

AT A REGULAR MEETING OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE 8TH DAY OF JULY 2008, AT 7:00 P.M. IN THE COUNTY GOVERNMENT CENTER BOARD ROOM, 101 MOUNTS BAY ROAD, JAMES CITY COUNTY, VIRGINIA.

A. CALL TO ORDER

B. ROLL CALL

Bruce C. Goodson, Chairman, Roberts District
James G. Kennedy, Vice Chairman, Stonehouse District
James O. Icenhour, Jr., Powhatan District
John J. McGlennon, Jamestown District
Mary Jones, Berkeley District

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

C. PLEDGE OF ALLEGIANCE – Jordan Lawson, a rising fourth-grade student at Matoaka Elementary School, led the Board and citizens in the Pledge of Allegiance.

D. PUBLIC COMMENT

1. Mr. Dale Merriss, 104 Inverness, commented on the public hearing process and recognition of the voice of the public. Mr. Merriss asked that public hearing matters be voted on no sooner than the close of the public hearing.

2. Mr. Robert Richardson, 2786 Lake Powell Road, commented on inappropriate behavior related to the appointment of Mr. Chris Henderson to the Planning Commission and violations of the Code of Ethics.

3. Mr. Bob Warren, 104 Gullane, commented on the impact of illegal immigration on Prince William County and the implications for James City County.

4. Mr. Bill Geib, 104 Allwardly, on behalf of the James City County Citizens Coalition, commented on Distribution Antenna Systems (DAS) and other technology as alternatives to cellular towers. He commented on the need for a County-wide cellular service plan with available technology and the Comprehensive Plan update.

5. Mr. Ed Oyer, 139 Indian Circle, commented on citizen disapproval of the Transportation Authority; email retention in the County; traffic on Route 60 East; and right-of-way use fees.

Mr. Goodson noted that Delegate Brenda Pogge was in attendance.

E. CONSENT CALENDAR

Mr. Goodson asked to pull Item No. 2 for separate consideration.

Mr. McGlennon made a motion to adopt the remaining items on the Consent Calendar, including the amendment to the work session minutes of June 24, 2008.

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

1. Minutes –
 - a. June 24, 2008, Work Session as amended
 - b. June 24, 2008, Regular Meeting
2. Support for the Williamsburg Regional Medical Center Certificate of Public Need (COPN)

Mr. Goodson asked Mr. Bob Graves of Sentara to speak about the application for the COPN.

Mr. Graves thanked the Board for its consideration and noted Sentara's presence in James City County. He stated that the resolution demonstrated the Board's support for the most recent application for a COPN for an expansion of six beds.

Mr. McGlennon stated that he was unsure of his support for this item, as he was unaware of this project and what was being proposed. He stated that this was an application for six beds.

Mr. Graves stated this was correct.

Mr. McGlennon asked if there was also a component to this project to add a sixth-floor at a cost of approximately \$11 million.

Mr. Graves stated that the hospital was built with the capability to add a sixth-floor with space for up to 48 additional beds. He stated that this application requested only six beds.

Mr. McGlennon asked if there was a need for additional beds.

Mr. Graves stated that there were not additional beds needed due to the Riverside Health System application, but he believed that if the Commissioner of Health determined that additional beds were needed, then Sentara could provide them at a lower cost and with more accessibility.

Mr. McGlennon stated that he would like to see this item deferred until he was able to receive more detailed information about the project.

Mr. Graves asked if the Board would like to give a decision in support of the overall need with specific questions regarding the planning being answered as necessary.

Mr. McGlennon stated that he had no written information about this project and it was difficult to make a judgment of support without any additional information. He stated that he understood it was support for an application for six beds, but the building addition with the potential for 48 more beds was new information.

Mr. Goodson stated that additional information could be provided and the Board could continue this item to the next meeting. He stated that it could be placed on the agenda as a Board Consideration.

Mr. Graves stated that the application was already submitted and stated that supporting this resolution would provide competition.

Mr. McGlennon stated that he would like additional information before voting on this item.

Mr. Goodson stated that he believed the Board would need additional data on what the project entails. He stated that the item would be deferred to the next meeting as a Board Consideration.

This item was deferred to July 22, 2008.

F. PUBLIC HEARINGS

Mr. Goodson recognized Planning Commissioners Tony Obadal and Jack Fraley in the audience.

1. Z-0008/MP-0006-2007. Ford's Colony Section 37 – The Village at Ford's Colony

Mr. Bill Porter stated that prior to the staff presentation he needed to explain to the Board that the Agricultural and Forestal District (AFD) withdrawal portion required a public hearing of the Planning Commission and the Board of Supervisors. He stated that the remainder of the application did not require an additional public hearing. He stated that staff had made an error and the Board could address the error.

Mr. Goodson stated that the AFD withdrawal was part of the staff presentation.

Mr. Porter stated that the AFD withdrawal was in the staff presentation at the Planning Commission and at the Board of Supervisors meeting, but was not a separate advertised public hearing.

Mr. Goodson asked if the property should be withdrawn before the land use application could be acted on.

Mr. Porter stated that the policy adopted by the Board dictated that the AFD withdrawal and land use application move through the process simultaneously.

Mr. Goodson asked if there was any way to adopt the rezoning resolution and come forward at a later time with the land withdrawal.

Mr. Porter stated that it could not, as this condition was part of the Gordon's Creek AFD ordinance.

Mr. Rogers stated that it is incorporated in a Board policy adopted in 1996.

Mr. Porter stated that each AFD is adopted by ordinance.

Mr. Goodson stated that the ordinance would need to be amended.

Mr. Porter stated that this was correct.

Mr. Rogers stated that in order to comply with the ordinance and the public hearing requirements, the withdrawal would need to move simultaneously with the land use case, but since it was not advertised this was not possible. He stated that there were two options: an emergency ordinance which was a temporary ordinance that would be in effect for sixty days, during which time staff would advertise for the Planning Commission and the Board to get the item back for the meeting on August 12, 2008. He stated that the other option would be to readvertise both cases for the Planning Commission and Board, to be heard again by the Board on August 12, 2008, in order to meeting public hearing requirements.

Mr. Goodson stated that there would need to be a public hearing on the temporary ordinance and it needed to be acted on within 60 days.

Mr. Rogers stated that the case could be acted on today but staff would need to readvertise to adopt the temporary ordinance.

Mr. Porter noted that the only portion that was a problem was the AFD withdrawal and assured the Board that the land use portion met the proper requirements.

Mr. Goodson asked if permitting would need to be rushed in order to meet the time requirements of the temporary ordinance.

Mr. Rogers stated that he did not believe that staff would need to move more quickly than normal on permitting and site plan approval. He stated that if the Board wished to act on this item tonight, the Board would need to adopt the emergency ordinance, and the Board would need to act on that within 60 days.

Mr. McGlennon asked what was designated as an emergency.

Mr. Rogers stated that the Code has left that to the discretion of the Board.

Mr. McGlennon asked what the emergency was in this case to prevent the Board from following proper advertising procedure.

Mr. Porter stated that it was staff's error and the applicant should not bear the consequences of staff's error, and it was staff's understanding that this case would need to be acted on by August 1, 2008, to avoid financial hardships for the applicant.

Mr. McGlennon stated that the public should not be made to bear the consequences of staff's error in this instance. He stated that he was unaware of a timeline for a very significant case and it is presumptuous to assume this case would receive an approval at its first consideration of the Board of Supervisors. He stated that he did not believe the Board was obligated to act at this meeting.

Mr. Goodson stated that there was no timeline obligation, but that the deferrals requested by the application were in the interest of addressing public comment. He asked Mr. Fraley to speak about the public comment process of this item.

Mr. Fraley stated that the Planning Commission spent about eight hours in work sessions and regular meetings on this case alone.

Mr. Goodson stated that the applicant is being forced to wait and also the Planning Commission is being asked to invest more time. He stated the application is well-known to the public, and that the part subject to the error was a technicality that did not pose a major impact on the acceptance of the proposal.

Mr. McGlennon stated that the Planning Commission would need to invest the time anyway.

Mr. Rogers stated that was correct.

Mr. Goodson stated that the Planning Commission would be considering the AFD withdrawal only.

Mr. Rogers stated that this was correct.

Mr. McGlennon stated that the Planning Commission would consider the AFD case only in either circumstance. He stated that the Board has the opportunity to investigate this case to the same degree, and that the Planning Commission should not be the recipients of public comment for the Board as it has its own public comment process.

Mr. Goodson stated it was irregular for staff to make this error.

Mr. Kennedy asked what the consequence would be if the emergency ordinance was adopted and the case was approved, but the AFD withdrawal was denied by the Planning Commission and Board when it was heard at a later date.

Mr. Rogers stated that the Planning Commission would make a recommendation and the Board would make the decision. He stated that if the Board would not consent to the withdrawal, it should not act on the emergency ordinance. He stated that it would be a problem for this project if the emergency ordinance was adopted but not readopted after a public hearing.

Mr. Kennedy asked when this came to the attention of Mr. Icenhour, and asked why it did not come to the attention of the rest of the Board.

Mr. Icenhour stated that it came to his attention when reading the staff report and realizing that the resolution was absent of action regarding the AFD. He asked staff yesterday and was told that it could be fixed. He stated that members of the Planning Commission discussed the AFD withdrawal, and that it was in the staff report. He stated that there was discussion with staff today, and that there was no publication of the AFD withdrawal public hearing since the original Planning Commission advertisement was in November 2007. He stated that it was in May 2008 that the AFD Committee took action on this item, but there was no notice of the AFD withdrawal for the Planning Commission or Board of Supervisors.

Mr. Kennedy stated that when he was on the Planning Commission there was an item wherein the applicant realized he was in an AFD at the last minute and nothing could move forward. He stated that there should have been a checklist, and that staff had not done its job to due diligence. He asked how this happened.

Mr. Porter stated that he did not know. He stated that it was a long-running case with much iteration, and that during the long process this portion had fallen through the cracks.

Mr. Kennedy stated that he brought this up before, and stated that he felt that all property should indicate that it was in an AFD and that he understood from John Horne that this was done. He stated that this was a procedural problem and staff was wrong. He stated his disappointment, as he had hoped that the last time this happened would be the last time. He stated his disapproval with how the case had moved forward and the lack of information.

Mr. Goodson stated he believed that this delay would cause serious financial hardship to the applicant and asked if the County was culpable for this.

Mr. Porter stated that this would not slow the process down because staff recommended approval. He stated that staff did know it was an AFD and that it was taken through the AFD Advisory Committee and that it was included in the staff report for the Planning Commission and the Board, but that the advertisement was omitted.

Mr. Goodson stated that staff should have recommended approval since it meets the Comprehensive Plan.

Mr. Porter stated that staff did not purposely slow down projects.

Mr. Kennedy stated this was not a good situation for the Board because there was no proper solution.

Mr. McGlennon asked if the County could be held responsible.

Mr. Rogers stated that a suit could be filed, but the Board is not liable for damages. He stated that there was a financial time limit to act on the case and there was a mistake found. He stated that staff found a solution, and staff did not want to have a decision overturned in a procedural challenge. He stated that he wanted to make sure that whatever decision was to be made was done properly and also that it would be a final decision of the governing body.

Mr. McGlennon asked if staff told the applicant that a decision would be made by a certain date.

Mr. Rogers stated that staff has not done that.

Mr. Goodson stated that he is disappointed that staff is in this situation.

Ms. Jones stated that the purpose of a public hearing was to hear the public, staff, the applicant, and other Board members.

Mr. McGlennon stated that he felt there was no emergency and any case could be deferred.

Ms. Jones stated that there was a notification issue with Monticello Woods, and the Board still went to great lengths to go through the proper channels. She asked if the AFD withdrawal was referenced in all staff reports to this point.

Mr. Rogers stated that this was correct, and that was the subject of his meeting with Mr. Icenhour. He explained that the temporary ordinance was to withdraw the property from the AFD, and that Gordon's Creek AFD required that the withdrawal be done simultaneously with the land use case.

Mr. Kennedy asked to hear from the applicant.

Mr. McGlennon asked where the Board was at this point.

Mr. Goodson stated that he would like to hear whether the Board was in favor of considering the emergency ordinance or deferral.

Mr. Icenhour stated that the public hearing should be opened and should continue as we move forward. He stated that the error should not impact what the actions would be tonight.

Mr. Goodson stated that he agreed.

Mr. Goodson asked if the Board would have to open the public hearing on the temporary ordinance.

Mr. Rogers stated that the public hearing would need to be opened for the land use portion but not for the emergency ordinance.

