

AT A REGULAR MEETING OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE 22ND DAY OF MARCH 2011, 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

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

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

C. PLEDGE OF ALLEGIANCE – Kye Andress, a fourth-grade student at Clara Byrd Baker Elementary School, led the Board and citizens in the Pledge of Allegiance.

D. PRESENTATION

1. Certificate of State Accreditation - Police

Police Chief Emmett Harmon explained that representatives from the Virginia Law Enforcement Accreditation Commission were in attendance.

Mr. Gary Dillon, Department of Criminal Justice Services (DCJS), explained that the State Accreditation program and requirements have been met by the James City County Police Department (JCCPD) and ensure efficient and effective law enforcement in the County. He stated that the JCCPD was again in compliance with all requirements for accreditation with a perfect assessment. He stated that JCCPD was the first department in Virginia to achieve a perfect assessment. He congratulated Chief Harmon and retired Chief Daigneault for their efforts.

Sheriff Farrar W. Howard, Jr. of New Kent County, a member of the Accreditation Commission, presented a certificate of accreditation to Chief Harmon and congratulated the JCCPD.

Ms. Jones congratulated Chief Harmon and the Police Department. She presented a Certificate of Recognition for this outstanding achievement.

Chief Harmon acknowledged the Police Department staff members that were integral to the accreditation process including Major Steve Rubino, Deputy Chief Stan Stout, Lieutenant Jeff Hicklin, Major Brad Rinehimer, and Accreditation Manager Dave Daigneault.

Mr. Middaugh congratulated the Board and highlighted the hard work of the JCCPD.

E. PUBLIC COMMENT

1. Mr. Ed Oyer, 139 Indian Circle, commented on property sales in the County; political turmoil; the James Blair Middle School air conditioning unit; and proficiency of school administrators and School Board members.

F. BOARD REQUESTS AND DIRECTIVES

1. Warhill Access

Mr. Middaugh stated that Mr. Kennedy had asked for background information on service road access at the Warhill Sports Complex. He stated that the road has been opened as needed which was consistent with previous Board direction. He stated that staff was available to answer questions as needed.

Mr. Kennedy stated that he understood the Board was unwilling to make changes. He stated that he hoped the road would be opened more often as the baseball season approached.

Mr. Goodson stated that the access was convenient, but was concerned that people would be unaware of whether or not the gate was open if a regular schedule was not available.

Mr. McGlennon stated concern that the road would become a regular cut-through and that the road was not intended for that purpose. He stated that nearby neighborhoods would be impacted and that he agreed it should be opened for special events.

Mr. Icenhour stated that he believed the current policy was adequate, but additions would be acceptable. He stated that from the Warhill High School side, people could park and walk through rather than drive on the limited access road. He commented on the increased traffic that would result and impact neighborhoods and noted that the road was not up to the Virginia Department of Transportation (VDOT) standards. He stated that he agreed with flexibility for special events.

Ms. Jones stated that she agreed with additional access for special events.

Mr. Goodson stated that any road project that receives Federal funds required an environmental impact study, which included public information meetings. He stated that the meeting for the I-64 corridor citizen information meetings would be held on Wednesday, March 23, 2011, at City Center in Newport News from 5 to 8 p.m. and on Thursday, March 24, 2011, in New Kent County from 5 to 8 p.m.

Mr. Icenhour thanked Mr. Steven Hicks, Manager of Development Management, VDOT, and CSX Corporation for their work on the Lightfoot Road railroad crossing.

G. CONSENT CALENDAR

Mr. Kennedy asked to pull Item No. 4.

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

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

1. Minutes – March 8, 2011, Regular Meeting
2. Grant Award – Crime Records Information Sharing Network Expansion and Enhancements – \$56,700

RESOLUTION

GRANT AWARD – CRIME RECORDS INFORMATION SHARING NETWORK

EXPANSION AND ENHANCEMENT – \$56,700

WHEREAS, the James City County Police Department has been awarded a 2010 State Homeland Security Program (SHSP) Crime Records Information Sharing Network Expansion and Enhancement Grant through the Virginia Department of Criminal Justice Services (DCJS) for \$56,700; and

WHEREAS, the funds will be used for the purchase of tactical vests and in-car cameras; and

WHEREAS, there is no match required of this grant.

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:

SHSP – FY 11 (FY 10 Grant Program)	<u>\$56,700</u>
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Expenditure:

SHSP – FY 11 (FY 10 Grant Program)	<u>\$56,700</u>
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3. Chesapeake Bay Preservation Ordinance – Civil Charge – Ronald Haney, 3 Joy’s Circle, Hunter’s Creek Subdivision

RESOLUTION

CHESAPEAKE BAY PRESERVATION ORDINANCE VIOLATION – CIVIL CHARGE –

RONALD HANEY, 3 JOY’S CIRCLE, HUNTER’S CREEK SUBDIVISION

WHEREAS, Ronald Haney of 3 Joy’s Circle, Lot 10 of Section 2 Hunter’s Creek Subdivision, is the owner of a certain parcel of land commonly known as 3 Joy’s Circle, Toano, VA, designated as Parcel No. 2220500010 within James City County’s Real Estate system, herein referred to as the (“Property”); and

WHEREAS, on or about November 8, 2010, Ronald Haney caused the installation of a structure or other encroachments within a Chesapeake Bay Preservation Area (CBPA) on the Property without prior approval; and

WHEREAS, Ronald Haney has executed a Chesapeake Bay Restoration Agreement with the County agreeing to implement, in a timely manner, the provisions of an approved restoration plan which includes the installation of native canopy trees, native understory trees, and native shrubs within Resource Protection Area (RPA) on the Property and has successfully performed the work or posted sufficient surety guaranteeing the installation of the aforementioned improvements in order to remedy a violation of the County's Chesapeake Bay Preservation Ordinance and restore RPA on the Property; and

WHEREAS, Ronald Haney has agreed to pay a total of \$250 to the County as a civil charge under the County's Chesapeake Bay Preservation Ordinance; and

WHEREAS, the James City County Board of Supervisors is willing to accept the restoration of the impacted area and the civil charge in full settlement of the Chesapeake Bay Preservation Ordinance violation, in accordance with Section 23-18 of the Code of the County of James City.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes and directs the County Administrator to accept the \$250 civil charge from Ronald Haney, as full settlement of the Chesapeake Bay Preservation Ordinance Violations at the Property.

5. Payment of Automobile Liability Insurance Deductible

RESOLUTION

PAYMENT OF AUTOMOBILE LIABILITY INSURANCE DEDUCTIBLE

WHEREAS, James City County is a member of and has automobile liability insurance through the Virginia Association of Counties Group Self Insurance Risk Pool; and

WHEREAS, a James City County Police vehicle was involved in an automobile accident on December 25, 2009, that caused liability damages of \$211,423; and

WHEREAS, James City County carries a \$100,000 deductible on its automobile liability coverage; and

WHEREAS, the Virginia Association of Counties Group Self Insurance Risk Pool has invoiced James City County \$100,000 for the deductible payment.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the transfer from Contingency for the payment of \$100,000 to the Virginia Association of Counties Group Self Insurance Risk Pool.

Expenditures:

Non-Departmental

Insurance Deductible Payment	<u>\$100,000</u>
Contingency	<u>(\$100,000)</u>

6. JoAnn Falletta, Music Director of the Virginia Symphony Orchestra

RESOLUTION

RECOGNITION OF ACHIEVEMENT

JOANN FALLETTA, MUSIC DIRECTOR, VIRGINIA SYMPHONY ORCHESTRA

WHEREAS, JoAnn Falletta, “one of the finest conductors of her generation,” and a recognized international artist in the orchestra world, has chosen to share her unique talents with community and the Virginia Symphony Orchestra; and

WHEREAS, this season we celebrate her 20th Anniversary as Music Director of the Virginia Symphony; and

WHEREAS, under her leadership the Virginia Symphony has earned a reputation as one of the nation’s top orchestras; and

WHEREAS, she has led the Virginia Symphony to a cascade of artistic achievements including performances at Carnegie Hall, the Kennedy Center, National Public Radio and an ASCAP Award bringing national recognition to the region and to the orchestra; and

WHEREAS, she has enriched the lives of Hampton Roads audiences with her talent and uncompromising dedication to the highest artistic standards; and

WHEREAS, her artistic vision for the orchestra has led to the creation of a national discography recognized with wide critical acclaim; and

WHEREAS, she is one of Hampton Roads” leading Ambassadors to the world every time she takes the podium to lead an international orchestra; and

WHEREAS, she is beloved by the musicians, the greater Symphony Family and the entire community; and

WHEREAS, she has created an enduring and enriched quality of life for the municipalities and the citizens of Hampton Roads; and

WHEREAS, she was prominently featured as part of America’s Anniversary of the founding of Jamestown in James City County in May 2007.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, on this 22nd day of March, 2011 hereby expresses its sincere appreciation to Ms. Falletta for her contribution to the James City County’s quality of life.

4. Donation to James City-Bruton Volunteer Fire Department Capital Fund – \$25,000

Fire Chief Tal Luton stated that in 1963 Fire Station 1 was constructed in Toano. He stated that James City-Bruton (JCB) Volunteer Fire Department Chief David Nice has identified \$400,000 in repairs to the building and a fund drive was established to make the necessary repairs. He stated that the JCB Volunteer Fire Department offsets the personnel needs of the James City County Fire Department. He stated that the James City Volunteer Rescue Squad accepted a reduced contribution and recommended transferring the excess funds to the JCB Volunteer Fire Department's fund drive.

Mr. Kennedy noted the hard work and services provided by the JCB Volunteer Fire Department.

Chief Nice thanked the Board for its support and stated his pride in the volunteers and the community.

Mr. Kennedy made a motion to approve the resolution.

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

RESOLUTION

DONATION TO JAMES CITY-BRUTON VOLUNTEER FIRE DEPARTMENT

CAPITAL FUND - \$25,000

WHEREAS, the James City-Bruton Volunteer Fire Department has begun a Capital Fund Campaign to pay for identified extensive repair needs for its building; and

WHEREAS, the Volunteer Fire Department provides a vital emergency response service to the citizens and visitors to James City County; and

WHEREAS, the James City-Bruton Volunteer Fire Department has submitted a request for a donation to the Capital Fund Campaign.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes a donation to the James City-Bruton Volunteer Fire Department and authorizes the following budget transfer:

James City County Volunteer Rescue Squad	<u>(\$25,000)</u>
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James City-Bruton Volunteer Fire Department – Capital Campaign	<u>\$25,000</u>
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H. PUBLIC HEARINGS

I. Case Nos. Z-0002-2010/SUP-0029-2010/MP-0001-2010. The Williamsburg Pottery

Mr. Chris Johnson, Principal Planner, stated that Mr. Vernon Geddy has applied to rezone an 18.78-acre parcel located at 6692 Richmond Road from M-1, Limited Business/Industrial, with proffers, to M-1, Limited Business/Industrial, with amended proffers, and amend the existing Special Use Permit (SUP) and master plan applicable to this property. The purpose of the proposed amendments is to redevelop the property to incorporate new retail uses and dedicate the majority of the proposed retail and office square footage to the relocation and consolidation of the existing Williamsburg Pottery operations located on the eastern side of the CSX railroad tracks. The project proposes to increase the total amount of permitted retail and office square footage from 161,000 to 200,000, relocate one of the two signalized intersections, and reconfigure associated traffic improvements on Route 60. Other changes to the project include the relocation of one of the five pocket parks and elimination of the service drive between Buildings A and B at the north end of the site to allow the development of a larger central pedestrian plaza.

Staff finds the proposed amendments to be consistent with the Comprehensive Plan Land Use Map and surrounding zoning and development.

At its meeting on March 2, 2011, the Planning Commission recommended approval of the applications by a vote of 6-0 (Mr. Richard Krapf: absent).

Staff recommended that the Board of Supervisors approve the rezoning, master plan, and SUP applications with the conditions listed in the resolution and accept the voluntary proffers.

Ms. Jones opened the Public Hearing.

I. Mr. Vernon M. Geddy, III, on behalf of the applicant, gave a brief history of the Williamsburg Pottery business and property and the rezoning process in 2007. He reviewed the 2011 plan for the property, which consolidated the operations and office space and changed the business plan for the Pottery. He reviewed the master plan for the new development plans and the locations of the signalized entrances.

Mr. Icenhour asked if VDOT conducted a detailed traffic measurement study in order to determine that the traffic warrants were met.

Mr. Richard Costello, P.E., AES Consulting Engineers, commented that the traffic projections were incorporated into the traffic study.

As no one else wished to speak to this matter, Ms. Jones closed the Public Hearing.

Mr. Kennedy made a motion to approve the resolutions.

Mr. McGlennon stated his support for the application. He commented that this was a revitalization of a critical County business, and there were advantages over the previously approved plan including consolidation of existing retail space rather than incorporation of new retail space. He stated concerns about the traffic signalization, but understood that was a decision for VDOT to make.

Mr. Icenhour stated his support for the application. He stated that he believed this was a better plan than what was previously approved. He asked about the long-range plans for the buildings slated to be vacated on the east side of the property.

Mr. Geddy stated that he was unaware if there was a long-range plan, but some spaces would be used for warehousing and other uses.

Mr. Icenhour asked if the entrance to Lightfoot Road would be open.

Mr. Geddy stated that the entrance would not be open and through traffic would not be allowed.

Mr. Goodson thanked the property owners for their investment in the County.

Ms. Jones thanked the property owners and stated her support for the application.

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

RESOLUTION

CASE NOS. Z-0002-2010/MP-0001-2010. THE WILLIAMSBURG POTTERY

WHEREAS, in accordance with § 15.2-2204 of the Code of Virginia and Section 24-15 of the James City County Zoning Ordinance, a public hearing was advertised, adjoining property owners notified, and a hearing scheduled on Zoning Case Nos. Z-0002-2010/MP-0001-2010, for rezoning 18.78 acres from M-1, Limited Business/Industrial, with proffers, to M-1, Limited Business/Industrial, with amended proffers; and

WHEREAS, the proposed project is shown on a Master Plan prepared by AES, entitled "Master Plan and Rezoning Amendment for the Williamsburg Pottery," dated November 24, 2010, and revised January 27, 2011; and

WHEREAS, the Planning Commission of James City County, following its public hearing on March 2, 2011, recommended approval, by a vote of 6 to 0; and

WHEREAS, the property is located at 6692 Richmond Road and can be further identified as James City County Real Estate Tax Map No. 2430100024.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve Case Nos. Z-0002-2010/MP-0001-2010 and accept the voluntary proffers.

