

A G E N D A
JAMES CITY COUNTY PLANNING COMMISSION
OCTOBER 4, 2004 - 7:00 p.m.

1. ROLL CALL
2. MINUTES
 - A. September 13, 2004 Regular Meeting
3. COMMITTEE AND COMMISSION REPORTS
 - A. Development Review Committee (DRC) Report
 - B. Other Committee Reports
4. PUBLIC HEARINGS
 - A. Z-11-03 / MP-11-03 Stonehouse Modifications
 - B. Z-7-03 / MP-8-03 Governor's Grove
 - C. SUP-24-04 Basketville of Williamsburg
 - D. Z-10-04 112 Ingram Road Rezoning
 - E. Z-6-04 / MP-06-04 Lightfoot Mixed Use
 - F. Z-3-04 / Z-4-02 / MP-1-02 U.S. Homes – Boy Scout Expansion
SUP-21-04 U.S. Home Boy Scout Rural Cluster
5. PLANNING DIRECTOR'S REPORT
6. ADJOURNMENT

A REGULAR MEETING OF THE PLANNING COMMISSION OF THE COUNTY OF JAMES CITY, VIRGINIA, WAS HELD ON THE THIRTEENTH DAY OF SEPTEMBER, TWO-THOUSAND AND FOUR, AT 7:00 P.M. IN THE COUNTY GOVERNMENT CENTER BOARD ROOM, 101-F MOUNTS BAY ROAD, JAMES CITY COUNTY, VIRGINIA.

1. ROLL CALL

A. Joe Poole, III
Peggy Wildman
Jack Fraley
Donald Hunt
Joseph McCleary
Wilford Kale
George Billups

ALSO PRESENT

Michael Drewry, Deputy County Attorney
John T.P. Horne, Development Manager
O. Marvin Sowers, Jr., Planning Director
Toya Ricks, Administrative Services Coordinator
Christopher Johnson, Senior Planner
Karen Drake, Senior Planner
Sarah Weisiger, Senior Planner
Matthew Arcieri, Planner
Ellen Cook, Planner

2. MINUTES

Mr. Poole suggested a changed to the last sentence of the Planning Director's report clarifying the procedure for setting overflow dates.

Mr. McCleary motioned to approve the minutes.

Mr. Fraley seconded the motion.

Mr. Kale refrained from voting, as he was absent for the Planning Commission's August meeting.

The Planning Commission approved the August minutes as amended with a unanimous voice vote.

3. COMMTTEE AND COMMISSION REPORT

A. DEVELOPMENT REVIEW COMMITTEE (DRC)

Mr. McCleary delivered the DRC report. The DRC heard four cases at its Sept. 8th meeting. The DRC recommended approval for case C-007-03, New Town Conceptual Parking Overview. The DRC recommended deferral for cases SP-098-04, Warhill Green, and S-059-04, Greensprings West – Phase 6. Additionally, the DRC heard a pair of expedited review cases, SP-102-04. New Town – Movie Theater and SP-103-04. New Town – Blocks 6 & 7 parking. The DRC approved both cases.

Mr. Kale moved to approve the DRC report.

Mrs. Wildman seconded the motion.

In a unanimous voice vote the Commission approved the DRC report.

B. FIVE FORKS COMMITTEE

Five Forks Area Study – Primary Principles

Mr. McCleary updated the Commission on the progress of the Five Forks Area Study committee, detailing their final meeting and giving a brief overview of the final principles.

4. PUBLIC HEARINGS

A. Five Forks Area Study – Primary Principles

Mr. McCleary presented the study. The Five Forks Primary Principles are the product of four meetings conducted by the Five Forks Area Study Committee which was created in June 2004 by the Board of Supervisors in accordance with Economic Development Action 12G of the 2003 Comprehensive Plan. Mr. McCleary commended the committee, local citizens, and staff for their contributions to the process.

Mr. Poole also commended the committee, citizens, and staff for their work with the process.

Mr. Kale asked how the study would preserve the unique village character of Five Forks.

Mr. McCleary responded that the Land Use principles addressed the design, spacing, height, and color of new buildings.

Mr. Fraley stated that the study did not set raising the traffic service level of the Five Forks intersection, from “C” to “B,” as one of its goals.

Mr. McCleary replied that the study was concerned with maintaining the current level of service and that the level “C” is the standard currently used by VDOT.

Mr. Poole asked if this report had been shared with the members of the Economic Development Authority.

Mr. McCleary responded that the study had been distributed to that committee and that one of the EDA members, Mr. Jon Nystrom, was a member of the study committee.

Mr. Poole opened the public hearing.

Seeing no speakers, Mr. Poole closed the public hearing.

Mr. Sowers recommended that the Planning Commission take formal action on the case. If the study is approved, it would become an official policy document for use in reviewing development proposals.

Mr. McCleary pointed out that, since the study would likely become an addendum to the Comprehensive Plan, that the Planning Commission should take some formal action on the study.

Mr. Fraley moved for approval.

Ms. Wildman seconded the motion.

Mr. McCleary stated that the study represents an expansion of the language of the Comprehensive Plan and does not contradict anything within the plan.

The Planning Commission recommended approval of the primary principles by a 7:0 vote. AYE: Poole, Wildman, McCleary, Fraley, Hunt, Kale, Billups. NAY: 0.

B. Z-11-03/MP-011-03 Stonehouse Modifications

Ms. Karen Drake presented the request for deferral. The applicant, Mr. Alvin Anderson of Kaufman and Canoles, requested deferral to the October Planning Commission to allow more time to resolve outstanding issues. Staff concurred with the request.

Mr. Poole opened the public hearing.

Seeing no speakers, Mr. Poole deferred the case to the October Planning meeting.

C. Z-02-04/Z-09-04 Oaktree Office Park and Air Tight Storage Expansion

Mr. Chris Johnson presented the staff report. Ms. Jeanette Brady has applied to rezone approximately 5.7 acres from B-1, General Business, with proffers, to B-1, General Business, with amended proffers. The request seeks to amend a 1997 proffer which limits the total building footprint for mini-storage buildings on the site to 40,000 square feet. The amendment is necessary to accommodate a portion of the proposed 15,000 square foot mini-storage warehouse building footprint on the existing Oaktree site. The property is located just north of the Five Forks intersection at 3356 Ironbound Road in the Berkeley District and is designated Mixed Use on the Comprehensive Plan Land Use Map. Community-scale office development with complimentary building types and moderate density residential development are examples of uses that are envisioned for this Mixed Use area. The property is further identified as Parcel (1-26) on James City County Real Estate Tax Map No. (47-1).

Mr. McCleary affirmed with Mr. Johnson that the application, located in Five Forks, fulfills the requirement of maintaining the village feel set forth in the Five Forks Area Study.

Mr. Johnson confirmed this and added that the voluntary proffers included Development Review Committee review for the eventual site plan.

Mr. Poole added that the proffers additionally included enhanced landscaping.

Mr. Johnson stated that the existing office building would be used as a model for that landscaping.

Mr. Poole opened the public hearing

Ms. Jeanette Brady, the applicant, stated that she would comply with Five Forks committee recommendations, specifically with regard to landscaping and prorata share of road improvements.

Mr. Cleary clarified that prior to the Board of Supervisors' hearing the prorating would be addressed through an amended proffer.

Seeing no other speakers, Mr. Poole closed the public hearing.

Mr. Hunt moved to approve the application.

Ms. Wildman seconded the motion.

Ms. Wildman stated that she was pleased with the way applicant has worked with committee.

Mr. McCleary commended the applicant and other applicants who deferred or held applications for the Five Forks area until the committee concluded the Five Forks Area Study.

Mr. Poole stated that this application converted undeveloped land into viable uses and credited the applicant for including landscaping and Development Review Committee review in the proffers.

The Planning Commission approved the application with by a vote of 7-0. AYE: (7) Poole, Wildman, McCleary, Fraley, Hunt, Kale, Billups. NAY: (0).

D. Z-05-04/MP-05-04 New Town Section 3 & 6 and MP-08-04 New Town Section 3 & 6

Ms. Karen Drake presented the staff report. Mr. Greg Davis and Mr. Tim Trant of Kaufman & Canoles have applied on behalf of New Town Associates, LLC, to rezone approximately 69.2 acres of land in Section 3&6 that is currently zoned R-8, Rural Residential with proffers to MU, Mixed Used with proffers to construct a maximum of 470 dwelling units with an overall density cap of 4.5 dwelling units per acre and construct a maximum of 220,000 non-residential square feet. The New Town Section 2&4 Master Plan includes approximately 91.2 acres of land currently zoned MU with Proffers that will also be amended by

transferring 150 dwelling units and 70,000 non-residential square feet from Section 2&4 to Section 3&6 but will not change the overall New Town permitted number of dwelling units or non-residential square footage. The Comprehensive Plan Land Use Map designates this property for Mixed Use development with the principal suggested uses being a mixture of commercial, office and limited industrial with some residential secondary uses. This property is adjacent to Ironbound Road and is located west of the intersection of Ironbound Road and Monticello Avenue, at 4803 Courthouse Street, at 5206 Monticello Avenue and is more specifically identified as a portion of Parcels (1-50), (1-57), (24-6) and (24-1A) on the JCC Real Estate Tax Map No. (38-4). Staff found the proposal for New Town Section 3 & 6 generally consistent with the adopted 1997 New Town Master Plan and Design Guidelines. Staff also found the proposed proffers sufficiently mitigate anticipated impacts. Staff recommended approval.

Mr. McCleary noted that the transportation figures for Ironbound Road reflected that, due to the recent development, the road would be less frequently used.

Mr. Sowers stated that Mr. McCleary's assessment was correct due to the opening of Monticello Avenue and the Route 199 extension.

Mr. Kale confirmed that the proffers for underground utilities applied specifically to Ironbound Road.

Mr. Sowers related that staff had recommended such a proffer but that the proffer had not been included.

Mr. Billups asked for more information about staff's work with VDOT, specifically as to whether the application will meet minimum traffic standards.

Mr. Sowers responded that a letter of approval had not been received from VDOT, but the individual from VDOT that gave verbal approval to the application was the same individual that approved the traffic studies.

Mr. Poole opened the public hearing.

Mr. Greg Davis of Kaufman and Canoles, the applicant, gave a short overview of the project application, specifically highlighting the amenities and advantages envisioned for the area. He continued to address proposed architectural appearance of the area, the positive fiscal impact of the application, and the applicant's position on proffering the underground utilities on Ironbound Road, where the obligation would be undertaken by the applicant on a contractual, rather than a proffered, basis.

Mr. Billups asked if the applicant perceived any problems in finding tenants for commercial and research space.

Mr. Davis responded that the demand for this space was very high.

Mr. Kale asked if this demand for space prompted this proposed increase in commercial space.

Mr. Davis confirmed that this was the case and that residential rezonings would likely follow.

Ms. Wildman inquired into the current plans for landscaping along Ironbound Road.

Mr. Davis responded that the New Town Design guidelines required significant landscaping along road frontage.

Mr. Sowers added that staff was proceeding with road widening plans which will create the streetscape along Ironbound Road and in the median.

Mr. Hunt confirmed that the aforementioned utilities along Ironbound Road are not located on the New Town property.

Mr. Davis responded that the utilities at issue are those existing utilities.

Mr. Kale asked staff for more background into the necessity to institute balance requirements between commercial and residential development in New Town.

Mr. Sowers responded that, unlike Stonehouse for instance, a property which was rezoned all at once, New Town's plan to rezone in phases ensures that checks and balances regarding commercial and residential balance could be handled as part of each section's rezoning. Mr. Sowers also gave a bit of background into the residential development of New Town.

Mr. Davis gave specific numbers of residential projects currently under construction or review.

Mr. Fraley said that he was excited to see the progress in New Town.

Seeing no other speakers, Mr. Poole closed the public hearing.

Mr. McCleary agreed with Mr. Fraley and stated that he supported New Town's commitment to attracting high tech and research facilities.

Mr. Poole agreed with Mr. McCleary but stated that he remains cautious about the residential aspect of the application when the adequate public facilities test fails and the larger community does not appear willing to fund additional facilities

Mr. Kale agreed with Mr. Poole on the issue of schools and stated his concern about the timing and county funding levels required by these types of projects to provide the necessary public facilities. He stated that similar phases would be more desirable.

Mr. Poole stated that he was unsure how citizens feel about bearing costs for new and expanded schools and stated that he felt more comfortable voting on this case after the November referendum.

Mr. Fraley stated his support for the case, citing the positive fiscal impact, but also mentioned his concerns about the Adequate Public Facilities test.

Mr. McCleary motioned to approve the application.

Ms. Wildman seconded the motion

Mr. Billups asked if for some background into the remaining phases of New Town to be rezoned.

Mr. Sowers stated that the remaining rezonings would primarily be residential in character, but that there would still be some primarily commercial sections.

The Planning Commission approved the application by vote of 5-2. AYE: Wildman, McCleary, Fraley, Hunt, Billups (5). NAY: Poole, Kale (2).

E. Z-06-04/MP-06-04 Lightfoot Mixed Use

Ms. Sarah Weisiger presented the staff report. Mr. James Bennett of AES Engineering has applied to rezone approximately 52.0 acres of undeveloped land at **6601 Richmond Road** from B-1, General Business with proffers, to MU, Mixed Use with proffers. The property is also known as parcel (1-35) on JCC Tax Map (24-3). Proposed uses include: commercial, wholesale and warehouse, and/or office uses along Richmond Road. Commercial space is proposed to be 141,000 square feet of floor area. Residential structures containing two to four dwelling units and/or more than four dwelling units are proposed to be located on private streets. A maximum of 244 dwelling units are proposed with a gross density of 6.3 units per acre. The property is designated as Mixed Use Area on the Comprehensive Plan Land Use Map. The principal suggested uses in the Mixed Use Area are moderate density housing, commercial developments and office

developments. Staff recommended the commission defer the case due to the number of proffered conditions that need to be clarified.

Mr. Kale confirmed that the development did not access Centerville Road.

Ms. Weisiger stated that it did not.

Mr. McCleary made it clear that the Richmond Road frontage of the site spanned from Smith Memorial Church on the south to Wythe Candy on the north.

Ms. Weisiger responded that it was, with the exception of the Chesapeake Bank.

Mr. Poole opened the public hearing.

Mr. Vernon Geddy, of Geddy, Harris, Hickman, and Franck, spoke representing the applicant. He briefly summarized the different uses proposed with the projects, including warehousing, administrative and office space, and a commercial showroom. He stated the intention of the applicant to seek a vote on the application at the October meeting.

Mr. Poole appreciated the proposed rehabilitation of the area but expressed his concern about the market for additional commercial space in the area, the failure of the schools test, and the separation of commercial and residential uses.

Mr. Kale spoke of his respect for the Noland Company but expressed his concerns about school capacity and access issues, especially the lack of access from Centerville Road.

Mr. McCleary related geographic problems encountered by Colonial Heritage when they considered a similar access.

Seeing no other speakers, Mr. Poole deferred the case to the October meeting.

6. PLANNING COMMISSION CONSIDERATION

Reverend Billy Florence, of Morning Star Baptist Church, requested to speak to the commission and spoke to his concerns regarding the project proposed for the Grove area, Z-03-04, Greenmount-Kirby Tract rezoning. The church members are concerned about the impact of the landscape buffer on the church. Fifty feet, they feel, would not give significantly screening and the church requests a minimum of 100 feet.

Mr. Poole stated that the Commission would consider the Mr. Florence's comments when the Greenmount case comes before the commission.

6. PLANNING DIRECTOR'S REPORT

Mr. Marvin Sowers presented the report. He stated that Mr. Geoffrey Cripe started in September as the new Development Management Assistant. Mr. Sowers announced to the Commission that the Virginia Capital Trail will go to public hearing on September 30. Finally, he presented the Planning Commission's schedule for the remainder of the year, highlighting the reserve dates.

Mr. Poole thanked Mr. Sowers and staff for the information provided in staff reports.

Mr. Fraley also noted high level of good information in the reports.

Mr. Kale concurred.

7. ADJOURNMENT

There being no further business, the September 13, 2004, meeting of the Planning Commission was

recessed at approximately 8:58 p.m.

A. Joe Poole, III, Chairman

O. Marvin Sowers, Jr., Secretary

**JAMES CITY COUNTY
DEVELOPMENT REVIEW COMMITTEE REPORT**

FROM: 9/1/2004

THROUGH: 9/30/2004

I. SITE PLANS

A. PENDING PRELIMINARY APPROVAL

SP-087-01	The Vineyards, Ph. 3
SP-052-03	Kingsmill Access Ramp for Pool Access Bldg.
SP-063-03	District Park Sports Complex Parking Lot Expansion
SP-131-03	Colonial Heritage Ph. 2, Sec. 1
SP-132-03	Windy Hill Market Gas Pumps & Canopy SP Amend.
SP-006-04	Williamsburg Christian Retreat Center Amend.
SP-014-04	Action Park of Williamsburg Ride
SP-016-04	Richardson Office & Warehouse
SP-025-04	Carter's Cove Campground
SP-047-04	Villages at Westminster Drainage Improvements
SP-050-04	AJC Woodworks
SP-059-04	Norge Neighborhood
SP-067-04	Treyburn Drive Courtesy Review
SP-077-04	George Nice Adjacent Lot SP Amend.
SP-082-04	New Town - Sec. 2 & 4 Roadway Improvements
SP-090-04	Colonial Heritage Mass Grading
SP-093-04	Powhatan Plantation Ph. 9
SP-098-04	Warhill Green
SP-100-04	Lightfoot Exxon - Shed
SP-104-04	Williamsburg Community Chapel Second Entrance
SP-105-04	Branscome Office Trailer
SP-106-04	Anderson's Corner Sewer + Water Ext.
SP-107-04	Noah's Ark Vet Hospital Conference Room
SP-108-04	Williamsburg Office Complex
SP-110-04	Christian Life Center Expansion Ph. 1
SP-112-04	Wythe-Will Distribution Center Landscaping Amend.
SP-113-04	Williamsburg Landing SP Amend.
SP-114-04	Busch Gardens - Wolf/Eagle Exhibit

B. PENDING FINAL APPROVAL

	EXPIRE DATE
SP-056-03	Shell Building - James River Commerce Center
SP-086-03	Colonial Heritage Golf Course
SP-091-03	Colonial Heritage Ph. 1, Sec. 5
SP-108-03	Fieldstone Parkway Extension
SP-116-03	Kingsmill - Armistead Point
SP-136-03	GreenMount Industrial Park Road Extension
SP-138-03	New Town - Prudential-McCardle Office Building
SP-140-03	Pocahontas Square

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SP-141-03	Colonial Heritage - Ph. 2, Sec. 3	1 /12/2005
SP-145-03	Williamsburg National 13 Course Expansion	8 /13/2005
SP-150-03	WindsorMeade Marketplace	2 /3 /2005
SP-003-04	WindsorMeade Villas	3 /1 /2005
SP-004-04	WindsorMeade - Windsor Hall	3 /1 /2005
SP-005-04	WindsorMeade - Villa Entrance & Sewer Const.	3 /3 /2005
SP-017-04	Settlement at Monticello - Community Club	4 /6 /2005
SP-023-04	Williamsburg Landing SP Amend.	4 /2 /2005
SP-027-04	Greensprings Condominiums SP Amend.	6 /7 /2005
SP-045-04	Powhatan Co-Location Monopole Tower	4 /29/2005
SP-056-04	Michelle Point	7 /12/2005
SP-057-04	The Archaearium at Historic Jamestowne	6 /15/2005
SP-064-04	Eckerd's at Powhatan Secondary	6 /17/2005
SP-070-04	Godspeed Animal Care	7 /13/2005
SP-074-04	Chesapeake Bank at Lightfoot	7 /19/2005
SP-076-04	Stonehouse Recreational Vehicle Storage Area	7 /19/2005
SP-079-04	Norge Railway Station	7 /23/2005
SP-088-04	Wal-Mart Distribution Center - Ph. 3	7 /29/2005
SP-091-04	Mid County Park Trail	8 /24/2005
SP-092-04	Columbia Drive Waterline Extension	8 /18/2005
SP-096-04	First Colony Subdivision Clubhouse	9 /2 /2005
SP-099-04	7-Eleven #2516 Fuel System Upgrade	9 /2 /2005
SP-102-04	New Town - Blocks 6 and 7	9 /8 /2005
SP-103-04	New Town - Movie Theater	9 /8 /2005

C. FINAL APPROVAL

DATE

SP-054-04	Milanville Kennels	9 /13/2004
SP-069-04	New Town - Block 5, Parcel D & E, Mixed Use Bldgs.	9 /21/2004
SP-072-04	ECC Building	9 /24/2004
SP-087-04	Busch Gardens - Oktoberfest Expansion Ph. 2	9 /2 /2004
SP-097-04	Cromwell Ridge Yard Improvement	9 /7 /2004
SP-109-04	Stonehouse E.S. Generator Fuel Tank	9 /21/2004
SP-111-04	Kingsmill Landscape Storage Area Addition Amend.	9 /21/2004

D. EXPIRED

EXPIRE DATE

II. SUBDIVISION PLANS

A. PENDING PRELIMINARY APPROVAL

S-104-98	Skiffes Creek Indus. Park, VA Trusses, Lots 1,2,4
S-013-99	JCSA Mission Bank ROW Acquisition
S-074-99	Longhill Station, Sec. 2B
S-110-99	George White & City of Newport News BLA
S-091-00	Greensprings West, Plat of Subdv Parcel A&B
S-032-01	Subdivision and BLE Plat of New Town AssociatesLLC
S-008-02	James F. & Celia Ann Cowles Subdivision
S-086-02	The Vineyards, Ph. 3, Lots 1, 5-9, 52 BLA
S-062-03	Hicks Island - Hazelwood Subdivision
S-066-03	Stonehouse, BLA & BLE Parcel B1 and Lot 1, Sec. 1A
S-067-03	Ford's Colony Sec. 33, Lots 1-49
S-094-03	Brandon Woods Parkway ROW
S-100-03	Colonial Heritage Ph. 2, Sec. 1
S-107-03	Stonehouse Conservation Easement Extinguishment
S-108-03	Leighton-Herrmann Family Subdivision
S-116-03	Stonehouse Glen, Sec. 2
S-003-04	Monticello Ave. ROW plat for VDOT
S-022-04	ROW Conveyence for Rt. 5000 & Rt. 776 Abandonment
S-034-04	Warhill Tract BLE / Subdivision
S-046-04	ARGO Ph. 2
S-047-04	ARGO Ph. 3
S-048-04	Colonial Heritage - Open Space Easement
S-055-04	117 Winston Terrace
S-062-04	2400 Little Creek Dam Road
S-063-04	123 Welstead Street BLE
S-066-04	Hickory Landing Ph. 1
S-067-04	Hickory Landing Ph. 2
S-074-04	4571 Ware Creek Road (Nice Family Subdivision)
S-076-04	120 Grove Heights BLA
S-077-04	James River Commerce Center
S-078-04	Hogge Land Exchange
S-080-04	Williamsburg Winery Subdivision
S-081-04	Subdivision for Lot 3 Norge Neighborhood
S-084-04	Greensprings Condominiums
S-086-04	222 & 220-B The Maine BLA
S-087-04	Dudley S. Waltrip Family Subdivision
S-088-04	Noland Properties - Chesapeake Bank
S-089-04	Norge Neighborhood Easements
S-090-04	Minichiello Villa
S-091-04	Marywood Subdivision

B. PENDING FINAL APPROVAL

		EXPIRE DATE
S-037-02	The Vineyards, Ph. 3	5 /4 /2005
S-076-02	Marion Taylor Subdivision	10/3 /2004
S-094-02	Powhatan Secondary Ph. 7-C	12/30/2004
S-108-02	Scott's Pond, Sec. 3	1 /13/2005
S-033-03	Fenwick Hills, Sec. 2	10/31/2004
S-044-03	Fenwick Hills, Sec. 3	6 /25/2005
S-049-03	Peleg's Point, Sec. 5	7 /3 /2005
S-055-03	Colonial Heritage Ph. 1, Sec. 5	8 /4 /2005
S-056-03	Colonial Heritage Ph. 1, Sec. 4	9 /8 /2005
S-073-03	Colonial Heritage Ph. 2, Sec. 2	10/6 /2004
S-076-03	Wellington, Sec. 4	11/3 /2004
S-078-03	Monticello Woods - Ph. 2	11/3 /2004
S-098-03	Stonehouse Glen, Sec. 1	4 /5 /2005
S-099-03	Wellington, Sec. 5	2 /3 /2005
S-101-03	Ford's Colony - Sec. 35	2 /2 /2005
S-106-03	Colonial Heritage Ph. 2, Sec. 3	1 /12/2005
S-002-04	The Settlement at Monticello (Hidden)	3 /1 /2005
S-009-04	Colonial Heritage Public Use Site B	3 /18/2005
S-033-04	2011 Bush Neck Subdivision	5 /4 /2005
S-035-04	Colonial Heritage Blvd. Ph. 2 Plat	4 /28/2005
S-036-04	Subdivision at 4 Foxcroft Road	6 /15/2005
S-037-04	Michelle Point	7 /12/2005
S-038-04	Greensprings West Ph. 4B & 5	6 /9 /2005
S-039-04	Governor's Land - Wingfield Lake Lots 27, 28	6 /14/2005
S-041-04	6199 Richmond Road Subdivision	6 /14/2005
S-042-04	Eckerd's at Powhatan Secondary	6 /17/2005
S-045-04	ARGO Ph. 1	6 /28/2005
S-057-04	Boughsprings Resubdivision of Lot 22B	7 /6 /2005
S-059-04	Greensprings West Ph. 6	9 /13/2005
S-064-04	Jamestown Hundred Lots 10-41	8 /2 /2005
S-065-04	133 Magruder Avenue - Sadie Lee Taylor Prop.	8 /4 /2005
S-068-04	123 Indigo Dam Road	8 /11/2005
S-070-04	Wexford Hills Ph. 2A	8 /24/2005
S-071-04	Cowles Subdivision -163 Howard Drive	9 /3 /2005
S-072-04	New Town - Block 8, Parcels D & E	9 /21/2005
S-075-04	Pocahontas Square	9 /16/2005
S-079-04	New Town - Blocks 6 & 7, Parcels A & B	9 /21/2005

C. FINAL APPROVAL

		DATE
S-001-04	Ironbound Village Ph. 2, Parcel 2	9 /13/2004
S-029-04	BLA Lots 1A & 1B Longhill Gate	9 /10/2004
S-044-04	8715 Pocahontas Trail BLE	9 /3 /2004
S-051-04	SLN / Casey BLA (WindsorMeade Marketplace)	9 /11/2004

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S-092-04	Lot 62 BLA - Lake Powell Forest
S-093-04	Lot 129 BLA - Lake Powell Forest
D. EXPIRED	

9 /23/2004
9 /23/2004
EXPIRE DATE

DEVELOPMENT REVIEW COMMITTEE ACTION REPORT
Meeting of Sept. 28, 2004

Case No. C-111-04

St. Bede's Rectory

Mr. Alistair Ramsey, of LandMark Design Group, submitted a conceptual plan on behalf of St. Bede's Catholic Church proposing the addition of a rectory. The proposed site is located at 3686 Ironbound Road and is further identified as parcel (1-18) on James City County Tax Map (38-3). The adopted SUP Conditions for the church (SUP-15-00) require DRC review of any proposed changes to the Master Plan

DRC Action: The DRC recommended that the Planning Commission find the proposed addition of a rectory building consistent with the adopted Master Plan for the church.

Case No. SP-98-04

Warhill Green

Mr. Charles Records, of AES Consulting Engineers, submitted a site plan proposing twenty-nine condominium units to be located at 5450 Centerville Road. The property is further identified as parcel (1-34) on James City County Tax Map (31-3). Since the development proposes buildings whose total floor area exceeds 30,000 square feet, the plan requires DRC review.

DRC Action: DRC granted preliminary approval subject to agency comments and obtaining necessary easements for off site storm drainage system.

**Z-11-03 & MP-11-03. Stonehouse Planned Community Rezoning Amendment
Staff Report for the October 4, 2004, Planning Commission Public Hearing**

This staff report is prepared by the James City County Planning Division to provide information to the Planning Commission and Board of Supervisors to assist them in making a recommendation on this application. It may be useful to members of the general public interested in this application.

PUBLIC HEARINGS

**7:00 p.m.; Building F Board Room; James City County
Government Complex unless otherwise noted:**

Planning Commission: December 8, 2003, 5:30 p.m. Building C Board Room (Deferred)
January 12, 2004, 5:30p.m. (Deferred)
February 2, 2004, (Deferred) June 7, 2004 (Deferred)
March 1, 2004, (Deferred) July 12, 2004 (Deferred)
April 5, 2004, (Deferred) August 16, 2004 (Deferred)
May 3, 2004, (Deferred) September 13, 2004 (Deferred)

Board of Supervisors: November 9, 2004 (Tentative)

SUMMARY FACTS

Applicant: Mr. Greg Davis, Kaufman & Canoles

Land Owner: Ken McDermott of Stonehouse Capital, LLC and Stonehouse at Williamsburg, LLC for Stonehouse Glen, LLC, Fieldstone Investment, LLC, Mount Laurel, LLC, Fairmont Investment, LLC, Six Hundred North, LLC, Tymar Capital, LLC and Commerce Park at Stonehouse, LLC.

Proposal: To amend the master plan and proffers for the Stonehouse Planned Community by realigning Fieldstone Parkway, shifting residential densities and rezoning some landbays to residential. There is no proposed increase to the total number of approved residential units within the Stonehouse Planned Community.