Mr. Rogers stated that the AFD withdrawal has been part of the land use case since the beginning, and that in deciding the land use case the Board must consider whether the land should be withdrawn from the AFD and then the procedural issue of whether to adopt an emergency ordinance, or to defer the case for proper advertisement.

Mr. Goodson asked if there was a consensus to put the emergency ordinance before the public.

Mr. McGlennon asked if the emergency ordinance was subject to the public hearing.

Mr. Rogers stated that there was no need for a public hearing for an emergency ordinance, hence the nature of an emergency.

Mr. McGlennon stated that the issue of whether or not to adopt the emergency ordinance would need to be addressed before the public hearing.

Mr. Goodson asked staff to make the presentation.

Mr. David German, Planner, stated that Mr. Vernon Geddy has applied on behalf of Realtec, Inc. to rezone the subject property located at 3889 News Road (James City County Real Estate Tax Map No. 3730100004) from R-8 (Rural Residential) to R-4 (Residential Planned Community), with Proffers, to support the creation of a Continuing Care Retirement Community (CCRC) on the property. This CCRC will feature up to 38 independent living townhouses, 558 additional independent living units (elderly attached and congregate care), 83 assisted living/memory care rooms, two additional assisted living/memory care beds for use by the James City County Department of Social Services in conjunction with its Auxiliary Grant (AG) Program, and 60 skilled nursing beds. While the CCRC, if approved, would become a part of the Ford's Colony Master Plan, none of the CCRC living units, rooms, or beds will be sold to individual owners. Additionally, the applicant has proffered that the CCRC will not be a part of the existing Ford's Colony Home Owners Association (HOA), and that persons living in the CCRC will not be members of the existing Ford's Colony HOA; (please see Proffer No. 17 for further information). The R-8 zoning district is a low-density holding district for properties inside the Primary Service Area (PSA). It is the expectation of the County that properties zoned R-8 will eventually be rezoned and developed.

Staff found this application proposes a development that is generally consistent with the tenets of both the Zoning Ordinance and the Comprehensive Plan. The project represents an initial and annual fiscal gain for the County, and it adequately mitigates the larger infrastructure and other potential impacts associated with the proposed development. While the intensity of development is somewhat higher than in neighboring uses, staff believes that the buffers and proffers that are included in the plan of development will adequately offset the negative aspects associated with this difference in scale.

At its meeting on May 5, 2008, the AFD Advisory Committee recommended approval by a vote of 4-2.

At its meeting on June 4, 2008, the Planning Commission recommended approval by a vote of 4-3.

Staff recommended approval of the application.

Mr. Icenhour asked Mr. Rogers the application of this under the R-4 ordinance. He stated that Ford's Colony has been the most active R-4 community in the addition of land, and there was a question of ownership or control. He stated that the County was unconcerned with how many people own the property, as long as the applicant also owns the adjacent property. He stated that the issue was with control since the ownership of the R-4 is in several hands. He stated that at the time of application to add property, staff needed to make an administrative decision to determine if the developer had control of the property. He noted that since the original master plan there were many additions of land, and at the time they were done, the HOA Board was appointed by the developer. He stated that this was the first one that has occurred since the Board has been independent. He stated that the appeal process is past, but that there needed to be clarification to this issue of control due to when ownership of the R-4 community transfers to an HOA, they do not have any control of that.

Mr. Rogers stated that this was not correct. He stated that the control that an HOA has is over the common area of the development, and at some point in the declaration the ownership or control is turned over to the property owners. He noted that this is the same process that any planned residential community follows. He stated that the R-4 development is owned by Realtec, Inc., which owns a great deal of property through itself and its entities. He stated that through R-4 standards it was determined that Realtec was eligible to apply for a rezoning. He said that the question was whether it met the threshold to make an application.

Mr. Icenhour stated that it meets the requirement for a property owner to apply, but that there was still the issue of control.

Mr. Rogers stated that Realtec was the same developer that developed the R-4 community, and it had control over the property; and therefore, it was able to apply to add property and to let the Board decide whether or not it should be approved.

Mr. Icenhour stated that there was no confidence on the part of the HOA or residents that the Board would represent their interests, so they secured an agreement with the developer that gives them the authority for anything that would be put under the homeowners association, in addition to the HOA would require the approval of the HOA. He stated that his impression of a planned residential community was tied to a master plan, and this community's master plan has grown to be a master plan of the developer that has divorced from the community. He stated that the R-4 ordinance brought into question the interpretation of ordinances. He stated that it was the decision of staff, but he disagreed with it. He stated that he did not feel it was in the best interest of the citizens.

Mr. McGlennon asked what this particular proposal despite the amendment to the master plan, has to do with the planned residential community. He asked what other cases the County has that are comparable. He stated that he understood the proposal for the development, but he did not understand why it needed to be part of Ford's Colony.

Mr. German stated that he was unaware of any additions made after the master plan was approved, but Mr. Geddy may be able to answer this.

Mr. McGlennon asked why this was a reasonable amendment to a master plan to bear some relationship to the existing planned community, and asked if there were other examples to comparable amendments, particularly if the amendment was not to be treated similarly to the rest of the master plan.

Mr. German stated that it was unique in that respect, and stated that it was continuation of the lifestyle of Ford's Colony for those who live there.

Mr. McGlennon asked what would lead government to that conclusion based on a land use application. He asked if there was an example of a similar application.

Mr. Goodson stated that Morningside was a CCRC in the Busch R-4 Master Plan.

Mr. Icenhour stated that facility does not meet the same standard of continuing care.

Mr. Rogers stated that was not an amendment to an R-4, but it was similar in that it was a CCRC as part of an R-4 Master Plan. He stated that staff has an administrative responsibility to determine what meets the minimum standards to accept the application, but no legislative responsibility to determine if the addition should be made.

Mr. McGlennon asked why staff made the recommendation to make this amendment. He stated that staff should have come to the Board for guidance with a case that is not reflected in past policies and cases in the County Code. He stated that there was no standard of when to amend a master plan and when not to do so, but if this case is approved, it would set a precedent. He stated that there was not a compelling argument on why this case was made.

Mr. Goodson stated that there was disagreement over whether the application should be accepted.

Mr. McGlennon stated that there was obvious disagreement over whether or not to accept the application, which raised concern.

Mr. Kennedy asked if the acceptance was done in August 2007.

Mr. Rogers stated that the application was submitted in July 2007.

Mr. Kennedy stated that the R-4 ordinance was discussed in August 2007.

Mr. Rogers stated that was correct. He stated that the Zoning Administrator makes a determination whether or not to accept an application which is an administrative decision, not a legislative decision.

Mr. Porter stated that the application was submitted in July 2007, and through a series of deferrals it was not ready to be heard by the Board until this meeting.

Mr. Goodson stated that if the case was not heard tonight, it would have been in process for over a year. He stated that the applicant had asked for deferrals to incorporate citizen input, and that this was not attributed to being behind in the process.

Mr. Porter stated that the applicant was trying to improve the application.

Mr. McGlennon stated that it was reasonable to believe that if there was adequate guidance prior to the application, then the deferrals would not be necessary. He stated that the applicant made the determination to

make those deferrals, and he stated that the Board should not be pressured to act based on the deferral of the applicant.

Mr. Goodson stated that there was no pressure, but that the case has gone on for a long time.

Mr. Icenhour asked staff about the density issue and how staff made the determination to move forward in light of the character and nature of this portion of the County.

Ms. Jones asked about the minutes Mr. Icenhour had quoted from the Development Review Committee.

Mr. Fraley stated this item would not have gone before the Development Review Committee (DRC), but rather the Planning Commission.

Mr. German stated that the comment letter that Mr. Icenhour read was from staff to the applicant.

Mr. Icenhour stated that there was concern from staff and there were several deferrals and then there was a different recommendation. He stated that it was important for the Board to know that there was serious concern, but the same level of development went forward to the Planning Commission with a recommendation of approval.

Mr. German stated that in the interim there were a number of changes made by the applicant to improve the application. He stated that the applicant was very willing to work with staff and the Planning Commission on the proffers, which was how staff arrived at the positive recommendation.

Mr. Icenhour commented on the density of the project in relation to the Comprehensive Plan definition of Low Density Residential. He said that the Comprehensive Plan spoke only in residential density in units per acre with guidance in how to vary from 1-4 units per acre. He stated this was a use that did not fit within that zoning. He stated that other CCRCs were in property that was Low Density Residential, and that there were rezonings. He said each CCRC project used different density calculations based on the type of unit divided by gross acres. He stated that the Comprehensive Plan states 1-4 units, and asked how the recommendation was presented for approval for a project over four units per acre. He stated that some units were not counted because of different uses and different impact. He stated that staff has been inconsistent with its procedure without coming back to the Board for guidance on the interpretation.

Mr. Goodson stated that he felt the Board had been giving guidance through approvals for the previous calculations.

Mr. Icenhour stated that he felt the Board may not agree with the inconsistency in the calculations.

Mr. Goodson stated that he believed it did, as he did not believe rooms should be counted as units.

Mr. Icenhour stated that there was no method of determining impacts. He stated that if there were no independent living units, then the methodology would dictate a density of zero, which would be unacceptable. He stated that if there should be a determination of how much these items should count toward density.

Mr. Goodson stated staff should be given a question to answer.

Mr. Icenhour asked why staff used this method of calculating density for the project.

Mr. German stated that the same methodology was used as with the previous case in WindsorMeade as staff wished to maintain consistency with the last similar project the Board passed, which had not been done in the past.

Mr. Icenhour stated that when all units were counted, the density was above the recommended limit for low-density residential.

Mr. Goodson stated that the question of methodology was answered.

Mr. Icenhour stated that the calculations met the Comprehensive Plan limit.

Mr. Goodson stated that after this proposal, there should be a work session and staff should receive direction, but this application is currently before the Board and staff was given the direction through the approval of the last project.

Mr. Icenhour stated that direction should be given to change the Comprehensive Plan.

Mr. Goodson stated that staff followed the Board's direction by following the previously approved calculations.

Mr. McGlennon stated that since staff used conflicting calculations in the past, there was no clear direction.

Mr. Goodson stated that the mistake was realized and that it was rectified. He stated that staff got direction via the approval of the last case.

Mr. McGlennon stated that if there was a question staff should have asked the Board for guidance.

Mr. Porter stated that the density limit is there, and also what needs to be looked at is what was already approved and what has been built. He stated that with Patriots Colony, 120 units were approved and 60 units were built. Mr. Porter stated that it may be that Mr. Icenhour did not have the full information. He stated that the developments had an approved number, but they were not built-out.

Mr. Icenhour stated that even in the built-out phase it met the Comprehensive Plan limit.

Mr. McGlennon stated that the zoning allowed up to four units per acre, but to allow more than one unit there needed to be significant public benefit. Mr. McGlennon asked what unique benefits were provided to allow for the higher end of the limit of density.

Mr. German stated that there was a substantial economic benefit and a positive environmental benefit in design. He stated that the proffers were compared to previous applications from the same developer on the same property, and there was a superior proposal. He stated that this was a substantial public benefit.

Mr. McGlennon asked if there was a significant public benefit to warrant the higher density.

Mr. German stated that if it was built as designed, it would.

Mr. McGlennon stated that he assumed increasing density would equate to increasing public benefit, and that he was surprised it was not the assumption of staff. He stated that he was concerned about two proffers. He asked why staff felt the proffered stoplight was a benefit.

Mr. German stated that the residents of Powhatan Secondary asked the developer to consider a stoplight. He stated that the developer told them he doubted that the Virginia Department of Transportation (VDOT) would not warrant the stoplight at the intersection.

Mr. McGlennon stated that it was an empty proffer.

Mr. German stated that it may not come to pass at this point, but he felt that it was commendable that the applicant put the proffer forward in the event that VDOT warranted a stoplight.

Mr. McGlennon stated that VDOT has determined that since the development is built-out, it was unlikely that VDOT would change its opinion.

Mr. German stated that this was correct. He noted that was an additional item since the Planning Commission meeting.

Mr. McGlennon stated that citizens may reference a proffer like that and question why it has not come to pass. He said that it would raise questions of whether the developer lived up to the requirements. He stated his concern about that language, and raised concern about a proffer of a Williamsburg Area Transportation (WAT) bus stop on a road that was not served by, and no plan to serve bus service. He stated that there was a question of why it was proposed. He stated there may be bus service some day, but that it would likely not be the best choice for a new route due to the nature of the road. He stated that these items justify the additional density were meaningless.