RESOLUTION

CASE NO. SUP-0029-2010. THE WILLIAMSBURG POTTERY

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. Vernon Geddy has applied to amend the adopted condition for Case No. SUP-36-06 to allow for the development of a shopping center with commercial square footage over 10,000 square feet, as well as a traffic generation rate which is over 100 peak hour trips; and

WHEREAS, the proposed project is shown on a Master Plan prepared by AES, entitled "Master Plan and Rezoning Amendment for The Williamsburg Pottery," dated November 24, 2010, and revised January 27, 2011; and

WHEREAS, the property is located on land zoned M-1, Limited Business/Industrial, with proffers, and can be further identified as James City County Real Estate Tax Map No. 2430100024; and

WHEREAS, the Planning Commission, following its public hearing on March 2, 2011, voted 6 to 0 to recommend approval of this application.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve the issuance of SUP No. 0029-2010 as described herein with the following conditions:

1. Traffic Signal: The traffic signal at the Colonial Heritage east crossover shall be installed or bonded prior to the issuance of a certificate of occupancy for 182,000 square feet of buildings on the property as shown on the binding Master Plan, entitled "Master Plan and Rezoning Amendment for The Williamsburg Pottery," prepared by AES Consulting Engineers, Inc., dated November 24, 2010, and revised January 27, 2011.
2. Commencement of Construction: If construction has not commenced on this project within 36 months from the issuance of an SUP, the SUP shall become void. Construction shall be defined as obtaining permits for building construction and footings and/or foundations that have passed required inspections.
3. Severance Clause: This SUP is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.

2. Expansion of James City County's Enterprise Zone

Mr. Russ Seymour, Director of Economic Development, gave background information on the County's Enterprise Zone and its incentives. He stated that the County has been allocated 3,840 acres to be incorporated into the zone. He stated that the current zone was roughly 3,400 acres, and there was an opportunity to adjust the zone each year. He stated that the current enterprise zone program was scheduled to terminate in 2015, so staff wishes to utilize it as much as possible in the time remaining. He noted that there were areas in the Enterprise Zone that were not developable for environmental reasons. He stated that the resolution would remove that property from the zone and reallocate it to another part of the County to maximize the use of the Enterprise Zone program. He described the proposed areas to be included in the Enterprise Zone, including areas around Anheuser-Busch InBev and around the Stonehouse Industrial Park. He stated that the State allows for three areas, including a main zone and two sub-zones. He stated that staff is interested in opening up areas that are slated for development to take full advantage of this program. He stated that the resolution would allow staff to make application to the State to make these changes.

Mr. Goodson thanked Mr. Seymour for taking his suggestion to include the southern area of Route 60 including parts of the Riverside property which were scheduled for development.

Ms. Jones opened the Public Hearing.

As no one wished to speak to this matter, Ms. Jones closed the Public Hearing.

Mr. Goodson made a motion to adopt the resolution.

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

Ms. Jones recognized members of the Economic Development Authority in attendance.

RESOLUTION

EXPANSION OF JAMES CITY COUNTY'S ENTERPRISE ZONE

WHEREAS, James City County has a total of 3,840 acres which can be included as part of designated Enterprise Zone that will expire on December 31, 2015; and

WHEREAS, the County's existing Enterprise Zone contains approximately 3,456 acres; and

WHEREAS, approximately 1,061 acres within the existing Enterprise Zone are public lands or contain wetlands or property designated by the Chesapeake Bay Preservation Act as a Resource Protection Area (RPA); and

WHEREAS, the Commonwealth of Virginia allows for an annual 15 percent reallocation of existing Enterprise Zone acres.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby requests staff to submit an Enterprise Zone Amendment Application to the Virginia Department of Housing and Community Development to remove areas from the existing Enterprise Zone identified as wetlands and RPA and add additional areas in the following manner:

- Expand the County's existing Enterprise Zone to include a portion of the SR-60 Corridor in the vicinity of the Busch Corporate Center in the southern portion of the County.
- Create a sub-zone in upper James City County to include the Stonehouse Commerce Park, Jacobs and Hankins Industrial Parks, and a portion of the SR-60 and SR-30 Corridor.

3. **Ordinance to Amend James City County Code, Chapter 15, Offenses – Miscellaneous, by Amending Section 15-20, Noise Prohibited in Residential-Zoned Areas**

Mr. Middaugh stated this was a redrafting and expansion of the noise ordinance to clarify and strengthen the standards. He stated that the penalties were changed to civil penalties. He stated that the focus was primarily on residential properties, but this ordinance would also apply to mixed use and areas adjacent to residential properties. He stated that this warranted further discussion. He recommended continuing the public hearing.

Ms. Jones opened the Public Hearing.

1. Mr. Ed Oyer, 139 Indian Circle, asked about whether or not the noise ordinance would apply to vehicles. He stated that if the vehicle passes inspection, he did not understand how the ordinance could apply to noise emitted by the vehicle.

As no one wished to speak to this matter, Ms. Jones continued the Public Hearing until April 12, 2011.

4. Ordinance to Amend Chapter 5, Cable Communications, by Amending Section 5-1 through Section 5-30

Mr. Rogers stated that this was an update to the ordinance which has not been updated in some time. He stated that there have been many changes to the State Code which were incorporated. He stated that the Cable Advisory Committee has been removed, and a Broadband Committee would be incorporated.

Ms. Jones opened the Public Hearing.

1. Mr. Ed Oyer, 139 Indian Circle, asked about the deletion of the franchise fee in the ordinance.

As no one else wished to speak to this matter, Ms. Jones closed the Public Hearing.

Mr. Goodson asked if the franchise fee language was removed from the ordinance due to a change in State Code.

Mr. Rogers stated that was correct; he stated that it was being replaced by a communications tax. He stated that if the State Code changes, the franchise fee could be reincorporated.

Mr. Goodson confirmed that the franchise fee has not been collected in years.

Mr. Rogers stated that was correct.

Mr. Goodson made a motion to adopt the ordinance.

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

5. Ordinance to Renew the Franchise Certificate for Cox Communications of Hampton Roads, LLC to June 30, 2021

Mr. Rogers stated that the State had changed some of the laws for issuing a franchise. He stated that the County has not issued a franchise since 1990. He stated that this was very similar to the terms and conditions of franchise certificates of surrounding localities. He stated that staff has worked with Cox Communications for two years on the franchise to address Public, Educational, and Government (PEG) channels and customer service needs. He stated that a representative from Cox Communications was also in attendance.

Mr. Goodson asked if the franchise allows for competition.

Mr. Rogers stated that the franchise allows for competition; it was a non-exclusive franchise. He stated that if another company offered competition, it would be allowed.

Ms. Jones confirmed that the citizen committee was dissolved and a new committee would be developed for broadband. She asked how the work of the Cable Committee was recognized in the franchise process.

Mr. Rogers stated that the Cable Committee was integral in developing the customer service standards in the agreement, and they also worked on the early drafts of the franchise certificate. He stated that they were involved for a great deal of the process.

Mr. Icenhour asked about a pilot program of County PEG programming on demand.

Mr. Rogers stated that the intention was to make County programming available on demand on Cox Communications. He stated this was another way of broadcasting County programming.

Mr. Icenhour asked Mr. Rogers to explain the purpose of the PEG capital fee.

Mr. Rogers stated that in 1990, the franchise negotiations included a PEG fee. He stated that was no longer permitted by State law. He stated that the proposed PEG fee of \$0.25 was on the low end of the fee spectrum in Hampton Roads and was subject to consideration by the Board.

Mr. Icenhour asked what the fee would be used for.

Mr. Rogers stated that the fee would be used for anything used to broadcast, including technology and equipment. He stated that the costs exceed the funds received from the fee.

1. Mr. Gerry White, 4013 Killebrew, on behalf of the Cable Communications Advisory Committee, stated his concern about the cable franchise agreement. He stated that the committee had discussed the agreement with staff, but had not seen the final agreement. He commented on the insufficient customer service matters and noted that there was no prohibition of a disconnection fee. He asked the Board to defer action to allow for further review for the public. He stated his dissatisfaction about the level of transparency in the process.

2. Mr. Ed Oyer, 139 Indian Circle, commented that he was opposed to fees. He stated that there was no difference between a fee and a tax.

Mr. Rogers commented on the disconnection fee. He stated that there had been changes in State law and that if Cox Communications charges a fee that is permitted by law, the franchisee would have to submit notification that the fee would be charged.

Mr. McGlennon asked if the fee could be prohibited.

Mr. Rogers stated that it could not be prohibited, but could not be charged if not otherwise permitted by law.

Mr. McGlennon asked about the customer service standards included.

Ms. Jody Puckett, Director of Communications, stated that the Federal Communications Commission (FCC) limited the customer service standards that could be required, but what has been included was providing a customer service center, burying exposed lines, and simplifying bills to allow customers to better understand their charges.

Mr. McGlennon asked if it was necessary to act on this item at this meeting.

Mr. Rogers stated that it was necessary. He stated this item has been deferred twice and that the franchise expires on April 1, 2011.

Mr. Goodson asked if an extension would have to be negotiated.

Mr. Rogers stated that the Board could extend the franchise, but an ordinance was not prepared to do that.

Mr. McGlennon stated that he was interested in public comments and concerns. He stated that the Board needed to address how the County would pay for things that have been paid through fees. He stated his greatest concern was that people were able to review the information.

Mr. Rogers stated that there have been public hearings by staff and the Cable Committee to receive public comment and staff conducted a survey process and received overwhelming response. He stated that the majority of the recent changes were required to be done by law or were not significant substantive changes.

Mr. Goodson stated that he had not heard from citizens on this issue and knew it was publicized. He stated that he was comfortable moving forward on this item. He commented on the PEG fee; he stated that he believed it made sense to fund some of the telecommunications functions through the fee and noted that most of the citizens who benefit from that are cable customers.

Mr. McGlennon stated he understood that the majority of the funds would be used to expand the access of the programming and stated concern for everyone paying for these benefits.

Mr. Goodson stated this would only offset some of the costs of broadcasting meetings and programming.

Ms. Jones commented that citizens on a particular committee have invested time in this process and stated that she did not wish for these citizens to come away from the process feeling that their time was not well spent. She stated that she did support moving forward on this item at this time.

Mr. Icenhour stated that he agreed with Ms. Jones. He commented that citizen committees should be kept informed and stated his concern with how this process was handled. He commented on the PEG fee and noted that local government has limited means to collect funds. He commented that the Board should recognize that the citizens would have to pay to support PEG programming.

Mr. Goodson stated that a person has a choice to subscribe to cable service.

Mr. Kennedy raised a motion to eliminate the PEG fee.

Ms. Jones stated that she supported eliminating the PEG fee and that the PEG fee amounted to \$66,000. She asked for confirmation that Cox Communications was required to provide PEG channels. She stated that customers could not unsubscribe from these channels in order to opt out of the PEG fee.

Mr. Rogers stated that the franchise was going to set the PEG fee at the lowest rate. He asked if the motion was to strike the PEG fee from the franchise agreement to disallow future Boards from collecting it.

Mr. Icenhour asked if the fee could be set at zero and allow for future Boards to collect it if needed.

Mr. Kennedy stated that he could support allowing future Boards to collect it if it was equitable.

Ms. Jones stated she could support that.

Mr. McGlennon confirmed that the franchise agreement would retain the PEG fee, but the Board could eliminate the fee during the budget process.

Ms. Jones asked if there was a way to evaluate this on a regular basis.

Mr. Rogers stated that the Board could consider it annually during its budget process.

Mr. Goodson moved the franchise agreement with an amendment to change the PEG fee to zero.

Mr. McGlennon asked to consider deferring the matter to April 12, 2011, and extend the agreement until that time.

Mr. Rogers asked to continue the franchise until April 30, 2011, and have the reworded agreement available at the April 12, 2011, meeting.

Ms. Jones asked that staff include the committee members in the process.

Mr. Rogers recommended continuing the public hearing to allow for further public comment.

Ms. Jones continued the Public Hearing until April 12, 2011.

Mr. McGlennon made a motion to defer action until April 12, 2011, for further public input and to extend the franchise agreement until April 30, 2011.

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

6. Ordinance to Amend Chapter 23, Chesapeake Bay Preservation, by Amending Section 23-17, Appeals

Mr. Scott Thomas, Director of Environmental, stated that there were a few “housekeeping” amendments to the Chesapeake Bay Preservation Ordinance. He stated that the amendment to Section 23-17(c) clarifies the ability of the Chesapeake Bay Board (the “CB Board”) to impose conditions upon the granting of appeals from administrative decisions before the CB Board. The amendment to Section 23-17(d) establishes a 30-day time period for property owners to appeal decisions of the CB Board to the Circuit Court. Virginia Code Section 10.1-2109(f) permits the adoption of such an appeal period.

The amendment is consistent with State law, and staff recommends adoption of the Ordinance.

Ms. Jones opened the Public Hearing.

As no one wished to speak to this matter, Ms. Jones closed the Public Hearing.

Mr. McGlennon made a motion to adopt the ordinance amendments.

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

7. Marclay Road Airport Access Grant Application Endorsement

Mr. Jason Purse, Senior Planner, stated that the Williamsburg-Jamestown Airport is applying for an Airport Access grant through VDOT to allow funds to be used to realign Marclay Road and bring the road up to VDOT design standards. These improvements will allow Marclay Road to be accepted into the public road system. Of the total \$600,000 project cost, \$150,000 is required to be matched by the applicant.

Mr. Purse explained that by endorsing this application the County would be responsible for paying the match money to VDOT. However, the Williamsburg-Jamestown Airport has funds available for this project and will provide a letter of credit to the County to ensure that no County funds will be required for the project.

Staff recommended approval of the resolution.

Mr. Icenhour asked if the realignment of the road was necessary because there was not adequate easement or right-of-way to expand the existing road without encroaching upon current property lines and houses.

Mr. Purse stated that was correct.

Mr. Icenhour stated that he understood the road expansion was a by-right project.

Mr. Purse stated that no legislative approval was required.

Ms. Jones opened the Public Hearing.

1. Mr. Larry Waltrip, applicant, thanked the Board for considering the resolution. He stated that the Williamsburg-Jamestown Airport could support the project with funding and requested approval.

Mr. McGlennon stated that this would be a nice improvement to the road. He stated it would be important to communicate with the neighbors across Lake Powell Road to ensure they were aware of the process and to minimize impacts.

Mr. Waltrip stated that the project would be done with due diligence.

2. Mr. Steve Montgomery, President of Williamsburg Landing, stated that his organization was a neighbor of the Williamsburg-Jamestown Airport. He stated that there were many reasons that Williamsburg Landing would benefit from Board support of this resolution. He stated a back entrance would allow for diversion of emergency services and commercial and construction traffic to the facility off the main road. He stated there was much public good that would result from this project.

As no one else wished to speak to this matter, Ms. Jones closed the Public Hearing.

Mr. Goodson made a motion to adopt the resolution.

