

AT A REGULAR MEETING OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE 12TH DAY OF SEPTEMBER 2006, AT 7:00 P.M. IN THE COUNTY GOVERNMENT CENTER BOARD ROOM, 101 MOUNTS BAY ROAD, JAMES CITY COUNTY, VIRGINIA.

A. ROLL CALL

Bruce C. Goodson, Chairman, Roberts District
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. Wanner, County Administrator
Leo P. Rogers, County Attorney

*Adopted Sept. 26
as amended*

B. MOMENT OF SILENCE

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

C. PLEDGE OF ALLEGIANCE

Arielle Geiwitz, a rising seventh-grade student at Toano Middle School, led the Board and citizens in the Pledge of Allegiance.

D. PRESENTATIONS

1. Recognition - Environmental Single-Family Award - Affordable Homes, LLC-I

Mr. Goodson presented Mr. Rick Parker, representing Affordable Homes, LLC-I, with a resolution of appreciation and a sign in recognition of the outstanding efforts by Affordable Homes, LLC-I to protect the environment.

2. Tropical Storm Ernesto Update

Chief Tal Luton briefly updated the Board on the impacts of Tropical Storm Ernesto and the effects of the storm. Chief Luton stated preparations began four days prior to the storm with emergency services prepared three days in advance; the Board and executive staff were notified of measures by E-Mail two days in advance; and citizens were notified that shelters were open at 6 a.m. on the day of the storm, 24 hours in advance. Chief Luton continued that Governor Kaine declared a State of Emergency one day before the storm; on the day of the storm the EOC activated at 10 a.m.; shelters were staffed and ready to go; areas monitored; reports were received of flooding and power outages; and there was one request for shelter. Chief Luton stated an estimated \$250,000 of public and private damages were assessed on September 8, 2006. Chief Luton reported that damages were found in pockets with no widespread damage. Chief Luton explained that since Governor Kaine requested a Presidential Declaration of Emergency, the damage would be evaluated by FEMA,

which would allow Federal funds to be distributed. Chief Luton stated due to the James City Service Authority (JCSA) water leak, there was a declaration of a local state of emergency for Tropical Storm Ernesto and the water leak, though they were probably related. Chief Luton reported that 21,000 gallons of water were distributed Friday night and Saturday, and all methods of communications available were utilized to inform citizens of the boil water policy. Chief Luton informed the Board and citizens that the Jolly Pond Convenience Center was accepting debris free of charge until September 16, 2006, and there would be a reevaluation for further action on that date. He stated the current debris totaled 490 tons, with a \$14,000 cost to the County for disposal, small in comparison to Hurricane Isabel.

Mr. McGlennon asked if there was a way that citizens who have observations or suggestions could submit them for consideration.

Chief Luton said citizens would be able to provide feedback on the website.

Mr. McGlennon commented on the water leak being Ernesto-related with a tree coming down on the pipe and the great effort by County staff and citizens in the time of emergency.

Chief Luton stated the Citizens Emergency Response Team (CERT) volunteered and some who received water came back and volunteered as well, with totals of 25-30 employees and volunteers helping serve roughly 500 cars per hour.

Mr. McGlennon stated that Grounds Maintenance employees were helping to unload debris.

Mr. Icenhour asked if the Forest Glen flooding was related to a backed-up storm drain.

Chief Luton stated this was a result of a backed-up storm drain.

Mr. Goodson thanked Chief Luton and asked if the generator at radio station WMBG was operating properly.

Chief Luton said it was.

Mr. McGlennon asked if reverse 911 system of notification would assist in similar emergencies.

Chief Luton stated he would come back with a recommendation for a reverse 911 system, which was budgeted in this year's funds, but in this case phone lines that were out hampered utilizing this kind of system. Chief Luton explained the hosting system utilizes 1,000 phone lines and uploads updates to a database.

E. PUBLIC COMMENTS

1. Mr. Richard Bradshaw, Commissioner of the Revenue, gave an update on real estate tax exemption qualifications for the elderly and disabled. Mr. Bradshaw stated for the current tax year, the County received 457 applications and 412 applicants qualified for exemption, totaling \$432,000.

Mr. McGlennon asked if the increase was due to changed criteria.

Mr. Bradshaw stated the increased dollar amounts of income and assets were part of the increase.

2. Mr. Bryan Oyer, 9025 Barnes Road, commented on the subdivision of property without road access to the lots.

3. Mr. Ed Oyer, 139 Indian Circle, commented on wind generator towers; vehicle access to public properties; his son's letter to the editor; balloon tests for cellular phone towers in the Roberts District; Wolf Contracting; and debris from Tropical Storm Ernesto.

F. CONSENT CALENDAR

Mr. Bradshaw made a motion to adopt the items on the consent calendar as amended.

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

1. Minutes -
 - a. June 13, 2006, Regular Meeting
 - b. June 27, 2006, Regular Meeting
 - c. August 8, 2006, Regular Meeting
2. Recognition - Environmental Single-Family Award - Affordable Homes, LLC-I

RESOLUTION

RECOGNITION - ENVIRONMENTAL SINGLE-FAMILY AWARD

WHEREAS, Affordable Homes, LLC-I, is the 2006 Environmental Recognition Award Program second quarter Environmental Single-Family Award recipient at the selected site of 8873 Fenwick Hills Parkway, Lot 82, in Fenwick Hills; and

WHEREAS, Affordable Homes, LLC-I, has demonstrated building practices to minimize environmental impact in James City County; and

WHEREAS, Affordable Homes, LLC-I, has taken the initiative to control erosion, reduce run-off from its site, and go above and beyond normal erosion and sediment control measures.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby recognize the outstanding dedication of Affordable Homes, LLC-I, for environmental protection in James City County.

2. Mr. Bryan Oyer, 9025 Barnes Road, commented on the subdivision of property without road access to the lots.

3. Mr. Ed Oyer, 139 Indian Circle, commented on wind generator towers; vehicle access to public properties; his son's letter to the editor; balloon tests for cellular phone towers in the Roberts District; Wolf Contracting; and debris from Tropical Storm Ernesto.

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3. Dedication of Streets - Powhatan Secondary, Phases 7A-B

RESOLUTION

DEDICATION OF STREETS IN POWHATAN SECONDARY OF WILLIAMSBURG,

PHASES 7A-B

WHEREAS, the streets described on the attached Additions Form AM-4.3, fully incorporated herein by reference, are shown on plats recorded in the Clerk's Office of the Circuit Court of James City County; and

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

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

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby requests the Virginia Department of Transportation to add the streets described on the attached Additions Form AM-4.3 to the secondary system of State highways, pursuant to §33.1-229 of the Code of Virginia, and the Department's Subdivision Street Requirements.

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

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

4. Dedication of Street - Louise Lane South Extension

RESOLUTION

DEDICATION OF STREET KNOWN AS LOUISE LANE SOUTH EXTENSION

WHEREAS, the street described on the attached Additions Form AM-4-3, fully incorporated herein by reference, are shown on plats recorded in the Clerk's Office of the Circuit Court of James City County; and

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

5. Erosion and Sediment Control Ordinance Violation - Civil Charge - John Grier Construction

RESOLUTION

EROSION AND SEDIMENT CONTROL ORDINANCE VIOLATION -

CIVIL CHARGE – JOHN GRIER CONSTRUCTION

WHEREAS, on or about March 20, 2006, John Grier Construction, Owner, violated or caused a violation of the County's Erosion and Sediment Control Ordinance by disturbing land without a permit at 9935 Walnut Creek, Toano, Virginia, designated as Parcel No. (3-14) on James City County Real Estate Tax Map No. (5-2) and hereinafter referred to as (the "Property"); and

WHEREAS, John Grier Construction has abated the violation at the Property; and

WHEREAS, John Grier Construction, has agreed to pay \$1,000 to the County as a civil charge under the County's Erosion and Sediment Control Ordinance; and

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

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes and directs the County Administrator to accept the \$1,000 civil charge from John Grier Construction, Owner, as full settlement of the Erosion and Sediment Control Ordinance violation at the Property.

6. Authorization of Two Temporary Overhire Positions - Police Department

RESOLUTION

AUTHORIZATION OF TWO TEMPORARY OVERHIRE POSITIONS

WHEREAS, two officers have given notice of retirement, one effective December 1, 2006, and another effective March 1, 2007; and

WHEREAS, it takes four months for newly hired non-certified personnel to complete the Basic Law Enforcement Course at the Hampton Roads Criminal Justice Academy (November 6, 2006 – March 7, 2007) and an additional eight weeks to complete field training; and

WHEREAS, insufficient staffing in the Police Department adversely affects service delivery and places additional stress on employees already working in dangerous and stressful occupations; and

WHEREAS, some excellent candidates are available from a recent recruitment; and

WHEREAS, funds are available within the existing Police Department FY 2007 budget for the creation of two temporary overhire positions.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby establish two full-time temporary Police Officer I overhire positions that will expire March 1, 2007.

7. Destruction of Paid Personal Property and Real Estate Tax Tickets

RESOLUTION

DESTRUCTION OF PAID PERSONAL PROPERTY TAX TICKETS

WHEREAS, the Code of Virginia, § 58.1-3129, states that the Treasurer may, with the consent of the governing body, destroy all paid tax tickets at any time after five years from the end of the fiscal year during which taxes represented by such tickets were paid, in accordance with the retention regulations pursuant to the Virginia Public Records Act (§ 42.1-76, et seq.); and

WHEREAS, the tax tickets hereby referred to are paid personal property tax records from 1993 and 1994.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby approves the destruction of the paid personal property tax records from 1993 and 1994.

DESTRUCTION OF PAID REAL ESTATE TAX TICKETS

WHEREAS, the Code of Virginia, § 58.1-3129, states that the Treasurer may, with the consent of the governing body, destroy all paid tax tickets at any time after five years from the end of the fiscal year during which taxes represented by such tickets were paid, in accordance with the retention regulations pursuant to the Virginia Public Records Act (§ 42.1-76, et seq.); and

WHEREAS, the tax tickets hereby referred to are paid real estate tax records from 1993 and 1994.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby approves the destruction of the paid real estate tax records from 1993 and 1994.

WHEREAS, it takes four months for newly hired non-certified personnel to complete the Basic Law Enforcement Course at the Hampton Roads Criminal Justice Academy (November 6, 2006 – March 7, 2007) and an additional eight weeks to complete field training; and

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WHEREAS, the tax tickets hereby referred to are paid real estate tax records from 1993 and 1994.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby approves the destruction of the paid real estate tax records from 1993 and 1994.

8. Award of Contract - Ambulance Purchase - Fire Department

RESOLUTION

AWARD OF CONTRACT - AMBULANCE PURCHASE - FIRE DEPARTMENT

WHEREAS, funds are available in the FY 2007 Capital Improvements Program budget for purchase of a replacement ambulance; and

WHEREAS, cooperative purchasing action is authorized by Chapter 1, Section 5 of the James City County Purchasing Policy and the Virginia Public Procurement Act and the City of Newport News issued a cooperative purchasing contract to American LaFrance, LLC as a result of a competitive sealed Request for Proposals; and

WHEREAS, Fire Department and Purchasing staff determined the contract specifications met the County's performance requirements for a medium-duty ambulance and negotiated a price of \$185,500 with American LaFrance, LLC for a 2007 Freightliner M2/MedicMaster Type I Medium-Duty Ambulance unit.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, authorizes the County Administrator to execute a contract between James City County and American LaFrance, LLC in the amount of \$185,500.

