

A G E N D A  
JAMES CITY COUNTY PLANNING COMMISSION  
APRIL 3, 2006 - 7:00 p.m.

1. ROLL CALL
2. COMMITTEE AND COMMISSION REPORTS
  - A. Development Review Committee (DRC) Report
  - B. Policy Committee
  - C. Other Committee/Commission Reports
3. PLANNING COMMISSION CONSIDERATION
  - A. ZO-7-05 Initiating Resolution – Sign Ordinance
4. PUBLIC HEARINGS
  - A. Z-13-05 Village at Toano
  - B. AFD-9-86-3 Gordon Creek Withdrawal
  - C. SUP-5-06 WJCC 8<sup>th</sup> Elementary School
  - D. Z-12-05 Moss Creek Commerce Center (Toano Business Center)
  - E. Z-13-04/MP-10-04/SUP-31-04 Monticello at Powhatan North
  - F. SUP-4-06/MP-1-06 Prime Outlets MP Amendment
  - G. Z-16-05/MP-13-05 New Town Sec. 9 – Settler’s Market
  - H. SUP-1-06 Centerville Road Tower Relocation
  - I. ZO-1-06 Zoning Ordinance Amendment – Athletic Field Lighting
5. PLANNING DIRECTOR’S REPORT
6. ADJOURNMENT

**JAMES CITY COUNTY  
DEVELOPMENT REVIEW COMMITTEE REPORT**

**FROM: 3/1/2006 THROUGH: 3/31/2006**

**I. SITE PLANS**

**A. PENDING PRELIMINARY APPROVAL**

SP-067-04	Treyburn Drive Courtesy Review
SP-077-04	George Nice Adjacent Lot SP Amend.
SP-107-04	Noah's Ark Vet Hospital Conference Room
SP-150-04	Abe's Mini Storage
SP-004-05	Longhill Grove Fence Amend.
SP-008-05	Williamsburg National Clubhouse Expansion
SP-009-05	Colonial Heritage Ph. 1, Sec. 4 SP Amend.
SP-021-05	Villages at Powhatan Ph. 5 SP Amend.
SP-071-05	Merrimac Center Parking Expansion
SP-076-05	Warhill Multiuse Trail
SP-089-05	Stonehouse- Rt. 600 Utilities
SP-093-05	The Pointe at Jamestown, Ph. 2 Amend.
SP-106-05	New Town Block 5 Dumpster Relocation
SP-107-05	Warhill - Eastern Pond Dam Renovations
SP-131-05	Ironbound Square Road Improvements Ph. 1
SP-133-05	Prime Outlets Ph. 6
SP-134-05	Windsor Hall SP Amend.
SP-136-05	Colonial Heritage Ph. 5 Sec. 1
SP-137-05	Williamsburg Place Expansion
SP-140-05	Hankins Industrial Park Ph. 2 Cabinet Shop
SP-145-05	New Town, Langley Federal Credit Union
SP-147-05	Warhill - TNCC Site Improvements
SP-149-05	Liberty Crossing
SP-153-05	Ironbound Village Parking
SP-156-05	Chickahominy Baptist Building Expansion
SP-158-05	New Town, Block 10, Parcel B (McMurrin Bldg)
SP-160-05	Stonehouse Elementary Addition
SP-001-06	5525 Olde Towne Rd
SP-004-06	Villas at Five Forks
SP-005-06	Governor's Grove at Five Forks
SP-009-06	Williamsburg Indoor Sports Complex SP Amend.
SP-012-06	New Dawn Assisted Living
SP-017-06	Longhorn Steakhouse
SP-018-06	New Town, Block 9, Parcel A
SP-019-06	Corner Pocket Half-Wall
SP-020-06	JCSA Watermain Expansion / Interconnections
SP-021-06	Warhill Sports Complex - Field 5 Lighting

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SP-022-06	Volvo Rents
SP-023-06	Eighth E.S.
SP-024-06	WindsorMeade Marketplace Amend.
SP-025-06	Prime Outlets Ph. 7 Expansion
SP-026-06	Busch Gardens- Black Forest Gazebo
SP-027-06	Spectators Outdoor Seating Fence Addition
SP-028-06	New Town, Sec. 6, Block 15, Parcel B

**B. PENDING FINAL APPROVAL**

**EXPIRE DATE**

SP-141-04	Carolina Furniture Warehouse	4 /6 /2006
SP-042-05	STAT Services, Inc.	6 /6 /2006
SP-060-05	Community Sports Facility (Stadium)	12/5 /2006
SP-094-05	Homestead Garden Center	10/13/2006
SP-097-05	Stonehouse Presbyterian Church	10/27/2006
SP-100-05	Bay Aging	9 /12/2006
SP-102-05	LaGrange Pkwy and Rt 600 to Rt 606	9 /26/2006
SP-103-05	Colonial Heritage Ph. 4	11/7 /2006
SP-104-05	Powhatan Plantation Maintenance Building	12/21/2006
SP-115-05	Farm Fresh Fuel Express	1 /25/2007
SP-116-05	Cookes Garden Center	10/5 /2006
SP-122-05	Titan Concrete	11/7 /2006
SP-123-05	Michelle Point	10/3 /2006
SP-125-05	New Town, Block 10 Parcel D (Foundation Square)	11/7 /2006
SP-142-05	Busch Gardens Market Bldg	12/7 /2006
SP-148-05	Noland Commercial Site	4 /6 /2007
SP-162-05	Eaglescliffe Condos	2 /6 /2007
SP-006-06	Whythe-Will Parking Lot Expansion	2 /14/2007
SP-007-06	GreenMount Road Extension Ph. 2	3 /20/2007
SP-013-06	New Town Block 3 Parcel D (NNSECU Building)	3 /14/2007

**C. FINAL APPROVAL**

**DATE**

SP-063-03	Warhill Sports Complex, Parking Lot Expansion	3 /21/2006
SP-026-05	Williamsburg Plantation, Sec. 10 Amend.	3 /16/2006
SP-128-05	New Town Sec. 3 & 6 Roadways Ph. 4	3 /21/2006
SP-150-05	New Town, Block 11 Residential	3 /22/2006
SP-157-05	Park Inn Porte Cochere	3 /16/2006
SP-159-05	New Town Community Building Block 9 Parcel B	3 /16/2006
SP-011-06	Wedmore Place SP Amend	3 /21/2006
SP-015-06	Berm Plan @ Centerville Rd. & Blackheath SP Amend.	3 /20/2006
SP-016-06	Prime Outlets Kiosks SP Amend	3 /8 /2006

**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-086-02	The Vineyards, Ph. 3, Lots 1, 5-9, 52 BLA
S-062-03	Hicks Island - Hazelwood Subdivision
S-034-04	Warhill Tract BLE / Subdivision
S-066-04	Hickory Landing Ph. 1
S-067-04	Hickory Landing Ph. 2
S-121-04	Wellington Public Use Site
S-039-05	Hofmeyer Limited Partnership
S-042-05	Toano Business Centre, Lots 5-9
S-044-05	Colonial Heritage Road & Sewer Infrastructure
S-059-05	Peleg's Point, Sec. 6
S-075-05	Racefield Woods Lots 5A-5E
S-076-05	Racefield Woods Lots 5E-5I
S-090-05	Powhatan Secondary Ph. 7C
S-094-05	Warhill Tract Parcel 1
S-097-05	ROW Conveyance- 6436 Centerville Road
S-100-05	Gosden & Teuton BLA
S-104-05	1121 Stewarts Rd.
S-105-05	Stonehouse Land Bay 31
S-106-05	Colonial Heritage Ph. 5 Sec. 1
S-108-05	3020 Ironbound Rd. BLE
S-113-05	6425 & 6428 Conservancy BLA
S-117-05	Liberty Ridge
S-006-06	Ripley Family Subdivision
S-012-06	Huss Subdivision
S-013-06	Joyce G. Ward Subdivision, Parcel 1
S-014-06	Cowles Subdivision
S-015-06	Indigo Park- Block A, Lot 1
S-016-06	Bradley Family Subdivision
S-017-06	107 Theodore Allen
S-018-06	3448 Chickahominy Road

### B. PENDING FINAL APPROVAL

		EXPIRE DATE
S-044-03	Fenwick Hills, Sec. 3	6 /25/2006
S-098-03	Stonehouse Glen, Sec. 1	4 /5 /2007
S-101-03	Ford's Colony - Sec. 35	2 /2 /2007
S-116-03	Stonehouse Glen, Sec. 2	4 /6 /2007
S-002-04	The Settlement at Powhatan Creek (Hidden)	3 /1 /2007

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S-037-04	Michelle Point	10/3 /2006
S-059-04	Greensprings West Ph. 6	9 /13/2006
S-075-04	Pocahontas Square	9 /16/2006
S-091-04	Marywood Subdivision	12/5 /2006
S-111-04	Colonial Heritage Ph. 3, Sec. 1	2 /7 /2007
S-112-04	Wellington Sec. 6 & 7	12/5 /2006
S-002-05	The Pointe at Jamestown Sec. 2B	2 /18/2007
S-012-05	Greensprings Trail ROW-Waltrip Property Conveyance	3 /20/2007
S-013-05	Greensprings Trail ROW-Ambler/Jamestown Prop. Conv	3 /20/2007
S-014-05	Greensprings Trail ROW-P L.L.L.C Prop. Conveyance	3 /20/2007
S-015-05	Colonial Heritage Ph. 3, Sec. 2	5 /2 /2006
S-043-05	Colonial Heritage Ph. 3, Sec. 3	6 /6 /2006
S-053-05	Kingsmill-Spencer's Grant	7 /11/2006
S-063-05	John Barry Davidson BLE	7 /6 /2006
S-065-05	Argo Subdivision	12/23/2006
S-066-05	8739 Richmond Rd Subdivision	12/23/2006
S-071-05	Gordon Creek BLA	8 /2 /2006
S-078-05	Fairmont Subdivision Sec. 1- 4 (Stonehouse)	10/3 /2006
S-079-05	Colonial Heritage Ph. 4	11/7 /2006
S-083-05	Curry Revocable Trust	1 /9 /2007
S-091-05	Windmill Meadows	10/3 /2006
S-095-05	Landfall Village	3 /10/2007
S-114-05	Colonial Heritage Ph. 1 Sec. 5 Lots 1-30	12/15/2006
S-003-06	New Town Block 8 Parcels A, D, & E BLE & BLA	1 /13/2007
S-004-06	New Town Block 6 & 7 Parcel A & C BLA & BLE	1 /12/2007
S-009-06	Garrett BLA & BLE	3 /3 /2007
S-011-06	New Town, Block 15, Parcel B	3 /8 /2007

#### **C. FINAL APPROVAL**

#### **DATE**

S-073-03	Colonial Heritage Ph. 2, Sec. 2	3 /3 /2006
S-064-05	Stonehouse Commerce Park, Sec. D, Parcels A & B	3 /22/2006
S-101-05	Bozarth - Mahone	3 /1 /2006
S-115-05	5021 John Tyler BLA & BLE	3 /8 /2006
S-120-05	Lakeview Estates Ph. 1	3 /16/2006
S-121-05	Lakeview Estates Ph. 2	3 /16/2006
S-001-06	Prime Outlets Subdivision - 5699 Richmond Rd	3 /23/2006
S-005-06	New Town Block 14 Parcel B	3 /22/2006
S-008-06	108 Mace Street BLE	3 /21/2006
S-010-06	Ford's Colony Parcel A & A-4	3 /21/2006

#### **D. EXPIRED**

#### **EXPIRE DATE**

## **RESOLUTION**

### **INITIATION OF CONSIDERATION OF AMENDMENTS TO THE ZONING ORDINANCE**

#### **SIGNAGE IN MIXED-USE DISTRICTS**

WHEREAS, the Planning Commission of James City County, Virginia, is charged by Virginia Code §15.2-2223 to prepare and recommend to the Board of Supervisors various land development plans and ordinances, specifically including a zoning ordinance and necessary revisions thereto as seem to the Commission to be prudent; and

WHEREAS, on August 12, 2003, the Board of Supervisors adopted the 2003 Comprehensive Plan; and

WHEREAS, in order to make the Zoning Ordinance more consistent with the Comprehensive Plan, public review and comment of draft amendments is required, pursuant to Virginia Code §15.2-2285; and

WHEREAS, the Planning Commission is of the opinion that the public necessity, convenience, general welfare, or good zoning practice warrant the consideration of amendments.

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission of James City County, Virginia, does hereby request staff to initiate review of Article II. Division 3. Section 24-66, Definitions, Section 24-70, Freestanding signs, Section 24-73, Special regulations for certain signs, and Section 24-75, Prohibited signs, of the Zoning Ordinance for the consideration of permitting pedestrian-oriented signage in Mixed Use Districts governed by a binding master plan and a design review board. Also, the Planning Commission shall hold at least one public hearing on the consideration of amendments of said Ordinance and shall forward its recommendation thereon to the Board of Supervisors in accordance with law.

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Jack L. Fraley  
Chair, Planning Commission

ATTEST:

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O. Marvin Sowers, Jr.  
Secretary

Adopted by the Planning Commission of James City County, Virginia, this 3rd day of April,  
2006.

## **REZONING Z-13-05, Village at Toano**

### **Staff Report for April 3, 2006 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.*

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#### **PUBLIC HEARINGS**

Planning Commission:

#### **Building F Board Room; County Government Center**

October 3, 2005 (applicant deferral)

November 7, 2005 (deferred)

December 5, 2005 (applicant deferral)

January 9, 2006 (applicant deferral)

February 6, 2006 (applicant deferral)

March 6, 2006 (applicant deferral)

April 3, 2006

7:00 p.m.

Board of Supervisors:

June 2006 (tentative)

7:00 p.m.

#### **SUMMARY FACTS**

Applicant:

Vernon Geddy III, Geddy, Harris, Franck & Hickman, L.L.P.

Land Owner:

Jessica D. Burden, Rose Bunting, Elsie Ferguson, and Jack Ferguson

Proposed Use:

Construction of 94 town home units

Location:

3126 Forge Road

Tax Map/Parcel:

(12-3) (1-10)

Parcel size:

20.881 acres

Existing Zoning:

A-1, General Agricultural

Proposed Zoning:

R-5, Multi-family Residential, with proffers

Comprehensive Plan:

Moderate Density Residential and Low Density Residential

Primary Service Area:

Yes

#### **STAFF RECOMMENDATION**

After the adoption of the Toano Design Guidelines, the applicant has requested deferral of this case until May 1, 2006 in order to resolve various issues associated with the case and proffers. Staff concurs with this request.

Staff Contact:

Jason Purse

Phone: 253-6685

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Jason Purse

#### **ATTACHMENTS:**

1. Deferral Letter

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

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

ANDREW M. FRANCK  
RICHARD H. RIZK

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POST OFFICE BOX 379  
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email: [vgeddy@ghfhllp.com](mailto:vgeddy@ghfhllp.com)

March 24, 2006

Mr. Jason Purse  
James City County Planning Dept.  
101-A Mounts Bay Road  
Williamsburg, Virginia 23185

Re: Z-13-05 Villages at Toano

Dear Jason:

I am writing on behalf of the applicant to request that the Planning Commission defer consideration of this case until its May meeting.

Very truly yours,

GEDDY, HARRIS, FRANCK & HICKMAN, LLP



Vernon M. Geddy, III

VMG/

Cc: Mr. Wally Scruggs  
Mr. Marc Gutterman

**AFD Withdrawal CASE NO. AFD 9-86-3—Gordon Creek Withdrawal  
Staff Report for the April 3, 2006 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.*

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**PUBLIC HEARINGS**

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

Planning Commission:

April 3, 2006

7:00 PM

Board of Supervisors:

April 25, 2006

7:00 PM (tentative)

**SUMMARY FACTS**

**Applicant:**

Mr. Sanford Wanner, James City County County Administrator

**Land Owner:**

Mr. Sanford Wanner, James City County County Administrator

**Proposal:**

Withdrawal of approximately 44 acres to build an elementary school

**Location:**

4001 Brick Bat Road

**Tax Map/Parcel**

(36-3) (1-1)

**Parcel Size**

44+/- acres

**Existing Zoning:**

A-1, General Agricultural

**Comprehensive Plan:**

Rural Lands

**Primary Service Area:**

Outside

**STAFF RECOMMENDATION**

Staff finds the proposed withdrawal consistent with the Comprehensive Plan. Furthermore, staff finds this application meets all of the criteria for the withdrawal of lands from Agricultural and Forestal Districts outside the PSA. As a site currently zoned A-1, with the approval of a special-use-permit to allow for a public school, the site would be in conformance and consistent with zoning for General Agricultural districts.

The use of the site for a public school makes the site consistent with these policies as well as consistent with the Comprehensive Plan. Since the school site has an opening date of Fall of 2007, the applicant cannot wait for the renewal period for this district in August. Waiting for withdrawal during the renewal period will preclude the ability to complete the project during the allotted time frame. Therefore, based on the information available to staff at this time, staff recommends approval of the request to remove 44 acres from the Gordon Creek AFD.

On March 16, 2006 the AFD Advisory Committee recommended denial of this application by a vote of 7-1.

Staff Contact:

Jason Purse, Planner

Phone: 253-6685

**Project Description**

Mr. Sanford Wanner, has applied on behalf of James City County, to withdraw approximately 44 acres from the existing Gordon Creek Agricultural and Forestal District (AFD) for the purpose of constructing the 8<sup>th</sup> Elementary School for James City County. The parcel is located at 4001 Brick Bat Road, which is northwest of the Centerville and Brick Bat Road intersection and is further identified as Parcel No. (1-1) on the James City County Real Estate Tax Map No. (36-3). This request is being reviewed as a part of the 8<sup>th</sup> James City County Elementary School Special Use Permit (ref. Case No. SUP-05-06).

The site is predominantly wooded with some open area near the middle of the original property. This parcel is a part of the eastern most main section of Gordon Creek, but will not have an adverse effect on outlying pieces of this AFD. Originally the piece was a part of the 163.880 acres placed in the AFD by the previous owner. The rest of that parcel will remain part of the AFD, and is up for renewal this August.

### **Surrounding Zoning and Development**

A majority of the property to be withdrawn is surrounded by other properties located inside the Gordon Creek AFD along Brick Bat Road. The parcel is zoned A-1 and designated rural lands on the 2003 Comprehensive Plan Land Use Map. On the south side of Brick Bat, and off of Centerville Road, the parcel is adjacent to the Greensprings West subdivision, which is zoned R-4.

### **Comprehensive Plan**

The withdrawal area is designated as rural lands on the 2003 Comprehensive Plan. Rural Lands areas are areas containing farms, forests and scattered houses, exclusively outside of the Primary Service Area, where a lower level of public service delivery exists or where utilities and urban services do not exist and are not planned for in the future. Appropriate primary uses include agricultural and forestal activities, together with certain recreational, public or semi-public and institutional uses that require a spacious site and are compatible with the natural and rural surroundings.

## **PUBLIC IMPACTS**

### **Public Utilities**

The site is located outside the Primary Service Area, but will be served by public water and sewer from a connection with the adjacent Greensprings West service.

### **Analysis**

On September 24, 1996, The Board of Supervisors adopted a policy and withdrawal criteria for AFD parcels that are outside the Primary Service Area. The policy and criteria are as follows:

1. It is the policy of the Board of Supervisors to discourage the withdrawal of properties from Agricultural and Forestal Districts during the terms of those districts.
2. The criteria for withdrawal during the terms of the districts are as follows:

In order to establish “good and reasonable cause,” any request by a landowner to withdraw property from an Agricultural and Forestal District must submit written information to demonstrate compliance with the following criteria:

- A. The request is caused by a change in circumstances that could not have been anticipated at the time application was made for inclusion in the district.
- B. The request would serve a public purpose, as opposed to the proprietary interest of the landowner, that could not otherwise be realized upon expiration of the AFD.
- C. The request would not cause damage or disruption to the existing district.
- D. If the request for withdrawal is in conjunction with a proposal to convert the land use of a property to a different use than is currently in place on the property, the new land use would be in conformance with the Comprehensive Plan.

The Board shall weigh each of the above criteria in its deliberation, but may also use whatever other criteria as it deems appropriate for the individual case.

Each of these criteria have been evaluated by staff:

*Criteria A: Unanticipated Withdrawal*

With the accelerated growth of the number of school children in the County, there is an increased need for additional school sites. After the evaluation of possible sites in and around this area of the County, it was felt that this site provided the best opportunity for construction of the eighth elementary school. Areas were compared both inside and outside of the Primary Service Area, but in the end this site provided the best option for the County. The section of the parcel was only recently evaluated and selected as an appropriate site for the elementary school. There was no way of forecasting that this specific parcel would be chosen as the school site during the last AFD renewal period in 2002. **The application meets this criteria.**

*Criteria B: Public Purpose*

The withdrawal site will be used for a public school facility, which is a public purpose. Public elementary schools have certain specific location, transportation, and acreage needs that are unique to that use. An exhaustive study determined that this site provided for all of the necessities for a public school site. **The application meets this criteria.**

*Criteria C: Damage to the existing district*

The withdrawal site is internal to the largest section of the Gordon Creek AFD. The parcel can be withdrawn without adversely affecting parcels on the outside of it, because it will not cause parcels to be more than a mile away from the main body of the AFD. **The application meets this criteria.**

*Criteria D: Comprehensive Land Use conformance*

The withdrawal site is located within a rural lands area of the Comprehensive Plan. In the description of possible land uses within rural lands there are provisions for “public or semi-public and institutional uses that require a spacious site and are compatible with the natural and rural surroundings.” As this site will be used for an elementary school, and needs at least 20 acres of land to meet Comprehensive Plan criteria, this meets the provision for public uses. In actuality, public elementary schools require considerably more acreage in terms of developable land in order to fit all of the necessary elements onto the site. Many of the elementary schools in the County have sites of between 30 and 40 acres of land.

While the extension of utilities beyond the Primary Service Area (PSA) is contrary to the Comprehensive Plan, the Public Facilities section stresses that the location of new public facilities should be close to the

greatest number of people served. It also stresses the need for construction of public facilities in a timely manner to meet the needs of the County. A public school is needed in this area of the County in order to meet current demand. The withdrawal is consistent with the public facility goals of the Comprehensive Plan. The James City County Board of Supervisors reviewed a number of sites in and outside of the PSA and choose this site as best meeting all of the criteria for construction of the eighth elementary school.

**The application meets this criteria.**

### **RECOMMENDATION**

Should this withdrawal be approved, the size of the Gordon Creek AFD would be approximately 3,231 acres and would still meet minimum acreage requirements for Agricultural and Forestal Districts. Staff finds the proposed withdrawal consistent with the Comprehensive Plan. Furthermore, staff finds this application meets all of the criteria for the withdrawal of lands from Agricultural and Forestal Districts outside the PSA. As a site currently zoned A-1, with the approval of a special-use-permit to allow for a public school, the site would be in conformance and consistent with zoning for General Agricultural districts. The use of the site for a public school makes the site consistent with these policies as well as consistent with the Comprehensive Plan.

Since the school site has an opening date of Fall of 2007, the applicant cannot wait for the renewal period for this district in August. Waiting for withdrawal during the renewal period will preclude the ability to complete the project during the allotted time frame. Therefore, based on the information available to staff at this time, staff recommends approval of the request to remove 44 acres from the Gordon Creek AFD. On March 16, 2006 the AFD Advisory Committee recommended denial of this application by a vote of 7-1.

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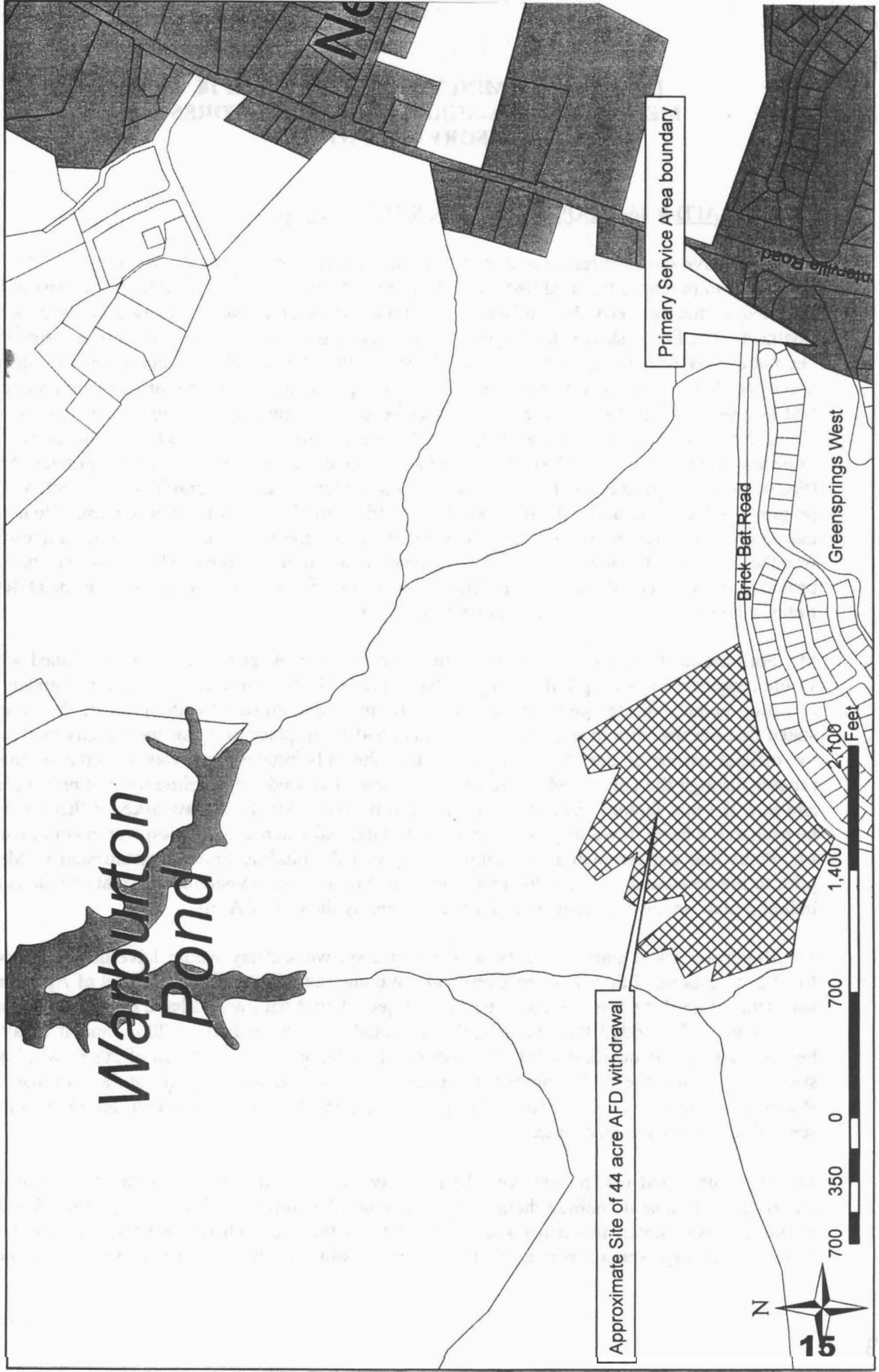
Jason Purse

#### Attachments:

1. Location map
2. Minutes of the March 16, 2006 AFD Advisory Committee Meeting
3. Letter from Sandy Wanner dated February 24, 2006

**AFD-9-86-3**

# **Gordon Creek AFD withdrawal**



**UNAPPROVED MINUTES OF THE MARCH 16, 2006  
MEETING OF THE AGRICULTURAL AND FORESTAL  
ADVISORY COMMITTEE**

**A. AFD-9-86-3 GORDON CREEK WITHDRAWAL**

Mr. Purse gave the staff report and staff's recommendation of approval. Mr. Ford asked if an agreement to purchase the land had been finalized. Mr. Purse responded that, to the best of his knowledge, the property had officially changed hands and that compensation was being finalized. Mr. Ford asked if the buyer and seller had agreed on a price. Mr. Purse stated that negotiations were still ongoing. Mr. Gilley stated that the Board of Supervisors specifically asked the AFD Committee to not withdraw anything outside of the primary service area, and that he was concerned that a precedent might be set by withdrawing property for the school. He added that he would not support the proposal. Mr. Purse stated that the Board of Supervisors had adopted criteria for withdrawing land outside of the Primary Service Area (PSA), and one of the most important of those criteria was the public use aspect of the proposed withdrawal, and reiterated that the property would be used for a public use. He noted that many sites were considered both inside and outside the PSA and that the site in question was the only one that met all the selection criteria for public schools. He stated that the site provided the needed acreage and buildability, and met criteria for the installation of athletic fields, which was an important component to the site.

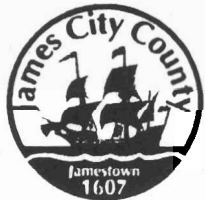
Mr. Ford asked if the AFD was coming up for renewal in August, and then questioned what would happen if the taking fell through in the courts. Mr. Ford questioned the appropriateness of acting given that the site might not be the ultimate one chosen for the project. Mr. Purse stated that the decision to use that piece of land had taken place and that the County was now the official owner of the land. He added that the only process left was the compensation process through the courts. Mr. Ford and Mr. Purse discussed the timeline for plat preparation and how the plat factored into the compensation process. Mr. Bradshaw asked if there would be irreparable harm in waiting until the renewal date, and when construction would commence. Mr. Purse laid out the planned timeline, noting that the bidding process would start in May, prior to the renewal date, and added that the project review was expedited and that site plan and building plan review was scheduled for completion by the end of April.

Mr. Bradshaw asked staff to clarify what effect a six week delay would have on the project. Mr. Purse responded that if the property did not come out of the AFD at the end of April, and was delayed until the renewal date, the June projected start date would have to be pushed back two months. He added that the school was slated to open in Fall of 2007, and if delayed beyond that fall, its opening would be pushed back a whole year, until Fall of 2008. Mr. Ford stated that he felt the AFD committee recommendation was advisory in nature, and that the Board would likely vote to approve the special use permit. Ms. Lowe stated that the timeline seemed to be moving very quickly.

Mr. Icenhour stated that he believed the property was chosen both for its satisfaction of the criteria and because it enabled them to operate under the current deadlines. He added that the elementary was slated to open on the same date as the high school, and though they were behind on the high school from a construction standpoint, the deadline was reasonable because

the elementary design was not as complicated. He added that he too did not want to create a precedent and felt if the County could withdraw for a school outside the PSA, the implications should be thoroughly considered. Mr. Purse reiterated that the criteria of the Board's policy was satisfied as the school was a public use, and privately developed projects outside the PSA would be considered differently. Discussion ensued about previous cases where land was withdrawn outside the primary service era.

Mr. Icenhour asked for confirmation that the withdrawal criteria was established by the Board of Supervisors and stated that although the same criteria apply to public and private petitioners, only public uses were acceptable. Mr. Bradshaw questioned the criteria distinguishing a public interest from a proprietary interest since many proprietary interests also bring public benefit such as tax revenue. Ms. Lowe stated that the Committee faced a dilemma and that it seemed like the only mechanism for controlling growth was to make the County less desirable, since a new elementary school was needed, but required the County to do so outside the PSA. Mr. Icenhour stated that the AFD regulations are a very important tool for maintaining the rural nature of the County and that he did not want to see the tool weakened. Mr. Ford pointed out that the desirability of the County as a place to live had consequences as a result of population growth. There being no further discussion, the Committee took a roll call vote. The withdrawal was denied (7-1).



## COUNTY ADMINISTRATION

101-C MOUNTS BAY ROAD, P.O. BOX 8784, WILLIAMSBURG, VIRGINIA 23187-8784  
(757) 253-6605

E-MAIL: [cadm@james-city.va.us](mailto:cadm@james-city.va.us)  
Fax: (757) 253-6833



February 24, 2006

Mr. Jason Purse, Planner  
James City County  
101-A Mounts Bay Road  
Williamsburg VA 23185

**RE: WJCC Elementary School Site Withdrawal from the Gordon Creek AFD**

Dear Mr. Purse:

I am writing on behalf of James City County to apply to withdraw approximately 44 acres from the Gordon Creek AFD for the purpose of constructing the Williamsburg-James City County Public Schools eighth elementary school.

The property in question is outside of the PSA and is designated Rural Lands on the 2003 Comprehensive Plan Land Use Map. The property is zoned A-1 and is now part of a parcel of approximately 164 acres in the Gordon Creek AFD, known as the "Jacksons" tract. Originally, the piece was a part of the 163.880 acres placed in the AFD by the previous owner. The rest of that parcel is still a part of the AFD and is up for renewal this August.

The James City County Board of Supervisors previously adopted a resolution delineating criteria for withdrawal from an AFD outside the PSA. This withdrawal request meets the criteria for "serving a public purpose, as opposed to the proprietary interest of the landowner, that could not otherwise be realized upon expiration of the AFD," as stated in Section 2(b) of the resolution.

This request is being filed jointly with a SUP application and concurrently with the Site Plan and Subdivision plats for this site. This withdrawal is necessary in order for the completion of this project to occur inside the desired timeframe for opening the school in the fall of 2007.

Please let me know if you need any further information.

Sincerely,

Sanford B. Wanner  
County Administrator

SBW/gs  
[jacksontract.ltr](mailto:jacksontract.ltr)

## **SPECIAL USE PERMIT CASE NO. SUP-05-06 W-JCC 8<sup>th</sup> Elementary School**

### **Staff Report for the April 3, 2006 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.*

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#### **PUBLIC HEARINGS**

Planning Commission:

Board of Supervisors:

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

April 3, 2006

7:00 PM

April 25, 2006

7:00 PM (tentative)

#### **SUMMARY FACTS**

**Applicant:**

Mr. Sanford Wanner, James City County County Administrator

**Land Owner:**

Mr. Sanford Wanner, James City County County Administrator

**Proposal:**

To construct an elementary school in A-1.

**Location:**

4001 Brick Bat Road

**Tax Map/Parcel**

(36-3) (1-1)

**Parcel Size**

40+/- acres

**Existing Zoning:**

A-1, General Agricultural

**Comprehensive Plan:**

Rural Lands

**Primary Service Area:**

Outside

#### **STAFF RECOMMENDATION**

Staff finds the proposal, with the attached conditions, to be consistent with surrounding land uses, and because it is a public use site, consistent with the Comprehensive Plan. Staff recommends the Planning Commission recommend approval of the special use permit application with the following conditions:

Staff Contact:

Jason Purse, Planner

Phone: 253-6685

## **Project Description**

Mr. Sanford Wanner, on behalf of James City County, has applied for a Special Use Permit to allow for an elementary school, on approximately 44 acres of land, on a parcel zoned A-1, General Agricultural. The parcel is located at 4001 Brick Bat Road, which is northwest of the Centerville and Brick Bat Road intersection and is further identified as Parcel No. (1-1) on the James City County Real Estate Tax Map No. (36-3). The site is shown on the 2003 Comprehensive Plan Land Use Map as Rural Lands.

## **Surrounding Zoning and Development**

The parcel is zoned A-1 and designated rural lands on the 2003 Comprehensive Plan Land Use Map. On the north side of Brick Bat Road, and adjacent to the east and west of the project site, the parcels are all zoned A-1, General Agricultural as well. On the south side of Brick Bat Road, and off of Centerville Road, the parcel is adjacent to the Greensprings West subdivision, which is zoned R-4.

## **PUBLIC IMPACTS**

### **1. Environmental Impacts**

**Watershed:** Gordon Creek

**Environmental Staff Conclusions:** The Environmental Division has reviewed the proposal and concurs with the Master Plan and conditions as proposed.

### **2. Public Utilities**

The site is located outside the Primary Service Area, but will be served by public water and sewer through a connection with Greensprings West.

#### **Conditions:**

- 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 development 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.
- Irrigation from the JCSA water distribution system and the installation of irrigation wells will not be permitted, unless approved by the JCSA General Manager.

**JSCA Staff Conclusions:** The James City County Service Authority has reviewed the proposal and concurs with the Master Plan and conditions as proposed.

### **3. Traffic**

The applicant used the ITE manual for Elementary Schools to determine traffic generation for the site, and determined that there would be 294 total AM Peak trips and 196 total PM Peak trips generated. Using 2004 VDOT traffic count data and HCS two-lane capacity analysis software, the applicant determined Brick Bat Road is currently operating at a LOS "A". In 2005, for the Monticello to Brick Bat Road section of Centerville Road, the Traffic Count survey indicated there were 5,060 trips daily, and

from the Brick Bat Road to News Road section there were 5,719 trips daily. The 2026 projected Traffic Counts indicate an increase to 9,500 trips for the Monticello to Brick Bat interchange, along with listing this section of Centerville Road as an “ok” area.

**Conditions:**

- All traffic improvements required by the Virginia Department of Transportation (VDOT) around the Centerville Road (Route 614) and Brick Bat Road (Route 613) intersection, as well as shoulder strengthening/widening of Brick Bat Road (Route 613) between Centerville Road (Route 614) and the school site, shall be installed or bonded by James City County prior to issuance of a certificate of occupancy for any structure on the site. All frontage improvements required by VDOT along the school site, including the widening of Brick Bat Road (Route 613) to accommodate appropriate turn lanes, shall be installed or bonded by the developer, and the appropriate right of way dedicated to VDOT, prior to issuance of a certificate of occupancy for any structure on the site.

**VDOT Conclusions:** VDOT has reviewed the proposal and concurs with the Master Plan and conditions as proposed.

**Comprehensive Plan**

The project area is designated as rural lands on the 2003 Comprehensive Plan. Rural Lands areas are areas containing farms, forests and scattered houses, exclusively outside of the Primary Service Area, where a lower level of public service delivery exists or where utilities and urban services do not exist and are not planned for in the future. Appropriate primary uses include agricultural and forestal activities, together with certain recreational, public or semi-public and institutional uses that require a spacious site and are compatible with the natural and rural surroundings.

**Staff Conclusions:** The project site is located within a rural lands area of the Comprehensive Plan. In the description of possible land uses within rural lands there are provisions for “public or semi-public and institutional uses that require a spacious site and are compatible with the natural and rural surroundings.” As this site will be used for an elementary school, and needs at least 20 acres of land to meet Comprehensive Plan criteria, this meets the provision for public uses. In actuality, public elementary schools require considerably more acreage in terms of developable land in order to fit all of the necessary elements onto the site. Many of the elementary schools in the County have sites of between 30 and 40 acres of land. One of the main reasons this site was chosen was because of its large availability for playing fields and accessory play areas for the community. The Parks and Recreation section of the Comprehensive plan suggests that there continue to be efficient utilization of athletic facilities between the Williamsburg-James City County Public Schools and the Parks and Recreation Division. This site, as a public use, meets not only the public school’s ability to meet a need, but also Parks and Recreation’s ability to meet the community’s need for additional recreation fields. When looking at the Strategies section of the Public Facilities section of the Comprehensive Plan, this site enables the County to have maximum site utilization while providing optimum service to, and compatibility with, the surrounding community.

While the Comprehensive Plan does not suggest that utilities be extended beyond the Primary Service Area (PSA), the Public Facilities section stresses that the location of new public facilities should be close to the greatest number of people served, and located so that accessibility is maximized with minimum neighborhood effects. The extension of utilities to the school site will require a special-use-permit, which will be reviewed by the Planning Commission and Board of Supervisors in May. A condition will be added to that special-use-permit to limit connections to the service which will reduce the impact that this project has on lands outside of the Primary Service Area. For the purpose of a public use, this site provides more ability for the County to meet community needs than any available parcel in the area that

was inside the Primary Service Area. The Comprehensive Plan also stresses the need for construction of public facilities in a timely manner to meet the needs of the County. A public school is needed in this area of the County in order to meet current demand. This use is consistent with the public facility goals of the Comprehensive Plan. With the approval of a special-use-permit to allow for a public school, the site would be in conformance and consistent with zoning for General Agricultural districts, and consistent with surrounding uses. The James City County Board of Supervisors reviewed a number of sites in and outside of the PSA and choose this site as best meeting all of the criteria for construction of the eighth elementary school.

There are also plans to light the playing fields, but those plans, and the specific fields have not been finalized. It would be staff's recommendation that the rear two fields be lit if that is what is desired, as those fields represent both a baseball field and a multi-purpose field, and they are the furthest ones away from the street where the light would be most readily seen. For any field lighting to be approved there must be a Zoning Ordinance Amendment to allow for field lighting, as well as a height waiver, which would need to be reviewed by the board before it is given approval. A Zoning Ordinance Amendment for athletic field lighting is currently under review.

### **RECOMMENDATION:**

Staff finds the proposal, with the attached conditions, to be consistent with surrounding land uses, and because it is a public use consistent with the Comprehensive Plan. Staff recommends the Planning Commission recommend approval of the special use permit application with the following conditions:

1. The Property shall be developed generally as shown on the master plan entitled "New Elementary School" and dated March 7, 2006 (the "Master Plan"), with only changes thereto that the Director of Planning determines do not change the basic concept or character of the development.
2. There shall be a fifty-foot (50') perimeter buffer generally as shown on the Master Plan. The buffer shall be exclusive of any structures or paving and shall be undisturbed, except for the entrances and sidewalks shown generally on the Master Plan, and with the approval of the Director of Planning, for lighting, entrance features, fencing and signs. Dead, diseased and dying trees or shrubbery, invasive or poisonous plants may be removed from the buffer area with the approval of the Director of Planning. With the prior approval of the Director of Planning, utilities may intrude into or cross the perimeter buffer, provided however, that such crossings or intrusions are generally perpendicular to the perimeter buffer and are given prior approval from the Director of Planning
3. Any new exterior site or building lighting shall have 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 are not visible from the side. Fixtures which are horizontally mounted on poles shall not exceed 30 feet in height. No glare defined as 0.1 foot-candle or higher shall extend outside the property lines. The height limitation provided in this paragraph shall not apply to athletic field lighting provided that proper permits are issued under the James City County Zoning Ordinance.
4. All traffic improvements required by the Virginia Department of Transportation (VDOT) around the Centerville Road (Route 614) and Brick Bat Road (Route 613) intersection, as well as shoulder strengthening/widening of Brick Bat Road (Route 613) between Centerville Road (Route 614) and the school site, shall be installed or bonded by James City County prior to issuance of a certificate of occupancy for any structure on the site. All frontage improvements required by VDOT along the school site, including the widening of Brick Bat Road (Route 613) to accommodate appropriate turn lanes, shall be installed or bonded by the developer, and the appropriate right of way dedicated to VDOT, prior to issuance of a certificate of occupancy for any structure on the site.

5. A Phase I Archaeological Study for the entire site shall be submitted to the Director of Planning for his 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 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 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 site and the clearing, grading or construction activities thereon.

6. The Williamsburg-James City County School Board shall be responsible for developing and enforcing water conservation standards to be submitted to and approved by the James City Service Authority (the "JCSA") prior to final development 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.

7. If construction has not commenced on this project within thirty-six (36) months from the issuance of a special use permit, the special use permit shall become void. Construction shall be defined as obtaining permits for building construction and footings and/or foundation has passed required inspections.

8. This special use permit is not severable. Invalidation of any word, phrase, clause, sentences, or paragraph shall invalidate the remainder.