Mr. Goodson stated that the stoplight was not considered as part of the approval by the Planning Commission.

Mr. McGlennon stated that each of these proffers was referenced as public benefits.

Mr. Goodson stated that VDOT would not allow the stoplight without the warrants, so the proffer could not be blamed. He stated that the anticipation that there would be no warrant did not eliminate the fact that the applicant tried to comply with the surrounding community.

Mr. Icenhour asked if neither Springhill Drive, Firestone Drive, nor Powhatan Secondary would warrant a stoplight.

Mr. German stated that was correct.

Mr. Icenhour asked why a stoplight would not be placed in this area.

Mr. Goodson stated that VDOT believed there was no need for a stoplight.

Mr. Icenhour noted that the people of Powhatan Secondary were concerned about the traffic there.

Ms. Jones stated that this is why they asked for the proffer.

Mr. McGlennon stated that if there was a proffer there, then that would not happen.

Mr. McGlennon stated that there was a justification that this project diversifies the local economy. He asked if this facility would primarily employ people of service and health field, and asked if there was an excess labor pool for these positions.

Mr. German stated that the economy would be diversified rather than the labor pool. He stated that this was a source of revenue that was not based on residential property taxes.

Mr. McGlennon stated that the reference was to moving away from tourist-related activity, which led to the opinion of the job market expansion.

Mr. German stated that the jobs generated there would not be significant diversification. He stated that there would be skilled and unskilled labor.

Mr. McGlennon asked if there was any discussion at any point to the issue of contribution to mitigate the affordable housing issue.

Mr. German stated that the applicant had spoken informally about the affordable housing issue, but there was no direct discussion of any related proffers with this application.

Mr. McGlennon stated that he understood there was discussion about a dense moderately-priced housing project on News Road, but beyond that there was no discussion about affordable housing.

Mr. German stated that this was correct.

Mr. Icenhour stated that when the traffic analysis was done, there was still a discussion about traffic on News Road at ultimate build-out with approved projects and other properties with by-right development. He stated that it was unlikely to be developed by-right. He stated the build-out scenario for this road was likely understated. He asked if there was any thought to apply land designation of 1-4 units to see what would be done to traffic on the road.

Mr. Fraley stated that when the traffic study was revamped by the applicant it took into account all approved development and for property for which there was no application, current zoning density applied. He stated the conclusion was that News Road would be at capacity for a two-lane road as determined by the Comprehensive Plan. He stated he was interested in a plan to address that for that area. He stated if a residential development with two units per acre was assumed for the property of this application, traffic would be far worse than what was proposed. He stated trip generation would be approximately 3,600 trips as opposed to fewer than 2,000 trips with this proposal. He stated that at a density of one unit per acre, the traffic generation was about neutral.

Mr. Icenhour thanked Mr. Fraley for his information and stated that the precedent that would be set if one applicant is getting four units per acre, then another applicant should as well. He stated that there was no reasoning he could give to permit a certain density. He stated that historically there was rarely over two units per acre without extensive public benefit.

Mr. Goodson stated that this development has far different impacts than residential developments.

Mr. Icenhour stated that there was a need to keep News Road viable as a two-lane road. He stated that no portion of the two-lane road meets current VDOT standards. He stated that a few million dollars was needed to bring the road up to standards and for intersection expenditures at Centerville Road.

Ms. Jones stated that at the Planning Commission Public Hearing, some Planning Commissioners made a recommendation that the News Road corridor should be given its own master plan in the Comprehensive Plan. She stated that this was something whereas the Board should offer support and move forward on this initiative.

Mr. Icenhour stated that it was in the best interest of the County to keep the road as a two-lane road.

Mr. Fraley stated that VDOT never said that it would never warrant a stoplight, but it was unlikely. He stated that at build-out, it becomes a safety issue for citizens of Powhatan Secondary to get to the Recreation Center. He stated that the residents of Powhatan Secondary were concerned with the traffic report and that it would be hazardous for the young people that cross the street to go to the recreation facilities.

Ms. Jones stated that was an existing condition, but this was a way to mitigate it.

Mr. McGlennon asked if there was any confidence that a stoplight would be placed at that intersection.

Mr. German stated there was not.

Mr. Icenhour asked staff if the property lies in two sub watersheds. He stated that looking at the Powhatan Creek watershed, he believed that this portion was determined to be sensitive, and impervious cover should be kept below 10 percent at build-out. He asked what the current impervious surface covers of the sub watersheds. He asked if it had exceeded 10 percent.

Mr. Scott Thomas, Environmental Director, stated that both portions were at approximately 12 percent. He stated that Sub Watershed 209 was at about 15 percent and the non-tidal mainstem was at approximately 9 percent.

Mr. Icenhour stated that the other portion of the Sub Watershed 209 was around the rear of WindsorMeade which was scheduled for apartments to be built.

Mr. Thomas stated that he had not seen that Plan.

Mr. Icenhour stated that the impervious cover was already at 15.8 percent without build-out.

Mr. Icenhour stated that this was correct, but there needed to be a more current inventory.

Mr. Icenhour stated that it had a projection for build-out impervious cover, but it was based on by-right development of 1-3 acres.

Mr. Thomas stated that this was correct.

Mr. Icenhour asked about the 300-foot variable width buffer on the mainstem and how it was applied in this case.

Mr. Thomas referred to a map that defined the creek mainstem and variable width buffers. He stated that there was a zone of up to 150 feet and then a 25-foot buffer in the outer-zone. He highlighted the 175 foot zone, plus the outer-zone of 25 feet. He stated that the thinnest portion was at a variable 70-foot buffer plus the outer-zone 25-foot buffer. He stated it was variable to 70 feet here because it was on a ridgeline. He stated there was interpretation on where the ridgeline met the corner, and there was additional area to compensate for thinner areas. He demonstrated on the map where some non-RPA buffers and non-intermittent stream buffers were, as well as 100-foot RPA buffers and that additional RMA buffers were beyond that.

Mr. Icenhour stated that there were other areas that were put in conservation easements that would not be required.

Mr. Thomas stated that some buffers were to be dedicated to conservation areas.

Mr. Goodson opened the Public Hearing.

1. Mr. Vernon M. Geddy, III, on behalf of the applicant, gave an overview of the project and highlighted the development team for the project, the property, and the benefits and goals of the proposal.

Mr. Geddy stated that Realtec was in a partnership that created a critical need for the Board to act on the zoning portion of the application by the end of the month.

Mr. Icenhour asked how long Realtec had known the July 31, 2008, deadline existed.

Mr. Geddy responded that they had known since January 2008.

Mr. Icenhour stated that since December 2007 there had been five developer-requested deferrals.

Mr. Geddy stated that they were sometimes at the request of staff, but they consented to improve the project.

Mr. Icenhour asked if staff asked or pressured the applicant to defer.

Mr. Geddy stated that there was an effort to improve the project at the request of staff.

Mr. Icenhour stated there was a deadline of which the Board was unaware that the developer was aware of. He stated that he would have had more sympathy for a deadline if there had been more communication.

Mr. Geddy stated that the applicant has worked to get this in a form that could be approved as quickly as possible and there as a business deadline.

Mr. McGlennon asked if there was a way to market this as the Village at Ford's Colony without an amendment to the Master Plan.

Mr. Geddy stated there was, but that there were many years vested in the development of the Ford's Colony community and that the developer would like to continue with this project.

Mr. McGlennon stated that the responsibility of the Board was to deliberate on this concern. He asked the cost of residence in the facility.

Mr. Mulhare stated that he was not permitted to discuss that until it was established.

Mr. McGlennon asked the target audience. He stated that it was not going to serve the needs of the growing elderly population, but rather it would serve the more affluent.

Mr. Mulhare stated that the pricing would be competitive with the local marketplace but pricing information could not be discussed by law.

Mr. Geddy stated discussion was prohibited until it was established.

Mr. McGlennon asked if the target market could be discussed.

Mr. Mulhare stated that he did not feel comfortable discussing it in light of the legal matters in relation to the cost.

Mr. Goodson stated that he understood it was marketed toward the residents of Ford's Colony.

Mr. McGlennon stated that the residents of Ford's Colony alone could not sustain this project.

Mr. Geddy stated that it was marketed to residents of Ford's Colony and the external market.

Mr. McGlennon asked if the market would be for people across the country.

Mr. Geddy stated the market was more likely in the surrounding area.

Mr. McGlennon stated that this would be a facility for people of a high income level.

Mr. Geddy stated that there would be income requirements.

Mr. Mulhare stated that the requirements would consider income and insurance combined.

Mr. McGlennon asked if it would be difficult to staff the facility at this level without broadening the current labor pool in those job categories.

Mr. Geddy stated that he was unaware of a study, but that was probably true.

Mr. McGlennon stated that existing facilities have vacancies.

Mr. Geddy stated that creates competitive income.

Mr. McGlennon stated that created a need for increased population and housing. He stated he had problems with a potential dense workforce housing project on News Road.

Mr. Geddy stated that the other proffer was for housing assistance for low-income elderly.

Mr. McGlennon asked if any other effort was made toward workforce or affordable housing.

Mr. Geddy stated that it was not specifically discussed, but the revenue generated could be put into these efforts by the County.

Mr. McGlennon asked that there was no effort to address affordable housing.

Mr. Geddy stated that there was a grant program for lower-income elderly, and no other CCRCs in the County have provided affordable housing.

Mr. McGlennon stated that there were significant environmental benefits and other benefits, but the standards of a case for rezoning were increasing. He stated that many of these concerns would need to be addressed regardless of the type of proposal.

Mr. Kennedy asked to allow the public to speak due to the late hour.

Mr. Goodson stated that typically there was time for questions in order to provide for discussion later.

Mr. Icenhour stated that he spoke with those with interest in the other local facilities and a potential customer. He stated that Williamsburg Landing draws 75 percent of its residents from the local area, and Patriots Colony had about 25 percent local residency. He said WindsorMeade is about 50 percent local residents. He stated that the current facilities draw about half the residents from outside the area. He said that marketing was toward 70 or older with certain income requirements. He stated that the cost he was provided was approximately \$300,000 upfront and \$4,000 per month. He stated that there were about 4,000 people at Ford's Colony, and he would estimate approximately 500 that meet the requirement. He stated that the local area would likely provide a minority, and that most of the people living there would be from outside the area. He stated that the labor force for the existing CCRCs was about 80 percent from outside the area. He stated that there was approximately 10 percent shortfall in staff. He asked what the marketing plan in general of the facility.

Mr. Geddy stated that the existing facilities are already 90 percent full, and there continued to be an aging population. He said that there may be some turnover, but there have been two market studies that indicate a significant local market for this facility.

Mr. Mulhare stated that the marketing studies indicated a significant need. He stated that the reason a majority of people leave Ford's Colony is due to the need for a higher level of care.

2. Mr. Dale Merriss, 104 Inverness, commented that the current project for construction is now acceptable to the Board and a majority of the residents. He stated that it was a greatly improved project and he was in opposition but now does not have a problem with the construction of the project, and his continued concern with the density in the surrounding area. He stated that altering the master plan and rezoning the property was unnecessary to allow the project to move forward. He asked that the master plan remain and rezone to R-5.

3. Mr. Mike Caplice, 4193 Teakwood, on behalf of Springhill subdivision, commented on traffic and structure of News Road. He stated that on behalf of Springhill, that the speed limit of 35 mph be established on News Road, that Police enforce speed limit and safety measures, moratorium on News Road development projects until a comprehensive traffic impact study is done and results are published, and that VDOT bring News Road up to standards through 2025.

Ms. Jones stated that she had asked Mr. Halacy from VDOT to look at a speed study on News Road. She stated that there was a distinct disconnect between the citizen expectations and what the VDOT studies dictate.

4. Mr. Robert Richardson, 2786 Lake Powell Road, asked that this item be returned to the Planning Commission for a revote that excluded Mr. Chris Henderson, as Mr. Richardson believed the vote was predetermined prior to Mr. Henderson's appointment to the Planning Commission.

5. Mr. Paul Spitalnik, 112 Mahogany Run, stated that he agreed with the previous speaker, and commented that the developer was deceiving the Board through its assertions of the fiscal impacts due to the age-restricted portion of the project created no impact on schools. He stated that the workers of the CCRC would likely have children living in the County. He stated that independent living requires unskilled labor and maintenance services all day. He stated that Mr. Geddy indicated 245 full-time employees, and there were Federal and State recommendations and requirements for this type of care that require and recommend a staffing plan. He stated that the Board should postpone its decision and ask for a staffing plan for this project.