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

RESOLUTION

MARCLAY ROAD AIRPORT ACCESS GRANT APPLICATION ENDORSEMENT

WHEREAS, Williamsburg-Jamestown Airport, Inc. owns property located at 3 Marclay Road and identified as James City County Real Estate Tax Map Parcel No. 4820100004 (the "Property") in the County of James City, Virginia and will soon enter into a firm contract to improve the access road (the "Access Road") to the airport facilities on the Property; and

WHEREAS, this Access Road improvements will involve the expenditure of approximately \$600,000; and

WHEREAS, operations are expected to begin at this Access Road on or about August 2011; and

WHEREAS, the existing public road network does not provide for adequate access to the airport and it is deemed necessary that improvements be made to Marclay Road (the "Road Project") and

WHEREAS, the County of James City (the "County") hereby guarantees that the necessary environmental analysis, mitigation, fee simple right-of-way, and utility relocations or adjustments, if necessary, for the Road Project will be provided at no cost to the Virginia Department of Transportation ("VDOT"); and

WHEREAS, the County acknowledges that no land disturbing activities may occur within the limits of the Road Project prior to appropriate notification from VDOT; and

WHEREAS, the County hereby guarantees that all ineligible Road Project costs and all costs exceeding the allocation from the Airport Access Program will be provided from sources other than those administered by VDOT; and

WHEREAS, the Board of Supervisors of the County endorses the grant application conditioned upon the Williamsburg-Jamestown Airport, Inc. entering into an agreement (the "Agreement") with the County upon terms acceptable to the County Administrator which shall, at a minimum, guarantee that Williamsburg-Jamestown Airport, Inc. will pay to the County the entire required match amount, which Agreement shall be secured by surety in a form and amount acceptable to the County Attorney.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby requests that the Commonwealth Transportation Board provide Airport Access Program funding to provide an improved access road to this airport facility.

BE IT FURTHER RESOLVED that the Board of Supervisors of James City County hereby authorizes the County Administrator to execute any and all documents necessary to secure the funding sought through the Airport Access Program and further authorizes the County Administrator to execute the Agreement with Williamsburg-Jamestown Airport, Inc.

BE IT FURTHER RESOLVED that the Board of Supervisors of James City County hereby agrees that the new roadway so constructed will be added to and become a part of the road system of the secondary system of highways.

I. BOARD CONSIDERATIONS

1. Metropolitan Area Network (Dark Fiber) Agreement

Mr. Tom Pennington, Director of Information Resources Management, stated that the resolution before the Board would allow the County Administrator to sign an agreement to lease dark fiber that the County has under contract from Cox Communications. He stated that this was in cooperation with the franchise agreement and was due to expire at the same time. He explained that the dark fiber was small strands of unlighted fiber optics that the County worked to incorporate into various sites in the County. He explained that this served schools, Middle Peninsula Juvenile Center, and other sites. He stated that this lease was for a broad service that was not readily available commercially or financially viable for each individual site. He stated that another part would be constructed in the future to make the services more robust and reliable.

Mr. Rogers acknowledged that representatives from Cox Communications were available.

Mr. Icenhour asked if this resolution could proceed without the franchise agreement.

Mr. Rogers stated that it would expire on June 30, 2011.

Mr. McGlennon confirmed that the Board could adopt the resolution at this time.

Mr. Rogers stated that was correct.

Mr. Icenhour made a motion to adopt the resolution.

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

RESOLUTION

LEASE AGREEMENT - METROPOLITAN AREA NETWORK DARK FIBER

LEASE AGREEMENT - COX COMMUNICATIONS HAMPTON ROADS, LLC

WHEREAS, fiber optic cabling without electronics has been under contract with Cox Communications since 1996; and

WHEREAS, the cabling is not available from any other provider; and

WHEREAS, Cox Communications Hampton Roads, LLC has agreed to continue to lease to James City County the same four strands of "unlighted" or "dark" fiber optic strands.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the County Administrator to execute a Dark Fiber Agreement for fiber optic cable from Cox Communications Hampton Roads, LLC in an amount of \$5,800 per month.

At 8:40 p.m. Ms. Jones recessed the Board for a meeting of the James City Service Authority (JCSA) Board of Directors.

At 8:46 p.m., Ms. Jones reconvened the Board.

2. Master Services Agreement for Telecommunications Services – Cox Communications, Hampton Roads, LLC

Mr. Pennington reviewed the Master Services Agreement and indicated that the agreement let the County choose a mixture of services that is most economical. He indicated that in the current market condition, the selection of the County's necessary services would result in a savings of about \$50,000 per year. He stated there was a need for services with new facilities coming online. He stated that the contract was renewable each year, but the contract price was good for five years. He recommended approval of the resolution.

Mr. Rogers stated that the effective date of the contract was July 1, 2011. He stated services would need to be switched prior to that date, so it was pertinent to adopt the resolution at this time to make those changes.

Mr. McGlennon made a motion to adopt the resolution.

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

RESOLUTION

MASTER SERVICES AGREEMENT FOR TELECOMMUNICATIONS SERVICES –

COX COMMUNICATIONS HAMPTON ROADS, LLC

WHEREAS, County staff has evaluated and recommends the proposed agreement with Cox Communications for telecommunications services; and

WHEREAS, the telecommunications services offered meet our business requirements; and

WHEREAS, the Agreement provides a Service Level Agreement as well as \$30,000 annual cost savings to James City County, Williamsburg-James City County Courthouse, Williamsburg Regional Library, Virginia Peninsula Regional Jail, James City Service Authority, and the Williamsburg Area Transit Authority; and

WHEREAS, the Agreement will result in a reduction of \$14,400 per year in the lease of its dark fiber network.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the County Administrator to execute the Agreement with Cox Communications Hampton Roads, LLC.

3. Revenue Sharing Program Fiscal Year 2012 – Tewning Road Improvements – \$200,000

Mr. Steven Hicks, Manager of Development Management, stated that funds were available in the VDOT Revenue Sharing program for 2012. He stated that JCSA has agreed to match the funds to make improvements to Tewning Road. Staff recommended approval of the resolution.

Mr. McGlennon made a motion to adopt the resolution.

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

RESOLUTION

REVENUE SHARING PROGRAM FISCAL YEAR 2012 –

TEWNING ROAD IMPROVEMENTS – \$200,000

WHEREAS, the Board of Supervisors of James City County desires to submit an application requesting \$100,000 of Revenue Sharing Funds through the Virginia Department of Transportation (VDOT) Fiscal Year 2012 Revenue Sharing Program; and

WHEREAS, the County will allocate \$100,000 to match Revenue Sharing Program funds; and

WHEREAS, the James City Service Authority (JCSA) has agreed to give \$100,000 to the County for the required match; and

WHEREAS, the combined County and State funding totaling \$200,000 is requested to fund improvements to Tewning Road to shore up the existing roadway and improve drainage to ensure access to the facilities and businesses located along Tewning Road.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby supports this application for an allocation of \$100,000 through the VDOT Revenue Sharing Program and the County will contribute \$100,000.

BE IT FURTHER RESOLVED THAT the Board of Supervisors of James City County, Virginia, hereby grants authority for the County Administrator to execute project administration agreements for any approved revenue sharing projects.

4. **Revenue Sharing Program Fiscal Year 2012 – Turn Lane Improvements – Richmond Road from Lightfoot Road to Centerville Road – \$1,000,000**

Mr. Hicks explained that this was a similar request with a County match of \$500,000. He stated that the turn lane improvements would be made on Centerville Road and requested approval of the resolution.

Mr. Goodson made a motion to adopt the resolution.

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

RESOLUTION

REVENUE SHARING PROGRAM FISCAL YEAR 2012 – TURN LANE IMPROVEMENTS –

RICHMOND ROAD FROM LIGHTFOOT ROAD TO CENTERVILLE ROAD – \$1,000,000

WHEREAS, the Board of Supervisors of James City County desires to submit an application requesting \$500,000 of Revenue Sharing Funds through the Virginia Department of Transportation (VDOT) Fiscal Year 2012 Revenue Sharing Program; and

WHEREAS, the County will allocate \$500,000 to match Revenue Sharing Program funds; and

WHEREAS, the combined County and State funding totaling \$1,000,000 is requested to fund turn lane improvements along Richmond Road (Route 60) between Lightfoot Road (Route 646) and Centerville Road (Route 614) to improve traffic flow and accessibility to the Warhill Tract and to provide for further economic development of the area.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby supports this application for an allocation of \$500,000 through the VDOT Revenue Sharing Program and the County will contribute \$500,000.

BE IT FURTHER RESOLVED THAT the Board of Supervisors of James City County, Virginia, hereby grants authority for the County Administrator to execute project administration agreements for any approved revenue sharing projects.

Ms. Jones recognized Planning Commissioner Tim O'Connor in attendance.

5. 2011 Redistricting Standards and Criteria and Procedural Guidelines – Revised

Mr. Middaugh stated that a revised resolution was provided regarding the Redistricting Standards and Procedures. He stated that he understood the Board wished to appoint a citizen committee.

Ms. Jones stated that the citizen committee would be comprised of two citizens per Board member as in the last redistricting process. She stated that those appointments would be done this evening. She requested that when the meetings were held by the citizen committee, staff be present from the Planning Office, Voter Registrar's Office, and the County Attorney's Office.

Mr. Rogers stated that a staff team had been established.

Mr. McGlennon stated that an aggressive deadline was established. He stated that he would hope the advisory committee would be given time to review plans submitted. He stated that the committee should be able to give the Board advice prior to the date the final plans are scheduled to be submitted. He stated he wanted the committee's deadline to be April 12, 2011.

Mr. Icenhour commented on the Standards and Criteria and Procedures for submittal of plans. He asked if any of the background information and legal requirements would be given to the citizen committee.

Mr. Rogers stated that it would be and that he would be available to advise the committee.

Mr. Goodson made a motion to adopt the resolutions with an amendment of April 12, 2011, as a deadline for the advisory committee to report its findings.

RESOLUTION

2011 REDISTRICTING STANDARDS AND CRITERIA

AND PROCEDURAL GUIDELINES

WHEREAS, the Board of Supervisors feels it would be appropriate to express its position on the adoption of standards and criteria to evaluate redistricting plans and adopt procedural guidelines to be followed for submittals of redistricting plans.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby adopts the standards and criteria to evaluate redistricting plans and adopts the following guidelines for submittal of such plans:

Standards and Criteria

Basic standards and factors important to the Board should be clearly stated. These standards and factors should be used to evaluate each redistricting plan considered. The following are suggested:

All the criteria are stated by Federal, State, or the County's Charter.

1. Five election districts shall be maintained. (James City County Charter)
2. Each election district shall be as nearly of equal population as practicable. The deviation from district to district shall be less than five percent (plus or minus five percent deviation). (VA Code Section 24.2- 304.1B)
3. Each election district and each precinct shall be composed as nearly as practicable of compact and contiguous territory. (VA Code Section 24.2-304.1B)
4. Each election district and precinct shall have clearly defined and clearly observable boundaries. Historic lines which appear as a block boundary in the United States Bureau of the Census map for the 2000 Census may be considered as an appropriate boundary. (VA Code Section 24.2-305)
5. The redistricting shall not dilute the voting opportunities of any racial or language minority group. Voting Rights Act Section 2
6. Known communities of interest shall not be divided into separate election districts if reasonably possible. (See Guide to Local Redistricting for 2011, Page 32)

Procedure for Submittal and Review of Plans

The Department of Justice has requested that the preclearance submittal include:

- (a) All plans submitted to the Board of Supervisors;

- (b) All plans considered by the Board of Supervisors;
- (c) The action taken by the Board of Supervisors on each plan specifying the reason for rejecting or approving the plans; and
- (d) Transcripts or minutes of all meetings considering the plans.

To meet this submittal objective, we recommend:

- 1) All plans shall be submitted to the County Administrator.
- 2) Each plan shall consider and include the entire County.
- 3) The County Administrator shall assign a number to each plan for purposes of record keeping.
- 4) Any plans initiated by Board members shall be prepared with staff assistance so that they can be drawn on appropriate maps.
- 5) A clear deadline for the submittal of plans should be established to allow the Board reasonable time to consider plans in advance of the deadline for adoption.
- 6) Each plan received by the County Administrator for Board consideration shall be available for public inspection.
- 7) The Board shall consider each plan submitted for consideration.
- 8) The Board, at a public meeting, may adjust, amend, or modify any plan before it or create a new plan. Such plan shall be assigned a number and shall be considered by the Board as a separate plan for purposes of review, approval, or denial.

RESOLUTION

REDISTRICTING CALENDAR

WHEREAS, the Board of Supervisors of James City County, Virginia, deems it appropriate to adopt a calendar setting forth a redistricting schedule; and

WHEREAS, in February 2011 the County received its census data from United States Bureau of the Census.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby adopts the following calendar setting forth a redistricting schedule.

March 22, 2011	Citizen Redistricting Committee appointed by Board
April 12, 2011	Deadline for Redistricting Advisory Committee to report its finding to Board and receive any additional assignments
April 12, 2011	Deadline for redistricting plans to be submitted to the County Administrator for consideration by the Board

April 12, 2011	Public hearing to receive comment prior to consideration of redistricting plan by the Board (7:00 p.m. regular Board meeting)
April 26, 2011	7:00 p.m. public hearing for Redistricting Ordinance
April 26, 2011	Adoption of Redistricting Ordinance (7:00 p.m. regular Board meeting)
April 29, 2011	Deadline for submitting preclearance to the Department of Justice

The Board made its citizen appointments:

Mr. Kennedy:	Mr. Joshua Mayes Ms. Amanda Johnston
Mr. Goodson:	Mr. Paul Gerhardt Mr. Jeff Ryer
Mr. Icenhour:	Mr. Dave Jarman Ms. Debra Kratter
Mr. McGlennon:	Ms. Jennifer Tierney Mr. Anthony Conyers
Ms. Jones	Mr. Heather Cordasco Mr. Jay Everson

J. PUBLIC COMMENT

1. Mr. Ed Oyer, 139 Indian Circle, commented on the I-64 environmental impact statement pamphlet and encouraged people to submit comments. He commented on the importance of military connectivity and traffic concerns during military mobilization.

K. REPORTS OF THE COUNTY ADMINISTRATOR

Mr. Middaugh stated that Mr. Hicks would provide a briefing on Highway Matters. He stated that the Board could make appointments to the Stormwater Program Advisory Committee in open session.

1. Highway Matters

Mr. Hicks reviewed traffic concerns in the County. He reported on speed bumps that would be installed on Casey Boulevard in New Town as a speed calming measure; signage at Route 5 to alert motorists of the traffic signal; wedges, ditching, and shoulder strengthening on Rochambeau Drive; slurry sill surface on Ponder Court; Route 60 pavement near Neighbors Drive that was scheduled to be completed the next day; Olde Towne Road ditches, cross pipes, and erosion to be completed in April; Lightfoot Road CSX railroad crossing completion; Airport Road railroad crossing work to begin shortly; Fire Station 2 installation of emergency traffic signals through revenue sharing funds; restriping of the right-turn lane and removal of the delineating poles at Rochambeau Drive and Old Stage Road; reconstruction of Endwood Road and Ware's

Manor Road due to potholes; completion of Route 199 and Route 5; Ironbound Road was on schedule; News Road project starting in June; and Longhill Road/Centerville Road to be completed by the end of the summer. He commented that grass mowing in VDOT rights-of-way for primary routes would be mowed three times and secondary roads would be mowed twice over the summer. He noted that there were virtually no subdivision overlay projects in the upcoming maintenance schedule; he noted that VDOT was changing the process to overlay these surfaces with liquid asphalt and small stones. He stated there was limited funding which would be applied to Federal routes. He stated the list of work and a map would be on the website for the public's reference.

Mr. Middaugh explained that the liquid asphalt method was a legitimate form of preventative maintenance, but it has downsides of being messy and being broadcast on cars.

