

AT A REGULAR MEETING OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE 14TH DAY OF SEPTEMBER 2010, 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

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

Robert C. Middaugh, County Administrator
Leo P. Rogers, County Attorney

C. MOMENT OF SILENCE

D. PLEDGE OF ALLEGIANCE – Nakeisha Johnson, a twelfth-grade student at Lafayette High School, led the Board and citizens in the Pledge of Allegiance.

E. PUBLIC COMMENT

1. Mr. Ed Oyer, 139 Indian Circle, commented on unkempt property at 101 Indian Circle and falling education standards in relation to increased education spending.

F. BOARD REQUESTS AND DIRECTIVES

Mr. Kennedy noted that this was an opportunity being offered earlier in the meeting for Board members to comment on items brought forward by citizens.

1. Mr. Kennedy – Discuss Specificity of Development Approvals

Mr. Kennedy requested Mr. Chris Johnson, Principal Planner, to come forward to discuss the Noland property which was reviewed by the Design Review Committee. He stated that the financial impact information has changed significantly on this case and the Board was not able to review it again. He asked that in the future similar cases be reviewed again in the event that there are changes that result in a significant negative fiscal impact.

Mr. Johnson stated that the property came forward for rezoning. He stated that there was an anticipated negative fiscal impact at buildout. Mr. Johnson reviewed the structures of the property and stated there was no specificity of the tenants of the property, but only the layout of the retail spaces. He stated that the original

occupant of the property resulted in a trigger which halted construction until a Certificate of Occupancy was obtained. He stated there was no further phasing which would inhibit development on the property. He stated that staff works with the applicant to achieve as much specificity as possible on the master plans, but often these factors are unknown. He stated that the fiscal impact statements correlate to the proposed uses of the property, but there was no requirement to come back before the Board if any of the uses result in a negative fiscal impact. He stated that a change in the use on this property was approved by the Development of Review Committee (DRC).

Mr. Kennedy asked what could be done to solidify the fiscal impact of this case, the Candle Factory case, as well as other developments.

Mr. Johnson stated that this case was adopted when the cash proffer policy for schools was still unknown. He stated that in order to achieve specificity, it would be to use the proffers to require phasing so the development maintains a positive cash flow.

Mr. Kennedy asked if self-storage qualifies as commercial use.

Mr. Johnson stated that use does qualify as commercial use which was what the DRC was examining.

Mr. Kennedy asked if the Board wished to look at this matter in a work session.

Mr. McGlennon stated he could support looking into this matter. He stated it may be worthwhile to examine the mixed-use ordinance to identify what uses could be located in this type of zoning. He stated that when the Board makes the decision to accept a proposal, there is a risk that the case will not meet expectations. He stated that the Board should examine the cases carefully and consider the worst-case scenarios.

Mr. Johnson stated that current requirements only require fiscal impact statements when residential units are proposed, but not for commercial properties. He stated that staff would be examining the ordinance during the zoning ordinance update for specificity, predictability, and flexibility.

Mr. Kennedy stated he wished to maintain the fiscal balance of mixed-use properties.

Mr. Icenhour stated he would support examining this. He stated he was concerned with the differences that could occur between the master plan during legislative approval and built-out project. He stated the approval should be phased and designed to ensure that what is built is what was proposed.

Ms. Jones stated that uncertainty exists, but the ordinance provides an idea of what uses are allowed and would be most beneficial in a particular zoning.

Mr. Kennedy expressed frustration with receiving a significant deficit in the fiscal impact since the statement that was proposed with the project. He stated that another fiscal impact statement should be required if the impacts are not equal to or greater than what was originally approved.

Mr. Goodson stated he would support discussing this matter. He stated that he did not feel this would contradict the request for flexibility. He stated that in this case, the applicant gave up flexibility with the B-1 zoning and must comply with the expectations of the Mixed Use zoning. He stated he did not generally support rezoning business property to allow residential use.

Mr. Kennedy stated that the Board has agreed to discuss a "housekeeping" ordinance to address unkempt properties in the County.

Mr. Goodson asked if the Board could apply any new ordinances to 101 Indian Circle to enforce grass-cutting and other measures.

Mr. Rogers stated that since the property is occupied, the Trash and Grass issues cannot be addressed, but there could be other zoning issues.

Mr. Goodson asked that the Board be briefed on a sensitive issue that could involve land acquisition in a closed session.

Mr. Middaugh asked if staff should meet with the development community to see how the housekeeping issues could assist those people.

The Board agreed that was acceptable.

G. CONSENT CALENDAR

Mr. Goodson asked to pull Item No. 7 for clarification.

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

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

1. Minutes –
 - a. August 10, 2010, Work Session
 - b. August 10, 2010, Regular Meeting
2. Budget Transfer – Curbside Leaf Collection - \$29,000

RESOLUTION

BUDGET TRANSFER – CURBSIDE LEAF COLLECTION – \$29,000

WHEREAS, the Board of Supervisors desires to conduct a curbside leaf collection program in Fiscal Year 2011 consisting of one round of collection; and

WHEREAS, funds for the program need to be transferred from the Operating Contingency budget to the Refuse Collection budget.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby transfers funds for this program as follows:

From:

Operating Contingency	<u>\$29,000</u>
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To:

Refuse Collection	<u>\$29,000</u>
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3. Grant Award – Radiological Emergency Preparedness Funds – \$25,000

RESOLUTION

GRANT AWARD – RADIOLOGICAL EMERGENCY PREPAREDNESS FUNDS – \$25,000

WHEREAS, the Virginia Department of Emergency Management (VDEM) has awarded James City County pass-down funds for Radiological Emergency Preparedness in the amount of \$25,000; and

WHEREAS, the funds are to be used for planning and response for public protective actions related to the Surry Nuclear Power Plant; and

WHEREAS, the grant requires no match.