6. Ms. Fran Dunleavy, 108 Workstop, stated that she was unable to get an explanation as to the acceptability of the application. She stated that the answer she received did not answer the question and eliminated the discussion. She stated there was no determination that Realtec was a majority owner and it was not. She stated that the property owners were the owners of Ford's Colony, but Realtec had no right to amend the master plan for Ford's Colony. She asked to be informed on how to interpret the ordinance.

7. Mr. Jack Haldeman, 1597 Founders Hill North, on behalf of the James City County Citizens Coalition (J4C), stated that the J4C was unable to reach a consensus. He stated that the organization met with the developer to discuss environmental issues, and traffic safety issues. J4C continues to oppose any further development in the Powhatan Creek Watershed. He stated that Realtec has seriously attempted to meet the requests of J4C though the facility was not ideal. He stated that Realtec has been committed to keeping J4C involved, and that they see this as a model, and that J4C withdraws its opposition to this project as it has gone the extra mile to meet citizen expectations.

8. Mr. Gary Krull, 104 Stoweflake, commented that a vote needed to be made, and it should be approved. He stated that Realtec and Mr. Mulhare worked with the HOA, J4C, and community to resolve the issues that had arisen. He commented that this plan was referred to as the most environmentally sensitive plan in the history of James City County, and noted the benefits to many of the citizens and to the County as it was a tax generating project. He stated his support for the project and requested approval, and said that staff should be accountable for their actions; AFD was introduced very late and should not be 'government at its finest', and asked for approval at this meeting.

9. Mr. Anthony Derose, 164 Killarney, stated he believed that this project would be done well by Realtec and noted that he had not spoken to any neighbors that were opposed to the project. He stated the advantages outweigh the disadvantages. He requested approval, and he commented on the staffing plan and stated that he felt that Ford's Colony would meet and exceed any requirements.

10. Mr. Ed Oyer, 139 Indian Circle, commented on the James City Service Authority (JCSA) water availability and asked if this was taken into consideration with this project.

Mr. Goodson closed the Public Hearing.

Mr. Goodson recessed the Board for a short break.

At 10:38 p.m. Mr. Goodson reconvened the Board.

Mr. Goodson asked the Board to discuss whether there was a consensus to defer or move forward.

Mr. McGlennon made a motion to defer to allow the Planning Commission to take the proper actions on this item.

Mr. Kennedy stated that he viewed this item as a courtesy rather than an emergency. He stated that he believed the AFD withdrawal portion was intended but an unfortunate mistake was made.

Mr. Goodson explained that an affirmative vote was for deferral.

On a roll call vote, the vote was: AYE: Icenhour, McGlennon (2). NAY: Jones, Kennedy, Goodson (3).

The motion failed.

Mr. Goodson asked if there was a motion to adopt the emergency ordinance.

Mr. Rogers stated that he had an emergency ordinance for the withdrawal from the AFD.

Mr. Goodson asked if this took the place of the resolution.

Mr. Rogers stated that both needed to be adopted, either simultaneously or the AFD ordinance first.

Mr. Goodson stated that it would be appropriate to adopt them simultaneously in the event that the application failed, but that the AFD withdrawal was approved.

Mr. Rogers stated that he believed in the past there have been separate votes on these items, since one is an ordinance and the other is a rezoning item.

Mr. Goodson stated that the ordinance would go away.

Mr. Rogers stated that the ordinance would go away unless it was reordained within 60 days.

Mr. McGlennon asked for further explanation.

Mr. Rogers stated a temporary ordinance had a span of 60 days and that could be done to readvertise and bring it before the Planning Commission and the Board to be reordained.

Mr. McGlennon asked if this met the financial needs of Ford's Colony.

Mr. Rogers stated that he understood from Mr. Geddy that it would.

Mr. Geddy stated that it would.

Mr. Icenhour asked to have the emergency ordinance separate.

Ms. Jones made a motion to adopt the emergency ordinance for AFD withdrawal.

Mr. McGlennon stated that he did not believe the conditions were present to warrant the adoption of an emergency ordinance, and he believed that it was more logical to hold a proper public hearing process.

Mr. Goodson stated that the applicant should not be penalized for the error of staff, and he stated that the AFD withdrawal was part of the application through the entire process.

Ms. Jones stated that she agreed with Mr. Goodson and stated though she was hesitant, she respected the citizen involvement and the public process it had gone through. It was not ideal and it was an oversight of staff, but do not feel it necessary to hold up the applicant on this item. She stated that the longer it takes regardless of the application, it is more expensive. She stated her support for the temporary ordinance.

Mr. Icenhour stated that it was called an emergency ordinance, and stated that this provided great latitude to the Board for its interpretation of need. He asked how many times an emergency ordinance was used and for what purposes.

Mr. Rogers stated that the last one was on outdoor burning, and that there was another occasion based on a public hearing ad issue in the 1990s.

Mr. Icenhour asked for more information about the issue in the 1990s.

Mr. Rogers stated that it was a similar circumstance due to a public hearing ad problem.

Mr. Icenhour stated that it was given for emergency purposes and this was not viewed as an emergency. He stated that he was not in support of it and he stated the AFD withdrawal was done correctly through the AFD committee, the Planning Commission, and the Board agenda. He said the missing item was an important procedural step to notify the public to meet the requirements of State Code. He stated that if the emergency ordinance moved forward, there was an issue of notification. He stated the outcome did not change, but there would be an impact on the citizens due to the inconsistency of the notification for certain cases. He said that this would send a bad message about the value of the process and the input, and that he would not support it.

Mr. Goodson stated this demonstrates that if the staff makes a mistake, it would be rectified.

Ms. Jones stated that it was important to clarify that if staff could rectify a mistake, it would be done.

Mr. Icenhour stated that there was responsibility on the hands of staff, but the applicant also has counsel that could have come to this conclusion.

Ms. Jones stated her appreciation for Mr. Icenhour noticing this ahead of time.

On a roll call vote, the vote was: AYE: Jones, Kennedy, Goodson (3). NAY: Icenhour, McGlennon (2).

The emergency ordinance was adopted.

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

Mr. Icenhour asked Mr. Geddy about proffering a building height of 38 feet in relation to the proffers with Springhill.

Mr. Geddy stated this would be a 48-foot building as 38-feet would be a two-story building.

Mr. Icenhour asked if he was willing to proffer a 48-foot building height.

Mr. Geddy stated that they would likely agree to 50 feet to allow for flexibility.

Mr. Icenhour asked about proffering 50 feet for the building height.

Mr. Geddy stated that they could proffer a height of 50 feet.

Mr. Icenhour asked about the emergency entrance and stated that the proffers were clear that if VDOT approved the turn lanes, this could be a normal use entrance. He said that the public should have an opportunity for a public hearing on that. He asked the possibility that if this came to pass it would come back to the Board for approval.

Mr. Geddy stated that he understood that it would come before VDOT, the DRC, and the Planning Commission in a public process to allow Springhill and everyone interested to speak on this.

Mr. Icenhour asked if he was willing to proffer coming back before the Board.

Mr. Geddy stated he was not.

Mr. McGlennon asked why not rezone the land to R-5 zoning.

Mr. Geddy stated that it was considered, but Realtec has spent 25 years building up this master plan and it was important to define it as part of the master plan.

Mr. Icenhour asked why this was when 921 people in Ford's Colony cited concern with having the facility be part of the residential community of Ford's Colony.

Mr. Geddy stated that it was analyzed as an R-5 and through discussions an agreement was made about the ability to annex new owners into the HOA without consent.

Mr. Icenhour commented on other proffers such as the \$447,000 proffer for News Road improvements. He asked about the amount of the credit for turn lanes.

Mr. Geddy stated that would be \$125,000.

Mr. Icenhour asked about proffer 19 for a watershed study at Cold Spring Swamp, and the density on undeveloped parcels.

Mr. Geddy stated that there were two undeveloped parcels, with Powhatan Secondary assumed to be low density residential, and the WindsorMeade piece to be multifamily residential.

Mr. Icenhour asked the level of water flow used to determine the adequate drainage for the project.

Mr. Geddy stated 50 and 100 year storm levels were used.

Mr. Icenhour stated that if the study warranted drainage work, it was not proffered.

Mr. Geddy stated that was the purpose of the \$447,000 for improvements.

Mr. Icenhour asked if there was an estimate.

Mr. Geddy stated that there was not at this time.

Ms. Jones commented on the use of 50-and 100-year storm water levels, and asked about increasing that due to capacity of culverts. She asked about doing the study at 500-year storm water levels.

Mr. Mulhare stated that VDOT's standard would be a 50-year storm level for this type of road, and they would do the work for 100-year storm levels, but it was possible to evaluate the 500-year storm levels and share them with the County.

Ms. Jones asked about Mr. Oyer's question regarding JCSA and the water supply.

Mr. German stated that the JCSA was asked to look at the application and evaluated it in terms of availability and proffer amounts from the applicant for infrastructure improvements.

Mr. McGlennon asked if the calculation included some of the cost from the Newport News Water Works Project Development Agreement.

Mr. German stated that he was unaware as JCSA provided a lump-sum estimate, but it was discussed that the water would be available to support this project, and if it was a comparable size housing development it would use more water and irrigation than a CCRC.

Mr. Rogers stated that on page 82 and 83 there was water and sewer analysis and the capacity question is that the proffer for water was for new capacity and connection fees, not infrastructure.

Mr. McGlennon asked how fixtures would be assessed since these are not residences.

Mr. Rogers stated that there was a water meter that was sized, and noted there was a policy related to condominiums and multiple dwelling units, and this may qualify under that policy. He said that JCSA was still collecting a fee for each connection. He said that he was unsure about beds in the nursing home, which may be assessed as a business, but for independent living it would be collected as if they were a single unit.

Mr. McGlennon stated that the value of the public hearing was diminished and the Board was hearing this case for the first time tonight and have gotten new questions. He stated that there was an opportunity to correct this, and the Board could adopt this resolution at the next meeting and still meet requirements if there were additional questions. He stated his position was that it was acceptable as a use; his concern was the scale of development on this parcel. He stated this was a significant growth accelerator, and that there needed to be a healthy rate of growth. He stated his opposition.

Mr. Icenhour stated that there was no issue with the use. The issues have been whether it should be done on the master plan and the appropriate density. He stated there were issues with interpretation of the County Code. He stated that the Comprehensive Plan defines low density residential unless it is interpreted differently. He stated that he would support this if it were less 100 units to be comparable to other surrounding areas. He stated that 739 units comprised 370,000,000 square feet, which was a very large development on News Road. He stated there could be additional master plan changes to expand the R-4 again. He stated that Springhill was not taken into consideration as seriously as other adjacent developments. He stated that he could not support the item.

Mr. Goodson stated that this is a demand of the community as the other CCRCs were close or at capacity. He stated this was an appropriate use and less intensive based on what could be done by right. He stated that staff was given clear direction to staff, and that this was not the same as single-family residences.

He stated that if there needed to be a way to devise density in these units, it should be done. He stated that independent living unit should be defined as a unit, but assisted living should be defined differently. He stated his support for the application.

Ms. Jones stated that she initially had significant concerns based on the concerns of scale and compatibility and the density. She stated that she met on July 1, 2008, with Mr. Geddy and Mr. Mulhare to review the most current plans. She stated that on April 14, 2008, she met with Powhatan Secondary Traffic Study Task Force with their concerns, and on May 1, 2008, she met with Monticello Woods, and the applicant responded to these concerns and took interest seriously. She stated that News Road needed to be studied for the upcoming Comprehensive Plan update. She stated that the calculation of density was a concern and commented that the skilled nursing bed calculation was not defined. She stated that she would support looking at other localities in this regard. She stated that 61 percent of the site was designated as buffer areas, and noted that the environmental practices were extraordinary and warranted the increased density. She stated it was a fiscal opportunity for the community, and that she understood the concerns about growth and felt that this was responsible growth management. She stated her support for this application.

Mr. Kennedy stated that the applicant has deferred and addressed the needs that were voiced by the citizens. He commented that the environmental record was outstanding, and that this project brought new ideas to the County, and the developer was vested in the community. He stated his support for the application, and his concern for the procedural mistake, and he felt that it should be corrected. He stated he did not want to shift the blame.

On a roll call vote, the vote was: AYE: Jones, Kennedy, Goodson (3). NAY: Icenhour, McGlennon (2).