Mr. Hicks explained that the Planning Office would have the I-64 corridor feedback brochures available for the public.

Mr. Middaugh stated that staff has been asked to compile a list of road projects and requested guidance from the Board on the projects. He stated that the budget included funding to identify priority intersections improvements.

Mr. Icenhour asked about traffic calming measures and speed bumps in New Town. He noted that this has been requested for communities and it was not feasible.

Mr. Hicks stated that the road in New Town was not accepted into the VDOT system and the developer was installing the speed bumps.

Mr. Goodson stated that the I-64 corridor study included the area from I-664 to I-95 in Richmond.

Mr. Hicks stated that the County Administrator had made formal comments about construction.

Mr. Goodson stated that the County's stance was to maintain the median and add any additional lanes to the outside of the road.

L. BOARD REQUESTS AND DIRECTIVES

1. Board Expense Policy

Mr. Middaugh stated that staff has prepared, at the Board's request, an expense policy for Board of Supervisors members. He stated that most of the policies are identical to the expense policy that applies to employees. He stated that the changes incorporated included a provision to help new supervisors establish a home office including equipment needs. He reviewed the policy's provision for a County cell phone and payment of half the cost of a home internet connection. He stated that the Board may wish to revise the travel provisions as needed.

Mr. Goodson commented on the in-state guidelines on hotel costs in relation to the Virginia Association of Counties (VACo) Annual Conference at the Homestead.

Mr. Middaugh indicated that the employee policy allows for the lowest cost room on-site.

Mr. Goodson stated that the policy could be clarified that the rate could be changed if it includes meals, such as in the case of the VACo Annual Conference.

Ms. Jones stated that she felt this would be good for future Board members.

Mr. McGlennon made a motion to adopt the resolution with an amendment to revise the policy's hotel rate when meals are included.

RESOLUTION

LEGISLATIVE SPENDING POLICY

WHEREAS, the Board of Supervisors desires to establish a legislative spending policy.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby adopts the Legislative Spending Policy.

Mr. McGlennon stated that in order to allow for continuity of membership on the committee, he recommended that the new members appointed to the Stormwater Program Advisory Committee have half their terms expire in 2013 and half expire in 2014.

Mr. McGlennon made a motion to remove Ms. Kathleen Lindsay due to lack of attendance and to appoint Mr. Allen Ayers, Mr. Louis J. Bott, Jr., Mr. Charles Brewster, Mr. Nitant N. Desai, Mr. Phillip Doggett, Mr. Reed Johnson, Mr. Malcolm E. Martin, Ms. Mary Delaney Smallwood, Mr. Roger Schmidt, and Mr. Richard Strenkowski to staggered terms set to expire in 2013 and 2014.

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

Mr. Goodson stated that the Board approved a resolution as part of its Consent Calendar in recognition of Ms. JoAnn Falletta, Music Director of Virginia Symphony Orchestra for her 20 years of service. He noted that a benefit would be held on April 10, 2011, and stated that if a member of the Board was attending the reception the resolution could be presented at that time.

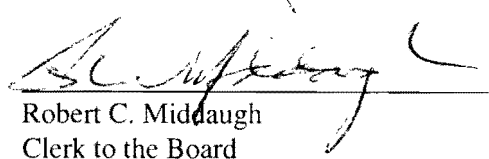
Mr. Middaugh stated that he believed members of the Williamsburg Area Arts Commission would be in attendance and be able to present the resolution.

M. ADJOURNMENT to 7 p.m. on April 12, 2011.

Mr. McGlennon made a motion to adjourn.

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

At 9:20 p.m. Ms. Jones adjourned the Board until 7 p.m. on April 12, 2011.


Robert C. Middaugh
Clerk to the Board

//0009765

AMENDED AND RESTATED PROFFERS

THESE AMENDED AND RESTATED PROFFERS are made this 28th day of January, 2011 by WILLIAMSBURG POTTERY PROPERTIES, LLC., a Virginia limited liability company (together with its successors and assigns, the "Owner") ("Grantor"), for the benefit of JAMES CITY COUNTY, VIRGINIA ("Grantee").

RECITALS

A. Owner is the owner of a tract or parcel of land located in James City County, Virginia, with an address of 6692 Richmond Road, Williamsburg, Virginia, being Tax Parcel 2430100024, and containing 18.78± acres, being more particularly described on Exhibit A attached hereto (the "Property"). The Property is now zoned M-1 and is subject to (i) Proffers dated March 19, 2007 and recorded in the Clerk's Office of the Circuit Court of the City of Williamsburg and County of James City as Instrument No. 070016264 (the "Existing Proffers") and (ii) a master plan entitled "Rezoning and Special Use Permit for the Promenade at the Williamsburg Pottery for the Williamsburg Pottery Factory Inc", prepared by AES Consulting Engineers dated November 29, 2006, and last revised March 19, 2007, (the "Existing Master Plan").

B. Owner has applied to amend and restate the Existing Proffers and to amend the Existing Master Plan in certain respects.

C. Owner has submitted to the County an amended master plan entitled "Master Plan and Rezoning Amendment for the Williamsburg Pottery for the Williamsburg Pottery Factory, Inc.", prepared by AES Consulting Engineers with a revision date of January 27, 2011 (the "Amended Master Plan") for the Property in accordance with the County Zoning Ordinance.

E. Owner desires to amend and restate the Existing Proffers in order to offer to the County certain amended conditions on the development of the Property not generally applicable to land zoned M-1.

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

CONDITIONS

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

2. **Water Conservation.** The Owner shall be responsible for developing water conservation standards to be submitted to and approved by the James City Service Authority and subsequently for enforcing these standards. The standards shall address such water conservation measures as limitations on the installation and use of irrigation systems and irrigation wells, the use of approved landscaping materials and the use of water conserving fixtures and appliances to promote water conservation and minimize the use of public water resources. Irrigation wells shall only draw water from the Upper Potomac or Aquia Aquifers and shall be subject to the approval of the General Manager of James City Service Authority. The standards shall be approved by the James City

Service Authority prior to final site plan approval.

3. Road Improvements/Entrances. (a) With the prior approval of the Virginia Department of Transportation (“VDOT”), Owner may install a right in only entrance into the Property from Route 60 approximately in the middle of Parcel 3 of the Property. When and if this entrance is constructed, a westbound right turn lane with 200 feet of storage and a 200 foot taper shall be constructed if necessary as determined by VDOT.

(b) The entrance into Parcel 2 of the Property shall be located at the approximate location shown on the Amended Master Plan as “Proposed Signalized Crossover” and the location shall be shown on the site plan for the Property and subject to the approval of the Director of Planning and VDOT. When the entrance is relocated, the existing entrance shall be closed and the existing crossover labeled on the Amended Master Plan as “Signal and Crossover to be Removed and Relocated” shall be closed within 30 days of the completion of the new entrance. At the entrance (i) an eastbound left turn lane with 200 feet of storage and a 200 foot taper; (ii) a westbound left turn lane with 200 feet of storage and a 200 foot taper and (iii) a westbound right turn lane with 200 feet of storage and a 200 foot taper shall be constructed and a new traffic signal shall be installed. Four egress lanes with at least 150 feet of storage consisting of two dedicated left turn lanes, one dedicated right turn lane and one ingress lane shall be constructed at this entrance. Construction of these improvements shall be completed or bonded in form satisfactory to the County Attorney prior to the County being obligated to issue building permits for any building in the phase of the development served by this entrance.

(c) Owner shall install a new entrance from Route 60 into Parcel 1 of the Property at the Colonial Heritage east crossover in the approximate location shown on the

Amended Master Plan as “Proposed Traffic Signal at Crossover per Colonial Heritage Rezoning Proffers”. When this entrance is constructed, a westbound right turn lane with 200 feet of storage and a 200 foot taper and an eastbound left turn lane shall be constructed. Three egress lanes with 200 feet of storage consisting of two dedicated left turn lanes and one dedicated right turn lane and one ingress lane shall be constructed at this entrance. Owner shall be responsible for and shall pay the costs of any necessary modifications to the traffic signal proffered for this intersection by Colonial Heritage so the signal will serve this entrance to and from the Property. At such time as a traffic signal is installed at this intersection and subject to VDOT approval, Owner shall install or pay the costs of installation of crosswalks, median refuge islands, signage and pedestrian signal heads at the intersection. Construction shall be completed or bonded in form satisfactory to the County Attorney prior to the County being obligated to issue building permits for any building in the phase of the development served by this entrance.

(d) Owner shall construct a right in, right out only entrance from Parcel 1 of the Property onto westbound Route 60 at the western end of the Property in the approximate location shown on the Amended Master Plan. When this entrance is constructed, a westbound right turn lane with 200 feet of storage and a 200 foot taper shall be constructed. Construction shall be completed or bonded in form satisfactory to the County Attorney prior to the County being obligated to issue building permits for any building in the phase of the development served by this entrance.

(e) The turn lanes and entrances, crosswalks, median refuge islands, signage and pedestrian signal heads proffered hereby shall be constructed in accordance with VDOT standards and shall be approved by VDOT.

(f) The right turn lanes and entrances proffered hereby shall include four foot bike lanes.

(g) After approval of the first final site plan for the redevelopment of the Property and within 30 days of a request from VDOT, Owner shall pay to VDOT a pro rata share (based on 1.5 signals divided by the total number of signals included in the project) of any VDOT Route 60 signal coordination project that includes the signalized intersections at entrances into the Property. The costs of the signal coordination project may include traffic signal equipment and utility relocation within the existing right of way and easements to accommodate traffic signal equipment, but will not include any right of way acquisition expenses or road construction changes.

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

5. Route 60 Buffer. There shall be a variable width community character corridor buffer with a minimum average width of 37 feet and a minimum width of 20 feet along the Route 60 frontage of the Property generally as shown on the Amended Master Plan. The buffer shall contain enhanced (defined as 125% of Ordinance size requirements) landscaping as shown on the Conceptual Landscape Plan for Route 60 Buffer made by AES Consulting Engineers dated March 19, 2007 submitted herewith and

on file with the County Planning Department and a fence at least 42 inches in height in the approximate locations shown on the Amended Master Plan and approved by the Director of Planning. A detailed landscape plan for the entire buffer shall be submitted to the Director of Planning with the initial site plan for development on the Property for his review and approval for consistency with this proffer. The buffer shall be planted or the planting bonded in a form satisfactory to the County Attorney prior to the County being obligated to issue building permits for buildings located on the Property.

6. Environmental. (a) Stormwater from the Property will be directed away from the Yarmouth Creek watershed to reduce existing negative impacts to that watershed; provided, however, drainage from the community character corridor buffer area adjacent to the VDOT right-of-way and up to 15,000 square feet of impervious cover associated with entrances, sidewalks or similar features may drain to the VDOT right-of-way and thus will continue to drain to the Yarmouth Creek watershed.

(b) Owner shall upgrade the existing farm pond shown on the Amended Master Plan as “Proposed Regional SWM Facility for the Williamsburg Pottery Factory Complex” to County standards to function as a Group A wet pond generally consistent with the provisions contained in the James City County Guidelines for the Design and Construction of Stormwater Management BMP’s, including any necessary channel improvements leading into the pond or bond the upgrade in form satisfactory to the County Attorney prior to the County being obligated to issue any building permits for building on the Property . The pond shall receive the redirected stormwater flows from the Property in addition to the existing flows from the Williamsburg Pottery Factory complex.

(c) Owner shall install six standard size tree box filters capable of treating stormwater from approximately one and one-half acres of impervious cover in the parking lots on the Property.

7. Architectural Review. (a) Owner has submitted to the County conceptual architectural renderings and Design Standards for the entire Property (the “Guidelines”) prepared by Dayton & Thompson, PC and dated January 26, 2007, revised February 23, 2007, March 16, 2007 and March 23, 2007. All buildings, landscaping and site design on the Property shall be consistent with the Guidelines. No building on the property shall exceed thirty-five (35) feet in height as defined in the Zoning Ordinance.

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

8. WAT Stop. Owner shall retain the Williamsburg Area Transit (“WAT”) bus stop on the Property with a pull-off per VDOT standards in a location approved by Owner, WAT, the Director of Planning and VDOT. The location shall be shown on the site plan for the Property and approved prior to final site plan approval.

9. Existing Railroad Crossing and Pedestrian Tunnel. The existing surface railroad crossing and pedestrian tunnel under the railroad tracks shall be retained subject to the provisions of this Proffer. Since the purpose of the tunnel is to provide a way for

pedestrians to safely cross the railroad tracks, if there is no need for pedestrians to cross the tracks given the use of the property on the north side of the tracks, with prior written notice to the Director of Planning, the tunnel may be temporarily blocked and taken out of service. If the tunnel remains continuously out of service for a period of six years, with prior written notice to the Director of Planning, the tunnel may be permanently closed.

10. Route 60 Median Planting. Subject to VDOT approval, Owner shall install landscaping in the portion of the Route 60 median along the frontage of the Property not already landscaped by the Colonial Heritage project consistent with the landscaping provided by Colonial Heritage. A landscape plan for the median shall be submitted to the Director of Planning with the initial site plan for development on the Property for his review and approval for consistency with this proffer. The median shall be planted or the planting bonded in a form satisfactory to the County Attorney prior to the County being obligated to issue building permits for buildings located on the Property.

11. Landscape Maintenance. The Owner, or its agents or assigns, shall be responsible for the maintenance, repair and replacement of all landscaping materials, fences and barriers proffered hereby in accordance with standards set forth in Section 24-87(e) of the Zoning Ordinance.

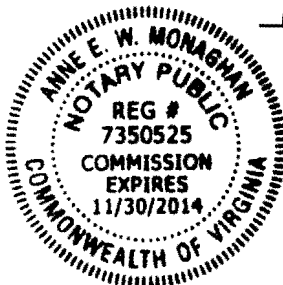
Witness the following signatures.

WILLIAMSBURG POTTERY*LLC *PROPERTIES
By: [Signature]
Title: Ex. V.P.

STATE OF VIRGINIA
CITY/COUNTY OF James City

The foregoing instrument was acknowledged before me this 28th day of January
2011, by Peter Kao as Executive Vice President of Williamsburg
Pottery*LLC on behalf of the company.
*Properties

My commission expires:
Registration No.: 7350525



Anne E. W. Monaghan
Notary Public

Exhibit A
Property Description

All those two (2) certain pieces or parcels of land situate in James City County, Virginia, as shown and set forth on plat of survey entitled "Lot Line Extinguishment Between Various Parcels of Land Standing In The Name of Maloney Family Trust" dated January 25, 1986, made by Paul C. Small, C.L.S., of record in the James City County Circuit Court Clerk's Office in Deed Book 298, page 664, which plat is herein incorporated by reference; BEING a portion of the same property conveyed to the Grantor herein named by deed dated December 1, 1986, from Frederick C. Maloney, Trustee, Maloney Family Trust which deed is of record in the Clerk's Office of the Circuit Court of James City County, Virginia in Deed Book 324, page 810.

This tract is identified on the current tax records of James City County, Virginia as Parcel No. 2430100024 and is said to contain 18.860 acres.