9. Declaration of a Local Emergency - Tropical Storm Ernesto

RESOLUTION

DECLARATION OF A LOCAL EMERGENCY – TROPICAL STORM ERNESTO

WHEREAS, the Board of Supervisors of James City County, Virginia, does hereby find that due to the effects of Tropical Storm Ernesto the County faces dangerous conditions of sufficient severity and magnitude to warrant coordinated local government action to mitigate the damage, loss, hardship, or suffering threatened or caused thereby; and

WHEREAS, a condition of extreme peril of life and property necessitated the declaration of the existence of an emergency; and

WHEREAS, due to exigent circumstances, the Board of Supervisors was unable to convene to consent to the declaration of a local emergency.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, pursuant to Section 44-146.21 of the Code of Virginia, 1950, as amended, the Declaration of a Local Emergency dated September 7, 2006, by Sanford B. Wanner, Director of Emergency Management for James City County, be, and the same is, confirmed.

BE IT FURTHER RESOLVED that the Director of Emergency Management and the Coordinator of Emergency Management shall exercise those powers, functions, and duties as prescribed by state law and the ordinances, resolutions, and approved plans of James City County in order to mitigate the effects of said emergency.

G. PUBLIC HEARINGS

1. Real Property Tax Rate

Mr. John McDonald, Manager of Financial and Management Services, gave an overview of the real property tax rate based on the reassessment. Mr. McDonald explained that in May when the Board adopted the budget for Fiscal Year 2007, the Real Property Tax revenues were calculated with an 18.7 percent increase assumed, and actual numbers were higher, and additional revenue was \$1.46 million. Mr. McDonald stated this budget amendment would reduce the tax rate from 78.5 cents/\$100 to 77 cents/\$100 and contributed the residual \$141,151 to water quality and road improvement projects. Mr. McDonald stated the purpose of real estate assessment was to estimate a reasonable assessment of market value and create equity to other properties; that if someone did not feel his/her assessment met these two requirements, please contact Real Estate Assessments; that the property would be subject to administrative review; and that appeals are to a five-member Board of Equalization.

Mr. Goodson opened the Public Hearing.

1. Mr. Ron Fisher, 3520 Mott Lane, complimented the Board and suggested reducing the quality of life and facilities due to taxes imposed on low- and fixed-income citizens.

2. Mr. Martin Simeck, 122 Water's Edge Drive, stated that for 21 years the Board and Planning Commission favored housing developers rather than businesses and facilities. He commented on the rate increase in late 90s followed by assessment increase; tax rate decreased afterward; and this practice is happening again. Mr. Simeck stated his opposition to the proposal.

3. Mr. R. Streko, 6061 Allegheny Road, stated a reduction of 1.5 cents is not enough. Mr. Streko commented that assessments should be changed and taxes collected at time of sale; commented on quality of life; stated schools do not improve with more money; and suggested increasing tax-exemption income maximum to \$42,000.

4. Mr. Don Kimball, 6151 South Mayfair Circle, stated his opposition to the proposal and commented on the Board not answering questions; stated Fairfax County does tax relief for citizens earning \$90,000 to \$110,000 per year who cannot afford taxes; stated the County cannot produce a formula to define fair market value; and stated money beyond budget should be returned to citizens.

5. Mr. Donnie Martin, 7196 Canal Street, stated Chickahominy Haven flooded from Ernesto and Hurricane Isabel, and few came through from the County; commented on ditches and lack of services; asked for tax relief for long-term citizens of the County; and commented on County vehicles being driven home.

6. Ms. Lee Meadows, 7201 Canal Street, Chickahominy Haven, stated the community was hit hard by Hurricane Isabel and Ernesto, and she is speaking on behalf of her mother; commented on homes being continually flooded; stated the assessments of affordable homes were impacted by larger homes; stated she did not take advantage of the appeal process but will now; stated the Board should advocate for those with low incomes who do not want to be pushed out of the County; and left a CD with Mr. Bradshaw with pictures of Ernesto flooding.

7. Ms. Mary Magoon Delara, 92 Sand Hill Road, stated the Board was commendable to lower tax rates, but a 1.5-cent reduction was not enough; stated affordable housing is taxed out of existence; and suggested alternative measures to make assessments more equitable should be done, such as revised tax relief policies or a cap on assessment increase percentage.

8. Mr. Dave Brinton, 6053 Allegheny Road, Longhill Station, stated he was retired and on a fixed income; and that when he came to the County, taxes were reasonable but now taxes have doubled. Mr. Brinton asked the Board to tax something else other than homeowners.

9. Ms. Josephine Gardner, 731 Autumn Circle, stated houses cannot be sold at the assessed value and will not allow a homeowner to buy another house in the County. Ms. Gardner suggested a cap on assessments, or collecting the taxes when a house is sold.

10. Dr. Robert Herrmann, 6057 Alleghany Road, Longhill Station, stated he could not afford the taxes on his property and could not sell the property at the assessed value.

11. Mr. Ed Oyer, 139 Indian Circle, stated he had previously commented on the real estate tax system; stated his home would not sell for the assessed value because people cannot afford to buy, and that the General Assembly needed to allow counties to develop an indexed system or establish a cap.

12. Mr. Bryan Oyer, 9025 Barnes Road, commented that his property value went up \$70,000 once and now it was up another \$40,000 after he built the home for \$100,000. Mr. Oyer stated the large new homes were not well made but they were driving up his assessment. Mr. Oyer stated he once attempted to appeal his assessment and he received the paperwork the day before it was due. Mr. Oyer commented that property owners were not told what the property was assessed against by the Real Estate Assessments Office. He commented that assessments would not go down as quickly as they rose and this could have been offset if Wal-Mart had located in the County. Mr. Oyer continued that the Board should cut back on many things, including allowing employees to drive County vehicles home because a 1.5-cent reduction was not adequate.

13. Mr. Howard Goldstein, 108 Shinnecock, stated based on assessments that the State dictates, market values are irrational and set by speculation and that the duty of the Board was to normalize this speculation on the behalf of the citizens. Mr. Goldstein stated the Board needed to normalize the growth in the budget, incorporating less than double-digit growth.

14. Mr. George Sperry, 6323 Chinwick Park, stated homes in his development were built in the last ten years and some houses cost \$60,000 more than his house. Mr. Sperry asked how figures are developed and did not get a straight answer. Mr. Sperry asserted the tax system was broken due to abnormal increases.

15. Ms. Margaret Hill, 118 Thompson's Lane, stated her family has lived in the County since 1800 and she will not be able to pass down land due to tax increases; and commented that all middle and lower class would not be able to stay in the County, including working people who had earned the right to live here.

16. Mr. Trevor Walter, 3736 Cherry Walk, stated the Real Estate Assessments Division should disclose how the assessments are made.

Mr. Goodson stated the Board is not allowed by the Code of Virginia to cap the annual assessment.

Mr. Goodson asked Mr. McDonald to comment on the citizens' inquiries.

Mr. McDonald stated that sales produce trends to develop a market value based on property features, generalizations based on square footage, and other characteristics used to define assessment; and then over the next 12 months, the State department would audit the assessment and analyze how closely the County had come to actual market value. Mr. McDonald explained that the most recent evaluation reported the County assessments in the mid-80th percentile, which meant the assessments have not kept up with market value as actual sale; and he has not seen reductions in market value in the County. Mr. McDonald stated the system was as good as the information and that property owners could help improve the information by calling the

Real Estate Assessments Office to report information about a specific parcel. Mr. McDonald said the office can provide information to property owners on how a specific parcel was assessed and what standards were used. Mr. McDonald stated he would invite property owners to give information as the County performs a mass appraisal and that a property owner can provide information not taken into consideration. He stated staff would like to hear from and respond to citizens.

Mr. Goodson asked if there is a computer printout for each property available to citizen to disclose how property was assessed.

Mr. McDonald stated this printout exists and is available to citizens upon request.

Mr. Goodson asked if the County was audited last year and asked for confirmation that the County assessment was 20 percent lower than market sales.

Mr. McDonald stated the report was based on the median of the property value versus what the property sold for and that the County was at 83 percent of the assessment versus actual sales value, which meant the assessment was low. Mr. McDonald explained that the County values were using actual sales, and the State was using prices of historical sales.

Mr. Harrison asked what the process was to appeal a property assessment.

Mr. McDonald stated the first step was to assert that the assessment is not correct, and that the Real Estate Assessments Office would perhaps offer to make an adjustment. If the citizens chose to appeal, there would be a form to give supportive information, including comparable sales or assessments or specific characteristics that would decrease the assessed value of the property.

Mr. Harrison asked if an assessor is sent out.

Mr. McDonald stated that an assessor is sent if the property owner requests one in order to analyze the property or respond to questions.

Mr. Icenhour stated he went to the Real Estate Assessments Office and asked questions and commented there was a perception that the assessments were done by computer, and the public would be surprised if they went to the office. Mr. Icenhour explained that the assessments were not done by community, but were broken down by section. Mr. Icenhour expressed concern that the assessment values were based on a built-in 12-24 month lag, as well as concern on how the State audits the County. Mr. Icenhour thanked Mr. McDonald for the education and invited citizens to go to the office and look at the assessments.

17. Mr. Dan Masciullo, 3740 Cherry Walk, stated the Board should consider if the property tax rate is out of hand; asked if the revenue required to maintain increases proportionally to the increase in property taxes; commented on the effects of the tax rate on retired citizens with fixed income; asked the Board to remember that citizens need security; and stated a house in the County would not sell for a market price that would allow the owner to afford another house in the County.

18. Ms. Ronnie Goldstein, 108 Shinnecock, commented on the budget and stated surplus should be returned to the people.

19. Ms. Lucy Szrama, 117 Teal Way, stated her assessment went up and commented that if the Virginia legislature was responsible, it needed to be addressed and that the formula for assessment needed to be changed.

Mr. Goodson closed the Public Hearing.

Mr. Goodson stated that in this case the County was shifting costs from businesses to homeowners. Mr. Goodson commented that the proposed property tax rate decrease was revenue-neutral and that since the budget was passed several months ago and commitments had been made, only a certain amount of tax relief was available without making specific adjustments to the budget.

Mr. Harrison commended citizens for speaking to this matter. He clarified that he was reluctant to ask staff questions because they had been communicating about this matter all along, but he wanted to hear from citizens. Mr. Harrison stated he was in the same situation as the citizens and it was a backwards process to set budget since there was not the same audience during budget process. He explained that the audience during the adoption of the budget encourages the Board to spend for schools, utilities, roads, and other services. Mr. Harrison suggested that the budget growth be capped, with a fixed-rate of eight percent growth annually. He commented that the County does not have the level of commercial development needed to adequately offset the burden of property taxes from property owners. Mr. Harrison suggested an expansion of the relief program through an increase in annual salary and extending the program to low-income citizens living in affordable housing. He stated the reduction in rate at 1.5 cents did not seem like a lot but he was concerned with giving that much back based on the budget and future need. Mr. Harrison suggested looking at ways to cut costs, including what citizens had mentioned about County vehicles going home and new vehicles being purchased. He explained the difficulty in making cuts without hearing from the people.

Mr. Icenhour stated the County cannot do certain things based on powers from the State, but can address these powers through a legislative agenda. He encouraged citizens to contact the representatives and encouraged the Board to build the legislative agenda. Mr. Icenhour stated the Board's budget process was backwards, commented that the land book should be created before the budget, and the tax rate should be set at that point to eliminate guessing what property tax revenue should be. He stated part of this need for revenue was the capital projects going on, including four new schools within three years. Mr. Icenhour stated there needed to be a more consistent rate and assessment process. He proposed basing the assessment cycle on calendar year rather than the fiscal year so the blue sheet from the Real Estate Assessments Office would come out in February when the Board started putting the budget together so citizens could help decide what needed to be cut. Mr. Icenhour proposed changes to the exemption program and commented that affordable housing was becoming non-existent, which was pricing people out of County. He recommended an increased annual salary for elderly and disabled from \$35,000 to \$50,000. Mr. Icenhour asked that staff bring back information with a careful analysis of the impacts of revenue to support infrastructure of the County and suggested the County take the same tax exemption program and increase exemption for lower-income property owners regardless of age. He stated he was in favor of the resolution to decrease the tax rate.