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

Revenue:

Radiological Emergency Preparedness Funds – FY 11	<u>\$25,000</u>
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Expenditure:

Radiological Emergency Preparedness Funds – FY 11	<u>\$25,000</u>
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4. Grant Award – Virginia Department of Motor Vehicles – \$34,569

RESOLUTION

GRANT AWARD – VIRGINIA DEPARTMENT OF MOTOR VEHICLES – \$34,569

WHEREAS, the James City County Police Department has been awarded a highway safety grant award from the Virginia Department of Motor Vehicles for \$34,569; and

WHEREAS, the grant requires an in-kind match; and

WHEREAS, the funds are to be used toward traffic enforcement overtime and related training and equipment.

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

Revenue:

DMV FY 11 – Highway Safety	<u>\$34,569</u>
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Expenditure:

DMV FY 11 – Highway Safety	<u>\$34,569</u>
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5. Grant Amendment – Virginia Recreational Trails Fund – \$283,976

RESOLUTION

ACCEPTANCE OF A GRANT AMENDMENT –

VIRGINIA RECREATIONAL TRAILS FUND – \$283,976

WHEREAS, the Department of Conservation and Recreation, in cooperation with the Federal Highway Administration, has underrun matching funds available for the development of trails; and

WHEREAS, funds are needed for the construction of the multi-use Powhatan Creek Trail to connect neighborhoods, historic sites, schools, and the Virginia Capital Trail.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, accepts the \$283,976 grant amendment awarded by the Department of Conservation and Recreation in cooperation with the Federal Highway Administration to help with the construction of the Powhatan Creek Trail.

BE IT FURTHER RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the following appropriation to the Capital Projects Fund:

Revenue:

From the Federal Government	<u>\$283,976</u>
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Expenditure:

Powhatan Creek Trail Grant	<u>\$283,976</u>
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6. Code Violation Lien – Trash and Grass Lien – 3232 Reade’s Way

RESOLUTION

CODE VIOLATION LIEN – TRASH AND GRASS LIEN – 3232 READE’S WAY

WHEREAS, the Zoning Administrator has certified to the Board of Supervisors of James City County, Virginia, that the property owners as described below have failed to pay a bill in the amount listed, for cutting of grass and weeds or removal of trash and debris, although the County has duly requested payment; and

WHEREAS, the unpaid and delinquent charges are chargeable to the owners and collectible by the County as taxes and levies and constitute a lien against the Property.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors, James City County, Virginia, that in accordance with Sections 10-7 and 10-5 of the Code of the County of James City, Virginia, the Board of Supervisors directs that the following delinquent charges for services rendered, plus interest at the legal rate from the date of recordation until paid, shall constitute a lien against the Property to wit:

Cleaning of Trash/Debris and/or Cutting of Grass, Weeds, etc.:

ACCOUNT: Barbara A. Bullock and Janice Hillman
3232 Reade's Way
Williamsburg, VA 23185-2421

DESCRIPTION: 3232 Reade's Way

TAX MAP/PARCEL NOS.: (46-1)(07-0-0101)
James City County, Virginia

FILING FEE: \$10.00

TOTAL AMOUNT DUE: \$260.00

8. Colonial Community Criminal Justice Board Appointment

RESOLUTION

COLONIAL COMMUNITY CRIMINAL JUSTICE BOARD (CCCJB) APPOINTMENT

WHEREAS, Police Chief Emmett Harmon's term on the Colonial Community Criminal Justice Board (CCCJB) expired on August 31, 2010; and

WHEREAS, Chief Harmon has agreed to reappointment to the CCCJB.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby reappoints Chief Emmett Harmon to a full three-year term on the CCCJB, set to expire on August 31, 2013.

9. Resolution Opposing the Proposed Closure of United States Joint Forces Command

RESOLUTION

RESOLUTION PROTESTING THE PROPOSED CLOSURE OF

UNITED STATES JOINT FORCES COMMAND

WHEREAS, the mission of the United States Joint Forces Command (JFCOM) is to provide ready capable joint forces to support the development and integration of joint, interagency, and multi-national capabilities to meet the present and future operational needs of the military, as well as to anticipate and prepare for the future demands of the National Defense Strategy; and

WHEREAS, JFCOM directly employs 5,650 people with an estimated 5,150 additional jobs generated in the Hampton Roads region through both direct and indirect effects; and

WHEREAS, the Defense Business Board, a Pentagon Advisory Board, presented a report making many recommendations including the elimination of JFCOM; and

WHEREAS, the Defense Business Board Report also stated a need to do more in-depth study which has not been done on the JFCOM issue; and

WHEREAS, Secretary of Defense Gates on August 9, 2010, officially recommended that JFCOM be closed; and

WHEREAS, the closure of JFCOM would have an immediate and continuing severe detrimental effect on the military's ability to jointly address threats to national security and would greatly weaken the effectiveness and efficiency of the individual uniformed services to function as one cohesive and joint military force to counter, among other things, worldwide terrorism; and

WHEREAS, the proposed closure of JFCOM is not being done in accordance with Federal Law, particularly Title 10 of the U.S. Code, § 2687 which was established to ensure that Congress has sufficient time and opportunity to review the DOD proposal that resulted in the closure realignment of significant military facilities which JFCOM surely is; and

WHEREAS, James City County is united with the Hampton Roads region in this effort to maintain JFCOM and the preparedness of our military.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby protests the proposed closure of JFCOM and requests that the Congressional Delegation and State Government urgently do all things necessary to maintain the current level of JFCOM activities.

7. Request for Disaster Designation and Federal Assistance for James City County

Mr. Goodson explained that he mistakenly pulled this item and needed clarification on a different item. He made a motion to adopt the resolution.