VIRGINIA: CITY OF WILLIAMSBURG & COUNTY OF JAMES CITY
This document was admitted to record on 29 May 2011
at 2:51 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

MAR 22 2011

ORDINANCE NO. 141A-15BOARD OF SUPERVISORS
JAMES CITY COUNTY, VIRGINIA

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 5, CABLE COMMUNICATIONS, OF THE CODE OF JAMES CITY COUNTY, VIRGINIA, BY AMENDING ARTICLE II, DEFINITIONS, SECTION 5-3, DEFINITIONS; ARTICLE III, GRANT OF AUTHORITY, SECTION 5-5, INTERPRETATION OF FRANCHISE TERMS; SECTION 5-6, FRANCHISE APPLICATIONS; ARTICLE IV, CABLE COMMUNICATIONS ADMINISTRATOR AND CITIZENS COMMITTEE, SECTION 5-7, CABLE COMMUNICATIONS ADMINISTRATOR'S POWER AND RESPONSIBILITIES; BY DELETING SECTION 5-8, CABLE COMMUNICATIONS COMMITTEE'S POWERS AND RESPONSIBILITIES; BY AMENDING ARTICLE V, FRANCHISE CONDITIONS, SECTION 5-9, FRANCHISE TERMS; SECTION 5-12, FRANCHISE RENEWAL; SECTION 5-12.1, FORFEITURE AND TERMINATION; BY DELETING SECTION 5-13, FRANCHISE FEE; BY AMENDING SECTION 5-14, INSURANCE; BONDS; INDEMNITY; BY AMENDING ARTICLE VI, SUBSCRIBER FEES AND RECORDS, SECTION 5-16, SUBSCRIBER FEES; SECTION 5-17, BOOKS AND RECORDS; SECTION 5-18, PRIVACY PROTECTION; BY AMENDING ARTICLE VII, SYSTEM OPERATIONS, SECTION 5-19, FRANCHISE TERRITORY; SECTION 5-20, SYSTEM DESCRIPTION AND SERVICE; SECTION 5-23, COMPLAINT PROCEDURE; BY AMENDING ARTICLE VIII, GENERAL PROVISIONS, SECTION 5-27, DISCRIMINATORY PRACTICES PROHIBITED; BY DELETING SECTION 5-29, LIQUIDATED DAMAGES; AND BY AMENDING SECTION 5-30, OBTAINING OR ATTEMPTING TO OBTAIN CABLE COMMUNICATIONS SERVICE WITHOUT PAYMENT; PENALTY.

BE IT ORDAINED by the Board of Supervisors of the County of James City, Virginia, that Chapter 5, Cable Communications, is hereby amended and reordained by amending Article II, Definitions, Section 5-3, Definitions; Article III, Grant of Authority, Section 5-5, Interpretation of franchise terms; Section 5-6, Franchise applications; Article IV, Cable Communications Administrator, Section 5-7, Cable communications administrator's power and responsibilities; by deleting Section 5-8, Cable communications committee's powers and responsibilities; by amending Article V, Franchise Conditions, Section 5-9, Franchise terms; Section 5-12, Franchise renewal; Section 5-12.1, Forfeiture and termination; by deleting Section 5-13, Franchise fee; by amending Section 5-14, Insurance; bonds; indemnity; by amending Article VI, Subscriber Fees and Records, Section 5-16, Subscriber fees; Section 5-17, Books and records; Section 5-18, Privacy protection; by amending Article VII, System Operations, Section 5-19, Franchise territory; Section 5-20, System description and service; Section 5-23, Complaint procedure; by amending Article VIII, General Provisions, Section 5-27, Discriminatory practices prohibited; by deleting Section 5-29, Liquidated damages; and by amending Section 5-30, Obtaining or attempting to obtain cable communications service without payment; penalty.

Chapter 5. Cable Communications
Article I. Title, Intent and Purposes

Sec. 5-1. Title.

This chapter shall be known and may be cited as the "James City County Cable Communications Ordinance."

Sec. 5-2. Intent and purposes.

It is the intent of the county to:

- (1) Promote the public health, safety and general welfare by providing for the grant of one or more franchises for the construction and operation of a cable system;
- (2) Provide for the regulation of each cable system by the county;
- (3) Provide for the payment of fees and other valuable consideration by a franchisee to the county for the privilege of using the public right-of-ways for constructing and operating a cable system;
- (4) Promote the widespread availability of cable service to county residents wherever economically feasible;
- (5) Encourage the development of cable as a means of communication between and among the members of the public institutions; and,
- (6) Encourage the provisions of diverse information to the community over cable.

Article II. Definitions

Sec. 5-3. Definitions.

For the purpose of this chapter, the following words and their derivations have the meanings defined below. Words not defined are given their meaning in *the Cable Act* ~~Section 602 of the Cable Act, 47 USC Section 552,~~ and if none, their common and ordinary meaning. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number; and words in the singular number include the plural number. The word "shall" is mandatory and the word "may" is permissive.

Access channel shall mean any channel *reserved for the transmission of non-commercial Public, Educational, or Governmental access programming as directed by James City County.* ~~set aside for non-commercial Public, Educational, Government programming as directed by James City County, without a charge by the grantee for channel usage.~~

Administrator shall mean the cable communication administrator for James City County.

Application shall mean a proposal to construct and operate a cable system within the county, transfer a franchise, renew a franchise or modify a franchise. An application includes the initial proposal plus all subsequent amendments or supplements to the proposal, relevant correspondence and any testimony taken in connection with the application.

Board shall mean the James City County Board of Supervisors.

Cable Act shall mean *the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996 (47 U.S.C. 521, et seq.), as amended.* ~~the Cable Communications Policy Act of 1984, 47 USC Section 521 et seq.~~

Cable-casting shall mean programming carried on a cable system, exclusive of broadcast signals, whether originated by the cable operator or any other party.

Cable Service shall be defined herein as it is defined under Title 15.2 of the Code of Virginia, Chapter 21, Article 1.2, Section 15.2-2108.19, meaning the one-way transmission to Subscribers of (i) Video Programming or (ii) other programming service, and Subscriber interaction, if any, which is required for the selection or use of such Video Programming or other programming service. Cable Service does not include any Video Programming provided by a commercial mobile service provider defined in 47 U.S.C. § 332(d). shall mean the one-way transmission of video or other programming service to subscribers, together with any subscriber interaction provided in connection with such service.

Committee shall mean the James City County Cable Communications Committee.

Control of a grantee or applicant shall mean the legal or practical ability to direct the affairs of the grantee or applicant either directly or indirectly, whether by contractual agreement or majority ownership of an economic interest.

Construction shall mean the physical building or installation of a cable communications system, including attaching or laying cable, the building of head-end building or studio, or necessary towers to receive and distribute audio, video or other electrical signals.

County shall mean the County of James City, Virginia.

FCC shall mean the Federal Communications Commission and any legally appointed, designated or elected agent or successor.

Franchise shall mean and include any authorization granted by the county in terms of franchise, right, privilege or authority to construct, operate and maintain a system.

Franchise certificate shall mean the contract entered into in accordance with the provisions of this chapter between the county and a grantee that sets forth the terms and conditions under which the franchise shall be exercised. A copy of any franchise certificate that has been issued may be found in the office of the county attorney administrator.

Grantee shall mean the person, firm or corporation to whom or to which a franchise, as herein defined, is granted by the board under this chapter, or any one who succeeds the person, firm or corporation in accordance with the provisions of a franchise.

~~*Gross annual revenues* shall mean all revenue derived directly or indirectly by the grantee, its affiliates, subsidiaries, parent, and any person in which the grantee has a financial interest, from or in connection with the operation of a system in the county; provided, however, that all revenues shall include, but not be limited to, basic subscriber service monthly fees; pay cable fees; installation, disconnection and reconnection fees; leased channel fees; rentals of converters, remotes and other equipment; studio rental; production equipment and personnel fees; fees received from programmers; fees from shopping channels; and advertising revenues, and this shall not include any taxes on services furnished by the grantee herein imposed directly upon any subscriber or user by the state, county or other governmental unit and collected by the grantee on behalf of said governmental unit nor shall this include subscriber deposits.~~

~~*Primary service area* shall mean the area of the county that will receive cable communications service at a fixed rate not including any line extension charges.~~

Public way shall mean the surface, the air space above the surface, and the area below the surface of any public street, highway, lane, path, alley, sidewalk, boulevard, drive or other public rights-of-way, including public utility easements or rights-of-way, and any temporary or permanent fixtures or improvements located thereon now or hereafter.

Subscriber shall mean any person, firm, corporation, association, joint venture or other entity legally receiving for any purpose cable service.

System shall be defined herein as it is defined under Title 15.2 of the Code of Virginia, Chapter 21, Article 1.2, Section 15.2-2108.19, meaning franchisee's facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service that includes Video Programming and that is provided to multiple Subscribers within the Service Area, except that such term shall not include (i) a system that serves fewer than 20 Subscribers; (ii) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (iii) a facility that serves only

Subscribers without using any Public Rights-of-Way; (iv) a facility of a common carrier that is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, as amended, 47 U.S.C. § 201 et seq., except that such facility shall be considered a Cable System to the extent such facility is used in the transmission of Video Programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services; (v) any facilities of any electric utility used solely for operating its electric system; (vi) any portion of a system that serves fewer than 50 Subscribers in any locality, where such portion is a part of a larger system franchised in an adjacent locality; or (vii) an open video system that complies with § 653 of Title VI of the Communications Act of 1934, as amended, 47 U.S.C. § 573. shall mean a cable communications system consisting of antennas, cables, wires, lines, fiber, towers, wave guides, laser beams or any other conductors, converters, electronics, equipment or facilities, designed and constructed for the purpose of producing, receiving, amplifying and distributing by audio, video and other forms of electronic or electrical signals to and from subscribers and locations within the county.

Transfer of a franchise shall mean any transaction in which control of more than 50 percent of the right of control of an ownership or a grantee is acquired by a person or group of persons acting in concert, none of whom already own or control 50 percent or more of the right of control of the grantee, or the rights held by the grantee under a franchise certificate are transferred or assigned to another person or group of persons.

Two-way capability shall mean the two-way circuits shall be capable of transmitting effectively commercial broadcast audio video TV-quality programming in either of two directions (both outgoing from and incoming to all points of program origination throughout the system); and further means that the subscriber or any other location shall have the capability to choose whether to respond immediately, or by sequential delay by utilizing any type of terminal equipment whatever, by push-button code, dial code, meter, voice, video signal, or by any other means, to any type of electronic, including, but not limited to, audio and video, electrical or mechanical produced signal, display and/or interrogation.

User shall mean a person or organization utilizing a system channel for purposes of production and/or transmission of material, as contrasted with receipt thereof, in a subscriber capacity.

VDOT shall mean the Virginia Department of Transportation.

Article III. Grant of Authority

Sec. 5-4. Requirements of a franchise.

(a) No person, firm, company, corporation or association shall construct, install, maintain or operate a system within the county unless a franchise has been obtained pursuant to the provisions of this chapter, and unless such franchise is in full force and effect.

(b) A franchise authorizes use of the public right-of-ways for installing cables, wires, lines and other facilities to operate a cable system within a specified district.

(c) A franchise is nonexclusive and will not expressly or implicitly preclude the issuance of other franchises to operate cable systems within the county or affect the county's right to authorize the use of public right-of-ways to other persons as it determines appropriate.

(d) The nonexclusive franchise shall be in effect upon acceptance by signature and notarization of the franchise certificate by the grantee. A franchise certificate constitutes a contract between the grantee and the county once it is accepted by the grantee. A grantee contractually commits itself to comply with the terms, conditions and provisions of the franchise certificate and with all applicable laws, ordinances, codes, rules, regulations and orders.

(e) A franchise conveys no property right to the grantee or right to renewal other than as may be required by law.

(f) A grantee is subject to and shall comply with all applicable county, state and federal laws, ordinances, codes, rules, regulations and orders. A grantee is also subject to the county's police power.

(g) A grantee or other person shall not be excused from complying with any of the terms and conditions of this chapter or a franchise certificate by any failure of the county upon one or more occasions to require compliance or performance.

Sec. 5-5. Interpretation of franchise terms.

(a) The provisions of this chapter shall apply to a franchise certificate as if fully set forth in the franchise certificate. *Unless otherwise provided in a franchise certificate, the* ~~The~~ express terms of this chapter shall prevail over conflicting or inconsistent provisions in a franchise certificate.

(b) The provisions of a franchise certificate shall be liberally construed in order to effectuate its purposes and objectives consistent with the chapter and the public interest.

(c) A franchise certificate shall be governed by and construed in accordance with the laws of the ~~State~~ *Commonwealth* of Virginia.

Sec. 5-6. Franchise applications.

(a) After receiving applications for a franchise *or franchise renewal*, the board, after considering the legal, financial, technical and character qualifications of the applicants, may, by franchise certificate, grant a nonexclusive franchise creating a right to construct and operate a system within the county. A franchise may be granted to the applicant which in the board's judgment may best serve the public interest, and whose construction and financial plans and arrangements are both feasible and adequate to fulfill the conditions set forth in this chapter and incorporated into a franchise certificate awarded to the grantee. However, no provision of this chapter shall be deemed or construed as to require the board to grant a franchise. The board may award additional licenses, franchises or certificates of public convenience as it deems appropriate if the board finds that the public welfare will be enhanced by such awards after a public hearing at which testimony is heard concerning the economic consideration, the impact on private property rights, the impact on public convenience, the public need and potential benefit and such other factors as are relevant.

(b) An application for a cable communications franchise *or renewal of a franchise* shall be submitted to the board, or its designee, or a written application form furnished by the county, and in accordance with procedures and schedules to be established and published by the county. The application of the grantee shall be incorporated into the franchise certificate by reference. An application form may request facts and information the county deems appropriate. Applications shall be accompanied by a nonrefundable application fee of

\$1,000.00 payable to the order of the "County of James City," which amount shall be used by the county to offset direct expenses incurred in the franchising and evaluation procedures, including, but not limited to, staff time and consulting assistance.

(c) A grantee receiving a franchise shall, in addition to the nonrefundable application fee, pay to the county at the time the grantee files the franchise certificate an amount, not to exceed \$15,000.00, which shall be prescribed by the board. Said payment shall be nonrefundable, shall be made to the order of the "County of James City," and shall be used to offset any direct costs incurred by the county in granting the franchise not defrayed by fees forthcoming from the provisions of paragraph (b) of this section and fund the cable administration functions listed in Article IV.

Article IV. Cable Communications Administrator ~~And Citizens Committee~~

Sec. 5-7. Cable communications administrator's power and responsibilities.

(a) Day-to-day administration of cable television operations within the county may be assigned to a cable communications administrator. The administrator shall be designated by the county administrator ~~and shall report directly to the county administrator.~~ The administrator's powers and responsibilities shall include, but not be limited to, the following functions:

- (1) ~~Preparation~~ *Assisting in the preparation, criteria, and reviewing applications of the application form to be submitted by an applicant* for a cable communications franchise; *if required, making recommendations to the board.*
- (2) ~~Assisting in the preparation of invitations to bid for a franchise; establishing criteria for review and ranking of franchise applications; reviewing and screening applications for franchises and selection recommendations to the board.~~
- ~~(3)~~(2) Monitoring the timely performance of a grantee in making application for and obtaining all certificates, permits and agreements as provided in this chapter.