Mr. Bradshaw thanked citizens for attending and speaking to this matter, and highlighted important comments, including the assertion that the tax system was a regressive tax. He explained that the County favors real estate taxes rather than a higher sales tax because it is normally progressive; however, this was no longer the case. Mr. Bradshaw stated the need to refocus on development of businesses and commercial enterprises and a uniform tax rate. He commented that any collection over the budget should be returned, which was what the Board was attempting to do. Mr. Bradshaw stated the need to look at different alternatives and though he would like to increase the tax exemptions for elderly and disabled citizens, he did not want to transfer the tax burden to other groups. He stated the Board could not do many suggestions at this meeting, but the suggestions would be revisited.

Mr. McGlennon stated the Board thinks seriously about spending tax dollars and though the Virginia tax system is not defensible, this demographic received a much greater increase than the average assessment increase. He urged people to appeal their assessments. Mr. McGlennon explained that this was the only system that allowed for funding County government in Virginia, creating a reliance on real estate for the majority of

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Mr. Goodson stated that in this case the County was shifting costs from businesses to homeowners. Mr. Goodson commented that the proposed property tax rate decrease was revenue-neutral and that since the budget was passed several months ago and commitments had been made, only a certain amount of tax relief was available without making specific adjustments to the budget.

Mr. Harrison commended citizens for speaking to this matter. He clarified that he was reluctant to ask staff questions because they had been communicating about this matter all along, but he wanted to hear from citizens. Mr. Harrison stated he was in the same situation as the citizens and it was a backwards process to set budget since there was not the same audience during budget process. He explained that the audience during the adoption of the budget encourages the Board to spend for schools, utilities, roads, and other services. Mr. Harrison suggested that the budget growth be capped, with a fixed-rate of eight percent growth annually. He commented that the County does not have the level of commercial development needed to adequately offset the burden of property taxes from property owners. Mr. Harrison suggested an expansion of the relief program through an increase in annual salary and extending the program to low-income citizens living in affordable housing. He stated the reduction in rate at 1.5 cents did not seem like a lot but he was concerned with giving that much back based on the budget and future need. Mr. Harrison suggested looking at ways to cut costs, including what citizens had mentioned about County vehicles going home and new vehicles being purchased. He explained the difficulty in making cuts without hearing from the people.

Mr. Icenhour stated the County cannot do certain things based on powers from the State, but can address these powers through a legislative agenda. He encouraged citizens to contact the representatives and encouraged the Board to build the legislative agenda. Mr. Icenhour stated the Board's budget process was backwards, commented that the land book should be created before the budget, and the tax rate should be set at that point to eliminate guessing what property tax revenue should be. He stated part of this need for revenue was the capital projects going on, including four new schools within three years. Mr. Icenhour stated there needed to be a more consistent rate and assessment process. He proposed basing the assessment cycle on calendar year rather than the fiscal year so the blue sheet from the Real Estate Assessments Office would come out in February when the Board started putting the budget together so citizens could help decide what needed to be cut. Mr. Icenhour proposed changes to the exemption program and commented that affordable housing was becoming non-existent, which was pricing people out of County. He recommended an increased annual salary for elderly and disabled from \$35,000 to \$50,000. Mr. Icenhour asked that staff bring back information with a careful analysis of the impacts of revenue to support infrastructure of the County and suggested the County take the same tax exemption program and increase exemption for lower-income property owners regardless of age. He stated he was in favor of the resolution to decrease the tax rate.

Mr. Bradshaw thanked citizens for attending and speaking to this matter, and highlighted important comments, including the assertion that the tax system was a regressive tax. He explained that the County favors real estate taxes rather than a higher sales tax because it is normally progressive; however, this was no longer the case. Mr. Bradshaw stated the need to refocus on development of businesses and commercial enterprises and a uniform tax rate. He commented that any collection over the budget should be returned, which was what the Board was attempting to do. Mr. Bradshaw stated the need to look at different alternatives and though he would like to increase the tax exemptions for elderly and disabled citizens, he did not want to transfer the tax burden to other groups. He stated the Board could not do many suggestions at this meeting, but the suggestions would be revisited.

Mr. McGlennon stated the Board thinks seriously about spending tax dollars and though the Virginia tax system is not defensible, this demographic received a much greater increase than the average assessment increase. He urged people to appeal their assessments. Mr. McGlennon explained that this was the only system that allowed for funding County government in Virginia, creating a reliance on real estate for the

majority of revenue that comes in, but over the last ten years, there was not an increase in reliance on property tax, which has declined. He stated the County makes efforts to even the balance on citizens and other sources of income, as some revenue came from inter-governmental transfers and that the State has increased the amount of money received in recent years, including a reimbursement for car taxes. Mr. McGlennon commented that there was a myth perpetuated on what the County does for economic development, insisting the County drove Wal-Mart away from locating in James City County and although none of these Board members served on the Board when Wal-Mart decided to go to York County and the City of Williamsburg would not allow Wal-Mart to build within the City, the County approached the corporation, which informed the County that it does not respond to communities for location decisions. Mr. McGlennon stressed that one establishment does not make or break a County situation and that the County was fortunate to have robust economic activity including New Town, the Prime Outlets expansion, the Wal-Mart Distribution Center, and other entities with higher salaries in more skilled jobs, including the Avid Medical, Inc. expansion, doubling jobs created. He explained these are not as visible but are just as productive for revenue. Mr. McGlennon stated the Board was trying to be a good steward of County revenue and certain powers to tax that were held even by the City of Williamsburg, such as cigarettes, were not permitted in a county, as well as restrictions on other sources of revenue such as lodging taxes. He assured the citizens that the Board and staff were trying to find the best ways to provide quality services without placing too much burden on property owner and that the high assessments in recent years helped to fund the extraordinary increase of costs on local government that has far exceeded the cost of living with construction costs. Mr. McGlennon stated the Board had asked the School Board to cut back provisions for school construction to make costs within the budget but they could not find sufficient reductions. He stated that the County looked for other ways of dealing with cost and adopted a cash proffer system for developers to pay for new facilities and that a compromised version will be enhanced in future, as an effort to share the tax burden with property owners. Mr. McGlennon stated the Board cannot stop growth, but has voted down several developments this year and that some members have voted against proposals consistently, due to the belief that the County can expect higher standards for proposed development and greater mitigation of the effects of development. He clarified that State law does not allow for retroactive rezoning decisions and there have recently been expensive school propositions. Mr. McGlennon stated the citizen comments are helpful and although the Board cannot make the requested change in tax rate, the Board and staff were trying to find alternative sources of revenue, adjust rate of growth, pace of development, and cost of growth, but these actions could not be immediate, as the Board would have to dismantle the budget to do what citizens expected. Mr. McGlennon stated his support for the resolution and he would like to return the amount of funds above what was budgeted.

Mr. Goodson stated he was happy to hear from citizens and complimented Mr. Icenhour for his suggestions. He stated the Board had changed the assessment in the past, but there needed to be a consensus. Mr. Goodson stated progress could be made through advancing the legislative agenda to lobby for the power to cap some assessments and make homestead exemptions. He stated if the assessment was available when the budget was passed, he may have voted differently on the budget; however, the County needed to keep its budgeted obligations. Mr. Goodson stated his support for the 1.5-cent reduction.

Mr. McGlennon 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

REAL PROPERTY TAX RATE

WHEREAS, the Board of Supervisors of James City County is in receipt of the County landbook as of July 1, 2006; and

WHEREAS, the total value of the landbook exceeds earlier estimates used in approving the budget for the fiscal year ending June 30, 2007 (FY 2007); and

WHEREAS, estimated tax collections for FY 2007, using the values in the July 1, 2006, landbook, exceed those in the adopted budget by \$1,600,397; and

WHEREAS, the Board of Supervisors desires to lower the tax rate to \$0.77 per \$100 assessed value as a result of the higher actual landbook value, resulting in \$141,151 in additional revenue in FY 2007.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby amends the FY 2007 Budget by reducing the tax rate on real property for FY 2007 from \$0.785 to \$0.77 per \$100 of assessed value.

BE IT FURTHER RESOLVED that the FY 2007 Budget be amended and \$141,151 in additional real property tax revenue be appropriated to the Non-Departmental category of the County's General Fund to assist in funding road improvement and water-quality projects

Mr. Goodson recessed the Board for a short break at 9:05 p.m.

Mr. Goodson reconvened the Board at 9:12 p.m.

2. Case Nos. Z-2-06/MP-3-06/SUP-19-06. Mason Park - Reduced Street Width Request

Mr. Goodson opened the Public Hearing and explained the applicant had asked for a deferral to the October 10, 2006, Board meeting.

Mr. Goodson deferred the Public Hearing to October 10, 2006.

3. Case No. Z-3-06/SUP-21-06/MP-4-06. Pleasant Hill Station

Mr. Jason Purse, Planner, stated Mr. James Peters has applied to rezone a 4.7-acre portion of the 403-acre Hill Pleasant Farm parcel located at 7152 Richmond Road from A-1, General Agricultural, to B-1, General Business, with proffers, with a Special Use Permit (SUP) for the development of a car wash, as well as two other commercial uses. The property is also known as Parcel No. (1-5) on James City County Real Estate Tax Map No. (24-1).

Staff found the proposal generally consistent with the 2003 Comprehensive Plan as outlined in the staff report. Staff believed the proffers would adequately mitigate impacts from this development.

At its meeting on August 7, 2006, the Planning Commission voted 6-0 with one abstention to approve the application.

Staff recommended the Board of Supervisors approve the Rezoning, Master Plan, and SUP applications with the acceptance of the proffers.

Mr. Goodson opened the Public Hearing.

1. Mr. Vernon Geddy, III, on behalf of the applicants, gave a presentation which outlined the application, including uses, architecture and design, landscaping, traffic information, stormwater management, and master plan.

Mr. McGlennon asked how the connectivity would operate and how it would relate to whether a traffic signal would be warranted.

Mr. Geddy responded that the signal would be based on the general traffic in the area.

Mr. McGlennon stated it would be to the advantage of both property owners to have the signal but there would be no cost sharing and asked if the adjacent property owners were interested in the connection.

Mr. Geddy stated there was none and they were very interested in the connectivity.

Mr. Icenhour asked if the only access would be at the main entrance at the far end of the property.

Mr. Geddy confirmed this.

Mr. Icenhour asked for more details about the car wash, including whether it would be drive-through or self-serve.

The applicant responded that the car wash would be drive-through with a detail shop and a self-serve option as well.

Mr. Icenhour asked what would ultimately happen to the water that was recycled from the car wash and asked what remained after filtration.

Mr. Tim Fitzpaltrick, Mid Atlantic Autec, explained that the car wash would recycle 85-90 percent of the water and that the septic tanks would need to be pumped once a quarter.

Mr. Icenhour asked if any water would go into the storm sewer or the sanitary sewer.

Mr. Fitzpaltrick stated it would go into neither.

Mr. Icenhour asked about how the water would be disposed of once it was pumped out of the tanks.

Mr. Fitzpaltrick stated he was uncertain, but believed there were restrictions on how the septic companies were allowed to dispose of the water.

Mr. Icenhour asked how the water would be disposed of from the self-serve bays.

Mr. Fitzpaltrick stated the water would be filtered and go straight to the sanitary sewer.

Mr. Icenhour asked what percentage of vehicular waste was removed from the water in the filtration process.

Mr. Fitzpaltrick stated about 75 percent was removed.

Mr. Icenhour asked about the history of other jurisdictions and the restrictions on the filtration system due to requirements by the Hampton Roads Sanitation District (HRSD) as what is sent to the sewer ends up in the watershed.

