

AT A REGULAR MEETING OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE 23RD DAY OF OCTOBER 2012, 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

John J. McGlennon, Chairman, Roberts District
Mary K. Jones, Vice Chairman, Berkeley District
W. Wilford Kale, Jr., Jamestown District
James G. Kennedy, Stonehouse District (Present by Phone)
James O. Icenhour, Jr., Powhatan District

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

C. MOMENT OF SILENCE

D. PLEDGE OF ALLEGIANCE - Kenny Ayers, a first-grade student at D.J. Montague Elementary School, led the Board and citizens in the Pledge of Allegiance.

E. PRESENTATIONS – None

CHANGE IN AGENDA ORDER

J. BOARD CONSIDERATIONS

3. Mooretown Road Extension Study

Mr. McGlennon stated that the Board intended to deviate from the Agenda and move the Mooretown Road Extension Study to the beginning of the Agenda to accommodate Mr. Kennedy. Mr. McGlennon stated that anyone who planned to speak during the Public Comment in regards to the Mooretown Road Study were welcome to come and speak in regards to this item at the time.

1. Mr. Wayne Moyer, 268 Peach Street, addressed the Board stating that the Mooretown Road Extension Study should be postponed and the money redirected to other more pressing projects.

2. Mr. Mack Mediae, 105 Guilley Drive, addressed the Board in opposition to the Mooretown Road Extension Study, stating that the money could be used elsewhere.

Adopted
11-13-12
JDF

3. Ms. Sue Sadler, 9929 Mountain Berry Court, addressed the Board questioning Mr. Icenhour and Mr. McGlennon's opposition to the Mooretown Road Extension Study.

Mr. McGlennon asked Mr. Jason Purse, Planner III, to make his presentation to the Board.

Mr. Purse addressed the Board, giving a summary of the staff report included in the Agenda Packet.

Mr. McGlennon asked the Board if they had any questions for staff or had any comments in regards to this item.

Ms. Jones made a motion to approve the resolution.

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

RESOLUTION

BUDGET APPROPRIATION – MOORETOWN ROAD EXTENSION STUDY - \$400,000

WHEREAS, in accordance with Hampton Roads Transportation Planning Organization funding allocation procedures, James City County has been awarded \$400,000 in Regional Surface Transportation Program (RSTP) funds; and

WHEREAS, the funds will be used for a study to determine the feasibility of extending Mooretown Road between its current terminus at Lightfoot Road and Croaker Road near the intersection with Rochambeau Drive; and

WHEREAS, the appropriation of these funds will allow the award of contract for the Mooretown Road Extension Study project.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby appropriates \$400,000 to the Special Projects Fund.

Revenue:

Mooretown Road Extension Study:	<u>\$400,000</u>
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Expenditure:

Mooretown Road Extension Study:	<u>\$400,000</u>
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RESOLUTION

COUNTY/STATE PROJECT ADMINISTRATION AGREEMENT

MOORETOWN ROAD EXTENSION STUDY (UPC 98810)

WHEREAS, in accordance with the Code of Virginia to provide localities the opportunity to administer projects financed by the Regional Surface Transportation program in accordance with the Virginia Department of Transportation Locally administered Projects Manual; and

WHEREAS, the Board of Supervisors of James City County, Virginia, has expressed its desire to locally administer the work of the Mooretown Road Extension Study Contract UPC No. 98810 in the amount of \$400,000.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the County Administrator to execute the Project Administration Agreement for the Mooretown Road Extension Study Contract UPC No. 98810 in the amount of \$400,000.

F. PUBLIC COMMENT

1. Mr. Jim Klijanowicz, 413 Ironwood Drive, addressed the Board in regards to the Olde Towne Timeshares Multiuse Trail, stating concerns of homeowners in the area.

Mr. McGlennon stated that for clarification purposes, the Olde Towne Timeshares Multiuse Trail resolution was designed to allow the County to accept the funds for the trail to be built. He stated that as of yet, there is no trail in the planning.

2. Mr. Craig Metcalfe, 4435 Landfall Drive, addressed the Board in regards to staggered terms.

3. Ms. Shirley Baker, 104 Forest Heights Road, addressed the Board in regards to the Forest Heights Improvement Project.

4. Ms. Judy Fuss, 3509 Hunter's Ridge, addressed the Board in regards to staggered terms.

5. Mr. Keith Sadler, 9929 Mountain Berry Court, addressed the Board in regards to staggered terms.

6. Ms. Judy Trautman, 134 Maxton Lane, addressed the Board in regards to staggered terms and the redistricting process.

7. Mr. Ralph Simmons, 129 Ewell Place, addressed the Board in regards to the Olde Towne Timeshares.

8. Ms. Penny Pulley, 20 Mile Course, addressed the Board in regards to staggered terms.

9. Ms. Heather Cordasco, 113 Alexander Place, addressed the Board in regards to the redistricting process and staggered terms.

10. Mr. John Bookless, 3 Claraton Court, addressed the Board in regards to the eminent domain amendment on the November ballot.

11. Mr. Carlton Stockton, 3201 Fowlers Lake Road, addressed the Board in regards to staggered terms.
12. Mr. Jeff Ryer, Merrimac Trail, addressed the Board in regards to staggered terms.
13. Mr. Ed Oyer, 139 Indian Circle, addressed the Board in regards to staggered terms.
14. Mr. Jay Everson, 103 Branscome Boulevard, addressed the Board in regards to the redistricting process and staggered terms.
15. Ms. Rosanne Riddin, 209 King Rook Court, addressed the Board in regards to the redistricting process and staggered terms.
16. Mr. Joseph Swanenberg, 3026 The Pointe Drive, addressed the Board in opposition to staggered terms.
17. Ms. Marjorie Ponziani, 4852 Corbridge Circle, addressed the Board in opposition to staggered terms.
18. Mr. Gary Moore, 158 Forest Heights Road, addressed the Board in regards to the Forest Heights Project.
19. Mr. Chris Henderson, 101 Keystone, addressed the Board in opposition to staggered terms.

