

AT A REGULAR MEETING OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE 13TH DAY OF FEBRUARY 2007, AT 7:00 P.M. IN THE COUNTY GOVERNMENT CENTER BOARD ROOM, 101 MOUNTS BAY ROAD, JAMES CITY COUNTY, VIRGINIA.

A. ROLL CALL

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

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

B. MOMENT OF SILENCE

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

C. PLEDGE OF ALLEGIANCE

Rachel Jones, a tenth-grade student at Lafayette High School led the Board and citizens in the Pledge of Allegiance.

D. PRESENTATION

Mr. Matthew James, President and CEO of the Peninsula Council for Workforce Development, gave an overview of the Peninsula Council for Workforce Development efforts in the region. Mr. James presented a video describing the Youth Career Cafe, a workplace-readiness center for students and young adults ages 14 to 21. Mr. James stated Mr. Harrison was active on the Council and the Workforce Development Consortium. Mr. James related the Council was looking forward to a second location in Newport News in six to eight weeks, and eventually having a concentration of three centers on the Peninsula to serve youth.

Mr. Harrison stated that hopefully the Williamsburg/James City County area could become one of the locations.

E. PUBLIC COMMENT

1. Mr. Leonard Sazaki, 3927 Ironbound Road, commented on trash pickup, suggesting that citizens should be allowed to decide on this trash disposal option; and commented that the County should not buy the airport property because he believed the cost would ultimately fall on the citizens.

2. Mr. Jay Everson, 103 Branscome Boulevard, commented on what he saw as a disconnect on the adequate school facilities test and the potential ninth elementary school.

3. Mr. Ed Oyer, 139 Indian Circle, commented on the purchase of the airport property; salaries for teachers; road repairs on Route 60; recent real estate market decline; biodiesel fuel shortcomings; and spending controls for schools in York County.

4. Mr. John Rhein, 3505 Hunter's Ridge, stated that a demonstration of audio/video voting machines would be held by A. J. Cole, General Registrar, on February 17, 2007, at 1 p.m. at the James City-Williamsburg Community Center. He stated the voting machine would make voting easier for the blind and visually impaired, illiterate, and others who have difficulty with voting ballots. The meeting is open to all interested citizens.

F. CONSENT CALENDAR

Mr. Bradshaw asked to pull Item No. 4 from the Consent Calendar.

Mr. Harrison made a motion to adopt the remaining items as amended.

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

1. Minutes -
 - a. February 1, 2007 - VACo/VML Legislative Day
2. Extension of One Temporary Overhire Position - Police

RESOLUTION

EXTENSION OF ONE TEMPORARY OVERHIRE POSITION

WHEREAS, the Board of Supervisors previously gave approval on September 12, 2006, for two temporary overhire positions for the Police Department that would expire on March 1, 2007, upon the expected retirement of two officers; and

WHEREAS, one of the officers scheduled to retire has extended his retirement date beyond March 1, 2007; and

WHEREAS, funds are available within the existing Police Department FY 2007 Budget to cover the cost of the extension of one overhire position.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby extend the expiration date of one full-time temporary Police Officer I overhire position from March 1, 2007, to July 27, 2007.

3. Office of Emergency Medical Services (OEMS)/Rescue Squad Assistance Fund (RSAF) - Grant Award - \$12,500

RESOLUTION

OFFICE OF EMERGENCY MEDICAL SERVICES (OEMS)/RESCUE SQUAD

ASSISTANCE FUND (RSAF) - GRANT AWARD - \$12,500

- WHEREAS, the James City County Fire Department has received a grant from the Virginia Department of Health, Office of Emergency Medical Services, Rescue Squad Assistance Fund in the amount of \$12,500; and
- WHEREAS, the funds are to be used for the purchase and replacement of outdated Automatic External Defibrillators (AED's) for the Fire Department's administrative and command vehicles, at the Fire Training Center and at Fire Station 3; and
- WHEREAS, the grant requires a match of \$12,500; and
- WHEREAS, the matching funds are available in the County's Grants Match Account; and
- WHEREAS, the grant expires on December 31, 2007, therefore, allowing unexpended funds to be carried over into the next fiscal year budget.
- NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the acceptance of the grant and appropriates the following budget appropriation to the County's Grants Match Account:

Revenues:

Rescue Squad Assistance Fund	\$12,500
JCC Grants Match Account	<u>12,500</u>
Total	<u>\$25,000</u>

Expenditure:

Rescue Squad Assistance Fund	<u>\$25,000</u>
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5. Virginia Department of Historic Resources Grant Award - \$55,000

RESOLUTION

VIRGINIA DEPARTMENT OF HISTORIC RESOURCES GRANT AWARD - \$55,000

- WHEREAS, James City County has received grants from the Virginia Department of Historic Resources totaling \$55,000; and

WHEREAS, the grant will allow for the creation and installation of the first of three statues to be erected at the Courthouse Circle; and

WHEREAS, the grant requires no matching funds.

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

Revenue:

Virginia Department of Historic Resources	<u>\$55,000</u>
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Expenditure:

Courthouse Circle	<u>\$55,000</u>
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6. FY 2008 Virginia Department of Rail and Public Transportation Grant Application

RESOLUTION

FY 2008 VIRGINIA DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION

GRANT APPLICATION

WHEREAS, the Commonwealth of Virginia has made funds available for public transportation; and

WHEREAS, the Board of Supervisors is desirous of securing said funds in support of the Williamsburg Area Transport Company's operations.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of James City County, Virginia, that the County Administrator is authorized to execute and file the application to the Virginia Department of Rail and Public Transportation (VDRPT) of the Commonwealth of Virginia for a grant of State public transportation matching assistance under Section 58.1-638(A)(4) of the Code of Virginia. The amount requested for State and Federal assistance is \$1,908,800 to assist in eligible project expenses. The County Administrator shall be authorized to accept grant funds awarded and to have furnished the VDRPT documents and other information as may be required for processing this grant request.

BE IT FURTHER RESOLVED that the Board of Supervisors of James City County, Virginia, certifies that the funds shall be used in accordance with the requirements of Section 58.1-638(A)(4) of the Code of Virginia, and that James City County may be subject to audit by the VDRPT and the State Auditor of Public Accounts.

7. Appropriation of VDOT Revenue Sharing Funds - Ironbound Square Revitalization Road Improvements - Phase I

RESOLUTION

APPROPRIATION OF VDOT REVENUE SHARING FUNDS -

IRONBOUND SQUARE REVITALIZATION ROAD IMPROVEMENTS - PHASE I

WHEREAS, on October 24, 2006, the James City County Board of Supervisors awarded a Construction Contract for the Ironbound Square Revitalization Road Improvements - Phase I.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby amends the Community Development Budget, as adopted for the fiscal year ending June 30, 2007, as follows:

Revenue:

Virginia Department of Transportation Revenue Sharing	<u>\$194,920</u>
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Expenditure:

Ironbound Square Revitalization Road Improvements - Phase I	<u>\$194,920</u>
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BE IT FURTHER RESOLVED that the appropriation of funds for the Ironbound Square Revitalization Road Improvements - Phase I, be designated a continuing appropriation to carry beyond FY 2007 until the road improvement contract is complete.

8. Contingency Transfer - Facilities Management

RESOLUTION

CONTINGENCY TRANSFER - FACILITIES MANAGEMENT

WHEREAS, the James City/Williamsburg Community Center heat exchanger and the Human Services Building cooling tower have failed; and

WHEREAS, the adopted budget for FY 2007 did not include these major repairs; and

WHEREAS, the estimates have been received totaling \$33,000 for the Community Center and \$78,890 for the Human Services Building cooling tower.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, amend the previously adopted budget for FY 2007 as follows:

Expenditures:

Facilities Management Division	\$111,890
Operating Contingency	(\$111,890)

4. Natural Resources Conservation Service (NRCS) Grant - Greenspace Acquisition - \$250,000

Ms. Tammy Rosario, Senior Planner, stated that the Board authorized the acquisition of conservation easements on the Whitehall Tavern property near Anderson's Corner, owned by Mr. Bert Geddy, Jr. She stated grant funds were sought to augment the County's investment in this historic property and the County was recently advised that it had received \$250,000 from the United States Department of Agriculture's Natural Resources Conservation Service (NRCS) for the Federal Farm and Ranch Lands Protection Program. Staff recommended approval of the resolution appropriating the grant funds.

Mr. Bradshaw stated that Ms. Rosario and other staff members have done a very good job in seeking non-County funds to offset the cost of a very important easement.

Mr. Bradshaw made a motion to adopt the resolution.

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

RESOLUTION

NATURAL RESOURCES CONSERVATION SERVICE (NRCS) GRANT -

GREENSPACE ACQUISITION - \$250,000

WHEREAS, the Board of Supervisors has acquired conversation easements on portions of the historic Whitehall Tavern property and sought out Federal grant funds to augment County Greenspace funds; and

WHEREAS, the County has recently been notified that it will receive \$250,000 from the United States Department of Agriculture's Natural Resources Conservation Service (NRCS) for the Federal Farm and Ranch Lands Protection Program.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, accepts this grant of \$250,000 and appropriates it to the Capital Improvement Budget for Greenspace.

Mr. McGlennon stated that there was \$317,000 in grant funds to offset the burden upon taxpayers.

G. PUBLIC HEARINGS

1. Case No. Z-5-06/MP-7-06. New Town Sections 7 and 8 (continued from January 9, 2007)

Mr. Matthew Smolnik, Planner, stated Mr. Gregory Davis, on behalf of New Town Associates, LLC, has applied to rezone approximately 108 acres in Sections 7 and 8 located north of the intersection of Monticello Avenue and Route 199, further identified as Tax Map/Parcel Nos.: (38-4)(1-51) and (38-4)(1-56) from R-8, with proffers, to MU, with proffers. The project area for Sections 7 and 8 is located in the northwestern corner of New Town, which is west of Sections 3 and 6, north of Section 9 (Settler's Market), and east of State Route 199. Sections 7 and 8 will be primarily residential development with up to 400 dwelling units made up of a mixture of single-family attached and single-family detached dwelling units. Sections 7 and 8 may also include up to 62,300 square feet of nonresidential development.

Staff found the proposal for New Town Sections 7 and 8 is generally consistent with the adopted 1997 New Town Master Plan and Design Guidelines, with the exception of the Community Character Corridor (CCC) buffer (formerly known as a greenbelt), which is depicted as a 150-foot open-space greenbelt road easement on the original Master Plan and Section 6.9 on page 121 of the original Design Guidelines, which references a 150-foot greenbelt buffer along Route 199. The proposed development is compatible with surrounding zoning and development; however, the proposal is not consistent with the 2003 Comprehensive Plan recommendations, specifically the section pertaining to the width of CCC buffers. The inconsistencies with the Comprehensive Plan, original Design Guidelines and Master Plan, and previously approved residential development in New Town are outlined in the staff report.