Mr. Fitzpaltrick said this was correct.

Mr. Goodson stated there were certain rules set forth by the HRSD about what goes into the system.

Mr. Geddy stated this was correct.

Mr. Goodson stated that though this application would be a water use, those using it would be citizens who would wash cars in driveways and waste more water. He stated his support of the resolution in that regard. Mr. Goodson stated that a possible lube shop could be located on the property and asked for confirmation that motor fuels could be sold without an SUP change.

Mr. Sowers stated gasoline could not be sold without a separate SUP.

Mr. Bradshaw asked about the selection of the name, noting the inversion of "Hill Pleasant" and "Pleasant Hill."

Mr. Peters stated permission would have to be granted by the landowner to use the name of Hill Pleasant Farm.

Mr. Bradshaw stated the historic name was good, a name of historical significance, but wanted to clarify the inversion of the name as the Hunt family corrected others when the name was incorrect. Mr. Bradshaw stated he wanted assurance that those landscaping the property knew what effort was involved in caring for an orchard.

Mr. Peters stated there was specific language for landscaping, which resembled an orchard.

Mr. Goodson closed the Public Hearing.

Mr. Bradshaw disclosed that he has represented Hill Pleasant Farm in the past but as they were not current clients; he believed he could fairly act on this item.

Mr. Bradshaw made a motion to adopt the resolutions.

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

RESOLUTION

CASE NO. Z-03-06/MP-4-06. PLEASANT HILL STATION

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 Case No. Z-03-06/MP-4-06, with Master Plan, for rezoning 4.7 acres from A-1, General Agricultural, to B-1, General Business, with proffers; and

WHEREAS, the Planning Commission of James City County, following its Public Hearing on August 7, 2006, recommended approval, by a vote of 6 to 0; and

WHEREAS, the property is located at 7152 Richmond Road and can be further identified as Parcel No. (1-5) on James City County Real Estate Tax Map No. (24-1).

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve Case No. Z-03-06/MP-4-06 and accepts the voluntary proffers.

RESOLUTION

CASE NO. SUP-21-06. PLEASANT HILL STATION

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. James Peters has applied for an SUP to allow for the development of a car wash, as well as a traffic generation rate which is over 100 peak hour trips; and

WHEREAS, the property is located on land zoned B-1, General Business, and can be further identified as Parcel No. (1-5) on James City County Real Estate Tax Map No. (24-1); and

WHEREAS, the Planning Commission, following its Public Hearing on August 7, 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 Special Use Permit No. 21-06 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. This SUP is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.

4. Case No. SUP-24-06. Coleman Family Subdivision

Ms. Leanne Reidenbach, Planner, stated Mr. David L. Coleman has applied for an SUP to allow a family subdivision generating two lots less than three acres in size in an A-1, General Agricultural District, located at 9024 Barnes Road. Ms. Reidenbach stated the existing property is approximately 3.13 acres and can be further identified as Parcel No. (5-1D) on James City County Real Estate Tax Map No. (10-2), and was currently owned by Ms. Yook Coleman. Ms. Reidenbach stated the proposed subdivision would create one new 1.78-acre parcel (Lot 1-D2) to be conveyed to Mr. David Coleman, her son, and the remaining parcel (Lot 1-D1) would be approximately 1.34 acres, both lots with access off Barnes Road. Ms. Reidenbach explained the applicant had expressed that the purpose of the subdivision would be so that he could locate on Lot 1-D2 and construct a retirement home for his mother on the new parcel, enabling Mr. Coleman to more easily provide care for his mother. Ms. Reidenbach stated the property was located in the A-1, General Agricultural

District, and the minimum lot size in A-1 for single-family detached units was three acres, while Section 24-214, paragraph (d) allows for a minimum lot size of less than three acres if the creation of said lot is for use by a member of the owner's immediate family (children 18 years of age or older or parents of an owner) and an SUP is issued. Ms. Reidenbach stated the Zoning Ordinance required only the Board of Supervisors to review and approve this type of SUP.

Staff found the proposal to be consistent with the surrounding zoning and development and Section 19-17 of the James City County Subdivision Ordinance.

Staff recommended approval of this application with the conditions listed in the attached resolution.

Mr. Bradshaw asked when the property was purchased.

Ms. Reidenbach responded the property was purchased in July 2006.

Mr. Bradshaw asked if there was any other dwelling on the parcel.

Ms. Reidenbach stated there was not.

Mr. Goodson asked if an auxiliary housing unit could be built on a property without subdividing the land.

Ms. Reidenbach stated the property would need to demonstrate that it would be subdividable, and she stated she would research this matter.

Mr. Goodson asked in order to develop an auxiliary structure, if there would need to be a subdivision.

Mr. Rogers stated the parcel would need to demonstrate that it would be able to be subdivided if it was a two-family parcel and on A-1 parcel and if the property is three acres, it would not meet the A-1 requirements for subdivision.

Mr. Purse quoted Section 24-189 of the Zoning Ordinance where two or more residential uses were permitted on a parcel provided all other requirements of the zoning district that were met for each of the principle residential uses.

Mr. Goodson asked if a duplex would be allowed without subdividing.

Mr. Sowers stated a two-family development would require an SUP.

Mr. Goodson opened the Public Hearing.

1. Mr. David Coleman stated he wanted a separate home for his mother to care for her when she retires.

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

Mr. Bradshaw stated the Code says a family subdivision may be granted if it was not an attempt to circumvent the Zoning Ordinance. Mr. Bradshaw commented the applicant wanted two homes on a property, which circumvents the ordinance. Mr. Bradshaw stated he would be more comfortable if the property had been held in a family for a longer period of time and if it had been developed. Mr. Bradshaw stated he did not support the application.

Mr. Harrison stated he appreciated Mr. Bradshaw's comments and stated this would be an opportunity to create a legacy, whereas a developer would not preserve this. He commented he felt the application met the criteria and stated support for the resolution.

Mr. Goodson stated concern because with lot size requirements for Rural Lands changing from three acres to 10 acres, this type of application could become more prevalent. He explained that if a family is initially living on a parcel, once subdivided, the individual parcels were separate and could be sold separately. Mr. Goodson stated this provision was intended to give property owners who have owned a parcel property for years an opportunity to pass it down to their children, and he felt it was important for the Board to set a precedent. Mr. Goodson stated he did not support the application.

Mr. McGlennon stated this matter was a discretionary action of the Board and required a higher standard, and though it was hard to establish a time length requirement for ownership, the property should be owned more than a few months. Mr. McGlennon stated concern that the lot size was barely over minimum lot size for the zoning district and stated he could not support the application, as it would send a message that family subdivisions was a way to more aggressively develop outside the Primary Service Area (PSA).

Mr. Icenhour stated there was a recommendation from staff based on strict assessment of the Zoning Ordinance, yet the Board was raising issues that were not clearly defined in the Ordinance; that he could understand if the applicant believed he could get the application approved if he read the Ordinance when looking for property for this purpose, and suggested that beyond this case, these concerns needed to be incorporated in this Ordinance. Mr. Icenhour stated he did not support the application.

Mr. Goodson stated that the Board was setting a precedent with this decision.

Mr. Harrison stated a family subdivision was created to prevent developers from subdividing land.

Mr. McGlennon stated originally it had to be family-owned, but there was no requirement to stay in the family possession.

Mr. Harrison stated that should be considered.

Mr. Bradshaw stated he believed there was a three-year requirement of ownership of family.

Mr. Rogers stated that this was a matter of an exception to the Subdivision Ordinance and the exception should be narrowly construed to effectuate the purpose. Mr. Rogers explained this was not an application for an exception to the family Subdivision Ordinance, but an SUP for an exception to the Zoning Ordinance for a smaller lot size than required. He stated the Board could incorporate a holding period for a family subdivision, which is an acceptable provision to effectuate the purpose of a family owning property to subdivide and give to an heir. Mr. Rogers stated a holding period requirement would be an acceptable provision to make to the Subdivision Ordinance; however, this application was truly an SUP to the Zoning Ordinance.

Mr. Goodson asked what changes could be made to the Ordinance, such as a minimum lot size.

Mr. Rogers stated the Ordinance does provide for that in the Subdivision Ordinance and the Zoning Ordinance, but it seems the only change to that would be in the family Subdivision Ordinance to provide for by-right family subdivisions that would require a holding period for the property owner to own or live on the property for a period of time, which was an acceptable provision for a family subdivision exception.

Mr. Goodson stated that would be setting policy.

Mr. Rogers stated that was correct, and in dealing with a Zoning Ordinance SUP, if that was in the Subdivision Ordinance, that would be a criterion that staff would need to apply.

Mr. Harrison made a motion to approve the resolution.

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

5. FY 2007 Budget Amendment - Matoaka Elementary School

Mr. John E. McDonald, Manager of Financial and Management Services, stated the budget amendment would appropriate \$4 million to the construction of Matoaka Elementary School, which required \$4.3 million in additional funding, \$4 million of which was to come from the County. He stated the budget amendment would move \$2.8 million from funds for the school multiuse building, reduce Contingency by \$.25 million, and that \$.95 million would be collected from bond proceeds. Mr. McDonald stated \$1.2 million was generated from bonds issued for a high school and \$228,227 was included as a budget amendment for lighting and other facility needs. He stated the project would be budgeted in full, but if it was necessary to borrow money to provide funds, the Chairman, the County Administrator, representatives from Davenport Financial, and he would meet to discuss.

Mr. Harrison asked if there are other items connected to Matoaka Elementary School that could drive costs higher.

Mr. McDonald stated the unfinalized acquisition price may increase the needed funds for the elementary school.

Mr. Goodson opened the Public Hearing.

1. Mr. Henry Howell spoke, on behalf of the Letitia Hanson Trust and Travis Armistead, to encourage the Board to cease development of the Matoaka Elementary School site until after the November 8, 2006, hearing on the condemnation. Mr. Howell listed items that in his opinion refute the legality of the condemnation of the property, including no title exam being done, not identifying the correct owners, no title report being done, no negotiations with the correct owners, no bona fide offer to owners before condemnation, no plans for project, the need to condemn more land, no notice required to condemn an Agricultural and Forestal District, and a resolution that did not comply to laws for Counties by indicating the owners and money offered to each person. Mr. Howell stated the Armistead family had handled another expensive condemnation when land was taken for the desalination plant. Mr. Howell commented on obtaining an SUP on land that was not yet condemned and a failure to manage the property during Ernesto, causing flooding. Mr. Howell asked the Board to stop development until the court hearing.

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,

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

RESOLUTION

FY 2007 BUDGET AMENDMENT - MATOAKA ELEMENTARY SCHOOL

WHEREAS, the Board of Supervisors of James City County has previously budgeted funds for the construction of Matoaka Elementary School; and

WHEREAS, despite rebidding the contract, the construction contract for Matoaka Elementary School exceeded budget estimates by approximately \$4 million, with the County share estimated at \$3,756,134; and

WHEREAS, the Board of Supervisors has previously endorsed a contract award for the construction of Matoaka Elementary School and needs to identify and appropriate the needed additional funds.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby amends the FY 2007 Budget and appropriates additional funds, as follows:

CAPITAL BUDGET

Revenue:

Contribution from Debt Service	<u>\$ 956,403</u>
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Expenditures:

Matoaka Elementary School	\$2,796,403
School Multi-Use Building	(2,800,000)
Matoaka Elementary School Road Improvements	<u>960,000</u>
	<u>\$ 956,403</u>

DEBT SERVICE BUDGET

Revenue:

Interest on Bond Proceeds	<u>\$1,184,630</u>
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Transfers:

Capital Budget	\$ 956,403
Operating Budget	<u>228,227</u>
	<u>\$1,184,630</u>

OPERATING BUDGET

Revenue:

Contribution from Debt Service	<u>\$ 228,227</u>
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Expenditure:

Utility Costs

\$ 228,227

6. An Ordinance to Amend and Reordain Chapter 13, Motor Vehicles and Traffic, of The Code of The County of James City, Virginia, by Amending Article II, Driving Automobiles, Etc., While Intoxicated or Under the Influence of Any Drug, Section 13-29, Recovery of Expenses for Emergency Response

Mr. Adam Kinsman, Assistant County Attorney, stated this ordinance amendment was a response to recent changes in State Code. Mr. Kinsman explained that the County was allowed to recover expenses for emergency response during an accident at a separate civil suit against the defendant once prosecuted for a DUI or DWI offense. Mr. Kinsman stated this has proven to be cumbersome, and the ordinance amendment would eliminate the separate civil suit so the County could gain reimbursement at time of prosecution; and that the ordinance amendment also expanded the scope of what could be reimbursed. Staff recommended approval of the ordinance amendment.