Location: 9235 Fieldstone Parkway, 9760 Mill Pond Road,
9186 & 9600 Mount Zion Road and 9501 Sycamore Landing Road
Stonehouse District

Tax Map/Parcel: (4-4)(1-25), (4-4)(1-26), (4-4)(1-27), (4-4)(1-28), (4-4)(1-29)
(5-3)(1-10), (6-3)(1-1), (6-4)(1-1), (7-4)(1-20) and (12-1)(1-47)

Primary Service Area: Inside

Parcel Sizes: 4,684 Acres

Existing & Proposed Zoning: Planned Unit Development Residential & Commercial with Proffers

Comprehensive Plan: Low Density Residential & Mixed Use

Staff Contact: Karen Drake - Phone: 253-6685

STAFF RECOMMENDATION

The applicant has requested deferral of this case until the November 1, 2004 Planning Commission meeting to allow more time to resolve outstanding issues regarding the Stonehouse master plan and proffers. Staff concurs with the request.

Attachment: 1.) Deferral Request Letter

KAUFMAN & CANOLES

— | A Professional Corporation | —

Attorneys and Counselors at Law

Timothy O. Trant, II
757 / 259-3823
totrant@kaufcan.com

757 / 259-3800
fax: 757 / 259-3838

Mailing Address:

P.O. Box 6000
Williamsburg, VA 23188

4801 Courthouse Street
Suite 300
Williamsburg, VA 23188

September 29, 2004

Via Hand Delivery & Facsimile (757) 253-6850

Karen Drake
Senior Planner
James City County
101-E Mounts Bay Road
Williamsburg, VA 23185

Re: *Stonehouse at Williamsburg, LLC*
Application for Rezoning and Master Plan Amendment of a portion of Stonehouse
James City County Case No's. Z-11-03 & MP-11-03
Our Matter No. 100281

Dear Ms. Drake:

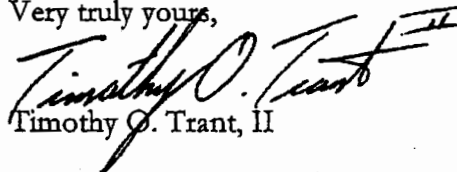
The above-referenced case is scheduled to be presented to the James City County Planning Commission at its meeting on October 4, 2004. The applicant and its consultants have been diligently working to respond to the issues raised by the James City County Department of Development Management ("Staff"). On March 26, 2004, the applicant submitted to Staff a revised set of proffers and a revised master plan. Staff has provided the applicant with a number of detailed comments on both submissions aimed at bringing the documents towards a final, presentable form.

Given the detailed nature of Staff's comments and in preparation for the presentation of these materials to the Planning Commission, the applicant and its consultants are undertaking a thorough review of the proffers and master plan before resubmitting to Staff. The applicant is not likely to have completed its review and to have prepared the documents for resubmission in time for the Staff to present the application at the October 4, 2004 Planning Commission meeting. Accordingly, the applicant recognizes that Staff will not be prepared to make a complete staff report nor make a recommendation to the Planning Commission regarding the case at the October 4, 2004 meeting. Therefore, the applicant requests that any action on the case by the Planning Commission be deferred until the November 1, 2004 Planning Commission meeting.

Karen Drake
September 29, 2004
Page 2

If you have any questions, please do not hesitate to contact me.

Very truly yours,



Timothy O. Trant, II

xc: Kenneth G. McDermott (via facsimile 908-234-9508)
Mark Rinaldi (via facsimile 757-229-0049)
Alvin P. Anderson, Esq. (via hand delivery)
Gregory R. Davis, Esq. (via hand delivery)
Susan B. Tarley, Esq. (via U.S. mail)

#6061220 v1

**Rezoning 7-03/Master Plan 8-03 Governor's Grove at Five Forks
Staff Report for October 4, 2004 Planning Commission Meeting**

This staff report is prepared by the James City County Planning Division to provide information to the Planning Commission and Board of Supervisors to assist them in making a recommendation on this application. It may be useful to members of the general public interested in this application.

PUBLIC HEARINGS

Planning Commission:

Building F Board Room; County Government Center

October 4, 2004 7:00 p.m.

November 1, 2004 (tentative) 7:00 p.m.

Board of Supervisors:

December 14, 2004 (tentative) 7:00 p.m.

SUMMARY FACTS

Applicant:

Eric Nielsen, National Housing Corporation

Land Owner:

Five Forks Virginia, Inc. and E.H. Saunders, Trustee

Proposed Use:

Construction of 216 apartment units and 30,000 square feet of office/commercial.

Location:

4310 and 4360 John Tyler Highway; 3181 and 3191 Ironbound Road

Tax Map/Parcel:

(46-2)(1-14), (46-2)(1-37), (47-1)(1-35), (47-1)(1-36)

Existing Zoning:

R-8, Rural Residential and B-1, General Business

Proposed Zoning:

MU, Mixed Use, with proffers

Comprehensive Plan:

Moderate Density Residential

Primary Service Area:

Yes

STAFF RECOMMENDATION

The applicant has requested deferral of this case until November 1, 2004 in order to resolve various issues associated with the case and proffers. Staff concurs with this request.

Staff Contact:

Matthew Arcieri

Phone: 253-6685

ATTACHMENTS:

1. Deferral letter

GEDDY, HARRIS, FRANCK & HICKMAN, L.L.P.

ATTORNEYS AT LAW

1177 JAMESTOWN ROAD

WILLIAMSBURG, VIRGINIA 23185

TELEPHONE: (757) 220-6500

FAX: (757) 229-5342

MAILING ADDRESS:

POST OFFICE BOX 379

WILLIAMSBURG, VIRGINIA 23187-0379

VERNON M. GEDDY, JR.
STEPHEN D. HARRIS
SHELDON M. FRANCK
VERNON M. GEDDY, III
SUSANNA B. HICKMAN

ANDREW M. FRANCK
RICHARD H. RIZK

September 27, 2004

Mr. Matthew Arcieri, Planner
James City County Planning Department
101-E Mounts Bay Road
Williamsburg, Virginia 23185

Re: National Housing/Case Number Z-07-03

Dear Matt:

I am writing to confirm our verbal request that the Planning Commission defer consideration of this case until its November 2004 meeting to allow us to continue working with Staff on the various issues involved. Thanks for your help.

Very truly yours,

GEDDY, HARRIS, FRANCK & HICKMAN, LLP



Vernon M. Geddy, III

VMG/ch

Cc: Mr. Eric Neilsen

SPECIAL USE PERMIT SUP-24-04, BASKETVILLE OF WILLIAMSBURG

Staff Report for October 4, 2004, Planning Commission Meeting

This staff report is prepared by the James City County Planning Division to provide information to the Planning Commission and Board of Supervisors to assist them in making a recommendation on this application. It may be useful to members of the general public interested in this application.

PUBLIC HEARINGS

Planning Commission:

Board of Supervisors:

Building F Board Room; County Government Complex

October 4, 2004

November 9, 2004 (tentative)

SUMMARY FACTS

Applicant:

Mr. Richard Costello of AES Consulting Engineers

Land Owner:

Basketville of Williamsburg, Inc.

Proposed Use:

Expansion of existing retail building by 7,500 square feet

Location:

7761 Richmond Road

Tax Map/Parcel:

(12-4)(1-45)

Parcel Size:

4.69 acres

Zoning:

B-1, General Business District

Comprehensive Plan:

Mixed Use

Primary Service Area:

Inside

STAFF RECOMMENDATION

The proposed expansion is compatible with surrounding zoning and development and generally consistent with the Comprehensive Plan. The attached conditions adequately address any impacts associated with the proposal. Staff recommends the Planning Commission recommend approval of the proposal with the attached conditions.

Staff Contact:

Ellen Cook, Planner

Phone: 253-6685

PROJECT DESCRIPTION AND PROPOSED OPERATION

The proposed expansion would add 7,500 square feet to the existing 7,800 square foot retail structure, for a total of 15,300 square feet. The expansion would be located to the rear of the existing building, with a maximum height - 24 feet - matching the existing building's maximum height. Ten additional parking spaces would be added at the rear of the existing parking area. The proposed expansion would be primarily retail use with some storage area.

PUBLIC IMPACTS

Archaeology

The subject property is a previously-disturbed site and is not located within an area identified as a highly sensitive area in the James City County archaeological assessment "Preserving Our Hidden Heritage: An Archaeological Assessment of James City County, Virginia."

Staff Conclusions: Staff feels that given the size and nature of the site, no archaeological studies are necessary.

Environmental Impacts

Watershed: Yarmouth Creek, Subwatershed 102.

Environmental Staff Comments: No major comments pertaining to the Master Plan. The goals, priorities and contents of the Yarmouth Creek Watershed Management Plan should be reviewed and addressed, as appropriate, prior to development plan submission.

Public Utilities

The site is served by public water and sewer.

JCSA Staff Comments: None.

Traffic

2003 Traffic Counts: 18,184 (Forge Road to Croaker Road)

2026 Projected Volume: 24,000 – "OK" Category in the 2003 Comprehensive Plan

Road Capacity: A four lane minor arterial with turn lanes has a capacity of 30,000 vehicle trips per day

Access: Basketville fronts on Richmond Road between Bush Springs Road and Turlington Road. Basketville has two right-in/right-out driveways on Richmond Road, and one driveway on Bush Springs Road. There is a crossover on Richmond Road at Bush Springs Road, with the next crossover to the west at the driveway to Unfinished Furniture west of Turlington Road. The Basketville site currently has right turn lanes at the driveways on eastbound Richmond Road, and there are left turn lanes on westbound Richmond Road at the Bush Spring Road crossover and at the Unfinished Furniture crossover.

VDOT Comments:

- ◆ VDOT concurs with the Traffic Engineer's traffic analysis conclusions that no improvements will be required to the existing entrances on Route 60.
- ◆ The proposed addition, with no other development planned, should not cause a negative impact on current or future VDOT Right of Way.

Staff Comments:

Trip generation associated with the proposed expansion introduces approximately 2 new AM peak hour vehicle trips and approximately 32 new PM peak hour vehicle trips. The Traffic Study projected that the expansion would have very little effect on traffic operations and level of service. No improvements are required.

COMPREHENSIVE PLAN

- ◆ Located in the Toano Community Character Area and along the Richmond Road Community Character Corridor
 - Staff Comments: The proposed expansion would meet the Community Character Area design criteria through the proposed binding master plan and through special use permit conditions. While the proposed expansion will likely have a minimal visual impact from Richmond Road due to its location and dimensions, a condition for the special use permit gives the Planning Director authority over building materials and architectural design to ensure that these compliment the existing Basketville development and have minimal visual impact on surrounding areas. The proposed expansion would leave in place specimen trees and would place the additional parking spaces toward the rear of the existing development. In addition, staff has worked closely with the applicant on potential landscaping for this site and feels confident that the landscaping concept will both adequately screen any negative side-on views of the proposed expansion and enhance the Richmond Road Community Character Corridor through careful placement of appropriate plant materials.
- ◆ The property is designated Mixed Use
 - Staff Comments: The principle suggested uses in the Toano Mixed Use area include moderate density residential development, neighborhood-scale commercial establishments, and small office developments. While Basketville is not primarily considered a neighborhood-scale commercial use in terms of the customers it serves, it is an acceptable neighborhood scale use due to its limited impact on adjacent residential areas as described in the Comprehensive Plan. The proposed expansion would continue the existing use of this property and, with the attached conditions, would not substantially increase impacts on adjacent residential areas.

CONCLUSIONS & CONDITIONS

The proposed expansion is compatible with surrounding zoning and development and generally consistent with the Comprehensive Plan. The conditions adequately address any impacts associated with the proposal. Staff recommends the Planning Commission recommend approval of the proposal with the following conditions:

1. Prior to final site plan approval, architectural elevations, building materials, and colors shall be submitted to the Planning Director for review and approval. The intent of this condition is to ensure that the existing and proposed structures on the site are uniform and compatible in terms of design, materials, and colors, and are designed for minimal visual impact.
2. The plan of development shall be generally consistent with the "Master Plan For A Special Use Permit For Basketville of Williamsburg, Inc." prepared by AES Consulting Engineers, dated August 23, 2004 as determined by the Planning Director.
3. A 20 foot buffer shall be provided along the rear property line, and 50 foot buffer shall be provided along the Bush Springs Road Property line from the rear property line to the existing asphalt entrance road. The buffer shall be undisturbed, unless otherwise approved by the Planning Director or his designee, except for any additional landscaping in accordance with the landscaping requirements of the Zoning Ordinance. A landscape plan depicting the buffer and any additional landscaping shall be approved by the Planning Director or his designee prior to final site plan approval.
4. 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 approved landscaping design and materials to promote water conservation and minimize the use of public water resources. The water conservation standards shall be approved by JCSA prior to final site plan approval.

5. All dumpsters shall be screened by landscaping and fencing in a location approved by the Planning Director or his designee prior to final site plan approval.
6. All exterior lighting on the property shall be recessed fixtures with no bulb, lens, or globe extending below the casing. The casing shall be opaque and shall completely surround the entire fixture and light source such that all light will be directed downward and the light source is not visible from the side. Modifications to this requirement may be approved by the Planning Director if it is determined that the modifications do not have any adverse impact on the Property or surrounding property.
7. Construction on this project shall commence within thirty-six (36) months from the date of approval of this special use permit or this permit shall be void. Construction shall be defined as obtaining permits for building construction and installation of footings and/or foundations.
8. This special use permit is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.

Ellen Cook

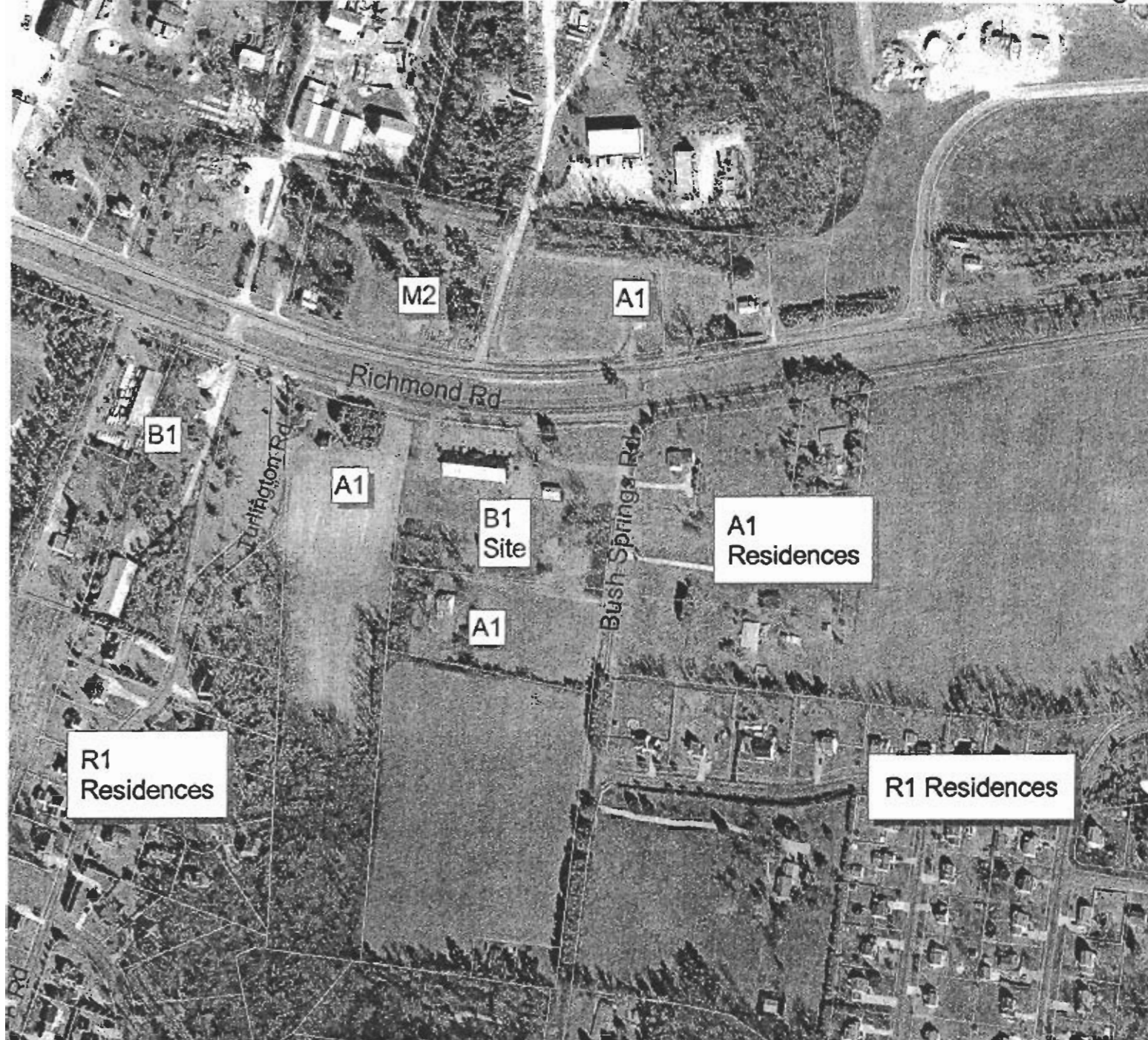
ATTACHMENTS:

1. Location Map
2. Proposed Master Plan (separate cover)

Case No. SUP-24-04 Basketville of Williamsburg 7761 Richmond Road



Aerial View Copyright 2002 Commonwealth of Virginia



REZONING CASE NO. Z-10-04 112 INGRAM ROAD**Staff Report for the October 4, 2004, Planning Commission Public Hearing**

This staff report is prepared by the James City County Planning Division to provide information to the Planning Commission and Board of Supervisors to assist them in making a recommendation on this application. It may be useful to members of the general public interested in this application.

PUBLIC HEARINGS

Planning Commission:

Board of Supervisors:

7:00 p.m.; Building F Board Room; County Government Complex

October 4, 2004, 7:00 PM

November 9, 2004, 7:00 PM (tentative)

SUMMARY FACTS**Applicant:**

Mr. Scott Evans, Scott Evans Contracting, LLC

Land Owner:

Ms. Marjorie Gray, et al

Proposal:

To rezone 0.37 acres from R-8, Rural Residential, to B-1, General Business, with proffers, for the construction of an approximately 3,900-square foot, four-unit office building.

Location:

112 Ingram Road

Tax Map/Parcel

(47-1)(1-23)

Parcel Size

0.37 acres

Proposed Zoning:

B-1, General Business, with proffers

Existing Zoning:

R-8, Rural Residential

Comprehensive Plan:

Mixed Use

Primary Service Area:

Inside

STAFF RECOMMENDATION

With the submitted proffers, staff finds the proposal will not negatively impact surrounding property. Staff also finds the proposal consistent with surrounding land uses, the Land Use policies of the Comprehensive Plan, the Comprehensive Plan Land Use Map designation, and the Primary Principles for Five Forks Area of James City County. Staff recommends the Planning Commission recommend approval of the Rezoning application and the acceptance of the voluntary proffers.

Staff Contact:

Trey Davis, Planner

Phone: 253-6685

Proffers:

Are signed and submitted in accordance with the James City County Proffer Policy.

Project Description

Mr. Scott Evans of Scott Evans Contracting, LLC, has applied to rezone 0.37 acres located at 112 Ingram Road from R-8, Rural Residential, to B-1, General Business, with proffers. Approval of the proposal would permit the removal of an existing vacant structure and the construction of a two-story, approximately 3,900-square foot office building. The building would house four offices.

PUBLIC IMPACTS

1. Archaeology

The subject property is a previously-disturbed site and is not located within an area identified as a highly sensitive area in the James City County archaeological assessment “Preserving Our Hidden Heritage: An Archaeological Assessment of James City County, Virginia.”

Staff Conclusions: Staff feels that given the size and nature of the site, no archaeological studies are necessary.

2. Environmental Impacts

Watershed: Mill Creek

Environmental Staff Conclusions: The Environmental Staff has no major comments relating to the rezoning application as submitted. Staff has provided the applicant with preliminary comments to consider during the site plan process should this project move forward. These comments encourage low-impact development techniques consistent with the Environmental Principles set forward in Section II of the Primary Principles for Five Forks Area of James City County.

3. Public Utilities

The site is located within the Primary Service Area and will be served by public water and sewer.

Proffers:

Water Conservation. Water conservation measures shall be submitted and approved by JCSA prior to final site plan approval.

JCSA Staff Comments: The JCSA Staff has no major comments relating to the rezoning application as submitted. Staff has provided the applicant with preliminary comments to consider during the site plan process and guidelines for developing the water conservation standards.

4. Traffic

Proposed Traffic:

2003 Traffic Counts:	11,183 vehicle trips per day on Ironbound Road from John Tyler Highway (Route 5) to News Road (Route 613) (12,959 VTD prior to completion of Monticello Avenue)
	13,142 vehicle trips per day on John Tyler Highway (Route 5) from Ironbound Road to Route 199.
2026 Volume Projections:	13,000 vehicle trips per day on Ironbound Road – “Watch” Category in the 2003 Comprehensive Plan
	12,000 vehicle trips per day on John Tyler Highway (Route 5) – “Watch” Category in the 2003 Comprehensive Plan
Road Capacity:	A two lane collector road with turn lanes has a capacity of 14,000 vehicle trips per day

Traffic Proffers:

Intersection Improvements. A cash contribution of \$1,100, as determined by the formula developed by Kimley-Horn and Associates, Inc. as a part of the Five Forks Area Study, shall be made to the County prior to final site plan approval in order to mitigate traffic impacts resulting, in part, from the physical development and operation of the Property.

VDOT Comments: VDOT has no major comments related to the rezoning application as submitted. VDOT staff has provided the applicant with preliminary comments to consider during the site plan process.

Staff Comments: The trip generation associated with the proposed development presents approximately 5 new AM peak hour vehicle trips and approximately 5 new PM peak hour trips. These trips result in no change to the previously determined Level of Service (LOS) and delay for the southbound and northbound lane groups as well as the Ironbound Road and John Tyler Highway intersection as a whole.

Trip generation thresholds presented in the Five Forks Area Study indicate the maximum number of vehicle trips that should be allowed within the Five Forks Area during either the AM or PM peak hours – with or without geometric improvements. Trip generation thresholds assume that VDOT and the County will accept some lane groups operating at a LOS “D” during peak hours while the overall signalized intersection LOS continues to achieve LOS “C.” The introduction of 5 new trips during the AM peak results in the use of approximately 1.4% of the new trip threshold without geometric improvements and approximately 1% with geometric improvements. The introduction of 5 new trips during the PM peak results in the use of approximately 1.4% of the new trip threshold without geometric improvements and approximately .8% with geometric improvements. In both scenarios, the new trips result in no change to the previously determined LOS and delay for the southbound and northbound lane groups as well as the Ironbound Road and John Tyler Highway intersection as a whole.

Staff feels the cash contribution proffer for improvements to the Ironbound Road/John Tyler Highway intersection is consistent with the project’s weighted percentage of the total improvement cost and will offset the traffic impacts from this development.

Comprehensive Plan

The property is designated Mixed Use on the Comprehensive Plan land Use Map. The Comprehensive Plan text further describes appropriate Mixed Use development for the Five Forks Area:

The developed area in the immediate vicinity of the intersection of John Tyler Highway (Route 5) and Ironbound Road primarily serves nearby residential development. Limited commercial development of this nature may continue so long as the resulting land use mix of the area is limited primarily to community-scale and neighborhood commercial and office uses. Moderate density residential development is encouraged as a secondary use.

The property on the east side of Ironbound Road, northeast of Powhatan Springs Road, south of the Colonial pipeline easement, and northwest of the Ingram Road Office Park is envisioned for mixed uses limited to community-scale office development and moderate density residential development. New development should tie into the larger Five Forks area with complimentary building types and connections to surrounding commercial and residential development.

Staff Comments: The proposed office building is consistent with the Mixed Use designation for the Five Forks area and this site specifically.

The applicant has submitted proffers to address the architectural guidelines set forth in the Primary Principles for Five Forks Area of James City County. This proffer gives the Planning Director authority over the building materials and architectural design. This will enable staff to recommend desirable design elements to help compliment and enhance the visual quality of the Five Forks Area and compatibility with the existing development.

Primary Principles for Five Forks Area of James City County

The binding conceptual plan for the office site and the proffers submitted by the applicant address several of the proposed Primary Principles for Five Forks including landscaping, sidewalks, and compatible architectural features. The applicant has also proffered his pro-rata share of costs associated with implementing the geometric and signal improvements necessary to maintain a LOS “C” for traffic conditions in the Five Forks area.

RECOMMENDATION:

Staff finds the proposal consistent with surrounding land uses, the Land Use policies of the Comprehensive Plan, the Comprehensive Plan Land Use Map designation, and the Primary Principles for Five Forks Area of James City County. Staff recommends the Planning Commission recommend approval of the Rezoning application and the acceptance of the voluntary proffers.

Trey Davis

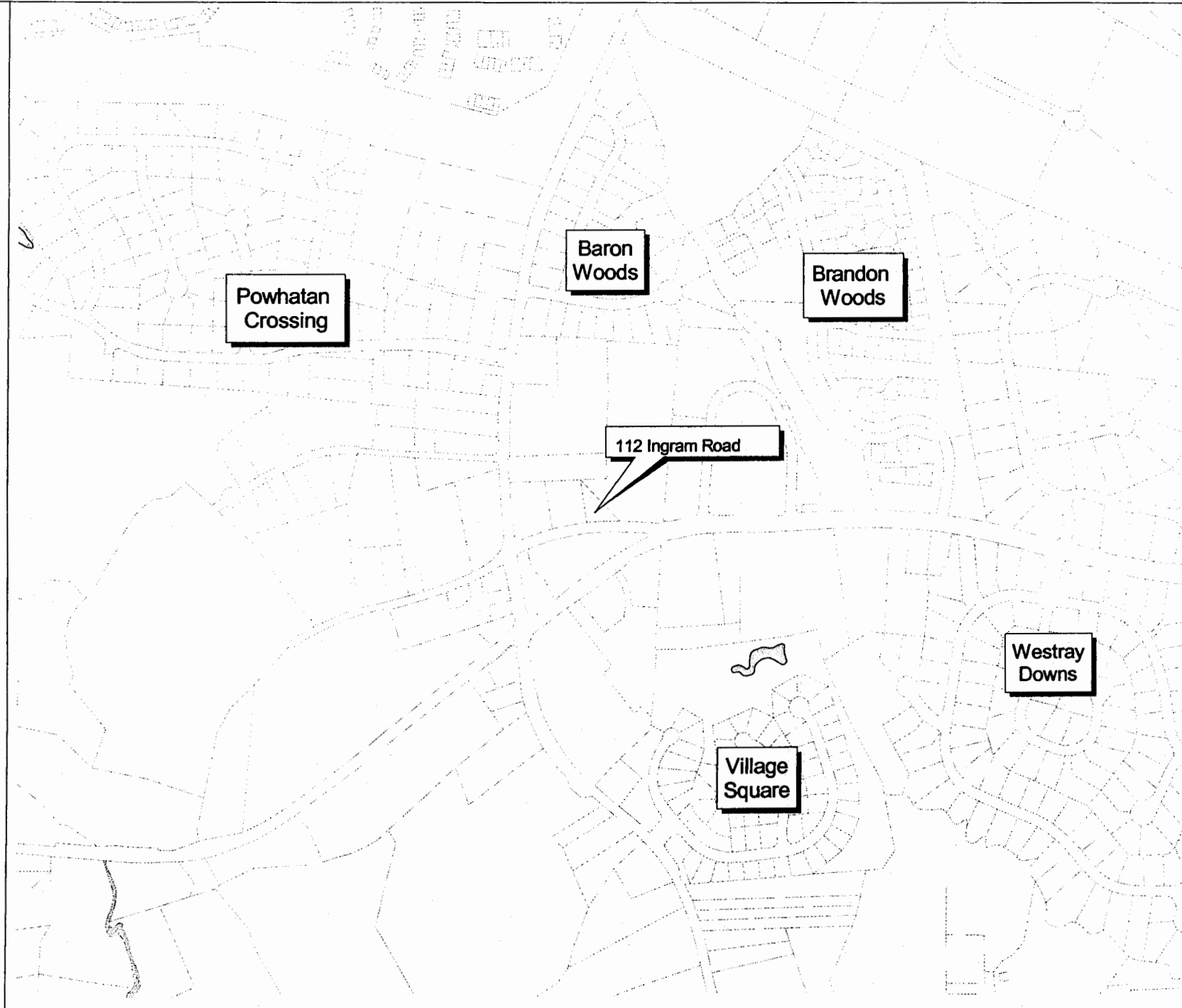
CONCUR:

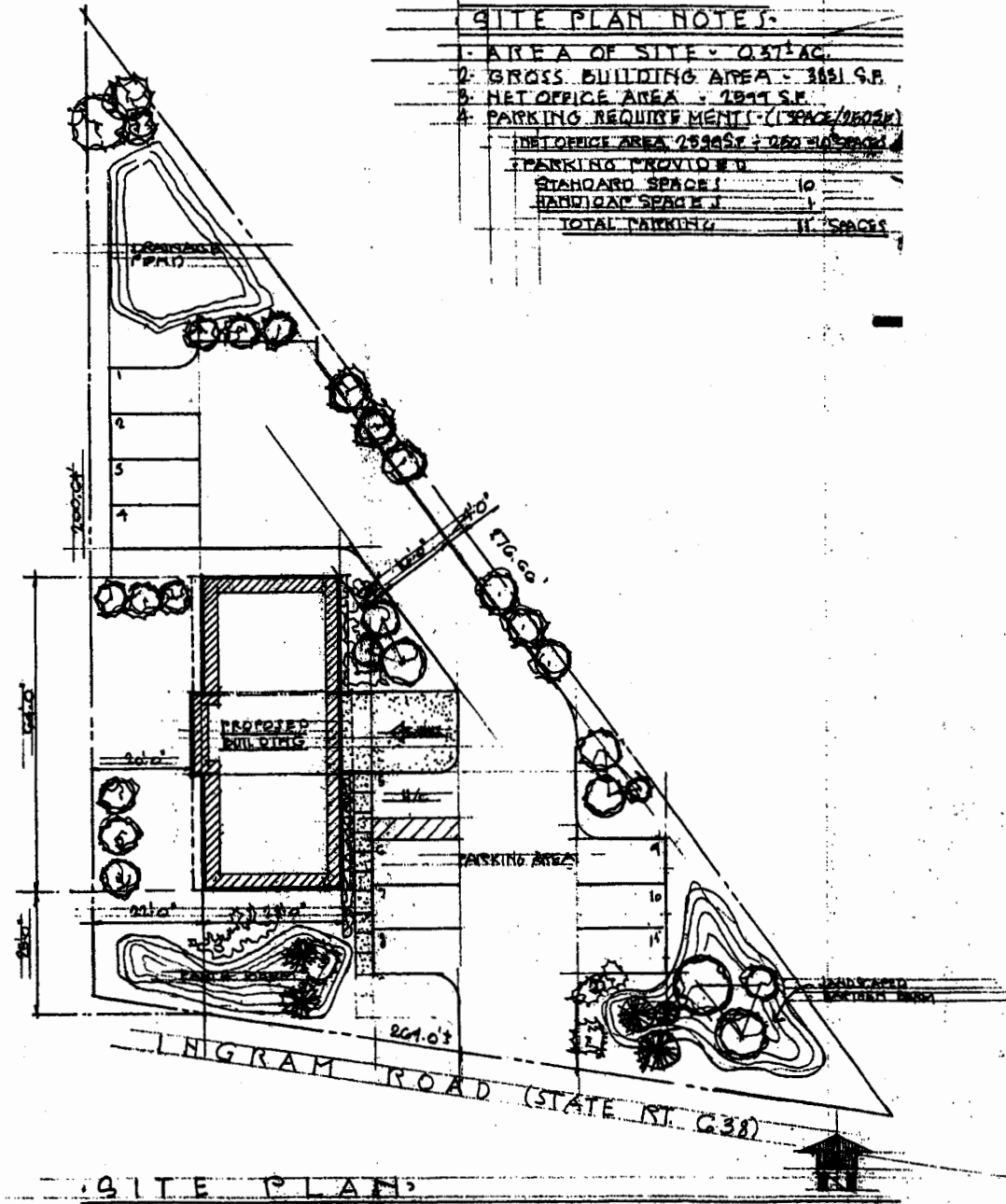
O. Marvin Sowers, Jr.