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

RESOLUTION

**REQUEST FOR DISASTER DESIGNATION AND FEDERAL ASSISTANCE FOR
JAMES CITY COUNTY**

WHEREAS, drought conditions in the County of James City have adversely affected farmers and their production yields; and

WHEREAS, during critical periods of the growing season of 2010, certain areas of the County of James City received considerably less than normal rainfall while experiencing higher than normal temperatures; and

WHEREAS, the loss of production for James City farmers due to these adverse conditions has been reported by the Farm Service Agency, the Natural Resources Conservation Service, and Virginia Cooperative Extension to be at a minimum of 50 percent to soybeans (1,837 acres planted, value of loss estimated at \$279,224) and a minimum of 75 percent to corn (1,378 acres planted, value of loss estimated at \$457,496); and

WHEREAS, James City County farmers need State and Federal assistance in responding to their losses.

NOW, THEREFORE, BE IT RESOLVED, that the Board of Supervisors of James City County, Virginia, hereby instructs the County Administrator to submit to the Governor of Virginia a certified copy of this resolution and request assistance in obtaining Federal disaster designation for James City County and Federal assistance from the United States Department of Agriculture for James City County farmers who have experienced agricultural damages and losses due to excessive heat and drought.

Mr. Goodson asked for clarification on Item No. 3, Grant Award – Radiological Emergency Preparedness Funds - \$25,000. He stated he did not oppose spending the money on a new generator for the Emergency Operations Center, but he asked Fire Chief Tal Luton if these funds would normally go toward supplies of iodine pills that would be distributed in the event of a radiological emergency.

Chief Luton responded that those pills were supplied and distributed by the Virginia Department of Health and would not need to be purchased with these funds.

H. PUBLIC HEARINGS

1. Case No. SUP-0028-2009. Ingram Road Pegasus Wireless Communications Facility (WCF)

Mr. Luke Vinciguerra, Planner, stated that Mr. Stephen Romine has applied for a Special Use Permit (SUP) to allow the construction of a 124-foot Wireless Communications Facility (WCF) at 108 Ingram Road between an existing building and John Tyler Commercial Park (exact location best viewed on page A-0 of the site plan). Tower-mounted communication facilities higher than 60 feet in the B-1, General Business, district require an SUP. The proposed WCF would be a “slick stick” with no visible external antennas.

Staff found the proposal to be consistent with surrounding land uses, the Land Use policies of the Comprehensive Plan, the Comprehensive Plan Land Use Map Designation, and the Wireless Communications Performance Standards policy.

At its meeting on August 4, 2010, the Planning Commission recommended approval of the application by a vote of 5-0.

Staff recommended approval of the resolution with the proposed conditions.

Mr. Goodson clarified that without buffers, the buildings surrounding the tower site would block visibility of the base of the tower. Mr. Vinciguerra stated that was correct, but the buffer would be consistent with the WCF standards for buffer along the front of the location.

Mr. Goodson stated that the buffer would screen the whole development, rather than just the tower. He asked if there was a reason to upgrade the current buffer to 100 feet because he did not see the buffer as applying directly to the tower for screening.

Mr. McGlennon stated he believed that the buffer was explicit in the adopted standards.

Mr. Vinciguerra stated that there was a buffer requirement in the standards to screen the base of the tower.

Mr. Goodson stated the buffer would not screen the base since the existing structures already served that purpose.

Mr. Vinciguerra stated the additional buffer would not surround the base, but would screen the rest of the tower.

Mr. Goodson stated that the trees in the front of the property provide screening for the tower and noted that the 100-foot buffer would prevent additional economic development on the property. He stated that he believed the standards did not apply in this case and he wished to consider a buffer less than 100 feet.

Mr. Icenhour commented that this parcel was located within the Route 5 Community Character Corridor (CCC), which requires a buffer.

Mr. Vinciguerra stated that the CCC would require a 50-foot buffer for buildings.

Mr. Icenhour clarified that anything built on the property in the future would require a 50-foot buffer.

Mr. Vinciguerra stated that was correct.

Mr. Kennedy opened the Public Hearing.

1. Mr. Dan Qualls, LeClair Ryan, on behalf of the applicant, gave a brief history of the property and reviewed the site plan. He reviewed the results of the balloon test results and the wireless coverage issues the tower would address. He asked for the Board's consideration of a reduced buffer to allow for an additional building to be built on the property as reflected on an old master plan. He stated that the applicant had requested the 50-foot reduced buffer at the Planning Commission and there did not seem to be opposition; rather, the Planning Commission recommended approval unanimously of the staff recommendation. He requested approval of the application.

2. Mr. Allen Murphy, Planning Director, came forward to clarify some of the applicant's points. He stated the previous site plan mentioned was from the late 1980s and has expired. He stated the wireless tower policy does not refer to a buffer around the base of the tower, but rather to a buffer intended to screen the entire tower. He stated that the applicant requested that staff consider the 50-foot buffer, but due to the CCC, staff opted to recommend the 100-foot buffer.

Ms. Jones clarified that the 50-foot buffer requirement was for buildings within the CCC.

Mr. Murphy stated that was correct, but staff believed that a 120-foot tower was significantly different from a normal building structure and would require a more substantial buffer.

Ms. Jones asked if the tower was far enough away from John Tyler Highway to allow for the reduced buffers.

Mr. Murphy responded that the distance would allow for consideration of the decreased buffer.

Ms. Jones asked Mr. Fraley about the applicant's request for a decreased buffer at the Planning Commission and asked for additional information about the discussion.

Mr. Fraley stated that the Planning Commission considered the request for the decreased buffer, but still supported the staff recommendation for the 100-foot buffer. He noted that the policy recommends a wooded buffer around the site.