On November 6, 2006, the Planning Commission voted 4-3 to recommend approval of this application. The Planning Commission also made suggestions regarding water quality monitoring, stream channel monitoring, and remediation, and holding a public meeting with persons that spoke at the public hearing. Changes have been made to the proffers to address monitoring and remediation, and the applicant has met with the persons who spoke at the public hearing to discuss the proposal in greater detail. Staff supports the applicant's amendments to the proffers but continues to recommend denial of the application.

Mr. McGlennon recognized Ms. Shereen Hughes of the Planning Commission in attendance.

Mr. Icenhour confirmed that the stream monitoring as proffered is paid for by the developer rather than the Homeowners Association.

Mr. Harrison asked for confirmation that the developer would contribute \$60,000 up front on future remediation.

Mr. Smolnik confirmed that this was correct.

Mr. Smolnik stated this was correct and the monies would be given up front for any remediation necessary prior to site plan and development.

Mr. Harrison asked if this funding would come forward when the permit was issued.

Mr. Smolnik stated the bond or letter of credit to the County would be issued prior to the first development plan approval.

Mr. Bradshaw asked that in addition to the \$60,000 for remediation, was the developer paying for the estimated \$150,000 for stream monitoring.

Mr. Smolnik stated this was correct.

Mr. McGlennon stated the revised application provided for 11.55 acres to be treated by LID, whether by the four systems identified, or some other techniques.

Mr. Smolnik stated this was correct.

Mr. McGlennon opened the public hearing.

1. Mr. Greg Davis, on behalf of New Town Associates, stated since the case initially came forward, proffer changes were made to the LID plan, and the Williamsburg Environmental Group provided a detailed commentary on the stream monitoring and remediation program. Mr. Davis stated his client would develop monitoring plans and conduct monitoring at the estimated cost of \$150,000 with an additional bond of

\$60,000 when the site plan was approved. He stated his client met with the James City County Concerned Citizens' group the Historic Route 5 Association, and the Friends of Powhatan Creek Watershed on January 29, 2007, and had a meaningful exchange. Mr. Davis stated the CCC buffer plan was revised and he had provided a letter from Virginia Department of Transportation (VDOT) stating the supplemental plantings would be permitted on the Route 199 VDOT right-of-way. He stated that New Town Associates received confirmation from the U.S. Army Corps of Engineers and the Department of Environmental Quality that permits were approved for the protection of the small whorled pogonia. He stated the protection plan met both Federal and State approval. Mr. Davis requested approval of the application.

Mr. Bradshaw highlighted that the LID process was described in a very precise way in the memorandum from AES Consulting Engineers describing LID practices.

Mr. McGlennon stated his appreciation of the proffer to integrate the low-income housing within the other housing units.

2. Ms. Sarah Kadec, on behalf of the James City County Concerned Citizens Group, thanked New Town Associates for their response to the environmental proffers and thanked Mr. Greg Davis for providing revised proffers and a better understanding for the Concerned Citizens group. She stated AES met with group members and responded to remaining questions, which they believed demonstrated a significant improvement over previous environmental efforts. She stated the group felt the stream monitoring and remediation plan set a precedent and the additional LID acreage should help improve water quality in the Powhatan Creek Watershed. She stated the remaining concerns were the CCC buffer variance, traffic, and stormwater management.

3. Ms. Donna Ware, 14 Buford Road, stated she was a retired botanist with the College of William & Mary and had studied the Casey property colony of the small whorled pogonia, and in doing so deduced that the project would interfere with the colony. She indicated the realignment of Route 199 spared the colony but it was still not adequately protected in the proposed design. She stated the proposal included the development of almost half of the ravine and headwaters of the colony; and if the surface water was diverted into stormwater ponds, it would affect hydrology of the colony, or if surface water was not diverted, it will carry contaminants into the ravine where the small whorled pogonias are located. Ms. Ware stated there was an eminent need to adequately protect the colony and asked that the preserve design be modified to exclude development in the ravine headwaters.

As no one else wished to speak to this matter, Mr. McGlennon closed the public hearing.

Mr. Icenhour asked how the agreement was documented that development would occur outside the Resource Protection Area (RPA) buffer since it was not listed in the proffers.

Mr. Smolnik stated the 100-foot buffer was shown on the Master Plan, and with Board approval the Master Plan became a legally binding document.

Mr. Icenhour stated he believed the CCC buffer requirements were unclear between the Comprehensive Plan and the zoning ordinance for MU-Mixed Use development and requested staff examine this to have the buffer requirements apply universally as he felt the Comprehensive Plan intended.

Mr. McGlennon asked Mr. Davis about issues regarding the small whorled pogonia colony brought up by Ms. Ware.

Mr. Davis stated he had not previously been in contact with Ms. Ware, and commented that the Fish and Wildlife Service was a commenting agency who suggested more protection than the permitting agencies required. He stated that originally there were three acres of protection for the small whorled pogonia and there

were now approximately 8.5 acres of protection, which was deemed appropriate by environmental permitting agencies.

Mr. Goodson made a motion to adopt the resolution.

Mr. Goodson thanked the applicant for working with the Board and citizen comments, and though he had concerns about the CCC buffer, he felt it was needed not to protect the site from the road but to protect the people in the community. He stated that with better plantings in the VDOT right-of-way, the buffer would be adequate unless there was an expansion of Route 199 in the future.

Mr. Harrison thanked the applicant for listening to the guidance of staff, community members, and the Board, and stated his concern that there was not a baseline water quality study done prior to any development. He commented that continuing development was affecting water supply, traffic, and the environment. He expressed concern over increasing impervious cover percentages and stated he could not support the application for these reasons.

Mr. Icenhour stated the New Town project had been approved by a previous Board, but New Town Associates agreed to refer back to the Board for each section. He stated that given that the Board had already given approval on the overall plan, this Board was not looking at whether or not to move forward with the development, but how to progress. He stated that many of his concerns have turned into positive aspects of the application including integration of affordable housing, application of the new cash proffer policy for schools to this section, willingness to change the variance for a 50-foot buffer, and moving development outside the RPA. He stated he was pleased with water quality monitoring and testing, increases in LID acreage, but he felt the impervious cover was too high, and created too much of an impact on schools and traffic. He stated that the CCC buffer on the original Master Plan until June 2006 was 150-feet but was constrained due to the pogonia preserve and other environmental aspects. He stated his appreciation for decreasing the number of houses in the development and the willingness to work with citizen groups, resulting in his support for the application.

Mr. McGlennon stated there was a concern about the increased residential development in the County, and asking taxpayers to carry a burden, which created stress on the schools and environmental concerns. He stated that every proposal needs strict scrutiny, and as Mr. Icenhour pointed out, that in the past decade the development was approved by individual sections to improve teach site as it was ready for development creating an assumption of approval unless the application had serious flaws. He stated there had been significant changes and credited the Concerned Citizens group, the Friends of the Powhatan Creek Watershed, the Historic Route 5 Association, and the Planning Commission, as Ms. Shereen Hughes had made the suggestion for inclusion of additional LID acreage. Mr. McGlennon stated the application had significantly improved from the original proposal that went before the Planning Commission, which was permitted to have almost 600 homes, and was now down to about 330. He indicated concern for the CCC buffer ambiguity, as it was not clear that it is a requirement for a Mixed Use rezoning. He said he felt that further enhancements including plantings in the VDOT right-of-way and garages built to buffer the road will help mitigate those impacts. Mr. McGlennon said he was pleased with the ability to monitor water quality and endangered species being provided at high levels and felt that mitigates most of the major concerns. He stated his support for the application.

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

RESOLUTION

CASE NO. Z-5-06/MP-7-06 NEW TOWN SECTIONS 7 AND 8

WHEREAS, in accordance with § 15.2-2204 of the Code of Virginia, and Section 24-13 of the James City County Zoning Ordinance, a public hearing was advertised, adjoining property owners were notified, and a hearing was scheduled on Case No. Z-5-06/MP-7-06, with Master Plan, for a rezoning of 108.1 acres from R-8, Rural Residential, with proffers, to MU, Mixed Use, with proffers; and

WHEREAS, the applicant has proposed to construct up to 400 residential units and up to 62,300 square feet of nonresidential development; and

WHEREAS, the property is designated Mixed Use on the 2003 Comprehensive Plan Land Use Map; and

WHEREAS, the property is located to the north of the intersection of Monticello Avenue and State Route 199 on property more specifically identified as Parcel Nos. (1-51) and (1-56) on James City County Real Estate Tax Map No. (38-4); and

WHEREAS, on November 6, 2006, the Planning Commission of James City County, following a public hearing, recommended approval of the application by a vote of 4-3.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, following a public hearing, does hereby approve Case No. Z-5-06/MP-7-06 as described herein and accept the voluntary proffers.

2. Case No. Z-7-06. New Town Sections 3 and 6 Proffer Amendment

Ms. Leanne Reidenbach, Planner, stated Mr. Tim Trant has applied on behalf of New Town Associates to amend a 2004 proffer which requires a minimum of two lanes departing Ironbound Road on Watford Lane.

Traffic studies determined that only one lane on Watford Lane departing Ironbound Road was consistent with the proposed plans for widening Ironbound Road and still met appropriate levels of service. Staff stated the proposed change would not adversely affect traffic capacity at the Watford Lane/Ironbound Road intersection.

At its meeting on January 10, 2007, the Planning Commission voted 7-0 to approve the application.

Staff recommended approval of the application.

Mr. Harrison asked what dialogue had occurred in regards to impacts on the Ironbound Square revitalization efforts.

Ms. Reidenbach stated that based on traffic studies on New Town, the additional lane would not be needed even with the pending Ironbound Square development.

Mr. McGlennon asked if there was discussion with the Ironbound Square Homeowners Association or with the homeowners on the other side of Ironbound Road regarding the proffer amendment.

Ms. Reidenbach stated there had not been any discussion.

Mr. McGlennon asked if notice was sent to them as adjacent property owners.

Ms. Reidenbach stated notice had been sent but there were no concerns received by the Planning office.

Mr. Wanner stated there would be a traffic signal on that intersection at the appropriate time.

Mr. McGlennon stated Watford Lane was a two-lane road that would align on the other side of Ironbound Road.

Ms. Reidenbach stated that the two lanes would align and the third lane on the other side would be a dedicated right-hand turn lane.

Mr. Bradshaw commented that there would be two lanes out of Watford Lane but only one lane into Watford Lane.

Mr. Goodson asked for confirmation that the straight traffic and right-turn traffic would be sharing the same lane.

Ms. Reidenbach stated this was correct.

Mr. Goodson stated he did not imagine there would be a great deal of impact on traffic in this area.

Ms. Reidenbach stated this was correct.

Mr. McGlennon clarified that there was adequate notification to adjacent property owners.

1. Mr. Tim Trant on behalf of New Town Associates was present to answer questions.

Mr. Icenhour asked Mr. Trant to re-state the benefits to the public in making the requested proffer amendments.

Mr. Trant stated the proffer amendment application could be contributed to a reduction of impervious surface area, and the driving force was the design of the Watford Lane interchange based on most recent traffic study showing Watford Lane required only three lanes departing Ironbound Road. Mr. Trant stated this matched up with VDOT's design and improvements in the area, and it seemed only necessary to include three lanes at that interchange based on traffic.