Attachments:

1. Location map
2. Master Plan
3. Primary Principles for Five Forks Area of James City County
4. Proffers

Z-10-04 112 Ingram Rezoning





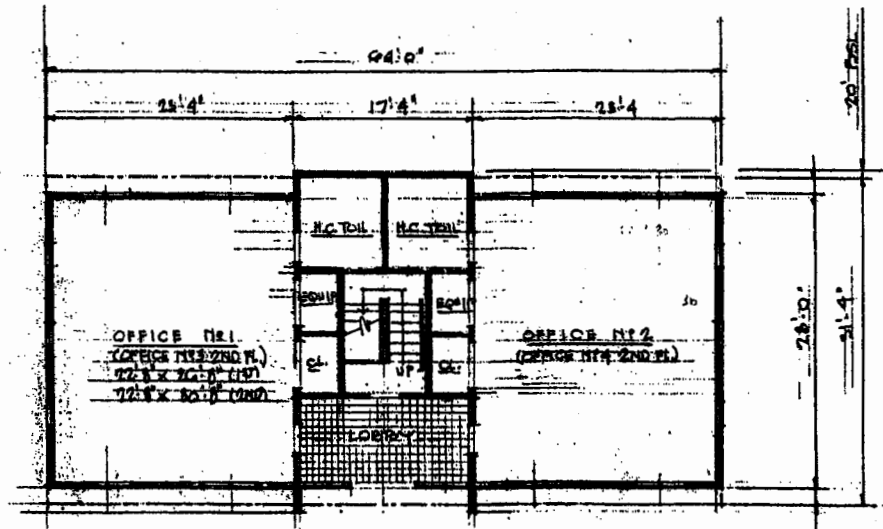
SITE PLAN NOTES:

1. AREA OF SITE - 0.87 AC.
2. GROSS BUILDING AREA - 3851 S.F.
3. NET OFFICE AREA - 2591 S.F.
4. PARKING REQUIREMENTS - (1 SPACE/100 S.F.)

NET OFFICE AREA 2591 S.F. ± 250 S.F. ± 250 S.F.

PARKING PROVIDED

STANDARD SPACE	10
HANDICAP SPACE	1
TOTAL PARKING	11 SPACES



BUILDING NOTES:

AREA CALCULATIONS:

1. GROSS BUILDING AREA - 3851 S.F.
2. NET OFFICE AREA - 2591 S.F.
3. FIRST FLOOR - 1509 S.F.
4. SECOND FLOOR - 1390 S.F.
5. TOTAL - 2591 S.F.

RENTAL AREA (INC. OFFICES/TOILETS/LOBBY & STAIRS)

FLOOR	NET RENTAL AREA	COMMON AREA
FIRST FLOOR	1509 S.F.	200 S.F.
SECOND FLOOR	1390 S.F.	200 S.F.
TOTALS	2999 S.F.	400 S.F.

A PROPOSED OFFICE BUILDING

2-10-04



REVISED: AUG 10, 2004 - ADD LANDSCAPING & REVISE PARKING

DUBLAND DESIGN - ARCHITECTS 100 John Rolfe Lane Williamsburg, VA 23186		PROPOSED OFFICE BUILDING 12 INGRAM ROAD (RT. 638) JAMES CITY COUNTY, VIRGINIA	
SCOTT EVANS CONTRACTING INC. WILLIAMSBURG, VIRGINIA		APPROVED BY: _____ DATE: JULY 24, 2004	
DRAWN BY: LWD		CHECKED BY: _____	
SITE PLAN / ELEVATION		SHEET NUMBER: 1 OF 1	

EVANS OFFICE

RESOLUTION

PRIMARY PRINCIPLES FOR FIVE FORKS AREA OF JAMES CITY COUNTY

WHEREAS, Economic Development Action 12G of the 2003 Comprehensive Plan recommends that James City County evaluate redevelopment and land use issues in the Five Forks area; and

WHEREAS, on June 8, 2004, the Board of Supervisors created the Five Forks Area Study Committee to conduct a comprehensive study of the area and develop a set of guiding principles for future development; and

WHEREAS, these principles will be used by citizens, staff, Planning Commission, and the Board of Supervisors to guide recommendations and decisions in future land use cases and other development activity in the Five Forks area; and

WHEREAS, after four public meetings the Five Forks Area Study Committee unanimously adopted primary principles for the Five Forks area of James City County; and

WHEREAS, on September 13, 2004, the James City County Planning Commission recommended the adoption of the primary principles by a vote of 7-0.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby endorse the following Vision and Principles to be used alongside the 2003 Comprehensive Plan when reviewing Rezonings, Special Use Permits, and other development activities in the Five Forks area:

Primary Principles for the Five Forks Area of James City County

Five Forks is an area with a unique village character. Bounded to the east by Mill Creek and to the west by the Powhatan Creek, Five Forks is within a significant natural area. Five Forks also supports a thriving commercial center and boasts a quality elementary school at its southern edge. Five Forks is generally understood to encompass the area that lies within three quarters of a mile of the intersection of John Tyler Highway and Ironbound Road.

Five Forks has grown and changed. With new growth, however, come questions about traffic levels, housing capacity, and preservation of the village qualities that make the area unique.

The Five Forks Area Study Committee was created by the Board of Supervisors to listen to the views of County citizens, particularly those who live and work in Five Forks. The Committee's purpose was to recommend principles that preserve and build upon the many positive qualities of Five Forks. These principles seek to protect the watersheds and safeguard the village character of the area. The principles will address residential growth, commercial development, traffic concerns, and alternative transportation. The principles will be incorporated into the next regularly scheduled update of the County's Comprehensive Plan. Until that time, these principles, when approved, serve as an addendum to the 2003 Comprehensive Plan.

Vision Statement

Five Forks has a rich heritage and a community character unique to James City County. By cooperating with citizens and with local government we will preserve these qualities for future generations. Through these principles, the Committee envisions that Five Forks will be a place where future redevelopment or development:

- Improves or maintains water quality and other environmental features;
- Preserves Five Forks' unique village character;
- Does not overburden the road network beyond capacity;
- Provides adequate facilities for pedestrians and cyclists;
- Provides goods and services needed by citizens; and
- Ensures housing opportunities for all citizens.

I. Transportation Principles

1. Capitalize on and Enhance Existing Roadway Network (see the Environmental Principles for relevant information related to these recommended actions):
 - Inventory/validate existing pavement and right-of-way width.
 - Reconfigure pavement markings/lane delineations to accommodate a 150-foot full-width exclusive right-turn lane for southbound Ironbound Road (i.e., north leg).
 - Construct a 150-foot full-width right-turn lane along the northbound approach of Ironbound Road (i.e. south leg).
 - Reduce the speed limit to 35 mph approximately a half mile from the intersection of Ironbound Road and John Tyler Highway.
 - Implement AM, Noon, PM, and Off-Peak signal timing modifications to best process traffic, maximize available and enhanced capacity, and to sustain acceptable level of operations for the isolated signalized intersection of Ironbound Road and John Tyler Highway.
2. In conjunction with any development proposals using Ingram Road West for access, encourage developers to make road improvements (reopening access from Ingram Road East from John Tyler Highway was considered but was not recommended. Such reopening might prove to be unsafe and possible benefits appear to be minimal. The initiative might prove to be beneficial at some time in the future depending on future development on Ingram Road East.):
 - Developers using Ingram Road West for access should rebuild this road as a two-lane roadway in accordance with current VDOT street requirements. Improvements could include:
 - 12 - 14-foot lanes to include roadway as well as curb and gutter;
 - 4-foot buffer between curb and sidewalk on one side of roadway;
 - Street trees and other aesthetic improvements; and
 - 25 mph posted speed limit.

3. Promote pedestrian and bicycle facility interconnectivity within Five Forks area (see the Land Use and Environmental Principles for relevant information related to these recommended actions):
 - Utilize available funds in the Sidewalk Capital Improvement Program budget as well as alternate sources of funding including grants or private contributions to construct sidewalks and pedestrian crosswalks in accordance with the phasing plan listed below.
 - Ensure that new development either provides sidewalks along public road frontages in accordance with the recommendations of the sidewalk inventory, or contributes funds to the Sidewalk Capital Improvement Program.
 - Coordinate the design and construction of roadway improvement projects with bicycle and pedestrian facilities. Bicycle and pedestrian facilities should be designed with an emphasis on safety, adequate lighting, signage, and Americans with Disabilities Act (ADA) compliant features.

Phase I

- Using the Five Forks area sidewalk inventory, and considering existing and potential development, and existing sidewalk connections as a guide, develop an implementation plan to extend sidewalks to serve pedestrian activity within the businesses at the Ironbound Road/John Tyler Highway intersection.
- Stripe crosswalks and provide crossing ramps and pedestrian signals for each approach to the Ironbound Road/John Tyler Highway intersection.
- Provide paved shoulders on John Tyler Highway west of the Ironbound Road intersection during the next VDOT repaving to decrease road maintenance and provide more travel space for bicycles and pedestrians.

Phase II

- Using the Five Forks area sidewalk inventory, existing and potential development, and existing sidewalk connections as a guide, develop an implementation plan to construct sidewalk segments that provide greater connectivity between the central business area and Clara Byrd Baker Elementary School, neighborhoods, and recreational areas.
- In accordance with the Greenway Master Plan, construct a multi-use path along John Tyler Highway that can connect to Jamestown High School and the Greensprings Trail.
- Construct shoulder bikeways along Ironbound Road using Federal grants. In accordance with the Greenway Master Plan, construct a multi-use path along Ironbound Road that can connect to Mid-County Park/Monticello Marketplace Shopping Center.
- Utilize Greenway Funds in the Capital Improvement Program budget and other sources of funding such as grants to support the construction of the above multi-use paths.

4. Promote opportunities for bus service in Five Forks:
 - Work with Williamsburg Area Transport (WAT) to investigate areas and routes with the highest ridership and potential for enhanced service (e.g., to serve activity/employment centers).
 - Work with WAT and Traffic to promote public transportation incentives and the use of alternative commuting modes (park-and-ride, ride sharing, express routes, etc.) to both employers and employees.
 - Investigate opportunities to increase ridership to/from centers of activity, businesses, residential areas and special event attractions.
5. Maintain a "C" level of service for traffic conditions in Five Forks by adhering to new trip generation thresholds established in the Five Forks Area Study Traffic Impacts Alternative Analysis prepared by Kimley Horn and Associates when approving new development through the rezoning and special use permit process (trip levels above the threshold result in the Level of Service decreasing from C to D. These new trip generation threshold numbers are on top of projected 2008 background trips.):
 - Without Geometric Improvements
 - AM peak should not exceed 350 new trips
 - PM peak should not exceed 500 new trips
 - With Geometric Improvements recommended by Principle I.1
 - AM peak should not exceed 500 new trips
 - PM peak should not exceed 650 new trips
 - New development should be phased so that new trips do not exceed the lower thresholds until the improvements listed in Principle I.1 are either constructed or fully funded in the VDOT Six-Year Road Plan.
 - New development should provide a pro-rata share of the costs associated with implementing the geometric and signal improvements.

II. Environmental Principles

1. Maintain and improve water quality and reduce flooding risk in the Mill Creek and Powhatan Creek Watersheds by minimizing the amount of additional impervious cover and treating existing and additional stormwater runoff:
 - Develop a coordinated stormwater master plan for Five Forks. The stormwater master plan should address possibilities for regional treatment or other treatment approaches for new and existing development as well as opportunities to reduce and/or treat runoff from the existing roadway into Powhatan Creek and Mill Creek.
 - Minimize drainage of new sidewalks, multiuse paths, or other transportation improvements. Encourage drainage of these improvements into a treatment facility such as a grassy swale, regional and structural Best Management Practices (BMP), or other appropriate options.

- For new or modified residential or commercial development in the Powhatan Creek and Mill Creek watershed, encourage the use of Low Impact Design (LID) and Better Site Design (BSD) techniques such as, but not limited to, those listed in the 2003 Comprehensive Plan; the Builders for the Bay James City County Local Site Planning Roundtable consensus document (expected to be completed in Fall 2004); and the booklet entitled “*Better Site Design: An Assessment of the Better Site Design Principles for Communities Implementing Virginia’s Chesapeake Bay Preservation Act.*”
 - Work with the Village Square Homeowners Association to ensure maintenance of the Village Square BMP and encourage the community to improve the existing BMP by pursuing a grant through the County PRIDE mini-grant program. Explore options for retrofitting and/or maintaining other Five Forks area BMPs.
 - Investigate options for and encourage the undertaking of stream restoration projects in the Powhatan Creek and Mill Creek Watersheds.
2. Ensure that any new development in the Powhatan Creek Watershed implements the recommendations of the Powhatan Creek Watershed Management Plan adopted by the Board of Supervisors on February 26, 2002:

Watershed Management Plan Recommendations:

- Non-tidal mainstem in the Five Forks area (west of Ironbound and north of Ingram Road): By encouraging the use of expanded buffers along the Powhatan Creek mainstem.
 - Tidal mainstem in the Five Forks area (west of Ironbound Road and south of Ingram Road): By encouraging the use of expanded buffers along the Powhatan Creek mainstem stormwater management with an added focus on fecal coliform removal.
 - Stormwater Recommendations: Use of Special Stormwater Criteria; specialized on-site BMP design with emphasis on removal of nutrients and bacteria; minimize stormwater outfalls on steep slopes.
3. Explore options for land conservation in Five Forks:
- Through the rezoning and special use permit process; encourage developers to set aside land as permanent open space.
 - Continue to target County Green Space Acquisition Funds to acquire properties that are environmentally sensitive or preserve the John Tyler Highway Community Character Corridor.

III. Land Use Principles

1. Promote mixed-use, pedestrian-friendly land-use patterns (see Principles III.6 for Land Use recommendations, including recommendations on moderate- and low-income housing):
- Pursue regulatory and investment strategies that promote a safe and healthy mix of uses (e.g., retail, residential, office, and public facilities).

- Continue to promote Five Forks as a center of community activity with complementary mixed uses.
 - Promote development patterns that support compact development, interconnected streets (connections to existing neighborhoods should be permitted only where practical and desired by those residents), sidewalks, etc., in an effort to encourage walkable neighborhoods within the Five Forks area.
2. Identify and re-utilize vacant buildings and properties that are no longer utilized:
- Encourage master planning of available land for redevelopment or new uses in order to promote shared parking, fewer entrances onto arterial roads, better utilization of land and increased open space.
 - Promote reuse and redevelopment of blighted and no longer utilized properties.
 - Target capital investments by James City County (e.g., infrastructure, underground utility lines, streetscape improvements, etc.) to support private reinvestment and redevelopment.
 - Through the Office of Housing and Community Development, investigate ways to renovate and rehabilitate the existing housing stock in the Five Forks area where appropriate. Work with private nonprofit groups such as Habitat for Humanity, the Community Action Agency and Housing Partnerships, Inc., to improve the condition and availability of the existing housing stock and assist residents that may be displaced by new development.
3. Reduce conflicts between incompatible land uses:
- Promote transitional uses between different land uses.
 - Through the rezoning/special use permit process and standards in the subdivision and zoning ordinance, reduce the impacts of higher intensity on lower intensity uses (requirements for landscaping, buffering, signage, screening, noise, odor, light, traffic, etc.).
4. Connect the land use pattern to a supportive, multi-modal transportation system:
- Establish compact, mixed-use development patterns that create a walkable environment and reduce the need to use the automobile by local residents.
 - Provide convenient pedestrian access from outlying residential areas to the Five Forks community activity center in accordance with Principle I.4.
5. Establish guidelines to define and maintain the historic, cultural, and aesthetic character of the Five Forks area:
- As part of the 2008 Comprehensive Plan update, designate Five Forks as a Community Character Area and incorporate the following guidelines as part of the Community Character element:
 - Building architecture, scale, materials, spacing, height, and color should respect the architectural context of existing structures such as the historic schoolhouse and veterinary

clinic and maintain the village character of Five Forks. New buildings should attempt to emulate distinguishing architectural elements of existing structures such as windows, roof lines, and cornices.

- Buildings that are traditional in character, massing, and detailing are preferred. Contemporary interpretations of traditional architecture are acceptable, if based on the scale and proportions of traditional architecture, and compatible with the context of the Five Forks village character.
 - Building facade materials and architectural treatment should be consistent on all sides of buildings, including side and rear elevations.
 - Where possible, parking should be located to the rear of buildings and should be well landscaped with shrubs and street trees. Shared access and parking should be pursued before constructing new access breaks and parking facilities.
 - Existing specimen trees and shrubs should be preserved to the extent possible. New landscaping should be of a type, size, and scale to complement and enhance the building and site design. Native plant and tree species are encouraged.
 - Signage should be of a scale, size, color, and materials to complement the village character of the area. Monument style signs, rather than pole signs, are the preferred type.
 - All mechanical equipment should be screened from view with architectural elements, fencing, or landscaping.
 - In addition to the above standards, residential buildings should have varied roof lines, wall articulations, window placements, and other features to reduce building mass and unbroken building lines. Arrangement and siting of buildings should preserve the buffers along the Community Character Corridor and complement existing structures such as the historic schoolhouse and maintain the village character of Five Forks.
- Develop and maintain defining traits that can be reflected through landscaping or streetscape design.
 - Protect and enhance the visual character of John Tyler Highway and Ironbound Road. Transportation improvements and new development should be carefully sited to minimize loss to the existing tree canopy over the roads.
6. Ensure that future residential and non residential development/redevelopment is compatible with the vision and principles for the Five Forks area:
- Ensure new trip generating developments do not exceed new trip thresholds in accordance with Principle I.5 through the rezoning/special use permit process.
 - Ensure proposed land uses are in compliance with the land use section of the 2003 Comprehensive Plan. The following descriptions provide additional guidance on acceptable land use proposals:

- Low Density Residential: Recommended gross densities are 1 to 3 dwelling units per acre. Higher densities should provide public benefits such as setting aside property for low- and moderate-cost housing developments; low- and moderate-income (Low income housing is defined as housing for persons earning less than 50 percent of area median income. Moderate income housing is defined as housing for persons earning 50 percent to 80 percent of the area median income.) housing; mixed-cost housing; or extraordinary environmental protection, including low impact design, better site design, open space preservation and implementation of the Powhatan Creek Watershed Management Plan.
 - Moderate Density Residential: Recommended gross densities are 4 to 10 dwelling units per acre. Higher densities should provide public benefits such as setting aside property for low- and moderate-cost housing developments; low-income housing (including persons earning less than 30 percent of area median income); moderate income housing; mixed cost housing; or extraordinary environmental protection, including low-impact design, better site design, open space preservation and implementation of the Powhatan Creek Watershed Management Plan. Recommended housing types include townhouses, apartments, or attached cluster housing.
 - Mixed Use: The recommended mix of uses includes offices and community commercial uses serving residents of the Five Forks area. Moderate-density housing may be a secondary use provided it is designed in accordance with these principles.
- As part of the 2008 Comprehensive Plan update, incorporate the above guidance into the Land-Use element.

IV. Economic Development Principle

1. Promote and facilitate economic growth through development/redevelopment:
 - Facilitate the location of a new anchor tenant in Governor's Green Shopping Center should Winn-Dixie close.
 - Support the development of remaining undeveloped commercial land and vacant buildings in Five Forks to provide goods and services desired by residents of the Five Forks area.
 - Advise the Economic Development Authority on the outcomes of the Five Forks Study so that they may capitalize on future economic opportunities.

Bruce C. Goodson
Chairman, Board of Supervisors

ATTEST:

Sanford B. Wanner
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 28th day of September, 2004.

fiveforkredev.res

112 INGRAM ROAD OFFICE BUILDING PROFFERS

These proffers are made as of this 24th day of September 2004, by MARJORIE GRAY ET AL.
(Together with their successors and assigns, the "Owner") and SCOTT EVANS
CONTRACTING INC.

RECITALS

- A. Owner is the Owner of a tract or parcel of land located in James City County, Virginia containing approximately 0.37 acres and being Tax Parcel (47-1) (1-23) and further described in "Attachment A". The Property is now zoned R-8, Rural Residential.
- B. Scott Evans Contracting, Inc. and/or assigns ("Buyer") has contracted to purchase the Property conditioned upon the rezoning of the Property.
- C. Owner and Buyer have applied to rezone the Property from R-8, Rural Residential, to B-1, General Business.
- D. Buyer has submitted to the County a Conceptual Plan entitled "Proposed Office Building 112 Ingram Road" prepared by DeBlasio Design Architects.
- E. Owner and Buyer desire to offer the County certain conditions on the development of the Property not generally applicable to land zoned B-1. Therefore, and in consideration of the approval by The Board of Supervisors of the rezoning, and pursuant to Section 15.2-2296. et seq of the Code of Virginia, 1950, as amended, and Section 24-16, of the Zoning Ordinance. Owner and Buyer agree that it shall meet and comply with all of the following conditions in developing the Property. If the requested rezoning is not granted by the County, these Proffers shall be null and void.

CONDITIONS

- 1. Uses and Conceptual Plan. The property shall be put to the following uses: business, governmental and professional offices and accessory uses thereto as defined in the James City County Zoning Ordinance. The property shall be developed generally in accordance with the Conceptual Plan, which such minor changes as the Development Review Committee determines does not change the basic concept or character of the development.
- 2. Architecture. The Office Building on the Property shall be developed in a harmonious and uniform manner with an architectural design and color scheme approved by the Director of Planning prior to final site plan approval. This design shall be consistent with the architectural standards set forth in the Primary Principles for Five Forks Area of James City County, adopted by the Board of Supervisors on September 28, 2004.
- 3. Landscaping. An enhanced landscaping plan shall be approved by the Director of Planning prior to final site plan approval. This plan shall provide enhanced landscaping along the site's west property line. (125% of that which is required in the ordinance)
- 4. Sidewalk. A paved five foot wide sidewalk shall be installed across the Ingram Road frontage of the property prior to the issuance of any Certificate of Occupancy.

5. Intersection Improvements. A cash contribution of \$1,100, as determined by the formula developed by Kimley-Horn and Associates, Inc. as a part of the Five Forks Area Study, shall be made to the County prior to final site plan approval in order to mitigate traffic impacts resulting, in part, from the physical development and operation of the Property. The County shall use these funds towards the construction of intersection improvements to the Ironbound Road/John Tyler Highway intersection as detailed in section I.1 of the Primary Principles for Five Forks Area of James City County, adopted by the Board of Supervisors on September 28, 2004.
6. Water Conservation. The owner shall be responsible for developing and enforcing water conservation standards to be submitted to and approved by the James City Service Authority prior to final site plan approval. The standards may include, but shall not be limited to such water conservation measures as limitations on the installation and use of irrigation systems and irrigation wells, the use of approved landscaping materials including the use of drought tolerant plants where appropriate, and the use of water conserving fixtures and appliances to promote water conservation and minimize the use of public water resources.

Witness the following signature and seal:

Marjorie Gray ET AL

Marjorie Gray

Scott Evans Contracting, Inc.

S. EVANS, PRES.

State of Virginia

City/County of James City to Wit:

The foregoing instrument was acknowledged before me this
24th Day of September 2004, by Tracy Stevens

Tracy Stevens
Notary Public

My commission expires: August 31, 2007

**REZONING -6-04 / MASTER PLAN -6-04. Lightfoot Mixed Use Development
Staff Report for the October 4, 2004, Planning Commission Public Hearing**

This staff report is prepared by the James City County Planning Division to provide information to the Planning Commission and Board of Supervisors to assist them in making a recommendation on this application. It may be useful to members of the general public interested in this application.

PUBLIC HEARINGS

Planning Commission: 7:00 p.m.; Building F Board Room; County Government Complex
July 12, 2004 (Deferred)
August 16, 2004 (Deferred)
September 13, 2004 (Deferred)
October 4, 2004
Board of Supervisors: November 9, 2004 (Tentative)

SUMMARY FACTS

Applicant: Richard A. Costello, AES Consulting Engineers

Land Owner: Noland Properties, Inc.

Proposed Use: A mix of uses including a maximum of 144,800 square feet of commercial space on 13.5 acres along Richmond Road and a maximum of 244 multi-family residential units on the remaining 38.5 acres with a gross residential density of 6.3 units per acre.

Location: 6601 Richmond Road, Stonehouse District

Tax Map/Parcel (24-3)(1-35)

Parcel Size 53.24 acres, with 52.0 acres for development; the Chesapeake Bank site is not included in the master plan or proffers.

Proposed Zoning: MU, Mixed Use with proffers

Existing Zoning: B-1, General Business with proffers

Comprehensive Plan: Mixed Use

Primary Service Area: Inside

STAFF RECOMMENDATION

At the Planning Commission meeting on September 13, 2004, this case was deferred at staff's request and the applicant's concurrence to allow for more time to clarify the proffered conditions that were provided to the Planning Commission. With the attached revised proffers, staff finds the proposed rezoning is consistent with surrounding development and consistent with the Comprehensive Plan. Staff recommends that the Planning Commission recommend approval of the rezoning and master plan and acceptance of the voluntary proffers, subject to revision of a master plan note described in the Environmental section of this report. Staff also recommends that the Planning Commission approve the applicant's perimeter setback modification requests.

Staff Contact: Sarah Weisiger, Planner Phone: 253-6685

PROJECT DESCRIPTION

Mr. Richard Costello has applied on behalf of Noland Properties, Inc. to rezone 52.0 acres located on Richmond Road (Route 60) northwest of the junction with Lightfoot Road, from B-1, General Business with proffers to Mixed Use, MU with proffers. The applicant has proposed 144,800 square feet of commercial and light industrial development on 13.5 acres with frontage on Richmond Road and 244 multi-family dwelling units in the back of the parcel on 38.5 acres. Two entrances would provide access to the development from Richmond Road with the main entrance at the existing median crossover. The residential units are proposed to be “for sale” with up to 24 of the units proffered to be affordable. The commercial area is proposed to have a mix of uses including mini-storage, retail sales, offices and restaurants. A special use permit has previously been granted for Chesapeake Bank which is located on the same parcel; it is not subject to this rezoning.

EXISTING ZONING AND DEVELOPMENT

Development Area:	Vacant with abandoned restaurant, shops and house B-1 with proffers under Case No. Z-12-89, L.A. & G Corporation.
Adjacent Properties:	
◆ North	Distribution center, A-1 General Agricultural / B-1 General Business Undeveloped bank site on the same parcel, B-1
◆ East	Commercial uses across Richmond Road, M-1 Limited Business/Industrial
◆ South	Church, hotels, restaurant along Richmond Road, B-1 Outlet mall at corner of Centerville and Richmond Roads, M-1
◆ West	Manufactured home park on Centerville Road with a density of approx. 3.0 units per acre and vacant parcels, A-1

PUBLIC IMPACTS

ARCHAEOLOGY:

The County archaeological policy is proffered.