- (4) (3) Monitoring the performance of a grantee in meeting the construction timetable as provided in this chapter.
- (5) (4) Advising and making recommendations to the board on technical, *and* engineering ~~and police power~~ regulations for cable operations within the county.
- (6) (5) Cooperating with other systems, cable communications system operators and governmental units in the development of and in the supervision of the interconnection of systems *and access channels*.
- (7) (6) Reviewing all franchise records and reports as required by this chapter, ~~as well as all franchise reports filed with the FCC, and, at the county administrator's discretion, requiring the preparation and filing of information in addition to that required therein, as may reasonably be required to accomplish the purposes of this chapter.~~
- (8) (7) Monitoring performance of a grantee under any other terms of the franchise certificate and this chapter and making recommendations to the board to ensure such compliance.
- (9) ~~Making an annual report to the board which shall include: an account of franchise fees received, the total number of hours of utilization of public channels with hourly subtotals for various programming categories, and a review of any plans submitted during the year by a grantee for development of new services.~~
- (10) ~~Conducting evaluations of the system at least every three years, and pursuant thereto making recommendations to the board for amendments to this chapter or to franchise certificates.~~
- (11) (8) Receiving and investigating complaints against a grantee by any person or upon direction of the board.
- (12) (9) Seeking recovery, if necessary, of liquidated damages in accordance with this chapter.
- (13) (10) Advising a grantee of the receipt of subscriber complaints affecting the grantee's system.

~~Sec. 5-8. Cable communications committee's powers and responsibilities.~~

~~(a) There shall be established a citizen's board entitled the "James City County Cable Communications Committee." The committee shall consist of seven members. Members shall be appointed and serve at the pleasure of the board for terms of four years. No member shall be appointed as a member of the committee for more than two consecutive terms. Terms for committee members shall be staggered so that beginning in April 2005, four members shall be appointed and in April 2007, three members shall be appointed. A like number shall be appointed to serve every four years thereafter. Appointments to fill vacancies shall be only for the unexpired portion of a term, which shall not constitute a term for the two consecutive term limit. A member whose term expires shall continue to serve until his successor is appointed. The administration shall provide staff support to the committee.~~

~~(b) The committee shall adopt bylaws governing its procedures and actions on matters coming before it which shall include provisions for selection and tenure of the committee chairman.~~

~~(c) Responsibilities of the committee shall include, but not be limited to, the following:~~

~~(1) The committee shall adopt regulations governing the operation and use of the public access and educational access channels of cable television and any institutional networks that may be developed.~~

~~(2) Enforce its public access guidelines and procedures, if and from the time the franchise certificate vests management of a grantee's public access channel(s) in the committee.~~

~~(3) Develop policies and procedures regulating use, services, and programming of the public access channel.~~

~~(4) Review with the administrator required system performance evaluations every three years.~~

~~(5) Advise the board of objectives to be obtained in the county's system based upon its continued evaluation of a franchise and continued assessment of cable technology.~~

- ~~(6) Review the annual report to the board prepared by the administrator and make recommendations to the administrator as may be appropriate.~~
- ~~(7) Work with staff to perform research, conduct surveys, and make recommendations on all aspects of the county's system which shall be reported to the board through the administrator's report.~~
- ~~(8) Serve as a liaison between the county, the grantee(s) and the community.~~
- ~~(9) Cooperate with the county and grantee(s) in fulfilling its responsibilities herein.~~

Article V. Franchise Conditions

Sec. 5-9. Franchise terms.

~~The term of an original franchise or any renewal shall be 15 years from the date the franchise is accepted by the grantee. The term of a renewed franchise shall be no more than 15 years.~~

Sec. 5-10. Notice to grantee.

The board shall not take final action at any meeting involving the review, renewal or revocation of the grantee's franchise unless the county has given the grantee at least 21 days' written notice of such meeting. The notice shall advise the grantee of the meeting's time, place and proposed action affecting the grantee.

Sec. 5-11. Franchise review.

It shall be the policy of the county to amend a franchise upon application of the grantee, the recommendation of the administrator, or upon the board's own motion when necessary or advisable to enable the grantee to take advantage of advancements in the state-of-the-art which will afford it an opportunity to more effectively, efficiently or economically serve its subscribers or the county; provided, that this Section shall not be construed to require the county to make any amendment for such purpose.

Sec. 5-12. Franchise renewal.

(a) *Review by public hearing.* The board may set the time and place of a public hearing, the purpose of which shall be to review a grantee's performance during the term of its franchise; to consider the adequacy of the franchise from the standpoint of the county, the grantee, and the ~~Federal Communications Commission~~ FCC Rules for cable communications; and to determine the advisability of renewing the grantee's franchise.

(b) *Determination of compliance.* The board shall hear interested persons at the public hearing and shall determine whether the grantee reasonably complied with the terms and conditions imposed by this chapter and the franchise certificate.

(c) *Renewal.* If the board determines that the grantee has been in reasonable compliance with the terms and conditions imposed by this chapter and the franchise certificate, the board may, by ordinance, renew the grantee's franchise certificate, with any modifications it deems desirable, for a period of time not inconsistent with the provisions of this chapter. The board may require a grantee to pay the county, as a condition of renewal of the franchise, an amount which the board determines will compensate the county for those direct expenses above normal administrative costs incurred in connection with the renewal of the franchise.

(d) *Right not to renew; acquisition.* Notwithstanding the fact that the board may determine that the grantee has been in reasonable compliance with the terms and conditions imposed by this chapter and the franchise certificate, it shall have the right not to renew the franchise. If the board does not renew the franchise, the board shall have an option to the extent then permitted by existing law, to acquire the assets of the grantee's cable television system or the option to permit a succeeding grantee to acquire such assets. ~~The amount paid for such assets shall be the fair market value of the system as of the expiration date of the franchise and shall be determined by using a hypothetical assumption that the cable system is a going concern with an existing franchise which will expire ten years from the aforesaid expiration date.~~ The board's option to acquire the assets of the grantee or to permit a succeeding grantee to acquire such assets must be exercised within one year from the date of expiration.

(e) *Service continuity.*

- (1) If, pursuant to the terms and conditions of Section 5-12 and Section 5-12.1 of this chapter, the county exercises its right not to renew the grantee's franchise, the grantee shall, at the county's request, continue to operate the system pursuant to the terms and conditions of its franchise for a period not to exceed one year from the expiration date of the franchise. If the county chooses to have the grantee operate the system beyond the expiration date, the county shall notify the grantee no less than 90 days prior to said expiration date. Furthermore, if the county chooses to have the grantee terminate its operation prior to the first anniversary following the expiration date of the franchise, the county shall notify the grantee at least 90 days prior to the date on which service is to terminate.
- (2) During such period beyond the franchise expiration date as the grantee may be required to continue service, the grantee may charge for its service such rates as had been in effect during the month immediately preceding the expiration date.
- ~~(3) If the grantee fails to comply with the requirements set forth above, the grantee shall be subject to such remedies provide elsewhere in this chapter, including, but not limited to, liquidated damages as established in Section 5-29(5) herein.~~

(f) *System removal.* Upon expiration of its franchise, or upon its termination or cancellation, or at such later date as may be set by the county pursuant to paragraph (a) above, a grantee shall, if requested, at its own expense, remove its system from all streets, roads and any public and private property upon which the system had been placed. If the grantee fails to completely remove its system within 120 days following the franchise expiration date, the county may, at its option, have grantee's system removed at grantee's cost and without liability to the county for damage caused to grantee's system during such removal.

Paragraphs (a) through (d) above shall apply to the extent not preempted by federal law.

Sec. 5-12.1. Forfeiture and termination.

(a) In addition to all other rights and powers retained by the county under this chapter or otherwise, the county reserves the right to forfeit and terminate a franchise and all rights and privileges of the grantee in the

event of ~~a~~ *an uncured* breach of ~~the~~ *a material term* or ~~terms and~~ conditions, including, but not limited to, the following.

- (1) Violation by grantee of ~~any~~ *a material* provision of the franchise or any rule, order, regulation or determination of the county made pursuant to the franchise *and failure to cure said violation after notice and an opportunity to cure as provided in this chapter or the franchise certificate*;
- (2) *A finding by a court that a grantee has attempted* ~~Attempt by grantee~~ to evade any material provision of the franchise or practice any fraud or deceit upon the county or its subscribers or customers;
- (3) Failure by grantee to begin or complete system construction or system extension as provided under the franchise;
- (4) Failure by grantee to restore service after 96 consecutive hours of interrupted service, except when approval of such interruption is obtained from the county; such approval shall not be unreasonably withheld; or
- (5) Any misrepresentation by grantee of *a material* fact in the application for ~~or negotiation of the~~ franchise.

(b) A grantee shall not be responsible for any failure to meet all or any part of the terms and conditions under this chapter or its franchise certificate due to regulation, act of God, riot or other civil disturbance, and, without limiting the foregoing, by any other cause, contingency or circumstance not subject to its control which prevents or hinders the grantee from operating and maintaining a system as described herein. Grantee shall not be excused by mere economic hardship ~~nor~~ *or* by misfeasance or malfeasance of its directors, officers or employees.

(c) If, in the opinion of the county administrator, a breach has occurred, then the administrator shall make a written demand that the grantee comply with any such provision, rule, order, or determination under or pursuant to this chapter or the franchise certificate within a period of seven calendar days. If the violation by the grantee continues for a period of ten days following the period set forth for correcting the violation, the

county administrator shall submit the matter to the board. The county administrator shall notify in writing by certified or registered letter to the grantee at least ten days prior to the date of such a board meeting, a written notice of intent to request such termination and the time and place of the meeting. Public notice shall be given of the meeting and issue which the board is to consider.

(d) The board shall hear and consider the issue and shall hear any person interested therein and shall determine in its direction whether any violation by the grantee has occurred.

(e) All or any portion of a franchise granted under this chapter may be terminated or suspended by the board for failure to comply with any provisions of this chapter or the franchise certificate; provided, the county shall first notify in writing, by certified mail, the grantee of any failure to comply with the provisions of this chapter or the franchise certificate. The grantee shall have ten days after the receipt of such notice to correct the violation or to appeal the proposed termination or suspension to the board in writing. The board shall afford the grantee a hearing within 30 days of the receipt of such appeal. The effective dates of the suspension or termination shall begin ten days after the notice of suspension, if not appealed, or upon written notice from the board that the appeal has been denied.

~~Sec. 5-13. Franchise fee.~~

~~(a) — In consideration of the grants contained herein, a grantee shall pay quarterly to the county a franchise fee in an amount equal to five percent of the gross quarterly revenues. Such payment shall be made to the treasurer (payable to James City County) on or before the 30th day of each of the months of April, July, October, and January for the quarters ending March 31, June 30, September 30, and December 31. The quarterly franchise fee shall be in addition to any other payment, charge, permit fee or bond owed to the county by the grantee and shall not be construed as payment in lieu of personal or real property taxes levied by the state, county or local authorities. Grantee agrees to provide for review by the Commissioner of the Revenue a statement of the gross monthly revenues by the 30th day of the calendar month following each quarter, which should be certified under oath by an officer of the grantee.~~

~~(b) — In the event that any payment is not made on or before the required date, the county shall assess a penalty of ten percent of the amount due plus interest on such payments from the due date at the annual rate of~~

~~18 percent. Should legal action be required to correct such fee(s), penalties and interest, the county also shall be entitled to attorney's fees equal to 25 percent of the total amount due.~~

~~State law reference Authority of county to license cable television systems. Code of Va., § 15.2-967.~~

Sec. 5-14. Insurance; bonds; indemnity.

(a) *Unless otherwise provided in a franchise certificate, At* at the time of filling an application for a franchise, the applicant shall obtain, pay all premiums for, and deliver to the county written evidence of payment of premiums and originals of bid bond or bonds running to the county with good and sufficient sureties in the amount of \$50,000.00, and in a form acceptable to the county to protect the county from all damages or losses arising from the failure of the applicant, if selected as a grantee, to accept the franchise in conformity with this chapter and the substance of the proposal as submitted by the applicant.

(b) *Unless otherwise provided in a franchise certificate, Upon* upon the granting of a franchise and within 30 days following the filing of the franchise certificate, and at all times during the term of the franchise, including the time for removal of facilities or management as a trustee as provided for herein, a grantee shall obtain, pay all premiums for, and deliver to the county written evidence of payment of premiums and originals of the following:

- (1) A general comprehensive public liability policy or policies indemnifying, defending and saving harmless the county, its officers, boards, commissions, agents or employees from any and all claims by any person whatsoever (including the costs, defenses, attorney fees and interest arising therefrom) on account of injury to or death of a person or persons occasioned by the operations of the grantee under the franchise herein granted pursuant to this chapter or alleged to have been so caused or occurred, with a minimum liability of \$1,000,000.00 per personal injury or death of any one person and \$2,000,000.00 per personal injury or death of any two or more persons in any one occurrence.
- (2) A property damage insurance policy or policies indemnifying, defending and saving harmless the county, its officials, boards, commissions, officers, agents, and employees from and against all claims by any person whatsoever (including the costs, defenses, attorney fees and interest arising therefrom)

for property damage occasioned by the operation of the grantee under the franchise herein granted pursuant to this chapter, or alleged to have been so caused or occurred, with a minimum liability of \$500,000.00 for property damage to the property of any one person and \$1,000,000.00 for property damage to the property of two or more persons in any one occurrence.

- (3) A performance bond or bonds running to the county with good and sufficient surety approved by the county *attorney* conditioned upon the faithful performance and discharge of the obligations imposed by this chapter and the franchise certificate from the date of the franchise certificate, including, but not limited to, faithful compliance with the construction timetable proposed by the grantee in its application as incorporated into the franchise certificate. The bond shall be in the amount determined necessary by the county, based upon review of the grantee and its application, and shall be set forth in the franchise certificate. The amount of the bond may be reduced by 50 percent when regular subscriber service is available to more than 50 percent of the occupied dwelling units with the primary service areas specified in the franchise certificate as certified by the cable communications administrator to the board; and may be further reduced by an additional 80 percent when regular subscriber service is available to more than 90 percent of the occupied dwelling units within the primary service areas specified in the franchise certificate as certified by the administrator to the board. The county's right to recover under the bond shall be in addition to any other rights retained by the county under this chapter and other applicable law.

(c) *Unless otherwise provided in a franchise certificate, the* ~~The~~ bonds and all insurance policies called for herein shall be in a form satisfactory to the county attorney. Cancellation provisions, where permitted, shall require 30 days written notice of any cancellation to both the county and the grantee. The grantee shall, in the event of any such cancellation notice, obtain, pay all premiums for, and file with the county original replacement bonds or policies within 15 days following receipt by the county or the grantee of any notice of cancellation.

(d) The county may require in a franchise certificate coverage and amounts in excess of the above minimums where reasonably necessary in view of the grantee's greater exposure to liability. The county may, from time-to-time, require that insurance coverage be broadened or increased if it is reasonably determined by

the county that such adjustments to coverage are necessary to reflect inflation or changing circumstances relative to liabilities.