Mr. Icenhour asked about the percentage of impervious cover on the site.

Mr. Vinciguerra stated he did not have that information at the time.

Mr. Icenhour asked if any new development would have to meet the requirements for maximum impervious cover.

Mr. Vinciguerra stated that was correct; the new development would have to meet current standards.

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

Ms. Jones made a motion to adopt the resolution with the revisions provided by staff.

Mr. Goodson made a motion to amend to decrease the buffer requirement to 50 feet.

On the motion to amend, the vote was AYE: Goodson, (1). NAY: McGlennon, Icenhour, Jones, Kennedy (4).

The motion to amend failed.

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

RESOLUTION

SPECIAL USE PERMIT-0028-2009. INGRAM ROAD

PEGASUS WIRELESS COMMUNICATIONS FACILITY

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

WHEREAS, Mr. Stephen Romine has applied on behalf of Pegasus Tower for an SUP to allow for the construction of a wireless communications facility on a parcel of land zoned B-1, General Business; and

WHEREAS, the proposed development is shown on a plan prepared by BC Architects Engineers, PLC, dated July 7, 2010, (the "Master Plan"), with the Site No. listed as NF496; and

WHEREAS, the property is located at 108 Ingram Road and can be further identified as James City County Real Estate Tax Map/Parcel No. 4710100007; and

WHEREAS, the Planning Commission, following its public hearing on August 4, 2010, voted 5-0 to recommend approval of this application; and

WHEREAS, the Board of Supervisors of James City County, Virginia, finds this use to be consistent with the 2009 Comprehensive Plan Use Map designation for this site.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve the issuance of SUP-0028-2009 as described herein with the following conditions:

1. Term of Validity: This SUP shall be valid for a total of one wireless communications facility at a total height of 124 feet including all appurtenances on the property as depicted in the Special Use Permit application site plan titled "*Pegasustower A New 120' Stealth Pole in a New Tower Compound*" prepared by Christopher D. Morin of BC Architects Engineers dated July 7, 2010.
 2. Time Limit: A final Certificate of Occupancy (CO) shall be obtained from the James City County Codes Compliance Division within two years of approval of this SUP, or the permit shall become void.
 3. Structural and Safety Requirements: Within 30 days of the issuance of a final CO by the County Codes Compliance Division, certification by the manufacturer, or an engineering report by a structural engineer licensed to practice in the Commonwealth of Virginia, shall be filed by the applicant indicating the tower height, design, structure, installation, and total anticipated capacity of the tower, including the total number and type of antennas which may be accommodated on the tower, demonstrating to the satisfaction of the County Building Official that all structural requirements and other safety considerations, set forth in the 2000 International Building Code, or any amendment thereof, have been met.
 4. Tower Color: The tower color shall be gray. Any alternative color used shall be approved by the Planning Director, or his designee, prior to final site plan approval.
 5. Advertisements: No advertising material or signs shall be placed on the tower.
 6. Additional User Accommodations: The tower shall be designed and constructed for at least three users and shall be certified to that effect by an engineering report prior to the site plan approval.
 7. Guy Wires: The tower shall be freestanding and shall not use guy wires for support.
 8. Enclosure: The fencing used to enclose the area shall be vinyl-coated and shall be dark green or black in color, or shall be another fencing material of similar or superior aesthetic quality as approved by the Planning Director. Any fencing shall be reviewed and approved by the Planning Director prior to final site plan approval.
 9. Tree Buffer: A minimum buffer of 100 feet in width of existing mature trees shall be maintained at the front of the property abutting Ingram Road/John Tyler Highway.
 10. Severance Clause: This SUP is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.
2. Case No. Z-0001-2010. Fast Food Restaurant at 8953 Pocahontas Trail (Continued from August 10, 2010)

Ms. Sarah Propst, Planner, stated that Mr. John Rogers has applied to rezone a one-acre parcel located at 8953 Pocahontas Trail from M-2, General Industrial, to B-1, General Business, with proffers. The application proposes redevelopment of the existing property to include a 1,680-square-foot drive-through barbeque restaurant. The property formerly operated as a truck wash facility and the existing structure on-site

will be demolished. The site is identified as Mixed-Use on the 2009 Comprehensive Plan Land Use Map. Ms. Propst explained that following the Planning Commission approval on July 7, 2010, staff received a letter dated July 13, 2010, from a representative of Ball Metal Beverage Container, an adjacent property owner. That afternoon, staff arranged a meeting between the applicant and the adjacent property owner to discuss Ball Metal's concerns regarding the proposed development. The following day, Mr. Rogers provided Ball Metal's counsel with an insurance policy, on which Ball would be named as additionally insured, with specification for an air filtration system, and provided oven specifications upon a later request. She stated that an amicable solution was reached between the parties and amended proffers were placed at the dais for the Board's consideration.

Staff found the application to be a positive redevelopment project for the site, and with the Master Plan and proffers, is in conformance with the goals of the Comprehensive Plan. Considering the design limitations of the parcel shape and size, staff found that the applicant was providing a design that maximizes the development potential of the site and the proposed landscaping would be a significant aesthetic improvement over existing site conditions

At its meeting on July 7, 2010, the Planning Commission recommended approval of the application by a vote of 6-0.

Staff recommended approval of the resolution with the amended proffers.

Mr. Kennedy opened the Public Hearing.

1. Mr. Vernon M. Geddy, III, on behalf of the applicant, commented that this was a redevelopment project. He gave a history of the property and commented on the assistance of the County's Business Facilitator. He noted that the Planning Commission recommended approval unanimously and after receiving concerns from Ball Metal, the applicant requested a one-month deferral in order to address those problems. He stated during that time, the applicant has agreed to proffers that both entities find suitable. He requested approval of the application.