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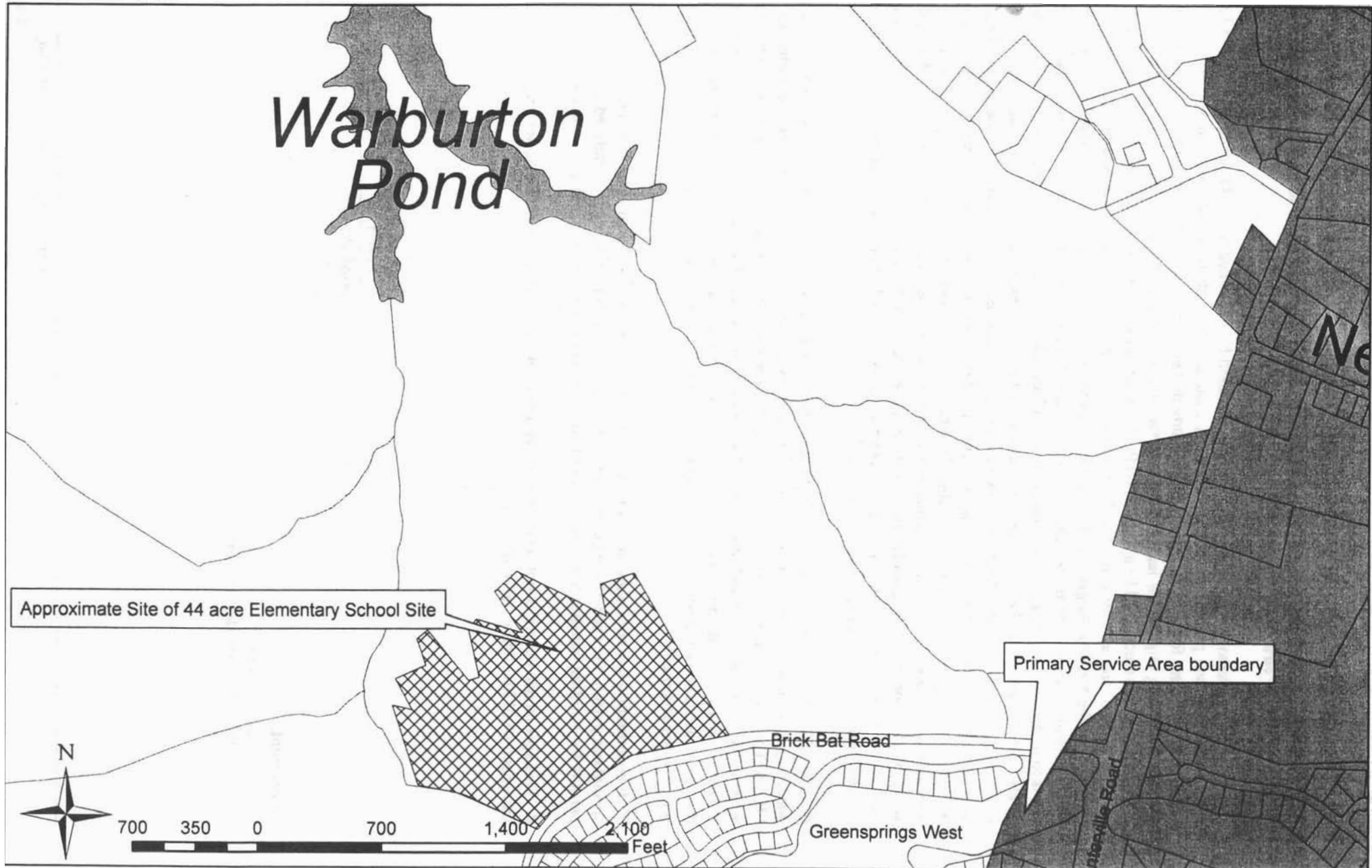
Jason Purse

Attachments:

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

**SUP-05-06**

# **W-JCC Eighth Elementary School**



**REZONING 12-05. Moss Creek Commerce Center (Toano Business Center)**  
**Staff Report for the April 3, 2006, Board of Supervisors 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.*

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**PUBLIC HEARINGS**

Planning Commission:	<b><u>Building F Board Room; County Government Complex</u></b> August 1, 2005 (proffer deadline not met) 7:00 p.m. September 12, 2005 (applicant deferral) October 3, 2005 (applicant deferral) November 7, 2005 (applicant deferral) December 5, 2005 (staff deferral) January 9, 2006 (applicant deferral) February 6, 2006 (applicant deferral) March 6 (applicant deferral)
Board of Supervisors:	<b>May 9, 2006 (tentative) 7:00 p.m.</b>

**SUMMARY FACTS**

Applicant:	Mr. Vernon Geddy, III
Land Owner:	Toano Business Center, L.L.C.
Proposal:	3,574 SF Bank; 4,739 SF Convenience Store; Mini-Storage Facility; 44,475 SF Retail; 26,400 SF Office/Warehouse; 3,628 SF Professional Office
Location:	9686 and 9690 Old Stage Road
Tax Map/Parcel Nos.:	(4-4)(1-34), (4-4)(1-4)
Parcel Size:	21.23 acres
Existing Zoning:	A-1, General Agricultural District
Proposed Zoning:	MU, Mixed Use, with Proffers
Comprehensive Plan:	Mixed Use and Low Density Residential
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 and the Comprehensive Plan. Staff recommends the Planning Commission recommend approval of the rezoning and acceptance of the voluntary proffers.

Staff Contact: Ellen Cook

Phone: 253-6685

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

## **CHANGES SINCE THE DECEMBER 5<sup>TH</sup> PLANNING COMMISSION**

This case was last presented at the December 5, 2005 Planning Commission meeting. Since that time the applicant has made the following Master Plan changes to address Commission and staff questions: the amount of retail square footage has increased from 34,630 to 44,475; the amount of office/warehouse square footage has decreased from 54,000 to 26,400; a separate professional office building has been added (3,628 square feet); and some changes in the parking and drive aisle configurations have been made. The applicant has also made the following changes to the proffers: a more detailed architectural proffer has been added that provides for an architectural review committee, and binds the submitted elevations and color scheme; language has been added to the perimeter buffer proffer that addresses the size and type of landscaping; a proffer has been added pertaining to the convenience store that addresses signs and outside display of merchandise; a proffer has been added that addresses the appearance of the entrance sign; and the traffic proffer language has been modified for greater clarity.

## **PROJECT DESCRIPTION**

Mr. Vernon Geddy III has submitted an application on behalf of Michael C. Brown/Toano Business Center L.L.C. to rezone approximately 21.23 acres of land at 9686 and 9690 Old Stage Road from A-1, General Agricultural, to MU, Mixed Use, with proffers, for the development of: 3,574 square foot bank with drive-thru lanes; 4,739 square foot convenience store with fueling stations; a mini-storage facility; 44,475 square feet of retail; 26,400 square feet of office/warehouse; and 3,628 square feet of professional office. No residential units are proposed.

The site of the proposed development is currently primarily cleared land with trees along most of the perimeter and several existing structures (which would be demolished). The parcel is located approximately 3,000 feet from the I-64 Barhamsville interchange, and is at the intersection of Route 30 and Fieldstone Parkway, one of the primary entrances into the Stonehouse Planned Unit Development (PUD) community. The parcel directly to the east is within the Stonehouse PUD, and has a "G" or "Office" designation under the approved 1999 Master Plan. The small parcel directly to the south (between the proposed development and Fieldstone Parkway) is owned by The Association at Stonehouse, Inc. and used as space for an entrance feature and landscaping. The land directly across Fieldstone Parkway is designated for Recreation by the 1999 Stonehouse Master Plan. To the north of the parcel are agricultural and single family residential uses, with the parcel directly adjacent zoned A-1, designated Rural Lands by the Comprehensive Plan, and currently within the Barnes Swamp Agricultural and Forestal District (AFD). Land to the west (between Route 30 and I-64) is also currently in single family and agricultural and forestal uses. The land directly across Route 30 is zoned B-1, General Business and designated Mixed Use and Low Density Residential; portions of this land are also currently within the Barnes Swamp AFD.

## **PUBLIC IMPACTS**

### **Archaeology**

#### **Proffers:**

- Standard language from the Board of Supervisors Archaeological Policy (Proffer #6).

**Staff Comments:** The applicant has submitted a Phase I evaluation of this parcel which found that two sites, a tavern/ordinary and the historic Williamsburg Stage Road, were potentially eligible for inclusion in the National Register of Historic Places. The Virginia Department of Historic Resources has reviewed the Phase I study and recommended either avoidance of these sites or completion of a Phase II study. The applicant has indicated that they will be undertaking a Phase II study.

### **Environmental**

#### **Watershed: Ware Creek**

#### **Proffers:**

- A Master Stormwater Management Plan, which incorporates Low Impact Design measures where feasible and appropriate, as part of the site plan submittal for the Property (Proffer #8).

**Staff Comments:** Environmental Staff has noted technical comments to be addressed at site plan review.

#### **Public Utilities**

This site is served by public water and sewer.

#### **Proffers:**

- Standard water conservation language (Proffer #1).

**Staff Comments:** JCSA Staff has noted minor technical comments that can be addressed during the site plan review stage.

#### **Transportation**

The Master Plan proposes the primary entrance to be on Route 30, approximately 400 feet from the Route 30-Barnes Road intersection, and approximately 900 feet from the Route 30-Fieldstone Parkway intersection. A second entrance from Fieldstone Parkway is conceptually shown; as this parcel is not owned by the applicant, any future connection(s) to the parcel from a Fieldstone Parkway entrance would require coordination with an adjacent property owner. The estimated net trips generated by this development are as shown in the table below (please note that this information has been adjusted in accordance with the application's square footage changes).

Average Daily Trips (NET)	A.M. Peak (NET)		P.M. Peak (NET)	
5,889	Enter	Exit	Enter	Exit
	169	114	249	290

**2005 Traffic Counts:** VDOT counts for the section of Route 30 between the New Kent County line and I-64 showed a two way daily volume of 7,540 in 2004. The same count in 2001 was 6,954, for an increase of 8 percent over the three years.

**2026 Volume Projected:** For the section of Route 30 between Route 601 (Barnes Road) and I-64, the 2026 projected volume is 17,000. The Comprehensive Plan lists the daily capacity for a four lane road as 30,000 vehicles. This section of roadway is listed in the 2026 Transportation Projections as "OK".

**Road Improvements:** A series of road improvements are recommended in the traffic study as described below.

If both entrances are constructed: right and left turn lanes at the main entrance on Route 30; a left turn lane at the Fieldstone Parkway entrance; and possible signalization at the Fieldstone/Old Stage Road intersection after confirmation that signal warrants have been exceeded.

If only the entrance on Route 30 were constructed: right and left turn lanes at the main entrance on Route 30; signalization at the main entrance and at the Fieldstone/Route 30 intersection after confirmation that signal warrants have been exceeded.

**Proffers:** The improvements listed above have been incorporated into the proffers (Proffer #4); with the exception, however, that signalization of the Fieldstone/Route 30 intersection signalization has not been included. While signalization of this intersection is currently included in the Stonehouse PUD proffers, the applicant has not at this time proffered any contribution to address their development's share of signalization and/or other road improvements which will become necessary in whole or in part due to the trips generated by this development. In addition to the road improvements listed above, the applicant has shown a shoulder bike lane on the Master Plan, and has proffered to construct it in accordance with VDOT standards. Both staff and VDOT note that the location of the bike lane as depicted on the Master Plan will need to be adjusted in order to meet VDOT standards; the location will be carefully reviewed at site plan review.

**VDOT Comments:** VDOT concurs with the trip generation rates and notes that the changes in land uses from previous proposals have a negligible impact on the overall results and conclusions. VDOT also concurs with the trip distributions used in the traffic study, and with the recommended traffic improvements as proffered.

**Staff Comments:** Signalization of the project's main entrance on Route 30 will result in an intersection

Level of Service B. Staff would prefer that the two entrance option be used as it would delay or possibly eliminate the need for a signal at the main entrance; staff acknowledges that this circumstance is not within the control of the property owner, and that the applicant has attempted to address the situation through the reserved right-of-way proffer (Proffer #9), the connections depicted on the Master Plan, and the proffered left turn lane from Fieldstone Parkway (Proffer #4b). In relation to the signalization of Fieldstone Parkway/Route 30 intersection, staff had recommended to the applicant that he provide a proffer contributing toward signalization and/or other road improvements which will become necessary in whole or in part due to the trips generated by this development. While the applicant has stated that the percentage of trips that the mixed use development would contribute toward meeting warrants is very small, the traffic study does state that for the one entrance scenario “without the diverted traffic at the Fieldstone entrance, the increase in through traffic volumes at the intersection of Fieldstone Parkway and Route 30 will accelerate the date at which signal installation will be warranted.”

## **COMPREHENSIVE PLAN**

### **Land Use Map Designation**

The proposed development includes two parcels, one of which (the 1.2 acre parcel) is designated Low Density Residential, and the other, which constitutes the majority of the site (20 acres) is designated Mixed Use. Mixed Use areas are centers within the PSA where higher density development, redevelopment, and/or a broader spectrum of land uses are encouraged. Mixed Use areas located at or near interstate interchanges and the intersections of major thoroughfares are intended to maximize the economic development potential of these areas by providing areas primarily for more intensive commercial, office, and limited industrial purposes. Mixed Use areas such as Lightfoot are intended to provide flexibility in design and land uses in order to protect and enhance the character of the area.

Mixed Use areas require nearby police and fire protection, arterial road access, access to public utilities, large sites, environmental features such as soils and topography suitable for intense development, and proximity or easy access to large population centers. The timing and intensity of commercial development at a particular site are controlled by the maintenance of an acceptable level of service for roads and other public services, the availability and capacity of public utilities, and the resulting mix of uses in a particular area. Master Plans are encouraged to assist in the consideration of mixed use development proposals. The consideration of development proposals in mixed use areas should focus on the development potential of a given area compared to the area's infrastructure and the relation of the proposal to the existing and proposed mix of land uses and their development impacts.

The Stonehouse Mixed Use Area is more specifically described in the Comprehensive Plan as follows: “The principle suggested uses are light industrial and office/business park. Commercial uses should be clearly secondary in nature. Commercial developments should be limited in scale, comprise a small percentage of the land area of the overall development, and be oriented towards support services that employees and residents in the Stonehouse Area can utilize. The commercial uses should not be developed in a “strip” commercial fashion, but rather should be internally oriented with limited and shared access to Route 30. Development in the Mixed Use area should also emphasize shared access and parking, consistent treatment for landscaping and architecture, and the preservation of environmental and cultural resources.”

### **Other Considerations**

- **Development Standards.**

Development Standards (General Land Use). Development Standards include and suggest that: permit new development only where such developments are compatible with the character of adjoining uses and where the impacts of such development can be adequately addressed; minimize the impact of development proposals on overall mobility, especially on major roads by limiting access points and providing internal, on-site collector and local roads, side street access and joint entrances; provide for safe, convenient, and inviting bicycle, pedestrian, and greenway connections to adjacent properties and developments in order to

minimize impacts and to provide adequate access between residential and nonresidential activity centers. Development Standards (Commercial and Industrial Use). Development Standards include and suggest that: mitigate objectionable aspects of commercial or industrial uses through an approach including performance standards, buffering and setback regulations; provide landscape areas and trees along public roads and property lines, and develop sites in a manner that retains or enhances the natural, wooded character of the County; large retail establishments should be an integral and indivisible component of a larger retail and business enterprise, located close to major arterial roads with adequate buffering from, but also strong pedestrian connections to, residential areas...other considerations include combining large establishments with smaller retail merchants and smaller commercial structures in a well designed and coordinated shopping and business center in a manner that visually reduces their bulk, size and scale...a unified theme of design, materials and facades, along with shared parking, should complement local architecture and aesthetics.

- **Community Character.** The project fronts on Route 30, which is a Community Character Corridor.

### **Proffers**

The applicant has provided proffers addressing the following items:

**Architecture.** An architectural proffer has been provided that includes binding architectural elevations (Proffer #2).

**Lighting.** A lighting proffer has been provided (Proffer #5).

**Buffer.** A Perimeter Buffer proffer is provided that includes enhanced landscaping (Proffer #7).

**Reserved Right-of-Way.** The applicant has proffered reserved right-of-way for possible future connections to the adjacent parcel (Proffer #9).

**Paths.** The applicant has proffered a hard surface trail along the Route 30 frontage and along Fieldstone Parkway if approved by the DRC (Proffer #10).

**Entrance Feature.** The applicant has proffered that the entrance sign be of similar design and materials to the Stonehouse Development entrance sign (Proffer #11).

**Convenience Store.** The applicant has proffered certain sign and display restrictions for the convenience store (Proffer #12).

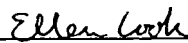
**Staff Comments:** The Stonehouse Mixed Use area is the largest mixed use area within the County, with land that includes both the Planned Unit Development-Commercial zoning in Stonehouse, and land surrounding the north-west, south-west and south-east quadrants of the Barhamsville interchange. The principle suggested uses for the entire mixed use area are light industrial and office/business park, with commercial as a clearly secondary use that is limited in scale and comprises a small percentage of the land area of the overall development. The development proposal for Moss Creek Commerce Center is clearly primarily commercial in nature, with office/warehouse as the secondary use. Within the context of the whole Mixed Use area, however, this parcel would constitute a fairly small percentage of the millions of square feet of light industrial, office/business park, and commercial possible either under currently approved existing Master Plans or due to existing B-1 zoning. The Comprehensive Plan also states that commercial development should be oriented toward support services that employees and residents in the Stonehouse Area can utilize: the uses included in this proposal would appear to meet that criteria.

In the December 5<sup>th</sup> staff report, staff listed a series of concerns pertaining to the proposal at that time. These concerns included: (1) master planning of this parcel with adjacent parcels to minimize traffic concerns and create an integrated development pattern; (2) lack of provisions through the Master Plan or Proffers for shared parking; (3) not fully meeting the intent of the zoning ordinance standard of “usable open space linked by pedestrian walkways”; (4) lack of integration of uses on site; and (5) an architectural proffer that staff felt was too general in nature. While staff continues to feel that (1) is a concern, staff recognizes that the applicant does not have the ability to address this at this time beyond the proffers and master plan connections that have already been put in place as described in the Transportation section. As for (2), staff has discussed this item with the applicant and generally agrees that given the uses proposed, fewer opportunities exist for shared parking than might occur in other mixed use developments which include residential and night-oriented uses; staff will continue to work with the applicant at the site plan

level to minimize any excess parking on site. The applicant has addressed (3) by adding a picnic area adjacent to the convenience store and a small open space between the BMP and the retail area; and has addressed (4) by adding additional vehicular connections between uses. Finally, for (5) the applicant has provided a much more detailed architectural proffer that includes binding architectural elevations and a binding color scheme. While elevations for all sides of the buildings are not shown, the proffers provide sufficient assurances that all sides visible to the public or adjacent properties will be of the same quality. The newly added convenience store and entrance feature proffers also provide assurances about the visual impact this development would have on surrounding properties and the Route 30 Community Character Corridor. Overall, staff finds that the applicant has sufficiently addressed pertinent aspects of the land use designation description and the Development Standards through the Master Plan and Proffers.

#### **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 and the Comprehensive Plan. Staff recommends the Planning Commission recommend approval of the rezoning and acceptance of the voluntary proffers.



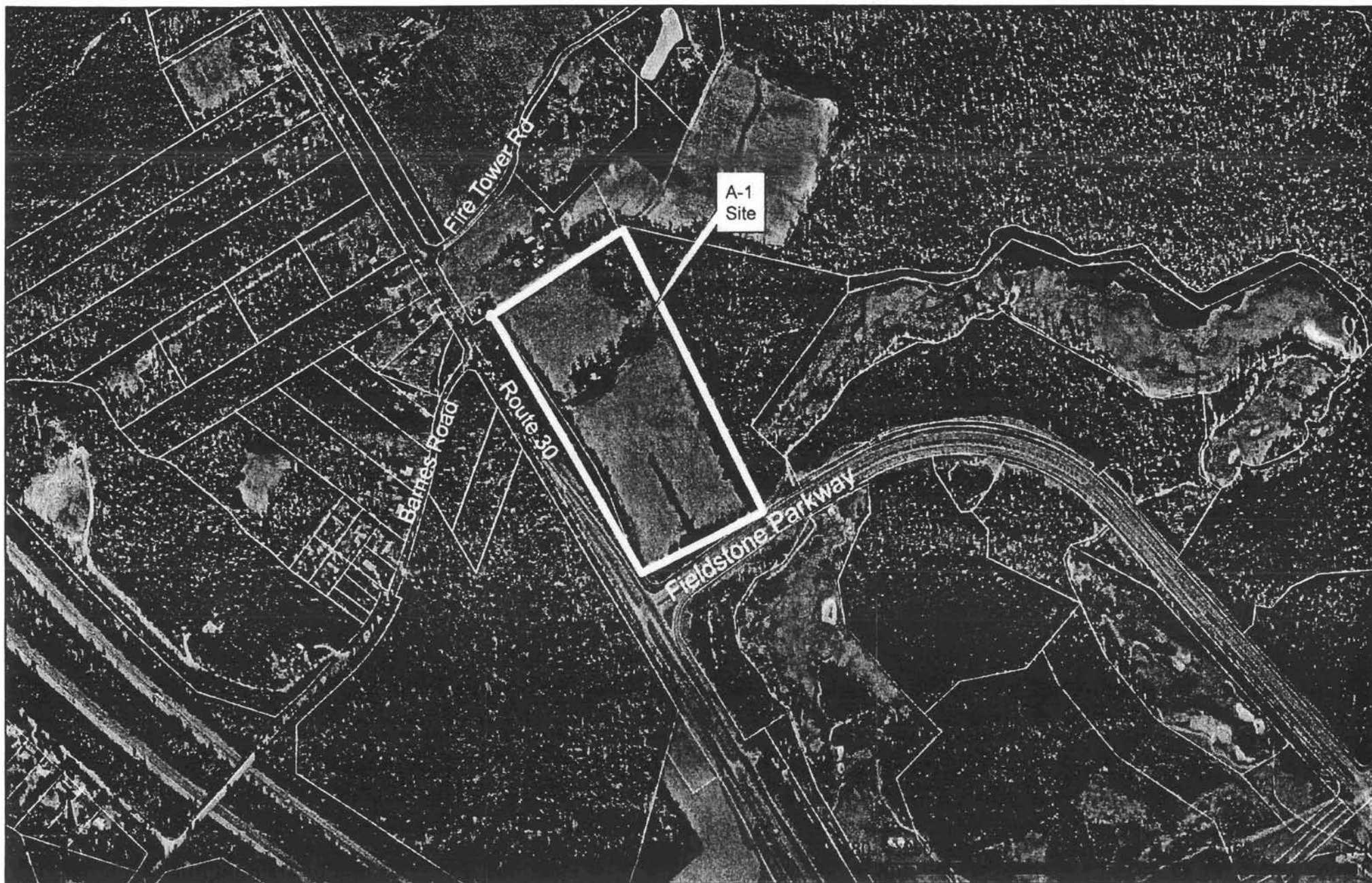
Ellen Cook

#### **ATTACHMENTS:**

1. Location Map
2. Master Plan
3. Proffers
4. Architectural Elevations
5. Traffic Study Conclusions and Recommendations
6. Minutes from the December 5<sup>th</sup> Planning Commission Meeting
7. Citizen Letters

JCC-Z-12-05

# Moss Creek Commerce Center



LOW IMPACT DEVELOPMENT  
STORMWATER MANAGEMENT TECHNIQUES  
TO BE INCORPORATED AS REASONABLY PRACTICAL

# PROPOSED MASTER PLAN MOSS CREEK COMMERCE CENTRE AT STONEHOUSE

9690 OLD STAGE ROAD  
JAMES CITY COUNTY, VIRGINIA

## SITE SUMMARY:

PARCEL ID #:	0440100004 and 044010034
GROSS SITE AREA:	21.9 AC +/-
NET DEVELOPABLE AREA:	21.9 AC +/-
EXISTING ZONING:	A1 (GENERAL AGRICULTURAL)
PROPOSED ZONING:	MU (MIXED USE)
PERIMETER BUFFER REQ'D:	50'
MIN. LOT SIZE, FRONT YARD:	N/A
REAR YARD AND SIDE YARD:	N/A
OPEN SPACE REQ'D:	10% (2.19 AC. +/-)
OPEN SPACE PROVIDED:	2.19 AC. +
NON-RESIDENTIAL FLOOR AREA:	3.1 AC
FLOOR AREA DENSITY:	.14
IMPERVIOUS COVER:	9.5 +/- AC (43% +/-)

## PROGRAM SUMMARY:

- 3,574 S.F. BANK WITH 3 DRIVE-THRU LANES
- 4,739 S.F. CONVENIENCE STORE WITH FUELING
- 54,250 S.F. MINI-STORAGE FACILITY:
  - 3 CLIMATE CONTROLLED BUILDINGS
  - 5' X 10' STORAGE SPACE (120 UNITS)
  - 10' X 20' STORAGE SPACE (28 UNITS)
  - 10' X 15' STORAGE SPACE (60 UNITS)
  - 10' X 25' STORAGE SPACE (28 UNITS)
  - OFFICE/CARETAKER BLDG.
- 44,475 S.F. RETAIL WITH RESTAURANT ANCHOR
- 26,400 S.F. OFFICE/WAREHOUSE SPACE
- 3,628 S.F. PROF. OFFICE BLDG.

NOTE: ALL QUANTITIES ARE APPROXIMATE, BASED ON ASSUMED  
BOUNDARY, TOPOGRAPHIC AND PHYSICAL FEATURES INFORMATION.  
LANDSCAPING IS SHOWN FOR ILLUSTRATIVE PURPOSES ONLY.

## Parking Calculations

	Formula	Qty.	Required
Bank	1 per 250 s.f.	3,574 s.f.	14
Convenience Store	1 per 250 s.f.	4,739 s.f.	19
Retail	1 per 200 s.f.	*29,358 s.f.	147
Office**	1 per 250 s.f.	11,428 s.f.	45
Mini-Storage & Climate Storage	1 per 100 Units & 2 per caretaker residence	236 Units & 1 res.	4
Restaurant	1 per 250	7,777 s.f.	31
Warehouse	1 per 2 employees	T.B.D.	-

TOTAL PARKING PROVIDED: 355

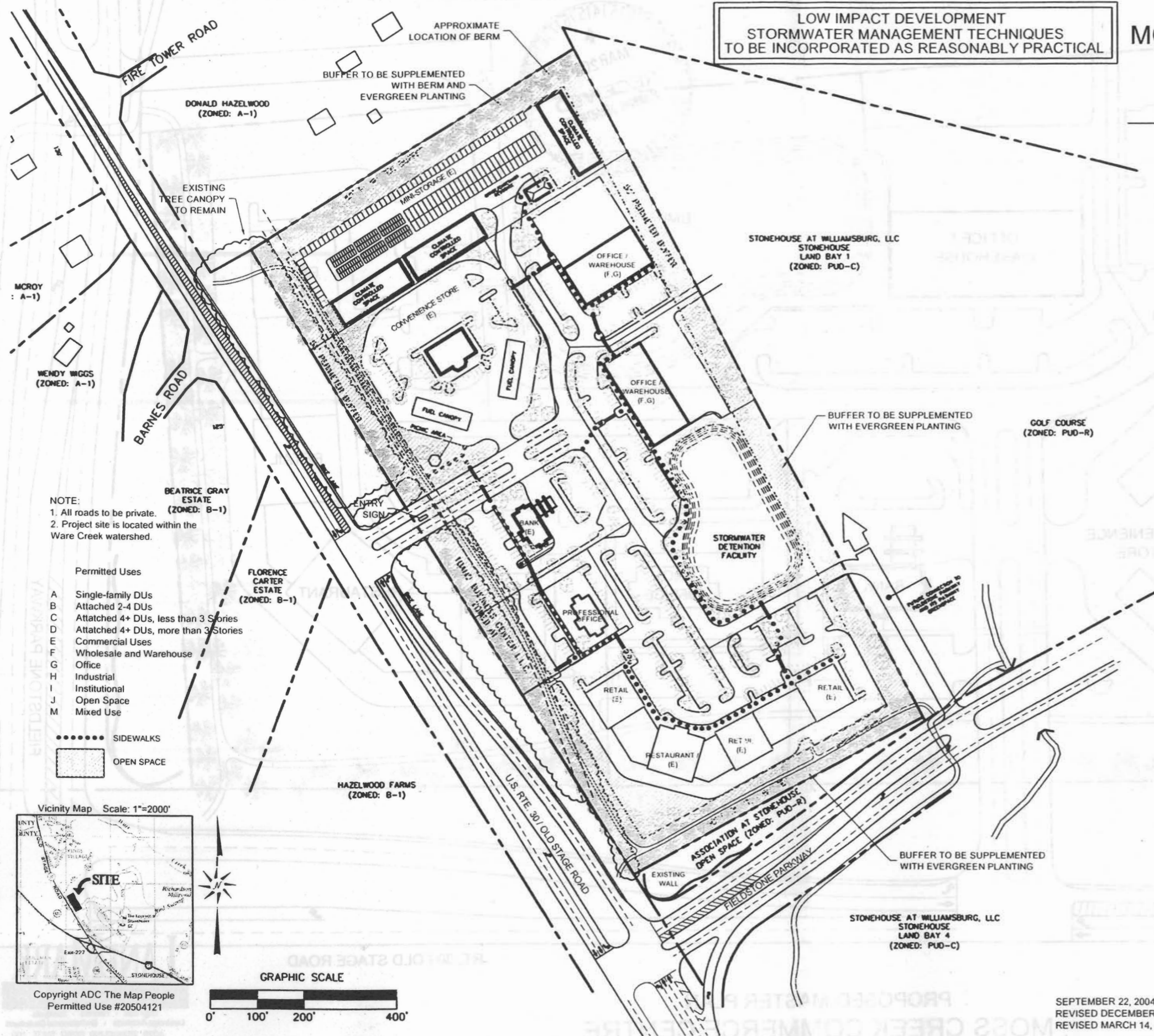
\* BASED ON NET AREA EQUAL  
TO 80% OF GROSS AREA  
\*\* INCLUDES PROF. OFFICE AND  
1/2 S.F. OF OFFICE/WAREHOUSE

(Calculations are approximate,  
may change with final site plan)

Job # 2004085-000.00  
LFV Drawing # 15818W

**LANDMARK**  
DESIGN GROUP  
Engineers • Planners • Surveyors  
Landscape Architects • Environmental Consultants  
4029 IRONBOUND ROAD SUITE 100  
WILLIAMSBURG, VIRGINIA  
(757) 253-2975 FAX: (757) 229-0049

SEPTEMBER 22, 2004  
REVISED DECEMBER 28, 2005  
REVISED MARCH 14, 2006



NOTE:  
1. All roads to be private.  
2. Project site is located within the  
Ware Creek watershed.

## Permitted Uses

- A Single-family DUs
- B Attached 2-4 DUs
- C Attached 4+ DUs, less than 3 Stories
- D Attached 4+ DUs, more than 3 Stories
- E Commercial Uses
- F Wholesale and Warehouse
- G Office
- H Industrial
- I Institutional
- J Open Space
- M Mixed Use

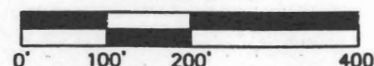
..... SIDEWALKS  
OPEN SPACE

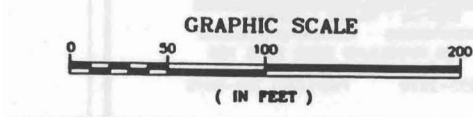
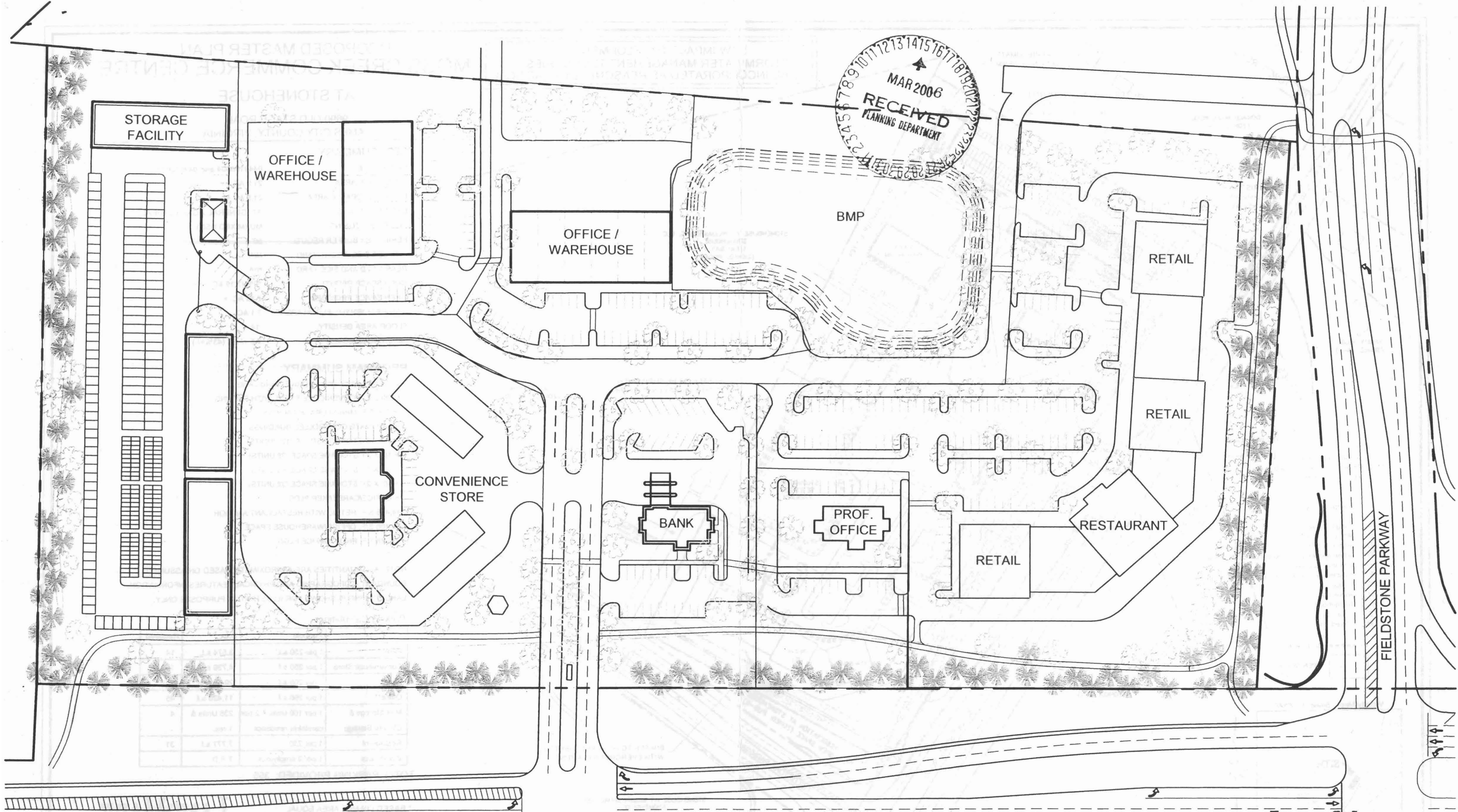
Vicinity Map Scale: 1"=2000'



Copyright ADC The Map People  
Permitted Use #20504121

GRAPHIC SCALE





Job # 2004085-000.00  
Drawing # 16722W MARCH 14, 2006

PROPOSED MASTER PLAN  
MOSS CREEK COMMERCE CENTRE  
AT STONEHOUSE

RT. 30 / OLD STAGE ROAD

**LANDMARK**  
DESIGN GROUP  
Engineers • Planners • Surveyors  
Landscape Architects • Environmental Consultants

4029 IRONBOUND ROAD SUITE 100  
WILLIAMSBURG, VIRGINIA  
(757) 253-2975 FAX: (757) 229-0049

#### PROFFERS

THESE PROFFERS are made this 23<sup>rd</sup> day of March, 2006 by **TOANO BUSINESS CENTER, LLC**, a Virginia limited liability company (together with its successors in title and assigns, the "Owner").

#### RECITALS

A. Owner is the owner of those certain parcels or pieces of land located in James City County, Virginia, with addresses of 9686 and 9690 Old Stage Road and being Tax Parcels 0440100034 and 040100004 and being more particularly described on Exhibit A hereto (the "Property").

B. The Property is now zoned A-1. The Owner has applied to rezone the Property from A-1 to MU, with proffers.

C. Owner has submitted to the County a master plan entitled "Proposed Master Plan, Moss Creek Commerce Centre" prepared by LandMark Design Group and dated September 22, 2004 and revised December 28, 2005 (the "Master Plan").

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 15.2-2298 of the

Code of Virginia, 1950, as amended, and the County Zoning Ordinance, Owners agree that they 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. **Water Conservation.** The Owner shall be responsible for developing water conservation standards to be submitted to and approved by the James City Service Authority and subsequently for enforcing these standards. The standards shall address such water conservation measures as limitations on the installation and use of irrigation systems and irrigation wells, the use of approved landscaping materials and the use of water conserving fixtures and appliances to promote water conservation and minimize the use of public water resources. Irrigation wells shall only draw water from the Upper Potomac or Aquia Aquifers. The standards shall be approved by the James City Service Authority prior to final site plan approval.

2. **Design Guidelines and Review.** (a) Owner shall prepare and submit design review guidelines (the "Guidelines") to the County for the approval of the Development Review Committee prior to the County being obligated to grant final approval to

any development plans for the Property setting forth design and architectural standards for the Property incorporating but not limiting the following as guidelines:

(i) The buildings on the Property shall be harmonious and of uniform architectural design (as noted in (v) below) and color scheme (e.g., muted earth tones);

(ii) The design of the buildings on the Property shall have varied roof lines, wall articulations, window placements and other features to reduce the mass and unbroken building lines that may occur in certain standard commercial designs;

(iii) All buildings immediately adjacent to Fieldstone Parkway or Old Stage Road shall present a front façade to the road;

(iv) No building on the property shall exceed thirty-five (35) in height;

(v) The buildings shall be consistent with the architectural styles embodied in elevations made by James Pociluyko, AIA, dated February 9, 2006 submitted to the County herewith.

Once approved, the Guidelines may not be amended without the approval of the Development Review Committee.

(b) Owner shall establish in the Governing Documents a Design Review Board to (i) adopt more specific procedures for the design review process, (ii) review all building plans, building elevations and landscape plans for conformity with the Guidelines and (iii) approve or deny such plans. The Design Review Board shall establish an Advisory Committee consisting of three property owners in the Mill Pond at Stonehouse development elected by the property owners. The Advisory Committee shall review all plan submissions and render an advisory opinion to the Design Review Board. The Governing Documents shall set forth more specific procedures for the design review process. All building plans, building elevations and landscape plans shall receive the approval of the Design Review Board prior to the Director of Planning being required to grant approval of the plans.

(c) Owner shall submit to the Director of Planning with each site plan for development within the Property conceptual architectural plans, including architectural elevations, for the buildings and associated structures shown on the site plan for the Director of Planning to review and approve for consistency with the Guidelines. Decisions of the Director of Planning may be appealed to the Development Review Committee, whose decision

shall be final. Final architectural plans shall be consistent with the approved conceptual plans. Completed buildings shall be consistent with the approved plans. No building on the Property shall exceed thirty-five (35) feet in height.

3. **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, open space areas, private streets, sidewalks, and all other common areas 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. The Governing Documents shall also provide for a Design Review Committee with the power to adopt more specific procedures for the design review process; review all building plans, building elevations and landscape plans for conformity with the Guidelines and the Governing Documents and approve or deny such plans.

**4. Entrances/Turn Lanes.** (a) The main entrance to the Property shall be from Old Stage Road in the approximate location shown on the Master Plan. A right turn lane with 150 feet of storage and a 150 foot taper and a left turn lane with 200 feet of storage and a 200 foot taper shall be constructed at the main entrance.

(b) Owner may install a second entrance to the Property from Fieldstone Parkway in the approximate location shown on the Master Plan. If and when this second entrance is installed, a left turn lane from Fieldstone Parkway into the second entrance shall be constructed.

(C) Owner shall install a traffic signal at the main entrance when and if Virginia Department of Transportation ("VDOT") traffic signal warrants are met. Owner shall conduct a traffic signal warrant study within six months of the issuance

of certificates of occupancy for the bank and convenience store shown on the Master Plan and submit the study to the Director of Planning and VDOT for review and approval. Owner shall perform a second traffic signal warrant study at such time as certificates of occupancy have been issued for 80% of the development permitted under the Master Plan if the traffic signal has not previously been installed and submit the study to the County and VDOT for their review and approval. If either approved study determines such a signal is warranted, the County shall not be obligated to issue any further building permits for further development on the Property until such traffic signal at the main entrance has been installed or its installation commenced and surety for its completion in form acceptable to the County Attorney has been posted with the County.

(d) The turn lanes at the main entrance into the Property proffered hereby and the bike lanes along Route 30 shown on the Master Plan shall be constructed in accordance with VDOT standards and shall be completed or their completion bonded in form satisfactory to the County Attorney prior to the issuance of any building permit for buildings on the Property. The left turn lane from Fieldstone Parkway into the second entrance into the Property proffered hereby shall be constructed in accordance

with VDOT standards and shall be completed or its completion bonded in form satisfactory to the County Attorney at the time of construction of the second entrance.

5. **Lighting.** All street light poles on the Property shall not exceed 20 feet in height. All building or canopy mounted external lights on the Property shall be recessed fixtures with no globe, bulb or lens extending below the casing or otherwise unshielded by the case so that the light source is visible from the side of the fixture. No glare defined as 0.1 footcandle or higher shall extend outside the property lines of the Property unless otherwise approved by the Director of Planning. Owner shall submit a lighting plan to the Director of Planning for review and approval for consistency with this Proffer prior to final site plan approval.

6. **Archaeology.** A Phase I Archaeological Study for the entire Property and any portion of the adjacent VDOT right of way to be disturbed for the entrance into the 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.

7. **Perimeter Buffer.** A combination of preservation of existing trees, enhanced landscaping (defined as 125% of ordinance requirements as to quantity, with at least 50% of the trees and shrubs being evergreen, including Leyland cypress, pine and ligustrum, with the plants being of a size at planting that exceeds ordinance requirements, for example, black pine with a diameter of at least four inches, Leyland cypress with a height of at least eight feet and ligustrum with a height of at least two feet) and low berms shall be provided in the perimeter buffer between the Property and Fieldstone Parkway, Tax Parcel 0440100001 and Tax Parcel 0440100028 to create an effective buffer between the properties in accordance with a landscaping plan approved by the Director of Planning. The balance of the perimeter buffers shall contain enhanced landscaping in accordance with a landscaping plan approved by the Director of Planning. The buffers shall be planted or the planting bonded prior to the County being obligated to issue certificates of occupancy for buildings located on the Property.

8. **Environmental Protections.** Owner shall submit to the County a master stormwater management plan as a part of the site

plan submittal for the Property, including the stormwater management facility generally as shown on the Master Plan and low impact design measures where feasible and appropriate, 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.

9. **Reserved Right of Way.** Owner shall reserve the areas shown on the Master Plan as "Reserved Right of Way" for a possible future road connections to the adjacent parcel shown on the Master Plan as Stonehouse at Williamsburg, LLC, Stonehouse Land Bay 1. If the owner of the adjacent parcel and Owner reach an agreement permitting Owner access from the Property to a road on the adjacent property and ultimately to Fieldstone Parkway, Owner shall install road connections in the "Reserved Right of Way".

10. **Paths.** If approved by the Development Review

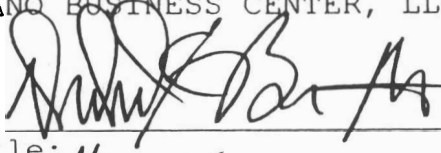
Committee as an alternative to construction of sidewalks in accordance with Section 24 - 35(c) of the Zoning Ordinance, Owner shall install a hard surface path along the Fieldstone Parkway frontage of the Property generally in the location shown on the Master Plan and along the Route 30 frontage of the Property in the location of the Stage Road Trace shown on the Master Plan.

**11. Entrance Feature.** Any entrance feature and/or signage at the entrance(s) into the Property shall be of similar design and materials as the entrance into the Stonehouse development at Fieldstone Parkway and Route 30.

**12. Convenience Store with Fueling.** (a) No more than two signs shall be allowed on the canopy over the gasoline pumps except as provided herein. Gas pricing signs shall be allowed on a monument type sign in the parking area or on the columns of the canopy.

(b) No outside display, sale or storage of merchandise other than ice machines shall be permitted at the convenience store. No outside vending machines shall be permitted.

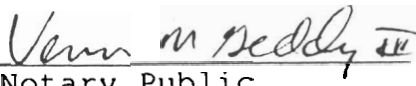
WITNESS the following signature.

TOANO BUSINESS CENTER, LLC  
By:   
Title: Manager

STATE OF VIRGINIA

CITY/COUNTY OF WILLIAMSBURG

The foregoing instrument was acknowledged before me this  
23rd day of ~~August~~ March, 2006, by Michael C. Brown as Manager  
Of Toano Business Center, LLC on behalf of the company.

  
Notary Public

My commission expires: 12/31/09

Exhibit A

Page 14 of 14

## **EXHIBIT A**

### **Parcel One**

ALL that certain tract or parcel of land, situate in Stonehouse District, James City County, Virginia, containing by survey 23.77 acres, and contained within the following bounds, commencing at a point in the center of the main stage road leading from Toano to Richmond opposite a ditch bank separating this land from Joe Johnson's tract, thence down the said ditch bank to a stob near a white oak tree N. 64 E. 2.47 chains, thence down the said ditch bank N. 65 E. 3.25 chains to a stob on the said bank, thence down said ditch bank N. 67 E 4.85 chains to a stob on said bank, thence S. 20 1/4 E. 25.85 chains to a cedar stob, edge of woods, thence S. 67 3/4 W.9.68 chains to a point in the center of said Main Stage Road opposite a marked white oak tree; thence up the center of the said main road N. 14 1/4 W. 11.19 chains to a point in the center of the said road, thence up the said road N. 25 1/4 W. 3.32 chains to a stob in the center of the said main road; thence up the said road N. 29.1.4E. 10.91 chains to the point of beginning. For a further and better description reference is made to deed dated October 13, 1913, from C.C. Branch and wife to J.E. Williams, as record in the Clerk's Office of the City of Williamsburg and County of James City, in Deed Book 14, pages 287-288.