Mr. Icenhour asked if the strikethrough text was the current language of the ordinance.

Mr. Kinsman stated that was correct.

Mr. McGlennon asked if there is any discretionary nature of the ordinance to look at individual cases as far as what fee would be assessed and if it would always be DUIs or cases of that nature.

Mr. Kinsman stated there would be a flat fee of \$250 brought against someone convicted, or a minute-by-minute accounting up to \$1,000, which was less likely as it would come forward before sentencing.

Mr. Harrison asked if this would be charged once someone was sentenced.

Mr. Kinsman explained that it would be brought up during the case against the defendant and if found guilty, the fee would be charged when the person was sentenced.

Mr. Harrison asked if this was a fee for provision of law enforcement.

Mr. Kinsman stated a fee of \$250 would not come close to covering the cost of a response, but in a sense, this was a very small fee for law enforcement.

Mr. Goodson opened the Public Hearing.

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

Mr. Harrison made a motion to adopt the ordinance amendment.

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

7. Resolutions Authorizing the Lease of Real Property and Air Space for Cellular Telecommunications Towers:

a A resolution authorizing the lease of approximately 1,329 square feet of real property and air

space to Nextel Communications on the 280-foot tower located on the parcel of land identified as Tax Parcel No. 6010100011 on the James City County Real Estate Tax Map and more commonly known as 9320 Merrimac Trail in James City County.

- b. A resolution authorizing a lease option of approximately 1,750 square feet of real property, including air space, to Cingular Wireless, a Delaware Limited Liability Company, on the parcel of land identified as Parcel No. 4721500001 on the James City County Real Estate Tax Map and more commonly known as 5087 John Tyler Highway, Williamsburg, Virginia 23185.
- c. A resolution authorizing the lease option of approximately 6,400 square feet of real property, including air space, to Cingular Wireless, a Delaware Limited Liability Company, on the parcel of land identified as Parcel No. 3630100023 on the James City County Real Estate Tax Map and more commonly known as 3201 Monticello Avenue, Williamsburg, Virginia 23188.
- d. A resolution authorizing the lease of approximately 1,080 square feet of real property and air space to Nextel Communications on the 280-foot tower located on the parcel of land identified as Tax Parcel No. 461-0A-00-002 on the City of Williamsburg Real Estate Tax Map and more commonly known as 1118 Ironbound Road in the City of Williamsburg.

Chief Tal Luton stated four resolutions were being considered for cellular communication towers. Chief Luton stated two leases were on existing 800-MHz radio towers owned by James City County and two leases were on towers that were yet to be built. Chief Luton stated that when the towers were constructed, they were built to offer support for three other users for expected revenue. Chief Luton displayed maps of each of the properties which would be leased. Chief Luton explained Item (a) at 9320 Merrimac Trail in James City County; and Item (d) at 1118 Ironbound Road in the City of Williamsburg were already existing towers. Chief Luton stated the initial annual rent would be \$24,000 with an annual three percent increase for a five-year term with the option to renew for up to four additional five-year terms.

Mr. Goodson stated there would be three other facilities and asked if there would be two other applicants for lease.

Chief Luton stated this was correct.

Chief Luton stated Item (b) at 5087 John Tyler Highway would be constructed by Cingular Wireless behind the Law Enforcement Center (LEC) and Item (c) at 3201 Monticello Avenue would be constructed by Cingular Wireless adjacent to Fire Station 5. Chief Luton stated both towers would be leased for one year and Cingular Wireless can exercise the option to lease five years. Chief Luton stated the initial annual rent would be \$20,000 with an annual increase of three percent. Staff recommended approval of the resolutions authorizing the County Administrator to execute the leases.

Mr. Goodson asked if there would be additional opportunities to raise towers.

Chief Luton stated that the area behind the LEC may be problematic for additional towers; however, behind Fire Station 5 may be a favorable site.

Mr. Goodson opened the Public Hearing.

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

Mr. Icenhour commented this lease should reflect market rate in order to avoid foregoing additional revenue. Mr. Icenhour asked how the increase rate of three percent was assessed.

Tax Parcel No. 6010100011 on the James City County Real Estate Tax Map and more commonly known as 9320 Merrimac Trail in James City County.

- b. A resolution authorizing a lease option of approximately 1,750 square feet of real property, including air space, to Cingular Wireless, a Delaware Limited Liability Company, on the parcel of land identified as Parcel No. 4721500001 on the James City County Real Estate Tax Map and more commonly known as 5087 John Tyler Highway, Williamsburg, Virginia 23185.
- c. A resolution authorizing the lease option of approximately 6,400 square feet of real property, including air space, to Cingular Wireless, a Delaware Limited Liability Company, on the parcel of land identified as Parcel No. 3630100023 on the James City County Real Estate Tax Map and more commonly known as 3201 Monticello Avenue, Williamsburg, Virginia 23188.
- d. A resolution authorizing the lease of approximately 1,080 square feet of real property and air space to Nextel Communications on the 280-foot tower located on the parcel of land identified as Tax Parcel No. 461-0A-00-002 on the City of Williamsburg Real Estate Tax Map and more commonly known as 1118 Ironbound Road in the City of Williamsburg.

Chief Tal Luton stated four resolutions were being considered for cellular communication towers. Chief Luton stated two leases were on existing 800-MHz radio towers owned by James City County and two leases were on towers that were yet to be built. Chief Luton stated that when the towers were constructed, they were built to offer support for three other users for expected revenue. Chief Luton displayed maps of each of the properties which would be leased. Chief Luton explained Item (a) at 9320 Merrimac Trail in James City County; and Item (d) at 1118 Ironbound Road in the City of Williamsburg were already existing towers. Chief Luton stated the initial annual rent would be \$24,000 with an annual three percent increase for a five-year term with the option to renew for up to four additional five-year terms.

Mr. Goodson stated there would be three other facilities and asked if there would be two other applicants for lease.

Chief Luton stated this was correct.

Chief Luton stated Item (b) at 5087 John Tyler Highway would be constructed by Cingular Wireless behind the Law Enforcement Center (LEC) and Item (c) at 3201 Monticello Avenue would be constructed by Cingular Wireless adjacent to Fire Station 5. Chief Luton stated both towers would be leased for one year and Cingular Wireless can exercise the option to lease five years. Chief Luton stated the initial annual rent would be \$20,000 with an annual increase of three percent. Staff recommended approval of the resolutions authorizing the County Administrator to execute the leases.

Mr. Goodson asked if there would be additional opportunities to raise towers.

Chief Luton stated that the area behind the LEC may be problematic for additional towers; however, behind Fire Station 5 may be a favorable site.

Mr. Goodson opened the Public Hearing.

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

Mr. Icenhour commented this lease should reflect market rate in order to avoid foregoing additional revenue. Mr. Icenhour asked how the increase rate of three percent was assessed.

Mr. Rogers stated the County has been doing tower leases for approximately seven or eight years and when cellular towers became prominent, the County worked with landowners to see what would be a fair lease in relation to tower height, location, and other characteristics. Mr. Rogers stated most leases provided for a 15 percent increase over five years, and that there is some accumulation with three percent annually, which was a good estimate of market rate increase. Mr. Rogers stated historically the rates of inflation have been accurate and this rate was consistent with those of other jurisdictions.

Mr. Icenhour asked if other jurisdictions were not requiring renegotiation upon renewal of leases for price adjustments.

Mr. Rogers explained that the County is able to receive this favorable rent due to the commitment of a long-term lease, as building a tower is a significant investment, which cannot be relocated easily.

Mr. Goodson stated that not only is the County receiving revenue but also providing a service and stated his support.

Mr. Bradshaw stated his concern with changes in consumer price index, historically the last 10 years, this is consistent. Many other leases only had increases after longer periods, and by having annual increase, rent goes up faster, compounds as well. The County lease compare favorably with other leases.

Mr. Bradshaw made a motion to approve the four resolutions.

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

RESOLUTION

LEASE OF 1,329 SQUARE FEET OF COUNTY PROPERTY TO NEXTEL COMMUNICATIONS OF THE MID-ATLANTIC, INC.

WHEREAS, James City County owns a 280-foot tower ("Tower") located on James City County Tax Map Parcel No. 6010100011 and more commonly known as 9320 Merrimac Trail, Williamsburg, Virginia; and

WHEREAS, Nextel Communications of the Mid-Atlantic, Inc. ("Nextel") wishes to lease 1,329 square feet on the Tower; and

WHEREAS, after a public hearing, the Board of Supervisors is of the opinion that the County should lease a portion of the Tower to Nextel on the terms and conditions contained in the Lease Agreement.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of James City County, Virginia, that the County Administrator is hereby authorized and directed to execute the Lease Agreement between James City County and Nextel Communications of the Mid-Atlantic, Inc., for 1,329 square feet of Tower space and such other memoranda, agreements, or other documents as may be necessary to effectuate the Lease.

RESOLUTION

LEASE OF 1,750 SQUARE FEET OF COUNTY PROPERTY

TO CINGULAR WIRELESS, LLC

WHEREAS, James City County owns certain real property identified as Tax Parcel No. 4721500001 on the James City County Tax Map and more commonly known as 5087 John Tyler Highway, Williamsburg, Virginia, and it is operated as the James City County Law Enforcement Center ("Property"); and

WHEREAS, Cingular Wireless, LLC ("Cingular") desires an option to lease 1,750 square feet on the Property; and

WHEREAS, after a public hearing, the Board of Supervisors is of the opinion that the County should enter the option to lease with Cingular on the terms and conditions contained in the Option and Lease Agreement.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of James City County, Virginia, that the County Administrator is hereby authorized and directed to execute the Option and Lease Agreement between James City County and Cingular Wireless, LLC for the lease of 1,750 square feet on the Property and such other memoranda, agreements, or other documents as may be necessary to effectuate the Lease.

RESOLUTION

LEASE OF 6,400 SQUARE FEET OF COUNTY PROPERTY TO CINGULAR WIRELESS, LLC

WHEREAS, James City County owns certain real property identified as Tax Parcel No. 3630100023 on the James City County Tax Map and more commonly known as 3201 Monticello Avenue, Williamsburg, Virginia and is operated as the James City County Fire Station 5 ("Property"); and

WHEREAS, Cingular Wireless, LLC ("Cingular") desires an option to lease 6,400 square feet on the Property; and

WHEREAS, after a public hearing, the Board of Supervisors is of the opinion that the County should enter the option to lease with Cingular on the terms and conditions contained in the Option and Lease Agreement.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of James City County, Virginia, that the County Administrator is hereby authorized and directed to execute the Option and Lease Agreement between James City County and Cingular Wireless, LLC for the lease of 6,400 square feet on the Property and such other memoranda, agreements, or other documents as may be necessary to effectuate the Lease.