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

Mr. Goodson made a motion to adopt the resolution with the revised proffers and thanked the parties for working toward a suitable solution for everyone.

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

RESOLUTION

CASE NO. Z-0001-2010. FAST FOOD RESTAURANT AT 8953 POCAHONTAS TRAIL

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. Z-0001-2010; and

WHEREAS, Mr. John Rogers has applied to rezone his property located at 8953 Pocahontas Trail and further identified as James City County Real Estate Tax Map No. 5920100019 (the "Property") from M-2, General Industrial, to B-1, General Business, with proffers to redevelop the former Spray King Truck Wash property into a drive-through fast food restaurant; and

WHEREAS, the Property is designated Mixed Use on the 2009 Comprehensive Plan Land Use Map; and

WHEREAS, on July 7, 2010, the Planning Commission of James City County recommended approval of the application by a vote of 5-0.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve Case No. Z-0001-2010 as described herein and accept the voluntary proffers.

3. Ordinance to Designate Dream Catchers and the Cori Sikich Foundation as Tax Exempt

Mr. John McDonald, Financial and Management Services Manager, stated that State Code allows the Board to consider exemptions for charitable organizations. He stated that the Cori Sikich Foundation and Dream Catchers were being considered in this case for exemption from property taxes. He reviewed the qualifications for exemption based on State Code and explained how the Cori Sikich Foundation and Dream Catches met each of the criteria. He stated the Board has the option to grant the exemption which would be in effect until the use of the property changed or until the Board revoked the exemption. He requested approval of the ordinance granting the exemption.

Mr. Icenhour asked if this would be a permanent exemption.

Mr. McDonald stated that the exemption would stay with the property until the use changed or until the Board voted to revoke the exemption.

Mr. Kennedy opened the Public Hearing.

1. Ms. Nancy Paschall, Executive Director of Dream Catchers, 10120 Fire Tower Road, stated the long-term plans for the property were to continue the current use as a therapeutic riding center.

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

Mr. Icenhour made a motion to adopt the ordinance.

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

4. Ordinance to Amend Chapter 10, Garbage and Refuse, by Amending Section 10-5, Same-Recourse of County upon Failure of Owner or Occupant, and Section 10-7, Penalty

Mr. Rogers stated that the ordinance would create an easier process for recordation of liens to allow the County Administrator to sign liens rather than bringing the cases before the Board of Supervisors. He stated the changes would also add civil penalties for offenses, which are easier to collect than criminal charges. He stated the civil fines would be \$50 for a first offense and \$250 for subsequent offenses. He stated that criminal penalties would be assessed for habitual offenders.

Mr. Kennedy stated he supported criminal charges for those properties of habitual offenders.

Mr. Kennedy commented on the Epstein property and requested that Mr. Rogers contact Mr. Ware.

Mr. Rogers stated he was aware of this concern and he would follow up on the matter.

Mr. McGlennon stated he supported this ordinance amendment, but he believed there was a value of showing the seriousness of these offenses in the County. He requested that a list of offenders be regularly distributed and provided to the public.

Mr. Kennedy asked that the information be posted on the County website.

Mr. Kennedy opened the Public Hearing.

1. Mr. Jack Fowler, 109 Wilderness Lane, commented on a potential housekeeping ordinance.

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

Mr. McGlennon made a motion to adopt the ordinance.

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

5. Conveyance of Utility Easements to Verizon Virginia, Inc.

Mr. McDonald stated the purpose of the resolution was to authorize the County Administrator to enter into an agreement to convey two easements at the County Government Complex to Verizon Wireless in order to link the existing cellular towers on the property and provide additional wireless coverage in the area. He stated that the towers currently were outfitted with ALLTEL components, and under this agreement, Verizon Wireless would refit the towers to make them functional. He stated the easements would go to the towers on the complex and then run to an existing conduit at Building D. He stated the coverage would improve wireless access in the area surrounding the Government Complex and much of Kingsmill, expected to be completed by the end of the calendar year. He requested approval of the resolution.

Mr. Kennedy opened the Public Hearing.

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

Mr. Goodson made a motion to approve the resolution.

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

RESOLUTION

VERIZON EASEMENT – WARHILL TRAIL

WHEREAS, James City County owns a parcel of property located at 5700 Warhill Trail and further identified as James City County Real Estate Tax Parcel No. 3210100012 (the “Property”); and

WHEREAS, the James City Service Authority (the “JCSA”) has entered into a lease with AT&T for the location of a cellular array and related support equipment on the Warhill water tank site located at 5900 Warhill Trail; and

WHEREAS, the cellular support equipment requires telephone service and the closest telephone line is situated along Opportunity Way; and

WHEREAS, the extension of a telephone line from Opportunity Way to the Warhill water tank will provide improved telephone service on adjacent County-owned property at the Warhill site.

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 sign and execute those documents necessary to grant a 20-foot-wide, approximately 4,200-foot-long easement, on property located on the northeast side of the Warhill property and further identified as James City County Real Estate Tax Parcel No. 3210100012 to Verizon to extend telephone service from Opportunity Way to JCSA's Warhill water tank.

I. PUBLIC COMMENT

1. Mr. Jack Fower, 109 Wilderness Lane, commented on illegal businesses and properties with over five cars in the County. He asked the Board to consider a housekeeping ordinance in order to preserve aesthetics, protect property values, and address blight.

2. Mr. Adam Geissler, 111 Cooley Road, commented on the resolution in opposition to the closure of the US Joint Forces Command (USJFCOM). He asked the Board to reconsider this action since he believed this was a way to reduce bureaucracy and help balance the national budget.

3. Mr. Ed Oyer, 139 Indian Circle, commented that he did not believe the County should involve itself in matters such as the action opposing the closure of the USJFCOM.