(e) A grantee shall, at its sole cost and expense, indemnify and hold harmless the county, its officials, boards, commissions, officers, agents and employees against any and all claims, suits, causes of action, proceedings, and judgments for damage arising out of the operation of the cable communications system under the franchise. These damages shall include, but not be limited to, penalties arising out of copyright infringements and damages arising out of any failure by a grantee to secure consents from the owners, authorized distributors or licensees of programs to be delivered by the grantee's cable communications system whether any act or omission complained of is authorized, allowed or prohibited by the franchise. Indemnified expenses shall include, but not be limited to, all out-of-pocket expenses, such as costs and attorney's fees, and shall also include the reasonable value of any service rendered by the county attorney or his assistants or any employees of the county.

(f) No grantee shall permit any policy or bond to expire or approach less than 30 days prior to expiration without securing and delivering to the county a substitute, renewal or replacement policy or bond in conforming with the provisions of this chapter.

(g) The county may require bonds and insurance policies described in this section to run to the benefit of both the county and other governmental units located and/or operating within the county

Sec. 5-15. Transfer of franchise.

(a) No transfer of ownership or control of a franchise shall take place, whether by force or voluntary sale, lease, mortgage, assignment, encumbrance, or any other form of disposition, without prior notice to and approval by the board.

(b) No such consent shall be required for a transfer in trust, mortgage or other instrument of hypothecation, in whole or in part, to secure an indebtedness except when such hypothecation shall exceed 75 percent of the fair market value of the property used by the grantee in the operation of its system. Prior consent of the board,

expressed by resolution, shall be required for such transfer and said consent shall not be withheld unreasonably.

(c) Prior approval of the board of the transfer of a franchise shall be required. By its acceptance of a franchise certificate, a grantee specifically grants and agrees that any such transfer occurring without prior approval of the board shall constitute a violation of its franchise by the grantee.

Article VI. Subscriber Fees and Records

Sec. 5-16. Subscriber fees.

- (a) If a grantee is subject to rate regulation pursuant to federal law:
 - (1) Subscriber rates during the first four years of the franchise shall be specified in the franchise certificate. The rates so specified shall not, except as otherwise provided herein, be increased without the consent of the board.
 - (2) After the first four years of the franchise, subscriber rates shall, subject to the provisions of this chapter, become unregulated.
 - (3) The board, at any time, may adopt an ordinance, to be effective at any time following the aforementioned four-year period, regulating subscriber rate.
 - (4) Except as may be otherwise provided in the franchise certificate, a subscriber shall have the right to have its service disconnected without charge; such disconnection shall be made as soon as practicable and in no case later than 30 days following notice to the grantee of same. No grantee shall enter into any agreement with a subscriber which imposes any charge following disconnection of service, except for reimbursement for converters not returned and reconnection and subsequently monthly or periodic charges which shall be no greater than charges for new customers.

(b) All charges to subscribers shall be consistent with a schedule of fees for all services offered by a grantee. Changes in the fee schedule shall not take effect until at least ~~60~~ 30 days after notification of same is delivered to the administrator.

~~(c) The grantee shall notify in writing each subscriber of all applicable fees and charges for providing cable communications service prior to executing a contract of service with such subscriber or installing any equipment to serve such subscriber. The grantee may require a deposit for materials and services according to its rate schedule.~~

~~(d) If the grantee fails to remedy a loss of service attributable to the system within 48 hours after a written notice of such a failure, the grantee shall be required to rebate one thirtieth of the regular monthly charge to each subscriber for each 24 hours or fraction thereof following the first 48 hours after a loss of service except to the extent that restoration of service is prevented by strike, injunction, act of God, or other cause beyond the grantee's control. Loss of service shall be defined as the loss of audio or video service on four or more channels of the cable system.~~

~~(e)~~ (c) This section shall not prevent a grantee from refusing service to any person because the grantee's prior account with that person remains due and owing.

Sec. 5-17. Books and records.

(a) *Unless otherwise provided in a franchise certificate, a* ~~A~~ grantee shall, within 30 days following the acceptance of a franchise, and within 30 days of the change of ownership of three percent or more of the outstanding stock or equivalent ownership interest of a grantee, furnish the county a list showing the names and addresses of persons owning three percent or more of the outstanding stock or equivalent ownership interest of grantee. Such a list shall include a roster of the grantee's officers and directors (or equivalent managerial personnel) and their addresses.

(b) *Unless otherwise provided in a franchise certificate, a* ~~A~~ grantee shall file annually with the commissioner of the revenue, no later than 90 days after the end of the grantee's fiscal year, a copy of a complete financial report applicable to the James City County Cable operation, including an income statement

applicable to its operations during the preceding twelve-month period, a balance sheet, and a statement of its properties devoted to cable system operations, by categories, giving its investment in such properties on the basis of original cost, less applicable depreciation. This report shall be certified as correct by an authorized officer of the grantee and there shall be submitted along with it such other reasonable information as the county shall request with respect to the grantee's properties and expenses related to the system within the county. The county shall have access to records of financial transactions for the purpose of verifying burden rates or other indirect costs prorated to the system. The grantee's accounting records shall include sufficient detail as may be necessary to provide the county with the information needed to make accurate determinations as to the financial condition of the system.

(c) A grantee shall retain such books and records, in any reasonable form, for a period *up to of not less than* five years. The county shall have the right to extend the retention period through the term of any renewed franchise.

(d) An annual independently audited financial statement may be requested by the administrator to be received by the county no later than 120 days after requested. The expense of the audit shall be borne by the grantee. Such audited financial statements must be requested at least 60 days prior to the end of the grantee's fiscal year.

(e) Copies of all petitions, applications, communications and reports submitted by a grantee to the FCC, Securities and Exchange Commission or any other federal or state regulatory commission or agency having jurisdiction in respect to any matters affecting cable communications operations authorized pursuant to the franchise shall be provided ~~simultaneously~~ to the county *upon request*.

(f) *Unless otherwise provided in a franchise certificate, a* ~~A~~ grantee shall have available for public inspection maps, plats and permanent records of the location and character of all facilities constructed, including underground facilities. Such maps, plats and permanent records shall be updated within 90 days of any construction by the grantee. All record maps shall be at a scale of one inch equals two hundred feet (1" = 200'). A grantee shall join the Miss Utility of Virginia Association. The construction, extension and modernization of plan shall be available for public inspection during normal business hours at the local business office of the grantee.

Sec. 5-18. Privacy protection.

A grantee shall comply with all applicable federal and state privacy laws, rules, and regulations.

~~(a) No data shall be collected over a system from an individual subscriber unless the subscriber has given prior written authorization. Such authorization shall be limited to a one year period, shall be revokable *revocable* at any time without penalty or cost, and shall not be a condition for *deceiving receiving* cable services. Landlords may not give authorization for their tenants. The subscriber shall have the right to access information about him kept by a grantee or disseminated to others.~~

~~(b) A grantee shall observe the rights of a subscriber to privacy of their persons. A grantee may release information concerning the number of subscribers viewing particular television channels, the number of subscribers expressing preferences by poll, or the number of subscribers purchasing any of the services contained herein, and may keep records of services by individual subscribers as are necessary for billing for such services. All other data collected, maintained or tabulated by a grantee shall not reveal individual subscriber preferences or opinions.~~

~~(c) Interception by a third party of data and/or cable casting *programming* transmitted through a system; *exclusive of broadcast signals*, shall be prohibited.~~

Article VII. System Operations

Sec. 5-19. Franchise territory.

(a) A franchise is for the territorial limits of the county. A grantee shall furnish to the county as part of its formal application for a franchise a map of suitable scale showing all highways and public buildings. The map shall indicate the primary service areas to be served and, upon approval by the county, shall be incorporated into the franchise certificate. The map shall clearly delineate areas where the system is available and areas where expansion of the system is planned. ~~the following:~~

- ~~(1) The primary service areas within the franchise territory where the system will be available and the construction schedule for making such service available. Any differential rate within the primary service areas shall be specified as required by Section 5-15(a).~~
- ~~(2) Areas within the franchise territory but outside the primary service area where extension of the system cannot reasonably be expected to be made available due to lack of present or planned development, or other similar reasons, but which would receive service according to the grantee's line extension policy incorporated into the franchise certificate.~~
- ~~(b) Extension of the system into any areas outside the primary service area shall be required if any of the following conditions are met:~~
- ~~(1) When potential subscribers can be served by extension of the system past occupied dwellings units equivalent to a density of 40 homes per mile or greater of cable contiguous to the activated system. Provided, where it is necessary to extend the grantee's trunk and feeder lines more than 300 feet solely to provide service to subscriber(s) not required to be served by the grantee, the direct cost for such extension in excess of 300 feet shall be paid in advance by the potential subscriber(s).~~
- ~~(2) In areas not meeting the conditions in subSection(b)(1) above, the grantee shall provide, upon the request of ten or more potential subscribers desiring service, an estimate of the costs required to extend service to said subscribers. If the potential subscribers then wish service, the grantee shall extend service upon request of said potential according to the estimate. The grantee may require advance payment. The amount paid for special extension shall be nonrefundable, and in the event the area subsequently reaches the density required for mandatory extension, such payments shall be treated as consideration for special extension.~~
- (e) (b) Within 30 days of the effective date of its franchise, grantee shall diligently pursue all efforts to obtain all necessary certificates, permits and agreements which are required to construct and operate a system in the county. Within 90 days of receipt of such certificates, permits and agreements, a grantee shall commence construction of the system. Thereafter, construction shall proceed at such rate so as to make service available to all members of the public desiring such service at the earliest possible time. The construction program shall follow the schedule set forth in the franchise certificate. If construction does not begin within 12 months of the effective date of the franchise, the franchise certificate shall be canceled.

~~(d)~~ (c) A grantee shall notify the county in writing 15 days prior to the date on which *initial* construction of *its system* will commence. Thereafter, a grantee shall file quarterly written reports with the county within 30 days after the end of each calendar quarter, informing the county of the grantee's construction progress. Such reports shall indicate the number of miles of system and include maps setting forth areas made operational during the current quarter and any potential delays which the grantee is aware of which could prevent the completion of the system within the required period.

~~(e)~~ (d) Nothing in this section shall prevent a grantee from constructing the system earlier than planned. However, any delay in the system construction beyond the times specified in the plan timetable shall require, if so requested in writing by the administrator, application to and consent by the board. The county may not unreasonably withhold consent when a grantee has shown good cause for the delay, but the county may attach reasonable conditions to ensure performance. The schedule and maps shall be updated whenever substantial changes become necessary.

~~(f)~~ (e) A grantee shall not be responsible for any failure to meet all or any part of the construction schedule deadlines due to act of God, riot or other civil disturbance, and, without limiting the foregoing, by any other cause, contingency or circumstance not subject to its control which prevents or hinders the construction of the system described herein. If construction is delayed or prevented by any of the circumstances set forth hereinabove, a grantee shall notify the county in writing within ten days after the occurrence of any act or ten days after the termination of any continuous act and request that the time of completion of the project be extended for a stated period. If the board agrees, an extension shall be granted in whole or in part. Refusal of the board to agree to an extension shall be final.

~~(g)~~ (f) A grantee shall interconnect origination and access channels of the cable system with any or all other cable systems in the adjacent areas upon the directive of the county. The grantee shall cooperate with any interconnection corporation, regional interconnection authority or city, county, state or federal regulatory agency which may be hereafter established for the purposes of regulating, financing or otherwise providing for the interconnection of cable systems beyond the boundaries of the county. A grantee may be excused from interconnecting if the operator of the cable facility to be interconnected or the franchising authorities in other

jurisdictions refuse to reach a reasonable agreement regarding such interconnection. *Grantee may charge a third party for the cost of such interconnection.*

(h) (g) Upon the direction of the county, a grantee shall upgrade its cable communications system if necessary to meet the future cable-related community needs and interests, taking into account the cost of meeting such needs and interests, the technical reliability of the existing system, the unamortized investment in the existing system, and whether the upgrade would present an unreasonable financial burden to either the grantee or its subscribers.

Sec. 5-20. System description and service.

(a) Application for a franchise may include proposals for the provision of public education, local government, and leased access channels limited not only to video but also including audio, FM and data channels. Such proposals by a grantee may be incorporated into the franchise certificate granted and, to the extent so incorporated, shall subject the grantee to the following minimum requirements. *Unless otherwise provided in any applicable franchise certificate or amendment thereto, a grantee shall have no control over the content of access cable cast programs.*

~~(1) Unless otherwise provided in any applicable franchise certificate or amendment thereto, a grantee shall have no control over the content of access cable cast programs; however, this limitation shall not prevent taking appropriate steps to ensure compliance with the operating rules described herein.~~

~~(2) The public access channel(s) shall be made available to provided programming of a local, regional or national nature to county residents as determined by the cable communications committee. The grantee shall adopt operating rules for the public access channel(s), to be filed with the cable communications administrator prior to the activation of the channel(s), designed to prohibit the presentation of any advertising material designed to provide the sale of commercial products or services (including advertising by or on behalf of candidates for public office); lottery information; and defamatory, obscene or indecent matter, and rules permitting public inspection of a complete record of the names and addresses of all persons or groups requesting access time. Such a record shall be retained for a period of two years. If the franchise certificate vests management of a grantee's public access~~

~~channel(s) in the committee, at the time the committee assumes such management, the grantee shall have no further responsibility for public access operating rules.~~

~~(3) The education access channel(s) shall be made available for the use of local public educational authorities and private nonprofit educational telecommunication entities free of charge. A grantee shall adopt operating rules for the education access channel(s), to be filed with the administrator prior to activation of the channel(s), designed to prohibit the presentation of any advertising material designed to promote the sale of commercial products or services (including advertising by or on behalf of candidates for public office); lottery information and defamatory, obscene or indecent matter as well as a rule permitting public inspection of a complete record of the names and addresses of all persons or groups requesting access time. Such a record shall be retained for a period of two years.~~

~~(4) The local government access channel(s) shall be made available for the use of local government authorities free of charge.~~

~~(5) The leased access channel(s) shall be made available to leased users. Priority shall be given part-time users on at least one channel. A grantee shall adopt operating rules, which are consistent with federal law, for the channel(s) to be filed with the administrator prior to activation of the channel(s), designed to prohibit the presentation of lottery information, obscene or indecent matter and shall establish rules to this effect, and other rules requiring nondiscriminatory access, sponsorship identification, specifying an appropriate rate schedule and permitting public inspection of a complete record of the names and addresses of all persons or groups requesting time. Such a record shall be retained for a period of two years.~~

~~(b) The committee shall promulgate rules under which channel capacity dedicated to public government and educational access may be used by the grantee when it is not being used for access purposes.~~

~~(c) (b) Unless otherwise provided in a franchise certificate, a~~ A grantee shall provide without charge one service outlet activated for regular subscriber service to each fire station, public school, police station, public library, and such buildings used for public purposes as may be designated by the county; provided, that if it is necessary to extend a grantee's trunk or feeder lines more than 300 feet solely to provide service to any such

school or public building, the county shall have the option either of paying grantee's direct costs for such extension in excess of 300 feet or of releasing the grantee from the obligation to provide service to such building. Furthermore, a grantee shall be permitted to recover from any public building owner entitled to free service the grantee's actual cost for any additional converters required and direct cost of installing, when requested to do so, more than one outlet, or concealed inside wiring, or a service outlet requiring more than 250 feet of drop cable; provided, however, that a grantee shall not charge for the provision of regular subscriber service to the additional service outlets so installed in public schools, police stations, fire stations, public libraries, and ~~county government~~ offices in addition to any such other facilities as are specified in the grantee's franchise certificate.