G. BOARD REQUESTS AND DIRECTIVES

Mr. Icenhour made a motion to appoint Ms. Kathy Richardson to the Community Action Agency after the resignation of a previous appointee.

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

Mr. Kale stated that he wanted to clarify his absence at the end of the last Board meeting. He stated that he left because he had an early morning flight the next day.

Ms. Jones reminded the citizens about the public hearing in regards to the proposed Dominion Virginia Power Transmission Line to be held at Warhill High School. Ms. Jones stated that she participated in a meeting of the Hampton Roads Military and Federal Facilities Alliance.

Mr. Kennedy addressed the comments reported in the newspapers.

H. CONSENT CALENDAR

Mr. Kale made a motion to approve the Consent Calendar.

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

RESOLUTION

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

WHEREAS, the James City County Fire Department's Division of Emergency Management has been awarded pass-through funds in the amount of \$25,000 to support Radiological Emergency Preparedness (REP) from the Virginia Department of Emergency Management (VDEM); and

WHEREAS, the funds are to be used for planning and response for public protective actions related to the Surry Power Station nuclear plant; and

WHEREAS, the grant requires no match.

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

Revenue:

Radiological Emergency Preparedness Funds - VDEM	<u>\$25,000</u>
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Expenditure:

Radiological Emergency Preparedness Funds - VDEM	<u>\$25,000</u>
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RESOLUTION

GRANT AWARD – LAND AND WATER CONSERVATION FUND GRANT FOR

JAMESTOWN BEACH PARK - \$152,049

WHEREAS, the Virginia Department of Conservation and Recreation has Land and Water Conservation grant funds available for shoreline stabilization, parking, trail, and restroom enhancements; and

WHEREAS, funds are needed to stabilize the shoreline, improve parking, drainage, restrooms, and accessible access to Jamestown Beach.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby accepts the \$152,049 grant to help with the improvements at Jamestown Beach Park and authorizes the County Administrator to execute the required documents.

BE IT FURTHER RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the following appropriation to the Special Projects/Grants Fund.

Revenue:

Virginia Department of Conservation and Recreation	<u>\$152,049</u>
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Expenditure:

Jamestown Beach Park

\$152.049

RESOLUTION

APPOINTMENT OF ALTERNATE ACTING ZONING ADMINISTRATOR

WHEREAS, Ms. Christy Parrish has been appointed Acting Zoning Administrator of James City County; and

WHEREAS, occasions may arise that require an Alternate Acting Zoning Administrator to perform the Zoning Administrator's functions and duties.

WHEREAS, the Acting Zoning Administrator, in good faith, designated Mr. Allen Murphy as Alternate Acting Zoning Administrator to act in her capacity on October 11, 2012; and

WHEREAS, pursuant to Section 24-5 of the Code of the County of James City, the Board of Supervisors is responsible for appointing the Zoning Administrator.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby authorize Mr. Allen Murphy as Alternate Acting Zoning Administrator effective October 11, 2012, and hereby ratifies his actions taken as Alternate Acting Zoning Administrator.

I. PUBLIC HEARINGS

1. Case No. ZA-0006-2012. Williamsburg Pottery - Proffer Violation Appeal (Lights)

Ms. Christy Parrish, Acting Zoning Administrator, addressed the Board, giving a summary of the staff report included in the Agenda Packet.

As there were no Board questions for staff, Mr. McGlennon opened the Public Hearing.

Mr. Greg Davis, of Kaufman and Canoles, addressed the Board as the representative of the applicant. Mr. Davis stated that the applicant has submitted a lighting plan to address the proffer issue. Mr. Davis showed the Board a piece of a diffuser cap, which the applicant believes will be the most viable solution for the lighting violation. He stated that staff is in agreement that this diffuser cap will be an adequate solution, but has requested that the applicant perform a demonstration. Mr. Davis stated that the reason for the delay in scheduling the demonstration is that the diffuser cap is manufactured overseas, and as such, it is taking longer than expected to get the diffuser cap here.

Mr. Kale questioned how the lights were ever put on in the first place.

Mr. Davis stated that to the best of his knowledge, it was a mistake.

As no one else wished to speak on the matter, Mr. McGlennon closed the Public Hearing.

Ms. Jones stated that she was in agreement with the deferral, but believed that the Public Hearing should be left open.

Mr. Leo Rogers, County Attorney, clarified that the case would not have to be readvertised if the Public Hearing was left open.

Mr. McGlennon agreed to leave the Public Hearing open.

Ms. Jones made a motion to defer this case for one month until the November 27, 2012, meeting.

Mr. Icenhour stated that he felt that until a compromise is worked out that the lights should be turned off at night.

Mr. Kennedy stated that he feels like the lights should be turned off at 9 p.m. until a solution can be made in the case.

Mr. McGlennon stated that in this case there is a clear ruling from the County Zoning Administrator that the lights are a violation. Therefore, he feels that the lights should be turned off until a solution can be reached.

Mr. Kennedy stated that while he is in favor of the Chairman's statement, he believes it needs to be fair across the board. He stated that there have been violations in the past that the Board has allowed to continue until a solution could be reached.

Mr. Davis, in regards to the Boards comments, stated that the applicant is amiable to turning off the lights at night until a solution can be reached. However, the applicant requested that the lights be allowed to burn on the weekend of Black Friday, which is a critical shopping day for the applicant.

Mr. Icenhour stated that he believed the request was very reasonable.

Mr. Kale wanted clarification of the time frame for Black Friday.

Mr. Davis stated that it would from 12 a.m. on the Friday immediately following Thanksgiving, through Saturday morning.

Mr. McGlennon clarified that there was a motion to defer for one month, with the stipulation that the lights be turned off during the hours of darkness, except for the Black Friday weekend as defined earlier.

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

2. Case Nos. Z-0007-2012/Special Use Permit-0002-2011. Greensprings Mobile Home Park Sanitary Sewer Force Main Extension

Mr. Chris Johnson, Principal Planner, addressed the Board giving a summary of the staff report that was included in the Agenda Packet.