TOGETHER WITH the right-of-way retained for the 23.77 acre parcel described in Deed Book 23, page 369 and in Deed Book 77, page 277, recorded in the Clerks' Office, Circuit Court, City of Williamsburg and County of James City, Virginia.

LESS AND EXCEPT the 3 3/5 acre parcel described in Deed Book 23, at page 369.

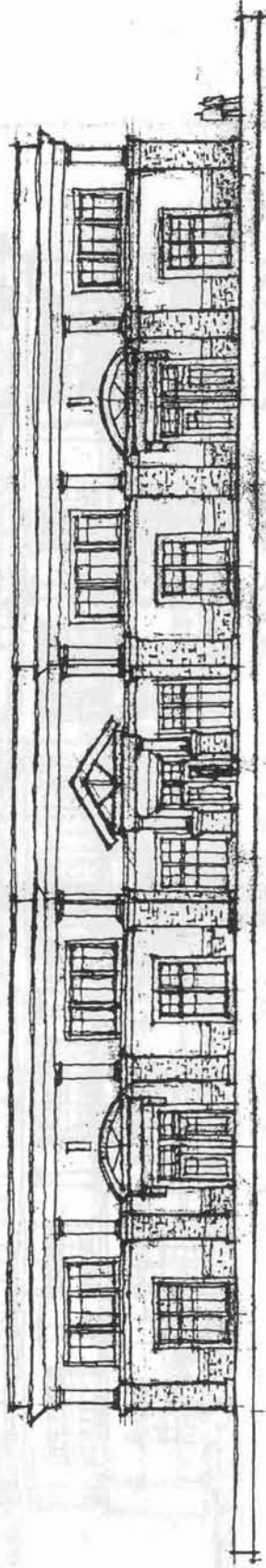
### **Parcel Two**

All that certain parcel of land in the Stonehouse District of James City County, Virginia, being part of the tract of land known as "Parkers", lying on the northwest side of State Highway Rt. 168, as shown and designated as 1.156 ACRES on a plat of survey of "PARKERS", made by Reynolds & Miller, C.L.S., dated December 23, 1970, a copy of which is recorded in the Clerk's Office of the Circuit Court for the City of Williamsburg and County of James City in Plat Book 29, at page 42.

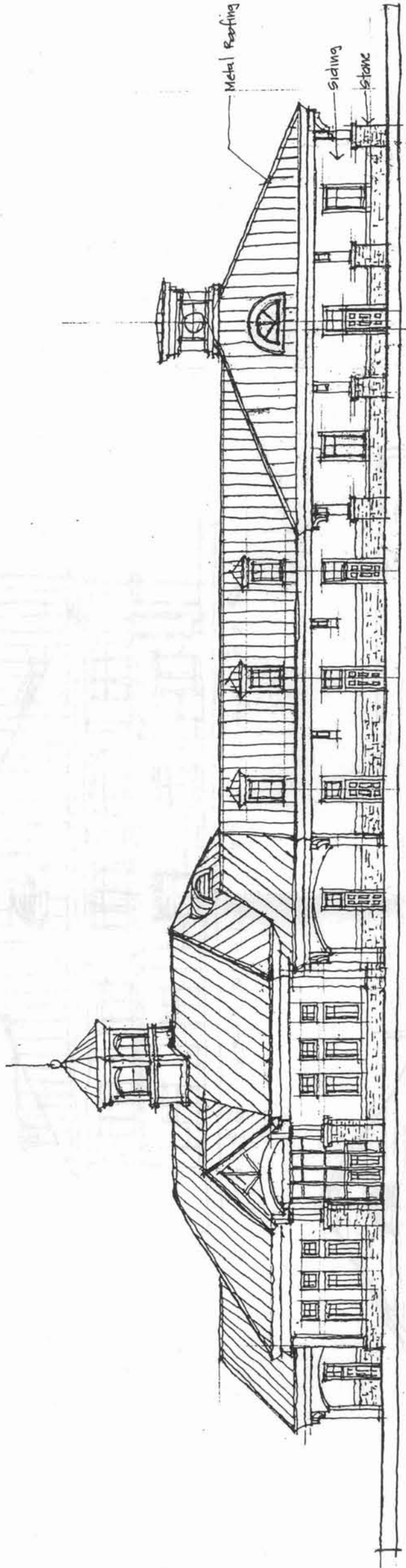
Being part of the property conveyed unto Hazelwood Farms, L.L.C., by deed dated December 7, 1998, from R.M. Hazelwood, Jr., recorded as James City County Instrument No. 980023833.







ELEVATION STUDY of OFFICE / WAREHOUSE



ELEVATION STUDY of RETAIL SPACE  
& RESTURANT

ELEVATI

MOSS CREEK COMMERCE CENTER  
AT STONEHOUSE

JAMES POCILUYKO • AIA  
2515 Kensington Ave. 1<sup>st</sup> Floor  
Richmond Virginia 23220

REVISION

DATE  
JOB #  
SHEET  
2 of 2  
CHECKED  
DRAWN



## CONCLUSIONS AND RECOMMENDATIONS

The proposed Moss Creek multi-use development will provide services and commercial spaces that are not currently available in the Barhamsville area. As a result the development will attract motorists from Stonehouse and the Old Stage Road background traffic that would otherwise need to travel farther to acquire the same goods and services. The analysis presented in this report are based on the maximum capture rates for trips attracted out of the existing traffic stream as allowed under VDOT's policies. Statistics presented in the *ITE Trip Generation Report* suggest that the convenience store and bank may attract an even greater portion of background traffic.

The potential to attract traffic from the area traffic stream will be a major factor in determining the value of the potential second entrance from Fieldstone Parkway to the south side of the development. A second entrance will attract trips directly from Stonehouse and also divert trips from Old Stage Road. It will also create an alternative route through which site traffic can bypass delays at the main entrance or visa versa. Under VDOT policies, trips attracted from Stonehouse were added to the Stonehouse traffic flow. Some of these are expected to be trips that would otherwise leave the Stonehouse area.

The proposed main entrance on Old Stage Road intersects the north end of the transition from 4 lanes to 2 lanes. This alignment, while not conventional, is necessary to provide full access to the site without compromising the existing intersection of Old Stage Road and Barnes Road. If the entrance were place farther south, it would intersect with the grass median. If it were placed farther north, a left turn lane could not be installed without the turn lane crossing the Barnes Road intersection. The spacing of the next two intersections to the north is too close to consider extending the four-lane section without major road relocations and right of way acquisitions. Traffic volumes on Old Stage Road do not warrant such efforts. To reduce the level of geometric complexity through this transition, a "right turn must turn right" alignment, combining the lane drop and right turn lane, has been recommended.

If both entrances are constructed, the project will require the following road improvements:

- Left and right turn lanes at the main entrance on Old Stage Road.
- A left turn lane at the Fieldstone Parkway entrance.
- Possible signalizations at the Fieldstone/Old Stage Road intersection after confirmation that signal warrants have been exceeded.

If only one entrance is constructed, it will require:

- Left and right turn lanes at the main entrance on Old Stage Road.

- Signalization at the main entrance and at the Fieldstone/Old Stage Road intersection after confirmation that signal warrants have been exceeded.

**APPROVED MINUTES OF THE DECEMBER 5, 2005 MEETING  
OF THE PLANNING COMMISSION**

**Moss Creek Commerce Center (Toano Business Center)**

Ms. Ellen Cook presented the staff report stating that Mr. Vernon Geddy has submitted an application to rezone 21.23 acres of land from A-1, General Agricultural to MU, Mixed Use, with proffers. The applicant proposes 3,575 square feet of bank; 4,725 square feet of convenience store with fueling; 34,630 square feet of retail; 54,000 square feet of office/warehouse space; and a mini-storage facility. The property is located at 9686 and 9690 Old Stage Road, and is further identified as parcels (1-4), and (1-34) on the JCC Real Estate Tax Map (4-4). The property is designated Low Density Residential and Mixed Use on the Comprehensive Plan Land Use Map. Recommended uses on property designated for Low Density Residential includes single family homes, duplexes, cluster housing, and very limited commercial establishments with a gross density of up to 4 units per acre in developments that offer particular public benefits. Recommended uses on property designated for Mixed Use in the Stonehouse mixed use area include light industrial and office/business park, with commercial uses clearly secondary in nature. VDOT comments on the initial traffic study stated that the agency did not concur with a number of technical items in the study as well as the proposed roadway configuration. Staff recommended deferral of the proposal to allow VDOT to review a recently submitted revised traffic study and resolution of other outstanding issues.

Mr. Hunt opened the public hearing.

Mr. Vernon M. Geddy, III represented the applicant. He gave a powerpoint presentation outlining the vision for the project. He said the goal was to provide goods and services to citizens living and working in the Stonehouse area. Mr. Geddy said the applicant was not seeking a decision at this time but requested feedback from Commissioners to facilitate being able to present the case at the next meeting.

Mr. Hunt asked if the applicant saw any impediments to being able to connect to Fieldstone Parkway.

Mr. Geddy said the location was really the only potential access to that land bay of the Stonehouse development. He said that although they could not force the other property owners to allow a connection he thought it would be easy to work out.

Mr. Kale asked about the location of the Stonehouse western boundary.

Mr. Geddy showed the area on the master plan.

Mr. Kale asked whose permission was needed to allow a connection to Fieldstone Parkway.

Mr. Geddy said it would be the owner of the Stonehouse Planned Development.

Mr. Kale asked how much of the vegetation shown in Mr. Geddy's 1<sup>st</sup> photograph would be maintained.

Mr. Geddy said it would all be retained and that a large portion of it is in the VDOT right-of-way.

Mr. Hunt said the prior owner of the parcel in question said that VDOT had purchased the right-of-way some time ago.

Mr. Kale said the buffer would be cut in half should VDOT chose to install a four lanes roadway.

Mr. Geddy agreed that the width would be cut down but said that a minimum 50 foot buffer with enhanced landscaping would be maintained.

Mr. Kale referred to the last page of the staff report identifying staff concerns. He stated that he would like to see responses to those concerns in addition to VDOT comments if a deferral was granted. Mr. Kale also asked for an explanation of the last sentence of the last item regarding an exemption to the commercial special use provision.

Mr. Geddy explained that a project zoned to mixed use with a binding master plan would be exempt from the commercial special use permit ordinance since the entire project would have already gone through the entire process.

Ms. Hughes asked what the height of the buildings would be.

Mr. Geddy said there is a proffered height limit of 35 feet.

Ms. Hughes asked if it was possible to provide architectural renderings with the re-submittal since the project would change the character of the road in that area.

Mr. Geddy said that architectural renderings would be difficult to supply because the buildings had not been designed but that the applicant had proffered that any building fronting on Fieldstone Parkway or Route 30 would present a front façade on those roads.

Ms. Jones stated that she would like to see more flow through the site and more neighborhood commercial and small business and less office/warehouse.

Mr. Fraley said he was concerned that approving a small project within a very large area that would eventually be developed would result in a patchwork effect. He also stated concerns about the flow, the eclectic mix of uses, and his desire for the applicant to share in the cost for road improvements.

Mr. Kale said the mini-storage facility should not be visible from the road or any residences. He also stated his agreement with Ms. Jones' concerns relative to warehouses and the project being in harmony with its surroundings, including providing a healthy, strong buffer and attractive entryway.

Mr. Geddy said the applicant was committed to a high quality development. He said they agreed with the Commission's concerns about the mini-storage facility and said its location within the site had been chosen for those reasons.

Mr. Kale said the buffer at the Busch Corporate Center on Route 60 in front of McLaws Circle provided a better feel in comparison to Kingsmill Shoppes across the street from it where there is no buffer. He also asked Mr. Sowers if the project would require DRC approval during the site plan phase.

Mr. Sowers answered yes.

Mr. Hunt asked Mr. Kale if he thought the Busch Corporate Center buffer was acceptable.

Mr. Kale said it was a more enjoyable setting than having no buffer at all.

Mr. Geddy clarified that there would not be any large scale warehousing but rather small warehouses with offices in front.

Mr. Billups asked if the applicant had received any community input.

Mr. Geddy said the applicant met with the Board of Directors of the Stonehouse Homeowner's Association.

Mr. Michael Brown, the applicant, said residents wanted to know when construction would start. He said there had been concerns about the architecture that had been addressed. He said he had the same devotion to the architecture of this project as he did with his Jamestown Retreat project.

Mr. Kale asked if the architecture of this project would be as up-scale as Jamestown Retreat.

Mr. Brown answered yes and added that he plans a more low-impact architecture utilizing natural materials and colors such as timber frame, stone and brick. He said he would try to provide renderings at the next meeting.

Mr. Kale said architectural renderings would be helpful to ensure a good fit with the community. He said it would also be helpful to be reminded of what is planned for the adjacent properties.

Hearing no other requests to speak the public hearing was continued.

9808 Turning Leaf Drive  
Toano, VA 23168  
March 27, 2006

Mr. Marvin Sowers  
Director of Planning, JCC  
101 East Mounts Bay Road  
P.O. Box 8784  
Williamsburg, VA 23188



RE: Rezoning Application Z-12-05, Toano Business Center, LLC.  
Rezoning of 21.23 acres from A-1 to MU  
Moss Creek Commerce Center

Dear Mr. Sowers,


In May 1997, we were the second family to put down a \$1000.00 deposit on a lot in Mill Pond at Stonehouse. We, Mary Ann and Walter Rybak, have lived in Mill Pond at Stonehouse for almost six years. Since that time, we both have been very involved and active in the evolution of Mill Pond at Stonehouse on behalf of the residents of our neighborhood, Leatherleaf, and all of the other neighborhoods in this community.

We totally support the development of the Moss Creek Commerce Center by Mr. Michael Brown. He has invited residents of our community to meet with him regarding the design and purpose of the proposed Moss Creek Commerce Center and has been very receptive of and responsive to resident opinions as well as suggestions for changes to his plans.

We feel that Mr. Brown is the developer whom we prefer to develop the referenced land. Having lived here for almost six years, it will be wonderful to have the convenience of a well-designed and architecturally attractive retail and business center nearby.

We urge the Planning Commission to support and approve Mr. Brown's request for Rezoning Application Z-12-05.

Sincerely,

  
Walter P. Rybak

  
Mary Ann Rybak

cc: Mr. Andy Bradshaw  
Supervisor, Stonehouse District  
James City County

March 24, 2006

9821 Cross Branch Drive  
Toano, VA 23168

VIA HAND DELIVERY

Marvin Sowers, Jr.  
Director of Planning  
James City County  
101 East Mount's Bay Road  
P.O. Box 8784  
Williamsburg, VA 23188



**Re: Rezoning Application Z-12-05  
Toano Business Center, LLC Rezoning  
of 21.23 Acres from A-1 to Mixed Use**

Dear Mr. Sowers:

We the undersigned, Carol K. Proctor and Thomas F. Proctor, Jr., are requesting that the James City County Planning Commission vote to deny the referenced application for the rezoning of 21.23 acres near the entrance to the Stonehouse development on Route 30. As residents of the Stonehouse community for the past 35 months and of James City County for over four years, we believe that we are qualified to state our opposition to the proposed rezoning. In addition, as homeowners in Fairfax County, Virginia, for over thirty years, we were first-hand witnesses to what unplanned commercial growth in or adjacent to residential areas can do to adversely affect the day-to-day lives of residents. For example, we are concerned about dangerous traffic conditions that would arise with the proposed development just beyond the entrance into Stonehouse.

While it might appear to be an exaggeration to refer to the proposed rezoning of 21.23 acres as unplanned commercial growth, it is a fact that as a Planned Unit Development (PUD), Stonehouse includes approved zoning for both homes and retail establishments within the Stonehouse community. It makes much more sense to build retail establishments inside Stonehouse on land that has already been approved for commercial zoning.

Mr. Ken McDermott presently has a proposal pending before the Planning Commission to develop what were previously known as Phases II through V of Stonehouse. Mr. McDermott's proffers include plans for both residential and commercial units. We believe it is in the best interests of the residents of Stonehouse for the Planning Commission to reject Rezoning Application Z-12-05, or at the least defer the Rezoning Application until after making a decision on Mr. McDermott's application.

Marvin Sowers, Jr.

March 24, 2006

Page 2

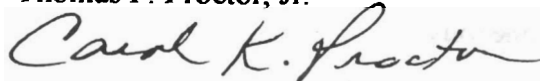
We also wish to make it clear to the Planning Commission that not all residents of the Stonehouse community are in favor of the Rezoning Application. Several residents have been meeting with Mr. Michael Brown to gather information about his proposed development of Moss Creek Commerce Center and to convey residents' issues with that development, and to discuss building designs and possible tenants. It is our understanding that Mr. Brown has not conducted any market surveys to justify Moss Creek Commerce Center as presented to Stonehouse residents. Instead, he has told residents that he had conducted his own study and already had multiple commitments for a bank, convenience store and self-storage units. We, the undersigned, question the meaning of Mr. Brown's usage of the word "commitments". We request that Mr. Brown be asked to inform the Planning Commission of just what he means by a "commitment" and to identify the businesses. Because we believe that the population and traffic flow in this area of James City County will not support the discussed tenant "wish list" that includes a bank, restaurant, and shops, but would more likely support a convenience store, storage facilities and office warehouses, it is our fear that the zoning change will result in the tenancy of businesses that are undesirable at the entrance to a residential area. For example, if the Zoning Application is approved and the property is not developed as proposed, we could end up with a tenant on the order of a 24-hour truck stop and/or an equipment and tool rental business.

We appreciate your consideration of the points raised in this letter and request that you forward it to the Planning Commission members for their consideration.

Very truly yours,



Thomas F. Proctor, Jr.



Carol K. Proctor

**DAVID K. LEHNERTZ  
JOYCE M. LEHNERTZ  
3215 OAK BRANCH LANE (STONEHOUSE)  
TOANO, VA 23168**

March 27, 2006

Mr. Marvin Sowers, Jr.  
Director of Planning  
James City County  
101-E Mounts Bay Road  
Williamsburg, VA 23185

Re: Rezoning Application Z-12-05, Moss Creed Commerce Center  
Rezoning of 21.23 Acres from A-1 to MU

Dear Mr. Sowers;

We are writing to express our opposition to the rezoning proposed in Z-12-05. We live in the Stonehouse Community and believe that a rezoning of this property will likely have significant negative impacts on our community.

We believe that Stonehouse has sufficient office, warehouse, retail and other uses currently with approved zoning and that additional space for the same usage is not desired nor warranted. The Association at Stonehouse has supported the SAW rezoning of Land Bay 3 from Office to Single Family since it was recognized that residential is more appropriate than office as one enters the Stonehouse development. To rezone agricultural land to warehouse, storage, office, a gas station and convenience store is not appropriate; nor will it be attractive near the entrance to our community. We would prefer the area immediately behind our Stonehouse sign remain agricultural or become residential.

Additionally, we strongly object to the creation of storage space in the proposed Moss Creek Commerce Center development. It is more appropriate to place this use in one of the several warehouse districts which already exist in the immediate area.

Also, we believe that the proposed use will place significant traffic burdens and impacts on Route 30. We understand that a traffic study is being developed and have been told that the developer is willing to install a traffic signal at his entrance. There will be a future signal at the intersection of Fieldstone Parkway and Route 30. The proposed signal for this property will be too close to function well without proper coordination and will adversely impact traffic flow. We also do not support the proposed future connection of roadways from Fieldstone Parkway to this property.

Finally, contrary to the position espoused by Mr. Vernon M. Geddy, attorney for Michael C. Brown, Stonehouse residents are not excited about the Moss Creek development. During several community-wide and neighborhood meetings of Stonehouse residents in recent weeks, the general attitude expressed during the meetings that I attended showed a strong opposition to the

proposed development. The opposition centered on the proposed storage units at our front entrance to our community and the expected traffic implications.

We acknowledge the work done by the applicant in the development of renderings showing what might be constructed and agree that they are attractive. However, this is not what we want at our front door. We request that this rezoning be denied and thank you for your consideration of our comments. I also request that a copy of this letter be provided to the Planning Commission.

Sincerely,

David and Joyce Lehnertz  
3215 Oak Branch Lane (Stonehouse)  
Toano, VA 23168

Mr. Marvin Sowers, Jr.  
Director of Planning  
James City County  
101 E. Mounts Bay Road  
P.O. Box 8784  
Williamsburg, Virginia 23188

23 March. 2006

RE: Rezoning Application Z-12-05, Moss Creek Commerce Center (Toano Business Center)

Dear Mr. Sowers:

My husband and I are writing to express our support for the rezoning requested in Z-12-05. We were the first family to build a home in Stonehouse. When we moved in during 1998 we were expecting retail and commercial sections to follow shortly thereafter. The area was compared to Reston, in Northern Virginia and Disney's Celebration near Orlando.

Mr. Michael C. Brown, the developer and property owner of Moss Creek, has been very forthcoming with elevations, his proffers, and answers to questions the community of Stonehouse has phrased. He came to Stonehouse on 2 occasions to speak and respond to questions at open meetings. His elevations and proffers lay the groundwork for a very upscale restaurant, bank, and retail shops. He is also looking for an upscale convenience store with discount gas. Right now we have to drive a distance or pay a high price.

We do not have a real restaurant at Stonehouse yet. Someone mentioned to the county that we had one at the Golf Course. What is there is very little. It provides a full bar and hot dogs and sandwiches. There is no breakfast or dinner offered. Smoking is permitted throughout the building making most people uncomfortable. We can not even get pizza delivered out here. The only restaurant between Stonehouse and Anderson's Corner is a McDonalds.

A letter to the Director of Planning in opposition to this request refers to Land Bay 3 of the SAW proffers which asks for commercially zoned property to be rezoned residential. This letter fears that the property could be negatively impacted by Moss Creek. The writer does not mention that there is a commercial land bay between Moss Creek and Land Bay 3. It should be noted that Land Bay 3 was originally zoned Multi-family Residential and rezoned commercial a few years ago with no objections by Stonehouse residents or the Home Owners Association Board. It appeared that everyone thought it would be more appropriate since the rest of the bays on Fieldstone Parkway were commercial. Residents of Stonehouse have not yet addressed the SAW rezoning requests. There have been no public meetings to explain them to all the residents and they have had many changes over the last 2 years but that is another issue for another time.

We understand that the Moss Creek plans also call for Mini-storage and office space. We did not see any RV storage areas as some have claimed and asked Mr. Brown for clarification. He stated that none were planned. While reviewing the latest elevations for the center, I also do not see a parking area for trucks and construction vehicles to park alongside Fieldstone Parkway as some had feared.

All and all I think The Moss Creek Commerce Center will improve the Quality of Life for Stonehouse and will be compatible with the commercial development along Fieldstone Parkway. Mr. Brown's willingness to inform and work with the Stonehouse Community and revise his proffers and elevations to accommodate their wishes is unprecedented in my experience with developers. He is proffering upscale buildings and landscaping material and giving the community an ongoing voice in the architecture of the Center. This is an opportunity for a great result.

Sincerely,

Judith J. Bishop

cc: Planning Commission Members  
Donald C. Hunt  
George H. Billups  
James Kennedy  
Mary Jones  
Anthony J. Obadal  
Jack L. Fraley Jr.  
Shereen Hughes

### E-mail Communications

**Sent:** Tuesday, March 21, 2006 11:47 AM

**To:** Planning

**Subject:** Moss Creek Commerce Center

I am a resident of Stonehouse Community and I support the proposed County Plan Z-12-05 Moss Creek Commerce Center.

Thank you.

Ford Warren-Hinck

Ford Warren-Hinck

Hinckford Manor

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**Sent:** Thursday, March 23, 2006 6:41 AM

**To:** Planning

**Subject:** Moss Creek Commerce Center County Plan Number Z-12-05

Dear Sir/Madam,

We are current owners of lot #16, Hillcrest in the Stonehouse Development and wish to express support for the Moss Creek Commerce Center, County Plan Number Z-12-05. Currently, in the Marine Corps serving this great nation of ours overseas, we believe this development will be of great benefit to the

current and future residents of Stonehouse. It's location and future stores will provide services that are lacking in the area of Stonehouse.

These conveniences that will be located in the Moss Creek Commerce Center, will also aid in attracting new residents and businesses to the area and provide tax revenue to the county.

Once again, please pass County Plan Number Z-12-05 in support of the Commerce Center.

Semper Fi,

Ed & Connie Ramsey

Lot #16, Hillcrest, Stonehouse

Okinawa, Japan

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**Sent:** Friday, March 24, 2006 7:28 AM

**To:** Planning; Andy Bradshaw

**Subject:** Moss Creek Development Proposal - Stonehouse

Dear Folks:

My wife, Marcia, and I are residents of the Lisburn section of Mill Pond at Stonehouse. We reside at 3591 Splitwood Road. I am writing to express our positive disposition to the proposed Moss Creek commercial development for which the developer, Michael Brown, is in the process of seeking a zoning change. Most homeowners in a nice area like Stonehouse would like to, in a perfect world, either prevent all further development once they get into the area or, failing that, have the chance to completely control all aspects of development that does occur. That, in the real world, is not a realistic possibility.

However, short of such unrealistic goals, we need to acknowledge and applaud the very positive efforts of Michael Brown to reach out to our community to provide an opportunity for input and

his willingness to make reasonable changes to his proposal to accomodate resident concerns. His current architectural plans provide for a commercial area that will be a good and needed addition and one done tastefully and with measured, appropriate controls. If completed in accordance with the plans we have seen, it will be a solid precedent to follow as future (inevitable) additional development occurs near the front entrance to Stonehouse. Absent some flaw in his plans that you see and that we have not been privy to, we would urge your favorable consideration of his proposal and your involved monitoring of his actual construction efforts to ensure full compliance with the proposed proffers.

Thank you for the chance to be heard on this proposal.

Regards, Clinton Brooks

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**Sent:** Thursday, March 23, 2006 10:00 PM  
**To:** Planning  
**Subject:** County Plan Number Z-12-05

Mr. Marvin Sowers, Jr.  
Director of Planning  
James City County

RE: Moss Creek Commerce Center  
County Plan Number Z-12-05

We are residents of the Lisburn Section of Stonehouse Community. We are in support of the Moss Creek Commerce Center as proposed to us at a resident's meeting .

James E. Wheeler  
Barbara M. Wheeler  
9901 East Cork Rd.  
Toano, Va 23168

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**Sent:** Monday, March 27, 2006 4:45 PM  
**To:** [planning@james-city.va.us](mailto:planning@james-city.va.us)  
**Subject:** Moss Creek Commerce Center County Plan # Z- 12- 05

Dear Sirs,

We have no objection to the proposed commerce park. In fact, it may prove to be a real convenience. We have lived out here since the year 2000 and have been looking forward to some development of services. We feel Mr. Brown is to be commended for taking such an interest in our community's concern and input.

Sincerely,  
Mr. and Mrs. Victor Montesano

March 21, 2006

Mr. Marvin Sowers, Jr.  
Director of Planning  
James City County  
101 E Mounts Bay Road  
P O Box 8784  
Williamsburg, VA 23188

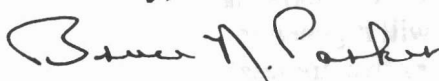
Dear Mr. Sowers,

I am writing to you as a resident of Stonehouse in regard to the Moss Creek Commerce Center (County Plan Number Z-12-05).

While I would prefer that nothing be built at the entrance to the Stonehouse development, I realize that this would not be a practical expectation. Considering all of the possibilities of what could be developed at that site, and based on information I have received on the Moss Creek Commerce Center proposal, I think we could do a lot worse. Mr. Michael Brown seems to be making a real effort to build a commerce center that will be esthetically pleasing and appropriate given the nature of the Stonehouse development. Therefore, my wife and I are in favor of the rezoning request for the Moss Creek proposal.

Thank you.

Sincerely,

A handwritten signature in dark ink, appearing to read "Bruce N. Parker". The signature is fluid and cursive, with the first name "Bruce" and last name "Parker" being clearly legible.

Bruce N. Parker  
3012 Heartwood Crossing  
Toano, VA 23168

March 24, 2006

Mr. Marvin Sowers, Jr.  
Director of Planning  
James City County  
101 E. Mounts Bay Road  
P.O. Box 8784  
Williamsburg, Virginia 23188

Re: Moss Creek Commerce Center (Toano Business Center) County Plan No. Z-12-05

Dear Mr. Sowers,

My wife and I are residents of Mill Pond at Stonehouse and want to express our support for the subject re-zoning application.

Development, as much as many of us might not like it, is not only inevitable but is already in the plans. Anyone in the Mill Pond at Stonehouse community who does not believe that needs only to review the existing Stonehouse Master Plan/Proffers and the JCC Comprehensive Plan. The truth of the matter clearly is, while no one can say exactly what that development will look like due to future requests to change zoning that will almost certainly arise (e.g., Stonehouse at Williamsburg's pending request for a zoning change), Fieldstone Parkway will not always be the scenic, undeveloped entry to the Mill Pond community. In fact, it was never intended to be. The current circumstances are transitory and everyone who purchased property in Mill Pond should have understood that to be the case.

That said, the development of a small commerce center on a public road outside the western boundary of the greater Stonehouse development and nearby to the only currently existing residential community (Mill Pond) makes a great deal of sense. Not only will it generate revenue for the County but it adds to, supplements and improves on services that are less available to residents. One of the things that we heard from many of the neighbors (as well as property owners who live elsewhere) since establishing residence in Mill Pond is the need for more services. Certainly there is some opposition to the re-zoning request, but the depth of whatever opposition exists needs to be placed in context. The existing residential population of Mill Pond makes up less than 10% of the planned population for Stonehouse. Even if you count all property owners in Mill Pond, many of whom live outside Virginia and some of whom currently reside outside the continental United States, the total only represents about 15% of the planned population. So, even if a large number of residents oppose the request, you must consider that normal human behavioral science suggest that you will always hear from opponents in larger numbers than proponents. Because you may have

heard from more individuals who oppose than support the Commerce Center does not mean that significant support does not exist. Beyond considering the views of those who contact the Planning Commission or staff, you must consider this request with regard to what will be “smart” for the large population that will exist in the greater Stonehouse development, as well as those residents in JCC along Route 30.

We believe that most of the concerns and comments registered by those opposed to the rezoning request center on emotion and hyperbole. Their concerns need to be viewed within the context of the existing Stonehouse development plan. For example, the comment has been made that the Commerce Center will be at our “front door”. We submit that our front door is much more reasonably the intersection of Fieldstone Parkway and Mill Pond Run (almost a mile from Route 30) than it is to Route 30 and Fieldstone Parkway. The romantic notion that Fieldstone Parkway is the expansive private driveway to our homes needs to give way to the reality that Fieldstone Parkway has always been planned as a well developed area that will serve as a main thoroughfare connecting the east and west ends of the Stonehouse development. Another comment has been made that we already have a restaurant at the Stonehouse Golf Club. While we love the clubhouse grill, surely no one really sees it as a restaurant. Not only has its existence been erased from the Interstate 64 East sign identifying “food” available at exit 227, but in the winter the menu is severely limited. It cannot fairly be compared to a restaurant of the type proposed by the developer.

A comment we believe that has serious merit relates to traffic. However, again we must note that traffic is a foregone conclusion for greater Stonehouse. The requirement that traffic studies be done is testimony to the fact that development brings traffic. So the real question in this regard is what steps can be taken to mitigate these traffic issues. In our mind, these matters do not seem to be insurmountable and we are confident they will be addressed as part of the application for rezoning process (among the developer, JCC and VDOT).

The developer in this case came to our community to share his vision of the Commerce Center and has made a concerted effort to collect input from the Mill Pond at Stonehouse community and thereafter, to address concerns that residents have expressed. Another developer (SAW) who owns significant property along Fieldstone Parkway has not been able to find the time to meet with the representatives of the Mill Pond neighborhoods. While the Commerce Center developer may not satisfactorily address every concern raised by every property owner, we submit he has made more than a good faith attempt to listen and change. We believe that others have already outlined many of the things that the developer has done in this regard (see, for example, the March 17, 2006 letter from Mr. and Mrs. Lawton). Such a relationship with a developer would seem to be the model that everyone in JCC (the Planning Commission, the Board of Supervisors, etc.) would like to see emulated. We believe that it will establish a standard for developers making it clear that if you want community support you need to be willing to communicate and compromise.

The chairman of the Planning Commission, Mr. Fraley, has been quoted in the Virginia Gazette regarding another request for re-zoning, as saying he is looking for “extraordinary public benefit” to support a request for re-zoning. We are uncertain as to what Mr. Fraley means by this statement but “extraordinary public benefit” is in the eyes of the beholder. A

far too subjective and untenable benchmark. It seems to us that the threshold should be more about what is in concert with and supports the larger plans for development within the County. JCC has already established a position on the area in question as it identifies it in the Comprehensive Plan as being an area for mixed use. There is nothing the developer is asking to do that is outside that already established parameter. In addition, we submit that the existing zoning presents a far more clear and present danger to Mill Pond residents and their properties than the re-zoning and development that we have seen rendered. The existing zoning, A-1, allows, for example, the placement of manufactured homes on permanent foundations. Such a development would not require JCC zoning approval. We would hazard the guess that you would hear far louder and more extensive opposition to such a course than you have or will to the current request.

The truth of the matter is that the property in question will be developed. Look on the west side of Route 30 and all of the B-1 properties. The only real question here is what will actually be built on the property in question and when it will be built. It may not be with this developer (should you deny his request) and it may not be in the next year or so, but it will happen. Saying that the existing plans for the Stonehouse development already make provision for services does not suffice. No one really knows what services will be provided or whether those plans will ever be fulfilled. Regardless of whether we or others have any reservations about the Commerce Center, we believe it is in our best interest to act now with this developer who has demonstrated a willingness to address community concerns and who has rendered an architecturally attractive and well landscaped facility at this location.

We support the subject re-zoning request and ask for your favorable consideration, and a recommendation for its approval when it comes before the Planning Commission.

Thank you,

/s/

Caroline and Michael Lott  
9804 Loblolly Court  
Toano, Virginia 23168

cc:

Mr. Andy Bradshaw  
Ms. Ellen Cook

**Barb and Dave Persons**  
**3105 Trailwood Lane**  
**Toano, VA 23168**

**757-566-9790**

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**March 20, 2006**

Mr. Marvin Sowers, Jr.  
Director of Planning  
James City County  
101-E Mounts Bay Road  
PO Box 8784  
Williamsburg, VA 23188

Re: Rezoning Application Z-12-05, Toano Business Center, LLC. Rezoning of  
21.23 Acres from A-1 to MU

Dear Mr. Sowers;

We are writing to express our support of the rezoning proposed in Z-12-05. We live in the Stonehouse Community and believe that a rezoning of this property along with the plans Mr. Michael Brown has for the development will create an asset at our front door. We have read a summary of the amended proffers and viewed the proposed elevations and are VERY pleased with the work done on our (Stonehouse residents) behalf.

We very much appreciate the willingness of Mr. Brown to work with residents in Stonehouse. This makes him an exceptional developer in our eyes. We hope that this small development will set a high standard for other commercial development in the future in Stonehouse. We request that you approve the change in zoning and the Moss Creek Development with the amended proffers.

Sincerely,

Dave and Barb Persons

March 19, 2006

Mr. Marvin Sowers, Jr.  
Director of Planning  
James City County  
101 E Mounts Bay Road  
P.O. Box 8784  
Williamsburg, Virginia 23188

RE: Moss Creek Commerce Center (Toano Business Center)  
County Plan Number Z-12-05

Dear Mr. Sowers,

I am the Chairman of the elected Neighborhood Representatives (NR) of the property owners within Mill Pond at Stonehouse. In a letter dated February 15, 2006 regarding the above re-zoning request, I stated that the Neighborhood Representatives (NRs) were working with Mr. Brown in an effort to reach common ground with respect to his Moss Creek proposal. In the letter, I also stated that we would notify you of our position once we complete our meetings with Mr. Brown. Although our discussions with Mr. Brown are continuing, we would like to offer our position. However, I would first like to discuss the authority of the NRs to represent the property owners of Mill Pond at Stonehouse and then outline events that have occurred since my initial letter.

I am aware that letters have been sent to you regarding the Moss Creek proposal. I personally, as do the NRs, fully support and encourage our property owners to make their opinions known in this matter. However, I must take exception to any letters that state the NRs do not have the authority to represent the property owners of this community. I can cite numerous documented incidents where the Stonehouse NRs have done just that over the last several years. I will not attempt to list all those occasions but would direct your attention to the JCC file for the currently pending request for re-zoning by Stonehouse at Williamsburg (SAW) and a letter dated December 4, 2003, from the *Chairperson of the Stonehouse Neighborhood Representatives* regarding that request. That letter should dispel any misinformation that the current NRs, or any predecessor group of NRs, have done anything but act on behalf of the community or as the voice of the community both inside and outside the boundaries of this development. A copy of that letter is attached for your consideration.

I would also like to share actions taken by the NRs to obtain information about the development, discuss concerns of the property owners with Mr. Brown and the efforts taken to communicate information to property owners in an effort to allow them to make an informed decision about the development.

- The NRs formed a sub-committee tasked with meeting with Mr. Brown who clearly outlined his vision of the Moss Creek development, presented both site plans and architectural representations of the structures within this proposed development, made changes in both the make up of the component parts of the development (e.g., eliminating an office/warehouse building facing Fieldstone Parkway and reconfiguring the retail area) as well as the appearance and screening that make up his development plan based on property owner input, and incorporated numerous changes and additions to his proffers, again, based on input from property owners.
- Over the last several weeks, the NR sub-committee has conducted a number of individual neighborhood information sessions and two community wide information sessions to outline the details of the Moss Creek proposal, to answer questions, and to collect any additional concerns from Stonehouse property owners to bring back to Mr. Brown for his consideration. Although noted above, I would like to reemphasize the fact that the purpose of these meetings was to provide information to property owners to allow each to make an informed decision regarding the development.
- Questions the presenters could not answer were collected, discussed with Mr. Brown, and written up for distribution to all property owners within the Community.
- The NR sub-committee is currently discussing the revisions Mr. Brown has made to the proffers, will be preparing a summary and sharing the summary and the draft proffers with the Community as soon as they are available.

Although the NRs are continuing to work with Mr. Brown, we recently discussed whether we felt we had enough information to take a position on the Moss Creek proposal and if so what that position might be. It was agreed that based on discussion to date with Mr. Brown, observations from the information sessions held and independent discussions with property owners we were at a point where we could form a position. In deciding what that position might be, it was agreed that there are strong feelings on the part of our property owners on both sides of the issue as to whether the Moss Creek development is an asset to Stonehouse and the surrounding area of the County or a liability. As a result of there being no clear consensus in the community, the NRs have decided to take a “neutral” position with regard to the Moss Creek Commerce Center and the prerequisite rezoning request. It should be noted that in making this decision the voting representatives from the eligible Stonehouse Neighborhoods voted to either “support” or “remain neutral” with the majority supporting neutrality. There were no votes in opposition to the Moss Creek development plan among the Voting Reps. The key factor influencing the NR voting was that due to the division in the community it was best that we not take a position to either support or to oppose the project, therefore the vote to remain neutral.

The NRs also voted to continue to meet with Mr. Brown on behalf of the community in defining the features of the Moss Creek plan, to continue to distribute information regarding the development to the property owners of our community, and to encourage property owners to make their wishes known with letters to the JCC Planning Commission and to attend the public Planning Commission meetings and express their opinions on this matter.

We are confident you will receive additional letters on this subject from individual property owners. Although we understand that in reality individuals who oppose a project are more likely to write a letter, we are hopeful that the Stonehouse property owners will communicate their wishes to allow those of you who are charged with the responsibility to rule on development issues such as Moss Creek to have a clear picture of the desires of the Community. Finally, we would like to express our gratitude to Mr. Brown who has demonstrated and continues to demonstrate a sincere desire to listen to the concerns of the Stonehouse NRs and applaud this approach by a developer to work with a community.

Sincerely,

*Bruce Lawton*

Bruce Lawton,  
Chairman  
Stonehouse Neighborhood Representatives

Encl: 1, Ltr. dtd. Dec. 2003.

Neighborhood Representatives\*

Bob Phaneuf  
Caroline Lott  
Fred Weissensee  
John Craddock  
Walt Rybak  
Bonnie Nealon  
Bruce Lawton  
Jack Nolan  
Ralph Frye  
Bruce Parker

Stonehouse Neighborhood

Bent Tree  
Hillcrest  
Hollow Oak  
Laurel Ridge  
Leatherleaf  
Lisburn  
Orchard Hill  
Overlook  
Richardson's Mill  
Summerfield

\*Please note that annual elections have been held recently so names of NRs on this letter do not in all cases match the names in the February 15, 2006 letter.

**CC: Planning Commissioner Members:**

Donald C. Hunt	(Stonehouse District)
George H. Billups	(At-Large Representative)
James Kennedy	(At-Large Representative)
Mary Jones	(Berkeley District)
Anthony J. Obadal	(Powhatan District)
Jack L. Fraley Jr.	(Roberts District)
Shereen Hughes	(Jamestown)

Andy Bradshaw  
JCC Supervisor  
Stonehouse District

3147 Cider House Road  
Toano , VA 23168

March 17, 2006

Mr. Marvin Sowers, Jr.  
Director of Planning  
James City County  
101 E. Mounts Bay Road  
P.O. Box 8784  
Williamsburg, Virginia 23188

RE: Moss Creek Commerce Center (Toano Business Center)  
County Plan Number Z-12-05

Dear Mr. Sowers:

My wife and I have been residents of Stonehouse at Mill Pond for nearly five years and would like to express our opinion of the proposed Moss Creek Commerce Center.

In our search for a retirement home that lead to our choice of Stonehouse, the amenities, the golf course, the architectural features and the location were certainly factors as was the rural nature of the surrounding area. Admittedly I would prefer the unspoiled farmland and treed areas of State Route 30 between exit 227 of Interstate 64 and Barhamsville that currently form a picturesque entrance to our community, remain untouched and undeveloped. I know too that we live in a land where property rights are significantly spoken for in both our culture and in our laws. Political sub divisions in Virginia have had little success in establishing what some would call "zero growth zones". Ultimately, someone will make a proposal to develop the area next to our entrance and at some time, the James City County Planning Commission and the Board of Supervisors will approve such a plan.

I have had the opportunity to listen to Mr. Brown address members of our community and consider their concerns and I have had the opportunity to view in detail the site plan and the architectural renderings of his proposed Moss Creek Commerce Center. I would expect any business man / developer / property owner to make a profit from such a venture but I doubt that the vast majority would invite the nearby residents of his project to come and contribute suggestions for changes and then actually incorporate their recommendations into his site plan and into his proffers as Mr. Brown has with the residents of Stonehouse. The architecture he has proposed for his project is in good taste and consistent with that found in the public buildings in Stonehouse. The color schemes are muted and attractive, the signage is subdued, the lighting is not harsh mercury vapor or neons atop forty foot poles but is twenty foot community type street lights. He has

adopted into his proposal suggestions for additional screening on the Fieldstone Road and the Old Stage Road sides of the site, he has agreed to improve the screening around the BMP and has actually replaced an office / warehouse building with additional retail space - all in response to the suggestions of Stonehouse residents. If this man is willing to not only listen to the local residents but actually incorporate their suggestions into his site plan, architecture and proffers then I am willing to support his proposal. This is the kind of attractive and useful development that I would prefer as inevitable development marches its way to this end of the county. If this area of the county is going to be developed now I want Mr. Michael Brown to be the one to develop it.

My wife and I both support the Moss Creek Commerce Center and the necessary rezoning to allow its construction as proposed. I can assure you that we would not support just any development proposal for this parcel that included a similar mix of retail and commercial construction but feel that Mr. Brown is making a concerted effort to create a project that will provide convenient services in an attractive surrounding that will represent an asset to our community and to this part of the county. If Mr. Brown is willing to place his confidence in the judgments and opinions of the residents of Stonehouse as he has, possibly at some risk to his investment, then we are willing to place our confidence and support in his proposal.

Please approve Mr. Brown's Moss Creek Commerce Park proposal and the prerequisite zoning approval.

Sincerely,

*Bruce & Linda Lawton*

Bruce & Linda Lawton

[bwlawton@cox.net](mailto:bwlawton@cox.net)

(757) 566-8289

CC: Andy Bradshaw  
Supervisor, Stonehouse District  
James City County

February 15, 2006

Mr. Marvin Sowers, Jr.  
Director of Planning  
James City County  
101 E. Mounts Bay Road  
P.O. Box 8784  
Williamsburg, Virginia 23188

RE: Moss Creek Commerce Center (Toano Business Center)  
County Plan Number Z-12-05

Dear Mr. Sowers,

I am the Chairman of the elected Neighborhood Representatives (NR) of the property owners within Mill Pond at Stonehouse. As the Board of Directors for the Association at Stonehouse is still under developer control, we represent the only group elected by the property owners within Stonehouse. Over the last several months the NRs have been working with Mr. Michael Brown (property owner/developer, Moss Creek Commerce Center) in an effort to reach common ground with regard to his plans as set forth in the above cited zoning request. To that end, Mr. Brown has personally met, on 2 occasions, with the our group of neighborhood elected representatives (open to all property owners); is scheduled to meet with us again and has assured us that he is committed to revising his plans and proffers to address as many community concerns as are economically feasible.