ENVIRONMENTAL IMPACTS:

Watershed:	Yarmouth Creek
Environmental:	Since the Planning Commission meeting on September 13, 2004, the applicant has revised the proposed master plan to eliminate a previous note which stated that the property shall be developed in accordance with the Yarmouth Creek Watershed Plan. The revised note proposes to use a different treatment approach around a degraded stream than that which is recommended in the Watershed Plan.
Environmental Comments:	This change to “General Notes” #10 on the Cover Sheet of the master plan is not acceptable to staff. Since the revised master plan was submitted, the applicant and staff have agreed to a change to note #10 reflecting an acceptable manner to address problems identified in the Yarmouth Creek Watershed Plan. This change will be made to the master plan prior to the meeting of the Board of Supervisors on November 9, 2004.
Proffers:	The applicant has proffered to provide a master stormwater plan for the entire property prior to approval of any development plans. The applicant has also proffered a construction setback for buildings to be located a

minimum of ten feet from the Resource Protection Area buffer.

Proffer Comments: The proffer for a master stormwater plan satisfies staff's earlier concerns about how stormwater would be treated on the property. The proffer for a construction setback for buildings is acceptable.

FISCAL IMPACTS:

Impact Study: The fiscal impact study prepared by Wessex Group, Ltd., estimates that the annual fiscal impact of the proposal is estimated to be a net deficit of \$2,227.

Proffers: The applicant has proffered a cash contribution of \$750 per dwelling unit to mitigate impacts from the physical development and operation of the property, and has proffered to phase at least 25,000 square feet of commercial development in advance of residential development.

Staff Comments: Staff finds that the project's annual recurring operating deficit would likely be much larger than the one forecast by the applicant's study. The exclusion of capital cost impacts due to overcrowded schools is the most significant reason for this difference.

HOUSING:

Proffer: The applicant has proffered 10% of the residential dwelling units (up to 24 of 244 units) at a sales price limit of \$110,000. The applicant has also proffered that all units will be offered "for sale".

Staff Comment: The proffer of a sales price limit to some units is consistent with the Comprehensive Plan for moderate density development within mixed use areas and consistent with the Housing section of the Plan because the project would create a mixed income community and provide affordable housing.

SCHOOLS:

Per the Adequate Public Facilities Test policy adopted by the Board of Supervisors, all special use permit and rezoning applications should pass the test for adequate public school facilities. The test is based on whether the schools which would serve the development have adequate design capacity to accommodate the additional students. The applicant estimates that the residential units will generate 0.2 students per unit for a total of 49 students. The following information was provided by the applicant:

School	Projected 2004 Enrollment*	Design Capacity	Projected Students Generated by Development
Norge Elementary	640	760	23
Toano Middle School	821	775	12
Lafayette High School	1484	1250	14

*These figures were projected by the Williamsburg James City County Public Schools in the September 30, 2003 official report. The official September 30, 2004 school enrollment figures will be released in early October.

Staff Comments: The proposal does not pass the adequate public facilities test for the middle and high schools. The applicant suggests that by redistricting the middle school areas, sufficient capacity currently exists within the County for middle school students generated by the development. Staff believes that redistricting would not present a long term solution to overcrowding.

PUBLIC UTILITIES: The site is served by public water and sewer. James City Service Authority (JCSA) has not approved a water model for the entire development. This issue will need to be addressed to the satisfaction of JCSA at the development plan stage.

Proffers: Water conservation: Water conservation measures shall be submitted for review and approval prior to subdivision or site plan approval.
Sewer: A contribution of \$382.50 for each residential unit and a contribution based on non-residential sewage flow usage factoring in previous development uses on the property are proffered for sewer system improvements.
Water: A cash contribution of \$630.00 per residential dwelling unit has been proffered for development of alternative water sources or JCSA water system improvements.

JCSA Comment: Proffers are acceptable.

TRAFFIC IMPACTS:

Proposed Traffic: The applicant estimates trip generation of 445 AM Peak Hour trips and 689 PM Peak Hour trips and a total daily site generation of 6,264 trips. All streets are proposed to be private.

Traffic Counts: The James City County Traffic Count Summary for Richmond Road in the area of the proposed development finds the following:
2003 Traffic Counts: 18,828 (Croaker Rd to Lightfoot Rd)
2026 Volume Projected: 33,500 (Croaker Rd to Centerville Rd)

Level of Service: Intersection Level of Service (LOS) at Development – Main Driveway:
Existing - AM Peak Hour, LOS - B / PM Peak Hour, LOS - C
2020 with Lightfoot Mixed Use development and unsignalized -
AM Peak Hour, LOS – C / PM Peak Hour, LOS - D

Proposed Road Improvements: A study by DRW Consultants concluded that the traffic forecast for the development at buildout is “borderline for traffic signalization at the existing crossover.” The applicant proffers to provide an updated traffic impact study after a majority of development has been issued building permits or if a proposed use generates materially higher trip generation. If the updated traffic study finds that a traffic signal and/or an additional turn lane are warranted, the owner has proffered to provide the improvements. An entrance taper has been proffered for construction of the right-in right-out driveway.

VDOT Comments: The traffic analysis did not clearly define when left turn improvements or a traffic signal will be warranted.

Staff Comments: Staff now finds that the revised proffer for an updated traffic study will provide assurance that necessary improvements, including a traffic signal, will be provided in a timely manner if warranted.

RESIDENTIAL DEVELOPMENT CONSIDERATIONS:

Conceptual Plan Review Proffer:

In lieu of providing a detailed master plan of the residential area of the project, the applicant has proffered to provide a conceptual plan of the residential area prior to the submittal of a site plan for the property.

Staff Comment: The proffer has been revised to include review and approval by the Planning Director and now satisfies staff's earlier concerns.

Recreation Proffer:

The applicant proposes to provide recreational facilities in the residential area as set forth in the County's Recreation Master Plan or to make cash contributions in accordance with the Recreation Master Plan.

Staff Comment: The proffer has been revised and now satisfies staff's earlier concerns.

Pedestrian Connections Proffer:

The applicant proposes to provide pedestrian connections between the property and the adjacent Williamsburg Outlet Mall and between each area shown on the Master Plan.

Staff Comment: The proffer has been revised and now satisfies staff's earlier concerns that the pedestrian connections be constructed along with infrastructure and buildings in each area.

Streetscape Guidelines Proffer:

The applicant has proffered streetscape improvements in accordance with the County's Streetscape Guideline policy for the entrance road in the commercial area and within residential areas.

Staff comment: The proffer has been revised to include streetscape improvements within residential areas and now satisfies staff's earlier concerns.

COMPREHENSIVE PLAN

Land Use Map designations:

- Mixed Use area within the Lightfoot Mixed Use Area
- Community Character Corridor

Mixed Use Area:

Mixed Use areas are centers where higher density development and/or a broader spectrum of land uses are encouraged. They are intended to provide flexibility in design and land uses in order to enhance the character of the area. The Comprehensive Plan's specific recommendations for Lightfoot Mixed Use area are that: "For lands west of Richmond Road (Route 60 West), the principal suggested uses are moderate density housing, commercial developments and office developments. The commercial uses should not be developed in a 'strip' commercial fashion and should emphasize shared access and parking as well as consistent treatment for landscaping and architecture. Measures to mitigate traffic congestion will be critical to maintain the economic vitality of the area and to maintain an acceptable degree of mobility."

Staff Comment: The proposed principal uses are generally consistent with those in the Comprehensive Plan. The square shape of the commercial site and the location of the proposed entrance road will mitigate against strip commercial development. As noted earlier in the staff report, the proffer for the updated traffic study is acceptable to staff as it helps guarantee that an acceptable degree of mobility will be maintained.

Community Character Corridor:

The section of Richmond Road in front of the proposed development is an urban Community Character Corridor. The applicant has proffered to only place monument signs within the Community Character buffer and to provide a limited list of materials for building walls facing Route 60. All rooftop mechanical equipment will be screened from view. Because extensive fencing may be used within the commercial land use area along Richmond Road, the applicant has also proffered to limit the types of fencing and to provide extra shrubs to hide any chain link fencing within 200 feet of Richmond Road.

Staff comment: Staff is satisfied with the revisions to the proffers to assure that the visual impact of development will be consistent with the Comprehensive Plan.

Recommendation for Setback Modification requests:

Staff recommends that the Planning Commission approve all perimeter setback modification requests as described in the September 13, 2004 staff report to the commission.

STAFF RECOMMENDATION

At the Planning Commission meeting on September 13, 2004, this case was deferred at staff's request and the applicant's concurrence to allow for more time to clarify the proffered conditions that were provided to the Planning Commission. With the attached revised proffers, staff finds the proposed rezoning is consistent with surrounding development and consistent with the Comprehensive Plan. Staff recommends that the Planning Commission recommend approval of the rezoning and master plan and acceptance of the voluntary proffers, subject to revision of a master plan note described in the Environmental section of this report. Staff also recommends that the Planning Commission approve the applicant's perimeter setback modification requests.

Sarah Weisiger

Attachments:

1. Location map
2. Master Plan (under separate cover)
3. Proffers

Case No. Z-6-04/MP-6-04 Lightfoot Mixed Use Development

900 0 900 1800 Feet

Photo Copyright 2002 State of Virginia



PROFFERS

THESE PROFFERS are made this 25th day of September, 2004 by NOLAND PROPERTIES, INC., a Virginia corporation (together with its successors in title and assigns, the "Owner").

RECITALS

A. Owner is the owner of a tract or parcel of land located in James City County, Virginia, with an address of 6601 Richmond Road, Williamsburg, Virginia and being a portion of Tax Parcel 2430100035 containing approximately 52 acres as shown on the Master Plan (defined herein), being more particularly described on Schedule A hereto (the "Property").

B. The Property is now zoned B-1, with proffers dated November 15, 1989 and recorded in James City Deed Book 458 at page 126 (the "Existing Proffers"). Owner has applied to rezone the Property from B-1, with proffers, to MU, Mixed Use District, with proffers.

C. Owner has submitted to the County a master plan entitled "Master Plan for Rezoning of Lightfoot Mixed Use Development for Noland Properties, Inc." prepared by AES Consulting Engineers dated September 3, 2004 (the "Master Plan") for the Property in accordance with the County Zoning Ordinance. Owner has submitted to the County a traffic impact analysis entitled "Traffic Analysis for Lightfoot Mixed Use Development" prepared by DRW

Consultants, Inc. dated March 3, 2004 (the "Traffic Study") for the Property.

D. Owner desires to offer to the County certain conditions on the development of the Property not generally applicable to land zoned MU.

NOW, THEREFORE, for and in consideration of the approval of the requested rezoning, and pursuant to Section 15.2-2297 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. Upon the approval of the requested rezoning, the Existing Proffers are replaced and superceded in their entirety by these Proffers. If the requested rezoning is not granted by the County, these Proffers shall be null and void and the Existing Proffers shall remain in full force and effect.

CONDITIONS

1. Owners Association. There shall be organized an owner's association or associations (the "Association") in accordance with Virginia law in which all property owners in the development, by virtue of their property ownership, shall be members. The articles of incorporation, bylaws and restrictive covenants (together, the "Governing Documents") creating and governing each Association shall be submitted to and reviewed by the County Attorney for consistency with this Proffer. The

Governing Documents shall require that each Association adopt an annual maintenance budget, which shall include a reserve for maintenance of stormwater management BMPs, recreation areas, private roads and parking areas, sidewalks, and all other common areas (including open spaces) under the jurisdiction of each Association and shall require that the Association (i) assess all members for the maintenance of all properties owned or maintained by the Association and (ii) file liens on members' properties for non-payment of such assessments. The Governing Documents shall grant each Association the power to file liens on members' properties for the cost of remedying violations of, or otherwise enforcing, the Governing Documents. If there is more than one Association created for the Property the Associations shall enter into a costs sharing agreement allocating responsibility for maintenance and expenses for common areas described above between the Associations.

2. Water Conservation. (a) The Association 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. The standards shall be approved by the James City Service Authority prior to final subdivision or site plan approval.

(b) If the Owner desires to have outdoor watering in the area of the Master Plan designated as Areas 2, 4 or 5 it shall provide water for irrigation utilizing surface water collection from the two surface water ponds that are shown on the Master Plan and shall not use James City Service Authority ("JCSA") water or well water for irrigation purposes, except as provided below. This requirement prohibiting the use of well water may be waived or modified by the General Manager of JCSA if the Owner demonstrates to the JCSA General Manager that there is insufficient water for irrigation in the surface water impoundments, and the Owner may apply for a waiver for a shallow (less than 100 feet), well to supplement the surface water impoundments.

3. Cash Contributions for Community Impacts. (a) A contribution of \$630.00 for each residential dwelling unit on the Property shall be made to the James City Service Authority ("JCSA") in order to mitigate impacts on the County from the physical development and operation of the Property. The JCSA may use these funds for development of alternative water sources or any project related to improvements to the JCSA water system, the

need for which is generated in whole or in part by the physical development and operation of the Property.

(b) A contribution of \$382.50 for each residential dwelling unit on the Property shall be made to the James City Service Authority ("JCSA") in order to mitigate impacts on the County from the physical development and operation of the Property. The JCSA may use these funds for development of sewer system improvements or any project related to improvements to the JCSA sewer system, the need for which is generated in whole or in part by the physical development and operation of the Property.

(c) A contribution for each non-residential building on the Property in an amount equal to \$1.53 per gallon per day of average daily sanitary sewage flow as determined by JCSA based on the use of the building(s) shall be made to the JCSA in order to mitigate impacts on the County from the physical development and operation of the Property. Contributions for buildings on Area 1B shown on the Master Plan shall be reduced by a credit based on flows from the prior use of that Area as a restaurant. Contributions for buildings on Area 1D shown on the Master Plan shall be reduced by a credit based on flows from the prior use of that Area as retail shops. The JCSA may use these funds for development of sewer system improvements or any project related to improvements to the JCSA sewer system, the need for which is

generated in whole or in part by the physical development and operation of the Property.

(d) A contribution of \$750.00 for each dwelling unit on the Property shall be made to the County in order to mitigate impacts on the County from the physical development and operation of the Property. The County may use these funds for any project in the County's capital improvement plan, the need for which is generated in whole or in part by the physical development and operation of the Property, including, without limitation, for emergency services, school uses, off-site road improvements, library uses, and public use sites.

(e) The contributions described above shall be payable for each dwelling unit or non-residential building on the Property at the time of subdivision or site plan approval for such unit or building.

(f) The per unit contribution(s) paid in each year pursuant to this Section shall be adjusted annually beginning January 1, 2006 to reflect any increase or decrease for the preceding year in the Consumer Price Index, U.S. City Average, All Urban Consumers (CPI-U) All Items (1982-84 = 100) (the "CPI") prepared and reported monthly by the U.S. Bureau of Labor Statistics of the United States Department of Labor. In no event shall the per unit contribution be adjusted to a sum less than the amounts set forth in paragraphs (a) through (d) of this Section. The

adjustment shall be made by multiplying the per unit contribution for the preceding year by a fraction, the numerator of which shall be the CPI as of December 1 in the year preceding the calendar year most currently expired, and the denominator of which shall be the CPI as of December 1 in the preceding year, In the event a substantial change is made in the method of establishing the CPI, then the per unit contribution shall be adjusted based upon the figure that would have resulted had no change occurred in the manner of computing CPI. In the event that the CPI is not available, a reliable government or other independent publication evaluating information heretofore used in determining the CPI (approved in advance by the County Manager of Financial Management Services) shall be relied upon in establishing an inflationary factor for purposes of increasing the per unit contribution to approximate the rate of annual inflation in the County.

4. Entrances/Taper. There shall be no more than two entrances into the Property to and from Route 60 in the general locations shown on the Master Plan. An eastbound 150 foot right turn taper on Route 60 shall be constructed at the right-in, right-out entrance to the Property from Route 60. The taper proffered hereby shall be constructed in accordance with Virginia Department of Transportation standards and shall be completed

prior to the issuance of the first certificate of occupancy for a building utilizing that entrance.

5. Private Streets. All streets on the Property shall be private and shall conform to VDOT construction standards. Private streets shall be maintained by the Association(s). The party responsible for construction of a private street shall deposit into a maintenance reserve fund to be managed by the Association responsible for maintenance of that private street an amount equal to one hundred and fifty percent (150%) of the amount of the maintenance fee that would be required for a similar public street as established by VDOT - Subdivision Street Requirements. The County shall be provided evidence of the deposit of such maintenance fee at the time of final site plan or subdivision plat approval by the County for the particular phase or section which includes the relevant private street.

6. Updated Traffic Study. (a) If any use is proposed to locate on the Property with a materially higher trip generation based on ITE trip generation figures than the use used in the Traffic Study which results in an overall materially higher trip generation from the Property, then Owner shall submit with the proposed site plan for the new use an updated traffic impact study to the Director of Planning and VDOT based on the new proposed use for their review and approval and shall implement

the recommendations of the approved updated study prior to issuance of certificate of occupancy for the new use.

(b) In any event, the Owner shall submit an updated traffic impact study to the Director of Planning and VDOT for their review and approval prior to the time of the issuance of building permits for (i) 70% of the commercial square footage permitted on the Property under the Master Plan and (ii) 50% of the total number of residential units permitted on the Property under the Master Plan, unless the Director of Planning and VDOT waive such requirement. Both thresholds shall be met before the study is required to be performed. The updated traffic study shall include actual traffic counts from the developed portions of the Property and utilize ITE trip generation figures for undeveloped portions of the Property and shall account for all other traffic utilizing the entrance road into the Property and shall determine whether a traffic signal and/or second left turn lane at the main entrance to the Property are warranted. If the approved updated study determines such a signal and/or additional turn lane are warranted, the County shall not be obligated to issue any further building permits for further development on the Property until such second westbound left turn lane at the main entrance into the Property from Route 60 and/or traffic signal at the main entrance have been installed or their installation commenced and surety for their completion in form acceptable to the County

Attorney have been posted with the County. Any such traffic signal shall include signal preemption equipment for emergency use and , if required by VDOT, shall be coordinated with other traffic signals along Route 60.

7. **Landscaped Setback.** The 20 foot buffer adjacent to Smith Memorial Baptist Church property (Tax Map #(24-3)(1-36) and the Zaharopulus property (Tax Map #(24-3)(1-37A) shall contain enhanced landscaping, defined as 125% of the landscaping otherwise required by the County zoning ordinance. No fence located in the buffer shall be closer than 19 feet to the Property boundary line. The facade of the mini-storage warehouses facing Smith Memorial Baptist Church shall be brick and no road or driveway shall be permitted between the 20 foot buffer adjacent to Smith Memorial Baptist Church and the mini-storage warehouses.

8. **Affordable Housing Units.** (a) At least 5% (rounded down to the nearest whole unit) of the residential dwelling units on the Property shall be reserved and offered for sale at prices of \$110,000.00, subject to adjustment as provided below, and at least 5% (rounded down to the nearest whole unit) of the residential dwelling units on the Property shall be reserved and offered for sale at prices of \$135,000.00, subject to adjustment as provided below. The maximum price set forth herein shall be adjusted annually as of January 1 of each year by increasing such

prices by the cumulative rate of inflation as measured by the Consumer Price Index - Urban, U.S. City Average annual average change for the period from January 1, 2005 until January 1 of the year in question. The annual increase shall not exceed five percent (5%). The Director of Planning shall be provided with a copy of the settlement statement for each sale at a price at or below the maximum prices set forth above. Owner shall consult with and accept referrals of, and sell to, potential qualified buyers from the James City County Office of Housing and Community Development on a non-commission basis. The units subject to this Condition shall be constructed prior to the County being required to issue building permits for more than 200 residential dwelling units on the Property.

9. **Development Phasing.** The County shall not be obligated to issue building permits for any residential dwelling units on the Property until the County has issued building permits for at least 25,000 square feet of floor area within areas designated as Area 1 on the Master Plan and construction thereof (defined as footings dug and foundations poured and passed required inspections) has commenced.

10. **Environmental Protections.** (a) The Owner and/or the owners association shall grant, free of charge, to a County approved land conservation entity and/or the County a conservation easement with terms consistent with these Proffers

over the area designated on the Master Plan as Area 3 generally in the locations shown on the Master Plan. The exact boundaries of the Conservation Area shall be shown on subdivision plats and/or site plans of the Property. The County shall not be obligated to issue land disturbing permits for areas with preliminary plan or plat approval until the County has approved the exact location of the Conservation Area on such plats or plans. The conservation easement over the Conservation Area shown on each individual subdivision plat or site plan shall be granted at the time of final approval thereof by the County. The Conservation Area shall remain undisturbed and in its natural state, preserving indigenous vegetation except as set forth below. The stormwater BMP shown on the Master Plan may be located in the Conservation Area with road crossings/dam structure generally in the location shown on the Master Plan, unless otherwise approved by the County. With the prior approval of the County Engineer or his designee on a case by case basis, (i) dead, diseased and dying trees or shrubbery and invasive or poisonous plants may be removed from the Conservation Area; (ii) select hand clearing and pruning of trees shall be permitted in the Conservation Area to permit sight lines or vistas, and (iii) utilities, pedestrian paths, trails and bridges may intrude into or cross the Conservation Area. If vegetation is removed from the Conservation Area by development activities

it shall be replaced by indigenous vegetation that is equally or more effective in retarding runoff, preventing erosion and filtering nonpoint source pollution and in accordance with the following ratios and sizes: 2:1 for canopy trees (using 1.5 inch caliper tree), 1.5:1 for sub-canopy trees (using 1 inch caliper tree) and 1:1 for shrubs (using 5 gallon container). The Conservation Area shall be maintained by Owner unless the County approved land conservation entity or the County assumes responsibility therefor under its easement or the Conservation Area is conveyed to an owners association, at which time the association shall assume responsibility for its maintenance. The Conservation Area shall be exclusive of lots or dwelling units.

(b) Owner shall submit to the County a master stormwater management plan for the entire Property, including the regional stormwater management facility generally as shown on the Master Plan, for review and approval by the Environmental Division. The master stormwater management plan may be revised and/or updated during the development of the Property with the prior approval of the Environmental Division. The County shall not be obligated to approve any final development plans for development on the Property until the master stormwater management plan has been approved. The approved master stormwater management plan, as

revised and/or updated, shall be implemented in all development plans for the Property.

(c) There shall be a 10 foot construction setback adjacent to all Resource Protection Areas on the Property. No building shall be permitted in this setback area. This setback shall be reflected on all development plans for those areas of the Property.

11. Route 60 Community Character Buffer. Owner has submitted to the County a conceptual landscape plan for the fifty foot average width community character corridor buffer shown and described on the Master Plan ("CCC Buffer") along the Route 60 frontage of the property (the "Landscaping Plan"). All site plans for development including any portion of the CCC Buffer shall contain landscaping generally consistent with the Landscaping Plan, with such landscaping to be subject to review and approval by the Director of Planning. All signs located within the CCC Buffer shall be monument signs with a consistent monument structure. The building walls of all buildings facing Route 60 shall be constructed of brick, glass, masonry or better split faced block, dryvit, stone, manufactured stone, or siding as determined by the Director of Planning. All rooftop mechanical equipment will be screened from view from Route 60.

12. Conceptual Review. Prior to submission of a

preliminary site plan for any residential development in Areas 2, 4 and 5 of the Property, Owner shall submit a more detailed conceptual site plan for the development to the Director of Planning for review and approval.

13. Pedestrian Connections. Owner shall provide pedestrian connections with a durable surface between the Property and the adjacent property upon which Williamsburg Outlet Mall is located and between each of Areas 1 - 5 shown on the Master Plan, with the plans, location and materials for such connections subject to review and approval by the Director of Planning and with such connections to be shown on the development plans for the Area in question. Pedestrian connections shall be constructed between Areas shown on the Master Plan at the time of site construction of each the Areas being connected. The connections shall be either (i) installed or (ii) bonded in form satisfactory to the County Attorney prior to the issuance of any certificates of occupancy for any buildings in each such Area.

14. Streetscape Guidelines. The Owner shall provide and install streetscape improvements on both sides of the main entrance road into the Property in Area 1 as shown on the Master Plan and along the private roads in Areas 2, 4 and 5 as shown on the Master Plan in accordance with the applicable provisions of the County's Streetscape Guidelines policy. The streetscape improvements shall be shown on development plans for that portion

of the Property and submitted to the Director of Planning for approval during the site plan approval process.

15. Reserved Right of Way. Owner shall reserve the area shown on the Master Plan as "Possible Future Connections to Adjacent Parcel (Light Duty Only)" for a possible future road connection to the adjacent parcel to the north of the Property. Owner shall have no responsibility to construct a connecting road in this area and shall not be obligated to permit the owner of the adjacent parcel to construct a road in such area unless and until Owner and the owner of the adjacent parcel have entered into an agreement providing for the equitable sharing of the cost of maintenance of such road and the main entrance road into the Property, agreed upon a restriction limiting the use by the adjacent parcel of such roads to cars and light duty trucks and obligating the owner of the adjacent parcel to pay for any required road or traffic signal improvements warranted by the additional traffic from the adjacent parcel.

16. Special Fence Requirement Area. Within the area shown on the Master Plan as "Special Fence Requirement Area" all fencing shall be either wood, dark metal picket fence or dark vinyl coated chainlink fence. If chain link fencing is used in this area it shall be supplemented with evergreen shrubs at four foot spacing along 75% of its length, with the exact location of such shrubs to be subject to the review and approval of the

Director of Planning. Barbed wire or similar security fencing material shall not be used along the top of any fencing in this Area.

17. Lighting. All exterior lighting on Area 1 of the Property shall be recessed fixtures with no bulb, lens or globe extending below the casing. The casing shall be opaque and shall completely surround the entire light fixture and light source in such a manner that all light will be directed downward and the light source is not visible from the side. Modifications to this requirement may be approved by the Planning Director if it is determined that the modifications do not have any adverse impact on the Property or the surrounding property.

18. Recreation. There shall be provided in Areas 2, 4 and 5 recreational facilities meeting the standards set forth in the County's Recreation Master Plan or in lieu of a portion thereof Owner shall make cash contributions to the County in amount determined pursuant to the County's Recreation Master Plan (with the amount of such cash contributions being determined by escalating the amounts set forth in the Recreation Master Plan from 1993 dollars to dollars for the year the contributions are made using the formula in Section 3(f)) or some combination thereof. All cash contributions proffered by this Proffer 18 shall be used by the County for recreation capital improvements. The exact locations of the facilities proffered hereby and the

equipment to be provided at such facilities shall be subject to the approval of the Development Review Committee.

19. **Archaeology.** A Phase I Archaeological Study for the entire Property shall be submitted to the Director of Planning for review and approval prior to land disturbance. A treatment plan shall be submitted and approved by the Director of Planning for all sites in the Phase I study that are recommended for a Phase II evaluation and/or identified as eligible for inclusion on the National Register of Historic Places. If a Phase II study is undertaken, such a study shall be approved by the Director of Planning and a treatment plan for said sites shall be submitted to, and approved by, the Director of Planning for sites that are determined to be eligible for inclusion on the National Register of Historic Places and/or those sites that require a Phase III study. If in the Phase III study, a site is determined eligible for nomination to the National Register of Historic Places and said site is to be preserved in place, the treatment plan shall include nomination of the site to the National Register of Historic Places. If a Phase III study is undertaken for said sites, such studies shall be approved by the Director of Planning prior to land disturbance within the study areas. All Phase I, Phase II, and Phase III studies shall meet the Virginia Department of Historic Resources' *Guidelines for Preparing Archaeological Resource Management Reports* and the Secretary of

the Interior's Standards and Guidelines for Archaeological Documentation, as applicable, and shall be conducted under the supervision of a qualified archaeologist who meets the qualifications set forth in the Secretary of the Interior's Professional Qualification Standards. All approved treatment plans shall be incorporated into the plan of development for the Property and the clearing, grading or construction activities thereon.

20. Residential Units For Sale. All residential units constructed on the Property shall be offered for sale by the developer thereof.

WITNESS the following signature.

NOLAND PROPERTIES, INC.

By: 

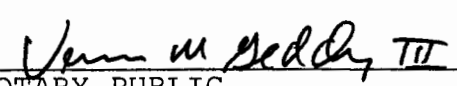
Title:

AUTHORIZED SIGNATORY

STATE OF VIRGINIA AT LARGE

CITY/COUNTY OF WILLIAMSBURG, to-wit:

The foregoing instrument was acknowledged this 27th day of September, 2004, by Robert J. Singley, as Authorized Signatory of NOLAND PROPERTIES, INC. on behalf of the corporation.


NOTARY PUBLIC

My commission expires: 12/31/04.

SCHEDULE A

ALL that certain piece or parcel of land, situate, lying and being in James City County, Virginia, containing 53.44 acres more or less shown on a plat entitled "ALTA/ACSM LAND TITLE SURVEY A PARCEL CONTAINING 53.44 ACRES +/- OWNED BY EASTERN OREO, INC." dated May 10, 1995, made by AES Consulting Engineers of Williamsburg, Virginia, together with the buildings and improvements thereon, which plat is recorded in the Clerk's Office of the Circuit Court for the City of Williamsburg and James City County, Virginia in Plat Book 61, page 79.

LESS AND EXCEPT that certain parcel of land containing approximately 1.4 acres constituting a portion of the property described above shown and set out as "Proposed Chesapeake Bank Site, 1.4 AC." on the Master Plan.

REZONING CASE NOS. Z-3-02 & Z-4-02; MASTER PLAN CASE NO. MP-1-02; SPECIAL USE PERMIT CASE NO. SUP-21-04. U.S. Home - Colonial Virginia Council, Boy Scouts of America, Inc., Proffer Amendment, Master Plan Amendment, Boy Scout Property Rezoning and Rural Cluster SUP
Staff Report for the October 4, 2004, Planning Commission Public Hearing

This staff report is prepared by the James City County Planning Division to provide information to the Planning Commission and Board of Supervisors to assist them in making a recommendation on these applications. It may be useful to members of the general public interested in these applications.

