not change the basic concept or character of the development.
2. There shall be a 50-foot perimeter buffer generally as shown on the Master Plan. The buffer shall be exclusive of any structures or paving and shall be undisturbed, except for the entrances and sidewalks shown generally on the Master Plan, and with the approval of the Director of Planning, for lighting, entrance features, fencing, and signs. Dead, diseased and dying trees or shrubbery, invasive or poisonous plants may be removed from the buffer area with the approval of the Director of Planning. With the prior approval of the Director of Planning, utilities may intrude into or cross the perimeter buffer; provided, however, that such crossings or intrusions are generally perpendicular to the perimeter buffer and are given prior approval from the Director of Planning
3. Any new exterior site or building lighting shall have 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 are not visible from the side. Fixtures which are horizontally mounted on poles shall not exceed 30 feet in height. No glare defined as 0.1 foot-candle or higher shall extend outside the property lines. The height limitation provided in this paragraph shall not apply to athletic field lighting provided that proper permits are issued under the James City County Zoning Ordinance.
4. All traffic improvements required by the Virginia Department of Transportation (VDOT) around the Centerville Road (Route 614) and Brick Bat Road (Route 613) intersection, as well as shoulder strengthening/widening of Brick Bat Road (Route 613) between Centerville Road (Route 614) and the school site, shall be installed or bonded by James City County prior to issuance of a certificate of occupancy for any structure on the site. All frontage improvements required by VDOT along the school site, including the widening of Brick Bat Road (Route 613) to accommodate appropriate turn lanes, shall be installed or bonded by the developer, and the appropriate right-of-way dedicated to VDOT, prior to issuance of a certificate of occupancy for any structure on the site.
5. A Phase I Archaeological Study for the entire site shall be submitted to the Director of Planning for his 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 being 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 site and the clearing, grading, or construction activities thereon.

6. The Williamsburg-James City County School Board shall be responsible for developing and enforcing water conservation standards to be submitted to and approved by the James City Service Authority (JCSA) prior to final development 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 and irrigation wells, the use of approved landscaping materials including the use of drought-tolerant plants where appropriate, and the use of water-conserving fixtures and appliances to promote water conservation and minimize the use of public water resources.
7. The developer shall integrate LID techniques and measures into the site development plan and shall work with the James City County Environmental Division to determine the most appropriate locations and techniques to be used based on the intended road, building and athletic facilities layout, grading, and drainage plan and site soils information. At a minimum 30 percent of the stormwater runoff generated from impervious surfaces shall be captured and treated by LID components above and beyond what is currently shown in the approved stormwater master plan. More than 30 percent is encouraged should greater opportunity for LID be present on the site. The LID measures shall not be used to comply with the James City County 10-point Best Management Plan (BMP) system or with the James City County special stormwater criteria as required by any applicable approved County watershed management plan. All stormwater basin components shall be in compliance with all Federal, State, and local regulations including, but not limited to, aquatic benches, forebays, landscaping, buffers/setbacks, and safety requirements. The percentage of impervious surface for the site shall not exceed 60 percent.
8. If construction has not commenced on this project within 36 months from the issuance of a 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.
9. This SUP is not severable. Invalidity of any word, phrase, clause, sentences, or paragraph shall invalidate the remainder.

RESOLUTION

CASE NO. SUP-14-06. 4001 BRICK BAT ROAD - 8TH ELEMENTARY SCHOOL

UTILITY EXTENSION

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, Mr. Sanford B. Wanner, on behalf of James City County, has applied for an SUP to allow for the extension of approximately 880 linear feet of 8-inch gravity sanitary sewer line and approximately 1474 linear feet of 12-inch waterline from existing services located in the Greensprings West subdivision to serve the proposed Williamsburg-James City County 8th Elementary School site at 4001 Brick Bat Road; and

WHEREAS, the property is located on land zoned A-1, General Agricultural, and can be further identified as Parcel No. (1-1) on James City County Real Estate Tax Map No. (36-3); and

WHEREAS, the Planning Commission, following its public hearing on May 1, 2006, voted 6 to 0 to recommend approval of this application.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve the issuance of Case No. SUP-16-04 as described herein with the following conditions:

1. 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 clearing, grading, and excavation of trenches necessary for the water and sewer mains.
2. No connections shall be made to the water main which would serve any property located outside the Primary Service Area (PSA) except for connections of the 8th Elementary School project and existing structures located on property outside the PSA adjacent to the proposed water main. In addition, for each platted lot recorded in the James City County Circuit Court Clerk's Office as of May 9, 2006, that is vacant, outside the PSA, and adjacent to the water main, one connection shall be permitted with no larger than a 3/4-inch service line and 3/4-inch water meter.
3. No connections shall be made to the gravity sanitary sewer main which would serve any property located outside the PSA except for connections of the 8th Elementary School project and existing structures located on property outside the PSA adjacent to the proposed mains. In addition, for each platted lot recorded in the James City County Circuit Court Clerk's Office as of May 9, 2006, that is vacant, outside the PSA, and adjacent to the main, one connection shall be permitted with no larger than a 4-inch service line.
4. All permits and easements shall be acquired prior to the commencement of construction for the water and sewer transmission mains.
5. For water and sewer main construction adjacent to existing residential development, adequate dust and siltation control measures shall be taken to prevent adverse effects on adjacent property.

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

4. Consideration of an amended resolution to condemn 44± acres of a 164± acre parcel of land, known as 4085 Centerville Road and designated on James City County Real Estate Tax Map as Parcel No. 3630100001, for a school, in order to update property ownership and code section references (continued from April 25, 2006)

Mr. Rogers stated this resolution amends the resolution adopted December 13 to restate code sections as amended and to include the property owners. Mr. Rogers stated that this issue raised by Mr. Howell and to address concerns, the resolution was redone. Mr. Rogers further stated that two weeks ago the true nature of the ownership of the property was learned through a court order entered in New Kent County and that this resolution corrects the resolution from December 13, 2005.

Mr. Goodson opened the Public Hearing.

1. Mr. Henry Howell stated, on behalf of Letitia Harrison Trust his disagreement with the validity of the Certificate of Take which enables condemnation of the property. He stated the owners did not have notice before the Certificate of Take and that the County ignored the procedure.

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

Mr. McGlennon made a motion to adopt the resolution.

Mr. Harrison stated he had a problem with condemnation and stated he wanted to affirm to the public they are not ignoring property rights. He stated his support, but asked the Board and County to reassure the public in this matter.

Mr. Rogers stated that the County is doing all it can to work with the property owners, worked with Mr. Armistead long before the resolution was adopted through the agent, copied Mr. Howell on letters and offers before the resolution was adopted as a courtesy, and tried in many ways to make offers to acquire the property outside of condemnation. The process of condemnation was a last resort and he made an offer to all property owners.

Mr. Harrison thanked Mr. Rogers for the clarification for the sake of the public.

Mr. McGlennon stated this was not a matter taken in haste but was a long deliberate process and the Board was being urged to move forward to serve the public need.

Mr. Icenhour stated he did not agree with condemnation of land but he stated this was ultimately the right thing for the County to do and agreed with Mr. Harrison in that this is being done for a public purpose. The question is not if there would be a school, the question was when, how, and that the property owners would receive proper compensation. He stated his support for the resolution.

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

RESOLUTION ADOPTED

NUNC PRO TUNC

A RESOLUTION TO AUTHORIZE THE ACQUISITION, BY VOLUNTARY CONVEYANCE OR CONDEMNATION, OF A 44-ACRE TRACT OF LAND BEING A PORTION OF THE 164 ACRES OF REAL PROPERTY COMMONLY KNOWN AS THE "JACKSONS" TRACT, 4085 CENTERVILLE ROAD IN JAMES CITY COUNTY, OWNED BY SALLIE ARMISTEAD WILSON, MARY ARMISTEAD HOGGE AND R. TRAVIS ARMISTEAD, JR. AS INDIVIDUALS AND/OR AS SUCCESSOR TRUSTEES UNDER THE DEED AND TRUST AGREEMENT DATED DECEMBER 27, 1970 AND MADE BY ROBERT T. ARMISTEAD AND SARAH H. ARMISTEAD, AND LETITIA A. HANSON AND MICHAEL J. CAVANAUGH, TRUSTEES UNDER THE LETITIA ARMISTEAD HANSON REVOCABLE TRUST, FOR PUBLIC PURPOSES, TO WIT:

CONSTRUCTION OF AN ELEMENTARY SCHOOL

- WHEREAS, the Williamsburg-James City County Public Schools ("Schools") needs to construct an eighth elementary school in order to meet the needs of the growing community; and
- WHEREAS, the Schools and the County of James City, Virginia ("County") have determined that the 44-acre tract of hereinafter described property is the necessary and proper location for a new elementary school; and
- WHEREAS, on December 13, 2005 the Board of Supervisors of James City County adopted a Resolution authorizing the acquisition of the same property by voluntary conveyance or condemnation ("Initial Resolution"); and
- WHEREAS, the Initial Resolution identified the owners of the hereinafter described property as Sarah H. Armistead, Trustee/Executor, Letitia A. Hanson, and Michael J. Cavanaugh, Trustees under the Letitia Armistead Hanson Revocable Trust and further stated that the County may proceed against any successors in title; and
- WHEREAS, prior to filing the Certificate of Take, the County learned that Sallie Armistead Wilson, Mary Armistead Hogge and R. Travis Armistead, Jr., as individuals and/or trustees have some ownership interest in the property; and
- WHEREAS, each of the three owners discovered after adoption of the Initial Resolution were given proper notice and received offers to purchase prior to filing the Certificate of Take; and
- WHEREAS, an attorney for one or more of the owners who was provided notice of the pre-Initial Resolution and post-Initial Resolution offers and the filing of the Certificate of Take, complained that, despite the savings clause, all property owners were not specifically referenced in the Initial Resolution; and

WHEREAS, the County and the Schools have moved forward with the acquisition of the property by filing the Certificate of Take and entering upon the property for the design and engineering of the new elementary school; and

WHEREAS, after holding a public hearing, the Board of Supervisors of James City County is of the opinion that a public necessity exists for the acquisition of the hereinafter described property for the construction and operation of a new elementary school in order to provide an adequate public education system and for such public purposes as to provide for the preservation of the health, safety, peace, good order, comfort, convenience, morals, and welfare of the County; and

WHEREAS, this Resolution should be adopted *nunc pro tunc*, to clarify for all purposes, if needed, that the Initial Resolution authorized the County's acquisition of the property by voluntary conveyance or condemnation.

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

1. The acquisition of the hereinafter described property for a public school, specifically authorized by Section 22.1-126.1, Code of Virginia (1950), as amended, is declared to be a public necessity and to constitute an authorized public undertaking pursuant to Section 15.2-1901.1, Code of Virginia (1950), as amended, and it is further declared that the acquisition and use of such property by the County will constitute a public use as defined by Section 15.2-1900, Code of Virginia (1950), as amended.
2. The County elects to use the procedures set forth in Sections 25.1-300 et seq., as authorized by Section 15.2-1905(C), Code of Virginia (1950), as amended.
3. A public necessity exists that the County enter upon and take the hereinafter described property for the purposes described hereinabove prior to or during the condemnation proceedings and the County declares its intent to so enter and take the property.
4. The County Attorney and/or the law firm of Randolph, Boyd, Cherry and Vaughan are hereby authorized and directed to acquire by voluntary acquisition or, if necessary by condemnation, in the manner provided by Title 25.1, Code of Virginia (1950), as amended, the hereinafter described property.
5. Based on the information available from the land records, the names of the present owners of the property to be acquired are: one-half ownership in Sallie Armistead Wilson, Mary Armistead Hogge, and R. Travis Armistead, Jr., individually and/or as Trustees under the Deed and Trust Agreement dated December 27, 1970 and made by Robert T. Armistead and Sarah H. Armistead, and one-half ownership in Letitia A. Hanson and Michael J. Cavanaugh, Trustees, under the Letitia Armistead Hanson Revocable Trust.
6. A substantial description of the property is:

44 acres of land as shown on the drawing entitled "School Site 1", being a portion of that certain parcel or tract of land, situate, lying and being in James City County, Virginia, commonly known as "Jacksons" containing one hundred sixty-three and 88/100 (163.88) acres, more or less, but conveyed in gross and not by the acre, designated on a plat and survey of the tract made by Sydney Smith, Surveyor, in April, 1920, as "Mrs. Rosa Armistead's Portion" bounded and described as follows: on the North by a pond known as Warburton's Pond, and by lands of Charles Thompson, on

the South by a road separating the land hereby conveyed from Greenspring Farm, on the East by Warburton's Pond, the land conveyed to John G. Warburton and the lands of Charles Thompson, and on the West by the tracts of land known as Pine Woods, Varnees and Nayses, and the south prong of Warburton's Pond.