Mr. McGlennon asked Mr. Johnson about the approximate cost of connecting to the sewer extension.

Mr. Johnson replied that the applicant has stated that the cost will be approximately \$600,000.

As the Board had no other questions for staff at this time, Mr. McGlennon opened the Public Hearing.

1. Mr. William Shewmake, of LeClaire Ryan Law Offices, addressed the Board on behalf of the applicant. He stated that Greensprings Mobile Home Park is a well-maintained, vibrant community whose

residents have lived there for many, many years. Mr. Shewmake stated that Greensprings Mobile Home Park provides Affordable Housing to the community, housing that has been documented to be severely lacking within the County. He stated that the community has a problem, one that has been an issue for years. He stated that his client is requesting permission, at no cost to the County, to connect to the public water and sewer line. Mr. Shewmake stated that the septic problems are posing a health risk to the residents and could potentially cause the park to close. Those residents would have to be moved; however, many of the residents would not be accepted into other mobile home parks.

Mr. Shewmake explained to the Board the various options that the applicant has gone through to try and fix the septic problems. He stated that the applicant has been in constant contact with the Peninsula Health Department in regards to the viable options for the septic system. He stated that the Soil Scientist and the Peninsula Health Department both agree that any alternative systems are not a viable option. Mr. Shewmake explained the potential effects on human health from failing septic systems.

Mr. Shewmake stated that the conditions in the Comprehensive Plan that allow for extensions of the Primary Service Area (PSA) have been met. He stated that this is a pre-existing community, with no expansion occurring, that needs the extension of the PSA because of failing septic systems which pose a health risk to the community. He noted that the Greensprings Mobile Home Park pre-dates the PSA and respectively believes that the park should have been included in the PSA. He noted several instances where the Board has extended the PSA to homes and citizens that have had failing septic systems.

Mr. Shewmake stated that the applicant has submitted voluntary proffers stating that the current 86 homes in the park are the only homes that would be connected to the sewer line, as well as stating that at no time will there be any more than 86 mobile homes on the property at any one time. He also stated that the voluntary proffer would prevent any building from being built on the open 15 acres at the back of the park.

Mr. McGlennon asked the Board for questions or comments.

Ms. Jones asked the County Attorney why this case was considered a rezoning case as well as the special use permit. She stated that she had never seen a rezoning case where nothing is being re-zoned just to add voluntary proffers.

Mr. Rogers stated that this is a unique situation, but not unheard of. He stated that the Board has done this in the past where land is rezoned to the same designation to allow proffers to be included.

Mr. Kennedy asked Mr. Rogers about a previously discussed proffer condition that was not included in the voluntary proffers submitted in the final application.

Mr. Rogers stated that the applicant chose not to include that provision in the proffers which would have protected the residents and guaranteed that they would be able to stay in their homes. He stated that staff does not know what portion of the cost of the extension is going to be put on the residents and that staff tried to put in those protections for the residents.

Mr. Shewmake asked to speak to Mr. Roger's comments. He stated that there is no way to do a proffer that states this person shall live here; people have the right to live where they choose. However, the proffers specify that the current 86 homes are the only homes allowed on the property. He stated that the applicant has agreed to absorb the cost of the sewer extension and to not raise the rents. Mr. Shewmake stated that the applicant has done everything legally possible to make sure the park stays as a mobile home park and the current residents stay in their homes.

Mr. Kennedy asked Mr. Rogers if that was indeed the case.

Mr. Rogers stated no, that there are some flaws in the proffers. He stated that Mr. Shewmake stated that the costs are going to be borne by the applicant, however that is not stated anywhere in the proffers. He stated that the County cannot rely on that, the proffers are the only instrument, as well as the zoning, that the County can enforce. Mr. Rogers stated that staff has worked with the applicant tirelessly to try and get protections for the residents included, but as of now those protections have not been included in the voluntary proffers.

Mr. Shewmake stated that if there is a proffer stating that the applicant will not raise the rents, then we are happy to do it. However, he stated that he never remembered hearing such a proffer being discussed in the meetings with staff. He reiterated that the applicant is absorbing the cost and not passing it on to the residents and if staff can craft that into a proffer, then the applicant is amenable to it.

Mr. McGlennon questioned how a business can survive when it does not factor in the costs of operations.

Mr. Shewmake stated that when the applicant purchased the property he had concerns over the septic system and has been planning for this outlay of cost.

Mr. Kennedy asked Mr. Rogers to clarify the language in the second proffer. He asked if it only stated manufactured homes or referred to mobile homes as well.

Mr. Rogers stated that the proffer refers to manufactured and mobile homes.

Mr. Kennedy stated that he has stated previously that he is willing to support this if the language of the proffers protects the current residents and their homes.

Mr. Shewmake stated that the proffers list manufactured and mobile homes, because the homes fall into separate categories based on their age according to the County Code.

Mr. Rogers stated again that there is no protection for the current residents or any protection against rate increases in the language of the voluntary proffers.

Ms. Jones addressed the residents of the park in the meeting room, stating that should the case be approved, they should be aware that there is the potential for their rents to go up. She stated that this is a free-market and while there are price points for this type of housing, there is the chance that they could see increases in their rates because of the outlay of cost.

Mr. McGlennon opened the Public Hearing as there were no more questions for staff or the applicant.

1. Ms. Pamela Banzinger, 7 Hickory Court, Williamsburg, addressed the Board requesting its approval of the case.
2. Mr. Randy Marley, 8 Hickory Court, Williamsburg, addressed the Board requesting its approval of the case.
3. Ms. Joyce White, 116 Pinepoint Road, Williamsburg, addressed the Board requesting its approval of the case.
4. Ms. Amy Pemberton, Environmental Health Supervisor, Virginia Department of Health, addressed the Board stating that she was available for any health questions that the Board might have.