This letter should not be interpreted as an approval or support for the zoning request on our part, but rather an indication that in light of Mr. Brown's demonstrated willingness to try to work with us, we are reserving judgment on the proposal. However, it should be read as counterpoint to letters received in opposition to this application.

We will notify you of our position and provide any germane details once we complete our meetings with Mr. Brown.

Sincerely,

*Bruce Lawton*

Bruce Lawton,  
Chairman  
Stonehouse Neighborhood Representatives

March 16, 2006

James City County Planning Department  
101-A Mounts Bay Rd.  
P.O. Box 8784  
Williamsburg VA 23187



Sirs:

We would like to express our opposition to the rezoning of the property known to us as Moss Creek (the tract owned by developer Michael Brown at the entrance to the Stonehouse residential development), from agricultural to mixed use. In one jump, from most restrictive to least restrictive use.

Our other concerns have to do with the property's extreme closeness (1/4 m.) to exit 227 off interstate 64, and with what seem to us the inappropriate uses planned for it. We know of no other I-64 exit in the area that provides trucks and cars exit and re-entry without adding substantial time to their journeys, an attractive circumstance, of course. Will not a gas station and Wa-Wa or other convenience store at Moss Creek draw great numbers of travelers getting off there, given the lack of any other amenities in the area at present except for one gas station and a McDonald's in the other direction? Also, are storage units appropriate at the entrance to an upscale development?

Given that businesses more suitable to an interstate exit are likely to cluster in the area of the present McDonald's eventually, we feel the present zoning for the Moss Creek land should stand until the situation for the future is clearer.

Thank you for your consideration.

*Robert Kennedy*  
*Joanne S. Kennedy*

*3057 Old Grove Lane*  
*Loano VA 23168*

Cc: M. Anderson Bradshaw,  
Stonehouse District Commissioner

March 13, 2006

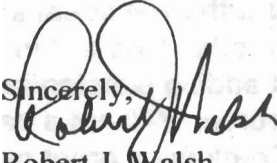
Mr. Marvin Sowers Jr.  
Director of Planning  
James City County  
101 E. Mounts Bay Road  
Williamsburg, Va. 23188



Dear Mr. Sowers:

I am a resident of Stonehouse in James City County and from all of the information Mr. Michael Brown has presented to me, I believe the Moss Creek development will be a tremendous asset to this end of the County.

Please include me on the "yes" side.

Sincerely,  
  
Robert J. Walsh  
3052 Old Grove Lane  
"Stonehouse"  
Toano, Va. 23168

3141 Hollow Oak Drive  
Toano, VA 23168  
March 13, 2006

Mr. Marvin Sowers  
Director of Planning  
James City County  
101-A Mounts Bay Road  
Williamsburg, VA 23185

Re: Rezoning Application Z-12-05, Toano Business Center, LLC. Rezoning of  
21.23 acres from A-1 to MU

Dear Mr. Sowers,

I am writing to express my support for the proposed Moss Creek Project as envisioned by  
Michael Brown.

The evidence of growth in the upper county has become evident to most residents and to  
experience a developer coming to neighbors who would be most impacted by this development  
is, to say the least, very refreshing and I might add, unique.

Mr. Brown has even invited a sub committee comprised of Millpond at Stonehouse residents to  
meet with him to exchange ideas and opinions of his proposals.

The project offers many conveniences to residents in the area and the architectural renderings  
indicate that Moss Creek will be visually pleasing.

I urge the Planning Committee to support this rezoning.

Truly yours,  
  
John G. Coleman

Donn Q. Gorman  
9116 Three Bushel Drive  
Toano, Virginia 23168



March 8, 2006

Mr. Marvin Sowers, Jr.  
Director of Planning-James City County  
101 east Mount's Bay Road  
P.O. Box 8784  
Williamsburg, Virginia 23188

Re: Support of Moss Creek Development

Dear Mr. Sowers:

As a proud resident of the Stonehouse community in Toano, I've made the effort to familiarize myself with Michael Brown's proposed Moss Creek development.

This development would be located adjacent to the Stonehouse entrance and personally, I believe it would be a great asset. Mr Brown was good enough to provide several artist renderings of Moss Creek and it certainly appears to be a tasteful, well planned and up-scale project.

I hope you will give Mr. Brown the zoning changes he needs to build Moss Creek.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'Donn Q. Gorman'.

Donn Q. Gorman  
Phone: (757) 741-2122  
Facsimile: (757) 741-2122  
Cellular: (757) 645-5314  
Email: [Gorman9116@cox.net](mailto:Gorman9116@cox.net)

9809 Hidden Nest  
Toano, VA 23168  
February 2, 2006

Mr. Marvin Sowers  
Director of Planning  
James City County  
101-A Mounts Bay Road  
Williamsburg, VA 23185

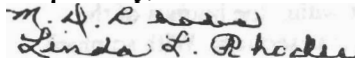
Re: Rezoning Application Z-12-05, Toano Business Center, LLC. Rezoning of 21.23 Acres from A-1 to MU

Dear Mr. Sowers;

Having reviewed the Reference Application for the rezoning of 21.23 acres near the entrance to the Stonehouse development on Rt. 30, we would request that the Planning Commission vote to deny the Application. As a resident of the Stonehouse community, it is our opinion, that a rezoning of this property will likely have a significant negative impact on the Stonehouse community at large. Our comments and observation regarding the Application are noted in the attachment.

We appreciate the consideration of the Commission in this matter.

Respectfully,

  
Marvin and Linda Rhodes

Attachment (1)



Attachment

Letter by Marvin and Linda Rhodes

Re: Application Z12-05, Toano Business Center, LLC

Mr. Vernon Geddy, the attorney representing the Applicant, indicated to several members of the Planning Commission during a preliminary development plan review, that the Applicant had presented the proposed rezoning plan to the Stonehouse community and the community fully supported it. While a plan was discussed with a group of neighborhood representatives, it has not been distributed to the community at large and it is doubtful that most would endorse the plan if they knew what it entailed. We do not endorse the Application and do not believe that Mr. Geddy has accurately reflected the sentiment of the Stonehouse community.

Mr. Geddy also indicated at the same preliminary plan review, that the Stonehouse community was "desperate" to have commercial development in this area. Residents of Stonehouse had to be aware of the nature of the commercial resources in the area when they purchased here. We moved to Stonehouse in 2000 to escape the traffic, congestion, and commercial development along Rt. 17 in York County. It is likely that many of our neighbors chose Stonehouse for the same reason. Shopping is available a relatively short distance from Stonehouse, and it's proximity to I64 permits easy access. It would appear that the shops proposed by the Applicant do not necessarily serve the greater needs of residents of the Stonehouse community.

3. Rt. 30 narrows from a divided four lane road to an undivided two lane road near where the Applicant proposes to access Rt. 30. Placing an access to commercial stores in this vicinity may cause a potentially dangerous and confusing situation. To add to this, a traffic study of Rt. 30 indicated the average speed to be about 65 mph. Traffic entering and leaving the proposed commercial development near the narrowing of the road is likely to result in a very dangerous intersection.
4. As you are aware, Stonehouse is a Planned Unit Development (PUD) that includes zoning for both residential and commercial units. There is substantial property for commercial development within the bounds of the Stonehouse community so residents will not have to leave the development to access services. With so much, as yet undeveloped property already zoned commercial, why does the County want to rezone more agriculture property to commercial?.
5. The developer of Stonehouse Phases 2-5, Stonehouse at Williamsburg, also has a rezoning request pending review by the Planning Commission, which includes the transfer of commercially zoned property to residential, in what is known as Land Bay 3. This property is in the vicinity of the property owned by the Applicant. If the property in Land Bay 3 is rezoned, it would likely be beneficial to the Stonehouse community. However, the development of the Land Bay 3 property could be negatively impacted by the Reference application. The Reference application needs to be examined, not in isolation, but in view of all rezoning requests, as well as the community at large. If the Reference application is approved, substantial vegetative screening should be required between this property and the Stonehouse development. Also, the effects of lighting need to be reviewed and evaluated to determine its impact on all future development in the Stonehouse community.

All, or most, of the services proposed by the Applicant are available nearby. There is a restaurant at the golf course within Stonehouse. A restaurant and several gas stations are situated between the entrance to Stonehouse and, nearby Anderson's Corner. Mini storage facilities are situated at both Barhamsville and Hankins Industrial Park. Why should the residents of Stonehouse want these services duplicated at the entrance where there is the potential to substantially degrade the appearance of their "front door".
7. It has been rumored that the Applicant currently has the property for sale. This appears to be a situation where the property was acquired at a price below current market value and the Applicant hopes to have it rezoned and then sell it at a substantial profit.
8. The Applicant has indicated that he also owns the property, and abandoned structures, across I64 near the east bound entrance, formerly known as Stuckey's. That property is apparently already zoned commercial and might be a more appropriate location for the proposed development. Placing these businesses at the Stuckey's location would eliminate a currently blighted condition within the County.
9. The Stonehouse community has been envisioned from the outset as a moderately upscale community that will eventually have 4400 homes, along with associated County facilities including schools, fire station, library, etc., with compatible commercial development. The Applicant's property sits at the "front door" of Stonehouse. It is requested that the Commission work diligently to ensure that any development at or near the front entrance to Stonehouse be compatible with, and compliment, this fine community
10. The Applicant's site contains a BMP. This is not an attractive feature from any vantage point.

11. The site contains an area designated for RV Storage. Is this for permanent or temporary storage? Why is this needed?
12. The Applicant has indicated that he would like to install a second entrance to the property from Fieldstone Parkway. An additional intersection near the Rt. 30 entrance could create a potentially dangerous condition at what will soon become a high volume intersection.
13. The Proffers offered by the Applicant are vague and many are simply standard County requirements. For example, the Applicant indicates in Paragraph 8 that he will submit a storm water management plan. In Paragraph 4, he proffers entrance turn lanes. These are not proffers! They are requirements spelled out in Sec. 24-515 of the JCC Zoning Ordinance.

2920 Leatherleaf Drive  
Toano, VA, 23168  
January 30, 2006

Mr. Marvin Sowers, Jr  
Director of Planning – James City County  
101 East Mount's Bay Road  
P.O. Box. 8784  
Williamsburg, VA 23188

Re: Moss Creek Commercial Center  
James City County Case Z 12-05

Dear Mr. Sowers:

At your recent Planning Commission work session, Mr. Geddy stated that the community of Stonehouse fully supported this application. I for one do not believe that this statement is accurate.

Stonehouse is a Planned Unit Development (PUD) that includes zoning for both residential and commercial units. There is substantial commercial property zoned within the bounds of the Stonehouse community so that residents will not have to leave the development to access commercial services in the future. An additional poorly conceived strip commercial development at the entrance could have the potential to degrade the community unless the strip commercial development meets strict and compatible architectural standards with the adjacent upscale residential community and contains commercial enterprises which provide complimentary services to the residents of the community such as Dry Cleaning, Coffee Shop, Bakery, Bank Branch etc. not a mini storage and a commercial warehousing area!

Some of the services offered by Mr. Brown are already nearby the Stonehouse Community. There are mini-storage units available 1 ½ miles away in Barhamsville and also in the Hawkins Industrial Park in Toano. Why would we need a gas station when there is one right by the interchange entrance ½ mile away? Why would the residents of Stonehouse want these services duplicated at their front entrance where there is the potential to degrade the appearance of their "front door".

Mr. Brown's request that the complex contain several structures zoned business/warehouse. In the present layout, the sides and rear of these buildings will be visible along Fieldstone Parkway, the main entrance into Stonehouse. Mr. Brown has this same type of space in his Toano Business Park and the back and side areas are not very attractive, with large truck and equipment storage. Additionally there is a section for RV storage. We are not certain how that area will be managed.

The proffers Mr. Brown has submitted appear to be very weak, open ended and difficult to enforce. For example his proffers state "A combination of preservation of existing trees, enhanced landscaping (defined as 125% of ordinance requirements, with at least 50% of the trees and shrubs being evergreen) and a low berm shall be provided in the perimeter buffer between the Property and Tax Parcel 0440100001 to create, when the landscaping matures, an effective buffer". More clearly stated, he can plant any size evergreen shrubs and when they mature (5-10 years from now) they will provide a visual screen into this area. Additionally, architecture guidelines are not definitive and enforceable. Another area of concern is the BMP located in the middle of the property. How is the planning commission ensuring that this feature is done in an attractive manner? When he met with some residents, Mr. Brown stated that he would retain the ERC rights to development as he sold off the parcels to be developed. Since there are no architectural guidelines included in the application, I am not sure how this will impact the final product. However, even this guarantee does not appear in the proffers and it is rumored that the entire parcel is up for sale.

Please also review the proffers. If the Commission agrees with the land use, then please ensure that Mr. Brown clarifies the proffers and guarantees, at least, evergreen screening along Fieldstone Parkway that provides an effective screen immediately, and not years down the road.

I, along with many residents, believe the Planning Commission should look at Mr. Brown's application in view of the pending rezoning of Stonehouse at Williamsburg, Phases II-V. The residents of the upper county have asked that the Planning Commission examine the area as a whole and not as individual pieces.

Mr. Brown's proffers discuss an entrance onto Fieldstone Parkway. I do not believe he owns an access to Fieldstone Parkway. Entrance in and out of the parcel should be restricted to Route 30.

While I do have a pragmatic view toward the development of James City County and the benefit of expanding the tax revenue base for its citizens, I ask the Planning Commission to review this application-questioning if this is the appropriate use of this section of the upper county.

Thank you for your attention and consideration to my request that you review more carefully Mr. Browns

Sincerely,

James H. French  
[jimlety@cox.net](mailto:jimlety@cox.net)

cc: Planning Commission Members

Donald Hunt – Chair

Jack Fraley – Vice – Chair

George Billups

Anthony Obadal

Shereen Hughes

James Kennedy

Mary Jones

William Mistr- President – Association at Stonehouse

3515 Longwood Drive  
Toano, VA, 23168  
January 30, 2006

Mr. Marvin Sowers, Jr  
Director of Planning – James City County  
101 East Mount's Bay Road  
P.O. Box. 8784  
Williamsburg, VA 23188

Re: Moss Creek Commercial Center  
James City County Case Z 12-05



Dear Mr. Sowers:

At your recent Planning Commission work session, Mr. Geddy stated that the community of Stonehouse fully supported this application. As a member of the Board of The Association at Stonehouse, and chairperson of the Transition Committee, I do not believe that this statement is accurate.

As you are aware, Stonehouse is a Planned Unit Development (PUD) that includes zoning for both residential and commercial units. There is substantial commercial property zoned within the bounds of the Stonehouse community so that residents will not have to leave the development to access commercial services in the future. An additional strip commercial development at the entrance has the potential to degrade the community.

I, along with many residents, believe the Planning Commission should look at Mr. Brown's application in view of the pending rezoning of Stonehouse at Williamsburg, Phases II-V. The residents of the upper county have asked that the Planning Commission examine the area as a whole and not as individual pieces.

Most of the services offered by Mr. Brown are already nearby the Stonehouse Community. Many Residents question the need for the mini storage units since there are mini-storage units available 1 ½ miles away in Barahamsville and also in the Hawkins Industrial Park in Toano. Why would we need a gas station when there is one right by the interchange entrance ½ mile away? Why would the residents of Stonehouse want these services duplicated at their front entrance where there is the potential to degrade the appearance of their "front door".

Additionally, Mr. Brown is requesting that the complex contain several structures zoned business/warehouse. In the present layout, the sides and rear of these buildings will be visible along Fieldstone Parkway, the main entrance into Stonehouse. Mr. Brown has this same type of space in his Toano Business Park and the back and side areas are not very attractive, with large truck and equipment storage. Additionally there is a section for RV storage. We are not certain how that area will be managed.

The proffers Mr. Brown has submitted appear to be very weak, open ended and difficult to enforce. For example his proffers state "A combination of preservation of existing trees, enhanced landscaping (defined as 125% of ordinance requirements, with at least 50% of the trees and shrubs being evergreen) and a low berm shall be provided in the perimeter buffer between the Property and Tax Parcel 0440100001 to create, when the landscaping matures, an effective buffer". More clearly stated, he can plant any size evergreen shrubs and when they mature (5-10 years from now) they will provide a visual screen into this area. Additionally, architecture guidelines are not definitive and enforceable. Another area of concern is the BMP located in the middle of the property. How is the planning commission ensuring that this feature is done in an attractive manner? When he met with some residents, Mr. Brown stated that he would retain the ERC rights to development as he sold off the parcels to be developed. Since there are no architectural guidelines included in the application, I am not sure how this will impact the final product. However, even this guarantee does not appear in the proffers and it is rumored that the entire parcel is up for sale.

As a resident of Stonehouse and board member and chairperson of the Transition Committee, I ask the Planning Commission to review this application- questioning if this is the appropriate use of this section of the upper county.

Please also review the proffers. If the Commission agrees with the land use, then please ensure that Mr. Brown clarifies the proffers and guarantees, at least, evergreen screening along Fieldstone Parkway that provides an effective screen immediately, and not years down the road.

Mr. Brown's proffers discuss an entrance onto Fieldstone Parkway. I do not believe he owns an access to Fieldstone Parkway. Entrance in and out of the parcel should be restricted to Route 30.

Thank you for your consideration of the concerns of some residents in the Stonehouse community.

Sincerely,

Rhea Woloszynski  
Board Member  
Association at Stonehouse  
[rheawolo@cox.net](mailto:rheawolo@cox.net)

cc: Planning Commission Members

Donald Hunt – Chair

Jack Fraley – Vice – Chair

George Billups

Anthony Obadal

Shereen Hughes

James Kennedy

Mary Jones

William Mistr- President – Association at Stonehouse

Below is a list of just some of the residents who share my concerns:

**As a resident of the Stonehouse Community I support the concerns expressed in this letter written by Rhea Woloszynski**

Ann & Rick Chlebos	3116 Bent Tree
Joseph & Barb Spina	3519 Longwood Drive
Gary & Nancy Lee Leighton	3523 Longwood Drive
Jim and Carolyn Sage	3104 Sapling Drive
David & Geneva Wilson	3105 Sapling Drive
Lwell & Jerry Glass	31109 Sapling Drive
Edward & Jean McCue	3115 Sapling Drive
Pj. & Gen McQuade	3108 Windy Branch Drive
Michael & Marilyn Randell	3151 Windy Branch Drive
Jim and Joan Augustine	3101 Bent Tree Drive
Felicia & Bill Forest	3104 Bent Tree Drive
Patty & Del Humphreys	3016 Heartwood Crossing
Dr. & Mrs. Paul Duch	3120 Bent Tree Lane
David & Diane Love	3112 Sapling Drive
Joyce & Dave Lenhertz	3215 Oak Branch Drive
Bud & Linda Rhodes	9809 Hidden Nest
Ken and Peggy Hook	3209 Oak Branch Drive
Alice and Ken Kievit	3150 Cider House Road
John & Claudia Dodge	3107 Cider House Road
Bart & Peg Crews	3112 Windy Branch Dr
Carol & Randy Thorpe	3531 Longwood Drive
Craig & Heather Batten	3139 Windy Branch Drive
Dean & Carolyn Dunbar	3524 Longwood Drive
Mide & Charlie Purcer	3115 Bent Tree Lane
John & Judy Vitale	3144 Windy Branch Dr
George & Michaelene Mirkovich	3105 Bent Tree
Bob & Nancy Phaneuf	3124 Bent Tree
Gail & Mark Lang	3527 Longwood Drive

As a resident of the Stonehouse Community I support the concerns expressed in this letter written by Rhea Woloszynski

- Ann + Rick Chlebos  
3116 Bent Tree
2. Joseph M. Spire  
3514 Longwood
3. Gary and Nancy Lee Leighton  
3523 Longwood Dr.
4. Jim + Carolyn Sage  
3104 Sapling Dr.
5. David & Gerwyn Wilson  
3105 Sapling Dr
6. 3109 Sapling Dr.
7. Edward + Jean McCue  
3115 SAPLING DR., TOANO
8. G. J. + Gen McQuade  
3108 Windy Branch Drive  
Toano VA
9. Mr & Mrs. Chas E. Roberts  
3120 Sapling Drive  
Toano, VA 23168
10. Mr & Mrs. Michael H. Knudsen  
3151 WINDY BRANCH DRIVE  
TOANO, VA 23168
11. Mr. & Mrs. James Augustine Jr.  
3101 Bent Tree Lane
21. Felicia + Bill Forest  
3104 Bent Tree Lane
22. Patty + Del Humphrey  
3016 Heartwood Crossing  
Toano, Va.
23. Dr. + Mrs Paul Duch  
3120 Bent Tree Lane  
Toano, VA 23168
24. David & Diana Love  
3112 Sapling Dr  
Toano, VA 23168
25. Joyce + Dave Lonhertz  
320 Oak Branch
26. Bud + Linda Rhodes  
317 Oak Branch
27. Ken + Patsy Hark  
3209 Oak Branch
28. Alice + Ken Kieck  
3152 Cedar Hill Rd
29. Claudia + John D. Dye  
3167 Cedar Hill

12. BART + PEG CREWS  
3112 WINDY BRANCH DR  
TOANO, VA 23168
13. Carole & Randy Thorpe  
3531 Longwood Drive
14. Craig & Heather Batten  
3139 Windy Branch Drive
15. Dean & Carolyn Dunbar  
3524 Longwood Dr  
Toano, Va 23168
16. Marge Purcell & Charlie Purcell  
3115 Bent Tree Lane  
Toano, VA 23168
17. John & Judy Virace  
3144 Windy Branch Dr  
Toano, VA 23168
18. George & Michaelene Muckemil  
3105 Bent Tree Lane  
Toano, Va 23168
19. BOB & NANCY PHANEUF  
3124 BENT TREE LANE  
TOANO VA 23168
20. Gail and Mark Long  
3127 Longwood Dr.  
Toano, VA  
23168

**Ken and Peggy Hook**  
**3209 Oak Branch Lane**  
**Toano, VA 23168-9617**

**757-234-0073**



January 11, 2004

Mr. Marvin Sowers  
Director of Planning  
James City County  
101-A Mounts Bay Road  
Williamsburg, VA 23185

Re: Rezoning Application Z-12-05, Toano Business Center, LLC. Rezoning of  
21.23 Acres from A-1 to MU

Dear Mr. Sowers:

We are writing to express our opposition to the rezoning proposed in Z-12-05. We live in the Stonehouse Community and believe that a rezoning of this property will likely have significant negative impacts on our community.

We are also concerned that there is a relatively small group of Neighborhood Representatives that are purporting to represent the Community when they clearly do not represent the larger community feelings in this matter. At the Neighborhood meetings we attended, we did not hear many who appeared in favor of the development. In addition I would point out that our Covenants do not allow the Neighborhood Representatives to speak for the community. In fact the Covenants state that "Except as otherwise provided herein or in the Articles, each Neighborhood Committee shall be advisory in nature and shall not exercise any corporate authority on behalf of the Association."

We believe that Stonehouse has significant office, warehouse, retail and other uses currently with approved zoning and that more of the same is not desired nor warranted. Stonehouse at Mill Pond has supported the SAW rezoning of Land Bay 3 from Office to Single Family since it was recognized that residential is more appropriate than office as one enters the Stonehouse development. To rezone agricultural land to warehouse, office, a gas station and convenience store is not appropriate nor will it be attractive near the entrance to our community. We would prefer the area immediately behind our Stonehouse sign remain agricultural or become residential.

The proposed use will place significant traffic burdens and impacts on Route 30. We understand that a traffic study is being developed and have been told that the developer is willing to install a traffic signal at his entrance. There will be a future signal at the intersection of Fieldstone Parkway and Route 30. The proposed signal for this property will be too close to function well without proper coordination and will adversely impact traffic flow. We also do not support the proposed future connection of roadways from Fieldstone Parkway to this property.

Lastly, we strongly object to the creation of storage space in the development. It is more appropriate to place this use in one of the several warehouse districts which already exists elsewhere in the Toano and for that matter the Stonehouse area.

We appreciate the work done by the applicant in the development of renderings showing what might be constructed and agree that they are attractive. However, this is not what we want at our front door. We request that this rezoning be denied and thank you for your consideration of our comments. I also request that a copy of this letter be provided to the Planning Commission.

Sincerely,

*Ken Hook* *Peggy Hook*

Ken and Peggy Hook

TO: JAMES - CITY COUNTY  
PLANNING COMMISSION (FAX 253-6822)

FROM: MICHAEL R. HUPPERT <sup>PHONE</sup> (234-0188)  
(STONEHOUSE RESIDENT)

I AM WRITING THIS NOTE TO REGISTER MY OPPOSITION TO THE PROPOSED PROJECT BEING DISCUSSED AT THE ENTRANCE TO STONEHOUSE ON OLD STAGE ROAD (RT. 30). I BELIEVE THE PROJECT NUMBER IS 2-12-05.

AT THIS LOCATION, A GAS STATION, STORAGE UNITS, A BANK WOULD ONLY PROVIDE FURTHER EVIDENCE OF BUSINESS GROWTH THAT IS SCATTERED AND DENRATING FROM THE POSITIVE AND WELL-PLANNED JAMES CITY-COUNTY. PLEASE DO NOT APPROVE THESE UNNECESSARY SHOPS.

THANK YOU.

**REZONING Z-13-04/SUP-31-04/MP-10-04. Monticello at Powhatan North**  
**Staff Report for the April 3, 2006, Planning Commission Public Hearing**

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*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.*

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**PUBLIC HEARINGS**

Planning Commission:  
Board of Supervisors:

**Building F Board Room; County Government Complex**

April 3, 2006                      7:00 p.m.  
May 9, 2006                      7:00 p.m.

**SUMMARY FACTS**

Applicant: Timothy O. Trant

Land Owner: Lawrence E. Beamer

Proposal: 91 condominiums

Location: 4450 Powhatan Parkway, Williamsburg, VA 23188

Tax Map/Parcel Nos.: (38-3) (1-1)

Parcel Size: 36.48 acres

Existing Zoning: R-8, Rural Residential

Proposed Zoning: R-2, General Residential with Cluster Overlay and Proffers

Comprehensive Plan: Low Density Residential

Primary Service Area: Inside

**STAFF RECOMMENDATION**

Staff finds that the Master Plan and proffers are not consistent with the surrounding development, the 2003 Comprehensive Plan, and the intent of the Cluster Overlay District. The proposal does not provide the necessary public benefits required to achieve the increased density under the 2003 Comprehensive Plan and has not yet been approved for basic compliance with environmental regulations. Staff finds that the Zoning Ordinance criteria for granting a special use permit with regard to additional density has been satisfactorily met; however, the intent of the overlay district is create innovative and quality designs. This design does not meet this intent. Staff has continually raised concerns with traffic, density, and environmental protections that have not been satisfactorily met. The applicant has requested a second indefinite deferral in order to return with a proposal that would be more in line with staff's comments. Staff believes that any future resubmittal would need to be so different as to constitute a new rezoning application. Therefore, staff recommends denial of the Rezoning and Special Use Permit, and recommends against granting the applicant's request for deferral.

Staff Contact: Joel Almquist, Planner

Phone: 253-6685

**Proffers:** Proffers have not been signed and submitted in accordance with the James City County Proffer Policy.

**Master Plans:** Copies of the Master Plan have not been provided by the applicant for the April 3, 2006 Planning Commission meeting.

<b>Cash Proffer Summary (See staff report narrative and attached proffers for further details)</b>	
<b>Use</b>	<b>Amount</b>
Water (CIP contribution)	\$796.00 per unit
Parks and Recreation (including schools)	\$107.00 per unit
Library Facilities	\$60.00 per unit
<b>Total Amount</b>	<b>\$87,633.00</b>
<b>Total Per Lot</b>	<b>\$963.00/unit</b>

## **PROJECT DESCRIPTION**

Timothy Trant of Kaufman and Canoles on behalf of Lawrence Beamer has submitted an application to rezone 36.48 acres at the end of Powhatan Parkway from R-8, Rural Residential to R-2, General Residential with a Cluster Overlay and proffers. If approved, the development would have 91 condominium units with an overall gross density of 2.49 units per acre.

According to the Cluster provisions of the Zoning Ordinance, residential cluster developments of one unit per acre or less may be permitted in areas designated low density residential on the comprehensive land use map. However, the Ordinance permits additional density up to four units per acre upon the issuance of a special use permit, and implementation of various policies or other measures. In accordance with Section 24-549 of the Zoning Ordinance, the applicant has met minimum ordinance requirements to allow 2.49 units per acre by providing for the following:

### For Density greater than 1 DU/Acre up to 2 DU/Acre:

- Implementation of the County's Streetscape Guidelines.
- Implementation of the County's Archaeological Policy.
- Provision of sidewalks on one side of all internal streets.
- Provision of Recreation Facilities as recommended in the County's Comprehensive Parks and Recreation Master Recreation Plan.
- Implementation of the County's Natural Resources Policy.

### For Density from 2 DU/Acre up to 3 DU/Acre:

- Provision of pedestrian trails connecting cul-de-sacs and recreation facilities.
- Construction of curb and gutter streets.

In addition to the requirements of the Zoning Ordinance to allow for increased density above one unit per acre but not to exceed four units per acre, the 2003 Comprehensive Plan has suggested specific public benefits that should be provided in areas designated Low Density Residential to go above 1 dwelling unit per acre. Examples of such benefits include mixed-cost and affordable housing, unusual environmental protection, or development that adheres to the principles of open space development design. Staff believes that this proposal does not provide any of these benefits and staff also believes that it has given the applicant ample time to improve their design to make it more in-line with the intent of the Low Density Residential designation.

This case was originally submitted to the County in November 2004 to be developed as rental condominiums; that proposal generated concerns over environmental issues and was met with strong public opposition so the applicant requested and was granted an indefinite deferral until it was resubmitted in September 2005. The proposal has since been repeatedly resubmitted in response to staff's concerns to density, traffic, and environmental protections; each resubmittal has included minor

changes to the overall development plan but the developer has yet to address the major environmental concerns in a satisfactory manner. After consistent requests by the Environmental Division to address their concerns, staff gave the applicant a timeframe to either address these issues or withdraw their application and submit a new application for rezoning at a later date. If the applicant was unable to comply, then staff would recommend denial with no further recommendations of deferral at the April 3<sup>rd</sup> Planning Commission meeting.

## **PUBLIC IMPACTS**

### **Archaeology**

#### **Proffers:**

- Grave Site. Development of the property shall not include that portion of the Property identified on the Plan of Development as “Approximate Location of Grave Site as Identified in the Field.” The Owner may undertake to maintain and beautify the area with landscaping, fencing, and/or markers.

**Staff Comments:** A Phase I and Phase II Archeological Investigation was performed on this site in June of 2000. The report entitled *Phase I and Phase II Archeological Excavations of Approximately 26.18± Acres at the Proposed Williamsburg Christian Academy, James City County, Virginia*, was prepared by Alain C. Outlaw, *et al.* of the firm Archeological & Cultural Solutions, Inc. This report was reviewed by the Virginia Department of Historic Resources and in a November 2004 letter to the applicant the DHR concurred with the consultants recommendations that no further archeological investigations are warranted for the parcel, provided that the location pointed out by the former owner as a grave site can be avoided as provided for in the Grave Site proffer.

### **Environmental**

**Watershed:** This parcel lies within Subwatershed 209, Catchment 209-102-1 of the Powhatan Creek Watershed and is subject to the contents of the Powhatan Creek Watershed Management Plan as adopted by the Board of Supervisors on February 26<sup>th</sup> 2002.

#### **Proffers:**

- Nutrient Management Plan. Prior to the issuance of a Certificate of Occupancy for the ninety-first Residential Unit constructed on the Property, the Owners Association shall develop and implement a nutrient management plan in an effort to limit nutrient runoff.
- Building Setback. Except for the building shown on the Plan of Development as “10” no Residential Unit shall be constructed on the Property within fifteen feet of the Buffer Area.
- Conservation Easement. Prior to final site plan or subdivision plan approval for development of the Property, the Buffer Area shall be encumbered by a conservation easement.

**Staff Comments:** The Environmental Division has had several reoccurring items that have not been addressed with regards to this proposal. These include a lack of commitment to the goals, priorities and recommendations of the approved Powhatan Creek Watershed Management plan and a general lack of information to support that the structural BMP component of the stormwater management plan for the site will meet the County’s 10-point system for water quality, much less demonstrate an exceptional level of protection. Other concerns with the proposal include a lack use of better site design techniques (open space design), unsuitable setbacks from Resource Protection Areas, impacts to priority conservation C-29 RMA wetland area due to proposed sewer and trail locations, and that the trigger for the development of a Nutrient Management Plan does not occur until the development is almost fully built-out.

Staff does not believe that this proposal illustrates an innovative and quality environmental design, nor does it provide unusual environmental protection and adherence to open space design as required in the Comprehensive Plan; staff also believes that the proffers the applicant has submitted are not sufficient to off-set the impacts of the development. This proposal also does not provide for usable and meaningful open space as required by the Cluster Overlay in the Zoning Ordinance.

### **Fiscal**

The proposed development will have a positive net fiscal impact at buildout of \$191,000. Annual revenue is expected to be generated to the sum of \$402,000 with annual expenditures of \$212,000. These projections are subject to change with proffer resubmissions and updated long term road costs from increased traffic in this section of the County.

#### **Proffers:**

- Cash Contributions for Community Impacts. The applicant is proffering \$963.00 per unit for use in the County's capital improvement plan to mitigate the impacts on County emergency services, libraries, and water services.

**Staff Comments:** James City County Financial Management Services has reviewed the Fiscal Impact Statement submitted with this application and concurs that this development would result in a positive net fiscal impact.

### **Public Utilities**

All units will have public water and sewer connections.

#### **Proffers:**

- Water Conservation. Water conservation measures such as limitations on the use of irrigation systems and irrigation wells, the use of approved landscaping materials, and the use of water conserving fixtures and appliances will be developed and submitted to JCSA for approval.
- Water Improvements. A contribution of \$796.00 for each unit shall be made to the County for the use by JCSA for water system improvements. A change to the amount of \$820.00 per dwelling unit is needed to comply with current JCSA estimates.

**Staff Comments:** This development proposal will be served by public water and sewer with no anticipated negative impacts resulting from the increased demand generated by these units. JCSA has requested the applicant show water and sewer extensions over the Jesters Lane right-of-way. This will allow JCSA to provide gravity sanitary sewer service to most of the Jesters Lane area.

### **Public Facilities**

**Proffers:** Per the adopted Cash Proffer Policy for Schools, single-family attached dwelling units to be sold as opposed to being rented have a recommended school cash proffer amount of zero. Therefore, no contribution has been proffered.

**Staff Comments:** According to the Public Facilities section of the Comprehensive Plan, Action number four encourages through the rezoning, special use permit or other development process (1) evaluation of the adequacy of facility space and needed services when considering increasing development intensities (2) encouraging the equitable participation by the developer in the provision of needed services. With respect to item (1), the Board of Supervisors has adopted the adequate public schools facilities policy. With respect to item (2), the County has identified methods for calculating cash proffer amounts for schools, recreation and water supply facilities.

Monticello at Powhatan North is located within the Mathew Whaley Elementary, Berkeley Middle and Lafayette High School. Per the adequate public school facilities policy adopted by the Board of Supervisors, all special use permit or rezoning applications should meet the policy for adequate public school facilities. The policy adopted by the Board uses the design capacity of a school, while Williamsburg-James City County schools recognize effective capacity as the means of determining student capacities. With respect to the policy, the following information is offered by the applicant:

School	Design Capacity	Effective Capacity	Current Enrollment (09/30/2005)	Projected Students Generated by Proposal	Enrollment + Projected Students
Matthew Whaley Elementary	513	504	555	4	559
Berkeley Middle	725	816	876	3	879
Jamestown High	1250	1177	1524	3	1527
Total	2488	2497	2955	10	2965

Both design and effective capacities are exceeded for all three schools. Although the design capacity of Lafayette High School is clearly exceeded, the adequate public facilities policy states that if physical improvements have been programmed through the County CIP then the application will meet the policy guidelines. On November 2, 2004, voters approved the third high school referendum and the new high school is scheduled to open in September 2007; therefore, staff believes that this proposal meets the policy guidelines for the high school level. An eighth elementary school has been approved for construction by the Board of Supervisors in the FY 2006 budget; therefore, staff believes that this proposal meets the policy guidelines for the elementary school level. The proposal does not meet the policy guidelines at the middle school level.

### **Parks and Recreation**

#### **Proffers:**

- **Recreation.** The following recreation facilities shall be constructed/installed on the Property:
  - a) Five-Tenths (.5) of an acre of community space; and
  - b) Two-Tenths (.2) of a mile system of pedestrian/jogging paths

**Staff Comments:** According to the Parks and Recreation Master Plan, this development should have the .5 acre neighborhood park, .2 miles of paved trails, .3 acre playground, .1 acre courts, and .03 acre fields or the cash equivalent for these facilities which would total approximately \$16,145. The proffers, as submitted, are not consistent with the Parks and Recreation Master Plan.

### **Transportation**

**2005 Traffic Counts:** The number of daily vehicle trips to be generated by this proposal is 533. Of these there is projected to be 40 AM peak hour and 47 PM peak hour trips. For the adjacent existing 100 single- family detached units and existing 209 apartments, plus the 91 proposed condominiums, these uses have the potential to generate approximately 2,960 daily vehicles on Powhatan Parkway.

**2026 Projected Volume:** Powhatan Parkway was not included as part of the 2026 Transportation Study.

**Road Improvements:** No off-site road improvements are warranted by this proposal.

#### **Proffers:**

- **Internal Streets.** All internal streets shall be private and in accordance with the following:
  - a) the Streetscape Guidelines Policy;
  - b) providing a sidewalk along one side of internal streets;
  - c) providing for curb and gutter design of internal streets.

**VDOT Comments:** VDOT concurs with the applicant's traffic generation report and agrees that no improvements are warranted for Powhatan Parkway. The traffic counts used in the study are now almost 3 years old. With recent development and the opening of the Windsor Meade shopping center, it is recommended that new traffic counts be taken to verify the projections used in the traffic study for the

analysis of News Road and Old News Road. We note that the westbound Old News Road approach was projected to operate at a LOS C with the development in 2005, so it may be beneficial to reevaluate this intersection at this time. There are capacity concerns at the Monticello Avenue and News Road intersection, and while not created by this development, the development will certainly be adding some traffic to the intersection.

**Staff Comments:** Staff concurs with VDOT concerning the applicant's traffic generation rates and regarding no improvements being warranted for Powhatan Parkway. Powhatan Parkway was engineered to handle higher trip volumes than will be generated by this proposal; of note is that Powhatan Parkway is a residential street lined with single-family housing on both sides of the roadway. Jester's Lane was studied as an alternate access to the proposed development but was found to be inadequate in terms of pavement width and available right-of-way. Several existing intersections in the area that would serve this development are in danger of dropping to an unacceptable LOS; examples include News Road at Old News Road, News Road at Monticello Ave, and Monticello Market Place at Monticello Ave. Staff is working with other developers on a cost sharing mechanism to address these deficiencies and recommends the applicant consider in their proffers the cost percentage that this development would need to contribute towards improving these intersections.

## **COMPREHENSIVE PLAN**

### **Land Use Map Designation**

This parcel is designated Low Density Residential on the 2003 Comprehensive Land Use Map. Low density areas are residential developments or land suitable for such developments with gross densities up to one dwelling unit per acre depending on the character and density of surrounding communities and the degree to which the development is consistent with the Comprehensive Plan. A residential development with a gross density greater than one unit per acre and up to four units per acre may be considered only if it offers particular public 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.

### **Proffers**

Proffers have been submitted but not agreed upon by the County and the applicant. Staff suggests that the inclusion of seed money given to the Home Owners Association for the guaranteed maintenance of the private street, increasing the water contribution to JCSA to the sum of \$820.00 per unit, change to the Marshall-Swift Index as apposed to the Consumer Price Index, and staff would encourage stronger irrigation controls in the Water Conservation proffer. Proffers have not been finalized at this point because staff is still in negotiation with the applicant concerning the entire rezoning submittal.

**Staff Comments:** The Cluster Overlay District was created with the intent to achieve innovative and quality designs of residential developments above one unit per acre that provide avenues for affordable housing, minimize environmental impacts, provide for usable and meaningful open space, and provide recreation amenities within a more practical and efficient development. This development was originally submitted as 96 apartments and was later reduced to 91 condominiums, each proposal having the same basic design and characteristics. Staff feels that as proposed, this design does not meet the intent of the Cluster Ordinance as outlined above. There are no provisions for affordable housing, the extent to which the environment will be impacted has not been properly addressed, there is little open space that could be used by residents, and the recreational plans have the trail system running through conservation easements and non-RPA wetlands.

As suggested in the 2003 Comprehensive Plan, additional densities can be granted to proposals that exceed the minimums required by the Zoning Ordinance and that provide particular public benefits to the County and surrounding communities. These benefits are in addition to the ones required in the Cluster Overlay and as demonstrated this proposal does not provide these benefits. Staff believes it has

given the applicant adequate time and feedback as to how the development and proposal package should be improved to gain approval for allowing the rezoning and greater density.

**Recommended Special Use Permit Conditions:**

1. **Master Plan and Use:** This Special Use Permit shall be valid for the “Jennings Way” Master Plan, and accessory uses thereto. Development of the site shall be generally in accordance with the above referenced master plan as determined by the Development Review Committee (DRC) of the James City County Planning Commission. Minor changes may be permitted by the DRC, as long as they do not change the basic concept or character of the development.
2. **Commencement of Construction:** If construction has not commenced on this project within thirty-six (36) months from the issuance of a special use permit, the special use permit shall become void. Construction shall be defined as obtaining permits for building construction and footings and/or foundation has passed required inspections.
3. **Landscaping in Perimeter Buffer:** In the areas of the perimeter buffer that are non-wooded, the Owner shall plant two trees per 400 square feet of landscape area. A minimum of fifty percent of the trees shall be evergreen.
4. **Lighting:** Any new exterior site, building, or parking lot lighting for the condominium units shall have 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 are not visible from the side. Fixtures which are horizontally mounted on poles shall not exceed 15 feet in height. No glare defined as 0.1 foot-candle or higher shall extend outside the property lines.
5. **RPA Setback:** A 25-foot principle building setback shall be provided from the limits of all dedicated natural open space and Resource Protection Areas in order to limit the potential affects from construction on the existing vegetation due to the installation of foundations and grading operations.
6. **Severance Clause:** This special use permit is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.

**RECOMMENDATION**

Staff finds the Master Plan and proffers are not consistent with the intent of the Cluster Overlay District and are also not consistent with the 2003 Comprehensive Plan. The applicant has requested a second indefinite deferral in order to return with a proposal that would be more in line with staff’s comments. Staff believes that any future resubmittal would need to be so different as to constitute a new rezoning application. Therefore, staff recommends denial of the Rezoning and Special Use Permit and recommends against granting the applicant’s request for deferral.