BEING the same property as that conveyed to Rosa L. Armistead by deed of W.A. Bozarth, et als. dated June 7, 1920, recorded April 11, 1921 in James City Deed Book 19, page 241, the said Rosa L. Armistead having died seized and possessed of the said property at her death on August 11, 1956 and by her will dated September 20, 1953, and recorded in James City County Will Book 6, at page 195, she devised the said property to R. T. Armistead and Letitia Hanson; and

All that certain lot, piece or parcel of land located in James City County, Virginia, designated as Part of Parcel-1 on that certain plat entitled "PLAT OF A PORTION OF PARCEL-1, PROPERTY OF GREENSPRINGS PLANTATION, INC." dated June 10, 1997 as prepared by Freeman & Associates, Land Surveyors, attached to a deed from Greensprings Plantation, Inc., a Virginia corporation, dated July 15, 1997, recorded in the Clerk's Office of the Circuit Court of the City of Williamsburg and James City County, Virginia, as Instrument No. 970012003.

BEING the same property as that conveyed to THE LETITIA ARMISTEAD HANSON REVOCABLE TRUST, Letitia Armistead Hanson and Michael J. Cavanaugh, Trustees, from Letitia Armistead Hanson, by Deed of Gift dated December 5, 2003 and recorded in the Clerk's Office of the Circuit Court of the City of Williamsburg and James City County, Virginia as Document No. 030038497.

7. Just compensation is estimated to be \$450,000 based upon an appraisal which should be split equally between the two trusts identified herein or the beneficiaries of such trusts. Actual distribution of the proceeds shall be made by the Circuit Court.
8. No condemnation proceedings shall be commenced until the preconditions of Section 15.2-1903(A), Code of Virginia (1950), as amended, have been met.
9. In the event any of the property described in Paragraph 6 of this resolution has been conveyed, the County Attorney and/or the law firm of Randolph, Boyd, Cherry and Vaughan are authorized and directed to institute proceedings against the successors in title.
10. An emergency is declared to exist and this resolution shall be in effect from the date of its passage.
11. This Resolution is adopted *nunc pro tunc* by the Board of Supervisors as if the same were adopted on December 13, 2005.

5. Case No. SUP-1-06. Centerville Road Tower Relocation

Mr. Matthew Smolnik, Planner, stated that Mr. John Abernathy has applied on behalf of the Gene Burleson & Blair Burleson Estate to relocate the existing 405-foot-tall WMBG radio tower from New Town to Centerville Road. The properties consist of 39.1 combined acres and are located at 4338 and 4400 Centerville Road and can be further identified as Parcel Nos. (1-31) and (1-32) on James City County Real Estate Tax Map No. (36-2). The property is currently zoned A-1, General Agricultural.

Staff found the proposal generally inconsistent with the County's Performance Standards for Wireless Communications Facilities (WCFs). Staff also finds the proposal generally inconsistent with the 2003 Comprehensive Plan as outlined in the staff report and recommends that the James City County Board of Supervisors deny this application. However, by definition the proposed tower is not a wireless communication facility and the Board of Supervisors may wish to use its discretion on which portions of the policy are reasonably applicable in this case.

At its meeting on April 3, 2006, the Planning Commission voted to approve the application by a vote of 6-1.

Staff recommended that the Board deny the resolution.

Mr. McGlennon asked what information was provided about alternate locations.

Mr. Smolnik stated some sites for existing towers that overlapped and coverage areas for proposed location.

McGlennon asked what the use of the land would be in addition to the tower.

Mr. Smolnik stated one condition would be that there could be no subdivision while the tower was in operation. Mr. Smolnik stated there were some accessory structures and a fenced-in area on the property, but there would be no additional uses.

Mr. McGlennon asked if the tower would come down if it were no longer used.

Mr. Rogers stated the conditions only apply while the tower was being used.

Mr. McGlennon asked if the restriction of subdivision was no longer applicable if the applicant were required to remove the tower.

Mr. Rogers stated they would have by-right uses.

Mr. O. Marvin Sowers, Planning Director, stated there were approximately six parcels that could be developed theoretically.

Mr. Icenhour asked if the Resource Protection Area (RPA) would be affected and if the Board approved this, would the applicant need to go through the Chesapeake Bay Board.

Mr. Smolnik confirmed this.

Mr. Icenhour stated his surprise at a lack of objection from Ford's Colony and stated his support for the resolution.

Mr. Goodson stated the height of this tower cannot be altered because it is an AM broadcast facility.

Mr. Smolnik stated the height is correlated to the frequency.

Mr. Goodson stated the Board should not use the WCF's for broadcast towers because it would be far too restrictive for broadcast towers.

Mr. Goodson asked if there are any FCC problems with this policy or if it should be applicable on a broadcast facility.

Mr. McGlennon stated this was not a policy applicable to this particular application.

Mr. Goodson stated staff members should not have recommended denial because they are inappropriately applying a policy that does not pertain to this matter. Mr. Goodson stated he did not like to vote against staff recommendation, but did not think it was appropriate.

Mr. McGlennon asked if the elevation was required or could the tower be located in a depression at its current height. Mr. McGlennon stated he agreed with Mr. Goodson that the Board does not like to vote against staff recommendation. He asked if there were there any other ways to think about locating this facility with less impact.

Mr. Smolnik stated the policy was applied due to its application to the County's towers according to those used for 800 MHz.

Mr. McGlennon asked the acreage of the property.

Mr. Smolnik indicated there were two parcels: one parcel was 20 acres and the other was 19 acres.

Mr. McGlennon asked which, if not both parcels, would not be allowed to be subdivided.

Mr. Sowers stated they would merge them into a single parcel.

Mr. McGlennon stated that as this property was within the PSA, the applicant may apply for a rezoning.

Mr. Bradshaw emphasized to the Board that the language included "Property" which indicated two parcels collectively.

Mr. Goodson opened the Public Hearing.

1. Mr. Vernon M. Geddy, III, on behalf of AIG Baker and John Abernathy, presented an overview of the application and a brief history of the tower, including the need to relocate the tower to develop Section 9 of Settler's Market at New Town, and specific provisions that allows full power broadcast for AM towers at night for emergency broadcast. Mr. Geddy stated the tower was very visible, but as it was slim profile, it was unobtrusive. He stated the preferred relocation was to be within approximately two miles, but the selected site was 2.5 miles west of the current location. Mr. Geddy explained that the application would not intrude on RPA buffer, would show support for local radio, allow for Section 9 of New Town to be developed, and allow easy access to the tower for emergency broadcast.

Mr. McGlennon asked if the elevation could be manipulated.

Mr. Geddy responded that the current location is higher in elevation than the proposed site.

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

Mr. Harrison made a motion to adopt the resolution.

Mr. McGlennon stated he would like to have seen more effort to explore other options.

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

RESOLUTION

CASE NO. SUP-1-06. CENTERVILLE ROAD TOWER RELOCATION

WHEREAS, Mr. John Abernathy, on behalf of AIG Baker Development, LLC, has applied for a Special Use Permit (SUP) to allow for the construction of a 405-foot-tall AM radio tower; and

WHEREAS, a public hearing was advertised, adjoining property owners notified, and a hearing scheduled on Case SUP-1-06; and

WHEREAS, communication towers in excess of 35 feet in height are a specially permitted use in the A-1, General Agriculture, zoning district; and

WHEREAS, the tower will be located on property currently zoned A-1, General Agriculture, and is further identified as Parcel Nos. (1-31) and (1-32) on James City County Real Estate Tax Map No. (36-2) (collectively, the "Property"); and

WHEREAS, the Planning Commission of James City County, following its public hearing on April 3, 2006, recommended approval of Case No. SUP-1-06 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 Case No. SUP-1-06 as described herein with the following conditions:

1. This SUP shall be valid for a total of one guy wire tower on the Property. The maximum height of the tower shall not be greater than 405 feet. The Property shall be developed generally in accordance with the site layout titled "Master Plan Centerville Road Tower Relocation" dated January 27, 2006 (the "Master Plan"). Minor changes to the Master Plan may be approved by the Director of Planning.
2. Final building design, location, orientation, and construction materials for any supporting structures, such as equipment sheds and huts, shall be approved by the Director of Planning prior to final site plan approval.
3. Prior to final site plan approval, the applicant shall prepare a tree preservation and landscape plan (the "Landscape Plan") encompassing, at a minimum, all areas on the Property within 100 feet of the guy wire circle as depicted on the Master Plan. The Landscape Plan shall be approved by the Planning Director and shall provide for an evergreen buffer that effectively screens the tower base and related facilities from adjacent properties. This buffer shall remain undisturbed except for the access drive and necessary utilities for the tower.

4. A final Certificate of Occupancy (CO) from the James City County Code Compliance Division shall be obtained within 24 months of approval of this SUP, or the permit shall become void.
5. Within 30 days of the issuance of a final CO by the James City County Code Compliance Division, certification by the manufacturer, or an engineering report by a Virginia-registered structural engineer, shall be filed by the applicant indicating the tower height, design, structure, installation, and total anticipated capacity of the structure, including number and type of antennae which could be accommodated, demonstrating to the satisfaction of the Building Official that all structural requirements and other safety considerations set forth in the 2000 International Building Code, or any amendment thereof, have been met.
6. Any new exterior building lighting or lighting used to directly illuminate the building(s) at the base of the tower shall have 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. Fixtures which are horizontally mounted on poles shall not exceed 15 feet in height. No glare defined as 0.1 foot-candle or higher shall extend outside the property lines. There shall be no upward directed lighting on the property.
7. No additional lighting beyond the minimum required by the FAA or Federal Communications Commission (FCC) shall be allowed on the tower.
8. The tower shall have a finish that is similar to a light grey or light blue in color as approved by the Director of Planning.
9. No advertising material or signs shall be placed on the tower.
10. No subdivision of the Property shall be permitted while the tower remains in operation.
11. The tower shall be engineered to accommodate a minimum of six service provider antennae.
12. WMBG shall be responsible for the replacement or modification of all residential electronic equipment within 1,200 feet of the tower that is affected by interference. An independent tower engineer hired by the County and paid for by the applicant shall determine if the tower interference is the cause of the malfunction of this equipment.
13. If the tower ceases to regularly broadcast AM radio transmissions for a period of six months, the tower and associated accessories shall be removed from the property by its owners, within three months thereafter.
14. This SUP is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.

6. Case No. Z-16-05 and MP-13-05. New Town Section 9 - Settler's Market

Mr. Matt Smolnik, Planner, stated that Mr. Vernon Geddy, III, on behalf of AIG Baker Development, LLC and Developer's Realty Corporation has applied to rezone 58.0 acres to MU, Mixed Use, with proffers, to apply New Town Design Guidelines. If approved, proposed construction includes approximately 401,945 to 426,342 square feet of office and commercial space and approximately 215 to 279 residential units. The property consists of 58.0 acres and can be further identified as Parcel Nos.(1-3), (1-2), (1-52), and a portion of (1-56) on James City County Real Estate Tax Map No. (38-4).