5. Ms. Valerie Jordan, Environmental Health Specialist, Virginia Department of Health, addressed the Board stating that she was available for any health questions that the Board might have.

6. Ms. Deborah Hite, 1 Red Oak Drive, Williamsburg, addressed the Board requesting its approval of the case.

7. Ms. Liz Dye, 3 Dena Drive, Williamsburg, addressed the Board requesting its approval of the case.

8. Mr. Keith Sadler, 9929 Mountain Berry Court, Toano, addressed the Board requesting the extension of the PSA be approved.

9. Mr. John Bookless, 3 Clarendon Court, Williamsburg, addressed the Board requesting its approval of the case.

10. Ms. Shirley Alspar, 19 Clay Circle, Williamsburg, addressed the Board requesting its approval of the case.

11. Mr. Ed Oyer, 139 Indian Circle, Williamsburg, addressed the Board noting that no one has stated whether or not the residents or the applicant will be paying the monthly sewer and water bill.

12. Ms. Sandra Perkins, 4 Red Oak Drive, Williamsburg, addressed the Board requesting its approval of the case.

13. Mr. John Gegliano, 2 Bryan Street, Williamsburg, addressed the Board requesting its approval of the case.

14. Mr. James Bowman, 19 Hickory Court, Williamsburg, addressed the Board requesting its approval of the case.

15. Ms. Elizabeth White, LeClair Ryan Law Offices, addressed the Board on behalf of the park owner, Mr. Franklin. She stated that Mr. Franklin had only intended to speak if there were questions, however Mr. Franklin would like to address some of the Board comments made earlier.

16. Mr. John Franklin, 401 Atlantic Avenue, No.1201, Virginia Beach, addressed the Board in response to comments and questions made during the case presentation. He stated that Mr. Rogers keeps mentioning the money and the cost. Mr. Franklin stated that he got a loan about six years ago. In regards to raising rents, he stated that he has 3,000 tenants in 20 different mobile home parks and he does not need to raise the rents of these residents to cover the costs.

Mr. Kale asked Mr. Franklin if he would be willing to include a proffer that specifically stated that the cost of the project would not be passed on to the tenants. Mr. Kale also asked with whom at the County this project was discussed.

Mr. Franklin stated that, yes he would be willing to include a proffer stating that the costs would not be passed on to the tenants. He also stated that the discussions with the County were years ago and he cannot remember exactly who was involved at the time, except Mr. Larry Foster.

17. Ms. Elizabeth White, LeClair Ryan Law Offices, addressed the Board stating that one of the residents has asked her to read her statement. On behalf of Ms. Joan Prince, 8 Bryan Street, Ms. White addressed the Board requesting approval of the case.

As no one else wished to speak to the case, Mr. McGlennon closed the Public Hearing and looked to the Board for discussion.

Mr. Icenhour stated that he is not convinced that the documentation before him does enough to protect the current residents of this community. He stated that he would like to take more time to allow staff and Mr. Franklin to come up with additional documentation addressing that the current residents have the option to stay in their homes as long as they choose and that the costs of the project will not be transferred to the residents.

Ms. Jones stated that while doing research on this issue, the mobile home park predates the PSA. She stated that the PSA was drawn to include residential areas, but she found that specifically excludes commercial areas and the mobile home park is considered commercial property. However, the Comprehensive Plan allows for exemptions to be granted by the Board and the Board has done so in the past. In order to get an exemption, there must be a considerable public benefit. She stated that this case does provide a considerable public benefit as well as being a health and safety issue. Ms. Jones also stated that it concerns her that citizens felt the need to justify where they live. She stated that where you live is irrelevant, that this case is about health and safety.

Mr. Kale stated that the County set a precedent by extending the waterline for miles to Riverview Plantation, because of a health issue. This case does not extend the line for miles, it is right next door. He stated that the PSA line was obviously drawn to exclude the mobile home park and although it may be classified as commercial property, he does not see the difference between renting in a mobile home park and renting in an apartment complex. Mr. Kale also stated that this case is about affordable housing. The Board has been talking about Affordable Housing for months and now the Board is discussing eliminating 86 affordable housing units with the outcome of this case. Mr. Kale stated that he is supportive of the project and there is a precedent set already.

Mr. Kennedy stated that he was very familiar with the exemption given to Riverview Plantation as he worked on that project with Mr. Foster for four years. He stated that he wanted to clarify that the residents of Riverview are, and have been, paying for that waterline extension. He stated that he did not want anyone thinking that it was done for free. Mr. Kennedy also wanted to clarify that he did not mean that he wanted a proffer that would allow the residents to live in their homes. He stated that his concern was that the lots could then be flipped for stick-built homes; that concern has been alleviated by the proffer. Mr. Kennedy noted that it seems that the residents of Greensprings Mobile Home Park are very pleased with the product they rent from Mr. Franklin. He stated that his concerns had been addressed this evening and he would support the project.

Mr. McGlennon stated that he wanted to thank Mr. Franklin for coming forward to speak tonight and for the good relationship he seems to have with his tenants. Mr. McGlennon stated that this evening another proffer condition was offered that would have Mr. Franklin assume the cost of the project and not pass on the cost to the tenants. Mr. McGlennon stated that he believes it is important that that proffer be in writing and in front of the Board when they vote on the resolution. He stated that he appreciated that Mr. Franklin is willing to absorb the cost on his own and he is assuming that the residents know that they will be taking on the monthly payments for the public utilities. He stated that his concern is over the residents being forced out due to an increased cost of living.

Ms. Jones stated that she is satisfied with the language of the proffers as they are before the Board this evening. She asked Mr. Kennedy if he was looking for new language to be added to the proffers.

Mr. Kennedy stated no, that he was satisfied with what he had heard this evening.

Ms. Jones asked Mr. Kale if he wanted new language added to the proffers this evening.

Mr. Kale asked if it was possible for Mr. Rogers, Mr. Shewmake, and Mr. Franklin to come up with a sentence or two tonight, to satisfy the proffer condition discussed this evening.