J. REPORTS OF THE COUNTY ADMINISTRATOR

Mr. Middaugh commented that there was going to be a series of meetings in each district for him to meet with constituents and discuss issues, including the upcoming Stormwater referendum question. He noted that the public information regarding the referendum was being developed and citizens could get more information on the County's website or by contacting the County's Civic Engagement Coordinator, Tressell Carter, at 757-259-4986. He noted that the third and final Zoning Ordinance Update forum would be held on September 27, 2010, at 6:30 p.m. in Building F. He encouraged citizens to contact Planning or check the County website to sign up to speak. He stated that when the Board completes its business, it should go into Closed Session pursuant to Section 2.2-3711(A)(5) of the Code of Virginia for the discussion of matters related to a business in which an announcement has not yet been made; and Section 2.2-3711(A)(3) of the Code of Virginia for discussion about acquisition of parcels of property for public use.

K. BOARD REQUESTS AND DIRECTIVES

Ms. Jones commented that at the intersection of Route 199 and John Tyler Highway, there is a large pothole that should be reported to the Virginia Department of Transportation (VDOT).

Mr. Goodson stated that the next meeting of the Hampton Roads Mayors and Chairs would occur the next day and asked if it would be appropriate for him to sign the resolution in opposition of the closure of USJFCOM on behalf of the County.

Mr. Kennedy stated it would be appropriate.

Mr. McGlennon made a motion to reappoint Mr. Timothy Mills and Mr. Robert Cowling to the Board of Building Code Adjustments and Appeals.

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

L. CLOSED SESSION

Mr. Goodson made a motion to go into Closed Session pursuant to section 2.2-3711(A)(5) of the Code of Virginia, for the discussion of matters related to a business in which an announcement has not yet been made; and section 2.2-3711(A)(3) of the Code of Virginia, for discussion about acquisition of parcels of property for public use.

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

At 8:40 p.m., Mr. Kennedy recessed the Board into Closed Session.

At 9:27 p.m., Mr. Kennedy reconvened the Board.

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

RESOLUTION

CERTIFICATION OF CLOSED MEETING

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

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

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby certifies that, to the best of each member's knowledge: i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this certification resolution applies; and ii) only such public business matters were heard, discussed, or considered by the Board as were identified in the motion, Section 2.2-3711(A)(5) of the Code of Virginia, to discuss the expansion of an existing business where no previous announcement has been made; and Section 2.2-3711(A)(3) of the Code of Virginia to consider the acquisition of parcels of property for public use.

M. ADJOURNMENT to 4:00 p.m. on September 28, 2010.

Mr. Goodson made a motion to adjourn.

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

At 9:28 p.m., Mr. Kennedy adjourned the Board to 4 p.m. on September 28, 2010.

Robert C. Middaugh
Clerk to the Board

091410bos_min

SEP 14 2010

ORDINANCE NO. 211BOARD OF SUPERVISORS
JAMES CITY COUNTY
VIRGINIA

DREAM CATCHERS, THE CORI SIKICH FOUNDATION AND DAVID W. OTEY, JR., AS
TRUSTEE OF THE CORI SIKICH FOUNDATION EXEMPTION FROM COUNTY REAL AND
PERSONAL PROPERTY TAXES

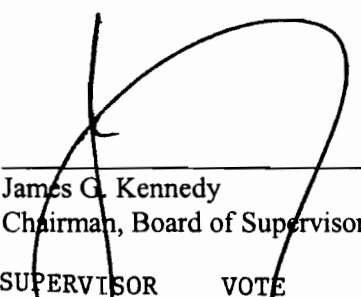
WHEREAS, pursuant to Subsection 6(a)(6) of Article X of the Constitution of Virginia and Section 58.1-3651 of the Code of Virginia, 1950, as amended, the Board of Supervisors is authorized to exempt, by classification or designation, real and/or personal property from taxation; and

WHEREAS, following a public hearing where citizens had an opportunity to be heard, the Board of Supervisors makes the following findings concerning Dream Catchers, The Cori Sikich Foundation (the "Foundation") and David W. Otey, Jr., as Trustee of the Foundation:

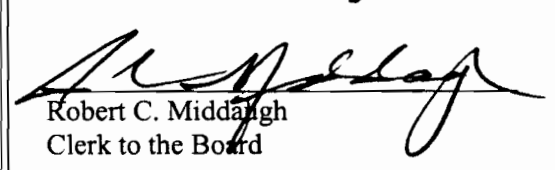
1. Dream Catchers and the Foundation are tax exempt organizations under Section 501 (c) of the Internal Revenue Code of 1954; and
2. Neither Dream Catchers nor the Foundation have a license from the Virginia Alcoholic Beverage Control Board to serve or sell alcoholic beverages; and
3. No director, officer, or employee of either Dream Catchers or the Foundation is paid an unreasonable compensation in relation to the services provided; and
4. No net earnings of Dream Catchers or the Foundation inure to the benefit of any individual and both receive a significant portion of their funds from donations and contributions. Dream Catchers and the Foundation provide charitable and benevolent services for the common good of the residents of James City County and for the benefit of non-residents as well; and
5. Dream Catchers and the Foundation do not engage in propaganda, nor, in any substantial way, attempt to influence legislation, or participate in, or intervene in, any political campaign on behalf of any candidate for public office; and
6. David W. Otey, Jr., as trustee of The Cori Sikich Foundation, owns real property at 10120 Fire Tower Road, with land and improvements assessed for FY 2011 at \$1,100,500 (annual real property taxes of \$8,474), and leases this property to Dream Catchers. Personal property taxes are \$734 on an annual basis.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of James City County, Virginia, that Dream Catchers, The Cori Sikich Foundation, and David W. Otey, Jr., in his role as Trustee of The Cori Sikich Foundation shall be exempt from real and personal property taxation for all real and personal property used to perform their charitable and benevolent service to the community.