Staff found the proposed additions consistent with surrounding zoning and development and consistent with the Comprehensive Plan.

At its meeting on April 3, 2006, the Planning Commission voted to approve the application by a vote of 7-0.

Staff recommended that the Board approve the resolution.

Mr. Bradshaw asked Mr. Smolnik about the school proffer amount.

Mr. Smolnik stated he could not answer the question, and that he would let the applicant answer the question.

Mr. Bradshaw stated this as not a number that comes from the policy and asked what the number would be if we used the policy.

Mr. Smolnik stated the proffer amount for multifamily attached would be zero dollars.

Mr. Bradshaw asked if this number would be good in comparison with the policy and asked how the fiscal analysis takes into account the effect on schools for those employed at retail jobs.

Mr. Smolnik stated this was consistent with the past, but this does not take into account those employed at retail jobs.

Mr. Bradshaw stated the fiscal impact may be beneficial but stated there may be outlying impacts including the lower income of retail jobs. Mr. Bradshaw stated the Monticello Avenue corridor was intended to be urban and slow in speed and if this is approved, the Board would acknowledge that this area was designed for urban development.

Mr. McGlennon stated that the proffer of 3 percent would be marketed at approximately \$350,000 but stated there were no qualifications for a particular income level and there would be no provision to maintain that as affordable housing beyond the first sale.

Mr. Smolnik stated Mr. Rick Hanson, OHCD, would work with those in the community to refer applicants for affordable housing, but this was not in the proffers.

Mr. McGlennon stated they wanted to encourage some addition to moderately priced housing. He asked about protection for the view of the corridors including Route 199.

Mr. Smolnik stated there would be a wooded buffer and the site plans would go through the New Town Design Review Board (DRB).

Mr. McGlennon asked if the DRB could encourage the development to implement architecture that would mimic the front of buildings.

Mr. Smolnik stated this was discussed with the applicant.

Mr. Icenhour asked where the rest of the money would come from beyond the applicant's share of eight percent of road improvements west of Route 199.

Mr. Smolnik stated future developments and rezonings would contribute to road improvements.

Mr. Icenhour asked if this was projected in any future budget.

Mr. Sowers stated that two more zonings would come forward in New Town. He stated the County could seek Federal and State money for this and accepting the proffer would be the first money received for these improvements.

Mr. Icenhour asked the time frame of the work.

Mr. Sowers stated the window of time projected allows for improvements and there are funds available over time.

Mr. McGlennon asked if minutes are available from the New Town DRB.

Mr. Smolnik stated they were available and would be provided in the future.

Mr. Bradshaw asked if Proffer No. 5 utilized the same language as other affordable housing through OHCD.

Mr. Icenhour asked if there was still potential for a soft second mortgage.

Mr. Smolnik stated there would be.

Mr. Goodson opened the Public Hearing.

1. Mr. Vernon M. Geddy, III, on behalf of the applicants, gave a presentation that highlighted the development of Section 9 of Settler's Market and outlined the traffic, fiscal, architectural, and environmental impacts of the property and the proffers by the applicants.

Mr. Harrison urged the applicant to protect the character corridor from the perspective of Interstate 64 as well as the entrances and commented on unanticipated costs.

Mr. Bradshaw asked how the development will maintain the character of the area.

Mr. Geddy responded that nationally recognized stores will draw people to the locally owned and operated shops that will also be in the area and the developer was actively looking for smaller chain stores.

Mr. Bradshaw asked if design of the national chain stores would be consistent with the nationwide look or if these buildings would look like the architectural designs.

Mr. Geddy stated the stores would look like the architectural designs.

Mr. McGlennon stated if the original proposal was upheld with occasional return to the Board, this process would work if everyone maintained the original plan. Mr. McGlennon asked what the applicant was offering as far as mixed-cost housing.

Mr. Geddy stated the applicant wished to be consistent with what was being done in earlier sections.

Mr. McGlennon asked if this was consistent with other mixed-cost housing in the County.

Mr. Geddy stated there were a variety of proffers and the applicants are working with OHCD and accepting referrals from them, but there have not been any discussions about using soft-second mortgages.

Mr. McGlennon asked if the purchaser would need to be of a qualified income.

Mr. Geddy confirmed purchasers would need to be of a qualified income.

Mr. McGlennon asked if, due to parking and transportation issues, there would be public transportation within the section.

Mr. Geddy stated the applicant would be open to this discussion.

Mr. McGlennon asked how much parking would be available.

Mr. Geddy stated the parking would be underneath the building.

Mr. McGlennon asked if there would be adequate parking for those living and working in the buildings.

Mr. Geddy stated the residents would have spots underneath the building and others would be outside.

Mr. McGlennon stated he would like to get the perspective of the DRB.

Mr. Harrison asked what safety measures were being taken with the underground parking.

Mr. Geddy assured the Board that safety measures would be taken into consideration.

Mr. Harrison commented about the affordability of the units, and allowing those who purchase affordable housing to be able to participate in the equity of the home over time.

Mr. McGlennon stated the policy does not prevent them from benefiting from the equity of the property.

Mr. McGlennon asked Mr. Magoon to discuss the proposal and its actions within the DRB.

Mr. Magoon stated the applicants have been very cooperative. He stated discussions have taken place concerning the architecture but would look carefully at those units that front on Route 199 by looking at topography, vegetation, and exposure from roadways. Mr. Magoon stated the DRB does not want the back of this development to look like backs of buildings off the Interstate in Newport News.

2. Mr. Ed Oyer, 139 Indian Circle, stated concern that the development will be built to look like the renderings and commented on coordination of traffic lights in the New Town area.

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

Mr. Harrison made a motion to adopt the resolution.

Mr. Harrison stated his appreciation of the applicant's patience and the DRB's stewardship of the development of New Town.

Mr. Icenhour stated his concern for the traffic and impact on schools, but believed this has been mitigated.

Mr. McGlennon stated that based on the decision in 1997, this would go forward, but changes may be made over time: maintaining mixed housing and public space and greenspace; and encouraging circulation in the development and programming within the New Town area.

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

RESOLUTION

CASE NO. Z-16-05/MP-13-05. NEW TOWN SECTION 9 - SETTLER'S MARKET

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-16-05/MP-13-05, with Master Plan; and

WHEREAS, WHS Land Holdings, LLC and New Town Associates, LLC own several parcels of property identified as Parcel Nos. (1-3), (1-2), (1-52), and a portion of (1-56) on the James City County Real Estate Tax Map No. (38-4) (collectively, the "Property"); and

WHEREAS, the Property is currently zoned M-1, Limited Business/Industrial, and R-8, Rural Residential, with proffers, designated Mixed Use on the 2003 Comprehensive Plan Land Use Map; and

WHEREAS, on behalf of AIG Baker Development, LLC and Developer's Realty Corporation, Mr. Vernon Geddy, III, has applied to rezone the Property to MU, Mixed Use, with proffers; and

WHEREAS, on April 3, 2006, the Planning Commission recommended approval of the application by a vote of 7-0.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby does hereby approve Case No. Z-16-05/MP-13-05 as described herein, and accept the voluntary proffers.

Mr. Goodson recessed the Board for a break at 9:38 p.m.

Mr. Goodson reconvened the Board at 9:42 p.m.

7. Case No. Z-12-05. Moss Creek Commerce Center (Toano Business Center)

Ms. Ellen Cook, Planner, stated that Mr. Vernon Geddy, III, has applied on behalf of Michael C. Brown to rezone approximately 21.23 acres to construct a 3,574-square-foot bank; 3,910-square-foot convenience store, mini-storage facility; 44,475-square-foot retail; 26,400-square-foot office/warehouse; and 3,628-square-foot professional office spaces. No residential units are proposed.

Staff found the proposal, with submitted proffers, will not negatively impact surrounding property. Staff also found the proposal consistent with surrounding land uses and the Comprehensive Plan.

At its meeting on April 3, 2006, the Planning Commission voted to approve the application by a vote of 4-2.

Staff recommended that the Board approve the resolution.

Mr. Goodson opened the Public Hearing.

1. Mr. Vernon M. Geddy, III, presented the development proposal and the architecture of the development and outlined revisions to the master plan and proffers.

Mr. Icenhour asked if the convenience store would be a 24-hour operation.

Mr. Geddy stated he was unaware of this.

Mr. Icenhour asked what type of businesses would fill the office buildings.

Mr. Geddy stated these were likely to be specialty stores.

Mr. Icenhour asked about the entrances, including the traffic light at main entrance, and how quickly a light would be needed if there was only one entrance.

Mr. Geddy stated the light would be necessary.

Ms. Deborah Lizenski with LandMark Design Group stated a traffic light would most likely not be necessary for about five years.

Mr. McGlennon asked if the property across Route 31 was zoned for mixed use.

Mr. Geddy stated it was zoned B-1.

Mr. McGlennon asked the impact of that property based on placement of entrances to the development.

Mr. Geddy stated he could not address the matter.

Ms. Ellen Cook stated the parcel across the street has not had any plans yet, but it may be developed by-right.

Mr. McGlennon asked if VDOT would have control of this.

Mr. Geddy confirmed that VDOT would.

Mr. Goodson stated the other property owner would benefit from working with the applicant.

Mr. McGlennon commended on applicant's concern about putting the front side on both sides of the building.

2. Mr. Clint Brooks, 3591 Splitwood Road, commended the Board for the quality of the development and the accessibility of Board members. He stated he emailed Mr. Bradshaw and said this development would set a precedent.

3. Mr. James Wheeler, 9901 East Cork Road, stated his area is growing and he and his neighbors were very impressed and stated his satisfaction with the developer. He also stated his support for the development.

4. Mr. Walt Rybak, 9808 Turning Leaf Drive, stated in the past he has come before the Board in protest, but he supports this proposal. Mr. Rybak read a letter of support written by his neighbors, Mike and Belinda Cook.

5. Ms. Caroline Lott, 9804 Loblolly Court, stated she was part of a group that worked with the developer on this application and stated her support.

6. Ms. Judy Bishop, 2924 Leatherleaf Drive, stated her support for the development.

7. Mr. John Coleman, 3141 Hollow Oak Drive, stated he was part of a group that worked with the developer for this proposal and stated his support for the development.

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

Mr. Harrison made a motion to adopt the resolution.

Mr. Harrison stated his support for more retail development in the County and the active role given the residents of the area and the standards set by the architectural design.

Mr. Bradshaw stated this community and developer have been a good example for other developers and communities in order to create a product that serves everyone. Mr. Bradshaw stated the applicant did not proffer a stoplight at Fieldstone and Route 30 and that since lights may be required and different parties could be responsible, it was to the benefit of Mr. Brown and the adjacent property owner to come to an agreement.

Mr. Icenhour stated this development is consistent with Comprehensive Plan and surrounding business and the support of the neighbors is important. He expressed concern regarding traffic and the second access, but expressed hope for an agreement with the adjacent property owner. Mr. Icenhour stated his support for the application.

Mr. Goodson complimented Mr. Brown for working with the community.

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

RESOLUTION

CASE NO. Z-12-05. MOSS CREEK COMMERCE CENTER

(TOANO BUSINESS CENTER)

WHEREAS, in accordance with § 15.2-2204 of the Code of Virginia, and Section 24-13 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-12-05, with Master Plan, for rezoning 21.23 acres from A-1, General Agricultural District, to MU, Mixed Use, with proffers; and

WHEREAS, the Planning Commission of James City County, following its public hearing on April 3, 2006, recommended approval of Case No. Z-12-05, by a vote of 4 to 2, with one abstention; and

WHEREAS, the property is located at 9686 and 9690 Old Stage Road and further identified as Parcel Nos. (1-34) and (1-4) on James City County Real Estate Tax Map No. (4-4).

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve Case No. Z-12-05 and accepts the voluntary proffers.