As no one else wished to speak to this matter, Mr. McGlennon closed the public hearing.

Mr. Goodson made a motion to adopt the resolution.

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

RESOLUTION

CASE NO. Z-07-06. NEW TOWN SECTIONS 3 AND 6 PROFFER AMENDMENT

WHEREAS, in accordance with §15.2-2204 of the Code of Virginia and Section 24-13 of the James City County Zoning Ordinance, a public hearing was advertised, adjacent property owners were notified, and a hearing was scheduled for Case No. Z-07-06 for amending the proffers for approximately 65.4 acres from MU, Mixed Use with proffers, to MU, Mixed Use with amended proffers; and

WHEREAS, the site can be further identified as Parcel No. 1-157 on James City County Real Estate Tax Map No. 39-1; and

WHEREAS, the Planning Commission of James City County, following its public hearing on January 10, 2007, recommended approval of Case No. Z-07-06, by a vote of 7 to 0.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, after a public hearing, does hereby approve Case No. Z-07-06 as described herein and accepts the amended proffers.

3. Case No. SUP-33-06. Johnny Timbers Tree Service

Mr. Matthew Smolnik, Planner, stated Mr. John Hull, on behalf of Johnny Timbers Tree Service, has applied for a special use permit (SUP) to allow for a contractor's warehouse and office at 2201 Jolly Pond Road, further identified as James City County Real Estate Tax Map/Parcel No. (29-4)(1-9), consisting of 5.01 acres zoned A-1, General Agricultural. Mr. Smolnik stated the property was currently being used to store equipment and material associated with the Johnny Timbers Tree Service, Inc., which was currently operating without the required SUP in the A-1, General Agricultural, zoning district. Mr. Smolnik stated the brochure for the business described the services offered by Mr. Hull's business, which included commercial and residential tree removal, pruning, and stump grinding. Mr. Smolnik stated the applicant owned and stored equipment on the property. The applicant has indicated the hours of normal operation were from 7 a.m. to 5 p.m. with a total of four employees. He stated the employees of the business meet at the property in the morning and leave the site with the appropriate equipment for the day. Mr. Smolnik said that the applicant has indicated that wood by-products such as valuable timber and mulch have been stored on the property. He said log trucks come on-site, load the logs, and then deliver them to the lumber mill, and the mulch was ground off-site at job sites and stored on-site until it was needed. Mr. Smolnik stated an SUP condition had been drafted to eliminate the storing of this and similar type material on-site.

The applicant has been cited by James City County as a nonconforming use following noise complaints from neighboring property owners. The applicant has also been cited by the Fire Marshal's Office for illegal open burning. The applicant has applied for an SUP to bring the current use into conformance with the Zoning Ordinance. Staff has contacted neighbors of the property and discussed in detail the current operations of this business. Staff believes the proposed SUP conditions should sufficiently mitigate the impacts of the business on surrounding residential dwellings.

At its meeting on January 10, 2007, the Planning Commission voted 7-0 to approve the application.

Staff recommended approval of the application subject to conditions provided.

Mr. Icenhour stated he had received a letter from Ms. Rachel Cole regarding the application stating there was storage of materials on the property. Mr. Icenhour asked how the SUP conditions restrict the operation regarding noise and burn complaints.

Mr. Smolnik stated the conditions limited the hours of operation, prohibited stores of wood or wood by-products, and prohibited material back on-site from off-site work.

Mr. Icenhour stated this would become a contractor's warehouse where vehicles and equipment were kept.

Mr. Smolnik stated this was correct.

Mr. McGlennon opened the public hearing.

1. Mr. John Hull, 717 Autumn Trace, stated that he, as the owner/operator, was willing to abide by the conditions. He stated the open burning citation was a result of burning downed trees to clean up the property. Mr. Hull stated the main operations do not run machinery on the property, and he had spoken with adjacent property owners about his application and operation of the business.

Mr. McGlennon asked for confirmation that the conditions were understood and agreeable.

Mr. Hull confirmed that the conditions in the special use permit were acceptable.

Mr. McGlennon asked if Mr. Hull understood that violation would result in revocation of the SUP and the ability to operate the business.

Mr. Hull stated he understood.

2. Ms. Shereen Hughes, Planning Commissioner, stated that it was traditional in the area where the parcel was located to have a residence and have a contractor's warehouse on a property, and that Mr. Hull indicated at the Planning Commission meeting that there would be a residence developed on the property. She stated that before the dam went out there were businesses and homes with construction vehicles using Jolly Pond Road and stated concerns about traffic. Ms. Hughes recommended notifying VDOT and the James City County Police regarding vehicles going too fast on this road as it was not a wide road and there would be large vehicles using it.

As no one else wished to speak to this matter, Mr. McGlennon closed the public hearing.

Mr. Harrison made a motion to approve the resolution.

Mr. McGlennon stated that he appreciated Ms. Hughes's comments because due to the size of the parcel, having a home on the land along with the contractor's warehouse was very practical.

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

RESOLUTION

CASE NO. SUP-33-06. JOHNNY TIMBERS TREE SERVICE

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

WHEREAS, Mr. John W. Hull has applied for an SUP to allow a contractors warehouse and office; and

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

WHEREAS, the property is located at 2201 Jolly Pond Road on property more specifically identified as Parcel No. (1-9) on the James City County Real Estate Tax Map No. (29-4); and

WHEREAS, on January 10, 2007, following a public hearing, the Planning Commission recommended approval of the application by a vote of 7-0.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, following a public hearing, does hereby approve the issuance of SUP-33-06 as described herein with the following conditions:

1. This SUP shall be valid for the operation of Johnny Timbers Tree Service, Inc. (Business) and accessory uses thereto as shown on the Master Plan titled "2201 Jolly Pond Master Plan" date stamped December 20, 2006. Development of the site shall be generally in accordance with the above-referenced Master Plan as determined by the Development Review Committee (DRC) of the James City County Planning Commission. Minor changes may be permitted by the DRC, as long as they do not change the basic concept or character of the development.
2. Should new exterior site or building lighting be installed for the operation of the business, such fixtures shall have recessed fixtures with no bulb, lens, or globe extending below the casing. The casing shall be opaque and shall completely surround the entire light fixture and light source in such a manner that all light will be directed downward and the light source is not visible from the side. Fixtures, which are horizontally mounted on poles, shall not exceed 15 feet in height. No glare defined as 0.1 footcandle or higher, shall extend outside the property lines.
3. Hours of operation including, and subject to the provisions of Condition No. 6, the operation of power tools, machinery, truck deliveries, and pickups, shall be limited to 7 a.m. to 5 p.m., Monday through Friday.
4. Freestanding signage shall be limited to one monument style sign. For purposes of this condition, a "monument" style sign shall be defined as a freestanding sign with a completely enclosed base not to exceed 16 square feet in size and not to exceed six feet in height from grade.
5. Only one entrance shall be allowed onto Jolly Pond Road (Route 611) as shown on the Master Plan.
6. There shall be no tree stumps, trunks, limbs, tree roots, chipped wood, mulch, sawdust, or other wood by-products stored, placed, or processed on the property.

7. A landscaping plan shall be approved by the Planning Director or his designee to effectively screen the storage of mechanical equipment from Jolly Pond Road. This buffer shall be installed or bonded in a manner satisfactory to the County Attorney within six months of the approval date of this SUP by the Board of Supervisors. The owner shall provide enhanced landscaping so that the required size of plants and trees equals, at a minimum, 125 percent of the requirements of the James City County Landscape Ordinance.
8. With the exception of a drive aisle and supplemental plantings, the area depicted as "Proposed Green Space" as shown on the Master Plan shall remain in a natural undisturbed state unless otherwise approved by the Planning Director.
9. The applicant shall receive full approval from the Health Department for septic tank and drainfield capacity prior to final site plan approval.
10. This SUP is not severable. Invalidity of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.

3. Case No. HW-1-07. Warhill Sports Complex: Recreation Facilities (PPEA #2)

Mr. Bradshaw stated that James City County is the landowner and could pose a conflict of interests, however, he felt the Board could consider the application fairly.

Ms. Ellen Cook, Planner, stated Mr. Andy Curtis has applied on behalf of James City County for a height waiver to allow for the construction of eighteen 70-foot-tall light poles to illuminate new recreation fields at the Warhill Sports Complex Site.

Staff found that due to an established wooded buffer surrounding the area, distance from the property lines, and the light fixtures proposed, there would be a negligible impact on the surrounding properties from the light poles.

Staff recommended approval of the application.

Mr. Goodson stated the higher the pole the less light spillage resulted because the light was directed downward, so the higher poles created less of an impact.

Mr. McGlennon stated the light fixture specified used a particular technology creating less light spillage.

Mr. Icenhour stated he went out to look at the lights at the stadium and drove around to surrounding neighborhoods, including the Villages at Westminster. He concluded that the higher poles and technology decreased what could have been a problem with light spillage.

Mr. McGlennon opened the public hearing.

As no one wished to speak to this matter, Mr. McGlennon closed the public hearing.

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

Mr. McGlennon noted that the concentration of light is more energy efficient and will save in cost of lighting.

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

RESOLUTION

CASE NO. HW-1-07. WARHILL SPORTS COMPLEX: RECREATION FACILITIES

WHEREAS, Mr. Andy Curtis, on behalf of James City County, has applied for a height limitation waiver to allow for the construction of eighteen 70-foot-tall light poles; and

WHEREAS, the Recreation Facilities will be illuminated with Musco Light Structure Green outdoor sports lighting or other lighting of substantially equivalent or superior off-site spill light control characteristics; and

WHEREAS, a public hearing was advertised, adjoining property owners notified, and a hearing scheduled on Case HW-1-07; and

WHEREAS, the light poles will be located on property zoned R-8, Rural Residential, and is further identified as Parcel No. (1-12) on James City County Real Estate Tax Map No. (32-1); and

WHEREAS, the Board of Supervisors finds that the requirements of Section 24-354 of the James City County Zoning Ordinance have been satisfied in order to grant a height limitation waiver to allow the erection of structures in excess of 60 feet.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve Case No. HW-1-07.

2. Declaration of Restrictive Covenants for Conservation and Open Space - Jamestown Campground and Yacht Basin

Ms. Tammy Rosario, Senior Planner, stated on November 28, 2006, the Board of Supervisors adopted a resolution authorizing the County Administrator to execute all documents necessary for the acquisition of the Jamestown Campground and Yacht Basin, a total of 202 acres ("Property"), and expend up to \$9,550,000 for the Property. Ms. Rosario said staff has successfully satisfied nearly all special award conditions for two of the grants which included a \$1.88 million Coastal and Estuarine Land Conservation Program (CELCP) grant from the National Oceanic and Atmospheric Administration (NOAA) and a \$750,000 grant from Virginia Land Conservation Foundation (VLCF). As a final requirement for grant reimbursement, both Agencies require a covenant on the Property, which dedicates specific portions of the Property as either a conservation area or an open-space area. Staff has prepared a Declaration of Restrictive Covenants for Conservation and Open Space for both the CELCP and VLCF grants, which, once recorded, will fulfill the conditions of each grant. Ms. Rosario stated the CELP grant area consisted of 99 acres of the campground and yacht basin, which was designated to be used for activities consistent with conservation purposes including resource protection, restoration and enhancement, passive recreational activities, and research and educational activities. She stated the VLCF grant area was slightly larger, covering 112 acres, and the VLCF Covenant dedicated the property as open-space land under the Open-Space Land Act of 1966 for the purposes of natural area protection, open spaces and parks, and historic area preservation. Ms. Rosario clarified that in instances where the two grant areas overlap, the more restrictive conditions of the two programs will apply. Staff recommended approval of the resolution authorizing the County Administrator to sign and execute these covenants.