PUBLIC HEARINGS

Planning Commission: Building F Board Room; County Government Center
November 4, 2002 7:00 p.m. (Deferred)
December 2, 2002 7:00 p.m. (Indefinitely Deferred)
October 4, 2004 7:00 p.m.
Board of Supervisors: November 9, 2004 7:00 p.m. (Tentative)

SUMMARY FACTS

Applicant: Mr. Alvin Anderson and Mr. Gregory Davis of Kaufman & Canoles

Land Owners: Colonial Heritage, LLC and Colonial Virginia Council, Boy Scouts of America, Inc.

Proposal: Amend the existing Colonial Heritage Master Plan and Proffers; incorporate the PSA portion of the Boy Scout property into the previously approved Colonial Heritage development; allow a 50-lot rural cluster development on a portion of the Boy Scout property located outside the PSA.

Location: 6175, 6799, and 6993 Richmond Road; 499 Jolly Pond Road

Tax Map/Parcel Nos.: (23-4)(1-21);(24-3)(1-32); (31-1)(1-11); (22-4)(1-7)

Primary Service Area: Colonial Heritage, Inside; BSA, " 229 acres Inside; " 503 acres Outside

Parcel Size: Colonial Heritage " 722 acres; Boy Scout property " 732 acres

Existing Zoning: Colonial Heritage is zoned MU, Mixed Use, with Proffers
BSA property is zoned A-1, General Agricultural

Proposed Zoning: Colonial Heritage - MU, Mixed Use with Amended Proffers
BSA property inside the PSA - MU, Mixed Use with Proffers
BSA property outside the PSA - A-1, General Agricultural with Proffers

Comprehensive Plan: Low Density & Moderate Density Residential, Mixed Use and Rural Lands

Staff Contact: Christopher Johnson Phone: 253-6685

STAFF RECOMMENDATION:

Staff recommends the Planning Commission recommend approval of the proposed Boy Scout property

rezoning, proffer and master plan amendments, and accept the voluntary proffers. Staff also recommends that the Planning Commission recommend approval of the SUP for the proposed 50-lot rural cluster development with the attached conditions which staff believes will sufficiently mitigate the impacts created by the development.

PROJECT HISTORY

On November 27, 2001, the Board of Supervisors approved rezoning and master plan applications (Case Nos. Z-4-00 and MP-1-01) for a 2,000-unit, gated and age restricted community known as Colonial Heritage at Williamsburg. The applications rezoned approximately 777 acres from A-1, General Agricultural, and M-1, Limited Business/Industrial, to MU, Mixed Use, with proffers. The master plan for the development included 425,000 square feet of commercial development fronting on Richmond Road. The owner, U.S. Home Corporation, has marketed the community to retirees and those approaching retirement, and restricts the age of residents to 55 and above through proffers and covenants. The community will focus on an 18 hole golf course with associated amenities and will provide several residential products, including single-family, townhomes, and multi-family condominiums.

One provision of the proffers accepted by the Board dealt with the possible donation of one of two public use sites shown on the approved Master Plan by U.S. Home for certain public uses needed to offset the public costs associated with the U. S. Home project. As an alternative to the donation of a public use site, the proffers allowed the Board the option to elect to receive a \$750,000 cash contribution for use toward the acquisition of a public use site or other capital projects, the need for which being generated by the Colonial Heritage at Williamsburg project. The proffers required the Board to make an election to receive the real property or the cash contribution within thirty calendar days of the receipt of a draft groundwater withdrawal permit from the Department of Environmental Quality. A draft groundwater withdrawal permit was issued to the James City Service Authority on October 30, 2002. On November 26, 2002, the Board adopted a resolution selecting a public use site over the cash contribution. The proffers grant U.S. Home the option of selecting which of the two possible public use sites they wish to convey to the County within three years of the date of approval of the rezoning.

In 2002, the applicant filed a rezoning application to incorporate the " 732 acre Boy Scout property into the existing Colonial Heritage at Williamsburg development. This rezoning application, along with associated proffer and master plan amendment applications, were indefinitely deferred at the request of the applicant at the December 2, 2002, Planning Commission meeting. Earlier this year, the applicant submitted an amended rezoning application for the Boy Scout property along with a special use permit application for a 50-lot rural cluster development on a portion of the Boy Scout property located outside the Primary Service Area (PSA).

Since the Board approved the Colonial Heritage at Williamsburg proposal in 2001, staff has reviewed and approved more than thirty development plans for a variety of uses including the 40,000 square foot Colonial Heritage Clubhouse and Aquatic Center, the temporary sales office, model court and infrastructure improvements. Subdivision plats have also been reviewed and approved for 193 lots within the development. Development plans for an additional 322 lots as well as the 18-hole golf course are currently under review.

PROJECT DESCRIPTION

Mr. Alvin Anderson and Mr. Gregory Davis of Kaufman and Canoles, on behalf of U.S. Home Corporation and the Colonial Virginia Council, Boy Scouts of America, Inc, have applied for a

master plan amendment and rezoning of approximately 229 acres from A-1, General Agricultural, to MU, Mixed Use, with proffers to incorporate the PSA portion of the Boy Scout property into the previously approved Colonial Heritage development with no increase to the approved 2,000 residential dwelling units. The applicants have also applied to rezone approximately 503 acres from A-1, General Agricultural, to A-1, General Agricultural, with proffers. The 503 acre portion of the Boy Scout property located outside the PSA would be subject to the amended and restated proffers but would not be subject to the amended master plan. The 229 acre portion of the Boy Scout property located within the PSA is designated Low Density Residential on the Comprehensive Plan Land Use Map. The 503 acre portion of the Boy Scout property located outside the PSA is designated Rural Lands on the Comprehensive Plan Land Use Map. The Boy Scout property is located at 499 Jolly Pond Road and can be further identified as Parcel No. (1-7) and James City County Real Estate Tax Map No. (22-4).

The applicants have also applied on behalf of Colonial Heritage, LLC to rezone approximately 722 acres from MU, Mixed Use, with proffers, to MU, Mixed Use, with amended proffers. The purpose of the rezoning is to amend and restate the proffers affecting the existing Colonial Heritage at Williamsburg development. The Colonial Heritage at Williamsburg development consists of three parcels that are designated Low Density Residential, Moderate Density Residential, and Mixed Use on the Comprehensive Plan Land Use Map. The properties are located at 6175, 6799, and 6993 Richmond Road and can be further identified as Parcel No. (1-21) and James City County Real Estate Tax Map No. (23-4); Parcel No. (1-32) and James City County Real Estate Tax Map No. (24-3); and Parcel No. (1-11) and James City County Real Estate Tax Map No. (31-1).

In addition, the applicants have applied on behalf of U.S. Home Corporation and the Colonial Virginia Council, Boy Scouts of America, Inc, for a special use permit to allow a 50-lot rural cluster development in accordance with the provisions of Section 24-214(c) of the Zoning Ordinance. The proposed rural cluster would be located on the portion of the Boy Scout Property located outside the PSA.

The amended Colonial Heritage at Williamsburg master plan proposes up to 1,400 single-family residential lots, 800 townhomes, 240 condominiums (subject to the proffered 2,000 unit cap), and 425,000 square feet of commercial, retail, and office space, 18 holes of golf course, amenities, and open space. If approved by the Board of Supervisors, the proposed master plan amendment and rezoning applications would effectively decrease the overall density of the Colonial Heritage development by spreading the project over an additional 229 acres. The proposed overall density under this proposal would be reduced from 2.6 dwelling units per acre to 2.0 dwelling units per acre.

PUBLIC IMPACTS

1. Archaeology

Proffers: The County Archaeological Policy has been proffered by the applicant.

Staff Comments: The applicant has performed a Phase 1-A archaeological assessment of the 229-acre portion of the Boy Scout property located inside the PSA. The assessment recommends that additional study be performed within the areas of the property that offer moderate potential (approx. 33 acres) and high potential (approx. 113 acres) for archaeological sites. Phase II and Phase III surveys will be performed as required by the Virginia Department of Historic Resources. The proffer is in compliance with the 1997 County Archaeological Policy. Staff has included an SUP condition that will require the

applicant to perform an archaeological assessment on the portion of the Boy Scout property located outside the PSA proposed for the rural cluster development.

2. Environmental Considerations

Watershed: Yarmouth Creek

Proffers: The applicant has proffered to commission a natural resource inventory for the portion of the Boy Scout property located inside the PSA. These investigations will be conducted by personnel qualified to conduct such studies and be submitted to and approved by the Planning Director prior to preliminary site plan or subdivision plan approval for any portion of the development occupied by any Natural Heritage Resource. The applicant has also proffered steep slope protections for lots subdivided or developed on large, contiguous areas of steep slopes and proffered to convey a conservation area of not less than 282 acres to the County on the portion of the Boy Scout property located outside the PSA.

Environmental Comments: The Boy Scout property located inside the PSA contains approximately 229 acres and includes the land south of Yarmouth Creek and generally north of Jolly Pond Road. Surface water features on the Boy Scout property are located within Yarmouth Creek and its associated tributaries. Wetlands are present in the drainage network that generally bisects the site from north to south perpendicular to Yarmouth Creek. Resource Protection Areas (RPA), a component of the Chesapeake Bay Preservation Ordinance within James City County, have been mapped within Yarmouth Creek and are shown on the amended master plan.

Yarmouth Creek contains over 1,500 acres of wetlands which provide habitat for a diversity of fish, waterfowl, and wildlife, which collectively contribute to the area's exceptional potential for fishing, bird watching and nature enjoyment. These wetlands are also home to at least one blue heron rookery, multiple bald eagle nesting sites, and several globally rare or state rare plant species. Development at the headwaters of the watershed necessitates the immediate need for effective conservation planning to protect this environmental resource for the future.

The Deer Lake Natural Area is centered on a small ravine that feeds Deer Lake on the Boy Scout property located outside the PSA. The ravine is covered by relatively young forest. The forests surrounding the natural area are young, and have been subjected to substantial clear-cutting in recent years.

The Yarmouth Creek Watershed Management Plan adopted by the Board of Supervisors states that the best way to mitigate environmental impacts created by development within the watershed is through the provision of significant portions of contiguous forests and open space. The 282-acre conservation easement proffered by the applicant adjacent to Yarmouth Creek will provide a substantial benefit to County efforts to protect biodiversity, habitat and water quality within the watershed.

Staff has included conditions for the rural cluster SUP that require the submittal of a master stormwater plan for the development of lots adjacent to Deer Lake, protection of steep slopes, and the submittal of a perennial stream evaluation to coincide with the submission of any plan of development for the rural cluster.

3. Fiscal Impacts

Proffers: The applicant has not amended the previously proffered cash contributions to the County that were accepted with the approval of the original rezoning application for Colonial Heritage in November 2001.

Staff Comments: The James City County Financial and Management Services has reviewed the Revised Fiscal Impact Statement submitted with these applications and agrees with the conclusion that the proposal produces a positive fiscal impact. Since U.S. Home has been approved to build a total of 2,000 homes, the 50 homes to be built on the Boy Scout property outside the PSA will be removed from the Colonial Heritage unit count. The revised fiscal impact analysis assumes that the addition of 229 acres into the Colonial Heritage at Williamsburg development will allow the developer to introduce additional home designs that utilize the larger lot sizes that would be possible within the expanded community. Larger lot sizes and larger homes are anticipated to increase the sales price for homes within the community by 12% to \$440,500. The developer anticipates that the average selling price for detached homes and lots outside the PSA would be \$850,000. While the proposed 50-lot rural cluster located outside the PSA would not be subject to the age restrictions of the Colonial Heritage community and are likely to produce impacts such as public education costs, the report anticipates that the fiscal impact to the County would continue to be positive.

4. **Public Utilities**

Proffers: Water conservation standards will be developed by the owner and approved by the JCSA similar to those which have been developed for the existing Colonial Heritage development. The standards will address such water conservation measures as limitations on the installation and use of approved landscaping design and materials to promote water conservation and minimize the use of water resources. The JCSA shall approve the standards prior to final approval for any plan of development on the BSA property. A financial contribution of \$750 for each of the 2,000 residential lots within the development is proffered to the JCSA to offset the costs of developing water supply alternatives in the County.

JCSA Comments: An independent central well and storage facility will be required for the proposed rural cluster development since it would be located outside the County's PSA. Connection into existing JCSA facilities will not be permitted from lots located outside the PSA. The independent well shall be designed to provide the necessary fire flow, peak water demands and irrigation requirements for the development. A hydraulic analysis shall be submitted in accordance with JCSA standards for review and approval.

5. **Schools**

Staff Comments: The proposed rural cluster development on the Boy Scout property located outside the PSA would not be subject to the age restrictions of the Colonial Heritage development. The fiscal impact analysis provided by the applicant estimates that the 50 lots would produce approximately 25 school age children. The report does not distribute the children by age among the schools which serve this area. While the additional educational costs attributable to the 50 lot cluster development may result in the proposal failing the adequate public facilities schools test, the number of school children that would be generated by a by-right development of the site would be triple the number that would result from the proposed cluster development.

6. Traffic Impacts

2003 Traffic Counts: 9,279 vehicle trips per day on Centerville Road from Route 60 to Route 678 (Ruth Lane); 8,281 vehicle trips per day on Centerville Road from Jolly Pond Road to Route 1507 (Forest Glen subdivision)

2026 Volume Projections: Centerville Rd., from Longhill Rd. to Rte. 60, 15,000 - "Watch"

Road Capacity: A two lane collector road with turn lanes has a capacity of 14,000 vehicle trips per day

Proffers: The applicant has proffered a cash contribution to the County of \$40,250 for a pro-rata share of the costs for intersection improvements at the Centerville Road/Jolly Pond Road intersection. The applicant has also proffered to install all required traffic signals when warranted by VDOT. The applicant has added an additional guarantee to install all traffic signals by proffering a cash deposit of \$150,000 per traffic signal once the 1,500th residential unit has been approved even if warrants established by VDOT have not yet been met. The cash deposit would be held for a period of five years by the County.

VDOT Comments: VDOT concurs with the traffic engineer's conclusions as presented in the revised traffic impact analysis. VDOT recommends that a northbound left turn lane on Centerville Road at Jolly Pond Road be constructed with this development.

Staff Comments: The residential portion of the existing Colonial Heritage development contains two main access points: an entrance/exit off of Richmond Road and an entrance/exit on the southern boundary on Centerville Road. A separate access point will be constructed for the commercial/retail/office area along Richmond Road. Given that the current applications do not propose to increase the total number of residential dwelling units in the development above the 2,000 which are currently approved, the proposed expansion onto the Boy Scout property has relatively few additional traffic related impacts/effects. A revised traffic study prepared by DRW Consultants, Inc. concludes that there will be no effect on general trip distribution for residential development within Colonial Heritage. The primary change which would result from an expansion onto the Boy Scout property is a shift in the split of residential traffic to the east and north via Richmond Road versus Centerville Road. In other words, the midpoint on the main collector road for equal travel time via Richmond Road versus Centerville Road will shift to the west as more traffic would exit onto Centerville Road than was originally suggested in previous traffic models. Staff continues to believe that the proffered road improvements will result in Richmond Road and Centerville Road maintaining a projected Level of Service of "C" or better for all lanes at buildout.

7. Parks & Recreation

Proffers: The applicant has proffered to construct and convey to the County a public greenway along Jolly Pond Road for the frontage located inside the PSA. A greenway will also be dedicated, but not constructed, along the frontage outside the PSA along Jolly Pond Road and Cranston's Mill Pond Road. All greenways that were previously proffered within the Colonial Heritage development remain unchanged in the amended and restated proffers.

Staff Comments: When the original Colonial Heritage rezoning and master plan applications were approved, the Board of Supervisors had not yet adopted the Greenway Master Plan. The Board adopted the Greenway Master Plan on June 25, 2002. The amended Colonial Heritage master plan application is in general compliance with the

recommendations of the adopted Greenway Master Plan with respect to the provision of trails or multi-use paths along all property boundaries. In addition, there are numerous opportunities for interconnections between required trails and paths to existing or planned facilities on adjacent properties.

RURAL CLUSTER SUP

Section 24-214(c) of the Zoning Ordinance states that a subdivision may be approved with a minimum lot size of less than three acres in the A-1, General Agricultural, zoning district when all of the following conditions are met:

1. The overall gross density of the subdivision shall not exceed one dwelling unit per two acres.
2. There shall be at least three residential lots in the subdivision.
3. No lot shall be less than one acre in size.
4. The subdivision shall only be for single-family detached dwellings.
5. All lots shall front on an approved public street created by the subdivision and no lot shall have direct access to a street not a part of the subdivision.
6. Provisions shall be made in subdivision plats and lot conveyances to ensure that lot purchasers have adequate notice regarding limitations on resubdivision of parcels and no resubdivision or sale by any means shall be permitted which would in any way create a violation with this chapter.
7. The general design standards of this section shall be complied with.
8. The subdivision design shall provide good building sites and at the same time make best use of topography and minimize grading and destruction of natural vegetation.
9. The subdivision design shall provide for protection of conservation areas as specified in the Comprehensive Plan or other sections of this chapter.
10. No more than 30 percent of any lot shall be located in a floodplain area as defined by this chapter; provided, however, that up to 50 percent of the area of any lot may be covered by the waters of the lake, pond or canal planned or approved as a part of and wholly within the subdivision.
11. Maintenance of any common open space shall be assigned to a homeowners association or other approved entity.
12. Lots shall be arranged and building sites shall be designed so as to promote a harmonious relationship with the built environment and the existing public streets and roads; and to this end, the design shall employ such techniques as may be appropriate to a particular case, including location of lots of various sizes, location of building sites with respect to project boundary lines, location of open space and buffer areas and maintenance of vegetation.
13. All structures shall be located a minimum of 150 feet from all roads existing prior to the platting of the subdivision.

Staff Comments

The proposed 50-lot rural cluster, with the recommended conditions, is in compliance with the A-1, General Agricultural, zoning ordinance conditions as well as the Rural Land Use Standards of the Comprehensive Plan.

COMPREHENSIVE PLAN

The Colonial Heritage at Williamsburg development is located west of Richmond Road and north of Centerville Road. The Boy Scout property is located east of Cranston's Mill Pond Road and north

of Jolly Pond Road. Centerville Road and Richmond Road are listed as Community Character Corridors (CCC) in the Comprehensive Plan.

1. The predominant visual character of the suburban CCC should be the built environment and natural landscaping, with parking and other auto-related areas clearly a secondary component of the streetscape.

The 229-acre portion of the Boy Scout property located inside the PSA is designated Low Density Residential on the Comprehensive Plan Land Use Map.

2. Low density areas are residential developments on land suitable for such developments with overall densities up to one dwelling unit per acre depending on the character and density of surrounding development, physical attributes of the property, buffers, the number of dwellings in the proposed development, and the degree to which the development is consistent with the Comprehensive Plan. In order to encourage higher quality design, a residential development with greater density than one unit per acre is not recommended unless it offers particular benefits to the community. Examples of such benefits include mixed-cost housing, affordable housing, unusual environmental protection, or development that adheres to the principles of open space development design. Such design may include maintaining open fields, retaining natural vegetative buffers around water bodies or wetlands, preserving historic sites, creating adequate recreational areas, designing effective pedestrian circulation to include trail systems, and ensuring that the common land adjoins open space on adjacent parcels.

Low Density Residential areas are located inside the PSA and where natural characteristics such as terrain and soils are suitable for residential development. Low density areas are located where public services and utilities exist or are expected to be expanded to serve the site over the next 20 years. Timing and density of the development of particular sites within low density areas will depend on an acceptable level of service of roads and other public services. The timing and density of development for a Low Density Residential site may also be conditioned upon the provision of least cost housing or the provision of open space.

The 503 acre portion of the Boy Scout property located outside the PSA is designated Rural Lands on the Comprehensive Plan Land Use Map.

3. Rural Lands are areas containing farms, forests and scattered houses, exclusively outside the PSA, where a lower level of public service delivery exists or where utilities and urban services do not exist or are not planned for the future. Rural residential uses associated with limited agricultural and forestal activities are appropriate when overall density is no more than one unit per three acres and soils are suitable for individual waste disposal systems. Residential development is only appropriate when they meet the Rural Lands Development Standards of the Comprehensive Plan and minimize adverse impacts on rural lands. Concentrations of residential development such as large scale subdivisions will interrupt rural qualities sought to be preserved.

Rural Land Use Standards

4. Development Standards are intended to provide a basic framework for evaluating rezoning and special use permit proposals and to provide a guide for accommodating land uses in a manner harmonious with the natural and built environment. Rural Land Use Standards are meant to further provide a means to preserve the natural, wooded, and rural character of the County. The proposed rural cluster will specifically locate residential lots outside of sensitive areas and utilize the existing topography and natural terrain, vegetation, trees, and tree lines to the maximum extent possible. The development will be well screened from public right-of-way to minimize the visual presence of the development and preserve the rural character of the surrounding area. The Rural Standards seek to discourage conventional large lot residential subdivisions in the rural areas through a preferred pattern of guidelines which include minimizing the impact of residential development by preserving a substantial amount of the development in an undivided block of land for permanent open space. Any open space provided to meet these standards should be placed in a conservation easement to ensure that the land would remain undeveloped. The proposed cluster will dedicate a 282 acre conservation easement to the County to address this guideline. In addition to the conservation easement, a large portion of the remaining acreage within the cluster development will remain as open space which results in the preservation of over two thirds of the site as permanent open space. The goals of preserving open space are intended to preserve wetlands, steep slopes, stream corridors, wildlife habitats, and environmentally sensitive lands. The layout of the cluster development will preserve environmentally sensitive areas that contain rare and threatened species and steep slopes will be further protected by the recommended SUP conditions.

Staff Comments: The proposed rural cluster development limits the number of lots to 50, which is less than a third of the number of residential lots which could be developed by-right under the current A-1 zoning of the property. Development of the property under a by-right scenario would be unlikely to see the preservation of such a significant portion of the property in meaningful, permanent open space. Due to these factors, the proposed design of the subdivision and the recommended conditions, staff finds that the proposed rural cluster development is consistent with the rural lands designation and the Rural Land Use Standards in the Comprehensive Plan.

RECOMMENDATION:

Staff finds that the proposed Boy Scout property rezoning, proffer and master plan amendments are consistent with surrounding zoning and development, and consistent with the Comprehensive Plan.

Staff recommends the Planning Commission recommend approval of the proposed Boy Scout property rezoning, proffer and master plan amendments, and accept the voluntary proffers.

Staff finds that the dedication of a 282-acre conservation easement to the County will protect and preserve a significant portion of contiguous forest and environmentally sensitive lands within the non-PSA portion of the Boy Scout property is consistent with the primary objective of the Yarmouth Creek Watershed Management Plan. Staff also finds that the development limitation of 50 lots within the proposed rural cluster development substantially addresses goals and intent of the Rural Land Use Standards in the Comprehensive Plan. Staff recommends that the Planning Commission recommend approval of the proposed 50-lot rural cluster development on the non-PSA portion of the Boy Scout property with the following conditions which staff believes will sufficiently mitigate the

impacts created by the development.

2. Development Limitation. No more than fifty (50) residential lots shall be platted on the portion of the Boy Scout of America (BSA) property located outside the Primary Service Area (PSA). Any residential lots developed on the BSA property located outside the PSA shall be subject to the 2,000 residential unit density cap.
3. Conservation Easement. A conservation easement shall be submitted for review and approved by the County Engineer prior to issuance of a land-disturbing permit for any related plan of development of the portion of the BSA property located outside the PSA. The conservation easement shall be dedicated to James City County or an agency acceptable to the County prior to final site plan or subdivision approval for any plan of development or subdivision of lots for the " 282 acres shown on the plan "Special Use Permit Plan on a Portion of Colonial Virginia Council, Boy Scouts of America, a Virginia Corporation" prepared by AES Consulting Engineers, September 24, 2004. The area within the conservation easement shall be available and the Owners shall retain the right to utilize the open space and conservation area for stormwater management structures and facilities, required open space, required impervious/pervious cover calculations, and watershed protection measures for the Colonial Heritage development and the 50-lot rural cluster. The conservation easement shall clearly state that no clearing, land disturbing, or development shall occur on the " 282 acres unless otherwise approved by the Planning Director.
4. Buffers. A minimum 150-foot buffer shall be maintained along Jolly Pond Road and Cranston's Mill Pond Road. That buffer shall remain undisturbed with the exception of breaks for any entrance road, pedestrian connections, utilities, walking, hiking and biking trails, any required clearing necessary to create adequate sight distance and other uses specifically approved by the Planning Director. The Planning Director shall approve the design of such features located within the required buffer.
5. Vehicular Access. Access to the 50-lot cluster development shall be from a single entrance road onto Jolly Pond Road unless a second entrance road is approved by the Planning Commission following the review of the Development Review Committee.
6. Central Well. An independent central well shall be required for the proposed cluster development. Connection into existing JCSA facilities shall not be permitted from outside the PSA. The independent well shall be designed to provide the necessary fire flow, peak water demands and irrigation requirements for the development. A hydraulic analysis shall be submitted in accordance with JCSA standards for review and approval prior to final approval being granted for any plan of development or subdivision of lots of the property located outside the PSA.
7. Water Conservation. The applicant shall be responsible for developing water conservation standards to be submitted to and approved by the JCSA. The applicant shall be responsible for enforcing these standards. The standards shall address such water conservation measures as limitations on the installation and use of approved landscaping design and materials to promote water conservation and minimize the use of water resources. The JCSA shall approve the standards prior to final approval for any plan of development on the portion of the BSA property located outside the PSA.

8. Archaeology. Prior to issuance of a land disturbing permit for any portion of the BSA property located outside the PSA, the applicant shall provide written evidence to the Planning Director which demonstrates that the recommendations of a professional archaeologist have been implemented in a manner consistent with the preservation objectives of the Board of Supervisors Archaeological Policy, as determined by the Planning Director or his designee.
9. Master Stormwater Plan. A master stormwater plan shall be submitted with the development plan for the alternative which is submitted for review and approval by the Environmental Director. The master stormwater plan should specifically address how Deer Lake will be utilized as a primary BMP (by use of drawings/narratives), whether additional onsite structural or non-structural practices are necessary and whether there is a better site design/low impact development component proposed for stormwater compliance.
10. Steep Slopes. Any plan of development for the portion of the BSA property located outside the PSA shall maintain a separation of at least 35 feet between the top of 25% and steeper slopes and any structure and a 20 foot separation from the limits of grading to the top of 25% and steeper slopes. This is intended to apply to the larger, contiguous areas of steep slopes, not isolated areas, as determined by the Environmental Director. The Environmental Director shall have the ability to grant variances from this criteria to provide flexibility in application of this condition.
11. RPA/Perennial Stream. The applicant shall conduct a perennial stream evaluation which shall receive approval from the Environmental Director prior to preliminary approval being granted for any plan of development of the portion of the BSA property located outside the PSA. If perennial streams are present on the site, a 100-foot buffer shall be required around them and any wetlands contiguous to and connected by surface flow to the stream. Any plan of development for the portion of the BSA property located outside the PSA shall also maintain a structural separation of 35 feet from any Resource Protection Area (RPA) on the property.
12. Severability. This special use permit is not severable. Invalidation of any word, phrase, clause, sentence or paragraph shall invalidate the remainder.

Christopher Johnson

CONCUR:

O. Marvin Sowers, Jr.

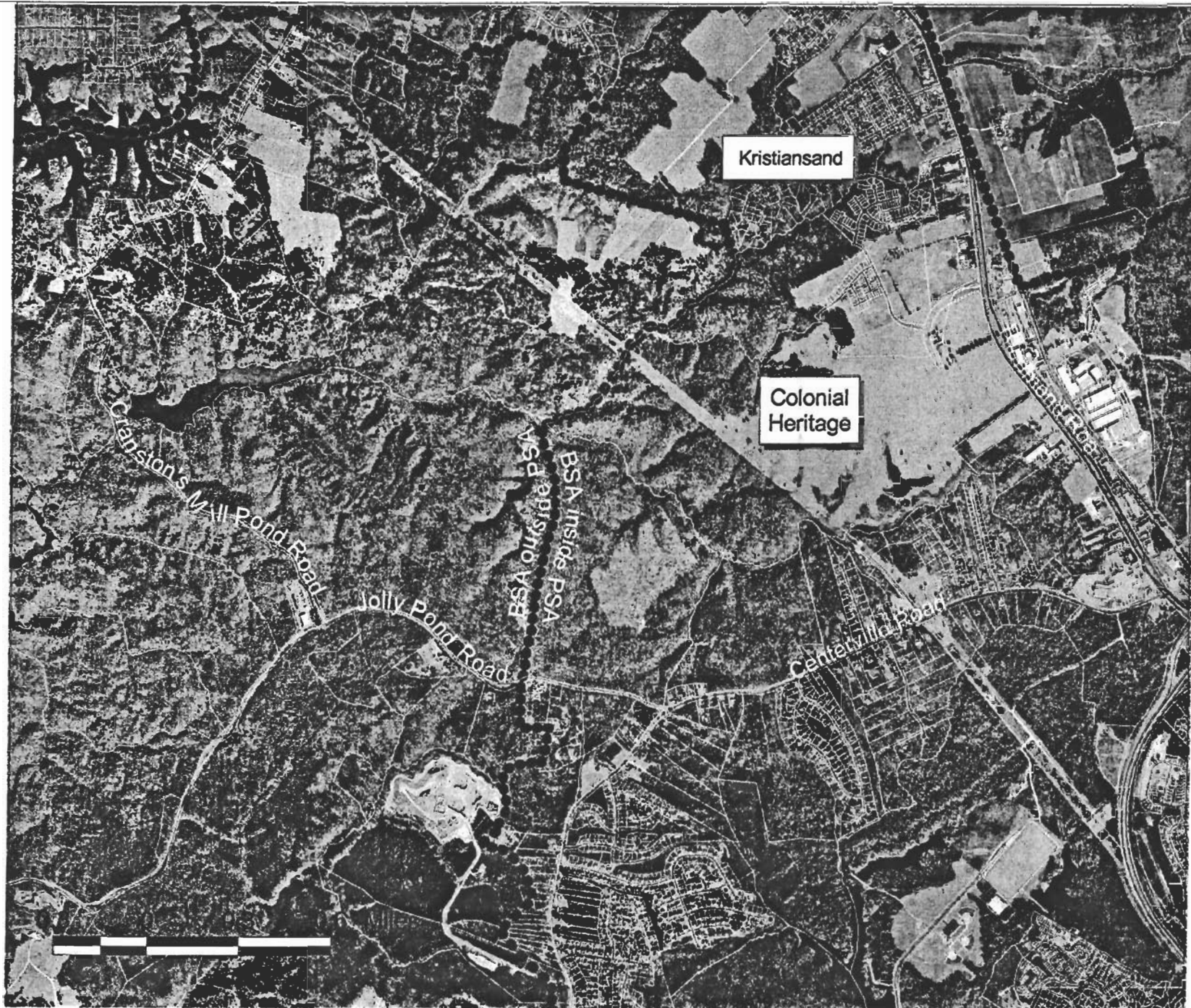
Attachments:

16. Location Map
17. Amended and Restated Proffers, dated September 24, 2004
18. Revised Fiscal Impact Statement, dated July 23, 2004
19. Special Use Permit Plan, dated September 24, 2004
20. Master Plan Amendment, dated July 1, 2004 (separate cover)
21. Community Impact Statement, dated June 21, 2002 (reading file)

Case Nos. Z-3-02, Z-4-02, MP-1-02, SUP-21-04.