8. Case No. SUP-13-06. Unicorn Cottage Child Day-Care

Mr. Marvin O. Sowers, Planning Director, stated that the applicant had requested deferral of this application and staff concurred with this request.

There were no objections to the continuation of the Public Hearing.

Mr. Goodson opened the Public Hearing.

H. BOARD CONSIDERATIONS

1. FY 2007-2008 County Budget

a. An Ordinance to Amend and Reordain Chapter 4, Building Regulations, of the Code of the County of James City, Virginia, by Amending Article I, Virginia Uniform Statewide Building Code, Division 2, Permit and Inspection Fees, Section 4-8 Generally; to Increase Certain Fees

Ms. Sue Mellen, Assistant Manager of Financial and Management Services, stated the appropriation resolution reflects work session and one-time credit for debt service for replacement of fire pumper and school busses. Ms. Mellen stated the ordinance amendment reflects changes to County Code for permit and inspection fees. Ms. Mellen requested that the Board approve the ordinance and resolution.

Mr. Bradshaw made a motion to approve the appropriation resolution.

Mr. Harrison stated his support for this budget and the work by staff.

Mr. McGlennon commented on the deficit of local funding for the schools, but stated the additional efforts to reconcile this difference and there would be revenue to provide full amount even if the funds do not all come out of General Operating Budget, the County found funding to cover expenses.

Mr. Harrison stated the two-fiscal-year forecast would provide for a stormwater utility.

Mr. Icenhour thanked Ms. Mellen for answering his questions and stated the Board handled the budget very well. Mr. Icenhour stated the money spent was an investment in the future and actions to control growth now will dictate budget impacts later.

Mr. Goodson thanked his Board members for the budget process this year.

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

RESOLUTION OF APPROPRIATION

WHEREAS, the County Administrator has prepared a two-year Proposed Budget for the fiscal years beginning July 1, 2006, and ending June 30, 2007, along with the fiscal year beginning July 1, 2007 and ending June 30, 2008 and a five-year Capital Improvements Program, for information and fiscal planning purposes only; and

WHEREAS, it is now necessary to appropriate funds to carry out the activities proposed therein for the fiscal year beginning July 1, 2006, and ending June 30, 2007, and to set tax rates on real estate, tangible personal property, and machinery and tools, to provide certain revenue in support of those appropriations; and

WHEREAS, the Board wishes to adopt the second year of the operating and capital budgets for planning purposes, beginning July 1, 2007, and ending June 30, 2008.

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

1. The following amounts are hereby appropriated in the FY 2006-2007 General Fund for the offices and activities in the amounts as shown below:

GENERAL FUND REVENUES

	<u>FY 2007</u>
General Property Taxes	\$ 95,436,553
Other Local Taxes	21,355,000
Licenses, Permits and Fees	8,634,430
Fines and Forfeitures	320,000
Revenue from Use of Money and Property	1,009,131
Revenue from the Commonwealth	24,429,622
Revenue from the Federal Government	5,868
Charges for Current Services	3,602,215
Miscellaneous Revenues	<u>102,100</u>
TOTAL REVENUES	<u>\$154,894,919</u>

GENERAL FUND EXPENDITURES

	<u>FY 2007</u>
Administrative	\$1,178,893
Elections	297,813
Human Resources	1,384,457
Financial Administration	3,954,400
General Services	5,845,947
Information Resource Management	1,959,046
Development Management	4,943,542
Judicial	2,153,037
Public Safety	19,384,692
Community Services	6,790,854
Contribution - Outside Agencies	3,697,746
Library and Arts Center	4,277,971
Health Services	1,441,737
Other Regional Entities	2,275,461
Nondepartmental	5,516,237
WJCC Schools	64,924,816
Contribution - School Debt Service	13,996,210
Contribution - Capital Projects Fund	8,338,790
Contributions - Other Funds	<u>2,533,270</u>
TOTAL EXPENDITURES	<u>\$154,894,919</u>

The appropriation for education includes \$64,906,587 as a local contribution to the Williamsburg-James City County Schools operations.

2. That the tax rates be set for the amounts shown below and revenues appropriated in the following classifications:

TAX RATES

Real Estate on each \$100 assessed value	\$0.785
Tangible Personal Property on each \$100 assessed value	\$4.00
Machinery and tools on each \$100 assessed value	\$4.00

CAPITAL PROJECTS BUDGET

Capital Projects Fund - FY 2007

Revenues and Other Fund Sources:

Estimated Prior Year General Fund Balance	\$ 2,000,000
Contribution - General Fund	8,338,790
Proffers	500,000
School Debt Financing	6,704,270
Grants and Donations	<u>522,500</u>
	<u>\$18,065,560</u>

Expenditures:

Development Management	\$ 2,775,524
Parks and Recreation	1,024,976
General Services	666,161
Public Safety	1,614,648
Schools	11,174,251
Other	<u>810,000</u>
	<u>\$18,065,560</u>

DEBT SERVICE BUDGET

*From General Fund - Schools	\$10,086,210
From General Fund - Other	3,000,000
2-Cent Real Estate Tax Investment	1,940,000
2-Cent/4-Cent R/E Tax New Schools	1,940,000
Interest Earned on Construction	<u>970,000</u>
Total Debt Service Fund Revenues	<u>\$17,936,210</u>
Current Year Expenditures	\$16,250,601
To Fund Balance - Capital Reserve	<u>1,685,609</u>
Debt Service Fund Disbursements	<u>\$17,936,210</u>

VIRGINIA PUBLIC ASSISTANCE FUND

Revenues:

From the Federal Government/Commonwealth	\$4,311,862
From the General Fund	1,677,111
Comprehensive Services Act	387,850
Other	<u>374,840</u>
Total Virginia Public Assistance Fund Revenues	<u>\$6,751,663</u>

Expenditures:

Administration and Assistance	<u>\$6,751,663</u>
Total Virginia Public Assistance Fund Expenditures	<u>\$6,751,663</u>

COMMUNITY DEVELOPMENT FUND

Revenues:

General Fund	\$ 646,088
Grants	1,368,496
Generated Program Income	120,000
Other	<u>300,000</u>
Total Community Development Fund Revenues & Fund Balance	<u>\$2,434,584</u>

Expenditures:

Administration and Programs	<u>\$2,434,584</u>
Total Community Development Fund Expenditures	<u>\$2,434,584</u>

SPECIAL PROJECTS/GRANTS FUND

Revenues:

Colonial Drug Task Force	\$ 27,000
Transfer from General Fund	0
Revenues from the Commonwealth	0
Litter Control Grant	<u>8,700</u>
	<u>\$ 35,700</u>

Expenditures:

Colonial Drug Task Force	\$ 27,000
Litter Control Grant	<u>8,700</u>
	<u>\$ 35,700</u>

JAMESTOWN 2007 FUND

Revenues:

County Contribution	\$ 513,000
From Fund Balance	42,000
Reimbursement from State	<u>630,410</u>
Total Revenues	<u>\$1,185,140</u>

Expenditures:

Historic Triangle Corridor Enhancement Program	\$ 25,000
Jamestown Settlement	150,000
Community Activities	40,000
Community Building Art	25,000
Association for the Preservation of Virginia Antiquities (APVA)	50,000
Host Committee	15,000
Anniversary Weekend Security	630,140
2007 Sponsorship	<u>250,000</u>
Total Expenditures	<u>\$1,185,140</u>

3. The County Administrator be authorized to transfer funds and personnel from time to time within and between the offices and activities delineated in this Resolution as he may deem in the best interest of the County in order to carry out the work of the County as approved by the Board of Supervisors during the coming fiscal year.
4. The County Administrator be authorized to administer the County's Personnel Policy and Pay Plan as previously adopted by the Board of Supervisors. There will be a salary increase included on the employee's salary with variable increases based on performance and funded at an average of 4 percent.
5. The County Administrator be authorized to transfer funds to and from the Personnel Contingency account and divisional personnel line items in order to capture turnover savings at a divisional level.
6. All outstanding encumbrances in all County funds at June 30, 2006, shall be an amendment to the FY 2007 budget, and appropriated to the FY 2007 budget to the same department and account for which they were encumbered in the previous year.
7. The County Administrator be authorized to make expenditures from the Donation Trust Fund for the specified reasons for which the fund was established. In no case shall the expenditure exceed the available balance in the fund as verified by the Treasurer.
8. The Board of Supervisors of James City County, Virginia, hereby adopts the following budgets for the purposes of future financial and operational planning:

FY 2006

General Fund	\$170,241,755
Capital Budget	85,311,214
Debt Service	22,710,640
Public Assistance	6,920,251
Community Development	2,333,907
Jamestown 2007	402,500
Special Projects/Grants	35,700

Mr. Wanner thanked the Board for participation in the Budget retreat, early guidance, and interaction with staff during the process and during work sessions.

Mr. Bradshaw made a motion to adopt the ordinance.

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

I. PUBLIC COMMENT - None

J. REPORT OF THE COUNTY ADMINISTRATOR

Mr. Wanner stated the items for the Closed Session discussion can be deferred to May 23, 2006. Mr. Wanner stated the Board would reconvene at 4 p.m. on May 23, 2006, for a Joint Work Session with the Planning Commission regarding the Rural Lands Study.

K. BOARD REQUESTS AND DIRECTIVES

Mr. Bradshaw requested that the Board review the Street Width Reduction policy.

Mr. Icenhour asked for more information regarding the watershed plan by the June 26, 2006, Board meeting.

Mr. Goodson stated he attended the Habitat for Humanity Putt-off and news reports and funding would be provided for the County by Channel 43.

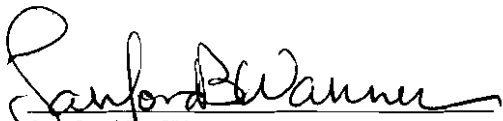
L. CLOSED SESSION - deferred until the May 23, 2006, Board meeting.

M. ADJOURNMENT

Mr. McGlennon made a motion to adjourn until 4 p.m. on May 23, 2006.

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

At 10:36 p.m., Mr. Goodson adjourned the Board until 4 p.m. on May 23, 2006.


Sanford B. Wanner
Clerk to the Board

060017870

Tax Parcels: 3840100002, 3840100003, 3840100052 and a portion of 3840100056

NEW TOWN - SECTION 9 - SETTLER'S MARKET AT NEW TOWN -

PROFFERS

THESE PROFFERS are made as of this 17th day of March, 2006 by **WHS LAND HOLDINGS, LLC**, a Virginia limited liability company ("WHS"), **NEW TOWN ASSOCIATES**, a Virginia limited liability company ("Associates") (together with their respective successors and assigns, "Owner") (index each as a "grantor"); and the **COUNTY OF JAMES CITY, VIRGINIA** (the "County") (index as the "grantee").

RECITALS

R-1. WHS is the owner of certain real property in James City County, Virginia, being more particularly described on Exhibit A attached hereto and made a part hereof (the "WHS Property")

R-2. WHS has contracted to sell the WHS Property to AIG Baker Development, LLC ("Baker").

R-3. Associates is the owner of certain real property in James City County, Virginia, being more particularly described on Exhibit B attached hereto and made a part hereof (the "Associates Property").

R-4. Associates has contracted to sell a portion of the Associates Property to Baker and a portion of the Associates Property to Developers Realty Corporation ("DRC").

R-5. Baker and DRC intend to construct a mixed use commercial/residential development on their respective properties pursuant to an agreed upon Master Plan. The

WHS Property and the Associates Property is hereinafter collectively called the "Property".