Mr. Middaugh addressed Mr. Kale's comments, saying that while yes they could do that, it would not be well thought out.

Mr. Kennedy stated that his concern over flipping the property has been satisfied by the language stating only manufactured or mobile homes will be placed on the property. He stated that by restricting it to only those types of homes, the rental rates are fairly set and he is not concerned about a big increase in rental rates. He stated that there is only a certain price that Mr. Franklin is going to get for those lots and Mr. Franklin owns enough mobile home parks to realize this.

Ms. Jones stated that with respect for everyone the Board needs to act on this case tonight. She stated that the proffers are restrictive enough and should be acted on.

Mr. Kale asked Mr. Rogers if a motion could be made to adopt the resolution this evening including the proffer that was discussed this evening.

Mr. Rogers stated that he would need to work with Mr. Shewmake to draft that option into the proffer and then have a signed and notarized legal instrument that could be recorded with the land deed, so that if the property was sold the next day, the cost would still have to be borne by the land owner. He stated that he could draft such an instrument and bring it back before the Board.

Mr. McGlennon stated that he was in favor and supportive of drafting the legal proffer and bringing it back before the Board.

Mr. Shewmake stated that drafting that proffer would be very difficult. He stated that is why the applicant chose to proffer that this property could only be a mobile home park with 86 manufactured or mobile homes. Those restrictions allow the market rate to influence pricing and keep Mr. Franklin from being able to pass the cost of the project on to the residents.

Mr. Kennedy stated that if Mr. Franklin sold the property tomorrow, the new owner would have the same restrictions on them as Mr. Franklin. The new owner would not be able to use the back 15 acres, it would still have to be only manufactured or mobile homes and there could only be 86 units.

Mr. Rogers stated that he could draft the language. He stated that it would be something along the lines of "the owner shall bear the cost of the capital improvement project of installing water and sewer lines to each of the 86 manufactured or mobile homes on said property, and the capital cost would not be transferred to the tenants of the 86 manufactured or mobile homes."

Ms. White came forward and stated that the applicant would agree to that language. Ms. White suggested that with Mr. Franklin in attendance, that the language be hand-written and signed and then tomorrow it could be typed up and the page substituted in the signed proffers.

Mr. Rogers requested that the Board take a five minute break to allow for this discussion.

Mr. McGlennon recessed the Board at 10:12 p.m. for a five minute break.

Mr. McGlennon reconvened the Board at 10:24 p.m.

Mr. McGlennon asked Mr. Rogers if an agreement has been reached.

Mr. Rogers stated yes.

Mr. Shewmake stated that an agreement had been reached, signed by Mr. Franklin, and would be notarized tomorrow. Mr. Shewmake read the additional third condition of the proffer to the Board, "Owner will bear the Capital costs of connecting each of the 86 manufactured or mobile homes to the JCSA sewer system, and such Capital costs shall not be borne by the residents of the manufactured or mobile homes being connected."

Mr. Kale made a motion to approve the resolution with the inclusion of Proffer No. 3 that was read to the Board and has been signed by the applicant, Mr. Franklin.

Mr. Icenhour stated that he believes this item is about the best it is going to be. However, he stated that he had one question for Mr. Rogers. He asked if there was anything in this agreement that would preclude Mr. Franklin from selling the property and the new owner evicting the tenants, tearing down the mobile homes, and replacing them with modular homes that could then be leased or rented.

Mr. Rogers stated technically no. However, there are some protections granted by the Mobile Home Leasing Act, which his office would enforce and would provide time and some extensions to the tenants.

Ms. Jones stated that in response to Mr. Icenhour's comments, if a new owner wanted to do something different with the property they would have to come back before the Board. She stated that she thought the additional language was an unnecessary injection of government into private business; however, she would still support the resolution.

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

RESOLUTION

CASE NO. SUP-0002-2011. GREENSPRINGS MOBILE HOME PARK

SANITARY SEWER FORCE MAIN EXTENSION

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. William Shewmake and Ms. Elizabeth White have applied to allow the extension of approximately 3,350 linear feet of public sanitary sewer utilities; and

WHEREAS, the proposed project is shown on an Exhibit prepared by Prism Contractors & Engineers, Inc, entitled "Greensprings Mobile Home Park Sanitary Sewer Force Main Extension" and dated April 13, 2012; and

WHEREAS, the property is located on land zoned A-1, General Agricultural, and can be further identified as James City County Real Estate Tax Map Parcel No. 3640100001; and

WHEREAS, the Planning Commission, following its public hearing on September 5, 2012, voted 7-0 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 Case No. SUP-0002-2011 as described herein with the following conditions:

1. If construction has not commenced on this project within 24 months from the issuance of an SUP, the SUP shall become void. Construction shall be defined as clearing, grading, and excavation of trenches necessary for the water and sewer mains.
2. No connections shall be made to the sanitary sewer force main which would serve any property located outside the Primary Service Area (PSA) except for connections to the 86 manufactured or mobile homes located on the subject property at any one time. In addition, for each platted lot recorded in the James City County Circuit Court Clerk's Office as of February 24, 2011, that is vacant, outside the PSA and adjacent to the main, one connection shall be permitted with no larger than a 4-inch service line.
3. All permits and easements shall be acquired prior to the commencement of construction for the sewer transmission main.
4. For sewer main construction adjacent to existing residential development, adequate dust and siltation control measures shall be taken to prevent adverse effects on adjacent property.
5. The sanitary sewer force main extension shall be placed within areas previously cleared adjacent to the Virginia Department of Transportation (VDOT) right-of-way and the James City Service Authority (JCSA) easement. Any additional clearing shall require the approval of the Director of Engineering and Resource Protection prior to site plan approval.
6. This SUP is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.

Mr. Kennedy stated that he was going to sign-off for the night.

J. BOARD CONSIDERATIONS

1. Olde Towne Timeshares Multiuse Trail

Mr. John Carnifax, Director of Parks and Recreation, addressed the Board giving a summary of the memorandum found in the Agenda Packet.