Mr. McGlennon stated there were amended covenants that had been distributed prior to the meeting.

Mr. McGlennon opened the public hearing.

1. Mr. Ed Oyer, 139 Indian Circle, asked what "to promote revenue alternatives to property taxes" meant.

As no one else wished to speak to this matter, Mr. McGlennon closed the public hearing.

Mr. McGlennon responded to Mr. Oyer's comments stating that due to the receipt of grant monies and as a result of accepting the covenants, the property acquisition would not require County resources in the amount of the grants.

Mr. Harrison made a motion to approve the resolution.

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

RESOLUTION

DECLARATION OF RESTRICTIVE COVENANTS FOR CONSERVATION AND OPEN SPACE

JAMESTOWN CAMPGROUND AND YACHT BASIN

WHEREAS, on December 20, 2006, the County acquired the Jamestown Campground and Yacht Basin, a total of 202 acres and comprised of the following County Tax Map Nos.: (46-4)(1-8), (46-4)(1-9), (46-4)(1-10), (46-4)(1-13), (46-4)(1-14), (46-4)(1-15), (46-4)(1-12), (46-3)(1-5), (46-3)(1-6), (46-3)(1-9), (46-3)(1-13), and (46-3)(1-14) (Property); and

WHEREAS, the County has received grant reimbursements for the acquisition of the Property from the Virginia Land Conservation Foundation (VLCF), and the Coastal and Estuarine Land Conservation Program (CELCP), a part of the National Oceanic and Atmospheric Administration (NOAA); and

WHEREAS, as a condition of the VLCF and CELCP/NOAA grants, portions of the Property must be designated as either a conservation area or an open-space area; and

WHEREAS, the County desires to place Restrictive Covenants on portions of the Property, which will designate 90 acres of the Property as a conservation area and 105 acres of the Property as an open-space area; and

WHEREAS, the Restrictive Covenants will apply to the following parcels of the Property: County Tax Map Nos. (46-3)(1-5), (46-3)(1-9), (46-3)(1-13), (46-3)(1-14), (46-4)(1-13), (46-4)(1-14), and (46-4)(1-15); and

WHEREAS, the Board of Supervisors is of the opinion the County should place the Restrictive Covenants on the Property to preserve portions of the Property as conservation and open-space areas in order to fulfill the conditions of the VLCF and CELCP/NOAA grants.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby authorize and direct the County Administrator to execute the Restrictive Covenants and any other documents necessary to preserve portions of the Property as conservation and open-space areas.

3. Ordinance Amendment to Chapter 15, Offenses - Miscellaneous, Section 15-25.1, Designation of Police to Enforce Trespass Violations

Mr. Adam Kinsman, Assistant County Attorney, stated that a previous ordinance allowed private property owners to allocate the James City County Police Department as legally responsible for property to enforce trespassing violations. Mr. Kinsman stated the ordinance required that before an individual was arrested for trespassing, he or she be issued a written "notice of trespass." Since when this ordinance was initially drafted, staff envisioned that the common trespass violation would be a small, isolated incident involving one or two people, making issuance of a written notice relatively simple. He indicated that recent events at New Town and other places in the County have consisted of larger groups rather than single trespassers, and in a group format, the issuance of trespassing citations was cumbersome. He stated the purpose of the ordinance amendment was to eliminate the written requirement of the trespassing citation, with which staff felt comfortable, and adding the Sheriff's Department as a permissible party for the power of attorney designation as the department often provide backup to the Police Department. Mr. Kinsman stated Sheriff Deeds was agreeable to this and a number of businesses and organizations were already utilizing the ordinance. He stated there was an eminent addition of various apartment complexes and businesses, as well as the Homeowners Association in New Town that may also use the limited power of attorney, so staff may revise the ordinance further at a later time as the ordinance is used. Staff recommended adoption of the ordinance.

Mr. Harrison asked if, with the revision and addition of Sheriff's Department, there was a need to include additional manpower for groups, such as Fire Marshals.

Mr. Kinsman stated there were various mutual aid agreements already in place and the power of attorney was very limited to trespassing. He stated that between the Sheriff's Department the Police Department as well as mutual aid for crowd control, he did not see the need to add additional aid in the ordinance; however, that issue could be readdressed in the future.

Mr. McGlennon asked Chief Emmett Harmon to address the effectiveness of the ordinance.

Chief Harmon stated there had not yet been an arrest under this ordinance as it was very new and still being refined. He stated the ordinance could be an effective tool, especially in New Town which has become a gathering place, to keep the area safe for everyone.

Mr. McGlennon opened the public hearing.

1. Mr. Ed Oyer, 139 Indian Circle, asked if there was a minimum number or constraint to the people to which it would apply.

As no one else wished to speak to this matter, Mr. McGlennon closed the public hearing.

Mr. Bradshaw stated there was no limit to the trespassing violation.

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

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

7. Case No. ZO-02-06, Subdivision Ordinance Revision

Mr. Adam Kinsman, Assistant County Attorney, stated that on November 23, 2003, the County's Chesapeake Bay Preservation Ordinance (the "CBPO") was comprehensively revised to bring it into compliance with State regulations and as part of the revision, many of the original CBPO sections were

renumbered. Staff recently discovered that a section of the County's Subdivision Ordinance incorrectly refers to a section of the CBPO that no longer exists. Mr. Kinsman stated that Section 19-29 of the County's Subdivision Ordinance set forth the submittal requirements for a final subdivision plan and that Subsection (g) requires that property containing wetlands and/or resource protection areas include a statement on the final plat indicating that these areas will remain undisturbed "except for those activities permitted by section 23-9(c)(1) of the James City County Code." Mr. Kinsman stated on November 23, 2003, Section 23-9(c)(1) was revised and recodified as Section 23-7(c)(1); consequently, the above-quoted reference to the old section of the CBPO must also be revised. Staff recommended adoption of the ordinance amendment.

Mr. McGlennon opened the public hearing.

As no one wished to speak to this matter, Mr. McGlennon closed the public hearing.

Mr. Icenhour made a motion to approve the ordinance.

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

H. BOARD CONSIDERATION

1. Initiation of the Rezoning of Five Parcels within the Ironbound Square Revitalization Area

Mr. Rick Hanson, Office of Housing and Community Development, stated that five years ago there was an initiative to revitalize and redevelop Ironbound Square to improve conditions with new housing. He stated the adoption of this project allowed the County to receive Community Development Block Grant funds for housing improvements for all of Ironbound Square. He stated in 2002 residents and stakeholders created a redevelopment concept plan and in 2005 six acres in the northern block were rezoned based on the concept plan to MU (Mixed Use) zoning. Mr. Hanson stated the rezoned property was designed for a 67-unit senior housing facility, five single-family lots, and an upgraded neighborhood park. He stated of the 29 parcels to be rezoned to MU, 24 owners of parcels signed the rezoning application. Mr. Hanson stated that five lot owners had not signed the application which would ensure only single-family homes would be allowed in the residential area on Carriage Road, and allow for improvements to the Ironbound Square community. He recommended adoption of the resolution to authorize a Board initiated rezoning of the five parcels from R-2 to MU.

Mr. Harrison made a motion to adopt the resolution.

Mr. Harrison thanked Mr. Hanson for his efforts in bringing this project into fruition.

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

RESOLUTION

INITIATION OF THE REZONING OF FIVE PARCELS WITHIN THE IRONBOUND SQUARE

REVITALIZATION AREA

WHEREAS, on February 26, 2002, the Board of Supervisors adopted the Ironbound Square Redevelopment Plan (the "Redevelopment Plan"), which enabled the Division of Housing and Community Development ("HCD") to implement the Ironbound Square Residential Revitalization Program (the "Revitalization Program"); and

WHEREAS, in furtherance of the Revitalization Program, HCD has submitted an application to rezone a number of parcels within the Ironbound Square redevelopment area from R-2, General Residential, to MU, Mixed Use (the "HCD Rezoning Application"); and

WHEREAS, because HCD was unable to obtain signatures from the owners of five parcels within the Ironbound Square redevelopment area, these five parcels were omitted from the HCD Rezoning Application; and

WHEREAS, these five parcels are included in the Redevelopment Plan and allowing them to retain their current R-2 zoning designation while rezoning all of the surrounding parcels to MU will complicate implementation of the Redevelopment Plan and is inconsistent with sound planning principles.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of James City, Virginia, that the rezoning of the following five parcels from their current R-2, General Residential, zoning designation to MU, Mixed Use, shall be initiated and shall be considered concurrently with the HCD Rezoning Application:

- a. 4344 Ironbound Road, James City County Real Estate Tax Map No. 3910100094
- b. 4346 Ironbound Road, James City County Real Estate Tax Map No. 3910100093
- c. 4348 Ironbound Road, James City County Real Estate Tax Map No. 3910100092
- d. 4354 Ironbound Road, James City County Real Estate Tax Map No. 3910100090B
- e. 4356 Ironbound Road, James City County Real Estate Tax Map No. 3910100089

Mr. Wanner stated that Mr. Harrison is an active member of the Ironbound Square Redevelopment Team.

Mr. McGlennon stated this was a very exciting project for the community, especially for an existing neighborhood that was so close to a newly developing area. He stated this is proof that the County can take care of those citizens who have been residents for a long time and may have limited means.

I. PUBLIC COMMENT

1. Mr. Ed Oyer, 139 Indian Circle, commented on citizen input on New Town application; York County providing emergency generators in all schools to be used as emergency shelters as well as four mobile generators; York County providing maintenance for schools; and the conservation easement benefits in the State Tax Code.

J. REPORTS OF THE COUNTY ADMINISTRATOR

Mr. Wanner stated the County continued to monitor General Assembly activities, and the Hampton Roads Mayors and Chairs met last Friday and endorsed a letter regarding transportation bills. He stated the letter discussed solutions offered by the region. Mr. Wanner recommended that the Board, when it completed its business, recess to 9 a.m. on Friday, February 16, 2007, for a joint meeting with the Williamsburg-James City County School Board and the Williamsburg City Council. Mr. Wanner said that when the Board adjourns from that meeting, it should adjourn to 4 p.m. on Tuesday, February 23, 2007, for a Work Session including an information technology briefing and an education briefing from NAACP regarding pre-Kindergarten education.

K. BOARD REQUESTS AND DIRECTIVES

Mr. Harrison highlighted the County's upcoming diversity program.