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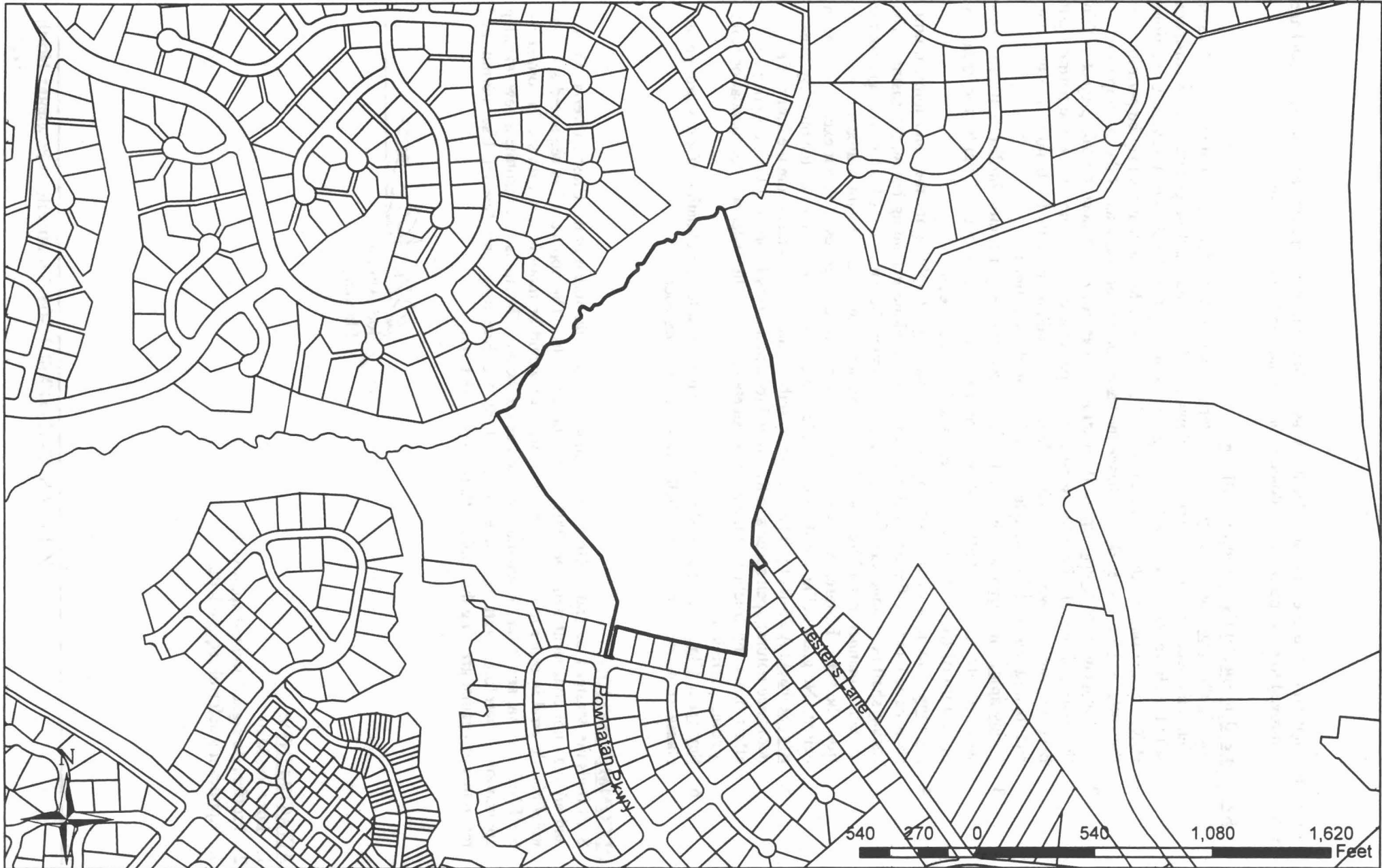
Joel Almquist  
Planner

**ATTACHMENTS:**

1. Location Map
2. Proffers (unsigned and not approved)
3. Applicant’s deferral request letter

**Z-13-04/SUP-31-04**

# Monticello at Powhatan North



# **PROFFERS**

## **MONTICELLO AT POWHATAN NORTH**

**JANUARY, 2006**

Prepared by:  
Kaufman & Canoles, P.C.  
4801 Courthouse Street, Suite 300  
Williamsburg, VA 23188

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## **MONTICELLO AT POWHATAN NORTH PROFFERS**

THESE PROFFERS are made this 17th day of October, 2005, by **POWHATAN ENTERPRISES, INC.**, a Virginia corporation, its successors and/or assigns, ("Owner") (to be indexed as grantor), and the **COUNTY OF JAMES CITY, VIRGINIA**, a political subdivision of the Commonwealth of Virginia, ("County") (to be indexed as grantee), provides as follows:

### **RECITALS:**

**R-1.** Owner is the owner of certain real property (the "Property") located in the County of James City, Virginia, containing 36.49± acres, more or less, more particularly described on **Exhibit A** attached hereto and made a part hereof.

**R-2.** Owner has filed a rezoning application, master plan application, and a special use permit application (collectively, the "Application") requesting a change of zoning for the Property. The Application has been designated by the County as Case Numbers Z-13-04, MP-10-04, and SUP-31-04.

**R-3.** In the Application, Owner has requested that the Property be rezoned from R8-Rural Residential to R2-General Residential with Cluster Overlay with proffers as described by Section 24-251 *et seq.* and Section 24-538 *et seq.* of the County's Zoning Ordinance in effect on the date hereof (the "Zoning Ordinance"), Section 24-1 *et seq.* of the County Code, in order to permit the construction of clustered "Residential Units" (hereinafter defined) at a density of three (3) Units per "Gross Acre" (hereinafter defined). The term gross acre or gross acreage ("Gross Acre" or Gross Acreage") shall mean the total land area of a parcel, including but not limited to stream beds, areas subject to flooding, marsh and areas with slopes exceeding 25 percent (25%) gradient, within the outermost boundary lines of the parcel as established by existing parcel lines or future subdivisions.

R-4. A Phase I and Phase II Archaeological Study (collectively, the “Archaeological Study”) was conducted on the Property as detailed in that certain report entitled “Phase I and Phase II Archaeological Excavations of Approximately 26.18± Acres at the Proposed Williamsburg Christian Academy, James City County, Virginia” dated June 2000, prepared by Archaeological & Cultural Solutions, Inc. The Archaeological Study recommended no further investigation or treatment of the Property, and the report has been submitted to, reviewed and approved by the County Planning Director. The Archaeological Study is on file in the office of the County Planning Director.

R-5. A conceptual plan of development (“Plan of Development”) entitled “Master Plan Monticello at Powhatan North (Phase III)”, dated January 17, 2006, prepared by Landmark Design Group, has been submitted to the County Planning Director for review by the County in connection with the Application. The Plan of Development is on file in the office of the County Planning Director.

R-6. A community impact statement (“Community Impact Statement”) entitled “Monticello at Powhatan North (Phase III) Rezoning of 36.48 Acres from R-8 to R-2 (Cluster Overlay)”, dated October 25, 2004, revised January 6, 2006, prepared by LandMark Design Group, has been submitted to the County Planning Director for review by the County in connection with the Application. The Community Impact Statement is on file in the office of the County Planning Director.

R-7. A traffic impact study (“Traffic Impact Study”) entitled “Monticello @ Powhatan North Apartments Traffic Impact Study”, dated April, 2004, prepared by LandMark Design Group, has been submitted to the County Planning Director and the Virginia Department of

Transportation (“VDOT”) for review in connection with the Application. The Traffic Study is on file in the office of the County Planning Director.

**R-8.** An Environmental Inventory (“Environmental Inventory”) was conducted on the Property as detailed in that certain report entitled “Field Survey Plant Species Surveys for the Small Whorled Pogonia, Virginia Least Trillium and False Hop Sedge Monticello at Powhatan North James City County, Virginia”, dated May-June 2004 and March –April 2005, prepared by LandMark Design Group. The Environmental Inventory identified no threatened or endangered species on the Property and did not identify any potential habitat for the same within the developable areas of the Property. The Environmental Inventory has been submitted to, reviewed and approved by the County Planning Director, and is on file in the office of the County Planning Director.

**R-9.** The provisions of the Zoning Ordinance may be deemed inadequate for protecting and enhancing orderly development of the Property in accordance with the County Comprehensive Plan. The Owner, in furtherance of the Application, desires to proffer certain conditions which 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-10.** The County constitutes a high-growth locality as defined by Section 15.2-2298 of the Virginia Code.

NOW, THEREFORE, for and in consideration of the approval by the County of the Application, and pursuant to Section 15.2-2296 of the Virginia Code and Section 24-16 of the

Zoning Ordinance, Owner agrees that it shall meet and comply with the following conditions and proffers as indicated in developing the Property.

**PROFFERS:**

1. Plan of Development. The Property shall be developed generally in accordance with the Plan of Development. The Plan of Development is a conceptual plan for proposed development on the Property and provides only for the general location of buildings, proposed streets, drainage facilities, areas of open space, buffer areas and recreation facilities. All of such development shall be expressly subject to such changes in configuration, composition and location as required by all other governmental authorities having jurisdiction over such development.

2. Condominium Owners Association. A condominium owners' association ("Owners 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 each individual residential dwelling unit (individually, a "Residential Unit", and collectively, the "Residential Units") within the portions of the Property currently lying inside the development area shall be members by virtue of their property ownership. The articles of incorporation or organization and bylaws of the Owners Association and declaration of restrictive covenants enforceable by the Owners Association (collectively, the "Governing Documents") shall be submitted to and reviewed by the County Attorney for consistency with this proffer. The Governing Documents shall require or provide for, *inter alia*, the following:

(a) The Owners Association shall adopt an annual maintenance budget and assess all of its members for the maintenance of the properties owned or maintained by the Owners Association.

(b) The Owners 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 Owners Association.

(c) The Owners 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 Owners Association.

(d) The Owners Association shall implement and enforce the water conservation standards proffered herein.

(e) Prior to the issuance of a Certificate of Occupancy for the ninety-first (91<sup>st</sup>) Residential Unit constructed on the Property, the Owners Association shall develop and implement a nutrient management plan ("Nutrient Management Plan") for the maintenance of lawns and landscaping on the Property in an effort to limit nutrient runoff into Powhatan Creek and its tributaries. The Nutrient Management plan shall include measures necessary to manage yearly nutrient application rates to turf such that the application of nitrogen does not exceed 75 pounds per year per acre. The Nutrient Management Plan shall be prepared by a landscape architect licensed to practice in Virginia or submitted for review to the County Environmental Division for conformity with this proffer. The Nutrient Management Plan shall include terms permitting enforcement by either the Owners Association or the County.

3. Parks and Recreation. In accordance with the County Comprehensive Parks and Recreation Plan proffer guidelines, as in effect on the date hereof, the following recreation facilities ("Recreation Facilities") shall constructed/installed on the Property:

(a) Five-Tenths (.5) of an acre of community space as shown generally on the Master Plan; and

(b) A Two-Tenths (.2) of a mile long system of pedestrian/jogging paths as shown generally on the Master Plan.

The Recreation Facilities shall be open to all residents of the development, and maintained and regulated by Owner. The Recreation Facilities shall be completed or guaranteed ("Guaranteed") in accordance with Section 15.2-2299 of the Virginia Code (or such successor provision) and the applicable provisions of the County Code of Ordinances (such performance assurances to be hereinafter referred to as a "Guarantee" or "Guarantees") prior to final site plan or subdivision plan approval for residential construction on the Property exceeding fifty (50) Residential Units.

4. Water Conservation. The owner(s) of the Property shall be responsible for developing and enforcing, as to the Property, water conservation standards to be submitted to and approved by James City Service Authority ("JCSA"). The standards shall address such water conservation measures as limitations on 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. Design features, including the use of drought tolerant grasses and plantings, a water conservation plan, and drought management plan shall be implemented to accomplish the limitation on use of public water and groundwater. The standards shall be submitted to and reviewed by the County

Attorney for general consistency with this proffer and shall be approved by JCSEA prior to final approval of the first site plan or subdivision plan for development of the Property or any portion thereof.

5. Contribution for Public Facilities.

(a) Water. A contribution shall be made to JCSEA in the amount of Seven Hundred Ninety-Six Dollars (\$796.00), for each Residential Unit developed on the Property (the "Per Unit Water Contribution"). The JCSEA shall make these monies available for development of water supply alternatives, the need for which is deemed by the JCSEA to be generated in whole or in part by the development of the Property.

(b) Parks and Recreation. A contribution shall be made to the County in the amount of One Hundred Seven Dollars (\$107.00) per Residential Unit developed on the Property (the "Per Unit Parks and Recreation Contribution"). The County shall make these monies available for acquisition of school sites and/or construction of school facilities, the need for which is deemed by the County to be generated by the development of the Property.

(c) Library Facilities. A contribution shall be made to the County in the amount of Sixty Dollars (\$60.00) for each Residential Unit developed on the Property (the "Per Unit Library Contribution"). The County shall make these monies available for the development of library space, the need for which is deemed by the County to be generated by the development of the Property.

(d) The Per Unit Water Contribution, Per Unit Parks and Recreation Contribution, and Per Unit Library Contribution (collectively, the "Per Unit Contributions") shall be payable for each of the Residential Units to be developed within the Property at the time of

final site plan or subdivision plan approval for the particular Residential Unit or grouping of Residential Units or at such other time as may be approved by the County Planning Director.

6. Internal Streets. All internal streets shall be private, and all site plans and/or subdivision plans for development on the Property shall:

(a) Be in accordance with the Streetscape Guidelines Policy adopted by the County Board of Supervisors on April 13, 2004, a copy of which is attached hereto as Exhibit B;

(b) Provide for a sidewalk along one (1) side of internal streets; and

(c) Provide for curb and gutter design of internal streets.

The County Planning Director may waive and/or modify any of the aforementioned requirements as to all or a portion of the proposed development upon a determination that such site plan or subdivision plan otherwise meets the intent of the Density Standards outlined in Section 24-549 of the Zoning Ordinance as it exists on the date hereof.

7. Grave Site. Development of the Property shall not include that portion of the Property ("Grave Site") identified on the Plan of Development as "Approximate Location of Grave Site as Identified in the Field." Notwithstanding the aforementioned restriction on development of the Grave Site, the Owner may undertake such reasonable measures to preserve and/or beautify the Grave Site to include, but not be limited to, the cutting of grass, the trimming of trees and shrubs, the installation of fencing, the placement of signs, monuments, or markers, and the installation of landscaping. The County Planning Director may waive and/or modify the aforementioned restriction on development of the Grave Site, upon a determination by the County Planning Director that no burial site exists on the Grave Site or upon implementation of appropriate treatment measures approved in advance by the County Planning Director for any burial site that does exist on the Grave Site.

8. Limitation on Number of Residential Units. There shall be no more than ninety-one (91) Residential Units constructed on the Property.

9. Building Setback. The Plan of Development identifies “Existing Conservation Easement”, “RPA Buffer”, “RPA Buffer & RPA Wetlands”, and “Non-RPA Wetlands” (collectively the “Buffer Area”) on the Property. Except for that building show on the Plan of Development as “10” no Residential Unit shall be constructed on the Property within fifteen (15) feet of the Buffer Area.

10. Conservation Easement. Prior to final site plan or subdivision plan approval for development of the Property (to the extent not already encumbered by a conservation easement), the Buffer Area shall be encumbered by a conservation easement, the form and substance of which shall (unless otherwise agreed by the County Planning Director) be generally consistent with either that certain Deed of Easement dated June 15, 2000 and recorded in the Circuit Court Clerk’s Office (the “Clerk’s Office”) for the County of James City and the City of Williamsburg as Instrument Number 000011685, or that certain Deed of Easement dated June 21, 2000 and recorded in the Clerk’s Office as Instrument Number 000012940. This proffer shall not operate to limit Owner’s ability to include the Buffer Area or portions thereof in its open space requirements for development of the Property, to include but not be limited to undisturbed natural open space for stormwater management.

11. Consumer Price Index Adjustment. All cash contributions contained in these Proffers (collectively, the “Proffered Amounts”), to include but not be limited to the Per Unit Contributions, shall be adjusted annually beginning January 1, 2007 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 Proffered Amounts be adjusted to a sum less than the amount initially established by these Proffers. The adjustment shall be made by multiplying the Proffered Amounts 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 Proffered Amounts shall be adjusted based upon the figure that would have resulted had no change occurred in the manner of computing the 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 Proffered Amounts to approximate the rate of annual inflation in the County.

12. Cash Proffer Disposition. In the event that any Proffered Amounts contributed to the County as required under the terms of these 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 Proffered Amounts 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.

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

14. 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.

15. Conflicts. In the event that there is any conflict between these 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.

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

17. Void if Application not Approved. In the event that the Application is not approved by the County, these Proffers shall be null and void.

18. Recitals. The Recitals set forth above shall be included and read as a part of these Proffer and are incorporated herein by reference.

WITNESS the following signature, thereunto duly authorized:

POWHATAN ENTERPRISES, INC., a Virginia corporation

By: \_\_\_\_\_  
Lawrence E. Beamer, President

COMMONWEALTH OF VIRGINIA

AT LARGE, to-wit:

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by Lawrence E. Beamer, President of Powhatan Enterprises, Inc., a Virginia corporation, in its behalf.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

::ODMA\PCDOCS\DOCSWMB\6032686\8

## EXHIBIT A

ALL that certain piece or parcel of land located in James City, Virginia, containing 36.4849 ± acres, more or less, but sold in gross and not by the acre, being more particularly shown and designated as "PORTION OF PARCEL A 448,882 SQ. FT. 10.3049 AC." and "PORTION OF PARCEL A 1,140,402 SQ. FT. 26.1800 AC." on that certain plat (the "Plat") entitled, "SUBDIVISION AND BOUNDARY LINE ADJUSTMENT PLAT OF PROPERTY STANDING IN THE NAME OF POWHATAN ENTERPRISES, INC., dated December 14, 1999, prepared by Stephen A. Romeo, Langley and McDonald, P.C., (now known as LandMark Design Group), recorded in the Clerk's Office of the Circuit Court for the City of Williamsburg and County of James City, Virginia (the "Clerk's Office"), in Plat Book 78, at page 16, which Plat is incorporated herein by reference; LESS AND EXCEPT the family burial ground, designated as "grave site," together with a right of way to and from said grave site, which was reserved to the heirs of John Y. Jester, in that certain deed, dated September 11, 1945, from Alma M. Robins, et al. to J.G. Warburton, recorded in the Clerk's Office in Deed Book 38, at page 502.

4450 Powhatan Parkway, Williamsburg, VA 23188  
Parcel No. 3830100001

**EXHIBIT B**

[Insert Streetscape Guidelines Policy – Page 1]

**EXHIBIT B**

[Insert Streetscape Guidelines Policy – Page 2]

**EXHIBIT B**

[Insert Streetscape Guidelines Policy – Page 3]

**EXHIBIT B**

[Insert Streetscape Guidelines Policy – Page 4]

Exhibit B

RESOLUTION

STREETSCAPE GUIDELINES POLICY REVISION

WHEREAS, the Streetscape Guidelines Policy was originally created to preserve or establish street trees in new residential areas of James City County during the special use permit and rezoning process; and

WHEREAS, the 2003 Comprehensive Plan identified the need for a revision of the Streetscape Guidelines Policy to allow flexibility with the choice of plant material and location of street trees due to site constraints such as utilities; and

WHEREAS, the Policy Committee recommended endorsement of the Streetscape Guidelines Policy revision to the Planning Commission on February 17, 2004; and

WHEREAS, the James City County Planning Commission endorsed the revisions to the Streetscape Guidelines Policy on March 1, 2004.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby endorse the following:

STREETSCAPE GUIDELINES POLICY

**Goal**

To preserve and/or establish tree canopies along residential streets, subdivision entrances, and common areas. Plant new trees appropriate to the climate and soils of James City County, enhancing existing healthy, durable, and mature trees in these areas.

Tree preservation/planting shall be accomplished such that, within 20 years growing time, the minimum tree canopy over residential streets shall be 20%. The environmental and aesthetic benefits from tree planting enhance the quality, character, and health of the community.

**Guidelines for Street Trees**

In all residential subdivisions, deciduous shade trees and/or shrubs shall be planted along all rights-of-way within and abutting the subdivision. Street tree plans shall be prepared by a Virginia Landscape Architect and shall be reviewed and approved by the Director of Planning. The street tree plans shall adhere to the following guidelines:

- Trees and/or shrubs shall be located within a minimum five-foot landscape preservation easement contiguous to such right-of-way. Every effort should be made to avoid conflict between the landscape preservation easement and the utilities during the design phase of the subdivision. If a conflict cannot be avoided, the landscape preservation easement shall be placed as close to the right-of-way as the design allows.

- The easement shall contain, at a minimum, one tree per an average 40 linear feet of street on each side of the street or one shrub per an average 20 linear feet of street on each side of the street. The mix of trees and shrubs shall be approved by the Planning Director.
- Trees and/or shrubs shall be spaced no greater than 75 feet apart along 60% of the street frontage.
- All trees that are planted shall be native species or street trees commonly planted in the James City County area that are adapted to the soils and climate. At the time of planting, trees shall have a minimum caliper of 1 1/2". Shrubs are to be a minimum of 22" in height at the time of planting. Please refer to the Table 1 for street tree suggestions. Although plant material is not restricted to the list provided, any trees or shrubs that are invasive or require extensive maintenance for disease or pest control will not be approved.
- Existing trees which are within 20 feet of the edge of the right-of-way, and which are protected and preserved in accordance with the requirements of the Zoning Ordinance, may be used to satisfy this planting requirement if approved by the Planning Director. Canopies that are a mixture of existing and planted trees or shrubs shall have similar or complementary branch characteristics.
- Plantings are to occur between November 1 and March 31 while the plant material is dormant to reduce the stress of transplanting. Prior to final site plan approval, the plantings and installation are to be bonded.

Upon completion of installation, a Virginia Landscape Architect shall verify, in writing, that the specified trees or shrubs were installed in the locations shown on the plans. A signed letter from the Landscape Architect shall be submitted to the Planning Division at the time of verification.

#### **Guidelines for Entrances and Common Areas**

Entrances shall be landscaped with native and/or climate and soil appropriate trees, shrubs, grasses, and ground covers except where the existing mature trees have been preserved or protected in such areas. Plant material to be used in these areas shall be specified from Table 2 or, if not on the list, meet the above criteria. Unless the Director of Planning or his designee determines that such landscape treatment is unnecessary, impractical, or in conflict with drainage, utilities, sight distance, or other required features of the subdivision, the cleared portions of the entrances and associated common areas in a residential subdivision shall be landscaped with a minimum of 1 tree and 3 shrubs per 400 square feet exclusive of roadways, sidewalks, recreation facilities or other impervious areas.

In wooded areas, entrance features including walls, fences and signs shall be minimized to reduce the amount of clearing to accommodate entrance roads. In no case shall clearing for entrance roads and abutting utility easements exceed 60 feet in width.

**Table 1. Suggested Street Trees**

*Acer campestre*, Hedge Maple  
*Acer rubrum*, Red Maple  
*Fraxinus pennsylvanica*, Green Ash (seedless cultivars)  
*Ginkgo biloba*, Maidenhair Tree (male cultivars)  
*Nyssa sylvatica*, Black Tupelo  
*Ostrya virginiana*, American Hophornbeam  
*Quercus phellos*, Willow Oak  
*Quercus shumardii*, Shumard Oak  
*Ulmus parvifolia*, Lacebark Elm  
*Zelkova serrata*, Japanese Zelkova

This list is suggested. Trees used are not required to be from this list.

**Table 2. Suggested Plant Material for Entrances and Common Areas**

**Trees**

*Betula nigra*, River Birch  
*Carya ovata*, Shagbark Hickory  
*Cercis Canadensis*, Eastern Redbud  
*Cornus kousa*, Kousa Dogwood  
*Juniperus virginiana*, Eastern Redcedar  
*Pinus taeda*, Loblolly Pine

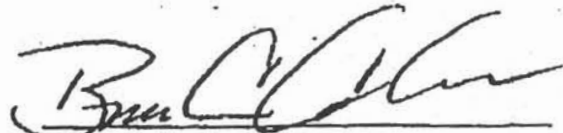
**Shrubs**

*Hamamelis virginiana*, Witch Hazel  
*Ilex opaca*, Inkberry  
*Ilex vomitoria*, Yaupon Holly  
*Myrica cerifera*, Wax Myrtle  
*Viburnum dentatum*, Arrowwood Viburnum

**Groundcovers and other Herbaceous Plants**

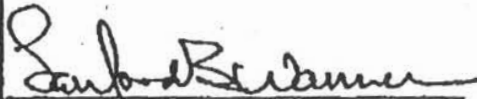
*Calamagrostis acutiflora*, Feather Reed Grass  
*Ceratostigma plumbaginoides*, Plumbago  
*Coreopsis verticillata*, Threadleaf Coreopsis  
*Deschampsia caespitosa*, Tufted Hair Grass  
*Festuca cinerea*, Blue Fescue  
*Helictotrichon sempervirens*, Blue Oat Grass  
*Hemerocallis*, Daylily  
*Hypericum calycinum*, St. Johnswort  
*Liriope muscari*, Blue Lily-turf  
*Miscanthus sinensis*, Japanese Silver Grass  
*Panicum virgatum*, Switch Grass  
*Potentilla fruticosa*, Bush Cinquefoil

This list is suggested. Plants used are not required to be from this list.



Bruce C. Goodson  
Chairman, Board of Supervisors

ATTEST:



Sanford B. Wanner  
Clerk to the Board

<u>SUPERVISOR</u>	<u>VOTE</u>
BRADSHAW	AYE
HARRISON	AYE
BROWN	AYE
MCGLENNON	AYE
GOODSON	AYE

Adopted by the Board of Supervisors of James City County, Virginia, this 13th day of April, 2004.

streetscape.res

# 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

March 29, 2006

## Via Hand Delivery & Email

Joel Almquist  
Planner  
James City County  
101-A Mounts Bay Road  
Williamsburg, VA 23185

Re: *Powhatan Enterprises, Inc.*  
*Monticello at Powhatan North (Phase III)*  
*James City County Case No's. Z-13-04, MP-10-04, & SUP-31-04*  
*Our Matter No. 79791*

Dear Joel:

My firm represents Powhatan Enterprises, Inc. (the "Applicant") in connection with the above-referenced application (the "Application"). The Application is scheduled to be presented to the James City County Planning Commission at its meeting on April 3, 2006, and the Applicant is requesting that the Planning Commission defer consideration of the Application for a minimum of 90 days in order for the Applicant to address recent comments from the James City County Department of Development Management ("Staff") regarding, *inter alia*, a substantial reduction in project density. To show the Applicant's good faith efforts in this regard, enclosed please find copies of a progress plan showing the steps that the Applicant has taken to date in addressing Staff's recent comments. The Applicant intends to contact the County Environmental Division soon to review the progress plan and to discuss additional changes that may be necessary to appropriately address Staff's concerns.

The Applicant is aware that, notwithstanding its efforts to revise the Application to address Staff's comments and to bring the Application to a final form, Staff intends to recommend denial of the Application at the April 3, 2006 Planning Commission meeting unless the Applicant completely withdraws its proposal. I respectfully request that Staff reconsider its position in this regard. As you are aware, withdrawal of the Application will result in (1) more significant delays in the submission and review timeframe for the proposal, (2) unnecessary additional consultant and administrative expenses to the Applicant in preparing a new application, and (3) a new application fee in excess of \$4,000.00.

The Applicant has requested deferral of this Application only to allow appropriate time to address evolving Staff and citizen concerns. The most recent comments from Staff were received in a meeting with Staff on February 21, 2006. The Applicant has been working diligently since that time to revise the Master Plan, proffers, traffic study, fiscal impact study, community impact

Chesapeake

Hampton

Newport News

Norfolk

Richmond

Virginia Beach

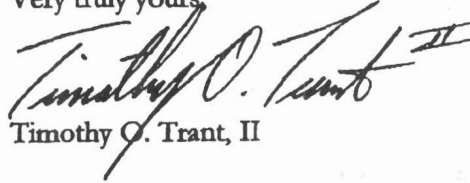
March 29, 2006

Page 2

statement, and other supplemental materials to reduce density, increasing buffering, and improve environmental protections - as evidenced by the progress plan enclosed. Accordingly, I request that any action by the Planning Commission on the Application be deferred for 90 days in order to allow the Applicant sufficient time to complete the revisions to its proposal to address Staff comments.

I appreciate your thoughtful consideration of this request. If you have any questions, please do not hesitate to contact me.

Very truly yours,



Timothy O. Trant, II

Enclosure

c (w/o encl.): Lawrence E. Beamer (via facsimile)  
Bradley Waitzer (via facsimile & U.S. mail)  
Alvin P. Anderson, Esq. (via email)  
Gregory R. Davis, Esq. (via hand delivery)  
Stephen A. Romeo (via U.S. mail)  
Donald J. Messmer (via U.S. mail)  
Linda A. Taylor (via U.S. mail)  
Peter Mellette (via U.S. mail)

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**SPECIAL USE PERMIT-4-06/MASTER PLAN-01-06. Prime Outlets Expansion.  
Staff Report for the April 3, 2006, Planning Commission Public Hearing**

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*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.*

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**PUBLIC HEARINGS**

Planning Commission:  
Board of Supervisors:

**Building F Board Room; County Government Complex**

April 3, 2006 7:00 p.m.  
May 9, 2006 (tentative) 7:00 p.m.

**SUMMARY FACTS**

Applicant: Greg Davis, Kaufman and Canoles

Land Owner: Prime Retail, L.P.

Proposal: Amend the existing master plan and special use permit to allow for a 7,000± square foot expansion of Prime Outlets on their existing site, as well as to incorporate the existing Ewell Station shopping center into Prime Retail and to allow for the construction of an additional 74,000 square feet of retail space adjacent to the existing Ewell Station shopping center.

Location: Richmond Road

Tax Map/Parcel Nos.: Parcels (1-28), (1-29), (1-33C), (1-33D) and (1-33E) on the JCC Real Estate Tax Map. (33-1), and Parcel (1-2) on the JCC Real Estate Tax Map. (33-3)

Parcel Size: The existing Ewell Station is 13.2 acres, for a total site area of 51.9 acres

Zoning: B-1, General Business (existing Ewell Station) and B-1, General Business, with Proffers (existing Prime Outlets)

Comprehensive Plan: Community Commercial

Primary Service Area: Inside

**STAFF RECOMMENDATION**

At the time of the writing of this report, Staff was awaiting additional traffic information from the applicant and final review of it from our traffic consultant. Staff recommends deferral of this case until additional data is submitted and reviewed and VDOT comments can be addressed.

Staff Contact: Kathryn Sipes Phone: 253-6685

**PROJECT DESCRIPTION**

Mr. Greg Davis has applied on behalf of Prime Retail, L.P. to amend the existing approved master plan and special use permit for the Prime Outlets to allow for a 7,000± square foot expansion of Prime Outlets on their existing site (proposed Phase 8), as well as to incorporate the existing Ewell Station shopping center into Prime Retail and to allow for the construction of an additional 74,000 square feet of retail space adjacent to the existing Ewell Station shopping center (proposed Phase 7). Currently, Phases 1-6 of Prime Outlets are existing or already approved. If Phases 7 & 8 are approved, the gross building area for Prime Outlets would equal 517,411 square feet. After deducting public spaces and other non-retail space, the net building area would equal approximately 401,511 square feet. Based on this net figure, 2008 parking spaces are required per the parking ordinance; 2042 parking spaces are proposed.

In 2004, prior to Prime Outlets acquiring the Ewell Station property, a site plan was approved for the Ewell Station parcel. This approved plan, SP-110-02, provided for a Phase II expansion of an additional 69,000 square feet. This would bring the Ewell Station site to a total of 137,000 square feet of retail. Prime Outlets Phase 7 expansion proposes to construct 74,000 square feet on the Ewell Station property, transferring the already approved 69,000 square feet to this project.

## **PUBLIC IMPACTS**

### **Environmental**

**Watershed:** Powhatan Creek

**Conditions:**

- Condition 6 under *Conditions Specific to the Phases 7 & 8 Expansions* specifies the following stormwater management facility improvements shall be made prior to approval of the development plans for Phases 7 and 8:
  - (a) Infiltration capacity shall be added to stormwater facility PC-186 (along Olde Towne Road) in accordance with approved JCC site plan SP-110-02, or equivalent measures provided as approved by the Environmental Director;
  - (b) Stormwater facility PC-124 (along Olde Towne Road) shall be retrofitted to improve water quality in accordance with approved JCC site plan SP-110-02, or equivalent measures provided as approved by the Environmental Director;
  - (c) Stormwater facility PC-036 (behind the existing Food Lion) shall be retrofitted to incorporate water quality treatment as approved by the Environmental Director; and
  - (d) Pre-treatment measures shall be incorporated into development plans as approved by the Environmental Director.

**Staff Comments:** Environmental Staff has reviewed and approved the condition language and finds the proposal consistent with the Powhatan Creek Watershed Management Plan and the Chesapeake Bay Ordinance. Environmental Staff believes it cannot be determined at this time whether the proposed project meets or exceeds ordinance requirements; however, environmental review is on-going and additional stormwater analysis should be available for the next meeting of the Planning Commission. Staff would like to note that the applicant has volunteered to contribute to a portion of the costs associated with off-site stormwater improvements along Chisel Run Road. Exact contribution amounts will be negotiated between the applicant and Environmental staff. Please note, however, this is not a condition of the SUP and is, therefore, not guaranteed.

### **Public Utilities**

Public water and sewer are available for all proposed phases of development.

**Conditions:**

- Condition 5 under *Conditions Specific to the Phases 7 & 8 Expansions* requires the applicant to submit water conservation standards for review and approval by the James City Service Authority prior to final approval of any development plan for the Phase 7 and 8 expansions.

**Staff Comments:** JCSA Staff has reviewed and approved the condition language.

### **Transportation**

The existing Prime Outlets site is accessed off Richmond Road by five entrances. Two are one-way service

roads, accessible from eastbound Richmond Road only. A third (near the Mikasa store) is right-in, right-out only and accessible from eastbound Richmond Road only; this entrance/exit is scheduled to be eliminated in the future and is not shown on the revised master plan, but can be seen on the Location Map attached to this report. The fourth and fifth entrances/exits are signaled intersections accessible from eastbound and westbound Richmond Road, with left turn lanes provided for westbound traffic. A right turn lane is provided the entire length of the site for eastbound traffic.

Currently, Ewell Station is accessible via three entrances/exits. One is right-in/right-out off Richmond Road, accessible to eastbound traffic only; the right turn lane on Richmond Road extends from the Prime Outlets site to the intersection of Richmond Road and Olde Towne Road, and serves this entrance. Two additional points of access are off of Olde Towne Road; both are served by left turn lanes for northbound traffic on Olde Towne Road. None of these three are signaled. A fourth entrance to the Ewell Station site is proposed per the master plan revision; this is a non-signalized, right-in/right-out service road.

**2005 Traffic Counts:** Olde Towne Road (from King William Drive to Chisel Run Road): 9,671 vehicle trips per day

Richmond Road (from Lightfoot Road to Old Towne Road): 20,697 vehicle trips per day

**2026 Volume Projected:** Richmond Road (between Route 199 and the City of Williamsburg line): 31,000 vehicle trips per day. This is listed in the “watch” category; the recommended daily capacity for four lane roads is 30,000 vehicle trips per day. There are no projections for Olde Towne Road.

**Road Improvements:** Comments from VDOT indicate the need for improvements to the left turn lane from westbound Richmond Road onto Olde Towne Road. Additionally, the applicant has previously contributed to the coordination of the signals along Richmond Road, and that project is scheduled to be completed by VDOT in April 2006.

**Conditions:**

- Condition 1 under *Conditions Specific to the Phases 7 & 8 Expansions* specifies a mass transit plan shall be approved by the Planning Director. Improvements per this plan shall be completed prior to the issuance of any final Certificate of Occupancy for the Phase 7 & 8 Expansions.
- Condition 7 under *Conditions Specific to the Phases 7 & 8 Expansions* require the applicant to lengthen the left turn lane from westbound Richmond Road onto Olde Towne Road prior to the issuance of any final Certificate of Occupancy for the Phase 7 & 8 Expansions.

**VDOT Comments:** VDOT staff has reviewed the Traffic Impact Study submitted on February 21, 2006 and does not concur with the methodology used, specifically with the analysis of Ewell Station as a stand-alone development rather than an expansion of the existing Prime Outlet center. Furthermore, VDOT staff believes all entrances should be evaluated and the overall number of access points reduced. VDOT staff further suggests a meeting be arranged between County staff, the applicant, and VDOT representatives.

**Staff Comments:** A Traffic Impact Study was submitted and reviewed by staff, as well as the County’s third-party traffic consultant. The Traffic Impact Study presented the existing overall Level of Service (LOS) for the Richmond Road/Olde Towne Road intersection as LOS B, with A being the best performance rating possible. Specifically, six traffic movements were analyzed at this intersection and none received less than a LOS C. The study presents projections for this intersection remaining at an overall LOS B for 2007 with proposed Phase 7, and shifting to an overall LOS C in 2011 with proposed Phases 7 & 8. Two movements decline to LOS D for both the 2007 and 2011 projections.

The following additional traffic information was requested of the applicant per a memo dated March 8, 2006:

1. A written and graphic analysis further detailing how traffic patterns will be affected by the shift of this shopping center from local shopping center to outlet mall;
2. An evaluation of safety impacts of the project’s Olde Towne Road entrances and the potential impacts of closing one or both of these;
3. A queuing, weave, and arterial level of service analysis for Richmond Road;
4. A queuing analysis for all existing left turn lanes on Olde Towne Road; and
5. An analysis of existing and potential off-site parking impacts on adjacent property, with a focus on

seasonal, weekend and other times of peak parking usage.

Given VDOT's response to the traffic study submitted on February 21, in addition to supplemental information requested and not yet received (Items #3 and 5 above) and not yet reviewed by the County's traffic consultant (Items #3, 4 and 5 above), Staff believes additional time is needed to evaluate traffic impacts.

## **COMPREHENSIVE PLAN**

### **Land Use Map Designation**

Prime Outlets and Ewell Station are designated Community Commercial on the Comprehensive Plan Land Use Map. Lands designated Community Commercial are intended to allow general business activity in areas located within the Primary Service Area while usually having a moderate impact on nearby development.

### **Other Considerations**

- **Community Character:** The expansion of Prime Outlet is located along Richmond Road, a community character corridor.

### **Conditions**

Conditions 2, 3, and 4 under *Conditions Specific to the Phases 7 & 8 Expansions* provide for architectural review, improved landscaping along Richmond Road for the Ewell Station frontage, and entrance lighting, respectively.

## **RECOMMENDATION**

At the time of the writing of this report, Staff was awaiting additional traffic information from the applicant and final review of it from our traffic consultant. Staff recommends deferral of this case until additional data is submitted and reviewed and VDOT comments can be addressed.

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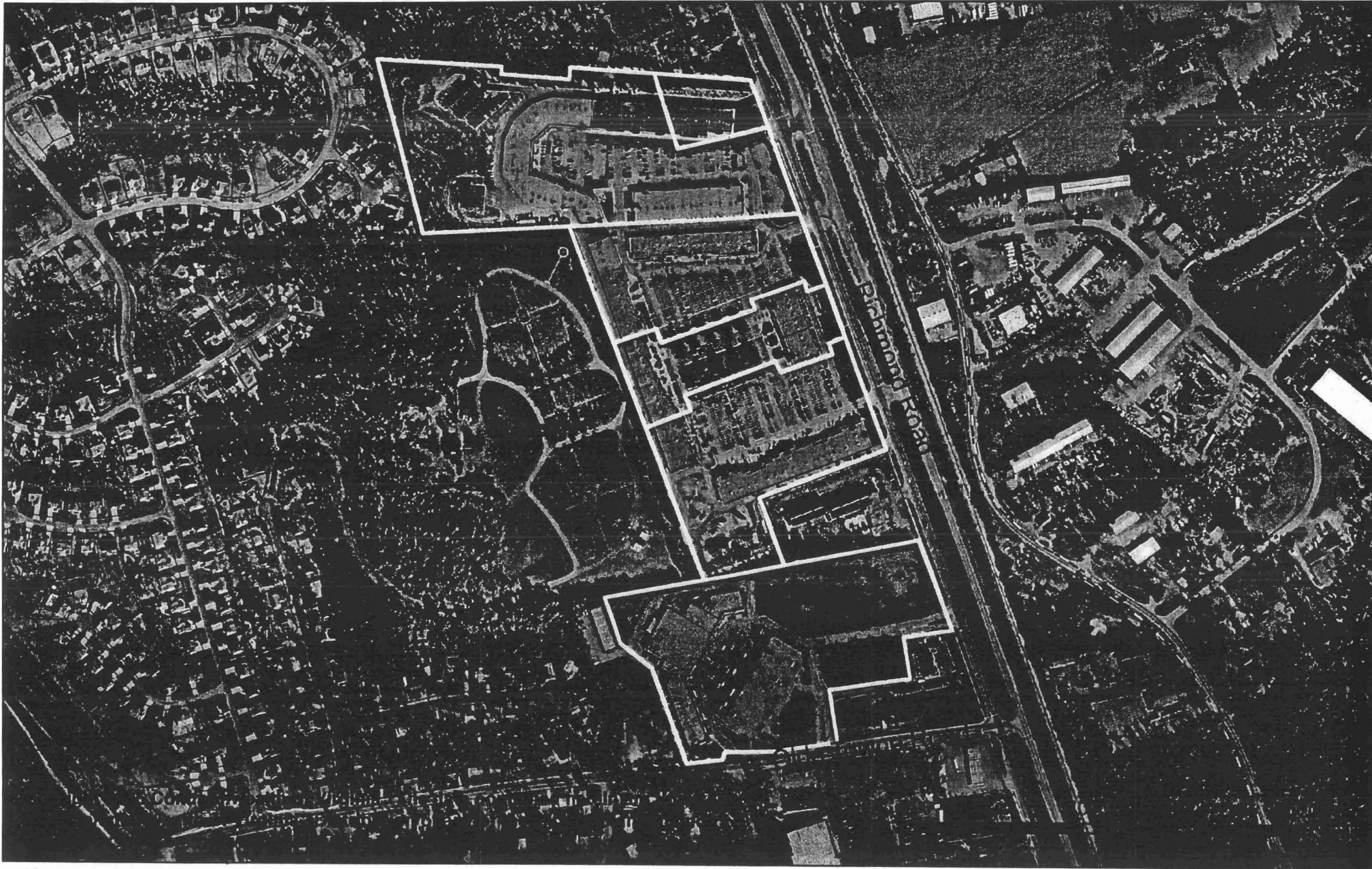
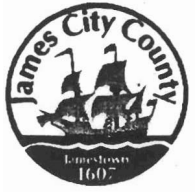
Kathryn Sipes

### **ATTACHMENTS:**

1. Location Map
2. Master Plan (under separate cover)
3. SUP Conditions

**SUP-04-06/MP-01-06**

# **Prime Retail Expansion Phases 7 & 8**



CASE NO. SUP-4-06/ MP-1-06 PRIME RETAIL MASTER PLAN AMENDMENT

*Conditions Specific to the Phase 5A Expansion*

1. Planters (the type and size of planters to be specified by the landscaping plan) along the entire store frontage of the Phase 5A Expansion as shown on the Master Plan, shall be approved by the Planning Director or his designee prior to final site plan approval for any future expansion. The planters shall be installed prior to issuance of any final Certificate of Occupancy for any future expansion.
2. Applicant has installed a 35-foot-wide transitional buffer planted along the northern most property line adjacent the 5A expansion. This area has been planted and shall be maintained at 133 percent of the numerical standards found in Section 24-94 of the James City County landscape ordinance, and with an emphasis on evergreen shade and understory trees as determined by the Planning Director. The fence already installed in this area shall be a maximum of eight feet high and shall be maintained with a vinyl coating and shall be either black or green in color. Furthermore, the fence shall be maintained with a setback from the property line at least three feet.

*Conditions Specific to the Phase 6 Expansion*

1. Prior to final site plan approval for the Phase 6 expansion, the Planning Director shall review and approve the final architectural design of the building(s) prepared as part of the Phase 6 expansion. Such building shall be reasonably consistent, as determined by the Planning Director, with the architectural elevations titled, Prime Outlets Phase 6 expansion, submitted with this special use permit application dated, July 6, 2005, and drawn by Gary S. Bowling, Guernsey Tingle Architects.
2. Prior to the issuance of any final Certificate of Occupancy for the Phase 6 expansion, lighting shall be installed for the two entrances from the property onto Richmond Road as shown on the Master Plan. In addition, parking lot lighting shall be installed in the new parking lot as shown on the Master Plan behind Phase 6 which will be re-stripped from existing parking for buses to parking for cars. The specific location, adequacy, and design of all lighting fixtures shall be approved by the Planning Director. No lighting fixture shall exceed a height of 30 feet.
3. A landscaping plan for the Phase 6 expansion, including foundation landscaping in accordance with James City County Code Section 24, shall be approved by the Planning Director or his designee prior to final site plan approval.
4. Prior to submission of any development plan for the Phase 6 expansion, the applicant shall submit a water and sanitary sewer master plan and hydraulic analyses for the expansion space for review and approval by the James City Service Authority.

*Conditions Specific to the Phases 7 & 8 Expansions*

1. Prior to final site plan approval for the Phase 7 and 8 expansions, a mass transit plan in accordance with Section 25-59(f) of the James City County Code shall be approved by the Planning Director for Prime Retail. The plan, at a minimum, shall include a replacement bus transfer stop for the Williamsburg Area Transport purple and blue line currently located in the Ewell Station shopping center. Installation of all bus stops, shelters and other items approved as part of the mass transit plan shall be completed prior to issuance of any final Certificate of Occupancy for the Phase 7 and 8 expansions.