(d) (c) A system shall be capable of two-way communications, as defined by Section 5-3(l), on at least four channels.

(e) (d) A grantee shall *comply with the Federal Emergency Alert System regulations, 47 C.F.R. Sec. 76, Part 1, as amended. In the event of a state or local emergency, the Emergency Alert System shall be remotely activated as set forth in the Virginia Emergency Alert System plan.* ~~incorporate into its system the capability which will permit the county, in times of emergency, to override the audio portion of all channels simultaneously. A grantee shall designate a channel which will be used for emergency broadcasts of both audio and video. A grantee shall cooperate with the county in the use and operation of the emergency broadcasts of both audio and video. A grantee shall cooperate with the county in the use and operation of the emergency alert override system.~~

Sec. 5-21. Construction standards.

(a) In the maintenance and operation of a system in the county and in the course of construction or additions to its facilities, a grantee shall proceed so as to cause the least possible inconvenience to the general public. Any opening or obstruction in the streets or other public places made by a grantee in the course of its operations or in the operations of its successors or assigns shall be approved by permit by VDOT and shall be guarded and protected at all times by the placement of adequate barriers, fencings or boardings, the bounds of which during period of dusk and darkness shall be designated by warning lights of approved types.

(b) Whenever a grantee shall take up or disturb any pavement, sidewalk or other improvement of any street, avenue, alley, highway, or other public place, the same shall be replaced and the surface restored in as good condition as before entry within 48 hours after completion of the grantee's work. Upon failure of a grantee to make such restoration within such time, or to begin such restoration within such time, if the restoration cannot be made within such time, or upon the grantee's delay of more than 24 hours in the continuation of a restoration begun, the county or VDOT may serve upon the grantee notice of intent to cause restoration to be made, and unless the grantee, within 24 hours after receipt of such notice, begins or resumes the proper restoration, the county or VDOT may cause the proper restoration to be made, including the removal of excess debris, and the reasonable expense of same, as itemized, shall be paid by the grantee upon demand by the county or VDOT.

(c) A grantee's transmission and distribution system, poles, wires and appurtenances, and underground conduit installations, shall be located, constructed and maintained so as not to endanger or interfere with the lives of persons or interfere with any improvements or additions the county or VDOT may deem proper to make from time to time, or to unnecessarily hinder or obstruct the free use of the streets, alleys, bridges or other public property; removal or relocation of any part of a grantee's transmission and distribution to avoid such interference shall be at the grantee's expense.

(d) A grantee shall have the right, insofar as the county's title or rights allow it to grant said rights, to use the public ways in the county in order to construct, install and maintain any poles, conduits, cables or other facilities necessary to provide cable communications services. The rights of use granted are limited to use which does not unreasonably interfere with either the county's or the public's use of said right-of-way or with the use of public utility easements.

(e) In all locations of the county where any of the cables, wires, or other like facilities of public utilities are placed underground, a grantee shall place its cables, wires or other like facilities underground. In case of new construction or property development where utilities are to be placed underground, the developer or property owner shall give the grantee(s) reasonable notice of such construction or development and of the particular date on which open trenching will be available for grantee's installation of conduit, pedestals and/or vaults, and laterals to be provided at grantee's expense. Grantee(s) shall also provide specifications as needed for trenching. Costs of trenching and easements required to bring service to the development shall be borne by the

developer or property owner; except that if a grantee fails to install its conduit, pedestals and/or vaults and laterals within five working days of the date the trenches are available, as designated in the notice given by the developer or property owner, then should the trenches be closed after the five-day period, the cost of new trenching shall be borne by that grantee.

(f) A grantee shall have the authority to trim trees on public property at its own expense as may be necessary to protect its wires and facilities, subject to the regulation, supervision and/or direction of the county.

(g) A grantee shall, on the request of any person holding a building moving permit or a permit to move an oversized load issued by VDOT, temporarily raise or lower its wires to permit the moving of buildings or oversized load. The expense of such temporary removal, raising or lowering of wires shall be paid by the person requesting the same, and a grantee shall have the authority to require such payment in advance. A grantee shall be given not less than 48 hours' advance notice to arrange for such temporary wire changes.

Sec. 5-22. Operational requirements and records.

(a) A grantee shall construct, operate and maintain the cable television system subject to full compliance with the rules and regulations, including applicable amendments, of the FCC and all other applicable federal, state or county laws and regulations. The system and all its parts shall be subject to inspection by the county and the county reserves the right to review a grantee's construction plans prior to construction.

(b) A grantee shall exercise its best effort to design, construct, operate and maintain the system at all times so that signals carried are delivered to subscribers without material degradation in quality (within the limitations imposed by the technical state-of-the-art).

Sec. 5-23. Complaint procedure.

(a) The administrator is designated by the county as having primary responsibility for the continuing administration of the franchise and implementation of complaint procedures.

(b) A grantee shall ~~have maintain an office in the county, which shall be open at least during all usual business hours (9:00 a.m. to 5:00 p.m.), having a publicly listed local telephone, and shall be so operated that~~ complaints and requests for repairs or adjustments may be received on a 24-hour basis each day of the year.

(c) A grantee shall maintain a repair and maintenance crew capable of responding to subscriber complaints or requests for service, excepting initial installation, within 24 hours after receipt of the complaint or request. No charge shall be made to the subscriber for this repair service.

(d) A grantee shall establish procedures for receiving, acting upon and resolving subscriber complaints to the satisfaction of the subscriber. A grantee shall furnish a notice of such procedures to each subscriber at the time of initial subscription to the system. In the event that a customer complaint is not resolved to the mutual satisfaction of the customer or the grantee, either the customer or the grantee may request that the matter be presented to the administrator for a hearing and resolution.

(e) A grantee shall keep a maintenance service log which shall indicate the nature of each service complaint, the date and time it was received, the disposition of said complaint, and the time and date thereof. This log shall be maintained for two years and shall be made available for periodic inspection by the county.

Sec. 5-24. Tests and performance monitoring.

When there have been complaints made or when there exists other evidence which, in the judgment of the administrator, casts doubt on the reliability or quality of cable service, the county shall have the right and authority to compel a grantee to test, analyze and report on the performance of the system. Such report shall be delivered to the administrator no later than 14 days after the administrator formally notifies the grantee and shall include the following information: the nature of the complaints which precipitated the special tests; what system component was tested, the equipment used, and procedures employed in said testing; the results of such tests; and the method in which said complaints were resolved.

Article VIII. General Provisions

Sec. 5-25. Franchise validity.

A grantee shall agree, by the acceptance of the franchise, to accept the validity of the terms and conditions of this chapter and the franchise certificate in their entirety and that it will not, at any time, proceed against the county in any claim or proceeding challenging any term or provision of this chapter or the franchise certificate as unreasonable, arbitrary or void, or that the county did not have the authority to impose such term or conditions.

Sec. 5-26. Rights reserved to the county.

The county hereby expressly reserves the following rights:

- (1) To exercise its governmental powers, now or hereafter, to the full extent that such powers may be vested in or granted to the county.
- (2) To adopt, in addition to the provisions contained herein and in the franchise certificate and in any existing applicable ordinance, such additional regulations as it shall find necessary in the exercise of its police power.

Sec. 5-27. Discriminatory practices prohibited.

A grantee shall not, as to rates, charges, services, service facilities, rules, regulations, employment, or in any other respect, make or grant any undue preference or advantage to any party, nor subject any party to any prejudice or disadvantage. ~~This Section shall not prohibit the negotiation of rates with commercial establishments and apartment complexes having more than ten units.~~

Sec. 5-28. Landlord-tenant relationship.

- (a) No landlord shall:

- (1) Interfere with the installation of cable communications facilities upon his property or premises, except that a landlord may require:
 - a. That the installation of cable communications facilities conform to such reasonable conditions as are necessary to protect the safety, function and appearance of the premises, and the convenience and well-being of other tenants;
 - b. That the cable communications company or the tenant or a combination thereof bear the entire cost of the installation, operation or removal of such facilities; and
 - c. That the cable communications company and the tenant agree to indemnify the landlord for any damage caused by the installation, operation or removal of such facilities.
- (2) Demand or accept payment from any tenant or any cable communications company in any form in exchange for permitting cable communications service on or within his property or premises.
- (3) Discriminate in rental charges, or otherwise, between tenants who receive cable communications service and those who do not.

(b) Rental agreements and leases executed prior to the effective date of this article may be enforced notwithstanding this section.

(c) No cable communications company may enter into any agreement with the owners, lessees or persons controlling or managing buildings served by a cable communications company, or do or permit any act that would have the effect, directly or indirectly, of diminishing or interfering with existing rights of any tenant or other occupant of such building to use or avail himself of master or individual antenna equipment.

~~Sec. 5-29. Liquidated damages.~~

~~Notwithstanding any other remedy provided for in this chapter, or otherwise available under law, the county shall have the power to recover monetary amounts from a grantee under certain conditions, such monetary amounts being in the nature of liquidated damages. The conditions for and amounts of such damages are listed~~

~~below. By accepting a franchise, a grantee automatically agrees that the following conditions will cause damages to the county, and that the monetary amounts are established because it is difficult to ascertain the exact amount of the damages. The damages resulting to the county include, but are not limited to, loss of franchise fees that would have otherwise been paid to or would have become due the county and administrative costs incurred by the county. Damages shall be invoked upon the occurrence of any or all of the following:~~

- ~~(1) — For failure to submit plans indicating expected dates of installation of various parts of the system — \$100.00 per day.~~
- ~~(2) — For failure to commence operations in accordance with this chapter and/or the franchise certificate — \$200.00 per day.~~
- ~~(3) — For failure to complete construction and installation of the system within the required time limits — \$300.00 per day.~~
- ~~(4) — For failure to supply data requested by the county in accordance with the requirements of this franchise certificate and this chapter, such data pertaining to installation, construction, customers, finances or financial reports or rate review — \$50.00 per day.~~
- ~~(5) — For failure to otherwise provide service to a subscriber in accordance with the requirements of this chapter — \$10.00 per day per subscriber affected, but not to exceed \$50.00 per subscriber per month, and further not to exceed \$1,000.00 per day in the aggregate. This amount shall be reduced by any refunds of subscriber fees made to subscribers affected by the failure, etc., to provide service.~~

Sec. 5-30. Obtaining or attempting to obtain cable communications service without payment; penalty.

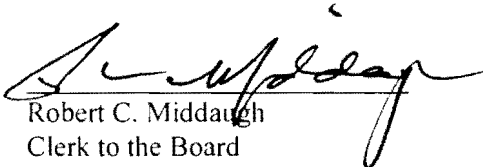
(a) It shall be unlawful and constitute a misdemeanor for any person to obtain or attempt to obtain, for himself or for another, cable communications service by the use of any false information or in any case where such service has been discontinued by the supplier and notice of disconnection has been given.

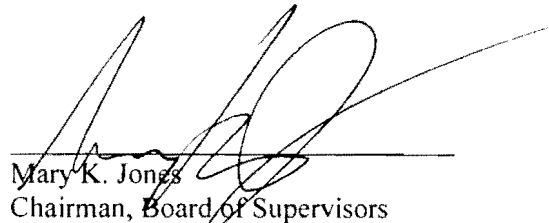
(b) It shall be unlawful for any person to obtain or attempt to obtain cable communication service by the use of any scheme, device, means or method, or by a false application for service with intent to avoid payment of lawful charges therefor.

(c) The word "notice," as used in paragraph, (a) hereof, shall be notice given in writing to the person to whom the service was assigned. The sending of a notice in writing by a receipted delivery system, and the actual signing of the receipt for said notice by the addressee, shall be prima facie evidence that such notice was duly received.

(d) Any person who violates any provisions of this section, ~~if the value be less than \$100.00~~ shall be guilty of a Class 1 misdemeanor.

ATTEST:


Robert C. Middaugh
Clerk to the Board


Mary K. Jones
Chairman, Board of Supervisors

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

Adopted by the Board of Supervisors of James City County, Virginia, this 22nd day of March, 2011.

MAR 22 2011

ORDINANCE NO. 183A-7

BOARD OF SUPERVISORS
JAMES CITY COUNTY
VIRGINIA

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 23, CHESAPEAKE BAY PRESERVATION, OF THE CODE OF THE COUNTY OF JAMES CITY, VIRGINIA, BY AMENDING SECTION 23-17, APPEALS.

BE IT ORDAINED by the Board of Supervisors of the County of James City, Virginia, that Chapter 23, Chesapeake Bay Preservation, is hereby amended and reordained by amending Section 23-17, Appeals.

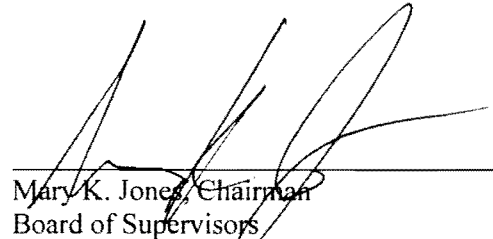
Chapter 23. Chesapeake Bay Preservation

Section 23-17. Appeals.

- (a) An owner of property subject to an administrative decision, order or requirement under this chapter may appeal by submitting a written application for review to the board no later than 30 days from the rendering of such decision, order or requirement. The board shall hear the appeal as soon as practical after receipt of the application. The appellant, the board of supervisors, the manager, the planning director and any person or agency expressing an interest in the matter shall be notified by the board not less than ten days prior to the date of the hearing. Published notice of the board's public meetings shall state that appeals from decision under the Chesapeake Bay Preservation Ordinance may be heard.
- (b) In rendering its decision, the board shall balance the hardship to the property owner with the purpose, intent and objectives of this chapter. The board shall not decide in favor of the appellant unless it finds:
 - (1) The hardship is not generally shared by other properties in the vicinity;
 - (2) The Chesapeake Bay, its tributaries and other properties in the vicinity will not be adversely affected; and
 - (3) The appellant acquired the property in good faith and the hardship is not self-inflicted.

- (c) The board may impose conditions to the granting of any waiver, ~~or~~ exception *or appeal* as it may deem necessary in the public interest, and may, to ensure compliance with the imposed conditions, require a cash escrow, bond with surety, letter of credit or other security as is acceptable to the county attorney.
- (d) An owner of a property subject to a board decision, order or requirement may appeal to the Circuit Court of James City County *no later than 30 days from the rendering of such decision, order or requirement.*

State law reference—Code of Va, § 10.1-2109 (F).



Mary K. Jones, Chairman
Board of Supervisors

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

ATTEST:



Robert C. Middaugh
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, on this 22nd day of March,
2011.

Sect23-17Amend_ord