Mr. Wanner indicated the Black History program would be on February 22, 2007, at 9 a.m. at Legacy Hall and further mentioned that the dedication of the structures at Freedom Park would take place on February 27, 2007, at 2 p.m.

Mr. McGlennon stated the County was involved in the State of the Black Union, which provided national television coverage for the County and the area.

Mr. Icenhour stated he was working with Mr. Larry Foster to meet with those who live on Jolly Pond Road in order to discuss road closure and dam issues at D. J. Montague Elementary School on Wednesday, February 21 at 7 p.m. He stated the meeting would likely take place in the Library, and further information would go out to citizens by phone calls and flyers to encourage participation in the discussion.

Mr. Harrison stated there would be a meeting concerning youth issues on February 16, 2007, from 1-3 p.m. in the Human Services Building, which would be attended by representatives from the Board, the Schools, and the faith community.

Mr. McGlennon stated that is one of the issues being addressed at the upcoming joint meeting with the School Board and Williamsburg City Council.

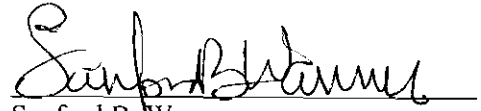
Mr. Bradshaw stated the Commissioner's Office at VDOT permitted the restoration of billboards, even though billboards were not permitted in James City County. Mr. Bradshaw explained that the State allowed restoration of the billboards granted the cost was not more than 50 percent of the cost to replace the sign. Mr. Bradshaw stated that he found out that there was a ruling that two damaged billboards in the County could not be restored due to the efforts of the Code Compliance and County Attorney staff.

L. RECESS

Mr. Harrison made a motion to recess.

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

At 9:03 p.m., Mr. McGlennon recessed the Board until 9 a.m. on February 16, 2007, for a joint meeting with the Williamsburg-James City County School Board and Williamsburg City Council at Rawls Byrd Elementary School.

A handwritten signature in black ink, appearing to read "Sanford B. Wanner", written over a horizontal line.

Sanford B. Wanner
Clerk to the Board

021307bos.min

FEB 13 2007

ORDINANCE NO. 56A-13BOARD OF SUPERVISORS
JAMES CITY COUNTY
VIRGINIA

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 15, OFFENSES - MISCELLANEOUS, OF THE CODE OF JAMES CITY COUNTY, VIRGINIA, BY AMENDING SECTION 15-25.1, DESIGNATION OF POLICE TO ENFORCE TRESPASS VIOLATIONS.

BE IT ORDAINED by the Board of Supervisors of the County of James City, Virginia, that Chapter 15, Offenses-Miscellaneous, is hereby amended and reordained by amending Section 15-25.1, Designation of law enforcement to enforce trespass violations.

Chapter 15. Offenses-Miscellaneous

Section 15-25.1. Designation of ~~police~~ law enforcement to enforce trespass violations.

(a) The owner, lessee, custodian, or person lawfully in charge of any real property may designate the James City County Police Department *and/or the Williamsburg-James City County Sheriff's Office* as a "person lawfully in charge of the property" for the purpose of forbidding another to go or remain upon the lands, buildings or premises of the owner, lessee, custodian, or person lawfully in charge as specified in the designation. This designation shall be valid only upon the execution of a limited power of attorney in a form provided by the James City County Police Department, *the Williamsburg-James City County Sheriff's Office*, or in a form otherwise approved by the county attorney. The limited power of attorney shall appoint the James City County Police Department, and its officers, *or the Williamsburg-James City County Sheriff's Office*, as true and lawful attorneys-in-fact for the owner, lessee, custodian, or person lawfully in charge with the following specific powers:

- (1) To determine if a person has the owner's, lessee's, custodian's, or person lawfully in charge's permission to go or remain upon such property,
- (2) To issue ~~written~~ "notice forbidding trespass" to person(s) without such permission provided they are engaged in illegal activity,

- (3) To arrest person(s) found to be in violation of such notice, and
- (4) To testify in court on behalf of the owner, lessee, custodian, or person lawfully in charge to enforce the notice forbidding trespass and the trespass laws.

(b) In all cases, the actual owner of said real property will have the right to change the officer's *or deputy's* determination of "lack of permission" and the owner may revoke such notice forbidding trespass, in writing, at any time after providing written notice of such change to the chief of police *or the sheriff*. The owner may revoke his limited power of attorney, at any time, after providing written notice of such revocation to the chief of police *or sheriff*. The chief of police *or sheriff* may terminate the agreement to act as agents of the owner, lessee, custodian, or person lawfully in charge for any given property at any time, after providing written notice of such termination to the owner, lessee, custodian, or person lawfully in charge.

(c) Copies of such limited power of attorney will be kept on file with the James City County Police Department *or the Williamsburg-James City County Sheriff's Office, as applicable*.

State law reference - Code of Va., § 15.2-1717.1



John J. McGlennon
Chairman, Board of Supervisors

ATTEST:



Sanford B. Wanner
Clerk to the Board

SUPERVISOR	VOTE
HARRISON	AYE
BRADSHAW	AYE
GOODSON	AYE
ICENHOUR	AYE
MCGLENNON	AYE

Adopted by the Board of Supervisors of James City County, Virginia, this 13th day of February, 2007.

ADOPTED

FEB 13 2007

ORDINANCE NO. 30A-33

BOARD OF SUPERVISORS
JAMES CITY COUNTY
VIRGINIA

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 19, SUBDIVISIONS, OF THE CODE OF THE COUNTY OF JAMES CITY, VIRGINIA, BY AMENDING ARTICLE II, PROCEDURES AND DOCUMENTS TO BE FILED, SECTION 19-29, FINAL PLAN - SUBMITTAL REQUIREMENTS.

BE IT ORDAINED by the Board of Supervisors of the County of James City, Virginia, that Chapter 19, Subdivisions, is hereby amended and reordained by amending Article II, Procedures and documents to be filed, Section 19-29, Final plan – Submittal requirements.

Chapter 19. Subdivisions


Article II. Procedures and Documents to be Filed

Section 19-29. Final plan - Submittal requirements.


The final plan for a subdivision shall be on blue-line or blackline print. The scale shall be 100 feet to the inch except in cases where the agent approves an alternate scale. The size of the record plat portion of the final plan shall not be smaller than 8 1/2" x 11" or larger than 18" x 24" inches. If more than one sheet is used, sheets shall be numbered in sequence and an index shall be provided. In addition to the requirements of the preliminary plan, the final plan for a subdivision shall include the following:

(g) If the subdivided property contains wetlands and/or resource protection areas, there shall be a note on the plat which states the following:

"Wetlands and land within resource protection areas shall remain in a natural undisturbed state except for those activities permitted by section ~~23-9(c)(1)~~ 23-7(c)(1) of the James City County Code."


John J. McGlennon
Chairman, Board of Supervisors

ATTEST:


Sanford B. Wanner
Clerk to the Board

SUPERVISOR	VOTE
HARRISON	AYE
BRADSHAW	AYE
GOODSON	AYE
ICENHOUR	AYE
MCGLENNON	AYE

Adopted by the Board of Supervisors of James City County, Virginia, this 13th day of February, 2007.

Tax Parcel I.D. Numbers: (38-4)(1-51) and (38-4)(1-56)

070005134

PROFFERS

NEW TOWN – SECTION 7 & 8

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

TABLE OF CONTENTS

<u>RECITALS</u>	4
1. <u>Application of New Town Proffers, Master Plan and Design Guidelines</u>	9
2. <u>New Town Owner's Association</u>	9
3. <u>Development Process and Land Use</u>	11
4. <u>Mix of Housing Types</u>	13
5. <u>Community and Open Spaces</u>	14
6. <u>Streetscapes</u>	15
7. <u>Bus/Transit Facilities</u>	16
8. <u>Recreation Facilities</u>	16
9. <u>Archaeology</u>	17
10. <u>Small Whorled Pogonia</u>	17
11. <u>Water Conservation</u>	18
12. <u>Nutrient Management</u>	18
13. <u>Stormwater Management</u>	19
14. <u>Community Character Corridor Buffer</u>	21

15.	<u>Contribution for Public Facilities/Impacts</u>	22
16.	<u>Private Streets</u>	24
17.	<u>Building Setback from Wetland and Other Areas</u>	25
18.	<u>Marshall & Swift Index Adjustment</u>	25
19.	<u>Disposition of Property and Payments</u>	26
20.	<u>Successors and Assigns</u>	26
21.	<u>Severability</u>	26
22.	<u>Headings</u>	27
	<u>EXHIBIT A</u>	29

NEW TOWN - SECTION 7 and 8 - PROFFERS

THESE PROFFERS are made as of this 1st day of December, 2006, by **NEW TOWN ASSOCIATES, LLC**, a Virginia limited liability company (together with its successors and assigns, "Owner") (index as the Grantor), and the **COUNTY OF JAMES CITY, VIRGINIA**, a political subdivision of the Commonwealth of Virginia (the "County") (index as the Grantee).

RECITALS

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

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

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

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

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

R-6. In accordance with the requirements of paragraph 4 of the New Town Proffers, Owner has submitted to the County an updated traffic study (the "Traffic Study") entitled "TRAFFIC STUDY FOR SETTLER'S MARKET AT NEW TOWN", dated February 28, 2006, prepared by DRW Consultants, LLC, Midlothian, Virginia, which addresses the proposed development of the Property and is on file with the County Planning Director.

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

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

R-9. Owner has previously submitted to the DRB, and the DRB has previously approved in writing, as consistent with both the New Town Master Plan and the New Town Design Guidelines, a conceptual plan of development (the "Section 7 and 8 Master Plan") entitled "NEW TOWN SECTION 7 AND 8 MASTER PLAN BERKELEY DISTRICT JAMES CITY COUNTY, VIRGINIA", dated August 25, 2006, revised October 13, 2006, October 31, 2006 and December 28, 2006, prepared by AES Consulting Engineers and Cooper Robertson & Partners, and design guidelines (the "Section 7 and 8 Guidelines") entitled "NEWTOWN SECTION 7 & 8 DESIGN GUIDELINES – RESIDENTIAL NEW TOWN ASSOCIATES", dated October, 2006, prepared by AES Consulting Engineers and Cooper Robertson & Partners, for the Property, copies of which Section 7 and 8 Master Plan and Section 7 and 8 Guidelines are on file with the County Planning Director.

R-10. A Phase I Archaeological Study (the "Casey Study") was conducted on the Property as detailed in that certain report entitled "A Phase I Archaeological Survey of the Casey Property, James City County, Virginia", dated July 30, 1990, prepared for the Casey Family c/o Virginia Landmark Corporation by the William and Mary Archaeological Project Center, which report has been submitted to, reviewed and approved by the County Planning Director. The Casey Study identified three (3) areas of archaeological significance on the Property, Sites 44JC618, 44JC619, and 44JC620, and recommended such sites for Phase II evaluation.