R-6. The Property is located within and in the vicinity of a development commonly known as "New Town." The New Town development is subject to and governed by (i) certain proffers entitled the "New Town Proffers" dated December 9, 1997 of record in the Clerk's Office of the Circuit Court for the City of Williamsburg and County of James City, Virginia (the "Clerk's Office") as Instrument No. 980001284, (ii) a conceptual master land use plan entitled "New Town Plan" prepared by Cooper, Robertson & Partners and AES Consulting Engineers, dated July 23, 1997 and revised December 8, 1997 (the "New Town Master Plan"), (iii) design guidelines entitled "NEW TOWN DESIGN GUIDELINES, JAMES CITY COUNTY, VIRGINIA," prepared by Cooper, Robertson & Partners dated September 3, 1997 and (iii) the New Town - Sections 2 and 4 - Proffers dated November 1, 2001 of record in the Clerk's Office as Instrument No. 010023715 (the "New Town Design Guidelines"), (iv) New Town - Sections 3 and 6 - Proffers dated October 25, 2005, Instrument No. 040027471, (v) Supplemental Proffers - New Town - Sections 2 and 4, dated October 3, 2003, Instrument No. 030032005, and (vi) New Town - Section 5 - Proffers, April 23, 2004, Instrument No. 040020235.

R-7. In furtherance of the vision embodied in the New Town Master Plan and New Town Design Guidelines, Baker and DRC, with the consent of Owner, have applied for a rezoning of the Property from M-1, Limited Industrial, and R-8, Rural Residential to MU, Mixed-Use, with proffers. The rezoning of the Property to MU, with proffers, is in fact consistent both with the land use designation for the Property on the County's

Comprehensive Plan and the statement of intent for the MU zoning district set forth in Section 24-514 of the County's Zoning Ordinance in effect on the date hereof (the "Zoning Ordinance").

R-8. Owner has submitted a Community Impact Statement to the County's Director of Planning which satisfies the requirements of Section 24-515(c) of the Zoning Ordinance and the New Town Proffers, which Community Impact Statement includes, without limitation, a Fiscal Impact Study which has been reviewed and accepted by the County in connection with the rezoning request referenced above. The Community Impact Statement and Fiscal Impact Statement are on file with the County's Director of Planning.

R-9. Pursuant to subsection 2(b) of the New Town Proffers, there has been established a Design Review Board ("DRB") for development of the property subject to the New Town Proffers.

R-10. Pursuant to the New Town Proffers, the DRB is charged with the responsibility of rendering a written advisory recommendation to the County's Planning Commission and to the County's Board of Supervisors as to the general consistency with the New Town Master Plan and the New Town Design Guidelines of any proposed master plans and guidelines in future rezonings of the property subject to the New Town Proffers.

R-11. Owner has previously submitted to the DRB, and the DRB has previously approved in writing as consistent with both the New Town Master Plan and the New Town Design Guidelines, a master plan entitled "SETTLER'S MARKET AT NEW TOWN, MASTER PLAN", dated December 22, 2005 (the "Section 9 Master Plan"), and

design guidelines entitled "SETTLER'S MARKET AT NEW TOWN, SECTION 9 DESIGN GUIDELINES", dated December 5, 2005 (the "Section 9 Guidelines") for the Property, copies of which Section 9 Master Plan and Section 9 Guidelines are on file with the County's Director of Planning.

R-12. In accordance with paragraph 4 of the New Town Proffers, Owner has submitted to the County a traffic study entitled "Traffic Study for Settler's Market at New Town" dated February 28, 2006 prepared by DRW Consultants, Inc. (the "Traffic Study"), a copy of which is on file with the Director of Planning.

R-13. A small whorled pogonia survey was conducted on the Associates Property revealing that no small whorled pogonia plants exist on the Associates Property. The report generated from that survey is entitled "SEARCHED FOR THE SMALL WHORLED POGONIA, ISOTRIS MEDEOLOIDES, ON THE CASEY TRACT, CHISEL RUN WATERSHED, WILLIAMSBURG/JAMES CITY COUNTY, VIRGINIA SPRING/SUMMER 1996" (the "1996 report"), prepared by Dr. Donna M. E. Ware of the College of William & Mary for Williamsburg Environmental Group, Inc. The results of the 1996 report are illustrated on sheet 6, entitled "Master Stormwater Plan", of the New Town Master Plan. A copy of the 1996 report is on file with the County Planning Director. A small whorled pogonia survey was conducted on the WHS Property revealing that no small whorled pogonia plants exist on the WHS Property. The report generated from that survey is set forth in the document entitled "ENVIRONMENTAL RESOURCE INVENTORY OF THE AIG BAKER TRACTS I & II AT NEW TOWN", prepared by Williamsburg Environmental Group, Inc. and dated September 2005, a copy of which is on file with the Director of Planning.

R-14. A Phase I Archeological Study (the "Casey Study") was conducted on the Associates Property as detailed in that certain report entitled "A Phase I Archeological Survey of the Casey Property, James City County, Virginia", dated July 30, 1990, prepared for the Casey Family c/o Virginia Landmark Corporation by the William and Mary Archeological Project Center, which report has been submitted to, reviewed and approved by the County Planning Director. The Casey Study identified only one (1) area of archeological significance on the Property, Site 44JC617, and recommended such site for Phase II evaluation. Subsequent to the Casey Study, Associates commissioned a second Phase I Archeological Study (the "Associates Study") of, *inter alia*, Site 44JC617 as detailed in that certain report entitled "Phase I Archeological Investigations of Sites 44JC617, 44JC618, 44JC619, and 44JC620 on the New Town Tract James City County, Virginia", dated January, 2004, prepared by Alain C. Outlaw, Principal Investigator, Timothy Morgan, Ph.D., and Mary Clemons, which report has been submitted to, reviewed and approved by the County Planning Director. The Associates Study determined that Site 44JC617 is an isolated finds area and recommended no further treatment of the site. An archaeological study entitled "Phase I and Phase II Archaeological Investigations in Select Areas of the Casey Tract, James City County, Virginia" dated May, 2005, prepared by Alain C. Outlaw, Principal Investigator, Timothy Morgan, Ph.D., and Mary Clemons (the "2005 Study") of the WHS Property has been submitted to, reviewed and approved by the County Planning Director. The 2005 Study recommended no further archaeological on the WHS Property.

R-15. The provisions of the Zoning Ordinance, Section 24-1, et seq., may be deemed inadequate for protecting and enhancing orderly development of the Property.

Accordingly Owner, in furtherance of its application for rezoning, desires to proffer certain conditions which are specifically limited solely to those set forth herein in addition to the regulations provided for by the Zoning Ordinance for the protection and enhancement of the development of the Property, in accordance with the provisions of Section 15.2-2296 *et seq.* of the Code of Virginia (1950), as amended (the “Virginia Code”) and Section 24-16 of the Zoning Ordinance.

R-15. The County constitutes a high-growth locality as defined by Section 15.2 - 2298 of the Virginia Code.

NOW, THEREFORE, for and in consideration of the approval by the Board of Supervisors of the County of the rezoning set forth above and the Section 9 Master Plan, the Section 9 Guidelines and all related documents described herein, and pursuant to Section 15.2-2296 *et seq.*, of the Virginia Code, Section 24-16 of the Zoning Ordinance and the New Town Proffers, Owner agree that all of the following conditions shall be met and satisfied.

PROFFERS:

1. Application of New Town Proffers, Master Plan and Guidelines. Unless otherwise specifically noted herein, these Proffers shall supersede and amend and restate in their entirety the New Town Proffers, the New Town Master Plan and the New Town Design Guidelines, to the extent they now apply to the Property.

2. Owner’s Association. Either (i) a supplemental declaration (the Supplemental Declaration”) shall be executed and recorded in the Clerk’s Office to submit the Property to the New Town Master Association, a Virginia non-stock corporation (the “Commercial Association”), and to the Master Declaration of Covenants,

Easements and restrictions for New Town, dated June 22, 1998, recorded in the Clerk's Office as documents no. 980013868, the Articles of Incorporation and the Bylaws governing the Commercial Association, as any of the foregoing have been or may be hereafter supplemented, amended or modified pursuant to the terms thereof, with it being specifically intended that the Property shall be maintained as a stand alone development by the owner thereof and the Property shall not be subject to all of the covenants, restrictions, terms and conditions set forth in the declarations governing New Town, or, (ii) in the alternative, for any of the Property not submitted to the Supplemental Declaration, a separate owners association (the "Settler's Market Association") shall be formed by Owner. If a Settler's Market Association is formed, the Settler's Market Association and the Commercial Association shall develop and enter into shared facility agreements with respect to shared facilities, if any, benefiting both associations to fairly and reasonably apportion fiscal responsibility for the operation and maintenance of shared facilities. In addition, one or more separate owners or condominium associations may be organized for the Property (each individually "Separate Association") and supplemental restrictive covenants may be imposed on the Property. The Supplemental Declaration and any articles of incorporation, bylaws and declaration associated with a Settler's Market Association, any separate owner's association for the Property (collectively, the "Governing Documents"), if any, shall be submitted to and reviewed by the County Attorney for general consistency with this proffer. The Governing Documents shall (i) require that the applicable association adopt an annual maintenance budget and assess all members for the maintenance of the properties owned or maintained by such association (ii) grant such association the power to, and require that such association, file

liens on member's properties for non-payment of such assessments and for the cost to remedy violations of, or otherwise enforcing, the Governing Documents, and (iii) provide that the DRB is to serve as a design review board for each association formed with respect to the Property.

3. Development Process and Land Use. (a) DRB Authority, Duties and Powers. All revised master plans, revised design guidelines, subdivision, site plans, landscaping plans, architectural plans and elevations and other development plans for the Property shall be submitted to the DRB for review and approval in accordance with the manual entitled "NEW TOWN DESIGN PROCEDURES JAMES CITY COUNTY", as the same may be amended by the DRB from time to time, and such other rules as may be adopted by the DRB from time to time, for general consistency with the Section 9 Master Plan and Section 9 Guidelines. Evidence of DRB approval of plans required to be submitted to the County for approval shall be provided with any submission to the County Department of Development Management of such plans. The County shall not be required to review any subsequent development plans not receiving the prior approval of the DRB. In reviewing applications, development plans and specifications, the DRB shall consider the factors set forth in the Section 9 Master Plan and/or the Section 9 Guidelines. The DRB shall advise of either (i) the DRB's recommendation of approval of the submission, or (ii) the areas or features of the submission which are deemed by the DRB to be materially inconsistent with the Section 9 Master Plan and/or the Section 9 Guidelines and the reasons for such findings and suggestions for curing the inconsistencies. The DRB may approve development plans that do not strictly comply with the Section 9 Master Plan and/or Section 9 Guidelines, if the circumstances,

including, but not limited to, topography, natural obstructions, hardship, economic conditions or aesthetic or environmental considerations, warrant approval. All structures and improvements and open space, wetlands and other natural features on the Property shall be constructed, improved, identified for preservation, left undisturbed or modified, as applicable, substantially in accordance with the plans and specifications as finally approved by the DRB.

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

4. Traffic Study and Road and Signal Improvements/Traffic Signal Preemption Equipment. (a) In accordance with the requirements of Section 4 of the New Town Proffers, Owner has submitted to the County the Traffic Study.

(b) A traffic signal at the Settler's Market Boulevard/Monticello Avenue intersection shall be designed and installed, which traffic signal shall include, subject to Virginia Department of Transportation ("VDOT") approval, traffic signal preemption equipment meeting VDOT design standards and acceptable to the James City County Fire Department.

(c) For the Casey Boulevard (as designated on the Master Plan) connection to Monticello Avenue, the following entrance and road improvements shall be installed:

- (i) Dual eastbound left turn lanes on Monticello Avenue.
- (ii) A westbound right turn/through lane on Monticello Avenue extending to the existing right turn lane from westbound Monticello Avenue onto northbound Route 199.

A traffic signal at the Casey Boulevard/Monticello Avenue intersection shall be designated and installed, which traffic signal shall include, subject to VDOT approval, traffic signal preemption equipment meeting VDOT design standards and acceptable to the County Fire Department.

(d) The traffic signal improvements proffered in paragraphs (b) and (c) shall include pedestrian crosswalks, pedestrian signal heads and controls on the Settler's Market side of Monticello Avenue, and, if safe and feasible in light of turn lane configurations, pedestrian median refuges.