J.S. Home - Colonial Virginia Council, Boy Scouts of America, Inc. Proffer Amendment,
Master Plan Amendment, BSA Rezoning and Rural Cluster

Photo Courtesy 2002 State of Virginia



**AMENDED AND RESTATED
PROFFERS
COLONIAL HERITAGE AT WILLIAMSBURG**

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**AMENDED AND RESTATED
PROFFERS
COLONIAL HERITAGE AT WILLIAMSBURG**

THESE AMENDED AND RESTATED PROFFERS are made this ____ day of _____, 2004, by and among:

COLONIAL HERITAGE LLC, a Virginia limited liability company ("Colonial Heritage") (to be indexed as grantor) and

COLONIAL VIRGINIA COUNCIL OF BOY SCOUTS OF AMERICA, INC., a Virginia corporation ("Boy Scout Council") (to be indexed as grantor), and

THE COUNTY OF JAMES CITY, VIRGINIA ("County") (to be indexed as grantee),
provides as follows:

RECITALS:

R-1. Colonial Heritage is the owner of certain real property located in the County of James City, Virginia, more particularly described on **Exhibit A** attached hereto and made a part hereof. The property described on Exhibit A is referred to herein as the "Colonial Heritage Property."

R-2. Colonial Heritage is the developer of an age-restricted active adult community known as Colonial Heritage, located on the Colonial Heritage Property, pursuant to certain

Prepared by: Kaufman & Canoles, P.C.
P.O. Box 6000
Williamsburg, VA 23188

Proffers dated November 7, 2001 which are recorded in the Office of the Clerk of the Circuit Court for the City of Williamsburg and County of James City as Instrument No. 010022082 (the "Proffers"), and a master plan of development which is incorporated by reference and made a part of the Proffers.

R-3. Colonial Heritage is a wholly-owned subsidiary of and is managed by U.S. Home Corporation, a Delaware corporation ("U.S. Home").

R-4 The Boy Scout Council is the owner of certain real property located in the County of James City, Virginia containing 740.2 ± acres, more particularly described on Exhibit B, attached hereto and made a part hereof (the "Boy Scout Property").

R-5. A portion of the Boy Scout Property described on Exhibit C is located outside the Primary Service Area defined on the James City County Comprehensive Plan and Zoning Map as in effect on the date hereof ("PSA") (the "Non-PSA Boy Scout Property").

R-6. U.S. Home is the contract purchaser of the Boy Scout Property.

R-7. All real property which is described on Exhibits A and B inclusive and which is located inside the PSA shall be referred to collectively herein as the "Property".

R-8. Colonial Heritage, the Boy Scout Council and their collective successors and assigns who own record title to the Property and subsequent purchasers of Residential Units (as hereinafter defined) and non-residential areas are referred to collectively herein as the "Owners". The term "Residential Unit(s)" as used herein shall be defined as any residential dwelling, house, condominium or other unit.

R-9. The Owners have filed applications under County file numbers Z-3-02/Z-4-02/MP-1-02 (the "Applications for Amendment") to (i) rezone the Boy Scout Property, and (ii) to amend the previously approved master plan and the Proffers in connection with incorporating portions of the Boy Scout Property into Colonial Heritage but without any increase whatsoever in the number of permitted Residential Units, and (iii) to rezone the Non-PSA Boy Scout Property from A-1 to A-1 with a special use permit (referenced in R-10 below) allowing a residential cluster development.

R-10. Colonial Heritage has filed an application for a special use permit ("SUP") under County file number SUP-21-04 to establish not more than fifty (50) residential lots on the Non-PSA Boy Scout Property, which application and SUP will impose certain conditions upon the Non-PSA Boy Scout Property.

R-11. The provisions of the Zoning Ordinance, Section 24-1, *et seq.* possibly may be deemed inadequate for protecting and enhancing orderly development of the Property in accordance with the County Comprehensive Plan. The Owners, in furtherance of the Application, desire to proffer certain conditions which, among other things, provide for some of the types of benefits specified in the low density residential provisions of the comprehensive plan and in the Cluster Development Standards and density bonus provisions of the Zoning Ordinance applicable to R-1, R-2 and R-5 districts that should be provided for densities greater than one dwelling unit per acre. These conditions are specifically limited solely to those set forth herein in addition to the regulations provided for by the Zoning Ordinance for the protection and enhancement of the development of the Property, in accordance with the provisions of

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

R-12. The County constitutes a high-growth locality as defined by Section 15.2-2298 of the Virginia Code.

R-13. Phase I, II and III Archaeological Studies have been performed on the Colonial Heritage Property as described in that document entitled: An Archeological Assessment of the Massie and Ware Tracts, James City County, Virginia dated October, 2000 prepared by Cultural Resources, Inc. The referenced studies with treatment plans required pursuant to paragraph 2 below have been approved by the County Director of Planning.

R-14. Copies of each of the studies referenced in Recital paragraph R-13 and paragraph 2 below are on file in the office of the County Director of Planning.

R-15. A Community Impact Statement made by AES Consulting Engineers, with update dated June 24, 2002 has been submitted to the County Director of Planning for review and approval by the County in connection with both the Application and the Applications for Amendment, and those statements are on file in the office of the County Director of Planning.

NOW, THEREFORE, for and in consideration of the approval by the County of the rezoning of the Property, and pursuant to Section 15.2-2296 of the Virginia Code and Section 24-16 of the Zoning Ordinance, the Owners agree that they shall meet and comply with the following conditions and proffers as indicated in developing the Property.

PROFFERS:

SECTION I. Proffers Applicable to All Property.

1. **Binding Master Plan.** The Property shall be developed generally in accordance with an Amended Master Plan of Development pursuant to Section 24-515(b) of the Zoning Ordinance entitled "Amended Master Development Plan of Colonial Heritage at Williamsburg" made by AES Consulting Engineers and Land Design, Inc. and Williamsburg Environmental Group, Inc., dated June 21, 2002, and revised July 2, 2004, which is incorporated by reference (the "Master Plan"). The Master Plan provides only for the general location of proposed streets, the general location of proposed areas of open space, buffer areas, recreation facilities, densities, and types of land use, and the general location of proposed areas for golf fairways, greens, drainage facilities, pedestrian connectivity, greenways and other amenities. Development plans may deviate from the Master Plan if the Planning Commission concludes after reviewing written comments from the Planning Director that the plan does not significantly alter the character of land uses or other features or conflict with any conditions placed on the approval of the rezoning. The County hereby acknowledges that the Master Plan described above has been submitted to and is on file in the office of the County Director of Planning. Prior to or concurrent with submission of development plans for each land bay shown on the Master Plan within the Property ("Land Bays"), the Owners shall receive approval from the County's Director of Planning of more detailed master plan(s) for each Land Bay which more detailed master plans shall describe the dwelling unit and commercial land use types and layout for each Land Bay.

2. Archaeological Study. If not previously submitted and approved, a Phase I Archaeological Study for each Land Bay shall be submitted to the Director of Planning for his review and approval prior to issuance of a land disturbing permit for any soil disturbing activity in such Land Bay. A treatment plan shall be submitted to, and approved by, the Director of Planning for all sites in the Phase I study that are recommended for a Phase II evaluation, and/or identified as being eligible for inclusion on the National Register of Historic Places. If a Phase II study is undertaken, such a study shall be approved by the Director of Planning and a treatment plan for said sites shall be submitted to, and approved by, the Director of Planning for sites that are determined to be eligible for inclusion on the National Register of Historic Places and/or those sites that require a Phase III study. If in the Phase II study, a site is determined eligible for nomination to the National Register of Historic Places and said site is to be preserved in place, the treatment plan shall include nomination of the site to the National Register of Historic Places. If a Phase III study is undertaken for said sites, such studies shall be approved by the Director of Planning prior to land disturbance within the study area. All Phase I, Phase II and Phase III studies shall meet the Virginia Department of Historic Resources' Guidelines for Preparing Archaeological Resource Management Reports and the Secretary of the Interior's Standard and Guidelines for Archaeological Documentation, as applicable, and shall be conducted under the supervision of a qualified archaeologist who meets the qualifications set forth in the Secretary of the Interior's Professional Qualification Standards. All approved treatment plans shall be incorporated into the plan of development for each Land Bay and shall be adhered to during the clearing, grading and construction activities thereon.

3. Traffic.

A. U.S. Home has submitted to the Office of the County Director of Planning and the Virginia Department of Transportation ("VDOT") a traffic analysis dated October 23, 2000 entitled: "Traffic Analysis for U.S. Homes Site on Richmond Road" prepared by DRW Consultants, Inc. as updated by supplements dated June 18, 2002 and July 28, 2004 (the "Traffic Study"). The Traffic Study is on file with the County Department of Planning.

B. The following entrance and road improvements ("West Crossover Improvements") shall be installed to VDOT standards and specifications:

(1) A traffic signal at the west crossover as shown and defined in the Traffic Study (hereinafter "West Crossover").

(2) Modification on and/or improvement of the single left turn lane on westbound Richmond Road at the West Crossover, if, as and when required by VDOT.

(3) Construction of a right-turn lane on eastbound Richmond Road at the West Crossover.

(4) Construction of two (2) exit lanes and two (2) entrance lanes at the site entrance at the West Crossover.

(5) Construction of a left-turn lane on eastbound Richmond Road at the West Crossover as necessary to accommodate the traffic signal described above.

(6) Modifications to crossover pavement to accommodate improvements listed herein.

C. In addition, the following entrance and road improvements ("East Crossover Improvements") shall be installed to VDOT standards and specifications:

(1) A traffic signal at the east crossover as shown on the Traffic Study (hereinafter "East Crossover").

(2) Construction of double left turn lanes on westbound Richmond Road at the East Crossover.

(3) Construction of a right turn lane on eastbound Richmond Road at the East Crossover.

(4) Construction of three (3) exit lanes and two (2) entrance lanes at the site entrance at the East Crossover.

(5) Construction of an eastbound left turn lane at the East Crossover as necessary to accommodate a traffic signal.

(6) Construction of East Crossover pavement to accommodate improvements listed herein.

(7) If commercial component or Nonresidential Use (as defined below) development precedes residential development and commercial component or Nonresidential access to the West Crossover is requested, then the West Crossover

improvements cited above shall be required as a condition of the Nonresidential development approval upon determination of necessity by the County Director of Planning and approval by VDOT.

D. (1) The East Crossover and West Crossover Improvements cited above may be phased in accordance with a commercial phasing plan. Any phasing of East Crossover and West Crossover Improvements must be approved by VDOT and the County Director of Planning as a condition of the site plan approval for the commercial phase.

(2) After approval of the first phase of road improvements identified above and within 30 days of a request from VDOT, the Owners shall pay to VDOT a pro rata share (pro rata share based on the number of signals provided by the Owner divided by the total number of signals included) of any VDOT U.S. Route 60 (Richmond Road) signal coordination project that includes either or both of the East and West Crossovers committed for construction by the earlier of December 31, 2020 or the date of completion of development of the Property (defined below).

(3) For purposes of this paragraph, the date of completion of development of the Property shall be defined as the later of such date on which preliminary site plan or preliminary subdivision plan approval has been granted by the County for all portions of the Property devoted to both residential and commercial use.

(4) The cost for a signal coordination project may include traffic signal equipment at intersections on Richmond Road and may include any necessary utility relocation

within available right of way and easements to accommodate traffic signal equipment, but will not include any right of way acquisition expense(s) or road construction changes.

E. For any right turn in/right turn out driveway on eastbound Richmond Road to provide access to the Nonresidential areas of the Property, a right turn lane on eastbound Richmond Road shall be installed to VDOT standards and specifications prior to the issuance of any temporary or permanent Certificate of Occupancy for buildings shown on the associated site plan.

F. In addition, the following entrance and road improvements shall be installed to VDOT standards and specifications:

- (1) Construction of a left turn lane on northbound Centerville Road at the point of access.
- (2) Construction of a right turn lane on southbound Centerville Road at the point of access.
- (3) Construction of two (2) exit lanes and one (1) entrance lane at the point of access.
- (4) A traffic signal shall be installed on Centerville Road at the point of access.

G. Plantings approved in advance by the County Director of Planning and VDOT, if necessary, shall be placed in the median of Richmond Road along those portions of Richmond Road which abut the Property.

H. Except as otherwise provided herein, the entrance and road improvements described in subparagraphs B and C above shall be completed prior to approval of any final subdivision plat or final site plan for any lot, section or phase housing a Residential Unit within the Property. Construction of the clubhouse, golf course or other neighborhood recreation facilities, roads and amenities within Colonial Heritage may begin and may be completed prior to completion of such road improvements.

I. The road improvements to Centerville Road described in subparagraph F above shall be completed or bonded prior to approval of any subdivision plat or final site plan for any lot, section or phase containing Residential Units within Land Bay V, VII or VIII as shown on the Master Plan. The entrance and road improvements for Centerville Road described in subparagraph F above and the connection of the main road shown on the Master Plan connecting State Route 614 (Centerville Road) to U.S. Route 60 (Richmond Road) shall be completed or bonded prior to approval of any final subdivision plat or site plan for any lot, section or phase creating a cumulative total of 1,200 Residential Units within the Property. No Residential Units beyond 1200 shall be approved by the County until said improvements and connection have been completed or bonded. If said improvements and connection to Centerville Road have not then been completed, then the Owner shall provide an additional traffic impact analysis (reviewed and approved by the County Director of Planning and VDOT) to include:

(1) A count of actual traffic using the U.S. Route 60 (Richmond Road) access during the AM and PM peak hours.

(2) A determination of the actual trip generation rates of the existing Residential Units during the AM and PM peak hours.

(3) A forecast for the then remaining Residential Units on the Property to be built to determine if the sum of the traffic from said remaining Residential Units at actual trip generation rates without the State Route 614 (Centerville Road) connection added to the actual trips exiting and entering the Property at U.S. Route 60 (Richmond Road) is less than or greater than the Residential Unit traffic assigned to U.S. Route 60 (Richmond Road) in the Traffic Study.

(4) If it is determined that the sum of said remaining Residential Unit traffic at actual trip generation rates without the State Route 614 (Centerville Road) connection added to the actual trips exiting and entering the Property at U.S. Route 60 (Richmond Road) is greater than the Residential Unit traffic assigned to U.S. Route 60 (Richmond Road) in the Traffic Study, then the additional traffic impact analysis will determine either:

(a.) That the traffic from said remaining Residential Units based on actual trip generation rates will not change the levels of service (letter grade) presented in the Traffic Study in which event subdivision and/or final site plan approval may proceed beyond the 1,200 units described above, or

(b.) Additional road improvements identified by the Traffic Study and needed on U.S. Route 60 (Richmond Road) to provide the levels of service (letter grade) presented in the Traffic Study for the remaining Residential Units at actual trip generation rates will be provided by the Owner.

(5) The improvements identified in 3(I)(4)(b) above, if any, shall be installed or bonded as described below prior to final site plan or subdivision approval for any Residential Units beyond 1200. Except as provided to the contrary above, the Owner may obtain final plat or site plan approval by bonding the completion of the required improvements.

J. Furthermore, the following additional measures shall be undertaken:

(1) Prior to issuance of a building permit for the 600th Residential Unit on the Property, a trip generation study of the residential development of the Property shall be conducted and submitted to the County Director of Planning and VDOT for review and approval. The trip generation study shall conduct counts (7 a.m. to 9 a.m. and 4 p.m. to 6 p.m.) and document actual two-way A.M. and P.M. peak hour trip generation for Residential Units for which a certificate of occupancy has been issued by the County as of the date of the study, but such counts shall be limited to entering and exiting counts at all residential points of access to the Property.

(a.) In the event that such actual two-way A.M. and/or P.M. peak hour trip generation for Residential Units for which a certificate of occupancy has been issued is greater than the residential trip generation rates projected in the Traffic Study,

additional steps shall be taken as described in subparagraph 4 below to mitigate traffic impacts upon Richmond Road and/or Centerville Road.

(b.) In the event that actual trip generation rates are equal to or less than those projected in the Traffic Study, development of Residential Units may proceed pending additional traffic studies as described below.

(c.) The trip generation study shall also include an assessment of the need for the second left turn lane westbound on Route 60 at the west crossover and the second left turn lane northbound on Centerville Road, Route 614 at the west crossover for construction of 600 to 1200 residential units. If needed, either or both turn lanes shall be constructed or bonded prior to approval of the number of units determined in the study to require either or both turn lanes.

(2) Prior to issuance of a building permit for the 1,200th Residential Unit on the Property, a trip generation study of the residential development of the Property shall be conducted and submitted to the County Director of Planning and VDOT for review and approval. The trip generation study shall conduct counts (7 a.m. to 9 a.m. and 4 p.m. to 6 p.m.) and document actual two-way A.M. and P.M. peak hour trip generation for Residential Units for which a certificate of occupancy has been issued by the County as of the date of the study, but such counts shall be limited to entering and exiting counts at all residential points of access to the Property.

(a.) In the event that the actual two-way A.M. and/or P.M. peak hour trip generation for Residential Units for which a certificate of occupancy has been issued is

greater than the residential trip generation rates projected in the Traffic Study, additional steps shall be taken as described in subparagraph 4 below to mitigate traffic impacts upon Richmond Road and/or Centerville Road.

(b.) In the event that actual trip generation rates are equal to or less than those projected in the Traffic Study, development of Residential Units may proceed pending additional traffic studies as described below.

(c.) The trip generation study shall also include an assessment of the need for the second left turn lane westbound on Route 60 at the west crossover and the second left turn lane northbound on Centerville Road, Route 614 at the west crossover for construction of 1200 to 1600 residential units. If needed, either or both turn lanes shall be constructed or bonded prior to approval of the number of units determined in the study to require either or both turn lanes.

(3) Prior to issuance of a building permit for the 1,600th Residential Unit on the Property, a trip generation study of the residential development of the Property shall be conducted and submitted to the County Director of Planning and VDOT for review and approval. The trip generation study shall conduct counts (7 a.m. to 9 a.m. and 4 p.m. to 6 p.m.) and document actual two-way A.M. and P.M. peak hour trip generation for Residential Units for which a certificate of occupancy has been issued by the County as of the date of the study, but such counts shall be limited to entering and exiting counts at all residential points of access to the Property.

(a.) In the event that the actual two-way A.M. and/or P.M. peak hour trip generation for Residential Units for which a certificate of occupancy has been issued is greater than the residential trip generation rates projected in the Traffic Study, additional steps shall be taken as described in subparagraph 4 below to mitigate traffic impacts upon Richmond Road and/or Centerville Road.

(b.) In the event that actual trip generation rates are equal to or less than those projected in the Traffic Study, development of Residential Units may proceed.

(c.) The trip generation study shall also include an assessment of the need for the second left turn lane westbound on Route 60 at the west crossover and the second left turn lane northbound on Centerville Road, Route 614 at the west crossover for construction of 1600 to 2000 residential units. If needed, either or both turn lanes shall be constructed or bonded prior to approval of the number of units determined in the study to require either or both turn lanes.

(4) In the event that such actual trip generation rates as determined above produced by Residential Units on the Property exceed those projected by the Traffic Study, additional roadway improvements shall be made after each trip generation study or, at the option of the County, cash payment(s) may be made to the County after each trip generation study in order to fund road improvements, additional signal coordination, capacity improvements on Richmond Road or Centerville Road, or other capacity needs generated by development of the Property as may be determined appropriate and approved in advance by the County Director of Planning; provided, however, that the aggregate cost of improvements and/or cash payment(s)

described herein during the entire development of the Property shall not exceed a total of Five Hundred Thousand and No/100 Dollars (\$500,000.00).

K. The Owners shall make a contribution to the County in the amount of \$40,250.00 for a portion of the costs of intersection improvements at the Centerville/Jolly Pond intersection as described by the Traffic Study. This payment shall be made on or before January 1, 2006.

L. Traffic signals described in and required by this paragraph 3 shall be constructed at such time as warrants, need or traffic thresholds established by VDOT are met (referred to herein as "warranted"). Prior to the issuance of final site plan or subdivision plat approval for the 1500th Residential Unit on the Property, any traffic signal required by this paragraph which has not been warranted shall be guaranteed in accordance with the following procedure:

(1) A cash deposit in the amount of ONE HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$150,000.00) per traffic signal shall be made with the County.

(2) The deposit(s) referenced above shall be held for a period of five (5) years (the "Deposit Term") from the date on which said deposits are made.

(a.) Should any traffic signal(s) not be warranted during the Deposit Term, the deposit for each of such lights shall be returned to the depositor or its assigns.

(b.) In the case of traffic signal(s) which are warranted during the Deposit Term, the deposit for such signal(s) shall be retained by the County in full satisfaction of the obligations created by these proffers to provide the subject signal(s).

4. Underground Utilities. All existing and new utilities, including electrical and telephone wires, conduits and all sewer and water pipes within the Property (but outside of the easements currently held by, or area currently dedicated to transmission lines for Dominion Virginia Electric & Power, Dominion Virginia Natural Gas and the City of Newport News) shall be underground, except as approved by the County Director of Planning.

5. Bus/Transit Facilities. A bus pull-off area and bus stop shelter shall be constructed on both Richmond Road and Centerville Road adjacent to the Property prior to issuance of a Certificate of Occupancy for any permanent building in Land Bay I. Design and location of the pull-off and shelter shall be approved in advance by the County Transit Administrator. The timing of completion of construction of the facilities required by this subparagraph may be deferred by approval of the County Transit Administrator.

6. Natural Resources.

A. The Owners shall commission a natural resource inventory of each of the portions of the Colonial Heritage Property to be disturbed, before each such portion is disturbed, which will map and describe unique and sensitive habitats for known threatened and/or endangered species, as well as rare species of concern ("Natural Heritage Resources") which are now listed by the Virginia Department of Conservation and Recreation's Division of Natural Heritage ("DCR/DNH"). These investigations will be conducted by personnel who are qualified

to conduct such studies and be submitted to and approved by the County Director of Planning prior to issuance of a preliminary site plan or subdivision plan approval for any portion of the development of the Property occupied by a Natural Heritage Resource. If the natural resource inventory confirms that a Natural Heritage Resource exists on a particular portion of the Property to be disturbed, a conservation management plan will be prepared, submitted, and approved by the County Director of Planning, as well as other agencies responsible for the protection/conservation of the specific species inventoried, prior to issuance of any land disturbance permit for the affected portion of the Property. All inventories and conservation management plans shall meet or exceed DCR/DNH standards. All approved conservation management plans shall be incorporated into the development plan of the portion of the Property affected and if unavoidable impacts will occur as a result of clearing, grading or construction, an appropriate mitigation plan will be developed by the Owners and approved by the County Director of Planning and the appropriate regulatory agency prior to issuance of a land disturbance permit for the portion of the development of the Property occupied by any Natural Heritage Resource. Such an inventory shall be completed and the terms above met for any portion of the property which is the subject of a land disturbance permit application before issuance of that permit. The provisions of this paragraph shall be in addition to and not in lieu of any environmental inventory otherwise required by the County Code.

B. The Owners shall commission a natural resource inventory for all of the Boy Scout Property within the PSA prior to County approval of any final site plan or subdivision plat for development on said property. Such inventory will map and describe unique and sensitive habitats for any known threatened and/or endangered species, as well as any rare

species of concern ("Natural Heritage Resources") which are listed by the Virginia Department of Conservation and Recreation's Division of Natural Heritage ("DCR/DNH"). These investigations will be conducted by personnel who are qualified to conduct such studies and be submitted to and approved by the County Director of Planning prior to preliminary site plan or subdivision plan approval for any portion of the development of the Property occupied by any Natural Heritage Resource. If the natural resource inventory confirms that a Natural Heritage Resource exists on a particular portion of the Property to be disturbed, a conservation management plan will be prepared, submitted, and approved by the County Director of Planning, as well as any other agency responsible for the protection/conservation of the specific species inventoried, prior to issuance of any land disturbance permit for the affected portion of the Property. All inventories and conservation management plans shall meet or exceed DCR/DNH standards. All approved conservation management plans shall be incorporated into the development plan of the portion of the Property affected and if unavoidable impacts will occur as a result of clearing, grading or construction, an appropriate mitigation plan will be developed by the Owners and approved by the County Director of Planning and the appropriate regulatory agency prior to issuance of a land disturbance permit for the portion of the development of the Property occupied by any Natural Heritage Resource.

7. Sidewalks. Sidewalks shall be constructed on one side of the road along those portions of Richmond Road and Centerville Road which abut the Property. These sidewalks shall be constructed prior to issuance of a building permit by the County for the 250th Residential Unit within the Property. Should VDOT or other permitting issues delay completion of the

sidewalks described in this paragraph, the Owners may be issued building permits beyond 250 Residential Units after bonding compliance with this paragraph.

8. Public Use Site.

A. In order to mitigate impacts upon the County of development of the Property, a conveyance of real property pursuant to paragraph B below shall be made to the County.

B. The conveyance of real property to the County as described above, shall be made upon the following terms:

(1.) The Owners shall convey to the County for use as a public use site that certain portion of the Boy Scout Property more particularly shown and described on the attached plat/drawing entitled: "PLAT OF SUBDIVISION FOR CONVEYANCE TO JAMES CITY COUNTY, VIRGINIA OF PUBLIC USE SITE B, 82.0± ACRES, POWHATAN DISTRICT, JAMES CITY COUNTY, VIRGINIA" dated December 12, 2003, made by AES, Consulting Engineers ("Public Use Site B"). Public Use Site B shall be conveyed subject to restrictive covenants benefiting the Owners and the Association, prohibiting uses and/or development except as described in subparagraph 2 below. Public Use Site B shall be conveyed to the County on or before the later of December 1, 2004 or such date as is sixty (60) days after the date of final approval of the Applications for Amendment.

(2.) Public Use Site B shall be conveyed subject to restrictive covenants running with the land which shall limit the use and/or development of Public Use Site

B to uses intended to mitigate the impacts of development of a public use site on the Colonial Heritage development and to protect and enhance development of the remainder of the Property. Accordingly, use of the public use site described and conveyed per the above shall be restricted in accordance with that certain document entitled Declaration of Covenants, Conditions and Restrictions for Public Use Site B, James City County, Virginia which is attached hereto as Exhibit D, and which shall be recorded in the Clerk's Office upon conveyance to the County of Public Use Site B.

SECTION II. Proffers Applicable to Residential Property

1. Age Restriction. Occupancy of Residential Units developed upon the Property shall be age restricted to persons fifty-five (55) years of age or older in accordance with the following parameters:

A. It is the intent of the parties that Residential Units shall be occupied by persons fifty-five (55) years of age or older and that no Residential Unit shall be occupied by a person under the age of eighteen (18). In some instances, persons under the age of fifty-five (55) but over the age of eighteen (18) shall be entitled to occupy Residential Units, subject, at all times, to the laws and regulations governing age fifty-five (55) and over restricted housing as more particularly set forth and described in subparagraph B below.

B. Each Residential Unit within the Property shall have a master bedroom and bath on the main floor of such unit and shall be developed and operated in compliance with applicable federal and state laws and regulations regarding housing intended for occupancy by persons fifty five (55) years of age or older, including but not limited to: the Fair Housing Act,

42 U.S.C. §3601 *et seq.* and the exemption therefrom provided by 42 U.S.C. §3607(b)(2)(C) regarding discrimination based on familial status; the Housing for Older Persons Act of 1995, 46 U.S.C. §3601 *et seq.*; the Virginia Fair Housing Law Va. Code §36-96.1 *et seq.*; any regulations adopted pursuant to the foregoing; any judicial decisions arising thereunder; any exemptions and/or qualifications thereunder; and any amendments to the foregoing as now or may hereafter exist. Specific provisions of the age restriction described above and provisions for enforcement of same shall be set forth in a declaration of restrictive covenants and property owners' association documents described in Section II, paragraph 8 below.

2. Density.

A. No more than two thousand (2,000) Residential Units shall be developed upon the Property. Any Residential Units developed on the Non-PSA Boy Scout Property shall be subject to this limitation on total Residential Units.