Mr. McGlennon asked the Board if there were any questions for staff.

Mr. Kale asked if this trail was in any of the current project plans and how this would play out in the future.

Mr. Carnifax stated that this was not in the current project plans. He stated that this just guaranteed either the funding or that the owner would build the trail. Development plans and design would come later on.

Mr. Kale clarified that the resolution before the Board tonight protects the project in the future.

Mr. Carnifax stated that is correct and the Board must act on it tonight or lose that protection.

Mr. Icenhour stated that if the Board does not act, then the option of the trail comes off the table.

Mr. Carnifax stated that was correct.

Mr. Icenhour stated that so acting on the resolution keeps the option for the trail. Mr. Icenhour questioned if the owner was given the option of building the trail or taking a cash offer in lieu of.

Mr. Carnifax stated yes that had been explained to the owner. If the cash offer was utilized later and the Board at the time did not approve the trail, the cash offer could be used elsewhere for other trails.

Mr. Kale made a motion to approve the resolution.

On a roll call vote, the vote was: AYE: Mr. Icenhour, Mr. Kale, Ms. Jones, Mr. McGlennon (4). NAY: (0). Absent: Mr. Kennedy (1).

RESOLUTION

OLDE TOWNE TIMESHARES MULTIUSE TRAIL

WHEREAS, the Board of Supervisors approved Case No. SUP-21-05/MP-9-05 which includes a condition to construct a public trail; and

WHEREAS, this trail would link New Town to three park facilities, two high schools, and meets the recommendations of the County Comprehensive Plan, the Greenway Master Plan, the Virginia Outdoors Plan, and the Parks and Recreation Master Plan; and

WHEREAS, public support for walking and biking trails continue to rank high in importance of County residents.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby approves the construction of the defined trail in Case No. SUP-21-05/MP-9-05, Amendment No. 10 and requests that the property owner proceed with construction within 180 days of this date.

2. Forest Heights Neighborhood Improvement Project –

- a. Community Development Block Grant (CDBG) Appropriation of Funds
- b. Power Line Conversion

- c. Authorization for the County Administrator to Contract with George Nice and Sons, Inc. to Construct Forest Heights and Benefit Roads

Mr. Vaughn Poller, Administrator of Housing and Community Development, addressed the Board giving a summary of the staff report found in the Agenda Packet for the series of items.

Mr. McGlennon asked for clarification as to the project costs that have caused the overrun.

Mr. Poller stated that mostly it has been drainage issues. He stated that when the engineers went out into the field, the area was much larger than they had anticipated.

Mr. McGlennon queried that the preliminary engineering was not adequate to address the scope of the project.

Mr. Poller stated that was correct.

Mr. McGlennon stated that it appeared that the concerns of the citizens that spoke earlier had been addressed.

Mr. Poller stated that the new roads would address those concerns.

Mr. Kale asked if there was a sidewalk plan in the design for the future.

Mr. Poller stated that there was a sidewalk planned on one side and the Virginia Department of Transportation (VDOT) requested that another sidewalk be built on the other side of the street.

Mr. Kale asked if those were included in the budget allocations.

Mr. Poller stated yes.

Ms. Jones asked how long the issue with the roads had been going on. She stated that she believed it had been about 10 years.

Mr. Poller stated that his office has been working on getting the roads paved since 2008; however the citizens of the community had been working on it for a much longer time.

Mr. Icenhour stated that he has known about this issue since 2001 when he walked the community.

Ms. Jones stated that she has concerns over the project. She stated that every time this item comes before the Board it seems to be costing more money. She stated that she will not support adding any more money into this project.

Mr. Icenhour stated that the Board has bent over backwards to avoid using eminent domain and the community has come together to work with the County to get the roads designed. He stated that he cannot balance the lives that have been lost in this community versus the cost overruns and he would support the project.

Mr. Kale stated that the Board had been briefed in Closed Session about the project overruns. He stated that he had a hard time beginning a project and not seeing it through to its completion. He stated that he would be supporting the project and the additional funds needed.

Mr. Icenhour asked the County Attorney if the resolutions needed to be moved individually or if they could be moved all together.

Mr. Rogers stated that they could all be moved together.

Mr. Icenhour made a motion to approve all of the Forest Heights Improvement Project resolutions.

On a roll call vote, the vote was: AYE: Mr. Icenhour, Mr. Kale, Mr. McGlennon (3). NAY: Ms. Jones (1). Absent: Mr. Kennedy.

RESOLUTION

FOREST HEIGHTS NEIGHBORHOOD IMPROVEMENT COMMUNITY DEVELOPMENT

BLOCK GRANT (CDBG) ADDITIONAL APPROPRIATION

WHEREAS on January 25, 2011, the Board of Supervisors approved by resolution the Forest Heights Neighborhood Community Development Block Grant (CDBG), accepting \$1,400,000 in CDBG funds and allocating \$1,094,552 in local funds; and

WHEREAS increased expenses are expected due to additional drainage, road design, acquisition, and relocation costs; and

WHEREAS, the Office on Housing and Community Development has directed all previous unallocated appropriations toward the cost of the Forest Heights project leaving a need for an additional appropriation of \$220,235; and

WHEREAS, sufficient funds are available in the County's Community Development Fund to provide the additional needed local funds.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby approves the appropriation in the amount of \$220,235 for the Forest Heights Neighborhood Improvement Project as shown below:

Revenues:

Program Income	\$ 194,000
Fund Balance	<u>26,235</u>
Total:	<u>\$220,235</u>

Expenditures:

Forest Heights	\$ 1,055,645
Program Income Redeployment	(503,096)
Housing Development	<u>(335,314)</u>
Total:	<u>\$220,235</u>

RESOLUTION

FOREST HEIGHTS NEIGHBORHOOD IMPROVEMENT PROJECT -

POWER LINE CONVERSION

WHEREAS, James City County has committed to providing power line conversion in the infrastructure improvement area along Forest Heights Road where private utilities would be jointly relocated underground to conform to County ordinances for new neighborhoods; and

WHEREAS, \$100,000 in local funds are allocated to the project and \$11,114.29 from the Community Development Fund will be expended on this project.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby approves the use of \$111,114.29 of local leverage funds from the County's Community Development Fund for Power Line Conversion as part of the Forest Heights Neighborhood Improvement Project.