BE IT FURTHER RESOLVED by the Board of Supervisors of James City County, Virginia, that the tax exemptions granted shall be effective as of July 1, 2010, and shall remain in effect unless terminated by the Board of Supervisors or the charitable and benevolent use of such real or personal property changes.


James G. Kennedy
Chairman, Board of Supervisors

ATTEST:


Robert C. Middaugh
Clerk to the Board

SUPERVISOR	VOTE
MCCLENNON	AYE
GOODSON	AYE
ICENHOUR	AYE
JONES	AYE
KENNEDY	AYE

Adopted by the Board of Supervisors of James City County, Virginia, this 14th day of September, 2010.

TaxExempt_res

SEP 14 2010

ORDINANCE NO. 131A-6BOARD OF SUPERVISORS
JAMES CITY COUNTY
VIRGINIA

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 10, GARBAGE AND REFUSE, OF THE CODE OF THE COUNTY OF JAMES CITY, VIRGINIA, BY AMENDING ARTICLE I, IN GENERAL, SECTION 10-5, SAME-RECOURSE OF COUNTY UPON FAILURE OF OWNER OR OCCUPANT; AND SECTION 10-7, PENALTY.

BE IT ORDAINED by the Board of Supervisors of the County of James City, Virginia, that Chapter 10, Garbage and Refuse, is hereby amended and reordained by amending Article I, In General, Section 10-5, Recourse of county upon failure to maintain by owner or occupant; and Section 10-7, Penalty.

Chapter 10. Garbage and Refuse

Article I. In General

Sec. 10-5. ~~Same~~-Recourse of county upon failure of *to maintain by* owner or occupant.

(a) The county administrator or his designee, and upon complaint by any responsible person that conditions exist on any real property in violation of section 10-4, shall investigate conditions existing on real property in the county at any time, and upon determination by the county administrator or his designee, following investigation, that the owner, occupant or persons in charge of any real property in the county stands in violation of his duty as provided in section 10-4 and directing him to take such action as may be necessary to rectify such conditions within such time, not more than ten days, as shall be stated in the notice.

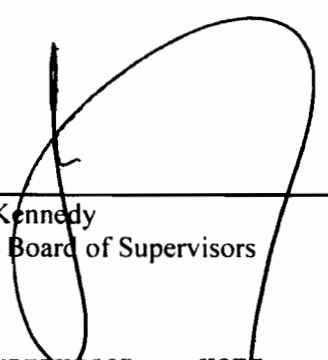
(b) If ten days after the service of any such notice the directive thereof has not been complied with, the county administrator or his designee shall proceed to have such work done as may be necessary to abate any condition which might endanger the health or safety of residents of the county and all expenses resulting therefrom shall be chargeable to and paid by the owner of such property and ~~may~~ *shall* be collected by the county as taxes and levies are collected, and all charges not so collected shall constitute a

lien against such property. *In addition, the county administrator or his designee may record such documents among the real estate records of the county as may be necessary to give notice of such lien.*

Sec. 10-7. Penalty.


Any person convicted of a violation of this chapter shall be ~~guilty of a misdemeanor and upon conviction thereof shall be punished by fine not exceeding one \$1,000.00, or by confinement in jail for a period not exceeding 12 months, either or both; provided, however, that the court may suspend the imposition of any sentence on condition that the defendant volunteer his services for such period of time as the court may designate to remove litter from the highway.~~ *subject to a civil penalty, not to exceed \$50 for the first violation, or violations arising from the same set of operative facts. The civil penalty for subsequent violations not arising from the same set of operative facts within 12 months of the first violation shall not exceed \$200. Each business day during which the same violation is found to have existed shall constitute a separate offense. In no event shall a series of specified violations arising from the same set of operative facts result in civil penalties that exceed a total of \$3,000 in a 12-month period. Civil penalties shall be in lieu of criminal penalties and shall preclude prosecution of such violation as a misdemeanor. In the event three civil penalties have previously been imposed on the same defendant for the same or similar violation, not arising from the same set of operative facts, within a 24-month period, such violations shall be a Class 3 misdemeanor. The classification of such subsequent violations as criminal offenses shall preclude the imposition of civil penalties for the same violation. For the purposes of this section, a business day shall constitute Monday through Friday of each week, except for holidays as shown on the calendar adopted by the board of supervisors each year.*

State law reference: - Authority of county to provide for removal or disposal of trash, cutting of grass and weeds; penalty, Code of Va. § 15.2-901.



James G. Kennedy
Chairman, Board of Supervisors

ATTEST:


Robert C. Middaugh
Clerk to the Board

<u>SUPERVISOR</u>	<u>VOTE</u>
MCGLENNON	AYE
GOODSON	AYE
ICENHOUR	AYE
JONES	AYE
KENNEDY	AYE

Adopted by the Board of Supervisors of James City County, Virginia, this 14th day of September,
2010.

Ch10_Revisions_ord

100021284

Return to: Adam R. Kinsman
Deputy County Attorney
James City County
P.O. Box 8784
Williamsburg, VA 23187-8784

Tax Map No. 5920100019

PROFFERS

THESE PROFFERS are made as of this 14th day of September, 2010 by John A. Rogers, II (together with his successors and assigns, the "Owner").

RECITALS

1. The Owner is the owner of certain real property located in James City County (the "County") at 8953 Pocahontas Trail and more particularly described as James City County Real Estate Tax Map No. 5920100019 (the "Property"). (See Exhibit "A" for Legal Description)
2. The Property is zoned M-2, General Industrial.
3. The Owner has applied for a rezoning of the Property from M-2, General Industrial to B-1, General Business with proffers.
4. The Owner desires to offer the County certain conditions on the development of the Property not generally applicable to land zoned B-1, General Business.