RESOLUTION

CASE NO. Z-0008-2007/MP-0006-2007. THE VILLAGE AT FORD'S COLONY

WHEREAS, in accordance with § 15.2-2204 of the Code of Virginia, 1950, as amended, and Section 24-15 of the James City County Zoning Ordinance, a public hearing was advertised, adjoining property owners notified, and a hearing scheduled on Zoning Case No. 0008-2007, with Master Plan No. 0006-2007, for rezoning 180.79 acres from a zoning of R-8, Rural Residential, to R-4, Residential Planned Community, with proffers, to accommodate the creation of The Village at Ford's Colony, a Continuing Care Retirement Community (CCRC); and

WHEREAS, this proposal includes the amendment of the existing Ford's Colony Master Plan to add the CCRC to the Master Plan as Section 37 of Ford's Colony; and

WHEREAS, the property to be rezoned is located at 3889 News Road, and can be further identified as James City County Real Estate Tax Parcel ID No. 3730100004; and

WHEREAS, the Agricultural and Forestal District (AFD) Advisory Committee met on May 5, 2008, and recommended that the property be withdrawn from the Gordon Creek Agricultural and Forestal District, by a vote of 4 to 2; and

WHEREAS, the Planning Commission of James City County, following its public hearing on June 4, 2008, recommended approval, by a vote of 4 to 3.

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

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-0008-2007/MP-0006-2007, amending the existing Master Plan of Ford's Colony, approving the rezoning of the subject property, allowing for the withdrawal of the subject property from the Gordon Creek Agricultural and Forestal District, and allowing for the construction of the proposed CCRC, as outlined in the Master Plan and proffers, and accepts the associated voluntary proffers.

Mr. Goodson asked to move up Board Consideration Item No. 2.

2. Requesting a Change in the Limited Access Line of Route 199 to Accommodate Improvements to the Route 199/Route 60 Interchange

Mr. Wanner stated that this was a resolution requesting a change in the limited access line to accommodate improvements to the Route 199/Route 60 Interchange due to the development at the Quarterpath area to improve the geometry of the to accommodate additional traffic generated by development. This required approval by the Commonwealth Transportation Board (CTB) after Hampton Roads District. Timmons Plan shows the change to the limited access line, which was not a new break, but instead a reconfiguration of the ramps. He stated the property was located in the County, and staff was working with the City of Williamsburg and VDOT. He said the organizations collectively support this and the City of Williamsburg had adopted a similar resolution.

Mr. McGlennon asked if it was from Interstate 64 on Route 199 at the exit at Busch Gardens.

Mr. Porter demonstrated the line on the map.

Mr. Goodson stated that at this point there is a tight curve and this would extend the curve.

Mr. Wanner stated that Riverside has agreed to donate the land and there is no cost to the County.

Mr. McGlennon stated that there would be some cost for signalization.

Mr. Wanner stated that when the development continues in the City of Williamsburg and the County, there would be traffic improvements.

Mr. McGlennon made a motion to adopt the resolution.

Mr. Goodson noted that there were people in the audience representing Quarterpath at Williamsburg and VDOT.

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

RESOLUTION

REQUESTING A CHANGE IN THE LIMITED ACCESS LINE OF ROUTE 199 TO ACCOMMODATE IMPROVEMENTS TO THE ROUTE 199/ROUTE 60 INTERCHANGE

WHEREAS, Riverside Healthcare Association, Inc. has initiated construction plans for the development of Quarterpath at Williamsburg located in the City of Williamsburg and James City County; and

WHEREAS, Riverside Healthcare Association, Inc., having identified certain existing deficiencies in the functioning of the Route 199/Route 60 interchange, has expressed a desire to enhance said functioning to correct existing traffic management issues and to better accommodate for its anticipated development of the Quarterpath at Williamsburg project, and has offered to pay for improvements to the interchange that necessitates a change in the Route 199 limited access line; and

WHEREAS, Riverside Healthcare Association, Inc. has paid for the development of a plan of improvements to the Route 199/Route 60 interchange that includes extension of Loop B and Ramp B of the interchange in accordance with the design criteria of A Policy on Geometric Design of Highways and Streets, published by the American Association of State Highway and Transportation Officials (AASHTO) and shown on "Route 199 and Route 60 Interchange (Ramp B and Loop B) Designed Per Minimum AASHTO Criteria" by the Timmons Group, dated May 8, 2008, (i.e., the Timmons Plan); and

WHEREAS, the proposed extension of Loop B and Ramp B requires an expansion of the Route 199 limited access area; and

WHEREAS, Riverside Healthcare Association, Inc. has agreed to donate the land required for the extension of Loop B and Ramp B, and the expansion of the Route 199 limited access area; and

WHEREAS, the required expansion of the Route 199 limited access area does not change the limits of limited access control on Route 199 or Route 60, and there is no reduction in limited control by the Commonwealth, nor is there any new break in limited access; and

WHEREAS, the Timmons Plan for the Route 199/Route 60 interchange will alleviate existing traffic problems and interchange function deficiencies, and accommodate planned development on the Route 60 corridor in James City County which includes Quarterpath at Williamsburg; and

WHEREAS, all costs of constructing the Timmons Plan will be paid by Riverside Healthcare Association, Inc., with no expense to the Commonwealth to provide this appreciable enhancement for the traveling public.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby request approval of the change in limited access to accommodate the Timmons Plan, including any subsequent modifications thereto as may be jointly approved by the Williamsburg City Manager and the James City County Administrator for improvements to the Route 199/Route 60 interchange.

NOW, THEREFORE, BE IT FURTHER RESOLVED that the Board of Supervisors of James City County, Virginia, hereby requests the Virginia Department of Transportation and the Commonwealth Transportation Board to proceed expeditiously with review of this privately funded improvement to the Route 199/Route 60 interchange.

2. Case No. Z-1-2008/MP-01-2008/SUP-06-2008/HW-02-2008. St. Olaf Catholic Church

Mr. Porter stated that the applicant has requested a deferral for this Item until July 22, 2008.

Staff recommended deferral.

Mr. Goodson opened the Public Hearing.

As no one wished to speak to this item, Mr. Goodson continued the Public Hearing.

The Board deferred this item until July 22, 2008.

3. HW-0003-2008. 9th Elementary/4th Middle School Athletic Field Lighting

Ms. Leanne Reidenbach, Planner, stated that Mr. Aaron Small of AES Consulting Engineers, on behalf of James City County, has requested a height limitation waiver from the Board of Supervisors to construct 14 70-foot-tall light poles and ten 80-foot-tall light poles which will be used to illuminate new recreation facilities (two softball fields, one baseball field, and four multiuse fields) at the 4th middle/9th elementary schools. On property zoned PL, structures may be constructed up to 60 feet; however, structures in excess of 60 feet may be constructed only if specifically approved by the Board of Supervisors. The proposed use for the schools and their associated recreation facilities has been previously approved for this site with SUP-0030-2007, so all that is in question with this application is the height of light poles for this facility. The site plan for these facilities is currently under review by the County and other reviewing agencies.

Staff found the proposal consistent with the requirements stated under Section 24-535.9 of the Zoning Ordinance.

Staff recommended approval of the resolution.

Mr. Goodson stated that taller lights eliminate impact.

Ms. Reidenbach stated that this was correct and they could share light poles.

Mr. McGlennon stated that this was the same as other light poles.

Ms. Reidenbach stated that this was correct.

Mr. Kennedy stated that security camera use under these lights could be considered

Mr. Wanner stated that staff could investigate this.

Mr. Goodson asked if these light poles were available for cell tower locations.

Ms. Reidenbach stated that it would need to be higher, which would require a height waiver as in a recent case at the Recreation Center.

Mr. Goodson opened the Public Hearing.

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

Mr. Kennedy made a motion to adopt the resolution.

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

RESOLUTION

CASE NO. HW-0003-2008. 4TH MIDDLE SCHOOL/9TH ELEMENTARY SCHOOL

ATHLETIC FIELD LIGHTING

WHEREAS, Mr. Aaron Small of AES Consulting Engineers on behalf of James City County has applied for a height limitation waiver to allow for the construction of fourteen 70-foot-tall and ten 80-foot-tall light poles; and

WHEREAS, all fields will be illuminated with Musco Light Structure Green outdoor sports lighting or other lighting of substantially equivalent or superior offsite spill light control characteristics; and

WHEREAS, a public hearing was advertised, adjoining property owners notified, and a hearing scheduled on Case No. HW-0003-2008; and

WHEREAS, the light poles will be located on property zoned PL, Public Lands, and is further identified as a portion of James City County Real Estate Tax Map No. 3010100009; and

WHEREAS, the Board of Supervisors finds that the requirements of Section 24-535.9 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-0003-2008 which permits the construction of fourteen 70-foot-tall and ten 80-foot-tall light poles in the general locations shown on the plan, drawn by AES titled "Sports Lighting Photometric Plan," and dated December 26, 2007.

4. SUP-0011-2008. Williamsburg Dog

Ms. Leanne Reidenbach, Planner, stated that the applicant has requested a deferral for this item until August 12, 2008.

Mr. Goodson opened the Public Hearing.

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

The Board deferred this item until August 12, 2008.

5. Lease of Property at 5301 Longhill Road

Mr. Adam Kinsman, Deputy County Attorney, stated that this lease provided approximately 900 feet to AT&T for a wireless communication facility on a light pole at 4501 Longhill Road at the James City/Williamsburg Community Center. He stated that the County would lease the property for up to \$40,000. Staff recommended approval of the resolution.

Mr. Goodson opened the Public Hearing.

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

Mr. McGlennon made a motion to adopt the resolution.

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

RESOLUTION

LEASE OF PROPERTY AT 5301 LONGHILL ROAD

WHEREAS, James City County owns a parcel of property located at 5301 Longhill Road and further identified as James City County Real Estate Tax Map No. 3910100153 (the "Property"); and

WHEREAS, at its meeting on June 10, 2008, the Board of Supervisors approved a Special Use Permit (the "SUP") for the erection of a 138-foot-tall wireless communication facility on the Property; and

WHEREAS, AT&T wishes to lease a portion of the Property in order to erect a wireless communication facility on the Property pursuant to the conditions contained in the SUP.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of James City County, Virginia, that the County Administrator is hereby authorized and directed to execute those documents necessary to lease approximately 900 square feet of property for the erection of a communication tower and related structures on the Property in accordance with SUP-0005-2008.

G. BOARD CONSIDERATIONS

1. Revised Fiscal Year 2009 Virginia Department of Transportation (VDOT) Revenue Sharing Program Request

Mr. Marvin Sowers stated that the Board originally requested \$1 million for revenue sharing; but since then, VDOT had revised the revenue sharing guidelines and unfortunately the new guidelines no longer favored the large projects requested by the County. He stated that instead they favored those projects able to be done in a short period of time, and the requested projects were unlikely to get funded. He said that the CTB also disqualified landscaping projects, and staff could only identify a small number that met the new criteria. He said that staff had one recommendation for the revenue sharing project, which was the Old News Road

reconstruction between Monticello Avenue and Powhatan Parkway, currently part of the approved secondary road plan. He stated that Revenue Sharing Funds could accelerate this project by four years. He recommended approval of the resolution.

Mr. Icenhour asked if VDOT could accelerate the project if the County received the matching funds.

Mr. Sowers stated that was the intention.

Mr. Icenhour asked if there were public hearing requirements.

Mr. Sowers stated that there was likely not, unless the project would require acquisition of right-of-way. He stated that the County would have to survey to determine that.

Mr. Wanner stated that a hearing was held during the Secondary Road Plan hearing.

Mr. Icenhour stated that he did not know if there would be opposition from those who live on that road due to an increase in traffic.

Mr. Wanner stated that there may be drainage improvements, and that the model is what the Board approved for the reconstruction on Ironbound Road. He stated that it could be accelerated to be done sooner and cost less, and that the public would be aware of the project.

Mr. McGlennon asked if this was something to be addressed in a legislative package.

Mr. Wanner stated that it should, particularly in relation to the landscaping projects.

Mr. Icenhour made a motion to adopt the resolution.

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

RESOLUTION

REVISED FISCAL YEAR 2009 VIRGINIA DEPARTMENT OF TRANSPORTATION (VDOT)

REVENUE SHARING PROGRAM REQUEST

WHEREAS, the Board of Supervisors of James City County by resolution on February 26, 2008 supported its application to the Fiscal Year (FY) 2009 Revenue Sharing Program in accordance with VDOT's application deadline; and

WHEREAS, the 2008 Virginia General Assembly subsequently revised the FY 2009 Revenue Sharing Program criteria necessitating reconsideration of said application; and

WHEREAS, upon consideration of the revised Revenue Sharing Program criteria, the Board of Supervisors of James City County desires to submit an amended application requesting \$235,000 of Revenue Sharing funds through VDOT to the FY 2009 Revenue Sharing Program; and

WHEREAS, the County will allocate \$250,000 to match the Revenue Sharing Program funds; and

WHEREAS, the combined County and State funding totaling \$485,000 is requested to be used to fund the reconstruction of Old News Road; and

WHEREAS, the Revenue Sharing Program has historically been a very valuable resource to address James City County's most important highway improvement needs; and

WHEREAS, the revised FY 2009 Revenue Sharing Program criteria now places significant and unnecessary constraints on project scale and on expenditure timelines.