RESOLUTION

LEASE OF 1,080 SQUARE FEET OF COUNTY PROPERTY TO

NEXTEL COMMUNICATIONS OF THE MID-ATLANTIC, INC.

WHEREAS, James City County owns a 280 foot tower ("Tower") located on the City of Williamsburg Tax Map as Parcel No. 461-0A-00-002 and more commonly known as 1118 Ironbound Road, Williamsburg, Virginia; and

WHEREAS, Nextel Communications of the Mid-Atlantic, Inc. ("Nextel") wishes to lease 1,080 square feet on the Tower; and

WHEREAS, after a public hearing, the Board of Supervisors is of the opinion that the County should lease a portion of the Tower to Nextel on the terms and conditions contained in the Lease Agreement.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of James City County, Virginia, that the County Administrator is hereby authorized and directed to execute the Lease Agreement between James City County and Nextel Communications of the Mid-Atlantic, Inc., for 1,080 square feet of Tower space and such other memoranda, agreements, or other documents as may be necessary to effectuate the Lease.

8. Grant of Permanent Easements and Temporary Easements to Virginia Department of Transportation and Dominion Virginia Power for Construction of the Virginia Capital Trail

Mr. Marvin Sowers, Planning Director, stated two phases are being constructed by VDOT of the Virginia Capital Trail. Mr. Sowers explained this application dealt with the Chickahominy phase and that both phases were under construction. He stated temporary and permanent easements were needed for VDOT and Dominion Power on three County properties: Chickahominy Riverfront Park, where the easement ran parallel to Route 5 and was 20 feet wide for the permanent easement with an additional five feet on each side for temporary construction easement; the second location was what was known as the Exxon parcel on the corner of Route 5 and Greensprings Road, acquired by the County and VDOT for preservation of open space and the Virginia Capital Trail; and the third property was at Governor's Land and Route 5, which was originally dedicated to the County as part of a Governor's Land rezoning for road improvements. Mr. Sowers stated staff recommended approval of the resolution.

Mr. Harrison asked how the concerns in Governor's Land were resolved.

Mr. Sowers stated a series of discussions were made with the County, VDOT and Governor's Land, most recently in the middle of summer. Mr. Sowers indicated that at this time, VDOT looked at various options to the present alignment and decided on the present option proceeding through Governor's Land. Mr. Sowers stated former VDOT Secretary Pierce Homer finalized location of the trail.

Mr. Goodson opened the Public Hearing.

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

Mr. Bradshaw made a motion to approve the resolution.

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

RESOLUTION

CONVEYANCE OF EASEMENTS TO THE

VIRGINIA DEPARTMENT OF TRANSPORTATION AND

DOMINION VIRGINIA POWER FOR THE VIRGINIA CAPITAL TRAIL

WHEREAS, James City County owns 140.484 acres of land commonly known as 1350 John Tyler Highway, designated as Tax Parcel No. 34-30100002, and operated as the Chickahominy Riverfront Park; and

WHEREAS, James City County owns 8.834 acres of land generally parallel and adjacent to the southern right of way of John Tyler Highway which extends 1,855 feet west and 3,220 feet east of Two Rivers Road, designated as Tax Parcel No. 44-20100016E; and

WHEREAS, James City County owns 8.067 acres of land commonly known as 3493 John Tyler Highway at the southeast corner of Greensprings Road, designated as Tax Parcel No. 45-20100012; and

WHEREAS, the Virginia Department of Transportation ("VDOT") and Dominion Virginia Power, require as part of the construction of the Virginia Capital Trail, the following permanent and temporary easements across the following parcels:

Tax Parcel Number 34-30100002:

1.517 acres of permanent easement to VDOT

1.520 acres of temporary easement to VDOT

Tax Parcel Number 44-20100016E:

2.137 acres of permanent easement to VDOT

1.286 acres of temporary easement to VDOT

.015 acres of permanent easement to Dominion Virginia Power

Tax Parcel Number 45-20100012:

.263 acres of permanent easement to VDOT

.277 acres of temporary easement to VDOT

WHEREAS, after holding a public hearing, the Board of Supervisors agree to convey the easements needed for the Virginia Capital Trail.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes and directs the County Administrator to execute the deeds and other documents necessary to convey the above-referenced property to the Virginia Department of Transportation and Dominion Virginia Power.

H. BOARD CONSIDERATION

1. Route 60 East Project Administration Agreement

Mr. Sandy Wanner, County Administrator, stated the Route 60 East project was a primary road project once Route 199 was completed. He explained that the Route 60 East project underwent discussion regarding new alignment and deferred alignment for second action with the Metropolitan Planning Organization (MPO), and that there was success in finding some funding project. Mr. Wanner stated this consideration was for the County to enter into an agreement with VDOT, as the County was eligible to locally administer the project in order to provide data for the layout of the alignment with the budget. He clarified that the County may opt out of the agreement if funding does not materialize for the project. Mr. Wanner stated entering into this agreement was critical in completing the project and although there was some risk involved, staff recommended entering into the agreement and moving forward with the project.

Mr. Harrison stated the risk would be to start the project though the County may not finish if funds did not materialize.

Mr. Wanner stated if the County entered into the agreement, strides could be made such as obtaining right-of-way and an environmental assessment.

Mr. Goodson stated that this project will look favorable for funding at the State level and made a motion to approve the resolution.

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

RESOLUTION

ROUTE 60 EAST PROJECT ADMINISTRATION AGREEMENT

WHEREAS, in accordance with the Code of Virginia to provide localities the opportunity to administer projects financed by the Virginia Department of Transportation and in accordance with the Guide for Local Administration of Virginia Department of Transportation; and

WHEREAS, the Board of Supervisors of the James City County of Virginia has expressed its desire to administer the work of the Route 60 East project located in the Roberts District from James City County Line at Newport News to 0.9 miles west of James City County line, also known as Project No. 0060-047-V11, UPC 13496.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the County Administrator to execute the Route 60 East project administration agreement.

I. PUBLIC COMMENT

1. Mr. Ed Oyer, 139 Indian Circle, commented on the property behind his home and storm damage; economic stability; a shortage of welders; York County school addition; opposition to middle school program; and the James City County Progress Report.

J. REPORTS OF THE COUNTY ADMINISTRATOR

Mr. Wanner stated the Board needed to have a Closed Session following the regular meeting and a JCSA meeting that recessed to this meeting from August 8, 2006. Mr. Wanner recommended that when the Board concluded its business tonight, it should adjourn until 4 p.m. on September 26, 2006.

Mr. Wanner reminded the Board and citizens of a dedication honoring Mr. Jack Massey on September 19, 2006, at 5:30 p.m. at the Williamsburg Community Building and that the Route 199 bridges would be named in his honor.

Mr. Wanner commented on a Virginia Gazette editorial about the James City/Williamsburg Community Center and explained that during the closure of the facility, extensive maintenance was performed, including painting, floor waxing and refinishing, pool and spa maintenance, and meeting with two engineering firms to assess pool water and pool air quality. Mr. Wanner stated the whirlpool filter should be up and running by Friday and that maintenance was still working to fix the heat exchanger in the whirlpool and repair benches in the men's sauna. Mr. Wanner explained that a great deal of the facility was serviced and although there is more to do, it would be done.

K. BOARD REQUESTS AND DIRECTIVES

Mr. Icenhour asked staff to bring forward information regarding budget process.

Mr. McGlennon reiterated interest in the potential of the County offering curbside trash service.

Mr. Goodson stated he sent an E-Mail concerning legislative agenda and asked to work it into work session in two weeks.

Mr. Goodson recessed the Board for a brief JCSA Board of Directors meeting.

Mr. Goodson reconvened the Board at 10:36 p.m.

Mr. Bradshaw made a motion to recess to Closed Session.

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

At 10:40 p.m., Mr. Goodson recessed the Board to Closed Session.

L. CLOSED SESSION

Mr. Goodson reconvened the Board into Open Session at 11:58 p.m.

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

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

RESOLUTION

CERTIFICATION OF CLOSED MEETING

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

WHEREAS, Section 2.2-3711 of the Code of Virginia requires a certification by the Board that such closed meeting was conducted in conformity with Virginia law.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby certifies that, to the best of each member's knowledge: i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this certification resolution applies; and ii) only such public business matters were heard, discussed, or considered by the Board as were identified in the motion, Section 2.2-3711(A)(1), to consider personnel matters, the appointment of individuals to County boards and/or commissions; Section 2.2-3711(A)(1), to consider a personnel matter involving the evaluation of the County Attorney; and Section 2.2-3711 (A)(3), to consider acquisition/disposition of a parcel/parcels of property for public use.

Mr. McGlennon made a motion to recommend Mr. Christopher R. Hedrick to the Board of Equalization, term to expire on December 31, 2008, and to appoint Mr. Morris L. Randall, Sr. to the Colonial Services Board to serve an unexpired term to expire on June 30, 2007, and to appoint Mr. Robert W. Spencer to the Peninsula Agency on Aging Board of Directors, effective September 30, 2006, term to expire September 30, 2009.

Mr. McGlennon made a motion to award a five percent increase to the County Attorney, Mr. Leo Rogers, in recognition of his outstanding performance.

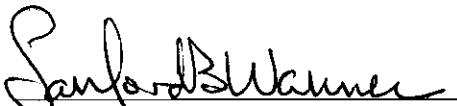
On a roll call vote, the vote was AYE: Harrison, Icenhour, McGlennon, Bradshaw, Goodson (5).
NAY: (0).

M. ADJOURNMENT

Mr. Harrison made a motion to adjourn.

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

At 11:59 p.m., Mr. Goodson adjourned the Board until 4 p.m. on September 26, 2006.


Sanford B. Wanner
Clerk to the Board

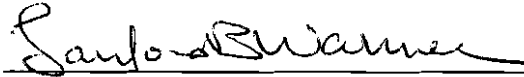
In the County of James City

By resolution of the governing body adopted September 12, 2006

The following VDOT Form AM-4.3 is hereby attached and incorporated as part of the governing body's resolution for changes in the secondary system of state highways.

A Copy Testee

Signed (County Official):



Form AM-4.3 (11/28/2005)
Asset Management Division

Report of Changes in the Secondary System of State Highways

Project/Subdivision

Powhatan Secondary Of Williamsburg, 7A - B

Type of Change: **Addition**

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

Reason for Change: Addition, Secondary System, New subdivision street
Pursuant to Code of Virginia §33.1-229

Route Number and/or Street Name

Powhatan Secondary, State Route Number 1480

Description: **From:** Route 613, News Road
To: Route 1580, Colonies Crossing
A distance of: 0.12 miles.

Right of Way Record: Filed with the Land Records Office on 10/1/2003, Document # 030029209, with a width of 50'.

Powhatan Secondary, State Route Number 1480

Description: **From:** Route 1580, Colonies Crossing
To: Route 1581, Styler's Mill Crossing
A distance of: 0.06 miles.

Right of Way Record: Filed with the Land Records Office on 10/1/2003, Document # 030029209, with a width of 40'.

Powhatan Secondary, State Route Number 1480

Description: **From:** Route 1581, Styler's Mill Crossing
To: Route 1581, Styler's Mill Crossing
A distance of: 0.19 miles.

Right of Way Record: Filed with the Land Records Office on 10/1/2003, Document # 030029209, with a width of 40'.

Powhatan Secondary, State Route Number 1480

Description: **From:** Route 1581, Styler's Mill Crossing
To: Route 1580, Colonies Crossing
A distance of: 0.08 miles.

Right of Way Record: Filed with the Land Records Office on 10/1/2003, Document # 030029209, with a width of 40'.

Colonies Crossing, State Route Number 1580

Description: **From:** Route 1480, Powhatan Secondary
To: End of channeled median
A distance of: 0.03 miles.