Subsequent to the Casey Study, Owner commissioned a second Phase I Archaeological Study (the "Associates Study 1") of, *inter alia*, Sites 44JC618, 44JC619, and 44JC620 as detailed in that certain report entitled "Phase I Archaeological Investigations of Sites 44JC617, 44JC618, 44JC619, and 44JC620 on the New Town Tract James City County, Virginia", dated January, 2004, prepared by Alain C. Outlaw, Principal Investigator, Timothy Morgan, Ph.D., and Mary Clemons, which report has been submitted to, reviewed and approved by the County Planning Director. The Associates Study 1 recommended avoidance or a Phase II analysis of Sites 44JC618, 44JC619, and 44JC620.

Owner commissioned a Phase II Archaeological Study (the "Associates Study 2") of Site 44JC620 as detailed in that certain report entitled "An Archaeological Evaluation of Site 44JC620, New Town Tract, James City County, Virginia", dated May 4, 2005, prepared by William and Mary Center for Archaeological Research, which report has been submitted to, reviewed and approved by the County Planning Director. The Associates Study 2 determined that Site 44JC620 was not eligible for the National Register of Historic Places and recommended no further treatment of the Site.

Owner commissioned a Phase II Archaeological Study (the "Associates Study 3") of Site 44JC618 as detailed in that certain report entitled "An Archaeological Evaluation of Site 44JC618, James City County, Virginia", dated June 18, 2004, prepared by William and Mary Center for Archaeological Research, which report has been submitted to, reviewed and approved by the County Planning Director. The Associates Study 3 determined that the historic component of Site 44JC618 is eligible for the National Register of Historic Places and that the prehistoric component is not eligible. The Associates Study 3 recommended that Site 44JC618 be avoided or that the archaeological data be recovered.

Owner commissioned a supplemental Phase II Archaeological Study (the "Associates Study 4") of Site 44JC618 as detailed in that certain report entitled "Supplemental Archaeological Evaluation of Site 44JC618, James City County, Virginia", dated June 7, 2005, prepared by William and Mary Center for Archaeological Research, which report has been submitted to, reviewed and approved by the County Planning Director. The Associates Study 4 determined that a portion of Site 44JC618 is not eligible for the National Register of Historic Places and redefined the area of Site 44JC618.

Owner is proposing to avoid Sites 44JC618 and 44JC619 in accordance with Proffers 9 and 10 herein.

R-11. A small whorled pogonia survey was conducted on the Property identifying the "Casey Colony" as existing on a portion of Section 8 of the Property. The report generated from that survey is entitled "Detailed Survey for the Small Whorled Pogonia (*Isotria medeoloides*) New Town, James City County, Virginia Latitude: 37°16'50.00"N Longitude: 76°45'00.00"W WEG # 456" (the "WEG Report"), dated July 10, 2006, prepared by Williamsburg Environmental Group, Inc. A copy of the WEG Report is on file with the County Planning Director. Owner is proposing to preserve the "Casey Colony" in accordance with Proffer 10 herein.

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

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

R-13. The County constitutes a high-growth locality as defined by Section 15.2-2298 of the Virginia Code.

NOW, THEREFORE, for and in consideration of the approval by the Board of Supervisors of the County of the rezoning set forth above and the Section 7 and 8 Master Plan, the Section 7 and 8 Guidelines and all related documents described herein, and pursuant to Section 15.2-2296, *et seq.*, of the Virginia Code, Section 24-16 of the Zoning Ordinance and the New Town Proffers, Owner agrees that all of the following conditions shall be met and satisfied in developing the Property.

PROFFERS:

1. Application of New Town Proffers, Master Plan and Design Guidelines. These Proffers, the Section 7 and 8 Master Plan and the Section 7 and 8 Design Guidelines shall supersede, amend and restate in their entirety the New Town Proffers, the New Town Master Plan and the New Town Design Guidelines, but only as to the Property. Accordingly, this document contains the only proffers hereinafter applicable to the Property.

2. New Town Owner's Association.

(a) A supplemental declaration ("Supplemental Declaration") shall be executed and recorded in the Clerk's Office to submit all or a portion of the Property to the New Town Residential Association, Inc., a Virginia non-stock corporation (the "Residential Association"), and to the Master Declaration of Protective Covenants and Restrictions for New Town residential property, dated May 19, 2004, recorded in the Clerk's Office as Instrument Number 040013865 (including the articles of incorporation and the bylaws governing the

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

(b) For any of the Property not submitted by Supplemental Declaration to the Residential Association, Owner shall submit such remaining portion(s) of the Property to the New Town Master Association, a Virginia non-stock corporation (the "Commercial Association"), and to the Master Declaration of Covenants, Easements and Restrictions for New Town, dated June 22, 1998, recorded in the Clerk's Office as Instrument Number 980013868 (including the articles of incorporation and the bylaws governing the Association, as any of the foregoing have been or may be hereafter supplemented, amended or modified pursuant to the terms thereof). In addition to the Commercial Association and the Residential Association, one or more separate owners' or condominium associations may be organized for portions of the Property (each individually a "Separate Association") as subordinate associations of the Commercial Association and/or Residential Association and supplemental restrictive covenants may be imposed on the corresponding portions of the Property.

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

shared facilities by the membership of each association and/or such other factors agreed to between the associations.

(d) Any Supplemental Declaration and any articles of incorporation, bylaws and declaration associated with a Separate Association for the Property (collectively, the “Governing Documents”) and the Shared Facilities Agreements, if any, shall be submitted to and reviewed by the County Attorney for general consistency with this proffer. The Governing Documents shall (i) require that the applicable association adopt an annual maintenance budget and assess all of its members for the maintenance of the properties owned or maintained by such association, (ii) grant such association the power to, and require that such association, file liens on its member’s properties for non-payment of such assessments and for the cost to remedy violations of, or otherwise enforce, the Governing Documents, (iii) establish architectural controls, approved by the DRB with input from the County Planning Director, consistent with the Section 7 and 8 Design Guidelines, and (iv) provide for the implementation and enforcement of the water conservation, water quality monitoring/remediation plan, turf management, and stream channel monitoring/remediation proffered herein.

3. Development Process and Land Use.

(a) Development. The Property shall be developed in one or more phases generally in accordance with the Section 7 and 8 Master Plan and the Section 7 and 8 Design Guidelines, including, but not limited to, the land uses, densities and design set forth therein. All of such development shall be expressly subject to such changes in configuration, composition and location as required by all other governmental authorities having jurisdiction over such development.

(b) DRB Authority, Duties and Powers. All site plans, landscape plans, building materials, building elevation plans and other development plans for the Property shall be submitted to the DRB for review and approval in accordance with the manual entitled "NEW TOWN DESIGN PROCEDURES JAMES CITY COUNTY" as the same may be amended by the DRB from time to time, a copy of which is on file with the County Planning Director, and such other rules as may be adopted by the DRB from time to time, for general consistency with the Section 7 and 8 Master Plan and Section 7 and 8 Guidelines. Evidence of DRB approval of plans required to be submitted to the County for approval shall be provided with any submission of such plans to the County Department of Development Management. The County shall not be required to review any development plans not receiving the prior approval of the DRB. In reviewing applications, development plans and specifications, the DRB shall consider the factors set forth in the Section 7 and 8 Master Plan and/or the Section 7 and 8 Guidelines. The DRB shall advise of either (i) the DRB's recommendation of approval of the submission, or (ii) the areas or features of the submission which are deemed by the DRB to be materially inconsistent with the applicable Section 7 and 8 Guidelines and/or the Section 7 and 8 Master Plan and the reasons for such finding and suggestions for curing the inconsistencies. The DRB may approve development plans that do not strictly comply with the Section 7 and 8 Master Plan and/or the Section 7 and 8 Guidelines, if circumstances, including, but not limited to, topography, natural obstructions, design/development hardship, economic conditions or aesthetic or environmental considerations, warrant approval. All structures, improvements, open space, wetlands and other natural features on the Property shall be constructed, improved, identified for preservation, left undisturbed or modified, as applicable, substantially in accordance with the plans and specifications as finally approved by the DRB.

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

4. Mix of Housing Types.

(a) A minimum of twelve (12) Residential Units constructed on the Property shall be initially offered for sale for a period of nine (9) continuous months (if not earlier sold pursuant to such offer) after the issuance of a building permit for such Residential Units at a price at or below One Hundred Fifty-Four Thousand Dollars (\$154,000), subject to adjustment as set forth herein. The County Planning Director shall be provided with a copy of the listing agreement and sales literature for each Residential Unit offered for sale at a price at or below the adjusted price set forth above, and with respect to the sale of such Residential Units, consultation shall be made with, and referrals of qualified buyers shall be accepted from, the County Office of Housing and Community Development. This obligation to construct and offer for sale the Residential Units with the above-proffered pricing shall be exclusive of any similar obligations that may have been or will hereafter be transferred from other sections of the New Town development.

(b) The Residential Units priced and sold pursuant to paragraph 4(a) shall be spread between Sections 7 and 8 as shown on the Master Plan, integrated with housing offered at higher prices, and shall not be relegated to one particular block within a portion of the Property.

5. Community and Open Spaces.

(a) The Section 7 and 8 Master Plan and the Section 7 and 8 Guidelines set forth an archaeological interpretive park, a small whorled pogonia preserve, and other open and/or community spaces (collectively, the “Community Space”).

(b) A site plan or other appropriate plan as may be reasonably requested by the Planning Director for the Community Space located in Section 7 shall be submitted to the County prior to final site plan or subdivision plan approval for greater than forty percent (40%) of the Residential Units to be constructed on Section 7 of the Property. Any improvements to be located in the Community Space shall be completed or guaranteed (“Guaranteed”) in accordance with Section 15.2-2299 of the Virginia Code (or such successor provision) and the applicable provisions of the County Code of Ordinances (such performance assurances to be hereinafter referred to as a “Guarantee” or “Guarantees”) prior to final site plan or subdivision plan approval for greater than seventy-five percent (75%) of the Residential Units to be constructed on Section 7 of the Property. Any form of a guarantee shall be approved by the County Attorney.

(c) A site plan or other appropriate plan as may be reasonably requested by the Planning Director for the Community Space located in Section 8 shall be submitted to the County prior to final site plan or subdivision plan approval for greater than forty percent (40%) of the Residential Units to be constructed on Section 8 of the Property. Any improvements to be located in the Community Space shall be completed or Guaranteed in a manner approved by the County Attorney prior to final site plan or subdivision plan approval for greater than seventy-five percent (75%) of the Residential Units to be constructed on Section 8 of the Property.

(d) The configuration, composition, location and design of the Community Space is subject to the provisions of paragraph 3(b) hereof, and shall be further expressly subject

to such changes in configuration, composition and location as may be required by governmental authorities, other than the County, having jurisdiction.

(e) The Community Space shall be maintained by the Commercial Association, the Residential Association and/or a Separate Association, and shall be subject to rules and regulations as may be promulgated, from time to time, by the responsible association.