NOW, THEREFORE, BE IT RESOLVED, by the Board of Supervisors of James City County, Virginia, that the FY 2009 Revenue Sharing Program has been substantially changed to where its ability to address many of the most critical highway needs of James City County or of its citizens has been substantially impaired.

NOW, THEREFORE, BE IT FURTHER RESOLVED that the Board of Supervisors of James City County, Virginia, that since said Revenue Sharing Program will significantly improve the safety of Old News Road, the Board of Supervisors hereby supports this application for an allocation of \$235,000 through the FY 2009 Revenue Sharing Program and will contribute \$250,000.

H. PUBLIC COMMENT - None

I. REPORTS OF THE COUNTY ADMINISTRATOR

Mr. Wanner stated that when the Board completed its business it should adjourn to 4 p.m. on July 22, 2008, for a work session on the Comprehensive Plan Update process, and County Administrator's annual evaluation.

J. BOARD REQUESTS AND DIRECTIVES

Mr. Goodson recommended that the closed session for the appointments to the Economic Development Authority be done at the next meeting.

Mr. Kennedy commented on the Prince William County disclosure in the Daily Press, and asked the County Administrator to discuss this again and come to a consensus.

Mr. McGlennon corrected that it was Loudoun County. He asked if it included a ban on contributions.

Mr. Wanner stated that he would like to tie this discussion to that on the Code of Ethics, and provide for a work session on these items. He stated that the reason this discussion was delayed was because it needed input from all boards and commissions to help with the Board's deliberations.

Ms. Jones asked for the process of the Stormwater Citizen Committee and asked when it would be officially formed.

Mr. Wanner stated that Ms. Geissler put a proposal to the Board to receive input. He stated that the Board could take action on this at its meeting on July 22, 2008.

Ms. Jones noted the Hurricane Readiness Guide in the newspaper, and noted James City County provisions listed in the paper.

Mr. Goodson stated that there was significant concern in the community about a hostile takeover of Anheuser Busch by InBev. He stated that there was not a great deal that a local Board of Supervisors could do, but asked if the Board would like to issue a resolution of support for American ownership of Anheuser Busch.

Mr. McGlennon stated that it should go beyond that and express the concerns of the Board to representatives in Washington, and express the impact on the community and the little discussion given to the theme parks, as Busch Gardens is an important fiscal contributor to the County.

Mr. Goodson stated that instead of a resolution there should be a letter from the Chairman with those issues.


Mr. McGlennon stated his agreement.

L. ADJOURNMENT to 4 p.m. on July 22, 2008

Mr. McGlennon made a motion to adjourn.

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

At 11:59 p.m. Mr. Goodson adjourned the Board to 4 p.m. on July 22, 2008.


Sanford B. Wanner
Clerk to the Board

ADOPTED

JUL 8 2008

EMERGENCY ORDINANCE NO. 170A-15

BOARD OF SUPERVISORS
JAMES CITY COUNTY
VIRGINIA

AN EMERGENCY ORDINANCE TO APPROVE THE WITHDRAWAL OF

A PARCEL OF PROPERTY KNOWN AS THE WARBURTON TRACT FROM THE

GORDON'S CREEK AGRICULTURAL AND FORESTAL DISTRICT

WHEREAS, Mr. Vernon M. Geddy, III has filed a request with the Board of Supervisors of James City County (the "Board of Supervisors") on behalf of Realtec, Inc. to remove the 180.7-acre "Warburton Tract" located at 3889 News Road and further identified as James City County Real Estate Tax Map No. 3730100004 (the "Property") from the Gordon's Creek Agricultural and Forestal District (the "Application"); and

WHEREAS, at its May 5, 2008, meeting, the James City County Agricultural and Forestal District (AFD) Advisory Committee recommended approval of the Application by a vote of 4 to 2; and

WHEREAS, at its meeting on July 2, 2008, the Planning Commission of James City County (the "Planning Commission") recommended approval of the Application by a vote of 4 to 3; and

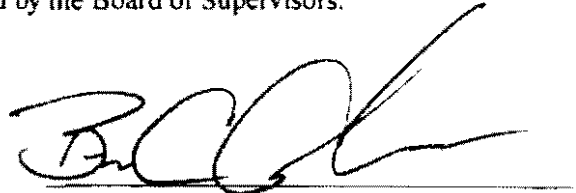
WHEREAS, subsequent to the Planning Commission's meeting, it was discovered that the Application was not properly advertised for either the July 2, 2008, Planning Commission meeting or the July 8, 2008 Board of Supervisors meeting; and

WHEREAS, the Board of Supervisors wishes to consider the pending rezoning and master plan applications submitted by Realtec, Inc. at its meeting on July 8, 2008, but cannot do so until the Property is removed from the AFD; and

WHEREAS, the Board of Supervisors finds that the withdrawal request conforms to the applicable Board of Supervisors policy regarding removal of lands from an AFD within the Primary Service Area, which policy is set forth in the resolution dated September 24, 1996 and entitled "Withdrawal of Lands from the Gordon's Creek Agricultural and Forestal Districts Within the Primary Service Area."

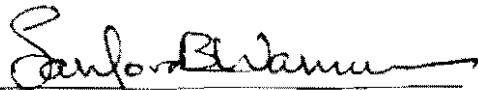
NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of James City County, Virginia, that pursuant to the authority granted by Section 15.2-1427(F) of the Code of Virginia, 1950, as amended, the Board of Supervisors of James City County, Virginia hereby removes the 180.7-acre property commonly known as the Warburton Tract, located at 3889 News Road and further identified as James City County Real Estate Tax Parcel No. 3730100004 from the Gordon's Creek Agricultural and Forestal District.

BE IT FURTHER RESOLVED by the Board of Supervisors of James City County, Virginia, that an emergency is hereby declared to exist and this ordinance shall be effective immediately and for a period of 60 days unless readopted by the Board of Supervisors.



Bruce C. Goodson
Chairman, Board of Supervisors

ATTEST:



Sanford B. Wanner
Clerk to the Board

SUPERVISOR	VOTE
ICENHOUR	NAY
MCGLENNON	NAY
JONES	AYE
KENNEDY	AYE
GOODSON	AYE

Adopted by the Board of Supervisors of James City County, Virginia, this 8th day of July, 2008.

EmergencyOrd_res

080017656

AMENDED AND RESTATED FORD'S
COLONY PROFFERS

These AMENDED and RESTATED FORD'S COLONY PROFFERS are made this 10th day of June, 2008 by REALTEC INCORPORATED, a North Carolina corporation (together with its successors in title, the "Owner").

RECITALS

A. Owner is the developer of the Ford's Colony at Williamsburg development containing approximately 2,962 acres and which is zoned R-4, Residential Planned Community, with proffers, and subject to a Master Plan heretofore approved by James City County (the "Existing Master Plan").

B. In connection with prior Master Plan amendments, Owner has entered into and James City County has accepted Amended and Restated Ford's Colony Proffers dated as of January 6, 2005 and recorded in the Clerk's Office of the Circuit Court for the City of Williamsburg and County of James City as Instrument No. 050001465 and Richard J. Ford has entered into and James City County has accepted Richard J. Ford/Ford's Colony Proffers dated as of September 29, 1995 and recorded in the Clerk's Office of the Circuit Court for the City of Williamsburg and County of James City in James City Deed Book 757 at page 529 (together, the "Existing Proffers"). The property now subject to the Existing Proffers and Existing Master Plan is hereinafter called the "Existing Property".

C. Owner has applied to amend its Existing Master Plan to include as Section 37 of Ford's Colony a tract of land with an address of 3889 News Road, Parcel ID# 3730100004, containing approximately 180 acres, which property is more particularly described on Exhibit A (the "Additional Property") and to rezone the Additional Property from R-8 to R-4, with proffers.

Prepared by: Vernon M. Geddy, III, Esq., 1177 Jamestown Rd., Williamsburg, VA 23185 (757- 220-6500)

Return to: Adam R. Kinsman, Deputy County Attorney, 101-C Mounts Bay Rd., Williamsburg, VA 23185 (757-253-6612)

D. Owner has submitted to the County a master plan entitled "Master Plan for Rezoning of The Village at Ford's Colony at Williamsburg for Realtec Incorporated" prepared by AES Consulting Engineers dated July 20, 2007, last revised May 20, 2008 (the "Amended Master Plan") in accordance with the County Zoning Ordinance.

E. Owner desires to offer to the County certain conditions on the development of the Property not generally applicable to land zoned R-4.

F. In consideration of the approval of the amendment of its Amended Master Plan and the rezoning, Owner desires to amend and restate the Existing Proffers as set forth below. If the requested rezoning and amendment of Owner's Existing Master Plan is not approved by James City County, these Amended and Restated Ford's Colony Proffers shall be void and the Existing Proffers shall remain unchanged, in full force and effect.

RESTATEMENT

1. **Restatement.** The Existing Proffers are hereby restated and incorporated herein by reference and shall continue to apply only to the Existing Property.

PROFFERS APPLICABLE TO THE ADDITIONAL PROPERTY

The following proffers apply only to the Additional Property:

2. **Master Plan.** The Additional Property shall be developed generally as shown and set out on sheets 4 through 8 of the Amended Master Plan. Final plans (as defined in Section 24-279 of the Zoning Ordinance) may vary from the Amended Master Plan to the extent permitted by Section 24-279 of the Zoning Ordinance.

3. **Density.** (a) There shall be no more than 596 independent living dwelling units ("dwelling units"), 83 assisted living/memory care rooms and 60 skilled nursing beds (together, the "rooms/beds") and two AG Beds (as defined in Proffer 22) on the Additional Property. The

terms "assisted living room" or "room" shall mean a non-medical residential room in the assisted living facility area of the continuing care retirement community licensed in accordance with Sections 63.2-1800 et seq. of the Virginia Code and Sections 22 VAC 40-72 et seq. of the Virginia Administrative Code where adults who are aged, infirm or disabled are provided personal and health care services and 24-hour supervision and assistance. Rooms must meet the standards set forth in 22 VAC 40-72-730 and 880. Typically rooms are occupied by one person. No more than two persons may occupy a room and only persons directly related by blood or marriage may occupy the same room.

(b) All dwelling units developed on the Additional Property shall be occupied by persons eighteen (18) years of age or older in accordance with applicable federal and state laws and regulations, including but not limited to: the Fair Housing Act, 42 U.S.C. 3601 et seq. and the exemption therefrom provided by 42 U.S.C. 3607(b)(2)(C) regarding discrimination based on familial status; the Housing for Older Persons Act of 1995, 46 U.S.C. 3601 et seq.; the Virginia Fair Housing Law Va. Code 36-96.1 et seq.; any regulations adopted pursuant to the foregoing; any judicial decisions arising thereunder; any exemptions and/or qualifications thereunder; and any amendments to the foregoing as now or may hereafter exist. Specific provisions of the age restriction described above and provisions for enforcement of same shall be set forth in a recorded document which shall be subject to the review and approval of the County Attorney prior to issuance of the first building permit for dwelling units on the Additional Property.

(c) Any accessory commercial uses located on the Additional Property, such as bank offices, beauty salons and barbershops, shall be located and designed to serve residents of the Additional Property as verified by the Director of Planning.

4. Water Conservation. (a) The Owner shall be responsible for developing water

conservation standards to be submitted to and approved by the James City Service Authority ("JCSA") and subsequently for enforcing these standards. The standards shall address such water conservation measures as limitations on the installation and use of irrigation systems and irrigation wells, the use of drought resistant native and other adopted low water use landscaping materials and warm season turf on common areas in areas with appropriate growing conditions for such turf and the use of water conserving fixtures and appliances to promote water conservation and minimize the use of public water resources. The standards shall be approved by the JCSA prior to final subdivision or site plan approval.