2. Prior to final site plan approval for the Phase 7 and 8 expansions, the Planning Director shall review and approve the final architectural design of the building(s) prepared as part of the Phase 7 and 8 expansions, including exterior architectural modifications to the existing Ewell Station Shopping Center. Such building shall be reasonably consistent, as determined by the Planning Director, with the architectural elevations titled, Prime Outlets Phase 7 and 8 Expansion, submitted with this special use permit application dated, February 20, 2006, and drawn by Gary S. Bowling, Guernsey Tingle Architects.
3. A landscaping plan for the Phase 7 and 8 expansions, including foundation landscaping in accordance with James City County Code Section 24, shall be approved by the Planning Director or his designee prior to final site plan approval. Landscaping shall be provided along Richmond Road that exceeds plant material size requirements in Section 24-90 of the James City County Code by 125%.
4. Prior to the issuance of any final Certificate of Occupancy for the Phase 7 and 8 expansions lighting shall be installed for the existing entrances from the property onto Richmond Road and Olde Towne Road as shown on the Master Plan. The specific location, adequacy, and design of all lighting fixtures shall be approved by the Planning Director. No lighting fixture shall exceed a height of 30 feet.
5. 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 any final development plan approval for the Phase 7 and 8 expansions. 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 the intent of this condition which is to conserve water and minimize the use of public water resources to the greatest extent possible.
6. Development plan approval for the Phase 7 and 8 expansions shall reflect the following stormwater management facility improvements:
  - a. PC-186 (located along Olde Towne Road): Infiltration capacity shall be added in accordance with approved JCC site plan SP-110-02, or equivalent measures provided as approved by the Environmental Director;
  - b. PC-124 (located along Olde Towne Road): Shall be retrofitted to improve water quality in accordance with approved JCC site plan SP-110-02, or equivalent measures provided as approved by the Environmental Director;
  - c. PC-036 (behind the existing Food Lion): Shall be retrofitted to incorporate water quality treatment as approved by the Environmental Director; and
  - d. Pre-treatment measures shall be incorporated into development plans as approved by the Environmental Director.

All stormwater management facility improvements shown on the approved development plans for the Phase 7 and 8 expansions shall be installed prior to the issuance of any final Certificate of Occupancy for the Phase 7 and 8 expansions unless expressly permitted by the Environmental Director.

7. Improvements, as specified by VDOT, must be made to the left turn lane from westbound Richmond Road onto Olde Towne Road prior to the issuance of any final Certificate of Occupancy for the Phase 7 & 8 Expansions.

*Conditions Applicable to all Phases of Prime Retail*

1. This Special Use Permit shall be valid for the approximately 7,000 sq. ft. expansion of Prime Retail, the incorporation of the existing Ewell Station shopping center into the Prime Retail and to allow the construction of an additional 74,000± square foot of retail space adjacent the existing Ewell Station shopping center, and accessory uses thereto. The total gross building area shall not exceed 517,411 sq. ft.
2. Development of the site shall be generally in accordance with the above referenced master plan and any questions as to compliance shall be determined by the Development Review Committee of the James City County Planning Commission. Minor changes may be permitted by the DRC, as long as they do not change the basic concept or character of the development. This Special Use Permit and these conditions shall supersede the existing conditions of approval of James City County Case No. SUP-25-05 and prior SUP conditions affecting the Prime Retail development.
3. Any new exterior site lighting shall be limited to fixtures which are horizontally mounted on light poles not to exceed 30 feet in height and/or other structures and 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. No glare, defined as 0.1 footcandle or higher, shall extend outside the property lines. The use of temporary flood lighting shall be prohibited unless written approval is obtained by the Planning Director for use during a special event.
4. No dumpsters shall be allowed on any portion of the service road located behind the buildings along the northern property line where the service road is 20 feet in width or less. All new and existing dumpsters shall be screened by landscaping or fencing approved by the Planning Director.
5. Prior to issuance of any final Certificate of Occupancy plan for any expansion, the applicant shall complete the following: (1) internal driveways shall be designated as "One Way" traffic only, as shown on the Master Plan; (2) fire lane shall be properly marked in accordance with the Virginia Fire Code; and (3) the applicant shall install signage for the rear parking lots and service drives clearly indicating the existence of additional parking spaces for customers and employees. Prior to installation of any new signage, the applicant shall prepare and submit a comprehensive signage plan for review and approval by the Planning Director.
6. If construction has not commenced on this project within thirty-six (36) months from the issuance of this special use permit, the special use permit shall become void. Construction shall be defined as obtaining permits for building construction and footings and/or foundation has passed required inspections.
7. This special use permit is not severable. Invalidation of any word, phrase, clause, sentence or paragraph shall invalidate the remainder.

**REZONING-16-05. New Town Section 9 – Settlers Market**  
**MASTER PLAN-13-05. New Town Section 9 – Settlers Market**  
**Staff Report for the April 3, 2006 Planning Commission Public Hearing**

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*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.*

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**PUBLIC HEARINGS**

Planning Commission:

**Building F Board Room; County Government Complex**

November 7, 2005	7:00 p.m. (applicant deferred)
December 5, 2005	7:00 p.m. (applicant deferred)
January 9, 2006	7:00 p.m. (applicant deferred)
February 6, 2006	7:00 p.m. (applicant deferred)
March 6, 2006	7:00 p.m. (deferred)
April 3, 2006	7:00 p.m.
May 9, 2006	7:00 p.m. (tentative)

Board of Supervisors:

**SUMMARY FACTS**

Applicant:

Mr. Vernon Geddy, III on behalf of AIG Baker Development, LLC and Developer's Realty Corporation

Land Owner:

WHS Land Holdings, LLC and New Town Associates, LLC

Proposal:

To apply Design Guidelines and rezone 58.0 acres to MU, Mixed Use, with proffers. If approved, proposed construction includes approximately 401,945 to 426,342 square feet of office and commercial space and approximately 215 to 279 residential units.

Location:

At the intersection of Monticello Avenue and Route 199

Tax Map/Parcel Nos.:

(38-4) (1-3), (38-4) (1-2), (38-4) (1-52) and a portion of (38-4) (1-56)

Parcel Size:

58.0 acres

Existing Zoning:

R-8, Rural Residential with proffers and an approved Master Plan and M-1, Limited Business / Industrial

Proposed Zoning:

MU, Mixed Use, with proffers

Comprehensive Plan:

Mixed Use

Primary Service Area:

Inside

**STAFF RECOMMENDATION**

Staff finds this proposal for New Town Section 9 generally consistent with the adopted 1997 New Town Master Plan and Design Guidelines. The proposed development is compatible with surrounding zoning and development and consistent with the 2003 Comprehensive Plan recommendations. Following the March Planning Commission meeting, the applicant, traffic consultants and staff have worked to resolve the outstanding traffic issues. Staff believes that the applicant and the consultants have adequately addressed the traffic concerns along the Monticello Avenue corridor as stipulated in the 1997 proffers. Staff recommends the

Planning Commission recommend approval of the rezoning and master plan applications to the James City County Board of Supervisors and the acceptance of the voluntary proffers. Please note the following sections of the current staff report have been altered from the March 6, 2006 staff report: Staff recommendation, Proffer table, Environmental and Transportation. All other sections of the current staff report are unchanged from the previous month.

Staff Contact: Matthew J. Smolnik

Phone: 253-6685

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

<b>Cash Proffer Summary (See staff report narrative and attached proffers for further details)</b>	
<b>Use</b>	<b>Amount</b>
Water	\$820 per dwelling unit
Recreation	\$109 per dwelling unit
School Facilities	\$528 per dwelling unit
Library Facilities	\$61 per dwelling unit
Fire / EMS Facilities	\$71 per dwelling unit
Road Improvement Contribution	\$68,800 *
<b>Total Amount (2006 dollars)</b>	<b>\$410,435 to \$512,131</b>

\* Added since the March 6, 2006 Planning Commission meeting

### **BRIEF HISTORY AND DESCRIPTION OF NEW TOWN**

In August 1995, James City County and the C.C. Casey Limited Company sponsored parallel design competitions for a Courthouse and Town Plan, respectively, to be located on approximately 600 acres known as the “Casey” Property. The winning town plan, chosen from among 99 entries worldwide, was submitted by Michel Dionne, Paul Milana and Christopher Stienon of New York City. The program included several civic facilities, 600,000 square feet of regional and community retail, 400,000 square feet of office space and 2,000 residential units of varying types. The plan locates a civic green at the southeast corner of the site where it becomes central to the larger Williamsburg region and an urban gateway to the town. A retail square is the focus of the mixed-use town center with research and development corporations along Discovery Boulevard. The neighborhoods are composed of a simple urban street and block pattern that accommodates alleys, and permits a variety of lot sizes and housing types. The public spaces of the plan connect to the regional system of public open space so that the new town becomes an urban extension and center for the region.

Using the winning town plan as a launching pad, on December 22, 1997, the Board of Supervisors approved rezoning applications (Case Nos. Z-4-97 & Z-10-97) that set forth the New Town binding master plan and Design Review Guidelines by rezoning 547 acres of the Casey Tract to R-8 with proffers. The purpose of the R-8 zoning was to bind the property to the Proffers and Master Plan, which set maximum densities, major roads, major open spaces and types of uses. The rezoning also established Monticello Avenue and Ironbound Road through New Town as major urban arterials with design and operating standards more reflective of urban rather than suburban roads. Under the proffers, the R-8 area could not actually be developed until further rezoning to MU. The purpose for this was to gradually implement the full development. Also, by rezoning areas separately, the Planning Commission and Board will have the opportunity to gauge proposed development against current situations (in an attempt to best mitigate impacts) and to evaluate the proposed development against the Master Plan, the proffers and the design guidelines.

To allow for initial and immediate construction, 27.5 acres of the Plan (Section 1) was rezoned to Mixed Use in 1997. Section 1 approved uses included 146,000 square feet for institutional and public use (80,000 square feet for the Courthouse and 66,000 square feet for the Williamsburg United Methodist Church); 60,000 square feet for office space, Institutional/Office Mixed Use, or Office/Commercial Mixed Use; and 3.5 acres for Open Space.

On what is commonly referred to as the west side of New Town due to its location west of Route 199, the Windsor Meade Retirement Community rezoning application (Case Z-02-01/MP-02-01) was approved by the Board of Supervisors on October 23, 2001. Windsor Meade Retirement Community will provide 300 residential units of various levels of continuous health care and have a maximum of 19,500 square feet of commercial office space. Windsor Mead Marketplace (Case Z-05-03/MP-06-03) was approved on October 14, 2003 and will include approximately 200,000 square feet of commercial and retail space fronting Monticello Avenue.

On the east side of New Town, Section 2 & 4, or the New Town Center, was rezoned to Mixed Use with proffers on December 11, 2001 (Case No. Z-03-01) and amended on October 14, 2003 when approximately 3 acres were added on October 14, 2003. (Case No. Z-06-03/MP-4-03) Section 2 & 4 borders both Ironbound Road and Monticello Avenue and contains the initial development opened in New Town: the Corner Pocket and the SunTrust Building. Proposed, featured architectural and design highlights of Section 2 & 4 include Court Square, the Civic Green, the Village Square, the Village Green and Pecan Square.

Accessed from Tewning Road and separated by wetlands from the core of New Town East, Section 5 was rezoned to M-1, Limited Business/Industrial with proffers on June 8, 2004. (Case No. Z-1-04/MP-2-04).

Encompassing approximately 70 acres to the north of Section 2 & 4 is New Town Section 3 & 6, which was rezoned from R-8, with proffers, to MU, with proffers on October 26, 2004 (Case No. Z-05-04/MP-05-04). Section 3 & 6 is bounded by Ironbound Road to the east, Discovery Boulevard to the south and west, the lands of Eastern State Hospital to the north and east and an industrial neighborhood (Section 5 and Tewning Road) directly to the north. Section 3 & 6 will consist of a maximum of 470 dwelling units with an overall density cap of 4.5 dwelling units per acre and a maximum of 220,000 non-residential square feet.

In each of the subsequent rezonings, the cases were evaluated to ensure consistency with the original New Town vision as set out in the master plan, proffers and design guidelines. The cases were also evaluated to ensure their impacts were consistent with the other standards and impacts envisioned in the original rezoning especially in regard to traffic, fiscal and environmental impact.

## **PROJECT DESCRIPTION**

The current request is to rezone approximately 58 acres in Section 9 from R-8, with proffers, to MU, with proffers. The following description of Section 9 is an excerpt from the introduction of the attached *Settler's Market at New Town Section 9 Design Guidelines*, which are proposed by the applicant:

This section of New Town is master planned as a Gateway Commercial District in the New Town Master Plan. The proposed mixed-use development includes well-appointed residential condominiums and townhomes, office uses, nationally recognized retail tenants and specialty shops to serve the daily needs of the residents and workers within New Town.

The joint zoning application is for property in Section 9 totaling 58 acres, which includes the addition of approximately 8 acres previously included in Section 8. The property is currently owned by two entities: New Town Associates, LLC and WHS Land Holdings, LLC. Settler's Market is bounded on the west by State Route 199, to the south by Monticello Avenue, to the north by future Section 8 residential within New Town and to the east by approximately 4.5

acres of preserved wetlands between Settler's Market and Section 4. Settler's Market Boulevard connects Monticello Avenue through the development into the future Section 8 residential. Traversing from the south northward, the development transitions from retail and restaurants to multi-level mixed use buildings and retail stores to an open green and residential buildings before entering Section 8. Entering Section 9 from New Town on Casey Boulevard, the frontage east of Settler's Market Boulevard is comprised of residential and mixed-use buildings before turning south towards Monticello Avenue through primarily retail and restaurant uses.

The green space transitions the development from retail, office and mixed uses to residential buildings as Settler's Market Boulevard enters Section 8. The green's placement adjacent to the main intersection of Settler's Market Boulevard and Casey Boulevard provides a focal point of activity for the residential owners, pedestrian users, retail shoppers and office workers. The green's final design will encourage use by the residential owners near its edge, while still protecting the sense of place for the occasional user and visitor and the opportunity for public uses and activities.

Settler's Market functions as the commercial gateway to New Town from State Route 199 and Monticello Avenue, establishing the first impression of the Town to those who pass by or visit. The mixed-use center is designed to provide characteristics that are in harmony with other sections of New Town. The site layout and landscaping provide a visually appealing as well as a functional design of streets and parking zones, which limit visibility to parking areas from major access points. The architecture will be in keeping with the current Town Center area. Building placement is functional yet contemporaneous with New Town principles. The roadway design and pedestrian connectivity enable both permanent New Town residents and visiting shoppers or office workers to utilize the retail, restaurants, activities and public areas.

### **Plan Flexibility**

When New Town was originally rezoned in 1997, rather than set finite square footages and dwelling uses for each use in each section, the adopted master plan establishes certain uses for each section and then describes in tables the maximum and minimum square footages and dwelling units which would occur under two market scenarios.

The first scenario assumes the residential uses are built out to the maximum extent, whereas the second scenario assumes non-residential uses are built out to the maximum extent. This system is intended to provide flexibility in determining the mix of residential and non-residential uses in each section. The 1997 results for the entire east side of New Town development (Sections 1-10) is summarized below:

<b>EAST SIDE OF NEW TOWN, SECTIONS 1-10</b>		
	<b><u>Maximum Residential Scenario</u></b>	<b><u>Maximum Non- Residential Scenario</u></b>
<b>Residential</b>	1,972 dwelling units	1,171 dwelling units
	4.5 du/acre overall cap	4.5 du/acre overall cap
<b>Non-residential</b>	1,361,157 square feet	2,008,657 square feet

To achieve the current development proposed in Section 9, the original Master Plan for Section 8 governing approximately 86 acres is being amended in conjunction with this rezoning by transferring 154 dwelling units from Section 8 to Section 9. Additionally, ten acres of Williamsburg Community Hospital property that currently houses the WMBG AM radio tower, which is currently not part of New Town, is being included in the Section 9 rezoning. Commercial and residential densities for the ten acres are consistent with the 1997

Master Plan, at 7,200 square feet per acre to 7,640 square feet per acre for commercial density and 1.1 units per acre to 2.2 units per acre for residential density. **It should be noted that the overall limits on total number of residential units and non-residential square footage for New Town is not being changed with this application.** The revised land use tabulations for Section 8 and Section 9 are proposed as follows:

<b>PROPOSED SECTION 8</b>		
	<b><u>Maximum Residential Scenario</u></b>	<b><u>Maximum Non- Residential Scenario</u></b>
<b>Residential</b>	125 dwelling units	125 dwelling units
<b>Non-residential</b>	33,500 square feet	33,500 square feet

<b>PROPOSED SECTION 9</b>		
	<b><u>Maximum Residential Scenario</u></b>	<b><u>Maximum Non- Residential Scenario</u></b>
<b>Residential</b>	279 dwelling units	215 dwelling units
<b>Non-residential</b>	401,945 square feet	426,342 square feet

### **Design Guidelines**

Design guidelines were adopted with the original rezoning to ensure the vision of the winning town plan and establish the New Town Design Review Board and a process from which to review and approve proposed developments. The Design Guidelines for Section 9 address street design, streetscape, parking, block design, architecture and landscaping. The New Town Design Review Board has reviewed the proposed Master Plan and revised Design Guidelines for Sections 9 and has approved them for conformance with the adopted Master Plan and original New Town design guidelines. With some significant exceptions to allow for larger retail buildings primarily adjacent to Route 199, the design guidelines are very similar to those for Section 2 & 4. **While the master plan was ultimately approved by the New Town Design Review Board, it was the subject of extensive discussion due to these exceptions and its decision was not unanimous. The large retail buildings in this proposal are different from other sections of New Town east of Route 199. The Commission and Board should review the design proposal and make their own findings as to whether it is compatible with the overall vision of New Town.**

### **Master Plan**

Staff believes that the proposed Master Plan is compatible with surrounding zoning and development and is consistent with the approved 1997 New Town Master Plan. In general, nonresidential development is located directly to the east of State Route 199, along Monticello Avenue and the southern sections of Settlers Market Boulevard and Casey Boulevard with residential areas located along the northern area of Section 9. The Master Plan and Design Guidelines are designed to work together to ensure that the overall project achieves the design objectives.

### **PUBLIC IMPACTS**

#### **Archaeology**

**Staff Comments:** The applicants have performed a Phase I Study with the appropriate treatment plans for the appropriate areas. A Phase II Study was conducted in the fall of 2000 at site 44JC361. The artifacts found were in contexts largely disturbed by logging activities; therefore no further work is recommended at site 44JC361 because the site would not significantly add to the knowledge of the history of the area. A Phase I Study was performed in January 2005 on the 10 acre site that currently houses the WMBG AM radio tower. The site is included in the current application. The Phase I Study yielded negative results and no further work was recommended at this site.

## **Environmental**

**Watershed:** Powhatan Creek

**Proffers:** The binding master plan shows a variable width buffer around environmentally sensitive areas. The applicant has proffered a 15 foot setback from the buffer shown on the master plan.

**Environmental Staff Comments:** The approved Master Stormwater Plan covers this area of development and all components shall apply. The submitted plan will meet the approved Master Stormwater Management Plan for New Town and will require approval by the U.S. Army Corps of Engineers and the Virginia Department of Environmental Quality. That plan was developed and approved with extensive staff input and consultation. The Master Plan will need to be revised to include general notes for stormwater management similar to previously approved Master Plans for New Town. Included as an attachment to the staff report is the Environmental Staff Report on the Powhatan Creek Watershed Management Plan and Master Stormwater Management Plan as they apply to New Town and Settler's Market at New Town, Section 9 (Z-16-05/MP-13-05). With the above revisions, this application is acceptable and further environmental issues will be addressed at the development plan stage.

## **Fiscal**

**Proffers:** Cash contributions for various public facilities have been proffered to offset the project's fiscal impact. In addition, a Fiscal Impact Study has been submitted in accordance with Zoning Ordinance Requirements.

**Staff Comments:** Overall fiscal impact is positive, even with the assumption that all homes are assumed to be occupied in Year 2. At buildout (assumed to be in the year 2008), the proposal for Section 9 provides a net positive annual fiscal impact of approximately \$975,000. This figure is based on the maximum number of residential homes (279) and the minimum space for retail and office development (401,945 square feet). Timing of nonresidential and residential buildout is important to actual fiscal performance. Overall, New Town has experienced a more rapid buildout of nonresidential vs. residential. This will result in a more favorable fiscal balance than projected in 1997.

## **Housing**

**Proffers:** A minimum of three percent (3%) of the residential units (7-9 units) constructed on the Property will be initially offered for sale for a period of nine continuous months after the issuance of a building permit for such residential units at a price at or below \$154,000 subject to the Marshall Swift Index price adjustment.

**Staff Comments:** Staff has reviewed this proffer and finds it adequate.

## **Libraries**

**Proffers:** A contribution of \$61 for each residential unit is proffered for library needs.

**Library Comments:** In the near future, another library facility will need to be considered to adequately service demands. The proffered amount helps offset building construction costs but does not provide sufficient funds for the opening day collection needs.

## **Public Utilities**

**Proffers:**

- A cash contribution of \$820 for each dwelling unit on the property shall be made to the James City Service Authority in order to mitigate impacts on the County from the physical development and operation of the property.
- Appropriate water conservation measures will be developed and submitted to the JCSA for review and approval prior to any site plan approval.

**Staff Comments:** This site is served by public water and sewer. The proffered dollar amount is consistent with the need indicated by the JCSA and other recent rezonings with adjustments made for

inflation.

### **Public Facilities**

**Proffers:** Total contributions of \$1,589 per residential unit are proffered to the County for each residential unit developed on the property (\$528 per residential unit for schools).

**Staff Comments:** According to the Public Facilities section of the Comprehensive Plan, Action number four encourages through the rezoning, special use permit or other development processes (1) evaluation of the adequacy of facility space and needed services when considering increasing development intensities and (2) encouraging the equitable participation by the developer in the provision of needed services. With respect to item (1), the Board of Supervisors has adopted the adequate public school facilities policy. With respect to item (2), the County has identified methods for calculating cash proffer amounts for schools, recreation and water supply facilities. The applicant has proffered cash contributions to the County for each of the facilities as well as for libraries and fire/EMS. Please note that while significant, the proffers do not address the full range of County facilities and services.

Settler's Market at New Town is located within the Clara Byrd Baker Elementary School, Berkeley Middle School and Jamestown High School districts. Under the proposed Master Plan, a range of 215 to 279 condominium or townhouse units are proposed. Per the adequate public school facilities policy adopted by the Board of Supervisors, all special use permit or rezoning applications should meet the policy for adequate public school facilities. The policy adopted by the Board uses the design capacity of a school, while the Williamsburg - James City County schools has since begun to recognize the effective capacity as the means of determining student capacities. With respect to the policy, the following information is offered by the applicant:

#### **Low Range Residential**

<i>School</i>	<i>Design Capacity</i>	<i>Effective Capacity</i>	<i>Current 2005 Enrollment</i>	<i>Projected Students Generated by Proposal</i>	<i>Current 2005 Enrollment and Projected Student Total</i>
Clara Byrd Baker	804	660	758	16	774
Berkeley Middle	725	816	869	8	877
Jamestown High	1,250	1,177	1,497	10	1,507
Total	2,779	2,769	3,124	34	3,158

#### **High Range Residential**

<i>School</i>	<i>Design Capacity</i>	<i>Effective Capacity</i>	<i>Current 2005 Enrollment</i>	<i>Projected Students Generated by Proposal</i>	<i>Current 2005 Enrollment and Projected Student Total</i>
Clara Byrd Baker	804	660	758	21	779
Berkeley Middle	725	816	869	11	880
Jamestown High	1,250	1,177	1,497	13	1,510
Total	2,779	2,769	3,124	45	3,169

The following information applies to both the low range residential and high range residential scenarios. There is design capacity for this development at Clara Byrd Baker; therefore this development meets the policy guidelines at the elementary school level. Both design and effective capacities are exceeded at Berkeley Middle School and Jamestown High School. Although the design capacity of Jamestown High School is clearly exceeded, the adequate public school facilities policy states that if physical

improvements have been programmed through the County CIP then the application will meet the policy guidelines. On November 2, 2004, voters approved the third high school referendum and the new high school is scheduled to open in September 2007; therefore, staff believes that this proposal meets the policy guidelines for the high school level. The proposal does not meet the policy guidelines at the middle school level.

### **Parks and Recreation**

**Proffers:** The proffers provide for several community spaces referred to as “Village Community Spaces” which are also shown and labeled on the master plan as “Transition Open Space” and “Focal Open Spaces”. Further, the proffers provide for a cash contribution of \$109 for each residential unit developed on the property.

**Staff Comments:** In addition to the items depicted on master plan, the Design Guidelines call for sidewalks along all roads and bikeways along Casey Boulevard, Settlers Market Boulevard and Monticello Avenue. Given this is an urban development the proffered recreational facilities are different than those provided by suburban developments. Based on previous New Town rezonings, the proffers are acceptable.

### **Fire and EMS:**

**Proffers:** A cash contribution of \$71 per residential unit is proffered for fire and rescue equipment and facilities.

**Staff Comments:** This figure is consistent with the need indicated by the Fire Department and consistent with other recent rezonings.

### **Transportation**

**2005 Traffic Counts on Monticello Avenue (Ironbound Road to State Route 199):** 23,662

**2005 Traffic Counts on Monticello Avenue (State Route 199 to News Road):** 36,548

**2005 Traffic Counts on Ironbound Road (Monticello Avenue to Watford Lane):** 10,157

A traffic impact study was submitted to the County in accordance with the requirements of Section 4 of the original New Town proffers.

#### **Proffers:**

- A traffic signal at the Settler's Market Boulevard/Monticello Avenue intersection is proffered which will include pedestrian crosswalks, pedestrian signal heads and controls and a pedestrian median refuge.
- A traffic signal at the Casey Boulevard/Monticello Avenue intersection is proffered which will include pedestrian crosswalks, pedestrian signal heads and controls and a pedestrian median refuge.
- For the Casey Boulevard / Monticello Avenue intersection, the following entrance and road improvements shall be completed (or bonded), to the extent such improvements are not already in place, when warranted by VDOT:
  - (i) Dual eastbound left turn lanes on Monticello Avenue.
  - (ii) A westbound right turn/through lane on Monticello Avenue extending to the existing right turn lane at Route 199.
- A cash contribution of \$68,800 to be used towards the conceptual road improvements on the west side of Monticello Avenue. This proffer includes funds for roadway construction and utility relocation.
- At least one but no more than two bus pull-off areas and bus shelters to be constructed on the property.

**VDOT Comments:** VDOT has indicated there are no major issues with the study and that all construction plans will need to be submitted for their review.

Staff retained Kimley-Horn and Associates to assist with the review of the applicant's traffic impact study

and has submitted the following overview of Monticello Avenue which explains current conditions and how this corridor will function in the future with additional development, including Section 9:

“Monticello Avenue is currently a major arterial serving residents in the James City County and Williamsburg area of Virginia. The roadway is a four lane divided facility with a grass median and posted speed limit of 45 mph. Travel speeds along Monticello Avenue today can range from 25 MPH to 50 MPH based on time of day and direction of travel. Monticello Avenue intersects with Route 199 creating two distinct areas of development within the County.

Monticello Avenue west of Route 199 currently encounters significant periods of delay at the News Road and Monticello Marketplace intersections with Monticello Avenue. These conditions are the result of a large variety of retail services offered in this area combined with increased residential development to the west and north, lack of roadway capacity, and uncoordinated traffic signal timing. To the east of Route 199 lies the evolving development of New Town, the James City County Courthouse Complex, Ironbound Road, and access to the College of William and Mary. Development within New Town is progressing and is intended to result in a mix of higher density residential, retail/service, and employment centers.

Notably the interchange of Monticello Avenue with Route 199 is a single point urban interchange or SPUI. This interchange configuration offers the opportunity to provide more capacity and vehicle mobility within an area normally reserved for a diamond interchange.

Increased development within James City County and at New Town will result in the evolution of Monticello Avenue from a traditional suburban arterial roadway to a more urban arterial type roadway while retaining its purpose of accommodating both local and intraregional travel. Monticello Avenue will remain a four-lane divided facility but it is likely the posted speed limit will be reduced to 35 mph to support a more urban function (i.e., the interaction of vehicles, pedestrians, and bicyclists). Interconnected and coordinated traffic signals will accommodate progression of traffic along the corridor which is vital to the sustainment of acceptable traffic operations in the future.

As an urban roadway Monticello Avenue will continue to carry significant vehicle traffic while providing for some transit, bicycle and pedestrian travel. Monticello Avenue will continue to serve the commercial/retail and employment centers located along yet off the mainline of the corridor. As an urban facility the roadway will accommodate moderate to lower vehicle speeds and four vehicle travel lanes. Additional laneage may be introduced where appropriate. Primary street connections are spaced accordingly with few local access driveways. The presence of a landscaped median reduces conflicts and restricts turning movements to designated intersections. Additional crosswalks along the Monticello Avenue corridor will be strategically located at intersections that best accommodate pedestrian activities. The multi-use path will be retained along the corridor to promoted pedestrian and bicyclist mobility.

Traffic conditions along Monticello Avenue will obviously change. With a reduced speed limit and increased development along Monticello Avenue, at New Town, and in James City County travelers can expect to experience more delay. West of Route 199 travelers can expect to encounter travel speeds in the range of 10 MPH to 20 MPH depending upon direction of travel and time of day. The westbound movement will continue to encounter slower travel speeds and greater delay. Westbound volumes will continue to be the

predominant movement during the PM peak hour as traffic enters and exits the various retail/commercial activity centers located along the north side of Route 199. This condition will be further exacerbated if capacity improvements are not implemented at the Monticello Avenue/News Road intersection and the Monticello Avenue/Monticello Marketplace intersection. These intersections encounter significant delay today and will continue to do so without the necessary improvements.

East of Route 199 travelers will encounter travel speeds in the range of 15 MPH to 25 MPH again depending upon direction of travel and time of day. Like the west side of Route 199 the westbound direction of Monticello Avenue will encounter the greatest amount of delay. However, the segment of Monticello Avenue east of Route 199 is being improved and has plans for additional improvements to accommodate existing and future demand. The improvements include turn-lanes, through lanes, intersection improvements, and traffic signals necessary to promote and enhance traffic progression between the Monticello Avenue/Ironbound Road intersection to the east and then Monticello Avenue/Route 199 interchange to the west.

To promote traffic progression along the Monticello Avenue corridor existing and future traffic signals will need to be interconnected and coordinated. It is likely that as a result of the Route 199 interchange, Monticello Avenue will be divided into two systems as the interchange offers a logical or expected stopping point from either direction along the corridor. Signal coordination and associated signal timing plans will be developed to accommodate variations in traffic volumes by direction (eastbound or westbound) and time of day (AM, Mid-Day, PM, Weekend, etc.).

Side street access or delay will not be the priority along the corridor. The emphasis will be to maintain traffic progression along the mainline during weekday AM and PM peak periods. This is often the case when an arterial such as Monticello Avenue traverses an area. However, as a result of the significant retail/commercial activity in the area side street access and delay during mid-day and weekend operations should be reduced as there will be lower traffic volumes on the mainline. Green time for the side streets at the signalized intersection will need to be increased as a result of retail traffic during these times and to minimize side street delay.

It should be noted that the overall feel of Monticello Avenue will change. With development within the County and at New Town travelers can expect to encounter greater periods of delay. The New Town area will transform and should be viewed in more of an urban context resulting in lower travel speeds and more pedestrian activity.

It is expected that LOS along the corridor in the future will be in the range of D and E depending upon time of day, intersection, direction of travel. Travel conditions at LOS D along an urban arterial as that described are (considered) acceptable, particularly when those conditions are anticipated to occur 10 to 15 years into the future. For urban facilities VDOT and some other municipalities will accept LOS D due to expected higher density development, greater traffic demand from adjacent activity centers, increased pedestrian and bicyclist activity, and the fact that the horizon year for the proposed facility is often 20 to 25 years in the future. James City County may want to develop adequate public facilities policy that determines LOS D as acceptable for designated urban facilities”.

**1997 Proffer Criteria:** The 1997 proffers require an updated traffic impact study to be submitted with the rezoning of each section from R-8 to MU. These proffers also specify operational standards for the

Monticello Avenue and the methodology and criteria for the studies. The 1997 proffers require the provision of road improvements to maintain an overall level of service (LOS) C for the design year of 2015 at all New Town intersections. Of note, however, is a relaxed level of service standard in the 1997 proffers that permits lane groups to have LOS D if they are part of a coordinated traffic signal system and the overall intersection maintains LOS C. Although LOS C for all lane groups is the accepted standard for most roads in the County by both staff and VDOT, it is a very suburban type standard that produces very wide roads. An overall LOS D is an accepted urban standard and produces narrow more pedestrian-friendly design and traffic movement and is used in most cities. In an effort to reduce the scale of the road network and the related improvements (i.e., dual left-turns) so that the streets would fit the vision of New Town, the relaxed standard was accepted by James City County and VDOT for some lane groups in 1997.

**Traffic Study Findings:** The updated traffic impact study is based on existing peak p.m. hour traffic and counts were compiled by VDOT and DRW Consultants, LLC. The nine intersections along Monticello Avenue that were analyzed for this study include; Ironbound Road, Courthouse Street, New Town Avenue, Settler's Market Boulevard (proposed), Old Ironbound Road (Casey Boulevard), State Route 199, WindsorMeade Way, Monticello Marketplace and News Road. It should be noted that the intersections at Monticello Marketplace and News Road were not included in the 1997 proffers, but were analyzed for this traffic impact study at the County's request. While these two intersections were designed by VDOT as part of the Route 199 project, the other seven intersections were designed by New Town's traffic consultant. Three scenarios were analyzed in the applicant's traffic impact study: 2015 traffic conditions without Section 9, 2015 traffic conditions with Section 9; and 2015 traffic conditions with Sections 7, 8 and 9.

**The results of the traffic impact study indicate that the seven intersections included under the 1997 proffers (Ironbound Road to WindsorMeade Way) will operate in accordance with the original proffers. An overall LOS C is projected as is a LOS D for some lane groups for these seven intersections for all three scenarios in 2015; therefore the proposal meets the standards of the original New Town proffers.**

It was also demonstrated that the other intersections not part of the 1997 proffers will also meet the 1997 proffer standards except at the News Road intersection for 2015. The News Road intersection is projected to achieve an overall LOS D for all three scenarios. Both the Monticello Marketplace intersection and News Road intersection have individual turning lane movements that do not achieve a LOS D in all three scenarios. Although these intersections were not included in the original New Town proffers, these intersections are vital in regards to the movement of traffic along the Monticello Avenue corridor. These intersections will require upgrades to achieve the 2015 LOS of the other seven intersections along this corridor. The applicant has submitted conceptual plans for recommended road improvements on the west side of Monticello Avenue. Staff and Kimley-Horn have reviewed the conceptual road improvement plans and with some minor engineering adjustments, both believe the conceptual road improvements will allow for smoother traffic flow along the west side of Monticello Avenue.

Kimley-Horn has provided staff with cost estimates for the conceptual road improvements and for underground utility relocation, which total \$860,000. Kimley-Horn estimated that Section 9 will contribute approximately 8% of the traffic to the two most problematic intersections along Monticello Avenue, News Road and Monticello Marketplace, and DRW Consultants and the applicant have also agreed on this figure. The developers of Section 9 have proffered to contribute 8%, or \$68,800 towards the total cost of upgrading the road system along the west side of Monticello Avenue. This is a cost sharing funding mechanism similar to that adopted by the Board of Supervisors for Five Forks.

**Additional Analyzes by Staff's Consultant:** At the request of staff, Kimley-Horn conducted LOS analyses for the 9 intersections in the traffic study and an arterial LOS analyses for the Monticello

Avenue corridor for a no build scenario and with the development of Section 9 in order to evaluate the potential cumulative impacts of other developments in the corridor and to determine when LOS may drop below LOS C. These analyses applied the lane configurations used in the February 28, 2006 traffic study and did not include any road improvements in addition to those in the February 28, 2006 traffic study. The results are based on PM peak hour traffic and use a conservative approach assuming a constant annualized growth rate (see table below).

For the no build scenario the three intersections (News Road, Monticello Marketplace and WindsorMeade Way) on the west side of Monticello Avenue will achieve a LOS D or better in the year 2020. In the year 2023 the WindsorMeade Way intersection will operate at a LOS D; however the News Road and Monticello Marketplace intersections will fall to a LOS E. The remaining intersections (Route 199, Casey Boulevard, New Town Avenue, Courthouse Street and Ironbound Road) in the no build scenario will achieve a LOS D or better in the year 2020. In the year 2023 the Route 199 intersection and New Town Avenue intersection will fall to a LOS E, but all other intersections on the east side of Monticello Avenue will operate at a LOS D or better in 2023.

With the development of Section 9 the News Road and Monticello Marketplace intersection will operate at a LOS E in the year 2020 and both fall to a LOS F in the year 2023. The WindsorMeade Way intersection will operate at a LOS C in 2020, but will fall to a LOS E in the year 2023. The remaining intersections on the east side of Route 199, including the Route 199 intersection, will operate at a LOS D or better in the year 2020 with the development of Section 9. In the year 2023 the Route 199 intersection and New Town Avenue intersection both fall to a LOS E, however all other intersection east of Route 199 will operate at a LOS D or better in 2023.

<b>Intersection</b>	<b>2020 LOS without Section 9</b>	<b>2020 LOS with Section 9</b>
Ironbound Road	C	C
Courthouse Street	B	C
New Town Avenue	D	D
Settlers Market Boulevard	n/a *	C
Casey Boulevard	A	C
Route 199	D	D
WindsorMeade Way	B	C
Monticello Marketplace	D	E
News Road	D	E

<b>Intersection</b>	<b>2023 LOS without Section 9</b>	<b>2023 LOS with Section 9</b>
Ironbound Road	D	D
Courthouse Street	C	C
New Town Avenue	E	E
Settlers Market Boulevard	n/a *	D
Casey Boulevard	B	D
Route 199	E	E
WindsorMeade Way	D	E
Monticello Marketplace	E	F
News Road	E	F

\* Settlers Market Boulevard is not constructed without the development of Section 9

In addition to analyzing the intersections beyond 2015, Kimley-Horn completed a similar analysis of the

PM peak hour arterial LOS for the westbound and eastbound movements on Monticello Avenue. Under the no build scenario, the eastbound movements will operate at a LOS C in 2020 and 2023 while the westbound movements will operate at a LOS D in 2020 and a LOS E in 2023. With the development of Section 9, the eastbound movements will operate at a LOS C in 2020 and a LOS D in 2023 while the westbound movements will operate at a LOS E in 2020 and a LOS F in 2023.

With or without the development of Section 9, increased delays and congestion will be experienced along Monticello Avenue. Without Section 9, all but two intersections (Casey Boulevard and Courthouse Street) are a LOS D or worse by 2023. By 2025 all intersections with the exception of Casey Boulevard, Courthouse Street and Ironbound Road will operate at a LOS E or worse. With the completion of the conceptual road improvements to the west side of Monticello Avenue, staff believes that the LOS for the intersections located on the west side of Route 199 and the westbound movements as a whole may be better in 2023 than predicted by the Kimley-Horn analyses.

DRW Consultants reviewed the LOS analyses out to the year 2023 and made the following comments:

“KHA included traffic analysis for forecast years 2017, 2020 and 2023 with progressively increasing traffic and lower LOS results over time. This is not the technique that was used in the February 28, 2006 DRW traffic study. In fact, traffic from existing development should not be expected to increase indefinitely in the future, and traffic from proposed new development should not be expected to increase indefinitely beyond conventional trip generation factors.

It is my belief that the potential for traffic growth and options to accommodate that growth on Monticello Avenue beyond 2015 is probably more problematic for the west side of Route 199 than for the east side of Route 199. On the east side of Route 199, I believe there is less unplanned, vacant land for development with access on Monticello Avenue, and there is potential of the widening of Ironbound Road and the Ironbound Connector to increase capacity for access to Route 199 and the Williamsburg area.

I do not believe the Kimley-Horn 2023 LOS results are compelling evidence for any commitment at this time to provide additional road improvements on Monticello Avenue beyond that in the February 28, 2006 traffic study and the West Monticello Concept Plan. The Kimley-Horn 2023 LOS results do illustrate that future development translates to a need to monitor the balance between traffic growth and road capacity”.

Staff is aware the LOS along the Monticello Avenue corridor will drop as development continues in this area of the County. Monticello Avenue is planned to be an urban corridor in this section and the traffic movements will differ from the majority of roads in the County. This difference has been anticipated since the original approval in 1997. The Monticello Avenue corridor will experience drops in LOS with or without the development of Section 9. Staff has worked very intensely with the applicant and the two traffic consultants to understand the impacts that Section 9 will have on this corridor. The applicant has demonstrated that Section 9 will be in accordance with the 1997 proffers. The Planning Commission and the Board of Supervisors should determine how to assess the traffic impacts outside the scope of the original proffers, including the LOS for the News Road and Monticello Marketplace intersections and the LOS analyses beyond the year 2015. Staff would note that it is not unreasonable to expect decreased LOS on most roadway systems 15-20 years in the future. It is also not unreasonable to expect travel patterns to shift as other retail centers come on-line. Based on the predicted LOS for the Monticello Avenue intersections and corridor without the development of Section 9, staff believes the traffic impacts associated with the development of Section 9 will be mitigated to the extent feasible with the proffered road improvements and the implementation of the conceptual road improvements to the west side of

Monticello Avenue.

Street design within all of New Town is based on street design cross sections contained in the Design Guidelines. The cross sections include street trees, medians, lighting and pedestrian/bicycle facilities. All streets within Section 9 have the potential to be privately owned and maintained (non-gated); however, the intention is that most all streets will be publicly owned, maintained, and constructed to VDOT standards unless VDOT will not approve the streets as substantially described in the Guidelines. The proffers provide an acceptable mechanism for the maintenance of any private streets.

## **COMPREHENSIVE PLAN**

### **Land Use Map Designation**

The 2003 Comprehensive Plan shows the entire New Town master planned area, which includes all the property requested for rezoning, as Mixed Use on the Land Use Plan map. The Comprehensive Plan states that mixed use areas:

- are centers within the PSA where higher density development, redevelopment, and/or a broader spectrum of use is encouraged;
- are intended to maximize the economic development potential of these areas by providing areas primarily for more intensive commercial, office, and limited industrial uses when located at or near the intersections of major thoroughfares;
- are intended to provide flexibility in design and land uses in order to protect and enhance the character of the area; and
- require nearby police and fire protection, arterial road access, access to public utilities, large sites, environmental features such as soils and topography suitable for intense development, and proximity to large population centers.

The mixed-use land designation further states that moderate to high-density residential uses could be encouraged in the Mixed Use area where such development would compliment and be harmonious with existing and potential development. The timing and intensity of commercial development at a particular site is controlled by the maintenance of an acceptable level of service for roads and other public services, the availability and capacity of public utilities, and the resulting mix of uses in a particular area. The consideration of development proposals in Mixed Use areas should focus on the development potential of a given area compared to the areas infrastructure and the relation of the proposal to the existing and proposed mix of land uses and their development impacts.

During the 2003 Comprehensive Plan Update, the New Town Mixed Use area description was reviewed to ensure it continues to generally support the implementation of the winning town plan from the design competition and now states: For the undeveloped land in the vicinity of and including the Route 199/Monticello Avenue interchange, the principal suggested uses are a mixture of commercial, office, and limited industrial with some residential as a secondary use. The development in this area should be governed by a detailed Master Plan which provides guidelines for street, building, and open space design and construction which complements the scale, architecture, and urban pattern found in the City of Williamsburg. In summary, staff believes that the current proposal is consistent with the Mixed Use designation of the Comprehensive Plan.

### **Other Considerations**

**Community Character:** The other primary consideration in the Comprehensive Plan for this master planned area is its location in the New Town Community Character Area (CCA) and along the Monticello Avenue, Ironbound Road, and Route 199 Community Character Corridors (CCC). The CCA generally calls for a superior design which provides a balanced mixture of businesses, shops, and residences in

close proximity to one another in an urban environment. It also describes more specific design standards to which development in that area should adhere. The Ironbound Road CCC and Monticello Avenue CCC are primarily suburban/urban in nature along the New Town borders, and as such, the built environment, formal landscaping, and pedestrian amenities should dominate the streetscapes in these corridors.

Staff believes that Section 9 is consistent with the Comprehensive Plan land use and CCA and CCC designations given the uses and densities proposed in the Master Plan, the proposed proffers and the standards set forth in the design guidelines. Moreover, the design guidelines establish land uses and streetscape standards for the Monticello Avenue corridor which meet the intent of the CCA and CCC language in the Comprehensive Plan.