Right of Way Record: Filed with the Land Records Office on 10/1/2003, Document # 030029209, with a width of 57'.

Report of Changes in the Secondary System of State Highways

Colonies Crossing, State Route Number 1580

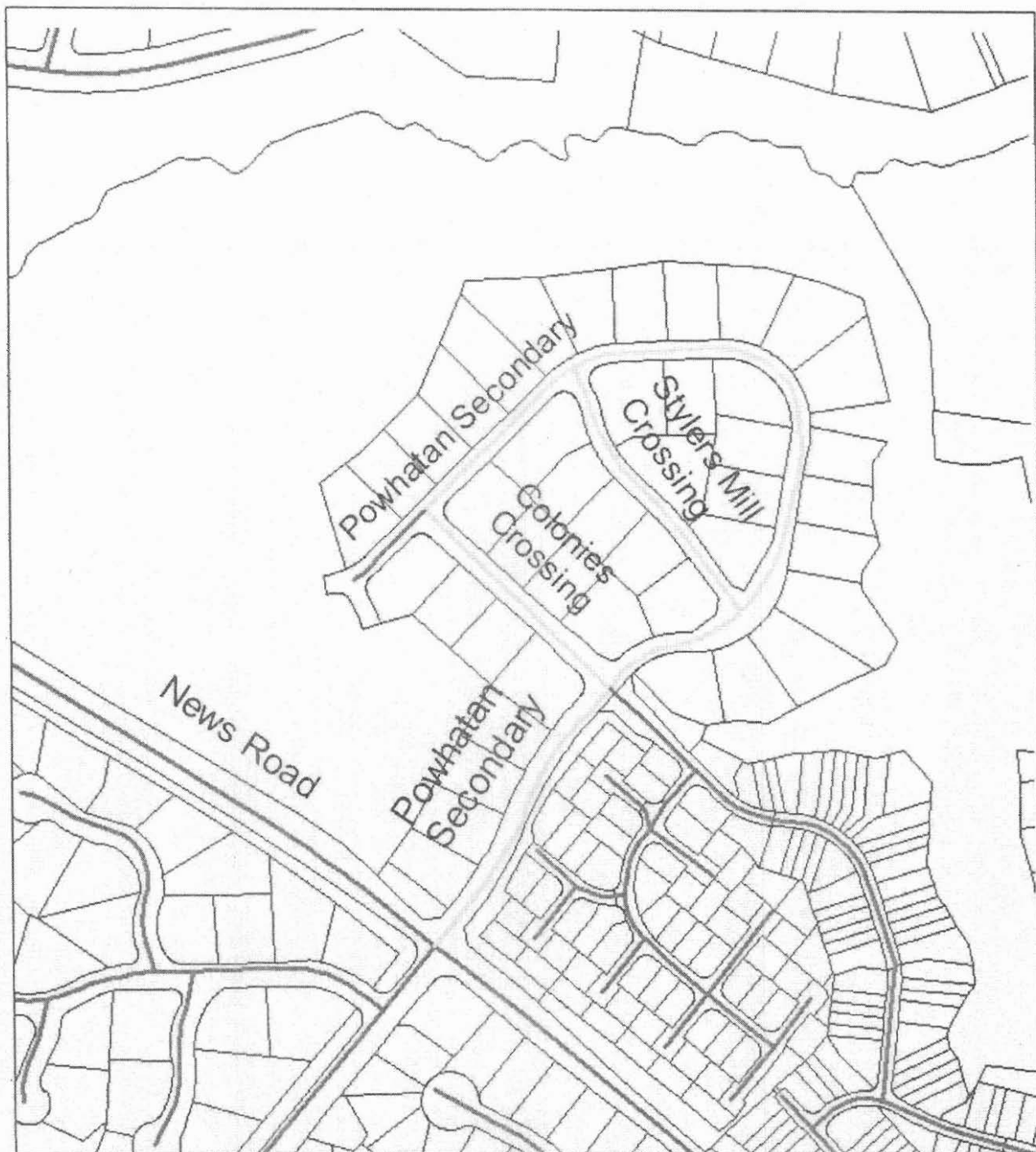
Description: **From:** End of channeled median
To: Route 1480, Powhatan Secondary
A distance of: 0.07 miles.

Right of Way Record: Filed with the Land Records Office on 10/1/2003, Document # 030029209, with a width of 50'.

Styler's Mill Crossing, State Route Number 1581

Description: **From:** Route 1480, Powhatan Secondary
To: Route 1480, Powhatan Secondary
A distance of: 0.12 miles.

Right of Way Record: Filed with the Land Records Office on 3/10/2003, Document # 030007285, with a width of 40'.



DEDICATION OF STREETS IN POWHATAN SECONDARY OF WILLIAMSBURG, PHASES 7A-B



Streets Being
Dedicated

200 0 200 400 Feet

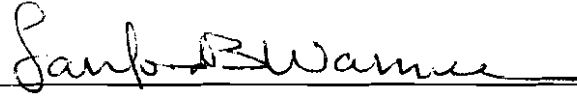


In the County of James City

By resolution of the governing body adopted September 12, 2006

The following VDOT Form AM-4.3 is hereby attached and incorporated as part of the governing body's resolution for changes in the secondary system of state highways.

A Copy Testee Signed (County Official):



Form AM-4.3 (11/28/2005)
Asset Management Division

Report of Changes in the Secondary System of State Highways

Project/Subdivision

Louise Lane South Extension

Type of Change: **Addition**

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

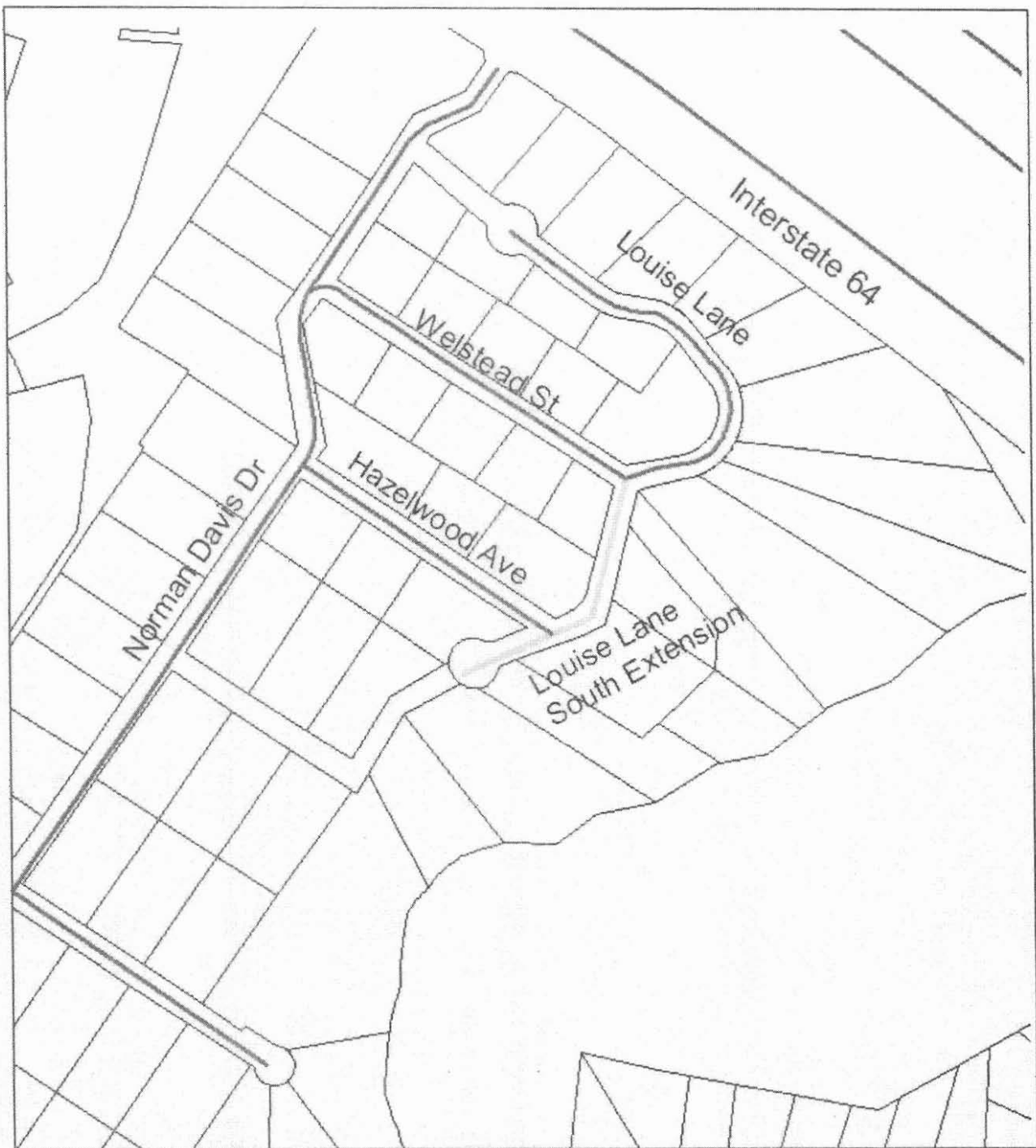
Reason for Change: Addition, Secondary System, New subdivision street
Pursuant to Code of Virginia §33.1-229

Route Number and/or Street Name

Louise Lane, State Route Number 1638

Description: **From:** Route 1624, Welstead Lane
To: End of cul de sac
A distance of: 0.10 miles.

Right of Way Record: Filed with the Land Records Office on 12/7/1962, Pb 20, Pg 47, and on August 5, 2004 Document # 040020099, with a width of 50'.



DEDICATION OF STREET KNOWN AS LOUISE LANE SOUTH EXTENSION



Street Being
Dedicated

200 0 200 400 Feet



060023805

PROFFERS

THESE PROFFERS are made this 31st day of August, 2006 by HILL PLEASANT FARM, INC., a Virginia corporation (together with its successors and assigns, the "Owner") and DOUG HARBIN ("Buyer").

RECITALS

A. Owner is the owner of a tract or parcel of land located in James City County, Virginia, with an address of 7152 Richmond Road, Williamsburg, Virginia and being Tax Parcel 2410100005. Buyer has contracted to purchase, conditioned upon rezoning, a portion of the parcel containing 4.7± acres, being more particularly described on Exhibit A attached hereto (the "Property"). The Property is now zoned A-1.

B. Owner and Buyer have applied to rezone the Property from A-1 to B-1, General Business District, with proffers.

C. Buyer has submitted to the County a master plan entitled "Rezoning and Special Use Permit for Doug Harbin" prepared by AES Consulting Engineers dated May 26, 2006, revised July 21, 2006 (the "Master Plan") for the Property in accordance with the County Zoning Ordinance.

E. Owner and Buyer desire to offer to the County certain conditions on the development of the Property not generally applicable to land zoned B-1.

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

CONDITION

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

2. **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, equipping the automatic car wash with an approved water recycling system, 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 and shall be subject to the approval of the General Manager of James City Service Authority. The standards shall be approved by the James City Service Authority prior to final site plan approval.

3. **Architectural Review.** (a) Owner has submitted to the County a conceptual architectural perspective of the car wash to be located on the Property dated June 27, 2006 (the "Perspective") together with Architectural Guidelines for the entire Property (the "Guidelines") prepared by PMA Planners + Architects. The architecture and colors of the car wash shall be generally consistent with the Perspective as determined by the Director of Planning. All buildings on the Property, including the car wash, shall be of a harmonious and uniform architectural design and color scheme

consistent with the car wash and shall be consistent with the Guidelines. No building on the property shall exceed thirty-five (35) in height.