(e) The road improvements identified in items (b) and (c) above shall be installed to VDOT standards and specifications. The traffic improvements and signals proffered above shall be bonded in accordance with the provisions of the County Code prior to final development plan approval for development on the Property and shall be installed when warranted as determined by VDOT.

(f) A contribution shall be made to the County in the amount of Sixty Eight Thousand Eight Hundred Dollars (\$68,800.00) at the time of final site plan approval for the development of the Property ("Road Contribution"). The County shall make these monies available for off-site road improvements in the Monticello Avenue corridor, the

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

5. Mix of Housing Types. A minimum of three percent (3%) of the residential units constructed on the Property shall be initially offered for sale for a period of nine (9) continuous months (if not earlier sold pursuant to such offer) after the issuance of a building permit for such residential units at a price at or below One Hundred Fifty-Four Thousand Dollars (\$154,000.00) subject to adjustment as set forth herein. The County Planning Director and Department of Housing and Community Development shall be provided with a copy of the listing agreement and sales literature for each residential unit offered for sale at a price at or below the adjusted price set forth above, and with respect to the sale of such residential units, consultation shall be made with, and referrals of qualified buyers shall be accepted from, the County Department of Housing and Community Development.

6. Community Spaces. There shall be village community spaces generally as shown on the Section 9 Master Plan as the DRB may approve as consistent with the Section 9 Guidelines (the "Village Community Spaces"). The construction of the Village Community Spaces shall be bonded in form satisfactory to the County Attorney prior to final development plan approval for development on the Property. The Village Community Spaces shall be maintained by the applicable owners association for the Property, and shall be subject to rules and regulations as may be promulgated, from time to time, by the responsible association; provided, however, no permanent barriers shall be erected or maintained to prohibit pedestrian access to such Village Community Spaces and such Village Community Spaces shall be open to the owners of the Property, their

respective mortgagees, and tenants and occupants of buildings constructed on the Property and the respective subtenants, licensees, concessionaires, business invitees, employees and customers of all such persons.

7. Streetscapes. All site development and subdivision plans for development within the Property shall include (i) pedestrian connections on the Property, or the portion thereof so developed, along main roads adjoining the Property, (ii) streetscape plans for adjacent streets within the Property, and (iii) streetscape plans for those portions of the Property adjacent to Monticello Avenue, all of which pedestrian connections and streetscapes shall be consistent with the applicable Section 9 Guidelines. The approved streetscape plans, including, where required by the DRB pursuant to the Section 9 Design Guidelines, street trees, the town wall or fence, sidewalks, crosswalks, street lighting, street furniture, and bike lanes, and any other miscellaneous improvements required by the Section 9 Design Guidelines and approved by the DRB, shall be implemented when the adjacent portion of the Property is developed but in any event within one (1) year after the issuance of the first certificate of occupancy for a building on the Property.

8. Bus/Transit Facilities. At least one (1) but no more than two (2) bus pull-off area and bus stop shelter shall be constructed on the Property in locations approved by the County Transit Administrator. Design of the pull-off and shelter shall be approved in advance by the DRB. The pull-off and shelter shall be shown on development plans for the Property, shall be bonded in accordance with the County Code at the time of final development plan approval and installed when the adjacent roadways are constructed.

9. Contribution for Public Facilities. (a) Water. A contribution shall be made to the County in the amount of Eight Hundred Twelve Dollars (\$812.00), for each individual residential dwelling unit (individually, a "Residential Unit", and collectively, the "Residential Units") developed on the Property (the "Per Unit Water Contribution"). The County shall make these monies available for development of water supply alternatives, the need for which is deemed by the County to be generated by the development of the Property.

(b) Recreation. A recreation contribution shall be made to the County in the amount of One Hundred and Nine Dollars (\$109.00) for each Residential Unit developed on the Property (the "Per Unit Recreation Contribution"). The County shall make these monies available for development of recreational facilities, the need for which is deemed by the County to be generated by the development of the Property.

(c) School Facilities. A contribution shall be made to the County in the amount of Five Hundred Twenty-Eight Dollars (\$528.00) per Residential Unit for each Residential Unit developed on the Property (the "Per Unit School Contribution"). The County shall make these monies available for acquisition of school sites and/or construction of school facilities, the need for which is deemed by the County to be generated by the development of the Property.

(d) Library Facilities. A contribution shall be made to the County in the amount of Sixty-One Dollars (\$61.00) for each Residential Unit developed on the Property (the "Per Unit Library Contribution"). The County shall make these monies available for the development of library space, the need for which is deemed by the County to be generated by the development of the Property.

(e) Fire/EMS Facilities. A contribution shall be made to the County in the amount of Seventy-One Dollars (\$71.00) for each Residential Unit developed on the Property (the "Per Unit Fire/EMS Contribution"). The County shall make these monies available for the acquisition of fire and rescue facilities and equipment, the need for which is deemed by the County to be generated by the development of the Property.

(f) The Per Unit Water Contribution, Per Unit Recreation Contribution, Per Unit School Contribution, Per Unit Library Contribution, and Per Unit Fire/EMS Contribution (collectively, the "Per Unit Contributions") shall be payable for each of the Residential Units to be developed within the Property at the time of final, non-appealable site plan or subdivision plat approval for the Residential Unit.

10. Private Streets. It is intended that Settler's Market Boulevard, Casey Boulevard and Merchants Court shall be dedicated as public streets, however, as stated on the Section 9 Master Plan, all streets within Section 9 of the Property may be private. The party responsible for construction of a private street shall deposit into a maintenance fund to be managed by the applicable association responsible for maintenance of such private street an amount equal to one hundred fifty percent (150%) of the amount of the maintenance fee that would be required for a similar public street as established by VDOT – Subdivision Street Requirements. The County shall be provided evidence of the deposit of such maintenance fee amount at the time of final site plan of subdivision plat approval by the County for the particular phase or section which includes the street to be designated as private.

11. Construction Setback. No building shall be constructed within 15 feet of any Resource Protection Area buffer on the Property.

12. Water Conservation. The Settler's Market Association and/or the Commercial Association shall be responsible for developing water conservation standards for the Property 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.

13. Turf Management Plan. The Settler's Market Association and/or the Commercial 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 Powhatan Creek and its tributaries. The Turf Management Plan shall include measures necessary to manage and limit yearly nutrient application rates to turf. The Turf Management Plan shall be prepared by a landscape architect licensed to practice in Virginia or submitted for review to the County Environmental Division for conformity with this proffer. The Turf Management Plan shall include terms permitting enforcement by either the Settler's Market Association and/or the Commercial Association or the County. The Turf Management Plan shall be approved by the Environmental Division prior to final subdivision or site plan approval.

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

limited to housing sales prices and Per Unit Contributions and the Road Contribution, shall be adjusted annually beginning January 1, 2007 to reflect any increase or decrease for the preceding year in the Marshall and Swift Building Costs Index (the "Index"). In no event shall the Proffered Amounts be adjusted to a sum less than the amount initially established by these Proffers. The adjustment shall be made by multiplying the Proffered Amounts for the preceding year by a fraction, the numerator of which shall be the Index as of December 1 in the year preceding the calendar year most currently expired, and the denominator of which shall be the Index as of December 1 in the preceding year. In the event a substantial change is made in the method of establishing the Index, then the Proffered Amounts shall be adjusted based upon the figure that would have resulted had no change occurred in the manner of computing the Index. In the event that the Index is not available, a reliable government or other independent publication evaluating information hereto used in determining the Index (approved in advance by the County Manager of Financial Management Services) shall be relied upon in establishing an inflationary factor for purposes of increasing the Proffered Amounts to approximate the rate of annual inflation in the County.

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

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

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

17. Severability. In the event that any clause, sentence, paragraph, section or subsection of these Proffers shall be judged by any court of competent jurisdiction to be invalid or unenforceable for any reason, including a declaration that it is contrary to the Constitution of the Commonwealth of Virginia or of the United States, or if the applicable thereof to any owner of any portion of the Property or to any government agency is held invalid, such judgment or holding shall be confined in its operation to the clause, sentence, paragraph, section or subsection hereof, or the specific application thereof directly involved in the controversy in which the judgment or holding shall have been rendered or made, and shall not in any way affect the validity of any other clause, sentence, paragraph, section or provision hereof.

18. Conflicts. In the event there is a conflict between: (1) these Proffers, the Section 9 Guidelines, and/or the Section 9 Master Plan; and (2) the New Town Proffers, the New Town Master Plan and/or the New Town Guidelines, then these Proffers, the Section 9 Guidelines and the Section 9 Master Plan shall govern.

19. Signature by the County. The County's Director of Planning has executed these Proffers solely for purpose of confirming the filings and submissions

described herein and confirming approval by the Board of Supervisors of the rezoning of the Property with these Proffers by resolution dated May 9, 2006.

20. Headings. All section and subsection headings of Conditions herein are for convenience only and are not part of these Proffers.

21. Conditions Applicable Only To The Property. Notwithstanding anything in these Proffers to the contrary, the failure to comply with one or more of the conditions herein in developing the Property shall not affect the rights of Owner and its successors in interest to develop its other property in accordance with other applicable provisions of the County Zoning Ordinances.

WITNESS the following signatures, thereunto duly authorized:

WHS LAND HOLDINGS, LLC

By: Williamsburg Health Services, Inc., its
sole member

By: Man B. Sharp
Title: Chairman

NEW TOWN ASSOCIATES, LLC

By: [Signature]
Title: EXECUTIVE DIRECTOR

THE COUNTY OF JAMES CITY,
VIRGINIA

By: [Signature]
Its: JCC Planning Director

APPROVED AS TO FORM:

[Signature]
County Attorney

STATE OF VIRGINIA

CITY/COUNTY OF James City

The foregoing instrument was acknowledged before me this 17th day of March, 2006, by Marc B Sharp as Chairman of Williamsburg Health Services Inc on behalf of the company, as sole member of WHS Land Holdings, LLC.

Wanda M. Diddy, LLC
Notary Public

My commission expires: 12/31/09

STATE OF VIRGINIA

CITY/COUNTY OF VA

The foregoing instrument was acknowledged before me this 23RD day of March, 2006, by John P. McCann as Executive Director of New Town Associates, LLC on behalf of the company.

Jenesea Curryman Knighton
Notary Public

My commission expires: 08/31/08

STATE OF VIRGINIA

CITY/COUNTY OF James City

The foregoing instrument was acknowledged before me this 18th day of July, 2006, by D. MARVIN SOLLERS as Director of James City County on behalf of the company County.