(f) The Property shall be developed in compliance with currently applicable County open space requirements, including Section 24-524 of the Zoning Ordinance. With the approval of the County Planning Director, the applicable open space requirements in developing the Property may be met by specifically designating open space on other property within the New Town development as and when the Property is developed, if such open space requirements applicable to the Property cannot reasonably be met by identifying open space located on the Property. Such designation of open space on the New Town Property may be changed with the prior written approval of the County Planning Director. Owner may utilize the Community Space or portions thereof to meet the open space requirements for the Property, provided such space meets the applicable definition of open space contained in the Zoning Ordinance.

6. Streetscapes. All site plans and subdivision plans for development within the Property shall include: (i) pedestrian connections on the Property, or the portion thereof so developed, along main roads adjoining the Property; and (ii) streetscape plans for streets within the subject portion of the Property, all of which pedestrian connections and streetscapes shall be consistent with the Section 7 and 8 Guidelines applicable to the Property. The approved streetscape plans, including, where required by the DRB pursuant to the Section 7 and 8 Design Guidelines, street trees, sidewalks, walking trails, crosswalks, street lighting, and any other miscellaneous improvements that may be required by the Section 7 and 8 Design Guidelines and

approved by the DRB, shall be implemented when the adjacent portion of the Property is developed.

7. Bus/Transit Facilities. If requested by the Williamsburg Area Transport Company in writing to Owner prior to June 30, 2007, at least one (1) bus pull-off area with bus stop shelter shall be constructed on the Property at a location along the proposed Casey Boulevard in the vicinity of that portion of the Property shown on the Master Plan as "Archaeological Interpretive Park" or, at the request of Owner, at such reasonable alternative location as is approved by the County Planning Director and the Williamsburg Area Transport Company. Design of any pull-offs and shelters shall be approved in advance by the DRB. The pull-off(s) and shelter(s) shall be shown on development plans for the subject portion(s) of the Property, Guaranteed at the time of final development plan approval, and installed in connection with construction of the adjacent roadway(s).

8. Recreation Facilities. The Property is being developed in furtherance of a comprehensive town plan that is subject to the Section 7 and 8 Guidelines and the Section 7 and 8 Master Plan which provide for a more urban approach to the design of buildings and public spaces in order to avoid conventional suburban patterns and promote an environment conducive to walking. Implementation of such development design will provide for a network of sidewalks, alleyways and community areas. Specifically, in accordance with of the County Comprehensive Parks and Recreation Plan proffer guidelines (the "County Recreation Guidelines"), as in effect on the date hereof, recreation facilities in the form of the community spaces to be established on the Property shall be provided, open to all residents of the development, and maintained and regulated by the Commercial Association, the Residential Association and/or a Separate Association. Further, prior to issuance of buildings permits for

units exceeding seventy-five (75%) of the Residential Units to be constructed on the Property, Owner shall complete the installation of: (i) one (1) playground; (ii) one (1) pool; (iii) one (1) urban park area associated with the pool; (iv) one (1) archaeological interpretive park; (v) one (1) urban park area in Section 8; and (vi) a system of pedestrian/jogging paths as shown on the Section 7 and 8 Master Plan, all in accordance with the currently adopted version of the County Parks and Recreation Master Plan and as approved by the DRB and County Planning Director. Subject to approval by the County Planning Director, Owner may utilize the Community Space to meet the aforementioned requirements.

9. Archaeology. Prior to any final site plan or subdivision plan approval for development on the Property, Owner shall submit to the County Planning Director for review and approval a treatment plan for that portion of the Property shown as "Archaeological Interpretive Park" on the Section 7 & 8 Master Plan to include but not be limited to (i) substantial preservation of the site in place, (ii) the placement of benches, landscaping and educational signs in the park area, and (iii) nomination of the site to the National Register of Historic Places; provided, however, that such treatment plan shall not conflict with any requirements of or restrictions imposed by any other governmental authority with jurisdiction.

10. Small Whorled Pogonia. Prior to any final site plan or subdivision plan approval for development on Section 8 of the Property, Owner shall (i) preserve as natural open space the area including and surrounding the small whorled pogonia colony (the "Casey Colony") located on the Property (the "SWP Buffer") shown as "Casey SWP Colony", "Archaeological Preserve", and "Casey SWP Colony Preserve" on the Section 7 and 8 Master Plan (ii) and submit to the County Planning Director for review and approval a preservation plan for the SWP Buffer addressing the maintenance and protection of the SWP Buffer; provided, however, that such

preservation plan shall not conflict with any requirements of or restrictions imposed by the United States Army Corps of Engineers or other governmental authority with jurisdiction.

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

12. Nutrient Management. The Residential Association, the Commercial Association and/or Separate Association(s) shall be responsible for contacting an agent of the Virginia Cooperative Extension Office ("VCEO") or, if a VCEO agent is unavailable, a soil scientist licensed in the Commonwealth of Virginia or other qualified professional to conduct soil tests and to develop, based upon the results of the soil tests, customized nutrient management plans ("Nutrient Management Plans") for all common areas of such Association(s) within the Property. The Nutrient Management Plans for individual common areas shall be submitted to the County Environmental Director for his review and approval prior to the issuance of building permits for the Residential Units adjacent to such common area(s). Upon approval,

such Association shall be responsible for ensuring that any nutrients applied to the common areas which are controlled by such Association be applied in accordance with the applicable Nutrient Management Plan or any updates or amendments thereto as may be approved by the County Environmental Director. Within twelve (12) months after issuance of the Certificate of Occupancy for the final Residential Unit on the Property and every three (3) years thereafter, a nutrient management information seminar shall be conducted regarding the Property. Such seminars shall be designed to acquaint residents with the tools, methods, and procedures necessary to maintain healthy lawns and landscaping.

13. Stormwater Management.

(a) A site plan for the that certain stormwater management facility shown as “BMP PARCEL # 1” on that certain plat entitled “PLAT OF SUBDIVISION SHOWING CENTER STREET, NEW TOWN AVENUE, BLOCK 5, AND COMMON AREA, (BMP PARCEL#1) PREPARED FOR NEW TOWN ASSOCIATES, LLC”, dated December 11, 2003, prepared by AES Consulting Engineers, and recorded in the Clerk’s Office of the Circuit Court of the City of Williamsburg and the County of James City, Virginia as Instrument Number 040009441, as the same may be amended from time to time, shall be submitted to the County prior to issuance of a land disturbance permit for development of the Property. Owner shall complete and have in service BMP Parcel # 1 in accordance with such site plan prior to issuance of any land disturbance permit for development on Section 8 of the Property.

(b) Commencing at the date of issuance of the first land disturbing permit for any area within the Property and continuing for a period of five (5) years after Build-Out (defined below) of Sections 2&4, 3&6, and 7&8 of New Town, Owner shall at its expense monitor the certain stream located on the Property starting at the outfall of BMP # 1, shown on

the Section 7 & 8 Master Plan separating Section 7 from Section 8, by annual inspections to be conducted by a third-party environmental monitoring service for the purpose of evaluating channel stability. A copy of the report generated from each such annual inspection shall be provided to the County Environmental Director.

(c) Commencing at the date of issuance of the first land disturbing permit for any area within the Property and continuing for a period of five (5) years after Build-Out (defined below) of Sections 2&4, 3&6, and 7&8 of New Town, Owner shall at its expense monitor water resources on the Property bi-annually for the purpose of conducting water quality sampling and testing for Total Suspended Solids ("TSS"), Total Phosphorus, Dissolved Oxygen, Temperature, Nitrate, Nitrite, pH and Biological/Benthic. Owner shall establish not more than five (5) monitoring stations within the Property in locations approved by the Environmental Director and provide reports based on data collected all pursuant to a water quality monitoring plan designed by Owner and subject to the approval of the James City County Environmental Director. Such water quality monitoring plan shall be submitted to the Environmental Director for review prior to final approval of the first site plan or subdivision plan for any development within the Property.

(d) Build-Out shall be defined for purposes of these Proffers as that date on which certificates of occupancy have been issued by the County for 900 Residential Units and 950,000 square feet of non-residential space within Sections 2&4, 3&6 and/or 7&8 of New Town.

(e) If the water quality monitoring plan or stream channel stability monitoring described above reveals the need for remediation as determined by the Environmental Director, Owner shall provide a remediation plan. The remediation plan shall be approved by the

Environmental Director when warranted by findings of the aforesaid monitoring programs as approved by the Environmental Director. Owner will provide \$60,000 for remediation funding which shall be paid in escrow or guaranteed prior to approval of any site plan for the Property. Unused portions of any escrow funds shall be returned to Owner or its designee with accrued interest after expiration of the monitoring periods discussed above. The obligation of Owner to perform or fund remediation pursuant to the monitoring or remediation plans referenced above shall be limited to \$60,000.

(f) Stormwater from a total of 13.55 acres within the Property shall be treated using Low Impact Development (“LID”) measures approved as a part of the site plan(s) for the Property. The treated areas and LID techniques may include, but shall not be limited to those areas generally depicted on the Section 7 and 8 Master Plan, and on that supplemental plan entitled: Conceptual LID Plan, Section 7 and 8 – New Town for New Town Associates, dated December 19, 2006, made by AES Consulting Engineers (the “Conceptual LID Plan”).

(i.) Not more than two (2) acres of the Property treated using LID measures shall be utilized to satisfy requirements for LID treatment acreage established for areas east of Route 199 by the New Town Master Stormwater Plan approved as of the date hereof.

(ii.) In the event that soils, topography or any other factor limits or precludes precise adherence to the configuration, nature, type or design of LID measures depicted on the Section 7 and 8 Master Plan or the Conceptual LID Plan, other LID techniques, measures or designs may be utilized upon approval of the Environmental Director, provided that there is no reduction in the 13.55 acres of treatment required by this subparagraph.

14. Community Character Corridor Buffer. Owner shall maintain a variable width undisturbed (except for supplemental plantings as provided herein) buffer (the “Community

Character Corridor Buffer”) with an average depth of one hundred eighteen (118) feet but not less than one hundred ten (110) feet from the existing public right of way for Virginia Route 199 along the western boundary line of the Property, all as generally shown by the Master Plan. Prior to final site plan or subdivision plan approval for development in Section 8 of the Property, Owner shall supplement the Community Character Corridor Buffer with a mix of evergreen trees and shrubs and ornamental species to be planted in the Community Character Corridor Buffer and/or the adjacent public right of way (as may be approved by the Virginia Department of Transportation and the County Planning Director) in accordance with a landscape plan (the “Landscape Plan”) designed to enhance the visual buffer from vehicles traveling on Virginia Route 199 and development on Section 8 of the Property. The Landscape Plan shall be prepared by a landscape architect licensed in the Commonwealth of Virginia and submitted to the County Planning Director for review and approval.

15. Contribution for Public Facilities/Impacts.

(a) Recreation Facilities. A recreation facilities contribution shall be made to the County in the amount of One Hundred Nine Dollars (\$109), for each individual residential dwelling unit (individually, a “Residential Unit”, and collectively, the “Residential Units”) constructed on the Property (the “Per Unit Recreation Contribution”). The County shall make these monies available for development of recreational facilities, the need for which is deemed by the County to be generated in whole or in part by the development of the Property.