### **RECOMMENDATION**

Staff finds this proposal for New Town Section 9 generally consistent with the adopted 1997 New Town Master Plan and Design Guidelines. The proposed development is compatible with surrounding zoning and development and consistent with the 2003 Comprehensive Plan recommendations. Following the March Planning Commission meeting, the applicant, traffic consultants and staff have worked to resolve the outstanding traffic issues. Staff believes that the applicant and the consultants have adequately addressed the traffic concerns along the Monticello Avenue corridor. Staff recommends the Planning Commission recommend approval of the rezoning and master plan applications to the James City County Board of Supervisors and the acceptance of the voluntary proffers.

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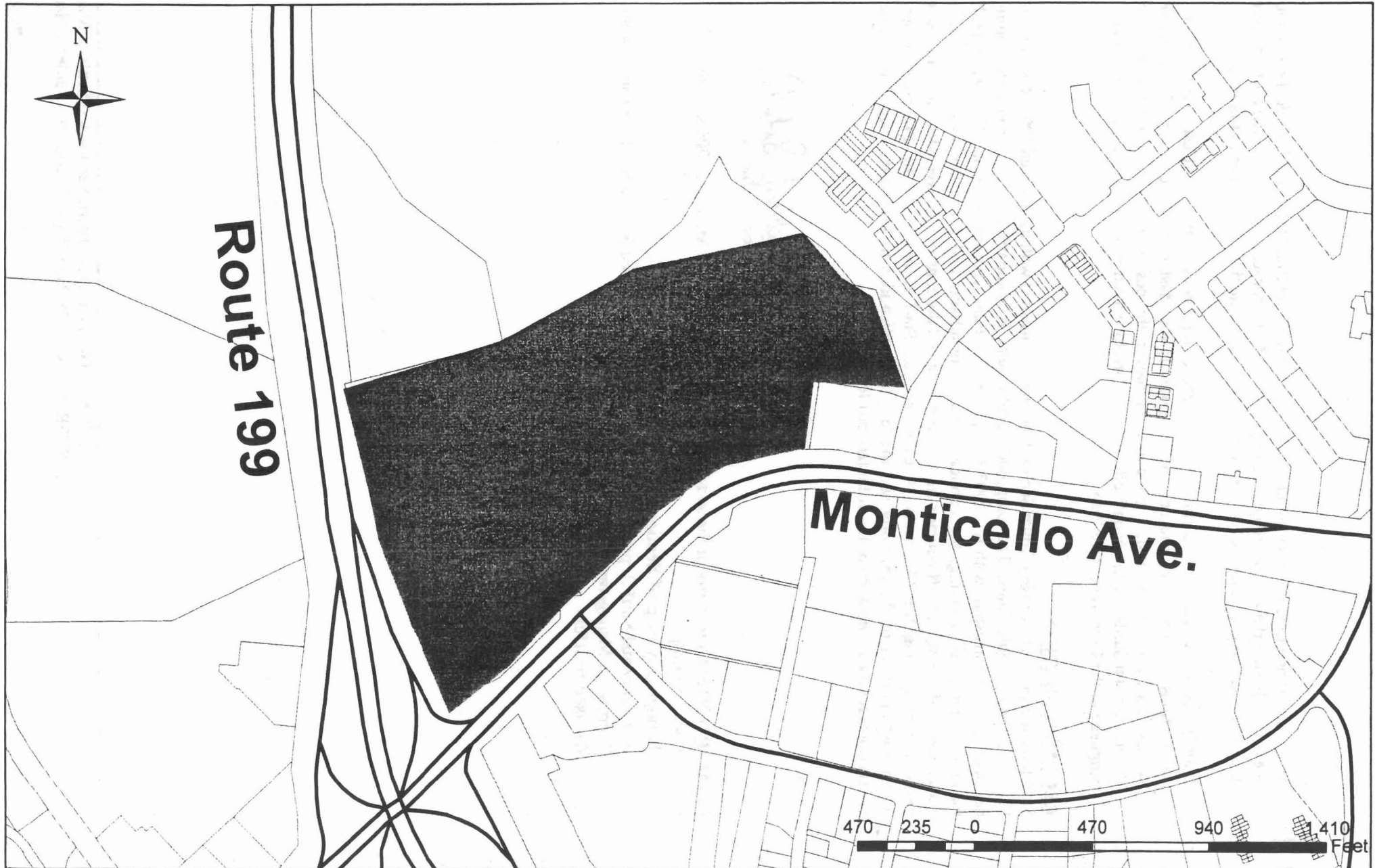
Matthew J. Smolnik

**ATTACHMENTS:** (A majority of the attachments were included in the March 6, 2006 staff report)

1. Location map
2. Topography map of Section 9
3. Environmental Staff Report on the Powhatan Creek Watershed Management Plan and Master Stormwater Management Plan
4. Revised proffers

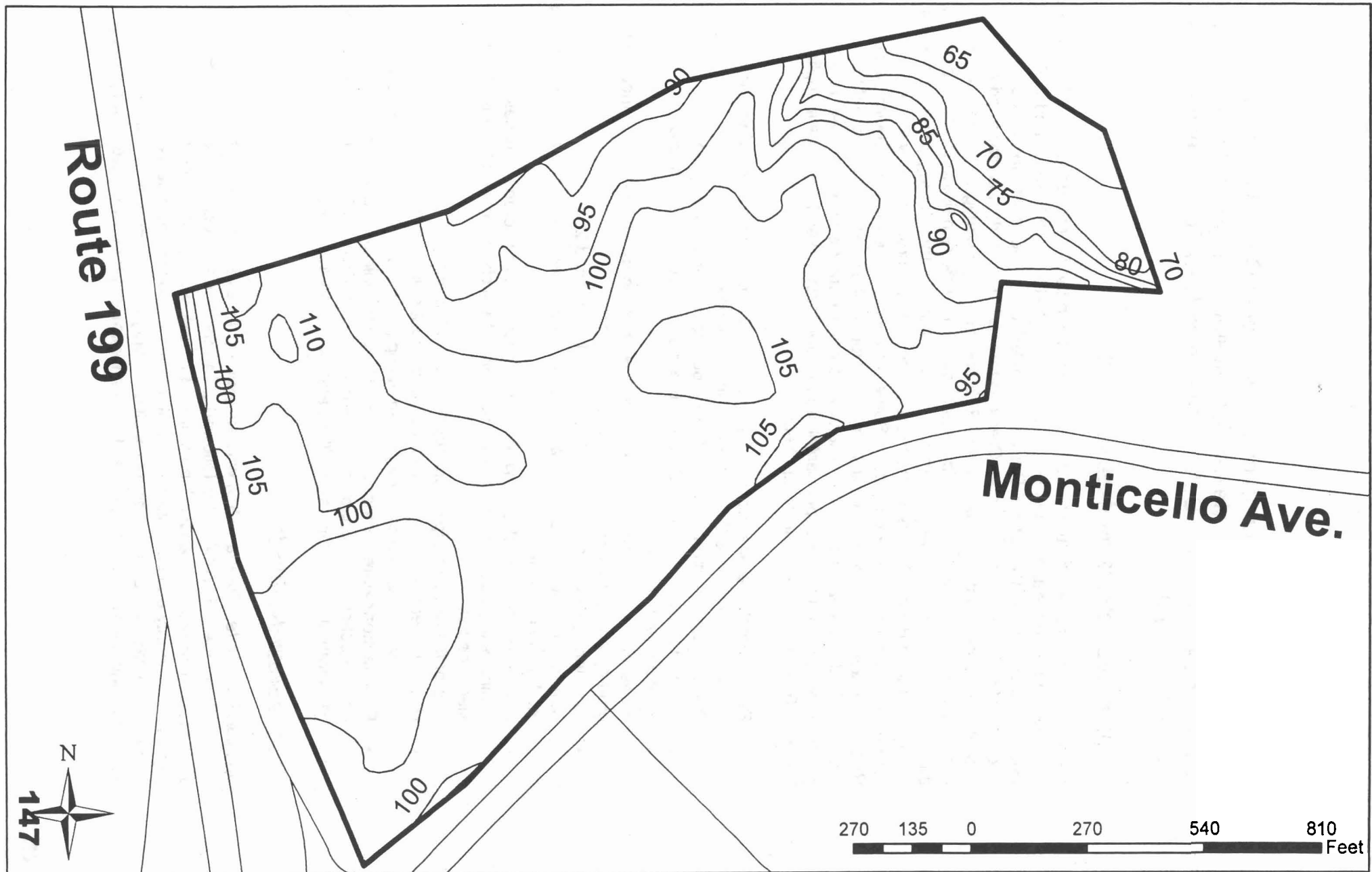
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# **New Town Section 9: Settler's Market**



# JCC-Z-16-05 / MP-13-05

## New Town Section 9 Topography



## Environmental Staff Report on the Powhatan Creek Watershed Management Plan and Master Stormwater Management Plan as they apply to New Town and Settler's Market at New Town, Section 9 (Z-16-05/MP-13-05)

### **Powhatan Creek Watershed Management Plan**

New Town is primarily situated in Subwatershed 208 in the Powhatan Creek Watershed Management Plan area, particularly in catchments 208-103-1, 208-103-2 and 208-101-1. Subwatershed 208 (Lower Chisel Run) is characterized as the most threatened subwatershed in all of the Powhatan Creek watershed. Currently it is classified as sensitive, it contains large populations of RTE species, large contiguous forest tracts, excellent stream habitat and floodplain wetlands. With 49% remaining developable land, this subwatershed is expected to shift to impacted status in the coming years as a result of large planned developments in the headwaters unless extraordinary watershed protection measures are implemented. Some indication of the future of Lower Chisel Run can be seen in the current condition of the Upper Chisel Run. Features of the subwatershed and catchments and recommendations from the approved watershed management plan and the supplemental stormwater master plan report, as it applies to the New Town area, are summarized below:

- RPA extension areas (not endorsed by the BOS but accomplished through the revised Chesapeake Bay Preservation Ordinance)
- Priority Conservation Area C-24 (RTE population near New Town)
- Priority Conservation Area C-25 (RTE population sensitive to hydrology)
- Contiguous forest areas
- Forest Retention-retain as much forest as possible by minimizing clearing and grading and reducing the development footprint
- Excellent general stream conditions (in Subwatershed 208)
- Streams in Lower Chisel Run are currently in excellent condition and rank among the best in the watershed
- Application of Special Stormwater Criteria for Stream Protection Areas to minimize impacts of new development on natural channels and to rare wetland plant species
- Use of the "parallel piping concept" to regional ponds
- Use of better site design to reduce the amount of impervious cover
- Stormwater quality treatment on-site, using practices such as bioretention
- Provide stormwater recharge on-site through techniques such as rooftop disconnection, non-rooftop disconnection and BMPs that allow for infiltration such as bioretention, surface sand filters and infiltration trenches.

### **Special Stormwater Criteria**

*Special Stormwater Criteria (SSC)* was adopted by the Board of Supervisors by a 5-0 vote on December 14, 2004. This followed a 14-month long process, which started in June of 2003, in which an assembled stormwater task group, consisting of 10 members, 1 guest and County advisory staff, formulated and developed the criteria. *Special Stormwater Criteria (SSC)* is a direct result of Priority # 7 and Priority # 3 of the Powhatan and Yarmouth Creek watershed management plans which were adopted by

the Board in February, 2002 and October, 2003, respectively. Special Stormwater Criteria (SSC) is a layer of stormwater criteria above and beyond the County's 10-point water quality and stream channel protection (quantity control) stormwater management criteria. Objectives of *Special Stormwater Criteria (SSC)* include:

- Protection of specific stream reaches from accelerated channel erosion;
- Protection of conservation areas from the impacts of stormwater runoff;
- Protection of high quality wetlands from the effects of altered water level fluctuation;
- Developing more effective criteria and locations for stormwater practices in watersheds for new development;
- Retrofitting of existing facilities and uncontrolled areas of the watershed to improve water quality

Special Stormwater Criteria is a step-by-step process in which existing erosion and sediment control, clearing plan and environmental inventory information is used to determine the presence of HSG A & B soil groups on the site, whether or not they are impacted and if saved in their entirety, the criteria is achieved. If HSG A&B soils are not present or saved in their entirety, then a required number of special stormwater criteria practices (SSCP's) must be applied to a site based on the site's disturbed area amount. Currently over 39 SSCP's are available to choose including on- and offsite design practices, structural and non-structural practices, slope/grading practices, on-lot stormwater management practices, BMP enhancement and stream restoration measures.

As it applies to New Town, no development sections to date have been subject to the Special Stormwater Criteria. There are several reasons for this including:

- New Town master planning and development was well in advance of development of the SSC Criteria (June 2003 to December 2004).
- It was expected that a neotraditional urban design concept, such as New Town, would have severe difficulty meeting the criteria which could have resulted in wholesale changes to the development concept.
- It appeared that the final master stormwater management plan for New Town, to be reviewed and approved by the County, would require a low impact development component in order to meet the County's 10-point criteria.

Rezoning efforts for New Town Sections 2 & 4 (Z-06-03) and New Town Section 3 & 6 (Z-05-04; MP-05-04) both included general stormwater management plan notes to use the "parallel piping concept" and to "evaluate the use of civic spaces, common areas, parking islands and other landscaped areas as water quality enhancement features. Due to reliance on site specific plans of development (grading, drainage, etc.), these would be worked out upon the submission of applicable plans of development within Sections 2&4 and 3&6.

In summary, it was staff's opinion that the County efforts to obtain LID-IMP features during rezoning and for the master stormwater management plan would end up being very similar to application of SSC.

## **Master Stormwater Management Plan for New Town**

New Town uses a master stormwater management plan to show Chesapeake Bay Preservation compliance under the County's 10-point system for water quality. This means that each individual plan of development section does not have to achieve 10-points but the project overall must demonstrate 10-point compliance through the use of structural BMPs, dedicated natural open space (conservation easement) and other approved components.

The earlier approved versions of the master stormwater management plan used five structural BMPs in combination with natural open space to achieve compliance. However, many of the proposed structural BMPs were situated in main stream, wetland areas and there was extreme difficulty in acquiring necessary state and federal wetlands permits for this arrangement. The County approved the master stormwater management plan in 1997, and a nationwide wetlands permit was issued in 1998 for one of the BMPs. However, at least one of the other regulatory agencies did not approve the overall concept of the master stormwater plan. So the master plan was significantly revised and submission to the permitting agencies was delayed until March, 2004. Based on that submission, a wetlands permit for Sections 3 & 6 of New Town was approved in December, 2005, which increased the width of the variable width RPA buffer for those sections by five feet. Another permit application for Sections 7, 8 & 9 was submitted in December, 2005.

One result of the approved and submitted permit applications is that the buffer around the small whorled pagonias is proposed to increase in size. Another result of the process was that only one of the larger BMPs was allowed in the wetlands, the others needed to be removed. Therefore, a revised master stormwater management plan was proposed which moved the structural BMPs upland to avoid environmentally sensitive areas and proposed a Low Impact Development component to achieve the required 10-points.

The revised master stormwater management plan was approved by the County Environmental Division on December 22, 2004. The current master stormwater management plan uses thirteen (13) structural BMPs and dedication of 58.11 acres on natural open space and a Low Impact Development component which will utilize thirteen (13) Intergrated Management Practices (IMPs) to serve 17 of the project's 374 acres. In order to use the LID-IMP component within the County's 10-point system, a formal variance request and approval was necessary. The variance request and subsequent approval for an LID component was consistent with the County's Chesapeake Bay Preservation program and use of LID as encouraged by CBLAD and the Virginia DCR. Other similar master planned projects in James City County which utilize an LID component is Colonial Heritage at Williamsburg.

There were three distinct conditions imposed on the LID component of the stormwater master plan. These were as follows:

- LID strategies and IMPs must be used on at least 17 acres of the project;
- The conversion of BMP 53 to a wet pond needs to include a forebay;
- The total BMP count for the project will need to be updated as land planning continues and drainage divides are modified by development activities.

## **Stormwater Management in Section 9**

Section 9 totals approximately 58 acres. The revised Master Stormwater Management Plan shows that Section 9 will be treated by three (3) proposed stormwater management BMPs including BMP A04 (a 10-point BMP), BMP A06 (a 4-point BMP) and BMP A07 along with any applicable dedicated natural open space consistent with the master plan. No LID-IMPs were specifically proposed in Section 9 per the master stormwater management plan. However, the use of these measures can be added to the Section 9 rezoning by use in the proffers of the following statements that were contained on the previously approved Section 2 & 4 (Z-06-03) and Section 3 & 6 (Z-05-04) rezoning conceptual plan maps.

1. Unless otherwise approved by the Environmental Director, all piped stormwater outfalls will be directed to a best management practice (BMP).
2. As practicable, Owner will evaluate the use of civic spaces, common areas, parking islands and other landscaped areas as water quality enhancement features.

## **Variable Width RPA Buffer**

An RPA exception was granted on December 22, 2004 to allow for a variable width buffer on the New Town project. This followed a specific Chesapeake Bay Exception request for Section 4, Block 8 which was heard and approved by the Chesapeake Bay Board on May 12, 2004. For the variable width buffer request, a Water Quality Impact Assessment (WQIA) was provided to support the RPA exception request for proposed impacts to the RPA due to road construction, sewer extensions and for stormwater management facilities, consistent with the revised master stormwater management plan. There were no proposed impacts to the seaward 50-ft. buffer except for road crossing, BMP outfalls and utilities. The WQIA proposed a variable width buffer to replace the standard 100-foot buffer with a 25-foot minimum undisturbed buffer around intermittent streams and a 50-foot minimum buffer around perennial streams, except for the Bay Board approved Section 4, Block 8 buffer. The WQIA documented that the variable width buffer would remove more phosphorus than a 100-foot buffer. The major factor for consideration of the exception request was that a strict application of the 100-ft. buffer around perennial streams on the site would have greatly impacted the master planning efforts and approvals that had been granted for the project prior to revised perennial stream and RPA identification processes that become effective on January 1<sup>st</sup> 2004 as none of the streams on the New Town site were designated as perennial prior to the ordinance revisions. The variable width buffer was allowed for application to this specific review case only because of the master planning that occurred on the project prior to January 1, 2004. The RPA exception was granted administratively by the Environmental Director on December 22, 2004 with the following conditions:

- Individual exceptions would also be required at the time of site or subdivision plan approval for the specific encroachments into the buffer for BMP outfalls, utility lines and road crossings as shown on the plan;
- The excess clearing (approximately 40 ft. wide) associated with the sewer line along Section 7 must be restored with native vegetation.

### **Other Items to Note**

James City County performed a bioretention demonstration project on the grounds of the Williamsburg/James City County Courthouse. One of the purposes of performing the demonstration project was to actively demonstrate how LID-IMP concepts could be successfully implemented within the New Town project. The County spent around \$65,000 on this demonstration project of which \$25,000 was received back in a grant from the National Fish and Wildlife Foundation. Currently, New Town is taking credit for this facility in their master stormwater management plan.

County Environmental Division staff has routinely suggested and coordinated with the applicant/plan preparer on opportunities to incorporate LID-IMP features into specific plans of development. To date, LID-IMP measures include two bioretention areas in Block 2 and tree box filters (Filterra) in Block 6 & 7. Opportunities for additional LID-IMP measures include the use of manufactured BMP systems for pretreatment purposes in ultra-urban settings present in New Town such as residential Block 8, Phase 1B.

Tax Parcels: 3840100002, 3840100003, 3840100052 and a portion of 3840100056

**NEW TOWN - SECTION 9 - SETTLER'S MARKET AT NEW TOWN -  
PROFFERS**

THESE PROFFERS are made as of this \_\_\_\_ day of March, 2006 by **WHS LAND HOLDINGS, LLC**, a Virginia limited liability company ("WHS"), **NEW TOWN ASSOCIATES**, a Virginia limited liability company ("Associates") (together with their respective successors and assigns, "Owner") (index each as a "grantor"); and the **COUNTY OF JAMES CITY, VIRGINIA** (the "County") (index as the "grantee").

**RECITALS**

R-1. WHS is the owner of certain real property in James City County, Virginia, being more particularly described on Exhibit A attached hereto and made a part hereof (the "WHS Property")

R-2. WHS has contracted to sell the WHS Property to AIG Baker Development, LLC ("Baker").

R-3. Associates is the owner of certain real property in James City County, Virginia, being more particularly described on Exhibit B attached hereto and made a part hereof (the "Associates Property").

R-4. Associates has contracted to sell a portion of the Associates Property to Baker and a portion of the Associates Property to Developers Realty Corporation ("DRC").

R-5. Baker and DRC intend to construct a mixed use commercial/residential development on their respective properties pursuant to an agreed upon Master Plan. The

WHS Property and the Associates Property is hereinafter collectively called the "Property".

**R-6.** The Property is located within and in the vicinity of a development commonly known as "New Town." The New Town development is subject to and governed by (i) certain proffers entitled the "New Town Proffers" dated December 9, 1997 of record in the Clerk's Office of the Circuit Court for the City of Williamsburg and County of James City, Virginia (the "Clerk's Office") as Instrument No. 980001284, (ii) a conceptual master land use plan entitled "New Town Plan" prepared by Cooper, Robertson & Partners and AES Consulting Engineers, dated July 23, 1997 and revised December 8, 1997 (the "New Town Master Plan"), (iii) design guidelines entitled "NEW TOWN DESIGN GUIDELINES, JAMES CITY COUNTY, VIRGINIA," prepared by Cooper, Robertson & Partners dated September 3, 1997 and (iii) the New Town - Sections 2 and 4 - Proffers dated November 1, 2001 of record in the Clerk's Office as Instrument No. 010023715 (the "New Town Design Guidelines"), (iv) New Town - Sections 3 and 6 - Proffers dated October 25, 2005, Instrument No. 040027471, (v) Supplemental Proffers - New Town - Sections 2 and 4, dated October 3, 2003, Instrument No. 030032005, and (vi) New Town - Section 5 - Proffers, April 23, 2004, Instrument No. 040020235.

**R-7.** In furtherance of the vision embodied in the New Town Master Plan and New Town Design Guidelines, Baker and DRC, with the consent of Owner, have applied for a rezoning of the Property from M-1, Limited Industrial, and R-8, Rural Residential to MU, Mixed-Use, with proffers. The rezoning of the Property to MU, with proffers, is in fact consistent both with the land use designation for the Property on the County's

Comprehensive Plan and the statement of intent for the MU zoning district set forth in Section 24-514 of the County's Zoning Ordinance in effect on the date hereof (the "Zoning Ordinance").

R-8. Owner has submitted a Community Impact Statement to the County's Director of Planning which satisfies the requirements of Section 24-515(c) of the Zoning Ordinance and the New Town Proffers, which Community Impact Statement includes, without limitation, a Fiscal Impact Study which has been reviewed and accepted by the County in connection with the rezoning request referenced above. The Community Impact Statement and Fiscal Impact Statement are on file with the County's Director of Planning.

R-9. Pursuant to subsection 2(b) of the New Town Proffers, there has been established a Design Review Board ("DRB") for development of the property subject to the New Town Proffers.

R-10. Pursuant to the New Town Proffers, the DRB is charged with the responsibility of rendering a written advisory recommendation to the County's Planning Commission and to the County's Board of Supervisors as to the general consistency with the New Town Master Plan and the New Town Design Guidelines of any proposed master plans and guidelines in future rezonings of the property subject to the New Town Proffers.

R-11. Owner has previously submitted to the DRB, and the DRB has previously approved in writing as consistent with both the New Town Master Plan and the New Town Design Guidelines, a master plan entitled "SETTLER'S MARKET AT NEW TOWN, MASTER PLAN", dated December 22, 2005 (the "Section 9 Master Plan"), and

design guidelines entitled "SETTLER'S MARKET AT NEW TOWN, SECTION 9 DESIGN GUIDELINES", dated December 5, 2005 (the "Section 9 Guidelines") for the Property, copies of which Section 9 Master Plan and Section 9 Guidelines are on file with the County's Director of Planning.

R-12. In accordance with paragraph 4 of the New Town Proffers, Owner has submitted to the County a traffic study entitled "Traffic Study for Settler's Market at New Town" dated February 28, 2006 prepared by DRW Consultants, Inc. (the "Traffic Study"), a copy of which is on file with the Director of Planning.

R-13. A small whorled pogonia survey was conducted on the Associates Property revealing that no small whorled pogonia plants exist on the Associates Property. The report generated from that survey is entitled "SEARCHED FOR THE SMALL WHORLED POGONIA, ISOTRIS MEDEOLOIDES, ON THE CASEY TRACT, CHISEL RUN WATERSHED, WILLIAMSBURG/JAMES CITY COUNTY, VIRGINIA SPRING/SUMMER 1996" (the "1996 report"), prepared by Dr. Donna M. E. Ware of the College of William & Mary for Williamsburg Environmental Group, Inc. The results of the 1996 report are illustrated on sheet 6, entitled "Master Stormwater Plan", of the New Town Master Plan. A copy of the 1996 report is on file with the County Planning Director. A small whorled pogonia survey was conducted on the WHS Property revealing that no small whorled pogonia plants exist on the WHS Property. The report generated from that survey is set forth in the document entitled "ENVIRONMENTAL RESOURCE INVENTORY OF THE AIG BAKER TRACTS I & II AT NEW TOWN", prepared by Williamsburg Environmental Group, Inc. and dated September 2005, a copy of which is on file with the Director of Planning.

R-14. A Phase I Archeological Study (the "Casey Study") was conducted on the Associates Property as detailed in that certain report entitled "A Phase I Archeological Survey of the Casey Property, James City County, Virginia", dated July 30, 1990, prepared for the Casey Family c/o Virginia Landmark Corporation by the William and Mary Archeological Project Center, which report has been submitted to, reviewed and approved by the County Planning Director. The Casey Study identified only one (1) area of archeological significance on the Property, Site 44JC617, and recommended such site for Phase II evaluation. Subsequent to the Casey Study, Associates commissioned a second Phase I Archeological Study (the "Associates Study") of, *inter alia*, Site 44JC617 as detailed in that certain report entitled "Phase I Archeological Investigations of Sites 44JC617, 44JC618, 44JC619, and 44JC620 on the New Town Tract James City County, Virginia", dated January, 2004, prepared by Alain C. Outlaw, Principal Investigator, Timothy Morgan, Ph.D., and Mary Clemons, which report has been submitted to, reviewed and approved by the County Planning Director. The Associates Study determined that Site 44JC617 is an isolated finds area and recommended no further treatment of the site. An archaeological study entitled "Phase I and Phase II Archaeological Investigations in Select Areas of the Casey Tract, James City County, Virginia" dated May, 2005, prepared by Alain C. Outlaw, Principal Investigator, Timothy Morgan, Ph.D., and Mary Clemons (the "2005 Study") of the WHS Property has been submitted to, reviewed and approved by the County Planning Director. The 2005 Study recommended no further archaeological on the WHS Property.

R-15. The provisions of the Zoning Ordinance, Section 24-1, et seq., may be deemed inadequate for protecting and enhancing orderly development of the Property.

Accordingly Owner, in furtherance of its application for rezoning, desires to proffer certain conditions which 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-15. The County constitutes a high-growth locality as defined by Section 15.2 - 2298 of the Virginia Code.

NOW, THEREFORE, for and in consideration of the approval by the Board of Supervisors of the County of the rezoning set forth above and the Section 9 Master Plan, the Section 9 Guidelines and all related documents described herein, and pursuant to Section 15.2-2296 et seq., of the Virginia Code, Section 24-16 of the Zoning Ordinance and the New Town Proffers, Owner agree that all of the following conditions shall be met and satisfied.

PROFFERS:

1. Application of New Town Proffers, Master Plan and Guidelines. Unless otherwise specifically noted herein, these Proffers shall supersede and amend and restate in their entirety the New Town Proffers, the New Town Master Plan and the New Town Design Guidelines, to the extent they now apply to the Property.

2. Owner’s Association. Either (i) a supplemental declaration (the Supplemental Declaration”) shall be executed and recorded in the Clerk’s Office to submit the Property to the New Town Master Association, a Virginia non-stock corporation (the “Commercial Association”), and to the Master Declaration of Covenants,

Easements and restrictions for New Town, dated June 22, 1998, recorded in the Clerk's Office as documents no. 980013868, the Articles of Incorporation and the Bylaws governing the Commercial Association, as any of the foregoing have been or may be hereafter supplemented, amended or modified pursuant to the terms thereof, with it being specifically intended that the Property shall be maintained as a stand alone development by the owner thereof and the Property shall not be subject to all of the covenants, restrictions, terms and conditions set forth in the declarations governing New Town, or, (ii) in the alternative, for any of the Property not submitted to the Supplemental Declaration, a separate owners association (the "Settler's Market Association") shall be formed by Owner. If a Settler's Market Association is formed, the Settler's Market Association and the Commercial Association shall develop and enter into shared facility agreements with respect to shared facilities, if any, benefiting both associations to fairly and reasonably apportion fiscal responsibility for the operation and maintenance of shared facilities. In addition, one or more separate owners or condominium associations may be organized for the Property (each individually "Separate Association") and supplemental restrictive covenants may be imposed on the Property. The Supplemental Declaration and any articles of incorporation, bylaws and declaration associated with a Settler's Market Association, any separate owner's association for the Property (collectively, the "Governing Documents"), if any, shall be submitted to and reviewed by the County Attorney for general consistency with this proffer. The Governing Documents shall (i) require that the applicable association adopt an annual maintenance budget and assess all members for the maintenance of the properties owned or maintained by such association (ii) grant such association the power to, and require that such association, file

liens on member's properties for non-payment of such assessments and for the cost to remedy violations of, or otherwise enforcing, the Governing Documents, and (iii) provide that the DRB is to serve as a design review board for each association formed with respect to the Property.

3. Development Process and Land Use. (a) DRB Authority, Duties and Powers. All revised master plans, revised design guidelines, subdivision, site plans, landscaping plans, architectural plans and elevations and other development plans for the Property shall be submitted to the DRB for review and approval in accordance with the manual entitled "NEW TOWN DESIGN PROCEDURES JAMES CITY COUNTY", as the same may be amended by the DRB from time to time, and such other rules as may be adopted by the DRB from time to time, for general consistency with the Section 9 Master Plan and Section 9 Guidelines. Evidence of DRB approval of plans required to be submitted to the County for approval shall be provided with any submission to the County Department of Development Management of such plans. The County shall not be required to review any subsequent development plans not receiving the prior approval of the DRB. In reviewing applications, development plans and specifications, the DRB shall consider the factors set forth in the Section 9 Master Plan and/or the Section 9 Guidelines. The DRB shall advise of either (i) the DRB's recommendation of approval of the submission, or (ii) the areas or features of the submission which are deemed by the DRB to be materially inconsistent with the Section 9 Master Plan and/or the Section 9 Guidelines and the reasons for such findings and suggestions for curing the inconsistencies. The DRB may approve development plans that do not strictly comply with the Section 9 Master Plan and/or Section 9 Guidelines, if the circumstances,

including, but not limited to, topography, natural obstructions, hardship, economic conditions or aesthetic or environmental considerations, warrant approval. All structures and improvements and open space, wetlands and other natural features on the Property shall be constructed, improved, identified for preservation, left undisturbed or modified, as applicable, substantially in accordance with the plans and specifications as finally approved by the DRB.

(b) Limitation of Liability. Review of and recommendations with respect to any application and plans by the DRB is made on the basis of aesthetic and design considerations only and the DRB shall not have any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes or other governmental requirements, or ordinances or regulations. Neither the Owner, the County, the DRB nor any member of the DRB shall be liable for any injury, damages or losses arising out of the manner or quality of any construction on the Property.

4. Traffic Study and Road and Signal Improvements/Traffic Signal Preemption Equipment. (a) In accordance with the requirements of Section 4 of the New Town Proffers, Owner has submitted to the County the Traffic Study.

(b) A traffic signal at the Settler's Market Boulevard/Monticello Avenue intersection shall be designed and installed, which traffic signal shall include, subject to Virginia Department of Transportation ("VDOT") approval, traffic signal preemption equipment meeting VDOT design standards and acceptable to the James City County Fire Department.

(c) For the Casey Boulevard (as designated on the Master Plan) connection to Monticello Avenue, the following entrance and road improvements shall be installed:

(i) Dual eastbound left turn lanes on Monticello Avenue.

(ii) A westbound right turn/through lane on Monticello Avenue extending to the existing right turn lane from westbound Monticello Avenue onto northbound Route 199.

A traffic signal at the Casey Boulevard/Monticello Avenue intersection shall be designated and installed, which traffic signal shall include, subject to VDOT approval, traffic signal preemption equipment meeting VDOT design standards and acceptable to the County Fire Department.

(d) The traffic signal improvements proffered in paragraphs (b) and (c) shall include pedestrian crosswalks, pedestrian signal heads and controls on the Settler's Market side of Monticello Avenue, and, if safe and feasible in light of turn lane configurations, pedestrian median refuges.

(e) The road improvements identified in items (b) and (c) above shall be installed to VDOT standards and specifications. The traffic improvements and signals proffered above shall be bonded in accordance with the provisions of the County Code prior to final development plan approval for development on the Property and shall be installed when warranted as determined by VDOT.

(f) A contribution shall be made to the County in the amount of Sixty Eight Thousand Eight Hundred Dollars (\$68,800.00) at the time of final site plan approval for the development of the Property ("Road Contribution"). The County shall make these monies available for off-site road improvements in the Monticello Avenue corridor, the

need for which is deemed by the County to be generated by the development of the Property.

5. Mix of Housing Types. A minimum of three percent (3%) of the residential units constructed on the Property shall be initially offered for sale for a period of nine (9) continuous months (if not earlier sold pursuant to such offer) after the issuance of a building permit for such residential units at a price at or below One Hundred Fifty-Four Thousand Dollars (\$154,000.00) subject to adjustment as set forth herein. The County Planning Director and Department of Housing and Community Development shall be provided with a copy of the listing agreement and sales literature for each residential unit offered for sale at a price at or below the adjusted price set forth above, and with respect to the sale of such residential units, consultation shall be made with, and referrals of qualified buyers shall be accepted from, the County Department of Housing and Community Development.

6. Community Spaces. There shall be village community spaces generally as shown on the Section 9 Master Plan as the DRB may approve as consistent with the Section 9 Guidelines (the “Village Community Spaces”). The construction of the Village Community Spaces shall be bonded in form satisfactory to the County Attorney prior to final development plan approval for development on the Property. The Village Community Spaces shall be maintained by the applicable owners association for the Property, and shall be subject to rules and regulations as may be promulgated, from time to time, by the responsible association; provided, however, no permanent barriers shall be erected or maintained to prohibit pedestrian access to such Village Community Spaces and such Village Community Spaces shall be open to the owners of the Property, their

respective mortgagees, and tenants and occupants of buildings constructed on the Property and the respective subtenants, licensees, concessionaires, business invitees, employees and customers of all such persons.

7. Streetscapes. All site development and subdivision plans for development within the Property shall include (i) pedestrian connections on the Property, or the portion thereof so developed, along main roads adjoining the Property, (ii) streetscape plans for adjacent streets within the Property, and (iii) streetscape plans for those portions of the Property adjacent to Monticello Avenue, all of which pedestrian connections and streetscapes shall be consistent with the applicable Section 9 Guidelines. The approved streetscape plans, including, where required by the DRB pursuant to the Section 9 Design Guidelines, street trees, the town wall or fence, sidewalks, crosswalks, street lighting, street furniture, and bike lanes, and any other miscellaneous improvements required by the Section 9 Design Guidelines and approved by the DRB, shall be implemented when the adjacent portion of the Property is developed but in any event within one (1) year after the issuance of the first certificate of occupancy for a building on the Property.

8. Bus/Transit Facilities. At least one (1) but no more than two (2) bus pull-off area and bus stop shelter shall be constructed on the Property in locations approved by the County Transit Administrator. Design of the pull-off and shelter shall be approved in advance by the DRB. The pull-off and shelter shall be shown on development plans for the Property, shall be bonded in accordance with the County Code at the time of final development plan approval and installed when the adjacent roadways are constructed.

9.     Contribution for Public Facilities.     (a)     Water. A contribution shall be made to the County in the amount of Eight Hundred Twelve Dollars (\$812.00), for each individual residential dwelling unit (individually, a “Residential Unit”, and collectively, the “Residential Units”) developed on the Property (the “Per Unit Water Contribution”). The County shall make these monies available for development of water supply alternatives, the need for which is deemed by the County to be generated by the development of the Property.

          (b)     Recreation. A recreation contribution shall be made to the County in the amount of One Hundred and Nine Dollars (\$109.00) for each Residential Unit developed on the Property (the "Per Unit Recreation Contribution"). The County shall make these monies available for development of recreational facilities, the need for which is deemed by the County to be generated by the development of the Property.

          (c)     School Facilities. A contribution shall be made to the County in the amount of Five Hundred Twenty-Eight Dollars (\$528.00) per Residential Unit for each Residential Unit developed on the Property (the "Per Unit School Contribution"). The County shall make these monies available for acquisition of school sites and/or construction of school facilities, the need for which is deemed by the County to be generated by the development of the Property.

          (d)     Library Facilities. A contribution shall be made to the County in the amount of Sixty-One Dollars (\$61.00) for each Residential Unit developed on the Property (the "Per Unit Library Contribution"). The County shall make these monies available for the development of library space, the need for which is deemed by the County to be generated by the development of the Property.

(e) Fire/EMS Facilities. A contribution shall be made to the County in the amount of Seventy-One Dollars (\$71.00) for each Residential Unit developed on the Property (the "Per Unit Fire/EMS Contribution"). The County shall make these monies available for the acquisition of fire and rescue facilities and equipment, the need for which is deemed by the County to be generated by the development of the Property.

(f) The Per Unit Water Contribution, Per Unit Recreation Contribution, Per Unit School Contribution, Per Unit Library Contribution, and Per Unit Fire/EMS Contribution (collectively, the "Per Unit Contributions") shall be payable for each of the Residential Units to be developed within the Property at the time of final, non-appealable site plan or subdivision plat approval for the Residential Unit.

10. Private Streets. It is intended that Settler's Market Boulevard, Casey Boulevard and Merchants Court shall be dedicated as public streets, however, as stated on the Section 9 Master Plan, all streets within Section 9 of the Property may be private. The party responsible for construction of a private street shall deposit into a maintenance fund to be managed by the applicable association responsible for maintenance of such private street an amount equal to one hundred 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 amount at the time of final site plan of subdivision plat approval by the County for the particular phase or section which includes the street to be designated as private.

11. Construction Setback. No building shall be constructed within 15 feet of any Resource Protection Area buffer on the Property.

12. Water Conservation. The Settler's Market Association and/or the Commercial Association shall be responsible for developing water conservation standards for the Property 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.

13. Turf Management Plan. The Settler's Market Association and/or the Commercial Association shall be responsible for developing and implementing a turf management plan ("Turf Management Plan") for the maintenance of lawns and landscaping on the Property in an effort to limit nutrient runoff into Powhatan Creek and its tributaries. The Turf Management Plan shall include measures necessary to manage and limit yearly nutrient application rates to turf. The Turf Management Plan shall be prepared by a landscape architect licensed to practice in Virginia or submitted for review to the County Environmental Division for conformity with this proffer. The Turf Management Plan shall include terms permitting enforcement by either the Settler's Market Association and/or the Commercial Association or the County. The Turf Management Plan shall be approved by the Environmental Division prior to final subdivision or site plan approval.

14. Consumer Price Index Adjustment. All cash contributions and pricing contained in these Proffers (collectively, the "Proffered Amounts"), to include but not be

limited to housing sales prices and Per Unit Contributions and the Road Contribution, shall be adjusted annually beginning January 1, 2007 to reflect any increase or decrease for the preceding year in the Marshall and Swift Building Costs Index (the "Index"). In no event shall the Proffered Amounts be adjusted to a sum less than the amount initially established by these Proffers. The adjustment shall be made by multiplying the Proffered Amounts for the preceding year by a fraction, the numerator of which shall be the Index as of December 1 in the year preceding the calendar year most currently expired, and the denominator of which shall be the Index as of December 1 in the preceding year. In the event a substantial change is made in the method of establishing the Index, then the Proffered Amounts shall be adjusted based upon the figure that would have resulted had no change occurred in the manner of computing the Index. In the event that the Index is not available, a reliable government or other independent publication evaluating information hereto used in determining the Index (approved in advance by the County Manager of Financial Management Services) shall be relied upon in establishing an inflationary factor for purposes of increasing the Proffered Amounts to approximate the rate of annual inflation in the County.

15.     Disposition of Proffered Property and Payments.     In the event cash and dedication of real property are proffered pursuant to these Proffers and any such property and cash payments are not used by the County or, with respect to real property, the Commonwealth of Virginia, for the purposes designated within twenty (20) years from the date of receipt by the County, the amounts and 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 deemed by the County to be generated by the development of the Property.

16. Successors and Assigns. This Proffer Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective heirs, successors and/or assigns. Any obligation(s) of Owner hereunder shall be binding upon and enforceable against any subsequent owner or owners of the Property or any portion thereof.

17. Severability. In the event that any clause, sentence, paragraph, section or subsection of these Proffers shall be judged 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 applicable 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.

18. Conflicts. In the event there is a conflict between: (1) these Proffers, the Section 9 Guidelines, and/or the Section 9 Master Plan; and (2) the New Town Proffers, the New Town Master Plan and/or the New Town Guidelines, then these Proffers, the Section 9 Guidelines and the Section 9 Master Plan shall govern.

19. Signature by the County. The County's Director of Planning has executed these Proffers solely for purpose of confirming the filings and submissions

described herein and confirming approval by the Board of Supervisors of the rezoning of the Property with these Proffers by resolution dated \_\_\_\_\_, 2006.

20.     Headings.     All section and subsection headings of Conditions herein are for convenience only and are not part of these Proffers.

21.     Conditions Applicable Only To The Property.     Notwithstanding anything in these Proffers to the contrary, the failure to comply with one or more of the conditions herein in developing the Property shall not affect the rights of Owner and its successors in interest to develop its other property in accordance with other applicable provisions of the County Zoning Ordinances.

WITNESS the following signatures, thereunto duly authorized:

WHS LAND HOLDINGS, LLC

By: Williamsburg Health Services, Inc., its  
sole member

By: \_\_\_\_\_

Title:

NEW TOWN ASSOCIATES, LLC

By: \_\_\_\_\_

Title:

THE COUNTY OF JAMES CITY,  
VIRGINIA

By: \_\_\_\_\_

Its:

APPROVED AS TO FORM:

\_\_\_\_\_  
County Attorney

STATE OF VIRGINIA  
CITY/COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2005, by \_\_\_\_\_ as \_\_\_\_\_ of \_\_\_\_\_ on behalf of the company.

\_\_\_\_\_  
Notary Public

My commission expires:

STATE OF VIRGINIA  
CITY/COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2005, by \_\_\_\_\_ as \_\_\_\_\_ of \_\_\_\_\_ on behalf of the company.

\_\_\_\_\_  
Notary Public

My commission expires:

STATE OF VIRGINIA  
CITY/COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2005, by \_\_\_\_\_ as \_\_\_\_\_ of \_\_\_\_\_ on behalf of the company.

\_\_\_\_\_  
Notary Public

My commission expires:

Prepared by and return to:  
Geddy, Harris, Franck & Hickman, LLP  
1177 Jamestown Road  
Williamsburg, Virginia 23185

Exhibit A

Description of WHS Property

Exhibit B

Description of Associates Property

**SPECIAL USE PERMIT-1-06: Centerville Road Tower Relocation**  
**Staff Report for the April 3, 2006 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.*

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**PUBLIC HEARINGS**

	<b><u>Building F Board Room; County Government Complex</u></b>	
Planning Commission:	March 6, 2006	7:00 p.m. (PC deferral)
	April 3, 2006	7:00 p.m.
Board of Supervisors:	May 9, 2006	7:00 p.m. (tentative)

**SUMMARY FACTS**

Applicant:	Mr. John Abernathy
Land Owner:	Gene Burleson & Blair Burleson Estate
Proposal:	The applicant has proposed to relocate the existing 405 foot tall WMBG radio tower from New Town to Centerville Road.
Location:	4338 and 4400 Centerville Road
Tax Map/Parcel Nos.	(36-2) (1-32) and (36-2) (1-31)
Parcel Size	39.1 combined acres for both parcels
Existing Zoning:	A-1, General Agriculture
Comprehensive Plan:	Low Density Residential
Primary Service Area:	Inside

**STAFF RECOMMENDATION**

Staff finds the proposal generally inconsistent with the County's Performance Standards for Wireless Communications Facilities. However, by definition the proposed tower is not a wireless communication facility and the Planning Commission and Board of Supervisors may wish to use their discretion on which portions of the policy are reasonably applicable in this case. Staff also finds the proposal generally inconsistent with the 2003 Comprehensive Plan as outlined in the staff report. The Planning Commission and Board of Supervisors should take into consideration the Land Use Plan designation for the existing tower site and whether or not the property is being utilized appropriately. Since the March 6, 2006 Planning Commission meeting, the applicant provided staff with broadcast footprints and answers to questions raised by staff and the Planning Commission; however staff still recommends that the Planning Commission recommend denial of this application to the James City County Board of Supervisors. Should the Planning Commission recommend approval of this case to the Board of Supervisors, staff recommends the acceptance of the attached special use permit conditions.