B. The maximum number of Residential Units for which building permits may be issued both on the Property and the Non-PSA Boy Scout Property shall not exceed a total of two thousand (2,000). Any development of Residential Units on the Non-PSA Boy Scout Property shall otherwise comply with all applicable provisions of the Zoning Ordinance in effect from time to time.

3. Water Source: Cash Contribution. A contribution shall be made to the County in the amount of Seven Hundred Fifty and No/100 Dollars (\$750.00) for each Residential Unit developed on the Property (the "Per Unit Contribution"). The County shall make these monies available for development of water supply alternatives. Such contributions shall be payable for

each of the Residential Units developed within the Property upon the earlier of the time of final subdivision plat or final site plan approval by the County for the particular Residential Unit or grouping, phase or section of Residential Units.

4. Neighborhood Recreation Facilities. The following recreation facilities shall be provided, open to all residents of the Property, maintained and regulated by the Association (defined below):

A. Park land which meets or exceeds the Guidelines (defined below) shall be established by Colonial Heritage. Included shall be an eighteen (18) hole golf course, an approximately 10 acre clubhouse site with a clubhouse facility of at least 15,000 square feet and related amenities. Clubhouse amenities shall include a room for library use which shall accommodate a cooperative program between the Williamsburg Regional Library (or successor public library) and the Association (defined in Section II, paragraph 8 below). Clubhouse amenities shall also include an aerobic exercise room and locker rooms.

B. Tennis courts numbering not fewer than three (3).

C. An indoor and an outdoor swimming pool with an aggregate area of all pools (whether one or more, indoor, outdoor or both) not less than twenty-five (25) meters by twenty-five (25) meters.

D. The clubhouse, swimming pool(s) and tennis courts shall be completed before issuance of the Certificate of Occupancy for the 450th Residential Unit within the Property.

E. (1) The Owners shall construct and convey to the County public greenways generally as shown on the Master Plan. Such greenways shall be in the location(s) as generally shown on the Master Plan and shall not exceed 30 feet in width.

(2) The greenways described herein shall be (a) conveyed subject to restrictive covenants prohibiting all motorized vehicles from operating thereon, and further prohibiting all buildings or structures thereon, (b) constructed with soft, pervious surfaces in accordance with the County Greenway Master Plan approved June 25, 2002, and (c) constructed not less than eight (8) feet in width unless a lesser width is approved by the County Director of Planning.

(3) The general location of greenways within the Property shall be described in advertising, promotional and disclosure materials published by the Owners.

(4) Greenways located inside the PSA shall be constructed and conveyed in segments, with each section or segment constructed and conveyed prior to issuance by the County of a building permit for any structure in any section or tract adjacent to a particular segment of greenway.

(5) Greenways located outside the PSA shall be dedicated as shown on the Master Plan prior to final approval of any subdivision plat establishing lots on the Boy Scout Property outside the PSA. The Owners shall not be required to clear or construct those greenways which are located outside the PSA.

5. Transitional Screening.

A. A landscape area shall be established between all commercial and residential use areas within the Property. Such landscape area shall be thirty-five (35) feet in width, and shall contain plantings which meet or exceed the landscape area standards of Section 24-94 of the Zoning Ordinance. This landscape area may be located on areas within the Property which are designated for commercial or residential uses, or partly on both, but no portion of said landscape area shall be part of any individual lot designated for a Residential Unit. Landscape areas compliant with this subparagraph shall be established and planted adjacent to areas of Nonresidential Use (defined below) prior to issuance of a Certificate of Occupancy by the County for such Nonresidential Use.

B. A buffer of one hundred fifty (150) feet shall be maintained between any lot and the Centerville Road right-of-way as it exists on the date hereof. In areas of this buffer which are not presently wooded, a minimum of three (3) trees per four hundred (400) square feet of buffer area shall be planted; not less than fifty percent (50%) of such trees shall be evergreen species.

(1) The buffer described in this subparagraph may, with the approval of the Planning Director, include entrance/exit roads, directional signage, underground utilities, underground and above ground drainage facilities, bus stops, curbs, gutters, sidewalks, fences and signs.

(2) The buffer described in this subparagraph shall be planted, or the planting of such buffer shall be bonded, prior to final approval of any subdivision plat for any Residential Unit(s) in the Land Bay(s) adjacent to said buffer.

C. A buffer of one hundred fifty (150) feet shall be maintained between any residential lot (exclusive of any well lot) and the Jolly Pond Road right-of-way as it exists on the date hereof. In the event that clearing is undertaken to provide sight lines for any entrance or driveway providing access to Jolly Pond Road, the buffer described here shall be maintained from the limits of such clearing to any adjacent lot. The buffer described in this subparagraph may, with the approval of the Planning Director, include entrance/exit roads, directional signage, underground utilities, underground and above ground drainage facilities, bus stops, curbs, gutters, sidewalks, fences and signs.

6. Golf Course Water Usage. Unless otherwise specifically approved by the Board of Directors of the James City Service Authority, no groundwater or water supplied by a public water system as defined in the Zoning Ordinance shall be used for irrigation purposes upon the golf course developed upon the Property. The term "groundwater" as used in this paragraph shall not include surface water, surface water runoff, stormwater, water from stormwater management facilities (including those facilities commonly known as or defined by the County Code, Virginia Code or applicable regulations, best management practices or BMPs), water from ponds, lakes or other impoundments not supplied by wells. Water from Deer Lake and other lakes, ponds or impoundments on the Property or the Non-PSA Boy Scout Property shall constitute surface water, and irrigation with such water shall not be prohibited by this proffer. Design features, including the use of drought tolerant grasses and plantings, a water conservation plan, and drought management plan shall be implemented to reduce the total irrigated area of the golf course in order to accomplish the limitation on use of public water and groundwater contained within this paragraph.

7. Additional Water Conservation.

A. The Owners and the Association shall be responsible for developing water conservation standards to be submitted to and approved by the James City Service Authority. The Association shall be responsible for enforcing these standards. The standards shall address such water conservation measures as limitations on the installation and use of irrigation systems, 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. The standards shall be approved by the James City Service Authority prior to the first subdivision plat approval for a Residential Unit within the Property.

B. No irrigation well(s) shall be established or utilized for any Residential Unit within the Property.

C. Existing wells located on the Property shall be capped/abandoned in accordance with applicable Commonwealth of Virginia and/or County regulations and ordinances, if, as and when the Owners determine in their discretion that such wells are not necessary or to be utilized in the future.

8. Property Owners Association. A residential property owners' association ("Association") shall be established in accordance with the Virginia Property Owners' Association Act, §55-508 *et seq.* of the Virginia Code, in which all owners of Residential Units within the portions of the Property currently lying inside the PSA shall be members by virtue of their property ownership. The articles of incorporation or organization and bylaws of the Association and declaration of restrictive covenants enforceable by the Association shall be

submitted to and reviewed by the County Attorney for consistency with this proffer. Such governing documents shall require or provide for, *inter alia* the following:

A. The Association shall adopt an annual maintenance budget and assess all members for the maintenance of all properties owned and/or maintained by the Association, including private roads.

B. The Association shall be granted the right to adopt and enforce rules and regulations with respect to the use of common areas and with respect to other areas of responsibility of the Association.

C. The Association shall have the power to assess its members in order to provide for the budget described above, and shall further have the power to levy special assessments, and to have a lien upon property owned by its members for collection and enforcement of such assessments, and for the cost of remedying violations of the rules and regulations established by the Association. Separate owners' associations may be established for individual sections within the Property, and impose supplemental restrictive covenants on individual sections or areas of the Property.

D. The Association shall have the power and shall enforce the age restrictions described above, including without limitation the application of such restrictions upon sale and/or resale of any Residential Unit.

E. The Association shall administer the Automatic External Defibrillator program described in Section II, paragraph 14 below.

F. The Association shall be charged with the obligation to provide for not less than one (1) uniformed security guard to be continuously stationed at the main entrance to the Property from Richmond Road. Such security guard need not be, but may be at the discretion of the Association (subject to appointment procedures established by law), (i) a special police officer(s) and/or conservator(s) of the peace, and/or (ii) armed.

G. The Association shall conduct or facilitate a golf instructional program for children of low income families residing in the County, so as to expose children to the game of golf. Such instructional program shall be conducted no less frequently than two (2) times per calendar year.

H. The Association shall enforce the water conservation standards described in paragraph 7 above.

I. The Association shall enforce restrictions designed to preserve natural open space adjacent to Residential Units or residential lots subdivided within those portion of the Property currently within the PSA.

J. The Association shall maintain the median plantings described in Section I paragraph 3(G) above, by replacing dead or diseased plantings.

9. Private Streets. All streets (as defined by the County Code) within the residential portions of the Property shall be private and shall conform to VDOT construction standards. All private streets shall be certified to the satisfaction of the County engineer as required by

Section 19-49 of the County Code. Curb and gutter shall be constructed on any streets on which a Residential Unit fronts.

10. Deed Provisions. Every deed by which any lot or parcel created for a Residential Unit is first conveyed to any owner by the Owners shall contain reference to the age restriction provisions of Section II, paragraph 1 above.

11. Streetscapes. Any and all residential development within the Property shall be in conformity with the County Streetscape Guidelines Policy as in effect on the date hereof. No Residential Unit(s) shall front on any portion of Colonial Heritage Boulevard shown on the Master Plan running from U.S. Route 60 (Richmond Road) to State Route 614 (Centerville Road).

12. Sidewalks/Pedestrian and Bicycle Trails.

A. (1) Sidewalks shall be constructed on at least one (1) side of every internal street or road constructed within the Property, and sidewalk construction shall be completed or bonded not later than the date on which construction of the adjacent road is completed (including final asphalt topcoating).

(2) Sidewalks (or a combination of sidewalks and the pedestrian trails described in subparagraph B below) shall be constructed on both sides of any internal street on which multiple family or two-family (as defined in the County Code) Residential Units front. Such sidewalks and/or trails shall be completed or bonded not later than the date on which construction of the adjacent road is completed (including final asphalt topcoating).

(3) At any point where sidewalks or pedestrian trails described herein cross and connect to another sidewalk or trail across the main arterial street shown on the Master Plan connecting U.S. Route 60 (Richmond Road) with State Route 614 (Centerville Road), striping, signage, and pavement texturing shall be designed and implemented to assure the visibility of such crossing. All such measures shall be subject to the approval of the County Director of Planning.

B. A system of pedestrian and bicycle trails shall be constructed or bonded in connection with and simultaneously with development of each phase, section or Land Bay shown on the Master Plan (which trail system shall include the sidewalks described above) conforming to the following design guidelines:

(1) All pedestrian trails shall be not less than four (4) feet in width and all bicycle trails shall be not less than eight (8) feet in width.

(2) Access to abutting Land Bays shown on the Master Plan and connection of cul-de-sacs shall be established where practical as determined by Colonial Heritage and approved by the County Planning Director.

(3) Interconnectivity for pedestrian traffic between the commercial or Non-Residential Use (defined below) areas of the Property shall be established as a part of pedestrian trail and/or sidewalk systems created pursuant to this paragraph.

(4) Trails shall avoid lands with greater than twenty-five percent (25%) slopes, environmentally sensitive areas and areas designated as resource protection areas where practical as determined by the County Chesapeake Bay Administrator.

(5) Paved surfaces shall be provided, except as limited by environmentally sensitive areas, wherein pervious, soft surfaces underlaid with filter cloth shall be employed, as determined by the County Director of Planning.

(6) One and one-half (1.5) miles of trail shall be provided for each 590 Residential Units constructed within the Property and all construction of such trails shall be assured by agreement with the County and by furnishing to the County a certified check, bond with surety or letter of credit satisfactory to the County as set forth in Section 19-72 of the County Code.

(7) Except as provided or contradicted above, the trails shall be designed to meet or exceed the standards of the County Comprehensive Parks and Recreation Plan proffer guidelines, as in effect on the date hereof ("Guidelines").

(8) Pedestrian and bicycle trails may, but shall not be required to be located within the buffers established pursuant to Section II, paragraphs 5(A), (B) and (C).

C. All sidewalks constructed within the Property shall meet or exceed the standards of Section 24-35 of the County Code.

13. EMS Equipment/Signalization: Cash Contribution.

A. A contribution shall be made to the County in the amount of Seventy Thousand and No/100 Dollars (\$70,000.00) for fire and rescue equipment replacement and supply and traffic signal preemption equipment. This payment shall be made at the rate of Seventy and No/100 Dollars (\$70.00) per Residential Unit (the "Per Unit Contribution") for the first one thousand (1,000) Residential Units within the Property, and shall be payable upon the earlier of the time of final subdivision plat or final site plan approval by the County of each said Residential Unit or grouping, phase or section of Residential Units or, in the case of signal preemption equipment, when said equipment is installed.

B. A contribution shall be made to the County in the amount of Fifty Thousand and No/100 Dollars (\$50,000.00) for application to the purchase of a new paramedic/first aid vehicle or unit. These funds may be, at the discretion of the Board of Supervisors of the County, applied to other capital needs of the County Emergency Medical Services deemed by the County to be generated by development of the Property. This payment shall be made prior to final site plan or subdivision plat approval for any Residential Units beyond 400 within the Property.

14. Automatic External Defibrillator ("AED") Program. An AED program shall be established for administration by the Association within the Property which shall comply with Section 32.1-111.14:1 *et seq.* of the Code of Virginia, as written on the date hereof, and Virginia State Board of Health regulations promulgated pursuant thereto. Not less than one defibrillator per building to be used as a part of the AED program shall be supplied by the Owner for use in

this AED program for every building constructed for public occupancy on the Property of the Association (exclusive of golf course maintenance buildings, equipment sheds, pump houses, storage buildings, Residential Units and other outbuildings of less than 2,000 square feet. The existence of such AED program and an implementation schedule shall be confirmed by the County Fire Chief prior to any final site plan or subdivision plat approval.

15. INTENTIONALLY OMITTED.

16. Cash Contributions For Additional Community Impacts.

A. An additional contribution shall be made to the County in the amount of Four Hundred Thirty-Eight and No/100 Dollars (\$438.00) for each of the first one thousand (1,000) Residential Units developed on the Property (the "Per Unit Contribution"), in order to mitigate additional impacts on the County arising from the physical development and/or physical operation of the Property. The County may make these monies available for any project in the County's capital improvement plan, the need for which is generated by the physical development and/or physical operation of the Property.

B. The contributions described above, unless otherwise specified, shall be payable for each of the Residential Units developed within the Property at the time of final subdivision plat or final site plan approval by the County for the particular Residential Unit or grouping, phase or section of Residential Units.

17. Slope Protection. For lots subdivided or developed on large, contiguous areas of steep slopes (steep being defined as slopes of twenty-five percent (25%) or greater grade) ("Steep Slope(s)") the following separation or setbacks shall be maintained:

- A. Fifteen (15) feet between the top of any Steep Slope and any structure
- B. Ten (10) feet between the top of any Steep Slope and the limits of lot or other clearing.

The separation or setback described in this paragraph may be reduced upon approval of the County Environmental Director in order to provide flexibility in the application of this provision, and so as to assure that this provision does not unreasonably restrict the developable acreage within the Property.

18. Open Space/Conservation Area. An open space and conservation area consisting of not less than 282± acres shall be established by easement conveyed to the County encumbering land shown on the Master Plan as "Area Not Subject of Master Plan" and more particularly described on that plan entitled "SPECIAL USE PERMIT PLAN – ALTERNATE 1, COLONIAL HERITAGE BSA PROPERTY" dated 7/9/04, revised 7/29/04, made by AES, Consulting Engineers, submitted with the SUP application SUP-21-04 referenced above, which plan is incorporated by reference. The open space and conservation area easement shall prohibit construction of any Residential Unit or other building, provide for protection of open space, wetlands, trees and tree canopy. The open space and conservation area shall be available, and the Owners shall retain the right to utilize the open space and conservation area for stormwater management structures and facilities, required open space, required impervious/pervious cover

percentages, watershed protection measures and other uses benefiting or facilitating development of the Property and/or the Non-PSA Boy Scout Property.

SECTION III. Proffers Applicable to Commercial Property

1. Area of Nonresidential Uses. A portion of the Property as shown on the Master Plan shall be developed for Nonresidential Uses defined in Section 24-521 and/or Section 24-522 of the Zoning Ordinance as written on the date hereof ("Nonresidential Use").

2. Development Plans. Design review standards for Nonresidential Use development shall be established by Colonial Heritage or successor owner(s) of Nonresidential Use areas of the Property, and provided to the County Director of Planning for approval. Thereafter, conceptual plans and conceptual elevations for development shall be approved prior to site plan approval for any Nonresidential building by the County Development Review Committee of the Planning Commission with a procedure generally as provided by Section 24-142 *et seq.* of the Zoning Ordinance so as to assure conformity with such design review standards, including but not limited to the following:

- (a) location and uses of buildings,
- (b) building orientation,
- (c) landscaping, open space and buffers,
- (d) location and number of entrances,

- (e) pedestrian and vehicular connections,
- (f) building height, and size of any single building
- (g) architectural design,
- (h) setbacks from adjacent properties or roadways,
- (i) signs.

Such approval shall be designed to address the uniformity, appearance and quality of Nonresidential Use of the Property, and shall not be unreasonably withheld.

3. Homeowners' Association Not to Control Commercial Property. The Association shall not control any of the Property developed for Nonresidential Uses. This provision shall not be read to preclude establishment of a separate association created in connection with development of areas of Nonresidential Use within the Property.

4. Strip Shopping Center(s) Prohibited. No retail construction/development or nonresidential use shall be undertaken in Land Bay VI that consists of a row or line of building fronts or separately occupied businesses which are one (1) unit deep, parallel or principally oriented to Richmond Road. A majority of the parking spaces provided shall not be located between the buildings and Richmond Road but shall instead be located beside and/or behind the buildings. Street frontage along Richmond Road shall primarily consist of buildings and open space. At least two pedestrian connections shall be provided from U.S. Route 60 (Richmond Road), one shall be provided from the main spine road, and one from Land Bay I. All pedestrian

connections shall be paved and be at least four feet wide. All commercial uses within Land Bay VI shall be interconnected for both pedestrian and motor vehicular access. It is the intent of this proffer to prohibit development commonly known as "strip commercial development." Development plans for Land Bay VI shall be approved by the Planning Director as to their compliance with these proffers.

5. Richmond Road Buffer. A buffer of fifty (50) feet shall be maintained between any parcel, lot or property line within the Property and the Richmond Road right-of-way as it exists on the date hereof. The buffer proffered in this Section III, paragraph 5 may, with the approval of the Planning Director, include entrance/exit roads, directional signage, underground utilities, underground and above ground drainage facilities, bus stops, curbs, gutters, sidewalks, fences and signs.

6. Preservation of Magnolia Trees. The trees comprising a double row of mature Magnolia trees existing within Land Bay VI as of the date hereof shall not be completely destroyed to create a building site, parking area or other improvements. Destruction or elimination of some trees shall be permitted to allow for streets, roads and vehicular or pedestrian connections perpendicular to such rows of Magnolia trees, the placement of utilities, or other purposes approved by the County Planning Director. This proffer is not to be read to require reimbursement of existing trees which are destroyed by natural causes.

IV. Miscellaneous Provisions

1. Headings. All section and subheadings of these Proffers are for convenience only and shall not be read as a part of these Amended and Restated Proffers or utilized in interpretation thereof.

2. Severability. In the event that any clause, sentence, paragraph, section or subsection of these Proffers shall be adjudged by any court of competent jurisdiction to be invalid or unenforceable for any reason, including a declaration that it is contrary to the Constitution of the Commonwealth of Virginia or of the United States, or if the application thereof to any owner of any portion of the Property or to any government agency is held invalid, such judgment or holding shall be confined in its operation to the clause, sentence, paragraph, section or subsection hereof, or the specific application thereof directly involved in the controversy in which the judgment or holding shall have been rendered or made, and shall not in any way affect the validity of any other clause, sentence, paragraph, section or provision hereof.

3. Conflicts. In the event that there is any conflict between these Amended and Restated Proffers and the Zoning Ordinance, the conflict shall be resolved by the County's Zoning Administrator subject to the appeal process to the Board of Supervisors and the Courts as otherwise provided by law.

4. Successors and Assigns. This Amended and Restated Proffer Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective heirs, successors and/or assigns.

5. Amended and Restated Proffers Void if Rezoning not Approved. In the event that the requested rezoning of the Boy Scout Property and the Proffer amendments and Master Plan amendments sought by the Applications for Amendment are not approved by the County, these Amended and Restated Proffers shall be null and void, but the Proffers, the master plan and the rezoning approval by the County in Case No. Z-4-00/MP-01-01 shall remain in full force and effect, unaffected hereby.

6. Effect of Accepted Amended and Restated Proffers. If these Amended and Restated Proffers are accepted by the County and the Applications for Amendment are simultaneously approved by the County, upon the expiration of thirty (30) days from said acceptance and approval with no appeal being duly noted, these Amended and Restated Proffers, and the Master Plan and associated documents filed with the Applications for Amendment shall amend, supersede and restate in their entirety the Proffers and all the associated documents, effective upon the date of such acceptance and approval.

7. INTENTIONALLY OMITTED.

8. Cash Proffer Disposition. In the event that any cash payment(s) or real property conveyed as required under the terms of these Amended and Restated Proffers are not used by the County for the purpose(s) designated within twenty (20) years from the date of receipt by the County, the amounts or Property not used shall be used at the discretion of the Board of Supervisors of the County for any other project in the County's capital improvement plan, the need for which is generated by the development of the Property.

9. Inflation Adjustment of Cash Proffered. Beginning as of January 1, 2003, the payments and/or Per Unit Contribution described in Section I paragraphs 3(J)(4), 3(K) and 3(L), and Section II, paragraph 3, paragraphs 13(A) and (B) and paragraph 16 above shall be inflation adjusted to reflect changes in the Consumer Price Index, U.S. City Average, All Urban Consumers (CPI-U) All Items (1982-84=100) (the "CPI") prepared and reported by the U.S. Bureau of Labor Statistics of the United States Department of Labor.

A. The adjustment shall be made by increasing or decreasing the payment (or any portion thereof) due by the percentage change in CPI from (i.) January 1, 2003 through (ii) the last day of the month most recently preceding the date on which the cash payment is due, payable or paid (or the most recent date on which CPI is available).

B. In no event shall the unadjusted proffered cash payment(s) or Per Unit Contribution(s) be adjusted to a sum less than the amount specified in the particular paragraphs described herein.

C. In the event that the CPI is not available, a reliable government or other independent publication evaluating information heretofore used in determining the CPI (approved in advance by the County Manager of Financial Management Services) shall be relied upon in establishing an inflationary factor for purposes of adjusting proffered cash payments to approximate the rate of inflation in the County after January 1, 2003. In the event that substantial change is made in the method of establishing the CPI, then the adjustment(s) described in this paragraph shall be based upon the figure that would have resulted had no change occurred in the manner of computing CPI.

10. Signature by County. The County's Director of Planning has executed these Amended and Restated Proffers solely for purposes of confirming the filings and submissions described in the Recitals section above, and confirming approval by the County Board of Supervisors of the rezoning of the Property with these Amended and Restated Proffers and the Applications for Amendment by a resolution dated _____, 200__.

#6010116 v39

COLONIAL HERITAGE LLC, a Virginia
limited liability company

By: U.S. Home Corporation, a Delaware
corporation, Manager

By: John Fleming
Name: John Fleming
Title: Regional V.P.

COMMONWEALTH OF VIRGINIA
AT LARGE, to-wit:

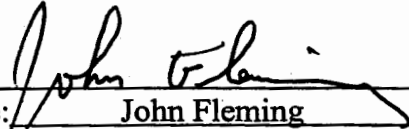
The foregoing instrument was acknowledged before me this 24th day of September,
2004, by John Fleming, Regional VP, of U.S. Home Corporation, Manager
of COLONIAL HERITAGE LLC, a Virginia limited liability company, on its behalf.

[Signature]
Notary Public

My commission expires: Dec. 31, 2007

COLONIAL VIRGINIA COUNCIL OF
BOY SCOUTS OF AMERICA, a Virginia
Corporation

By: U.S. Home Corporation

By: 
Name: John Fleming
Title: Vice President

COMMONWEALTH OF VIRGINIA
AT LARGE, to-wit:

The foregoing instrument was acknowledged before me this 24th day of September,
2004, by John Fleming, Vice President of U.S. Home Corporation, on behalf of Colonial
Virginia Council Boy Scouts of America, a Virginia corporation.


Notary Public

My commission expires: Dec. 31, 2007

THE COUNTY OF JAMES CITY,
VIRGINIA

By: _____

Name: O. Marvin Sowers

Title: Director of Planning

APPROVED AS TO FORM:

County Attorney

EXHIBIT A

(Colonial Heritage Property)

All those certain lots, pieces or parcels of land, together with buildings and improvements thereon, and appurtenances thereunto belonging, located in James City County, Virginia, being known and designated as "PARCEL 'A' (INCLUDES CEMETERY PARCEL)", "PARCEL 'B' and "PARCEL 'C'" as shown on that subdivision plat entitled "PLAT OF SUBDIVISION AND BOUNDARY LINE ADJUSTMENT BETWEEN THE PROPERTIES OWNED BY THE MASSIE CORPORATION, VAJACK, L.L.C., AND DAVID W. WARE MARITAL TRUST STONEHOUSE DISTRICT JAMES CITY COUNTY VIRGINIA," dated 10/24/02, and recorded in the Clerk's Office of the Circuit Court of the City of Williamsburg and County of James City, Virginia in Plat Book 89, at pages 10-12; together with all rights whatsoever, including riparian, oil, gas and mineral rights, privileges, easements, interests and appurtenances, thereto or thereto belonging.

All that certain lot, piece or parcel of land situate in Powhatan District, James City County, Virginia containing 181.547 acres \pm (but sold in gross and not by the acre) shown and designated as "PARCEL E" on Sheets 2 and 3 of a plat (the 'Plat') entitled "PLAT OF SUBDIVISION AND BOUNDARY LIEN ADJUSTMENT BETWEEN THE PROPERTIES OWNED BY THE MASSIE CORPORATION, VAJACK, L.L.C., AND DAVID W. WARE MARITAL TRUST, STONEHOUSE DISTRICT, JAMES CITY COUNTY, VIRGINIA," dated 10/24/02, revised 12/12/02 and made by AES Consulting Engineers, a copy of which is recorded in the Clerk's Office of the Circuit Court of the City of Williamsburg and County of James City, Virginia in Plat Book 89, pages 10-12 to which Plat reference is hereby made; together with all rights whatsoever, including riparian, oil, gas and mineral right, privileges, easements, interests and appurtenances thereto.

EXHIBIT B

(Boy Scout Property)

Parcel I

All of that certain tract of land in James City County, State of Virginia, formerly located in Jamestown Magisterial District, containing 617.2 acres, more or less, as shown by Plat of Survey dated May 10, 1938, made by G. L. Evans, Certified Surveyor, and of record in the Clerk's Office of the Circuit Court of James City County, Virginia, in Plat Book 7, Page 43, together with all improvements thereon, rights, privileges and appurtenances thereunto belonging, described as follows, to-wit:

Beginning at a Cedar Stob being the intersection of the Southeast corner of Piggott's Estate and the Southwest corner of R. L. Henley's Estate, thence North 80 degrees 10' W. 200 feet to a point in the center line of the county road; thence with the center line of said road North 61 degrees 10' W. 534 feet; thence North 75 degrees 00' W. 800 feet; thence North 71 degrees 00' W. 922 feet to a point; thence leaving said road South 67 degrees 20' W. 500 feet to a point; thence North 66 degrees 30' W. 130 feet to a point in the center of said county road; thence continuing with the center line of said road North 46 degrees 00' W. 1100 feet; thence North 33 degrees 20' W. 700 feet; thence North 59 degrees 30' W. 551 feet; thence North 77 degrees 00' W. 600 feet; thence South 75 degrees 20' W. 533 feet; thence North 58 degrees 40' W. 200 feet; thence North 16 degrees 30' W. 410 feet; thence North 35 degrees 30' W. 282 feet to a point; thence leaving said county road; thence North 86 degrees 00' E. 562 feet to an iron axle; thence North 4 degrees 10' E. 100 feet; thence North 0' 30' W. 140 feet; thence North 36 degrees 50' E. 100 feet; thence North 13 degrees 30' E. 100 feet; thence North 0 degrees 30' E. 184 feet; thence North 30 degrees 00' E. 100 feet; thence North 22 degrees 20' E. 123 feet; thence North 4 degrees 50' E. 255 feet; thence North 69 degrees 10' W. 100 feet; thence North 22 degrees 45' W. 300 feet; thence North 43 degrees 15' W. 100 feet; thence North 27 degrees 45' W. 300 feet; thence North 74 degrees 30' W. 100 feet; thence North 49 degrees 00' W. 158 feet; thence North 43 degrees 30' W. 400 feet; thence North 9 degrees 00' W. 254 feet; thence North 37 degrees 45' W. 200 feet; thence North 19 degrees 10' E. 300 feet; thence North 21 degrees 30' W. 359 feet to the South shore of Cranston's Mill Pond; thence continuing across said pond; North 33 degrees 00' E. 530 feet to the North shore of said mill pond; thence re-crossing said mill pond South 57 degrees 45' E. 666 feet; thence South 41 degrees 20' E. 85 feet; thence South 67 degrees 45' E. 200 feet; thence South 83 degrees 30' E. 400 feet; thence South 81 degrees 30' E. 100 feet; thence South 43 degrees 30' E. 200 feet; thence South 54 degrees 45' E. 200 feet; thence North 62 degrees 10' E. 131 feet; thence South 82 degrees 30' E. 100 feet; thence South 56 degrees 15' E. 200 feet; thence South 66 degrees 10' E. 94 feet; thence South 76 degrees 15' E. 600 feet; thence North 62 degrees 40' E. 555 feet; thence South 50 degrees 10' E. 200 feet; thence South 48 degrees 10' E. 500 feet; thence South 55 degrees 00' E. 409 feet; thence South 78 degrees 15' E. 400 feet; thence South 24 degrees 40' E. 300 feet; thence South 39 degrees 00' E. 200 feet; thence South 79 degrees 40' E. 300 feet; thence South 81 degrees 15' E. 393 feet; thence South 29 degrees 50' E. 200 feet; thence South 18 degrees 45' E. 139 feet; thence South 27 degrees 30'

E. 400 feet; thence South 47 degrees 20' E. 300 feet; thence South 84 degrees 45' E. 400 feet; thence South 39 degrees 00' E. 200 feet; thence South 81 degrees 00' E. 107 feet; thence South 18 degrees 30' E. 300 feet; thence South 16 degrees 40' E. 400 feet; thence South 49 degrees 30' E. 500 feet; thence South 24 degrees 10' W. 275 feet; thence South 68 degrees 45' W. 200 feet; thence South 29 degrees 20' W. 505 feet; thence South 22 degrees 30' W. 500 feet; thence South 12 degrees 30' E. 200 feet to Cedar Stob; thence South 37 degrees 50' W. 584 feet to a White Oak Stump; thence South 33 degrees 20' W. 260 feet to a White Oak Stump; thence South 12 degrees 00' W. 347 to the point of beginning.