NOW THEREFORE, for and in consideration of the approval of the requested zoning and pursuant to section 15.2-2303 of the *Code of Virginia*, 1950, as amended, and the James City County Code, the Owner agrees that it shall meet and comply with all of the following conditions in developing the Property. If the requested rezoning is not granted by the County, these proffers shall become null and void.

CONDITIONS

1. The Property shall be used only for the following purposes in accordance with the requirements set forth in the James City County Code: restaurant, fast food restaurant, tea room and tavern; veterinary hospital; banks and other similar financial institutions; medical clinics or offices; convenience store; tire, transmission, glass, body and fender and other automotive repair and service; vehicle rentals; and vehicle and trailer sales and services, provided, however, paint shops shall not be permitted as a part of any automotive, vehicle or trailer repair or service facility.
2. Notwithstanding the above, the Property shall not be used for any purpose that generates air emissions that contain substances that are hazardous or toxic under federal, state, or local law,

statute, regulation, or ordinance or that otherwise violate any applicable law, ordinance or regulation.

3. The building to be constructed on the Property by the Owner will be approximately 1,700 square feet, and will be located as shown on the plan by Land Tech dated June 2010.

4. The building exterior shall be brick and siding in a general color palette of brown brick, white siding and a red roof.

5. The existing pole mounted sign will be replaced with a ground mounted monument sign of thirty-two square feet or less.

6. If a restaurant, fast food restaurant or tea room and tavern is operated on the Property, no smoke, charcoal, or pit cooking, or any process using or incorporating any of the foregoing (either individually or in combination), shall be utilized in any cooking process occurring on or at the Property by or in any such use.

7. If a restaurant, fast food restaurant or tea room and tavern is operated on the Property, the building shall be equipped prior to issuance of a certificate of occupancy with an Smog-Hog PSG 12 -2 (or equivalent equipment/device from a reputable manufacturer) air cleaner/filtration system. Air emissions from such a use of the Property shall not exceed either the capacity of the foregoing system or the levels permissible under Condition # 2 above. Owner or operator of the Property shall maintain, repair, or replace the system in accordance with the manufacturer's specifications or recommendations for maintenance, repair, or replacement.

8. Prior to the issuance of a certificate of occupancy for a restaurant, fast food restaurant, tea room, tavern, or other use on the Property that generates air emissions that emanate from the Property, the owner of the Property shall record a restrictive covenant against the Property requiring that so long as the Property is used for a restaurant, fast food restaurant, tea room, tavern, or other use that generates air emissions that emanate from the Property and so long as a warehouse that stores beverage containers deemed "food containers" under the United States Food, Drug and Cosmetic Act is operated on the adjacent Tax Parcel 5920100018, the owner or operator, if different, of the Property shall maintain general liability insurance associated with the use of the Property in an amount equal to or greater than \$2,000,000.00 with a special endorsement naming the owner of Tax Parcel # 5920100018 as an additional insured for the limited purpose covering any damage to the beverage containers stored by the owner Tax Parcel # 5920100018 in the warehouse on Tax Parcel # 5920100018 as a result of air or other emissions emanating from the Property and/or the use thereof. The restrictive covenant shall be submitted to and approved by the County Attorney for consistency with this Proffer prior to issuance of a building permit. A copy of such policy of insurance shall be provided to the County and to the owner of Tax Parcel # 5920100018 prior to issuance of a certificate of occupancy for any such use on the Property, and such policy of insurance shall provide 30 days advance notice of cancellation to the owner of Tax Parcel # 5920100018.

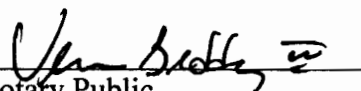
9. These proffered conditions are not severable. Invalidity of any word, phrase, clause, sentence, or paragraph or the unenforceability of same shall invalidate this entire set of proffers and render the associated rezoning null and void.

WITNESS THE FOLLOWING SIGNATURE:


John A. Rogers, II

COMMONWEALTH OF VIRGINIA,
CITY/COUNTY of AMES CITY, to wit:

The foregoing instrument was acknowledged this 14 day of September, 2010 by John A. Rogers, II.


Notary Public

Notary No. 183270

My Commission Expires: 12/31/2014



DOCSWMB-#6287970-v3-Ball_Corporation_Oinkers_Proffers DOC



Exhibit "A"

All of that certain lot, piece or parcel of land situate, lying and being in Roberts Magisterial District, formerly Jamestown District, James City County, Virginia, containing approximately one acre, but sold in gross, and not by the acre, being the remainder of the land owned by Nora I. Cole at this location being formerly her residence, and situate between Ball Corporation and Badische Corporation access road on Route 60, and being all the residue of the parcel remaining of the sale of 1.42 acres to Ball Corporation by deed dated July 23, 1971, which deed had attached thereto a plat entitled "Plat of Part of the Property of Nora I. Cole, Roberts District, James City County, Virginia for Ball Corporation", dated July 19, 1971, made by Baldwin and Gregg, Engineers, Surveyors, Planners, which said plat is recorded in Plat Book 28, page 59, to which plat reference is here made for a more complete description of the property hereby conveyed said property being the residue lying between the conveyance to Ball Corporation and to the North thereof and bounded on the North by U. S. Route 60.

VIRGINIA: CITY OF WILLIAMSBURG & COUNTY OF JAMES CITY
This document was admitted to record on 6 OCT 2010
at 9:01 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
\$ <u> </u>	\$ <u> </u>	\$ <u> </u>

TESTE: BETSY B. WOOLRIDGE, CLERK

BY: Betsy B. Woolridge Clerk