Staff Contact:	Matthew J. Smolnik, Planner	Phone: 253-6685
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**PROJECT DESCRIPTION**

Mr. John Abernathy has applied for a special use permit to relocate the existing WMBG radio tower from its current location near the intersection of State Route 199 and Monticello Avenue to 4338 and 4400 Centerville Road. The relocation of the tower is proposed in order to develop Section 9 of New Town. The current tower site is designated Mixed Use in the Comprehensive Plan and would be redeveloped for retail uses. The proposed tower is expected to be 405 feet above ground level (including lighting) and will be a guy wire tower. There will be approximately 120 copper wires that extend out from the base of the tower up to 330 feet

(some wires will be terminated sooner at the edge of environmentally sensitive areas). The copper wires will be buried 2 to 6 inches in the ground as part of the antenna for reflection. The land above them should remain in a natural state to avoid interference with the reflecting. The proposed tower will be sized so that it can support several side mounted communication antennas and there will be a small unattended equipment building at the base of the tower. The tower design has not been finalized by the applicant, but is expected to be 3 to 4 feet in width. The immediate area of the tower will be fenced. As part of the FAA approval process the applicant will request that white lights be used to illuminate the tower during the daytime and red lights be used at nighttime. In accordance with FAA regulations, a tower must be painted red and white if it is not illuminated with a white light during the daytime (however, in both instances the tower must be illuminated with red lights during the nighttime). If a tower is illuminated with a white light during the daytime, the tower is not required to be painted red and white and may be painted a shade of blue or grey. A special use permit condition has been included to require the tower color to be approved by the Planning Director.

## **PUBLIC IMPACTS**

### **Visual Impacts**

**Staff Comments:** A balloon test was conducted on February 15, 2006 to simulate the height of the proposed tower. Photographs from the balloon test are attached. Based on the photographs, the proposed tower will be visible from Ford's Colony and Springhill as well as from points along Centerville Road and News Road. Unlike the existing tower's location, these viewsheds currently do not contain any towers. Staff contacted the Home Owners Association for Ford's Colony and Springhill following the March 6, 2006 Planning Commission public hearing about the proposed tower's impacts but staff has not received feedback from either Association. Please note, however, that a tower at the proposed location would be visible from fewer off-site locations and along lower volume roadways.

### **Environmental**

**Staff Comments:** This project would be situated within Mainstem 101 of the Powhatan Creek watershed. Per the Powhatan Creek Watershed Management Plan, adopted Feb. 26, 2002, the area designated Mainstem 101 is part of a larger Non-Tidal Mainstem. Mainstem 101 contains a high quality stream north of News Road which is labeled conservation area C-34 and is ranked 9 out of 21 conservation areas and 7 of 17 acquisition areas. Mainstem 101 is considered a priority Stream Protection Area and if further development takes place special stormwater criteria will apply. Staff believes that there may be minimal encroachment into the RPA during the installation of the guy wires based on the current tower design. The RPA line has not yet been confirmed in the field and may change from what is shown on the SUP submittal, necessitating a change in the location of the guy wires so they do not impact the RPA. A waiver will need to be approved by the Environmental Division prior to any encroachment into the RPA.

### **Tower Policy**

On May 26, 1998 the James City County Board of Supervisors adopted several performance criteria for Wireless Communications Facilities (a copy of these standards are attached). Although this application is for an AM tower, it has been the County's practice to evaluate all towers against the wireless communications facilities standards in order to assure alternatives are duly considered and impacts are minimized. For example, the policy was applied to the County's three communication towers which ranged from 280 feet to 380 feet tall. Given the nature of this type of tower, the Planning Commission and Board of Supervisors should determine which portions of the policy are reasonably applicable in this case. The standards seek to minimize the appearance of towers by encouraging co-location on other towers, minimizing new areas where towers are located, and reducing their height or visual impact and whether they have been adequately addressed.

#### **A. Co-location and Alternatives Analysis**

**Standards A1 and A2** call for the applicant to investigate and provide verifiable evidence of having investigated all possible alternatives for locating prior to making a request to construct new facilities.

**Staff Comments:** The applicant initially identified several locations within the County, but due to parcel

size constraints and distance needs from the existing WMBG radio tower, no additional locations were determined suitable by the applicant. The applicant provided staff with this property information on March 27, 2006 which highlights parcels the applicant investigated as possible sites for the WMBG tower. The applicant has provided staff with a broadcast footprint for this radio station and surrounding AM stations along with a narrative from the applicant's tower engineer explaining why the applicant believes this is the only feasible site for the proposed tower. However, no documentation was provided that adequately explained why the other parcels were specifically not feasible. It should also be noted that the proposed tower will replace the existing tower in New Town, which will be dismantled and rendered inoperable if the new facility on Centerville Road is approved. However, several other towers will continue to be visible in New Town and the surrounding area. Staff does not believe the intent of this standard has been met by the applicant.

**Standards A3 and A4** call for a new tower to be sited to allow for the construction of a second tower and that all towers be designed to accommodate as many co-locations as possible.

**Staff Comments:** There are no plans for a second tower on this site. An AM antenna cannot be co-located on another tower because, with an AM tower, the tower itself is hot and is used to transmit frequencies unlike cell towers which rely on antennas to transmit their signal. The County policy for wireless communication facilities favors sites where more than one tower can be located in order to minimize new tower locations. While not able to support the same number of wireless communication facility antennae as two towers, staff believes this standard has been generally met because wireless communication providers will be able to locate their antenna on the AM tower. There are currently four service providers located on the existing tower and a special use permit condition requires that they proposed tower be engineered in a manner to support at least six service provider antennae. The applicant has been in contact with wireless communication providers regarding the placement of their antennae on the proposed tower.

#### **B. Location and Design**

**Standard B1** states that towers and tower sites should be consistent with existing and future surrounding development and the Comprehensive Plan. Towers should be compatible with the use, scale, height, size design and character of surrounding existing and future uses while protecting the character of the County's scenic resource corridors and their view sheds.

**Staff Comments:** Staff believes the site for the proposed tower is inconsistent with this standard due to the height of the tower and existing and planned surrounding uses and the absence of other towers visible in the area of the site. Staff believes the proposal is inconsistent with several strategies and actions of the Community Character section of the Comprehensive Plan along with the development standards referenced in the Comprehensive Plan. A further explanation of these inconsistencies is provided later in the staff report.

**Standard B2** states that new towers on this type of site should have minimal intrusion on surrounding residential areas and on scenic resource corridors (i.e. the tower should only be visible off-site when viewed through surrounding trees that have shed their leaves). For surrounding areas designated rural lands in the Comprehensive Plan within 1,500 feet of the tower these same standards apply. For areas more than 1,500 feet from the towers no more than the upper 25% of the tower should be visible.

**Staff Comments:** The balloon test conducted on February 15, 2006 indicates that the tower will be visible from surrounding residential areas, two Community Character Corridors (Centerville Road and News Road) and from adjacent property designated rural lands on the Comprehensive Plan. The tower is visible from surrounding residential areas well above the tree line. However, staff believes that no more than the upper 25% of the tower will be visible from areas designated rural lands in Comprehensive Plan. Staff believes that the tower does not meet this standard. Please note that WCFs are typically much shorter (100-200 feet) than the proposed tower and are therefore more able to meet this standard. Although staff was unable to conclusively determine from the balloon test, it does appear that the site

would meet the policy's standards for a wireless communication facility in the 200 foot range.

**Standard B3** states that the tower should be less than 200 feet to avoid lighting. Taller heights may be acceptable where views of the towers from residential areas and public roads are very limited.

**Staff Comments:** The proposed tower height is well in excess of that recommended by the County policy. The tower is visible from several residential areas, News Road and Centerville Road. The proposed tower must be lighted in accordance with FAA regulations; white strobes during the day and red beacon lights at night. Staff believes that the tower does not meet this standard. Staff would note, however, based on the information provided by the applicant AM towers such as the WMBG tower will not be able to meet this standard due to the required height for this type of signal.

**Standard B4** states that towers should be freestanding and not supported with guy wires.

**Staff Comments:** The proposed tower does not meet this requirement. However, in this case staff believes that a guy wire tower is acceptable. The tower policy was written to encourage towers of less than 200 feet. Given that this tower will be 405 feet tall the guy wire tower provides a more slender appearance critical to minimizing its visual impact.

### C. Buffering

**Standard C1 and C2** state that towers should be placed in a manner that maximizes buffering from existing trees, including maintaining a recommended 100 foot wide buffer around the site, and that access roads should be designed in a manner that provides no off-site view of the tower base and facilities.

**Staff Comments:** The proposed tower will be located approximately 2000 feet from Centerville Road. The area immediately surrounding the tower will be cleared for the installation on the underground copper wires. This cleared area will be approximately 560 feet across and will encompass the area inside the circle as depicted on the master plan. It should be noted that this area should re-vegetate following the installation of the copper wires, but the ground cover will differ from the current ground cover in this area as the large trees will not remain within the guy wire circle as depicted on the master plan. A special use permit condition is included to provide a forested buffer along the property line to the immediate north of the tower site. However, due to the proximity of the tower to the northern most property line a 100 foot wide buffer is not attainable. Instead the proposed forested buffer will be approximately 30 feet wide around the tower site. Staff believes that the tower does not meet this standard.

## **COMPREHENSIVE PLAN**

### **Land Use Map Designation**

The James City County Comprehensive Plan Land Use Map designates these properties for Low Density Residential development. Examples of acceptable land uses within this designation include single-family homes, duplexes, cluster housing, recreation areas, schools, churches, community-oriented public facilities, and very limited commercial establishments. Both the Comprehensive Plan and tower policy seek to minimize the presence of towers and other structures in areas where they would depart from existing and future development in terms of height and use.

### **Other Considerations**

The Comprehensive Plan designates Centerville Road and News Road as Community Character Corridors, which are roads that promote the rural, natural or historic character of the County. The County acknowledges that views along these roads can have a significant impact on how citizens and visitors perceive the character of the area and believes these roads warrant a high level of protection. The sections of Centerville Road and News Road which are impacted by the proposed tower are considered to be a wooded Community Character Corridor. A wooded Community Character Corridor is characterized as an area that has natural wooded areas and vegetation along the road, low to moderate traffic volumes, and suburban or rural development patterns

with minimal existing or planned commercial development. The intent of buffering along a wooded Community Character Corridor would be to protect development from traffic, to preserve open space and animal habitats and to maintain the wooded and natural character of the County.

**Staff Comments:** Staff believes the proposed use is generally inconsistent with the Land Use designation and Wireless Communication Facilities section of the Comprehensive Plan. The proposed tower will not preserve the aesthetic quality of the community and its landscape and will not minimize the presence of structures that depart from existing and future patterns of development, especially in terms of use, scale, height, site design, character and lighting. The Comprehensive Plan references specific goals, strategies and actions for the Community Character section. Staff believes that the intent of the following strategies and actions are not met by the proposed tower:

- Strategy #2: Ensure that development is compatible in scale, size and location to surrounding existing and planned development (page 95).
- Strategy #3: Ensure that development along Community Character Corridors and Areas protects the natural views of the area, promotes the historic, rural or unique character of the area, maintains greenbelt networks and establishes entrance corridors that enhance the experience of residents and visitors (page 95).
- Strategy #6: Ensure that all new development blends carefully with the topography and surrounding vegetation, preserving unique formations, greenery and scenic views (page 95).
- Action # 24 (b): Maintain the small town, rural and natural character of the County by encouraging new developments to employ site and building design techniques that reduces their visual presence and scale. Design techniques include berms, buffers, landscaping, building designs that appear as collections of smaller buildings rather than a single large building, building colors and siting that cause large structures to blend in with the natural landscape and low visibility parking locations (page 97).

Additionally, the Comprehensive Plan references development standards which are intended to provide a guide to accommodating land uses in a manner harmonious with the natural and built environment. These standards are further intended to provide a basic framework for evaluating proposals for rezoning, special use permits, site plans, subdivisions and other reviews in conjunctions with applicable ordinance provisions. The general land use standard place an emphasis on permitting new developments only where such developments are compatible with the character of adjoining uses and where the impacts of such new developments can be adequately addressed. Particular attention should be given to addressing such impacts as incompatible development intensity and design, building height and scale, land uses, smoke, noise, dust, odor, vibration, light and traffic. Please note, the current tower location also impacts several Community Character Corridors (Route 199, Monticello Avenue and Ironbound Road) and the New Town Community Character Area. However, these features are also impacted by several other existing towers.

### **STAFF RECOMMENDATION**

Staff finds the proposal generally inconsistent with the County's Performance Standards for Wireless Communications Facilities. However, by definition the proposed tower is not a wireless communication facility and the Planning Commission and Board of Supervisors may use their discretion on which portions of the policy are reasonably applicable in this case. Staff also finds the proposal generally inconsistent with the 2003 Comprehensive Plan as outlined in the staff report. The Planning Commission and Board of Supervisors should take into consideration the land use of the existing tower and whether or not the property is being utilized to the County's maximum benefit. The applicant provided staff with broadcast footprints and answers to numerous questions raised by staff and the Planning Commission, however even with the questions answered; staff still believes the proposal is inconsistent with the County's Performance Standards for Wireless Communications Facilities and the 2003 Comprehensive Plan. Staff recommends that the Planning Commission recommend denial of this application to the James City County Board of Supervisors. Should the Planning Commission recommend approval of this case to the Board of Supervisors, staff recommends the acceptance of the attached special use permit conditions.

1. This Special Use Permit shall be valid for a total of one (1) guy wire tower. The maximum height of the tower shall not be greater than 405 feet. The property shall be developed generally in accordance with the site

layout titled “Master Plan Centerville Road Tower Relocation” dated January 27, 2006. Minor changes may be approved by the Director of Planning.

2. Final building design, location, orientation and construction materials for any supporting structures, such as equipment sheds and huts, shall be approved by the Director of Planning prior to final site plan approval.

3. Prior to final site plan approval, the applicant shall prepare a tree preservation and landscape plan (the “Landscape Plan”) encompassing, at a minimum, all areas on the Property within 100 feet of the guy wire circle as depicted on the Master Plan. The Landscape Plan shall be approved by the Planning Director and shall provide for an evergreen buffer that effectively screens the tower base and related facilities from adjacent properties. This buffer shall remain undisturbed except for the access drive and necessary utilities for the tower.

4. A final Certificate of Occupancy from the James City County Codes Compliance Division shall be obtained within 24 months of approval of this special use permit, or the permit shall become void.

5. Within 30 days of the issuance of a final Certificate of Occupancy by the James City County Codes Compliance Division, certification by the manufacturer, or an engineering report by a Virginia-registered structural engineer, shall be filed by the applicant indicating the tower height, design, structure, installation and total anticipated capacity of the structure, including number and type of antennas which could be accommodated, demonstrating to the satisfaction of the building official that all structural requirements and other safety considerations set forth in the 2000 International Building Code, or any amendment thereof, have been met.

6. Lighting: Any new exterior building lighting or lighting used to directly illuminate the building(s) at the base of the tower shall have 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 are not visible from the side. Fixtures which are horizontally mounted on poles shall not exceed 15 feet in height. No glare defined as 0.1 foot-candle or higher shall extend outside the property lines. There shall be no upward directed lighting on the property.

7. No additional lighting beyond the minimum required by the FAA or FCC shall be allowed on the tower.

8. The tower shall have a finish that is similar to a light grey or light blue in color as approved by the Director of Planning.

9. No advertising material or signs shall be placed on the tower.

10. No subdivision of either parcel shall be permitted while the tower remains in operation.

11. The tower shall be engineered to accommodate a minimum of six service provider antennae.

12. WMBG shall be responsible for the replacement or modification of all residential electronic equipment within 1,200 feet of the tower that is affected by interference. An independent tower engineer hired by the County and paid for by the applicant shall determine if the tower interference is the cause of the malfunction of this equipment.

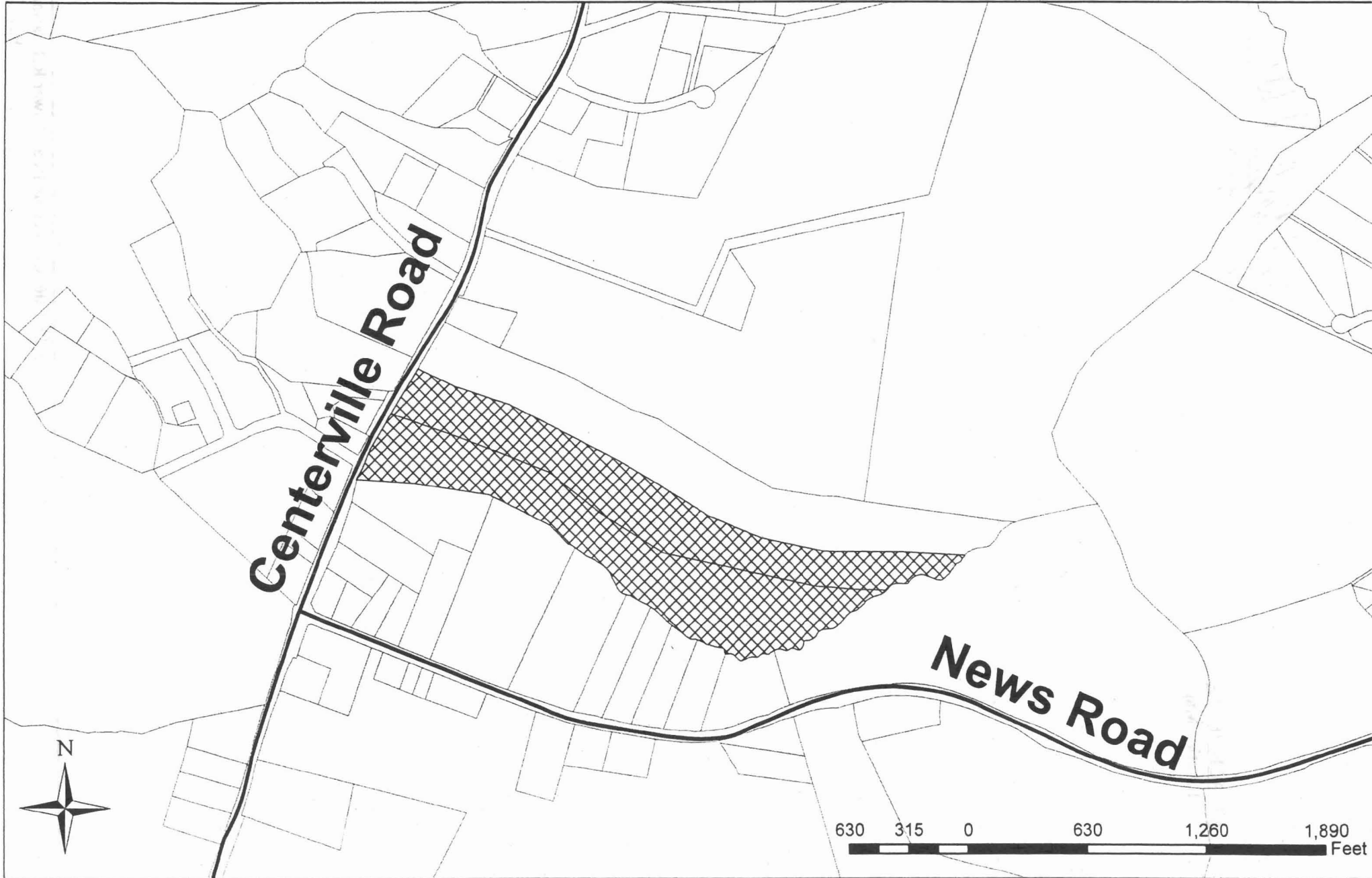
13. This special use permit is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.

ATTACHMENTS:

1. Location Map

JCC-SUP-01-06

# Centerville Road Tower Relocation



## MEMORANDUM

DATE: April 3, 2006  
TO: The Planning Commission  
FROM: Matthew J. Smolnik, Planner  
SUBJECT: ZO-1-06, Athletic Field Lighting

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As part of its review of the Community Sports Stadium and Warhill Sports Complex projects, it has come to staff's attention that there is a need to clarify the height requirements for athletic field lighting as stated under the height limits section within each zoning district. The attached ordinance change would clarify the ordinance and require a height waiver be issued by the Board of Supervisors for athletic field lighting in excess of 60 feet up to 100 feet in height in the following districts: General Agricultural District, A-1, Limited Residential District, R-1, General Residential District, R-2, Residential Planned Community District, R-4, Multifamily Residential District, R-5, Low-Density Residential District, R-6, Rural Residential District, R-8, Limited Business District, LB, General Business District, B-1, Planned Unit Development Districts, PUD and Mixed Use, MU.

Staff believes that through the height waiver process (which requires a public hearing and notification of adjacent property owners) the Board of Supervisors will have sufficient ability to review and mitigate the potential impacts of athletic field lighting on a site specific basis.

Staff recommends approval of the attached ordinance.

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Matthew J. Smolnik

Attachment

1. Ordinance

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 24, ZONING, OF THE CODE OF THE COUNTY OF JAMES CITY VIRGINIA, BY AMENDING ARTICLE V, DISTRICTS, DIVISION 2. GENERAL AGRICULTURAL DISTRICT, A-1, SECTION 24-218, HEIGHT LIMITS; DIVISION 3. LIMITED RESIDENTIAL DISTRICT, R-1, SECTION 24-240, HEIGHT LIMITS; DIVISION 4. GENERAL RESIDENTIAL DISTRICT, R-2, SECTION 24-261, HEIGHT LIMITS; DIVISION 5. RESIDENTIAL PLANNED COMMUNITY DISTRICT, R-4, SECTION 24-293, HEIGHT LIMITS; DIVISION 6. MULTI FAMILY RESIDENTIAL DISTRICT, R-5, SECTION 24-314, REQUIREMENTS FOR IMPROVEMENTS AND DESIGN; DIVISION 7. LOW-DENSITY RESIDENTIAL DISTRICT, R-6, SECTION 24-335, HEIGHT LIMITS; DIVISION 8. RURAL RESIDENTIAL DISTRICT, R-8, SECTION 24-354, HEIGHT LIMITS; DIVISION 9. LIMITED BUSINESS DISTRICT, LB, SECTION 24-375, HEIGHT LIMITS AND HEIGHT LIMITATION WAIVERS; DIVISION 10. GENERAL BUSINESS DISTRICT, B-1, SECTION 24-397, HEIGHT LIMITS AND HEIGHT LIMITATION WAIVERS; DIVISION 14. PLANNED UNIT DEVELOPMENT DISTRICT, PUD, SECTION 24-496 HEIGHT AND SPACING OF STRUCTURES; AND DIVISION 15. MIXED USE, MU, SECTIONS 24-525, HEIGHT OF STRUCTURES.

BE IT ORDAINED by the Board of Supervisors of the County of James City, Virginia, that Chapter 24, Zoning, is hereby amended and reordained by amending Article V, Districts Section 24-218, Height limits; Section 24-240, Height limits; Section 24-261, Height limits; Section 24-293, Height limits; Section 24-314, Requirements for improvement and design; Section 24-335, Height limits; Section 24-354, Height limits; Section 24-375, Height limits and height limitation waivers; Section 24-397, Height limits and height limitation waivers; Section 24-496 Height and spacing of structures; and Section 24-525, Height of structures.

Chapter 24. Zoning

Article V. Districts

Division 2. General Agricultural District, A-1

**Sec. 24-218. Height limits.**

Structures may be erected up to two stories and shall not exceed 35 feet in height from grade, except that:

- (1) The height limit for buildings may be increased to 45 feet and to three stories; provided, that the two side yards for the building are increased to a minimum of 15 feet plus one foot for each additional foot of the building's height over 35 feet.
- (2) Church spires, belfries, cupolas, monuments, water towers, *athletic field lighting*, chimneys, flues, flagpoles, home television antennas, home radio aerials, silos and other structures normally

associated with and accessory to farming operations and accessory or nonaccessory wireless communications facilities that utilize alternative mounting structures or are building mounted in accordance with division 6, Wireless Communications Facilities, may be erected to a total height of 60 feet from grade. Camouflaged wireless communications facilities may be erected to a total height of 120 feet from grade.

Upon application for a height limitation waiver, the payment of appropriate fees, notification of adjacent property owners and following a public hearing, the board of supervisors may grant a height limitation waiver for these structures to exceed 60 feet in height but not to exceed 100 feet, from grade to the top of the structure, and for wireless communications facilities that utilize alternative mounting structures or are building mounted to exceed 60 feet in height but not to exceed 120 feet in grade to the top of the structure, upon finding that:

- a. Such structure will not obstruct light to adjacent property;
- b. Such structure will not impair the enjoyment of historic attractions and areas of significant historic interest and surrounding developments;
- c. Such structure will not impair property values in the surrounding area;
- d. Such structure is adequately designed and served from the standpoint of safety, and the county fire chief finds that the fire safety equipment to be installed is adequately designed and that the building is reasonably well located in relation to fire stations and equipment, so as to offer adequate protection to life and property; and
- e. Such structure will not be contrary to the public health, safety and general welfare.

### Division 3. Limited Residential District, R-1

#### **Sec. 24-240. Height limits.**

Buildings may be erected up to two stories and shall not exceed 35 feet in height from grade, except that:

- (1) The height limit for dwellings may be increased to 45 feet and to three stories; provided, that there are two side yards for each permitted use each of which is a minimum of 15 feet plus one foot or more of side yard for each additional foot of building height over 35 feet.
- (2) A public or semipublic building such as a school, church or library may be erected to a height of 60 feet from grade, provided that the required front, side and rear yards shall be increased one foot for each foot in height over 35 feet.
- (3) Church spires, belfries, cupolas, monuments, water towers, *athletic field lighting*, chimneys, flues, flagpoles, home television antennae, and home radio aerials and wireless communications facilities that utilize alternative mounting structures or are building mounted in accordance with division 6, Wireless Communications Facilities, may be erected to a total height of 60 feet from grade. Camouflaged wireless communications facilities may be erected to a total height of 120 feet from grade. Upon application for a height limitation waiver, the payment of appropriate fees, notification of adjacent property owners and following a public hearing, the board of supervisors may grant a height limitation waiver for these structures to exceed 60 feet in height but not to exceed 100 feet, from grade to the top of the structure, and for wireless communications facilities that utilize alternative mounting structures or are building mounted to exceed 60 feet in height but not to exceed 120 feet in grade to the top of the structure, upon finding that:
  - a. Such structure will not obstruct light to adjacent property;
  - b. Such structure will not impair the enjoyment of historic attractions and areas of significant historic interest and surrounding developments;

- c. Such structure will not impair property values in the surrounding area;
- d. Such structure is adequately designed and served from the standpoint of safety, and the county fire chief finds that the fire safety equipment to be installed is adequately designed and that the building is reasonably well located in relation to fire stations and equipment, so as to offer adequate protection to life and property; and
- e. Such structure will not be contrary to the public health, safety and general welfare.

#### Division 4. General Residential District, R-2

##### **Sec. 24-261. Height limits.**

Buildings may be erected up to two stories and shall not exceed 35 feet in height from grade, except that:

- (1) The height limit for dwellings may be increased to 45 feet and to three stories; provided, that there are two side yards for each permitted use each of which is a minimum of 15 feet plus one foot or more of side yard for each additional foot of building height over 35 feet.
- (2) A public or semipublic building such as a school, church or library may be erected to a height of 60 feet from grade, provided that the required front, side and rear yards shall be increased one foot for each foot in height over 35 feet.
- (3) Church spires, belfries, cupolas, monuments, water towers, *athletic field lighting*, chimneys, flues, flagpoles, home television antennas and home radio aerials and wireless communications facilities that utilize alternative mounting structures or are building mounted in accordance with division 6, Wireless Communications Facilities, may be erected to a total height of 60 feet from grade. Camouflaged wireless communications facilities may be erected to a total height of 120 feet from grade. Upon application for a height limitation waiver, the payment of appropriate fees, notification of adjacent property owners and following a public hearing, the board of supervisors may grant a height limitation waiver for these structures to exceed 60 feet in height but not to exceed 100 feet, from grade to the top of the structure, and for wireless communications facilities that utilize alternative mounting structures or are building mounted to exceed 60 feet in height but not to exceed 120 feet in grade to the top of the structure, upon finding that:
  - a. Such structure will not obstruct light to adjacent property;
  - b. Such structure will not impair the enjoyment of historic attractions and areas of significant historic interest and surrounding developments;
  - c. Such structure will not impair property values in the surrounding area;
  - d. Such structure is adequately designed and served from the standpoint of safety, and county fire chief finds that the fire safety equipment to be installed is adequately designed and that the building is reasonably well located in relation to fire stations and equipment, as to offer adequate protection to life and property; and
  - e. Such structure will not be contrary to the public health, safety and general welfare.

#### Division 5. Residential Planned Community District, R-4

##### **Sec. 24-293. Height limits.**

Structures may be erected up to 60 feet in height from grade to the top of the structure, including all penthouse, electrical, plumbing, elevator, water tank, *athletic field lighting*, or other accessory functions, which are part of the structure. Camouflaged wireless communications facilities may be erected to a total height of 120 feet from grade. A structure in excess of 60 feet in height but not in excess of 100 feet, from grade to the top of the structure, including all penthouse, electrical, plumbing, elevator, water tank, radio,

television and microwave antennas and towers or other accessory functions, and accessory and nonaccessory wireless communications facilities that utilize alternative mounting structures or are building mounted in accordance with division 6, Wireless Communications Facilities in excess of 60 feet in height but not in excess of 120 feet in grade to the top of the structure, may be erected only upon the granting of a height limitation waiver by the board of supervisors. Upon application for a height limitation waiver, the payment of appropriate fees, notification of adjacent property owners and following a public hearing, the board of supervisors may grant a height limitation waiver upon finding that:

- a. Such structure is in accordance with the uses, densities, design and traffic analysis shown on the original master plan;
- b. Such structure will not obstruct light from adjacent property;
- c. Such structure will not impair the enjoyment of historic attractions and areas of significant historic interest and surrounding developments;
- d. Such structure will not impair property values in the surrounding area;
- e. Such structure is adequately designed and served from the standpoint of safety and the county fire chief finds that the fire safety equipment to be installed is adequately designed and that the building is reasonably well located in relation to fire stations and equipment, so as to offer adequate protection to life and property; and
- f. Such structure will not be contrary to the public health, safety and general welfare.

#### Division 6. Multifamily Residential District, R-5

##### **Sec. 24-314. Requirements for improvements and design.**

(j) *Structure height.* Structures may be erected up to 35 feet in height from grade to the top of the structure, including all church spires, belfries, cupolas, monuments, penthouse, electrical, plumbing, elevator, *athletic field lighting*, water tank or other accessory functions which are part of the structure and accessory and nonaccessory wireless communications facilities that utilize alternative mounting structures, or are building mounted in accordance with division 6, Wireless Communications Facilities. Camouflaged wireless communications facilities may be erected to a total height of 120 feet from grade. A structure in excess of 35 feet in height from grade to the top of the structure, including all church spires, belfries, cupolas, monuments, penthouse, electrical, plumbing, elevator, *athletic field lighting*, water tank, radio, television and microwave antennas and towers or other accessory functions, may be erected only upon the granting of a height limitation waiver by the board of supervisors. Upon application for a height limitation waiver, the payment of appropriate fees, notification of adjacent property owners and following a public hearing, the board of supervisors may grant a height limitation waiver upon finding that:

- (1) Such structure will not obstruct light from adjacent property;
- (2) Such structure will not impair the enjoyment of historic attractions and areas of significant historic interest and surrounding developments;
- (3) Such structure will not impair property values in the surrounding area;
- (4) Such structure is adequately designed and served from the stand point of safety and the county fire chief certifies that the fire safety equipment to be installed is adequately designed and that the building is reasonably well located in relation to fire stations and equipment, so as to offer adequate protection to life and property; and
- (5) Such structure would not be contrary to the public health, safety and general welfare.

Division 7. Low-Density Residential District, R-6

**Sec. 24-335. Height limits.**

Buildings may be erected up to two stories and shall not exceed 35 feet in height from grade, except that:

- (1) The height limit for dwellings may be increased to 45 feet and to three stories; provided, that the two side yards for the dwelling are increased to a minimum of 15 feet plus one foot for each additional foot of the building's height over 35 feet.
- (2) Church spires, belfries, cupolas, monuments, water towers, *athletic field lighting*, chimneys, flues, flagpoles, home television antennas, home radio aerials, silos and other structures normally associated with and accessory to farming operations and accessory and nonaccessory wireless communications facilities that utilize alternative mounting structures or are building mounted in accordance with division 6, Wireless Communications Facilities, may be erected to a total height of 60 feet from grade. Camouflaged wireless communications facilities may be erected to a total height of 120 feet from grade. Upon application for a height limitation waiver, the payment of appropriate fees, notification of adjacent property owners and following a public hearing, the board of supervisors may grant a height limitation waiver for these structures to exceed sixty feet in height but not to exceed 100 feet, from grade to the top of the structure, and for wireless communications facilities that utilize alternative mounting structures or are building mounted to exceed 60 feet in height but not to exceed 120 feet in grade to the top of the structure, upon finding that:
  - a. Such structure will not obstruct light to adjacent property;
  - b. Such structure will not impair the enjoyment of historic attractions and areas of significant historic interest and surrounding developments;
  - c. Such structure will not impair property values in the surrounding area;
  - d. Such structure is adequately designed and served from the standpoint of safety, and the county fire chief finds that the fire safety equipment to be installed is adequately designed and that the building is reasonably well located in relation to fire stations and equipment, so as to offer adequate protection to life and property; and
  - e. Such structure will not be contrary to the public health, safety and general welfare.

Division 8. Rural Residential District, R-8

**Sec. 24-354. Height limits.**

Structures may be erected up to two stories and shall not exceed 35 feet in height from grade, except that:

- (1) The height limit for buildings may be increased to 45 feet and to three stories; provided, that the two side yards for the building are increased to a minimum of 15 feet plus one foot for each additional foot of the building's height over 35 feet.
- (2) A public or semipublic building such as a school, church or library may be erected to a height of 60 feet from grade, provided that the required front, rear and side yards shall be increased one foot for each foot in height above 35 feet.
- (3) Church spires, belfries, cupolas, monuments, water towers, *athletic field lighting*, chimneys, flues, flagpoles, home television antennas, home radio aerials, silos and other structures normally associated with and accessory to farming operations and accessory and nonaccessory wireless communications facilities that utilize alternative mounting structures or are building mounted in accordance with division 6, Wireless Communications Facilities, may be erected to a total height of 60 feet from grade and camouflaged wireless communications facilities may be erected to a

total height of 120 feet from grade. Upon application for a height limitation waiver, the payment of appropriate fees, notification of adjacent property owners and following a public hearing, the board of supervisors may grant a height limitation waiver for these structures to exceed 60 feet in height but not to exceed 100 feet, from grade to the top of the structure, and for wireless communications facilities that utilize alternative mounting structures or are building mounted to exceed 60 feet in height but not to exceed 120 feet in grade to the top of the structure, upon finding that:

- a. Such structure will not obstruct light to adjacent property;
- b. Such structure will not impair the enjoyment of historic attractions and areas of significant historic interest and surrounding developments;
- c. Such structure will not impair property values in the surrounding area;
- d. Such structure is adequately designed and served from the standpoint of safety, and the county fire chief finds that the fire safety equipment to be installed is adequately designed and that the building is reasonably well located in relation to fire stations and equipment, so as to offer adequate protection to life and property; and
- e. Such structure will not be contrary to the public health, safety and general welfare.

#### Division 9. Limited Business District, LB

##### **Sec. 24-375. Height limits and height limitation waivers.**

(a) Structures may be erected up to 35 feet in height from grade to the top of the structure, including all penthouse, electrical, plumbing, elevator, water tank or other accessory functions which are part of or on top of the structure. Parapet walls may be up to four feet above the height of the building on which the walls rest.

(b) Church spires, belfries, cupolas, *athletic field lighting*, chimneys, flues, monuments, flagpoles and wireless communications facilities that utilize alternative mounting structures or are building mounted in accordance with division 6, Wireless Communications Facilities may be erected to a total height of 60 feet from grade. Camouflaged wireless communications facilities may be erected to a total height of 120 feet from grade. Upon application for a height limitation waiver, the payment of appropriate fees, notification of adjacent property owners and following a public hearing, the board of supervisors may grant a height limitation waiver for these structures to exceed 60 feet in height but not to exceed 100 feet, from grade to the top of the structure, and for wireless communications facilities that utilize alternative mounting structures or are building mounted to exceed 60 feet in height but not to exceed 120 feet in grade to the top of the structure upon finding that:

1. Such structure will not obstruct light to adjacent property;
2. Such structure will not impair the enjoyment of historic attractions and areas of significant historic interest and surrounding developments;
3. Such structure will not impair property values in the surrounding area;
4. Such structure is adequately designed and served from the standpoint of safety, and the county fire chief finds that the fire safety equipment to be installed is adequately designed and that the building is reasonably well located in relation to fire stations and equipment, so as to offer adequate protection to life and property; and
5. Such structure will not be contrary to the public health, safety and general welfare.

#### Division 10. General Business District, B-1

##### **Sec. 24-397. Height limits and height limitation waivers.**

Structures may be erected up to 60 feet in height from grade to the top of the structure, including all church spires, belfries, cupolas, *athletic field lighting*, monuments, flagpoles, penthouse, electrical, plumbing, elevator, water tank or other accessory functions which are part of or on top of the structure and camouflaged wireless communications facilities may be erected to a total height of 120 feet from grade, in accord with the following criteria:

- (1) A structure in excess of 60 feet in height but not in excess of 100 feet from grade to the top of the structure, including all church spires, belfries, cupolas, *athletic field lighting*, monuments, flagpoles, penthouse, electrical, plumbing, elevator, water tank or other accessory functions which are part of or on top of the structure and accessory and nonaccessory wireless communications facilities that utilize alternative mounting structures or are building mounted in accordance with division 6, Wireless Communications Facilities in excess of 60 feet in height but not in excess of 120 feet in grade to the top of the structure, may be erected only upon the granting of a height limitation waiver by the board of supervisors. Upon application for a height limitation waiver, the payment of appropriate fees, notification of adjacent property owners and following a public hearing, the board of supervisors may grant a height limitation waiver upon finding that:
  - a. The regulations of section 24-398 regarding building coverage, floor area ratio and open space are met;
  - b. Such structure will not obstruct light from adjacent property;
  - c. Such structure will not impair the enjoyment of historic attractions and areas of significant historic interest and surrounding developments;
  - d. Such structure will not impair property values in the surrounding area;
  - e. Such structure is adequately designed and served from the standpoint of safety and the county fire chief finds that the fire safety equipment to be installed is adequately designed and the building is reasonably well located in relation to fire stations and equipment, so as to offer adequate protection to life and property; and
  - f. Such structure would not be contrary to the public health, safety or general welfare.

#### Division 14. Planned Unit Development Districts

##### **Sec. 24-496. Height and spacing of structures.**

- (a) Structures may be erected up to 60 feet in height from grade to the top of the structure, including all church spires, belfries, cupolas, *athletic field lighting*, monuments, flagpoles, penthouse, electrical, plumbing, elevator, water tank or other accessory functions which are part of the structure and accessory and nonaccessory wireless communications facilities that utilize alternative mounting structures or are building mounted in accordance with division 6, Wireless Communications Facilities. Camouflaged wireless communications facilities may be erected to a total height of 120 feet from grade.
- (b) A structure in excess of 60 feet in height but not in excess of 100 feet from grade to the top of the structure, including all church spires, belfries, cupolas, *athletic field lighting*, monuments, flagpoles, penthouse, electrical, plumbing, elevator, water tank, radio, television, and microwave antennas and towers or other accessory functions, and accessory and nonaccessory wireless communications facilities that utilize alternative mounting structures or are building mounted in accordance with division 6, Wireless

Communications facilities in excess of 60 feet in height but not in excess of 120 feet in grade to the top of the structure, may be erected only upon the granting of a height limitation waiver by the board of supervisors.

Upon application for a height limitation waiver, the payment of appropriate fees, notification of adjacent property owners and following a public hearing, the board of supervisors may grant a height limitation waiver upon finding that:

- (1) Such structure is in accordance with the uses, densities, design and traffic analysis shown on the original master plan;
- (2) Such structure will not obstruct light from adjacent property;
- (3) Such structure will not impair the enjoyment of historic attractions and areas of significant historic interest and surrounding developments;
- (4) Such structure will not impair property values in the surrounding area;
- (5) Such structure is adequately designed and served from the standpoint of safety, and the county fire chief finds that the fire safety equipment to be installed is adequately designed and that the building is reasonably well located in relation to fire stations and equipment, so as to offer adequate protection to life and property; and
- (6) Such structure would not be contrary to the public health, safety or general welfare.

#### Article V. Districts

##### Division 15. Mixed Use, MU

##### **Sec. 24-525. Height of structures.**

(a) Structures may be erected up to 60 feet in height from grade to the top of the structure, including all church spires, belfries, cupolas, *athletic field lighting*, monuments, flagpoles, penthouse, electrical, plumbing, elevator, water tank or other accessory functions which are part of the structure and accessory and nonaccessory wireless communications facilities that utilize alternative mounting structures or are building mounted in accordance with division 6, Wireless Communications Facilities. Camouflaged wireless communications facilities may be erected to a total height of 120 feet from grade.

(b) A structure in excess of 60 feet in height but not in excess of 100 feet from grade to the top of the structure, including all church spires, belfries, cupolas, *athletic field lighting*, monuments, flagpoles, penthouse, electrical, plumbing, elevator, water tank, radio, television and microwave antennas, and towers or other accessory functions, and accessory and nonaccessory wireless communications facilities that utilize alternative mounting structures or are building mounted in accordance with division 6, Wireless Communications Facilities in excess of 60 feet in height but not in excess of 120 feet in grade to the top of the structure, may be erected only upon the granting of a height limitation waiver by the board of supervisors.

(c) Upon application for a height limitation waiver, the payment of appropriate fees, notification of adjacent property owners and following a public hearing, the board of supervisors may grant a height limitation waiver upon finding that:

- (1) Such structure is in accordance with the uses, densities, design and traffic analysis shown on the original master plan;
- (2) Such structure will not obstruct light from adjacent property;
- (3) Such structure will not impair the enjoyment of historic attractions and areas of significant historic interest and surrounding developments;

- (4) Such structure will not impair property values in the surrounding area;
- (5) Such structure is adequately designed and served from the standpoint of safety and the county fire chief finds that the fire safety equipment to be installed is adequately designed and that the structure is reasonably well located in relation to fire stations and equipment, so as to offer adequate protection to life and property; and
- (6) Such structure would not be contrary to the public health, safety or general welfare.

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Bruce C. Goodson  
Chairman, Board of Supervisors

ATTEST:

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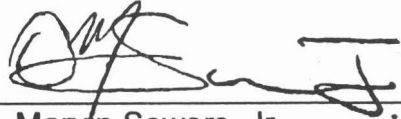
Sanford B. Wanner  
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 11th day of April, 2006.

**PLANNING DIRECTOR'S REPORT**  
**April 2006**

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

- **Rural Lands Study.** Throughout the month of March, the Rural Lands Committee continued its efforts to review the policies and ordinances for residential development in the rural lands. The Committee concluded its work on March 22. Staff is in the process of compiling the Committee's final recommendations for presentation to the Planning Commission and Board. Citizens are invited to attend the meetings and to follow the progress of the committee at [www.jccgov.com](http://www.jccgov.com).
- **New Town Design Review Board.** The Board reviewed ten projects and amendments to the sign ordinance at its February meeting.
- **Planning Commissioner Training.** Three Commissioners attended the Virginia Certified Planning Commissioner's Program in March (Jack Fraley, Shereen Hughes and Tony Obadal. Staff conducted an environmental training program for Commissioner's on March 22.
- **Commission/Board Work session.** The annual work session of the Planning Commission and Board of Supervisors was held on March 28. Several initiatives emerged to improve the development review process which staff will be working on with the Commission.
- **Transportation grants.** Staff is preparing several transportation grants which are due in March. Projects include road and intersection improvements and bikeways.
- **Staff Training.** All planners on staff attended at least two days of the Virginia Planning Association's Annual Conference held in Portsmouth. Staff has embarked on a special ongoing monthly internal training program. Thus far we have received short training sessions with Joe Basilone of Codes Compliance in November; by Sandra Barner of Economic Development in December; by Melinda Sikora and Richard Sebastain in January; and, by John Black of the JCC Fire Department in February.

  
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O. Marvin Sowers, Jr.