This conveyance is made by the tract and not by the acre.

Parcel II

All of that certain tract of land in James City County, State of Virginia, formerly in Jamestown Magisterial District, containing 117.8 acres, more or less, as shown by Plat of Survey dated May 10, 1938, made by G. L. Evans, Certified Surveyor, and of record in the Clerk's Office of the Circuit Court of James City County, Virginia, in Plat Book 7, Page 43, together with all improvements thereon, rights, privileges and appurtenances thereunto belonging, described as follows: to-wit:

Beginning at an iron pipe in a Pine stump located at the intersection of County Roads Nos. 626 and 603; thence North 8 degrees 20' E. 49 feet; thence North 7 degrees 40' W. 323 feet; thence North 21 degrees 40' W. 100 feet; thence North 53 degrees 00' W. 393 feet; thence North 47 degrees 30' W. 765 feet; thence North 77 degrees 10' W. 400 feet; thence North 64 degrees 00' W. 275 feet; thence North 48 degrees 10' W. 235 feet; thence North 26 degrees 40' W. 312 feet; thence North 30 degrees 45' W. 141 feet; thence North 50 degrees 10' W. 245 feet; thence up the center line of an old road North 41 degrees 50' W. 132 feet; thence North 20 degrees 10' W. 100 feet; thence North 4 degrees 50' W. 200 feet; thence North 13 degrees 00' W. 180 feet; thence North 32 degrees 50' E. 104 feet; thence leaving old road South 17 degrees 15' E. 158 feet; thence South 62 degrees 20' E. 104 feet to a Beech; thence North 10 degrees 45' E. 253 feet to a Cedar; thence North 36 degrees 00' E. 75 feet to a Beech; thence South 55 degrees 10' E. 76 feet to a point on the Southwest shore of Cranston's Mill Pond; thence North 71 degrees 50' E. 714 feet; thence North 71 degrees 30' E. 238 feet to a point on the Southern shore of said mill pond; thence crossing said mill pond North 26 degrees 45' E. 640 feet to a point on the northern shore of said mill pond; thence re-crossing said mill pond South 58 degrees 45' E. 870 feet to a point on the Southern shore of said mill pond; thence South 21 degrees 30' E. 359 feet; thence South 19 degrees 10' W. 300 feet; thence South 37 degrees 45' E. 200 feet; thence South 9 degrees 00' E. 254 feet; thence South 43 degrees 30' E. 400 feet; thence South 49 degrees 00' E. 158 feet; thence South 74 degrees 30' E. 100 feet; thence South 27 degrees 45' W. 300 feet (shown on Plat as South 27 degrees 45' E.); thence South 43 degrees 15' E. 100 feet; thence South 22 degrees 45' E. 300 feet; thence South 69 degrees 10' E. 100 feet; thence South 4 degrees 50' W. 255 feet; thence South 22 degrees 20' W. 123 feet; thence South 30 degrees 00' W. 100 feet; thence South 0 degrees 30' W. 184 feet; thence South 13 degrees 30' W. 100 feet; thence South 36 degrees 50'

W. 100 feet; thence South 0 degrees 30' E. 140 feet; thence South 4 degrees 10' W. 100 feet to an iron axle, thence South 86 degrees 00' W. 562 feet to the point of beginning.

This conveyance is made by the tract and not by the acre.

LESS AND EXCEPT all that certain portion of property lying north of the water's edge on the southern side of Bush's Mill or Cranston's Mill Pond as conveyed by Peninsula Council, Boy Scouts of America, a Virginia corporation, by Quitclaim Deed to Toano Fishing and Hunting Club, Incorporated, dated September 10, 1969, recorded September 25, 1969 in the aforesaid Clerk's Office in Deed Book 123, Page 392.

LESS AND EXCEPT all that certain tract, piece or parcel of land as granted to the Commonwealth Transportation Commissioner of Virginia, by Certificate of Take dated January 29, 1990, recorded in the aforesaid Clerk's Office in Deed Book 465, Page 109.

BEING A PART of the same real estate conveyed to PENINSULA COUNCIL, BOY SCOUTS OF AMERICA, A VIRGINIA CORPORATION, by Deed from WENDELL H. HUSSEY AND MARTHA WOODROOF HUSSEY, HUSBAND AND WIFE, SUZANNE HIDDEN MCMURRAN, ALSO KNOWN AS SUZANNE ELIZABETH MCMURRAN, BY MARTHA WOODROOF HUSSEY, HER ATTORNEY IN FACT, JOSEPH MCMURRAN, HUSBAND OF SUZANNE ELIZABETH MCMURRAN, BY MARTHA WOODROOF HUSSEY, HIS ATTORNEY IN FACT, GEORGIA GOODWIN HIDDEN, SINGLE, BY MARTHA WOODROOF HUSSEY, HER ATTORNEY IN FACT, FRANCES HIDDEN FITZHUGH, ALSO KNOWN AS FRANCES WINSTON FITZHUGH, BY MARTHA WOODROOF HUSSEY, HER ATTORNEY IN FACT, MAYO M. FITZHUGH, JR., HUSBAND OF FRANCES HIDDEN FITZHUGH, BY MARTHA WOODROOF HUSSEY, HIS ATTORNEY IN FACT, dated October 1, 1964, recorded December 3, 1964, in the Clerk's Office of the Circuit Court, James City County, Virginia, in Deed Book 98, page 477.

EXHIBIT C
(Non-PSA Boy Scout Property)

All that certain piece or parcel of land situated in James City County, Virginia, containing 506 acres \pm , shown and described as "AREA NOT SUBJECT OF MASTER PLAN SEE ACCOMPANYING SUP APPLICATION" on that certain Master Plan entitled: "COLONIAL HERITAGE, WILLIAMSBURG, VIRGINIA, AMENDED MASTER DEVELOPMENT PLAN" dated July 1, 2004, made by Land Design, and by AES Consulting Engineers, which said plat is incorporated herein by reference for a more particular description of the subject property.

EXHIBIT D

(Declaration of Covenants, Conditions and Restrictions)

Tax Map Number: portion of Tax Map Parcel (22-4)(1-7)

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR PUBLIC USE SITE B
JAMES CITY COUNTY, VIRGINIA

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (this "Declaration") is made this ____ day of _____, 2004, by COLONIAL HERITAGE LLC, a Virginia limited liability company (the "Owner"), provides as follows:

Recitals:

R-1. Colonial Heritage LLC is the Owner of that certain property in James City County, Virginia (the "County"), shown as "PUBLIC USE SITE B" (the "Property") on a plat entitled "PLAT OF SUBDIVISION FOR CONVEYANCE TO JAMES CITY COUNTY, VIRGINIA, OF PUBLIC USE SITE B, 82.0 +/- ACRES, POWHATAN DISTRICT, JAMES CITY COUNTY, VIRGINIA" dated December 12, 2003, prepared by AES Consulting Engineers, as Project No. 8881-03A, attached hereto as Exhibit A and incorporated herein by this reference (the "Plat"); and

R-2. The Property is a portion of the same property conveyed to the Owner by deed dated _____ from Colonial Virginia Council, Boy Scouts of America, a Virginia corporation, of record in the Office of the Clerk of the Circuit Court for the City of Williamsburg and County of James City (the "Clerk's Office") as Instrument No. _____; and

R-3. In connection with development of the Colonial Heritage project in James City County ("County"), certain Proffers dated November 7, 2001, (the "Proffers") were recorded in the Clerk's Office on November 30, 2001, as Instrument #010022082.

R-4. The Proffers require that the Owner provide certain contributions of land or cash to the County, at the election of the County. The County has elected to receive land pursuant to the Proffers, and the Owner has identified the Property as the land to be contributed.

R-5. As provided by the Proffers, the Owner desires to impose on the Property certain covenants, conditions and restrictions prohibiting or restricting certain activities on the Property.

NOW, THEREFORE, the Owner does hereby declare, covenant and agree, for itself and its successors and assigns, that the Property shall be hereafter held and sold subject to the following covenants, conditions and restrictions:

1. Permitted Uses. Only the following uses shall be permitted on or within the Property:

(a) Community Recreation Facilities, including only the following:

- (i) Parks
- (ii) Playgrounds
- (iii) Swimming pool(s)
- (iv) Ballfields
- (v) Tennis Courts, and/or
- (vi) Similar outdoor recreational facilities. Outdoor recreational activities permitted on the Property, shall be limited to daylight hours and shall not include any activity of an offensive or unusual nature, including, but not limited to:

(1) Outdoor concerts or sporting events

(2) Outdoor carnivals, fairs, or circuses

- (b) Fire Station
- (c) Health, exercise, and/or fitness center
- (d) Hospital
- (e) Indoor sports facility
- (f) Library
- (g) Parking lot
- (h) Public meeting hall, and/or
- (i) School(s).

- 2. Definitions. All terms contained in Section 2 above shall be defined as set forth in the James City County Code as of the date of this Declaration.
- 3. Amendment. The covenants, conditions and restrictions contained herein shall not hereafter be altered in any respect without the express written approval and consent of both the County and the Owner, or its successor in interest.
- 4. Severability. The provisions hereof shall be deemed individual and severable and the invalidity or partial invalidity or unenforceability of any one provision or any portion thereof shall not affect the validity or enforceability of any other provision of this Declaration.
- 5. Enforcement. The provisions hereof shall be enforceable by any proceeding at law or in equity by the Owner, and/or its successor in interest, and/or the Colonial

Heritage Homeowners' Association, Inc. or any sub association or successor thereto. Failure by any entity or the Owner to enforce any covenant, condition or restriction contained herein shall in no event be deemed a waiver of the right to do so thereafter.

6. Duration. These covenants, conditions and restrictions shall run with the land and shall be binding on all parties and persons claiming under them in perpetuity.
7. Miscellaneous. This Declaration is made subject to all applicable agreements, restrictions, deeds, easements, encumbrances and other matters of record affecting the Property. The Owner imposes these covenants, conditions and restrictions freely and voluntarily. No negative reciprocal covenant or restriction shall be created by the recordation or delivery of this Declaration.

WITNESS the following signature.

COLONIAL HERITAGE, LLC

By: _____
Vice President of U.S. Home
Corporation, a Delaware
corporation, manager of Colonial
Heritage LLC

COMMONWEALTH OF VIRGINIA
COUNTY OF JAMES CITY

The foregoing was acknowledged before me this _____ day of _____, 2003,
by _____, Vice President of U.S. Home Corporation, manager of COLONIAL
HERITAGE LLC.

My commission expires: _____

Notary Public



U. S. Home - Colonial Heritage at Williamsburg

**2004 Rezoning Application
BSA Tract**

**FISCAL IMPACT ANALYSIS
March 2004**

Revised July 23, 2004

Prepared for:

U. S. Home Corporation

Prepared by:

***The Wessex Group, Ltd.*
479 McLaws Circle, Suite 1
Williamsburg, Virginia 23185
Telephone: (757) 253-5606
Facsimile: (757) 253-2565
e-mail: wessexgroup@wessexgroup.com**

**U. S. Home – Colonial Heritage at Williamsburg
2004 Rezoning Application – BSA Tract
FISCAL IMPACT ANALYSIS**

U. S. Home, the developer of Colonial Heritage at Williamsburg, an active adult community, is seeking rezoning for a 660 acre tract of land adjacent to the approved site for Colonial Heritage, of which 400 acres will be set aside for conservation and 260 slated for development. This report describes the fiscal impact that James City County, Virginia can expect under the new development plan. All dollar figures shown in this report are in 2004 dollars *and have been updated from fiscal impact estimates provided in previous reports prepared by The Wessex Group, Ltd. (TWG) from April 2001 and June 2002.* No attempt has been made to estimate economic inflation. For consistency, all fiscal impact estimates in this report (whether net new estimates or examples from previous studies) are based on James City County's FY 2005 Proposed Budget. It should be noted a real estate property tax rate of \$0.85 (as stated in the FY 2005 Adopted Budget) has been used throughout this analysis.

The site already approved for the development of Colonial Heritage is referred to in this report as the "Massie and Ware tracts." The adjacent site that is being presented for rezoning was purchased from the Peninsula Council of the Boy Scouts of America and is referred to as the "BSA tract." *The Wessex Group* submitted a comprehensive fiscal impact report to James City County for the Massie and Ware tracts rezoning request in 2001. The reader should refer to that report for details on methodology and assumptions. The 2001 report describes the fiscal impact of developing 2,000 homes in Colonial Heritage. Since U.S. Home has been approved to build a total of 2,000 homes for its development, the additional 55 homes to be built on the BSA tract will be removed from within Colonial Heritage if the rezoning is approved by the county. The change in fiscal impact to the county from subtracting 55 homes from the active adult community development is presented below in Table 1.

**Table 1
Summary of Change in Net Fiscal Impact of Constructing 1,945 vs. 2,000 Homes
Massie & Ware Tracts**

	Assumption of Annual Real Appreciation in Real Estate Property Value		
	5%	3%	1.5%
Massie & Ware Tracts – As Approved w/ 2,000 homes (\$000's) adjusted using FY 2005 JCC Budget figures	\$15,504	\$10,419	\$7,613
Massie & Ware Tracts – 1,945 homes assuming the rezoning request is approved for the BSA Tract using FY 2005 JCC Budget figures	\$15,140	\$10,174	\$7,436
Massie & Ware Tracts –Decrease in Net Fiscal Impact (\$000's)	\$364	\$245	\$177

The primary focus of this report is to present the incremental impact of rezoning the additional acres in the BSA tract. The addition of the BSA tract to the Colonial Heritage tracts is referred to as the 2004 Plan. Two scenarios are presented: (1) estimates based on the rezoning request including 55 single family homes outside of the Colonial Heritage gates and (2) by-right development of 150 single family housing units on three-acre lots.

In summary and under the assumption of approval of the rezoning request, the combined net fiscal impacts after buildout are as follows in Table 2. As previously indicated, all figures presented in this report reflect 2004 dollars.

Table 2
Summary- Incremental Fiscal Impact – 2004 Plan

	Assumption of Annual Real Appreciation in Real Estate Property Value		
	5%	3%	1.5%
Massie & Ware Tracts – 1,945 units (\$000's)	\$15,140	\$10,174	\$7,436
BSA Tract – 55 homes Requested Rezoning (\$000's)	\$2,626	\$1,742	\$1,255
Fiscal Impact – Colonial Heritage and BSA Tract (\$000's)	\$17,766	11,916	8,691

Table 3 following summarizes the net fiscal impact of the BSA tract if developed by-right. Assumptions and estimates underlying the figures in Tables 1 and 2 are presented subsequently in this report, as are more detailed tables.

Table 3
By-Right Development – BSA Tract - Net Fiscal Impact

	Assumption of Annual Real Appreciation in Real Estate Property Value		
	5%	3%	1.5%
Incremental Revenues (\$000's)	\$777	\$613	\$523
Incremental Expenditures (\$000's)	\$870	\$870	\$870
Net Fiscal Impact (\$000's)	(\$93)	(\$257)	(\$347)

Following are more detailed explanations of estimates pertaining to real property values, population and public education costs for dwelling units located outside of the age-restricted community, and increased public safety costs resulting from the additional acreage in the BSA tract.

Real Property Value Estimates

As of February 2004, U. S. Home had 33 contracts for homes in Colonial Heritage and had closed on two homes. Table 4 lists the average actual selling prices for the homes with contracts, including lot, by product type. Based on the approved master plan and the selling prices shown in the table, the 1,378 detached homes planned for Colonial Heritage will sell for an average of \$385,400 (versus the \$300,000 first estimated in 2001).

Table 4
Colonial Heritage Products

Home Design	Dwelling Type	Average Square Feet	Average Selling Price
Executive Series	Detached	2,500	\$396,300
Garden Series	Detached	2,000	\$363,700
Villa Series	Attached	1,800	\$290,500
Carriage Series	Attached	1,500	\$257,800

In the fiscal impact estimates that follow, the average selling prices listed above are used as the initial basis of real estate values in Colonial Heritage. If the developer's rezoning request is approved, lot sizes of detached home products can be increased and additional product lines can be introduced. The

developer anticipates that the average selling price of a detached home and lot in the development will increase more than 12% to \$440,500.

The developer does not propose to expand the total number of dwelling units to be offered in Colonial Heritage above the approved number of 2,000. If the rezoning request is approved, the developer proposes to remove 55 homes from the active adult community and build 55 dwelling units on the BSA tract that will be located outside of the Colonial Heritage gates. The later are not subject to the resident age stipulations of an active adult community. For this analysis, the developer has estimated the homes outside of the gate (if the rezoning is approved) will average \$630,000 each which will include one to three-acre lots per home site. The developer estimates the average size of these custom built homes will be 4,000 square feet. Because these homes would be located next to Colonial Heritage, property appreciation rates are assumed to match those estimated for Colonial Heritage. The developer anticipates that the average selling price of a detached home and lot on the BSA tract will be \$850,000.

If the rezoning request is not approved, the developer expects to develop the BSA tract by-right, which would result in 150 single family homes (as compared to the proposed 55 housing units) that will not be located within the gates of Colonial Heritage and, therefore, not subject to the age restrictions of an active adult community. The higher density and consequently smaller lot sizes will reduce both the size and value of the homes constructed under this scenario. A market value of \$158,100 is assumed, based on an estimate of \$150,000 for the dwelling unit and lot plus \$8,100 for the additional acreage per unit. Because these single family units would be located next to Colonial Heritage, property appreciation rates are assumed to match those estimated for Colonial Heritage.

Population BSA Tract

The development of the BSA tract under both the requested rezoning scenario and the by-right development scenario is assumed to be single family units outside of the age-restricted, gated community of Colonial Heritage. The population of these households is based on the county average of 2.5 persons per household. For the 55 homes under the rezoned scenario, the estimated addition to the county's population is 136 persons. For 150 homes under the by-right development scenario, the incremental population would reach an average of 375 persons. As described in the 2001 fiscal impact report for Colonial Heritage at Williamsburg (TWG), several types of county revenues and expenditures are attributed to this new development on a per capita basis.

Public Education Costs

Based on information provided by James City County, it is assumed that each single family home located outside of the age-restricted community produces 0.5 public school children. Therefore, for the 50 proposed homes under the rezoned scenario, the incremental public school population would be 25 students. Under the by-right development scenario, the incremental public school population would be 75 students.

The Proposed Budget for FY 2005 shows that per student cost to the county is \$5,384 annually plus \$1,113 per student in debt service related to public schools. These costs have been attributed to the estimated school population of the portion of the BSA tract located outside of the age-restricted community. The per student cost cited above does not include the expenditure of funds allocated to the county under the 1 cent sales tax dedicated to public education costs in the Commonwealth. The analysis

also does not include the revenues allocated in James City County under the state formula. It is assumed that these funds off-set each other. Further, the purpose of the analysis is to estimate the impact on James City County from decisions under the control of the County.

Public Safety Costs

In response to a previous fiscal impact submission for Colonial Heritage prepared by *The Wessex Group*, county staff members indicated that a significant increase in the acreage of a residential development is likely to incur additional public costs, especially public safety costs, even if the number of households does not change. To respond to this concern, TWG staff contacted the James City County Police Department and Fire Department to discuss the financial impact of the additional acreage in the BSA tract.

In addition to the per capita cost of police protection, the Police Department recommends that the fiscal impact analysis include the cost of hiring and equipping one additional officer. The most recent figures indicate that the first year's cost is approximately \$75,000, which includes a police car and equipment. Subsequent years' costs are approximately \$40,000. To account for capitalization and future replacement of the equipment, public safety costs have been increased by \$47,500 per year. The per capita cost is \$84.54 (\$4,790,251 divided by the county's population of 56,662 persons = \$84.54).

To account for the cost of servicing the additional road miles in the BSA tract, the Fire Department recommends increasing the per capita cost of fire protection by 5%. The current per capita cost as indicated the FY 2005 Proposed Budget is \$97.28 (\$5,511,949 divided by the county's population of 56,662 persons = \$97.28). Increasing the per capita cost by 5% yields a figure of \$102.14.

Detailed Tables – Incremental Fiscal Revenues, Expenditures and Net Impact

Tables 5, 6 and 7 following provide more detailed estimates of the fiscal impact of rezoning the BSA tract or developing it by-right. It should be noted that any developer proffers currently in effect or suggested as part of the rezoning package are not incorporated in this analysis. These include the following three issues: (1) Public Use Site or Cash Contribution - \$750,000, (2) EMS Equipment/Signalization: Cash Contribution - \$120,000, and (3) Cash Contributions for Additional Community Impacts - \$438,000. These three proffers total more than \$1.3 million in cash and/or land for James City County and, in general, are payable over time as subdivision plats or final site plans are approved. In addition, a proffer of \$750 per dwelling unit has been offered to the James City Service Authority to help offset the various costs associated with providing water to new county residents in the future. The Service Authority will be paid \$1.5 million under the conditions of this proffer.

Table 5
Massie & Ware Tracts Consisting of 1,945 Units – 20 Year Buildout
Incremental Government Revenues, Expenditures and Net Fiscal Impact (2004 Dollars)

	Assumption of Annual Real Appreciation in Real Estate Property Value		
	5%	3%	1.5%
Dwelling Units & Population			
Residential Units – Colonial Heritage	1,945	1,945	1,945
Residential Units Outside of Gate	0	0	0
Incremental Population – Colonial Heritage (average of 1.73 persons/active adult household)	3,365	3,365	3,365
Incremental Population Outside of Gate	0	0	0
Incremental Public School Students	0	0	0
Incremental Government Revenues (\$000s)			
Real Property Taxes	\$15,396	\$10,671	\$8,064
Personal Property Taxes	1,163	1,163	1,163
Meals Tax	79	79	79
Retail Sales Tax	213	213	213
Business License Tax	43	43	43
Recording Taxes	782	543	411
Miscellaneous Taxes & Revenues	679	679	679
Total Incremental Government Revenues (\$000s)	\$18,356	\$13,390	\$10,652
Incremental Government Expenditures (\$000s)			
General Government & Administration	\$434	\$434	\$434
Health & Welfare	222	222	222
Statutory, Unclassified	264	264	264
Community Services/Contributions	511	511	511
Public Safety	1,014	1,014	1,014
Public Works	579	579	579
Capital Improvements	192	192	192
Public Education (Operating Costs)	0	0	0
Total Incremental Government Expenditures (\$000s)	\$3,216	\$3,216	\$3,216
Net Fiscal Impact (Revenues less Expenditures - \$000s)	\$15,140	\$10,174	\$7,436

Table 6
Colonial Heritage with 1,945 SF Homes & BSA Tract with 55 SF Homes Outside Gate
Incremental Government Revenues, Expenditures and Net Fiscal Impact (2004 Dollars)

	Assumption of Annual Real Appreciation in Real Estate Property Value		
	5%	3%	1.5%
Dwelling Units & Population			
Residential Units – Colonial Heritage	1,945	1,945	1,945
Residential Units Outside of Gate	55	55	55
Incremental Population – Colonial Heritage	3,365	3,365	3,365
Incremental Population Outside of Gate	136	136	136
Incremental Public School Students	27	27	27
Incremental Government Revenues (\$000s)			
Real Property Taxes	\$ 18,143	\$ 12,576	\$ 9,507
Personal Property Taxes	1,210	1,210	1,210
Meals Tax	82	82	82
Retail Sales Tax	218	218	218
Business License Tax	44	44	44
Recording Taxes	926	642	486
Miscellaneous Taxes & Revenues	707	707	707
Total Incremental Government Revenues (\$000s)	\$21,329	\$15,479	\$12,253
Incremental Government Expenditures (\$000s)			
General Government & Administration	\$ 451	\$ 451	\$ 451
Health & Welfare	231	231	231
Statutory, Unclassified	274	274	274
Community Services/Contributions	532	532	532
Public Safety	1,102	1,102	1,102
Public Works	602	602	602
Capital Improvements	222	222	222
Public Education (Operating Costs)	147	147	147
Total Incremental Government Expenditures (\$000s)	\$ 3,562	\$ 3,562	\$ 3,562
Net Fiscal Impact (Revenues less Expenditures - \$000s)	\$17,766	\$11,916	\$ 8,691
Incremental Net Fiscal Impact – Effects of Rezoning (\$000's)			
	\$2,626	\$1,742	\$1,255

Table 7
By-Right Development: BSA Tract with 150 SF Homes
Incremental Government Revenues, Expenditures and Net Fiscal Impact (2004 Dollars)

	Assumption of Annual Real Appreciation in Real Estate Property Value		
	5%	3%	1.5%
Dwelling Units & Population			
Residential Units Outside of Gate	150	150	150
Incremental Population Outside of Gate	375	375	375
Incremental Public School Students	75	75	75
Incremental Government Revenues (\$000s)			
Real Property Taxes	\$509	\$353	\$267
Personal Property Taxes	142	142	142
Meals Tax	9	9	9
Retail Sales Tax	14	14	14
Business License Tax	3	3	3
Recording Taxes	25	17	13
Miscellaneous Taxes & Revenues	76	76	76
Total Incremental Government Revenues (\$000s)	\$777	\$613	\$523
Incremental Government Expenditures (\$000s)			
General Government & Administration	\$48	\$48	\$48
Health & Welfare	25	25	25
Statutory, Unclassified	29	29	29
Community Services/Contributions	56	56	56
Public Safety	160	160	160
Public Works	64	64	64
Capital Improvements	83	83	83
Public Education (Operating Costs)	404	404	404
Total Incremental Government Expenditures (\$000s)	\$870	\$870	\$870
Net Fiscal Impact (Revenues less Expenditures - \$000s)	(\$93)	(\$257)	(\$347)

PLANNING DIRECTOR'S REPORT

October 2004

This report summarizes the status of selected Planning Division activities during the last 30 days.

1. Five Forks Area Study. The Planning Commission unanimously approved the Study's recommended Primary Principles on September 13, 2004. The Principles go to the Board of Supervisors for consideration on September 28.
2. Virginia Capital Trail Public Hearing. VDOT will conduct a public hearing on this project on September 30, 2004 at Jamestown High School. The hearing will follow an open house format, with the public welcome to drop by anytime between 4:00 and 7:00 PM. The proposed multi-use trail extends from the Chickahominy Riverfront Park along Route 5 to the vicinity of Greensprings Road where it would connect to the Greensprings Trail. (Please insert last month's blurb)
3. Personnel Updates. Geoff Cripe has joined the planning staff as a development management assistant. He replaces Trey Davis who is now a planner in the office. Geoff is a 2004 graduate of Indiana University with a degree in Public Management.
4. 2007 Community Activities task Force. Staff continued to participate on this committee in its work to encourage, coordinate and initiate various activities for the 2007 event. The Committee is focusing its efforts on beautification projects and events involving local resident and businesses.
5. Greensprings Trail. The Commonwealth Transportation Board approved the trail on September 16, and commencement of construction is projected for spring or summer, 2005.
6. New Town. The New Town Development Review Board meet on September 15 to consider the following cases:
 - New Town Associates and Developers Realty Corporation.
 1. Final, Sections 2 & 4 Phase III roads and infrastructure (AES).
 2. Block 6 Theater plan (AES, Developers Realty and Consolidated Theaters).
 3. Village Square concept plan Blocks 2, 3 and 6 (Developers Realty and New Town).
 4. Court Square (previously approved) changes (Higgins & Gerstenmaier).
 5. Entrance sign in Courthouse Street median. (New Town).
 - Town Bank – Changes to exterior building elevations (HBA and Town Bank).
 - Block C D & A – Final on building materials (brick wall built on site) issues include downspouts, lighting, screening of mechanical, plumbing and roof penetrations and signage.
7. Conceptual Plan Roundtable. On September 27, staff reviewed a conceptual plan for the addition of a rectory building at St. Bede Catholic Church on Ironbound Road. The proposal will require DRC review to determine if the proposed addition is consistent with the adopted St. Bede Master Plan.

Two recently submitted site plans, an extension of Green Mount Parkway in the Green Mount Industrial Park and an extension of Fieldstone Parkway in the Stonehouse development, are scheduled for review at the next roundtable meeting on October 11.
8. Transportation Priorities. The Board of Supervisors adopted its transportation priorities for 2006-2011 on September 14. The priorities are provided annually to VDOT to assist them in making funding decisions for the Six-Year Transportation Improvement Plan.

O. Marvin Sowers, Jr.