Mary Frances Rieger
Notary Public

My commission expires: October 31, 2009

Prepared by and return to:

Geddy, Harris, Franck & Hickman, LLP

1177 Jamestown Road

Williamsburg, Virginia 23185

PROPERTY DESCRIPTION

EXHIBIT A
WHS PROPERTY

All that certain piece, parcel or tract of land, situate, lying and being in the Berkeley District of the County of James City, Virginia, containing a total of 27.880 acres more or less and being more particularly described as follows:

Beginning at a point on the northerly right-of-way line of Monticello Avenue Extension, said point being approximately 1,900' westerly of the intersection of said Monticello Avenue Extension and Ironbound Road, State Route 615; thence, along the northerly right-of-way line of Monticello Avenue Extension, N82° 42'08"W, 270.27' to a point; thence, along a curve to the left, having a radius of 867.51' and arc length of 514.15' to a point; thence, N77° 26'29"W, 52.92' to a point; thence, S57° 33'24"W, 100.00' to a point; thence, S12° 33'17"W, 52.92' to a point; thence, along a curve to the left having a radius of 867.51' and arc length of 81.40' to a point; thence, S46° 23'51" W, 473.47' to a point, the corner to the property described heron and New Town Associates, LLC; thence leaving said right-of-way line of Monticello Avenue Extension and being along the line of New Town Associates, LLC, N18° 29'55"W, 289.67' to a point; thence N14° 06'23"W, 225.46' to an iron pipe found; thence, N 49° 43'48"E, 381.52' to a found 18" Oak; thence, N30° 26'18"E, 298.45' to a found 40" Poplar; thence, S27° 00'35"E, 104.02 to an iron rod found; thence, S55° 02'21"E, 149.03' to an iron rod found; thence, S53° 04'43"E, 334.03' to and iron rod found; thence, S40° 13'01"E, 177.63 to an iron rod found; thence, S77° 50'07"E, 85.56 to a found 10" Gum; thence, S17° 38'25"E, 378.78 to an iron rod found; thence, S16° 09'22"ER, 146.49' to an iron rod found; thence, S17° 21'30"E, 21.91' to a point on the northerly right-of-way line of Monticello Avenue Extension, the corner to the property described hereon and New Town Associates, LLC; thence along the right-of-way line of said Monticello Avenue Extension, N82° 42'08"W, 6.43 to a point; thence, S07° 17'52"W, 166.00' to the aforesaid point of beginning, said property being shown and set out on the plat entitled "Plat of Survey, a Parcel Containing 27.880 Acres± Owned by Philip O. Richardson, William L. Person, Jr. And A.B. Smith Residual Trust" made by AES Consulting Engineers dated 10/7/00 and recorded as Exhibit A-2 to the Deed recorded in the Circuit Court for the City of Williamsburg and County of James City as Instrument No. 010006507.

LESS AND EXCEPT that certain lot or parcel of land located in James City County, Virginia shown and set out as "New Parcel, Area = 2.00 Acres±+ 0.36 Acres± (Prop.R/W), Total 2.36 Acres±" on the plat entitled "Plat of Subdivision Being a Portion of the Property Owned by: WHS Land Holdings, LLC for Conveyance to Philip O. Richardson" made by AES consulting Engineers dated 1/8/02 and recorded herewith in the Clerk's Office for the Circuit court for the City of Williamsburg and County of James City in James City Plat Book 85 at page 16 (the "Plat").

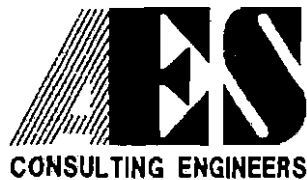
All that certain lot, piece or parcel of land, containing Ten Acres (10), situate, lying and being in James City County, Virginia, set up, shown and described on a plat of survey thereof entitled "Plat Showing Lot & 10 Acre Parcel Belonging to Carlton C. & Olive D. Casey to be conveyed to Williamsburg Broadcasting Company, Incorporated, and 40 ft. wide Parcel to be Dedicated as Access Right of Way to 10 Acre Parcel, James City County, Virginia," dated August 11, 1959, made by Wetherill D. Thomas, C.S., and attached to made a part of that certain deed of record in the Clerk's Office aforesaid in Deed Book 71, at page 176, whereon said parcel of land is more particularly described as follows: Beginning at an iron pipe on the westerly side of a 40-foot Access Right of Way, and thence S. 83° 23' 20" W. 660 feet, through two iron pipes, to an iron pipe; thence N. 6° 36' 40" W. 660 feet, through two iron pipes, to an iron pipe; thence N. 83° 23' 20" E. 660 feet, through two iron pipes, to an iron pipe on the westerly edge of said 40-foot Access Right of Way; thence along the westerly edge of said 40-foot Access Right of Way S. 6° 36' 40" E. 660 feet to the point of beginning.

TOGETHER with a non-exclusive easement of way for foot and vehicular traffic and for the erection, construction, replacement, maintenance and repair of an underground or overhead electrical line or lines for the transmission of electrical power, radio signals and other electronic communications. Said easement shall be forty (40) feet in width and shall begin at the northern right of way line of Monticello Avenue and extend to the above conveyed property in the location shown on the plat recorded in James City Plat book 17 at page 45 and together with all and singular the other rights, privileges, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining. Grantor expressly reserves unto itself and its successors and assigns all of its rights in and to the portion of the easement of way originally granted by Deed recorded in Deed Book 71, page 176 that is located south of the northern right of way line of Monticello Avenue to Ironbound Road.

The foregoing conveyance is made subject to all easements, conditions or restrictions of record or apparent on the ground insofar as they may lawfully affect the property conveyed hereby.

Being a portion of the same property as that conveyed to G-Square, Inc., a Virginia corporation, by Deed dated April 5, 1976, from Bulkeley Corporation, a Virginia corporation and recorded in James City County Deed Book 167, Page 828.

5248 Olde Towne Road • Suite 1
Williamsburg, VA 23188
(757) 253-0040
Fax: (757) 220-8994



614 Moorefield Park
Richmond, VA 23236
(804) 330-8040
Fax: (804) 330-9840

April 25, 2006

EXHIBIT B
ASSOCIATES PROPERTY

*Property Description
for
AIG Baker Development, LLC*

**Portions of Tax Map Parcel #(38-4)(1-51) and Tax Map Parcel (38-4)(1-56)
Containing a total of 14.099 Acres+/-**

All those certain pieces, parcels or tracts of land, situate, lying and being in the Berkeley District of the County of James City, Virginia, containing a total of 14.099 acres more or less and being more particularly described as follows:

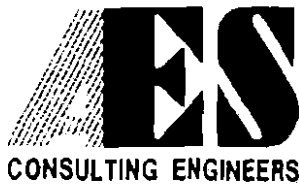
Commencing at an iron rod found at the intersection of the easterly right-of way line of State Route #199 and the northerly right-of-way line of Monticello Avenue, State Route #321; thence in a easterly direction and along the northerly right-of-way line of Monticello Avenue, State Route #321, N46°23'51"E, 72.84' to an iron rod found; thence N61°30'51"E, 155.38' to an iron rod found; thence N46°23'51"E, 336.39 to an iron rod found; thence N01°23'51"E, 50.00' to an iron rod found; thence N46°23'51"E, 57.87' to an iron found. This being the true point of beginning (p.o.b.) and the southwestern corner of the property described hereon.

Thence from said true point of beginning and iron rod found, said point being along the northerly right-of-way line of Monticello Avenue, State Route #321, a corner to the property described hereon and other lands of New Town Associates, L.L.C.; thence leaving said corner and right-of-way line of Monticello Avenue, State Route #321, N18°29'55"W, 278.33' to an iron pipe found; thence N14°06'23"W, 106.03' to an iron pipe found, a corner to the property described hereon, other properties of New Town Associates, L.L.C. and the property now or formerly standing in the name of WHS Holdings, L.L.C.; thence lying along the line of the property described hereon and the property now or formerly standing in the name of WHS Holdings, L.L.C., N14°06'23"W, 660.00' to an iron pipe found; thence S75°50'00"W, 630.30' to an iron rod found along the easterly right-of-way line of State Route #199, said iron rod found being a corner to the property described hereon and the property now or formerly standing in the name of WHS Holdings, L.L.C.; thence leaving said corner and lying along the right-of-way line of State Route #199, N06°36'51"W, 335.06' to a point, said point being a corner to the property described hereon and other lands now or formerly standing in the name of New Town Associates, L.L.C.; thence leaving said corner and lying along a proposed property line between the property described hereon and other lands of the property now or formerly standing in the name of New Town Associates, L.L.C., N75°50'02"E, 875.08' to a point; thence S56°52'18"E, 50.99' to a point; thence S26°18'43"E, 35.06' to a point; thence S56°03'09"E, 35.80' to a point; thence S75°05'24"E, 67.86' to a point; thence N48°25'10"E, 48.28' to a point; thence N16°11'12"E, 47.39' to a point; thence N41°49'10"E, 30.79' to a point; thence N54°23'10"E, 52.86' to a point; thence N62°02'26"E, 19.14' to a point; thence S29°52'16"E, 50.90' to a point; thence S85°09'06"E, 53.28' to a point; thence N63°49'01"E, 66.48' to a point; thence S52°55'57"E, 20.95' to a point, said point being a corner to the property described hereon, other lands of the property now or formerly standing in the name of New Town Associates, L.L.C. and being along the line of the property now or formerly standing in the name of WHS Holdings, L.L.C.; thence along the line of the property described hereon and the property now or formerly standing in the name of WHS Holdings, L.L.C., S49°43'48"W, 265.40' to an iron rod found; thence S20°41'22"E, 453.27' to an iron pipe found; thence S52°49'31"W, 532.46' to an iron pipe found; thence S14°06'23"E, 225.46' to a iron

rod found; thence S18°29'55"E, 289.67' to an iron rod found along the northerly right-of-way line of Monticello Avenue, State Route #321, a corner to the property described hereon and the property now or formerly standing in the name of WHS Holdings, L.L.C.; thence leaving said corner and lying along the northerly right-of-way line of Monticello Avenue, State Route #321, N88°36'09"W, 40.49' to an iron rod found; thence S46°23'51"W, 2.13' to the aforesaid true point of beginning.

This being a portion of the same property conveyed to New Town Associates, L.L.C., A Limited Liability Company, by deed from C.C. Casey Limited Company, A Limited Liability Company, and the College of William and Mary Real Estate Foundation, Inc., a Virginia Nonstock Corporation, dated June 23, 2000 and duly recorded at the Clerk's Office of the Circuit Court of the County of James City, Virginia by Instrument #000012573.

5248 Olde Towne Road • Suite 1
Williamsburg, VA 23188
(757) 253-0040
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614 Moorefield Park
Richmond, VA 23236
(804) 330-8040
Fax: (804) 330-9840

April 25, 2006

EXHIBIT B, CONTINUED
ASSOCIATES PROPERTY

*Property Description
For
Developers Realty Corporation*

Tax Map Parcel #(38-4)(1-52) Containing 8.420 Acres+/-

All that certain piece, parcel or tract of land, with the improvements shown thereon, situate, lying and being in the Berkeley District of the County of James City, Virginia, containing a total of 8.420 acres more or less and being more particularly described as follows:

Beginning at an iron rod found at the intersection of the easterly right-of way line of State Route #199, the northerly right-of-way line of Monticello Avenue, State Route #321 and a corner to the property described hereon; thence leaving said corner of the property described hereon and lying along the easterly right-of-way line of State Route #199, N 26°41'13"W, 373.33' to an iron rod found; thence, N19°03'42"W, 336.49' to an iron rod found, a corner to the property described hereon and the property now or formerly standing in the name of WHS Holdings, L.L.C.; thence leaving said corner and right-of-way line of State Route #199 and lying along the line of the property described hereon and the property now or formerly standing in the name of WHS Holdings, L.L.C., N75°50'00"E, 659.50' to an iron pipe found, a corner to the property described hereon, the property now or formerly standing in the name of WHS Holdings, L.L.C. and the property now or formerly standing in the name of New Town Associates, L.L.C.; thence leaving said corner and lying along the easterly line of the property described hereon and the property now or formerly standing in the name of New Town Associates, L.L.C. and an existing 50' easement and access right-of-way, S14°06'23"W, 106.03' to an iron pipe found; thence S18°29'55"E, 278.33' to an iron rod found on the northerly right-of-way line of Monticello Avenue, State Route #321, a corner to the property described hereon and the property now or formerly standing in the name of New Town Associates, L.L.C.; thence leaving said corner and lying along the northerly right-of-way line of Monticello Avenue, State Route #321, S46°23'51"W, 57.87' to an iron rod found; thence S01°23'51"W, 50.00' to an iron rod found; thence S46°23'51"W, 336.39' to an iron rod found; thence S61°30'51"W, 155.38' to an iron rod found; thence S46°23'51"W, 72.84' to the aforesaid point of beginning.

This being a portion of the same property conveyed to New Town Associates, L.L.C., A Limited Liability Company, by deed from C.C. Casey Limited Company, A Limited Liability Company, and the College of William and Mary Real Estate Foundation, Inc., a Virginia Nonstock Corporation, dated June 23, 2000 and duly recorded at the Clerk's Office of the Circuit Court of the County of James City, Virginia by Instrument #000012573.