(b) If the Owner desires to have outdoor watering of the Additional Property it shall provide water for irrigation utilizing surface water collection from the surface water ponds ("Impoundments") or other collection devices such as cisterns or rain barrels ("Collection Devices"). In the design phase, the Owner and design engineer shall take into consideration the design of stormwater systems that can be used to collect stormwater for outdoor water use for the development. In no circumstance shall the JCSA public water supply be used for irrigation purposes, except as otherwise provided by this condition. If the Owner demonstrates to the satisfaction and approval of the General Manager of JCSA through drainage area studies and irrigation water budgets that the Impoundments and Collection Devices cannot provide sufficient water for all irrigation, the General Manager of the JCSA may, in writing, approve a shallow (less than 100 feet) irrigation well to supplement the water provided by the Impoundments and the Collection Devices.

5. Contributions for Community Impacts. (a) A contribution of \$1,000 for each dwelling unit on the Additional Property shall be made to the County for fire, police or emergency services, library uses, and other public facilities, uses or infrastructure.

(b) A contribution of \$250.00 for each room/bed (excluding the AG Beds) on the Additional Property shall be made to the County for fire, police or emergency services uses.

(c) A contribution of \$870.00 for each dwelling unit and \$435.00 for each room/bed on the Additional Property shall be made to the JCSEA for water system improvements.

(d) A one-time cash contribution in the amount of \$36,000.00 shall be made to the County prior to the County being obligated to issue any certificates of occupancy for dwelling units/rooms/beds on the Additional Property for off-site improvements at the News Road/Monticello Avenue intersection and in the Monticello Avenue corridor.

(e) A contribution of \$750.00 for each dwelling unit on the Additional Property, subject to a credit for the costs of engineering and construction related to the improvements proffered by Owner in Section 6(b) calculated as set forth below, shall be made to the County for improvements to the News Road/Powhatan Secondary intersection, flood control measures where News Road crosses Cold Spring swamp, improvements at the News Road/Centerville Road intersection and other off-site road improvements in the News Road corridor. Owner shall receive a credit in an amount equal to its actual costs of the engineering and construction of the improvements proffered by Owner in Section 6(b) against the initial per unit contributions proffered under paragraph (d) of this Section (the "Credit Amount"). If construction of such improvements is not complete at the time the initial per unit contributions are due under paragraph (e) of this Section, the Credit Amount shall equal an engineer's estimate of such costs submitted by the Owner and approved by the Director of Planning. The Credit Amount divided by \$750.00 is the number of dwelling units for which the Credit Amount offsets the cash contribution otherwise due and payable. After application of the Credit Amount, the \$750.00 per dwelling unit cash contribution shall be payable on all subsequent dwelling units on the

Additional Property. Owner shall provide the County with copies of invoices and other supporting documentation of the costs of the improvements. If the Credit Amount is based on an agreed upon costs estimate, it shall be adjusted to equal the final actual costs of engineering and construction ("Actual Costs"). If the Credit Amount is more than the Actual Costs, Owner shall pay to the County an amount equal to the difference. If the Credit Amount is less than the Actual Costs, Owner shall receive an additional credit equal to the difference between the Actual Costs and the Credit Amount at the time the next cash contributions are due this paragraph.

(f) The contributions described above in paragraphs (a), (b), (c) and (e) shall be payable for each dwelling unit or room/bed, as applicable, on the Additional Property at the time of final subdivision or site plan approval for the residential unit or non-residential building unless the County adopts a policy calling for the payment of cash proffers at a later time in the development process, in which case the contributions described in paragraphs (a), (b), (c) and (e) above shall be payable at the time specified in the policy. In the event dwelling units, such as townhouse units, require both a site plan and subdivision plat, the contributions described above shall be paid at the time of final subdivision plat approval.

(g) A one-time cash contribution shall be made to JCSA in the amount of \$60,000.00 prior to the County being obligated to issue any certificates of occupancy for dwelling units/rooms/beds on the Additional Property for use by JCSA for off-site sewer improvements.

(h) The per unit/room/bed contribution amounts shall consist of the amounts set forth in the above paragraphs plus any adjustments included in the Marshall and Swift Building Costs Index (the "Index") from 2008 to the year a payment is made if payments are made after on or after January 1, 2009. In no event shall the per unit/room/bed contribution be adjusted to a sum less than the amounts set forth in the preceding paragraphs of this Section. In the event that the

Index is not available, a reliable government or other independent publication evaluating information heretofore used in determining the Index (approved in advance by the County Manager of Financial Management Services) shall be relied upon in establishing an inflationary factor for purposes of increasing the per unit/room/bed contribution to approximate the rate of annual inflation in the County.

6. Entrances; Traffic Improvements. (a) At the main entrance into the Additional Property at the intersection of News Road and Firestone Drive, an exclusive left-turn lane from westbound News Road into the Additional Property and an exclusive right-turn lane, including a shoulder bike lane, from eastbound News Road into the Additional Property shall be constructed. A shoulder bike lane along the Additional Property's News Road frontage shall be constructed. The existing southbound left turn lane on Firestone Drive at News Road will be restriped to a shared left and through lane.

(b) Prior to the County issuing final approval on any site or subdivision plan for any dwelling units/rooms/beds on the Additional Property, Owner shall submit plans to the County and Virginia Department of Transportation ("VDOT") for the installation of an exclusive left-turn lane on westbound News Road at the intersection with Powhatan Secondary. Owner will complete construction of the left-turn lane within twelve months of County and VDOT approvals to construct this exclusive left-turn lane. Owner is not responsible for road right of way acquisition or landscape/screening other than stabilization of disturbed soils. The County may elect to accept the cash equivalent contribution outlined in Proffer 5(d), (with any adjustments as may be appropriate as provided for in Proffer 5(g)), in lieu of construction of the turn lane by the Owner, in the event that acquisition of any needed right-of-way proves to be prohibitive. In the event that VDOT constructs this turn lane as part of its Six Year Secondary Road Plan, the

County may elect to divert some or all of the cash equivalent contribution to other road projects in the News Road Corridor, at the News Road/Monticello Avenue intersection, or in the western Monticello Avenue Corridor. Owner shall install or pay for the installation of a traffic signal at the intersection of News Road with Powhatan Secondary at such time as VDOT traffic signal warrants are met and VDOT has approved the installation of such a traffic signal.

(c) The improvements proffered hereby shall be constructed in accordance with VDOT standards. The improvements listed in paragraph (a) shall be completed or all required permits and plans for such approvals shall have been approved by all necessary governmental agencies and their completion bonded in form satisfactory to the County Attorney prior to the issuance of any certificates of occupancy for any building on the Additional Property.

(d) The second entrance to the Additional Property shall be located in the general location shown on the Master Plan and shall be limited by gate to emergency access only unless and until turn lanes approved by VDOT at this entrance have been installed.

(e) Owner shall convey free of charge to VDOT any right of way from the Additional Property necessary for the widening or realignment of News Road within 60 days of a written request for such conveyance together with final plans for the widening or realignment.

(f) Owner shall conduct traffic counts at its entrances prior to the County being obligated to issue certificates of occupancy for more than 247 dwelling units/rooms/beds on the Additional Property and again prior to the County being obligated to issue certificates of occupancy for more than 494 dwelling units/rooms/beds on the Additional Property. If these counts show a trip generation from the Additional Property more than 10% higher than the trip generation projected by the News Road Corridor Traffic Forecast and Analysis dated April 4, 2008 prepared by DRW Consultants, LLC filed with the rezoning application and on file with the Planning Division,

Owner shall submit an updated traffic impact study, including a listing of any entrance or turn lane improvements necessary to accommodate the increased traffic and the appropriate trigger for their construction, for review and approval by the County and VDOT. Owner shall install the necessary improvements, including any warranted traffic signal, as approved by the County and VDOT at the time recommended in the updated approved traffic study.

7. **Archaeology.** A Phase I Archaeological Study for the entire Additional Property shall be submitted to the Director of Planning for review and approval prior to land disturbance. A treatment plan shall be submitted and approved by the Director of Planning for all sites in the Phase I study that are recommended for a Phase II evaluation and/or identified as eligible for inclusion on the National Register of Historic Places. If a Phase II study is undertaken, such a study shall be approved by the Director of Planning and a treatment plan for said sites shall be submitted to, and approved by, the Director of Planning for sites that are determined to be eligible for inclusion on the National Register of Historic Places and/or those sites that require a Phase III study. If in the Phase III study, a site is determined eligible for nomination to the National Register of Historic Places and said site is to be preserved in place, the treatment plan shall include nomination of the site to the National Register of Historic Places. If a Phase III study is undertaken for said sites, such studies shall be approved by the Director of Planning prior to land disturbance within the study areas. All Phase I, Phase II, and Phase III studies shall meet the Virginia Department of Historic Resources' *Guidelines for Preparing Archaeological Resource Management Reports* and the Secretary of the Interior's *Standards and Guidelines for Archaeological Documentation*, as applicable, and shall be conducted under the supervision of a qualified archaeologist who meets the qualifications set forth in the Secretary of the Interior's *Professional Qualification Standards*. All approved treatment plans shall be incorporated into

the plan of development for the Additional Property and the clearing, grading or construction activities thereon.

8. Off-Site Sewer Easements. Upon the request of JCSA, Owner shall grant JCSA utility easements over, across and under the portion of the Additional Property along Powhatan Creek to permit future connections from the gravity sewer on the Additional Property to Tax Parcel 3640100007. The location of the easement shall be determined during the site plan approval process. The easements shall be recorded prior to JCSA issuing a Certificate to Construct.

9. Sustainable Building. The project shall be designed and constructed to obtain at least 200 points under the EarthCraft House Virginia, EarthCraft Multi-Family program certification process and a copy of the project worksheet shall be provided to the Director of Planning prior to the issuance of a certificate of occupancy for buildings in the phase in question.

10. Master Stormwater Management Plan. (a) Owner shall submit to the County a master stormwater management plan for the Additional Property consistent with the Master Stormwater Conceptual Plan prepared by AES Consulting Engineers dated July 20, 2007, last revised April 14, 2008 ("Stormwater Plan") and included in the Master Plan set submitted herewith and on file with the County, including facilities and measures necessary to meet the County's general stormwater management system requirements and the special stormwater criteria applicable in the Powhatan Creek watershed ("SSC") and, in addition, including features and measures over and above those necessary to meet the general requirements and SSC requirements and which will provide at least an additional five SSC credits, which shall include, without limitation, the features and measures listed on the Stormwater Plan subject to the criteria and conditions set forth on the Stormwater Plan. The master stormwater plan shall be approved

by the Environmental Director or his designee prior to the submission of any development plans for the Additional Property. The master stormwater management plan may be revised and/or updated during the development of the Additional Property based on on-site conditions discovered in the field with the prior approval of the Environmental Division. The approved master stormwater management plan, as revised and/or updated, shall be implemented in all development plans for the Additional Property.

(b) Prior to final site plan approval of the first site plan on the Additional Property, Owner shall submit a stream monitoring plan to the Environmental Division for their review and approval including a baseline assessment of the existing condition of the stream segments delineated on sheet 7 of the Master Plan and providing for annual monitoring beginning upon the date of the issuance of the first certificate of occupancy for a building on the Additional Property and continuing for a period of ten years from that date of the geomorphology of such stream segments. If such monitoring indicates the presence of new erosion not shown in the baseline assessment, Owner shall install additional upstream run-off control measures to prevent further erosion as approved by the Environmental Division.

(c) The warehouse building constructed in the area shown on the Master Plan as "Maintenance Area" shall be constructed using "green roof" technology. "Green roof" is defined as a roof which includes vegetation planted in soil or another growing medium spread over a waterproof membrane and may include drainage and/or irrigation systems.

11. **Nutrient Management Plan.** The Owner 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, an agent of the Soil and Water Conservation District or other qualified professional to conduct soil tests and to develop,

based upon the results of the soil tests, customized nutrient management plans (the "Plans") for all common areas within the Additional Property shown on site plans for the Additional Property. The Plans shall be submitted to the County's Environmental Director for his review and approval prior to the issuance of the any certificates of occupancy for units/rooms/beds shown on the site plan. Upon approval, the Owner shall be responsible for ensuring that any nutrients applied to common areas be applied in strict accordance with the Plan.

12. **Private Streets.** All streets and alleys on the Additional Property shall be private and shall be maintained by the Owner.

13. **Lighting.** All light poles on the Additional Property shall not exceed 30 feet in height. All external lights on the Additional Property shall be recessed fixtures with no globe, bulb or lens extending below the casing or otherwise unshielded by the case so that the light source is visible from the side of the fixture. No light spillage defined as 0.1 footcandle or higher shall extend outside the property lines of the Additional Property unless otherwise approved by the Director of Planning. Owner shall submit a lighting plan to the Director of Planning for review and approval for consistency with this Proffer prior to final site plan approval.