(b) Water Facilities. A water facilities contribution shall be made to the County in the amount of Eight Hundred Twenty Dollars (\$820), for each single-family attached and multi-family Residential Unit constructed on the Property and in the amount of One Thousand Ninety-Three Dollars (\$1,093), for each single-family detached Residential Unit

constructed on the Property (collectively, the “Per Unit Water Contribution”). The County shall make these monies available for development of water supply alternatives, the need for which is deemed by the County to be generated in whole or in part by the development of the Property.

(c) School Facilities. A school facilities contribution shall be made to the County in the amount of Four Thousand Eleven Dollars (\$4,011) per single-family detached Residential Unit constructed on the Property (the “Per Unit School Contribution”). The Per Unit School Contribution shall not apply to any single-family attached, multi-family, or any other type of Residential Units constructed on the Property. The County shall make these monies available for acquisition of school sites and/or construction of school facilities, the need for which is deemed by the County to be generated in whole or in part by the development of the Property.

(d) Library Facilities. A library facilities contribution shall be made to the County in the amount of Sixty-One Dollars (\$61) for each Residential Unit constructed on the Property (the “Per Unit Library Contribution”). The County shall make these monies available for the development of library space, the need for which is deemed by the County to be generated in whole or in part by the development of the Property.

(e) Fire/EMS Facilities. A fire/EMS facilities contribution shall be made to the County in the amount of Seventy-One Dollars (\$71) for each Residential Unit constructed on the Property (the “Per Unit Fire/EMS Contribution”). The County shall make these monies available for the acquisition of fire and rescue facilities and equipment, the need for which is deemed by the County to be generated in whole or in part by the development of the Property.

(f) Timing. The Per Unit Recreation Contribution, Per Unit Water Contribution, Per Unit School Contribution, Per Unit Library Contribution, and Per Unit

Fire/EMS Contribution (collectively, the “Per Unit Contributions”) shall be payable for each of the Residential Units to be developed within the Property at the time of final site plan or subdivision plan approval for the particular Residential Unit or grouping of Residential Units or at such other time as may be approved by the County Planning Director.

(g) Per Unit Contributions Inapplicable to Certain Residential Units.

Notwithstanding any other provision of these Proffers, none of the Per Unit Contributions shall be assessed for any Residential Unit with original proffered pricing at or below One Hundred Fifty-Four Thousand Dollars (\$154,000) or as such amount may be adjusted in accordance with paragraph 18 of these Proffers.

(h) Transportation Improvements. Prior to final site plan or subdivision plan approval for development of the Property or portion thereof, a transportation improvement contribution shall be made to the County in the amount of Twelve Thousand Seven Hundred Twenty-Eight and 00/100 Dollars (\$12,728). The County shall make these monies available for off-site road improvements in the Monticello Avenue corridor, the need for which is deemed by the County to be generated in whole or in part by the development of the Property.

16. Private Streets. Any and all streets within Section 7 and 8 of the Property may be private. Pursuant to Section 24-528 of the Zoning Ordinance, private streets within the Property shall be maintained by the Residential Association, Commercial Association and/or a Separate Association, as applicable. The party responsible for construction of a private street shall deposit into a maintenance fund to be managed by the applicable Commercial Association, Residential Association, or Separate Association responsible for maintenance of such private street an amount equal to one hundred fifty percent (150%) of the amount of the maintenance fee that would be required for a similar public street as established by VDOT – Subdivision Street

Requirements. The County shall be provided evidence of the deposit of such maintenance fee amount at the time of final site plan or subdivision plan approval by the County for the particular phase or section which includes the street to be designated as private.

17. Building Setback from Wetland and Other Areas. The Section 7 and 8 Master Plan identifies a "RPA Buffer" and a "Voluntary Wetland Buffer" (collectively, the "Buffer") on the Property. Except in the area shown on the Section 7 & 8 Master Plan as "COMM", no building or impervious cover shall be constructed or installed on the Property within fifteen (15) feet of the Buffer, unless approved by the County Environmental Director.

18. Marshall & Swift Index Adjustment. All cash contributions and pricing contained in these Proffers (collectively, the "Proffered Amounts"), to include but not be limited to housing sales prices and Per Unit Contributions, shall be adjusted annually beginning January 1, 2007 to reflect any increase or decrease for the preceding year in the Marshall and Swift Building Cost Index (the "MSI"). In no event shall the Proffered Amounts be adjusted to a sum less than the amount initially established by these Proffers. The adjustment shall be made by multiplying the Proffered Amounts for the preceding year by a fraction, the numerator of which shall be the MSI as of December 1 in the year preceding the calendar year most currently expired, and the denominator of which shall be the MSI as of December 1 in the preceding year. In the event a substantial change is made in the method of establishing the MSI, then the Proffered Amounts shall be adjusted based upon the figure that would have resulted had no change occurred in the manner of computing the MSI. In the event that the MSI is not available, a reliable government or other independent publication evaluating information heretofore used in determining the MSI (approved in advance by the County Manager of Financial Management Services) shall be relied

upon in establishing an inflationary factor for purposes of increasing the Proffered Amounts to approximate the rate of annual inflation in the County.

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

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

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

not in any way affect the validity of any other clause, sentence, paragraph, subparagraph, section or provision hereof.

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

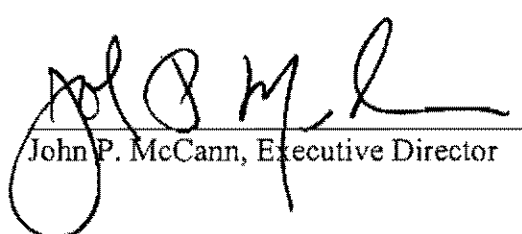
WITNESS the following signature, thereunto duly authorized:

[SIGNATURE LOCATED ON SUCCEEDING PAGE]

[SIGNATURE PAGE TO NEW TOWN SECTION 7 & 8 PROFFERS]

NEW TOWN ASSOCIATES, LLC

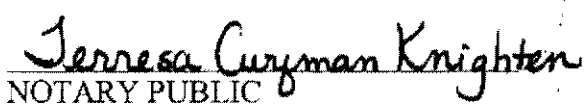
By:


John P. McCann, Executive Director

COMMONWEALTH OF VIRGINIA

CITY/COUNTY OF James City, to wit:

The foregoing instrument was acknowledged before me this 31st day of January 2007 by John P. McCann as Executive Director of New Town Associates, LLC, a Virginia limited liability company, on its behalf.


NOTARY PUBLIC

My commission expires: 08/30/08

\\ODMA\PCDOCS\DOCSWMB\6110004\17

EXHIBIT A

All those certain pieces, parcels, or tracts of land shown as "Section 7" and "Section 8" on that certain plan entitled "NEW TOWN SECTION 7 AND 8 MASTER PLAN BERKELEY DISTRICT JAMES CITY COUNTY, VIRGINIA", dated August 25, 2006, revised October 13, 2006, October 31, 2006 and December 28, 2006 prepared by AES Consulting Engineers, a copy of which is on file with the County Planning Director.

VIRGINIA: CITY OF WILLIAMSBURG & COUNTY OF JAMES CITY
This document was admitted to record on 22 Feb 07
at 11:35 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

070005135

SUPPLEMENTAL PROFFERS
NEW TOWN - SECTIONS 3 and 6

THESE SUPPLEMENTAL PROFFERS are made as of this 21st day of December, 2006, by **NEW TOWN ASSOCIATES, LLC**, a Virginia limited liability company (together with its successors and assigns, "Associates") (index as a "grantor"); and the **COUNTY OF JAMES CITY, VIRGINIA** (the "County") (index as the "grantee").

RECITALS

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

R-2. The Property is subject to the New Town – Sections 3 & 6 – Proffers (the "Sections 3 & 6 Proffers") dated October 25, 2004 of record in the Clerk's Office of the Circuit Court for the City of Williamsburg and County of James City, Virginia as Instrument No. 040027471.

R-3. Section 4(c) of the Sections 3 and 6 Proffers ("Proffer 4(c)") provides that Associates shall construct/install the following entrance and road improvements to Virginia Department of Transportation ("VDOT") standards and specifications for the Watford Lane (as designated in the traffic study entitled "TRAFFIC STUDY FOR SECTIONS 3 & 6 OF NEW TOWN, JAMES CITY COUNTY, VIRGINIA," dated June 2004, prepared by DRW Consultants, Inc., Midlothian, Virginia (the "Traffic Study"), which is on file with the County Planning Director) intersection with Ironbound Road:

A minimum of two lanes approaching Ironbound Road and two lanes departing

Ironbound Road on Watford Lane in New Town Section 3.

R-4. Associates has determined that only one (1) lane departing Ironbound Road on Watford Lane in New Town Section 3 is required to appropriately accommodate the traffic generated by the development of Property.

R-5. Associates has submitted a rezoning application (the "Application") with the County requesting the amendment of Proffer 4(c) to require only one (1) lane departing Ironbound Road on Watford Lane in New Town Section 3. The Application has been designated by the County as Case Number Z-07-06. The amendment of Proffer 4(c) is consistent both with the land use designation for the Property on the County Comprehensive Plan and the statement of intent for the MU zoning district set forth in Section 24-514 of the County Zoning Ordinance, Section 24-1 *et seq.* of the County Code of Ordinances, in effect on the date hereof (the "Zoning Ordinance").

NOW, THEREFORE, for and in consideration of the approval by the Board of Supervisors of the County of the proffer amendment set forth above and pursuant to Section 15.2-2296, *et seq.*, of the Virginia Code, Section 24-16 of the County Zoning Ordinance and these Supplemental Proffers, Associates agrees that all of the following conditions shall be met and satisfied in developing the Property.

PROFFERS:

1. Amendment. Proffer 4(c) is hereby amended and restated to read as follows:

"A minimum of two lanes approaching Ironbound Road and one lane departing Ironbound Road on Watford Lane in New Town Section 3; and"

2. Supplemental Proffers. These Supplemental Proffers amend the Sections 3 and 6 Proffers only as stated herein. No other amendment to the Sections 3 & 6 Proffers is intended or accomplished hereby. The Section 3 & 6 Proffers remain in full force and effect, subject to this amendment.

4. Recitals. The Recitals set forth above shall be included and read as a part of these Supplemental Proffers and are incorporated by reference.

WITNESS the following signatures, thereunto duly authorized:

NEW TOWN ASSOCIATES, LLC

By:

Title:

[Signature]
EXECUTIVE DIRECTOR

STATE OF VIRGINIA
COUNTY OF JAMES CITY, to wit:

The foregoing instrument was acknowledged before me this 21st day of DECEMBER, 2006 by JOHN P. McCANN, EXECUTIVE DIRECTOR of New Town Associates, LLC, a Virginia limited liability company, on its behalf.

[Signature]
NOTARY PUBLIC

My commission expires: 08/30/08

DOCSWMB-#6130317

EXHIBIT A

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

VIRGINIA: CITY OF WILLIAMSBURG & COUNTY OF JAMES CITY
This document was admitted to record on 22 Feb 07
at 11:37 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