VIRGINIA: CITY OF WILLIAMSBURG & COUNTY OF JAMES CITY
This document was admitted to record on 25 July 06
at 9:09 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 017869

PROFFERS

THESE PROFFERS are made this 28th day of April, 2006 by **TOANO BUSINESS CENTER, LLC**, a Virginia limited liability company (together with its successors in title and assigns, the "Owner").

RECITALS

A. Owner is the owner of those certain parcels or pieces of land located in James City County, Virginia, with addresses of 9686 and 9690 Old Stage Road and being Tax Parcels 0440100034 and 040100004 and being more particularly described on Exhibit A hereto (the "Property").

B. The Property is now zoned A-1. The Owner has applied to rezone the Property from A-1 to MU, with proffers.

C. Owner has submitted to the County a master plan entitled "Proposed Master Plan, Moss Creek Commerce Centre" prepared by LandMark Design Group and dated September 22, 2004 and revised December 28, 2005 (the "Master Plan").

D. Owner desires to offer to the County certain conditions on the development of the Property not generally applicable to land zoned MU.

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. **Water Conservation.** The Owner 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. Irrigation wells shall only draw water from the Upper Potomac or Aquia Aquifers. The standards shall be approved by the James City Service Authority prior to final site plan approval.

2. **Design Guidelines and Review.** (a) Owner shall prepare and submit design review guidelines (the "Guidelines") to the County 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 setting forth design and architectural standards for the Property incorporating but not limiting the following as guidelines:

(i) The buildings on the Property shall be harmonious and of uniform architectural design (as noted in (v) below) and color scheme (e.g., muted earth tones);

(ii) The design of the buildings on the Property shall have varied roof lines, wall articulations, window placements and other features to reduce the mass and unbroken building lines that may occur in certain standard commercial designs;

(iii) All buildings immediately adjacent to Fieldstone Parkway or Old Stage Road shall present a front façade to the road;

(iv) No building on the property shall exceed thirty-five (35) in height;

(v) The buildings shall be consistent with the architectural styles embodied in elevations made by James Pociluyko, AIA, dated February 9, 2006 submitted to the County herewith.

Once approved, the Guidelines may not be amended without the approval of the Development Review Committee.

(b) Owner shall establish in the Governing Documents a Design Review Board to (i) adopt more specific procedures for the design review process, (ii) review all building plans, building elevations and landscape plans for conformity with the Guidelines and (iii) approve or deny such plans. The Design Review Board shall establish an Advisory Committee consisting of three property owners in the Mill Pond at Stonehouse development elected by the property owners. The Advisory Committee shall review all plan submissions and render an advisory opinion to the Design Review Board. The Governing Documents shall set forth more specific procedures for the design review process. All building plans, building elevations and landscape plans shall receive the approval of the Design Review Board prior to the Director of Planning being required to grant approval of the plans.

(c) Owner shall submit to the Director of Planning with each site plan for development within the Property conceptual architectural plans, including architectural elevations, for the buildings and associated structures shown on the site plan for the Director of Planning to review and approve for consistency with the Guidelines. Decisions of the Director of Planning may be appealed to the Development Review Committee, whose decision

shall be final. Final architectural plans shall be consistent with the approved conceptual plans. Completed buildings shall be consistent with the approved plans. No building on the Property shall exceed thirty-five (35) feet in height.

3. **Owners Association.** There shall be organized an owner's association or associations (the "Association") in accordance with Virginia law in which all property owners in the development, by virtue of their property ownership, 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, open space areas, private streets, sidewalks, and all other common areas 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. The Governing Documents shall also provide for a Design Review Board with the power to adopt more specific procedures for the design review process; review all building plans, building elevations and landscape plans for conformity with the Guidelines and the Governing Documents and approve or deny such plans.

4. Entrances/Turn Lanes. (a) The main entrance to the Property shall be from Old Stage Road in the approximate location shown on the Master Plan. A right turn lane with 150 feet of storage and a 150 foot taper and a left turn lane with 200 feet of storage and a 200 foot taper shall be constructed at the main entrance.

(b) Owner may install a second entrance to the Property from Fieldstone Parkway in the approximate location shown on the Master Plan. If and when this second entrance is installed, a left turn lane from Fieldstone Parkway into the second entrance shall be constructed.

(c) Owner shall install a traffic signal at the main entrance when and if Virginia Department of Transportation ("VDOT") traffic signal warrants are met. Owner shall conduct a traffic signal warrant study within six months of the issuance

of certificates of occupancy for the bank and convenience store shown on the Master Plan and submit the study to the Director of Planning and VDOT for review and approval. Owner shall perform a second traffic signal warrant study at such time as certificates of occupancy have been issued for 80% of the development permitted under the Master Plan if the traffic signal has not previously been installed and submit the study to the County and VDOT for their review and approval. If either approved study determines such a signal is warranted, the County shall not be obligated to issue any further building permits for further development on the Property until such traffic signal at the main entrance 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.

(d) The turn lanes at the main entrance into the Property proffered hereby and the bike lanes along Route 30 shown on the Master Plan shall be constructed in accordance with VDOT standards and shall be completed or their completion bonded in form satisfactory to the County Attorney prior to the issuance of any building permit for buildings on the Property. The left turn lane from Fieldstone Parkway into the second entrance into the Property proffered hereby shall be constructed in accordance

with VDOT standards and shall be completed or its completion bonded in form satisfactory to the County Attorney at the time of construction of the second entrance.

5. Lighting. All street light poles on the Property shall not exceed 20 feet in height. All building or canopy mounted external lights on the Property shall be recessed fixtures with no globe, bulb or lens extending below the casing or otherwise unshielded by the case so that the light source is visible from the side of the fixture. No glare defined as 0.1 footcandle or higher shall extend outside the property lines of the Property unless otherwise approved by the Director of Planning. Owner shall submit a lighting plan to the Director of Planning for review and approval for consistency with this Proffer prior to final site plan approval.

6. Archaeology. A Phase I Archaeological Study for the entire Property and any portion of the adjacent VDOT right of way to be disturbed for the entrance into the 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.

7. **Perimeter Buffer.** A combination of preservation of existing trees, enhanced landscaping (defined as 125% of ordinance requirements as to quantity, with at least 50% of the trees and shrubs being evergreen, including Leyland cypress, pine and ligustrum, with the plants being of a size at planting that exceeds ordinance requirements, for example, black pine with a diameter of at least four inches, Leyland cypress with a height of at least eight feet and ligustrum with a height of at least two feet) and low berms shall be provided in the perimeter buffer between the Property and Fieldstone Parkway, Tax Parcel 0440100001 and Tax Parcel 0440100028 to create an effective buffer between the properties in accordance with a landscaping plan approved by the Director of Planning. The balance of the perimeter buffers shall contain enhanced landscaping in accordance with a landscaping plan approved by the Director of Planning. A landscape plan for the entire perimeter buffer shall be submitted to the Director of Planning with the initial site plan for development on the Property for his review and approval for consistency with this proffer. The buffers shall be planted or the planting bonded prior to the County being

obligated to issue certificates of occupancy for buildings located on the Property.

8. Environmental Protections. Owner shall submit to the County a master stormwater management plan as a part of the site plan submittal for the Property, including the stormwater management facility generally as shown on the Master Plan and low impact design measures where feasible and appropriate, for review and approval by the Environmental Division. A minimum of 25% of the site shall be captured and treated by Low Impact Design (LID) measures. LID measures shall not be used to comply with the County's 10-point BMP system for water quality. 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.

9. Reserved Right of Way. Owner shall reserve the areas shown on the Master Plan as "Reserved Right of Way" for a possible future road connections to the adjacent parcel shown on

the Master Plan as Stonehouse at Williamsburg, LLC, Stonehouse Land Bay 1. If the owner of the adjacent parcel and Owner reach an agreement permitting Owner access from the Property to a road on the adjacent property and ultimately to Fieldstone Parkway, Owner shall install road connections in the "Reserved Right of Way".

10. Paths. If approved by the Development Review Committee as an alternative to construction of sidewalks in accordance with Section 24 - 35(c) of the Zoning Ordinance, Owner shall install a hard surface path along the Fieldstone Parkway frontage of the Property generally in the location shown on the Master Plan and along the Route 30 frontage of the Property in the location of the Stage Road Trace shown on the Master Plan. The path shall be shown on the landscape plan for the perimeter buffer described in Proffer 7. The path shall be installed or its installation bonded prior to the County being obligated to issue certificates of occupancy for buildings located on the Property.

11. Entrance Feature. Any entrance feature and/or signage at the entrance(s) into the Property shall be of similar design and materials as the entrance into the Stonehouse development at Fieldstone Parkway and Route 30.

12. Convenience Store with Fueling. (a) No more than two signs shall be allowed on the canopy over the gasoline pumps except as provided herein. Gas pricing signs shall be allowed on a monument type sign in the parking area or on the columns of the canopy.

(b) No outside display, sale or storage of merchandise other than ice machines shall be permitted at the convenience store. No outside vending machines shall be permitted.

WITNESS the following signature.

TOANO BUSINESS CENTER, LLC

By: Vernon M. Geddy III
Title: Authorized Representative

STATE OF VIRGINIA

CITY/COUNTY OF Williamsburg

th
28 The foregoing instrument was acknowledged before me this
day of April, 2006, by Vernon M. Geddy III as
Authorized Representative of Toano Business Center, LLC on
behalf of the company.

Jani M. Thompson
Notary Public

My commission expires: 2-28-07

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

EXHIBIT A

Parcel One

ALL that certain tract or parcel of land, situate in Stonehouse District, James City County, Virginia, containing by survey 23.77 acres, and contained within the following bounds, commencing at a point in the center of the main stage road leading from Toano to Richmond opposite a ditch bank separating this land from Joe Johnson's tract, thence down the said ditch bank to a stob near a white oak tree N. 64 E. 2.47 chains, thence down the said ditch bank N. 65 E. 3.25 chains to a stob on the said bank, thence down said ditch bank N. 67 E 4.85 chains to a stob on said bank, thence S. 20 1/4 E. 25.85 chains to a cedar stob, edge of woods, thence S. 67 3/4 W. 9.68 chains to a point in the center of said Main Stage Road opposite a marked white oak tree; thence up the center of the said main road N. 14 1/4 W. 11.19 chains to a point in the center of the said road, thence up the said road N. 25 1/4 W. 3.32 chains to a stob in the center of the said main road; thence up the said road N. 29.14E. 10.91 chains to the point of beginning. For a further and better description reference is made to deed dated October 13, 1913, from C.C. Branch and wife to J.E. Williams, as record in the Clerk's Office of the City of Williamsburg and County of James City, in Deed Book 14, pages 287-288.

TOGETHER WITH the right-of-way retained for the 23.77 acre parcel described in Deed Book 23, page 369 and in Deed Book 77, page 277, recorded in the Clerks' Office, Circuit Court, City of Williamsburg and County of James City, Virginia.

LESS AND EXCEPT the 3 3/5 acre parcel described in Deed Book 23, at page 369.

Parcel Two

All that certain parcel of land in the Stonehouse District of James City County, Virginia, being part of the tract of land known as "Parkers", lying on the northwest side of State Highway Rt. 168, as shown and designated as 1.156 ACRES on a plat of survey of "PARKERS", made by Reynolds & Miller, C.L.S., dated December 23, 1970, a copy of which is recorded in the Clerk's Office of the Circuit Court for the City of Williamsburg and County of James City in Plat Book 29, at page 42.

Being part of the property conveyed unto Hazelwood Farms, L.L.C., by deed dated December 7, 1998, from R.M. Hazelwood, Jr., recorded as James City County Instrument No. 980023833.

VIRGINIA: CITY OF WILLIAMSBURG & COUNTY OF JAMES CITY
This document was admitted to record on 25 July 06
at 9:08 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