14. **Greenway Trail.** Subject to the issuance of all required permits by the County and other agencies as may be needed, Owner shall construct a trail with a minimum eight foot wide travel path with a mulch or other natural surface (which will be open to the general public during daylight hours only), including necessary bridges, if any, generally in the location shown on the Master Plan. In addition, Owner shall grant the County an easement eight feet in width from the centerline of the trail as constructed for public access as described above and the maintenance and improvement of the trail by the County. The exact location of the trail and

greenway easement may be varied with the prior written approval of the Environmental Division. The trail shall be constructed within twelve months of the issuance of necessary permits by the County and other agencies as may be needed.

15. Natural Resources. A natural resource inventory of suitable habitats for S1, S2, S3, G1, G2, or G3 resources as defined in the County's Natural Resources Policy on the Additional Property shall be submitted to the Director of Planning for his/her review and approval prior to the submittal of any development plans for the Additional Property. If the inventory confirms that a natural heritage resource exists, a conservation management plan shall be submitted to and approved by the Director of Planning for the affected area. All inventories and conservation management plans shall meet the Virginia Department of Conservation and Recreation's Division of Natural Resources ("DCR/DNH") standards for preparing such plans, and shall be conducted under the supervision of a qualified biologist as determined by the DCR/DNH or the United States Fish and Wildlife Service. All approved conservation management plans shall be incorporated into the plan of development for the site, and the clearing, grading or construction activities thereon, to the maximum extent possible. Upon approval by the Director of Planning, a mitigation plan may substitute for the incorporation of the conservation management plan into the plan of development for the site. This proffer shall be interpreted in accordance with the County's Natural Resources Policy adopted by the County on July 27, 1999.

16. Public Transit. Owner shall install a bus stop and shelter on News Road adjacent to the main entrance into the Additional Property, with the exact location being subject to the approval of Williamsburg Area Transit ("WAT"), or any successor entity to WAT as may become appropriate. The bus stop shall be installed upon the request of WAT at such time as

WAT provides bus service along News Road to the Additional Property.

17. **Ford's Colony at Williamsburg Homeowners Association.** Owner shall not subject the Additional Property to the Declaration of Protective Covenants, Section II, Ford's Colony at Williamsburg, dated April 2, 1985 ("DPC") or the Bylaws of the Ford's Colony Homeowners Association ("FCHOA"), as amended from time to time ("Bylaws") nor shall owners or residents of units, lots or parcels on the Additional Property be "Owner(s)" as such term is defined in the DPC or the Bylaws or be Members (as defined in the DPC) of the FCHOA.

18. **Recreation.** Owner will provide recreational and social facilities and programs appropriate for residents of a continuing care retirement community, which includes senior adult housing, assisted living beds, and nursing beds, as determined by Owner and generally as described below and in the general locations shown on the Master Plan. Facilities will be both indoor and outdoor and will be managed and maintained on a year round basis by Owner. Hard surface and soft surface trails and sidewalks will be installed for walking and bicycling and shown on the site plan for each phase of the development. The phase one construction shall include an outdoor pool and areas designated for lawn games, and accessible gardens. The phase one main CCRC building will contain terraces and covered porch areas that will be programmed for community social events such as cookouts and concerts and will have benches and chairs to be used during non-programmed time. The phase one main CCRC building will contain a comprehensive wellness center and pool for aerobic and strength conditioning, physical therapy, swimming and water aerobics, rooms for dining, formal lounges and bar, activities such as arts and crafts and woodworking, convenience shopping, health, beauty and other spa features, and a chapel. A multi-purpose facility will be built in conjunction with phase one for social and educational programming with a capacity of approximately 400 people. A private transportation

system will be employed to transport groups to Williamsburg area entertainment venues and shopping. All residents shall have full access to all indoor and outdoor facilities and programming. The dedicated assisted living buildings and skilled nursing care building will feature health care-related exercise areas and indoor and outdoor respite areas.

Associated Functions:

Building A: Lobby, Main Hall, Front Desk, Work Room, Mail Room, Administration, Sales, Security, Living Room, Community Center/Chapel, Library, Card Room, Terrace Room, Deli, Dining Room, Kitchen, Game Room, Crafts, Shop, Movie Auditorium, Bank, Toilets, Beauty/Barber, Business, Wellness/Spa, Pool, Staff Support, Maintenance, Housekeeping, Mechanical, Loading Dock, Receiving and Training

Building B: Lobby, Main Hall, Front Desk, Work Room, Mail Room, Administration, Sales, Security, Living Room, Community Center/Chapel, Library, Card Room, Terrace Room, Deli, Dining Room, Kitchen, Game Room, Crafts, Shop, Movie Auditorium, Bank, Toilets, Beauty/Barber, Business, Wellness/Spa, Pool, Staff Support, Maintenance, Housekeeping, Mechanical, Loading Dock, Receiving and Training, Service

Building C: main community meeting & multi-purpose, terrace, parking

Building D: spa, beauty/barber, arts/crafts, & chapel

19. Cold Spring Swamp Drainage Analysis. Prior to the County being obligated to grant final approval of the first site plan for development on the Additional Property, Owner shall cause a duly licensed professional engineer to prepare and submit to the County an analysis of the Cold Spring swamp drainage basin assuming full development in the drainage basin, subject to the review and approval of the County's Environmental Division Director, evaluating the adequacy of the existing culverts under News Road for use by the County in determining whether or not improvements to the culverts are necessary for flood control purposes.

20. Height Restrictions. No building on the Additional Property shall exceed 60 feet in height (with building height as defined in Section 24-2 of the County Zoning Ordinance) nor have more than four stories above grade. Building P as designated on the Master Plan shall not

exceed 106 feet above sea level (or 38 feet above finished grade) in height (with building height as defined in Section 24-2 of the County Zoning Ordinance). The buildings shown on the Master Plan as Duplexes shall not contain more than one and one-half stories. Building A shall not contain more than three stories or exceed 50 feet above finished grade in height (with building height as defined in Section 24-2 of the County Zoning Ordinance). Building Q shall not contain more than two stories. The buildings shown on the Master Plan as Maintenance, Transportation and Warehouse shall not contain more than two stories.

21. **Building P.** All mechanical equipment and vehicular entrances to underground parking for Building P shall be located on the sides of the building. All mechanical equipment serving Building P shall be screened for sound attenuation purposes by solid walls approved by the Director of Planning. Owner shall install evergreen trees behind Building P pursuant to a landscape plan approved by the Development Review Committee in the site plan review process in order to provide additional screening of the basement level of Building P from the Monticello Woods subdivision.

22. **Social Services.** Owner shall reserve two assisted living beds ("AG Beds") in Phase 2 of the project for individuals receiving auxiliary grants under the Auxiliary Grant Program (the "Program") administered by the Virginia Department of Social Services and shall participate in the Program with respect to the AG Beds. Such individuals must meet applicable Program eligibility criteria as determined by the County Department of Social Services and are subject to all admission and discharge criteria of the facility other than ability to pay for services and all other generally applicable rules and regulations of the facility.

WITNESS the following signatures and seals:

REALTEC INCORPORATED

By: [Signature]
Title: VICE PRESIDENT

STATE OF VIRGINIA
CITY/COUNTY OF James City to-wit:

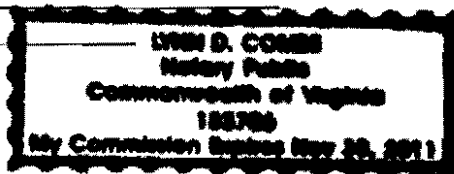
The foregoing instrument was acknowledged before me this 30th day of

June, 2008 by Drew Mulhare, Vice President of REALTEC
INCORPORATED, a North Carolina corporation, on behalf of the corporation.

[Signature]
NOTARY PUBLIC

My commission expires: _____

Registration No.: _____



Additional Property Description

EXHIBIT A

PARCEL A

All of that certain piece or parcel of land, lying and being in Jamestown District, James City County, Virginia, known as Hockaday, containing one hundred forty-seven and one-half (147-1/2) acres, more or less, bounded on the East, South and West by the land of the Shaw Land & Timber Co., known as the Pyle tract, the land of J. A. Barnes and Powhatan Swamp, and on the North by the land of Now Brothers.

PARCEL B

All of that certain piece or parcel of land situate in Jamestown District, James City County, Virginia, containing fifty five and two fifths (55-2/5) acres, more or less, and known as Cypress Swamp, and adjoining the lands of William Marlin's estate on the East, Greenspring on the South and Thomas N. Ratcliffe on the West and D. S. Jones on the North.

LESS AND EXCEPT that property conveyed to the Commonwealth of Virginia by Order Confirming Commissioner's Report, entered February 20, 1974, in the Circuit Court for the City of Williamsburg and County of James City, Virginia, and recorded in the Office of the Clerk of Court of such Court in James City County Deed Book 150, at Page 420, containing 3.74 acres, more or less, confirming that certain Certificate Number C-21570, filed by State Highway Commissioner of Virginia against the Heirs at Law of John G. Warburton, dated May 24, 1972, and recorded June 12, 1972, in the aforesaid Clerk's Office in James City County Deed Book 137, at Page 213, and SUBJECT TO the easements conveyed to the Commonwealth of Virginia in such Order and such Certificate.

The property herein conveyed, commonly known as the "Hockaday-Cypress Tract," is further described in its entirety on that certain plat of survey, entitled "BOUNDARY SURVEY OF A PORTION OF THE JOHN G. WARBURTON ESTATE, KNOWN AS THE HOCKADAY-CYPRESS TRACT," made by V. Monroe Mallory, of Dillard & Mallory, P.C., Certified Land Surveyors, Tappahannock, Virginia, dated October 25, 2001, recorded November 7, 2001, in the aforesaid Clerk's Office in James City County Plat Book 83, at Page 82, to which plat reference is made for a more complete description of such property.

Being a portion of the same property conveyed to John G. Warburton by Deed from C. H. Matthews and Mary Matthews, his wife, dated April 22, 1925, and recorded April 27, 1925, in the aforesaid Clerk's Office in James City County Deed Book 22, at Page 76, and by Deed from C. C. Hall and Beulah B. Hall, his wife, and T. C. Hall and Elsie G. Hall, his wife, dated March 18, 1952, and recorded April 3, 1952, in the aforesaid Clerk's Office in James City County Deed Book 47, at Page 183, the aforesaid John G. Warburton, having departed this life on October 15, 1986, and by his Last Will and Testament, dated February 3, 1984, and duly probated and recorded in the aforesaid Clerk's Office in City of Williamsburg Will Book 11, at Page 383, and duly recorded in the James City County probate records in Will File Number 374, devised such property to his daughters, Martha W. McMurren, and Sue Gregory Warburton Redd, subject to a life estate devised to Sarah Warburton, widow of John G. Warburton, who thereafter departed this life on September 25, 1991 (and whose Last Will and Testament, dated July 30, 1984, was duly probated and duly recorded in the aforesaid Clerk's Office in City of Williamsburg Will Book 45, at Page 18, and duly recorded in the James City County probate records in Will File Number 3234), leaving Martha W. McMurren and Sue Gregory Warburton Redd as the sole fee simple owners of such property, the said Sue Gregory Warburton Redd having conveyed her undivided one-half interest in and to such property to SWR-Hockaday, LLC, by Deed of Gift, dated February 24, 2003, and recorded March 3, 2003, in the aforesaid Clerk's Office as James City County Instrument Number 030006334, and by Deed of Correction, dated February 15, 2006, and recorded March 2, 2006, in the aforesaid Clerk's Office as James City County Instrument Number 050004430 and being the same property conveyed to Realtec, Incorporated, a North Carolina corporation, by Deed dated August 6, 2007, from Martha Warburton McMurren, widow and SWR-Hockaday, LLC, a Georgia Limited Liability company, and recorded in the said Clerk's Office as Instrument Number 070024542.

VIRGINIA: CITY OF WILLIAMSBURG & COUNTY OF JAMES CITY
 This document was admitted to record on 16 July 08
 at 2:47 AM/PM. The taxes imposed by Virginia Code
 Section 58.1-801, 58.1-802 & 58.1-814 have been paid.
 STATE TAX LOCAL TAX ADDITIONAL TAX

\$ _____ \$ _____ \$ _____
 TESTE: BETSY B. WOOLRIDGE, CLERK

BY: Betsy B. Woolridge Clerk