(b) Prior to the County being obligated to issue a building permit for each building on the Property, Owner shall submit to the Director of Planning conceptual architectural plans, including architectural elevations, for the building and any associated structures for the Director of Planning to review and approve for consistency with the Guidelines and this Proffer. Decisions of the Director of Planning may be appealed to the Development Review Committee, whose decision shall be final. Completed buildings shall be consistent with the approved plans.

4. **Owners Association.** There shall be organized an owner's association (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 the Association adopt an annual maintenance budget, which shall include a reserve for maintenance of stormwater management BMPs, open space areas, private streets, sidewalks, sewer and water systems and all other common areas under the jurisdiction of the 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 Association shall be responsible for the maintenance of (i) the private sewer system serving the Property pursuant to a Perpetual Maintenance Agreement to be entered into with James City Service Authority and (ii) any private water lines.

5. Entrances/Turn Lanes. (a) The main entrance to the Property shall be from Route 60 in the approximate location shown on the Master Plan. A right turn lane with 150 feet of storage shall be constructed at the main entrance.

(b) Owner shall install a second right in only entrance to the Property from Route 60 in the approximate location shown on the Master Plan. If and when this second entrance is installed, a right turn lane with 150 feet of storage and a 150 foot taper from Route 60 into the second entrance shall be constructed.

(c) The turn lanes proffered hereby shown on the Master Plan shall be constructed in accordance with Virginia Department of Transportation ("VDOT") standards, shall be approved by VDOT and the Planning Director, shall include shoulder bike lanes 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.

(d) Prior to the issuance of the first building permit for construction on the Property, Owner shall post a bond or other surety in form acceptable to the County Attorney for the installation of a traffic signal at the main entrance when and if VDOT traffic signal warrants are met. Owner shall conduct a traffic signal warrant study (i) within six months of the buildout of the Property or (ii) at such earlier time upon the request of VDOT and submit the study to the County and VDOT for their review and approval. If the approved study determines such a signal is warranted, the Owner shall

install the signal. If the approved study determines such a signal is not warranted, Owner shall have no further obligation with respect to the signal and its bond or surety shall be released by the County.

(e) If any use is proposed to locate on the Property with a materially higher trip generation based on ITE trip generation figures than the use used in the Traffic Study which results in an overall materially higher trip generation from the Property as determined by the Director of Planning, then Owner shall submit with the proposed site plan for the new use an updated traffic impact study to the Director of Planning and VDOT based on the new proposed use for their review and approval and shall implement the recommendations of the approved updated study prior to issuance of certificate of occupancy for the new use.

6. Lighting. All light poles on the Property shall not exceed 20 feet in height. All 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.

7. Route 60 Buffer. There shall be a 50 foot community character corridor buffer along the Route 60 frontage of the Property. The portion of the buffer located adjacent to buildings, parking and the BMP shown on the Master Plan shall contain enhanced (defined as 125% of Ordinance size requirements) landscaping and variable height berms from two to four feet in height generally as shown on the Master Plan. The

western most portion of the buffer area and the adjacent open space shall have installed the fruit tree orchard and naturalized meadow generally as shown on the Master Plan. A landscape plan for the entire 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 buffer 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. Owner shall submit to the County a master stormwater management plan as a part of the site plan submittal for the Property, including stormwater management/best management practices, in accordance with James City County Stormwater Guidelines and in locations as generally shown on the Master Plan and low impact design measures to satisfy the Special Stormwater Criteria, located generally as shown on the Master Plan including, without limitation, use of flatter site grades, bioretention, flat bottom, wide swales, underground pipe storm drain pipe or drywell or rain barrels for major downspouts, in accordance with the Yarmouth Creek Watershed Management Plan, for review and approval by the Environmental Division. The master stormwater management plan may be revised and/or updated during the development of the Property with the prior written approval of the Environmental Director. 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. Owner shall be responsible for keeping the culverts under Route 60 draining the Property free of debris

that would block or impede drainage from the Property.

9. Excluded Uses. The following uses generally permitted in the B-1 district shall not be permitted on the Property:

- Adult Day Care Centers
- Bowling Alley
- Child Care Centers
- Dance Hall
- Fast Food Restaurants
- Funeral Homes
- Hotels, Motels, and Convention Centers
- Houses of Worship
- Indoor Theatres
- Public Meeting Hall
- Radio and Television Stations
- Schools
- Wireless Communication Facilities

10. Reserved Right of Way. Owner shall reserve the area shown on the Master Plan as "Possible Future Connection to Adjacent Parcel" for a possible future road connection to the adjacent Go Karts Plus parcel to the east of the Property.

Witness the following signatures.

HILL PLEASANT FARMS, INC.

By: 

Title: PRESIDENT


Doug Harbin

STATE OF VIRGINIA

CITY/COUNTY OF Williamsburg

The foregoing instrument was acknowledged before me this 7 day of ~~June~~, September 2006, by Donald C. Hunt as President of Hill Pleasant Farms, Inc. on behalf of the corporation.



Notary Public

My commission expires: 1/31/07

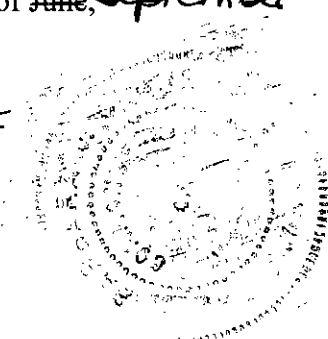
STATE OF VIRGINIA

CITY/COUNTY OF Williamsburg

The foregoing instrument was acknowledged before me this 5 day of ~~June~~, September 2006, by Doug Harbin.


Notary Public

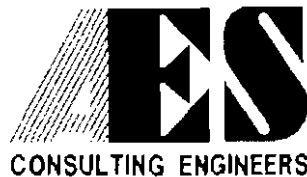
My commission expires: 1/31/07



Prepared by:

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September 5, 2006

***Property Description
for a Portion of the Property
Owned By Hill Pleasant Farm, Inc.***

**Portion of Tax Map Parcel #(24-1)(1-15)
Containing Approximately 5.0 Acres+/-**

All that certain piece, parcel or tract of land, situate, lying and being in the Stonehouse District of the County of James City, Virginia; said piece, parcel or tract of land is triangular in shape containing approximately 5.0 acres more or less and being more particularly described as follows:

Beginning at a point on the easterly right-of way line of U. S. Route #60, Richmond Road; said point of beginning being approximately 635 feet in a northerly direction from the intersection of Colonial Heritage Boulevard and U.S. Route #60, Richmond Road; said point being a corner to the property described hereon and the property now or formerly owned by Action Park of Williamsburg, VA., Inc.; thence in a northerly direction and along the easterly right-of-way line of U.S. Route #60, Richmond Road, a distance of 2047 feet more or less to a point, said point being a corner to the property described hereon and the intersection of the easterly right-of-way line of U.S. Route #60, Richmond Road and the westerly right-of-line of the CSX Railroad (formerly C & O Railroad); thence in a southerly direction and along the westerly right-of-way line of the CSX Railroad (formerly C & O Railroad), a distance of 2062 feet more or less to a point; said point being a corner to the property described hereon and the property now or formerly owned by Action Park of Williamsburg, VA., Inc.; thence in a westerly direction, a distance of 294 feet more or less and along the line of the property described hereon and the property now or formerly owned by Action Park of Williamsburg, VA., Inc. to the aforesaid point of beginning.

This being a portion of the same property conveyed to Hill Pleasant Farm, Inc. by deed from Harold J. Hunt, Jr. and Muriel R. Hunt, dated December 31, 1974 and duly recorded at the Clerk's Office of the Circuit Court of the County of James City, Virginia in Deed Book 158, page 176.

VIRGINIA: CITY OF WILLIAMSBURG & COUNTY OF JAMES CITY
This document was admitted to record on 25 Sept. 06
at 9:47 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

9 of 9

SEP 12 2006

ORDINANCE NO. 66A-55BOARD OF SUPERVISORS
JAMES CITY COUNTY
VIRGINIA

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 13, MOTOR VEHICLES AND TRAFFIC, OF THE CODE OF THE COUNTY OF JAMES CITY, BY AMENDING ARTICLE II, DRIVING AUTOMOBILES, ETC., WHILE INTOXICATED OR UNDER THE INFLUENCE OF ANY DRUG, SECTION 13-29, RECOVERY OF EXPENSES FOR EMERGENCY RESPONSE.

BE IT ORDAINED by the Board of Supervisors of the County of James City, Virginia, that Chapter 13, Motor Vehicles and Traffic, is hereby amended and reordained by amending Section 13-29, Recovery of expenses for emergency response.

Chapter 13. Motor Vehicles and Traffic

Article II. Driving Automobiles, Etc., While Intoxicated or Under the Influence of Any Drug

Sec. 13-29. Recovery of expenses for emergency response.

~~Any person who is convicted of violating Virginia Code Sections 18.2-51.4, 18.2-266, or 29.1-738 or county code section 13-28, when his operation of a motor vehicle, engine, train, or watercraft while so impaired is the proximate cause of any accident or incident resulting in an appropriate emergency response, shall be liable in a separate civil action to the county or to any volunteer rescue squad, or both, which may provide such emergency response for the reasonable expense thereof, in an amount not to exceed \$1,000 in the aggregate for a particular accident or incident occurring in the county. In determining the "reasonable expense," the county may bill a flat fee of \$250 or a minute by minute accounting of the actual costs incurred. As used in this section, "appropriate emergency response" includes all costs of providing law enforcement, fire fighting, rescue, and emergency medical services. The provisions of this section shall not preempt or limit any remedy available to the commonwealth, to~~

~~the county, or to any volunteer rescue squad to recover the reasonable expenses of an emergency response to an accident or incident not involving impaired driving or operation of a vehicle as set forth herein.~~

(a) Any person who is convicted of violating any of the following provisions shall be liable for restitution at the time of sentencing or in a separate civil action to the county or to any responding volunteer fire or rescue squad, or both, for reasonable expenses incurred by the county for responding law enforcement, firefighting, rescue and emergency services, including by the sheriff's office of the county or by any volunteer fire or rescue squad, or by any combination of the foregoing, when providing an appropriate emergency response to any accident or incident related to such violation:

(1) The provisions of Virginia Code Sections 18.2-51.4, 18.2-266, 18.2-266.1, 29.1-738, or 29.1-738.02 when such operation of a motor vehicle, engine, train, or watercraft while so impaired is the proximate cause of the accident or incident;

(2) The provisions of Virginia Code Section 46.2-852 et seq. relating to reckless driving, when such reckless driving is the proximate cause of the accident or incident;

(3) The provisions of Virginia Code Section 46.2-300 et seq. relating to driving without a license or driving with a suspended or revoked license;


(4) The provisions of Virginia Code Section 46.2-894 relating to improperly leaving the scene of an accident.

(b) Personal liability under this section for reasonable expenses of an appropriate emergency response shall not exceed \$1,000 in the aggregate for a particular accident or incident occurring in the

county. In determining the "reasonable expenses" at the time of sentencing, the county's flat fee shall be \$250 unless the county otherwise provides a minute-by-minute accounting of the actual costs incurred. As used in this section, "appropriate emergency response" includes all costs of providing law-enforcement, fire-fighting, rescue, and emergency medical services. In addition to the foregoing, the court may order as restitution the reasonable expenses incurred by the county for responding law enforcement, fire-fighting, rescue and emergency medical services. The provisions of this section shall not preempt or limit any remedy available to the commonwealth, to the county, or to any volunteer rescue squad to recover the reasonable expenses of an emergency response to an accident or incident not involving impaired driving, operation of a vehicle, or other conduct as set forth herein.

State law reference - Code of Va., § 15.2-1716.

ATTEST:


Sanford B. Wanner
Clerk to the Board



Bruce C. Goodson
Chairman, Board of Supervisors

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

Adopted by the Board of Supervisors of James City County, Virginia, this 12th day of September, 2006.