BE IT FURTHER RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the County Administrator to approve the Dominion Virginia Power request for Authorization to Proceed with the Forest Heights Neighborhood Improvement Project Power Line Conversion.

RESOLUTION

AUTHORIZATION FOR THE COUNTY ADMINISTRATOR TO CONTRACT WITH

GEORGE NICE AND SONS, INC. TO CONSTRUCT FOREST HEIGHTS AND BENEFIT ROADS

WHEREAS, bids were publicly advertised for the construction of the Forest Heights Revitalization Road Improvements; and

WHEREAS, six bids were considered for award and George Nice and Sons, Inc. was the lowest responsive and responsible bidder; and

WHEREAS, sufficient funds are available to award the bid amount of \$1,294,687 for The Forest Heights Neighborhood Improvement Project from the Community Development Fund.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the County Administrator to execute a contract up to the amount of \$1,294,687 with George Nice and Sons, Inc. for the Construction of Forest Heights Road Improvements.

3. Ordinance Amendment to Chapter 2, Administration, Section 2-3, Designation, population, and election cycle of districts

Mr. McGlennon stated that this item was deferred from the previous meeting, and as such, there was no presentation. He asked the Board if there were any questions or discussions to be made.

Mr. Kale questioned whether or not Mr. Kennedy had rejoined the meeting by phone.

Mr. McGlennon stated that Mr. Kennedy had not called back to the meeting.

Mr. Kale made a motion to approve the ordinance.

Ms. Jones stated that before the Board votes she wanted to reiterate her comments from the previous meeting. She stated that she believes it is disrespectful to vote on staggered terms without all the Board members present at the dais. She stated that there has been extensive discussion about this issue, but she will not be supporting this ordinance.

Mr. McGlennon stated that issues with the redistricting committee have come to light during these discussions. He stated that this ordinance is an opportunity to return the voting back to the way it was prior to the hasty decision made at the close of last year.

Mr. Kale stated that he always believed that this was a political issue and the signage that went up during the last week only proved it is a political issue. He stated that voters could petition to get this issue on the ballot as a referendum and allow the people to vote on the issue once and for all. Mr. Kale also stated that he wanted to clarify comments that have been made that he was appointed by a singular judge. He stated that he was appointed by the three presiding judges in the 9th district, not one.

On a roll call vote, the vote was: AYE: Mr. Icenhour, Mr. Kale, Mr. McGlennon (3). NAY: Ms. Jones (1). Absent: Mr. Kennedy.

K. PUBLIC COMMENT

1. Ms. Sue Sadler, 9929 Mountain Berry Court, Toano, addressed the Board in regards to staggered terms, the Forest Heights Improvement Project, and still requested that the Board support the eminent domain amendment that is on the ballot.

2. Mr. Ed Oyer, 139 Indian Circle, Williamsburg, addressed the Board about the cost of solar thermal power.

3. Mr. Chris Henderson, 101 Keystone, Williamsburg, addressed the Board in opposition to tax payer dollars that are being spent on the Forest Heights Improvement Project.

4. Mr. Keith Sadler, 9929 Mountain Berry Court, Toano, addressed the Board in regards to the items voted on this evening.

L. REPORTS OF THE COUNTY ADMINISTRATOR

Mr. Middaugh stated that there would be a Senior Citizen Health Fair this week at the Recreation Center on Longhill Road. Senior Citizens can receive flu, pneumonia, and tetanus shots; as well as receive information about Senior Citizen services available in the County.

Mr. Middaugh stated that next Tuesday is Halloween and children under the age of 12 are recommended to get out and trick-or-treat between the hours of 6 p.m. and 8 p.m. He also advised motorists to be careful of all the children that will be out and about that evening.

M. BOARD REQUESTS AND DIRECTIVES

Mr. McGlennon stated that the Board needed to make a motion to appoint Mr. Icenhour as the Board's voting representative to the Virginia Association of County Officials.

Mr. Kale so moved.

On a roll call vote, the vote was: AYE: Mr. Icenhour, Mr. Kale, Ms. Jones, Mr. McGlennon (4). NAY: (0). Absent: Mr. Kennedy.

Ms. Jones stated that she wanted to remind citizens that we are not out of Hurricane Season yet and there is a storm developing out at sea, so please be mindful and prepared.

N. CLOSED SESSION

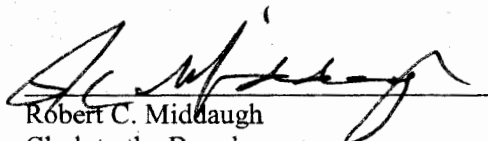
O. ADJOURNMENT - to 7 p.m. on November 13, 2012, for the Regular Meeting.

Mr. McGlennon requested a motion to adjourn.

Ms. Jones so moved.

On a roll call vote, the vote was: AYE: Mr. Icenhour, Mr. Kale, Ms. Jones, Mr. McGlennon (4). NAY: (0). Absent: Mr. Kennedy.

Mr. McGlennon adjourned the meeting at 11:07 p.m.


Robert C. Middaugh
Clerk to the Board

Prepared by:

William H. Shewmake, Esq.
LeClairRyan, A Professional Corporation
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, Virginia 23219

120 024564

Return to:

Adam R. Kinsman, Esq.
Deputy County Attorney
Post Office Box 8784
101-C Mounts Bay Road
Williamsburg, Virginia 23187-8784

PROFFERS

THIS PROFFER is made this 23rd day of October, 2012, by **Greensprings Mobile Home Park, LLC**, a Virginia limited liability company (together with its successors and assigns, "Owner") to be indexed as "Grantor," for the benefit of **The County of James City**, a political subdivision of the Commonwealth of Virginia (the "County") to be indexed as "Grantee."

Recitals

1. WHEREAS, Owner is the owner of certain real property in James City County, Virginia, being Tax Parcel 3640100001 and more particularly described on **Exhibit A** attached hereto and made a part hereof (the "Property").
2. WHEREAS, currently on the Property are eighty-six (86) manufactured and/or mobile homes as defined by James City County Code § 24-2 (the "Park").
3. WHEREAS, septic systems at the Park have begun to fail, and Owner seeks to correct the problem by connecting any manufactured or mobile homes in the Park to public sewer without expanding the number of manufactured or mobile homes that can access public sewer at any one time and also ensuring that once public sewer services the Property, the public sewer will not be used for any purpose other than servicing manufactured or mobile homes in the Park.
4. WHEREAS, Owner has, therefore, submitted a request for a Special Use Permit Case Number SUP-0002-2011 and a rezoning with proffers, Case Number Z-0007-2012, to permit the Property to utilize public sewer, provided that the public sewer connections be limited

Adopted
10-23-12

Recorded
11-27-12 JRP

to manufactured or mobile homes and that no more than 86 manufactured or mobile homes be connected to public sewer on the Property at any one time.

NOW, THEREFORE, in consideration of the approval of the requested rezoning Case Number Z-0007-2012 and requested Special Use Permit Case Number SUP-0002-2011 and pursuant to Section 15.2-2303 of the Code of Virginia, as amended, and the County Zoning Ordinance, Owner agrees that it shall meet and comply with the following conditions provided, however, if the Board of Supervisors denies the request to rezone the Property, Case Number Z-0007-2012, or denies the Owner's application for a Special Use Permit Case No. SUP-0002-2011, then the proffered conditions shall be void and of no effect.

Proffered Conditions

1. Connections to public sewer authorized and permitted by Owner's Special Use Permit SUP-0002-2011 shall be limited to manufactured or mobile homes as defined by James City County Code § 24-2 and there shall be a maximum of 86 manufactured or mobile home public sewer connections on the Property at any one time.
2. Other than a maximum of 86 manufactured or mobile homes on the Property at any one time, there shall be no other dwelling on the Property.
3. Owner will bear the capital costs of connecting each of the 86 manufactured or mobile homes to the JSCA Sewer System, and such capital costs shall not be borne by the residents of the manufactured or mobile homes being connected.

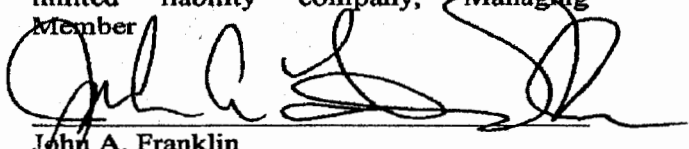
[The remainder of this page is left blank intentionally. Signatures appear on the next page.]

WITNESS the following signature:

GREENSPRINGS MOBILE HOME PARK,
LLC, a Virginia limited liability company

By: Franklin Investment, LLC, a Virginia
limited liability company, Managing
Member

By:


John A. Franklin
Manager

COMMONWEALTH OF VIRGINIA)

) to-wit:

CITY OF NEWPORT NEWS)

The foregoing instrument was acknowledged before me this 31st day of October, 2012, 2012, by John A. Franklin, Manager of Franklin Investment, LLC, a Virginia limited liability company, as Managing Member of Greensprings Mobile Home Park, LLC, a Virginia limited liability company, on behalf of the said Virginia limited liability company.

My commission expires: December 31, 2012.




Notary Public

Exhibit "A"

All that certain tract, piece or parcel of land containing 48.224 acres, more or less, situated in Powhatan District, James City County, Virginia, as shown and set forth on a certain plat of survey entitled, "Plat Of Property Standing In The Name Of Dudley S. Waltrip Situated In James City County, Virginia", dated September 21, 1969, made by Douglas E. White, C.L.S., a copy of which is of record in James City County in Plat Book 26, page 65, and is expressly incorporated herein by reference.

LESS and EXCEPT all that certain tract, piece or parcel of land, containing 1.84 acres, more or less, designated as Parcel A, as shown on a plat of subdivision entitled, "Plat Of Subdivision, Standing In the Name of Dudley Waltrip, Green Springs Mobile Home Estates," dated May, 1986, and made by Paul C. Small, Architects & Engineers, a copy of which is recorded in the Clerk's Office of the Circuit Court of James City County in Plat Book 42, page 71.

VIRGINIA CITY OF WILLIAMSBURG & COUNTY OF JAMES CITY
This document was submitted to record on 11-27-2012
at 1:34 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



OFFICIAL RECEIPT
WILLIAMSBURG/JAMES CITY COUNTY CIRCUIT
DEED RECEIPT

DATE: 11/27/12 TIME: 13:34:18 ACCOUNT: 830CLR120024564 RECEIPT: 12000039055
CASHIER: RJG REG: WD45 TYPE: OTHER PAYMENT: FULL PAYMENT
INSTRUMENT : 120024564 BOOK: PAGE: RECORDED: 11/27/12 AT 13:34
GRANTOR: GREENSPRINGS MOBILE HOME PARK LLC EX: N LOC: CO
GRANTEE: COUNTY OF JAMES CITY EX: N PCT: 100%
AND ADDRESS : N/A N/A, XX. 00000
RECEIVED OF : JAMES CITY
: \$.00
DESCRIPTION 1: PROFFER PARCEL 48.224 ACRES POWHATAN DISTRICT PAGES: 4 OP 0
2: DUDLEY S WALTRIP NAMES: 0
CONSIDERATION: .00 A/VAL: .00 MAP:
PIN:
000 ** ZERO PAYMENT ** .00
TENDERED : .00
AMOUNT PAID: .00
CHANGE AMT : .00

CLERK OF COURT: BETSY B. WOOLRIDGE

PAYOR'S COPY
RECEIPT COPY 1 OF 2